

# Inheemse Spoor

Celebrating San & Khoi Indigenous Knowledge

Uitgawe 2 (van 'n reeks van 4)

'n Publikasie van die Rooibos-trust

Januarie 2021



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OORWINNING

Lede van die KhoiKhoi-gemeenskappe is verheug dat die Rooibos-ooreenkoms uiteindelik onderteken is.

Foto met vergunning van Natural Justice

## Groot afwagting oor Rooibos voordele

### ZENZILE KHOISAN

**D**aar heers groot hoop en inspirasie onder die KhoiKhoi en die San inheemse afstammelingen in Suid-Afrika – oneag die donker wolke van die dodelike Covid 19-pandemie – dat die waterskeidingsoorwinning met die suksesvolle Rooibos-onderhandeling, 'n nuwe toekoms sal skep vir die ware eienaars van die kosbare kennis van hierdie beroemde plant.

Dit is die woorde van Chief Johannes Maarman, uitvoerende voorsitter van die nuutgestigte en wettige KhoiKhoi Rooibos ABS Trust, wat tot stand gekom het na 'n ooreenkoms met die Rooibos-Raad en die Nasionale Khoi en San Raad (NKR), onder toesig van die Departement van Omgewingsake.

Volgens hierdie ooreenkoms is die Rooibos-bedryf wetlik verplig om jaarliks 1,5% van die plaashek-verkoopprys van Rooibos aan Khoi- en San gemeenskappe te betaal. Die ooreenkoms stel dit duidelik dat die Rooibosbedryf moet verseker dat regverdige toegang aan gemeenskappe en inheemse Rooibos-boere in alle fasette van die bedryf gegee word.

“Ongeag die donker wolke van die pandemie, en al die onsekerheid wat daarmee gepaardgaan, begin ons 2021 ten volle bewus dat 2020 op 'n redelike hoë noot geëindig het met die ondertekening van die Rooibos en heuningbos-ooreenkoms,” het Maarman gesê. Hierdie ooreenkoms is onderteken op

1 November 2019 onder toesig van Barbara Creecy, Minister van Omgewingsake, Bosbou en Visserij, by !Kwa ttu, die San kultuur- en opvoedingsentrum naby Yzerfontein.

Die onderhandelingspan, wat bestaan het uit prominente gemeenskapsverteenners, die NKR, asook prokureurs van Natural Justice en Chennels Albertyn, het verseker dat die Rooibosbedryf 'n Boikulturele Gemeenskapsprotokol (BGP) onderteken, sodat die regte oor die inheemse kennis van die Khoi en San beskerm kan word.

Prins Stanley Peterson, lid van die NKR en hoof-onderhandelaar namens die KhoiKhoi, het in sy reaksie gesê:

“Hierdie is ons storie. Dit gaan oor die suksesvolle uitkoms van die lang pad wat gestap is met onderhandelinge en wat bereik is deur die Biokulturele Gemeenskapsprotokol.”

Die Bioprospekteringsfonds, waaruit geld oorbetal word aan die San Trust en die Khoi-Khoi trust, vorm deel van die Departement van Omgewingsake, Bosbou en Visserie.

Voordele sluit in werkskepping, en die opheffing van sowat 160 kleinskaalboere wat aan die Wupperthal kooperatief behoort in die

Wes-Kaap en die Heiveld ko-op in die Noord-Kaap.

“Soos ons reeds in die vorige uitgawe van Inheemse Spoor afgekondig het, noudat hierdie ooreenkoms geteken is, is dit amptelik erken dat ons mense die tradisionele kennis-houers is en dat spesifieke beginsels van reg tot vergoeding, in die vorm van 'n levy in swart en wit uitgelê is.

Die voorsitter het erken dat daar wel frustrasie op grondvlak in die Khoi en San gemeenskappe is, wat verdere inligting soek oor

“Die Rooibos proses moet beskou word as 'n belangrike keerpunt, waar ons bewussyn oor ons inheemse status ernstig opgeneem word en waar ons besef wat die waarde van ons tradisionele kennis is – Lesle Jansen

die ooreenkoms, spesifiek oor hoe die betaling van die voordele sal werk; hoe mense betrokke kan raak om deel te neem aan die proses en die daarstelling van 'n volhoubare struktuur en administrasie, wat uit die ooreenkoms sal voortvloei.

Die voorsitter het ook namens die Trust erken dat weens Covid-19 het daar ook te-leurstellings gekom weens die amptelike beperkings wat die proses vertraag het.

“Die Rooibos Levy moes reeds in Junie 2020 deur die bedryf betaal gewees aan die Biosprospekteringsfonds, maar as gevolg van Covid-19 en administratiewe vertrags aan

die regering se kant kon die oorbetalings nog nie gedoen word nie.

“Ons hoop dat die vertrags opgelos sal word, en sodra die eerste levy aan die Trust Fonds betaal is, sal almal in kennis gestel word. Ons hoop en vertrou is dat ons alles wat ons moet doen klaar sal kry, om ons mense te deur die Rooibos-voordele.

“Covid-19 het wel groot vertrags veroorsaak, maar ons hoop om binnekort aan die gang te kom met ons werksaamhede,” het Maarman bygevoeg.

Hy het verder die inheemse Eerste Nasie volke aangemoedig, selfs in hierdie tyd waar baie mense hoop verloor het, om nie tou op te gooi nie, maar om inspirasie te kry van die onderhandelingspan, wat 'n voorbeeld stel van onselfsugtige opoffering namens die volk.

“Hierdie ooreenkoms is vir ons die bevestiging van die integriteit, die standvastigheid en die uithou vermoë van almal wat betrokke was by die onderhandelingsproses.”

Dié boodskap is beaam deur Frans Kraalshoek, NKR-raadslid en woordvoerder van die legendariese Vrystaatse Griekwa-leier, Kapt. Johannes Kraalshoek, wat in Januarie 88 jaar oud geword het.

“Met die Rooibos-ooreenkoms en vele ander groot verwickelinge in die pylyn, waar ons regte as volk uiteindelik erken word, is daar groot hoop dat die jare lange onregverdige behandeling aangespreek sal word en dat geregtigheid sal seëvier,” het Kraalshoek gesê.

Vervolg op bl. 2

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## Knowing, enforcing traditional knowledge rights

ZENZILE KHOISAN

As we report in this edition of Inheemse Spoor, it is of critical importance that indigenous Khoi and San descendants understand the South African and International laws and conventions that govern Traditional Knowledge.

This knowledge is the priceless inheritance developed, preserved and handed over in Khoi and San indigenous communities through the generations.

Understanding the process through which a legal framework was developed for these rights, as well as the access and benefit agreements that flow from the enforcement or application of traditional Knowledge rights is a critical basis for rebuilding communities who were dispossessed of their identity, their land their culture and their ancient Traditional Knowledge, which was unjustly utilised by others for profit.

This legal framework of the rights of indigenous descendants and communities and the pathway to restitution is clearly outlined in the relevant articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of which the Republic of South Africa is a signatory.

(More information on UNDRIP on page 12)

These are the declarations on rights from the world body that still with serious political will, as in the case of the Ainu in Japan and the First Peoples in Canada, have to be fully integrated and applied in South African law.

As is fully explained in this edition of Inheemse Spoor,

### From the Editor's pen

there is a growing body of law, of legal processes that clearly shows the way to the recognition and application and enforcement of traditional knowledge in terms of recognition.

It also shows the pathways to access and benefit which is a prerequisite for justice in the sphere.

It is particularly instructive, through this pathway to see how, over a period of a decade, the protocols and treaties of international bodies such as the United Nations were then taken up by the human and peoples rights structures of the African Union and then, finally, by the South African department of environmental affairs.

The ground-breaking work of the Department of Environmental Affairs, Forestry and Fisheries in convening the investigative study on Traditional Knowledge holders rights related to Rooibos and Honeybush opened the way to a watershed agreement between the primary Rooibos and Honeybush industry body and the negotiating team comprised of the National Khoi and San Council and representatives of the indigenous Khoi and San communities.

These communities have been unfairly and unjustly dispossessed of the rights that had been developed and preserved by their forebears for centuries.

This is a brilliant start, but the victory achieved with Rooibos and Honeybush must now be applied to many other high value plants and practices where the Khoi and San have an irrefutable stake in the Traditional Knowledge.

## Groot afwagting

Vervolg van bl. 1

Kraalshoek glo vas dat die Rooibos oorwinning die inheemstrukture in die Vrystaat aangemoedig het om meer intens die stryd aan te pak om die onregverdigheid rakende die onteining van gronde, wat wetlik aan die stam behoort, reg te stel.

Inheemse prokureur, Lesle Jansen, van Natural Justice, wat 'n groot ondersteunende rol gespeel het in die Rooibos-onderhandelinge is ook oortuig dat Rooibos nie die einde is nie, maar die begin van 'n groter proses vir die restorasie van die Khoi en San afstammeling in Suid- en Suider-Afrika.

“Die inheemse volke in ons land moet die Rooibos-proses bekou as 'n belangrike keerpunt, 'n tydperk waar ons bewussyn oor ons inheemse status ernstig beskou word, waar ons besef wat die waarde van ons tradisionele kennis is – iets wat allesomvattend is.”

Volgens Jansen sluit dit in ons mense se kennis oor plante, die eeu oue kennis van die see en haar onskatbare waardes, asook dit wat mense soms beskou as net alledaagse dinge, soos hul kennis oor die gebruike van beesmis, en elke ander element van ons tradisionele kennis.

“Hiermee saam ons jarelange verbondheid aan die grond waarvan ons voorouers onteien was en ons kultuur wat ons weereens laat herleef – dit is alles deel van die herlewering en herstel van die Khoi en San inheemse volke,” het Jansen gesê.



ONSKATBARE ERFENIS: Lesle Jansen van Natural Justice lig gemeenskappe in oor hul inheemse kennis.



Pooven Moodley (middel), uitvoerende direkteur van Natural Justice, saam met NKR-raadslid chief Poem Mooney en ander Khoi-Khoi-verteenwoordigers by 'n geleentheid van Natural Justice.

Foto's met vergunning van Natural Justice.



*Tradisionele kennis sluit in ons mense se kennis oor plante, die eeu oue kennis van die see en haar onskatbare waardes, asook dit wat mense soms beskou as net alledaagse dinge, soos hul kennis oor die gebruike van beesmis...*

# Boodskap van die Rooibos Trust voorsitter – Chief Johannes Maarman

## ‘Moeilike jaar, maar kom ons sit skouer aan die wiel’

Groetnis dierbares

Aan ons KhoiKhoi mense wil ek, as voorsitter van die KhoiKhoi Rooibos-trust, graag net voorspoed toewens vir die nuwe jaar, en vir alles wat in hierdie jaar, onder moeilike omstandighede nog moet plaasvind. Soos ons hierdie nuwe jaar intree, met die dodelike Covid-19 pandemie wat wêreldwyd verwoesting saai en groot verlies en hartseer veroorsaak, wil ek ons in-nige meegevoel uitspreek aan almal in ons geledere wat swaar getref is deur die virus.

Ons voel dit saam met al ons leiers en families wat groot verliese gely het en ons KhoiKhoi mense wat dierbares moes afstaan aan die dood gedurende hierdie Covid-19 pandemie.

Ons wens ook sterkte toe aan diegene wat nog in hospitale en isolasie eenhede is, of wat tuis aansterk.

Ongeag die donker wolke van die pandemie, en al die onsekerheid wat daarmee gepaard gaan, begin ons hierdie 2021 met die volle bewussyn dat die vorige jaar op ’n redelike hoë noot geëindig het.

Een van die hoogtepunte verlede jaar was die ondertekening van ’n waterskeidingsooreenkoms met die Rooibos en Heuningbos-bedryf.

Soos ons reeds in die vorige uitgawe van Inheemse Spoor afge kondig het, noudat hierdie ooreenkoms onderteken is, word dit amptelik erken dat ons mense die tradionele kennishouers is en dat spesifieke beginsels van reg tot vergoeding, in die vorm van ’n levy, in swart en wit uitgelê is.

Hierdie ooreenkoms is vir ons die bevestiging van die integritet, die standvastigheid en uithouvermoë van almal wat betrokke was by die onderhandelingsproses, insluitend die leierskap van



Chief Johannes Maarman

gemeenskappe in die Rooibos land-boustreek, die leierskap van die Nasionale Khoi en San Raad, asook ons vennote soos Natural Justice, wat gespesialiseerde regs, finansiële en logistieke ondersteuning verleen het.

### Rooibos levy

Die Rooibos levy moes reeds teen Junie 2020 deur die bedryf aan die Biosprospecting Trust Fonds inbetaal gewees het, maar as gevolg van Covid-19 en administratiewe vertragings aan die regering se kant kon die oorbetalings nog nie gedoen word nie.

Ons hoop dat die administratiewe vertragings gou opgelos sal word en sodra die eerste Rooibos tradisionale kennis levy aan die Trust Fund betaal is, sal almal in kennis gestel word.

Ons wil graag vertrou dat ons alles gedoen sal kry wat ons moet doen om ons mense te kan bemagtig deur die Rooibos voordele.

Covid het wel groot vertragings veroorsaak maar ons hoop om binnekort aan die gang te kom met ons werksaamhede.

### Bioprospecting Trust Fonds

Soos vereis in die akte wat die wetlike riglyne bepaal vir die samestelling en werksamhede vir strukture wat gekoppel is aan die Biosprospecting Trust Fonds, asook die optrede namens begunstigdes, is die trustees in 2020 aangestel en gelys in die Trust akte.

Hierdie inligting is in die vorige uitgawe van Inheemse Spoor uiteengesit.

Wat betref die visie van die trust, asook die akte wat hierdie visie dryf, sal gemeenskappe wat as KhoiKhoi identifiseer geregtig wees op die levy soos uiteengesit in die Trust akte.

Hierdie KhoiKhoi-gemeenskappe

word identifiseer as Griekwa, Koranna, Nama, Kaapse Khoi, asook die Sederberge inheemse gemeenskappe

As Voorsitter van die Trust is my fokus en vooruitsigte vir hierdie jaar dat ons so spoedig moontlik sal begin om by ons mense op grondvlak uit te kom sodat die lang verwagte voordele by die mense kan uitkom.

My hoop is dat ons alles wat ons beoog ’n werklikheid sal maak, ongeag die probleme, wat as gevolg van Covid-19 ondervind word.

Ons moet skouer aan die wiel sit om te verseker dat ons die vertragings van die oorbetalings van

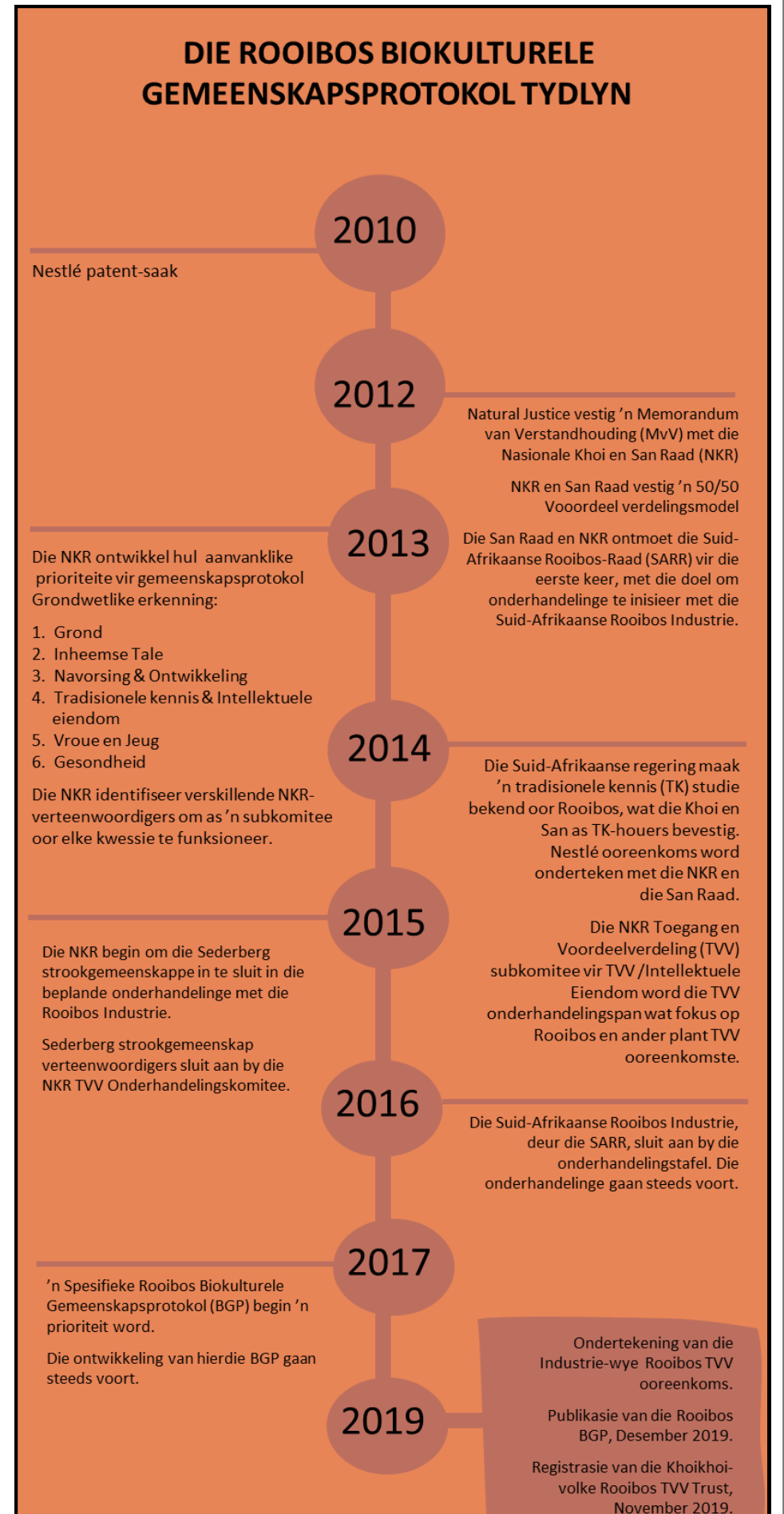
die fondse aanspreek.

Ons vertrou dat ons sou gou as moontlik met positiewe nuus na vore sal kom en ons sal nie rus voordat dit gebeur nie.

Laastens wil ek onder u aandag bring dat die eerste uitgawe van die Rooibos-trust koerantjie (Inheemse Spoor) al uit is en ons poog om dit oral by almal te kry sodat ons mense ingelig kan wees rondom alles wat gebeur in verband met die Rooibos-voordele.

Ons hoop en vertrou julle sal so gou moontlik kennis kry omtrent al die verwikkelinge.

Hartlike inheemse groete en alle voorspoed.



# Securing rights and benefits with binding contracts

ZENZILE KHOISAN

Many of the world’s indigenous peoples have found themselves in an intense struggle to ensure that the rights flowing from knowledge developed over centuries and handed down through the generations are protected and that benefits related directly to the use of products associated with this traditional or indigenous knowledge flow directly to the descendants of those who are the knowledge holders.

In South Africa and internationally Rooibos is regarded as a high value crop, that has been utilised for cosmetic, culinary and medicinal purposes by the Khoi and the San for centuries. Like other indigenous peoples across the world the Khoi and San, through their representative organisations and their professional structural support entities have engaged major corporates and the Rooibos industry umbrella structures to secure legally binding agreements.

For ease of reference Inheemse Spoor has summarised below the pertinent and critical aspects of the contracts the Khoi and San representative organisations have signed with the Rooibos Council and with the international food manufacturing and distribution giant Nestlé.

**Nestlé contract**

- The San and Khoi are the first indigenous peoples of South Africa. Through their traditional knowledge systems, dating back for countless millennia, they are the indigenous knowledge holders in relation to the medicinal uses of various plant varieties, including the plant known as Rooibos.
- The San and Khoi as indigenous knowledge holders are holders of certain legal rights (a form of intellectual rights) in relation to the plant species.
- Nestlé acknowledged that the San and Khoi are stakeholders in relation to Rooibos and would need to give permission for certain projects.
- The agreement is in terms of the Convention for Biological Diversity as set out in the South African Biodiversity Act 10 of 2004.
- The San is represented by the San Council and the Khoi by the Khoi and San Council.

**Components of the agreement:**

- San and Khoi assert and claim that they are knowledge holders.
- Nestlé acknowledges the San and Khoi as the knowledge holders.
- Nestlé is undergoing a pilot bio-prospecting project which requires a benefit-sharing agreement with the San and the Khoi.
- Agreement was in place until end of July 2014 that San and Khoi would receive combined, with an equal split between the San and Khoi, 3% of the proceeds from the bio-prospecting project.

ROUND TABLE DISCUSSION: NKC-chairman, Cecil le Fleur, explains the Rooibos Trust contract.

PIC COURTESY NATURL JUSTICE



**Rooibos contract**

- The San and Khoi are the first indigenous peoples of South Africa. Through their traditional knowledge systems, dating back for countless millennia, they are the indigenous knowledge holders in relation to the medicinal uses of various plant varieties, including the plant known as Rooibos.
- The San and Khoi as indigenous knowledge holders are holders of certain legal rights (a form of intellectual rights) in relation to Rooibos.
- A benefit sharing agreement arrangement needs to secure legal compliance of all stakeholders commercially involved in the Rooibos Industry, from farmers/primary producers to processing companies, to branding, marketing and sales organisations, both locally and internationally.
- Legal compliance by the Rooibos industry, by acknowledgement of TK, constitutes “Restitution” to San and Khoi descendants of the original TK holders.
- The agreement is in terms of the National Environmental Management (Biodiversity) Act.
- The South African Rooibos Industry, elected to negotiate

an industry-wide agreement, in order to ensure legal compliance by the industry’s multiple stakeholders.

- Parties: The San is represented by the San Council, the Khoi by the Khoisan Council and the Rooibos farming communities in the Cederberg.

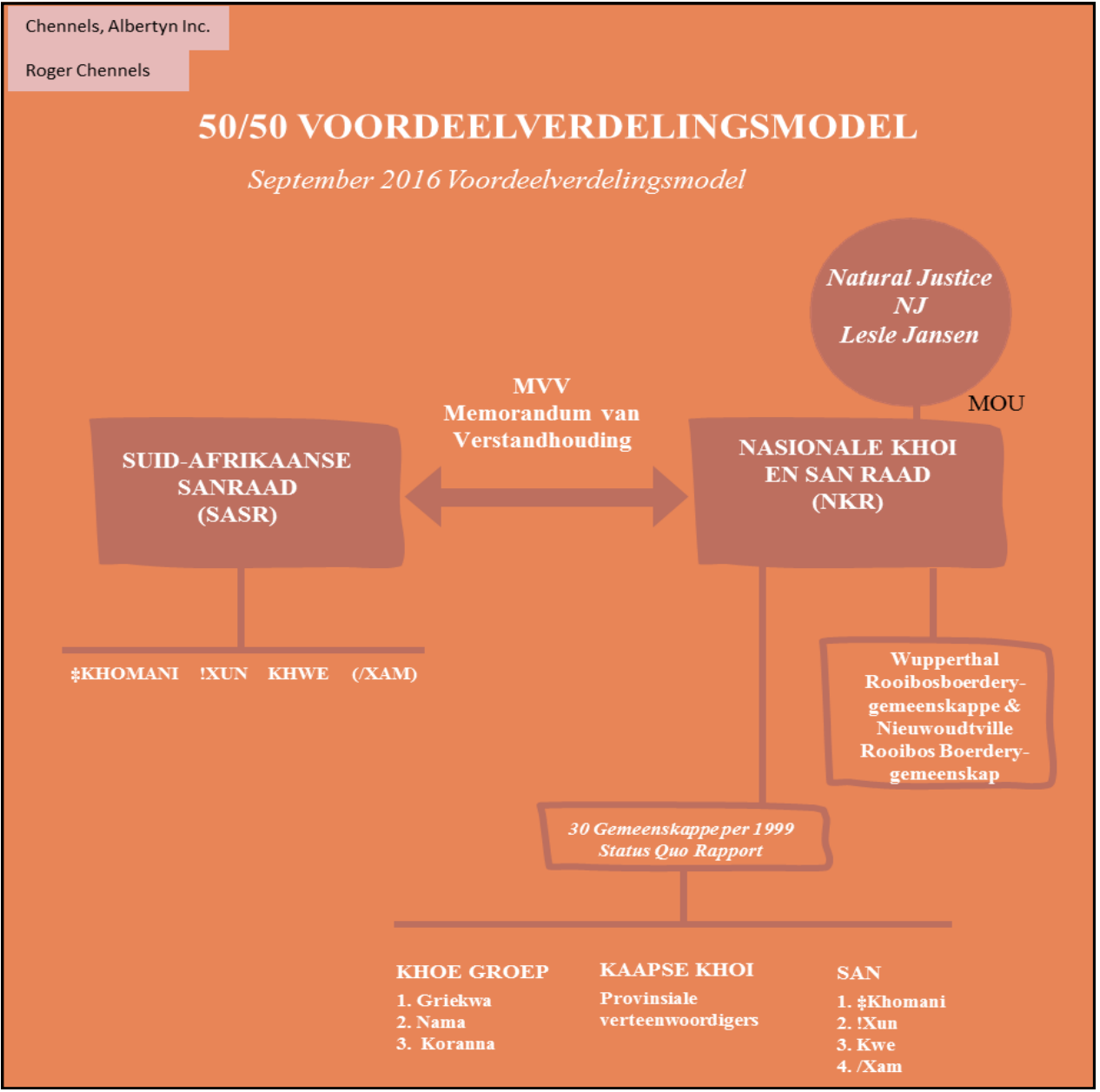
**Components of the agreement:**

- The Rooibos industry formally acknowledge the Traditional knowledge of the San and Khoi in relation to the plant variety and indigenous resources known as Rooibos
- The objective of the agreement is to provide for a fair and sustainable benefit sharing framework
- The agreement will be reviewed annually

San and Khoi will receive combined, with an equal split between the San and Khoi, 1.5% of the total annual purchases of Rooibos at the industry Farm Gate Price.

This will be paid into the Biodiversity Trust Fund, management by the Department of Forestry, Fisheries and the Environment, who shall then pay it over to the Khoi and San respective Trust funds.

(Additional source: Natural Justice)



Rooibos is regarded as a high value Crop that has been utilised for cosmetic, culinary and medicinal purposes by the Khoi and the San for centuries.

Pathway to traditional knowledge rights ...

International Law

Use of Rooibos must be fair, equitable benefit-sharing

The watershed agreement that has been signed with the Rooibos industry in South Africa has to be carefully monitored. Traditional Knowledge rights experts such as Natural Justice, as also the National Khoi and San Council and the Rooibos Trust representing indigenous communities, advocate that equity and fairness is critical for all benefit-sharing agreements.

The Convention on Biological Diversity

The Convention on Biological Diversity (CBD), an international agreement, came into being in 1992. The CBD has three objectives:

- Conservation of biological diversity;
- Sustainable use of its components; and
- Fair and equitable sharing of benefits arising from genetic resources.

This protocol was clear and, according to article 8 (j) requires States, *“subject to their national legislation, to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity, and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practice”*.

With reference to our case, when matters pertain

South Africa is a signatory to the Nagoya Protocol and has provided a mechanism in its domestic legislation to give effect to this Protocol.

The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises and affirms the rights of Indigenous People.

It states in the preamble that, *“respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment”*.

Article 23 of the Declaration states that we have the right to determine and develop our priorities.

We also have the right to exercise our development. With this BCP and by practising FPIC, we have the opportunity to be actively engaged in developing our communities. Our voices can be heard and we can fulfil our responsibilities to our communities.

Article 26 asserts our right to the lands, territories and resources which have been traditionally owned by us. \*

It is with this in mind that we believe our rights as TK holders need to be respected and affirmed by those who wish to engage with us in the development of Rooibos.



INFORMATION SESSION: Stanley Peterson, Chantal Revell and Barend Salomo during a discussion on access and benefit-sharing.

to the use of Rooibos Traditional Knowledge, there needs to be fair and equitable sharing of benefits.

The Nagoya Protocol

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity states that States shall:

- Take measures to ensure that benefits arising from natural resources and traditional knowledge held by communities is shared in a fair and equitable way with communities, on mutually agreed terms.
- Provide for legal clarity and transparent rules on access and benefit-sharing mechanisms.
- Provide information on how rules and procedures for obtaining prior, informed consent and mutual agreements can be obtained.
- Create conditions to promote and encourage research contributing to biodiversity conservation and sustainable use of biodiversity.
- Support the development of community protocols for access and for access and benefit-sharing regarding traditional knowledge associated with natural resources.

African Commission on Human and Peoples Rights

In 2010, the African Commission on Human and Peoples Rights released the protection of customary rights of communities. The African Commission adopted a Resolution on a Human Rights-Based approach to Natural Resource Governance in 2012 that reads as follows:

*“Mindful of the disproportionate impact of human rights abuses upon the rural communities in Africa that continue to struggle to assert their customary rights to access and control of various resources, including land, minerals, forestry and fishing...*

*“Calls upon State Parties to [...] confirm that all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision-making related to natural resource governance”*.

This resolution reinforces provisions of other international instruments that call for States to take an active role in providing those parties interested in engaging with informed consent.

\* More articles of the United Nations Declaration on the Rights of Indigenous Peoples on page 16.

Suid-Afrikaanse Wetgewing

Studie bevestig KhoiSan is tradisionele kennishouers

Nasionale Omgewingsbestuur: Wet op Biodiversiteit Suid-Afrika is een van die lande wat die Konvensie oor Biologiese Diversiteit (KBD) onderteken het.

Die Nasionale Omgewingsbestuur van Biodiversiteit verklaar op huishoudelike vlak Suid-Afrika se toegewydheid onder die KBD en Nagoya Protokol.

Ooreenkomstig die drie doelwitte van die KBD verskaf dit ’n raamwerk vir biodiversiteits-bewaring, volhoubare gebruik en voordeelverdeling, en gemeenskapsbetrokkenheid in biodiversiteitsbewaring.

Seksie 82 stel dit duidelik dat voor ’n permit vir bio-prospekterings-doeleindes uitgereik kan word, moet die

geskied.

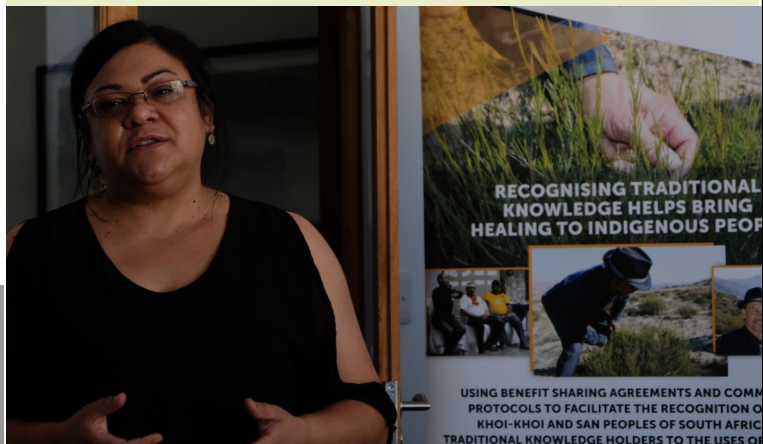
Veral wat betref dit wat voortspruit uit biopro-spekterende projekte, en wat ons inheemse biologiese bronne ontgin soos Rooibos, sowel as ons verwante tradisionele kennis.

Studie van Tradisionele Kennis deur die Departement van Omgewingsake

In 2014 het die Departement van Omgewingsake ’n studie gemagtig oor tradisionele kennis wat verwant is aan twee sleutelspesies in die biopro-spekterende sektor van Suid-Afrika, naamlik:

- Rooibos (*Aspalathus linearis*) en
- Heuningbos (*Cyclopia spp.*)

Ons het die regering daarop gewys dat ons onvoldoende



Natalie Feltman van die Departement van Omgewingsake, Visserye en Bosbou, bespreek die regering se beleid.

instansie wat dit uitreik seker maak dat die belange van die inheemse gemeenskap beskerm is.

Regulasies oor Bioprospektering, Toegang en Voordeelverdeling

Die BTVV/BABS-riglyne onderneem om verskillende aandeelhouders by te staan, wat in gesprek met ons wil tree oor die voldoening aan wetlike vereistes.

Deur te voldoen aan die wetlike vereistes soos uitgespel in hierdie regulasies, hoop ons dat billike en regverdige voordeelverdeling sal

erkenning, erkentlikheid en beskerming van ons belange ontvang het rakende die eienaarskap van tradisionele kennis verwant aan die Rooibos-spesies wat kommersieel ontgin word, net soos in die verlede.

Die DOS/DEA het ’n oorlegplegende aandeel-studie geloods.

Na die afhandeling van hul bevindinge het die Departement onse eis bevestig en het hulle geen rede gevind wat sou betwis dat ons die oorspronklike kennishouers van die gebruike tot Rooibos is nie.



Lerato Seema van Natural Justice.

# Kennishouers se regte erken

ZENZILE KHOISAN

Inheemse gemeenskappe dwarsoor die wêreld het vir eeue lank gely onder kolonisasie, besetting, onteining, verskuiwing en destabilisasie.

Hulle is as randfigure uitgeskuif, is ondermyn en erg verarm deur onwettige, onetiese en onregverdigte wette and praktye wat hul beroof het van hul waardevolle en kosbare erfenis – die tradisionele kennis wat as nalentskap van hul voorouers aan hulle oorgedra is.

Maar soos hierdie inheemse gemeenskappe in Suid-Afrika, sowel as wêreldwyd, weer begin opstaan het om hierdie erfenis te eis, was daar ’n noemenswaardige en aardskuddende ontwikkeling wat plaasgevind het.

Daar was ’n nuwe begrip en bewussyn dat hierdie onregverdigheid aangespreek en reggestel kán en móét word, sodat inheemse gemeenskap dit wat aan hulle behoort kan eis, bewaar en verdedig.

Hierdie belangrike en kritiese kopskuif word effektief aangespreek en opgesom in ’n inleidende video van die Union for ethical Bio-Trade van die Verenigde Nasies.

Hierdie video vorm deel van die aanlyn-opvoedkundig reeks oor internasionale raamwerke, wat ondersteuning bied aan inheemse mense, asook plaaslike gemeenskappe en hul gebiede, wat gebruik word vir bewusmakingsveldtogte.

Die toestand waarin inheemse mense hul tans bevind, word soos volg in die video opgesom:

“Dwarsdeur die geskeidenis, het Inheemse mense en plaaslike gemeenskap hul tradisionale kennis en biologiese hulpbronne gebruik om siektes te genees, kos te voorsien en om hul daaglike lewensbehoefes te vervul.

“Meer onlangs het baie mense voordeel getrek uit die gebruik van sommige van hierdie kennis en biodiversiteit vir farmaseutiese

produkte, skoonheidsmiddels, verskillende gewasse en vee rasse, asook ander produkte vir persoonlike gebruik.”

Die video verduidelik verder dat:

“...die gemeenskappe wat vir duisende jare omgesien het na die verbouing en gebruik van hierdie genetiese diversiteit, nooit regtig enige voordele hierdie ontwikkeling geniet het nie.

“Dikwels word hulle glad nie betrek by die navorsing en ontwikkelingsproses nie, verdien min of geen vergoeding vir hul kennis of hulpbronne nie, en het geen toegang tot die eindprodukte nie.

“Nie slegs is dit ’n oortreding van verskeie regte nie, maar kan dit ook daartoe aanleiding gee dat dit die aansporing kan blus wat gemeenskappe het om biodiversiteit te bewaar, asook die volhouding van hul tradisionele kennis-sisteme.

“In die algemeen is die meeste van die hulpbronne en tradisionele kennis wat vir hierdie ontwikkelinge gebruik word in die Globale Suide, terwyl die meeste van die voordele na die Globale Noorde vloei.”

In die laaste drie dekades het hierdie bewussyn ontwikkel in ’n afdwingbare etiese wetlike raamwerk, waardeur die regte van tradisionele kennishouers die verantwoordelikheid van inheemse gemeenskappe om hierdie kennis te bewaar as ’n hulpbron vir hul nageslagte, duidelik ontwikkel en uitgestippel is.

As gevolg van hierdie raamwerke is verklarings-konvensies, asook plaaslike en internasionale wette daargestel om meganismes en paaie te skep waardeur inheemse gemeenskappe bevry kan word van die verwoesting en verskriklike armoede waarin hulle hul bevind.

Hierna kan begin word om ’n nuwe werklikheid daar te stel, waar die rykdom wat kom van die kennis van hul voorouers, die primêre instrument kan word van hul herstelproses.



INHEEMSE GOUD: Kenneth Maarman en Hanelie Wilschut evalueer die toestand van die Rooibos-plant.



Een van die inheemse Rooibos-boere van Nieuwoudville, wat bevoordeel sal word met die Rooibos-ooreenkoms.

## Traditional Knowledge, innovations and practices

Traditional knowledge is the intimate knowledge and understanding of a particular resource or broader landscape or seascape, resulting from generations of direct interaction, observation, and learning-by-doing.

It is generally linked to a particular language with certain words and concepts that cannot be translated into other languages.

Traditional innovations are products or processes of research and application, developed by communities through on going interactions with a particular location and resources. Examples include crop varieties, livestock breeds, and handicrafts.

Traditional practices are patterns of behaviour and self-management that can be considered the products of traditional knowledge and innovations.

**Traditional Knowledge and international law**

South Africa has a rich cultural and biological heritage and diversity, with an expansive history of linking these through the traditional use of biological resources.

Local traditional knowledge of the value and use of biological resources is unique to a culture or society; passed from generation to generation through word of mouth and cultural rituals. This traditional knowledge is usually built by a group of people living in close contact with nature.

Traditional knowledge, particularly traditional ecological knowledge of an indigenous species, is an important

component in the improvement of natural resource management in South Africa. It can provide valuable information for the sustainable use and protection of ecosystems and species. This kind of knowledge is developed by local communities through their experiences with natural resources over time.

In 1992 the Convention on Biological Diversity (CBD), an international agreement, provided an approach to ensuring equity in the exploration and exploitation of biological resources and regulating the benefits of bioprospecting. (This is the search for plant and animal species from which medicinal drugs and other commercially valuable compounds can be obtained).

This approach, also called Access and Benefit Sharing (ABS), set out in Article 1 of the CBD, states that one of the fundamental objectives is the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. This includes appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

South Africa, being party to the CBD, regulates the exploration and exploitation of the country's rich biodiversity for commercial purposes through the National Environmental Management: Biodiversity Act (NEMBA or Biodiversity Act) (Act No. 10 of 2004) and the Bioprospecting,

Access and Benefit Sharing (BABS) Regulation, 2008 (including amendments).

South Africa's ground-breaking bioprospecting legislation and regulations are further supported by the ratification of the CBD's Nagoya Protocol.

This protocol, adopted in Japan in 2010, defines Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilisation (ABS), adopted in Japan in 2010.

The South African legislation and regulations and the international Nagoya Protocol have increased awareness of ABS and provide new opportunities for communities to benefit from their role as custodians of traditional knowledge of biological and genetic resources in SA.

In relation to this, in 2014 the Department of Environmental Affairs commissioned a study on the traditional knowledge associated with two key species in the bioprospecting sector of South Africa, namely rooibos (*Aspalathus linearis*) and honeybush (*Cyclopia* spp.)

**Sources:**

- <https://naturaljustice.org/wp-content/uploads/2015/09/Access-and-Benefit-Sharing.pdf>
- <https://naturaljustice.org/wp-content/uploads/2017/08/San-Khoi-Rooibos-Factsheet.pdf>

# Regte en pligte van gemeenskappe

## Regte

Volgens die Nagoya Protokol en die konvensie oor biologiese diversiteit bestaan daar regte wat gemeenskappe kan uitoefen om hul belange te beskerm. Dit sluit in:

- Die reg om vooraf geraadpleeg te word voordat 'n persoon of entiteit toegang tot 'n biologiese bron kry;
- Die reg om ten volle ingelig te wees oor die spesifieke rede vir toegang tot 'n genetiese bron;
- Die reg om toestemming te gee of te weier om 'n genetiese bron te deel;
- Die reg om te onderhandel op die terme waarmee almal saamstem oor toegang tot 'n genetiese bron;
- Die reg om te verseker dat pogings aangewend word om die gemeenskappe wat genetiese bronne eien, deel te maak in enige wetenskaplike navorsing oor daardie genetiese bronne;
- Die reg om 'n billike en regverdige betaling te ontvang van die komersiële gebruike van tradisionele kennis of navorsing oor 'n genetiese bron.

Hierdie voordele kan of in geld of 'n ander vorm van vergoeding wees;

- Die reg om te verseker dat hul gewoontereg, gemeenskapsprosedures en protokolle in ag geneem word, wat betref genetiese bronne of tradisionele kennis;
- Die reg dat geen verbod geplaas word op die gewoontes, gebruik en verdeling van genetiese bronne en tradisionele kennis binne of tussen inheemse gemeenskappe nie.

## Verantwoordelikhede

Artikel 15(6) van die Konvensie oor Biodiversiteit verklaar dat sodra gemeenskappe vooraf en billike toestemming gegee het is hierdie gemeenskappe verantwoordelik om deel te neem en toestemming tot toegang te gee tot relevante genetiese bronne.

## Intellektuele Eiendomsreg

Vooraf, ingeligte en billike toestemming word beskyf as 'n volledige proses en word as volg ontleed:

**“Vooraf”** beteken die geleentheid wat geskep word vir samewerking waarin toestemming gegee of weerhou word of waar daar teenkanting is teen 'n projek of ontwikkeling voordat dit geloods word – met genoeg tyd om al die inligting te evalueer of die moontlike nagevolge in ag te neem.

**“Ingeligte”** beteken dat alle inligting wat betrekking het op of die besluit dat toestemming gegee of geweier word, moet aan die gemeenskap verskaf word. Dit moet die jongste inligting wees en moet van 'n onafhanklike en objektiewe bron verkry word, en daar moet ook toegang wees tot tegniese kenners.

**“Toestemming”** beteken dat toestemming gegee word vir 'n spesifieke projek of ooreenkoms. 'n Gemeenskap kan toestemming gee of dit weier.

## Ander hulpbron-regte

Voordeel-verdelings ooreenkomste wat die Khoikhoi as tradisionele kennishouers erken is alreeds in die plek vir Hoodia, Boegoe en Rooibos. Daar is ook ander natuurlike bronne in Suid-Afrika waar die Khoi ook tradisionele kennis besit.

Wanneer hierdie natuurlike bronne benut of verwerk word vir kommersiële doeleindes kan die Khoi-gemeenskappe volgens die Nagoya Protokol toegangsbedeling-ooreenkomste sluit.

(Sources: <https://naturaljustice.org/wp-content/uploads/2015/09/Access-and-Benefit-Sharing.pdf>)

UNDRIP

The United Nations Declaration on the Rights of Indigenous Peoples have a long list that stipulates what rights indigenous people have. Among others:

To have redress, by means of restitution (having restored what has been lost or taken away) or compensation, for lands, territories or natural resources which they have traditionally owned or otherwise occupied or used, which have been confiscated, taken, occupied, used or damaged without their free, prior or informed consent (Article 28(1)).

• More UNDRIP articles on page 12.

# Consent, negotiation for access to indigenous resources & knowledge

Indigenous peoples and local communities may have the right to grant prior informed consent and negotiate on mutually agreed terms for the access to their genetic resources and traditional knowledge associated with these genetic resources.

They have this right because indigenous peoples and local communities are the custodians of their lands and natural resources.

Their traditional knowledge and practices, which are embedded in their cultural heritage, play an important role in the conservation and sustainable use of biodiversity, as do their customary laws and local governance structures.

The core principles of Access and Benefit Sharing (ABS) are contained in Article 15 of the Convention on Biological Diversity (CBD), which was adopted in 1992 and came into force in 1993.

Article 15 of the CBD recognises the sovereign rights of States over their natural resources and that they have the authority to determine access to the genetic resources under their control and according to their national legislation.

Access, where granted, shall be on mutually agreed terms (MAT). In other words, a contract must be formed, which governs the benefit-sharing arrangements.

Access to genetic resources shall be subject to prior informed consent (PIC) of the Contracting Party, unless otherwise determined by that Party.

States should take legislative, administrative or policy measures with the aim of sharing in a fair and equitable way the results of research and development.

This includes the benefits arising from the commercial and other utilisation of genetic resources with the provider.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity (Nagoya Protocol), which entered into force in

2014, builds on these principles and provides a more comprehensive framework for the implementation of ABS.

The three pillars of the Nagoya Protocol are access, sharing the benefits arising from utilisation, i.e. research and development on genetic resources, and monitoring compliance.

Critically, the Nagoya Protocol acknowledges the link between the use of genetic resources and traditional knowledge and, going beyond the CBD, specifies that ABS also applies to the traditional knowledge held by indigenous peoples and local communities when it is associated with

sources and associated traditional knowledge, ensure that traditional knowledge is protected from unlawful appropriation and support the development of truly fair and mutually beneficial agreements.

The implementation of the Nagoya Protocol creates the potential for the realisation of the rights of indigenous peoples and local communities to their resources and knowledge.

It includes the generation of local benefits from the utilisation of genetic resources and traditional knowledge, and better recognition of the customary governance and cultural values of indigenous peoples and local communities.

It calls for Parties to support indigenous peoples and local communities in the development of community protocols.

Minimum requirements for MAT and model contractual clauses for benefit-sharing and do not restrict the customary use and exchange of genetic resources and associated traditional knowledge within and among indigenous peoples and local communities, including across borders.

How these processes work in reality will largely depend on the national legal framework.

This framework defines how indigenous peoples and local communities are involved in this process and determines their rights, e.g. to land and resources.

Indigenous peoples and local communities have different roles in the ABS processes of African countries, including full responsibility for granting PIC and establishing MAT, through to a consultation, or systems where communities may have no formal role in the ABS process.

It is important for communities to understand how ABS is implemented at the national level.

Indigenous peoples and local communities can potentially play an active role in the development of the national ABS frameworks.

It is therefore essential for them to be proactive in establishing partnerships and developing value chains so that they benefit from their resources and knowledge.



Barend Salomo of Wupperthal with a Rooibos plant before processing.

genetic resources.

This means that, depending on how this is translated into national law, indigenous peoples and local communities may have the right to grant PIC and negotiate MAT for the access to their genetic resources and traditional knowledge.

The Nagoya Protocol also encourages governments to respect the customary laws of indigenous peoples and local communities, as well as their community protocols.

The explicit mentioning of the rights of indigenous peoples and local communities implies that countries need to, among others, provide for transparent, effective and culturally appropriate processes for PIC, empower communities to enter into negotiations with users of genetic re-



## STALWARTS:

Barend Salomo (left), Stanley Peterson and Colin Louw during a Pan African panel discussion in 2018.

Ons is die Khoi-Khoin – een volk. Ons, die Khoi-Khoin, het vir derduisende jare Suider-Afrika bewoon en rondbeweeg as nomadiese vee-eienaars. Saam met die San is ons die eerste inwoners van hierdie land. Die vroegste bewys van onse bestaan kan gesien word in afbeeldinge van rotskuns, oral te vinde in verskillende dele van Suider-Afrika. Die Khoi-Khoivolk bestaan uit vier historiese groeperinge: die Griekwa, die Nama, die Koranna en die Kaapse Khoi – wat almal subgroepe het. Khoi-Khoin is onse oorspronklike naam en is ’n sambreel-term, verwysend na die verskillende Khoi-Khoistamme soos bo vermeld. Spelvariasies sluit in “Khoi” of “Khoe” (enkelvoud), asook “Khoikhoi” en Khoisan.

Dis opmerklik dat al onse name in -kwa (in Engels qua) eindig – byvoorbeeld die Namakwa of Griekwa – omdat -kwa “mense” beteken. Die voorvoegsel verwys na ’n historiese leier en die naam sou dus die “mense van” die leier aandui. Daar is voorheen ook na ons verwys as die “Hottentotte”. Daardie naam verteenwoordig die kultuur- en taalpatrone van ons mense. Hollandse kolonialisme het Hottentot verkort tot “hotnot,” maar hierdie variasie het ’n beledigende konnotasie. Ons is nie formeel in Suid-Afrika as ’n inheemse kulturele gemeenskap opgeteken nie. Die Verenigde Nasies se Spesiale Rapporteur, Prof. Rodolfo Stavenhagen, het ons bestaan gedokumenteer as Suid-Afrika se inheemse volkere en die volgende gemeenskappe gelys in sy verslag. Hy skryf onder meer: \* “Daar is ses groot groepe wat hulself identifiseer as inheems en aanspraak maak op hierdie status. “Onder elk van hierdie groepe kan daar verskeie sub-groepe wees, wat van mekaar verskil, of vir hulle opvallende verskille in demografie of in die institusies wat hulle aangeneem het of

# Khoisan se rykdom was vee, kennis, erfenis



RAADPLEGING-SESSIE: Stanley Peterson, Jan Pietersen, Petrus Vaalbooi en Cecil le Fleur tydens ’n inligtingssessie oor die Rooibos-ooreenkoms.

weer vir verskille in hul bestaans- ekonomie. “Hierdie etniese groepe sluit in die drie hoof-Sanvolke (!Xun, Khwe en ǀKhomani); die verskillende Nama gemeenskappe (Khoekhoen); die groot Griekwa assosiasies; verteenwoordigers van die Koranna-afstammeling, sowel as verskeie groeperinge of sogenaamde ‘herlewings-Khoisan’ – mense wat hul historiese erfenis heropneem.” Volgens die dokumentasie verskaf aan die Spesiale Rapporteur gedurende sy besoek, tel die verskillende inheemse groepe, kollektief bekend as Khoi-San, insluitend ongeveer 1 000 ǀKhomani San, 1 100 Khwe San, 4 500 !Xun San en 10 000 Nama-mense, wat meestal in die dunbevolkte Noord-Kaap Provinsie woon. Daar is ’n verdere 300 000 Griekwas, meestal in die Noord- en Wes-Kaap Provinsies, maar met beduidende gemeenskappe in die Oos-Kaap, Vrystaat

en KwaZulu-Natal. Daar is verder ’n onbepaalde getal van herlewing” Khoisan-mense geassosieer met die Khoisan Erfenis Ontwikkeling Raad (KCHDC). Die meeste van die inheemse volke in die westelike deel van die land was gedwing om Afrikaans as hulle primêre taal aan te neem. Die gebruik van Khoe-San tale was sterk ontmoedig onder Apartheid. Hierdie historiese raamwerk van die breë historiese gemeenskappe word as sodanig in beide die Status Quo verslae van 1997 en die 2018 Suid-Afrikaanse Menseregte Kommissie se verslag oor die menseregte situasie van die Khoi-Khoin en San. Die Khoi-Khoivolke was bekend as besonderse nomadiese veeboere wat onse vorm van grond-ekonomie was.

Hollandse kolonialisme het Hottentot verkort tot “hotnot,” maar hierdie variasie het ’n beledigende konnotasie.

Dis geboekstaaf dat ons welgesteld was in die vorm van beeste, skape, inheemse kennis, gebruiklike bronne, asook ’n ryke erfenis, wat aan ons nagelaat is deur ons voorouers. Onse rykdom is ’n hele paar keer gedokumenteer in koloniale Britse, Hollandse, Duitse and Portugese argiewe. Geografies is die Khoi-Khoin oor groot dele van die Noord-, Wes- en Oos-Kaap asook die Vrystaat versprei, soos wat die provinsies in Suid-Afrika vandag bekend is. Voor kolonisasie was alle wes-, suid-sentraal- en suid-oos streke van die huidige Suid-Afrika bewoon deur slegs die Khoi- en Sanvolkere. Omdat die Rooibosplant net in die Wes-Kaap gevind word, kan die kennis aangaande sy gebruik net van ons verkry word. Ons is die Tradisionele Kennishouers (TK) van al die gebruike van Rooibos. Enige Eiendomsregte (EDR/IPR) verkry uit die gebruik van onse TK moet na behore aan ons, as die regmatige houers van die TK, geakkrediteer word. Daarom sou ons nooit individuele grondregte opeis nie, maar het gelewe met die diepgewortelde geloof dat grond behoort aan al die lewende wesens wat daarop woon. Hierdie verbondenheid met grond val saam met die antieke geloofsopvattinge van inheemse volkere wêreldwyd. Net soos die San, is die kuns om te skep op rotsagtige oppervlaktes in grotte en in oop ruimtes uniek, en karakteriseer ons uitsonderlike identiteit en erfgoed. Ons tekening dateer duisende jare terug en dien as getuienisse van onse reg tot grond en sy bronne in Suid-Afrika. Khoi-rotskuns bestaan uit geometriese ontwerpe, vingerkolle en handafdrukke. Die ontwerpe was met vingers aangewend, opvallend anders as die kunswerke van die San. \* Rodolfo Stavenhagen “Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (2005) MISSION TO SOUTH AFRICA” (UN REPORT) <https://undocs.org/E/CN.4/2006/78/Add.2>



# Captain’s inspiring artwork

Art washes away from the soul the dust of everyday life – Pablo Picasso



**A MAJESTIC PLACE:** An eagle hovers over the mountain and hills presiding over Bethane farm.



**ANIMAL LOVER:** Captain loves to paint animals; here is a Rhino that once visited Bethane.



**STRONG ROOTS:** This painting is called the Hendriks tree and it’s also the blue print for the Free State Griqua Council’s letterhead.



**Captain with the KhoiSan Community at the Rooibos Tea Discussion in Bloemfontein.**

# Captain Kraalshoek— a Griqua legend

There can really be no discussion of contemporary Griqua history in the Free State without a specific focus and explanation of the inspiring history, life’s work, legacy and legend of Captain Johannes Kraalshoek.

He was one of the most dedicated Griqua leaders who has been at the forefront of the struggle for the recognition, restitution and restoration of the Khoi and San descendants in South Africa.

Wise, soft spoken and incredibly knowledgeable about both his own peoples history, as also the history of the many other African peoples with whom the Griqua have come to share the area.

Captain Kraalshoek is the eldest of five children born to Andries and Louisa Kraalshoek, his other siblings being Willem Kraalshoek, Ben Kraalshoek, Jacobus Kraalshoek and Ismeal Kraalshoek.

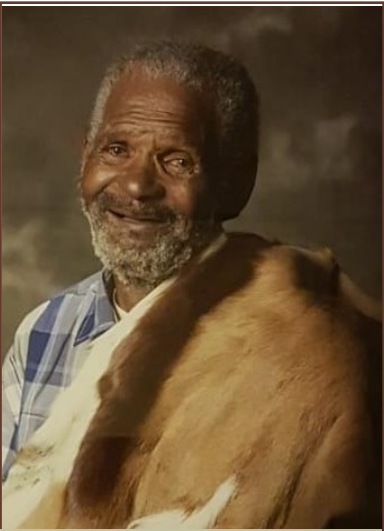
Currently the only remaining son and celebrating his 88th birthday this month, Captain Kraalshoek brought great jubilation to the legendary clan when he was born, during the great depression on 22 January 1933.

Deeply schooled about his heritage, culture, history and the indigenous knowledge systems that had been carried through both his own clan and the Griqua people for generations, Johannes Kraalshoek took the lead in the struggle to restore his people when he established one of the most formidable indigenous structures, the now 47 year old Free State Griqua Conference in 1974.

The veteran campaigner is specifically associated with one of the longest land restitution struggles, a fight reaching back 187 years that is grounded on a legally binding treaty related to land granted to the clan in 1833.

It is on the strength of this treaty that Hendrik Kraalshoek, Andries Kraalshoek and a group of elders mandated Captain Johannes Kraalshoek in 1960, while he served as an elder in the Lutheran Church, to lead the community and restore the land that was given to them by Captain Adam Kok II under treaty in 1833.

This treaty, like several others clearly demonstrating the claim to land of Khoi and San descendants provides irrefutable evidence of



**Captain Johannes Kraalshoek**



**Early life in Bethane.**

claim to land by First Nation descendants. It reveals the gross injustice perpetrated during the negotiations and constitutional process in South Africa which set the cut-off date for land restitution at 1913.

The background to this specific treaty dates back to the heyday of the town of Philippolis, where the Griqua people, under leadership of Captain Adam Kok II, settled in 1823.

This was a vibrant period where Philippolis, as an oasis of cultural practice and consciousness blossomed with various cultures, particularly the uniquely indigenous Griqua culture and way of life.

A decade later, in 1833, in tribute to their loyalty, steadfastness and unwavering dedication to defending the sovereignty of the Griqua people, their land, culture and identity, Captain Adam Kok II formally recognised their contribution.

This was with a specific grant of land in a treaty with Jan Kraalshoek.

This legally binding treaty was given further authority and enforceability when it was confirmed and sealed in a treaty on 13 September 1842 by Adam Kok III, who was the undisputed successor to Captain Adam Kok II.

By 1974, convinced that restitution of his clan and the Griqua people was critical to their restoration

to their rightful place in the region and broader society, Captain Johannes Kraalshoek launched a mass campaign to locate the descendants of the great dynasty and to educate them about their culture, history and language.

Among the many places where this mass consciousness campaign found fertile ground among the Griqua people was Springfontein; Bethulie; Welkom; Philippolis; Boshof; Bloemfontein; Thaba Putsoa and Edenburg.

This consciousness gained deep traction in the same year when Johannes Kraalshoek played a key role in the fight for Land Restitution, culminating in a case he and other stalwarts brought against the Evangelic Lutheran Church which called for the return of Bethane to its rightful owners.

It was also during the height of this campaign in 1974, that Johannes Kraalshoek established the Free State Griqua Conference in 1974.

It is due to his unwavering commitment to this campaign, to restore his people and retribute to them the land of which they had been unjustly dispossessed in Bethane, that his efforts were rewarded 25 years later when he prevailed victorious with the first successful land restitution case in the Free State Province.

On 28 September 2002, as a result of his hard work, the Free State Griqua Council was established.

The council is currently comprised of structures existing in Springfontein; Bethulie; Welkom; Philippolis; Boshof; Bloemfontein; Bethane; Xhariep dam; Thaba Putsoa, Edenburg, Jackobsdal, Koffiefontein, Trompsburg, Oppermansgronde, Bethlehem, Kroonstad, Fouriesmith and Luckhoff.

In 2006, in recognition of his pioneering work, then Free State premier Beatrice Marshoff awarded Captain Kraalshoek the Premiers Award, citing the hard work that he has done to prevail victorious in the first successful land restitution case in the province.

However, despite the jubilation that had lifted the community as a result of this victory, the Griqua community was dealt a further impediment when, against its wishes, a Communal Property Association was wrongfully established.

This latest injustice is now being vigorously contested in litigation between the Free State Griqua Council and the Bethane Communal Property Association.

Sadly, he lost his wife, Johanna Kraalshoek due to a long sick bed in 2019, followed by his youngest child, Conrad Kraalshoek, who passed away last year.

Still very much an inspiration to his people, Captain Kraalshoek, who is also a celebrated fine artist, resides on Bethane where he captures his unique worldview in his paintings.

*\*(Edited with permission from the Free State Griqua Council)*

# Sentinel moments in the Khoi & San indigenous resurgence

One of the incredibly inspirational stories of the post-apartheid South Africa era has been the phenomenal growth of what is known as the indigenous resurgence.

Today, because of the great sacrifices of the pioneers and their fortitude and vision, a formidable national movement has emerged.

2000



Bishop Kanyles

The former Department of Provincial and Local Government, under the leadership of Minister Sydney Mufamadi, undertakes its own research about the existing leaders and released a Report.

Dr. Zam Titus was in charge of the report affairs. Meanwhile, Paramount Chief Bishop Daniel J. Kanyiles organised the tribal chiefs under his leadership into the National Council of Khoikhoi chiefs.

This later developed into the Cape Khoi Cultural Heritage Development Council (CKCHDC). These are the vetted leaders that underwent the Status Quo Report process and which were the first representatives of the Khoisan revival.

This history is also where the ancestral and collective rights of the Khoikhoi and San communities are vested.



**FLASHBACK:** The KhoiSan National Consultative Conference Council (KNCCC) that was elected in Oudtshoorn in April 2001. Their mandate was to implement 21 far-reaching resolutions on recognition for first nation, official language status, repatriation and proper burial and the protection of intellectual property rights and indigenous knowledge.

2001

From 29 March to 1 April, 600 delegates of 32 Khoi and San groups came together in Oudtshoorn, under the leadership of Prof. Bredekamp.

The topic was “Khoisan diversity in national unity”. The Na-

tional Khoisan Consultative Conference thereafter chose Mr Cecil Le Fleur to be their chairperson and Prof. Bredekamp as their patron.

However, due to a lack of sufficient funds, the Conference could not continue any further.

2002

The state funeral of Sarah Baartman, whose remains were returned by the French government, is held. She is buried on the 9 August at Hankey in the Eastern Cape. Many parties were involved in the return of her remains, but it was initiated by the emotional poem of our beloved Diana Ferrus.

(See poem on this page.)



Grave of Sarah Baartman

2003

On Heritage Day, 24 September, Minister Mufamadi announces the Commissioners of the new Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission).

Two commissioners, DrWilliam Langeveldt and Dr Willa Boezak, are descendents of the Khoisan. They started their task the next year.

The CRL Rights Commission seeks to promote nation-building, but could not officially recognise Khoisan leaders.



Dr. William Langeveldt

2004

Legislation for the recognition of traditional leaders, by way of the Traditional Leadership and Governance Framework Act, is approved.

2005

Different Khoikhoi and San leaders have gone to the United Nations (UN) in Genève and New York every year to build up pressure on the South African government.

The United Nations subsequently decide to send their High Commissioner for Indigenous Rights, Prof. Rodolfo Stavenhagen, to SA to establish the state of affairs there.

He hands over his report to the SA government, a member state of the UN. In his recommendations Stavenhagen stated: “Indigenous communities should be recognised as such constitutionally in parity with the speakers of the 11 officially recognised languages.

“This refers specifically to the various Khoi and San groups, the Nama and also the Griqua who are not named as such in the Constitution.”

He also recommends that, “The Government and the Parliament should take all the necessary steps, in consultation with indigenous peoples in the country, to ensure a prompt ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).”

After 10 years, not one of the demands of the High Commissioner have been met. The issue of self-



Prof. Rodolfo Stavenhagen

determination is a stumbling block for the government, even though the NKC has time and again explained that the KhoiKhoi and San do not want to be a “state within a state”.

The Movement Against Domination of African Minorities (MADAM) claims that some of its members who work in the country’s correctional services are victims of discrimination and have been unjustly charged with delinquent behaviour.

The Special Rapporteur is concerned about the ambiguities surrounding the continued use of the category “Coloured,” to which the Khoi-San were arbitrarily assigned during the apartheid regime, in policies concerning employment, recruitment and job security.

He is worried that this categorisation might be misused to victimise the Khoi-San in the emerging occupational structure of the country, as is alleged in the complaint addressed to him by MADAM.



Chiefs Margaret Coetzee, Poem Mooney and Jacob Lotriet at the National Land Summit in Kimberley in 2014. PIC: ZENZILE KHOISAN

2009

The Department of Rural Development and Land Reform, under Minister Gugile Nkwinti, starts integrating Khoikhoi and San land rights.

The Constitution only allows for claims after 1913 and the Restitution of Land Rights Act 2014 is passed but still states that only people who have lost their land due to racial discrimination after 1913 and before 1994 can claim.

This is a setback, as the Khoikhoi and San’s land dispossession occurred in the 1400s, 1600s, 1700s and 1800s and onwards.

This bars them from their historical land claims.

2013 – 2014

Two national Land Summits are held in 2013 and 2014 in Kimberley. Issues such as restitution of historical sites, agri-parks, food security through sustainable agriculture, the recognition of heritage terrain and historical sites were discussed.

During the land summits, leaders were arguing that the recognition of communities without land rights does not make sense.

A National Khoisan reference group, under the leadership of Kapt. John Witbooi, was created to help with KhoiKhoi and San land cases. the status of this process is unclear.

2010

On 28 February 2010, approximately 300 national delegates from all Khoi and San groups gather at Oude Molen to celebrate the 500th anniversary of the Battle of Gorinhaiqua (28 February 1510).

Delegates resolve to mobilise nationally for a march on parliament.

On 24 September 2010 thousands of Khoi and San descendants travel from across the country to participate in the march on parliament to demand recognition, restoration and restitution for the Khoi and San.

2015 – 2019

The Human Rights Commission held a national public hearing about the rights of the Khoikhoi and San. Again, frustration and concerns about the lack of recognition were raised.

The White paper for the recognition of the Khoikhoi and San was drafted in 2009, as well as legislation developed in 2011, 2013 and 2015. The Cabinet has approved it.

The latest legislation has now been signed by the current President Ramaphosa (2019), the Traditional and Khoisan Leadership Act 2018.

## I’ve come to take you home

by Diana Ferrus

I’ve come to take you home –  
home, remember the veld?  
the lush green grass beneath the big  
oak trees  
the air is cool there and the sun does  
not burn.  
I have made your bed at the foot of  
the hill,  
your blankets are covered in buchu  
and mint,  
the proteas stand in yellow and white  
and the water in the stream chuckle  
sing-songs  
as it hobbles along over little stones.  
I have come to wrench you away –  
away from the poking eyes  
of the man-made monster  
who lives in the dark  
with his clutches of imperialism  
who dissects your body bit by bit  
who likens your soul to that of Satan  
and declares himself the ultimate god!  
I have come to soothe your heavy  
heart  
I offer my bosom to your weary soul  
I will cover your face with the palms  
of my hands  
I will run my lips over lines in your  
neck  
I will feast my eyes on the beauty of  
you  
and I will sing for you  
for I have come to bring you peace.  
I have come to take you home  
where the ancient mountains shout  
your name.  
I have made your bed at the foot of  
the hill,  
your blankets are covered in buchu  
and mint,  
the proteas stand in yellow and white  
I have come to take you home  
where I will sing for you  
for you have brought me peace.



Diana Ferrus

The idea is to let Khoikhoi and San leaders cooperate under one law, with-in existing national, provincial and traditional houses. Because of the dissolution of these houses in mid-2020, there are strong expectations to promulgate the Bill as soon as possible.

The struggle for recognition by the NKC included, in large part, securing their rights and recognition as traditional knowledge holders to their customary resources. Some of these are South Africa’s high-value plant species.

In the absence of their official recognition, Access and Benefit Sharing has helped open a beginning on their long walk to freedom.

KhoiSan simboliek

Maan, Kaagen deel van inheemse waardestelstel

||Khâb ons gids in die donker

ZENZILE KHOISAN

Die maan hou vir alle kulture iets spesiaal in en daar is soveel stories wat onder die nuwe maan gebore is.

In die mitologie van ou inheemse stammme van Noord- en Suid-Amerika, asook in Asië, Europa en Afrika is daar verhale van die maan wat deur middel van die mondelinge tradisie vir honderde jare oorvertel is.

In die Islam-geloof is die maan ook ’n baie belangrike simbool. Die fees wat volg op die Maand van Ramadan breek aan wanneer die imams (geestelike leiers) die nuwe maan kan sien.

Vir die KhoiSan draai alles om die maan – dit is ’n simbool van vernuwing, van die begin van groot dinge en die agterlaat van dit wat nie langer belangrik is nie.

Dit is die spil waarom die seisoene draai; ’n bevestiging van ons verbintenisse met die heelal, en in die donker is dit ’n gids en toesighouer.

Dit is onder die volmaan en om die vuur dat die inheemse volk dans en dankie sê vir die maand wat verby is en vra vir leiding vir die maand wat kom.

Onder die volle maan dans ons om die reën te verwelkom wat ons gronde water gee om nuwe lewe voort te bring, en om ons te verenig met die heelal, het Ouma !



Una Rooi van die Kalahari verduidelik.

Khoi-vissersgemeenskappe het al langs die kuste van die Wes- en Oos-Kaap viskrale gebou.

Met springgety tydens vol- en nuwe maan was die watervlak baie hoog en heelwat visse was gevang in die viskrale.

Dieselfde aand sou die stam God dank met uitgestrekte hande en met die dans van die riel. Europese waarnemers het toe gedink ons aanbid die maan.

Die waarde daaragter was egter om



Bidsprinkaan kry respek, nie aanbidding

Die koloniseerders het na onse land gekom met allerlei lelike vooroordele, soos dat dat ons voorouers onbeskaafde barbare was, mensvreter en heidene met geen waardes of godsdiens nie.

Daarom het hulle altyd ons mites wat geloofswaarhede bevat, belaglik gemaak.

So het dit dan vir hulle makliker gemaak om ons te jag en dood te maak as “wilde mense sonder siel” en om so vooraf die menseslagting te regverdig.

Een van die name wat die /Xam-Boesmans vir God gegee het, was /Kággen.

Terselfdertyd was /kággen – met ’n

altyd die Skepper te dank vir sy voorsienigheid.

Vir Jehtro Louw, Khoi-digter is dit onder volmaan – wanneer ons dans waar ons menslikheid na vore kom.

Die rede waarom ons die !Nau-sere-monie onder die volmaan hou is omdat ons alles – die hele oes na hierdie spesiale geleentheid bring, sê chieft Poem Mooney, Attakwa-stamhoof.

Vir Vet Piet, bo-baas spoorsnyer en natuurkenner van die Kalahari, is die maan ons gids in die donker, die simbool van die kom en gaan van die seisoene, die toesighouer van die manne wat jag, die voorspeller van reën, asook die simbool van nuwe lewe.

Vet Piet kon met die hulp van die maan die weer voorspel. Tydens ’n besoek met Amerikaanse studente aan die Oor-grenspark in die Kalahari, het Piet ons gewaarsku dat daar dié aand swaar reën gaan kom.

Dit was ’n helder aand sonder ’n teken van ’n wolkie.

“Maak maar lekker toe vanaand, want binne ’n paar ure gaan die hemel losbars met reën, wat vir ons ’n groot seën sal wees hier in die woestyn,” het hy ons vir die aand gegroet.

Daar was diegene wat nie die wyse woorde van Vet Piet kop toe gevat het nie, en nie hul tente verstewig het nie.

Die groep moes toe maar die prys betaal toe hulle in nat klere en skoene mos rondloop.

Volgende keer sal hulle weet om te luister wanneer inheemse mense, wat so na aan die natuur leef soos die Khoisan, praat.



klein letter – ook hul naam vir die mantis, ook bekend as die bidsprinkaan.

Die Boesmans het hulle verkyk aan die bedrieglikheid van ’n wyfie-mantis wat die mannetjie onverwags sou opvreet en het dit toegepas op die bouse //Gaunab.

God – Kággen – was egter die Ewige Helper van die gemeenskap.

Die onkundige Hollanders was verward en het gedink die /Xam aanbid die mantis en noem dit toe “die hotten-totsgot.” Maar die waarde wat die Boesmans aan die mantis geheg het, was respek vir die natuur en intieme kennis van Moeder Aarde.

Die mantis het steeds diepe geestelike waarde vir die Khoi-Khoi vandag. In Grieks beteken mantis profeet of waarseer.



CHIEFT POEM MOONEY

Die onderstaande gedigte deur Chieft Poem Mooney kom uit sy versameling Khoisan verse, genaamd KLIPSTAPELS

Grafte

Ek het ’n Khoi-Khoi-graf van ’n Kaptein gesien by Lammerkraal in die Karoo. Klipgestapel, hoog opgebou.

Ek glo nog steeds die beendere van sy geliefde vegbees, wit gebleek, was vir die nageslag behou – al was dit tussen struik weggesteek.

Die stawende bewyse maak my ’n aanspraakmaker op ’n erfenis wat ons steeds aan die Aarde hou.

Benewens hierdie een graf het ek verskeie ander grafte, op onderskeie plase raakgeloop en dit die laaste rusplek van koninklikes gedoop.

Miskien is daar nog êrens onontdekte grafte van hoofmanne, stamhoofde, ’n opperhoof, ’n Khoebaba.

Om hierdie erfenisterreine te bewaar, is seker nie te veel gevra.

!Nau

Uit die skemer van outydse wêreld trap ons in die spore van onbekende voorsate, en onbesonge helde.

Oor dorre streke bar landskappe skroeiende sand, ysige winde onder die volmaan koes-koes langs sekelquine draf ons op die roffeling van tromme

opwindende rituele en die getrappel van die voetvolk by die feeste

om hoë staanvure naby watergate, waar die vee onrustig suip.

Saamtrekke in klowe oop vlaktes onder bome soms in gemeenskapsentrums

waar Khoi-Khoi leiers ingehuldig word deur vuur, klippe, bloed en water, tot erflikheid gekroon bewierook deur die volk en ander volksgenote.

Onder luide toejuiging van die skare ingesalf met lofsange van die kore in die prosesie onder die bittersoet walms van die hotnotskooigoed op die wierookplaat tussen koedoehorings.

Met die wei wat aan die voete van die leiers kleef, tree hulle uit die !NAUKRAAL omgewe deur wierookwalms

die geklank van lofsalms rys die horingkartels wat krag en mag versinnebeeld.

Terwyl die horingblaser sketterend skal word daar woordeloos om hulp gevra.

Maak my Buffelsterk o Heer salf my met olie, sodat ek: meer en meer kan dien meer en meer kan sien hoe dat die vyand struikel voor U aangesig terwyl U dienaar Heer die Koedoehorings tot hoër hoogtes lig.



ASBROOD

As die Nama-mense ’n asbrood gebak het, is dit altyd met almal wat teenwoordig was gedeel.

Selfs vreemdelinge sou ’n stukkie kry.

Daarom is hul naam afgelei van na-i-ma: “byt-en-gee”.

Hier is asbrood die simbool vir medemenslikheid: khoi-/namxa-sib.



# UN Declaration on the Rights of Indigenous People

**Article 23**  
Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

**Article 24**  
1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.  
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realisation of this right.

**Article 25**  
Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

**Article 26**  
1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.  
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.  
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27**  
States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28**  
1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without

their free, prior and informed consent.  
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 29**  
1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.  
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.  
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

**Article 30**  
1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.  
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

**Article 31**  
1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures. This includes human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.  
2. In conjunction with indigenous peoples, States shall take effective measures to recognise and protect the exercise of these rights.

**Article 32**  
1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.  
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and

other resources, particularly in connection with the development, utilisation or exploitation of mineral, water or other resources.  
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

**Article 33**  
1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.  
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

**Article 34**  
Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

**Article 35**  
Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

**Article 36**  
1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.  
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

**Article 37**  
1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.  
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

**Article 38**  
States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

**Article 39**  
Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

**Article 40**  
Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

**Article 41**  
The organs and specialised agencies of the United Nations system and other intergovernmental organisations shall contribute to the full realisation of the provisions of this Declaration through the mobilisation, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

**Article 42**  
The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

**Article 43**  
The rights recognised herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

**Article 44**  
All the rights and freedoms recognised herein are equally guaranteed to male and female indigenous individuals.

**Article 45**  
Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

**Article 46**  
1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.  
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.  
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

