

of that document. On the face of it it seems of no importance to this case at this stage, except if they resolve to do something and you want to put it to the witness. What did they resolve to do?

BY ACCUSED KATHRADA :

5

Among the decisions taken was the passive resistance movement. Could I consider this during the adjournment, please, My Lord.

COURT ADJOURNS.

COURT RESUMES.

10

ISMIL AHMED CACHALIA, under former oath;

EXAMINATION BY ACCUSED KATHRADA CONTINUED :

My Lord, I will not read the resolution to the witness. Will you quickly glance through this resolution of the South African Indian Congress held in Cape Town on the 12th February, 1946? --- Yes.

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According to this resolution, one of the decisions taken was to send deputations from the South African Indian Congress to India, America and to Britain?

--- That is correct.

20

and the other major decision taken by this Conference was to prepare the Indian community of South Africa for a passive resistance struggle, is that correct? --- That is correct.

In pursuance of this resolution did deputations of the South African Indian Congress visit India, Britain and America? --- That is correct.

25

What was the purpose of these deputations?

--- The deputation which went to India, the purpose of that deputation was 1. That they should view the government of India in order to bring about a round table

30

Conference between the South African Government and the Indian government, failing a round table conference, if it is not accepted, then they will ask in terms of the resolution, the government of India to withdraw the High Commissioner from this country, the High Commissioner for 5 the Government of India, and to apply sanctions against South Africa. The South African Indian Congress which went from here, on reaching India, immediately contacted Mahatma Gandhi, who drew up the memorandum, and the late 10 Aga Kahn was asked to lead the deputation to the Viceroy, and a deputation was in fact led by Aga Kahn, and representations were made in terms of this resolution. Furthermore the other purpose of the delegation was to enlighten the position of the Indians of South Africa to the public of India. Similarly the other two delegations which went 15 to England and America, their purpose was also to enlighten the public opinion of Britain and America, as far as possible.

And further in pursuance of the resolution was a passive resistance movement started in South 20 Africa? --- This resolution also empowered the Congress to organise passive resistance movement against the Act, and the provincial bodies, that means the Transvaal Indian Congress and the Natal Indian Congress, were asked by the South African Indian Congress to embark on planning of 25 the passive resistance.

BY MR. JUSTICE RUMPF :

Did the Transvaal British Indian Association become the Transvaal Indian Congress? --- That is right, My Lord, in 1927. 30

BY ACCUSED KATHRADA :

When did passive resistance begin? ---

The passive resistance - the Transvaal and the Natal Indian Congresses formed passive resistance Councils, and these two Councils got together and a Joint Passive Resistance Council was formed and set up a date, I think in June of that year, to start passive resistance, and passive resistance was resumed from some date in June. 5

You told us you were a member of the Transvaal Passive Resistance Council? --- Yes.

Did the passive Resistance Council call for volunteers? --- Yes. 10

What were these volunteers called upon to do? --- These volunteers were called upon to defy a law and submit themselves to go to gaol.

Could you give us a bit more details? What actually did they defy? --- The Passive Resistance Council decided that a certain portion of land should be occupied by the volunteers, which would mean that they were violating the provisions of the Act, and therefore they selected only one place in Durban, which property belonged to the Municipality, and tents were pitched up and people started occupying that land without - as a result of that the resisters were arrested. 15 20

Have you any idea how many volunteers were imprisoned during that campaign? --- Round about two thousand people. 25

Were they only Indians? --- The large bulk of the resisters were Indians, but members from the other communities were accepted as volunteers and they also defied. There were Europeans, there were Coloureds, there were some Africans who took part in this defiance movement as volunteers. 30

My Lords, I would like to read a few

extracts from the report of the Joint Passive Resistance Council which deals with the setting up of the Passive Resistance Council, the course of the campaign, the hooliganism that took place at the plot, organisations that were set up amongst other communities to support the 5 campaign, etc.

BY MR. JUSTICE RUMPF :

Is that relevant? If we know the principle that there was a campaign, there was a submission to arrest, so many people were arrested, how are the details of that 10 particular campaign relevant?

BY ACCUSED KATHRADA :

Excepting My Lord that during the initial stages of the campaign there was a great amount of provocation and actual violence inflicted on the resisters. 15

BY MR. JUSTICE KENNEDY :

That may be relevant, and I suggest that you put the direct question, if it is within the knowledge of the witness, then you have got direct evidence. If the witness knows that of his own knowledge, he can speak about 20 it.

BY ACCUSED KATHRADA :

I don't know if the witness was present at the actual scenes of violence.

BY MR. JUSTICE KENNEDY : 25

Do you know of any scenes of violence which occurred at this place? --- I know, but I was not present, My Lord.

I take it you were on this Joint Resistance Committee, were you? --- I was. 30

And did you get reports in regard thereto?  
--- Yes, My Lord.

BY MR. JUSTICE RUMPF :

You see, I think the furthest you can go is to put to the witness what was generally believed by the Indian Congresses to have happened at the time, but you can't put through this witness a report drawn up by other people to prove the contents of that report. 5

BY ACCUSED K. THRADA :

My Lords, this is a report submitted to the Natal Indian Congress Conference by the Joint Passive Resistance Council, of which this witness was a member. It is contained in the Agenda Book, My Lords, and I was going to put it to him on that basis. 10

BY MR. JUSTICE RUMPF :

Well, it can't possibly be proof of the contents of that report. 15

BY ACCUSED K. THRADA :

Is it not...

BY MR. JUSTICE RUMPF :

You can put to the witness what the belief was in regard to provocation and violence or hooliganism. 20

BY ACCUSED K. THRADA :

As explained in this document, My Lord?

BY MR. JUSTICE BEKKER :

Yes, well, that was the report that came back to the Congress. Whoever drafted that report isn't before the Court, so the witness can only testify on that report on this basis : This is the report we received, and as far as our belief went, that is the position. But that is one thing. The other thing is that you can't prove the fact that there was violence of hooliganism by simply handing in the report. 30

BY ACCUSED KATHRADA :

I don't want to take it as far as that, My Lord. I want to put what the South African Indian Congress accepted as what happened during that campaign.

BY MR. JUSTICE BEKKER :

5

Couldn't the witness give testimony as to the belief?

BY MR. JUSTICE RUMPF :

Was he a party to that report? Did you sign that report? Did you draw it up? --- I did not draw it up but it was first in the Council before it was submitted. 10

Well, you can put to the witness what was alleged in the report, and whether that was discussed in the Council. 15

BY ACCUSED KATHRADA :

You say that passive resistance actually started in June of 1946? --- Yes.

Was it reported to the Joint Passive Resistance Council that acts of violence took place at the resistance plot? --- Yes. 20

Who was responsible for these acts of violence, according to the report? --- It was according to the report, some hooligans, not the Indians. Hooligan elements which came to the plot, they burnt the tents, and even assaulted some of the resisters. 25

Was there any retaliation on the part of the volunteers? --- No, none whatsoever, and it was seen that no fighting there should occur, although there was a large crowd of Indians who were not resisters, and even they were all kept back and not to fight and make it a racial issue first of all, the - and secondly the 30

resisters of course cannot indulge in violence at all. But even those who were not volunteers, they were also asked, and they obeyed the command, and no violence took place from the Indian side.

Did this violence continue for some days? 5

--- Yes.

To your knowledge, did the police intervene? Or was it reported to the Joint Passive Resistance Council? --- Unless I see the Report I won't remember all that. 10

According to the report, hooliganism began on the 16th of June and continued until the 24th when the District Commandant of Police read a proclamation under the Riotous Assemblies Act, prohibiting any gathering within five hundred yards of the intersection of Gail Street and Umbilo Road? --- Yes.

Do you remember ...

BY MR. JUSTICE BEKKER :

May I just interrupt here. After that, did the passive resisters still continue? --- Yes. 20

The reading of the Riotous Assemblies Act, was that to stop hooliganism? --- That is right.

And did it stop it? --- The struggle went on, the rioting stopped.

The violence stopped? --- Yes. 25

BY MR. JUSTICE RUMPFER :

You mean the volunteers were still camping on the plot of land? --- They were, and eventually an arrangement was arrived at with the authorities, that they would simply enter the area, their names would be taken down, and the following day they would appear in the Court, 30

BY MR. JUSTICE RUMPF :

Was that after the reading of the...? ---  
After that.

After the reading, they didn't continue  
to stay on the plot in a group? --- No, they came back 5  
after that. They first left and then they came back, and  
then this sort of arrangement was arrived at.

They just gave their names, and then they  
would leave the plot? --- They would leave the plot and  
the following day they would attend the Court, where they 10  
would be sentenced.

BY MR. JUSTICE BEKKER :

These hooligans, who were they? ---  
Europeans.

BY ACCUSED KATHRADA : 15

Do you recall if during the Passive  
Resistance Campaign, any organisation was set up amongst  
Europeans in support of the campaign? --- Yes, there was  
one in Durban, the Council of Human Rights, and one was  
in Johannesburg, the Council of Civil Rights or something 20  
to that effect.

I am leaving the passive resistance move-  
ment. You will recall that at the General Elections of  
1948, the Nationalist Party came into power? --- Yes.

BY MR. JUSTICE BEKKER : 25

Before you go on, what happened as a  
result of the deputations which went to India and Britain  
and America? What became of that? --- They came back,  
and the government of India withdrew the High Commissioner  
in terms of what the deputation asked the Government of 30  
India to do. There was no round table conference, the  
Government of South Africa did not accede to that, and as



a result of that the High Commissioner was called back.

BY MR. JUSTICE RUMPF :

Was that before May of 1948? Was the High Commissioner withdrawn before 1948? --- Yes, before the struggle started, and economic sanctions were applied 5 within South Africa, that means they stopped trading with South Africa. The deputations which went to England and America, they held quite a number of meetings, saw important people in Britain, and the one which went to America, they assisted the Indian delegation who took up this 10 matter to the United Nations.

BY ACCUSED KATHRADA :

Prior to the Nationalist Party's return to power, did they publish or did it publish what it called its Indian Policy? --- Yes, I believe so. 15

Was this so-called Indian policy printed in an election bulletin of the Nationalist Party called National News? --- Yes.

Were extracts from the National News published in a newspaper called the Passive Resister? --- 20 Yes.

What newspaper was this Passive Resister? --- The Passive Resister was a newspaper which was conducted by the Joint Passive Resistance Council for the Transvaal, giving the views and the news of the passive 25 resistance.

I would like to hand you a photostat sheet from the Passive Resister. My Lords, I merely wanted to read the six points of the Nationalist Party policy. 30

BY MR. JUSTICE RUMPF :

Well, this goes in as proof of the paper

the Passive Resister and what it contains, and what it published. It is not proof of the - it is not proof that these points were in fact part of the Nationalist Party policy, however much it looks like it. But technically it is not proof. This will be Z. 14. 5

BY ACCUSED KATHRADA :

Do you recognise this to be a passage from the Passive Resister? --- Yes.

Now I want to briefly read the six main points of the Nationalist - what purports to be the Nationalist Party's Indian policy. "1. Repatriation. The Party in collaboration with India and/or other countries will strive to repatriate or transfer elsewhere as many Indians as possible. 2. Indian Immigration and Penetration. The prohibition of (a) Indian penetration (b) movement and penetration must continue, and must be applied more strictly. 3. The Cape. The Cape Urban Areas must be protected against Indian penetration. 4. Mixed Living. The Indians must not be allowed to live amongst the other sections of the population. 5. Trading Licence Restrictions. The granting of trading licences to Indians outside their own area must be curtailed. 6. Family Allowances. Family allowances to Indians must be stopped." Was that to your knowledge/<sup>the</sup> policy of the Nationalist Party before it came into power? --- Yes. 25

Now further~~er~~ in the same article, there is a sub-heading, "What a Candidate Promised," referring to what is purported to what had been said by a Dr. J.H. Looch, who stood as a Nationalist Party candidate in Vereeniging. 30

BY MR. JUSTICE RUMPF :

How is that relevant?

BY ACCUSED K. THRADA :

My Lord, as part of Nationalist Party policy.

BY MR. JUSTICE RUMPF :

This is not evidence of Nationalist Party policy. I thought in this case we have said time and again that if a single individual expresses an opinion, that may not necessarily be the policy of a party.

BY ACCUSED KATHRADA :

My Lords, I want to put this one statement to him and ask him whether that is the type of statement that you are used to hearing from Nationalist leaders.

BY MR. JUSTICE RUMPF :

This is not evidence that it was made at all. It isn't even evidence of what you believe. Anything that is published in a paper is not evidence that all the people who read the paper believe it.

BY MR. KATHRADA :

But the ones who are responsible for publishing the paper, My Lord, what they believe to have been said by this Nationalist Party candidate.

BY MR. JUSTICE RUMPF :

This is not the way to put in evidence. If you want to prove that this statement was made, you must prove it in accordance with the law of evidence. Otherwise you can put in anything this way, anything, there is simply no limit, and then ask the witness, well, did you believe that that happened. How is that relevant, what he believes, this witness, in regard to what Mr. Looch may or may not have said?

BY ACCUSED KATHRADA :

My Lords, the witness has given the various positions he has held in the organisations...

BY MR. JUSTICE RUMPF :

Yes, Mr. Looch's opinion about the Indians is not relevant at all. It has got nothing to do with the case.

BY ACCUSED KATHRADA :

Is the policy of the Nationalist Party relevant, My Lord?

BY MR. JUSTICE RUMPF :

We have allowed you to put it in as the policy of the Nationalist Party, they have been put in in this form, and we have allowed it to go in on the basis that this may have been accepted by the Indian community as the policy of the party, rightly or wrongly. But now you come to a statement by any individual. How is that relevant?

BY ACCUSED KATHRADA :

He was subsequently a member of Parliament. I thought he was an important individual in the organisation.

BY MR. JUSTICE RUMPF :

I am afraid that that doesn't make it relevant.

BY ACCUSED KATHRADA :

I'll leave it at that, My Lord.

BY MR. JUSTICE RUMPF :

You see, it is going to rebound (?), the whole thing, because that is the point which you in your defence will take in this very case, that expressions of individuals do not represent or need not represent the

policy of the movement.

BY ACCUSED KATHRADA :

My Lord, I thought that matters of such evidence was put in by the Crown, but if the Court accepts that that is the position, I won't take it any further.

BY MR. JUSTICE RUMPF :

You have set out what we have allowed to go in as being the Nationalist Party policy in regard to Asiatics, according to the beliefs of those who were interested, the Asiatics.

BY ACCUSED KATHRADA :

I would like to go further. What the witness believes as Nationalist Party policy and as it was propagated by Nationalist officials.

BY MR. JUSTICE RUMPF :

I am afraid that in the form in which you put it it is not permissible.

BY ACCUSED KATHRADA :

Shortly after the election of the Nationalist Party to the Government, did the passive Resistance Council take any decision in regard to the continuation of the passive resistance campaign? --- Yes, this struggle of passive resistance which was started in 1946 continued throughout, but in May 1948 when the Smuts government lost the election and the Nationalist Government - the Nationalist Party formed the government, we discussed this matter in Joint Passive Resistance Council, and decided to suspend the struggle, because the Act - the United Party was actually responsible for the passing of the Act, and therefore we decided to suspend the struggle, and we in fact did suspend the struggle and immediately started communicating with the

Minister, more particularly the Prime Minister, on the subject.

The Prime Minister referred your communication to the Minister of the Interior? --- Yes, that is so.

And did the Congresses then receive a letter from Dr. Donges who I believe was the Minister of the Interior at the time? --- That is right. 5

My Lords, I have a further copy of the Passive Resister in which this letter was printed.

BY MR. JUSTICE BEKKER : 10

Have you read that original letter? --- Yes, My Lord.

And the copy you are about to hand in, is that a copy of the letter?

BY ACCUSED K. THIRADA : 15

A copy of the newspaper which contains the letter.

BY MR. JUSTICE BEKKER :

Are you able to say whether that copy of the letter appearing in that newspaper is correct, in the sense that it corresponds with the original letter that you saw? --- Yes, at the time we handed it to the Passive Resister to be published. 20

BY MR. JUSTICE RUMPFER :

This will be Z.15. 25

BY ACCUSED K. THIRADA :

Now in reply to your first letter to the Prime Minister, was the following the letter that you received from Dr. Donges: "Sir, Your letter of the 4th ultimo to the Private Secretary to the Honourable the Minister - the Honourable the Prime Minister has been referred to me by the Prime Minister. I note the request 30

of your two executive committees to the Prime Minister to meet a joint deputation of discuss certain difficulties in regard to the Asiatic Land Tenure and Indian Representation Act, 1946. As I am the responsible Minister, I shall regard the request for an interview as directed to me. I am at all times prepared to discuss with Indians in South Africa in a friendly and co-operative spirit any matter affecting the interests of Indians here. But I am not prepared to extend this facility to any organisation of Indians which sponsors or associates itself with any organised flouting of the laws of the country. I also exclude organisations which are communistic in their orientation or leadership or which while claiming to be composed of Union citizens, invoke the political aid of another country. At the moment the Natal and Transvaal Indian Congresses do not fall within the ambit of organisations with which I am prepared to discuss, indeed with which I could usefully discuss, matters affecting the Indian population in the proper spirit. I note that your organisations have temporarily suspended organised law breaking. While not prepared to judge the motives or reasons for this step, I can only hope that it will be followed within the near future by the permanent abrogation of organised law breaking and the repudiations of foreign ideological conceptions which are inimical to the racial peace in South Africa. If my hopes are realised, the way will be paved for the desired interview on a mutually convenient date. Until then, other Indian organisations which satisfy the tests I have enunciated above, will have to serve as the channel through which the Indian population in South Africa may approach the Government for a discussion of any

matter affecting its interests. Yours faithfully,  
signed T.E. Donges, Minister of the Interior." Just below that appears the text of the letter - the reply sent to this letter by the Joint Passive Resistance Councils of the Natal and Transvaal Indian Congress. "Sir, we are directed to acknowledge receipt of your letter dated 2nd July, 1948. It is the desire of the Transvaal and Natal Indian Congresses to make the following observations for the earnest consideration of the Honourable the Prime Minister.

(a) The history of the Indians in South Africa is one long record of his steadily deteriorating status and fast dwindling rights. He was deprived of the Parliamentary franchise in Natal in 1896. In 1924 the Municipal franchise was taken away from him. Earlier his trading and property rights in the Transvaal were restricted. The years have witnessed the growth of a huge body of anti-Indian legislation culminating in the Asiatic Land Tenure and Indian Representation Act of 1946. Reasons for Passive Resistance. (b) This unjust law aroused the deep indignation of Indians throughout South Africa. Dispossessed of the franchise, all constitutional means of obtaining redress were soon exhausted without avail. The unyielding attitude of the government left the Indian people with no other alternative but to launch a campaign of Passive Resistance in protest against a racially oppressive law. Suspension. (c) With the return of the present government to office as a result of the recent General Elections, in which the Indian people of South Africa have had no part, our Congresses suspended their Passive Resistance struggle and sought an interview with the Honourable the Prime Minister, to discuss the many disabilities confronting them, more particularly in



in relation to the abovementioned Act and to secure from him a statement of the Government's policy in regard to the Indian community. (d) We recall that in reply to our communication dated the 25th June, 1948, the Honourable the Prime Minister said he was unable to meet us as he had to proceed to Cape Town on urgent business. He referred the matter to the Honourable the Minister of Interior. To our further request the Honourable the Prime Minister stated that his heavy tasks and commitments precluded an interview with him and that we should approach the Honourable the Minister of Interior. (e) In the circumstances, our Congresses are concerned at the inaccessibility of the Honourable the Prime Minister at a juncture when vital questions affecting the Indian community call for pressing solution. (f) Our Congress have noted the suggestion of the Honourable the Prime Minister in your last communication that the Honourable the Minister of Interior should be approached with a view to an interview. However, before we could attend to this matter, the Honourable the Minister of the Interior has already by letter dated the 12th July, 1948, expressed his unwillingness to meet our Congresses. He has raised objections which are to be greatly deplored, for they run counter to all constitutional and democratic practice. We view such an attitude with grave apprehension, more particularly when it is taken against the accredited national representatives of a community who, deprived of the Parliamentary franchise, has not - has no other channel of placing its views before the government. (g) The objections of the Honourable the Minister of Interior constitute so serious a departure from ordinary democratic principles and procedure, that our Congresses cannot but draw the

Honourable the Prime Minister's attention to its wider implications and significance. (h) We cannot understand the Honourable the Minister concerning himself with the internal composition of the membership of our Congresses. It is not for the Honourable Minister, but for the Indian people themselves to determine the composition of their organisation. The Honourable Minister should be satisfied with the fact that we are the largest Indian political organisations in the country, whose membership is open to all Indians. The Natal Indian Congress has 35,000 registered members. The present officials of the Transvaal Indian Congress were elected by 12,000 votes without any opposition. (i) Indians in South Africa have always maintained their unfettered right to seek the goodwill of India and the support of world opinion in their struggle for full democratic rights in their land of birth and adoption. The solution here lies with the Government of South Africa. So long as the Indian is the victim of unjust racial discrimination, so long as franchise, the basic pillar of fundamental human rights, is denied to him, for so long, will this position remain. (j) The Honourable Minister refers to organised flouting of the law. We assume that this reference is to the Passive Resistance Movement. There is no question that the Asiatic Act of 1946 is directed against the interests of the Indian community of the Transvaal and Natal, and seeks their ultimate economic destruction, social degradation and national humiliation. In such circumstances, Indians have traditionally chosen to defy such an unjust law and accept the penalties imposed. Here too, the solution lies with the government. Our Congress, sir, record with great regret the fact that the Honourable the Prime Minister has

been unable to grant us an interview. He has referred us to the Honourable the Minister, who has refused to meet our organisations. The primary purpose envisaged by our Congresses in seeking the interview was to discover the policy of the new government in respect of the following disabilities 5 under which the Indians suffer: 1. Unjust discrimination in terms of the Asiatic Land Tenure and Indian Representation Act, 1946. 2. The continued denial of the franchise. 3. The restrictions on movement from one province of South Africa to another. 4. The unjust discrimination 10 against Indians in laws and their operation. 5. The question of a Round Table Conference between the Governments of India and the Union of South Africa, arising from the resolution adopted at the 1946 Session of the General Assembly of the United Nations. What we require is an 15 unequivocal statement of policy from the new Government in regard to the above matters, especially regarding our status as part of the South African nation. Such a declaration, we can seek only from the Honourable the Prime Minister, the head of the Government. We hope, Sir, 20 we have made our position clear. Should the Honourable the Prime Minister find it possible to grant us an interview, we shall readily wait on him at his early convenience. Should he not be able to do so, we anticipate an early statement on the abovementioned matters that 25 would apprise us on government policy thereon. Yours faithfully, Y.A. Cachalia, Joint Secretary, Transvaal Indian Congress. D. Singh, General Secretary, Natal Indian Congress. " Were those the texts of the correspondence which passed between your organisation and the 30 authorities? --- Yes.

You have already referred to the 1947

Report in which mention is made of the fact that the African National Congress sympathised with the present resistance struggle, and that Africans actually participated in the campaign? --- That is correct.

Is it correct that in March or thereabouts 5 in 1947, a meeting took place between representatives of the Natal Indian Congress, the Transvaal Indian Congress and the African National Congress?

BY MR. JUSTICE BEKKER :

Before you go on, what was the outcome 10 of these letters? --- This was the letter, and then there was no reply to this letter, My Lord, no policy was announced.

BY MR. JUSTICE RUMPFER :

I see that in the letter from the Minister 15 of the Interior there is a statement that he was not prepared to negotiate with organisations which are communistic in their orientation or leadership? --- Yes.

Were there communists as leaders of your 20 organisation at the time? --- I don't know what this letter meant, but Dr. Dadoo, he was a member of the Communist Party.

Was he the President of the Indian Congress, the ..? --- Yes.

The South African Indian Congress? --- No, 25 the Transvaal Indian Congress.

Who was the president of the South African Indian Congress? --- At that time, Mr. Ahmed Ismail.

Did the South African Indian Congress 30 consist of the Natal Indian Congress, the Transvaal Indian Congress and the Cape Indian Congress? --- Yes.

Were there other leaders of the Transvaal

Indian Congress who were members of the Communist Party?  
At that time? --- No, I don't think so. No officials  
were members of the Party.

BY ACCUSED KATHRADA :

I was asking you about a meeting between 5  
representatives of the Natal and Transvaal Indian Congresses,  
and the African National Congress. Did you know that such  
a meeting took place in 1947? --- Yes.

Do you know who the representatives were  
who participated in this meeting? --- Dr. Xuma, the 10  
President of the African National Congress, Dr. Naicker  
the President of the Natal Indian Congress, and Dr. Dadoo,  
President of the Transvaal Indian Congress met.

Was a statement of policy issued after  
this meeting? --- Yes. 15

What is the statement generally known as  
in Congress circles? --- It known as Xuma-Dadoo-Naicker  
Pact.

I want to refer to the Passive Resister,  
Friday, March 14th, 1947. There is an article headed 20  
"Non-European Unity Declaration." Is that the Dadoo,  
Naicker, Xuma Pact that you referred to? --- That is  
correct.

I would like to read in the text of  
this. "This joint meeting between the representatives 25  
of the African National Congress and the Natal and  
Transvaal Indian Congresses, having fully realised the  
urgency of co-operation between the non-European peoples  
and other democratic forces for the attainment of basic  
human rights and full citizenship for all sections of the 30  
South African people, has resolved that a Joint declara-  
tion of co-operation is imperative for the working out

of a practical basis of co-operation between the National Organisations of the non-European people. This Joint Meeting declares its sincerest conviction that for the future progress, goodwill, good race relations and for the building of a united, greater and free South Africa, 5 full franchise rights must be extended to all sections of the South African people, and to this end this joint meeting pledges the fullest co-operation between the African and Indian peoples and appeals to all democratic and freedom loving citizens of South Africa to support 10 fully and co-operate in this struggle for : 1. Full franchise; 2. Equal economic and industrial rights and opportunities and the recognition of African Trade Unions under the Industrial Conciliation Act; 3. The removal of all land restrictions against non-Euro- 15 peans and the provision of adequate housing facilities for all non-Europeans; 4. Guaranteeing freedom of movement and the abolition of pass laws against the African people and the Provincial barriers against the Indian; and 5. The removal of all discriminatory and oppressive 20 legislation from the Union's statute book." Does this correctly said - set out the Dadoo-Xuma-Naicker Pact? --- Yes,

In 1949 did rioting occur between Africans and Indians in Durban? --- That is correct. 25

Did the African National Congress and the Indian Congress adopt an attitude towards these riots? --- Yes.

What was their attitude? --- The attitude was to stop the rioting immediately. 30

I understand that the Congresses took certain specific steps to bring the rioting to an end? ---

That is correct.

What were these steps? --- That the President of the A.N.C. Natal, and the President of the Indian Congress of Natal made joint appeals to stop rioting, and bring about peace and better understanding amongst both sections of the people. 5

Did you personally visit Durban at the time? --- Yes, the President-General of the African National Congress was in Johannesburg. I went with him specifically during the time of the riots to see that the rioters stopped. 10

Was it Dr. Xuma? --- Yes.

Was there a Commission of Enquiry appointed after the riots? --- Yes, there was.

And did the Congresses make joint representations to this Enquiry? --- Yes, the Executive Committees of both the Congresses met in Durban and they decided at the time to make joint representation to the Commission, and they in fact made joint representation through advocates. 15 20

Is it correct that in 1949 there was in addition co-operation between the African National Congress and the Transvaal Indian Congress, which resulted in the first joint major campaign by the two organisations? --- Yes. 25

Did this campaign have anything to do with banning orders? --- Yes.

On whom was the banning order imposed? --- Dr. Dadoo, the President of the Transvaal Indian Congress went to Cape on Congress work. Then he was served notice under the Riotous Assemblies Act banning him from attending gatherings and attending meetings. 30

As a result of that the Transvaal Indian Congress and the Transvaal African National Congress met, and decided to launch protest against the banning, and they also decided to hold a Free Speech Convention, that was the decision taken, yes. 5

What was the purpose of this convention, do you remember? --- For the purpose of - on the question of freedom of speech, that people should not be banned, but that they should be allowed to propagate convictions.

Did this convention take any decisions with regard to any form of action? --- Yes. They decided also to protest as - as a means of protest for a stoppage of work for one day, and the May 1st was - the 1st of May was accepted for that purpose. 10

Did the Transvaal Indian Congress in fact take a decision - I mean take steps to implement this decision? --- Yes. 15

What form did the demonstration as a whole take? --- On the 1st of May there was stoppage of work in Transvaal, more particularly on the Reef. The Indians, those who were working, they did not go to work, and those who had businesses, they closed their shops. 20

As far as the Congress was concerned, was it a peaceful demonstration? --- Yes, certainly.

Did any disturbances occur on that date? --- Yes, in the evening there were some shootings in Alexandra Township, In Benoni, and also at Orlando. Some lives were lost, I think about eighteen or twenty. 25

You say lives were lost. Who were these people who were killed? --- The Africans were killed, by - from the shooting of the police. 30

Were any policemen injured to your



knowledge? --- No, none.

Later on, in May, did a Conference take place between representatives of the African National Congress and the South African Indian Congress? --- Yes, I think on the 14th of May. 5

What was the purpose of this Conference? --- The purpose of this conference was to protest and take some positive action against the bills which were before the Parliament, more particularly the Suppression of Communism Act and the Group Areas Act. 10

And did the Conference decide on the nature of any such action to be taken? --- Yes, it was decided that June 26th be proclaimed a day of protest, against these two measures, as well as a day of mourning for those people who were killed on the 1st May. 15

Was the date the 26th June fixed by any Congress official? --- No, it was left to the President-General of the African National Congress, and Dr. Moroka the President-General of the African National Congress fixed a date. 20

Now on the 26th June, 1950, was there in fact a stoppage of work? --- Yes.

Was the stoppage restricted to any particular area? --- No, this was a Union wide stoppage of work. 25

Can you give any idea of the extent of the stoppage in the main centres? --- I think it was just over 60%. The reports showed that there was over 60% success of the stoppage of work, taking all in all. BY MR. JUSTICE RUMPF : 30

60% of which people stopped work? --- 3  
All, that means the Indians, the Coloureds and the

Africans. For instance, My Lord, if you take the whole - if you take Natal, the bulk of the Indian population there who are workers, more people - more Indians did not go - stopped work in Durban.

This is 60% of the total population 5  
except the Whites? --- That is right, of the non-Europeans.

We have referred yesterday and today to the Conference of the South African Indian Congress held in 1950 in Johannesburg? --- Yes.

We have also referred to a resolution 10  
passed at that Conference on the need for co-operation between the Indian community and other communities? --- That is so.

Up to the time of your banning, was there any amendment or any change made to this attitude - to the 15  
attitude expressed in that resolution? --- Of co-operation?

Yes? --- No.

Has this resolution, as far as you are concerned, been the guiding policy of Congress since its adoption? --- Quite so. 20

My Lords, I am now proceeding to the Defiance Campaign. I wanted to start off by reading the letters which passed between the Congresses and the Government. Are you aware of a Joint Planning Council that was established in 1951 by the South African Indian 25  
Congress and the African National Congress? --- Yes.

What was the purpose of this Joint Planning Council? --- The purpose was to work out, inquire and work out the details of how the Defiance Movement or the passive resistance could be launched. 30

Did the Joint Planning Council prepare a plan which was submitted to the African National Congress

and to the South African Indian Congress? --- Yes, that is so.

My Lord, I think this plan is already on record.

BY MR. TRINGOVL :

5

The whole scheme was set forth in A.83, My Lord, which was read out in full, at page 436 of the record.

BY ACCUSED KATHRADA :

Do you remember this plan or would you like to have a look at it? --- I remember it, but... 10

I would like you to have a look at the plan. My Lord, I am informed that our copy of the record is in the prison library, but I'll continue, My Lord. How would you describe the nature of the method suggested in this plan? --- The method was based on passive resistance lines, on the lines of passive resistance. 15

Does the plan bear any resemblance to the passive resistance campaign of 1946 conducted by the Transvaal and Natal Indian Congresses? --- Yes, it was based on those lines. 20

CASE REMANDED TO THE 23RD JUNE, 1960.

COURT ADJOURNS.

(CONTINUED ON PAGE 14990) 25

30

23/6/60.MR. CACHALIAJOMAIL AHMID CACHALIA (UNDER FORMER OATH)

1

XD. BY MR. KATHRADA (ACCUSED 3) Contd:

MR. KATHRADA: My lords, before we adjourned yesterday I told your lordships that the plan of the Joint Planning Council had been read into the record; we have since tried to check the record with Mr. Trengove and discovered that it has not been read in.

5

RUMPF J: Not at all? Or not completely?

MR. KATHRADA: As far as I'm aware it has not been read in at all, mylord.

RUMPF J: The joint plan? Is that so, Mr. Trengove?

10

MR. TRENGOVE: The position is, my lords, that A.83 contains certain reports which refer to certain portions of the plan and the history of the scheme, but apparently it's not the document that the witness has in mind.

RUMPF J: Yes.

15

MR. KATHRADA: I propose reading the plan at this stage, my lords.

RUMPF J: How long is the document?

MR. KATHRADA: It is seven pages, my lords.

RUMPF J: Cannot it be taken as read?

20

MR. TRENGOVE: As far as we are concerned, my lord, it can be taken as read.

RUMPF J: It can then be typed into the record.

MR. KATHRADA: My lord, it will be important for me to read it.

25

RUMPF J: Why?

MR. KATHRADA: Because, my lords. . .

RUMPF J: Is there anything you want to put to the witness?

MR. KATHRADA: I wanted to put a few general questions

30

my lord; also for the benefit of the other accused. 1

RUMPF J. Yes, well, they can read it at a later stage, it will be typed in with to-day's evidence. That was what was done in the past. Have you got it in a book form?

MR. KATHRADA: Well, it's part of an appendix in a book, my lord. 5

RUMPF J: Is it also part of an exhibit?

MR. KATHRADA: It is not, my lord.

RUMPF J: I thought it was part of an exhibit but not read in? 10

MR. KATHRADA: No, it is not part of an exhibit, my lord.

RUMPF J: Does it not appear in any of the agenda books?

MR. KATHRADA: Not as far as I've been able to check, my lord. It does appear in an agenda book which is not an exhibit in this Court, my lord. 15

RUMPF J: Has that agenda book been referred to already?

MR. KATHRADA: I have referred to it, my lord, on various occasions, but I have not put it in. 20

RUMPF J: Which is the agenda book?

MR. KATHRADA: It is the Agenda Book of the 20th Session of the South African Congress held in Johannesburg in January, 1952, my lord. 25

RUMPF J: Have you got it there?

MR. KATHRADA: I have the book here, my lord.

RUMPF J: And have you got the joint plan there?

MR. KATHRADA: Yes, my lord. 30

MR. CACHALIA

and work out a budget estimate for such a vast national under- 1  
 taking. Suffice it to say that a full scale campaign will  
 require thousands of pounds. Conscious of this essential re-  
 quirement, we recommend with some confidence that if the Af-  
 rican National Congress and the South African Indian Congress  
 undertake to launch a 1 Million Shilling Drive it can sustain 5  
 the campaign. The Drive should be conducted under the slogan:  
"1 Million Shillings Freedom by the end of March 1952" for  
 freedom.

National Pledge

This Council is strongly of the opinion that an inspired 10  
 National Pledge should be issued which could be read out at  
 public, factory and group meetings and repeated by all those  
 present. A special day, e.g., April 6th should be set aside  
 so that special meetings are called everywhere, in towns,  
 villages, and hamlets in factories and locations, and special 15  
 church services be held on this day, where the National Pledge  
 could be publicly read out. This day or any other day which  
 the Conference of the African National Congress sets aside for  
 the purpose should be called "The National Day of Pledge and  
Prayer". 20

(Sgd.) J.S. MOROKA,  
 (Chairman)

Y.M. DADOO  
 Y. CACHALIA

J.B. MARKS  
 W.M. SISULU

(Representatives of the  
 South African Indian  
 Congress.)

(Representatives of the African  
 National Congress)

Thaba 'Nohu  
 November 8th 1951.

25

30

13.

1

We cannot fail to recognise that industrial action is second to none, the best and most important weapon in the struggle of the people for the repeal of the unjust Laws and that is inevitable that this method of struggle has to be undertaken, at one time or another during the course of the struggle. 5

We also note that in the present day South African conditions, the one-day protest on May 1st and June 26th, 1950, and the one-day protest in the Cape on May 7th, 1951 against the Separate Representation of Voters' Bill, demonstrated the preparedness of the people to undertake this form of struggle 10 with no mean success. We are nevertheless of the opinion that in this next phase of our campaign lawful industrial action should not be resorted to, but that it should be resorted to at a later stage in the struggle. In this new phase of the campaign a sustained form of mass action will be necessary 15 which will gradually embrace larger groups of people, permeate both the urban and the rural areas and make possible for us to organise, discipline and lead the people in a planned manner. And, therefore, contrary to feelings in some quarters, we are not keen to advocate industrial action as the 20 first step, but only as a later step in the campaign against Unjust Laws. It should be noted, however, that our recommendations do not preclude the use of lawful industrial action during the first stage, provided that conditions make its use possible on a local, regional, provincial or national 25 scale.

14.

It is apparent that the plan of action herein outlined cannot be put into effect without the necessary funds to back it. It is also apparent that no body of men can sit down 30

areas should be called to discuss the problems of the 1  
people and to decide on the most suitable form of  
Defiance of Unjust Laws in the area.

The South African Indian Congress

Insofar as appropriate action by the South African Indian  
Congress is concerned, the conditions and effects of the laws 5  
vary in the three provinces, but we submit the following for  
the consideration of the South African Indian Congress:-

- (a) Provincial Barriers.
- (b) Apartheid Laws such as train, post office,  
Railway Stations, etc. 10
- (c) Group Areas Act- if and when possible.

The Franchise Action Council:

- (a) General Apartheid segregation in Post Offices,  
Railway Stations, trains, etc
  - (b) Group Areas Act- if and when possible. 15
- Both (a) and (b) will apply to the Coloured people in the  
other provinces as well.

In the Cape a strong possibility exists of having mixed units  
rather than having separate national organisation units.

12 20

The Population Registration Act

During the conduct of the campaign it should not be forgotten  
that the Government is preparing the machinery for the en-  
forcement of the Population Registration Act. This Act is  
reluctant to all sections of the people and the campaign must 25  
pay particular attention to preparing the volunteers and in-  
structing the masses of the people to resist the enforcement  
of this Act. The campaign on this Act may well take the  
struggle from stages one and two into stage three of mass  
action. 30



Laws to be tackled. In recommending laws and regulations which should be tackled we have borne in mind the Laws which are most obnoxious and which are capable of being defied  
The African National Congress

Insofar as the African National Congress is concerned, 5  
the law which stands out for attack are naturally the Pass  
Laws and regulations relating to Stock Limitation.

Method of Struggle on the Pass Laws:

- (a) A Unit of Volunteer Corps should be called upon to  
defy a certain aspect of the pass Law, e.g., enter a 10  
Location without a permit. The Unit chosen goes into  
action on the appointed day, enters the location and  
holds a meeting. If confronted by the authorities  
the leader and all the members of the Unit court  
arrest and bear the penalty of imprisonment. 15
- (b) Selected leaders to declare that they will not carry  
any form of passes including the Exemption Pass and  
thus be prepared to bear the penalty of the law.
- (c) Other forms of struggle on the Pass Laws can also be  
undertaken depending on the conditions in the differ- 20  
ent areas throughout the country.

Rural Action.

Whilst the Volunteers go into action on the Pass Laws in the  
Urgan Areas, the people in the rural areas should mobilised  
to resist the culling of the cattle and stock limitation. 25

- (a) Stock Limitation: People in the rural areas to be  
asked not to co-operate with the authorities in any  
way in culling cattle or limiting livestock.
- (b) Meetings and demonstrations to be held.
- (c) Regional Conferences: Such Conferences in the rural 30

members of the Council. 1

- (c) To frame rules and regulations for the guidance of the campaign for approval by national executive.
- (d) To set up provincial regional and/or local councils within the framework of existing organisations.
- (e) Issue instructions for the organisation of volunteer corps and frame the necessary code of discipline for these volunteers. 5

The Joint Executives shall establish Provincial, Regional or where possible Local Council, which will have the primary task of organising and enrolling volunteers into volunteer corp on the following lines:- 10

- (a) a leader to be in charge of each volunteer corps for maintenance of order and discipline in terms of the "code of discipline" and for leading the corp into action when called upon to do so; 15
- (b) Corps to consist of members of both sexes.
- (c) The colours of the African National Congress - black, green and gold - shall be the emblem of the Volunteer Corps;
- (d) Each unit of the Volunteer Corps shall consist of members of the organisation to which they belong, sic. ANC, SAIC and FAC. The Coloured Organisations in the provinces of Natal, O.F.S. and the Transvaal participating in the campaign with the approval of the joint Planning and Directing Council, shall also be allowed to form units of the Volunteer Corps. 20 25
- (e) In certain cases, where a law or regulation to be defied applies commonly to all groups, a mixed unit may be allowed to be formed of members of various organisations participating in the campaign. 30

Three stages of Defiance of Unjust Laws:- 1

(a) First Stage. Commencement of the struggle by calling upon selected and trained persons to go into action in the big centres, e.g., Johannesburg, Cape Town, Bloemfontein, Port Elizabeth and Durban.

(b) Second Stage. Number of volunteer corps to be increased as well as the number of centres of operation. 5

(c) Third Stage. This is the stage of mass action during which as far as possible the struggle should broaden out on a country-wide scale and assume a general mass character. For its success preparations on a mass scale to cover the people both in the urban and rural areas would be necessary. 10

9

Joint Planning Council. In order to prosecute and put into effect the plan of Defiance of Unjust Laws and in order to co-ordinate the efforts of the various centres both urban and rural, it will be necessary for the Planning Council from time to time to make recommendations to the Executive Committees of the National Organisations who will jointly conduct, prosecute, direct and co-ordinate the campaign of Defiance of Unjust Laws as agreed upon by the Conference of the African National Congress and supported by the Conference of the South African Indian Congress. The Council must be empowered:- 15 20

(a) to co-opt members to the Council and fill vacancies with the approval of the Executive organs of the African National Congress and the South African Indian Congress. 25

(b) Invite representatives from non-European organisations which are in full agreement with, and active participants in the campaign, to serve as non-voting 30

the overwhelming majority of the people cannot find a firm 1  
foundation for progress and happiness.

It is to be noted, however, that the present cam-  
paign of definance of unjust laws is only directed for the  
purposes of securing the repeal of those unjust laws mentioned  
in the resolution of the Joint Conference 5

ALL PEOPLE IRRESPECTIVE OF THE NATIONAL GROUPS THEY MAY  
BELONG TO, AND IRRESPECTIVE OF THE COLOUR OF THEIR SKIN,  
ARE ENTITLED TO LIVE A FULL AND FREE LIFE ON THE BASIS OF  
OF THE FULLEST EQUALITY. FULL DEMOCRATIC RIGHTS WITH A  
DIRECT SAY IN THE AFFAIRS OF THE GOVERNMENT ARE THE IN- 10  
ALIENABLE RIGHTS OF EVERY SOUTH AFRICAN - A RIGHT WHICH  
MUST BE REALISED NOW IF THE COUNTRY IS TO BE SAVED FROM  
SOCIAL CHAOS AND TYRANNY AND FROM THE EVILS ARISING OUT OF  
THE EXISTING DENIAL OF FRANCHISE TO VAST MASSES OF THE  
POPULATION ON GROUNDS OF RACE AND COLOUR. THE STRUGGLE 15  
WHICH THE NATIONAL ORGANISATIONS OF THE NON-EUROPEAN PEOPLE  
ARE CONDUCTING IS NOT DIRECTED AGAINST ANY RACE OR NATIONAL  
GROUP BUT AGAINST THE UNJUST LAWS WHICH KEEP IN PERPETUAL  
SUBJECTION AND MISERY VAST SECTIONS OF THE POPULATION. IT  
IS FOR THE CREATION OF CONDITIONS WHICH WILL RESTORE HUMAN 20  
DIGNITY, EQUALITY AND FREEDOM TO EVERY SOUTH AFRICAN.

Plan of Action. We recommend that the struggle for securing  
the repeal of unjust laws be DEFINANCE OF UNJUST LAWS BASED  
on Non-Co-operation. Definance of unjust laws should take 25  
the form of committing breaches of certain selected laws and  
regulations which are undemocratic, unjust, racially discrim-  
inatory and repugnant to the natural rights of man.

Definance of Unjust Laws should be planned into three  
stages - although the timing would to a large extent depend on  
the progress, development and the outcome of the previous stage 30

MR. CACHALIA

duty that on this day we should pay tribute to the fighting 1  
 spirit, social responsibility and political understanding  
 of our people; remember the brave sacrifices of the people  
 and pay our homage to all those who had given their very lives  
 in the struggle for freedom.

Although we have suggested two alternative dates, 5  
 the Joint Planning Council strongly favours the earlier date  
 as it considers that three clear calendar months would give  
 the people ample time to set the machinery of struggle into  
 motion.

## 6. 10

With regard to the form of struggle best suited to  
 our conditions we have been constrained to bear in mind the  
 political and economic set-up of our country, the relationship  
 of the rural to the urban population, the development of the  
 trade union movement with particular reference to the dis- 15  
 abilities and state of organisation of the non-white workers,  
 the economic status of the various sections of the non-white  
 people and the level of organisation of the National Liber-  
 atory movements. We are therefore of the opinion that in  
 these given historical conditions the forms of struggle for 20  
 obtaining the repeal of unjust laws which should be considered  
 are:-

(a) defiance of unjust laws and (b) industrial action.

## 7.

In dealing with the two forms of struggle mentioned 25  
 in paragraph six, we feel it necessary to re-iterate the  
 following fundamental principle which is the kernel of our  
 struggle for freedom.

We believe that without realisation of these prin-  
 ciples, race hatred and bitterness cannot be eliminated and 30

MR. CACHALIA

call upon the Union Government to repeal the aforementioned 1  
 acts by NOT LATER THAN 29TH FEBRUARY, 1952. This call  
 be supported by the Conference of the South African Indian  
 Congress and by all other democratic organisations which find  
 themselves in full agreement with it.

5.

5

In the event of the Government failing to take  
 action for the repeal of these acts which cannot be tolerated  
 by the people any longer, the two Congresses embark upon mass  
 action for a redress of the just and legitimate grievances  
 of the majority of the South African people. It is our con- 10  
 sidered opinion that such mass action should commence on the  
6th April, 1952, the Van Riebeck Tercentary We consider  
 this day to be most appropriate for the commencement of the  
 struggle as it marks one of the greatest turning points in  
 South African history by the advent of European settlers in 15  
 this country, followed by colonian and imperialist exploitation  
 which has degraded, humiliated and kept in bondage the vast  
 masses of the non-White people.

or, alternatively,

on June 26th, 1952. We consider this day equally as sig- 20  
 nificant as April the 6th for the commencement of the struggle  
 as it also ranks one of the greatest turning points in South  
 African history. On this day we commemorate the National  
 Day of Protest held on 26th June, 1950, the day on which on  
 the call of the President-General of the African National Con- 25  
 gress, Dr. J.S. Moroka, this country witnessed the greatest  
 demonstration of fraternal solidarity and unity of purpose on  
 the part of all sections of the non-European people in the  
 national protest against unjust laws. The 26th June was one  
 of the first steps towards freedom. It is an historical 30

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