

**CONCERNED SOUTH AFRICAN INDIAN CITIZENS
BEEMA NAIDOO**

3 May 1996

**PETITION IN RELATION TO SECTION 6 (LANGUAGES) OF THE NEW
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA**

We are South African citizens of Indian origin and are deeply concerned that our civil and political rights will be infringed if section 6 of the Working Draft Constitution (as at April 1996) is approved and certified by the Constitutional Court.

We submit that Indian languages (Telegu, Hindi, Urdu, and Gujerati) should be recognized and included in the category of official languages in section 6 of the Constitution of the Republic of South Africa 1996.

Enclosed is our petition setting out our submission as well as a proposed text for section 6 of the new Constitution of the Republic of South Africa. As the guardian of the new constitution and our constitutional rights, we hope that the Constitutional Court will examine section 6 in the light of the constitutional principles, civil liberties and international humanitarian law.

BEEMA NAIDOO

PETITION

3 May 1996

**SUBMISSION FOR A REVIEW BY THE CONSTITUTIONAL COURT OF SECTION 6
(LANGUAGE CLAUSE) OF THE NEW CONSTITUTION OF THE REPUBLIC OF
SOUTH AFRICA PRIOR TO CERTIFICATION**

1. We are Concerned South African Indian Citizens permanently residing in the Republic of South Africa.
2. Mr. Beema Naidoo is a South. African Telegu-speaking citizen, born in Mtunzini, South Africa in 1920 and is a descendant of indentured labourers who arrived in South Africa from India (Andhra Pradesh) as part of the British/Natal indentured labour scheme originating in 1860. [Hereinafter both parties, Concerned South African Citizens and Mr Beema Naidoo will be referred to as "we" or as the "Petitioners"].
3. The petitioners note with great concern that the Constitutional Assembly has not recognized Indian languages as official languages in section 6 of the Refined Working Draft of the New Constitution of the Republic of South Africa (18 March 1996). [Hereinafter the language clause in the new Constitution will be referred to as section 6]. Furthermore, we understand that the Constitutional Assembly negotiators have in their final draft (April

1996) significantly diminished the rights of Indians and other minority linguistic groups by deleting the phrase "and development of" from section 6 (3).

4. Despite submissions by various organizations and individuals, the Republic of South Africa Constitution Act 1993 and the Working Draft of the New Constitution 1996 have failed to acknowledge that South Africans of Indian origin have had a long history in South Africa. We are descendants of Indian indentured labourers who first arrived in Natal in 1860. We note that the English annexed Natal in 1843. The English foisted their language on, inter alia, the inhabitants of the Colony of Natal. South Africans of Indian origin have, however, continued to nurture and speak their own languages, namely, Telugu, Tamil, Hindi, as well as the languages of later arrivals (merchants), Gujarati and Urdu. In addition, South Africans of Indian origin have been multi-lingual (speaking Indian languages, African languages, English and Afrikaans). As a result of the policy of apartheid, Indian languages, history and culture were not taught at schools and Indian languages have only been introduced into the school curriculum in recent years. There are already indications that the new national and provincial education policies will severely curtail the brief development of Indian languages. In addition, serious consideration was given by the education departments to eliminate entirely or reduce the extent to which the history of South African Indians is taught in the history syllabus. These are some practical examples of how South African Indian citizens will be deprived of their fundamental human rights are considered essential for eleven official linguistic groups.
5. The Republic of South Africa is a signatory to many international treaties and conventions, including the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966, which provide that all citizens must be accorded equal civil and political rights and that there should be no discrimination.
6.
 - a) Section 6 is the only provision in the constitution which has racial overtones and is discriminatory in that it draws a distinction between the right afforded to specific linguistic groups of South African citizens, namely, the English, Afrikaners, and Africans on the one hand and other linguistic groups, such as Indians, San, Greeks, and Portuguese (commonly referred to a minority linguistic groups) on the other hand.
 - b) Minority African languages such as Tshivenda, siSwati, isiNdebele and Xitsonga are afforded official status equal to that of isiZulu and isiXhosa. Yet the population of Tshivenda, siSwati, isiNdebele and Xitsonga speakers is disproportionate to those speaking isiZulu and isiXhosa. The criterion for granting official language status to those linguistic groups is, in our view, a racial and political one. The Constitutional Assembly's decision is, therefore, arbitrary and discriminatory.
 - d) It is perhaps surprising too that English and Afrikaans are considered acceptable for inclusion in the category of official languages and afforded equal status with nine African languages. Yet British settlement in Natal and the evolution of Afrikaans can be traced approximately to a period less than 25 years from the arrival of Indian

indentured labourers in Colony of Natal. Indian immigration into South Africa was prohibited in 1911. South Africa has the largest Indian community outside India. The population of Indians in South Africa would have been significantly higher were it not for that prohibition of immigration. On the other hand, the South African government actively encouraged immigration by whites, particularly from Great Britain and Europe, thereby increasing the population of English-speaking South Africans. As a result of apartheid education, English and, later, Afrikaans were foisted upon South African Indians who had to study either through the medium of English or Afrikaans. As has been noted above, Indian languages were not taught at schools but were taught privately by Indians at vernacular classes after school hours. It is only in that way that Indian languages were nurtured and kept alive. We emphasize that Indian languages (Telugu, Tamil, Hindi, Gujarati, Urdu) are living languages (both written and spoken). If Indian languages were spoken in Natal just seventeen years after Natal was annexed by the English, why is English given preferential treatment? We appreciate that English is an international language but this should not diminish the right of Indian languages to be accorded official language status. Afrikaans too evolved from Dutch, German and other indigenous languages but this evolution took place after the Great Trek of 1836. It is incorrectly assumed that either English or Afrikaans is the official language of South African Indians.

- e) It is particularly noteworthy that, of the four previously classified race groups, only Indians are not linked to any of the official languages.
 - f) The petitioners submit that the notion of a constitutional right should neither be based on race nor on financial grounds. For example, the fact that the government may regard the development of African languages as a priority should not be a ground for denying official status to all recognized languages of historically long-standing communities in South Africa. Such a priority is a policy decision which can be made from time to time by national/provincial legislation or administrative regulation.
7. From a constitutional and legal perspective, the petitioners wish to point out that there is a conflict between the different constitutional provisions which will have a significant impact on South African Indian civil rights. Section 31 of the 1993 Constitution provides that 'every person shall have the right to use the language and to participate in the cultural life his or her choice'. Section 30 of the 1996 Working Draft provides that 'everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may violate the rights of anyone else'. The essential content of the right afforded by section 31 (1) and section 30 of the Working Draft 1996 is negated by section 3 of the 1993 Constitution which provides as follows: 'Afrikaans, English, siSwati, isiNdebele, Sesotho sa Leboa, Sesotho, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu shall be the official South African languages at national level, and conditions shall be created for their development and for the promotion of their equal use and enjoyment', as well as by section 6(1) of the Working Draft which provides that the 'official languages of

the Republic are Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu.’ What is the official language of a South African Indian citizen and in what circumstances can we exercise our right to use Indian languages None of the presently formulated official languages can be attributed to us and we strongly refute the suggestion that Indians are an insignificant minority in South Africa and therefore it is not essential for our languages to be included in the category of official languages. Given the grave concerns expressed by minority communities in respect of their rights generally, it is imperative that the Constitutional Court examine closely the language clause, section 6. One of the ways in which South Africans of Indian origin can feel secure of their fundamental rights is if the constitution entrenches their language rights. Being linked to an official language will at the very least restore human dignity, self-respect and the security in the knowledge that we are recognised South African citizens and not simply an insignificant group of settlers who could potentially be treated as foreigners in the future. Furthermore, official language status will distinguish our rights from new waves of Indian immigrants who speak other Indian languages.

8. We believe that Indian languages spoken by the descendants of Indian indentured labourers should be official languages under the proposed new South African constitution and the provincial constitution of KwaZulu Natal. It is simply not acceptable that those languages be afforded limited recognition under section (10)(c) of the 1993 Constitution and section 6 of the 1996 Working Draft.
9. The petitioners recognize that it is not practical to include Indian languages as working official languages for government purposes and for government records. We also emphasize that we are not seeking to have separate Indian language-medium schools but where practicable, we wish to have Indian languages included in the school curriculum. We seek greater clarity on the definition and interpretation of the following phrases in section 6:
 - a) ‘official languages’
 - b) ‘respect for’; and
 - c) ‘development of’

It is clear that the current use of the term ‘official languages’ in section 6 is not in accordance with general international usage. No country in the world has eleven official languages. We propose that there be a single national working official language and one or more working official languages at the provincial level.

Even if there cannot be consensus on the number of working official languages nationally and the eleven remain, they can be referred to as working official languages. Accordingly, there can be a broader and new definition given to official languages under a general category as being all recognized languages spoken by South African citizens.

The term ‘respect for’ is, in our view, meaningless and of nugatory value. One can respect, tolerate, and promote understanding for a language but this does not guarantee the perpetuation of any language as a living language.

We suggest the following format:

**PROPOSED TEXT FOR LANGUAGE CLAUSE IN NEW CONSTITUTION FOR THE
REPUBLIC OF SOUTH AFRICA**

CHAPTER I

- 6.(1) The official languages of the Republic are Afrikaans, English, isiNdebele, Sesotho sa Leboa, Sesotho, siSwati, Xitsonga, Setswana, Tshivenda, isiXhosa and isiZulu, German, Greek Gujarati, Hindi, Portuguese, Tamil, Telugu, Urdu, Khoi, San, and sign language.
- (2) National and provincial government may use particular official languages for the purposes of government, taking into account usage, practicality and expense.
- (3) The Pan South African Language Board must promote the conditions for the development and use of the official languages.
- (4) The Pan South African Language Board must promote respect for Arabic, Hebrew, Sanskrit and other languages used for religious purposes.

The petitioners pray that the Constitutional Court will give careful consideration to their submission.

**BEEMA NAIDOO
CONCERNED SOUTH AFRICAN INDIAN CITIZENS**

18 May 1996

**PETITION IN RELATION TO THE CERTIFICATION OF SECTION 6
(LANGUAGES) OF THE NEW CONSTITUTION OF THE REPUBLIC OF
SOUTH AFRICA**

Our previous correspondence dated 3 May 1996 and 14 May 1996 refers.

Further to our petition dated 3 May 1996, we are sending you a revised submission incorporating, as requested, the specific Constitutional Principles which have not been complied with by the Constitutional Assembly in drafting section 6 of the new Constitution, namely, Constitutional Principles I, II, III, V, VII, and XI.

We should be pleased to elaborate further on any of the issues raised in our submission. We also wish to advise you that we now have many more signatories to our petition.

In 1789 U.S. Representative, James Madison moved that the U.S. Congress amend the U.S. Constitution. During his wide-ranging and impassioned speech, he observed:

The prescriptions in favour of liberty ought to be leveled against that quarter where the greatest danger lies, namely that which possesses the highest prerogative of power. But this is not found in either the Executive or Legislative departments of government, but in the body of the people operating by the majority against the minority.

In essence, we support the Constitution and majority rule but we do believe that section 6 needs to be re-visited by the Constitutional Assembly before we can call ourselves an equal nation. Despite the lofty democratic principles espoused in the Preamble, we are deeply concerned that section 6 has infringed our civil and political rights. We hope that the Constitutional Court will not certify section 6 and instead refer that section back to the Constitutional Assembly.

Thanking you, in anticipation, of the Court's find consideration of our petition.

BEEMA NAIDOO

PETITION

18 May 1996

SUBMISSION FOR A REVIEW BY THE CONSTITUTIONAL COURT OF SECTION 6 (LANGUAGE CLAUSE) OF THE NEW CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA PRIOR TO CERTIFICATION

1. We are Concerned South African Indian Citizens permanently residing in the Republic of South Africa.
2. Mr. Beema Naidoo is a South. African Telegu-speaking citizen, born in Mtunzini, South Africa in 1920 and is a descendant of indentured labourers who arrived in South Africa from India (Andhra Pradesh) as part of the British/Natal indentured labour scheme originating in 1860. [Hereinafter both parties, Concerned South African Citizens and Mr Beema Naidoo will be referred to as "we" or as the "Petitioners"].
3. The petitioners note with great concern that the Constitutional Assembly has not recognized Indian languages as official languages in section 6 of the Constitution of the Republic of South Africa Bill (as adopted on 8 May 1996). [Hereinafter the language clause in the new Constitution will be referred to as section 6]. Furthermore, we note that the Constitutional Assembly negotiators have in their final draft (adopted on 8 May 1996) significantly diminished the rights of Indians and other minority linguistic groups by deleting the phrase "and development of" from section 6 (3) of the Refined Working Draft (18 March 1996) and replacing that sub-section with section 6(5)(b).
4. Despite submissions by various organizations and individuals, the Republic of South Africa Constitution Act 1993 and the Constitution of the Republic of South Africa Bill 1996 have

failed to acknowledge that South Africans of Indian origin have had a long history in South Africa. We are descendants of Indian indentured labourers who first arrived in Natal in 1860. We note that the English annexed Natal in 1843. The English foisted their language on, inter alia, the inhabitants of the Colony of Natal. South Africans of Indian origin have, however, continued to nurture and speak their own languages, namely, Telugu, Tamil, Hindi, as well as the languages of later arrivals (merchants), Gujarati and Urdu. In addition, South Africans of Indian origin have been multi-lingual (speaking Indian languages, African languages, English and Afrikaans). As a result of the policy of apartheid, Indian languages, history and culture were not taught at schools and Indian languages have only been introduced into the school curriculum in recent years. There are already indications that the new national and provincial education policies will severely curtail the brief development of Indian languages. In addition, serious consideration was given by the education departments to eliminate entirely or reduce the extent to which the history of South African Indians is taught in the history syllabus. These are some practical examples of how South African Indian citizens will be deprived of their fundamental human rights are considered essential for eleven official linguistic groups.

5. The petitioners submit that, in drafting section 6 of the new Constitution, the Constitutional Assembly has failed to comply with Constitutional Principles I, II, III, V, VII, and XI of Schedule 4 of the Interim Constitution 1993. (Hereinafter referred to as CP I, CP II, CP III, CP V, CP VII, CP XI]. The submissions will be set out under four headings as follows:
 - A. Acknowledgement and Protection of Diversity of language and Culture.
 - B. Equality and the Prohibition Against Discrimination.
 - C. Amelioration of the Conditions of the Disadvantaged.
 - D. Enjoyment of Universally Accepted Fundamental Rights, Freedoms and Civil Liberties.

A. Acknowledgement and Protection of Diversity of Language and Culture.

Although the Constitutional Assembly acknowledges Indian languages (Gujarati, Hindi, Tamil, Telugu, and Urdu) in section 6 (5), the protection that it affords to South African Indian citizens (and other minority linguistic communities) is not in accordance with Constitutional Principle XI (CP XI) which provides that "the diversity of language and culture shall be acknowledged and protected, and conditions for their promotion shall be encouraged. Section 6(5)(b) and, in particular, the phrase "respect for" is in our view, meaningless and of nugatory value.

- (a) How can Indian languages be developed and nurtured simply by 'promoting and ensuring respect for Indian and other languages? One can respect, tolerate, and promote understanding for a language but this does not guarantee the perpetuation of any language as a living language. (See Annexure B for a sample of written Indian language);
- (b) CP XI provides for the diversity of language and culture in South Africa to be acknowledged and protected. CP XI does not provide that there should be a distinction drawn amongst linguistic groups in relation to the kind of acknowledgement, protection and conditions for their promotion. Accordingly, there should not be different categories of

acknowledgement and protection. Section 6, as adopted in the final draft, in fact, draws a distinction amongst three categories of linguistic groups. First, eleven linguistic groups have been accorded official status. Secondly, section 6(5)(a) will protect and develop Khoi, Nama, and San languages as well as sign language. Thirdly, section 6(5)(b) affords limited recognition (but no provision for the development of) Indian and other minority languages as well as Arabic, Hebrew and Sanskrit.

- (c) By classifying and according unequal acknowledgement, protection and development of languages to specific linguistic groups, the Constitutional Assembly has not only failed to comply with CP XI but also CP I, II, III, and V, all of which impose mandatory guidelines that the constitution shall be 'committed to achieving equality between men and women of all races' (CP I); everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties' (CP II); the 'Constitution shall prohibit racial, gender and all other forms of discrimination and shall promote racial and gender equality and national unity (CP III); and that 'the legal system shall ensure the equality of all before the law' (CP V).
- (d) There is neither logical nor legal explanation for the classification of official languages in South Africa. The use of the term 'official language' is not in accordance with international usage.
 - (i) Most countries have one and some have two official languages.
 - (ii) A few countries have three official languages.
 - (iii) Only Singapore has four official languages.
 - (iv) South Africa, alone, has eleven official languages.

We seek greater clarity on the definition and interpretation of the following phrases in section 6:

- (a) "official languages";
- (b) "respect for"; and
- (c) "development of".

B. Equality and the Prohibition Against Discrimination

An underlying theme stated expressly in CP 1, III, and V and implicitly in CP II [as has been noted above in page 2, B (c)] is that the Constitutional Assembly is obliged to draft constitutional provisions affording equality to all South African citizens and that there should be no discrimination. In affording varying degrees of equality in respect of the official status and development of recognized South African languages, section 6 flies in the face of these mandatory principles as well as universally recognized fundamental rights, freedoms and civil liberties. For instance, Article 7 of the Universal Declaration of Human Rights 1948 (ratified by the RSA) provides as follows:

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Furthermore, Article I of the 1948 Declaration provides:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 emphasizes that

Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Given the grave concerns expressed by minority communities in respect of their rights generally, it is imperative that the Constitutional Court examine closely the language clause, section 6. One of the ways in which South Africans of Indian origin can feel secure of their fundamental rights is if the constitution entrenches their language rights. Being linked to an official language will at the very least restore human dignity, self-respect and the security in the knowledge that we are recognized South African citizens and not simply an insignificant group of settlers who could potentially be treated as foreigners in the future. Furthermore, official language status will distinguish our rights from new waves of Indian ... [page cut off]

It is particularly noteworthy that, of the four previously classified race groups, only Indians are not linked to any of the official languages. Section 6 is the only provision in the constitution which has racial overtones and is discriminatory in that it draws a distinction between the right afforded to specific linguistic groups of South African citizens, namely, the English, Afrikaners, and Africans on the one hand and other linguistic groups, such as Indians, San, Greeks, and Portuguese on the other.

Section 6(4) states expressly that "all official languages must enjoy parity of esteem and must be treated equitably." Minority African languages such as Tshivenda, siSwati, isiNdebele and Xitsonga are afforded official status equal to that of isiZulu and isiXhosa. Yet the population of Tshivenda, siSwati, isiNdebele and Xitsonga speakers is disproportionate to those speaking isiZulu and isiXhosa. The criterion for granting official language status to those linguistic groups is, in our view, a racial and political one. The Constitutional Assembly's decision is, therefore, arbitrary and discriminatory and not in compliance with CP 1, II, III, V, and XI.

It is perhaps surprising too that English and Afrikaans are considered acceptable for inclusion in the category of official languages and afforded equal status with nine African languages. Yet British settlement in Natal and the evolution of Afrikaans can be traced approximately to a period less than 25 years from the arrival of Indian indentured labourers in Colony of Natal. Indian immigration into South Africa was prohibited in 1911. South Africa has the largest Indian community outside India. The population of Indians in South Africa would have been significantly higher were it not

for that prohibition of immigration. On the other hand, the South African government actively encouraged immigration by whites, particularly from Great Britain and Europe, thereby increasing the population of English-speaking South Africans. As a result of apartheid education, English and, later, Afrikaans were foisted upon South African Indians who had to study either through the medium of English or Afrikaans. As has been noted above, Indian languages were not taught at schools but were taught privately by Indians at vernacular classes after school hours. It is only in that way that Indian languages were nurtured and kept alive. We emphasize that Indian languages (Telugu, Tamil, Hindi, Gujarati, Urdu) are living languages (both written and spoken). If Indian languages were spoken in Natal just seventeen years after Natal was annexed by the English, why is English given preferential treatment? We appreciate that English is an international language but this should not diminish the right of Indian languages to be accorded official language status. Afrikaans too evolved from Dutch, German and other indigenous languages but this evolution took place after the Great Trek of 1836. It is incorrectly assumed that either English or Afrikaans is the official language of South African Indians.

It is particularly noteworthy that, in the global context, Indian languages would be ranked together with Mandarin Chinese as majority languages. Hindi is spoken by over 411 million people in India alone. Moreover, Telugu is the second largest language in India with over 72 million speakers (Bengali -- 69 million, Tamil - 59 million, Urdu -- 47 million). Any one of these linguistic groups would far exceed the total population of South Africa. By analogy, Afrikaans, Tshivenda, siSwati, isiNdebele and Xitsonga would be small minority languages in global terms. Indeed, the majority languages of South Africa (Sotho, isiXhosa, isiZulu) are themselves in the minority category when compared with global data of Hindi, Telugu and Tamil speakers. Given the status of Indian languages in a global context, it is regrettable and unacceptable that these languages are not accorded equal and official status in the South African Constitution.

C. Amelioration of the Conditions of the Disadvantaged

CP V provides that 'equality before the law includes laws, programmes or activities that have as their object the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or gender.' The petitioners submit that the notion of a constitutional right should neither be based on race nor on financial grounds. For example, the fact that the government may regard the development of African languages as a priority should not be a ground for denying official status to all recognized languages of historically long-standing communities in South Africa. Such a priority is a policy decision which can be made from time to time by national/provincial legislation or administrative regulation. Furthermore, the government has recognized that Indians too were victims of apartheid and that they fall into the category of disadvantaged. As has been stated above, Indian languages have not been developed by successive apartheid governments. Instead their languages were nurtured and flourished in private vernacular classes. In recent years Indian languages have been introduced in the school curriculum. If there were to be an educational policy review of the school curriculum, there will be no constitutional protection for the development of Indian languages unlike those afforded to official languages and to the Khoi, Nama, San and sign language communities. Since Indians are also considered to be disadvantaged, section 6 would be contrary to CP V.

D . Enjoyment of Universally Accepted Fundamental Rights, Freedoms and Civil Liberties

CP II provides as follows:

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justifiable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

The Republic of South Africa is a signatory to many international treaties and conventions, including the Universal Declaration of Human Rights 1948 (UDHR) and the International Covenant on Civil and Political Rights 1966 (ICPR), which provide that all citizens must be accorded equal civil and political rights and that there should be no discrimination. Article 26 of ICPR 1966 provides:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

It is submitted that not only section 6 but also section 9 of the new Constitution would be contrary to Article 26 of ICPR, Article 7 of the UDHR 1948, CP II (and provisions of numerous other international instruments).

The government has given much prominence to the rights of the child. Yet section 6 (and section 9) would give unequal and diminished rights to, inter alia, South African Indian children. This would surely be contrary to CP I, II, III, V, and XI as well as international conventions such as article 24 of ICPR 1966 which provides as follows: 'Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are ... [page cut off].

CONCERNED SOUTH AFRICAN INDIAN CITIZENS

23 May 1996

Our previous correspondence dated 3, 14, 18 May 1996 and your letter of 9 May 1996 refer.

Since our previous correspondence with the Constitutional Court, we have learned of the Court's advertisement in the Sunday Times (19 May 1996) in relation to written objections to the certification of the new Constitution. We wish to advise you that we have faxed a copy of our written objection to the Executive Director of the Constitutional Assembly and their office has confirmed, by telephone, that they have received our objection. We are also sending you a copy of

that objection. The original one-page objection as well as 24 copies are being sent to you by post. Given the vagaries of the postal service and considerable delays, we hope that the copy faxed to you with this letter will suffice as being a formal objection lodged with the Constitutional Court.

In your letter of 9 May 1996, you stated that if we specified the constitutional principles with which the Constitutional Assembly has not complied, the Constitutional Court would take into consideration our submission when certifying the new Constitution. We hope that our letter of 14 May and revised petition of 18 May 1996 has conformed with the guidelines set out in your letter of 9 May 1996. Furthermore, we request that the Constitutional Court give due consideration to our submission as set out in our petition of 18 May 1996 as well as in the written objection of 23 May 1996.

We also understand that the Constitutional Court may give objectors the opportunity to present oral argument at a public hearing before the Court on 1 July 1996. We request that the Court grant us the time to present oral argument (as ordinary citizens and without legal representation) in relation to our objection to the certification of section 6 (as well as section 9) of the new Constitution.

B. NAIDOO

Concerned South African Indian Citizens

**CONCERNED SOUTH AFRICAN INDIAN CITIZENS AND
MR. BEEMA NAIDOO (A SOUTH AFRICAN CITIZEN)**

23 May 1996

**OBJECTION TO THE CERTIFICATION OF SECTION 6 AND 9
OF THE NEW CONSTITUTION**

- (i) The Particular Provision of or Omission From The Constitution To Which Objection Is Taken: Section 6 and Section 9
- (ii) The Grounds For The Objection
 - (a) Section 6 is discriminatory and affords unequal and varying degrees of recognition of and protection to languages spoken by South African citizens contrary to constitutional principles I, II, III, V, VII and XI.
 - (b) The omission to include Indian languages in section 6 (1) is based on racial, political and demographic grounds and is therefore incompatible with the constitutional principles I, II, III, V, VII and XI and universally accepted fundamental rights, freedoms and civil liberties.

- (c) In drafting section 6, the Constitutional Assembly has failed to comply with constitutional principle XI that diversity of language be acknowledge and protected and conditions created for their promotion. Instead of recognizing the diversity of language and culture in South Africa, the Constitutional Assembly has created three categories of acknowledgement and protection for different linguistic groups. The limited recognition an protection afforded to South African Indian languages is meaningless and is of nugatory value. It is submitted that section 6(5)(b) which provides for the promotion of respect for, inter alia, South African Indian languages will not create conditions for the perpetuation of Indian languages as living languages in South Africa.
- (d) Constitutional Principle V provides for the amelioration of the conditions of the disadvantaged. By guaranteeing constitutional rights only in regard to the development of the eleven official languages as well as the Khoi, Nama, San and Sign languages, the Constitutional Assembly has not complied with Constitutional Principle V since South African Indians too were victims under apartheid and are considered by the Government (according various public statements), to be part of the disadvantaged group.
- (e) Section 9 entrenches discrimination, namely, that equality includes discrimination which is not 'unfair'. This provision is arbitrary, capricious, vague, and discriminatory and is contrary to constitution principles I, II, III, V as well as international conventions enshrining fundamental rights, freedoms and civil liberties referred to in constitutional principle II and VII.

(iii) Relevant Constitutional Principles not complied with: I, II, III, V, VII, and XI.

BEEMA NAIDOO

CERTIFICATION OF NEW CONSTITUTIONAL TEXT

Thank you for submissions of 23 May 1996

I have been asked by the President of the Constitutional Court to inform you that your submission will in due course be taken into account by the Constitutional Court.

M NEINABER

[Editor's Note: Several pages of signatures are attached to the Petition]