

“Make our Children Proud of the heritage”



A case study of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic communities in SA with specific reference to the emerging Khoe and San Indigenous Peoples in the Republic of South Africa.



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In loving memory of

Bruce Frederick May
(3 May 1948 – 18 April 2006)

Preface

The title of this thesis is, '*Make our children proud of their heritage*'. I have chosen this title because it is my whole purpose for being part of the Khoe and San indigenous movement in RSA. I do not want my niece and nephews to experience the pain that I went through, whilst growing up, of not being the colour or belonging to the culture of the dominant mainstream. I would like them to know who they are and acknowledge their rich complex heritage including their African heritage. This thesis is dedicated to them.

The main picture on the cover is of my immediate biological family namely, my parents, siblings and their spouses and my niece and four nephews. (July 2005) This picture was chosen to show the complex shades and textures that we have inherited from our ancestors. I want to thank my family for their faith in me and the unending and unquestioning support. To my Mum and Dad, who played and continue to play an integral part of making me this person I am today, thanks.

A special thanks to Joseph Little who inspired me to continue my studies and showed me ways of reviving our lost heritage and Michael Besten who helped me 'think' academically. Thanks to Cecil le Fleur and Petrus Vaalbooi for sharing their thoughts and time with me as well as William Langeveldt, Pumela Madiba, Marlene Le Roux and Marla Mareachealee.

Most of all, thanks to the University of Tromsø and the Sami Centre for giving me this opportunity to do a multidisciplinary study in Indigenous Issues. Thanks to SEMUT for giving me the financial assistance to do effective research. To my dear patient supervisor, Sidsel Saugestad, thank you for your understanding and guidance and the thoughtful feedback that was crucial for keeping me focused.

Finally, to my fellow students who spent two years of my life with me, let's continue in the global movement for equality and respect for all peoples and their cultures. Together we can put the 'Human back into Humanity!'

Abstract

The government of the Republic of South Africa established a human rights enshrined constitution. To implement it, various commissions were established to promote constitutional democracy by embracing their diverse cultures and take up the challenge of changing the racist and segregationist ideals of the recent Apartheid past to a nation unified in its diversity and embracing its' Africanness.

The CRL Commission was established, as an agent for social change, to address issues relating to cultural, religious and linguistic communities. Two examples show that both on group and individual level, members of the commission have been able to mediate and by bringing in new research based information in the first case and the shared African respect for ancestors graves in the second, new modes of coexistence of diverse cultures have been formed. However, this is not adequate to address the Khoe and San issue as they need a specific body that would effectively address their issues of cultural development, education, economic upliftment, restoration of their territories and especially their power relation with the nation state. Khoe and San are not just minority groups but a people who have lived in Southern Africa since time immemorial. Their language group is only found in this region of the world. The CRL Commission cannot address the issue of the Khoe and San.

Because of the power shift from colonial white rule to African black rule all black Africans are not indigenous to Africa anymore as the term indigenous addresses inequalities with regard to economic resources and the relationship between marginalised national minorities and the state. The change from addressing a hostile regime to addressing a well meaning regime, whose main shortcomings lay not so much in what is done than what is not being done, calls for a very different tactic and lines of arguments. The Khoe and San have become part of the global Indigenous arena who are using ethno-politics as a tool to reverse the negative stereotypes directed towards their 'primitiveness' and heritage as a means to decide their distinctiveness and therefore moral commitment by the state to address their issues.

African nations have to transcend the postcolonial conditions and move towards modernities that unite ancient and modern knowledge.

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Abbreviations & Acronyms

AIWO, the African Indigenous Women's Organisation

ANC, African National Conference

AWB, Afrikaner Resistance Movement (Afrikaner Weerstandsbeweging)

AZAPO, Azanian People's Organisation

CEO, Chief Executive Officer

CODESA, the Convention for a Democratic South Africa

CRL Commission, the Commission for the Promotion and Protection of the rights of Cultural, Religious and Linguistic communities in South Africa

DPLG, Department of Provincial and Local Government

FF, Freedom Front

GNC, the Griqua National Conference

ICCPR, the International Convention for Civil and Political Rights

IFP, Inkatha Freedom Party

ILO, the International Labour Office

IPACC, the Indigenous Peoples of Africa Coordinating Committee

NKC, the National Khoe-San Council

NKF, National Khoe-San Forum

NKOK, the National Khoe-San Consultative Conference in Afrikaans
(Die Nasionale Khoe-San Oorlegplegende Konferensie)

NP, the National Party

OAU, the Organisation of African Unity

OHCHR, the Office of the High Commissioner for Human Rights

PAC, Pan Afrikanist Congress

RSA, the Republic of South Africa

SAHRA, South African Heritage Resource Agency

UN, the United Nations

UNHRC, United Nations Human Rights Commission

UNWGIP, United Nations Working Group on Indigenous Populations

WIMSA, the Working Group of Indigenous and Minorities in Southern Africa

Chapter 1: Introduction

1. Problem Statement

The end of Apartheid brought in issues of identity and reification of African identities. In particular, many debates have arisen regarding the coloured people and are reflected in the resurgence of an Indigenous Khoe-San identity. Part of the ideology of the 'New' Republic of South Africa is re-establishing Africanness by embracing lost and denied African heritage and in so doing heal the pains of the past. The RSA coat of arms with our motto, "*!ke e: /xarra //ke*" "unity in diversity", emphasizes the right to diversity as well as respect and acknowledgement of the first peoples of the Republic of South Africa. The language of our motto is in an ancient Khoe and San or indigenous language, *!Xam*. Within the designation of "coloured", there is now a group of people referring to themselves as Indigenous First Nation¹ of South Africa. This is a direct response to the empowering new dispensation with its human rights enshrined constitution and the ratification of most of the United Nations Conventions.



The newly formed government of South Africa established various commissions or institutions to promote constitutional democracy by embracing their diverse cultures. Traditional Leadership and Customary Law were accommodated through Chapter 12 of the SA Constitution of 1996, which recognises the authority of traditional leaders and customary law. While Chapter 9, article 181, 185 and 186, specifically call for the establishment of a Commission for the Promotion and Protection of the rights of Cultural, Religious and Linguistic communities, popularly known as the CRL Commission. This was to accommodate the demands of some groups for the protection of their minority rights. Various interests groups, including NGO's, cultural groups, religious groups and ethnic groups or minorities which were divided into black, coloured, white and Indian under the apartheid regime, were invited to participate in the implementation of this Commission.

¹ The words, 'First Nation' are included to differentiate between the indigenous peoples and those who came into South Africa after the Khoe and San peoples as all black people were regarded as indigenous in Africa. This is also the terminology used by the Khoe and San activists and leaders. In this paper it might become clear that the term indigenous does not only refer to historical connection and continuity with the land but also a relational one, seeking equality and restitution of justice from the nation state.

However, Khoe and San groups argue that the mandate of this commission has limitations in addressing their plight to affirm their identity as Indigenous First Nations according to the United Nations working definition of indigenous peoples and to thus take their place as a proud people of the RSA. The Khoe and San peoples ask for official recognition and an equal share in the distribution of power through constitutional accommodation and a statutory body that addresses the issues central to Indigenous people namely respect and development of their heritage and culture combined with socio-economic upliftment.

This thesis will look at the emergence of Khoe and San expression and representation in RSA and will assess the possibilities the commission has in addressing the specific needs of the Khoe-San indigenous peoples. I will also attempt to show that because of the power shift from colonial white rule to African black rule all black Africans are not indigenous to Africa anymore as the term indigenous addresses inequalities with regard to economic resources and the relationship between marginalised national minorities and the state.

1.2 CONCEPTS

1.2.1 Indigenous

In the international arena the working definition of indigenous peoples seeks to address basic issues of *injustice, restitution and reconciliation*. At the moment the ILO Convention 169 is the only legal document defining indigenous peoples. The Draft Declaration on the Rights of Indigenous Peoples and the report of Martínez Cobo to the UN Sub-Commission on the Prevention of Discrimination of Minorities in 1986 are part of the ongoing debate about constructing a definition. A single definition may become exclusive, hence the laboured debates around the Draft Declaration. However, the Draft Declaration, the ILO169 and Martínez Cobo's report are all used in arguments for Indigenous Peoples status.

The UN Working Group on Indigenous Populations concentrated on 4 basic principles to define indigenous peoples,

“Priority in time, with respect to the occupation and use of a specific territory; the voluntary perpetuation of cultural distinctiveness; self-identification, as

well as recognition by other groups and by state authorities, as a distinct collectivity; and an experience of subjugation, marginalisation, dispossession, exclusion or discrimination, whether or not these conditions persist”. (IWGIA, 1986)

This kind of definition is easy to use in the countries like America, Canada and Australia where the settlers have remained and retained the economic and political power. However, the situation in Africa differs. The Report of the African Commission notes that the idea of aboriginality is problematic. There are still vulnerable groups who suffer discrimination and marginalization under the post-colonial nation states. During colonisation, aboriginal, native or indigenous were regarded as those people who were primitive, nomads, hunter-gatherers and did not have the skills or technological knowledge as the European settlers. In this case all Africans who were black were compared to Europeans who were white. The report says that this negative attitude towards that which is indigenous regarding it as primitive and backward, has to change in light of the post-colonial situation.

Saugestad argues that, “the relationship between a state and an indigenous minority is one of unequal distribution of power.” (Saugestad 2000: 308). In contemporary Africa, the nation states are still grappling with this legacy and trying to address the policies and structures that caused the poverty and degradation of African societies, left by their colonial counterparts. The indigenous issue in Africa relates to the internal relationships between the national majorities who, like the colonizers, see nation building as moving towards a hegemonic state, satisfying the interest of the majority, while minorities continue to suffer another form of internal colonialism. The term Indigenous, as defined in the United Nations system, is therefore a term to describe as well as address the unequal relationship between the state and those specific people who have occupied the territory since time immemorial.

“Africa has to deal with issues of oppression, marginalization and negative discrimination that continue after the liberation.” (African Commission 2005: 59)

African nations therefore, have to analyse the internal structural relationship of inequality that have persisted after the colonial powers left. In other words, African nation states have to transcend the war ravage, poverty and mismanagement of the postcolonial conditions in the majority of African states and move towards alternative

modernities that possibly unite the ancient with the modern in order to create a democratic society as laid out in the African Charter and advocated by the African Human Rights Commission.

The report states that issues of cultural difference and self-determination are essential factors to consider when dealing with the indigenous question. (African Commission 2005: 57) In their report they accept the United Nation's definition as reported by Martinez Cobo and highlighted by Irene Daes as a starting point for Africa. They also recommend that the indigenous people who are recognised by the UNWGIP, be recognised by African states. Therefore, not all black people are indigenous in South Africa today. The reality of the Khoe and San as indigenous peoples in SA will be argued throughout the paper. This thesis will deal with the term indigenous which raises some particular challenges in SA.

1.2.2 Khoe and San

The naming of the Khoekhoe and San is currently quite complex. At the 'grassroots' level in SA, individuals call themselves Khoesan. Those who have some academic knowledge prefer to call themselves Khoekhoe. On the level of national and international negotiation, the ǀKhomani, Khwe and !Xun people prefer to be called San, or 'Bushman'. They say that it doesn't matter which word you used, "*It depends on your tone of voice, when you use it.*" A derogative or negative connotation is often reflected in ones voice.

During the colonial and apartheid eras the Khoekhoe peoples were referred to, negatively, as '*Hottentots*', those who practiced herding as a mode of living. The San were negatively referred to as '*Bushman*' (Afrikaans: Boesman) and they were those practicing the hunting and gathering mode of living. When the indigenous resurgence started in RSA they chose to use the term Khoisan as a blanket term. It was as coined in 1928 by an academic named Leonard Schultz to refer to both Khoe and San peoples and their languages. As information and research on the Khoe and San history and language increased, the spelling of Khoikhoi changed and replaced the 'i' with an 'e' as in the Nama language and is now spelt Khoekhoe.

The #Khomani San are local and the Khwe and !Xun originate in Angola. About 4000 Khwe and !Xun were airlifted from Namibia to SA in 1990 where they were resettled as compensation for being used by the South African Defense Force as trackers during the Apartheid era's war along the border of Namibia and Angola.

The twin term Khoe and San is the latest development of how the people prefer to be named. The Khoekhoe and San peoples have a shared ancestry. With the help of the South African San Institute (SASI) and the Working Group of Indigenous and Minorities in Southern Africa (WIMSA), the San peoples gained some skills necessary to function in this changing socio-political and economic landscape. They now choose to be called San, separately from Khoekhoe. They express a fear of being dominated by the Khoekhoe whom they feel has a more privileged socio-economic and educational position.

A basic difference is that the San have suffered extreme poverty in terms of access to economic resources and basic services whereas the Khoekhoe, who largely became assimilated have suffered extreme loss of heritage and culture resulting in a severe loss of identity and sense of belonging. However, due to some San peoples moving to urban areas in search of jobs, the distinction becomes blurred. Those descendents currently living in urban areas prefer to call themselves Khoe-San. In this paper I will use Khoe and San as well as Khoe-San, depending on the context, to refer to the indigenous peoples in South Africa.² For some purposes the distinction may be important.

1.2.3 Revivalist Khoekhoe or Khoesan

The revivalist Khoekhoe or Khoesan refers to those people who began to publicly identify themselves as indigenous Khoesan from 1997 onwards. The revivalist groups are seen in contrast to those groups like the Griqua who have been advocating specific recognition since the early 1900s and the San who can trace their ancestry back to a hunting and gathering adaptation.

² I am aware that there are more groups of people in South Africa currently arguing for indigenous status.

1.2.4 Khoe and San Leaders

The term Khoe and San leaders refers to the representatives that make up the National Khoe-San Council (NKC) and the leaders and activists from the other organisations mentioned in 2.4.1 under the heading, 'National Level'.

1.3 Fieldwork

1.3.1 Data collection

My approach to this project has been a mixture of Anthropology and History. The focus area was archival research, both of parliamentary debates and reports; personal or telephonic interviews with role players in the formulation of the CRL Commission, some of the members of the Commission, and leaders of the active national Khoe and San indigenous organisations in SA.

My research period took place from mid June till the end of August 2005. I attended 2 conferences where I was able to interview the most prominent Khoe and San leaders. I later traveled to the Gauteng province where the office of the CRL Commission was and conducted a lengthy interview the CEO, Ms Pumela Madiba and Dr William Langeveldt (CRL Commissioner) as well as a brief informal meeting with the commission's chairperson, Dr Guma and its deputy chairperson, Ms Bethlehem. In Bloemfontein, I visited the University of the Free State and interviewed the NKOK secretary, the head of the Anthropology department, Prof PM Erasmus who has done research on the Khoe-San in South Africa and the Rev Kippie Jafhta, director of the Community outreach programme regarding the university's role in social transformation.

Back in the Western Cape I conducted a workshop in collaboration with the Cape Khoe leaders in the organisation called the *Khoe Cultural and Heritage Development Council* (KCHDC) to get their views, on the potential use of the CRL Commission regarding the promotion and awareness of Khoe-San issues. I interviewed the administrator and project manager of the Indigenous Peoples of Africa Coordinating Committee (IPACC), Mala Mareachealee. I attended a regional 'report back' meeting about the CRL National Consultative conference, in Cape Town and interviewed Marlene Le Roux, the Western Cape coordinator on the CRL Commission and spoke

briefly to Prof Suleman Dangor.

Line of questioning during the interviews

My line of questioning for the commissioners was whether they thought they had the capacity to fulfill their mandate, if so how and if not, why. Another question was whether this commission was redundant in light of the other institutions and government departments dealing with culture, language and religion? And finally I said that the objectives of the commission seem a tall order. Did they think that it was achievable or just a pipe dream?

Some people in political and administrative positions have referred specifically to the 'Khoe-San' communities whose culture was historically diminished. Mr Beukman³ argued that, "They were denied their cultural rights and referred to as coloured." He said that cultures like Jewish culture are well instituted, and resources have to be diverted to those cultures that need to be developed. I asked what had happened to this argument. Was it considered? If so, how. To all the political interviewees I asked why they thought the commission was established, what relation it had to other departments and wasn't this commission redundant as so many other government departments and institutions deal with culture, religion and linguistic issues. What did they think the positive implications of this kind of commission were.

My point of departure for the Khoe and San leaders and activists were whether they knew about the CRL Commission. I then asked about the representatives of Khoe and San interest on the commission and finally whether they thought this commission will hinder or assist their struggle as IPs in SA. I also added some of the political questions as mentioned above. All questions were open ended and I encouraged the interviewees to speak freely.

1.3.2 The insider's perspective

I have been actively involved with Khoe and San indigenous movement since 2000 and in 2001 became the secretary of the National Khoe and San Consultative Conference (NKOK). So I would be regarded as a revivalist Khoekhoe. Personally I

³ Chief Planner in Research in Governance

do not like this term as it continues to label me as someone who does not 'truly' belong. Since I embraced my Khoekhoe heritage and identity I feel a strong sense of belonging and for the first time in my life I feel proud of my African hair and features. As a woman growing up in a coloured community in Cape Town, it was very painful not having straight hair and sharp features as most coloured people aspired to be like white people. Strong biases against African heritage and any physical features that indicated this heritage existed even within the same biological families. But now I finally know who I am, where I belong and exercise my right to identify myself with my African ancestors, the Khoekhoe people. As Taylor (1994) explains,

“My discovering my own identity ...means that I negotiated it through dialogue, partly overt, partly internal, with others. That is why the development of an ideal of inwardly generated identity gives a new importance to recognition. My own identity crucially depended on my dialogical relations with others.”

Even though my cousin doesn't identify as a Khoekhoe, this does not mean that I am not a Khoekhoe. Our experience or dialogical relations in life were different. Others may prefer to identify with their European heritage.

Conducting research within my own community and country was not easy. Maintaining objectivity was a problem because my bias to the Khoe and San indigenous issue was very strong. It was easy to get the interviews with the Khoe and San leaders because I was familiar with them. Getting interviews with the commissioners were not easy. I had tried to set up appointments while still in Tromsø but only one commissioner responded and said that the situation on the board was sensitive and he didn't want to divulge anything that was not first sanctioned by the board of commissioners. This I found discouraging but I persevered. It did however influence my interviews with those who did agree to be interviewed.

I was also aware of the intra-conflict of the Khoe and San movement. After attending the United Nations Working Group on Indigenous populations in 2003, I realised that such intra-conflict was a common phenomenon that occurred in most indigenous organisations and different stages of development. However, while doing my research I tried to convey a neutral attitude with the people I interviewed.

1.4 Outline of chapters

Chapter 1 contains the problem statement and gives a brief explanation of concepts used in this thesis. It also briefly reports the fieldwork process. Chapter 2 deals with the historical background and context of the Khoe and San in the RSA. It attempts to put the Khoe and San indigenous situation within the broader international arena by bringing in legal instruments and mechanisms that can be useful when addressing indigenous issues. A few examples are given about current issues concerning the Khoe and San peoples. To conclude this chapter an overview of the current Khoe and San organisations is given.

Chapter 3 and 4 deals specifically with the CRL Commission in that chapter 3 explains the driving forces behind the establishment of the commission mainly from a political perspective and chapter 4 outlines the physical composition and mandate, including some examples of the activities of the commission. Chapter 5 includes some commissioners' perspectives and their main areas of focus as well as Khoe and San perspectives and concerns regarding their accommodation within the mandate of the CRL commission.

Chapter 6 encapsulates a wider context to the debate regarding the manner in which indigenous peoples resurge using ethno-political arguments. It includes debates for and sceptisms against the concept of indigenous. Most importantly it argues against the claim that all black Africans are indigenous, and tries to show that indigenous is a concept or instrument that groups who are still experiencing marginalisation can use in to fight for a better relationship with the ruling nation state.

And finally chapter 8, namely the 'rainbow' nation concludes with the notion that a true 'rainbow' nation should include all its constituents, in this case the Khoe and San peoples of South Africa.

Chapter 2: Background & Context

2.1 The Khoe-San in South African History

According to archeological genetic and material finds there is no question that the Khoekhoe and San have priority in time. They are aboriginal in that they did not emerge from any other country further north in Africa or Europe. (Deacon, 1999) They have their origin in Southern Africa, noting that the state borders were imposed by the colonial conquerors that did not consider the territorial borders of the peoples present. The history of South Africa marginalised the Khoe and San peoples as they became classified as ‘coloureds’ and many became assimilated and acculturated.

They therefore have historical continuity with the land in South Africa. Their cultural distinctiveness is still observable in rural areas. Urban Khoekhoe and San have become assimilated either voluntarily or through imposition. (Abrahams 2004: 27) Distinctiveness in language exists and according to linguist, Southern Africa is the only area where people used the clicks.⁴ The Xhosa language, which is classified as a Bantu language, has clicks because of their contact with the people in the south.

The Khoe and the San peoples have experienced subjugation, marginalisation, dispossession, exclusion and discrimination throughout the centuries, especially starting in 1652 when Van Riebeeck, an employee of the Dutch East India Company, settled at, what was then called, the Cape of Good Hope. Today in the new dispensation, they fear it can continue even though SA has a Human Rights enshrined Constitution and a National Plan of action applauded by the United Nations. The Khoe and San people continue to be part of a minority sector in the society.

2.1.1 Negotiating a ‘New’ South Africa

As South Africa headed towards the end of a minority institutionalised racist rule by Afrikaaner Nationalism, the “Liberation Struggle” intensified and together with international sanctions brought the Apartheid regime to an end. A bloodless or almost bloodless change took place, as political organisations, such as the ANC, were made

⁴ Except the Hadza and Sandave in Tanzania

legal and accepted back into the country. Leaders, including our first democratically elected president, Mr Nelson Mandela, were released and entered a negotiation process.

In 1991 the Convention for a Democratic South Africa (CODESA) which was a multiracial forum led by Mr Mandela and Mr De Klerk to work on a new constitution for SA, was established. The Khoe and San leadership were not invited to join these discussions (Griqua and Coloured people's Opinion, March 1997). The Griqua Organisations existed before, during and after the apartheid regime. So it remains a question, why they were not invited to attend the negotiations for a democratic South Africa.

Democratic elections, in which the ANC won overwhelmingly, were held on the 27 April 1994, now called Freedom Day. The entire population was afforded an opportunity to make inputs into the Constitution after the CODESA process. Griqua Khoekhoe, Nama Khoekhoe and San groups made inputs for the inclusion of their language. This was accepted and added to the RSA Constitution as marginalised South African languages needing promotion, protection and development. The new constitution was approved and adopted in 1996. The Khoe and San were recognised as a nearly extinct minority group with a threat of losing their language and cultural heritage. Hence the inclusion of clause, "promote and create conditions for the development and use of, the Khoi, Nama and San languages," got included. (Section 6 subsection 5a ii, SA constitution 108 of 1996)

2.1.2 Efforts to unite Khoe and San

Efforts were made to unite the Khoekhoe coming from rural and urban areas. The Khoe and San namely the Griqua Khoekhoe, Nama Khoekhoe and San sought collaboration and support in the growing International Indigenous arena. They elected to be called "The Khoe-San Peoples" and move out of the racially defined group category to a group category based on their African heritage and identity. These efforts gave the leadership an opportunity to lobby and advocate for recognition by international indigenous peoples and the S.A Government.

The Ministry of Provincial Affairs and Constitutional Development under Minister Vallie Moosa was approached. Griqua organisations were encouraged to unite and hence held a meeting on the 25 June 1996 at Maselspoort, Bloemfontein to form a united body. There the Griquas elected to form the *National Griqua Forum*. A turning point for a transitional form of recognition and acknowledgement came in 1997 with the *International Conference of Khoe-San Identities and Cultural Heritage* held from 12th to 16th July in 1997. (Banks 1998) An organisation called the *Cape Cultural Heritage Development Organisation* later the *Khoe Cultural Heritage Development Council*, brought leadership of all groups together from across South Africa. They affiliated themselves under the National Council of Khoe Chiefs of South Africa that was headed by Paramount Chief D.J.A Kanyiles. These ‘new-comers’ were part of the revivalism of the Khoe and San resurgence and hence called the ‘revivalist’ Khoekhoe or neo-Khoekhoe in recent academic works.

2.1.3 Excluded from States mechanisms for restitution of justice

In the same year of 1997, the Truth and Reconciliation Commission, which was a visible government plan for transformation and redress, began hearings regarding human rights violations between 1960 and 1993. The Land Restitution Act of 1994 has a cut-off date of 1913. Both initiatives automatically excluded violations against the Khoe and San peoples of SA because they experienced gross human rights violations and land loss much earlier. Overtly, these plans of redress seemed to address mainly the Bantu speaking population and those who physically took part in the recent liberation struggle. However, during this period Khoe and San individuals regarded themselves as black and part of the *Black Conscious Movement*.

While the hearings took place, the Khoe and San revival was emerging. In Cape Town, Mr Joseph D. Little, as principal indigenous leader of the Cape Khoe, had contacted the ILO Justice and Equality Dept and requested from Ms Henrietta Rasmussen to lobby the R.S.A Government into recognising the Khoe and San Peoples as Indigenous Peoples.⁵ The ILO financed a pre-planning Conference that was held in 1998 in Upington. This led to the establishment of the *National Khoe-San Forum*, which later became the *National Khoe-San Council* (NKC). This non-

⁵ Interview with Joseph Little

statutory body was formed with a single mandate to liaise with government on Khoe and San constitutional accommodation of its leadership.

2.2 Unfinished Business

Affirmation of Khoe and San identities had implications for the positions assumed in relation to the former apartheid categories of 'coloured', African, native, aboriginal, indigenous and black. The Khoe and San rejected the coloured identity as a false and imposed apartheid and colonial category and seek now to exhalt their African Heritage.

Before 1994, the Khoe and San did not feature in the South African constitution and in legal and political discourse as legitimate communities with identities, cultures and historical claims that deserved to be sustained. They were written out of the history of South Africa and regarded with negative stigmatization as a lost heathen and primitive people. Within the context of colonial cultural and racialised hierarchies, the Khoe and San were located at the bottom of the ladder. This, in time, caused the descendents, especially those living in urban areas, to distance themselves from their Khoe and San identities and cultures. Westernised names and the ability to speak western languages and a relatively light skin colour caused the descendents of the Khoe and San to be catergorised as 'coloured' and some even got themselves classified as 'white'. Taylor (1994) describes this as a form of internalized racism.

Following the repositioning and introduction of South Africa into the international arena, existing Khoe and San organisations like the Griqua Khoekhoe, and the San under the guidance of Working Group of Indigenous and Minorities in Southern Africa (WIMSA) and the South African San Institute (SASI), the Khoe and San communities used the national and international forums, like the UN Working Groups on Indigenous Populations and the UN Decade of Indigenous Peoples, to make their existence and issues known. The plan was also to inform and activate government response and recognition to land restitution, constitutional accommodation, cultural and linguistic as well as heritage issues. From around 1997 a growing number of 'coloureds', started to promote Khoekhoe, San and Khoe-San as 'Indigenous First Nation' South Africans. This was part of their process for psychological and socio-

political as well as socio-economic repositioning in the national and international arena.

2.2.1 International instruments

The following international and regional Human Rights instruments are relevant to the situation of the Khoe and San indigenous peoples in SA.

SA has adopted, incorporated and ratified the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights (ICCPR) of 1966. SA has not ratified the Covenant on Economic, Social and Cultural Rights but the National Action Plan of Implementation (1998) states that these instruments guide it. The international legally binding treaties SA has ratified and incorporated into its legal domestic system are the Convention for the Eradication of Racial Discrimination (CERD), the Convention for the Eradication of Discrimination against Women (CEDAW), the Convention Against Torture (CAT) and the Convention for the Rights of Children (CRC). Chennells and Du Toit (2004: 103) argue that even though SA has not ratified the ILO Convention 169, it can be used when arguing for access and ownership of land, (Part 2 Art.13; 14) as the SA Constitution recognises the status of international law.

Art. 27 of the CCPR relating to ethnic, religious or linguistic minorities combined with Article 1, 2, 14, 17, 26 and 27 has proven to be useful in court cases against the state by indigenous peoples. The United Nations Human Rights Commission (UNHRC) commented,

“The Covenant draws a distinction between the right to self-determination and the rights protected under article 27. The former is expressed to be a right belonging to peoples and is dealt with in a separate part (Part I) of the Covenant. (General Comment 23, para.3.1)

South Africa has taken these articles into consideration when formulating the ‘Chapter 9’ institutions, specifically section 185 in the call for the establishment of the CRL Commission as will be shown in chapter 3. The issue of collective rights is acknowledged in the form of community rights.

The creation of the African Charter was a focused attempt to “ensure that colonialism in all its’ forms is eradicated” within the administrative structures of the state. (Preamble of the African Charter). By making a distinction between Human and peoples’ rights, the charter acknowledges the shortfall of universal rights when it comes to African Peoples.⁶ Taylor (1994) argues that, “universalism of rights leads to diversity blindness which results in domination of the hegemonic culture and therefore marginalisation of minority cultures.” It refers to the eradication of negative but implementation of fair discrimination regarding the various aspects of life and living.

2.2.2 National Instruments

The Constitution of SA has a number of instruments pertinent to the Khoe and San peoples. The Pan South African Language Board (Section 6, subsection 5) clearly states the promotion and development of Khoe, Nama and San languages. Section 9 refers to the equality clause and has a direct relation to affirmative action provisions and deals with uplifting those people who have been disadvantaged due to unfair discrimination. The Bill of Rights (section 30 and 31) calls for minority rights. Chennells and Du Toit (2004: 102) argue that these clauses protect individual as well as collective rights. They argue that the inclusion of 30 and 31 was due to the tensions created by some of the former apartheid regime groups who wanted to ensure rights for ‘particular ethnic minorities in the new political dispensation.’ The CRL Commission was another one of these ‘goodwill’ mechanisms. (Ibid)

2.3 Current issues of the indigenous peoples of South Africa

2.3.1 Khoe and San peoples as indigenous peoples in South Africa

Notions of ‘African’ and ‘indigenous’ require re-examination. The argument that all shades of black are indigenous to Africa must be deconstructed. Abrahams argues that, yes, all black are indigenous to Africa but indigenous peoples are indigenous to specific regions in Africa. They share a continuation with the land, they have priority

⁶ For example, it contains Articles; 2, 4, 14, 16, 18(1), 21 and 24 which were proven useful in the Ogoni People v. Nigeria Court Case (2001)

in time and voluntarily maintain their cultural distinctiveness and share experiences of subjugation, marginalization and dispossession.⁷

Africa is a diverse continent with different climatic conditions and geographical formations. Indigenous peoples believe that God put them on earth to protect and preserve the land. They therefore hold centuries of tried and tested knowledge of managing the land and its people. “Africa has one tenth of the human population but on third of the world’s languages.” (Dutton and Archer 2003: 1) Given that languages hold knowledge, this would imply that Africa’s diverse languages contains a major source of knowledge as the near extinct and marginalised Khoe and San languages do.

Saugestad argues that indigenous peoples are often a special type of traditional community that does not itself constitute a political entity. (Saugestad 2005) She continues that one should look for processes and relationships with the state, not the specifics of properties and cultural content when identifying indigenous peoples. Non-Recognition or misrecognition (Taylor 1994) from the nation state regarding a distinct background gives reason for justified special needs for indigenous peoples. Saugestad argues,

“Emphasis should not be on the historical fact of suppression by annexation or conquest, but the degree to which suppression – be it physical violence, deprivation of rights, stigmatisation to marginalisation – has continued as a living memory and a contemporary experience.” (Saugestad 2005: 5)

The concept of Indigenous relates to the process of changes and kind of relationship the people had and has with the dominant intruding rulers, namely colonisation, slavery, apartheid and now supposed liberation and democracy. It is not about secession.

2.3.2 Self-determination or secession

The broad understanding of the term *self-determination* is the right to *participate* in the democratic process of governance and to influence one’s future – politically, socially and culturally. (Art 20 of the African Charter on Human and Peoples rights)

Niezen argues that the call by indigenous peoples for the right to self-determination is for liberation.

⁷ From my interview with Dr Abrahams

“For most indigenous peoples, liberation means an honorable relationship with states in which their rights to land are affirmed and compensation for their losses and suffering is honorably provided. Liberation means the ability to exercise self-determination, to develop culturally distinct forms of education, spirituality, economic development, justice, and governance.” (Niezen 2002:18)

This is the case in RSA. The Khoe and San indigenous peoples want self-determination and to be a part of the co-governance system. But some government officials have voiced concerns that the Khoe and San desires seemed reminiscent of the separatist policies of the apartheid era. In this case, Niezen also argues that although secession is desired by some ethnic groups, this is not the case for indigenous peoples as their desire for self-determination is not for secession from the nation state but recovery of their cultural and historical territories within the nation state. He argues that in the “zero-sum secessionist conflicts” it is,

“Very likely, few ethnic minorities that currently aspire to statehood would be satisfied with less. In the case of indigenous peoples, the experiment has not been supported by some states, ostensibly because of concerns that it would inflame similar secessionist passions. But leaving statehood as the only way for a people to achieve recognition of their right to self-determination is, on the face of it, more likely to encourage strident irredentism.” (Niezen 2002:140)

The zero-sum phenomenon is that there is a fixed amount of resources like land. More cannot be manufactured and produced. It is therefore understood that those who have the resources like land, are not necessarily willing to share it now. This is one of the factors that inhibits states to recognise indigenous peoples as they would have to share the land with them in order to justify their territorial rights.

2.3.3 Land Restitution

The ILO Convention 169 is the only legally binding statement about indigenous people but South Africa has not ratified this convention. According to Nigel Crawhall, the SA government is hesitant about ratifying the ILO169, not because of racial prejudice but because of a sensitivity not to instigate separatist movements. (Crawhall, 1999)

The Restitution of Land Rights Act 1994, states that

“...persons or communities disposed of property after 1913 as a result of past racially discriminatory laws and practices could lodge claims for the return of

their land/property or obtaining equitable compensation for such land until 31st December 1998”.

This quite obviously excludes the cases of the Khoe and San peoples. However a landmark court case where a Khoekhoe community won a land claim, including mineral and precious stone rights, against a state owned company *Alexcor*, marks a turning point in the interpretation of The Restitution of Land Rights Act of 1994. About five more Khoe and San communities have successfully acquired land through this act. (Chennells and du Toit 2004)

2.3.4 Sacred Sites

The competition here is with the tourism industry. The post apartheid era has seen an influx of tourism and a huge interest by Europeans in indigenous culture and heritage. One such interest is the ‘Rock Paintings in various mountainous areas in RSA. The majority of these sites are on farm owned land and white farmers who benefited from the apartheid system own all this land. These owners now benefit from these new tourism interests. The Khoe and San peoples want free access to their ancient spiritual heritage sites but farmers are reluctant to relinquish their revenue.

Another specific spiritual and heritage site is in Cape Town at the confluence of the Liesbeeck and Black rivers. The urban Khoekhoe are asserting their presence by reclaiming spaces in the city area. They have put in a claim for access to the river confluence area for reason of cultural and spiritual reconnection and revival. Their intention is to build a Khoekhoe museum and a place for spiritual meditation. The Khoekhoe movement in the Cape Town area argues that they have suffered cultural and human genocide since the Dutch settlement process. Today their people are reduced to poverty stricken beggars, criminals and drug abusers. Ms Sharon Leng expressed that the opportunity to reconnect with the land can heal their wounded people dispossessed of land, history, culture, which are some of the vital forces to ensure a person’s self-pride and dignity.⁸ Their claim has not been addressed although it was listed and accepted as one of the sites on the Khoe-San Heritage Route.⁹

⁸ Interview with Ms S Leng, leader of the Goringhaiqua Cultural Council, Cape Town and Mr R Abrahams, former researcher for the South African Heritage Resource Agency, July 2005

⁹ This is one of the projects under the Arts and Culture Department but nothing has been done on it since 2002 after the initial stage of identifying the sites were completed by SAHRA

In 1994 the state implemented a Reconstruction and Development Program which included a socio-economic policy framework to uplift impoverished communities. The Khoe and San peoples do not only need economic upliftment but cultural upliftment too. The African Commission noted that,

“Because of the root of subordination, poverty alleviation and mainstream welfare programmes are not suitable as they don’t address the overall subordination and dispossession of these groups.”
(African Commission 2005:67)

2.3.5 Affirmative Action Policy

The Affirmative Action plans as a measure of redress in South Africa are somewhat problematic on certain levels for the Khoe and San indigenous peoples. The use of the word ‘black’ is not inclusive of all non-white groups who were marginalised during apartheid. In Cape Town, for example, people from the previously category called ‘coloured’ is not able to benefit from this policy. When applying for a job, applicants have to state whether they are black, white or coloured. The coloured category is not mentioned in the affirmative action policy yet it is categorized on application forms. As Khoe and San peoples are still regarded as coloured, this serves to continuously marginalize and discriminate against them.¹⁰

2.3.6 Constitutional Accommodation and the Traditional Leadership Bill in accordance with Chapter 12

During the white paper discussion process regarding the Bill on Traditional Leaders and Governance as provided for in Chapter 12 of the SA Constitution, the Khoe and San indigenous leaders tried to be accommodated in this Bill. (Chennells and du Toit 2004) This was an extremely contentious issue as many Khoe and San leaders started to be identified or simply identified themselves as Traditional leaders. It was later argued that due to the void in history regarding San, but especially the Khoekhoe peoples, tracing back bloodline heritage was problematic and arguments regarding authenticity arose. Intra-Khoe-San bickering and tensions stalled the negotiation process for constitutional accommodation of Khoe-San leaders. The state had to find an acceptable way of determining who the leaders were. Amongst the Xhosa and Zulu

¹⁰ Interview with Mr Basil Coetzee, leader of the Khoekhoe Chochoqua Cultural Council, representative of the Labour Union at Polls Moor Prison, Senior guard at the prison.

and other people categorised as black under the former NP government, had little problem determining who the leaders were as they had a strong continued connection with their African culture, language and traditions.

However, in some cases leaderships were contested as some Traditional leaders were collaborators of the NP Government and may even have been appointed by them. This was mainly due to the continued methods of indirect rule as practised during colonialism, the divide and rule method of Apartheid, and its policy of ruling by cultural difference. Much more research was needed regarding the Khoe and San leadership. Prof J Bredekamp and Prof Olivier were assigned to evaluate research reports and produce a report based on their own evaluation of the reports, namely the *Status Quo Report* in 2000. In addition, the South African Human Rights committee, as commissioned by the government, has also produced a report on the rights of Indigenous peoples in the same year. However, both of these documents remain unavailable to the public. The Khoe and San activists and leaders have called for it to be made available on numerous occasions.

In the end the Department of Provincial and Local Government (DPLG) recommended that the Khoe-San indigenous issue be dealt with in a separate process due to the many arguments regarding lineage and leadership of some current leaders. The National Khoe-San Council (NKC) is still in a liaison process with the SA government regarding the constitutional accommodation of the Khoekhoe and San peoples. In 2004 the DPLG established an *Inter-departmental Forum* to address Khoe-San leadership and other issues. Departments and Institutions on the forum are; the Departments of Provincial and Local Gov, Land Affairs, Foreign Affairs, Education, Agriculture, the Human Rights Commission, the Commission for the Rights of Cultural, Religious and Linguistic Communities, the Freedom Park project and the Pan SA language Board (PanSALB).

This *Inter-departmental Forum* is drawing up an RSA plan of action for the Second Decade of Indigenous peoples, developing an integrated interdepartmental action plan relating to the full spectrum of work being done by South Africa on Khoe-San related

issues. The Department of Provincial and Local Government has submitted a cabinet memorandum to parliament and is awaiting cabinet's response. (IPACC and OHCHR 2004: 3) A discussion document for the debate concerning Khoe-San leadership and other issues is expected.

2.4 Overview of the Khoekhoe, San and Khoe-San Organisations

In response to the continued political and social change in RSA, the Khoe and San peoples have begun to reposition themselves and form community based or cultural organisations, as prescribed by government departments like the Arts and Culture Department in the Western Cape, in an attempt to empower themselves for effective redress. This repositioning is largely influenced and supported by the global arena of the indigenous movement and its networks.

There exist about 38 organisations locally or regionally that are affiliated to national Khoe and San bodies. These organisations are involved in government's local and regional civil engagement programs like:

- Arts and Culture Department's different national events like conferences and commemoration activities
- Municipal reconstruction and development plans
- Language Commission Western Cape is most progressive with a Nama Language Teaching Project, Booklet and CD
- Freedom Park has Khoe and San representatives on its organising committee
- The commission for the promotion and protection of the rights of cultural, religious and linguistic communities (CRL Commission) has 2 Khoe-San experts on the board of 18 commissioners.

However, despite the high number of organisations, the form and degree of engagement is minimal. The majority of the Khoe and San peoples, leaders and activists do not have the necessary capacity to effectively engage regarding bureaucratic processes, the law and their rights as a national minority. This was expressed by Khoe and San representatives at the CRL's National Consultative Conference and at a human and indigenous training workshop held by IPACC and the UNHCHR for RSA's indigenous leadership. I have experienced this in meetings where I did not make any input because I felt it was too naïve and simple.

2.4.1 National level

The Griqua National Conference (GNC)

The Griqua National Conference of South Africa, formed early in the 20th century by AAS le Fleur I, has been one of the more prominent Griqua and Khoe-San organizations, "...making them the oldest indigenous organisation on the continent." (IPACC and UNHCHR 2004: 7) The organizations split in two in the late 1960s.

The office of the bigger faction, now headed by paramount chief Alan le Fleur, is based at Kranshoek, Plettenberg Bay where their head resides. The head of the other, Anthony le Fleur, resides in Knysna whilst the office of this faction is at The Craggs near Knysna. Succession in both GNC's is partly determined by royal seniority but leadership ability also comes into play. The oldest son of the chief/volkspresident is usually his successor. It is customary for the head to identify his successor. However, the choice must be confirmed at a National Conference.¹¹

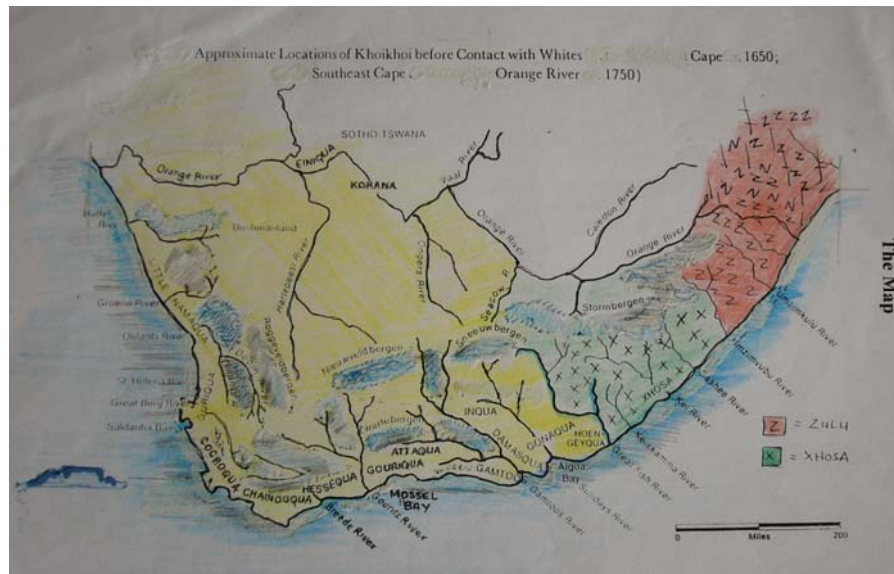
They currently have 300 000 members within sub-groups that span the whole country. They have actively engaged with the nation state for official recognition since the late 1900s. (IPACC and UNHCHR 2004: 7)

The Khoe Cultural and Heritage Development Council (KCHDC)

Mr Joseph Little is the main figure behind the creation of the KCHDC and is indicated on the organization's letterhead as the CEO. Poem Mooney is the Chairperson. The Council comprises leaders of affiliated organizations (or so-called 'tribes'). KCHDC chiefs are formally sworn in at ceremonies under the auspices of the National Council of Khoikhoi Chiefs of South Africa, created by Little and Daniel Kanyiles, leader of the Griqua Peoples Organization/Griekwa Volksorganisasie who assumed the title of paramount chief of Griqualand West and Albania. Kanyiles headed the National Council of Khoikhoi Chiefs before his death in 2003.

¹¹ From my interview with Mr Cecil Le Fleur

As part of their cultural revival the CCHDC based their organisations on names and areas on the geographical regions they have researched and believe that their historic tribal African Khoekhoe



ancestors occupied. For example, in the Western Cape their currently exists 7 groups namely the Goringhaiqua, Cochoqua, Gorachouqua, Chainouqua, Hessequa, Gouriqua and the Attaqua. All these groups have leaders with the major role of building the group within the specific region. Similar groups exist in the Provinces of Eastern Cape, Gauteng, Kwa Zulu Natal and the Northern Cape. The map above illustrates such historical mapping (Elphick 1985: 51).

These groups are generally referred to as the ‘Revivalist Khoekhoe’ or the Neo-Khoe-San (Besten 2006). This revival played a role in giving individuals an opportunity to self-identify with their African heritage.

Critics claim that the sole purpose of this ‘Revivalist Khoekhoe’ is for economic enrichment. This is part of the intra-conflict concerning Khoe and San leadership aspirations.

The San Council (SC)

This council was formed in 2002 by the †Khomani, !Xun and Khwe San. The chairperson is Mr Petrus Vaalbooi and the Secretary is Mr Colin Louw. They are supported by the regional umbrella organisation the Working Group of Indigenous Minorities in Southern Africa (WIMSA) and the South African San Institute (SASI). Helped by their legal advisor, Roger Chennels, they have successfully negotiated a

royalty agreement regarding the processing of the hoodia plant which is prized for its appetite suppressing qualities and promises valuable revenue income for the community. They are still faced with many challenges of management and protection of their resources and knowledge systems. One such challenge is the management of the Transfrontier Park that joins South Africa and Botswana. The †Khomani say,

“We have commercial and symbolic rights in the park but we still suffer disrespect from the park management... How could Mbeki melt the Kalahari Gemsbok Park with Botswana? Our traditional land now has a Tswana name which means nothing to us. With whom and how did they communicate about this?”(Dutton and Archer 2003)

Challenges like these have forced the †Khomani to ask for constitutional accommodation to ensure that the voice of their people are heard, respected and considered.

The National Khoe and San Consultative Conference (NKOK)

The NKOK is an umbrella non-governmental organisation to strengthen the Khoe and San peoples struggle. It consists of 20 elected members from 10 regions in SA. The current chairperson is Mr Cecil le Fleur and the Secretary Mr Frans Kraalshoek. The office of the NKOK secretariat is currently at the University of the Free State in Bloemfontein. It was set up to implement the 12 resolutions adopted at the initial conference in April 2001.

They have lobbied and engaged with national and local government departments for the Khoe and San Legacy Project, Khoekhoegowab languages projects, and poverty alleviation projects as well as supported the NKC in their Government liaison process. They also played a major role in the repatriation process of the remains of their ancestor, Sarah Baartman. Before the World Summit on Sustainable Development (WSSD) held in Johannesburg in 2002, the NKOK hosted the International Indigenous Peoples Summit on Sustainable Development in Kimberley, which adopted the Kimberley Declaration and the Indigenous Peoples Plan of Implementation on Sustainable Development (Tebtebba 2003). At the WSSD, the International Indigenous peoples movement successfully lobbied for the following

sentence to be included in the Johannesburg Declaration, “We reaffirm the vital role of indigenous peoples in sustainable development.”

At their second national consultative conference held in Springbok, 2003, the people reaffirmed the need for a non governmental umbrella body to unify the Khoe and San active organisations. The motto of this conference was, “*Tari da a!khais ge sida/gai*”, “Our strength is in who we are”.¹² While the NKOK may not be functioning strongly at the moment, reports show that the people are strengthening themselves in their respective regions.

The National Khoe and San Council (NKC)

This council consists of 21 members, representatives from the Nama, Griekwa, San, Korana and Cape Khoe indigenous groups and was formally established on 27 May 1999. It is chaired by Mr Joseph Little. The Department of Provincial and Local Government availed Mr J Meiring as the secretary. The mandate of the NKC is to liaise with the state regarding constitutional accommodation for the leadership of the Khoe and San indigenous peoples. Even though the RSA constitution has ratified and adopted many international and regional instruments regarding human rights, the RSA constitution needs some amendments for the inclusion of the Khoe and San First Nation Indigenous peoples in terms of their specific dilemma as an indigenous minority.¹³

2.4.2 National attitudes

However, the issue of indigenous in RSA remains a pertinent question as decisions are left largely to the leaders in Government institutions and departments. In an interview with the National Minister of Arts and Culture, Mr Pallo Jordan, regarding the visit of United Nations Special Rapporteur, Rudolpho Stavenhagen, he argued that the Department of Arts and Culture regarded everyone who was of African descent as indigenous except the immigrant groups from Europe and Asia. He added that the

¹² Ms Jean Burgess was the one to suggest this motto for the conference because she felt strongly that when we know who we are, we become stronger in that our self pride and dignity is restored. She is the leader of the Khoekhoe, Gonoqua Cultural Council in Grahamstown and current treasurer of the NKOK. She has participated in numerous conferences regarding indigenous peoples.

¹³ Mr Joseph Little, chairperson of the National Khoe-San Council, said that they want the words ‘First Nation Indigenous’ in order to differentiate between the other indigenous peoples in South Africa who settled due to phenomena of ‘expansion into adjacent territories’.

Khoekhoe did not suffer as much as the Africans and their indigenous languages are virtually non-existent with Afrikaans or English being their first language now. He continued that during apartheid the Khoekhoe received more privileges than the Africans did and finished by saying that,

“We have to bring political stability, social harmony and economic prosperity to SA and one way of doing that is to credit our common ancestral heritage”.
14

In the next chapters I will look at the implications of this statement. The CRL Commission was set out to ‘credit’ the common ancestral heritage of RSA. As shown in this chapter, the Khoe and San are part of the heritage. At the same time ‘social harmony’ shall be preserved. How does the CRL Commission balance these concerns?



Petrus Vaalbooi during the Civil Society engagement with the United Nations Special Rapporteur, Rudolpho Stavenhagen, in Bloemfontein 2005.



¹⁴ A media statement on 10 August 2005

Chapter 3: Driving forces behind the establishment of the CRL Commission

“Democratic constitutionalism provides an opportunity for compromise, by postponing decisions on sensitive and potentially unresolvable questions.”(Klug 2000; 18)

It would seem that the CRL Commission took so long to be established because it addressed the sensitive issue of separatism by a strong part of the Afrikaner people. It was a sensitive and potentially unresolvable matter during the 1990's that probably led to the ANC's compromise of allowing the establishment of a Volkstaat Council in the Interim Constitution of 1993, before the National election and the victor was uncertain. The later CRL Commission in the Constitution of 1996 seem now to be a compromise of the Afrikaner based parties, post the 1994 National election that the ANC won with a landslide victory. The establishment of the CRL Commission must be seen in the context of South Africa's immediate and past liberation struggle, which was led by the ANC and supported internationally. The policy of democracy, justice and equality combined with transparency and inclusivity, was the bases on which the ANC aimed to establish the 'New' South Africa.

3.1 Political interest

3.1.1 End of white domination

In 1989, a major turning point in the liberation struggle of non-white South Africans occurred. The OAU and the UN adopted the Harare Declaration as a result of the constant prompting by the ANC and the international arena to end apartheid. This declaration called for a basis to be set for the transition to democracy and that a representative and elected body should draft the SA constitution. What followed was a series of negotiations between ANC and the NP as well as other political parties and the broader public.

In 1991 the call for a representative and elected body was answered when the Convention for a democratic South Africa, CODESA, was established. This collapsed, however, when the ANC and the NP failed to reach an agreement

concerning the amount of votes that constitutes a majority. Later the Multi-Party Negotiating Process was formed to continue negotiations. A slogan of the political struggle was, “power to the people, the people shall govern.” The consultative constitutional process was transparent with lots of media coverage.

3.1.2 Not a smooth process

As was evident, this process was by no means smooth. The Pan African Congress (PAC) and Azanian People’s Organisation (AZAPO) walked out of the negotiating process and accused the ANC of selling out. Other parties like the Inkatha Freedom Party and the Freedom Front argued for recognition of their cultures and access to land. Both parties represented people who enjoyed a specific power base. The IFP led by Mr Mangosuthu Buthe, enjoyed power in present day, KwaZulu Natal. The Zulu based IFP wanted a federal constitution to be implemented to safeguard the rights of ethnic minorities as well as a means to solve the economic disenfranchisement of South Africa’s majority¹⁵.

The Afrikaans Weerstand Beweging (AWB) supported this motion.¹⁶ General Constand Viljoen, leader of the Afrikaner based, Freedom Front, was finally swayed into continued negotiation by the ANC when the ANC promised that a Volkstaat would be considered. The requests of the IFP and the AWB seem to be the forces which finally led to the incorporation of Chapter 11 on Traditional Authorities which calls for the establishment of a Council of Traditional Leaders to accommodate the IFP, and Chapter 11A which calls for the establishment of a Volkstaat Council, for the Afrikaners. The aim of the Volkstaat Council was to investigate the possibility of establishing an Afrikaner state within South Africa.

“The Council was supposed to serve as a constitutional mechanism to enable proponents of the idea of a Volkstaat to constitutionally pursue the establishment of such a Volkstaat...”¹⁷

The Volkstaat Council was a temporary body to make recommendations regarding the right to self-determination and to explore the possibility of an Afrikaner State, as promised by the ANC. It was agreed in later negotiations that all issues raised by the

¹⁵ Inkatha Freedom Party, 26 April 2006: <http://www.ifp.org.za/>

¹⁶ Towards democracy, 25 April 2006: <http://countrystudies.us/south-africa/36.htm>

¹⁷ Constitution of the Republic of South Africa, Act 200 of 1993, later repealed in 2001

Volkstaat Council were to be addressed by the CRL Commission. The CRL Commission and its mandate to promote and protect the rights of cultural, religious and linguistic communities was an attempt to move away from the former segregationist racist Afrikaner thinking and onto a more restorative and inclusive African based discourse based on diversity in culture and ethnicity. Previously, in 1995 the Department of Constitutional affairs launched a project called *Masakhane*

“This campaign was evaluated and re-focused-it aims at mobilising all sectors of society to actively involve them in redressing imbalances of the past. It also sought to create a society characterised by new norms and values, a new consciousness and sense of responsibility among all citizens with a view to transforming governance and building a new nation.”

Masekhane is an example of the change that was happening in South Africa after the 1994 victory of the ANC. It became increasingly obvious that the object of a Volkstaat Council, to form a separate state within SA, was out of order with the new black African based government. The final constitution came about as a result of negotiated settlement and compromise between the former apartheid regime, the National Party, and the African National Congress. The CRL Commission was a last minute deal between the ANC, the NP and the Afrikaaner based Freedom Front in 1996.

“At 2.20 am on Friday 19 April 1996, the negotiators from the Freedom Front, National Party and the African National Congress emerged from a three-way session on cultural councils, to announce that there was political agreement on the inclusion in the Constitution of a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities. As reflected in the minutes of the 38th meeting of the Constitutional Committee of the Constitutional Assembly, 18-19 April 1996, it was further agreed that the principle of collective rights of cultural, linguistic and religious communities would be reflected in the Bill of Rights.” (Beukman, 2004: 2)

The call for a CRL Commission seemed to come straight out of the United Nations Conventions for Civil and Political Rights Art 27. A carefully drawn plan to avoid secession yet allow for a form of collective rights.

3.2 Constitutional Process

3.2.1 Chapter 9 Institutions

In 1994, the newly formed government of RSA established various state mechanisms to promote constitutional democracy. These institutions commonly referred to as the ‘chapter 9’ institutions include; the Public Protector, the South African Human rights Commission, the CRL Commission, the Commission for Gender Equality, the Auditor General and the Electoral Commission. They report annually to the National Assembly and are independent, subject to the constitution and law of RSA. (RSA Constitution, Act 108 of 1996) Their general purpose is to protect, promote, monitor, investigate, report, intervene legally and educate the people on their constitutional rights. They have to facilitate and make real the provisions in the Constitution.

The Public Protector protects citizens from unfair treatment by the state and its officials as well as from inefficient administration and dishonesty with respect to public money. The Commission for Gender Equality’s primary goal is to monitor gender equality and to ensure the rights of women in particular since they were one of the most marginalised groups before. The Auditor General was established to promote accountability and prevent corruption. The Electoral Commission has the role to conduct free and fair elections. The Human Rights Commission promotes respect for human rights and protects and monitors human rights through education and training programmes. They are also able to make legal interventions and receive and investigate complaints. While the HRC’s role seem similar to that of the CRL Commission’s, the CRL commission deals with group rights and the HRC deals with individual rights. The CRL Commission was the last of these state mechanisms to be established.

The CRL Commission addresses sensitive and contentious issues regarding possible separatism. Debates regarding the conception and implementation of the CRL Commission started in September 1996 with a conference called for by the Institute for Democracy in South Africa, IDASA.¹⁸ At this conference Prof. Kader Asmal

¹⁸ IDASA is an independent public interest organisation committed to promoting sustainable democracy based on active citizenship, democratic institutions, and social justice. It is a registered Section 21 company in South Africa, has a functioning Board of Directors, and employs Deloitte & Touche as its company auditors. IDASA is a nationally recognised public interest organisation in South

emphasised that the CRL Commission should not allow any expression of separatist cultural diversity. Mr Yunus Carrim, a Member of Parliament said that,

“the commission represents an advancement in shifting the focus from the demands of the Afrikaners for territorial self-determination to the rights of all citizens for cultural, religious and linguistic expression.”(Beukman, 2004: 5)

In both contributions emphasis was placed on the need for unity and a shift away from the segregationist discourse of the former Apartheid regime.

In March 1997, the Volkstaat Council conducted a conference regarding the CRL Commission. The FF leader, Gen Constand Viljoen delivered a paper entitled “The Place of Communities in the Constitutional Dispensation - Socio-Political Background and Imperatives regarding section 185.” He noted that the CRL Commission was broadening the base for democracy and a healthy interaction mechanism to bridge the gap of the past. Similar views transpired in a consultative meeting held under the then chairmanship of the Minister of Provincial and Constitutional Development, Mr Valli Moosa, in Cape Town in June 1997. Present at the meeting were representatives from Parliament, government departments, ‘Chapter 9’ institutions and NGO’s. One participant said that the Commission was about finding a way to ‘ensure co-habitation between the ethnic reality and the nation building project.’

3.3 Towards Nation Building: A consultative process

Concern, however, was raised about the overlap of this commission with other institutions like the Human Rights Commission and the Pan South African Language Board. An important issue raised was that establishment of the commission should be through a process of consultation. A month later, in July 1997 a meeting was held with representatives from the Department of Constitutional Development, the Department of Arts Culture, Science and Technology, the Department of Justice, the Human Rights Commission, the Pan South African Language Board (PanSalb), the Council on Traditional Leaders and the Volkstaat Council. The meeting was for the establishment of a process towards the formation of the CRL Commission Bill. At this meeting Mr Valli Moosa said, “The commission must be viewed as part of the nation-

Africa. It maintains international links with many similar organisations through the world movement for democracy.

building process in South Africa.”(Beukman 2004)

Further meetings and consultations were held within ministerial circles and departments. Justice Albie Sachs, Justice of the Constitutional Court of South Africa observed that the former regime ruled through cultural difference and maintained a segregated society based on cultural and racial differences. The public became involved in 1998 by being invited to make submission to the Department of Constitutional Development and the Human Sciences Research Council was commissioned to compile an integrated discussion document of the consultative process.

3.3.1 Two Consultative conferences

A Consultative conference was held on Heritage Day, 24 September 1998. Thabo Mbeki opened the conference and reiterated that its focus was on a nation building mechanism to right the wrongs imposed by the apartheid legacy.

Themes emerging from the conference were equality, redressing historical imbalances, equaling the playing fields, monitoring and acting against unfair discrimination and role of the commission to promote and protect as well as education campaigns. After a second Consultative Conference the following year a draft bill was developed with important clauses pertaining to:

- How communities would be identified
- The primary objectives of the Commission
- That the chairperson should not be associated with any community
- That the powers and functions should essentially revolve around conflict resolution

After all the deliberations in the political and public arena a technical committee of 15 members was appointed by the Minister of Provincial and Local Government, to finalise the draft bill. Deliberations by the public were called for in September 2001, and submissions were made to the Provincial and Local Government Portfolio Committee, who took over these duties from the Constitutional Department.¹⁹

¹⁹ Deliberations were received from various organisations and institutions, for example, the Human Rights Commission, the South African Hindu Maha Sabha, the South African Jewish Board of Deputies, the Baphuthi Language and Cultural Development Programme, the South African Council of

3.4 Final amendments

In June 2002, the technical committee submitted the draft bill to the Minister with final amendments including,

- “protect” with promote as a primary object in the draft Bill
- foster mutual respect as one of primary objects
- Powers and functions to be exercised by own discretion
- Consultative conference to have consultative status and not infringe on the independence of the Commission
- educating and information role of Commission, nation building role, investigation of complaints
- Cultural Councils to be recognised by the President

The bill was submitted to parliament and after it was approved by cabinet, it went out for public hearings. At the public hearings the main issues raised were, increased powers and functions, more attention to community rights and recognition as well as the independence of the Commission.

Parliament amended the draft Bill and significantly added further important objectives namely:

- To promote the right of communities to develop their historically diminished heritage.
- Commission to convene two consultative conferences in its five-year term, the first to be held within the first 12 months
(Beukman, 2004)

So it would seem that the driving forces behind the establishment of the CRL Commission were ironic. The Afrikaners who set out to create a space to maintain their segregationist practices, in the end created a space and mechanism for

Churches, The Afrikaner Development Cooperative Incorporated, the Afrikanerbond, the National House of Traditional Leaders and the NKOK, as well as individuals like Mr Chris Landman and Ms Soni-Amin.

integration, reconciliation and unity in line with the preamble of the Constitution.



Parliament in Cape Town

Chapter 4: The Commission, its Mandate and Composition

4.1 Mandate

In the end and after all the deliberations the mandate of the Crl Commission was designed to encompass the practical tools necessary to assist in the building of the identity of a 'New' South Africa nation. Their work is directed at communities or, as I see it, at a grassroots level, the 'people'. The act, Act 19 of 2002 section 4, lists 5 objectives, with a subsection 5 that includes a list of 21 more powers and functions. The focus of the Commission is to,

“...educate the peoples of SA on their rights to practice, promote and protect their cultural heritage including language and religion, to develop peace, friendship, humanity and mutual respect as well as tolerance amongst the people and to establish the community councils.”

The objectives, to promote respect and protection of culture, religion and linguistic differences are called for in section 36 and 37 of the CRL Bill to create a concrete and practical mechanism to address the issue of section 31 in the Bill of Rights as laid out in the constitution (Act 108 of 1996) which gives individuals the right 'to enjoy their culture, practice their religion and use their language' (Act 108 of 1996, section 31 [1a]). This section corresponds with chapter 27 of the ICCPR.

Section 5 of the CRL Act extends the objectives with the powers and functions to conduct programmes in education and programmes to promote respect. They have to ensure public participation making sure that the youth are involved and are made aware of the CRL's ambitions. The commission has the power to monitor, investigate and research issues brought to their attention. They also have a conflict resolution role and most importantly they can make recommendations to the relevant state organs regarding legislation that impacts on the rights of cultural, religious and linguistic communities. Subsection 2 of section 5 gives the commission the right to employ personnel and form a legal entity and office to effectively deal with the implementation and practicality its mandate.

4.2 Composition of the commission.

The CRL commission was eventually established in 2003, with 18 members representing a spectrum of representatives from all conceivable areas or groups. A selection panel was chosen to assist the president in selecting the commissioners.²⁰ The Commissioners had to reflect the spectrum of the South African population as well as being gender sensitive.

The nominations were based on representations of culture, religion and linguistic communities, as well as expertise and experience in conflict resolution and education. Another expectation was interest, tolerance and commitment to nation building and thereby ability to transcend the boundaries created by apartheid. In an interview, shortly after the appointment of the commissioners, Advocate Pansy Tlakula,²¹ said that the commissioners showed an exceptional dedication to nation building and the ability to transcend the legacy of apartheid and its separatist discourse. They also, according to Pansy, showed a dedication to working together on this commission and its sensitive area.

The members serve for a period of 5 years. They are:

MD Guma (chairperson), executive director of the Ecumenical Service for Socio-Economic Transformation of the Anglican Church.

M Bethlehem (deputy chairperson), president of the SA Jewish Board of Deputies.

BB Mgcina, a traditional healer of the Zifozonke Traditional Healers Association.

ON Mndende, a researcher on African traditional religion at the Icamagu Institute.

MD Jobson, training co-ordinator in gender and human rights for All Africa Women for Peace.

MKS Ntlha, general secretary of the Evangelical Alliance of SA.

²⁰ The Panel consisted of Prof. Cynthia Marivate of Pan South African Language Board as Chairperson, Dr Leon Wessels of the South African Human Rights Commission as Deputy Chairperson, Prof. Karthy Govender from South African Human Rights Commission, Law Faculty, University of Natal, Prof. Sandile Gxilishe in the African Languages department, University of Cape Town, Mr Cecil Le Fleur chairperson of the National Khoe-San Consultative Conference, Ms Antjie Krog an Afrikaans poet and author, Rev Cedric Mayson from the Moral Regeneration Movement and Adv Pansy Tlakula chairperson of the Independent Electoral Commission.

²¹ Adv. Tlakula is a lawyer by profession and is currently serving as the Chief Electoral Officer of the Independent Electoral Commission. She was a member of the South African Human Rights Commission and prior to that was head of the Black Lawyers Association. She is chairperson of the Council of the University of North West and a board member of the Centre for Anti-Racism and Anti-Sexism

M Soni Amin, an adherent of the Hindu Vedanta Ramakrishna Mission of SA.
S Dangor, lecturer in Islamic studies at the University of Durban-Westville.
MAE Dockrat, lecturer in Arabic and Islamic studies at Rand Afrikaans University.
JCH Landman, lecturer in philosophy and ethics and member of the Afrikaner Alliance, director for the Foundation for National Minorities.
TSC Magwaza, programme director of gender studies at the University of Natal and a researcher on Zulu culture and the Shembe religion, as well as general secretary of the Southern African Folklore Society.
SE Ngubane, professor of isiZulu at the University of Natal.
LP Boshego, lecturer in African languages at the University of South Africa and chairman of the Sesotho sa Leboa National Language Body.
DKK Mboweni-Marais, language practitioner and provider of professional language services.
M Le Roux, director of performing arts development and education at the Artscape Theatre Centre, and chairperson of the Western Cape Cultural Commission.
H Gouvelis, businessman and member of the Federation of Hellenic Communities of SA.
WA Boezak, minister of religion and member of the National Council of Khoi Chiefs of SA.
RJ Langeveldt, project manager of the Barendse Griqua Trust, chairman of the Khoi-San National Trust and member of the National Khoi-San Language Board.

The make-up of this commission represents the complexity of contemporary South Africa in many ways. If we use the old categories of the past we get the pattern that 8 are Black, 5 are Coloured, 2 are Indian/Asian and 3 are White.

The commissioners were not only chosen based on their group representation but also on their expertise. The expertise and experience required by the board of commissioners is in the field of culture, religion, language, education and conflict management and resolution. More than half of the commissioners have expertise in more than 2 of the 3 main categories, as well as experience in conflict resolution and education.

The mandate is to represent the interest of all South Africa's communities and remain neutral. In this way they are expected to deal with the issues at hand instead of competing for specific attention for their constituencies. The raised concern of the

Khoe and San leaders that the CRL Commission can not address their issues seems evident. The Khoe and San culture and languages have not been maintained as the other cultures and languages in SA. They need more than just promotion and protection of their specific cultural symbols, forms and expression.

"The composition of the commission must *broadly reflect* the gender composition of South Africa". The term 'broadly reflect' is unclear and it's difficult to determine whether the commission has achieved that objective.

4.3 Activities

During the first year of the existence of the commission (2003 to 2004), a chief executive officer, Ms Pumela Madiba, was appointed to manage the office and administration as well as to ensure financial accountability. The CRL commission is therefore made up of the Board of commissioners as well as the management team. The commissioners serve in a part-time capacity and do not receive a salary, as they are employed outside of the commission. Only the administration is paid.

4.3.1 Plenary meetings

Three plenary meetings were held to discuss a strategic plan as well as the basic operations and infrastructure of the Commission. The strategic plans included the planning and preparation of national mini conferences to introduce the commission to the public. The commission started out with a budget from the DPLG of R7, 950 000. All 18 members visited the 9 provinces to introduce themselves and the CRL Commission to the people. *Provincial Committees* were set up and coordinated by a commissioner. Plenary meetings are held every 6 weeks where the commissioners report on the activities in their province. The commission has made contact at administrative level with the government departments that also deals with culture, religion and language. Besides the provincial coordinating committees, the board of commissioners have formed *Functional Committees*. For example the CRL's Education committee works closely with the Department of Education on education issues and the Pan South African Language Board on language issues in schools.

In July 2004 they launched the commission with the slogan, “Blanketing the diverse communities into a single African community,” at which they handed out specially embroidered blankets. The commissioners held the mini-conferences in all 9 provinces of South Africa to raise awareness about creating unity and respect within the different cultural, religious and linguistic communities. The chairperson, Dr Guma, said that the mini-conferences created renewed dialogue opportunities between the CRL Commission and the nation. He also said that,

“The constant challenge of our mandate is to search for ways to reverse the imprints of Colonialism and Apartheid in our *collective identity* and also guard against politically indulging groups’ nostalgia of privilege and power. The spirit of tolerance dictates that we acknowledge, both in theory and practice, social inclusivity and the coexistence of cultures in their diversity.”(Crl Commission Annual Report, 2004/2005:3)

This statement is a very loaded one in that Dr Guma mentioned ideologies that are not easily achievable without effectively deconstructing the colonial mind and to some degree implementing inequalities in order to achieve equalities (Kymlicka 1989: 182). The influence of Europe still rests heavily, or perhaps, comfortably in SA.

‘Collective identities’

In Dr Guma’s statement, he refers to ‘collective identities’ and ‘the coexistence of cultures in their diversity’ as unproblematic phenomena. But, it is not that simple in contemporary RSA. Ngugi Wa Thiong’o (2004:52) argued that the colonizers used a strategy of removing the colonizer’s memory and history then re presented it in the colonizers favour. He continues that the colonizers use their language to remove the colonized’s memory because, “memory lies in language and removing language is removing memory”. Only remnants of the Khoe and San languages still exist today.

After centuries of European imposition handed to us through a long line of inherited traumas caused by slavery, colonisation and apartheid, I feel, speaking both as a Khoe-San activist and as a student of indigenous issues, that we have all been conditioned, in some way or another, to see Europe as the successful, productive, scientific and civilized culture. Non-European language, culture, knowledge and religiosity was dehumanized and brought down on the constructed hierarchical ladder as primitive, evil and unproductive, a legacy of the Enlightenment discourse.

Perhaps we should not just reverse the imprint of colonialism and Apartheid but try to learn from it and transcend. What is our collective identity when the Khoekhoe, for instance, do not remember their history? Mudrooroo argues that, “we, the indigenous peoples, were written out of history. The history written was only of the conqueror.”(Mudrooroo 1996) The Bantu speaking population of the Apartheid SA was able to maintain their language and culture due to the segregationist policies. This was a negative and dehumanizing policy during apartheid but has transcended and become a positive reality in the current SA. The people have a strong sense of belonging and identity whereas the Khoe and San, who suffered acculturation before apartheid, were not that fortunate. The majority of the Khoe and San descendants were regarded as a bastard race, coloured, without a culture, language, land and identity. Collective identities surmise that the identities exist. So another question remains, *“Is it the coexistence of identities of the political and numerical dominant that is being referred to?”*

4.4.2 The National Consultative Conference (NCC) Durban 2004

In December 2004 a National Consultative Conference was a major milestone of the newly developed commission. 600 delegates represented both government sectors and non-government organisations. From the attendance register it is evident that the representation was from rural and urban areas and had a balance of gender and age. It was reported that the delegates spoke ‘freely and passionately’ about their cultural values and religious beliefs and practices because they were given the opportunity to express themselves in their mother tongue (CRL’s Annual Report, 2004/2005:12). However, agency plays a huge role to as the Khoe and San representatives said that they felt ‘overwhelmed’ at the conference and not able to make meaningful or effective input due to language barriers.

During my interviews and informal conversations with Khoe and San who were present, they articulated that they felt overwhelmed by the Conference attendees and that they were not confident enough to make meaningful contributions. They also expressed a need to have continued workshops aimed at educating them about their constitutional rights. The public had suggested during the regional mini-conferences

that a simplified version of the CRL Act of 2002 should be translated into all 11 official languages. This was done and delivered at the National Conference.

Regional Report back

I attended a ‘report back’ meeting at the Iziko Museum in Cape Town on 11 August 2005, which was held to reflect on the NCC. It was convened by commissioner, Marlene Le Roux, who is the coordinator of the Western Cape Provincial Steering Committee. This Steering Committee was formed to assist in implementing the resolutions of the NCC.²²

Ms Le Roux and Ms Madiba created the nature and milieu that the CRL commission strives to work in. They physically rearranged the seating into a circle, making nobody seem at the head, reminiscent of King Arthur and the Knights of the Round Table. Issues that were raised at the NCC were highlighted again namely; increased youth participation, the need for research into Khoen and San history, capacity building, and broader participation, the need to embrace African values as well as European values and finally the continued challenge of racism.

The absence of the ‘white elite’ communities was notable. As a person who grew up in Cape Town, I was acutely aware of the Group Areas Act which grouped communities according to their race. It looked like the working group was mainly made up of representatives from disadvantaged and poverty stricken communities. The white people in the meeting were government officials so their status and interest were as government officials not representatives of a community. The black women represented their cultural communities.

The CRL commission tended to do workshops in economically poor areas so I raised the following question, “Shouldn’t they carry the education to the economically rich areas too as it seemed that the advantaged and economically sound ‘white’

²² Present from the CRL Commission were two commissioners, Ms Le Roux and Prof Dangor and the CEO, Ms Madiba, Government representatives from the Provincial Arts and Culture Department, the Western Cape Language committee, the South African Heritage Resource Agency and the South African Museum. From the public domain there were leaders representing their community developmental organisations, like the African, Christian and Moslem religious groups, the Cape Khoen Heritage and Cultural Development organisation and an Afrikaans Developmental group.

community is not part of the CRL Commissions 'target group'? Ms Le Roux responded that, *"They are represented through their cultural, religious and language groups. We are not dealing with race issues."*

SA was ruled by constructed and enforced cultural difference, used as a synonym for race. My concern would be that the CRL commission could be stigmatised as a commission only there for the marginalised and poverty stricken communities. I think that education is necessary for those 'white elites' too, in order to effectively level the playing fields and foster respect for other cultures especially the African based ones. They have to learn to respect the African cultures as cultures of equal status.

4.3.3 Cases

The case of "Kinderlê"

The case of the Kinderlê incident is an example of some of the intra-conflict amongst the Khoe and San due to distorted historical remnants of the colonial past and the negative stigma attached to being African. The CRL was called in to facilitate a mediation process between the Nama Khoekhoe people of Steinkopf on one hand and the †Khomani San people of the Kalahari and the !Xun and Khwe San people from Platfontein in Kimberley. The San were perturbed by the way a historical event was dramatized by a Nama Khoekhoe drama group. The presentation portrayed the San peoples as merciless savages. The leadership of the respective communities participated in the mediation process of the CRL Commission which ended in a healing and cleansing ceremony. This dispute was highlighted in 2003 during the bi-annual conference of the NKOK in Springbok, Namaqualand. Part of the conference was to have a special Sunday church service and ceremony to unveil a monument in commemoration of 32 Nama children who died in 1836. The monument is a few kilometres north of Steinkopf.

However, on the previous Saturday during the cultural presentation evening, a Nama youth group of Steinkopf presented a play depicting this tragic event. This dramatic presentation depicted the Nama adults going off to church which was a few kilometres away. They left their children, mainly teenagers on a hill top. While the adults were away the San attacked the children killing them all, seeking revenge for the San who were killed by the Nama and the settlers. The play had a negative slant

towards the San depicting them as bloodthirsty savages and the San present took offence. It aroused resentment by the San representatives at the conference towards the Steinkopf community.

During the mediation process it became clear that the history of the Khoe and San peoples has been so airbrushed that distortions of the contexts of events occur. Boezak²³ argued that the colonial perspective was crucial in understanding tragic events of the past. It was therefore necessary for the CRL Commission to call on historical records. During the 1800's the 'Groot Trek' as the European settlers called it, caused great trauma for the indigenous Khoe and San peoples. They hunted and killed Khoe and San in an attempt to clear the land for their own settlement. Captured Khoe and San were forced into labour. The Europeans also fathered children by the indigenous women. These offspring were referred to as bastards. The 'bastards' were forced to join the commando raids. The division between African and European became blurred, hence the revenge on the youth by the San. The San saw these children as children of the settlers.(Boezak, 2004)

When this bit of history became evident to the parties, it was easier to forgive. In addition to a Sunday Healing ceremony, the author of the play was asked to revise the play and include the colonial context as well as themes of forgiveness and reconciliation. Dr Boezak, (2004:5) a CRL Commissioner, noted that, "As an activity it was the Commission's first Proactive Strategic Intervention and it ended on a very positive note."

Through a mediation process, which involves investigation and research, the commissioners seem able to maintain neutrality whilst dealing with cases from their respective reference groups.

Application for access to an ancestor's grave

Ms Madiba, the CEO of the CRL Commission, gave a practical example of the manner in which the commission dealt with applications.

²³ Doctrine in Theology, former lecturer at the University of the Western Cape, Khoe-San activist, Chaplin of the National Council of Khoekhoe Chiefs of SA, Commissioner on the CRL Commission, artist and poet

There was a family who had stayed on a farm in Pietersberg. The family's application was for access to visit an older relative's grave. This relative had been killed by the former farmer and had been buried there. The new owner had refused them access to the grave as they did not live there any longer.

Ms Madiba said that their approach to this case was of conflict resolution. They did some research and checked the facts of the application in order to find a compromise situation taking both parties into consideration. The applicants wanted daily access but Ms Madiba said that Africans only visited graves occasionally to perform religious rituals. Access daily would impact negatively on the current owner and was unnecessary. In the end the matter was resolved with an agreement between the two parties. The applicants would visit the grave on predetermined scheduled times in order to respect the farmer's situation and the farmer in turn had to respect and understand the cultural beliefs of the African applicants.

The two examples show that both on group and on individual level, members of the commission have been able to mediate. By bringing in new research based information in the first case and the shared African respect for ancestors graves in the second, new modes of coexistence have been formed.



Left to right: Dr Guma, Ms de Wet, Ms Madiba

Chapter 5: Perceptions

5.1 Commissioners' perceptions

In my interview with the head of administration, Ms Madiba, she emphasised that the CRL is not just a commission with a short life span but an institution to actively play its role as an agent for social change in SA. She noted that they are provided for in the Constitution, which gives them status as part of the infrastructure of the state. She said that this commission had to make concrete and practical what was aspired to in the human rights enshrined constitution as well as addressing the inequalities of the past. She felt that the most important task of the commission was to investigate and contribute to conflict resolution.

She highlighted that the term community was not that simple to define as each community in this country had gone through so much that it was no longer a community that shared the same views, values or even language. She said that we suffer from identity problems and was not sure who we are. One of the challenges of the CRL Commission was to deracialise our societies and deal with communities in terms of their cultural norms, values, languages or religions and not skin colour. Ms Madiba's argument about distinguishing community from culture is a great challenge because the issue of identity is so closely linked to culture and culture and language were used as discriminatory tools during apartheid. The issue of colour will have to be considered but in combination with culture, religion and language.

The idea of communities is currently shifting all the time as people become empowered. Hence the research and education component of the commission's mandate is vital in redressing the injustices of the past and creating the platform for dialogue. The right to self-determination comes into play strongly with this shifting of identities. During this nascent stage of the commission, they therefore find it challenging to determine what constitutes a community. The commission is in the process of consulting the public on this question. It is inclusive and not prescriptive. The degree of inclusivity remains limited, though.

The Youth

Ms Le Roux²⁴ emphasised, in my interview with her, the importance of the youth in the CRL Commission's programme. She said,

“After ten years of democracy, we can proudly state that Artscape's many programmes for educators and learners are answering the growing needs of our communities. The two main themes of the 2005 programme are 'Building the Youth', and 'Democracy through the eyes of the Youth'. We can only make a difference if our youth are capacitated.”

Through her arts and heritage festival programmes she introduces the CRL Commission. In the programme youths from all areas are given the opportunity to restore their lost and denied dignity through drama, dance and music. The audience are mainly parents who represent a mixture of rich and poor, black, white and coloured. She argues that in this way the people are forced to communicate and interact with each other which are necessary tools for redress and healing.

Western Cape has a steering committee to drive the CRL's objectives. She says that it is a challenge dealing with all the different personalities of the people but she feels that she has the trust of the people in here region and therefore her meetings are well attended. She said that the success of the Western Cape's steering committee is that they have the infrastructure, like her office, from which to work.

The specific situation of the Khoe and San

Dr Langeveldt, who was nominated for the CRL commissioner by Khoe and San communities, felt that the issue of 'levelling the playing fields' was of great concern. He argued that although everyone is invited to make in puts or raise complaints, everyone may not be ready or have the capacity to engage. He said that the Khoe and San peoples have suffered severe culture loss and have been assimilated into the dominant western society whereas other groups were better able to maintain there culture and language as well as traditions. For example, the Jews, Muslims and Xhosas, are more culturally aware and speak their specific languages.

²⁴ Former chairperson of the Western Cape Cultural Commission, currently the director of Artscape's Audience Development and Education Department (ADE Programme) This programme compliments the learning area of Arts and Culture incorporating knowledge skills, values and attitudes from four arts subject areas, Dance, Music, Visual Art and Design and Drama.

He continued that the CRL Commission will make a recommendation to the Department of Education concerning a budget for a Khoe and San Khoekhoegowab²⁵ learning programme for the children. It need not be a national implementation but a regional one in communities where the languages are still used or desired. As stated before, the SA constitution requires that municipalities take into account the language usage and preferences of its residents. (Chennels and Du Toit 2004:102)

The issue of giving priority to the Khoe and San is a contentious issue on the board and the matter is still under discussion. Dr Langeveldt continued that most of the complaints they receive are from white people and he argued that,

“All Laws in SA are still European based and is still dominated by a majority of white within the system which is alien to our people. Whites have the capacity and finance to deal with legal rights. Our people are still getting used to these rights, hence the outcry for a simplified constitution and workshops on rights. People still feel they’re not part of the country and one of the biggest problems is trust between white and black people.”

He feels that the establishment of the community councils is essential in the dialogue process between the different groups.

How can we transform society if the gap between the haves and have-nots is so huge and increasing daily? This is an ongoing debate on the board. There seems to be a struggle with the legacy of apartheid on a personal level, but during their interviews for appointment, the commissioners expressed a vision and a commitment to nation building on the premise of the ‘New’ South Africa. But they are still unclear about a special role for the Khoe and San.

5.2 Khoe and San Perceptions

During the public hearings on the CRL Commission’s Bill in October 2001, the National Khoe-San Consultative Conference (NKOK) said that,

²⁵ The official name of the language referred to as Nama

“Our participation is reluctant! We hope that this commission will not just be like other commissions and bodies before it which afford us a platform, yet do nothing to meaningfully address the critical issues we put on the table”²⁶

Khoe and San leaders are concerned that they would be referred to the commission regarding their issues for restitution of justice and redress whilst they seek this from the National Government. They do not want to be regarded as another minority group but as First Nations Indigenous Peoples who share power with the government as the House of Traditional leaders do on National and Provincial levels.

One of the National Khoe-San Council (NKC) demands is to have a statutory body at the same level as the CRL Commission and not a sub-committee of the commission. They are also concerned about the willingness of the Commission to deal with their specific issues regarding the promotion, protection and development of their Culture, Religion and Language given that more research is necessary to deal with it.

Mr Yunus Carrim, chairperson of the portfolio committee, said that,

“Crucial in the transitional process was the agreement that territorial and cultural self-determination would be provided for ... various groups need a way to be able to express their identities and so the commission is a necessity....”²⁷

This kind of comment adds to the concern articulated by the Khoe and San leadership and activists that their issue for self-determination would be referred to the CRL Commission instead of being dealt with at National government level.

Mr Cecil Le Fleur, a Khoekhoe leader I interviewed,²⁸ also raised this concern. He noted that the CRL Commission could be a valuable mechanism to assist in addressing the Khoe and San issues related to culture, religion and language. However, he also expressed unease that the coloured people were not adequately represented on the commission. He said, *“I feel a great lack of the coloured representation,”* and his assumption was that Coloured people couldn't claim a

²⁶ Public Hearings on the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic communities Bill, 2 October 2001, Provincial and Local Government Portfolio Committee, Old Assembly Chamber, Parliament, Cape Town

²⁷ Provincial Affairs and Local Government Portfolio Committee meeting 19 October 1999, June 2005: www.pmg.org.za/viewminute.php?id=4479

²⁸ Mr Cecil Le Fleur is a teacher by profession, the Chairperson of the National Khoe-San Consultative Conference and Chairperson of the Head Council of the Griqua National Conference. He served on the Technical Committee as well as the selection panel for the Crl Commission.

language without going to their Khoekhoe roots. He felt that the CRL Commission lacks representation of this group and although it was a racially defined group, it had emerged as a form of ethnic identity. When asked about the lack of San representation, he replied that there was no San with the formal skills or expertise required of the commissioners.

‘Culturally specific’ qualifications

Mr Petrus Vaalbooi²⁹ was disappointed that there was no San representative on the commission. He said that so many academics have interviewed him over the years, and have gained knowledge from him, then go back to their respective academic institutions and get awarded accolades. It is as though his knowledge is not regarded as relevant for today but only as a manuscript of history, as academics rush to collect the knowledge before it is gone. Saugestad argues that this is part of the indigenous struggle, “culturally specific qualifications and skills are rewarded differently, consistently leaving the minority in a disadvantaged position.” (Saugestad 2000: 310)

Mr Vaalbooi felt that the Khoe and San experts on the commission were not adequate to represent the San issue. The two Khoe and San representatives have doctorate degrees, but he does not feel that they represent his knowledge. This does then leave a question about the CRL’s commitment to African based values stored in indigenous knowledge systems. It may have been wise to have a representative of the oldest people in the world on their board. However, the commission has recognised this shortcoming and are in the process of including ‘elders’ in their regional steering committees. But what the San want is positions of equal status like a board member not just a glorified side committee.

Not for Khoe and San

As part of my fieldwork, I arranged a workshop with some Cape Khoe leaders. It was held in Oudtshoorn and hosted by the Attaquas³⁰ in the South Cape/Karoo Service Centre. Present were leaders from five Cape Khoe groups spanning Western and Eastern Cape. At the workshop, the Cape Khoe leaders present seemed to need much

²⁹ Mr Petrus Vaalbooi is the Chairperson of the South African San Council, Community leader of the !Khomani San and a San representative on the National Khoe-San Council

³⁰ The Attaquas is one of the revivalist Khoekhoe groups in Oudtshoorn in the Western Cape. It is lead by Mr Poem Mooney.

more information about the commission. However, after some discussion, I realised that they knew the commission but was wary about its motives regarding the Khoe and San peoples demand for First Nation Indigenous status.

They said that the CRL Commission was not a vehicle for the Khoe and San struggle even though the principle of collective rights as reflected in the Bill of Rights is part of its mandate. The Khoe and San want a statutory body which will be able to effectively address the Khoe and San peoples as First Nation Indigenous peoples of RSA. This body would then deal with the Cultural, Religious and Linguistic development as well as the other issues pertinent to them. Mr Little explained the structure of this statutory body and how the Khoe and San should fit into the different levels of existing government structures.

The load of the CRL Commission is too great and they fear that Khoe and San issue would not get the proper attention. Someone said that the CRL Commission was an artificial commission, just a lollipop to appease groups demanding redress. These kinds of comments showed the apprehension some Khoe leaders still had towards government structures dealing with redress.

Government's commitment:

At a Freedom Day celebration event, Mr Cyril Ramaphosa, a major negotiator during the early 1990's with the NP government, made an interesting statement regarding the unfinished business of the current government. He said,

“We are a nation in the making. We still have a lot of legacies to deal with, but this document (the constitution) gives us a firm and good platform to build the SA nation.”

One of the legacies is to resolve the relationship between government and the indigenous peoples within the nation state.

At a Heritage conference held in Cape Town, the Premier, Mr Rasool, said that Heritage should not be used to undermine other cultures. He said that,

“heritage pose a risk of reinforcing the racial stereotypes entrenched by apartheid laws if it is not properly articulated”.

The CEO of the National Heritage Council, Sonwabile Mangcotywa, reassured the premier that they are addressing those communities that have suffered marginalisation and dispossession of culture, language and history, like the San and Khoe communities,

"These people have been culturally marginalised, humiliated and yet nothing about their suffering has been told to the world. We need to find ways of how we could use heritage to tell the world what this community is going through.
(allafrica.com 2006)

These comments are full of goodwill, but what is articulated is that so much more knowledge is necessary in order to address the past and what still remains is SA government's inclusion of the Khoe and San and their knowledge within the statutory structures.

The Khoe and San want their leaders sitting in national, provincial and local government structures as the other tribal leaders do, not as political entities but cultural entities giving a voice to their people. The type of recognition they want is similar to the demands and requests put forward by many other indigenous peoples in the Americas and Northern Europe.

Workshop held in Oudtshoorn with some Cape Khoe Leaders



From left to right, Priscilla de Wet, William Human, Poem Mooney, Margaret Coetzee, Joseph Little, Mattie Cairncross, Mervan Kramer and George Maleiba

Chapter 6: The wider international context

6.1 The Sami in Norway

In Norway, the post war period highlighted issues of human and political rights for all and gave the Sami opportunities to organise and form a Sami Movement. (Eidheim 1997) In RSA, a similar shift, post Apartheid, gave the Khoe and San the opportunity to reposition themselves and resurge or regroup. Many battles had been fought before, against former settler regimes. The change from addressing a hostile regime to addressing a well meaning regime, whose main shortcomings lay not so much in what is done than what is not being done, calls for a very different tactic and lines of arguments.

The Sami movement made the Sami reflect on their self-image and they gradually became a political force. During this stage, there existed sceptism from some and arguments that the movement was made up of Sami elites. As in the Khoe and San resurgence, the intra-conflict also played out amongst the Sami. Intra-conflict currently exists in the Khoe and San movement around issues of elitism and authenticity, as well as the old and the new Khoe and San. These kinds of conflicts is not unusual and is experienced at different levels of development in most Indigenous organisations as indigenous peoples reposition themselves to address injustices towards them from the nation states.

The demands the Sami made were for recognition, maintenance of the languages, culture and territorial rights. (Eidheim 1997) A huge change in the Sami movement's struggle came after the Alta Dam protest in 1981.(Minde 2003:87) It started a lengthy process of legal and political reform and, in 1989, the Sami Parliament was established. This body has an advisory mandate to the state and a certain devolution of power regarding Sami affairs. In 2005, the Finmark Act was finalised and promulgated. It gave Sami people the opportunity to play a meaningful role in the management of their land in Finmark County. The Khoe and San are still liaising with the nation state for recognition through constitutional accommodation and a statutory body to deal with Khoe and San issues. (IPACC and OHCHR 2004: 3)

6.2 The Khoe and San in SA

6.2.1 The Resurgence

When the Khoe and San resurgence started under the post apartheid regime, they chose a collective identity namely, Khoesan. As the movement grew and skills and contemporary knowledge was acquired regarding the international indigenous arena the San now argue that their experience is different to that of the Khoekhoe. The San people argue that they have experienced great poverty and marginalisation as well as continued negative stigmatisation whereas the Khoekhoe, especially those in the urban areas, have assimilated and experienced a better lifestyle. This issue is based on access to economic resources. The Khoekhoe argue that the dispossession and poverty they have suffered was the loss of their heritage, culture, language, religion and identity.

Dr Abrahams argue (personal communication) that it was the middle class Khoekhoe with their academic skills and access to wealth that enabled them to effectively move the Khoe and San issue forward. They were able to take advantage of affirmative action in various fortuitous positions. Prof Bredekamp drew on the international network and organised a conference to deal with the Khoe and San history and identity in 1997 and four years later a consultative conference for the Khoe and San peoples to voice their aspirations. Following the 1997 conference Khoe and San began to 'stage' their identity. (Besten 2005: 309) They became vocal and visible in the media.

The charismatic Mr Joseph Little, caught the eye of the media, both in print and television, and the result was that more people became aware of the resurgence and started reflecting on their own heritage. Little said that the Khoe-San³¹ activist then used a lot of their own money to organise, recruit and hold exhibitions. What drove them was their will and desire for a sense of belonging not just part of a bastard race, as they were often referred.

6.2.2 The critics

The critics argue that the revivalist Khoe-Sans were just after self enrichment, by

³¹ The name Khoesan was used during that period and is still used by many individuals who identify themselves with both San and Khoekhoe.

claiming to be chiefs and fighting to be acknowledged in the House of Traditional Leaders as these leaders received a huge salary.

Many coloured people have been sceptical about embracing their Khoekhoe heritage and dissociated themselves with those who were. On one level the dissociation was because they saw the revivalist Khoekhoe as opportunists. On another level their dissociation was probably the result of the culture genocide and the resultant internalised racism and inferiority complex about their African heritage. The Sami also experienced the culture genocide and that many Sami scholars dissociated themselves from Sami cultural practice. (Kuokkanen 2000: 412,413)

Politically, the coloured people were in disarray, since within the coloured people, virtually anybody could be found, from persons as white as white Europeans to persons as black as black Africans. Religiously they belonged to an array of different denominations. Culturally they lived according to European norms, unlike the black, who continued to hold strong ties to their heritage and spoke their African languages and practiced their African traditions and religion. The coloured people had largely become politically indifferent to the political changes taking place.

Some political leaders, like Mr Pallo Jordan, argue that the Khoe and San are not marginalized, with regard to language and culture as they speak Afrikaans and practise the Christian religion. Mr Jordan seems to totally ignore the history of RSA before Apartheid.³²

6.3 Academic arguments

6.3.1 Ethno-politics

Currently, the revivalist Khoe has become politically active as cultural organisations not political entities. The *Khoe Culture Heritage and Development Council* (KCHDC), for example, have revived an ancient rite of passage called the !Nau. This ritual is practised as part of the process of reconnecting individuals to their African heritage and swearing in Khoe leaders. The ceremony is used to ‘authenticate’ leaders and commit them to build their respective groups.

³² Points raised by Dr Langeveldt during my interview with him.

This situation of using ethnicity or indigeneity as a means for mobilisation to address unjust dispossession of land and its resources or to gain political power can be paralleled with the Sami in Norway. Ethno-politics has become a tool for indigenous people who seek to reverse the negative stereotypes directed towards their 'primitiveness' as a means to decide their distinctiveness and therefore moral commitment by the state to address their issues. Eidheim (1997) argues that the Sami Movement,

“... has both inspired the development of the new Sami collective self-understanding and it has participated in the political organization of the Sami... with considerable success for Sami rights.”

The Khoe and San in SA have been condemned and ridiculed for reconstructing their past and recodifying their identity as well as wanting 'special privileges'. Eidheim (1997), Keesing (1998), Svennson (1997) and many other all argue that this kind of recodification and construction has been necessary to change the negative discourse or stigmatized identities directed towards indigenous peoples by the western world and colonizers, thereby increasing their ability to fight for their rights.

6.3.2 'Inequality for equality'

The colonial and imperialistic era with their Enlightenment discourse rendered the 'other' to a disadvantaged, sub-altern or inferior position. Taylor (1994) argues that our identities are formed through dialogue with others both on an internal and overt level. When forms of identities like those in relations to culture are not recognised or misrecognised as an inferior one then identity issues become a problem.

The Khoe and San who were reduced to coloured people in RSA have suffered this process. They have been oppressed by the negative stigma attached to their heritage so that they themselves find it contemptible and deride it. As Fanon also argues, the colonized have internalized their inferiority and even though there are numerous mechanisms for Khoe and San to engage in nation-building of RSA, they are still not able to do so effectively. The current trend internationally is for political recognition and “demands for equal status of cultures.”(Taylor 1994: 27) But because of the inequalities that exist on a psychological as well as economic level, Kymlicka argues that we need *unequal* rights in order to enjoy equal opportunities.

The Khoe and San peoples are thus affected on both these levels, as a vulnerable culture and on a rights basis.

6.4 International Indigenous Movement

Indigenous peoples started resurging globally because of their experience of continued oppression by the nation states. Indigenous Peoples from Africa became involved in the global Indigenous arena in the 1990s. By this time the movement had gone through many stages and were at Geneva, the United Nations, the highest international decision making body. From the 1970's, advocacy organisations like IWGIA, Survival International and Cultural Survival supported the Indigenous peoples struggle. The World Council for Indigenous peoples was the first indigenous umbrella organisation of indigenous organisations mainly in the Americas, Europe and Australia. In 1982 the UNWGIP was established and the latest achievement is the Permanent Forum on Indigenous Affairs established in 2002.

Indigenous Peoples are concerned about the degradation of the natural environment. Indigenous Peoples believe that humans are the custodians and caretakers of the land and are now in violation of that responsibility. Indigenous Peoples are the custodians of ancient knowledge regarding the natural environment and way of living. At the World Summit for Sustainable Development, hosted by South Africa, the Johannesburg Declaration included the sentence, "We reaffirm the vital role of indigenous peoples for sustainable development." All nations present at that summit accepted the role of Indigenous Peoples. Many global conferences have taken place in Africa, specifically South Africa for example, the World Conference against Racism and the World Parks Conference. As the ACHR reported, "Africa would do well to incorporate indigenous knowledge in their policy making and structural development."

6.4.1 Indigenous Peoples in Africa

Globally it may seem to many bureaucratic administrators of Nation States that the term 'indigenous' is problematic and anti-progressive (Saugestad 2001a: 301). Kuper argues that the Indigenous Peoples are seeking privileged rights based on a 'blood and soil' ideology reminiscent of Apartheid. Kenrick and Lewis argue that Kuper's

argument totally ignores the injustices of subjugation, dispossession and marginalisation the Indigenous peoples are still subjected to and denied the fundamental human rights and freedoms of expression as enjoyed by the hegemonic national majority. Saugestad adds that Kuper's argument ignores the debates regarding the history and social relations that make up the Indigenous predicament. (Kenrick and Lewis 2004:4)

A principle of the UNWGIP is inclusivity of all peoples and their right to self-identification. Miguel Alfonso Martines produced a report in 1999, pointing that only those who had suffered due to the imposition of the 'blue water' colonisation are indigenous. Judge Guisse, from Senegal, said that the report chooses to ignore the Indigenous peoples in Africa. Joseph Ole Karia, chair of IPACC also rejected the report and reiterated that, "Solidarity in the Indigenous Movement is of utmost importance."

It is argued that the African and Asian Indigenous peoples situation is complex due to the legacy and influence of the black and white dichotomy, that all blacks are natives, aboriginals or indigenous. In this sense, heads of state who are now black, believe that all black people are indigenous peoples. But as I have argued before, the continued subjugation and discrimination directed to some specific peoples who have a different culture and practise hunting or herding modes of living, leaves a question regarding the rights of these peoples. During the United Nations Decade for Indigenous peoples, the African indigenous peoples actively coordinated themselves. They formed the Indigenous Peoples of Africa Coordinating Committee (IPACC), the Organisation of Indigenous peoples in Africa (OIPA), the African Indigenous Women's Organisation (AIWO) and the Working Group for Indigenous and Minorities in Southern Africa.

6.5 Engaging with the International Mechanisms

A workshop was held in Port Nolloth by IPACC and the Office of the High Commission for Human Rights (OHCHR) in September 2004 to orient the Koe and San leadership on the international mechanisms available to assist indigenous peoples in their struggle for retributive justice, equality and official recognition. The workshop ended with 5 recommendation letters. One was recommendations to the UN

and the OHCHR. The workshop participants believed that international human rights agencies could, “encourage the RSA government to take steps to protect our human rights and create new instruments and standards for protecting the cultures, livelihoods and rights of indigenous peoples.” A second letter was to the president of RSA highlighting their concern for,

“... the slow pace of negotiations with our government to ensure a domestic policy regarding indigenous peoples. The evolution of a just domestic policy, based on our constitution, is required before there can be any articulation of a foreign policy to help protect other vulnerable indigenous peoples ... like the San in Botswana and the Pigmies in DR Congo.” in (IPACC and OHCHR 2004: 24)

Mr le Fleur argued that the lack of this domestic policy inhibits our department of Foreign Affairs in their negotiations for human rights at UN level, as the foreign diplomats are only able to take positions at the UN on issues that has a policy at domestic level. Because of its international stature, RSA could play a leading role in promoting indigenous peoples rights in Africa. (Ibid: 3)

No African state has ratified the ILO169 and the situation of the Indigenous peoples is a sore point, but at a celebration of the end of the first Decade of Indigenous Peoples held in Cape Town December 2004, Mr Le Fleur compared the situation to the lack of awareness ten years earlier and concluded,

“For Africa the decade has been a success. We have become part of a movement that has established ties across this continent and brought us in touch with the rest of the world.”(Saugestad 2006: 14)

He said that politically the movement has been able to create more awareness amongst the politicians and political administrators.

It would seem that the CRL Commission was mainly formulated to protect minorities in RSA, but the indigenous First Nation Khoe and San are not just minority groups, they are indigenous or *national minorities*. The report of the AHRC clearly states that,

“Collective rights to land and natural resources are one of the most crucial demands of indigenous peoples – globally as well as in Africa – as they are closely related to the capability of those groups to survive as peoples and to be able to exercise other fundamental collective rights such as the right to determine their own future, to continue and develop on their own terms their mode of production and way of life and to exercise their own culture.”(AHRC 2006: 64)

CHAPTER 7: The ‘Rainbow Nation’

7.1 Nation-Building

RSA is marketed as the ‘Rainbow Nation’, meaning that it is inclusively comprised of all the shades of skin colour as well as coexistence of diverse cultures, languages and religions. This also means ‘equalling the playing fields’ so that everyone has equal access to the economic and political arena.

This is a huge challenge in the RSA government’s process of nation-building and dealing with redress and restitution of past cruel inequalities of apartheid and colonialism. The issue of the term indigenous as the Khoe and San are arguing is one of those challenges but is reminiscent of the apartheid past that used essentialism of cultures as a means of indirect rule and justice for separatism. Khoe and San leaders argue that this is not now the case, what they want is to be officially recognised, respected and have the right to self-determination as the Zulu, Xhosa and others as traditional authorities who enjoy representation in national, provincial and local government, providing a voice for their respective peoples.

Perhaps SA’s slow pace in dealing with the San and Khoe matter is influenced by their past experience when they dealt with the Volkstaat issue. A glaring reality for me is that the Afrikaners tried to use their power during the early 1990 negotiation process to try to secure some place for them post apartheid. They insisted on a Volkstaat when it was unsure who would rule post the 1994 national elections. When the ANC won, the idea of a Volkstaat was preposterous in the ‘New’ South Africa.

Instead of opposing it outright, the ANC chose a reconcilable way and agreed on a CRL Commission, to promote and protect the rights of all the cultural, religious and linguistic communities in South Africa. Reminiscent is Mr Nelson Mandela’s words during the Rivonia trials in 1964,

"I have fought against white domination, and I have fought against black domination. I have cherished the idea of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal that I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die."

This sense of equality is universalistic and before we are able to reach that we have to address the current inequalities as Taylor and Kymlicka have argued. The ideal of Mr Mandela seems a tall order in this world of the growing global economy. However, SA has taken the challenge of creating a country unified in its multicultural diversity and the coexistence of a collective identity. The CRL Commission is one of its 'goodwill' mechanisms to practically act as an agent to reach these ideals.

7.2 Mandate too broad

The mandate of the CRL Commission to address these diversities represents the well meaning side of the RSA government. It is, however, very broad and not enough to effectively engage with the Khoe and San as First Nation indigenous peoples wanting official recognition and constitutional accommodation as well as restitution of justice with regards to their historical experience of dispossession, marginalisation and culture genocide, loss of territories, land rights and self-determination. The promotion and protection of culture, religion and language is appropriate for those groups who currently have access to these aspects of their cultures. The Khoe and San peoples have remnants of these aspects that need major development. They therefore need a specific body that would effectively address their issues of cultural development, education, economic upliftment, restoration of their territories and especially their power relation with the nation state. And who better to engage with this issue than the Khoe and San peoples themselves.

Although the clause in the mandate of the CRL Commission, "To promote the right of communities to develop their historically diminished heritage" may have been included to address the situation of the Khoe and San peoples, it is still a feeble attempt and an inadequate way of including the Khoe and San peoples in the countries commitment to restitution of justice for all its peoples.

As an agent for social change, the CRL Commission is practically engaging the diverse groups in SA in the form of dialogue and research. Research and public dialogues about processes of ethno-racial formation and the transformation of consciousness should encourage a post-colonial way of thinking that affirms and promotes diverse heritages. As part of their research mandate, the CRL Commission

is looking for practical ways of contributing to inquiries and dialogues about the effects of the past upon the present.

By promoting Africanness and African values based on *ubuntu* which means respect and care for each other, they can promisingly promote identities and ways of thinking about, and relating to the past which would encourage harmonious social relations and respect. In this way, together with the other ‘chapter 9’ institutions, they can make a valuable contribution to attempts at forging a post-colonial Republic of South Africa embracing the diversity of all its peoples including the Khoe and San. There are many roads towards the goal of true equality and toleration is one of them. To date, the culture missing from the South African domain is the Khoe and San culture. And surely to embrace diversity in SA is to embrace not only the cultures that currently exist but also restore and develop the ones that are almost forgotten.

“Toleration is historically the product of the realization of the irreconcilability of equally dogmatic faiths, and the practical improbability of complete victory of one over the other.”

Isaiah Berlin

The Originality of Machiavelli

(in Niezen 2002)



Cape Town, 2006

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