
When it flows, it floods

By Tauriq Jenkins

Tauriq Jenkins is Supreme High Commissioner for the Goringhaicona Khoi Khoi Traditional Indigenous Council under Paramount Chief Aran

In 1996, the Khoi and San were not part of the Constitution. Then President Thabo Mbeki's "I am an African" speech, with the founding of South Africa's Constitution, would remain in its nascent stage until the fullness of the African body was completed.

For it is in the unmistakable lines of a shared history of resistance that we ultimately are one nation. Above all else we are African.

At the confluence of the waters of the Black River and the Liesbeek River, the Khoi collectively sustained the longest resistance against colonial oppression which fanned out across the subcontinent for 169 years. It spanned 16 Khoi wars, the last five of which were fought together with the AmaXhosa in the East. David Stuurman and prophet leader Makhanda fought side by side and were captured and taken to Robben Island.

Our matriarchal guide, Krotoa, brought with her an umbilical connection with the Dutch. We share a history too with Portuguese, English, Irish, Scottish, German, Flemish, French, Swiss, Russian, Greek and Turkish influences. The intermingling of these groups forged mixed groups, and the etchings of the Afrikaans language began to emerge on the banks of the Liesbeek River as first frontier.

Our claim is the human claim. The controversial development on the floodplains of the oldest urbanised river valley in South Africa is a tale of where

much of what we have become begins. At the foot of Devil's Peak, which forms part of the Hoerikwaggo, a mountain that rose from the sea and is older than the Himalayas, is the Liesbeek river. The memory of it speaks to the root of mankind itself. The Observatory itself was built on a hill where our ancestors navigated the stars and with the kindred and sentient fellowship of the Quagga, Cape Lion and Blue Buck. Their permanent departure from the valley and the face of the earth, together with the Cape San, flowed from the genocidal menace of colonial conquest and theft.

The embankments on what is today's Two Rivers Urban Park (TRUP) are a place of return. It is the place of the first victorious line of defence against a colonial aggressor, Francisco D'Almeida, the Portuguese viceroy who vanquished India in 1510. It is also the place of loss – the First Frontier War in 1659, theft of land, the first evictions of the indigenous Khoi Khoi, the deployment of agricultural slaves in 1657 with the establishment of the Free Burgher Farms. This is where we came undone.

Today, the most significant heritage battle ensues with a threat of a R4.5 billion development on its sacred terrain. It is led by a local developer backed by an enterprise with coffers amassed as the VOC (Dutch East India Company) itself did at its peak 360 years ago. The significant impact of the genocidal smallpox epidemics on the Khoi and San notwithstanding, part of the TRUP is Ndabeni, the first black

township which was built to quarantine migrant (mostly Xhosa-speaking) labourers when the city was hit by the bubonic plague.

Contrary to the historical inclusive nature of the site according to the Heritage Appeal Directive, which is being challenged in the High Court¹ by the Western Cape Department of Transport and Public Works (DTPW), "conservation efforts to preserve the heritage of the indigenous First Nations' people and communities and protect their cultural rights have been hamstrung by the 'politics of divide and rule'."²:

Notable and alarming at the same time, is the concern that government officials who are meant to serve the people of this country and should be loyal and respectful towards each other, are perceived to form alliances with other tiers of government and developers, instead of aligning the scarce resources, with experience skills and expertise to cooperatively solve complicated heritage issues, internally, and in good faith.

The Municipal Planning Tribunal's decision to rezone a Public Open Space to one for mixed use development is being appealed by Interested and Affected Parties. So is the Environmental Assessment by the



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Province’s Department of Environmental Affairs and Development Planning (DEADP) which found nothing environmentally problematic about 150,000 square metres of concrete on a flood plain. The heritage authority, Heritage Western Cape, outright rejected the Heritage Impact Assessment that was prepared for the developer as part of the River Club proposal. It also rejected the Heritage Impact Assessment (HIA) of the Two Rivers Local Spatial Development Framework, a macro draft framework that is critiqued as favouring the bulk development being proposed on the River Club while ignoring the precepts of the existing 2003 Two Rivers Urban Park Local Spatial Development Framework.

The HIA and its supplementary reports erred in the transmutation of its interviewed subjects into an all-encompassing authoritative commenting body claiming to speak on behalf of “most of the Khoi and San”. The First Nations Collective (FNC) needs to be challenged on its establishment, constitution, authority and functions. While many are well known leaders within the various Khoi formations, we challenge the extent to which the leaders in this collective carry the mandates of the organisations mentioned in the report.

Further objectors to these rulings include 20,000 people, institutions such the South African Astronomical Observatory (SAAO), the South African Institute for Architecture, and 60 civic and Khoi and San groups. The City of Cape Town itself has appealed the Environmental Assessment (EA).

How is it, amidst all of these appeals, that the developer is whipping up a narrative of a done deal?

MANUFACTURING CONSENT

The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:

Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 8 1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

Article 8.2. States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.

[e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.]

Liesbeek Leisure Properties Trust (LLPT) said it has “always approached this project with maximum transparency and has remained committed to all planning approval processes as required by law”³ and would “gladly” make its case in the appeal process.

The developer has in recent articles claimed that this development is supported by the overwhelming leadership of the Khoi and San. The truth is that the majority of the Khoi groups have vehemently objected to his development. The developer states:

The project will also serve as a first-of-its-kind landmark in the City for the First Nations people to reclaim, memorialise and share their heritage with the greater public. The planned Heritage Cultural and Media Centre will be operated by the First Nations people and will provide critical job opportunities to members of these communities. This initiative follows extensive and constructive engagements with the senior Indigenous Khoi and San leaders comprising the First Nations Collective.⁴

There has been no open discussion in the formulation of how this “reclaiming” and “memorialising” will be “operated” by the First Nations people. The notion of providing critical job opportunities has no figures, no description, and who exactly the beneficiaries are remains elusive. The developer maintains:

We have had many robust interactions with all of the First Nations representatives, who have an interest in the area, whose histories and inputs have been ➤

respectfully incorporated throughout the planning and design of the reimagined River Club space.⁵ In fact, the majority of senior indigenous Khoi and San leaders in the Peninsula have expressed their full and unequivocal support for the redevelopment, and we are appreciative of the learnings they have inculcated.⁶

This is simply not true.

The name of the group mentioned is the First Nations Collective, an unregistered body comprising the interviewees of a report commissioned by the developer in support of the development.

The article in *New Agenda* 78, “Navigating a minefield to assert agency” (speaking for the FNC) stated:

Having been trivialised and bludgeoned into invisibility we elected to directly approach Jody Aufrichtig, representing the registered owners, about the redevelopment proposal. We have found the developer, Liesbeek Leisure Trust, open and empathetic to our concerns, which were placed on the table in a frank exchange of views. We believe that the developer has grasped the intense pain that has been associated with the bludgeoning of our narrative. As such, this developer, unlike any other government, corporate or social entities with which we have engaged, has made a firm commitment to ensure that the footprint of the Khoi and San’s history of resistance, and its modern-day resurgence,

is incorporated into the development plan.

Through this engagement, the First Nations Collective has secured an area in the centre of this development, which is of great cultural significance to us. This part of the redevelopment site has been set aside for building a fully-fledged heritage centre, a functional indigenous garden and cultural praxis site, a world-first international indigenous media and communication centre, as well as an amphitheatre where the best of Khoi and San art, culture and music can be showcased.⁷

The claim that Jody Aufrichtig has done more for the Khoi with his “empathetic” ear than anyone else, including the government, needs to be challenged. What is certain is that since 1652, every single governing administration, including post-1994, has been guilty of the marginalisation and gross disenfranchisement of the Khoi Khoi and San. The colonial splintering of identities in communities stripped away a connection to the soil, the environment and the notion of being African. This locates the Western Cape, in particular, as a perpetually primed terrain for conquest, manipulation and division.

The report produced by service provider AFMAS Solutions⁸, commissioned by the developer, goes out of its way to discredit the Goringhaicona, and is reminiscent of smear documents that surfaced last year targeting all leaders of organisations that are against the development. It aims to write the Goringhaicona out of history. The Goringhaicona in its various submissions has condemned epistemological violence as an act of attempted ethnocide.

However, the area was signed off by President Cyril Ramaphosa and the cabinet in August 2020 as part of the Khoi and San National Liberation and Resistance Route.⁹ The Department of Arts and Culture has also tried to have it added to an updated tentative Unesco list as a World Heritage Site. The promulgation of the Traditional and Khoi-San Leadership (TKSL) Act 3 of 2019,¹⁰ although deeply problematic and not close to an answer on key questions on land and restitution, indicated a symbolic shift towards further recognition of the Khoi and San. The Protection, Promotion, Development and Management of Indigenous Knowledge Act (IKA)¹¹ was signed by the President in 2019. So, in the legislative context, what makes the developer exceptional? His offerings are in two parts:

[The development will include a] ... fully-fledged heritage centre, a functional indigenous garden and cultural praxis site, a world-first international indigenous media and communication centre, as well as an amphitheatre where the best of Khoi and San art, culture and music can be showcased.¹² The developer has also committed to cleaning up and indigenising the ecology of the area and to ensure that the spiritual and cultural symbols of the Khoi and the San find resonance within the proposed development plan.¹³

The idea of the cultural media centre is a brokered package, impoverished of curatorial, archival or historical considerations. Nor are its custodianship and sustainability plans clear. A wound made for profit. As a ‘zwischenzug’¹⁴ it will usurp a complex and hard-earned

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integrated effort towards restorative justice taking place outside of the boardroom of the River Club.

The proposed development is inconsistent with national legislation and provincial and municipal spatial frameworks. The Liesbeek is one of the City's important fish-breeding rivers and should be conserved as such. Part of the City's Biodiversity Network, it is also a Protected Area in terms of the National Environmental Management Protected Areas Act and is also protected by the City's Municipal Spatial Development Framework (MSDF) as a biodiversity conservation area with wetlands and aquatic habitats. An agreement is in place with CapeNature for their ecological management in perpetuity. The proposed development intends to fill in the river and wetland habitats.

Significantly, in spite of the FNC assertions, there has been no downscaling of the concrete or 150,000 square metres of commercial bulk since their engagement. What is worse is that the sacred Liesbeek River is described "as a storm water ditch" by the developer and destined for infill without any objections from the FNC. Notably since their arrival on the scene, the commercial footprint has increased.

Furthermore, the collective has not submitted any comment against the devastating environmental concerns.

It has remained silent on the most salient – on the need to decolonise the framework of how heritage resources are being determined and the principles of true co-design and meaningful engagement.

This begs a deeper analysis of the notion of "agency", referred to in the article in *New Agenda* 78. It would appear the FNC is currently only acting within the parameters of what the developer wants.

The City's Environmental Management Department (EMD) goes on to say in its appeal against the Environment Assessment for DEADP:

The social issues revolving around cultural appropriation and social impact have not been expounded on sufficiently, the First Nations narrative appears to not be totally inclusive of all relative groups (Para 2.3.7 page 2913).

This is further reinforced in the final comments of HWC (para 97) which noted:

... the scope of engagement resulted in a number of groups electing to not participate fully; the research process was contested by participants in the engagements; the impartiality of the research questions is not clear to the committee; the methodology for the engagement does not appear to follow accepted oral history interviewing protocols (for example, no ethical clearance forms were supplied); the confusion between this report and the DTPW-commissioned report brings the ethics around the engagement into question.

Augmenting this observation is the note in the EMD description of the development that:

The implementation of these mechanisms is to be assured through an institutional arrangement which establishes within the Property Owners Association (or similar) an autonomous legal entity led by the Gorinhaiqua Cultural Council that will be responsible for the governance, planning, management, operations, maintenance and sustainability of the indigenous place-making mechanisms" (para 2.2. p 2908).

This information is in the 2019 supplementary HIA report which was not circulated for public comment by the Municipal Planning Tribunal.

Paragraph 91 of the Heritage Appeal Tribunal Directive commented that:

The policy of maintaining control over one's subordinates or opponents by encouraging dissent between them, thereby preventing them from uniting in opposition, is evident in this matter. Conservation efforts to preserve the heritage of the Indigenous First Nations people and communities and protect their cultural rights, have been hamstrung by the 'politics of divide and rule'. In a divided and disparate society that can benefit from and become unified through knowledge of each other's cultures and heritage, the current situation is not a good scenario to be in and this is unfortunate. >>

There is sadly no agency under such conditions. Rather it is turning out to be an injustice for everyone. This is a foil to divide and conquer a complex formation of Khoi and San groupings that continue to seek unity despite insurmountable challenges. The Khoi and San Kingdom Council of Southern Africa, the Nama, the Goringhaicona, !khora!gau!aes Council, IKhowshe Nama Traditional Council, the entire Korana across all provinces reject the River Club proposal, as do revivalist umbrella organisations such as the First Indigenous Nation of Southern Africa (FINSAs), the Democratic Federation of Indigenous People SA, the A!Xarra Restorative Justice Forum and the Western Cape Khoisan Legislative Council. Of the peninsula Khoi sovereign formations, the vast majority rejects this development. Coupled with this are the Abathembu, and the Pondo kingdoms that are kin to the Korana, who in an unprecedented act of unity have merged in defiance of the divisive Verwoerdian tropes of the “Nguni threat” that have also entered into the contemporary political discourse on land.

The Congress of Traditional Leaders of South Africa (Contralesa) does not support the AFMAS Solutions report, despite the name of the body appearing in it. The Cochoqua are stated as supporters of the development. However four of the five Cochoqua houses in the Western Cape are confirmed to have rejected the development. The National Khoi and San Council is plagued with perception issues of transparency. In the Western Cape, on a variety of issues, this body has Brexited itself from its own, leaving a trail of bewilderment and dissatisfaction, Rooibos being a trigger word. The banks of Liesbeek became an occupied territory in 1657, and since the war fought against the Khoi in 1659, the DNA of the VOC, it appears, has remained. In reality what exists now is an unprecedented united front towards

a World Heritage Site, not the vision of a dystopian Amazon.com Disneyland for tourists and the wealthy to sojourn.

The developer paradoxically has attempted to narrow the 21,629 objectors of a petition¹⁵ heralded by the Observatory Civic Association as a “handful of residents” by publicly decrying how he is “sick of all the lies”.¹⁶ The NIMBY (Not In My Back Yard) accusation against the Two Rivers Urban Park Association and the Observatory Civic Association is a strawman built by the same inventors of the Biscuit Mill in nearby Woodstock. Framed as “regenerative” projects, the Biscuit Mill, as well as the Woodstock Exchange, are toe-to-toe with the City’s maximal thinking of utilising land close to the CBD “appropriately”. The Biscuit Mill has been critiqued as a gentrification catalyst. Its primary client base, tenants, as well as beneficiaries, do not reside in Woodstock. Locals increasingly struggle to afford rental hikes, while plans for social housing projects have been mired in controversy.

In Observatory, the developer faces a unified force of environmental, civic and Khoi and San agencies for recognition of a World Heritage Site, a common concern, that recognises this as a Ground Zero precinct that will begin a process of deep healing.

It is a cheap form of racial hypocrisy for him to paint a narrative of Observatory’s antagonism for his development as the view of only a handful of selfish white property owners. Observatory is long known as a diverse, bohemian, activist community. In 2020 the OCA objected to the attempted “constructive” eviction by the City of Cape Town (during the lockdown) of the Singabalapha (We Belong Here) informal settlement in Observatory.¹⁷ Many of these residents are members of the OCA, as are residents of the Willow Arts Collective, formerly known as the Circus, located next to the Hartleyvale Stadium. Mayoral Committee Member Cllr

Badroodien in a 786 Radio interview on Friday 29 January 2021, called residents “land invaders stalling necessary upgrades in the area”.

In a debate hosted by the Institute for African Alternatives on 15 October 2020, the closing of the venue, Tagore’s, which has since closed down, was singled out as proof of racial and class antagonism in the area. The same venue included a gallery for the first exhibition of Khoi and San art with some of the most talented fine arts work by Khoi activist artists.

On some arrangements the developer’s documents are more clear. The LLPT in its supplemental Heritage Impact Assessment Report (December 2019) made it clear:

... the implementation of these mechanisms is to be assured through an institutional arrangement which establishes within the Property Owners Association (or similar) an autonomous legal entity led by the Gorinhaiqua Cultural Council that will be responsible for the governance, planning, management, operations, maintenance and sustainability of the indigenous place-making mechanisms.

The FNC, in fact, only came into being AFTER the Heritage Appeal Tribunal heard the hard facts that First Nation groups had been overlooked by the developers. Though earlier informal contact with the developer by one or two entities did occur, the FNC did not exist when Khoi leaders opposed the development in 2018. In fact, in 2018, some of the FNC sat with us and cried at the Tribunal. The next time we met in the same venue, things had changed. So, while leaders in that cohort claim a long history of Khoi activism,



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they were nowhere at the landmark Tribunal until the concept of a media centre, amphitheatre, herb garden, and heritage trails emerged on the table. So the question would be: what were the circumstances that fuelled the level of agency that gave credence to the FNC?

In 2017, the TKSL Act had not been signed, nor the bill on Indigenous Knowledge Systems, and the heritage matter of the Khoi was legally in limbo awaiting the signing of a white paper on intangible heritage. The Tribunal was the turning point. What was feared most by the developer and DEADP, DTPW and the City of Cape Town was what was to be said for the first time on record. A story of 360 years when Jan Van Riebeeck put up his palisade fence.

The AFMAS Solutions report commissioned by the benevolent developer stated:

Operationalizing the Social Compact: The First Nations Collective led by the Gorinhaiqua Cultural Council, in discharging its traditional duty of custody over not only the River Club site, but all of the precincts of the Two Rivers area; and in exercising its internationally recognized right of Indigenous cultural agency, is in the

process of establishing a legal entity that will be responsible for the post-establishment governance, planning, management, operations, maintenance and sustainability of the aforementioned Indigenous place making mechanisms. This entity will be a fully autonomous Indigenous entity, whose Indigenous access and negotiated rights, as articulated above – as the elements of the First Nations Imperative – will be enshrined in a formal agreement between the envisaged First Nations legal entity led by the Gorinhaiqua Cultural Council, and the Community Property Association of the development.¹⁸

If there was a real cultural agency, then the FNC could have said to the developer put that development aside, and talk to us about pain.

The Liesbeek Leisure Properties Trust has been allowed to dictate the negotiations where the result is a victory for a small group of local white men, including one of the wealthiest billionaires in the world who lives in Seattle, USA.

CONCLUSION

We owe our essence to the rivers, the stars, the land, and the sacred animals, many of which are no longer in existence. We have lost to oblivion the Blue Buck, Quagga and the Cape Lion, all of whom were hunted to extinction soon after access to the Liesbeek River was denied. We always remember and miss them, and meet them in awe and reverence in our dreams.

We say no to the concrete on the floodplain, to infill of the river, to the loss of memory to a mall with hotels.

We will not bid the kingfisher farewell. We say no to the violence against nature, to the violence of apartheid spatial planning, to the violence of the false claim that this is all done with the full consent of the Khoi and San. The Goringhaicona does not consent to this development. Not in a thousand years. Not in a million years. Never.

It’s time we all pause to heal. We are of |Gamirodi !Khais, the “place where the stars gather”.

ENDNOTES

- 1 <https://www.groundup.org.za/article/legal-spat-between-provincial-departments-over-river-club-development/>
- 2 <https://www.groundup.org.za/media/uploads/documents/RiverClubRuling14April2020.pdf>
- 3 <https://www.dailymaverick.co.za/article/2020-09-17-city-appeals-against-provincial-authorisation-of-r4-billion-river-club-development/>
- 4 <https://theriverclubct.co.za/wp/wp-content/uploads/2020/12/River-Club-Press-Statement-NEMA-and-Rezoning-Approvals-Final.pdf>
- 5 See the illustration at <https://www.groundup.org.za/article/r4-billion-river-club-development-clears-major-obstacle/>
- 6 <https://mg.co.za/opinion/2020-09-29-river-club-redevelopment-is-a-triumph-for-the-future-of-first-nations-heritage/>
- 7 <https://ifaaza.org/navigating-a-minefield-to-assert-agency/#more-1723>
- 8 <https://theriverclubct.co.za/wp/wp-content/uploads/2020/01/AFMAS-Solutions-Final-River-Club-First-Nations-Report.pdf>
- 9 <http://www.dirco.gov.za/docs/2020/cabinet0610.htm>
- 10 https://www.gov.za/sites/default/files/gcis_document/201911/4286528-11act3of2019tradkhoisaleadership.pdf
- 11 https://static.pmg.org.za/42647_19-8-Act6of2019ProtectPromoDevelopmentManagementIndigenousKnowledgeAct.pdf
- 12 <https://ifaaza.org/navigating-a-minefield-to-assert-agency/#more-1723>
- 13 Ibid.
- 14 <https://en.wikipedia.org/wiki/Zwischenzug>
- 15 <https://www.change.org/p/department-of-environment-affairs-and-development-planning-voice-your-opposition-to-the-river-club-bar-preserve-environment-and-heritage>
- 16 <https://www.20ceansvibe.com/2019/08/14/sick-of-all-the-lies-controversy-around-observatory-river-club-development/>
- 17 <https://www.groundup.org.za/article/obs-occupiers-win-interdict-against-city-cape-town/>
- 18 <https://theriverclubct.co.za/wp/wp-content/uploads/2020/01/AFMAS-Solutions-Final-River-Club-First-Nations-Report.pdf> **NA**