**WESTERN CAPE LEGISLATIVE** **KHOISAN COUNCIL**

**(WCLKSC) 171-180 NPO**

**Submission to the Portfolio Committee on the Traditional and KhoiSan Leadership Bill (TKLB)**

**30 November 2016**

**Constitutional Connivance and Democratic Deceit.**

1. **Salutations and Introduction**
2. Salutations and all protocols observed

Sida, Sida, Geratsoa tsoa (We are beginning)

Gangan Tsi (Thank you Lord)

1. My name is KhoiSan Francisco MacKenzie, Chief Autshumoa; I represent the Western Cape Legislative KhoiSan Council (The Council).
2. The Western Cape Legislative KhoiSan Council
3. The Council is the most representative body of the KhoiSan in the Western Cape Province. This much was acknowledged by a person no less than the Minister of Rural Development and Land Reform (DRDLR), Honourable Minister Gugile Nkwinti on 10 May 2015.
4. The Council is the custodian of the history of engagement of the KhoiSan since 1980 with decision-makers of our then emerging democracy to include us in a meaningful manner in the new Constitutional arrangements of the Republic of South Africa, post Apartheid. However, our sincere attempts to engage have thus far been met by *Constitutional Connivance and Democratic Deceit*.

*As an example*, my participation in the ground breaking conference arranged by IDASA in August of 1995 with the theme *“National Politics and the question of Identity – the Case of the Western Cape”,* has been completely expunged from the historical record as represented by the official publication of that conference, titled, *‘Now that We are Free – Coloured Communities in a Democratic South Africa” (edited by Wilmot James, Kerry Cullinan, and Daria Caliguire)*. The significance of this conference in the evolution of our democracy is underscored by the fact that the keynote speaker at this auspicious event was the first President of our Democratic Republic, President Nelson Rohlihlahla Mandela. The limitation of time precludes me from embroiding on this theme through recent examples. However, we want to note that this example of my personal experience in 1995 represents how the legitimate voice of the KhoiSan has been systematically and consciously excluded and expunged from the national discourse by the architects of the post 1994 Democratic Order.

1. The WCLKSC and the TKLB
2. With this submission, The Council formally and officially rejects the TKLB in its current form.
3. We base our rejection of the TKLB on the following positions:
	1. That, we , the KhoiSan, are excluded from the arrangements of Act 108 0f 1996 – also known as the Constitution of the Republic of South Africa;
	2. As all legislation emanates from the founding legislation of the Republic, we are of the considered opinion that the TKLB is a manifestation of a haphazard attempt to include the KhoiSan into the Constitutional arrangements of the country in an improper manner;
	3. Furthermore, the SILENCE of the TKLB on the issues of aboriginality and first nation status of the Khoisan People implies that it has been adjudged to be of no consequence by a competent court of law. However, we want to bring it to the attention of this Committee that the scrutiny of a competent court of law of the international legal frameworks of the United Nations Declaration of the Rights of Indigenous People (UNDRIP) and Convention 169 as it pertains to the KhoiSan has not yet been initiated nor concluded. Therefore, it is premature for this Bill to be silent on, thus, TO IGNORE these fundamental issues;
	4. The title of the TKLB suggests but an inclusion of KhoiSan Leadership without the Acknowledgement of the KhoiSan People of which the leadership forms a part;
	5. Furthermore, the Bill talks about the arrangements around the leadership of the KhoiSan, but do not – respectfully, I SAY AGAIN - express any word on the acceptance of the existence of the KhoiSan People as fundamental source, thus, starting-point of its leaders;
	6. Still furthermore, the Bill confines the role of this invented- and-cut-off-from-their-People KhoiSan Leadership to an advisory role and not a legislative role. This is reminiscent of the Advisory Councils of the Colonial/Apartheid era;
	7. The title suggests that legal arrangements around traditional and aboriginal communities are to be conflated under one Bill. It is our considered opinion that this is a fundament weakness in the TKLB in its current form as there are fundamentally different principles governing traditional communities vis a vit aboriginal communities;
	8. The definition of Cape Khoi has no bases in history, but it is a product of colonial and Apartheid Legislation. Therefore, we are of the view that the aboriginal communities grouped under this notion (i.e. the Cochoqua, Goranaiqua, Goran Haikona, the Hessequa, Ghainoqua, the Choragoqwe) be acknowledged as entities in their own right as with the others (Griqua, Koranna, Nama, and the San).
4. Our Prayer
5. That the KhoiSan be included into Act 108 of 1996 in a proper manner;
6. That The KhoiSan be afforded their rights as aboriginal First Nation under the UNDRIP and Convention 169;
7. That a mechanism similar to the Traditional Communities under the interim constitution of 1993 that led to Chapter 3 and Chapter 12 of Act 108 of 1996 be enacted for the Aboriginal Communities in order to build the institutional coherence of the KhoiSan;
8. That all legislation - including any future replacement of the TKLB - related to the Aboriginal Communities be made distinct from the legislation covering the Traditional Communities;
9. That all future legislation concerning the KhoiSan is promulgated in alignment with our concerns and our prayers contained in this submission.
10. Vote of Thanks and Closure
11. Mr. Chairman and fellow committee members and participants to this Public Hearing THANK YOU for the opportunity to make this submission. On behalf of the ignored and denied KhoiSan People standing at the gates of our democratic Parliament I THANK YOU FOR THIS OPPORTUNITY TO MAKE A CONTRIBUTION TO THE ONGOING DEEPENING AND BROADENING OF OUR HARD FOUGHT FOR DEMOCRACY.
12. aTOA TAMA! KHAMSGE!

Chairperson of the WCLKSC:

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KhoiSan Francisco MacKenzie, Chief Autshumoa (30 November 2016)