

First Indigenous Nation of Southern Africa (FINSA)
TWO RIVERS SUBMISSION

Introduction
Employment Act.55 Of 1998

Recognizing – “that as a result of apartheid and other discriminatory laws and practices, there are disparities in employment, occupation and income within the national labour market; and that those disparities create such pronounced disadvantages for certain categories of people that they cannot be redressed simply by repealing discriminatory laws,” Therefore, in order to promote the constitutional rights of the Khoikhoi and San Peoples and the exercise of true democracy; we need to eliminate unfair discriminations in South Africa.

Likewise- As a result of the deliberate refusal of various Organs of State and especially Businesses in particular to recognize and accept constitutionally the First Nation Status of the Khoikhoi and San People, there are disparities in all spheres of the Khoi-San life, and that these disparities create such pronounced disadvantages for the Khoikhoi and San Descendants that they cannot be redressed simply by the drafting and legalizing of Discriminatory laws and Bills that continues to promote the sidelining and oppression of the Khoikhoi and San People.

I would have expected that SAHRC would have been invite to give a submission, Why?

The Commission is an independent National Human Rights Institution (NHRI) established in terms of Section 181, under Chapter 9 of the Constitution, to support constitutional democracy. In terms of Section 184 (1) of the Constitution, the Commission is specifically mandated to:

- (a) Promote respect for human rights and a culture of human rights;
- (b) Promote the protection, development and attainment of human rights; and
- (c) Monitor and assess the observance of human rights in the Republic.

Although the primary responsibility for the respect, protection, promotion and fulfilment of human rights rest with states, NHRIs play a fundamental role in promoting the implementation of these obligations within a state, and therefore, form the cornerstone of national human rights protection systems.

Section 184(2)(a) of the Constitution empowers the Commission to investigate and report on the observance of human rights in the country.

Furthermore, Section 184(2)(c) and (d) affords the Commission authority to carry out research and to educate on human rights related matters. The South African Human Rights Commission Act, 40 of 2013 ("SAHRC Act") further supplements the powers of the Commission, and includes the power to carry out and report on studies concerning fundamental rights, and to monitor the implementation and compliance with international and regional conventions. Furthermore, the Commission is empowered to review policies relating to human rights and may make recommendations.⁷

The International Rule of Recognition

As noted, there is a long history to the right of disparate peoples to have and enjoy their own law, as there is a history of guaranteeing the rights to liberty and property in treaties and other legal documents when one state takes over another state or its citizens. The United Nations General Assembly adopted the International Covenant on Civil and Political Rights 81 (Covenant) in 1966, and it went into force on March 23, 1976.

It is a codification of customary international law, and Article 27 guarantees the right of persons belonging to ethnic, religious and linguistic minorities to "enjoy their own culture."83 Among the customary rights which are protected in Article 27 is the right to "preservation of customs and legal traditions. Khoi-Sans are fully capable of resolving their own problems, in their own ways and in their own communities. Khoi-San peoples have a right to make their own law and apply it in their own institutions in a way which suits them. They have had that right since Roman times; it is a fundamental human right.

The Situation of Indigenous people in Africa is extremely serious. And the condition of the descendants of the First Indigenous Nation of Southern Africa (FINSA), the Khoikhoi and San Nation, so called "Coloureds" in South Africa are even worst as we undeniably see and witness the high and severe levels of gangsterism and poverty among the people suffering the most. These issues are exacerbated by discrimination and marginalization of the Khoi-San peoples by mainstream populations in South Africa.



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The most pressing issue faced by the Khoisan people in South Africa is Land dispossession and the refusal by Government to return the land to the rightful owners, The descendants of the First Indigenous and Aboriginal People of this Land.

The right of Indigenous peoples to restitution of our lands, territories and resources is already included or being considered in a number of human rights texts (see Annex I). In particular, the draft *U.N. Declaration of the Rights of Indigenous Peoples* that was unanimously approved in 1994 by the U.N. Sub-Commission affirms in Art. 27:

Indigenous peoples have the right to the restitution of the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, occupied, used or damaged without their free and informed consent. Where this is not possible, they have the right to just and fair compensation. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status.¹ That the Land, all its Plants and therefore all its Indigenous Heritages belongs to the rightful owners.

Article 18 of UNDRIPS recognises the right of indigenous persons to "*participate in decision-making in matters which would affect their rights, though representatives chosen by themselves and in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.*" In addition to this, Article 19 expressed the obligation of states to consult with indigenous peoples and to obtain free, prior and informed consent before taking action which may affect them.

Generally, the right to participation contains both internal and external dimensions. The internal dimension is closely related to the right of self-determination and development, by providing equitable opportunities for indigenous persons to participate in decision-making relating to the internal or local activities which impact on them directly or indirectly. In fact, it has been found that the active participation of indigenous persons results in better and more effective programme outcomes.⁶⁷

Participation and consultation is therefore undertaken with a view of obtaining free, prior and informed consent in decision-making. "Free" requires the absence of coercion, intimidation or manipulation; "prior" implies the need for consent to be sought before any conclusion, authorisation or commencement of an activity has taken place; and finally, "informed" necessitates the provision of information in a form which is accessible and understandable.68

The external dimension of the right to participate, on the other hand, refers to the right of indigenous persons to participate alongside other groups in the broader public life of the state, which may include the need to create special measures to ensure the effective participation of indigenous peoples within the political structures of the state.

The responsibility to assure fair participation and prior notice is the sole onus and responsibility of the respondents.

Article 23 of UNDRIPS guarantees the right of indigenous peoples to determine and develop priorities and strategies for exercising their right to development. As described earlier, centuries of discrimination has resulted in the deprivation and marginalisation of indigenous peoples, leading to a myriad of socio-economic, cultural and political challenges.

While indigenous peoples have a right to develop in common with broader society within a state, cognisance must be given to the particular concerns faced by indigenous peoples, including the fact that development initiatives designed to benefit the economy or broader society as a whole may have particularly detrimental impacts on indigenous persons.

International law recognises the right of indigenous peoples to land, territories and natural resources, which right extends to ownership, maintenance, control and use. While the contents of this right will be elaborated on in the sections to follow, the achievement of this right is fundamental to the achievement of other rights for indigenous persons, highlighting the indivisibility and interdependence of rights. Indigenous peoples are dependent

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on access to land, traditional territories and natural resources for economic survival and development; the right to self-determination; and the ability of indigenous peoples to practice their culture and traditional ways of life, and a lack of access therefore threatens the survival of indigenous peoples as a distinct group.

Various international law instruments recognise the right of indigenous peoples to own, use, develop and control lands, territories and resources,⁹⁵ as well as the right to determine and develop priorities and strategies for development.⁹⁶ In addition to this, indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories and natural resources, and to uphold their responsibilities to future generations in this regard.⁹⁷

Indigenous communities are entitled to obtain adequate redress or compensation for dispossession of land and territories, and must be consulted by the state or private parties in relation to development or other projects which may impact indigenous communities.

Inconclusion

The right to restitution of land, provided for in Section 25(7) of the Constitution is further given effect through the Restitution of Land Rights Act ("Restitution Act"), 100 and provides all persons the right to claim restitution, including indigenous persons and/or communities, for land dispossessed as a result of past racially discriminatory laws or practices after 19 June 1913. The initial cut-off date for lodging claims was 31 December 1998, but this process has since been extended for a period of five years, ending on 30 June 2019.

It is my submission that if developers are going to be given the continues permits and not right, this Tribunal will allow the continuation of the violations of the Rights of indigenous people in the name of Development or should we truthfully say in the name of



Capitalistic Greed for wealth while people's rights are continuously walked over.

Bottom-line, who will benefit from any development in the Two River's Saga? The Nation, The community, the Khoikhoi and san....Who alone but those who seek to make millions on the suffering of the First Indigenous Nation of Southern Africa.

We support all those for the save keeping of the Heritage of the Khoikhoi and San.

Compiled by



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