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37 Albert Street,
DURBAN.
6th December, 1944.F. N. Broome, Esq., K.C., M.C.,
Chairman - Natal Indian Judicial Commission,
P. MARITZBURG.

Sir,

At a meeting of the Commission held on the 3rd November, 1944, the Indian situation as it had then developed was discussed by the Commission. The Commission came to a unanimous decision that a Provincial body, namely the Post War Works and Reconstruction Commission had been conducting an enquiry to some extent parallel to the enquiry which this Commission was appointed to undertake. The Commission felt that its field of enquiry was no longer static and that the subjects of its enquiry were in the process of being dealt with by a legislature (the Natal Provincial Council) other than the Union Parliament. The Commission expressed the view that the Residential Property Regulation Ordinance was designed not as a "Pegging" measure but as a permanent measure to deal finally with certain aspects of Indian affairs in Natal. Furthermore, it was the view of the Commission that this Ordinance was merely one of a series of four Ordinances (namely, the Natal Housing Board Ordinance, the Provincial and Local Authorities Expropriation Ordinance, the Water Supply Ordinance and the contemplated Town Planning Ordinance) which purported to deal permanently with most of the matters which fell within the orbit of the Commission's terms of reference. The Commission for these reasons resolved to suspend all its future sittings pending the receipt of the views of the Minister of the Interior.

2) Since the Commission's decision was conveyed to the Minister of the Interior the Prime Minister has indicated his intention to assent to the Housing and Expropriation Ordinances, to reserve assent to the Residential Property Regulation Ordinance, the Pegging Act remaining in force.

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By so doing the Government has now become a party to the actions of the Natal Provincial Council of which the Natal Indian Judicial Commission complained on November 3rd, 1944, thereby adding to rather than subtracting from the reasons which impelled the Commission to suspend its sittings.

3) It will be recalled that the appointment of the Natal Indian Judicial Commission originated during the debates on the Pegging Act, in the Government's recognition of a prima facie case against the Durban City Council, on its neglect to provide housing facilities and other civic amenities for the Indian Community, and in an anxiety on the part of the Government to have a complete picture of Indian affairs in Natal for the purpose of formulating a comprehensive Indian policy. The terms of reference of the Commission were all embracing and it was required :-

- 1) to enquire into and report upon :-
 - a) matters affecting the Indian Community of Natal, with special reference to housing and health needs, civic amenities and civic status ; and
 - b) the provision of adequate residential, educational, religious and recreational facilities; and
- 2) to make recommendations generally as to what steps are necessary further to implement the Uplift clauses of the Cape Town Agreement of 1927 and as to all matters affecting the well-being and advancement of the permanent Indian population of Natal.

It is clear that the recommendations and findings of the Natal Indian Judicial Commission were to be the subject of examination by the Union Government, and it was anticipated that they would form the basis of legislation originating in the Union Government and not in the Natal Provincial Council. That follows naturally from the fact that the Cape Town Agreement was reached between the Union Government and other parties and that it is only the Union Government which could give effect to any recommendations made regarding the implementation of the Cape Town Agreement.

4) Our acceptance of our appointment on the Commission was based on the belief, first, that its

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recommendations would be subjects for legislative actions by the Union Government and, second that no legislation would be initiated during the period of the Commission's investigations which would give direction to any aspect of Indian affairs. Other members of the Commission, we believe, accepted appointment on the same understanding.

5) During its enquiry the Commission enjoyed the wholehearted support of the Indian community. It commenced its work in an atmosphere of goodwill and the evidence so far tendered has furnished valuable information. It will be admitted that the atmosphere of goodwill has been dissipated and destroyed by the agitation over the Pretoria Agreement, by the speeches in the Provincial Chamber, particularly the claim made by the Administrator that the appointment of the Commission was unconstitutional and an infringement of the "sovereign powers" of the Province, and by the subsequent repudiation of the Pretoria Agreement. As a result of these events the confidence of the Indian Community has been shaken.

6) We have gathered from the reports of the Post War Works and Reconstruction Commission and the general pattern of provincial legislation embodied in the Ordinances mentioned that the Province is the final arbiter of Indian affairs. This demonstrates the fact that the work of the Commission has been anticipated and its recommendations forestalled. The usefulness of the Judicial Commission has thus been destroyed.

7) Our acceptance of the appointment and our community's approval of it was impelled by a desire to make a contribution to a solution of a problem involving the happiness and welfare of our people. We are persuaded that evidence led on such subjects as franchise, housing, health needs, civic amenities, education, the removal of provincial barriers and the like would be productive in assessing the

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truc position thus enabling the Commission to make recommendations that would lead to a fair and just solution of the problem.

8) Our reading of the situation demonstrates one fact. Franchise may not be the panacea of all our ills but so long as the Indian community is denied representation in the affairs of the country so long will our people be subject to exploitation and sacrifice on the altar of political expediency at the hands of the politically dominant group. Unless and until the franchise is restored to Indians, the system of local and provincial government as it now exists will give us no protection against in-roads on our rights. Even the Central Government may be powerless to intervene or protect the voiceless Indian as has been demonstrated by the passage of the Residential Property Regulation Ordinance. Only the possession of the vote can give the desired protection.

9) After deep and careful consideration of the events set out above we find ourselves reluctantly compelled to tender our resignation from the Commission, which we hereby do, and we request you to convey this to His Excellency the Officer Administering the Government.

10) We should like to place on record our sincere appreciation of the co-operation, kindness and courtesy shown to us by you and the other members of the Commission and its Secretary.

Yours faithfully,

(Sgd) S. R. Naidoo

" A. I. Kajee.
