

FORM OF STATE.

The next category of documents consists of those upon which the Crown relied for the proposition that the African National Congress denounced the present form of state, demanded its destruction and propagated the substitution therefor of a radically different form of state,

It is common cause that the African National Congress disapproved strongly of the present constitution of South Africa, and advocated far-reaching constitutional changes. The type of constitution which they wished to have instead, is described in broad outline in the Freedom Charter and in "Africans Claims". It is also common cause that to demand constitutional changes, no matter how far-reaching, is not treason. The Crown, however, seeks to infer a violent policy from the nature of the changes sought and the strength of the language in which they were advocated and the present system denounced.

The argument from the nature of the changes sought has already been mentioned in connection with the Freedom Charter. It is submitted that there is nothing in this argument, as once the franchise is achieved, any further change can obviously come, not only peacefully but constitutionally.

The argument from the strength of the language used ignores the fact that it is part of the stock-in-trade of every politician to paint his opponents in the blackest colours, possible. In view of this fact, together with the very real grievances which the non-European population
has/...

naa against the present system, it would be surprising if the African National Congress did not denounce the system in strong terms. The Crown's approach seems to be based on the assumption that every word of African National Congress propaganda is meant literally and forms part of a logical argument. This is an unsound approach to political propaganda, the wording of which may represent nothing more than a rhetorical effect which commended itself to some individual.

It is not denied that the African National Congress regarded the Government as stubborn and unyielding. It was this view which led to the adoption of the Programme of Action in place of the old method of supplication. The fact that some African National Congress members expressed this view of the Government in extreme terms does not mean that the African National Congress as a whole took it further than is indicated by the Programme of Action itself. The Crown's question, "How did they think they were going to defeat such a government as they describe?" receives a plain answer from the evidence. The answer is, "By the methods set out in the Programme of Action." The Crown, if it is to make anything of this aspect of the case, must show that the African National Congress did not believe in the efficacy of this Programme, to which it formally adhered, and did believe in the efficacy of violence.

The following documents were referred to by the Crown:

- (1) CM 34. V.20, pp. 3860-5, 3878-80.
Cape Provincial Conference, 1953.
The Crown relies on the address of

Dr./...

Dr. Mji. His reference to "a new society" clearly means a society without racial discrimination. He devotes much attention to the Defiance Campaign, a method of struggle which he obviously approves.

If any delegates to the conference drew any wrong conclusions from the exuberance of Dr. Mji's language, those conclusions would have been corrected by the address of Dr. Njongwe, in the same exhibit. He makes it clear that non-violence is the African National Congress method.

(11) A 37. V.2, p. 258 et seq.

National Conference, 1954.

The Crown accuses the African National Congress of "hypocrisy" in its criticism of the Public Safety Act, because that Act had been necessitated by the African National Congress's own actions. Is this political debate or legal argument? Does the Crown seriously expect the African National Congress to say "The Government was quite right to suppress us" ?

The Crown also refers to a passage headed "Two Wrong Views", in which a string of unfriendly adjectives is applied to the Government. The conclusion is, however, that the Government must be fought "in the economic, political and industrial spheres" (p. 266).

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- (iii) TT 28. A.N.C.Y.L. Resolutions, 1953,
has been dealt with under the heading
of "Liberatory Movement".
- (iv) ZKM 6. National Conference, 1953,
has also been dealt with. The only new
point made by the Crown is similar to
that made on A 37 (sub-para. (ii) above).
- (v) A 55. V.2, pp. 333-8.
Message by Luthuli, 1954.
Read as a whole, this document supports
the defence case. See the evidence of
Luthuli. V.59, p. 11716.
V.65, p. 13888.
The use of such phrases as "blood and
tears" has been repeatedly explained by
the defence witnesses.
- (vi) A 40. V.2, pp. 293-304.
Transvaal Presidential Address, 1954.
The Crown relies on a passage at p.304,
in which it is said that the African
National Congress has not "allowed the
Government to choose the time, the place
and the battle-ground for us." If the
African National Congress had violent
plans, this would mean one thing and if
the African National Congress had non-
violent plans, it would mean something
else. It does not prove either hypothesis.

(vii)./. .

(vii) A 24. V.5, pp. 985-91.

Natal Provincial Conference, 1954.

This document strongly supports the defence case. See express statement on non-violence at p. 991. The Crown complains of the statement that "the vote is the key", but this is also in favour of the defence. It illustrates the point that nothing in the "new state" takes the matter any further than the demand for universal franchise.

(viii) RF 54. V. 62, pp. 13304-5.

Letter from Luthuli to Dadoo.

The only point in this letter is the view that the Government is likely to take severe measures against the people. This is adequately explained by Luthuli. V.62, pp. 13305-6.

(ix) B 29. V.6, pp. 1185-8.

"Call to the People of Natal Midlands".

This was issued by a regional committee of the C.O.P., upon which local African National Congress leaders were represented. It cannot be assumed that every phrase in it necessarily reflects African National Congress policy.

The portion relied on by the Crown condemns the Liberal Party's alleged reliance on a "spontaneous change of heart". The

evidence/..

evidence is that the change hoped for by the African National Congress would not be spontaneous, but the result of pressure. For evidence on this document, see

Conco

Luthuli

- (x) B 259. V.7, pp. 1335-6.
Transvaal Presidential Address, 1956.
There is nothing in this but a description in rhetorical language of the activities of the African National Congress at the time.
- (xi) A 17. V.2., pp. 211-23.
Cape Provincial Conference, 1955.
This document talks about the sacrifice of blood in a context of religious metaphor. It is also said by the Crown to show that the African National Congress was not only fighting a particular party, but a system: that is common cause.
- (xii) JDM 10. V.16, pp. 3152-3.
"African Lodestar", 1951.
This article seems to be a polemic against "opportunists" who think that the Africans have enemies other than imperialism. The author is unknown, and it is not clear whether the people whom he was attacking were inside or outside the African National Congress. There is no reason for taking
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this as an expression of African National Congress policy. In any case, beyond the fact that it is anti-imperialist, its meaning is very obscure.

(xiii) A 78. V.2, pp. 380-5.

Document of unknown origin.

A part of this document is similar to an editorial in "Congress Voice", TMM 1. This may be a draft of the editorial, or something which the editor of "Congress Voice" had read. There is no evidence that A 78 itself is African National Congress policy. Its main theme is a criticism of the existing state of the African National Congress.

(xiv) A 205. V.5, pp. 861-4.

"African Lodestar", 1954.

This contains a romantic account of South African history from the black man's point of view, together with an attack on those who advocate compromise. It probably reflects the mood of the A.N.C.Y.L. in the Transvaal, but it cannot be inferred from this, as the Crown seeks to do, that the African National Congress had decided never to negotiate with the Government.

(xv) A 206. V.5, pp. 871-7.

"African Lodestar", 1955.

This article begins (pp.871-2) with a

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rousing passage about "sharpening contradictions" and the need for "action", but the concrete proposals for action made at p. 873-4 are very ordinary. It goes on to deal with ideology, and attacks the Liberals at pp. 876-7. The basis of the attack is not that the Liberals believe in non-violence, but that they do not believe in complete equality.

(xvi) NRM 35. Summarised at V.75, pp.15853-6.

Lecture "How S.A. is Governed."

This lecture was used by the African National Congress in the Transvaal, but not in other provinces, as far as we know. The submission has already been made that lectures did not necessarily reflect policy.

It advances the view that the state is an instrument of oppression. This was the view of the author, Mandela. See his evidence at V. 75, pp. 15897-8, 15900.

He does not regard this view as inconsistent with a policy of non-violent pressure, including the possibility of negotiation.

The Crown argues that this indicates that the kind of state that the African National Congress wanted would be completely different from the present state. This may be broadly correct, but the lecture does not attempt to define the type of
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state wanted. It shows nothing more than the extent of one individual's dissatisfaction with the present state.

It is submitted that these documents prove nothing relevant to the Crown's case. The Crown presents them as part of an elaborate and tortuous scheme of indoctrination. They may be far more reasonably explained as the products of an organisation, hostile to the Government, which permitted its hostility to be expressed by its members in a variety of ways, sometimes with excessive emotion.

"NEW AGE". "LIBERATION". etc.

The Crown relies on the contents of the publications "Advance". "New Age". "Liberation", and "Fighting Talk". It is common cause that these were not official organs of the African National Congress and were not under the control of the African National Congress. The Crown, however, relies on the fact that members of the African National Congress were encouraged to read these journals.

It is true that in several official or semi-official African National Congress statements, these journals are praised and recommended as reading matter. It no doubt follows that one would expect some similarity between the outlook of the journals and that of the African National Congress. Such similarity does exist. The journals not only support the general idea of racial equality, but they publicise the African National Congress, its activities and its leaders.

According to the defence evidence, this is the reason why the African National Congress recommended the journals. It does not follow, however, that everything in the journals coincides with the policy of the African National Congress. See

Conco, V.55, pp. 10923-31
V.56, p. 11201
V.57, pp. 11331-2.

Luthuli/...

<u>Luthuli.</u>	V.58, p. 11603
	V.59, p. 11878
	V.60, pp. 11927-8
	V.62, pp. 13225-7
	V.64, pp. 13713-5
	V.65, p. 13839
<u>Mandela.</u>	V.75, pp. 15974-5
	V.76, pp. 16086-9
<u>Resha.</u>	V.81, p. 17075
<u>Nkalipi.</u>	V.74, pp. 15627-9
<u>Sibande.</u>	V.83, p. 17412
<u>Yengwa.</u>	V.83, pp. 17586-8, 17592
<u>Matthews.</u>	V.85, p. 17974
	V.86, pp. 18093-4.

There is no reason to reject this evidence. The African National Congress wanted to have its own newspaper, but never succeeded in achieving that. The majority of South African newspapers were uninterested in the African National Congress, or hostile to it. It therefore gladly accepted such support as it received from the journals in question and reciprocated that support. The relationship was similar to that which exists between any political party and those newspapers which generally support it, but are not its official organs.

This being the case, it cannot be assumed that any particular article or report in these journals is a reflection of African National Congress policy.

The Crown sought to strengthen its case by demonstrating that on a variety of topics, opinions expressed/...

expressed in the journals were similar to those expressed by the African National Congress. This takes the matter no further. The only important question is whether anything can be inferred against the African National Congress from those views which are expressed in the journals and are not duplicated in the official documents of the African National Congress. Clearly nothing can be so inferred. The fact that a journal agrees with the African National Congress on nine topics does not prove that the African National Congress agrees with the journal on a tenth.

The Crown relies on thirteen articles in these journals as being directly relevant to the question of violence. It is submitted that even if these articles were incitements to violence, that could not be held against the African National Congress. We shall nevertheless deal with the articles.

(i) F 19. V.15, p. 2981.

This is an anonymous article about the play Julius Caesar. It seeks to draw a somewhat vaguely defined political moral from the play. It has nothing to say on the question whether methods should be violent or non-violent.

(ii) F 20. V.16, p. 3037.

This is an article about Cyprus which condemns certain forms of violence practised there, but not all forms of violence. A possible inference is that the writer

believed/...

believed that armed rebellion was justified in Cyprus. That has nothing to do with the case.

(iii) F 21. V.16, p. 3011.

The theme of this long, philosophical article is condemnation of the atom bomb. The Crown accuses the author of saying in passing that defensive wars are justified. If he had said so, he would merely have been repeating what most people believe. In fact, he does not say so. He condemns violence in terms surely strong enough to satisfy even the Crown, at p. 3013.

(iv) L 28. V.18, p. 3520.

Mandela expresses in strong terms his fear that the state may resort to violence. This goes no further than many similar statements.

(v) L 29. V.18, pp. 3467-73.

This is an article by Ruth First, who is not alleged to be a member of the African National Congress. It suggests that unconstitutional methods should be persisted in, even if the state employs violence. This may be an undesirable view, but it is not the same thing as an incitement to violence.

(vi) L 33. V.18, pp. 3506-10.

This article envisages the possibility,
under/...

under certain circumstances, of turning an imperialist war into a civil war. It does not, however, say that such circumstances are present in South Africa.

(vii) NA 11. V.20, p. 3978, V.21, p. 4035.

These passages on Kenya merely record alleged facts about the situation there. For a full statement of the attitude of "Advance" to Kenya, see the editorial recorded at V. 19, pp. 3615-7.

(viii) NA 12. V. 21, pp. 4078-9.

This is a book review, which cannot reasonably be regarded as expounding the policy even of "New Age". All that the Crown relies on is a statement that India was not given freedom voluntarily.

(ix) NA 23. V.18, pp. 3582, 3590, 3595.

The point here is that China is praised. Therefore, says the Crown, the methods used in China are being advocated. This argument has already been answered.

(x) NA 38. V.21, p. 4071.

This is a letter to the editor from one Hadebe, as to whom there is no other evidence. The letter could be interpreted as a threat of reprisals for government violence.

(xi) NA 39. V.19, p. 3633, V.20, p. 3895.

These are extracts from messages by

Luthuli/...

Luthuli, which have been dealt with fully elsewhere.

(xii) NA 41, V.20, p. 3908.

This purports to reproduce statements by the African National Congress on the Western Areas Removal scheme. The language used is similar to that which is found in some African National Congress speeches. The extracts are brief and their meaning ambiguous.

(xiii) NA 42, V.20, pp. 3909-10, 3920.

The portion recorded at p. 3909-10 purports to report the instructions given to people in the Western Areas. There is no instruction for violent resistance.

The portion at p. 3920 says that a deputation from nine organisations had stated that the use of force by the government in the Western Areas would lead to bloodshed. Whatever this proves, it does not prove the Crown's allegation that the African National Congress wanted force to be used.

Even if all these extracts are given the interpretations which the Crown wants to give them, they are a poor harvest from approximately 300 numbers of these journals published during the indictment period. It certainly cannot be contended that these journals were so obviously committed to a policy of violence that the

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African National Congress could not have recommended them without impliedly approving that policy.

A further source from which the policy of the African National Congress might be inferred is the actual activities which it conducted during the indictment period. These consisted of four "campaigns" - on Western Areas Removal, Bantu Education, pass laws and the Congress of the People. The subject of Freedom Volunteers will also be dealt with under this head.

WESTERN AREAS:

As framed in the indictment, the Crown case appeared to be that the African National Congress incited person to commit acts of violence in the Western Areas, as part of its plan to overthrow the state. It now appears that the Crown alleges only that the intention was to create a situation in which violence might be expected to occur, in order to test the preparedness of the masses. The difficulty which the Crown has had in formulating its case on this campaign is a significant indication of the weakness of that case.

The Crown case as it now stands is improbable in the extreme. If, as appears to be conceded, there was no hope of a successful insurrection in the Western Areas, what would the African National Congress gain by violence there? This case is also of doubtful relevance to a charge of treason. There is no authority for the proposition that it is treason to engineer a situation in which one's own followers will be shot down by

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the police, merely for the purpose of making propaganda out of the incident. Neither does such an irrational scheme throw much light upon the ultimate intentions of its perpetrators.

It is not necessary to seek for any ulterior motive for the African National Congress's opposition to the Western Areas removal scheme. That opposition flowed naturally from the long-established policies of the African National Congress. The purpose of the opposition was to stop the implementation of the scheme. See

Luthuli, V.57, p. 11463
V.58, pp. 11625-7
V.59, pp. 11747-51
V.63, pp. 13491-2
Resha, V.77, p. 16385
Bhengu, V.84, p. 17724
Matthews, V.85, p. 17911
Moeller, V. 6, pp. 1012-3.

The Crown has attempted, both in cross-examination and in argument, to show that the opposition by the African National Congress was unjustified and that the Government policy in this matter was a good policy. That is irrelevant. Whatever may be, on balance, the merits of this dispute, it is clear that there were genuinely felt objections to the Government action, and that the African National Congress stand was based on views which it had held long before the question of the Western Areas arose.

Cf./...

Cf. Lewsen. V.85, pp. 17827-9,
17838-9, 17851.

The African National Congress stated its
opposition to the removal as early as 1951.

Mandela. V.75, p. 15818

Resha. V.77, p. 16384.

The campaign proper was launched in June 1953,
at a special conference of several organisations.

Resha. V.78, p. 16409

In April, 1954, the National Executive decided to take
over the direction of the campaign.

Luthuli. V.59, pp. 11751-2

Matthews. V.85, pp. 17909-10

A 37, V.2, p. 273.

The National Executive did not in practice do more than
lay down the general lines along which the campaign was
to proceed. The detailed implementation was left to
three members of the Working Committee, Resha, Sisulu
and Tambo (of whom Sisulu was banned soon afterwards).

Resha. V.78, pp. 16412-4

V.80, p. 16824.

The National Executive approved in principle
of a refusal to move voluntarily, and of "industrial
action". The question of violence was never raised,
and it was taken for granted that the resistance would
be non-violent. See the evidence already quoted and

Yengwa. V.83, pp. 17515-6

Mandela. V.76, p. 16170

Sibande. V.82, pp. 17378, 17389.

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In cross-examination, the Crown criticised the attitude of the National Executive in various respects, but it was not put to any witness that the National Executive decided upon any plan for violent resistance. The evidence of National Executive members on this point is corroborated by that of members in lower positions in the organisation, to whom the policy was conveyed. E.g.,

Kekano. V.85, p. 17932

Motshabi. V.84, p. 17799

Sebolai. V.85, p. 17753

The decisions of the National Executive are perhaps open to criticism on the grounds of vagueness. The possibility that the Government might use force was admittedly foreseen, and the precautions taken against a clash arising out of this may not strike one as infallible. These issues were canvassed at great length, and some material for criticism of the African National Congress can no doubt be found in the evidence. See e.g.,

Luthuli. V.59, pp. 11754-5

V.65, p. 13822

V.63, p. 13450

Yengwa. V.84, pp. 17704-5

Matthews. V.86, pp. 18158-9

Ntsangani. V.77, pp. 16364-7.

The fact remains, however, that a clash did not materialise. On the Crown theory, it is difficult to see why not. It is submitted that the reason is that the African National Congress did not want a clash and that
its/...

its precautions, though perhaps imperfect, were adequate.

The actual conduct of the campaign is described in detail by

<u>Reaha.</u>	V.78, pp. 16415-9
	V.81, pp. 17049-57
<u>Molaoa.</u>	V.81, pp. 17192-5, 17197
	V.82, pp. 17307-9
<u>Kekane.</u>	V.85, pp. 17931-2

Propaganda was made among householders, encouraging them not to move voluntarily. Plans for a "stay at home" were prepared, but were kept secret until the last minute. Legal opinion was obtained, and householders were told that they would not commit an offence by ignoring notices to move. On the day of removal, some people were helped to move to other premises in Sophiatown. It is common cause that nothing more actually happened, and that no violence took place.

On this level, as at the Executive level, one finds some vagueness as to the exact conduct expected of the inhabitants. The Crown's attempt to draw a sinister inference from such vagueness is weakened by the fact that its own inferences are far more vague. If the instructions to the people were not as the defence witnesses testify, what were they, and why were they not carried out?

The Crown argues that the statements sometimes made by African National Congress speakers, to the effect that violence might occur in the Western Areas, must

mean/...

mean that violence was being planned by the African National Congress, since violence could not occur in any other way. There is, however, ample evidence, both by defence witnesses and in the documents, and speeches, that the African National Congress did believe in the possibility of police violence against non-violent resisters. There can be no justification for putting any other interpretation on statements which, on the face of them, express this belief, e.g. the report in "Advance" of 8th July, 1954, V.80. p. 16971-2.

The Crown further makes much of statements to the effect that the African National Congress wished to compel the Government to use force. E.g., ORT 129, V. 17, p. 3340. This has been repeatedly explained. The objective was to prevent the removal if possible, but in any case to make it clear that the people were not willing to go. See

Resha. V.80, pp. 16973-7

V.81, pp. 17029, 17181-2.

Thus it was desired that if the removal were to take place at all, it should take place only as a result of coercion. Such coercion need not, of course, take the form of violence. It would be sufficient if people left under an order of ejection, or only after their belongings had been removed by the officials.

There is no reason to reject this explanation, which is far more rational than the Crown theory that a massacre was desired. Insofar as the campaign achieved anything, it achieved precisely this objective. What

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was claimed for it after the event was that the presence of 2,000 police on the date of removal proved the unwillingness of the people to go. The actions of the African National Congress on the day, and its statements afterwards, are consistent with the hypothesis that such proof was what the African National Congress wanted. If the presence of the police was desired in order to create a "conflagration", why was the opportunity allowed to slip?

The Crown also relies on the fact that the campaign was regarded as a partial failure, and suggests that this was because no violence took place. This is pure speculation, and there is no support for it in any of the "post mortem" documents. On the contrary, these claim the absence of violence as a success. The failure obviously consisted largely in the fact that the removal took place at all. Luthuli, V.64, pp. 13604-7 and 13616-7, makes the further point that people did not show an adequate degree of unwillingness. He says that "some people did go, one can almost say joyfully". There is no evidence to contradict this, and if it is so, it explains the position quite adequately.

The Crown further seeks to make something out of the Western Areas campaign by using the phrase, "hindering and hampering the state in the administration of its laws." No doubt, as Luthuli admitted (V.63, pp. 13500-503) one of the effects of the campaign would be to hinder the state. But this has nothing to do with treason.

Another/...

Another point made is that some of the propaganda made against the Government was false and malicious. The falsity of such propaganda has not, of course, been proved. Even if it was false, slander and violence are not the same thing.

We now proceed to consider certain documents relating to the Western Areas Campaign.

(i) A 157, V.4, p. 791.

Leaflet, "We Shall Not Move".

This is the only written propaganda which is proved to have been distributed by the African National Congress in the Western Areas. (See Resha, V.78, pp. 16436-7). The Crown does not rely upon it. The concrete proposals for action contained in it are entirely consistent with the defence case.

(ii) NRM 47, V.15, pp. 2920-6.

Journal, "Modisa Umaluze."

Mandela states (V.76, p. 16174) that this journal was published by the African National Congress branch in Sophiatown. There is no other evidence of its status. The Crown relies on it for the statement that the throwing of one stone in the

Western/...

Western Areas could have caused a bloodbath. If the African National Congress believed this, and wanted violence, why was the stone not thrown? The same exhibit supplies the answer; the African National Congress did not want violence.

(iii) PJ 92, V.8, p.1450.

National Consultative Committee Report. This deals mainly with the campaign against passes, but it refers to the Western Areas campaign and to the lessons to be learned from it. It is called a campaign of "passive resistance alone."

(iv) A 162, V.4-5, pp. 796-811.

Report of the Secretariat on the Western Areas.

This is a "post mortem" report, drawn up by Resha and Tambo. It is dealt with exhaustively in evidence by

Resha. V.78, pp. 16448-64

V.81, pp. 17019-39.

The document does not say that the African National Congress had a plan for violence in the Western Areas. The Crown, however, relies strongly on certain alleged implications in the document. It is submitted that these

are/...

largely fanciful and that the Court was justified in its initial impression that this document takes the case no further.

The document begins with a brief history of the campaign. The statement that removal dates were announced and subsequently postponed is admitted by Resha to be an exaggeration.

At p. 801, elements hostile to the African National Congress are accused of trying to provoke "acts of terrorism", which would have led to violent action by the authorities. This attitude is clearly not approved.

The Crown relies heavily on the passage in which the document claims that the African National Congress "compelled" or "forced" the Government to take the action which it did. It is suggested that the African National Congress must have done so by threats of violence.

But the document does not say so, and if it were so as a matter of fact, the Crown could surely have proved that aliunde. It is submitted that the explanations of Resha. (pp.16459,17026) and Luthuli (V.63, pp. 13573-4, V.64, pp. 13612-3) are quite acceptable.

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The document continues with descriptions of the actual events of the removal day, consistent with the defence evidence.

The description of the objective of the campaign at p. 809 is also consistent with the defence case.

At p. 810, the failure to give unequivocal instructions to the people is mentioned as a weakness. It would not have been so mentioned if it had been a deliberate tactic adopted for some sinister purpose. The document goes on to make it clear that the African National Congress's "secret weapon" was industrial action, not violence.

The document goes on to deal with the future, and the Crown emphasises a sentence which calls for continued resistance leading to "more direct and positive action". This has been explained by Resha (V.78, p. 16462) and Luthuli (V. 64, p. 13631-2, 5-9). There is no reason for rejecting their explanations in favour of the theory that this is a reference to some vague scheme for violence. Whatever this may mean, the suggestion seems to have had little practical effect, since in fact the

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Western Areas Campaign fizzled out after February 1955.

The Crown attempts to make similar use of a statement that industrial action should be used to "lift the struggle to a higher level". Again, there is no reason for preferring the Crown interpretation of this phrase to that of the defence witnesses. The Crown argument on such phrases really amounts to nothing more than a submission that if the African National Congress had a policy of violence, these phrases could be interpreted as references to that policy. No doubt they could, but they do not prove that the policy of violence existed.

(v) A 102, V.4, p. 702.

Document of unknown origin.

This may be a draft secretarial report or an unpublished article. It is not known to have any official status. It was also written after the event.

It uses the phrase "physically oppose removal". All it says is that the people were not prepared to do that. The implication may be that in the opinion of the writer they should have done it, or that the writer's impression of African National Congress propaganda

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was that they should have done it.
Be that as it may, the phrase is not further defined and does not necessarily mean resistance by attacking Government officials. See Matthews. (V.86, p. 18174).

(vi) LLM 81, V.18, p. 3454.

National Executive Report, 1955.

One paragraph in this report accuses the Government of having wished to provoke a bloodbath in the Western Areas. Cf. the defence witnesses

Rosha, V.80, pp. 16969-73

Molaoa. V.82, p. 17305, and

Ntsangani. V.77, pp. 16364-6

think that this accusation was justified, whereas

Luthuli. V.63, p. 13486 and

Matthews.V.86. pp. 18164-71

think that it was an exaggeration. The Crown stigmatises this as a reckless imputation against the Government. The only relevant question, however, is whether it proves that the African National Congress wished to provoke a bloodbath. On the face of it, it proves the opposite, since it claims that the African National Congress foiled the Government's evil intentions. However unfounded this claim may be, the Executive could scarcely have made it if

all/...

all their members knew that the boot
was on the other foot.

(vii) A 58, V.2, p. 339.

Circular, 1955.

This refers to the Western Areas and is
mentioned in the Crown's particulars.
It contains nothing which supports the
Crown case.

(viii) A 59, V.2, p. 343.

Minutes, 1955.

The same remarks apply as to A 58.

(ix) A 158, V.4, p. 792.

Letter, Resha to Alexandra Branch.

This describes the aims of the Campaign
in the usual flamboyant language, but
contains no evidence of violence.

(x) ORT 129, V.18, p. 3439.

Document of unknown origin.

This deals with the African National
Congress's claim that it compelled the
Government to use 2,000 police. It adds
nothing to what has already been said
on this point.

(xi) ORT 66, V.65, p. 13872.

Statement by the Working Committee,
8th February 1955.

This statement, issued on the eve of the
first removal, contains an express
advocacy of non-violence. It strongly
supports/...

supports the defence case, and is inconsistent with the Crown theory.

- (xii) TT 27,
Cape Provincial Conference Resolution,
1954.

This resolution shows that the Cape African National Congress understood the Campaign to be non-violent.

- (xiii) TET 50, V.19, p. 3789.

Draft press statement.

It is not known whether this was published or not. It again accuses the Government of intending to use violence. The Crown says that Governments do not behave like that. This assertion by the prosecutor is not an adequate reason for holding that the document means the opposite of what it says.

- (xiv) B 13, V.6, pp. 1121-2.

Transvaal Indian Congress report, 1955.

C 162, V.9, p. 1648,

Bulletin, "Counter Attack".

These two documents contain very similarly worded "post mortem" comments on the Campaign. Both may be derived from the views expressed in A 162.

Neither contains any suggestion of violence.

- (xv) The Crown referred without argument to

a/...

a number of further documents, which need not be dealt with in detail. Among them is A 15, (V.1, p. 184), the National Conference resolution on the Western Areas. It is significant that the Crown can find no support for its case in this resolution, passed by the highest authority in the African National Congress. PDN 91 (V.15, p. 2813) contains practical proposals which support the defence case.

Evidence has been led of a considerable number of speeches made in connection with the Western Areas Campaign. The speeches of which evidence has been led are only a fraction of those which were made during the period of just over eighteen months which the Campaign occupied.

It is submitted that these speeches must be interpreted as political speeches, made on a subject which aroused strong feelings. It would be unrealistic to take every word contained in them literally.

Cf. Luthuli. V.63, pp.13505-6, 13516.
pp.13520, 13522.

Matthews. V.85, pp. 17968-9, 17972

and the remarks of Ludorf, J. in Pienaar v. Argus P. and P. Co.. 1956 (4) S.A. 310.

Among all the meetings mentioned in evidence, and the many more of which police reports must exist, the Crown has found only two which it submits contain

incitements/...

incitements to violence. Presumably because of the paucity of this material, the Crown has had to abandon the theory that the African National Congress was actually stirring up a rebellion in the Western Areas. That being so, it is a little difficult to see how these two isolated incitements fit into the picture. They fit more easily into the defence case, which is that the policy was non-violence, but that individual deviations from policy could not always be prevented.

The first meeting alleged to contain incitements is that of 9th January, 1955 (V.38, pp. 7469-84).

The speeches of Resha and Matlou are excited speeches, perhaps even rash, but they contain nothing which must necessarily be interpreted as meaning that violence is to be used by the African National Congress.

The speech of Mrs. Karai contains, on the face of it, an express threat to kill people. We do not know what language she was speaking, and it is noteworthy that the words particularly relied on by the Crown were reported by only one of the two witnesses who testified to the meeting. (Cf. report of Ncgai. V.47, p. 9309).

In any case, if the African National Congress had decided to reveal its policy of violence at this meeting, would it have done so through this unimportant person, in a brief and not very coherent speech which gives the listener no idea who is to be killed, or when, or how? This speech, if it was made as recorded, was clearly an outburst of emotion rather than an exposition of policy. Resha may be to blame for letting it pass,

but/...

but it would be fanciful to hold anyone else responsible, or to judge the whole campaign by this speech.

The next meeting is that of 30th January, 1955. (V. 38, pp. 7434-7502).

This meeting contains the usual sort of rhetoric, with the word "fight" used in a figurative way. There are express references to non-violence at p. 7496, and the instructions given at pp. 7497-9 are not instructions to commit violent acts.

At p. 7497, however, there is an obscure passage about "meeting the enemy at the gate" and "in the street", because "in your own house....you don't have enough space to move about."

Resha was not cross-examined on this, and the Crown has been unable to give it any precise meaning. There is no evidence of any plan for violence which these words could be made to fit. By themselves, they do not convey anything upon which the audience could have acted. The reporter has failed to record the end of this passage, from which the meaning might perhaps have appeared.

It is submitted that the evidence of public meetings in Sophiatown totally fails to prove any attempt by the African National Congress to prepare the people for violence.

Another meeting which the Crown relies on is the "Anti-Apartheid Conference" held at the Trades Hall on 27th June 1954 (V.38, pp. 7404 et seq, and V. 39, pp. 7767 et seq). This meeting does not form part of
the/...

propaganda addressed to the public of the Western Areas, but the Western Areas Campaign is extensively discussed. No plan for violent action emerges. The speech of Vundla (pp. 7412-9) shows that the African National Congress took a serious view of the situation, but that it not disputed. The resolution at p. 7423 merely states an attitude towards the removal scheme and calls for volunteers "for the purpose of organising opposition."

At p. 7428, one Paul Joseph suggests non-violent methods and uses military metaphors in the same breath.

Sibande's speech at pp. 7772-7 has been explained by the speaker.

Sibande. V.82, pp. 17365-8

This being the extent of the evidence of violent propaganda in the Western Areas, the Crown has, correctly, it is submitted, abandoned the allegation that the African National Congress was trying directly to incite a violent insurrection.

The case now rests upon the allegation that the African National Congress recklessly persisted in a campaign, in spite of the likelihood that violence would result.

It is not altogether clear whether the Crown relies on an objective probability that there would be violence, or merely upon an African National Congress belief that there would be.

Insofar as an objectively existing danger is relied upon, it is submitted that there is no evidence

to/...

to support the Crown. The Crown does not say that the police were in fact likely to take any aggressive action. No evidence has been led to establish the state of the feelings of the inhabitants. No violence in fact took place. There are no doubt some inherent dangers in a situation involving the compulsory removal of large numbers of people without their consent, but any contention that such a situation must inevitably lead to violence is met by the facts.

Insofar as an African National Congress belief is relied upon, the Crown is first faced with the difficulty of establishing the beliefs of an entire organisation. There is nothing on record to show that the African National Congress ever committed itself to an official view of what was likely to happen in the Western Areas. The most that can be said is that there was a widespread belief among African National Congress members that a risk of violence existed.

Both the defence witnesses and the documents claim that, far from recklessly accepting this risk, the African National Congress tried to avoid it, and succeeded. Perhaps there were better ways of avoiding it than those which they chose, but the state of mind which emerges is not one of recklessness. For instance, the statement issued on 8th February 1955, was a precaution against violence, whether adequate or not.

The most glaring weakness in the Crown case is the absence of any direct evidence of the plan for violence in the Western Areas, whatever form it may have taken. If any serious attempt was made to implement it,
the/...

the plan must have been disclosed to very many inhabitants of Sophiatown. Apparently they disapproved of it, since they did not carry it out. Why, then, have none of them come forward to give evidence?

Finally, it is necessary to refer to one document which is entirely inconsistent with the Crown case. This is AAC 39, a copy of the journal, "The Africanist" (V. 59, p. 11768). This was published by a dissident group within the African National Congress and it criticises the policy in the Western Areas because that policy is non-violent. The Crown has not attempted to explain this and cannot explain it.

BANTU EDUCATION

The indictment alleged that the African National Congress had a policy of inciting to illegal and violent resistance against, inter alia, the administration and enforcement of the Bantu Education Act. (Part B, para. 4(b)(iv)).

The Crown has made no serious attempt to prove this proposition. It is not now contended that the Bantu Education Campaign involved, or was intended to involve, any violence, or that it was aimed directly at the overthrow of the state.

The Crown says that this campaign was regarded as part of the liberatory struggle, and that Bantu Education was regarded as "the sharpest point of conflict" between the Government and the liberation movement. If this is so, and if the liberatory struggle was a violent one, should there not have been some violence in connection with Bantu Education? The importance attached by the African National Congress to this campaign is not disputed. That makes the non-violent nature of the campaign all the more significant.

The resistance to Bantu Education was, in fact, not even illegal. It took the form merely of advising parents to withdraw their children from schools, as they were perfectly entitled to do.

Nothing more than has already been said emerges from the documents referred to by the Crown. It will be necessary to deal with only a few of them.

(1)./...

(i) A 178, V. 4, p. 776.

Document entitled "Suggested Programme".
The Crown complains that this document envisages the undermining of the Act and the possibility of forcing the Government to retreat. But the method suggested is the boycott and nothing else. This document supports the defence case as to the extent of the A.N.C's faith in such methods as boycotts.

(ii) ORT 17, V.18, pp. 3437-9.

Document of unknown origin.
The only method here suggested is the boycott, and the phrase "the fury of the people" cannot be understood to refer to anything else.

(iii) RF 22, V.22, pp. 4355-7.

Article by Tshume.
As far as is known, this article was never published. It says that the boycott will not necessarily proceed "smoothly and in an orderly manner", but this only means that it will not be successful throughout the country from the outset.

Like the Defiance Campaign, the Bantu Education Campaign provides a clear practical example of the sort of non-violent action to which the accused say that they were committed.

THE ANTI-PASS CAMPAIGN.

Opposition to the pass system has been a part of the African National Congress policy for many years. The campaign which was conducted in 1956 was specifically intended to prevent the extension of the system to African women, by advising them not to apply for reference books. It was not compulsory for them to do so, and the campaign involved no illegality. It seems that no firm decision had been taken about the attitude to be adopted when reference books became compulsory for women. The evidence is, however, that there would be nothing contrary to African National Congress ideas in an illegal refusal to carry passes.

The campaign involved no violence and the Crown has been unable to contend that there was any specific plan for violent resistance to the pass laws. Certain vague insinuations are derived by the Crown from Exhibit PJ 92 (V.8, p. 1450). This is a memorandum by the National Consultative Committee, which had no power to lay down policy for the African National Congress. The concrete suggestions made in the document are all non-violent. At the end of the document (p. 1454), there is a warning against premature and reckless actions which will not obtain the support of the people. The Crown first assumes that this refers to violent actions and then argues that by condemning premature violence, the author is impliedly approving violence at the right time. The argument falls away if one makes the more reasonable assumption that the document in its last paragraph is

talking/...

talking about the same sort of actions as in its earlier paragraphs.

This campaign affords another practical example of the non-violent methods used by the African National Congress.

THE CONGRESS OF THE PEOPLE.

The other major campaign undertaken during the indictment period was that of the Congress of the People. The Freedom Charter has already been dealt with, and the Crown does not contend that the Congress of the People has any significance beyond what emerges from the Freedom Charter.

It is therefore not necessary to deal with the campaign itself in any detail. It is another example of the practical activities of the African National Congress, in which no hint of violence is to be found.

FREEDOM VOLUNTEERS.

The Crown case as now argued is not that the Freedom Volunteers were intended to commit acts of violence during the indictment period. It is now conceded that the many statements as to their non-violent nature did in fact reflect the policy for the immediate future. But, says the Crown, they were to go over to violence at some further stage of the struggle.

This theory is not supported by the evidence and was not put to the defence witnesses. It seems to have been evolved at a late stage of the case, in an effort to explain away a body of evidence which supports the defence case.

The defence evidence deals exhaustively with the nature and functions of the Freedom Volunteers. The term "volunteer" is derived from the Indian passive resistance struggles. It was first used in South Africa in 1906, later in India and again in South Africa in 1946. The African National Congress adopted it at the time of the Defiance Campaign in 1952. See

Cachalia. V.70, pp. 14924-5, 14963.

Murray. V.34, pp. 6758-9.

GMN 25, V.19, p. 3769.

A 83, V. 3, pp. 537-3, 594-6.

The Freedom Volunteers were set up in 1954. Their purpose was to act as propagandists and organisers, particularly in the Congress of the People and the Western Areas campaigns. They were to be a body of members who
would/...

would be more active and more dedicated than the average member. Insofar as the scheme was put into practice, this is what they in fact were. They were not organised on military lines and were not intended to engage in any form of violence. On the contrary, they were expected to set an example of calmness and refusal to be provoked.

See

- Conco, V.54, pp. 10884-5,
10886-8.
V.55, pp. 10959-60
V.56, pp. 11229-30
- Luthuli, V.59, pp. 11710-20, 11752
V.62, pp. 13252-4.
V.64, p. 13653.
- Nkhalipi, V.74, pp. 15607-8, 15620
15633-4, 15637-8,
15642, 15720, 15732.
- Mandela, V.76, pp. 16141, 16144,
16150.
- Ntsangani, V.77, pp. 16206-7, 16252.
- Reaha, V.78, pp. 16420-2, 16465-6.
16577.
V. 81, pp. 17072-4, 17120-1,
- Molao, V.81, pp. 17190-3.
V.82, pp. 17202, 17236-8.
- Sibande, V.82, pp. 17367-8.
V.83, pp. 17450-1, 17454
- Yonawa, V.83, pp. 17471-2, 17474-8
V.84, pp. 17709-12.
- Matthews, V.85, pp. 17912-5

Bhengu/...

Bhonani. V.84, pp. 17741-3.

Monrwabone. V.84, p. 17775.

Molcamedo, V.84, p. 17793.

Motshabi. V.85, p. 17801.

Ramakhula. V.85, p. 17817.

This defence evidence is fully supported by the documents handed in by the Crown. See particularly

A 55, V.2, pp. 335-7.

B.31, V.6, pp. 1191-4.

V.7, p. 1267.

The description contained in B 31 is repeated in other documents. It appears from A 118 (V. 4, pp. 738-43) that these tasks still applied after the Congress of the People.

No different picture emerges from the evidence of those police witnesses who testified as to the actual activities of the volunteers. See

Moeller, V.6, pp. 1016-8, 1025,7.

Buytenda. V.7, p. 1278.

There are several documents in which the non-violent nature of the volunteers is dealt with. For example

H 1, V.11, p. 2019.

B 35, V.6-7, pp. 1199, 1203.

Non-violence is also expressly mentioned in the article from which the Crown derives the term "shock brigade", on which it has placed so much emphasis. This article, apparently by the accused Kathrada, was published both in "New Youth" (B 4, V. 6, pp. 1081-2) and the Congress of

the/...

the People bulletin, "Speaking Together", (B.32, V.6, pp. 1195-6). Compare the speech of Kathrada reported in Vd.38, pp. 7462-8. It would seem that the term "shock brigade" was coined by Kathrada, who never uses it without making the point that violence is not envisaged. The Crown's faith in this phrase is therefore misplaced.

An interesting document relating to the Freedom Volunteers is Dr. Naicker's "Self Discipline for Volunteers". (C 55, V.11, pp. 2042-50). This contains proposals for organising the volunteers along completely Gandhian lines. There is no evidence that these ideas were ever put into practice, but they were discussed and seem to have aroused interest. See TET 50, V.20, p. 3818 and TET 80, V.20, p. 3840.

If the Congresses already had a plan for training the volunteers for violent action, it is difficult to see why they would have been interested in this. The Crown's effort to explain it away is ingenious, but finds no support in the evidence.

The only evidence upon which the Crown positively relies for the proposition that the volunteers were being prepared for violent action consists of the speeches of Ndimba at Port Elizabeth on 1st May 1955 and of Resha at Johannesburg on 22nd November 1956.

Ndimba's speech (V.50, pp. 9915-6) is very inadequately reported, and it is not possible to say what the real context was of the words

"If the instructions are given to
the volunteer to kill, they must
kill."

The/...

The speech may or may not be consistent with the present Crown argument - one does not know whether Ndimba made it clear that violence was coming when the time was ripe, but not before.

The defence evidence is that this speech was contrary to policy, and was repudiated by the Branch Executive. See

Nkalipi. V.74, pp. 15617-9,
15698-700.

This evidence is consistent with all the other evidence and cannot be rejected.

The evidence of what Ndimba said at his trial in the Magistrate's Court (Behrman. V.52, pp.10467-71) is admissible against Ndimba only. The Crown can rely on only part of this statement, since it also contains an explanation, according to which the words do not mean what they say. It is submitted that the Court will not base any finding upon a statement made by Ndimba for the purpose of saving himself from conviction, which is argued by the Crown to be only partly reliable. It is inconceivable that no other evidence would have been available of the oath to which Ndimba testified, if it had really been administered to all African National Congress members.

The speech of Resha (V.41, pp. 8149-8154) is before the Court verbatim, save that a part of it is missing. It is notable for its very rhetorical style, combined with a lack of any concrete proposals, save that volunteers must improve their organisation and their discipline. This meeting was called at a time when the

African/...

African National Congress believed itself to be facing a crisis. It is clear that there was no specific plan to meet this crisis, beyond a general effort to improve organisation and morale. Resha's speech was a "pep talk" designed to achieve this.

The manner in which he illustrated the discipline required, and the reception of this passage by the audience, no doubt show the existence of an unhealthy mood in the Transvaal African National Congress. But can this be seriously regarded as the exposition of a policy of violence? What exactly was the policy which was being expounded?

Resha has stated that what he said was contrary to African National Congress policy. In view of all the rest of the evidence, it is submitted that this is the truth.

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