

Establishing Monitoring Mechanism at the National and Regional Levels for the implementation of the United Nations Declaration on the Rights of Indigenous People's

This input is from the Kruipers //Hanaseb Bushman in the Southern Kalahari Desert in South Africa

We, the Khoi and San people's are the Indigenous people's of Southern Africa. We previously requested the United Nations to please approach the International Court of Justice for an advisory opinion on our behalf regarding the following matters. We have received neither assistance nor a response in this regards. However, we are hopeful that once the Independent Dispute Mechanism has been set up, our case will be the first to be attended to. Justice delayed is justice denied, and there can be no justice without reparations for the harms of the past.

1. With regards to our Indigenuity, the South African Government is trying to deny that we are the Indigenous people's of South Africa. Furthermore, they are trying to codify it in the Traditional Khoi and San Leadership Act. In our opinion our Indigenuity is an inherent right and thus inalienable.

2. Also, the territory of South Africa including all of its resources belongs to the Khoi and the San people's. The reason we are saying this is that we the Khoi and San people's never consented to the alienation of our territories. We never gave up our sovereignty. The agreement that was signed was between the British and Dutch. This territories still belongs to the Khoi and San people's. Firstly, our position is that the South African Government must recognize the Khoi and San as the Indigenous People's of this territories. Secondly, a special dispensation must be created by the State to specifically benefit the Khoi and San people's annually as the owners of these territories. For example a percentage of the gross domestic product paid annually to the Khoi and San. Also an agreed percentage of Khoi and San people's to serve on Boards around the country. Furthermore, bursaries for the children's further education and training amongst other things. Similarly, matters of tangible and intangible cultural heritage. For example our ancestral rock art sites on both public and private land must be returned to our ownership. On the other hand all businesses working within our territories must enter into benefit sharing agreements with us.

3. Furthermore, the principle of free, prior informed consent regarding Nation to Nation agreements. In particular the rights of Indigenous people's to veto government decisions pertaining to developments on, through and too their territories and resources.

4. On the other hand the ownership of Intellectual property rights is a contested terrain pertaining to State's, the Private Sector, Civil Society Actors and Academia. In this regards there are several actors listed below, practitioners of both internal and external colonialism as defined by E. Tuck & K.W. Yang, 2012 pg 4,5 in Decolonization : Indigeneity, Education & Society Vol.1, No1, 2012, pp. 1- 40.

5. We have also attached the Constitution of Wimsa which is the first Civil Society organization that must be dissolved.

In 1999/2000 the then attorney of the Kruipers Mr Rodger Chenells took Oom Dawid Kruiper to Namibia to found Wimsa. We must draw your attention to the fact that our late traditional leader Mr Dawid Hermanus Kruiper was illiterate. He had no idea of what he was getting us into. At the time he trusted his then legal adviser completely. This matter also concerns the people of Angola, Botswana, Namibia, Zambia, Zimbabwe in addition to South Africa. As you will note by the Constitution, all of the listed countries people are only being used as a means to an end. Pay particular attention to the financial paragraph of the Constitution.

6.1. The bad faith conduct of both States and the Private Sector to enrich themselves at the expense of Indigenous people's is unacceptable. For example the Hoodia plant, the Kruipers who did the research with the CSIR never got a cent. Now again with the rooibos tea some money was paid, but once again the Kruipers who are the Bushman Indigenous Knowledge Holder's once again received nothing. Instead the State is negotiating and going into agreements on the intellectual properties on behalf of the Khoi and San with the San Council an illegitimate structures. Comprised of specific members who are pretendian race shifters. Its painful to watch your ancestral intellectual properties being sold and the money stolen by others.

6.2. Similarly, the South African Government has created legislation pertaining to Indigenous Knowledge Systems. However, this legislation is problematic due to the fact that traditional communities must have registered their intellectual properties within the first year of the promulgation of the Act. Failure to do so, means that those communities lose their intellectual property rights to the State. This is unacceptable our intellectual property rights is not a commodity for their use. Furthermore, widespread public consultations to inform the public and to acquire free, prior informed consent was not done Particularly to inform the public of the fact that if they didn't register their intellectual properties within a year the ownership would revert to the State.

6.3. Similarly, Khoi and San People's representation matters, the South African government is negligent, racist, discriminatory and corrupt when it comes to Khoi and San People's matters. The National Government officials that was supposed to be in charge of the election of persons to serve on the National Khoi San Council were negligent in the performance of their duties This is the body that the State consults on all matters pertaining to the Khoi and San People's. The state chooses to negotiate with illegitimate structures on behalf of the Khoi and San. People's representatives that serve on the Khoi San Council must be publicly mandated by their communities. Also, the elections must be held in public and not in little back rooms with the few notified persons present. Similarly, the San Council was established under false and fraudulent pretext by the disreputable lawyer that established it. The South African Government should not be negotiating about Khoi and San People's. intellectual property rights with an illegitimate fraudulent structure.

6.4. On the other hand Indigenous knowledge holder's whose traditional knowledge is being discussed and sold must have a representative present during those negotiations. The principle of free, prior informed consent is fundamental to all traditional knowledge holder's. Similarly, the Private Sector must pay going market rates for the use of the medicinal plants and traditional knowledge. The amount being subject to annual review depending on their profit margins and the interest rate.

6.5. Civil Society and Academia must enter into benefits sharing agreements with the communities in which they work or do research. We will no longer condone Academics and Civil Society Organizations coming into our communities, taking our ideas, technologies and knowledge patenting it for themselves or their institutions.

7. The South African Government's legitimacy itself is questionable. The negotiated settlement between the black and white settlers had nothing to do with the Khoi and San People's. That much has been proven over time, they were each looking after their own interests. The Khoi and San people's where not consulted or part of the negotiations. Nelson Mandela only set up an advisory committee as an interim structure of representatives from the Khoi and San communities in 1999. The Constitution of South Africa that guarantees settlers property rights above those of the Indigenous people's is problematic. The Constitution of South Africa is unacceptable in it's current format.

South African National, Provincial and Local Government

7.1. The South African Government has failed at every imaginable indicator and their fiduciary duties. They must be removed. The South African Government policy of forced assimilation through the //Khomani San land claim. They forced the Kruipers to take all these other people on their land claim, by the lawyer telling them their numbers were not enough for the state to grant them land. The Kruipers claimed land for a safe place for them and future generations to live and to practice their traditions and culture

7.2. Cultural Genocide as an attempt at erasure. The state's repeated refusal to fund the Kruipers projects that can preserve their traditions and culture for future generations. The state's refusal to recognize Nama as an official language. Even though there are teachers, textbooks and dictionaries readily available. Instead the state recognizes other African languages from neighbouring countries as official languages in South Africa.

7.3. The failure of the state to uphold the 50/50 Agreement in the Heritage Park Agreement. The failure of the State to provide the Bushman farms close to the Park with water to date. The Kruipers initially agreed to accept the Vaalboois on their land claim under the conditions that half of the land would be reserved for traditional purposes and practices. This agreement has been broken and violated on numerous occasions, the state failed to act timeously and appropriately to date. There is now no land that is not occupied by others, there is now no space for the Kruipers to practice their traditions and culture. The Kruipers have told the state on numerous occasions that they want to be legally separated from the rest of the imagined //Khomani San Community. The state consistently and persistently refuses to do so, this is cultural genocide. The State's has to remove these people's and give them their own land where they originate from. More importantly the Khoi and San Land questions in South Africa must be dealt with holistically.

South African Human Rights Commission

The South African Human Rights Commission in the Northern Cape Province is useless. The head of the Human Rights Commission Office in the Northern Cape Province is biased and partisan and follows the Province lead. We are not aware of any work that they have done concerning UNDRIP.

