

## **National Khoi-San Council's (South Africa)**

### **Third DRAFT statement**

#### **to be presented at the**

#### **United Nations Permanent Forum on Indigenous Issues in New York during May 2014-**

We, the National Khoi-San Council (NKC) as the official representative body for the Khoi & San indigenous peoples, self-identify as the First Indigenous Peoples of South Africa. The Khoi-San communities are represented through the political structure called the National Khoi-San Council formed by former President Nelson Mandela during 1999. The National Khoi-San Council comprise 30 Khoi-San tribes. It is with this mandate that we deliver our recommendations before this honorable Forum.

On that note, we congratulate the South African government for voting in favour of the *United Nations Declaration on the Rights of Indigenous Peoples(UNDRIP)*, we however express our concern on the very slow implementation of the standards as expressed by the Declaration and in some cases, serious violation of some key UNDRIP standards.

We confirm our allegiance to the South African Constitution of 1996 and affirm the objectives of the progressive Bill of Rights enshrined therein. While the Constitution guarantees individual rights, it fails to promote and protect the collective rights of indigenous peoples as set out in UNDRIP. The Constitution in some parts and the absence of relevant legislation therefore, does not provide for the Khoi-San peoples to live according to their collective values such as secure rights and access to their ancestral lands, the official recognition of their indigenous languages and the recognition of their own indigenous institutions and leadership[, amongst other things.

We call upon the South African government with the support of the relevant United Nations agencies, to urgently implement the recommendations of the *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. Rodolfo Stavenhagen's Mission to South Africa of 2005;*

The Khoi-San peoples wish to state to this honorable forum that although South Africa is now a free country, the Khoi-San peoples, as a nation, continue to be marginalized in South Africa. We believe South Africa's democracy will only be a

true democracy if the Khoi-San people are afforded the right to self-determination as envisaged by the United Nations Declaration on the Rights of Indigenous Peoples.

The Khoi & San Peoples however continue to struggle in post-apartheid South Africa for the formal recognition of our collective rights as set out in the United Nations Declaration on the Rights of Indigenous Peoples. We however wish to call upon our Government to formally recognize and implement our collective rights through enacted legislation.

In the spirit of nation building and the South African government's compliance with its international obligations, we therefore recommend that the following matters be addressed with urgency and duly supported and monitored by the relevant UN agencies:

- 1. The leadership and governance structures of the dominant tribes were recognized by our democratic dispensation 20 years ago. However, the Khoi-San as the first indigenous peoples, continuous to struggle 20 years after the dismantling of apartheid to get the same recognition from our South African government. We call upon the government to enact legislation that recognizes the Khoi-San peoples' indigenous institutions and leadership, without further delay.**

The South African government has produced a National Traditional Affairs Bill during 2013 with the purpose of also recognizing the leadership and governance structures of the Khoi-San indigenous peoples together with the other dominant tribes of South Africa. The Khoi-San peoples wish to congratulate the SA government on producing this Bill. It shows the government's commitment to give effect to its obligations as a party to international instruments dealing with indigenous issues.

However, we wish to express our serious concern about the length of time it is taking the South African government to enact this legislation. It has been a long 20 year process thus far and it still remains unclear when the Bill will be promulgated.

- 2. We ask for (I) formal recognition of our collective land and heritage rights defined in terms of our ancestral territories; and (ii) this be done**

**in line with our representative institutions through our own representatives duly chosen**

The NKC is most encouraged with the legislative amendment to the Restitution of Land rights Act of 1994. This amendment allows South Africans to institute land claims for dispossession of lands lost after 1913. South Africans in terms of this amendment have another opportunity to institute land claims until the period of 2018.

The NKC want to express serious concerns around certain parts of this amendment and the process of consultations around it:

2.1 The amendment still does not allow for restitution of land during the period when the Khoi & San communities were dispossessed from their lands, in the period of 1652 onwards. This concern of the Khoi & San is in line with the former UN Special Rapporteur, Prof. Rodolfo Stavenhagen's recommendations that the Restitution of Land Rights be amended as such. This means the Khoi-San is still not in a position to institute land claims for their collective historical land lost.

2.2 The SA government's Department of Land Affairs created a high level consultative and participative structure with the Khoi-San peoples around their historical land claims. The NKC, as the official government recognized body is however, not given the opportunity to meaningfully participate in the most important process of land restitution on behalf of their communities. The SA government is not respecting the representative structures of the Khoi & San communities as clarified through the independent research process as established by former President Nelson Mandela during 1999/2000.

The Khoi & San's legitimate, representative structures were independently verified through independent researchers appointed by government. This research process was documented in official government reports called *Status Quo reports*. Out of that process only five historical communities and institutions were identified as Nama, Griqua, San, Cape Khoi and Koranna. These five historical communities are represented through 22 Khoisan representatives on the NKC since 1999. This membership was expanded to 30

members during 2012 to include additional Khoisan communities that did not feel represented through the NKC's structure.

During 2013 the SA government started consultations around the Amendment of the Restitution of Land Rights Act. The SA government started this consultations process without the **(i) meaningful participation of the NKC and (ii) without the representatives chosen by the NKC themselves which is not in accordance with their own decision making procedures as set out in the official government reports called the Status Quo reports.**

This consultative/participative process with the Department of Land Affairs set up during 2013, is however deeply flawed and in clear violation of Article 18 and Article 19 of UNDRIP.

### 2.3 We recommend:

2.3.1) The Amendment to the Restitution of Land Rights 2013 be changed to also make provision for the Khoi & San communities period of land dispossession prior to 1913.

2.3.2) We ask that the land claims consultative/participatory process be stopped immediately and for the process of our historical land claims be done through the NKC's representative institutions as vetted by former President Nelson Mandela.

2.3.3) We request the Department of Land affairs bring the consultative/participative process in line with Articles 18 & 19 of UNDRIP.

*To be delivered by Mr. Cecil le Fleur, the Chairperson of the National Khoi-San Council during May 2014 in New York.*