

SOUTH AFRICA

South Africa's total population is around 50 million, of which indigenous groups are estimated to comprise approximately 1%. Collectively, the various First Indigenous Peoples groups in South Africa are known as Khoe-San, comprising the San and the Khoekhoe. The San groups include the ǀKhomani San, who reside mainly in the Kalahari region, and the Khwe and!Xun who reside mainly in Platfontein, Kimberley. The Khoekhoe include the Nama, who reside mainly in the Northern Cape Province, the Koranna mainly in the Kimberley and Free State provinces, the Griqua in the Western Cape, Eastern Cape, Northern Cape, Free State and KwaZulu-Natal provinces and the Cape Khoekhoe in the Western Cape and Eastern Cape, with growing pockets in the Gauteng and Free State provinces. In contemporary South Africa, Khoe-San communities exhibit a range of socio-economic and cultural lifestyles and practices.

The socio-political changes brought about by the current South African regime have created the space for a deconstruction of the racially-determined apartheid social categories such as "Coloureds". Many previously "Coloured" people are now exercising their right to self-identification and identifying as San and Khoekhoe or Khoe-San. First Nations indigenous San and Khoekhoe peoples are not recognized as such in the 1996 Constitution, however, although this is shifting with their being accommodated in the pending National Traditional Affairs Bill of 2013. Additionally, South Africa has voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples but has yet to ratify ILO Convention 169.

National Traditional Affairs Bill

The National Traditional Affairs Bill was published for public comment during September 2013. It seeks to consolidate the National House of Traditional Leaders Act (2009) and the Traditional Leadership and Governance Framework Act (2003).¹ The Bill also provides for matters relating to the recognition of Khoe-



San communities, their leadership and its structures. The Bill is of particular historic value since it is the first time that draft legislation has included provisions relating to the statutory recognition of the Khoen and San communities and its leaders. It also sets out specific criteria for the recognition of cultural communities and their leaders to qualify as such. Criticism of the Bill includes its disregard of the effects of colonialism and apartheid on Khoen-San culture and communities, in particular through the historically weighted label "Coloured".² In addition, it is suggested that the Bill does not offer the Khoen-San community any meaningful rights, and thus further entrenches the existing challenges around traditional leadership in South Africa. However, the National Traditional Affairs Bill can be seen as a legislative framework that holds the possibility for positive engagement on the part of the Khoen-San with regard to their heritage and cultural identity. On this basis, the Bill is an opportunity to begin the historical restoration process for this community.

Draft Restitution of Land Rights Amendment Bill 2013

The South African Cabinet approved the Draft Restitution of Land Rights Amendment Bill on 23 May 2013. The Bill gives persons or communities the opportunity to institute their claims for land restitution only if they were dispossessed of their lands after 1913. For Khoe-San communities, whose land dispossession happened well before 1913, the barrier to having their land restitution addressed remains. The UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people recommended in his 2005 report to the South African government that the 1913 cut-off date for consideration of claims be removed so as to allow the Khoe-San communities to claim back their land.³ Additionally, the Bill proposes the deadline for all land claims to be extended to 2018.

The South African government recently formed a reference group with interested Khoe-San groupings to advise the government on the Khoe-San historical land claims. This process has been labelled as problematic by members of the National Khoi-San Council (NKC) because their recognized structures, such as the NKC, were not meaningfully consulted or included in this process.

Historic benefit-sharing agreement - Buchu plant

During November 2013, the San and Khoekhoe signed an historic benefit-sharing agreement with a South African pharmaceutical company under South Africa's Biodiversity Act 10 of 2004. Buchu is a small shrub endemic to the Western Cape Province that is used for its essential oils and the medicinal qualities of which are associated with the San and Khoekhoe's indigenous knowledge. The benefit-sharing agreement acknowledges that the Khoekhoe and San's medicinal plant knowledge predates that of subsequent South African inhabitants and that the Khoekhoe and San are legally entitled to a fair and equitable share of the benefits that result from the company's processing and commercial development of the Buchu plant. Although the San have been previously involved in similar agreements, this marks the first time that the Khoekhoe, represented by the NKC, have entered into such an agreement to recognize their indigenous knowledge as such. The Khoekhoe and San collectively formed a negotiating team that was

representative of both groupings. In terms of this historic partnership, the National Khoi-San Council and the San Council⁴ act as a representative structure for the Khoekhoe and San peoples respectively in order to protect their rights associated with the traditional knowledge of related plants.⁵

Khomani San (Kalahari)

In 1998, under the democratic South African government's Land Restitution legislation, the †Khomani San received some 25,000 ha of ancestral land in the Kalahari Gemsbok National Park (Northern Cape Province) and a further 36,000 ha outside of the park. Although designed to partially redress past injustices, the process soon experienced major difficulties. In 2004, after a three-day investigation into the rapidly deteriorating situation, the South African Human Rights Commission (SAHRC) described the case as one of "sad neglect" by all tiers of government, exacerbated by mismanagement on the part of successive ill-prepared and poorly-resourced community structures. In 2005, following an in-situ analysis, the UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people reinforced the South African Human Rights Commission's call for the South African government to address the situation as a matter of urgency. A lack of effective response led the claimant community to institute formal legal proceedings against the minister and state structures involved. After a series of failed initiatives to obtain satisfactory responses from the government, their appointed legal representatives finally lodged formal litigation documents with the High Court in October 2012. The state parties opted not to oppose the court action and a settlement proposal, in which the state undertook to honour its initial contractual obligations and take further steps to rectify the situation, was agreed and accepted by the people during 2013.⁶

Ancestral remains - Dawid Stuurman

Captain Dawid Stuurman, born in 1793, was an indigenous Khoekhoe leader from the Gamtoos valley on the East Coast of South Africa. He played a key role in the Khoi rebellion, or Third Frontier War from 1799 – 1803. He is regarded as a hero for his role in fighting the injustices imposed on the Khoekhoe peoples by

the colonists. He twice escaped from Robben Island but, on his third attempt, was recaptured and taken aboard the convict ship, *Brampton*, to New South Wales in Australia as a prisoner in 1823. He subsequently died in Australia. At the beginning of 2013, the Khoe-San began a campaign to lobby for the return of his remains to South Africa. The National Khoi-San Council became involved and made a presentation to the South African parliament in February 2013. After numerous attempts and research, it became clear that formal identification of Dawid Stuurman would not be possible since his remains are buried in a mass grave underneath the new railway station in Sydney. In the light of these developments, it has been decided instead to focus on a ceremonial/spiritual repatriation.

A team of indigenous and spiritual leaders, as well as South African government officials, will travel to Australia to perform certain spiritual rituals to mark the departure of the soul of Dawid Stuurman to his native homeland. Deeply rooted in their ancient belief systems, the Khoe-San understand that his soul will only come to rest if his last rite of passage is completed. This repatriation also seeks to restore not only the pride and dignity of the late Dawid Stuurman but that of the whole of South Africa's indigenous people, who continue to feel marginalised in the new democratic South Africa. ○

Notes and references

- 1 The two Acts comprise the legislative framework that governs the South African traditional leaders and the National House of Traditional Leaders. This legislative framework applied to the formally recognized cultural groupings in South Africa, of which the Khoe-San did not form a part.
- 2 The Khoe-San communities suffered a denial of their rights and denigration of their cultural and value systems, and they were later classified as "Coloureds" under the old race classification laws. (*Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people, 2005*).
- 3 Ibid.
- 4 The San council is a community organization representing the San communities specifically. It was formed during the period of the plant species "Hoodia" (a local succulent plant) agreement whereby the San groupings had to enter into benefit-sharing discussions around this plant.
- 5 <http://natural-justice.blogspot.in/2013/08/natural-justice-legally-supports.html>
- 6 <http://www.khomanisan.com/about-us/#HistoryOfTheSan>

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