

National Khoi-San Council's (South Africa)statement

to be presented at the

United Nations Permanent Forum on Indigenous Issues in New York during May 2013-

Mr. Chair, I would like to take this opportunity to congratulate you on your appointment as the Chairperson of the United Nations Permanent Forum's Twelfth session. The African region is celebrating this historic moment.

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 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.

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. The Constitution therefore, does not provide for the Khoi-San peoples to live according to their collective values such as land, language and indigenous institutions, 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 18 years ago. However, the Khoi-San as the first indigenous peoples, are still struggling 18 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 2011 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 concern about the length of time it is taking the South African government to enact this legislation. It has been an 18 year process thus far and it still remains unclear when the Bill will be promulgated.

We further express our concern that the Bill fails to adequately provide for a fair and equitable process of recognition for the Khoi-San peoples, in that it does not sufficiently take into account the historical differences between the leadership and governance structures of the Khoi-San peoples and the other dominant tribes. Although the Bill provides for different criteria to deal with the distinctness of the Khoi-San peoples, it fails to take into consideration how this will work in practice. The enactment of the Bill in its current form will have the effect of assimilating the Khoi-San peoples within the broader, dominant tribes' concern and issues, thereby further marginalizing them and defeating the purpose of the Bill.

The Bill falls short of Article 18 of the UNDRIP stating: '*Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, ... as well as to maintain and develop their own indigenous decision-making institutions.*'

The National Khoi-San Council recommends that the Bill be assessed against the standard as set out by Article 18 of the UNDRIP. Where it falls short of the standard as set out by Article 18, and related provisions in UNDRIP, we ask that the Bill be amended accordingly.

2. We ask for formal recognition of our collective land and heritage rights defined in terms of our ancestral territories including use; access and management rights;

We acknowledge the progress made around land restitution and heritage mapping. However, we ask for the speedy implementation of these initiatives so that the Khoi-San peoples can finally enjoy these key rights. The South African government has extensively delayed on such initiatives, and these delays negatively impact on the well-being of the Khoi-San peoples.

3. We ask that government set up a Ministry to deal specifically with Khoi-San affairs, led by skilled Khoi-San persons in cooperation with other partners;

4. We ask that Affirmative Action policies not continue to marginalize and discriminate against the Khoi-San through the continued stigmatization of being labelled Coloured through the system of apartheid as mentioned by 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;.

Delivered by Mr. Cecil le Fleur, the Chairperson of the National Khoi-San Council on Wednesday, 22 May 2013.

[This statement was prepared at a full National Khoi-San Council meeting of the NKC for UNPFII on Monday 13 May 2013.

This statement was supported by Indigenous Peoples of Africa Coordinating Committee (IPACC)]