

that means a limitation to the people who have the vote. In South Africa four fifths of the people do not have the vote. Therefore if I must accept that constitutional changes no matter how radical and far reaching can be lawfully sought, but must be sought only by legitimate and constitutional means, that to me indicates that the very people who are excluded from the franchise, are at the same time excluded from any means of trying to obtain it. It means that the franchise can only be extended to the voteless people through the White electorate, and here I must say, My Lords, that I myself have no faith in any voluntary, spontaneous change of heart, of the White electorate. I believe that they can eventually, under pressure, be brought to a change of mind, but I think that that pressure will come both from within South Africa and outside South Africa. But within South Africa, I want to say that I think the pressure must come from the four fifths of the people who have no alternative but to adopt unconstitutional means, for the simple reason that they are shut outside the constitutional field.

Mrs. Joseph, you referred to the 1946 Passive Resistance Campaign...

BY MR. JUSTICE BEKKER :

I just want this position clear, Mrs. Joseph. It has been said by Mr. Adams that he is calling you as his witness. Are you giving evidence on your own behalf as well? --- To my understanding, yes.

BY MR. ADAMS :

Mrs. Joseph, you referred to the 1946 Passive Resistance Campaign of the Indian people. Where was it held? --- It was held in the Transvaal, and was against the Asiatic Land Tenure Act which the Indian people

felt was an encroachment upon their rights.

Mrs. Joseph, you gave certain examples of civil disobedience campaigns. Do you consider them to be legitimate? --- To me they are morally legitimate. I find some difficulty now in view of the statement of the Crown's Opening Address as to how far they may be legally legitimate, but to me they are without any doubt morally legitimate. 5

What do you think the Crown will interpret to be constitutional/in this dictum? 10

BY MR. JUSTICE RUMPF :

I don't think the witness should be asked that question. Can she reply to it?

BY MR. ADAMS :

I won't take it any further. 15

BY MR. JUSTICE RUMPF :

It is for the Crown to explain that. If you could perhaps put it in a different way - if you want the witness' views on constitutional methods according to her opinion, it is another matter. 20

BY MR. ADAMS :

How would you say - Mrs. Joseph, what is your attitude towards the suggestion of a change of heart of the White voters in this country? --- My Lords, I have already said that I don't envisage a spontaneous voluntary change of heart. I think the change will come, and I certainly have great hopes and great expectations of it, but it will come to my mind by pressure, moral pressure, economic pressure. I think My Lords, that I can say that I myself am an example of the White electorate who has been modified by moral pressure. I am a White voter, and it was the Defiance Campaign that

brought me actively into the political field.

How do you think that attitude could be changed? --- Well, it can be changed by the type of pressure such as the Defiance Campaign which was not only moral pressure, as it was in my own case, but which I think had an enormous potential value as economic pressure, it can be changed by various non-violent methods. I would say the type of methods to which the Congresses are committed, that is boycotts, strikes, civil disobedience, noncollaboration, perhaps the most effective economic pressure would obviously come from strikes, industrial pressure, but I believe that these can, if consistently applied, eventually change the mind of the White electorate and bring them to the stage when they must realise that in their own interest, as well as in the interests of South Africa, franchise can no longer be retained as the privilege of a White skin, but must be extended to all people.

What is your opinion concerning the efficacy of methods such as deputations and supplication? --- My Lords, these were the methods which had been employed over many years by the South African Indian Congress and also by the African National Congress. I think they go back, My Lords, as far back as 1913, perhaps even before that. But it does seem that these methods have not had any real concrete effect. The position of the African people in particular has not improved since Union, the mind of the African people as I know it, and certainly I agree with that, is that their position has become worse. And that is why I think the time has come - had come in fact some years ago when it was realised that these methods could no longer be employed

by the non-Europeans as the only method, because they had proved generally ineffective over the years before 1950.

What would you consider the effect on the struggle of voteless people if extra-parliamentary means are held to be illegitimate and unconstitutional? --- My Lords, I would say that if extra-parliamentary means are held to be illegitimate and unconstitutional, then the voteless people to my way of thinking will be condemned to remain forever voteless, and I say this for the reasons I have given already, and that is that I do not see any hope of the White electorate voluntarily conceding the rights of the non-White people. I only see that possibility arising through pressure, extra-parliamentary pressure being exerted on the White electorate. I don't say that that excludes pressure on the White electorate by White voters, I merely say that for a handful of sympathetic White voters to try to exert pressure on the White electorate is not enough. The end which I and so many others want, and that is universal franchise, to my mind can only come through extra-parliamentary pressure being added to parliamentary pressure. And I believe that without extra-parliamentary pressure it won't come.

Mrs. Joseph, I would like you to turn to page 456 of the record, at line 28, the following appears : "The gist of the Crown's case of high treason is that the accused, acting in concert and through the instrumentality of their organisations, prepared to subvert and subvert the existing state by illegal means, including the use of force and violence, and to replace the existing state with a state founded on principles differing fundamentally from those on which the present

state is constituted." Was force or violence ever intended or countenanced by the Congresses? --- My Lords, I want to say that at no time was force or violence ever countenanced by the Congresses or ever included in their programmes.

Would you say that non-violence was implicit in the Congress movement? --- To my mind non-violence has always been implicit in the Congress movement. I want to say that to me the programme of the Congress movement is that which is outlined in the 1949 Programme of Action of the African National Congress. That is the Programme which has been accepted as laying down the method of our struggle, not only for the African National Congress itself, but also for the other Congresses who have allied themselves with the African National Congress. It has sometimes been suggested that that Programme of Action did not say in so many words, we are pledged to non-violence. But My Lords, I want to emphasise that the whole concept of that Programme of Action is one of non-violence. To my mind, such a Programme set against the background of the African National Congress and its history of struggle, could have no other meaning but that of non-violence. And when I say that I agree that non-violence is implicit in our struggle, I say that also because it may well be that our old Constitutions in our organisations, for example the South African Congress of Democrats, or the Federation of South African Women, it may well be that our Constitutions don't use the word "non-violence", but non-violence is implicit in those Constitutions. It is implicit in our Programmes and in our history. All our campaigns, together with those of the African National Congress, whether I speak of them

separate or together, all our campaigns have been campaigns of non-violence, they have all followed the methods outlined in the Programme of Action. The Defiance Campaign was perhaps the first, perhaps the most dramatic I would say, it set to me, it set the seal of non-violence upon the programmes that followed it.

How would you explain the insistence of Congress speakers and writers on resistance to provocation? --- My Lords, I would explain that very simply. The programme and the struggle of the congresses is a non-violent struggle. But, we have always taken care to warn the people who are going with us in the campaigns, that although our struggle is non-violent, we must always realise that it may be that violence may be inflicted upon the non-violent people. This has happened in other countries as well as our own, even in India, where the passive resistance was waged for so many years, there were occasions when extreme violence was used against the people. It can be ...

BY MR. JUSTICE BLIKKER :

May I just ask you here to enlarge on the basis I am putting it to you. You have heard of the saying that it takes two to make a party. Now what I can't quite follow is in what setting, in what circumstances were the people warned that although your struggle is non-violent, it may be that non- - that violence is inflicted on non-violent people. How does that come about? --- My Lord, it can come about, for example, if a crowd of people are given an order to disperse, and in the minds of the authorities to - presume the police, giving that order, the people may not disperse quickly enough, there have been examples of shooting, baton

charging, and bayonet stabbing. My Lords, to say that these things can happen does not mean that we plan any activity or any campaign expecting it to happen. But it means that we warn the people that non-violence in itself cannot be a sort of armour against ever having any physical hurt inflicted upon you.

BY MR. ADAMS :

Mrs. Joseph, was there ever any intention by any of the Congresses to subvert the existing state? --- My Lords, there was never any intention by any of the Congresses to subvert the existing state. By subvert I understand the meaning to overthrow violently, or to destroy. That was never the intention of the Congresses.

Do the Congresses support the parliamentary system? --- The Congresses believe in and support the parliamentary system.

X BY MR. JUSTICE RUMFF :

The two-party system? Or multi-party system? --- I don't think My Lord, that I have ever analysed it quite so deeply as that, when I speak of the parliamentary system, I really mean the system of electing the parliament of the country through the vote, which might be two party or multi-party.

X Or one party? --- I find it difficult myself to accept one party.

BY MR. ADAMS :

Mrs. Joseph, can you conceive of a parliamentary system where there is one party? --- I find it very difficult really to conceive a parliamentary system where there is only one party. To me that doesn't fulfill my meaning of a parliamentary system, which is essential - part of it is that people have a choice.

On what do you base the Congress attitude that parliament is undemocratic in South Africa? --- My reason for saying that the parliamentary system in South Africa is undemocratic is because in my view democratic implies without any doubt whatsoever that the people who are governed must be in a position to give their active consent to their being governed. In other words, they can only do that, they can only give their active consent if they themselves elect their own government. In South Africa, four fifths of the people are not in a position to give that active consent, and that is why I say that the parliamentary system in South Africa, as it is today, is not democratic. And that is why the goal of the Congress movement, it can make that parliamentary system fully democratic, by ensuring that every adult person shall have a vote.

What would you say is the real objective of the Congress movement insofar as the state is concerned? --- I would say that our real objective is not at all to overturn the state, not at all to destroy it, or its apparatus, but to see that the state becomes a state which really belongs to all the people in South Africa. A state form in which all the people of South Africa have a share. It is not that the Congresses want, as I said, to overturn the state, perhaps it might be true to say that they want to reverse it, perhaps to turn it round, so that it has a different appearance, so that it has a multi-racial appearance, but it has never been our intention to overturn it or to destroy it. We want to modify it, to effect sweeping, radical changes, but we want those changes to be effective - to be effected through the parliamentary system itself. That is why

we say that there must be a universal franchise.

What do you envisage as a state form if and when there is universal franchise? --- My Lords, I envisage a state which is very much in form what it is today, in other words, there will be the legislature, judiciary, police, army. But they will no longer be confined to one racial group only. I think we have outlined in the Freedom Charter itself to some extent, although it is not a blueprint, but to some extent the Freedom Charter I think reflects the type of state to which the people of South Africa look forward.

Would you turn to page 457, line 8 of the record, where the following appears: "The Crown does aver, however, that such a state was to be a state differing radically and fundamentally from the present state. The Accused themselves described their goal to be what they called amongst other things a People's Democracy, a true Democracy and so forth, and it will be the Crown's case that such a state would entail the destruction of the existing state and its machinery, its parliament, its judiciary, its police force, its defence force, and it would involve in a word the smashing of the entire apparatus of the state as we know it in this country." Do you concede that the modification of the present state as a result of universal franchise would entail its destruction? --- My Lords, I have really already said that I don't in any way see that the extension of the franchise would lead to the smashing of the state and its own apparatus. I have explained what I myself envisage would be the new type of state in South Africa. I would just like to comment, however, on the phrase "a People's Democracy", a "true democracy". By that I

understand what I think I have already explained, and that is a democracy in which all adult people will give their active consent to the government that is going to control them. It will mean also that from time to time people must have the right to change that government if they so wish. In other words, I would say that a democratic government or a people's democracy, must include reversible government.

X BY MR. JUSTICE RUMFF :

Would in your opinion Great Britain be a people's democracy? --- Yes.

The United States? --- Yes. Because there the people have - may I qualify that, My Lord?

Yes? --- It is correct of Great Britain, not entirely correct of the United States, because in the United States there are still I understand some sections where not everybody has a vote. I really must qualify it.

X BY MR. ADAMS :

Would you envisage that a non-violent programme could bring about universal franchise? --- I do envisage that, My Lord. I think that in this country the universal franchise can be brought about and I hope very much that it will be brought about through a non-violent programme. I have already outlined the methods and the way in which I think this can happen. It will happen through both moral and economic pressure being brought to bear on the present White electorate to concede that the vote must be extended to the non-White people.

What would you say is the attitude of the Congress to the existing state and its apparatus? --- My Lords, the attitude of the Congress to the existing state

and its apparatus is that while we accept its form, we condemn its composition. We condemn its composition because it is confined to one racial group only.

When do you envisage this change might come about? --- My Lords, it is impossible to put it into any term of years. This yielding of the present system, this yielding of the White electorate to the pressure that I foresee, together with many others, it may come soon, it may not come for some time. But I do believe that with the increasing pressure that comes from inside South Africa and the increasing pressure that is coming from outside South Africa, as I see other countries in Africa itself obtaining their independence, granting full rights to the people, so I see that in South Africa also the time is coming.

Now Mrs. Joseph, on page 457, line 19, the following appears : "As to the manner and means by which the Accused will achieve their aims at some stage is that the Accused foresaw and were bent upon no legitimate constitutional struggle for their political reform, but a violent and forcible revolution or that in any case the Accused must have known that the course of action pursued by them would inevitably result in a violent collision with the state, resulting in its subversion"? --- My Lords, I want to deny most emphatically that we were bent upon a violent and forcible revolution. That is completely and utterly in conflict both with Congress policy and with the history of our activity, not only during the period of the indictment, but over the course of years. To say that we were bent upon no legitimate constitutional struggle is to imply that we had in mind this violent and forcible revolution.

I want to say that nothing has ever pointed to that, in fact to the very opposite. Our policies and our programmes have pointed all the way through to the fact that we hoped and intended to achieve our ends by peaceful methods, by the methods of moral and economic pressure on the White electorate. That we hoped to achieve our ends through parliament itself. And I deny further this suggestion that we must have known that our course of action would inevitably result in a violent collision with the state, resulting in its subversion. My Lords, we knew no such thing. Our activities, our campaigns were planned and carried out in order to avoid violent collision. We have taken particular care to see that our demonstrations, that our conferences, were carried out in a legal manner. If we have been planning a demonstration - and I speak now for some of the Women's Demonstrations, particular care was taken to ensure that the women would not infringe any regulation, would not break any laws. My Lords, I want to quote an example here, of the time when twenty thousand women went to the Union Buildings to present their protest to the Prime Minister. Every care was taken, every instruction was given to the women to see that they infringed no regulations. It was continually impressed upon them both for that demonstration and for others that this was no defiance campaign. And even at the time of the Defiance Campaign, where laws were deliberately broken, volunteers were instructed to behave in the most disciplined manner and to avoid resistance to provocation of any sort. In other words, My Lord, our desire was to see that there should be - that we could minimise, eliminate as far as we possibly could, any possibility of there being any violent action.

And to say that we thought that we knew that this would result in a violent collision with the state, implies that we intended to plunge the country into chaos. My Lords, I maintain again that our very type of activity, our very campaigns, prove this to be absolutely untrue.

In what sense would you think that the Congress struggle has gone outside the orbit of legitimate and a constitutional struggle? --- My Lords, it seems to me that we have been compelled by the very nature of the struggle which involves so many voteless people to go outside the orbit of legitimate and constitutional - legitimate in the sense of the Defiance Campaign, - constitutional in the sense of extra-parliamentary. By extra-parliamentary I mean the type of activities to which we are committed, that is the strikes, boycotts, stay-at-homes and demonstrations.

Was there any alternative for the non-White people in the struggle? --- To my mind, My Lords, the non-White people who are deprived of the vote by reason of their colour have no alternative but to indulge in extra-parliamentary activity. I can see no alternative whatsoever, for the non-Whites to sit back and wait for a change of heart, spontaneous of the White electorate, is no alternative at all. The aims and aspirations of the non-White people can in my mind only be achieved when they add this extra-parliamentary pressure to whatever efforts the White electorate may make on their behalf.

Why is it considered necessary for the Congresses continually to warn the people that they must be prepared to suffer even to face death itself? --- My Lords, to some extent I have covered that point already, but I would just repeat that the history of the struggle,

the political struggle of the voteless people in South Africa and in other countries too, has shown that to mobilise people, to call people into a non-violent struggle entails upon the leaders the responsibility of seeing that the people themselves must know what risks they may be called upon to take. They must know that even though the struggle is non-violent, it is impossible to exclude the possibility of violence being inflicted upon them, possibly by the police in the course of their legal duties.

Do you agree that Congress activities would eventually lead - would inevitably lead to a violent collision as alleged by the Crown? --- My Lord, I think my contradiction of that, which I have already made - I do not believe that it would so do.

On the same page, I would like you to look at line 29, where the Crown states: "In support of its charge of high treason against each of the individual accused, the Crown will lead evidence which the Crown will contend proves (a) that each of the Accused has the requisite hostile intent against the state, that is the intention to subvert and overthrow the state or to disturb, impair or endanger the existence or security of the state". Would you say that these were the real aims of the Congress movement? --- My Lord, I want to say that this is not the aim of the Congress movement at all. The aim of the Congress movement, as I have said already, is to achieve by peaceable, but necessarily extra-parliamentary methods universal franchise and the establishment of a multi-racial democracy. I deny that there was any hostile intent, or that we had any intention either to subvert and overthrow the state, or that we

had any intention to disturb, impair or endanger the existence or the security of the state. That was not our intention. Our intention was to achieve our aims through the parliamentary system by the exertion of pressure upon the White electorate.

How does Congress seek to effect the changes it wants? --- We seek, My Lords, to effect our changes as I have said already, by exerting pressure upon the White electorate, exerting that pressure by parliamentary and by extra-parliamentary means.

How do you justify this expectation? --- I justify that expectation My Lords, because I have seen, as we all have, that in other countries people have achieved the franchise, have achieved independence. In India it took fifty years, but in Africa, on the continent of Africa it did not take them so long, country after country is achieving its independence from its former colonial status, and at the same time is granting a universal franchise. These changes have come about by the modification of the opinion of the electorate in the countries which formerly had control over these colonial states. Therefore I have confidence that ultimately in South Africa - I think I am repeating myself now, but ultimately in South Africa, the electorate will be convinced that in their own interests they will have to fall into line with the rest of Africa and grant the universal franchise.

BY MR. MANDELA :

Your Lordship, I wonder if I could intervene at this stage. I had raised a matter this morning in regard to our anxiety to be afforded an opportunity of looking through the Exhibits. Now Your Lordships said

that Your Lordships would see. I don't know whether that meant that I should raise the matter again or whether the Court intends sitting until four o'clock. It is a pressing difficulty as far as the Accused are concerned, and we would like to know what Your Lordships' desires are about the matter.

BY MR. JUSTICE RUMFF :

We propose to sit till four o'clock, and start at half past nine in the mornings.

BY MR. MANDELA :

Do I understand that will be the position every day?

BY MR. JUSTICE RUMFF :

That depends on circumstances.

BY MR. MANDELA :

As I say, My Lord, our application is that in the afternoons we should be afforded the opportunity of going through the exhibits, It is the only time which we think that we would be able to look through the exhibits. Alternatively, sir, I suggested if through Your Lordships' intervention the time we use the Courtroom in the afternoon could be extended, because certainly thirty minutes would not be sufficient for our purposes.

BY MR. JUSTICE RUMFF :

Well, we propose to carry on and see. When you require more time you can tell us.

BY MR. MANDELA :

As I say, sir, we require more time now. There are Exhibits before us just now, sir, containing a number of copies of Advance. It is our desire to be able to go through these exhibits today, and this effects the very evidence of the witness who is presently testifying,

and we are sorely pressed for time, and we feel that we have no alternative but to place this difficulty in Your Lordships' hands.

BY MR. JUSTICE RUMFF :

We propose to sit till four o'clock, and you can look at the exhibits till whenever you have got to go. Tomorrow morning you can start at quarter past eight and look at the exhibits till half past nine, and we will continue, and if you require then tomorrow further time, you can mention it.

BY MR. MANDELA :

Your Lordship, I cannot take the matter any further, but I would like to make it clear that in our view neither the thirty minutes this afternoon available, nor the hour which Your Lordship is suggesting in the morning, is at all sufficient for our purposes.

BY MR. JUSTICE BEKKER :

How many more exhibits have you got to look at? And does it stand in relation to this witness giving her evidence?

BY MR. MANDELA :

It refers to this witness giving evidence. It also refers to the entire preparation which the Accused are making in regard to this case. There are a lot more witnesses involved, and we feel that we do need this time, both in the afternoons as well as in the mornings.

BY MR. JUSTICE RUMFF :

Well, we don't propose to adjourn at one o'clock. We will sit in the afternoons, and you will have to look at the exhibits in the time available. If you require more time at any given date you can put your case

to us.

BY MR. MANDELA :

Well, sir, I was raising this matter specifically in regard to today, and in regard to the Exhibits that are before the Court now. But as I say, we leave the matter entirely in Your Lordships' hands. If Your Lordships feel that we should not be afforded this opportunity, I can't take the matter any further.

EXAMINATION BY MR. ADAMS OF MRS. JOSEPH CONTINUED :

Mrs. Joseph, I would like to refer you to a further passage on page 458, line 5, the Crown alleges that "each of the Accused conspired with each other and with persons mentioned in Schedule A to the indictment, and with other persons to the Crown unknown, to subvert and overthrow the state by violence, and to substitute therefor a Communist state or some other state, and to make active preparation for the achievement of the abovementioned objects". What would you say was Congress aims in relation to the state and substituting a communist state? ---
My Lords, I want to deny that the Congress organisation or the Accused ever had it in their minds either to subvert and overthrow the state by violence, or to substitute therefor a communist state or some other state. I have already made it clear that our intention was to seek to modify the existing state. There was no intention to substitute a communist state or any other state. Indeed, My Lords, I want to say that I am not clear what is really meant by a communist state, but that does not effect my denial that we want to substitute a new kind of state, for the existing state. As I have already said, in the Freedom Charter, can be discerned an idea of the kind of state to which we seek to modify the present state.

The changes envisaged there mainly stem from the existing state of injustice based on white supremacy and on apartheid. But just as the Freedom Charter itself was born out of the hopes and the aspirations of thousands of delegates who came together to the Congress of the People, so it seems to me that the modifications to the state will eventually, finally be born out of the wishes of the people when they are in a position to express those wishes by means of the universal franchise. I don't think My Lords, that I or anybody else can say at this stage whether the people of South Africa will ultimately wish themselves to change the state. I don't know whether they will finally want a capitalist state, a socialist state, a communist stage. These things I don't think can be foretold. But the point that I want to make, My Lords, is that it is the aim of the Congress movement not to work for the substitution of the state, but by means of the universal franchise to set the people of South Africa free to choose for themselves the kind of state which they will ultimately want.

Now on the same page, the Crown says, "The Crown will contend that by committing the said overt acts, each of the Accused did disturb, impair, and endanger the existence or the security of the state, or did actively prepare to disturb, impair and endanger the existence or security of the state". What is your comment on this statement? --- My comment on that, My Lord, is to deny once again that we had any intention of disturbing, impairing and endangering the security and existence of the state. I want to deny that by committing these acts which the Crown alleges are overt acts, that we did in any way prepare to disturb, impair

or endanger the existence and the security of the state. Such acts as we have committed have been in pursuance of the aims of the Congress movement, which are as I have stated already, by peaceable and non-violent means to bring about the creation of a true multi-racial people's democracy. But that My Lords, I maintain, will in no way endanger the existence or the security of the state.

Now on page 460 line 32, there appears the following passage : "The Crown relies on the fact that prior to 1952 and throughout the period of the indictment there existed in South Africa a National Liberation Movement. This National Liberation Movement is part of the international liberatory movement, which chiefly aims at the achievement by violence in non-communist countries of full political rights of such national groups as have not yet attained them. The Crown says that it is the duty of communists whose primary object is to effect a world revolution, to give active support to this movement, and that they have done so in South Africa and elsewhere, done so in countries which they regard as colonial or semi-colonial countries". What is your comment on this? --- My Lords, I want first of all to comment on this suggestion of a national liberatory movement. The Crown has placed it in quotation marks and adorned it with capital letters, which seems somehow to convey an impression of an organised systematised movement. I want to say My Lords, there is no such organised systematised national liberatory movement in South Africa. There is the Congress movement, which is in itself a mass liberation movement, but there I use the term to describe a phenomenon, a movement of the people themselves, a movement forward to obtain their freedom. Apart from the Congress movement

itself, which I would explain My Lords, in my view consists of the Congresses themselves, I would also include individuals, perhaps organisations who might be outside the Congresses, but whose object is also the national liberation of the people in South Africa. All these together form the Congress movement in a broad sense. But to say, My Lords, that this, if this is what the Crown means by its national liberatory movement, to say that this is part of an international liberatory movement, My Lords, conveys a totally incorrect impression. I know of no international liberatory movement of any kind. There are in different countries in different parts of the world in South Africa there is what I have described as this mass liberation struggle, here it is led by the Congress movement. But this is not part of an international Liberatory movement, and I want to say, My Lords, also I have not heard any evidence in this Court of the existence of an international liberatory movement. And I want to take it further. As far as I am concerned and the organisations to which I belong, we would never support in any way an international liberatory movement which would aim at the achievement of political rights by violence. Our organisations are totally opposed to violence. The Crown goes on to say "it is the duty of communists, whose primary object is to effect world revolutions, to give active support to these liberatory movements." My Lords, I myself am not aware of what is the duty, primary or otherwise of communists. But I would say that in my opinion it is the duty of everybody in South Africa, communist or non-communist, to give support for the struggle for the freedom of all people in South Africa. It may well be that in the past

- I presume this would be before 1950, at which time the Communist Party was outlawed in South Africa, it may well be that the communists in South Africa then gave support to the liberation struggle. But I find it difficult to think that it could be only communists or that it could be communist inspired. And so My Lords, I want to deny this implication that the national liberation struggle in South Africa has the form of a national liberatory movement which is in any way part of any international liberatory movement. It would have been impossible for such an international liberatory movement to exist to which our Congress movement was in any way linked, and for me not to have been aware of it. I was a member of the National Executive of the South African Congress of Democrats from the time of its inception. I have held official positions in the Federation of South African Women, as well as being on their National Executive, and I want to repeat My Lords that there could have been no such international liberatory movements which in any way had any influence on the liberation struggle in South Africa, and that I could not have been aware of it.

CASE REMANDED TO THE 3RD JUNE, 1960.

COURT ADJOURNS.

COURT RESUMES ON THE 3RD JUNE, 1960.

BY MR. LIEBENBERG :

May it please Your Lordships, I understand the Accused Ndimba, Accused No. 25 is still in hospital.

HELEN BERTRICE MAY JOSEPH, under former oath;

EXAMINATION BY MR. ADAMS CONTINUED :

Mrs. Joseph, yesterday I asked you a question how would you explain the insistence of Congress speakers and writers on resistance to provocation. Can you give any specific instances of provocation by the authorities? --- Yes, My Lords, I would like to quote one or two examples, which I omitted in my evidence yesterday. At the very beginning of the implementation of the Programme of Action of 1949 which was adopted by the African National Congress, on the 1st of May, 1951, a national stay at home was called for which was really the first example of the non-violent programme. On this occasion on the 1st May in three places on the Witwatersrand there were examples of police shootings, which were I think examples of provocation. My Lords - may I be permitted to change my evidence. I have confused myself. I am sorry, My Lords, I did not mean to quote those examples, I wanted to quote two others which are entirely different. I had mistaken the question, I want to speak about what I considered to be the provocation on the part of the authorities which justified our continual call to the people to resist such provocation. The first example that I want to quote, My Lord, is that of the Congress of the people which was held at Klip-town. That Congress went on for two days, there were some - just on three thousand accredited delegates at that

Conference. There was also a crowd of possibly another three or four thousand people who were in the same place, although outside the delegates' enclosure. On the afternoon of the second day the Conference was invaded by hundreds of armed police. Had it not been for the call 5 from the leaders of the Congress from the platform, to the people to remain calm, I think that there might have been a disastrous result.

BY MR. JUSTICE RUMPF :

X In what way? --- Because My Lord, for a 10 crowd of that size to be faced with the abrupt entry of a crowd of policemen, to be surrounded by a cordon of police, was in my opinion an action which could have inflamed the feelings of the people to a dangerous state. In my opinion it was the attitude taken by the Congress 15 leaders from the platform that ensured that the people did not become so inflamed. The second example that I wish to quote My Lords took place a year later at the same place. It was the first anniversary of the Congress of the people. I was present also on this occasion. I 20 was also one of the speakers, and therefore seated on the platform. At the end of a speech by Mr. G. Sibande, who is one of the Accused in this trial, as he descended from the platform the police in uniform approached him and served banning orders upon him. That My Lords, was 25 an action which made the people very excited, to see a speaker as he descended from the platform in front of a large crowd of people to be approached by the police. I think the people thought that he had been arrested and it did create great excitement. The crowd was calmed 30 once again by the speakers from the platform, who called upon them to remain calm. I quote this, My Lord, as an

example of what appeared to me and to many other people as wilful provocation. And these two examples I have given to support my statement of yesterday that the Congress leaders were justified in reminding the people that there - they must be prepared to be disciplined, self-controlled, and be ready to resist provocation.

X BY MR. ADAMS :

Could you name any of the leaders who called upon the people to be calm on these occasions? --- Yes My Lords, on the occasion of the Congress of the People in 1955 it was the Chairman of the South African Congress of Democrats who addressed the people, Mr. Pieter Beyleveld, and on the second occasion in 1956, it was Mr. Resha, who called upon the people to remain absolutely calm. Mr. Resha is one of the Accused in this case.

I further asked you the question yesterday why is it considered necessary for the Congresses continually to warn the people that they must be prepared to suffer, even to face death. Can you give any specific instances of violent action by the police? --- My Lords, I want to give one or two examples of how the people when engaged in non-violent activities, are liable to have violence inflicted upon them, even unto death. My first example, My Lords, is of this stay at home, which as I said earlier was in 1951. There were examples on the Witwatersrand in Benoni, Sophiatown and Alexandra Township, where in two of the cases, in Benoni and in Sophiatown, the people were fired upon by the police because they had not dispersed as a result of an order to disperse quickly enough and the most extreme form of violent action was taken against them, and people died as a result of that.

X BY MR. JUSTICE RUMPFER :

Were you present on those occasions? ---

No, My Lords, I am speaking now from what is I think common knowledge. There were other examples, My Lord. There was an occasion in East London where a prayer meeting was held for which permission had been obtained from the authorities, from the Location Superintendent, from the Mayor and also with the approval of the police. The police force arrived at this meeting, rightly or wrongly assumed that the meeting was not in fact a prayer meeting, and gave an order to disperse. The period stipulated was five minutes. It was afterwards admitted by the police that the order to shoot was given after three minutes, and people died as a result. I have just two more examples My Lord which fall into the period of the Indictment. The first was in March, 1956. It took place in Klerksdorp, where a large number of people gathered at the office of the Location Superintendent, where they had expected the officials to meet them there in order to discuss some grievances. The officials however did not meet the people, the crowd who was assembled there, The police arrived and called upon the people to disperse, and once again the failure to disperse within a very limited time led to the opening of fire, and people were injured as a result. My last example, My Lords, is in Vlakfontein, towards the end of 1956, I think it was in November, when a large crowd of African women also gathered at the office of the Location Superintendent to express their resentment at being called upon to take out reference books and there a similar incident occurred, and the women were fired upon. It was afterwards stated to the women that the Location Superintendent had called upon the police to take this action, and a clear impression was given to the women that the Location Superintendent had gone beyond

his duties and he was in fact immediately removed from that location. I quote these examples, My Lords, because they do appear to me to give a clear reason why we do consider it necessary to explain to the people that even although our methods are non-violent and our whole struggle is non-violent, the people must realise that personal sacrifice may be entailed and that there may be occasions when despite all precautions there is a possibility of physical violence being inflicted upon the people.

X BY MR. ADAMS :

Yesterday I was putting to you certain passages from the Opening Address by the Crown. I would like you to look at a further passage which appears on page 461 of the Opening Address from line 13. The passage reads : "In China, Korea, Vietnam, Indo-China, Kenya, and Malaya the revolutionary activities of the liberation movement resulted in the case of each such country in actual armed conflict between the so-called oppressed peoples and the duly constituted authority in such countries." What is your attitude towards duly constituted authorities in these countries? --- My Lord, I want to point out here that it seems to me that the expression "duly constituted authorities" in these cases might be called into question. As I understand the struggle, in most of these countries, the authorities were not constituted with the active consent of the people who were to be so governed. As I understand it, the struggle of the people in these countries arose from that very fact.

BY MR. JUSTICE BEKKER :

On that basis, would the present authorities in the Union be duly constituted? --- Not in my

opinion, My Lord.

Is that the sense in which you refer to these? --- I would draw the comparison, yes, My Lord. But that does not mean to say that I approve the armed conflict which resulted in those countries. But neither My Lords, do I accept that the armed conflict which resulted was due simply and solely to the efforts of the people in those countries to obtain their rights. It seems to me that the armed conflict which resulted was mainly due to a refusal of the authorities to recognise the rights of the people in those countries. I would however, My Lords, like to exclude Korea from this particular group of countries, because although I do not claim to be very well informed about Korea, from what I remember the warfare in Korea does not really fit into this pattern. But my comment does hold good on the other countries.

BY MR. ADAMS :

Why do you think that Korea does not fit into the pattern? --- Because My Lords, as I remember, but I must plead that my memory is not very clear on this matter, but I don't remember that the struggle in Korea was actually a struggle against the government imposed upon the people by some outside source.

Would you describe the position in Korea as being revolutionary? --- That is my difficulty, My Lord. I find it difficult to group Korea into a phrase "revolutionary activities".

I would like to refer you to a further passage in the Opening Address which appears on the same page 461 : "The Crown will prove that the Accused, co-conspirators and the organisations mentioned in Schedule B of the Indictment supported the liberatory movement

They identified themselves with and expressed solidarity with the struggles of the so-called oppressed peoples in these countries. That they lauded the violent acts committed by the so-called oppressed peoples in the cause of the struggle for national liberation; that they stressed that their struggle could not be isolated from the national liberation movement in the aforesaid countries, and that they advocated and encouraged the adoption of the same violent methods in the liberatory struggles in South Africa. The Accused further considered, so the Crown will seek to prove, that the Congress movement was the vanguard of the liberatory movement in this country, South Africa." What is the attitude of the organisations to which you belong towards the liberatory movement? --- My Lords, as far as the organisations to which I belong - and that is the Federation of South African Women, the South African Congress of Democrats and the South African Peace Council - as far as these are concerned, I must state that we must certainly support the struggle for liberation in South Africa. I said yesterday in my evidence that I do not understand or accept this concept of a systematized liberatory movement which is suggested so often by the Crown. To me the liberation movement is a mass struggle for liberation. I do not deny that we supported that. In fact I affirm it. We did, and we do, support the struggle for liberation.

Do you understand anything criminal or subversive in the suggestion that the Congress organisations identified themselves with and expressed solidarity towards these countries? --- My Lords, I can find nothing criminal or subversive in the fact that we identified ourselves with the struggle of the people in those countries for their liberation. To me it seems quite natural

that that should be the case. The people in countries such as Vietnam, Indo-China, Kenya, Malaya - these people were suffering from the same denial of fundamental rights as the people, the mass of the people in South Africa. To me it is the most natural thing that we should feel identified with that struggle. There were people suffering the same disabilities, fighting for recognition. When I say "fighting", My Lords, perhaps I should rather say struggling. I am not using fighting there in the sense of physical fighting. When I come to the expression "solidarity" I understand it in the meaning of expressing our common interest with these people. I don't understand solidarity in its other sense of participation, because our struggle in South Africa, although identical in some ways, was of course a separate struggle. I want to state, My Lords, that it was not linked with the struggle of the people in those other countries by any international liberatory movement as it seems to me the Crown is trying to suggest.

Are you aware of any lauding of violent acts? --- My Lords, I am not aware of any lauding of the violent acts committed by these so-called oppressed people in their struggle for liberation, and I want to say, My Lords, that I myself have never lauded any violent acts. I believe that all disputes can and must be settled by negotiation and not by violent conflict. As far as the Federation of South Women and the South African Congress of Democrats is concerned, I can say that in none of our speeches or in our documents have we ever lauded the violent acts.

BY MR. JUSTICE BLKKER :

Disapproved of it? --- I am not clear as to whether we have ever verbalised a disapproval. I would

not go to a I would not go so far as to make that statement until I have had time to consider it, but we have certainly never lauded it.

Yes, in good time you can just mention it?

--- Yes, My Lord.

BY MR. ADAMS :

Mrs. Joseph...? --- Just before you continue, My Lords, I wanted to add that as far as the Federation of South African Women are concerned, we would never laud any acts of violence whatsoever. We are an organisation of women. As women we want to create life, want to preserve it, not to destroy it. And our speeches and our documents and our resolutions point to that. We believe in Peace and we want to make the world a world into which our children can be born, without fear - I could go further than that, My Lords. We have expressed, and I will give Your Lordships a reference - we have expressed in our resolution a sense of sympathy with women who for whatever reason have lost their children or any member of their family. And I want to support this My Lords by a resolution that was passed by the Transvaal Region of the Federation of South African Women on the 2nd December 1956 which was shortly after the events which took place in Hungary.

Mrs. Joseph, we will come to that at a later stage in this Opening Address. I would like to put a further question to you. Do you see anything sinister in expressing that the struggle in South Africa would not be isolated from the struggle in China, Korea, Vietnam and the other countries mentioned by the Crown? --- My Lords, once again I would say that it is to me a most logical stress although our struggles are separate, they

are not linked, it would nevertheless be incorrect for the people in South Africa who are engaged in the liberation struggle to be unaware of what is taking place in other parts of the world. We may be separate, but we are not in isolation. All over the world in countries where people have not yet attained their independent, their equality, there is this move forward, it is a world wide trend, there is My Lords a wind of change that is blowing not only in South Africa, not only in Africa, but in the world. And to me it would be important, it would be the duty of Congress leaders and speakers to stress that in our struggle we are not alone.

Would you agree with the contention of the Crown that there was advocacy for the adoption in South Africa of the violence in South Africa,?)--- My Lords, I could not possibly agree with that contention. I know of no instance where a Congress speaker has advocated the adoption of these violent methods. Where references have been made to them, I myself have always understood it in the sense of a warning, a warning to South Africa that if the present government persists in this ruthless oppression of the struggle of the people, there is a possible danger that at some later stage the same tragic situations might arise in South Africa, as have arisen in other countries. Our aim, My Lords, is to achieve our goal by non-violent and peaceable methods, and in our eyes the situation such as that of Kenya, of Malaya, where great loss of life is involved, must be a tragic situation which we hope to see avoided.

What is your comment on the suggestion that the Accused considered the Congress movement to be the vanguard of the liberation - the liberatory movement in

South Africa? --- My Lords, using the term liberatory movement in the sense in which I have explained it as a mass movement towards liberation, I would say that it is quite correct that we regard the Congress movement as being in the vanguard of that liberation struggle. But I do My Lords not accept that the Congress movement has anything to do with this allegedly sinister national liberation movement in the sense in which the Crown seems to postulate it.

Mrs. Joseph, will you also give Their Lordships your comment on the following passage which appears on page 462 of the record. The passage reads : "The Crown says that the essence of the case against the Accused is to be found in the existence in South Africa of this so-called liberatory movement. This was the unifying element in the conspiracy. There is no facet (?) in the Crown's case which can be isolated from this movement and the Crown will show that the aims and activities of the Accused are always referable to this movement. In this movement the Accused and the organisations used every grievance or local issue, even such as bus boycotts and bus fares, issues which one would not normally associate with revolutionary activities, would be made part and parcel of their struggle forso-called freedom and liberation in this country." What is your comment? --- My Lords, I don't propose to spend much time on the first part of this, because I have already explained and emphasised my rejection of this concept by the Crown of the liberatory movement. I must however deny categorically that there was any conspiracy. The Crown says that it will show that our aims and activities are always referable to this movement. My Lords, I can only state that they are always

referable to the struggle - our aims and activities are always referable to the struggle of the people for recognition of their fundamental rights. I want however to deal in some detail with the second part of this paragraph. The Crown says that we used every grievance or local issue even such as bus boycotts and bus fares, issues which one would not normally associate with revolutionary activities and aims. My Lords, in the sense of revolutionary as moving towards a violent revolution, with that My Lords I have already rejected. But if revolutionary be used in the sense of moving towards a new type of government, a changed situation such as we envisage in South Africa, in that sense it would be a revolutionary change. It does not necessarily and would not if we can prevent it have to be achieved by violent revolution. In that sense I would say that the issues which affect the daily lives of thousands of people, would logically be associated, My Lords the whole reason for the desire of the people for recognition of their rights surely has its roots in their disabilities, in their hardships which they must suffer. Here in South Africa, those hardships flow from and are rooted in the system of apartheid. That is basic to our whole struggle. I would have thought that it would be entirely logical for the organisations to be concerned with the difficulties of the people, and that My Lords, it is a part of Congress policy. We have always attempted not to exploit grievances, but to take them up to try to see that these grievances should be redressed. My Lords, the very examples which the Crown has quoted, the question of bus fares, is something which plays an enormous part in the lives of thousands of people. I need only remind.....

X BY MR. JUSTICE RUMPF :

We know the grievances, Mrs. Joseph. We have heard them and we know how important they may be. The question here was for your comment on whether the - the Crown's statement in the Address that the grievances were used by the Congress alliance to achieve the change of state, not merely to redress the grievances, but for the other purpose as well, that is the change of state? --- ~~My~~ Lords, my attention had been caught by the use of the word "even", "even such as busfares..."

Yes, which I take it the Crown said is a - is the sort of thing that one would expect to happen only as far as the merits of that particular dispute is concerned, bus fares. But the Crown says, even certain grievances about busfares were used by the Congresses in their process of achieving a new state, or a new form of state? --- My Lords, I was trying to show that such issues were not used in the sense of exploiting, but because they are fundamental to the condition of the people, they are part and parcel of the struggle for freedom. My Lords, I wanted to show that they do not have to be made part and parcel, they are part and parcel of it. Therefore, the question of using them or exploiting them to my mind falls away.

You say they are automatically...? --- To me they are.

X BY MR. ADAMS :

Mrs. Joseph, we now come to the Defiance Campaign. Reference is made on page 463, where the following passage occurs: "The evidence will show that the first instruments of cohesion in the conspiracy were the A.N.C. and the S.A.I.C. In July, 1951, the

Executive Committees of the A.N.C. and the S.A.I.C. FORMED a joint planning Council to organise support for the National Liberatory Movement in South Africa. The Joint Planning Council recommended a mass campaign for the defiance of so-called unjust laws, and this led to the formation in June, 1952, by the Executive Committee of the A.N.C. and the S.A.I.C. of the National Action Committee and the National Volunteer Board to direct and to co-ordinate a Defiance Campaign. The Defiance Campaign was launched on the 26th of June, 1952 and members of the defunct C.P.S.A. then holding Executive positions in the S.A.I.C. and the A.N.C. were appointed as the first volunteers to defy laws. The campaign was waged on a countrywide scale and lasted until January 1953. The Crown will seek to prove from speeches and documents that the Accused and co-conspirators subsequently on many occasions referred to this campaign and considered it the main precedent for illegal and unconstitutional action in the struggle for liberation or freedom."

What would you suggest as a reason why the Defiance Campaign did not develop into a mass campaign? --- My Lords, I think that the main reason why the Defiance Campaign did not in fact develop into a mass campaign may in the action taken by the government to prevent it from doing so. The reason, My Lords, why I do not consider the Defiance Campaign as a mass campaign is because although the acts of defiance were committed in very many parts, it did not nevertheless take on the character of a mass campaign in that it effected really all parts of the Union. The Defiance Campaign also was conducted initially on the basis of selected volunteers, that is people who had volunteered and who

could be relied upon by the Congresses to conduct themselves in a disciplined manner and to resist any form of provocation. The Defiance Campaign had already been in operation for seven months when the government passed two Acts which were calculated to stop that campaign from developing into a mass campaign. These two Acts were the Amendment to the Criminal Laws Act and through this Amendment it was made an offence, carrying heavy penalties to commit an offence by way of protest or to incite any other person to commit an offence by way of protest. It can be understood therefore that this Act **struck** directly at the Defiance Campaign. The second Act was the public Safety Act which provided for the declaration of a State of Emergency in which people could be detained without trial. When these two Acts were passed, the future of the Defiance Campaign took on a different aspect and the Congresses I think quite correctly decided that in the new situation the Defiance Campaign could not continue. But I do think that the passing of these two Acts may be taken as a measure of the effect which the Defiance Campaign had upon the government.

Do you know the names of the first persons to defy unjust laws? --- Yes, My Lord, they were Mr. J. B. Marks, Dr. Y. Dadoo, Mr. Bopape and Mr. Johnson Ngwevela (?), ...

BY MR. LIEBENBERG :

My Lords, up to now I have not objected to any questions by the Accused, but I would like to know whether the witness is now speaking from her own knowledge or what she heard from others?

BY MR. ADAMS :

My Lord, the learned Prosecutor can ask that question in cross-examination.

BY MR. JUSTICE RUMPFER :

Oh no, he can raise the point now. We have also listened with patience to a lot of what is supposed to be evidence, but what is not evidence, but we allow it to go on. You see, you are basing the leading of your evidence at the moment on an argument addressed to the Court, not on the evidence which has been led, but you are entitled to do so, because there is evidence coming out amongst the argument, if I may say so, in reply to what the Crown has argued. I may tell you that after the Defence case is closed, the Crown must argue its case. That is not the argument by the Crown in this case on the evidence that has been led. It may change its argument slightly, it may qualify it, it may abandon part of that argument, the argument in the Opening Address. And in reply to the argument by the Crown the Accused are entitled to put forward their argument on the evidence that has been led. But you can proceed in the manner that you have done, because evidence is forthcoming in a general way. What the Crown has done, it has not pointed out that the witness is giving evidence on certain matters of fact, as if she knows this by firsthand knowledge. Now hearsay evidence is, strictly speaking, with certain exceptions, not admissible, and the Crown has pointed out that the witness is giving evidence as if she knows of her own that these people were the first to defy. Now the only point is, does she or does she not know that of her own knowledge? --- My Lords, to me I would say it is a matter of common

knowledge, that these people were the first...

X BY MR. JUSTICE RUMPF :

Well, if it is common knowledge, then we might as well know it, but we don't? --- I meant common knowledge in Congress circles, My Lord. 5

By the way, is this of any importance?

X

BY MR. ADAMS :

Yes, My Lord, the Crown here refers to members of the banned C.P.S.A. then holding Executive positions in the S.A.I.C. to be the first defiers in this Defiance Campaign, and it attaches a sinister implication I think on the Defiance Campaign. I am going to put a further question to the witness which will elucidate this reply. 10

BY MR. JUSTICE RUMPF :

15

I am afraid that common knowledge in Congress circles is not a basis for evidence in this Court, unless that common knowledge is in issue. You could put it in a different way perhaps. Are there any names that you are interested in specifically? You see, you put a general question, who were the first to defy, and now she is thinking of all the names that according to common knowledge were the first, but are you interested in any specific names? 20

BY MR. ADAMS :

25

My Lord, I'll leave it at the four names mentioned by the witness, but I would like to ask her a further question on this theme. Mrs. Joseph, do you know why these persons were selected to be the first to defy unjust laws? --- I have always understood that it was because they were amongst the very first people to receive bans under the Suppression of Communism Act, 30

which was one of the Acts against which the Defiance Campaign was launched.

Is this from your own knowledge? --- Well, once again My Lord, it is common knowledge in Congress circles. 5

Mrs. Joseph, you being in the Congress movement, you - could you tell us in what way the Defiance Campaign had an effect upon the White electorate? --- My Lords, I - to some extent I measured the effect of the Defiance Campaign upon the White electorate by its 10 upon myself and others whom I knew at the time. We were greatly impressed by the Defiance Campaign, and I have already informed the Court that as far as I was concerned it brought me into the active political field. But My Lords, it goes further than that. I think it was clear 15 at the time that it had made a great many people, White people, think seriously, possibly for the first time about the position of the non-White people in South Africa.

Mrs. Joseph, would it be correct to compare extra-parliamentary activity with collective bargaining? 20 --- In my view, My Lords, there is a very direct relationship, and I think this is particularly so in the case of the Defiance Campaign as an example of parliamentary activity. It seems to me that a campaign such as the Defiance Campaign can be compared to activity for example 25 in a factory or in any industry, where the workers themselves decide that they must take some action to improve their conditions, and so a strike results. But I want to point out, My Lords, that in such a case neither the employer nor the workers ever see the end of the strike 30 as being the bankruptcy of the employer or the closing down of the factory. Neither side sees a result of

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