

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The text is overlaid on the graphic.

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Botswana: The San (Bushmen) Rights Case

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Abstract. In November 2004, the San people of Botswana are expected to continue their court case against the government of Botswana. The San argue that they were illegally removed from their ancestral land within the Central Kalahari Game Reserve (CKGR). International human rights groups contend that the manner in which the San were removed violated international human rights laws. The discovery of diamond reserves within the CKGR has led advocacy groups to argue that the San have been removed to allow diamond mining to go ahead in the CKGR. Both the government of Botswana and leading diamond mining companies deny this accusation. How the court case is resolved could potentially have regional and global implications for disputes involving other first peoples of the world. The case is an issue of concern to the Congressional Human Rights Caucus, which held a Members briefing on it in September 2004.

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Summary

In November 2004, the San people of Botswana are expected to continue their court case against the government of Botswana. The San argue that they were illegally removed from their ancestral land within the Central Kalahari Game Reserve (CKGR). International human rights groups contend that the manner in which the San were removed violated international human rights laws. The discovery of diamond reserves within the CKGR has led advocacy groups to argue that the San have been removed to allow diamond mining to go ahead in the CKGR. Both the government of Botswana and leading diamond mining companies deny this accusation. How the court case is resolved could potentially have regional and global implications for disputes involving other “first peoples” of the world. The case is an issue of concern to the Congressional Human Rights Caucus, which held a Members’ briefing on it in September 2004. This report¹ will be updated.

Background

The culture of the San people of Southern Africa, a traditionally hunter-gatherer ethnic group popularly known as the Bushmen, is thought to be among the oldest on earth. Many anthropologists believe that the San have a unique kinship with the Kalahari desert, the natural habitat in which they live, and that their understanding of this environment is unparalleled. Many observers maintain that the San traditional way of life is under threat because of the government of Botswana’s decision to relocate the San peoples out of the Central Kalahari Game Reserve (CKGR) into government-designed settlements.²

¹ This report was prepared under the supervision of Nicolas Cook, specialist in African Affairs.

² Major sources for the paper include Taylor I. and Mokhawa. G., “Not forever: Botswana, conflict diamonds and the bushmen,” *African Affairs*, Apr. 2003; Government of Botswana, “Relocation of Basarwa from the Central Kalahari Game reserve,” available at [<http://www.gov.bw/basarwa/background.html>]; Hitchcock R. K., “We are the First People: Land, Natural Resources and Identity in the Central Kalahari,” *Botswana*, Vol 28: 4, Dec. 2002; IRIN, “Botswana: culture under threat - Special report on the San Bushmen (1),” Mar. 5, 2004; (continued...)

In 1961 Britain created the CKGR to protect the San traditional way of life. In 1966, Botswana was awarded its independence from British rule. Immediately after independence, the Botswana Democratic Party (BDP), which remains in power, declared that Botswana would be a non-racial country. In 1978, the government of Botswana launched its Remote Area Development Program (RADP) to bring services to Remote Area Dwellers (RAD), of which the San were key target beneficiaries. Under the RADP program, the government both provided water and social services to the San, and created new settlements for them outside of the CKGR. The biggest of these was New !Xade, which provided extensive social services, including hostels and a maternity ward.³ In 1986 the Minister of Commerce and Industry announced that Botswana would compulsorily relocate the San people outside of the CKGR. No action was taken to implement this decision until 1997 though some San voluntarily relocated during this time. In 1997, !Xade, a functioning San community within the CKGR, was completely relocated. 1996-2002 saw an intensification of the government's policy of relocation.⁴

Diamonds. Implementation of the government's compulsory relocation policy followed the discovery of a diamond kimberlite (i.e., a volcanic "pipe" containing diamond-laden material) in 1982 at Gope, inside the CKGR, as a result of prospecting by two firms, Falconbridge and De Beers. In 1996, the full evaluation of the site — which caused Debswana to state that it would not be commercially viable to mine the site — was completed.⁵ In 2000, however, De Beers was awarded a three-to-six year retention contract for the Gope site. It endows De Beers with mining rights to the site until 2006. Despite the reported non-viability mining at the site, some international human rights groups in Botswana, Britain and southern Africa contend that the future potential for diamond mining was the main reason for the removal of the San.⁶

Government of Botswana Position

The government of Botswana began intensified its efforts to remove remaining San from the CKGR in 1997. Approximately 1,739 San were relocated to New !Xade and Kaudwane. Recent statistics suggest that over 689 San lived in the CKGR in 2001, but

² (...continued)

Survival International, "Bushman aren't forever, Botswana: diamonds in the Central Kalahari Game Reserve and the Eviction of Bushmen," Oct. 31, 2003; and IRIN, "Botswana: Court case to determine rights of Bushmen," Jul. 1, 2003.

³ Roman letter orthographic devices, such as exclamation marks, are used to represent unique sounds that appear in Khoisan languages, such as a variety of "clicks."

⁴ Survival International, "Bushman aren't forever..." Survival International is a British human rights advocacy group which defends the rights and claims of the first peoples of the world. See also Hitchcock R. K., "We are the First People..."; "Botswana: the Mysterious Soul of Ancient Africa: A Country Profile," online at [<http://www.safariweb.com/botswana/country.htm>]; IRIN, "Botswana: Culture under threat - Special Report on the San Bushmen (2)," Mar. 10, 2004.

⁵ Debswana is diamond mining company that is equally owned between De Beers and the Botswana government.

⁶ Survival International, "Botswana: diamonds in the Central Kalahari Game Reserve and the eviction of Bushmen," October 31, 2003, online at [<http://www.survival-international.org/bushmen.html>]; and Taylor I. and Mokhawa. G., "Not forever..."

that just 17 San remained there by mid 2002. Since August 2002, more than 200 San have returned to the CKGR. During this time, governmental officials accused the San of attempting to create a “break away” state within the CKGR.⁷

The government maintains that the relocation of the San from the CKGR, where their population averaged around 1,500 between 1988 and 1996, is important for the preservation of the fauna and flora of the CKGR, and will allow the “Bushmen” to develop according to the socio-economic practices of the larger contemporary society. The government maintains that the San have largely stopped living their traditional way of life because of their involvement with the Bakgalagadi,⁸ an ethnic group related to the San which practices agriculture and animal husbandry, rather than a hunting and gathering way of life. The government argues that the methods of cattle herding used by the San are destroying the flora and fauna of the CKGR. In addition, the government claims, traditional methods of hunting with a bow-and-arrow have been replaced with the use of firearms, and that the San have formed permanent settlements within the CKGR, and no longer live a traditional nomadic lifestyle. Some observers also allege that some San use vehicles to hunt, a charge denied by the San. The Department of Wildlife and National Parks has stated that the “biomass,” a measure of the volume of living organisms within a designated area, more than doubled in the CKGR between 1986 and 1996.

While the government maintains that the relocation program is “encouraged” to provide the San “the benefits of development,” it has also stated that it can no longer fund its Remote Area Development Program (RADP), and that the San people must move out of the CKGR to existing settlements, such as New !Xade. The government of Botswana believes that the new settlements outside of the CKGR will better equip the San people to live according to demographically predominant social norms.⁹

The Botswana government maintains that it has never employed force, coercion, or threats during its relocation of the San. The government maintains that San are free to stay within the CKGR, but that they would have to live without the government support they enjoyed under the government’s RADP. The Botswana government formally ceased providing services to Remote Area Dwellers (RADs) on January 31, 2002. It maintains that this is solely due to operational costs.¹⁰

Views of the San and of Human Rights Organizations

Some international human rights advocacy groups maintain that the government of Botswana is removing the San from the CKGR so that they cannot claim any rights to minerals within the CKGR. One such group, Survival International, reports that by 2003

⁷ Hitchcock R. K., “We are the First People...”

⁸ The Bakgalagadi are descendants of the Nguni peoples of Northern Africa. They migrated to Southern Africa as cattle herders and formed an inter-dependent relationship with the San, though the former eventually became dominant within the relationship. The Bakgalagadi speak a dialect akin to Setswana, a national language, and have a hierarchical social system, similar to that of the Batswana. Hitchcock R. K., “We are the First People...”

⁹ IRIN News, “Botswana: Tensions Heightened Over Fate of Basarwa,” Oct. 31, 2003.

¹⁰ Hitchcock R. K., “We are the First People...”

over two-thirds of the CKGR and approximately 80% of the San ancestral land had been made subject to provisions governing diamond prospecting concessions. Analysts also suggest that over six different mining companies have been awarded these concessions. Other human rights experts doubt that the diamonds discovered are economically viable at this time, and see the relocation program as being motivated primarily by the state's goal of pursuing environmental conservation within the CKGR for tourism purposes, as well as due to the influence of cattle ranching interests.¹¹

Human rights critics of Botswana's government allege that in pursuing its relocation policy between 1996 and 2002, the government used tactics ranging from monetary incentives to the burning of huts, the removal of water supplies and physical assaults. Survival International reports that the government of Botswana destroyed homes and water tanks to make the return of the San to their former settlements impossible. One of the San who has taken the government of Botswana to court is reported to have said that the "government told us to leave or they would send the army in" He also alleged that government agents threatened to achieve their goals through the use of murder and arson; they reportedly threatened to lock his wife in her hut and torch it. Experts report that in 2002, the government of Botswana sealed existing boreholes and destroyed all San water storage structures within the CKGR. It has also been reported that the government banned non-governmental organizations (NGOs) from supplying San within the CKGR with food and water.¹²

Critics also suggest that the government's relocation policy is placing in peril the ability of the San people to preserve and maintain their unique culture and language. The Sans' relocation outside the CKGR, for instance, is seen by some anthropologists as eroding San social coherence because it has removed them from their ancestral lands and grave sites, which have historically formed a central facet of San spiritual life and social identity. Some San have named New !Xade the "Place of Death." In addition, some allege that resettlement may also be contributing to reportedly high rates of alcoholism, social degradation, crime and HIV/AIDS in the resettled communities, where jobs and other economic opportunities are rare. Some experts argue that although development services and programs have been provided to the resettled San, they are inaccessible to the San due to cultural and linguistic differences. These experts also argue that although these programs are provided, they do not tackle the problems of social and economic exclusion. Cultural differences also play a role; for example, the San believe the increase in health problems in New !Xade is due to their inability to visit their ancestors' graves. Reports indicate that some San would be happy for mining to take place within the CKGR, as long as they would be given jobs and paid royalties in accordance with the rights to the land through ancestry that they are claiming.¹³

¹¹ Survival International, "Diamond concessions in CKGR," online at [<http://www.survival-international.org/bushmen-diamondmap.htm#>]; Hitchcock. R., "Seeking Sustainable Strategies: The Politics of Resource Rights among the Central Kalahari San," and "Impacts of Hunting by the People of Northwestern Kalahari Desert on Wildlife Sustainability," both online at [<http://www.kalaharipeoples.org/documents/Fpk-ckg.htm>].

¹² Roy Sesana cited in Alastair Leithead, "Botswana's bushmen battle for land," BBC News, July 12, 2004.

¹³ BBC News, "Botswana's bushmen battle..."; and IRIN, "Botswana: Culture under (2)..."

Court Case

Although some San have reportedly accept the government's resettlement policy, others are fighting their removal from the CKGR in court. In order to press their case, these San, with the assistance of NGOs, created a unified organization named First People of the Kalahari (FPK) in 1993. In 1996, the San, along with Botswana human rights groups, rallied together to form a negotiating team to press their claims during interactions with the government. The group included representatives from FPK, Working Group of Indigenous Minorities in Southern Africa (WIMSA), Ditshwanelo (Botswana's Center for Human Rights), and the Botswana Council of Churches. Their first step taken was to register 250 San as residents of the CKGR. This offered the negotiating team a basis for discussions with the Botswana government.¹⁴

Negotiations did not produce the results acceptable to the San and human rights groups, however, and in April 2002, the San took the government to court in Botswana. The court case focuses on the legality of the government's policy of halting the provision of essential services to RADs; the government's potential legal responsibility to restore these services; questions relating to the Sans' claim to hold land and mineral ownership rights in the CKGR on the basis of their ancestral occupation of the land in question; and whether the government of Botswana used force to remove the San from the CKGR. The case is being continued in New Xade following initial hearings in the capital. These were criticized by observers as being inaccessible to the plaintiffs, who are generally poor, lack transportation and, in some cases, do not speak English or Tswana. Some observers see the case as an example of Botswana's democracy at work, but those defending the San object that all the judges are Botswana, and argue that this shows the Botswana government's desire to tilt the judicial landscape in its favor.¹⁵

Legal Precedents. Two prior political decisions made by the first President of Botswana, Seretse Khama, are central to this court case. First, asserting that Botswana was a non-racial nation, he effectively decreed that all people of Botswana were indigenes of the nation's land. This presumption has informed the Botswana government's decision not to recognize the San as the original people of the Kalahari or as having any rights to the land in the CKGR through ancestry. Second, under President Khama, the parliament passed a law that decreed that all minerals are the property of the Botswana government. This law, known as "Khama's Choice," means that if any mineral deposits of wealth are discovered, they automatically belong to the Botswana government. This is important to the San court case because the law may undermine San claims to the minerals within the CKGR.¹⁶

¹⁴ Hitchcock. R., "Seeking Sustainable Strategies: The politics of resource rights among the Central Kalahari San," online at [<http://www.kalaharipeoples.org/documents/Fpk-ckg.htm>] and IRIN, "Botswana: Culture (2)..."

¹⁵ Botswana ("Tswana people") is the collective name for the various Setswana ("Tswana language")-speaking groups of Botswana. San culture and languages are distinct from those of the Botswana.

¹⁶ IRIN, "Botswana: Court case..." and Ralph Hazleton, "Diamonds: Forever or For Good? The Economic Impact of Diamonds in Southern Africa," *Occasional Paper #3*, The Diamonds and Human Security Project, March 2002.

Possible Implications of the Case

The court case between the San people of the CKGR and the government of Botswana may prove important both regionally and internationally for those seeking the rights to their ancestral land. The legal systems of several other African states where there exist historically disputed land claims are similar to those in Botswana. Should the San win any portion of their case, their victory may create precedents of legal strategy that may be applicable to the cases of land case plaintiffs in other countries. Similarly, legal precedents in other countries may inform legal outcomes in Botswana. In 2003, for instance, the Richtervelders of South Africa won a landmark court battle with a prominent diamond company.¹⁷ The Constitutional Court ruled that even though the 3,000 Nama Richtervelders had no legal land titles, they owned the rights to the minerals and land that they inhabit through ancestry. Analysts have suggested that the South African ruling is important in the CKGR case, as Botswana and South Africa share similar judicial systems.¹⁸ International observers also champion the importance of the San case for indigenes of other African countries, such as the Masai of Kenya, the pygmy peoples of Central Africa, and the Hadza hunting people of East Africa.¹⁹

U.S. Policy. The San case has not attracted extensive attention among U.S. policy makers, but its outcome may provide an important precedent for treatment of aboriginal peoples by national governments around the world. The San rights case is an issue of concern to the Congressional Human Rights Caucus. In late September 2004 the Caucus held a Members' Briefing on the issue. USAID and the Department of State have both cited the importance of the CKGR San court case for other San within bordering southern African countries.²⁰

¹⁷ Richtervelders are a Khoisan, Nama-speaking South African group who are related to the San of Botswana.

¹⁸ CIA World Factbook, *South Africa and Botswana*.

¹⁹ IRIN, "Botswana: Court case..."

²⁰ [<http://www.state.gov/r/pa/ei/bgn/1830.htm>], [<http://www.aaanet.org/committees/cfhr/san.html>], and [http://www.usaid.gov/stories/namibia/cs_namibia.bushman.html]