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'Improving their lives.' State policies and San resistance in Botswana

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Abstract

A court case raised by a group of San (former) hunter-gatherers, protesting against relocation from the Central Kalahari Game Reserve, has attracted considerable international attention. The Government of Botswana argues that the relocation was done in order to 'improve the lives' of the residents, and that it was in their own best interest. The residents plead their right to stay in their traditional territories, a right increasingly acknowledged in international law, and claim that they did not relocate voluntarily. The case started in 2004 and will, due to long interspersed adjournments, go on into 2006.

This article traces the events that led up to the case, and reports on its progress thus far. The case is seen as an arena for expressing and negotiating the relationship between an indigenous minority and the state in which they reside. The article discusses different aspects of this relationship as illuminated by the current court case, concluding that the favoured development ideals of a modern homogenous state have shaped policies that are unwilling to accommodate alternative development models favoured by the San.

The analysis shows how international solidarity and support have been essential for the San to be able to present their grievances, but at the same time argues that Survival International's campaign against Botswana diamonds may sidetrack the work for necessary changes in the national development policy.

1 The background

The Government of Botswana's homepage has a special section on 'Relocation of Basarwa', setting out the official position on a case of relocation that has caused both national and international concern. A succinct summary (downloaded April 2005) states that:

There has never been any forceful relocation of Basarwa from the Central Kalahari Game Reserve (CKGR).

There is no mining nor any plans for future mining anywhere inside the CKGR.

The intention of Government is to bring the standards of living of Basarwa up to the level obtaining in the rest of the country, as well as to avoid land use conflicts in the CKGR.

And the homepage goes on to complain:

In a world where Governments stand accused of many terrible crimes, it does seem strange that the Botswana Government should have to defend itself against the charge of improving the lives of its citizens. (www.gov.bw/basarwa)

This article is about the charges against the present policy of the government of Botswana, and asks what

'improving the lives' of its citizens might mean. The specific acts of improvement are the relocations in 1997 and 2002 of the inhabitants of the Central Kalahari Game Reserve, one of the largest game reserves in the world. Disagreement on the government position is expressed most strongly by 243 San (Basarwa) and Bakgalagadi who have taken the government to court over the relocation.¹

The court case started in 2004, it is presently adjourned, and is expected to finish in 2006. It raises questions on different levels: There are questions of facts: was the relocation voluntary? There are questions of policy: was the relocation necessary? There are questions of justice: do the San in question fall within the notion of aboriginal rights as developed in international law, and if so, should Botswana defer to this fact?

The article focuses on the relationship between the San minority and the state, seeing the present court case as one arena where this relationship is expressed and negotiated. In demographic terms the relocation

has only affected a small proportion of the San. Some 2500 have been involved directly, if one considers fluctuations in settlement and kinship networks across reserve borders, maybe 4-5 000 are affected out of an estimated population of 50,000 San. However, the relocation has attracted attention because it has taken on the symbolic significance of 'a last stand'. In fact, most San in Botswana have been relocated or dispossessed, but in less dramatic manners: some because of other game reserves set up after Independence in 1966 (Chobe, Moremi, Khutse) but most of them because of the centralisation to small settlement that is the cornerstone of the Remote Area Development Programme. Currently a large number are affected by relocation because of a fencing policy that effectively banishes San from cattle-posts, most notably in the Central District, just east of the CKGR, making them 'squatters on their own land' (Bishop 1998). Unfortunately, they do not attract the same amount of media interest, probably because of the gradual nature of this dispossession.

The attention is also due to the very specific justification for establishing the reserve. The Central Kalahari Game Reserve was set aside in February 1961, by the then Bechuanaland Government, to 'protect wildlife resources and reserve sufficient land for traditional land use by hunter gatherer communities of the Central Kgalagadi' estimated at that time to number approximately 4000 (Fact-Finding Mission 1985). George Silberbauer, Bushmen Survey Officer presented his recommendation for a reserve (Savingram no. 10840 111 (25) of 9 February 1961) based on extensive fieldwork of the traditional adaptation (published as *The Bushman Survey* in 1965, see also Silberbauer 1981).

The Kalahari is a semi-desert, with no permanent surface water, poor soil, great variation in rainfall and frequent droughts. Out of necessity, the G|ui, G||ana and Tsila, and Bakgalagadi, a Bantu group which has cohabited with the San for centuries, have developed highly flexible land-use strategies in order to cope with an uncertain environment (Tanaka 1980; Ikeya 1999; Hitchcock 2002). Foraging provided a crucial source of subsistence and income in the Kalahari, as it was gradually combined with the keeping of small stock (goats), the manufacture of crafts, and kind or cash payments received from various government schemes or occasional jobs on the neighbouring Ghanzi farms.

In the early stage of the reserve (1969) a borehole

was installed in Xade, the largest settlement. The year-round availability of clean water attracted San from other camps and within 15 years Xade's population increased to more than 1000 people. In 1982 the government built a school and health centre to serve the needs of this community, and the people of Xade began to cultivate crops and brought dogs, goats, donkeys and horses into the reserve, to use for transport and hunting.

The CKGR is an extremely fragile ecosystem, and in the mid 1980s the possession of livestock led to questions of whether people and wildlife could coexist within the Reserve. A Mission was established to look at the challenges of combining environmental protection with 'the socio-economic development of the remote area dwellers' (Fact-Finding Mission 1985). The main recommendation was that the residents of the CKGR be permitted to remain in their traditional areas, incorporated into a new Wildlife Management Area, while the northern part of CKGR should remain a game reserve. The Ministry in charge, however, decided that the social and economic development of Xade and other settlements in the reserve should be frozen and that viable sites for economic and social development should be identified outside the reserve. The residents of the Reserve should be encouraged – but not forced – to relocate at those sites.

When Silberbauer was called as the first expert witness at the opening of the court case in 2004, he emphasised that the main objective of the Reserve was to protect the food supplies of the existing Bushman population, against commercial hunters coming in from neighbouring farms. The easiest way to achieve this was to use existing legislation, and to declare it a game reserve. According to Silberbauer, a 'Native reserve', or in this case a 'Bushman reserve' was also considered at that time, but this was seen as legally more complex, and politically more controversial, and it was left as an option that could be realised later. This decision, as he put it, held 'an element of expediency rather than duplicity'.

It appears that although the protectorate government had been liberal in establishing 'Native reserves' with a fair degree of autonomy granted to Tswana chiefs, the G|ui and G||ana were not perceived as political entities to be negotiated with on that level. Nevertheless, the rationale behind the reserve is strikingly parallel to the contemporary concept of safeguarding 'collective rights' to land that a group has traditionally owned or otherwise occupied or used. The

question now is to what degree such collective rights that *in effect* were protected by the establishment of the game reserve now can serve as a protection against relocation. The position of the Government of Botswana is clear on this, according to the counsel for the respondents: 'The history and the motivation for the declaration of the CKGR is irrelevant and inadmissible'.

The court case illustrates a global trend: prospects for hunter-gatherers exercising their livelihood are less determined by the sustainability of their environment, and more by the premises laid down by states and transnational economies (see Hitchcock 1996; Anderson & Ikeya 2001). The effect may be *direct*: hunting regulations, relocation directives, or *indirect*: wildlife reduced by fencing, veterinary cordons and cattle ranching. Loss of control over territories is the common denominator.

Increasingly, relationships between hunter-gatherer communities, and the state laying down the conditions, are seen to fall under the conceptual umbrella of 'indigenous peoples' as this has developed in international law (Niezen 2003; IWGIA 2004; Kenrick & Lewis 2004; Crawhall 2005). This is not an uncontroversial observation in Africa. Readers of *Before Farming* may be familiar with the discussion between Suzman (2002) and Corry (2003), and the Botswana Government rejects the relevance of the concept outright. However, in this article it is suggested that an understanding of indigenous or aboriginal rights brings out some salient features of state-minority relations concerning many minorities in Africa, including the San minority in Botswana. This understanding provides a sub-text, both when the term 'indigenous' is not formally used, and/or when it is rejected (Saugestad 2001a,b, 2004).

2 Relocation 2002 and the court case

The events that triggered legal action took place in January and February 2002. It finalised a process that had started in 1997, when all residents of Xade, the largest settlement, had their possessions loaded onto trucks and transported to the resettlement village of New Xade to the west of the CKGR, and Kaudwane, south of the reserve. During this second round of removals, storage tanks for water were overturned, water points were sealed, remaining social services withdrawn. People, household utensils, blankets, huts, dogs and domestic animals were loaded on trucks and taken to the new resettlement locations. Ironically, this

was at the same time as a large United Nations conference was convened in the capital, Gaborone, on the theme: 'Peaceful and constructive group accommodation in situations involving minorities and indigenous peoples' (UNCHR 2002).²

Directly after the relocation 2002, a court case was raised as a matter of urgency. The case was spearheaded by the organisation First People of the Kalahari (FPK) and the Botswana chapter of the Working Group of Indigenous Minorities in Southern Africa (WIMSA), together with a Negotiation Team set up in conjunction with the first round of relocations. The Negotiation Team included two representatives from each of the CKGR settlements, and legal advisers. Funding was provided through a 'CKGR Legal Rights Support Coalition', a loose coalition of international human rights NGOs, and with Ditshwanelo, Botswana Centre of Human Rights, as its secretariat. The preparations had been going on for some years, with registration of applicants and the mapping of traditional land use, but the option of a court case had been pending, as many argued for negotiations as the preferred strategy, and a court case only as a last resort. After the evictions, the applicants, FPK and their legal advisers, felt that there was no longer a choice. When the case was raised there was an expectation that it could be heard and concluded within a year ('in time for the resident to return before the next rainy season', starting October/November). Thus the claim was formulated with a focus on restoring essential services.

In April 2002 an application was brought to the High Court in the matter between Roy Sesana and 242 others, the Applicants, and the Attorney General 'in his capacity as the recognised agent of the Government of the Republic of Botswana', the Respondent. The case contains the following elements:

- whether it was unlawful for the Government of Botswana to terminate basic and essential services to the Residents of the Game Reserve in January 2002
- whether the Government has an obligation to restore services to the Residents
- whether the Residents were in possession of their land and were deprived of such possession forcibly, wrongly and without their consent
- whether the Government's refusal to issue Game Licenses to the Residents and to allow them to enter the CKGR is unlawful and unconstitutional.³

The position of the applicants is that the people in question have used the territory in question,

uninterrupted since time immemorial, and that they should be able to enjoy the services in their home territory. According to the criteria set out in the ILO Convention 169 of 1989, the UN Draft Declaration on Indigenous Rights, and numerous other documents, the inhabitants of Central Kalahari are indigenous people and should have a right to occupation.

The position of the Government of Botswana is that it is not bound by these declarations. Continued settlement is incompatible with wildlife conservation and development of the tourism potential of the reserve, because residents have increasingly taken up non-sustainable activities such as keeping livestock and growing crops. The stated intention of the Government is to bring the standards of living of Basarwa up to a level obtaining in the rest of the country as well as to avoid land use conflict in the CKGR (www.gov.bw/basarwa/background.html).

In his *opening statement*, the counsel for the applicants emphasised what he saw as the main issue in the case: the right to choose.

This case is about the rights of the applicants to choose where and how they live. It is about their freedom to determine for themselves when, and how and at what pace they will join the outside world. This was the philosophy which underpinned the creation of the reserve, and to which Silberbauer will testify.

It must not be a beauty contest. The case is not about whether it is in the best interest of the residents to stay inside CKGR or to be relocated, it is not about whether they do or can or should pursue a traditional life as hunter-gatherers.

It is not about the wisdom of government policy that they should or must be integrated, or about the amount of money that the government may or may not have devoted to the implementation of this policy.

It is about the lawfulness and constitutionality of the course adopted by government. However well intended it may be, has the government gone about things in a lawful and proper way?

We say it has not.

Not surprisingly, as the case has developed it has to a large extent become a 'beauty contest'. A large contingent of international media covered the first couple of weeks of the case, and understandably the lead counsel for the respondent, Sidney Pilane, used the opportunity to present the good intentions of the government. Even after the first flurry of reporting, the case has been regularly reported on in the national press. A propensity for rhetoric has been time consuming. When the court adjourned in September

2005 it had been in session for 25 weeks, and is scheduled to reconvene February 2006. So far the court has heard all witnesses for the applicants, and has started on the witnesses for the respondents, while 20 names remain on the government's list. Initially, it was anticipated that the case would last for two to three weeks in Ghanzi, to hear witnesses for the applicants, and two weeks at the High Court in Lobatse to hear the witnesses for the respondents. Looking back, this incredibly optimistic and unrealistic estimate of the amount of time the case would take, demonstrates perhaps better than anything else the degree to which the case is unprecedented and unpredictable.

There is more than the usual degree of uncertainty about both proceedings and outcome. Botswana has a common law system where cases are determined on the basis of precedence, but there is no precedence in similar cases in Botswana. There is an obvious parallel across the border in South Africa, where the #Khomani won an extraordinary victory in the 1999 settlement, which restored to them a large section of the Kgalagadi Transfrontier park, an area from which they had been banished in stages between 1930 and the 1960s (Chennells & du Toit 2004; #Khomani San nd).⁴ However, the #Khomani land claim was settled out of court. There is also the Richtersveld case, where the notion of 'aboriginal title' was invoked. Although the South African *Restitution Act* played an important part in the verdict of the Constitutional Court, it was also seen as an 'open door' to the application of indigenous law ownership. Chan (2004:129) notes 'the full extent of the impact of the Richtersveld holding in South Africa and as a precedent in other sub-Saharan African countries remains to be seen.'

3 The issues

The court case is part of a wider debate about the position of the San in Botswana, and how their rights as citizens are promoted and protected. Both within the court case and in the public debate there are conflicting and competing representations of what does and does not benefit the San. Some of the most salient perspectives can be summed up under four headings:

- the facts about relocation: was it voluntary?
- the justifications for relocation: economic and ecological considerations
- different development models: the notion of modernity and 'improving their lives'
- different forms of outsider influence.

3.1 To what extent was the relocation voluntary?

The government of Botswana claims the moving was voluntary. On the whole no physical violence was used. But an extremely poor section of the population was presented with a merciless choice. They were given to understand that those who stayed on would be abandoned: there would be no access to water, health facilities, education for their children. For those who chose to move, there would be compensation money, cattle, ample public facilities. As noted in a Ditshwanelo (1996) report before relocation: 'Those who are leaving, are leaving in sorrow, those who are staying, are staying in sorrow'.

Except for Xade, which was completely cleared out in 1997, services were upheld to the other smaller settlements, and the threat of cutting services only took effect in 2002. But in the 10 years following a decision in 1986 to freeze all development inside the reserve (MCI 1986) pressure had increased, and by and large the residents of the CKGR were not given much choice.

A former Ghanzi District Commissioner, called as witness, claimed in a testimony on the 1997 relocation from Xade that the residents had found life unbearable and wanted to move. He cited as evidence a letter written by one Kuela Kiema in 1995, on behalf of the Xade community members. The letter expressed concerns about the conditions at Xade and said a majority of the people had accepted the government's plans to move them out of CKGR (*Mmegi* 18.08.05).

As it happened, Kuela Kiema, now a student at the University of Namibia, commented on the same letter at a seminar in Trømso November 2001. His interpretation was different. He told of a history of harassment of the Xade community, and of pestering at school where he was told 'you Masarva you should move out of the reserve'. After many years of persecution, he had come to the conclusion that the pressure was overwhelming, and the community would only be left in peace if they agreed to move.

I made up my mind to do something to save my people. I made the final decision against my will. I analysed the situation and made a decision to save the poor souls from further torturing. Did I like the decision? Not at all! It was pain in my soul that forced me to make the decision.

What was the decision? It was as simple as joining the enemy (government) and speak its language, convincing everybody (my people) that what the government said was of the utmost importance to us, the San.

What about the land rights issue? Of course it was not and is not my will to give up our mother land without our consent. I will never in my lifetime admit that we moved out of our land willingly. I will whenever conditions allow, always join hands with those who are fighting for our land, because it was pain and despair that forced me to turn a blind eye to FPK's attempts to fight for our land. [This was at the beginning of FPK's campaign.]

I prepared a letter and sent it to the District Commissioner stating we want to move out of the game reserve because we want to get cattle from government, sound health, education and other social amenities. The District Commissioner was very happy. He called us and thanked us for a making a wise decision...

I won the battle... I won to lose my land, my only heritage from my forefathers. I won against my will (notes from presentation, and Kiema 2001) .

The same experience of relentless pressure can be discerned in the witnesses' record of how they experienced the relocation events of 2002. The evidence is very clear that the show of force, in terms of large numbers of vehicles and people in uniforms, was perceived as overwhelming. They all say 'we were told to move, we were not asked' and several use terms like 'we gave up hope'.

The purpose of giving evidence is to establish facts according to a predefined set of procedures. The purpose of cross examination is to question the same facts. The opportunities to create doubt are manifold when the witnesses are illiterate speakers of languages containing four click sounds for which there are no sign in the Latin alphabet, and when their customs differ from those of the majority society in many other respects as well. To give a few examples: Names were written down by lawyers or bureaucrats with no language training, and the spelling invariably differed. Much time was taken up with identifying the most correct version. Another issue of contention was place of birth. More often than not those issuing identity cards (*Omang*) after independence (1966) would have to guess both at the date and place of birth. It is not inconceivable that an officer might put down as place of birth the nearest familiar settlement (even outside the reserve) instead of a local name in the vernacular, and such inaccuracies would have been of little consequence until contested during the court case.

Many of the witness statements tell how the relocation process created division within families. Different family members were approached separately, and if one agreed, this was used as a lever against the others. Spouses were approached individually, not as

couples, and offered individual relocation agreements. Women were told their common law marriages were not recognised in the Tswana system, because they 'did not wear a wedding ring', and they should leave on their own. Children were told they were entitled to compensation and benefits, and should not wait for their parents. One witness gave a vivid description of how his children were being persuaded by the government officials to go and talk to their mother to give her *Omang* to them. 'The children did that because they noticed that the police were now getting into the huts removing property from the huts themselves. And so the children talked to their mother and hand over her *Omang* so that they could move, because it was a fight.'

The above examples express resistance to relocation. Even though it may be self-evident, it is important also to recognise that in 1997, and even to some degree in 2002, there were some who genuinely agreed to relocate. San from inside the Central Kalahari can no more be expected to be uniform in aspirations for themselves and their families than any other population group. It may also be the case, as some argue, that relocation to a place providing clean water and easy access to clinic and school, was more attractive to women than to men, and what some men saw as interference in family affairs 'luring' the womenfolk away, might reflect real disagreement within some families. A proper answer to this question would require interviews with the women in question. On the other hand, there is little indication of such a division along gender line in the list of applicants, which includes 61% women.

3.2 Justifications for relocation

The actual cost of providing services to small groups located in extremely remote areas with poor roads is a legitimate concern. A Remote Area Development Programme provides services to smaller groups of people in more remote parts of the country than the standard settlement policy provides for. Providing services inside the CKGR is expensive, in absolute terms. But the level of services provided, especially after the 1997 relocation was modest indeed (water, destitute rations, visit by a mobile clinic, transport of school children to hostels outside the reserve), and there was a *de facto* understanding that residents within CKGR would have to move outside to partake in the full benefits of education or job opportunities. Over the years many residents of the Central Kalahari have chosen to move out, to engage in opportunities not

available inside the reserve. But the argument is that it is precisely this element of *choice* that now has been denied the inhabitants. Services could have been maintained for a considerable period of time inside CKGR for the amount now spent on infrastructure in the new resettlement locations, compensation and welfare assistance, and the court case. The offer by donors, most recently the European Union, to cover the cost of services, has been declined. But economy is no longer a main issue.

The question of whether or how wildlife and humans can cohabit, is of more significance. The question is approached partly with reference to law, as a very simple proposition: it is a game reserve and people are not allowed to reside inside a game reserve. The wider debate has concentrated on the carrying capacity of the reserve. This aspect has taken up the greater part of the time used in the case so far, pitting against each other the two expert witnesses on ecology.

The applicants argue that people have lived sustainably with wildlife as far back as human records go. Arthur Albertson, expert witness for the applicants, concludes that there is no scientific evidence that any CKGR species has declined, or is declining, on account of the Reserve's resident communities. CKGR wildlife population dynamics are primarily influenced by rainfall, and movement between the Reserve and adjacent areas (Albertson 2001a, b, testimony in court). His observations on traditional territories and conservation management show that:

- the CKGR communities occupy clearly defined traditional territories, which encompass all natural resources required to meet their long-term needs. As such, territories are self-contained ecological and economic units, and the communities have in-depth knowledge of local faunal and floral dynamics
- within their respective traditional territories, they employ highly complex and flexible land-use strategies that have successfully sustained them for many generations - even during drought - yet without harming the ecosystems on which they depend.

It has been difficult for counsel for the respondent to refute Albertson's observations, as no similar work has been done within the CKGR providing alternative conclusions. Much of the cross examination centred not around the facts as presented, but around Albertson's professional qualifications - claimed to be insufficient - and possible weaknesses in his scientific methods (he holds a BSc in Zoology and Botany, and an Honours in Wildlife management).

In contrast, the expert witness for the respondent, Kathleen Alexander, has a PhD in veterinary medicine, and an impressive list of scientific publications on animal diseases, but no record of research in the CKGR. The thrust of Alexander's testimonies so far (she has not yet been cross examined) has concentrated on disturbance factors, particularly the dangers of disease transmission from domestic animals to wildlife population, hence the need to exclude domestic animals and minimise human development in parks and game reserves.

The government's case is that they have not expelled traditional hunter-gatherers, as indeed they ceased to rely on hunting and gathering many decades ago. It is their increasing exercise of agropastoralism that endangers the wildlife, and this activity should be taken outside the reserve. The case, however, will not be solved through an agreement on nuances in the development of wildlife biomass or disease transmission. What is clear is that any permitted return to the CKGR, be it through a negotiated settlement or a court decision in favour of the applicants, would be circumscribed by strict land use regulations.

Ironically, such a plan already exists. A *Third Draft Management Plan* was prepared by the Department of Wildlife and National Parks (2001), based on consultations with the Central Kalahari communities and FPK. The plan introduces the concept of Community Use Zones, and is designed to allow the San to utilise their traditional territories inside the CKGR with two main objectives in mind: 1) to maintain the integrity of ecosystems and promote biodiversity, and 2) to ensure the socio-economic sustainability of residents of the CKGR. Only the most sustainable hunting, gathering and farming methods were to be permitted within the CUZ. The plan was finalised in 2001 and was approved by the relevant District Councils (Ghanzi and Kweneng), but was replaced by a *Draft Final* after the relocations in 2002, with a drastically reduced scope for community involvement.

The moot point, aboriginal rights, is not solved by the debate on the carrying capacity of traditional land use practices. However, the claim that the G|ui, G||ana and Tsila have resided in the area now known as Central Kalahari 'since time immemorial' has not been disputed, and, one may add, it would be very difficult scientifically to do so.

3.3 *A question of values: the notion of modernity*

The legacy of the historical relationship between dominant Tswana groups and San subordinates provide some of the key to an understanding of the current situation in Botswana. While many Europeans, in the van der Post tradition, may still see the Bushmen as the last representatives of values and lifestyles that have long been lost in western civilisation, the average Batswana see the Bushmen representing a not very distant past of physical hardship and material scarcity from which the Batswana want to disassociate themselves.

Basic values of Tswana life are connected with the social order of village life, and give weight to the recurrent argument that the Basarwa should leave their nomadic ways and become settled, ie, more civilised. Post-colonial nation-building strengthened the hegemony of the majority. In the geo-political climate of the 1960s and 1970s, and surrounded by apartheid-based neighbours, cultural differences were easily dismissed as expressions of tribalism, and a threat to the project of building a modern unitary state.

Contemporary development policies reproduce the marginalisation of the San in a different way (Nthomang 2004). The crude discrimination of colonial times, when San were denied citizenship because they were considered to be outside society, is gone. But they are still perceived as people of the past, representing adaptations that are out of time and place in a modern developed nation. They are most notably defined by what they are not. The one piece of rural development policy that most directly addresses the situation of the San, the Remote Area Development Programme, defines the target group as those living *outside* villages, *not* speaking Setswana, *lacking* access to water, land, livestock, and *not having* a hierarchical political organisation – in short a full catalogue of social problems - rather than recognising the strengths of the culture they actually do possess. It is a programme that creates clients, not empowerment (Saugestad 2001a).

The relocation from the Game Reserve fits into a vision of Botswana as a modern, prosperous and homogenous state, where hunter-gatherers have no place. It is consistent with a development model that sincerely wants to 'improve the lives of its citizens' as quoted in the introduction, but which also claims to know what is best for them.

The relocation of Basarwa from the Central Kalahari Game Reserve was *motivated by nothing other than a desire on the part of the Government to improve their living conditions*. For as long as Basarwa remained in the Game Reserve, it was not possible to provide them with health, water supply and other social amenities which are being enjoyed by other citizens. Living in the Game reserve *stereotyped the Basarwa to the hunter-gatherer life-style which is unsustainable and also not in their long-time interest*. (Statement to the UN Working Group on Minorities, in *Gazette* 10.03.04 emphasis added)

Development models recognising the need for diversity in development have become so common that the *Human Development Report 2004* carried the following declaration on its front cover:

Accommodating people’s demands for their inclusion in society, for respect of their ethnicity, religion, and language, takes more than democracy and equitable growth. Also needed are multicultural policies that recognize differences, champion diversity and promote cultural freedoms... – so that all people can choose to be who they are. (UNDP 2004)

The international indigenous movement is an exponent of this general trend. It is more focused on legal issues, and therefore more controversial, than the general arguments for multiculturalism. However, the emergence of indigenous organisations in Botswana, as reflected for instance in the case raised about the CKGR, is an expression of a global trend. This can be disliked, but not ignored.

3.4 Outside influence

This takes us to a final point: the role of outside influence. The Government of Botswana notes with considerable irritation (and quite correctly) that there would be no court case, if it had not been for the international support provided. The last time the applicants asked for an adjournment to look for additional funds from Europe, counsel for the respondent did not hide his indignation: ‘We do not want Europe to interfere and tell us what to do or not to do. We resent their involvement in our affairs. They should leave us alone’. (*Mmegi* 26.08.05). However, outside involvement has taken two very different forms, and the line between legitimate engagement and inappropriate interference has become contested territory. The one trend is motivated by a human rights and indigenous rights concern. We will return to this. The other trend pivots around the role of diamonds.

3.4.1 The diamonds

Diamonds are not an issue in the court case.

Nevertheless, the entire Survival International (SI) campaign against the relocation from CKGR centres on the role of diamonds as the reason for relocation, and a call for international boycott. Their press releases regularly state that:

The Botswana Government has been trying to get the Gana and Gwi Bushmen off their ancestral lands in the Central Kalahari Game Reserve since the 1980s when Diamonds were discovered. Exploration concessions leaped within a few days of the Bushmen being evicted in 2002. (08.10.05)

The government claims that there are no plans for diamond mining inside the CKGR, as the only known mineral discovery, the Gope deposit, is not commercially viable. However, the reserve is located between two of the world’s largest diamond mines: Orapa to the east and Jwaneng to the west, and SI (2004) publishes ample evidence that prospecting has increased after the 2002 relocation. It is quite likely that profitable discoveries will be made, and if so, it is quite likely that the Government, through its company Debswana which is linked to de Beers, will mine (Good 2003). The question is, *does this matter?* There is no convincing explanation why the Botswana Government should empty 52,000 km² of human settlement in order to mine one or two km². Given the size of the reserve, a small foraging population would be a minor inconvenience. Moreover, the applicants say they would not object to mining ‘if it brings jobs to our children’. The disturbance for wildlife, however, of mining and road transport, might be substantial.

The ‘blood diamond’ campaign represents one of the greatest enigmas of the SI operation, and has a tremendous impact on a case in which it is not an issue. It has a dubious empirical base, not in assuming that there may be future mining operations, but in identifying this as the driving force behind the Government of Botswana’s relocation policy, and indeed its entire policy towards the San. The argument diverts attention from the basic problem: an authoritarian and patronising model for development, elevating the preferred lifestyle of the majority to the national norm. UN Special Rapporteur Rodolfo Stavenhagen has warned against the way this campaign has become a media event: ‘The interests of the San people are not best served by a public debate between an NGO based in London and an international mining company’ (08.08.05/Reuters).

3.4.2 Indigenous rights and human rights

There are other procedures for international

involvement that are less confrontational, and which probably will have more impact in the longer run. Examples of these are the inclusion of African Indigenous Peoples in the United Nations systems, and the emerging networks of Indigenous-to-Indigenous collaboration.⁵ Another example of 'constructive engagement' is the Swedish Right Livelihood Award 2005, given to The First People of the Kalahari, and Roy Sesana, '... for resolute resistance against eviction from their ancestral lands. And for upholding the right to their traditional way of life.' <http://www.rightlivelihood.org/recipe/2005/first-people-of-the-kalahari—roy-sesana.htm>. It is a notable award in its own right, and an interesting side effect has been some positive impact on public opinion in Botswana.

Perhaps the most important initiative so far is the report of the African Commission's Working Group of Experts on Indigenous Populations/communities, adopted in 2003. The report notes:

Articles 20 and 22 of the African Charter emphasize that all people shall have the right to existence and to the social, economic and cultural development of their own choice and in conformity with their own identity. Such fundamental collective rights are to a large extent denied to indigenous peoples. (ACHPR 2005:107)

Like all other documents of this kind, its effects are slow to come and hard to measure. But the adoption of the report provides an instrument that may throw light on the situation of indigenous peoples in Africa, and may be used to lobby African governments to recognize indigenous peoples, their human rights concerns, and their particular needs. Members of the working group visited Botswana in June 2005, and the forthcoming report will be important.

Endnotes

- 1 Depending on context I use the term San, which is the term preferred by San organisations, Basarwa as the official term in Botswana, and Bushmen when referring to history.
- 2 The official figures for the 1997 relocation were: 1239 to New Xade, 500 to Kaudwane. Ikeya (2001:188) estimates that out of a total of 1700 people at that time living in the CKGR, 1130 were moved out, while 575 stayed.
The figures in 2002 were: 342 to New Xade, 179 to Kaudwane, 17 to Xere (a new settlement in Central District).
- 3 The application was first dismissed on

4 To conclude

No matter what the significance of international attention, the solutions have to be found in Botswana. The current court case will have an impact on two levels: the case proper can be won - or lost; but there is also public opinion and popular support that can be won - or lost. So far the campaign waged by Survival International has had a very negative impact not only on the government, but also on the Botswana public, who – unlike the international audience - can check press statements against realities on the ground. This is not denying the seriousness of confrontations that have taken place between demonstrators and the police, but to question whether 'ethnic cleansing' and 'genocide' appropriately describe what happens.

Writing about the San/Bushmen/Basarwa has for centuries been dominated by outsider perceptions, moving from contempt to exoticism and essentialism (Skotnes 1996) to the current buzzword of 'rights based' approaches. Local media have until recently tended to ignore the situation of the San, unless there has been a conflict on which to report. Seeing the court case as a media-worthy conflict, coverage has been fairly extensive, but comments have been stereotypical, implying an 'otherness' to San issues, and a deviance from the 'normal' Tswana life. Suddenly, the Right Livelihood Award, brought comments (eg, *Mmegi* 11.10.05) where Sesana and other applicants appear as regular persons, who stand out with their own history and individuality. If this leap of imagination can be sustained, much has been gained, irrespective of the outcome of the court case. To 'improve their lives', the many *Voices of the San* (Le Roux & White 2004) must be heard. There is no other way.

technicalities, then admitted by the Court of Appeal. There were delays caused by the need to raise money for the case, which was finally brought before a panel of three judges in the High Court in July 2004.

- 4 Legal advisers when the case was prepared were Glyn Williams and Roger Chennells of Chennells Albertyn, of Cape Town, the firm that successfully negotiated the #Khomani land claim in South Africa in 1999.
- 5 For instance support to the First People of the Kalahari channelled through the Saami Council (Borchgrevink 2005).

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The court case has become a media event, as demonstrated by the considerable investment in the Government of Botswana homepage (www.gov.bw), set up to appease an international audience, which otherwise is informed most vocally by the London based NGO Survival International (www.survival-international.org), through a homepage, regular press statements and e-mails. Local support organisations have also made their opinion known, such as Ditshwanelo, the Botswana Centre for Human Rights (www.ditshwanelo.org.bw), and the Working Group of Indigenous Minorities in Southern Africa (WIMSA) (www.san.org.za). And the interested reader can also follow the newspaper coverage when the court is in session, eg, through the government mouthpiece *Daily News* (www.gov.bw go to Recent News) or one of the independent papers, eg, *Mmegi* (www.mmegi.bw).

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