

FSAN/ECH.2

I ACCUSE !

SPEECHES TO COURT
BY NELSON MANDELA

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WHEN YOU HAVE FINISHED PLEASE
PASS IT ON

INTRODUCTION

Nelson Mandela, 44 year-old African leader, was sentenced to five years imprisonment on November 7th, 1962, after he had been found guilty of organising a national strike on May 29th, 30th and 31st, 1961, in protest against the Republic of South Africa Constitution Act, and of leaving the country without a valid passport to attend the Conference of the Pan-African Freedom Movement for East and Central Africa, held at Addis Ababa, Ethiopia, in February, 1962

The main charge against Mandela was framed under the Criminal Laws Amendment Act of 1953, which makes it an offence to advise, encourage, incite, command, aid or procure any person to commit an offence by way of protest against a law. The charge of leaving the country illegally was framed under the Departure from the Union Regulations Act of 1955.

The trial was held in the Old Synagogue, Pretoria, the scene of the Treason Trial, before Mr. W.A. van Helsdingen, a Regional Magistrate.

The press publicised the evidence and the judgement delivered by the Magistrate. Most newspapers, however, did not report what the Accused himself had said to the Court during his trial. The people of South Africa have a right to know everything said during this important trial. We accordingly publish the verbatim record of Mandela's two main addresses to the court.

The first address was an application by Mandela for the Magistrate to recuse himself from the case. The second address was a plea in regard to sentence made after he had been found guilty.

APPLICATION FOR MAGISTRATE'S RECUSAL

Your Worship, before I plead to the charge, there are one or two points I would like to raise.

CONDUCTS OWN DEFENCE.

Firstly, Your Worship will recall that this matter was postponed last Monday at my request until today, to enable Counsel to make the arrangements to be available here today. Although Counsel is now available, after consultation with him and my attorneys, I have elected to conduct my own defence. Some time during the progress of these proceedings, I hope to be able to indicate that this case is a trial of the aspirations of the African people, and because of that I thought it proper to conduct my own defence. Nevertheless, I have decided to retain the services of Counsel, who will be here throughout these proceedings, and I also would like my attorney to be available in the course of these proceedings as well, but subject to that I will conduct my own defence.

RECUSAL.

The second point I would like to raise is an application which is addressed to Your Worship. Now at the outset, I want to make it perfectly clear that the remarks I am going to make are not addressed to Your Worship in his personal capacity, nor are they intended to reflect upon the integrity of the Court. I hold Your Worship in high esteem and I do not for one single moment doubt your sense of fairness and justice. I must also mention that nothing I am going to raise in this application is intended to reflect against the Prosecutor in his personal capacity.

The point I wish to raise in my argument is based not on personal considerations, but on important questions that go beyond the scope of this present trial. I might also mention that in the course of this application I am frequently going to refer to the White man and the White people. I want at once to make it plain that I am no racialist, and I detest racialism, because I regard it as a barbaric thing, whether it comes from a Black man or from a White man. The terminology that I am going to employ will be compelled on me by the nature of the application I wish to make.

I want to apply for Your Worship's recusal from this case. I challenge the right of this Court to hear my case on two grounds.

I challenge it firstly because I fear that I will not be given a fair and proper trial. I challenge it in the second place because I consider myself neither legally nor morally bound to obey laws made by a Parliament in which I have no representation. In a political trial such as the present one which involves a clash of the aspirations of the African people and those of the Whites, the country's courts as presently constituted cannot be impartial and fair. In such cases Whites are interested parties. To have a White judicial officer presiding, how-

ever high his esteem, and however strong his sense of justice and fairness, is to make Whites judge their own case. It is improper and against the elementary principles of justice to entrust Whites with cases involving the denial by them of basic human rights to the African people. What sort of justice is this that enables the aggrieved to sit in judgement upon those whom they accused, a judiciary controlled entirely by Whites and enforcing laws enacted by a White Parliament in which we have no representation: laws, which in most cases are passed in the face of unanimous opposition from Africans.

BY THE COURT:

I am just wondering whether I shouldn't interfere with you at this stage, Mr. Mandela. Aren't we going beyond the scope of the proceedings? After all said and done, there is only one Court today and that is the White Man's Court. There is no other Court. What purpose does it serve you to make an application when there is only one Court, as you know yourself. What Court do you wish to be tried by?

BY THE ACCUSED:

Well, Your Worship, firstly I would like Your Worship to bear in mind that in a series of cases our Courts have laid it down that the right of a litigant to ask for a recusal of a judicial officer is an extremely important right, which must be given full protection by the Court, as long as that right is exercised honestly. Now I honestly have apprehensions, as I am going to demonstrate just now, that this unfair discrimination throughout my life has been responsible for very grave injustices, and I am going to contend that that race discrimination which outside this Court has been responsible for all my troubles, I fear in this Court is going to do me the same injustice. Now Your Worship may disagree with that, but Your Worship is perfectly entitled, in fact, obliged to listen to me, and because of that I feel that Your Worship.....

BY THE COURT:

I would like to listen, but I would like you to give me the grounds for your application for me to recuse myself.

BY THE ACCUSED:

Well, these are the grounds, I am developing them, sir. If Your Worship will give me time——

BY THE COURT:

I don't wish you to go out of the scope of the proceedings

BY THE ACCUSED:

——Of the scope of the application. I am within the scope of the application, because I am putting forward grounds which in my opinion are likely not to give me a fair and proper trial.

BY THE COURT:

Anyway, proceed.

BY THE ACCUSED:

As Your Worship pleases. I was developing the point that a judiciary controlled entirely by Whites and enforcing laws enacted by a White Parliament in which we have no representation, laws which in most cases are passed in the face of unanimous opposition from Africans, cannot be regarded as an impartial tribunal in a political trial where an African stands as an accused.

The Universal Declaration of Human Rights provides that all men are equal before the law, and are entitled without any discrimination to equal protection of the law. In May, 1951, Dr. D.F. Malan, then Prime Minister, told the Union Parliament that this provision of the Declaration applies in this country. Similar statements have been made on numerous occasions in the past by prominent Whites in this country, including Judges and Magistrates. But the real truth is that there is in fact no equality before the law whatsoever as far as our people are concerned, and statements to the contrary are definitely incorrect and misleading.

EQUALITY BEFORE THE LAW.

It is true that an African who is charged in a court of law enjoys on the surface the same rights and privileges as a White accused, insofar as the conduct of his trial is concerned. He is governed by the same rules of procedure and evidence as apply to a White accused. But it will be grossly inaccurate to conclude from this fact that an African consequently enjoys equality before the law. In its proper meaning equality before the law means the right to participate in the making of the laws by which one is governed. It means a constitution which guarantees democratic rights to all sections of the population, the right to approach the Court for protection or relief in the case of the violation of the rights guaranteed in the Constitution, and the right to take part in the administration of justice as Judges, Magistrates, Attorney-General, Prosecutors, law advisers and similar positions. In the absence of these safeguards the phrase "equal before the law" insofar as it is intended to apply to us, is meaningless and misleading.

All the rights and privileges to which I have referred are monopolised in this country exclusively by Whites, and we enjoy none of them. The White Man makes all the laws, he drags us before his courts and accuses us, and he sits in judgement over us. Now it is fit and proper to ask the question, Sir, what is this rigid colour bar in the administration of justice all about? Why is it that in this Courtroom I am facing a White Magistrate, confronted by a White Prosecutor, escorted by White Orderlies. Can anybody honestly and seriously suggest that in this type of atmosphere the scales of justice are evenly balanced? Why is it that no African in the history of this country has ever had the honour of being tried by his own kith and kin, by his own flesh and blood? I will tell Your Worship why: the real purpose of this rigid colour bar is to ensure that the justice dispensed by the courts should con-

form to the policy of the country, however much that policy might be in conflict with the norms of justice accepted in judiciaries throughout the civilised world.

"THE ATMOSPHERE OF WHITE DOMINATION"

I feel oppressed by the atmosphere of White domination that is around me in this Courtroom. Somehow this atmosphere recalls to mind the inhuman injustice caused to my people outside this Courtroom by this same White domination. It reminds me that I am voteless because there is a Parliament in this country that is White-controlled. I am without land because the White minority has taken the lion's share of my country, and I am forced to occupy poverty stricken reserves which are over populated and over stocked. We are ravished by starvation and disease because our country's worth.....

BY THE COURT:

What has that got to do with the case, Mr. Mandela?

BY THE ACCUSED:

With the last point, Sir, it hangs together, if Your Worship will give me the chance to develop it.

BY THE COURT:

You have been developing for quite a while now, and I feel you are going beyond the scope of your application.

BY THE ACCUSED:

Your Worship, this to me is an extremely important ground which the Court must consider.

BY THE COURT:

I fully realise your position, Mr. Mandela, but you must confine yourself to the application and not go beyond it. I don't want to know about starvation. That in my view has got nothing to do with the case at the present moment.

BY THE ACCUSED:

Well, Your Worship has already raised the point that here in this country there is only a White Court. What is the purpose of all this? Now if I can demonstrate to Your Worship that outside this Courtroom race discrimination has been used in such a way as to deprive me of my rights, not to treat me fairly, certainly this is a relevant fact from which to infer that wherever race discrimination is practised, this will be the same result, and this is the only reason why I am using this point.

BY THE COURT:

I am afraid that I will have to interrupt you, and you will have to confine yourself to the reasons, the real reasons for asking me to recuse myself.

BY THE ACCUSED:

Your Worship, the next point which I want to make is this: I raise the question, how can I be expected to believe that this same racial discrimination which has been the cause of so much injustice and

suffering right through the years should now operate here to give me a fair and open trial? Is there no danger that an African accused may regard the courts not as impartial tribunals, dispensing justice without fear or favour, but as instruments used by the White man to punish those amongst us who clamour for deliverance from the fiery furnace of White rule. I have grave fears that this system of justice may enable the guilty to drag the innocent before the courts. It enables the unjust to prosecute and demand vengeance against the just. It may tend to lower the standards of fairness and justice applied in the country's courts by White judicial officers to Black litigants. This is the first ground for this application: that I will not receive a fair and proper trial.

Now the second ground for this application is that I consider myself neither morally or legally bound to obey laws made by a Parliament in which I have no representation. That the will of the people is the basis of the authority of government is a principle universally acknowledged as sacred throughout the civilised world, and constitutes the basic foundation of freedom and justice. It is understandable why citizens who have the vote as well as the right of direct representation in the country's governing bodies should be morally and legally bound by the laws governing the country. It should be equally understandable why we as Africans should adopt the attitude that we are neither morally nor legally bound to obey laws which were not made with our consent, nor can we be expected to have confidence in courts that interpret and enforce such laws.

I am aware, Your Worship that in many cases of this nature in the past South African courts have upheld the right of the African people to work for democratic changes. Some of our judicial officers have even openly criticised the policy which refuses to acknowledge that all men are born free and equal, and fearlessly condemned the denial of opportunities to our people. But such exceptions, Your Worship, exist in spite, not because of the grotesque system of justice that has been built up in this country. These exceptions furnish yet another proof that even among the country's Whites there are honest men, whose sense of fairness and justice revolt against the cruelties perpetrated by their own White brothers to our people. The existence of genuine democratic values among some of the country's Whites in the judiciary, however slender they may be, is welcomed by me, but I have no illusions about the significance of this fact, healthy a sign as it may be. Such honest and upright men are few, and they have certainly not succeeded in convincing the vast majority of the rest of the White population that White supremacy leads to dangers and disasters.

"I HATE RACIAL DISCRIMINATION——"

Your Worship, I hate racial discrimination most intensely and in all its manifestations. I have fought it all along my life. I fight it now, and I will do so until the end of my days. I detest most intensely the set-up that surrounds me here. It makes me feel that I am a Black man in a White man's Court. This should not be. I should feel perfectly

free and at ease with the assurance that I am being tried by a fellow South African who does not regard me as inferior, entitled to a special type of justice. This is not the type of atmosphere most conducive to feelings of security and confidence in the impartiality of the Court.

Now the Court might reply to this part of my argument by assuring me that it will try my case fairly and without fear or favour, that in deciding whether or not I am guilty of the offence charged by the State, the Court will not be influenced by the colour of my skin or by any improper motive. That might well be so. But such a reply will completely miss the whole point of my argument. As already indicated, my objection is not directed to Your Worship in his personal capacity, nor is it intended to reflect upon the integrity of the Court. My objection is based upon the fact that our courts as presently constituted create grave doubts in the mind of an African accused whether he will receive a fair and a proper trial. This doubt springs from objective facts relating to the practice of unfair discrimination against the Black man in the constitution of the country's courts. Such doubts cannot be allayed by mere verbal assurances from a presiding officer, however sincere such assurances may be. There is only one way, and one way only of allaying such doubts: By removing discrimination, particularly in judicial appointments. This is my first difficulty.

WHITE AND BLACK ETHICS.

I have yet another difficulty about similar assurances Your Worship might give. Broadly speaking Africans and Whites in this country have no common standard of fairness, morality and ethics, and it will be very difficult for me to determine what standard of fairness and justice Your Worship has in mind. In relationships with us, South African Whites regard as fair and just to pursue policies which have outraged the conscience of mankind, and of honest and upright men throughout the civilised world. They suppress our aspirations, bar our way to freedom and deny us opportunities in our moral and material progress, to secure ourselves from fear and want. All the good things of life are reserved for the White folk, and we Blacks are expected to be content to nourish our bodies with such pieces of food as drop from the tables of men with a White skin. This is the White man's standard of fairness and justice. Herein lies his conception of ethics. Whatever he himself may say in his defence, the White man's moral standards in this country must be judged by the extent to which he has condemned the vast majority of its citizens to serfdom and inferiority.

We, on the other hand, Your Worship, regard the struggle against colour discrimination and for the pursuit of freedom as the highest aspiration of all men. Through bitter experience we have learnt to regard the White man as a harsh and merciless type of human being, whose contempt for our rights and whose utter indifference to the promotion of our welfare makes his assurances to us absolutely meaningless and hypocritical.

I have the hope and the confidence that Your Worship will not treat this objection lightly, nor regard it as a frivolous one. I have decided to speak frankly and honestly, because the injustices I have referred to tend to undermine our confidence in the impartiality of our courts in cases of this nature, and they contain the seeds of an extremely dangerous situation for our country and people. I make no threats, Your Worship, when I say that unless these wrongs to which I have pointed are remedied without delay, we might well find that even plain talk before the country's courts is too timid a method to draw attention to our grievances.

Finally, I need only say that the courts have said that the possibility of bias and not actual bias is all that need be proved to ground an application of this nature. In this application I have merely referred to certain objective facts, from which I submit that the possibility be inferred that I will not receive a fair and proper trial.

BY THE COURT:

Mr. Prosecutor, have you anything to say?

BY THE PROSECUTOR:

Very briefly, Your Worship, I just wish to point out that there are certain legal grounds upon which an accused person is entitled to apply for the recusal of a judicial officer from the case in which he is to be tried. I submit that the Accused's application is not based on one of those principles, and I ask the Court to reject it.

BY THE COURT:

Your application is dismissed. Will you now plead to your charges?

BY THE ACCUSED:

I plead NOT GUILTY to both charges, to all the charges

PLEA IN MITIGATION

I am charged with inciting people to commit an offence by way of protest against the law, a law in which neither I nor any of my people had any say in preparing. The law against which the protest was directed is the law which established the Republic in the Union of South Africa. I am also charged with leaving the country without a passport. This Court has found that I am guilty of incitement to commit an offence in opposition to this law as well as of leaving the country. But in weighing up the decision as to the sentence which is to be imposed for such an offence, the Court must take into account the question of responsibility, whether it is I who is responsible or whether, in fact, a large measure of the responsibility did not lie on the shoulders of the Government which promulgated that law, knowing that my people, as a whole who constitute the majority of the population of this country were opposed to that law, and knowing further that every legal means of demonstrating that opposition had been closed to them by prior legislation, and by Government administrative action.

PIETERMARITZBURG CONFERENCE

The starting point in the case against me is the holding of the Conference in Pietermaritzburg on March 25th and 26th last year (1961), known as the All-In African Conference, which was called by a Committee which had been established by leading people and spokesmen of the whole African population, to consider the situation which was being created by the promulgation of the Republic in this country, without consultation with us, and without our consent. That conference unanimously rejected the decision of the Government, acting only in the name of and with the agreement of the white minority of this country, to establish a Republic.

It is common knowledge that the Conference decided that, in place of the unilateral proclamation of a Republic by the white minority of South Africans only, it would demand in the name of the African people, the calling of a truly National Convention representative of all South Africans, irrespective of their colour, black and white, to sit amicably round a table, to debate a new constitution for South Africa, which was in essence what the Government was doing by the proclamation of a Republic, and furthermore, to press on behalf of the African people, that such new constitution should differ from the Constitution of the proposed South African Republic by guaranteeing democratic rights on a basis of full equality to all South Africans of adult age. The Conference had assembled, knowing full well that for a long period the present National Party Government of the Union of South Africa had refused to deal with, to discuss with, or to take into consideration, the views of the overwhelming majority of the population on this question. And, therefore, it was not enough for this Conference just to proclaim its aim, but it was also necessary for the Conference to find means of stating that aim strongly and powerfully, despite the Government's unwillingness to listen.

GENERAL STRIKE

Accordingly it was decided that should the Government fail to summon such a national convention before May 31st, 1961, all sections of the population would be called on to stage a general strike for a period of three days, both to mark our protest against the establishment of a republic, based completely on white domination over a non-white majority, and also, in a last attempt to persuade the government to heed our legitimate claims, thus to avoid a period of increasing bitterness and hostility and discord in South Africa.

At that conference an action council was elected and I became its secretary. It was my duty, as secretary of the committee to establish the machinery necessary for publicising the decision of this conference and for directing the campaign of propaganda, publicity and organisation which would flow from it. The court is aware of the fact that I am an attorney by profession and no doubt the question will be asked why I, as an attorney who is bound, as part of my code of behaviour, to observe the laws of the country and to respect its customs and traditions, should willingly lend myself to a campaign whose ultimate aim was to bring about a strike against the proclaimed policy of the Government of this country.

In order that the court shall understand the frame of mind which leads me to action such as this, it is necessary for me to explain the background to my own political development and to try to make this court aware of the factors which influenced me in deciding to act as I did.

CHILDHOOD DAYS

Many years ago, when I was a boy brought up in my village in the Transkei, I listened to the elders of the tribe telling stories about the good old days, before the arrival of the white man. Then our people lived peacefully, under the democratic rule of their Kings and their 'amapakati', and moved freely and confidently up and down the country without let or hindrance. Then the country was our own, in name and right. We occupied the land, the forests, the rivers; we extracted the mineral wealth beneath the soil and all the riches of this beautiful country. We set up and operated our own Government, we controlled our own armies and we organised our own trade and commerce. The elders would tell tales of the wars fought by our ancestors in defense of the fatherland, as well as the acts of valour by generals and soldiers during those epic days. The names of Dingane and Bambata, among the Zulus, of Hintsa, Makana, Ndlambe of the AmaXhosa of Sekhukhuni and others in the North, were mentioned as the pride and glory of the entire African nation.

DEMOCRACY IN AFRICAN SOCIETY

"The structure and organisation of early African societies in this country fascinated me very much and greatly influenced the evolution of my political outlook. The land, then the main means of production, belonged to the whole tribe and there was no individual ownership whatsoever. There were no classes, no rich or poor and no exploitation

of man by man. All men were free and equal and this was the foundation of government. Recognition of this general principle found expression in the constitution of the council, variously called "Imbizo" or "Pitso" or "Kgotla" which governs the affairs of the tribe. The council was so completely democratic that all members of the tribe could participate in its deliberations. Chief and subject, warrior and medicine man, all took part and endeavoured to influence its decisions. It was so weighty and influential a body that no step of any importance could ever be taken by the tribe without reference to it.

NO SLAVERY

There was much in such a society that was primitive and insecure and it certainly could never measure up to the demands of the present epoch. But in such a society are contained the seeds of revolutionary democracy in which none will be held in slavery or servitude, and in which poverty, want and insecurity shall be no more. This is the inspiration which, even today, inspires me and my colleagues in our political struggle.

AFRICAN NATIONAL CONGRESS

When I reached adult stature, I became a member of the African National Congress. That was in 1944 and I have followed its policy, supported it and believed in its aims and outlook for eighteen years. Its policy was one which appealed to my deepest inner convictions. It sought for the unity of all Africans, overriding tribal differences among them. It sought the acquisition of political power for the Africans in the land of their birth. The African National Congress further believed that all people, irrespective of the colour of their skins, all people whose home is South Africa and who believe in the principles of democracy and of equality of men, should be treated as Africans; that all South Africans are entitled to live a free life on the basis of fullest equality of the rights and opportunities in every field, of full democratic rights, with a direct say in the affairs of the Government.

THE FREEDOM CHARTER

These principles have been embedded in the Freedom Charter, which no one in this country will dare challenge for its place as the most democratic programme of political principles ever enunciated by any political party or organisation in this country. It was for me a matter of joy and pride to be a member of an organisation which has proclaimed so democratic a policy and which campaigned for it militantly and fearlessly. The principles enumerated in the Charter have not been those of African people alone, for whom the African National Congress has always been the spokesman. Those principles have been adopted as well by the S.A. Indian Congress and the Indian people and the S.A. Coloured People's Congress, and also by farsighted, forward-looking section of the European population, whose organisation in days gone by, was the South African Congress of Democrats. All these organisations, like the African National Congress, supported completely the demand for one man, one vote.

Right at the beginning of my career and experiences as an attorney I encountered difficulties imposed on me because of the colour my skin, and further difficulty surrounding me because of my membership and support of the African National Congress. I discovered, for example, that unlike a white attorney, I could not occupy business premises in the city unless I first obtained ministerial consent in terms of the Urban Areas Act. I applied for for that consent, but it was never granted. Although I subsequently obtained a permit, for a limited period, in terms of the Group Areas Act, that soon expired and the authorities refused to renew it. They insisted that my partner, Oliver Tambo, and I should leave the city and practice in an African location at the back of beyond, miles away from where clients could reach us during normal working hours. This was tantamount to asking us to abandon our legal practice to give up the legal service, of our people, for which we have spent many years training. No attorney worth his salt would agree easily to do so. For some years, therefore, we continued to occupy premises in the city, illegally. The threat of prosecution and ejection hung menacingly over us throughout that period. It was an act of defiance of the law. We were aware that it was, but nevertheless, that act had been forced on us against our wishes, and we could do no other than to choose between compliance with the law and compliance with our consciences.

IN THE COURTS

In the courts where we practised we were treated courteously by many officials but we were very often discriminated against by some and treated with resentment and hostility by others. We were constantly aware that no matter how well, how correctly, how adequately we pursued our career of law, we could not become prosecutors, or magistrates or judges. We became aware of the fact that, as attorneys we often dealt with officials whose competence and attainments were no higher than ours, but whose superior position was maintained and protected by a white skin.

I regard it as a duty which I owed not just to my people, but also to my profession, to the practice of law and justice to all mankind, to cry out against this discrimination which is essentially unjust and opposed to the whole basis of the attitude towards justice which is part of the tradition of legal training in this country. I believed that in taking up a stand against this injustice I was upholding the dignity of what should be an honourable profession.

ACTION OF LAW SOCIETY

Nine years ago the Transvaal Law Society applied to the Supreme Court to have my name struck off the roll because of the part I had played in a campaign initiated by the African National Congress, a campaign for the defiance of unjust laws. During the campaign more than 8,000 of the most advanced and farseeing of my people, deliberately courted arrest and imprisonment by breaking specified laws, which we regarded then, as we still do now, as unjust and repressive. In the

opinion of the Law Society, my activity in connection with that campaign did not conform to the standards of conduct expected from members, but on this occasion the Supreme Court held that I had been within my rights as an attorney, that there was nothing dishonourable in an attorney identifying with his people in their struggle for political rights, even if his activities should infringe upon the laws of the country; the Supreme Court rejected the application of the Law Society

TREASON TRIAL

It would not be expected that with such a verdict in my favour I should discontinue my political activities. But Your Worship may well wonder why it is that I should find it necessary to persist with such conduct, which has not only brought me the difficulties I have referred to, but which has resulted in my spending some four years on a charge before the courts, of high treason, for which I was subsequently acquitted, and of many months in jail on no charge at all, merely on the basis of the Government's dislike of my views and of my activities during the whole period of the emergency of 1960

MY CONSCIENCE

Your Worship, I would say that the whole life of any thinking African in this country drives continuously to a conflict between his conscience on the one hand and the law on the other. This is not a conflict peculiar to this country. The conflict arises for men of conscience, for men who think and who feel deeply in every country. Recently in Britain, a peer of the realm, Earl Russel, probably the most respected philosopher of the Western World, was sentenced, convicted for precisely the type of activities for which I stand before you today, for following his conscience in defiance of the law, as a protest against the nuclear weapons policy being followed by his own Government. For him, his duty to the public, his belief in the morality of the essential rightness of the cause for which he stood, rose superior to this high respect for the law. He could do no other than to oppose the law and to suffer the consequences for it. Nor can I. Nor can many Africans in this country. The law as it is applied, the law as it has been developed over a long period of history, and especially the law as it is written and designed by the Nationalist Government is a law which, in our view, is *immoral, unjust, and intolerable*. Our consciences dictate that we must protest against it, that we must oppose it and that we must attempt to alter it.

Always we have been conscious of our obligations as citizens to avoid breaches of the law, where such breaches can be avoided, to prevent clash between the authorities and our people, where such clash can be prevented, but nevertheless, we have been driven to speak up for what we believe is right, and work for it and bring about changes which will satisfy our human conscience.

Throughout its fifty years of existence the African National Congress, for instance, has done everything possible to bring its demands

to the attention of successive South African Governments. It has sought at all times peaceful solutions for all the country's ills and problems. The history of the A.N.C. is filled with instances where deputations were sent to South African Governments either on specific issues or on the general political demands of our people. I do not wish to burden Your Worship by enunciating the occasions when such deputations were sent; all that I wish to indicate at this stage is that, in addition to the efforts made by former presidents of the A.N.C., when Mr Strijdom became Prime Minister of this country, my leader, Chief A.J. Luthuli, then President of our organisation, made yet another effort to persuade this Government to consider and to heed our point of view. In his letter to the Prime Minister at the time, Chief Luthuli exhaustively reviewed the country's relations and its dangers, and expressed the view that a meeting between the Government and African leaders had become necessary and urgent.

GOVERNMENT REACTION

This statesmanlike and correct behaviour on the part of the leader of the majority of the South African population did not find an appropriate answer from the leader of the South African Government. The standard of behaviour of the South African Government towards my people and its aspirations have not always been what they should have been, and are not always the standards which are to be expected in serious high level dealings between civilised peoples. Chief Luthuli's letter was not even favoured with the courtesy of an acknowledgement from the Prime Minister's office.

LETTER TO VERWOERD

This experience was repeated after the Pietermaritzburg conference when I, as Secretary of the Action Council elected at that conference, addressed a letter to the Prime Minister, Dr. Verwoerd, informing him of the resolution which had been taken and calling on him to initiate steps for convening of such a national convention as we suggested before the date specified in the resolution. In a civilised country one would be outraged by the failure of the head of government even to acknowledge receipt of, or to consider such a reasonable request put to him by a broadly representative collection of important personalities and leaders of the most important community of the country, of the most numerous community of the country. Once again government standards in dealing with my people fell below what the civilised world would expect. No reply, no response whatsoever, was received to our letter, no indication was even given that it had received any consideration whatsoever. Here we, the African people, and especially we of the National Action Council, who had been entrusted with a tremendous responsibility of safeguarding the interests of the African people, we were faced with this conflict between the law and our conscience. In the face of the complete failure of the Government to heed, to consider, or even to respond to our seriously purposed objections and proposals for solution to

our objections to the forthcoming Republic, what were we to do? Were we to allow the law, which states that you shall not commit an offence by way of protest, to take its course and thus betray our conscience and our belief? Were we to uphold our conscience and our beliefs to strive for what we believe is right, not just for us, but for all the people who live in this country, both the present generation and for generations to come, and thus transgress against the law? This is the dilemma which faced us and in such a dilemma, men of honesty, men of purpose and men of public morality and of conscience can only have one answer. They must follow the dictates of their conscience irrespective of the consequences which might overtake them for it. We of the Action Council, and I particularly as Secretary, I followed my conscience.

WOULD DO IT AGAIN

If I had my time over I would do the same again, so would any man who dares call himself man. We went ahead with our campaign as instructed by the Conference and in accordance with its decisions.

The issue that sharply divided white South Africans during the referendum for a Republic did not interest us. It formed no part in our campaign. Continued association with the British Monarchy on the one hand, or the establishment of a Boer Republic on the other - this was the crucial issue in so far as the white population was concerned and as it was put to them in the referendum. We are neither monarchists nor admirers of a Voortrekker type of republic. We believe that we were inspired by aspirations more worthy than either of the groups who took part in the campaign on these. We were inspired by the idea of bringing into being a democratic republic where all South Africans will enjoy human rights without the slightest discrimination; where African and non-African would be able to live together in peace, sharing a common nationality and a common loyalty to this country, which is our homeland. For these reasons we were opposed to the type of Republic proposed by the National Party Government, just as we had been opposed previously to the constitutional Empire. We were not prepared to accept, and at a time when constitutional changes were being made, these constitutional changes should not affect the real basis of a South African Constitution, white supremacy and white domination, the very basis which has brought South Africa and its constitution to contempt and to disrepute throughout the world.

THE MAY 1961 CAMPAIGN

I wish now to deal with the campaign itself, with the character of the campaign and with the course of events which followed our decision. From the beginning our campaign was a campaign designed to call on people as a last extreme, if all else failed, if all discussions failed to materialise, if the Government showed no sign of taking any steps to attempt, either to talk with us or meet our demands peacefully, to strike, that is to stay away from work, and to bring economic pressure to

bear. There was never any intention that our demonstrations at that stage, go further than that. In all our statements, both those which are before the Court and those which are not before the Court, we made it clear that the strike would be a peaceful protest, in which people were asked to remain in their homes. It was our intention that the demonstration should go through peacefully and peaceably, without clash and conflict, as such demonstrations do in every civilised country.

CIVIL WAR AND REVOLUTION

Nevertheless, around that campaign and our preparations for that campaign was created the atmosphere for civil war and revolution. I would say deliberately created. Deliberately created, not by us, Your Worship, but by the Government which set out, from the beginning of this campaign, not to treat with us, not to heed us, nor to talk to us, but rather to present us as wild, dangerous revolutionaries, intent on disorder and riot, incapable of being dealt with in any way save by mustering of overwhelming force against us and the implementation of every possible, forcible means, legal and illegal, to suppress us. The Government behaved in a way no civilised Government should dare behave when faced with a peaceful, disciplined, sensible and democratic views of its own population. It ordered the mobilisation of its armed forces to attempt to cow and terrorise our peaceful protest. It arrested people known to be active in African politics, and in support of African demands for democratic rights, passed special laws enabling them to hold without trial for twelve days instead of 48 hours that had been customary before, and held them, the majority of them, never to be charged before the courts, but to be released after the date of the strike had passed. If there was a danger during this period that violence would result from the situation in the country, then the possibility was of the Government's making. *They set the scene for violence by relying exclusively on violence with which to answer our people and their demands.* The counter measures which they took clearly reflected growing uneasiness on their part, which grew out of the knowledge that their policy did not enjoy the support of the majority of the people, while ours did. It was clear that the Government was attempting to combat the intensity of our campaign by a reign of terror. At the time the newspapers suggested the strike was a failure and it was said that we did not enjoy the support of the people. I deny that. I deny it and I will continue to deny it as long as this Government is not prepared to put to the test the question of the opinion of the African people by consulting them in a democratic way. In any event the evidence in this case has proved that it was a substantial success. Our campaign was an intensive campaign and met with tremendous and overwhelming response from the population. In the end, if a strike did not materialise on the scale on which it had been hoped it would, it is not because the people were not willing, but because the overwhelming strength, violence and force of the Government's attack against our campaign had for the time being achieved its aim of forcing us into submission against our wishes and against our conscience

MASSACRE OF AFRICAN PEOPLE

I wish to return to the question of why people like me, knowing all this, knowing in advance that this Government is incapable of progressive democratic moves, so far as our people are concerned, that this Government is incapable of reacting towards us in any way other than by use of overwhelming brute force, why I, and people like me, nevertheless, decide to go ahead to do what we must. We have been conditioned by the attitudes by history which is not of our making. We have been conditioned by the history of White Government in this country to accept the fact that Africans, when they make their demands to have some chance of success, will be met by force and terror on the part of the Government. This is not something we have taught the African people, this is something the African people have learnt from their own bitter experience. We learnt it from each successive Government. We learnt it from the Government of General Smuts at the time of two massacres of our people: the 1921 massacre in Bulhoek when more than 100 men, women and children were killed and from the 1924 massacre, the Bondelswart massacre in South West Africa, in which some 200 Africans were killed. We have continued to learn it from every successive Government.

COUNTER VIOLENCE

Government violence can do only one thing and that is to breed counter violence. We have warned repeatedly that the Government, by resorting continually to violence will breed, in this country, counter-violence amongst the people, till ultimately, if there is no dawning of sanity on the part of the Government, ultimately the dispute between the Government and my people, will finish up by being settled in violence and force. Already there are indications in this country that people, my people, Africans are turning to deliberate acts of violence and of force against the Government, in order to persuade the Government, in the only language which this Government shows, by its own behaviour, that it understands.

FAILURE OF REPRESENTATION

Elsewhere in the world, a Court would say to me "You should have made representations to the Government". This court, I am confident, will not say so. Representations have been made, by people who have gone before me, time and time again. Representations were made in this case by me; I do not want again to repeat the experience of those representations. The Court cannot expect a respect for the processes of representation and negotiation to grow amongst the African people, the Government shows every day, by its conduct, that it despises such processes and frowns upon them and will not indulge in them. Nor will the Court, I believe, say that, under the circumstances, my people are condemned forever to say nothing and to do nothing. If the Court says that, or believes it, I think it is mistaken and deceiving itself. Men are not capable of doing nothing, of saying nothing, of not reacting to injustice, of not protesting against oppression, of not striving for the

good society and the good life in the ways they see it. Nor will they do so in this country.

UNCONVICED CRIMINAL

Perhaps the Court will say that despite our human rights to protest, to object, to make ourselves heard, we should stay within the letter of the law. I would say, Sir, that it is the Government, its administration of the law, which brings the law into such contempt and disrepute that one is no longer concerned in this country, to stay within the letter of the law. I will illustrate this from my own experience. The Government has used the process of law to handicap me, in my personal life, in my career and in my political work in a way calculated, in my opinion, to bring a contempt for the law. In December, 1952, I was issued with an order by the Government, not as a result of a trial before a court and a conviction, but as a result of prejudice, or perhaps star chamber procedure behind closed doors in the halls of Government. In terms of that order I was confined to the Magisterial district of Johannesburg for six months and, at the same time, I was prohibited from attending gatherings for a similar period. That order expired in June, 1953 and three months thereafter, again without any hearing, without any attempt to hear my side of the case, without facing me with charges, or explanations, both bans were renewed for a further period of two years. To these bans a third was added: I was ordered by the Minister of justice to resign altogether from the African National Congress and never again to become a member or to participate in its activities. Towards the end of 1955 I found myself free and able to move around once again, but not for long. In February, 1956, the bans were again renewed, administratively, again without hearing, this time for five years. Again, by order of the Government, in the name of the law, I found myself restricted and isolated from my fellow men, from people who think like me and believe like me. I found myself trailed by officers of the Security Branch of the Police force wherever I went. In short I found myself treated as a criminal, an unconvicted criminal. I was not allowed to pick my company, to frequent the company of men, to participate in their political activities, to join their organisations. I was not free from constant police surveillance. I was made, by the law, a criminal, not because of what I had done, but of what I stood for, because of what I thought, because of my conscience. Can it be any wonder to anybody that such conditions make a man an outlaw of society? Can it be wondered that such a man, having been outlawed by the Government, should be prepared to lead the life of an outlaw, as I have lead for some months, according to the evidence before this Court?

SEPERATE FROM FAMILY

It has not been easy for me during the past period to seperate myself from my wife and children, to say goodbye to the good old days when, at the end of a strenuous day at an office I could look forward to join-

ing my family at the dinner-table, and instead to take up the life of a man hunted continuously by the police, living seperated from those who are closest to me, in my own country, facing continually the hazards of detection and of arrest. This has been a life infinitely more difficult than serving a prison sentence. No man in his right senses would voluntarily choose such a life in preference to the one normal, family, social life which exists in every civilised community.

LIVED AS AN OUTLAW

But there comes a time, as it came in my life, when a man is denied the right to live a normal life, when he can only live the life of an outlaw because the Government has so decreed to use the law to impose a state of outlawry upon him. I was driven to this situation, and I do not regret having taken the decisions that I did take. Other people will be driven in the same way in this country, by this very same force of police persecution and of administrative action by the Government, to follow my course, of that I am certain. The decision that I should continue to carry out the decisions of the Pietermaritzburg Conference, despite police persecution all the time, was not my decision alone. It was a decision reached by me, in consultation with those who were entrusted with the leadership of the campaign and its fulfilment. It was clear to us then, in the early periods of the campaign, when the Government was busy whipping up an atmosphere of hysteria as the prelude to violence, that the views of the African people would not be heard, would not find expression, unless attempts were made deliberately by those of us entrusted with the task of carrying through the strike call, to keep away from the illegal, unlawful attacks of the Special Branch, the unlawful detention of people for twelve days without trial, and unlawful and illegal intervention by the police and the Government forces in legitimate political activity of the population. I was, at the time of the Pietermaritzburg conference, free from bans for a short time, and a time which I had no reason to expect would prolong itself for very long. Had I remained in my normal surroundings, carrying on my normal life, I would have again been forced by Government action to a position of an outlaw. That I was not prepared to do while the commands of the Pietermaritzburg Conference to me remained unfulfilled. New situations require new tactics. The situation, which was not our making, which followed the Pietermaritzburg Conference, required the tactics which I adopted, I believe, correctly.

ONE OF A LARGE ARMY

A lot has been written since the Pietermaritzburg Conference, and even more since my arrest, much of which is flattering to my pride and dear to my heart, but much of which is mistaken and incorrect. It has been suggested that the advances, the articulateness of our people, the successes which they are achieving here and the recognition which they are winning both here and abroad are in some way the result of my work. I must place on record my belief that I have been only one in a large

army of people, to all of whom the credit for any success of achievement is due. Advance and progress is not the result of my work alone, but of the collective work of my colleagues and I, both here and abroad. I have been fortunate throughout my political life to work together with colleagues whose abilities and contributions to the cause of my people's freedom, have been greater and better than my own, people who have been loved and respected by the African population generally as a result of the dedicated way in which they have fought for freedom and for peace and justice in this country. It distresses me to read reports that my arrest has been instigated by some of my colleagues for some sinister purpose of their own. Nothing could be further from the truth. I dismiss these suggestions as the sensational inventions of unscrupulous journalists. People who stoop to such unscrupulous manoeuvres as the betrayal of their own comrades have no place in the good fight which I have fought for the freedom of the African people which my colleagues continue to fight without me today. Not just I alone, but all of us are willing to pay, which I may have to pay for having followed my conscience in pursuit of what I believe is right. So are we all. Many people in this country have paid the price before me and many will pay the price after me.

"PENALTIES WILL NOT DETER ME"

I do not believe, Your Worship, that this Court, in inflicting penalties on me for the crimes for which I am convicted should be moved by the belief that penalties will deter men from the course that they believe is right. History shows that penalties do not deter men when their conscience is aroused, nor will they deter my people or the colleagues with whom I have worked before.

I am prepared to pay the penalty even though I know how bitter and desperate is the situation of an African in the prisons of this country. I have been in these prisons and I know how gross is the discrimination, even behind the prison walls against Africans, how much worse is the condition of the treatment meted out to African prisoners than that accorded to whites. Nevertheless, these considerations do not sway me from the path that I have taken nor will they sway others like me. For to men, freedom in their own land is the pinnacle of their ambitions, from which nothing can turn men of conviction aside. More powerful than my fear of the dreadful conditions to which I might be subjected in prison is my hatred for the dreadful conditions to which my people are subjected outside prison throughout this country.

HATE RACIALISM

I hate the practice of race discrimination, and in doing so, in my hatred, I am sustained by the fact that the overwhelming majority of mankind hate it equally. I hate the systematic inculcation of children with colour prejudice and I am sustained in that hatred by the fact that the overwhelming majority of mankind, here and abroad, are with me in that. I hate the racial arrogance which decrees that the good things of

life shall be retained as the exclusive right of a minority of the population, and which reduces the majority of the population to a position of subservience and inferiority, and maintains them as voteless chattels to work where they are told and behave as they are told by the ruling minority, and I am sustained in that hatred by the fact that the overwhelming majority of mankind both in this country and abroad are with me.

NOTHING WILL CHANGE MY BELIEFS

Nothing that this Court can do will change in any way that hatred in me, which can only be removed by the removal of the injustice and the inhumanity which I have sought to remove from the political, social and economic life of this country

"WHEN I AM RELEASED——"

Whatever sentence Your Worship sees fit to impose upon me for the crime for which I have been convicted before this Court, may it rest assured that when my sentence has been completed I will still be moved, as men are always moved, by their conscience: I will still be moved by my dislike of the race discrimination against my people when I come out from serving my sentence, to take up again, as best I can, the struggle for the removal of those injustices until they are finally abolished once and for all.

SECOND CHARGE

I now wish to deal with the Second Count.

When my colleagues and I received the invitation to attend the Conference of the Pan-African Freedom Movement for East and Central Africa, it was decided that I should leave the country and join our delegation to Addis Ababa, the capital of Ethiopia, where the Conference would be held. It was part of my mandate to tour Africa and make direct contact with African leaders on the Continent.

I did not apply for a passport because I knew very well that it would not be granted to me. After all the Nationalists Party Government, throughout the 14 years of its oppressive rule, had refused permission to leave the country to many African scholars, educationists, artists, sportsmen and clerics, and I wished to waste none of my time by applying for passport.

The tour of the Continent made a forceful impression on me. For the first time in my life I was a free man: free from White oppression, from the idiocy of apartheid and racial arrogance, from police molestation, from humiliation and indignity. Wherever I went I was treated like a human being. I met Rashidi Kawawa, Prime Minister of Tanganyika and Julius Nyerere. I was received by Emperor Haile Selassie, by General Abboud, the President of Sudan, by Habib Bourguiba, President of Tunisia, and by Modibo Keita of the Republic of Mali.

MET BEN BELLA

I met Leopold Senghor, I met Ben Bella, Prime Minister of Algeria, and Colonel Boumediene the Commander-in-Chief of the Algerian Army of National Liberation. I saw the cream and flower of the Algerian youth who had fought French imperialism and whose valour had brought freedom and happiness to their country.

GAITSKELL AND GRIMMOND

In London I was received by Hugh Gaitskell, leader of the Labour Party, and by Jo Grimmond, leader of the Liberal Party, and other prominent Englishmen.

OBODE

I met Prime Minister Obode of Uganda, distinguished African nationalists like Kenneth Kaunda, Oginga Odinga, Joshua Nkomo and many others. In all these countries we were showered with hospitality and assured of solid support for our cause.

SOUTH AFRICA WILL FAIL

In its efforts to keep the African people in a position of perpetual subordination South Africa must and will fail. South Africa is out of step with the rest of the civilised world, as is shown by the resolution adopted last night by the General Assembly of the United Nations Organisation which decided to impose diplomatic and economic sanctions. In the African States I saw black and white mingling peacefully and happily in hotels, cinemas trading in the same areas, using the same public transport and living in the same residential areas.

I had to return home to report to my colleagues and to share my impressions and experiences with them.

I have done my duty to my people and to South Africa. I have no doubt that posterity will pronounce that I was innocent and that the criminals that should have been brought before this Court are the members of the Verwoerd Government.

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FEDERATION OF SOUTH AFRICAN WOMEN 1954-1963

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