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To: Co-Chairpersons: Constitutional Review Committee:
Adv. SP Holomisa, MP and Mr BA Mnguni
Parliament of the Republic of South Africa

Subject: Constitutional Review of Section 6 Languages and section 9 Equality

Submission by Dr Ramola Naidoo to the Constitutional Review Committee, Parliament of the Republic of South Africa

Submitted by e-mail: ramola@mweb.co.za

I propose that section 6 be amended, as follows:

- 6 (1) The official working language of the Republic is English.
- (2) Government at all spheres must advance the use of all the languages spoken prior to 1994 by all racial and ethnic groups in the Republic.
- (3) Where practical and appropriate, national, provincial and local governments must ensure that communication relating to the access to basic services and the resolution of disputes be made in the language spoken by the people concerned in that geographical area.
- (4) Where appropriate and practical, national, provincial and local governments and councils of traditional leaders must promote and respect culture and human dignity through creative endeavour and digital communication for all citizens regardless of race, language, culture, gender, age, religion, disability, ethnicity, belief and opinion.
- (5) The languages spoken by all citizens of the Republic, as at 1994, are set out in Schedule 1.

Section 9: Equality

9(2) Equality.... freedoms. To promote the achievement of equality, fair and equitable legislative measures designed to protect or advance persons previously disadvantaged by unfair discrimination may be taken, especially those measures which would afford career path development and fair work and economic opportunities that promote sustainable development.

My comment on section 6 and section 9:

English has become the de facto official working language of the Republic of South Africa. It is instructive to note that English has become the preferred working language of the European Union (much to the consternation of France). Most of South African national government communication is in English, including speeches at national summits and conferences, press releases, and websites. Although Members of Parliament express themselves in different languages (with the benefit of electronic simultaneous translation), Parliament's website and major speeches are predominantly in English with a sprinkling of a few other languages within those speeches. The use of English makes good, common sense as it is one of the main international working languages at the UN and other agencies. Apart from English, it makes good sense too if we learn Portuguese, French, and Arabic as these are the languages of the African Union. Ideally, there should be language programmes offered free-of-charge so that those who live in a specific region can learn some of the languages spoken by their neighbours, employees and colleagues and, at the same time enjoy multi-lingual television programmes and artistic performances spoken in other languages. It is critically important that we nurture and support all languages spoken in South Africa whether it be for cultural purposes or for ordinary day-to-day matters. It is pleasing to see the pilot programme initiated by the Department of Justice for a magistrate court in the Eastern Cape where isiXhosa is spoken throughout the court's proceedings and by all parties such as the magistrate, the prosecutor, accused and other litigants. In this way, resolution of disputes will be more acceptable to the parties concerned and to the local community who can understand the entire proceedings instead of the filtered and often incorrect method of court interpretation. This is a practical and appropriate way of affording fair and equitable access to justice through language. It would, of course, be impractical and inappropriate to have a magistrates' court in Mafikeng, NWP where the entire proceedings is conducted in isiXhosa. Similarly, it would be unfair to do so in Athlone in the Cape Flats where a different dialect of Afrikaans is spoken. Indeed, Afrikaans, according to the late Achmat Davids is a slave language created in the Cape with the earliest recorded document written by a Bougies slave. The closest version of slave Afrikaans is spoken by the so-called Coloured/Malay community. A more formal version of Afrikaans, with closer grammatical association with Dutch and German, is honoured at the Taal Monument in Paarl. Afrikaans, as spoken on the Cape Flats, clearly has deep roots and was born in the Cape.

We need to be cautious in our definition of the word "indigenous". It is trite that there were inhabitants of the east coast of South Africa when the Portuguese named Natal on Christmas Day. The late Nesta Nala's exquisite pottery bears testimony to a rich Iron Age legacy that remains alive to this day. There is archaeological Iron Age evidence of inhabitants establishing a flourishing gold and iron mining centre on the confluence of the Shashi and Limpopo Rivers during the 10th century AD. There is archaeological evidence that there were inhabitants of Blombos Cave 75,000 years ago long before any European or indeed other African and Asian explorers traversed the Atlantic and Indian Oceans. There is also strong palaeontological evidence that all human beings (*homo sapiens sapiens*) originated in Africa, the cradle of humanity. When we speak of "indigenous" we need to put all of this information into perspective.

When Dutch East India Company Commander Jan van Riebeeck arrived at the Cape, he encountered people whom he recorded in his journal as Hottentoten and Strandlopers. Early writers who journeyed to the Cape wrote of the Goringaikona, Hessaqua and many others. There are original lithographs and paintings in Parliament's own art and book collection that depict in fine detail the original inhabitants of the Cape. In the 20th century, a German anthropologist coined the phrase, Khoisan, to describe these ancient peoples. The extraordinary rock art of the San bear testimony to the rich legacy of these ancient peoples across Southern Africa. Section 6(5)(a)(ii) is surely a marginalisation of the ancient Khoisan people and a serious indictment on the values that underpin our new democracy.

Apart from the above-mentioned groups, another small but significant group are so-called Asiatics or Asians (so-called Indians and Chinese). In Parliament is located a copy of a map showing the voyage of a Chinese ship around the eastern and southern coast of Africa. Archaeological artefacts at Mapungubwe in Limpopo show evidence of Indian, Chinese and Persian presence in that region suggesting a close interaction by these traders with the inhabitants of Mapungubwe in the 10th century AD and some may well have had temporary or permanent sojourn on the soil of what we now know as Limpopo Province. Archival records at the State Archives not far from Parliament, document the arrival of Chinese, Indian and many other slaves to Robben Island and the mainland from as early as 1657 until slavery was abolished. Subsequently, from 1860 until the early 1900s, Indian indentured labourers were brought to Colonial Natal where they made a significant contribution to sugar cane agriculture and related industry. Prior to their arrival, British farmers had struggled to harvest successful crops of sugar cane, itself a plant originating in India. A few years after their arrival, other Indian merchants arrived to settle as traders. Another group of Indians arrived and settled in Cape Town in the early 1900s. Many spoke Maharati. Chinese were brought as railroad workers in the 19th century and formed an important part of the social fabric. All of those early Asians left a rich legacy from difficult slave-like conditions. Their descendants were subject to apartheid's discriminatory laws, fought against apartheid and finally rejoiced in the promise of freedom in 1994.

History has recorded many more people than the official languages suggest. Among the early African slaves brought to the Cape were slaves from Angola, Guinea coast (including Benin as it is now called), and Madagascar. They too brought their own languages and made a significant contribution to the Cape. Most of the first landowners in Stellenbosch in the late 17th and early 18th centuries, were freed blacks, including Anthony of Angola, Louis of Bengal and Evert of Guinea. There were pioneering freed slave women such as Angela of Bengal and Maria Everts (the slave-born daughter of Evert and Anna of Guinea).

There are other people who also have been marginalised, including the descendants and family of Queen Modjaji whose language is not recognised in our constitution.

Section 6 has made some South Africans feel excluded, in direct conflict with section 1 of the Constitution. A recent example is the FIFA 2010 match ball, Jabulani. According to FIFA's launch of the ball and press release, Jabulani represents 11 languages and the 11 communities of South Africa. International media repeated this in their reports. This begs the question: how many communities are there in South Africa? If a South African citizen's language is not official, then does this make this person not part of any of South Africa's "communities"? It is noteworthy that neither the government nor members of Parliament refuted FIFA's description of South African society. If we are truly to have a common and shared national identity and social cohesion, then we need to amend section 6.

While it is correct that English has historical colonial and imperial overtones (as is evident throughout the British Commonwealth), the English language has evolved and been integrated into local dialects of English with different accents and dictionaries across the Commonwealth and elsewhere where English is spoken. South African English has absorbed words from African and Asian languages. Today, we all use the revered word "ubuntu" as we speak English. We will not be elevating its status (and rewarding racism and colonialism) by making it an official working language. We will simply be pragmatic and using English simply as a means of communication.

English as a language was imported into South Africa. Maize/mealies/putu/pap/samp was also imported into South Africa in the 17th century from North America. If maize, the indigenous food of Native Americans, is embraced as a truly "indigenous" African food, why not South African English?

We have extraordinary stories to tell about all South Africans in all their languages. We can marvel at the exquisite stories that she sought to keep alive and which is

All our ancestors were nomadic until the emergence of agriculture and settled habitats. As our DNA now shows, we all emerged out of Africa, the cradle of humanity. Our languages may differ from the original common sound and language of our common ancestor but we are all the same people, homo sapiens sapiens. I appeal to the Constitutional Review Committee to re-visit section 6 in the spirit of ubuntu and a shared common vision and identity.

Complex social engineering is divisive and discriminatory. Section 6 read together with the equality clause, section 9 has created a form of social engineering that has, in practice over the last 16 years, been discriminatory and divisive even to communities who were previously disadvantaged by racist legislation. In my view, affirmative action was necessary to redress the imbalances of the past for those previously disadvantaged. It has, however, been a challenge to implement as the focus has not been on career path development, as constitutionally mandated by section 195. Instead, racial quotas and a bias towards those speaking more than one official language have dominated human resource thinking, resulting in the inevitable problems relating to the lack of service delivery and a challenge to implement progressive, sustainable development. I propose, accordingly, that the Constitutional Review committee review and amend sections 6 and 9.

The Nobel Laureate and economist, Amartya Sen, observed in his book, *The Idea of Justice*,

"A person belongs to many different groups (related to gender, class, language group, profession, nationality, community, race, religion and so on), and to see them merely as a member of just one particular group would be a major denial of the freedom of each person to decide how exactly to see himself or herself. The increasing tendency towards seeing people in terms of one dominant 'identity' ('this is your duty as an American', 'you must commit these acts as a Muslim', or 'as a Chinese you should give priority to this national engagement') is not only an imposition of an external and arbitrary priority, but also the denial of an important liberty of a person who can decide on their respective loyalties to different groups (to all of which he or she belongs). [I]ndividuals tend to be identified as belonging to one social category to the exclusion of all others ('nothing more is seen in them'), such as being a Muslim or a Christian or a Hindu, an Arab or a Jew, a Hutu or a Tutsi, or a member of Western civilization (whether or not it is seen as clashing inevitably with other civilizations). Individual human beings with their various plural identities, multiple affiliations and diverse associations are quintessentially social creatures with different types of societal interactions. Proposals to see a person merely as a member of one social group tend to be based on an inadequate understanding of the breadth and complexity of any society in the world." (pp. 246-7)(The Bellknop Press of Harvard University,, Cambridge, Massachusetts, 2009).

Ramola Naidoo (Dr)
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