



Africans in America for Restitution and Repatriation-  
Kha-Nu National Community  
14 Murray Street, #199  
New York, New York 10007

November 7, 2017

H. E. Zeid Ra'ad Al Hussein  
Office of the United Nations High Commissioner  
for Human Rights (OHCHR)  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

Dear H.E. Ra'ad Al Hussein,

The United Nations General Assembly (UNGA) proclaimed 2015-2024 as the International Decade of People of African Descent (IDPAD), resolution 68/237. The UNGA, after one hundred years, has finally and officially conceded, as a matter of International law, the sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance of Africans was due to the slave trade. The UNGA conceded that slavery and the slave trade are crimes against humanity.

GA res. 48/141 (1993) established the post of High Commissioner for Human Rights to promote and protect the effective enjoyment by all people of all civil, cultural, economic, political and social rights, including the *right to development*. GA resolution 68/237 further held that the High Commissioner should function as the UN official with principal responsibility as coordinator for the International Decade of People of African Descent.

As a National Community of descendants of enslaved Africans in the United States (Kha-Nu Community) and civil society organization, we have decided for ourselves a resolution and program of activities; vision for our future; how we will go about achieving it; what would be the consequences; what would be the basis of authority for doing it; particularly considering international law, IDPAD and the Durban Declaration and Programmed of Action (DDPA).

Our Community convened and proclaimed the right to repatriation and national rebirth in Africa. The right is based on the **right of self-determination** of peoples. Self-determination is a fundamental principle in international law. It is embodied in the Charter of the United Nations and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Common Article 1, paragraph 1 of these Covenants provides that:

*“All peoples have the rights of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*

The right of self-determination has also been recognized in other international and regional human rights instruments such as Part VIII of the Helsinki Final Act 1975 as well as the Declaration on the Granting of Independence to Colonial Territories and Peoples. It has been endorsed by the International Court of Justice. Furthermore, the scope and content of the right of self-determination has been elaborated upon by the United Nations Human Rights Committee and Committee on the Elimination of Racial Discrimination as well as

international jurists and human rights experts.

**Recalling** “The Durban Declaration and Program of Action”, Section IV. Provision of *effective remedies, recourse, redress, and other measures at the national, regional and international levels.*

Paragraph 158. Recognizes that these historical injustices have undeniably contributed to the poverty, underdevelopment, marginalization, social exclusion, economic disparities, instability and insecurity that affect many people in different parts of the world, in developing countries. The Conference recognizes the need to develop programs for the social and economic development of these societies and the Diaspora, within the framework of a new partnership based on the spirit of solidarity and mutual respect, in the following areas:

- i.* Building or strengthening democratic institutions;
- ii.* Infrastructure development;
- iii.* Human resource development, including capacity-building;
- iv.* Education, training and cultural development;
- v.* ***Facilitation of welcomed return and resettlement of the descendants of enslaved Africans;***<sup>1</sup>

The UNGA seeks resolutions where people of African Descent can go considering the IDPAD. One of the “remedies” for the full implementation of the IDPAD and the DDPA is to ***“facilitate a welcome return and resettlement of the descendants of enslaved Africans.”***

Therefore, as a “People of African descent,” *we submit our programmed of activities to your office in an effort for you to appoint the Working Group of Experts on People of African Descent (WGEPAD) to evaluate collaborate/partner with us and our counsel, in accordance with WGEPAD mandate, to:*

1. gather relevant information, including an international and national legal framework to “facilitate a welcome return and resettlement” of the Kha-Nu National Community into the (claimed) territory of Bir Tawil, Africa (ceded/donated land) pursuant to IDPAD, DDPA, treaties and international law. (See Attachment 1)
2. seek, received and respond to information from states, the United Nations and its agencies, regional human rights and international institutions to facilitate the resettlement and recognition of the state. (see Attachment 1)
3. submit report to the Human Rights Council and United Nations General Assembly starting at the 73rd session.
4. urge international financial and development institutions and the operational programmes and specialized agencies of the United Nations to give greater priority to, and allocated appropriate funding for possible funding strategies for this collaboration effort on our program of activities. (see Attachment 2)

As descendants of enslaved Africans in the United States, we have taken effective measures for the implementation of a program of activities in the spirit of recognition, justice and development. The DDPA canvassed relevant United Nations decisions to address provision of ***effective remedies***, recourse, redress, and compensatory and other measures at the national, regional and international levels.

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<sup>1</sup> <http://www.un.org/WCAR/durban.pdf>

Your Excellency, the WGEPAD seeks to increase its engagement with civil society organizations to further enhance the effectiveness of its work and strengthen its connection to civil society working at national, regional and international levels. By bringing together the WGEPAD and our community, this collaboration will strengthen efforts to implement a Programme of Activities for the IDPAD and international human rights law for the protection of the human rights of people of African descent. We thank you Commissioner Ra'ad Al Hussein in advance for considering our most sincere request.

Very Respectively yours,

*Leslie Sapp*

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## ADVICE ON THE KHA NU NATION'S CLAIM TO STATEHOOD IN BIR TAWIL

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### I. Introduction and Background

1. We have been asked to advise the Kha-Nu Nation on a strategy in relation to their claim for Statehood in the territory of Bir Tawil. The Kha-Nu nation consists of descendants of enslaved Africans in the United States, seeking resettlement on the African continent. Bir-Tawil is on the Sudanese-Egyptian Border and we have been told that neither Egypt or Sudan claims the territory as its own.
2. The viability of the Kha-Nu Nation's legal claim for sovereignty over Bir Tawil turns on three questions:
  - i. First, whether Bir Tawil is terra nullius (a land claimed by no one), and therefore capable of lawful acquisition through effective occupation.
  - ii. Second, whether the Kha-Nu Nation have effectively occupied the land in question.
  - iii. Third, whether the Kha-Nu Nation otherwise satisfy the requirements of Statehood.
3. While these three questions are interrelated, they are distinct from one another, and must be answered separately. We will need further instructions to be able to advise the Kha-Nu Nation more fully in relation to each. However, we will set out below an overview of the law in this area, as well as requests for further information and our advice on next steps.

### II. The Law

#### *Terra Nullius*

4. Under international law, territory that is terra nullius, i.e. unoccupied and claimed by no one, could be acquired by an occupation sufficiently effective, accompanied by an intention to acquire sovereignty. Land has only been accepted as terra nullius, if it was 'desert and uncultivated' or 'uninhabited' (see James Crawford, *The Creation of States in International Law: Second Edition*, 2nd edn, Oxford: Oxford University Press, 2006 at p 335).
5. A land will not be terra nullius if it is claimed by another State, or inhabited by a political society (i.e. by a considerable number of persons) who are permanently united by habitual obedience to a certain and common superior. The presence of nomadic tribes with a degree of political and social organisation preclude territory from being regarded as terra nullius (*Western Sahara Advisory Opinion*, ICJ Reports 1975, p 12; *Mabo v Queensland* (1988) 166 CLR 186).
6. In order to determine whether the territory of Bir Tawil is indeed terra nullius, we must obtain instructions on:
  - i. whether the neighbouring States of Sudan and Egypt do in fact relinquish all title to the territory of Bir Tawil.
  - ii. whether either Sudan or Egypt administer the territory or otherwise exercise control over it, and if so, the nature and extent of that administration/control.
  - iii. whether the land of Bir Tawil is unoccupied, or whether there are indeed tribes, villages, or other groupings of people who currently occupy the land.

#### *Effective Occupation*

In order to acquire land that is terra nullius, there must be effective occupation of the territory in question, as well as an intention to acquire sovereignty.

8. The US Supreme Court stated in *New Jersey v New York* 523 U.S. 767, May 26 1998, as follows:

*Even as to terra nullius, like a volcanic island or territory abandoned by its former sovereign, a claimant by right as against all others has more to do than planting a flag or rearing a monument. Since the 19th century the most generous settled view has been that discovery accompanied by symbolic acts give no more than "an inchoate title, an option, as against other states, to consolidate the first steps by proceeding to effective occupation within a reasonable time." Brownly, Principles of Public International Law 146 (4th ed.1990); see also 1 C. Hyde, International Law 329 (rev.2d ed.1945); 1 L. Oppenheim International Law §§222-223, pp. 439-441 (H. Lauterpacht 5th ed.1937); Hall A Treatise on International Law, at 102-103; 1 J. Moore, International Law 258 (1906); R. Phillimore, International Law 273 (2d ed. 1871); E. Vattel, Law of Nations, §208, p. 99 (J. Chitty 6th Am. ed. 1844). Thus, even on the remote Pacific atoll mentioned in Justice STEVENS's dissent, post, at \_\_\_, something well beyond "a solitary fingerprint," post, at \_\_\_, will always be necessary to carry the day [33].*

9. In *Eritrea/Yemen - Sovereignty and Maritime Delimitation in the Red Sea* (Award of the Arbitral Tribunal in the First Stage, 09 October 1998), the Permanent Court of Arbitration stated that "*the modern international law of the acquisition (or attribution) of territory generally requires that there be: an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions, on a continuous and peaceful basis*". Similarly, in the *Clipperton Islands case (France v. Mexico)* (1931) 2 R.I.A.A. 1105, the Arbitrator stated, "*It is beyond doubt that by immemorial usage having the force of law, besides the animus occupandi, the actual, and not the nominal, taking of possession is a necessary condition of occupation. This taking of possession consists in the act, or series of acts, by which the occupying state reduces to its possession the territory in question and takes steps to exercise exclusive authority there*".
10. In the present case (and assuming that Bir Tawil is indeed terra nullius) we need further instructions on the extent to which the Kha Nu nation are occupying the territory (including whether they are present in the territory, the number of people present in the territory, the length and nature of any such presence, the extent to which they administer the territory, and the existence of any competing administration).

#### *Statehood*

11. In order to claim Statehood over the territory of Bir Tawil, the Kha Nu Nation must not only have acquired territory that is terra nullius through effective occupation, but must also satisfy the conditions of Statehood.
12. There are two primary schools of thought in relation to claiming Statehood:
- i. On one view, an entity must satisfy the criteria set out in the Montevideo Convention on the Rights and Duties of States of 1933 ("the Montevideo Criteria"). The criteria for Statehood are: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states. Under this doctrine the existence of the state is independent of recognition by the other states.
  - ii. On another view, recognition by other States is entirely constitutive of Statehood.
13. Regardless of which school of thought prevails, it is unlikely that an entity will be recognised as a State by a critical mass of nations unless it largely satisfies the Montevideo criteria. By a similar token, even if all the Montevideo criteria are satisfied, without recognition by the wider international community any claim for Statehood is unlikely to be politically viable. Accordingly, the Kha Nu Nation must endeavor to satisfy both limbs in order to successfully establish any new State.
14. The Montevideo criteria overlap somewhat with those required for effective occupation. However, in addition to the matters raised above, in order to determine whether Bir Tawil can satisfy the criteria for Statehood, we will need instructions on:
- i. Whether any members of the Kha Nu Nation present in Bir Tawil are there on a permanent basis.
  - ii. Whether Bir Tawil is sufficiently geographically defined.

- iii. Whether any Kha Nu administration in Bir Tawil forms a government, what system of governance they adopt, and whether they are capable of entering into relations with other States.
- iv. Whether any States thus far have indicated a willingness or intention to recognise Bir Tawil as a State.

*Precedents*

15. There have been a few instances where new States have been established on territory previously not part of any State, or on territory abandoned or ceded by its previous occupants (see James Crawford, *The Creation of States in International Law: Second Edition*, 2nd edn, Oxford: Oxford University Press, 2006 at pp 342-348).
16. The most relevant example is that of Liberia. Liberia was founded by the American Colonization Society for the Establishment of Free Men of Colour, a private society. The society established settlements in West Africa from 1821 onwards for the settlement of freed slaves. Settlements were originally administered as a colony from 1821, but subsequently declared independence in 1847, and thereafter obtained wide-ranging recognition. This precedent demonstrates that it is possible to attain Statehood in circumstances similar to those at play here, assuming there is sufficient political will.

**V. Next Steps**

17. In order to carry this claim for Statehood forward effectively, the Kha Nu Nation should undertake the following next steps:
  - i. Urgently provide instructions on the questions raised in paragraphs 6, 10 and 12 above.
  - ii. Approach Egypt and Sudan to ensure that neither claim the territory and to determine whether they would be supportive of the Kha Nu Nation's claim to Statehood in Bir Tawil (and obtain any such undertaking officially in writing, if possible).
18. Following the provision of the instructions requested above, we will advise on any steps that may be taken to strengthen the claim to the territory in question, and to Statehood within that territory. If it appears all the necessary criteria are satisfied, the Kha Nu Nation will want to formulate a strategy for approaching other States to seek recognition.

**BEN EMMERSON QC  
TAMARA JABER  
MATRIX  
16 August 2017**

## **Memo re: funding strategy for the Kha Nu Nation's claim to statehood in Bir Tawil**

### Introduction + Background

The Kha-Nu Nation is seeking a claim for Statehood in the territory of Bir Tawil, a piece of land that lies between present-day Sudan and Egypt. While there are a series of legal challenges that must be launched to effectively make the claim for Statehood, an endeavor like this will also benefit from storytelling expertise, PR strategy and effective advocacy and public engagement know-how. All of this will require financing to attract top talent – a plan for how to fund this initiative is laid out below.

### The Challenge

Regardless of if the Kha-Nu Nation's claim for Statehood enjoys initial backing from influential States and other actors, a robust media and advocacy plan will be needed as a complement to any legal strategy to engender broader regional and global support.

These services will require financing. The politically sensitive nature of the claim does not make it a likely candidate for the traditional routes of fundraising from governments, private foundations or family foundations. However, other funding paths that leverage the power of social media and organizing around cause movements may be an option.

Specifically, we are at a point in time where we see the convergence of two trends in the US market: i) a fresh wave of racial equality movements in the US spearheaded by movements like Black Lives Matter and as a reaction to racially charged moments, such as the recent events in Charlottesville and ii) the increased willingness of folks in the US to donate to causes as a demonstration of their values, following the election of Donald Trump to the White House.

Given that the Kha-Nu Nation's people are comprised of the descendants of former African slaves in the US, seeking resettlement on the African continent, there is a real opportunity to connect this project to the energy of the two trends listed above. Additionally, the rise in funding sources for projects that focus on entrepreneurship and innovation may provide a separate funding path as well.

### Funding Strategy

Based on the trends and challenges listed above we propose three funding paths, which can be pursued separately or in tandem.

#### *Option #1: Crowd Funding*

Typical crowd funding campaigns have reached a saturation point. As popular crowd funding platforms such as Kickstarter and Indiegogo have experienced an explosion of projects and causes seeking funding, so have the number of platforms designed to handle this traffic.<sup>1</sup> While middle-income countries may still hold untapped markets for this type of fundraising, audiences in North America and Europe are less likely to be enthused (indeed, according to recent data, less than one-third of crowd funding campaigns reach their goals). Therefore, these days, crowd funding is more likely to be viewed as a tool to build community in anticipation of the launch of a project than the actual means by which the money to finance the project will be raised.

The exception to this general decline are i) projects that tap into the current zeitgeist of protest and

#resistance activism and ii) projects that are successfully paired with influencers who become spokespeople for the cause.

One example of a campaign that combines both is this recent initiative by Jennifer Lawrence – currently the highest-paid actress in the world – to fundraise for Represent.Us, a non-profit organization dedicated to ending corruption in US politics. The campaign has received broad coverage in media ranging from the front page of Yahoo News to softer sites like E! News.

Similar to the fundraising effort here, we could partner with Omaze – an online fundraising platform that offers once-in-a-lifetime experiences in support of critical causes – to craft a robust campaign with a celebrity or other influencer to raise funds for the establishment of the Kha Nu Nation state. Celebrities who have supported racial justice initiatives in the US could potentially be tapped for such a project including the rapper Common, musician John Legend, songstress Solange Knowles, former NFL quarterback Colin Kaepernick or others.

#### *Option #2: Private Donors*

In line with the discussion of influencers above, another approach could be to find a wealthy benefactor who would be prepared to publicly support and financially back the establishment of the Kha Nu Nation state.

A guiding example is that of Refugee Nation, a proposal set forth by Silicon Valley investor Jason Buzi in 2015 to create a state for refugees in the world. While regarded as controversial in some circles, the proposal – supported by the services of a PR firm – did attract significant media coverage in mainstream outlets. Shortly thereafter, Naguib Sawiris – an Egyptian billionaire – offered to buy a Mediterranean island to house refugees fleeing the Syrian conflict. While the current status of the project is unclear, this demonstrates the willingness of certain investors to back a cause project if it aligns with values they support.

In our case, we would need to explicitly link the creation of the Kha Nu Nation state to a greater struggle for racial justice and the correction of the wrongs of the global slave trade in our collective past. By tapping into this narrative we can potentially entice investors who are willing to back bold and flashy projects in support of a cause that is close to their hearts.

One potential option for high-level investment of this type could be from singer, actor and activist Harry Belafonte and his organization Sankofa, which has been deeply involved in supporting the Black Lives Matter movement, as well as the protests at Standing Rock.

#### *Option #3: Innovation / Entrepreneurship Backed Investment*

Another option to get the Kha Nu Nation claim funded is to propose an innovative use for the land that social entrepreneur driven funding vehicles could be inspired to support.

Given its proximity to Sudan, it could serve as a transit hub for refugees, or accommodate peace-building programs to address the conflicts there. Or it could serve as the site of an incubator for education-focused solutions – to iterate and test innovative approaches towards solving gaps in the education system in neighboring Egypt.

Additionally, given where the territory of Bir Tawil is situated and the water shortages the region already faces and which will only be exacerbated in the years to come, an alternative model could be piloting water shortage solutions on the territory that could then be applied elsewhere in the region.



We could partner with an existing program like Isabel Technologies, which runs ag-tech programs in Peru and San Francisco, to craft a plan for the land to serve as a testing ground for new types of sustainable living. Such a plan would benefit from the land being able to operate as an independent state and one could tack the financing of the Statehood project as a requisite step before innovation plans could get underway.

Proposed budget

To properly staff a 6 month campaign to advance the Kha Nu Nation's claim for Statehood using legal, media and advocacy channels we will need a total of \$150,000-175,000 / £115,000-135,000.

That includes legal fees, creation of storytelling assets, PR services and other advocacy and public engagement strategies.

Pending further advancement of this proposal, we will provide a more detailed breakdown of the associated costs.

## **Bir Tawil Africa, the World's First 100% Sustainable State**

**Bir Tawil Development, Manufacturing, Research and Development Highpoints**

### **100% Sustainable State (Desert Living for the 21<sup>st</sup> Century and Beyond)**

100% Sustainable Zero Carbon, Eco-Cities

Zero Energy Housing Developments

Smart Technologies

Sustainable human development

Exceeding the United Nations Sustainable Development Goals 2030

Bir Tawil Institute for Desert Research and Development

Desertification Research (Global warming could create 150 million 'climate refugees' by 2050) <sup>(1)</sup>

(Desert Living-Leaving no one behind, people of African descent and the SDG 2030)

Research and testing of concrete made with desert sand

### **Renewable Energy Manufacturing, Production and Research**

Solar Panel Production, Research and Manufacturing Facilities

Energy storage research and development

Research, Development and Manufacture of low cost solar cells

Perovskite

Carbon based photovoltaic devices

Solar thermal

Glass manufacturing and research (desert silicon)

Solar powered research of water harvesting devices.

Solar powered vehicle research, development and manufacturing

### **Greenhouse Horticulture Research**

Greenhouse Farming and Research

Hydroponic Farming

Aquaponics Farming

Desert horticulture research

Drought-resistant plants research

Atmospheric water generator research and development

### **Bir Tawil Territory – Africa's 100% Sustainable State**

Innovating the Future of a Sustainability State in Africa with a myriad of African-American Professional Organizations

*Leslie Sapp*

Leslie Sapp

President and CEO

(1) <https://desertification.wordpress.com/2009/11/04/150-million-climate-refugees-by-2050-google-guardian/>