

Case study 9

South Africa

The ꞀKhomani San of South Africa

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May 2001



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1 Introduction

The San peoples of South Africa have over the past century been decimated to the point of virtual extinction. Those that survived were driven off their traditional land, and forced to exist alongside the more powerful and dominant cultures of pastoralists and colonial landowners. Fewer and fewer San practised their ancient culture, and as a group they and their lifestyle became a thing of memory, as the San lost touch with the Kalahari wilderness.

A group of San peoples, representing a number of language groups and known as the †Khomani San, decided in 1994 to launch a land claim under the new constitution. They claimed return of their ancient rights in and to their traditional land in the Southern Kalahari, most of which lay within the present Kgalagadi Transfrontier Park.

In March 1999 the first phase of the land claim was completed, as the government returned 40,000 ha of farmland outside the park to the San. This land, six farms in all, is to be used for the benefit and development of the approximately 1,000 San that are now members of the overall Trust and thus registered co-owners of this land. The intention is to use the land for game-farming, eco-tourism, and other related activities.

However the most important phase of the land claim still lies ahead, namely the negotiation and finalisation of the rights of the San in and to the park.

This paper records some of the most important aspects of the land claim process. Some emphasis is placed on how the culture and knowledge systems of the San, forged by their ancient relationship with the harsh Kalahari wilderness, are being captured in the Cultural Resource Mapping process, and utilised both as a necessary basis for the land claim, as well as a powerful tool to re-build a once-dispersed and demoralised community. The vision of all those involved in the process is that the final agreement will produce a development model in which conservation of biodiversity is integrated with conservation of the culture and the very essence of the †Khomani San as a people.

2 History of the San

Much has been written about the San of the Kalahari desert. Like the Batwa or Pygmies of the deep forests of central Africa, as well as the Hadza and Ogiek of Tanzania and Kenya, and the Aborigines of Australasia, the San are members of that most proud and ancient of families of man, the true 'hunter-gatherers'. This is not to suggest that the San are total strangers to the keeping of livestock or the planting of food crops, but their history is one characterised by mobility and living lightly off the environment, rather than the striving for control,

power and wealth in the form of material possessions that has persisted amongst others.

The San have lived for thousands of years as a fundamental part of the natural order, as part of the vast natural Kalahari ecosystem, rather than as a dominator of man or nature. This essential philosophy persists largely to this day, where many of the modern San deplore the modern trends associated with progress and civilisation, and long for a way to connect with the old ways and values.

The San peoples known today as the ǀKhomani San, the subject of this report, are part of a group of distinct San tribes inhabiting the Southern area of the vast Kalahari ecosystem at the turn of the last century, then referred to loosely as the Southern Kalahari San. The details of the harassment and demise of the Southern Kalahari San is beyond the work of this paper, but by 1970 they had been totally dispossessed of their traditional land in the Kalahari, and were spread all over South Africa, living in small groups or clans.

In 1994, when the decision was made by some ǀKhomani San activists to reclaim their land in the Kalahari, the very notion of eventual success was far-fetched. They had become thoroughly fragmented as a people, some eking out a humble living as 'live attractions' at tourist resorts, where foreign visitors could photograph and meet the semi-naked skin-clad little people. However some individuals were determined that they would eventually return to the Kalahari, and had faith that with assistance, this could come about. They began a process of learning more about their constitutional and human rights, specifically the rights to their land and culture, and of re-establishing contact with their extended families, in order to determine who were entitled to the land rights to be claimed.

As is well documented, the San have been similarly discriminated against and dispossessed of their traditional lands throughout the countries of Southern Africa, including Namibia, Botswana, Angola and Zimbabwe. In 1996, and encouraged by a worldwide acknowledgement of their rights as reflected in the UN General Assembly 'Decade of Indigenous Peoples', the San leaders of Botswana, Namibia and South Africa formed a new organisation known as WIMSA (the Working Group of Indigenous Minorities in Southern Africa) a San-led and owned networking and advocacy movement aimed at uniting the San peoples, and dedicated to fighting for their rights. This organisation began to establish links with other groups internationally, and provided a necessary institutional framework in support of the developing land claim of the ǀKhomani San.

Other land struggles received increasing international support at this stage, most notably the San that were being harshly evicted from the Central Kalahari Game Reserve (CKGR) in Botswana. WIMSA encouraged the formation of the South African San Institute, a service NGO dedicated to providing San organisations with the specialised legal and social services required for the ultimate success of

the land claims and other related challenges to the existing order. Other important organisations evolved at this time, most notably 'Kgeigeni Kweni' or First People of the Kalahari that was formed in response to and to challenge the CKGR evictions. It is important to note that without the formation of these dedicated activist organisations, the ǀKhomani San would have lacked the crucial support required at many levels, and would have failed to pursue their claim to its conclusion.

3 Rights to land

International conventions on the rights of indigenous peoples have long confirmed that rights to traditional land and culture are inextricably linked. ILO (International Labour Organisation) Conventions 107 and 169, as well as Article 22 of the Rio Declaration,¹ article 8(f) of the Convention on Biological Diversity² and the provisions relating to indigenous peoples contained in 'Agenda 21'³ were drawn upon for principled support. The Mabo decision in Australia of 1992 publicised the turning of the moral tide in favour of the long dispossessed indigenous or in particular 'first peoples' of the world, providing the San with encouragement as to the essential validity of their quest of restitution of their land rights.

Rights to land were the key. San organisations recognised that the San would cease to exist as distinct peoples unless a means was found to reverse the processes that had evicted them from their lands, and had simultaneously emasculated their cultures. The challenge was to embark on a practical strategy that was likely to succeed in the face of political opposition.

In every country where the San once roamed, their successful evictions from traditional lands had been effected in such a way as to appear 'legal'. One of the most widespread methods in Southern Africa was the removal of resident San in order to make way for nature reserves (for example the Etosha Game Reserve in Namibia, the Central Kalahari Game Reserve in Botswana, and the Kalahari Gemsbok National Park in South Africa, since 2000 the Kgalagadi Transfrontier Park) in order to provide pristine areas of 'wilderness' for tourism and recreation of the upper classes.

The hunger for farming land lay behind another concerted assault on San traditional lands. In countless recorded cases San were arrested and legally incarcerated by magistrates as 'trespassers' inhabiting land which had (unbeknown to the San) been formally allocated to farmers. Without their knowledge, the wild game that they had co-existed with and hunted since time immemorial became the legal property of those to whom the lands had been allocated. Whilst the men folk were arrested and sent to captivity far away, often never to return, the women and children were enslaved by their captors. Most infamously, as has been

recorded as a shameful chapter of colonialist brutality, San inconveniently occupying land allocated to farmers were in countless cases regarded as something less than human, declared to be or classified as ‘vermin,’ and legally exterminated by pioneer farmers in hunting parties in order to ‘tame’ and clear the sought-after farming land. This shameful method of land-grabbing was, incidentally, also taking place in other colonised territories apart from Africa, as recently as the turn of the twentieth century.

The corresponding and widespread colonial belief prevailing in the 18th and 19th centuries, that land inhabited by indigenous peoples was ‘terra nullius,’ or ‘unoccupied land,’ underpinned the vast array of dispossessions in all colonised countries, including Australasia and the Americas, and caused incalculable damage to ancient cultures and knowledge systems that were intrinsically related to their environments.

The societies and cultures of hunter gatherers were highly complex and effective, but because they did not live in settlements with advanced systems that reflected ‘civilisation’, (such as buildings, roads, farms, fences, courts and written laws) they were conveniently and short-sightedly regarded as having no system in terms of which their rights to the land could be measured or recognised.

In planning the strategy for the †Khomani land claim, it was considered that in most countries in Africa, including South Africa, the legal systems do not recognise the doctrine of aboriginal title, which in some jurisdictions (Canada, Australia, USA) has been successfully developed to allow the legal reclaim of traditional lands. A strategy to reclaim land would need to be more creative than a direct legal challenge to the existing order. In addition, land activists have found to their cost that court actions are expensive, confusing, divisive, lengthy, and – especially in third world countries – all too often thwarted by the lack of independence of judges. Perhaps as importantly, a legal challenge is seldom conducive to capacity development within the claimant community, for the reason that legal process capitulates the critical power to articulate and determine the community’s future to the lawyers and judges.

It was decided to base the †Khomani land claim upon a solid bedrock of practical research, which would not only establish and confirm the ancient rights of the San to the land in question, but at the same time capture the history and culture of the San community for the benefit of the development process that lay ahead.

4 The land claimed by the †Khomani San

Oral testimony by key San informants, backed up by initial research resources, established irrefutably that the †Khomani San were one of the San communities that had since time immemorial lived, hunted, gathered and roamed over the



Photo: SASI GRAM Archive

Traditional grass house

southern area of the South African Kalahari ecosystem. The Kalahari is the name given to the vast, waterless and sandy semi-desert ecosystem that spans Botswana, Namibia and South Africa, is populated by uniquely adapted fauna and flora, and is one of the harshest environments inhabited by man. The Kalahari semi-desert is subject to extreme variations in temperature, ranging from 45°C in the summer to well below freezing during the winters, and the San had over centuries evolved an astounding ability to not only survive, but to thrive in the vast and inhospitable wilderness that was their traditional home.

When a huge portion of the southern Kalahari of South Africa was proclaimed in 1931 as the Kalahari Gemsbok National Park, the authorities decided initially to leave the San unhindered, regarding them virtually as one of the animal species that inhabited the reserve.

However, tensions soon arose between the state officials tasked with ‘conservation’ and the human beings who regarded the reserve as ‘home.’ The conservation paradigm of the government of the time, in keeping with that of others in the Western world, was simply that environmental conservation and humans did not mix, and by 1956 the last of the resident San had been evicted from the park.

San families spread around the country in a pitiful diaspora, receiving negligible wages or the right to live in exchange for hard labour on Kalahari livestock farms,

and developing few other skills to support life in a rapidly modernising world. Young girls and children were taken as slaves, and atrocities committed by the powerful of these rural frontiers, all too often policemen and farmers, were recounted so often as to become commonplace experience.

In the southern Kalahari the once-nomadic hunter-gather community known as the ǀKhomani San soon became dispersed to the point where it had over the past 30 years ceased to become a functioning or even an identifiable community.

Where men hunted game for food, they were persecuted and arrested for trespassing on private land. Similarly freedom to gather bush foods and medicines became severely restricted, and the use of traditionally collected foods, practices and rituals began to fall away. Most importantly, the San suffered socially under the stigma of the various names denoting their plight. 'Boesman' was a pejorative name that meant person of the bush, lowest of the low in status, whilst in Botswana they were called 'Basarwa', which meant people with no possessions. Adults and children alike were ashamed of being San, and in a trend repeated by other hunter-gatherer peoples the world over, they increasingly assumed the ways and languages of their oppressors.

One of the established tenets of international law is that indigenous peoples have the right to their traditional lands. All the older ǀKhomani San that were consulted

Levi Namaseb interviews | Abakas Kruiper on genealogy



Photo: SASI CRAM Archive

knew the details and extent of their traditional lands. It was established that their traditional lands covered approximately 4,000 km² in the southern half of the park and it was decided that the rights to all of this land would be claimed.

The practical task facing the San activists, however, was how to establish the San rights to their traditional land in such a way that it could be proved without dispute in the event of the matter being referred to a court of law. Preferably, how to prove the rights in such a way that they would be unlikely to be challenged by the State. It was thus necessary as far as possible to link living San individuals of the claimant culture and origin, to the land. It was also recognised that the members of the community were so dispersed that a simultaneous process of recapturing and recording the culture in such a way that it could bind and define the community was required.

5 How to recapture lost identity, language and culture

The old languages spoken by the San had fallen into disuse, and the language loosely described as the ǀKhomani language (in fact the correct name for the language is N/u, see Crawhall) was prematurely declared to be officially 'dead' in 1970. In many cases children did not know that they were members of the San peoples, and the official assumption was that the N/u language was no longer in use, anywhere. The community, dispersed and demoralised, had ceased to exist.

Borrowing from other struggles of indigenous peoples abroad, in particular the native Americans of the far North, a process known as 'Cultural Resource Audit and Management' was commenced. In essence this process involved the interviewing of elder (initially) San individuals in order to record all they could tell, in particular their priceless knowledge relating to land, history, culture and identity. Thereafter the process would ensure that the body of knowledge recording their culture was managed in the most beneficial and effective manner.

Elders were approached to recount their life stories in such a way as to indicate their clan and familial relationships, traditional knowledge, rituals, stories, songs, myths, healing and medicinal practices, hunting and gathering places, land marks, burial sites, sources of water, shelter, and sustenance. As the process to gather information on the unique life experiences and cultural knowledge of these elders continued, far-flung members of families and clans became reunited, and the concrete proof of this common cultural identity became a tangible and central core around which the community began to recognise their interconnectedness as a cultural community. The youth began to express a sense of pride in their San identity, and an eagerness to acquire the knowledge that had become submerged. Many have recently committed themselves to the task of rebuilding the community around the reclaimed land.

Individuals identified by the San because of their particular knowledge became valuable land use informants, and would relate stories and practices relating to the traditional land which were then recorded on clear maps reflecting each aspect of land usage. Modern GPS systems enabled the facts recorded to be visually depicted on maps of the claimed territory. These maps would show favourite hunting sites and water holes, hunting routes, where they had gathered the tsamma melons that are such a rich source of food, where they had collected certain medicinal plants, where events in folklore had occurred, and where certain ancestors were buried. N/u (the ǀKhomani language) names of places, waterholes, geographical features, animals and plants were linked to places, and when recorded accurately on posters and maps drawn to scale with GPS techniques provided a visually clear bridge between the past and the present.

The entire community has been consulted in various ways over the past six years. Some have attended strategy meetings where they have been consulted fully regarding their vision regarding the park, and their responses were recorded in order to constitute the negotiating mandate of the leaders. The results of these consultative meetings have been recorded in writing, and form a historical record of what is seen as the final stage of the land claim. There is a recognition that it would be unwise to proceed too rapidly to finalise the entire negotiation process. The past six years since the formal commencement of the land claim have enabled the San constituency to grow in their collective understanding of what is at stake, and has enabled leaders to increase their knowledge and perspective of the issues at hand. It is important to note that the re-allocation of land rights to a community such as the San, which had not developed institutions or rules to manage ownership and management of resources in the past, requires enormous adaptation which is better achieved with time.

The following are selected quotations from key opinion-makers in the ǀKhomani San.

- **Ouma /Una**, (75) an inspirational San elder and N/u speaker
Our history is a trail of blood, which has been hidden deeply under the Kalahari red sand. If we open up the sand, as we are doing now, we will see that this trail leads right back into the middle of the park, where our parents and their parents were born and died.

With my remaining years, I want to teach all our young people how we lived off the land in the Kalahari. I want to teach them what bush foods we ate, what we used for medicine, how we as San lived happily in our only home.
- **Dawid Kruijer** (64) the traditional leader of the ǀKhomani San
Without the Kalahari (Park) we are nothing. In the Kalahari, we know we belong, we know what to do with the land, we know who we are. The animals



Photo: SASI CRAW Archive

Dawid Kruiper surveying his father's grave

know us. We are their brothers and sisters. Many of our stories are about the animals. Such as the lion, he still knows that the bushmen, the San are more clever than he is.

- **Vet Piet Kleinman** (62) acknowledged master of bushcraft and tracking
I know every plant, beetle, animal in the park. It is where our San people belong. We need to re-teach the young people the knowledge that I and some others have, so that they can know where they come from.
- **Jakob Malas** (44) key informant, and past hunter of the Kalahari
The Kalahari is like a big farmyard. It is not a wilderness to us. We know every plant, animal and insect, and know how to use them. No other people could ever know and love this farm like us.
- **Petrus Vaalbooi** (58) San leader of the negotiation committee
My mother did not teach me the N/u (ǀKhomani) language because she was ashamed to speak it. I want to make sure that all the young people can learn the language, and can know that they own the Kalahari, where we all came from.
- **Andries Orleyn** (78) elder and N/u speaker
I have lived all my life hiding that I am a San. Now we own our own land in the Kalahari, where we can be proud to be San, and can show our children how we lived with the land.

- **Buks Hendrik Kruijer;** (62) master hunter of the Kalahari
The red Kalahari sand is like the blood of our people. Our parents and their parents were buried in the sand, and one day we will all join them there, and become part of the red sand.
- **Sensie Monsignor** (55) San leader and committee member
The old people have the knowledge that we need, but to make it come alive the young people must throw their support into the entire claim.
- **Anna Festus** (22) San leader and committee member
It is the knowledge and contribution of the elders that gives us confidence to claim our inheritance and heritage.

Land use maps were drawn up, based upon interviews with each and every informant that could add to the growing data base of cultural information that linked the entire ǀKhomani San people to the land claimed. These maps became the irrefutable legal evidence that enabled this group of San to claim and negotiate for return of their land, confidently, with determination and with moral integrity.

6 The rights in the Kgalagadi Transfrontier Park

In March 1999 the South African government finally accepted the validity of the ǀKhomani San land claim, and awarded 40,000 ha of land outside the park for resettlement and development of the community. This constituted six large farms, of which some would be utilised for conservation or ecotourism purposes, and others for small-scale farming. With regard to the San claim for the Kalahari Park, they also awarded to the ǀKhomani an area of 25,000 ha on the southern boundary of the Kgalagadi Park, as well as commercial and symbolic rights in and to the remainder of the park. This latter allocation was regarded as ‘phase two’ of the entire process.

The ǀKhomani are now engaged deeply in negotiating the precise terms of an agreement with the park officials, which will conclude the legal aspects of the land claim. At the time of reporting on this case, the process of negotiation is sensitive, and in progress.

Negotiating a contract containing unique rights that have never been recorded before is a challenging task. The San leaders responsible for the negotiations recognise that for this process to be valid they need to listen to the voices of the people, particularly the voices of the elders and leaders (as is described above), in order to capture the spirit and wishes of the ǀKhomani San peoples. If the traditional knowledge of the elders about the use of the land, and the collected wishes of the scattered ǀKhomani peoples are fully incorporated into the legal



Photo: SASI CRAM Archive

San community at the Land Claim Ceremony

rights about to be finalised, the integrity of the final agreement will be assured. Most importantly, the ǀKhomani San will then have a framework of rights with which they can not only develop jobs and real livelihoods for their people, but which is based upon and simultaneously will rebuild their unique culture.

At present the framework of rights that is being claimed recognises three levels of land use for the San in the national park.

Level one

Ownership of 25,000 ha at the south boundary of the park.

This portion will be deregistered as a national park, and owned by the San as a 'contract park' in terms of which they may use it for any use whatsoever, as long as it is conservation based, and does not entail 'permanent settlement'. This will enable a wide variety of ecotourism opportunities, including hunting, camping trails, walking trails, a tourism Lodge, all owned and operated by San.

Some of the issues still to be decided by the San, and in relation to which the views of the community have been sought, are the following:

- Should hunting be allowed? If so, should it be with traditional weapons, such as bows and arrows, or could more modern and efficient methods be allowed?

- Should the owned area be fenced off from the Kgalagadi Transfrontier Park? This would provide advantages and disadvantages to the San. Generally the feeling is against fencing off a portion of what is a large and complex ecosystem, in which the game needs to migrate with rain and seasons.
- If ecotourism is to be allowed, should the San encourage high value Lodge tourism that will require a large infusion of capital or a commercial partner, or should they keep to low input, low impact and low profit forms of ecotourism? The former will require selecting a commercial partner, and ensuring that the interests of and benefits to the partner do not supersede those of the San.
- Should tourists be allowed to walk and camp overnight, which will entail a high risk of danger from lions. The San are known for their unusual knowledge and understanding of lions, and are confident of their ability to protect their guests in the park. Tourists might not appreciate the risks, however confident their hosts.
- Should a section of this area be left undeveloped, in order to be used for a 'wilderness area'? It is felt that any form of commercial exploitation will detract from the quality of pure 'wilderness' that will otherwise be available for spiritual and cultural purposes. An area will probably be preserved to be untouched by tourists.

Level two

A 'priority use zone', in the park bordering level one, where San will have priority to exercise commercial and cultural rights in the area, based and launched from the 'level one' land.

It is important to note that this 'level two' land is required in order to provide the San with access to the Auob river system, one of the two major rivers which is where the majority of game congregates.

In this priority use zone the San will exercise the rights to further ecotourism activities such as described above, with the important exception that by law no hunting is allowed in a national park, and that in carrying out all activities the San must abide by the provisions of the National Parks Act as well as the residual control of the park management.

Level three

A 'cultural, educational, and symbolic rights (with limited commercial rights) zone'.

In this zone, which will encompass the entire vast area of the park (4,000 km²)



Traditional painting skills

that was originally claimed, the San will be allowed relatively free access to the area for a series of cultural purposes. These will include the visiting of sites of cultural and symbolic importance, and the carrying out of educational trips, food or medicine gathering trips, or specific research, all as arranged and under the residual control of the park management.

The limited commercial rights referred to will flow from the fact that the San have been (subject to negotiations and confirmation) granted co-ownership with SA National Parks of the rights to the exclusive commercial concession granted to a yet-to-be-selected private ecotourism organisation. In terms of this concession, the selected private bidder for the opportunity will be granted the rights by the SA National Parks to operate a commercial ecotourism enterprise in the entire park. Amongst the various conditions imposed upon the concession and designed to ensure that the San benefit from the enterprise over the long term will be the following:

- Trackers will be employed from the San community;
- Other employment opportunities must be provided to the San peoples, as far as possible;
- Economic empowerment schemes benefiting the San will be required;
- The San will be provided equity in the enterprise;

- The San will form part of the management team that manages the overall performance of the Lodge Concession-holder.

7 How does this meet the 'new conservation model'?

It is useful to briefly test the evolving co-management system against the five core principles that underpin the new conservation model emerging from the various international legal instruments.

Firstly, 'Indigenous participation in conservation projects.'

The final agreement will provide the ǀKhomani San with full ownership of the conservation project in the 'level one' area, subject to the conservation laws applicable to the contract park, and a complex form of joint management of eco-tourism and other conservation projects over the extent of the 'level two' and 'level three' areas of the game reserve. The entire area over which indigenous participation in the management of tourism in the park is ensured by the emerging agreement is approximately 4,000 km².

Secondly, 'Co-management in these protected areas.'

The agreement will entrench co-management between the San and the conservation authority. In the 'level one' area, the SA National Parks will only be responsible for formal protection of boundaries and residual maintaining of biodiversity, as required by the National Parks Act. In the remainder of the park, the co-management will entail the permanent presence of the San on the Park Management Committee, the committee responsible for all practical management policies and decisions in the park. It will be confirmed that the San input on matters of heritage use, traditional use of plants, and other aspects of traditional knowledge, will be progressively incorporated into the body of 'scientific' knowledge that informs management.

Thirdly, 'Recognition of rights to sustainable use of their lands'

The agreement in its entirety is founded upon the acceptance by the government of South Africa that the San were deprived of their land, and are entitled to restoration of those land uses that are not contradictory to the overriding conservation paradigm imposed by the National Parks Act. The intention of the negotiations and agreement is that a formula is to be found that ensures not only rights to use lands in the traditional manner, but in addition to utilise such traditional rights, for the benefit of the San, in a modern manner that takes into account changed circumstances. In other words, the intention is to utilise ancient cultural rights in a modern context that is financially and culturally sustainable in the long term.

Fourthly, 'Land Rights for Indigenous Peoples'

The government of South Africa has belatedly recognised, with the assistance of activist NGO pressure and the evolving international consensus on the issue, that it bears a solemn obligation to restore traditional land to its vulnerable and indigenous peoples. What has assisted this process is the more practical argument that such restoration of culture and land can be of enormous benefit, not only to the affected indigenous peoples, but more significantly to the country. Acceptance that the ancient cultures have a value equal to the Western cultures to which so many African nations have aspired is encouraged by the international interest in ethnotourism. Simply put, indigenous cultures add enormous value to the conservation experience sought after by international tourists. Governments are thus able to see such indigenous peoples as national assets and not as 'less civilised' and hence lesser peoples.

Fifthly, 'Consultation regarding changes in conservation plans'

This principle is captured in the spirit of the agreement, in which the San are in effect a partner in the conservation of the park, with a respected voice in the policies and management. This implies that the San voice will be respected and heard. It also bears a responsibility on the San to empower themselves so that they have leaders who are willing and able to engage firmly and productively with the authorities. This aspect will require much assistance over the next decades, as the slowly improving collective self-esteem of the indigenous peoples translates to an ability to assert themselves appropriately, and thus attain the potential that they have within international law.

8 Conclusion

Negotiations on the second phase of the San land claim to the Kgalagadi Transfrontier Park are still 'in progress', and so the final picture is not yet complete. The following are some of the conclusions that can be drawn at this stage.

- The process of assisting the community to validly claim ancient rights to land has required an in-depth inquiry into the exact nature and extent of these rights. This has required the dedicated assistance of a service organisation and external funders.
- The elders, the holders of the traditional knowledge, have in this process been identified and reaffirmed as central to the identity of the ǀKhomani San. This has reversed a previous trend where the elders, uprooted from traditional lands and in poverty, failed to fulfil their former function of passing down valuable survival cultural information.

- The Cultural Resource Mapping technique described above, which records the culture of the people, links the individuals socially within the community, and places the activities physically to the traditional land via simple maps, has been shown to be an essential tool; the foundation upon which the community not only negotiates its claim but in addition is rebuilding its heart and soul.
- The six years that have elapsed since the decision to formulate and launch the claim have been necessary for the community to adapt to new structures of leadership, and for the leaders to acquire the knowledge and insight to lead. A more rapid process would be socially brittle, and less likely to be solid and sustainable.

Notes

- ¹ The Rio Declaration on Environment and Development was adopted at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro in 1992.
- ² The Convention on Biological Diversity was opened for signature at the Rio Conference (see note 1.) and entered into force in 1994.
- ³ Agenda 21 is an action plan by UN organisations, governments and major groups on every area where humans impact on the environment. It was adopted at the Rio Conference (see note 1).

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Conference discussions

Presentation by ꞤKhomani San community representative

The case study prepared by Roger Chennells was complemented by a presentation by Petrus Vaalbooi, San leader of the negotiation committee, ꞤKhomani San. His presentation is reproduced below in full, translated from Afrikaans by Eleanor McGregor.

Petrus Vaalbooi: I greet you in the name of my language. I will try my best to help you and will speak in Afrikaans. I will share the history of the ꞤKhomani San of South Africa with you.

150,000 years ago, San lived in South Africa. They were people with love and peace. They had a unique culture, they had values, they had broad knowledge with respect to medicine, hunting, and painting or rock art. They used to leave messages on rocks – paintings to share information with other South African groups. In the time of apartheid they were used as slaves and undermined – they had to work for others. In 1994 there was an election and things changed – we decided that it was time for our voices to be heard, but it was impossible for a single family group to make a land claim, so the first thing to do was to create an international network across Namibia, Botswana and South Africa – but also it was to include people with highly specialised knowledge, who were not of South African descent. This has been our big work. We had researchers, and we needed to give them background for them to work for us.

We had to prove that we were the descendants of ꞤKhomani San. The researchers had to cover a wide variety of areas – did bloodlines – checked if parents could speak the language. Our people had been evicted so we had to travel all over to look for them and bring them together – and to find some that could speak the old language. We had to put them on maps and prove to the government that we were from the Kalahari area – we had to physically go and do this. In 1997 we started a registration process to look for the original descendants of our people [he points to map]. Here is the map and the park – this is the proof that we walked around the area. We are a peaceful nation so we did not fight. We asked the government, ‘Do we have the right to ask for our rights?’ We started in Upton, the closest town to Kalahari. We changed the name of Upton, and the government of South Africa said that was fine. We had to go back and do research in the archives. To prove to the government that we had done this we used photos, etc.

Realising that this was a national park, we negotiated with the government. They said that they would give us rights to the park – and first gave us land outside where we could live and settle. We got 40,000 ha of land adjacent to the park. Then we had to go back to the park and negotiate with them for our rights – in 1999 we signed a contract in which it said that we could own land within the park. 25,000 ha has been given to us which we will manage as a conservation area. Outside the park we practice agriculture and have

started reliving our cultural ways of doing things. Due to apartheid we had been removed from the park – this led to problems, and we lost our original culture – hunting, food, medicine, etc. For our children, there was training within the community. The elders did this, so the children would know what to do when they went back in. In the Borders Park we now have access, cultural and user rights in the whole park – we can teach our children about how to live.

The most important thing that should be done now is to create a co-management plan – we and the park have to work hand in hand to implement this management plan.

In South Africa the park policies have changed; they used to be hard. Now indigenous peoples can work with the parks. Our forefathers' blood and bones are lying in the park and we want to be with them. This is why I am standing here today – to show you what the plan is and how to get what you want. The most important thing now is to go and look for solutions. We have to deal with two San organisations now in the Kgalagadi Transfrontier Park – this is what it has now become – South Africa and Botswana walking hand in hand. Now ꞤKhomani from South Africa are also coming in – how strong the relationship is. When they created the Kgalagadi Transfrontier Park, they did not recommend the ꞤKhomani Sams – we said that we were unhappy – in another area next to the park there is another organisation, now there are more, ꞤKhomani San Botswana, etc, so all of us have to bring a management plan to the table and then try to agree how to manage the entire system sustainably for future generations.

This photo is my grandmother; this was the first time she met white people and had to wear their clothes. This land is a dry arid area – only the strong can survive.

We do not want to fight, but to negotiate so that our human rights are recognised – with the greatest respect to Mandela who rewrote the constitution and laws – because we are recognised in South Africa as ꞤKhomani Sams. In order to create the co-management plan we have already given them our draft plan. We want three of the five members on the board – we know about democracy – there has to be voting and if you only have one member you do not have enough votes, and therefore are scared of the government. That is why everybody has to look at the other's policies so that we can co-manage the area.

Indigenous people have an attraction internationally because they are the ancient people from the area – because they have Indigenous Peoples' Knowledge of the area – why am I, a San, saying this? The wild animals cannot give their knowledge to the eternal world so that the world can see the picture. Our leader is a film star – why is it not the lion? This tells you a story: a man who fought to the end, who held on to his culture. We have been busy with Canadian and Namibian people who have written our language down, to capture our language on paper. We have it on paper, video and cassette and now in the archives. In our culture there are only 15 to 20 people who could still speak the ancient tongue – we have seen this and are still scared that our language will die out. We will now approach the Department of Education to get our language recognised. If it can be read and written, then the child will learn and then teach his children – our plan is to get this into schools.

What I can tell you with confidence is that you cannot jump from A to Z. You must follow steps. From 1996, when I started negotiating, I have proved where people lived, have proved with the government that place names have to be changed to the original names. I have proved that descendants of ꞤKhomani San were from the original bloodline. A lot of them do not have identity cards – but they are registered on our lists. And we did research – used the family tree to see if you were originally from that group. That is why I appeal to you – get the best researchers, but make sure that you are part of the process. You know your area, the people, who are the different people within communities, natural animals and plants of the area – all those things your researchers will have to map for you. Only then you will be able to negotiate in a peaceful manner with the government. And I can assure you if you send a lawyer on his own, he will not be able to do it. We gave our lawyer the words to put on to the paper; the researcher from Canada came and pointed out boundaries that we moved around – thousands of Sans, of ꞤKhomani, were driven to talk to old people. This is what I can show to you – this a sustainable document for your archives. The proof that has been compiled cannot be denied.

When we look at the wild animals we know their behaviour, etc., but also the dangers – the lions are one of the bushmen's biggest friends. Today research has been done on lions showing that dart guns hurt it, so it is aggressive, but my fathers never did this. This is park research – they are not only hurting me but also the animals they are conserving. People are studying the animals, getting degrees, etc, in order to build up knowledge about animals. The bushman knows the lion, etc. My leader got his name when a lion charged him and he stood upright – looked into lion's eyes and said 'No – my people are looking for food, not to hurt you'. The lion walked away. And the old traditional leaders stood when he went back because they were friends. We, as traditional people, must take leadership.

I want to add one final thing. On the road there are dangers – there are obstacles. In one car accident our leader lost five people – he lost them on his way to argue and fight for land. He went to another land – it was too cold – they died. And he got a lawyer – Roger Chennells from Scotland – a friend and one of the best. He helped create the international network – the best specialists brought in from all over to work with the community, to create these documents as proof to put on the table. Thank you very much.

Panel discussion

- Panellists:
- | | |
|---------------------|--|
| Phocus Ntayomba | – Director of Environment, Ministry of the Environment, Rwanda |
| Jackson Mutebi | – Project Manager, CARE Uganda: Development through Conservation Project |
| Joseph Claude Owono | – Chargé d'études et de la recherche, Planet Survey, Cameroon |

Phocus Ntayomba summarised the essential points from this presentation and from the case study, identifying the process used for claiming ancestral lands. He detailed the range of techniques and resources drawn on to ensure that every possible aspect of San cultural life was recognised and their future existence safeguarded through use of national and international laws and constructive negotiation with the government and parks.

He concluded that ‘the San case should be taken as a model, as they have made demands based upon a concrete basis with legitimate claims on the land and services’.

Jackson Mutebi agreed that this paved a way forward for the conference participants. He identified five positive aspects:

- 1 Appreciation of the San leaders’ approach in first addressing their wrongs through institutional means and capacity building.
- 2 The development of institutions through a good implementation plan has given insight into how to achieve legitimacy by using cultural knowledge and consultation and, at the same time, creating an atmosphere in which to rebuild the community, reunited around land claims.
- 3 ‘The San community, especially the leaders, have used a constitutional approach. They learned about their rights, educated their communities, and planned and prevented loopholes in the fight for their cause. They made the link between culture and land. In Uganda the fight for political rights tends to go for the political target first – which is exciting but not long-lasting. This other approach is more sustainable.
- 4 ‘I am glad the presentation recognises a new era of conservation: co-management. Preparing the community to take this up gives skills, it gives confidence to governments, . . . and puts emphasis on community. Co-management is the key to managing resources.
- 5 ‘The presenter never talked about other people mismanaging funds from outside, . . . the emphasis was on their own initiatives. This group of indigenous people were very confident about their initiatives and prepared to share them with others. This springs from the vision they have about their future.’

Joseph Claude Owono felt a great deal could be learned from this presentation:

- 1 Firstly, through the similarities between the San’s problems and those of other groups in the area, such as ‘cultural identity, territorial rights, etc. Loss of land is linked to loss of cultural identity’. He observed that the minority rights issue was often raised but ‘most states do not take customary rights into account’ despite indigenous people’s regular use of customary rights. ‘The South African Organisations of San people was well organised. The association made pressure on

the international level – they saw they must recognise international texts. In the last ten years they have been able to do this.

- 2 ‘They were also able to preserve their culture – this requires the support of other peoples, especially NGOs and researchers.
- 3 ‘Another lesson from this is that the community can develop in a way for indigenous people to take advantage of the land they occupy. In order for people to move forward they have to keep fighting.
- 4 ‘Donors should also make sure that they fulfil conditions of co-management.
- 5 ‘Beyond all of this, projects must take into account weak peoples’ interests.’

‘I hope that San achieve great results and that other peoples can use international lobbying to do the same thing.’

Participant discussion

The participants were unanimously appreciative of the positive contribution made by this presentation. Their comments reflect the wide-ranging benefits identified.

Nicolette Raats, Senior Social Ecologist, South African National Parks: Kgalagadi Transfrontier Park, congratulated the facilitator on a good case study. She explained the role played by social ecology in South African national parks with particular reference to performance in the areas of environmental education and cultural resource management. This in turn led to empowerment through partnerships with stakeholders who could then manage their own capacity building.

She then read from the case study on the indigenous peoples’ responsibility to empower themselves so they could assert themselves. She stressed how important it was for the community to recognise the need to rebuild right from the beginning. ‘It is not a quick process.’

William Olenasha, Co-facilitator, Ngorongoro, highlighted the link between the San’s success and political developments in South Africa over the last ten years. The new constitution had helped provide mechanisms for human rights guarantees. This lesson needed to be applied by other indigenous people who ‘must join hands with others fighting for constitutional changes and seek provisions to enable them to fight for their rights’. He applauded the way the San had organised themselves across boundaries – the Batwa and Maasai could do so here. The sharing of problems would lend more strength to their efforts if they join forces.

Pascal Kabungulu Kibembi, Secrétaire Exécutif, Héritiers de la Justice, reiterated the list of

obstacles surmounted by the San in creating a coherent programme, and attributed their success to the 'common vision of the ideal that they were pursuing'. Taking the example of the use made of the various international legal instruments, he recommended propagating these in the local languages as a means to move forward and enable indigenous people to plead for their cause. He also advocated drawing on the women as a powerful force to reinforce claims for indigenous rights.

Albert Kwokwo Barume, Human Rights Lawyer, FPP, agreed that this was an inspiring story, particularly the account of the role of elders and all the community elements incorporated. He recommended that other organisations look into the community issue.

Emmanuel Nengo, Secrétaire Exécutif, UNIPROBA, also felt this case should serve as a model, as much for its optimism as its practical example of the benefits of self-help. He acknowledged the tendency always to ask 'other outside organisations what to do, without knowing ourselves what to do' and this case showed how to start claiming rights at national constitution level.

Joseph Itongwa Mukumo, Coordinateur Principal, représentant de PIDP, complimented the San on their 'bravery and courage. Maybe their struggle will have more impact on others outside.' Acknowledging that some progress was being made in other countries, this case study demonstrated how minimal it was, and he hoped that this conference would result in the creation of networks with international organisations responsible for protecting the environment.

Pierre Kakule, Dian Fossey Gorilla Fund International, mentioned a new reserve, located in Kivu (North), [the Tayna Gorilla Reserve] which was created by indigenous peoples themselves to protect gorillas and okapi, etc. 'This example from South Africa will give us and teach us a lot.'

François Nsengiyaremye, President, ADBR, added his appreciation of this good case study. 'The ꞤKhomani San are a powerful and patient people. What they have done can act as an example. It shows that they have [achieved] the best [results], and beyond anyone's imagination. I thank them and encourage them to continue.'

Makelo Sinafasi, Coordinateur, AAPDMAC, agreed: 'This is a great story. It shows the flexibility of authorities in that country. The San never took up arms to claim for their rights. Cohesion played a big role, even though they were already very dispersed. This is an important lesson. In DRC the indigenous people have been forgotten and left alone – yes, this is true, but I wonder if they have done much [to bring about] their reunification.' He concluded that if governments are willing to listen – if two groups are flexible – then those two groups can make progress.

John Nelson, Project Coordinator, FPP, asked what the three most important things the ꞤKhomani San had done for themselves to overcome their marginalisation.

Dorothy Jackson, Africa Programme Coordinator, FPP, asked whether there were other people who had claims to the land?

In reply, Petrus Vaalbooi explained the process they had followed:

- a 'In the beginning the ǀKhomani group or culture was not recognised. We had got a strange identity – what we had to do was to find out who was part of our group, the bloodlines.
- b 'Secondly, we had to go to the government to prove that the land belonged to us. In order to do that we had to look for knowledge.
- c 'The government recognised our claim, but we had to look at the laws – we had to identify at least 250 people who were descendants of our forefathers. To do this we had to create a community property association.
- d 'This list was signed by the government and ourselves and we were registered as a community property association.
- e 'There were coloured people who also claimed the same area as us, but they could not give real proof of where they came from – the government would not accept their proof – so they opted for alternative measures, the hybrid organisation. On 13 March 1999 we sat and spoke with them; the Commissioner of Lands was also involved. Because they were part-descendants of ǀKhomani San, we decided to go into some agreement with this group. We negotiated as ǀKhomani San with the government that the hybrids should also get land – they just wanted land and water. This let us all work on the land claim together and moved us to the top of the pile. We decided for a bond of peace – a compromise – and this was captured in the 1999 conceptual agreement. The San were given 65,000 ha, so we cut it off and gave them a section. Negotiation is about giving and taking.

'We want to live together peacefully in a united land which is why we live in a peaceful manner with our national park and co-manage. And we think that we are going to win.'

Germain Ngandjui, Park Management Advisor, Tropenbos International/Campo Ma'an Biodiversity Conservation Project, asked what the San would have done if their claim for land had not been successful.

Petrus Vaalbooi explained that they would 'bring other claimants along with us – form an alliance.' When asked if the government could take land back, he replied that 'They cannot take it back – it is this promise that allowed us to go through the negotiations in peace.'

Close of session.