* THE COMMISSION ON HUMAN RIGHTS
* THE SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND THE PROTECTION OF MINORITIES
* THE WORKING GROUP ON INDIGENOUS PEOPLES.

SEVENTEENTH (17TH) SESSION
26 - 31 JULY 1999 GENEVA, SWITZERLAND

AGENDA ITEM NO. 5.

KHOI-KHOI (HOTTENTOT) (COLOURED) DESCENDENTS RELATIONSHIP TO LAND.

ORAL INTERVENTION by Chief Joseph D. Little
(CCHDC- S.A & NC OF KC OF S.A)

* On behalf of the Chiefs and Councils of all the tribes affiliated to CCHDC., their assigns and heirs as mandated.

Madam Chairperson/ Rapporteur Dr Erica Irene Daes
We commend you on the time effort and dedication committed to this study on Indigenous People and our relationship to land.
We are but newcomers to this prestigious forum/ UNWGIP''s./ The reason for this was lack of international knowledge of the UN system and exposure to it. In addition Apartheid was the main obstacle impeding our growth. We do not come with vast amounts of material, but one single page treaty and its abbrogation. This treaty was concluded between one of our Hottentot princes and a visiting V.O.C. Dutch Commssioner and not all the Hottentot sovereings of our country. The names of the Prince and the Commissioner were: Prince Manckhagou, a Goringhaiqua of the now Cape Town, Cape peninsula area and Commissioner Arnout van Overbeke. (a copy of the original treaty is herewith attach as proof). It is dated 19th April 1672 as verbatim evidence.
I here wish to expand on the legalities of our litigent claiming rights to our land.

1. The European Dutch settlers wanted to live permanently in our territories and were thus prepared to acknowledge our ownership, relationship and jurisdiction over it. This was done to gain ligitimate access and ownership and as an option to exercise their right of the legal theory of "justly won by the sword". The Dutch Colonisers were thus prepared to recognise our sovereignity, social organisation and political organisation within our land. They recognised our heritage and relationship to the land. This meant that we the descendants of the khoi-Khoi have litigent claiming rights and that the principle of Terra nullius could not be applied or legally enforceable as required by British Colonial Policy. The latter colonial standards was in accordance with their political theory as required of them in their land. In our land they required us to be "civilised" according to their standards in order to own or possess land. I want to remind the house that this frst treaty was never honoured by the Dutch as can be seen from an account dated the 3 May 1673 (documentary account by Govenor Isbrand Goske to the V.O.C.). At this point our ancestors lodged a complaint to the governor.

2. The full purchased price was not paid which was Rd 4000 (Reals of eight - Spanish currency) in goods. Only 31. 18 guilders were paid equivalent to USD 6.

3. The access rights to the territory were denied we the descendants of the Khoi-Khoi which was to last into perpetuity according to the treaty.

4. The territory in question was only that which was bordered by the False Bay, Table Bay and Liesbeeck River. The Peninsula land of the Goringhaiqua/ Gorinhaicona and not the lands belonging to the other tribes. (see attached proof of the contract).

I also want it noted at this stage of my statement that I did submit to yourself personally, last July 1998, a substantive document, called for by yourself in your first report. Could you kindly respond to this at the end of my submission.

When Britain took possession of the Cape in 1806 they adopted the domestic or local law, which was the Roman Dutch System. This system acknowledged Customary Law (Grotius' Law) yet Britain refused to acknowledge customary international law and our relationship to lands. Instead she applied a dual system: One for the Cape and another for the Zulu nation of Natal.
Land Titles is and was a colonial concept created by the British and was not the way that we saw the land. This concept recognised the settlers rights which was common law right. This was based on the Court System which was colonial and which did not recognise that our concept of ownership was based on indigenous title rights. The first being committed to paper titles, the other by our relationship to our lands and territories by tribal occupation. The irony of it all is that Britain had a doctrine of Aboriginal Title.

In our modern day system Aboriginal Title remains entrenched in our Constitution (Act 108 1996 The South Africa Act) under Section 232. International Law is Law in South Africa. The South African Government acknowledges that our title was not extinguished. By granting land and title to Nguni Peoples of various tribes and the San (Bushmen) of the Kalahari, it has created a precedent, which should also entitle our Khoi-Khoi peoples to obtain our legal claiming rights to the Lands and Territories of our ancestors.

The South African Government has, according to the constitution, established a legitimate structure through which the Government and we can negotiate.
I wish to inform this distinguished gathering that the Government of South Africa has shown their political willingness to restore the rights of us as indigenous Khoi-Khoi and San Groups and applaud them for this bold step. I hope that by the 18th Session we will report positively on those applaudable gestures. We thank you for the work you Dr Erica- Irene Daes have done in your report. This has served as a guideline to our own submission. We trust that your Colleague Dr. Miguel Alfonso Martinez will include our treaty in his study report so that we can finally appease our ancestors' children's relationship to their own land.

Madam Chair

See: Bennet Tom.Aboriginal Title in South Africa (Dept. of Public Law. University of Cape Town .