NEWS – reactions and interactions

Kalahari conundrums, James Suzman Before Farming 2002/3_4

Bushmen - the final solution and blaming the messenger

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The British anthropologist James Suzman's article published in *Before Farming* describes the evictions of Gana and Gwi Bushmen (he calls them, 'San') from the Central Kalahari Game Reserve (CKGR) in Botswana (Kalahari Conundrums: relocation, resistance and international support in the Central Kalahari Botswana, News, December 2002/3_4). Instead of arguing for the Bushmen's right to live on their ancestral land, as perhaps one might expect from a social scientist these days, he launched an attack on Survival International, the world's foremost organisation working for tribal peoples' rights.

Another version of Suzman's article was published at the same time in the South African newspaper, *Mail & Guardian*. The paper subsequently refused to publish Survival's answer to the attack arguing, somewhat bizarrely, that Suzman's article itself had been a 'right to reply'. The anthropologist had not in fact been mentioned in any prior newspieces about this tragic case.

In his attack on Survival, Suzman states that a coalition of local organisations set up a negotiating team, led by First People of the Kalahari (the Bushmen's own organisation), which was pursuing a policy of negotiating a management plan for the reserve. He thinks this plan was a 'major step in the right direction' offering a 'good platform for community development' and allowing 'people to maintain control over and de facto usufructory rights to much of the CKGR', and that Survival's campaign caused the government to reject the plan, and so worsened the plight of the Bushmen. He claims that Survival did not know what was in the plan, but rejected it because it 'did not grant the San exclusive ownership of the Central Kalahari' (though of course logic dictates that both statements cannot be true).

He goes on to assert that the rights Survival is pressing for are those enshrined in the most important international law on indigenous peoples, ILO Convention 169, which is 'so inappropriate to post-colonial Africa that no African country has seriously considered ratifying it'. It is inappropriate to assert that people have rights because they are indigenous people, he believes, because 'memories of apartheid ensure that there is staunch opposition to the granting of special rights to any group ... on the basis of their ethnicity or ancestry'.

He continues by defending De Beers which, he believes, has 'no plans to mine' diamonds at Gope (a Bushman community in the CKGR), and makes an astonishing and clearly unwarranted claim to legal expertise when he writes, 'legislation concerning subsurface minerals and prospecting licensing has no legal bearing whatsoever on the land rights of people in the Central Kalahari.' He believes Survival is wrong in thinking that diamonds are the root cause of the evictions, though of course he cannot possibly know this for a fact. He believes, wrongly, that Survival pursues this line because 'the hidden hand of a mining giant makes for more seductive copy.'

Most of this is just plain wrong: the management plan did not confirm any Bushman rights (as its author has admitted to Survival), Survival did not cause the government to reject the plan and so make matters worse (a false claim which originates with the local 'human rights organisation', to justify its own failure), Survival did know what was in the plan, and so on. But there is something much more important in this debate than a disagreement between an anthropolo-

gist and an NGO. For Suzman includes in his distorted account of events a thesis which is of the profoundest long-term importance for the region. It is an attempt to equate two opposites: to pretend that the affirmation of indigenous rights could lead to the violation of human rights which was apartheid. By a strange coincidence, De Beers recently said exactly the same thing as Suzman (in his article for the Mail and Guardian), virtually word for word, in a letter to Survival: 'a policy to cover indigenous rights would head straight down that path [of apartheid] once again.'

This is more than academic conjuring, it is a device which could enable a company like De Beers to justify ignoring international standards concerning the rights of peoples whose lands it wishes to explore or mine. Actually, it is more important even than that, because it points backwards towards denial and evasion about the history of the Bushmen: a story of oppression and genocide which is only now emerging from the shadowlands of historical amnesia. So far, South Africa is the only country which has begun to face this with some honesty and humility. Suzman and De Beers's upside down idea should not be allowed to turn the clock back, at a time of reconciliation and openness. Knocking indigenous rights on the head, which is Suzman's intention, would not only damage the interests of the Bushmen, it would also perpetuate the state of denial which prevails in much of the region.

Suzman says that supporting the idea that indigenous peoples have certain rights – and what everyone is really talking about here is primarily land rights – would be 'granting them special rights... on the the basis of their ethnicity or ancestry' and so would go against equality. In other words, he is against the idea that the territory that a people has lived on for many generations (in the case of the Bushmen, perhaps 1,000 generations) should be recognised as their land. The European colonists who landed on the shores of South Africa were against this idea too, of course. Though Suzman says he believes this because of equality, not out of old-fashioned colonialism.

There are a tiny number of British and US anthropologists who, like Suzman, are trying to promulgate this idea within the profession. Although this may sound cranky, governments have often followed bizarre anthropological theories when devising schemes to cope with minorities who did not fit their own view of the world. Perhaps the best-known example of this is the Nazi fabrication of a 'master race' – well supported by German social scientists. Of course, most anthropologists, like most indigenous peoples themselves, know Suzman's idea is rubbish. For example, the head of the main Australian Aboriginal organisation calls it simply 'nonsensical and offensive'.

Suzman believes that international standards about indigenous peoples' rights are totally inappropriate to Africa. Luckily many Africans – those outside De Beers anyway – don't agree. Six African countries have, in fact, ratified the 46-year old legal instrument (ILO Convention 107) of which the convention which Suzman mentions (ILO Convention 169) is a revision, and which also recognises indigenous peoples' land rights. Actually, it is open to question whether Suzman himself really believes his own thesis. For example, he recently wrote a report on Namibian San for the Minority Rights Group in London: it includes the recommendation that Namibia ratifies the very same law which he rejects in Before Farming as 'inappropriate' to Africa.

It is true that Botswana and South Africa have yet to ratify Convention 169, but instead the government of South Africa has done better, calling for the much stronger United Nations declaration on the rights of indigenous peoples to be finalised as soon as possible. This declaration will have a similar status to the famous declaration of human rights, but Suzman seems unaware of South Africa's laudable representations to the UN about it. In April 2001, the country committed itself to supporting indigenous peoples' rights, explicitly mentioning the San. Just last month, the Supreme Court of Appeal in South Africa declared that another indigenous people, now known as the Richtersvelders, who live in a diamond-rich area of western South Africa, are entitled to restitution of the land they were evicted from decades ago. The judge said, 'Their dispossession resulted from a racially discriminatory practice... based upon... the premise that due to their lack of civilisation... the Richtersveld people had no rights in the... land.' The UN declaration which South Africa likes so much – and which presumably Suzman hates – is particularly strong on the proper recognition of indigenous peoples' right to own their land, as well as the right to play a pivotal role in any proposed development. One can easily under-

stand why De Beers might not want this to become accepted practice.

The company recently encountered these ideas in Canada where a strong indigenous rights movement forced it into making agreements with Indian peoples whose lands it wants to explore. Other mining companies have made similar moves: one of the largest, Rio Tinto, has stated categorically that it will not mine Aboriginal land in Australia unless the Aborigines agree. De Beers seems to accept indigenous rights in countries where it has no choice, but it does not want such notions to take root close to home. Imagine the complications it would face if people had a say in what happens on their ancestral lands!

That, of course, is the last thing the Botswana government wants too. It is far easier to get the Bushmen out of the CKGR now, well before its other diamond mines are exhausted and it starts to want to mine Bushman land. Unsurprisingly, the number of diamond concessions covering Bushman land has rocketed since the evictions, and they now cover virtually the whole of the reserve. Suzman has stated De Beers wouldn't want to interfere in Botswana policy. But in fact the managing director of Debswana (De Beers's joint venture with the Botswana government), Louis Nchindo, enthusiastically welcomed the Bushman evictions only a few weeks after they were carried out and the company's deputy chairman, Dr Tombale, recently told the BBC that Survival was a terrorist organisation for supporting the Bushmen!

Another important fact which Suzman misrepresents, revealingly, is to suggest that Survival's campaign about the Bushmen, and the work done by the negotiating team of local NGOs, are separate and antagonistic. In fact, Survival has supported the negotiations for several years including financially and, most importantly, members of the team, including its leadership, have unequivocally thrown their weight behind Survival's campaign. This is an important point because the leaders of the negotiating team, as Suzman states in his *Before Farming* article, are the Bushmen's own representatives. But, curiously, in the *Mail and Guardian* article, aimed at a general South African readership rather than academics, Suzman writes exactly the same sentence, but contradicts himself and puts a different NGO as leader, effectively writing the Bushmen out of the equation. How can someone who claims to be a social scientist publish the same sentence at the same time in two articles and yet change, without explanation or comment, a crucial fact such as who led the negotiating team? And if one fact can be changed in such cavalier fashion, how reliable are his others?

The Bushmen have not only welcomed and supported the Survival campaign, they were its instigators in the first place. They have not changed their minds. They remain adamant that the international campaign is vital if they are to claim their proper rights. If Suzman had taken the trouble to visit them to find out what they themselves think – as Survival has repeatedly, for many years – they would doubtless have told him so. Survival does not think they are either fools or wrong. In our experience tribal peoples have a very good understanding about what is happening to them and are by far and away the best people to articulate their own defence.

Or perhaps I am wrong here, perhaps they would have been wary of speaking openly, remembering that Suzman's work on the region has been as an employee of none other than De Beers. He was in fact employed to assess Bushman land rights in the CKGR for the mining giant just a few years before the Bushmen were kicked out!

But Suzman shows little interest in what the Bushmen themselves say. His article, for example, quotes Survival, and myself, extensively, but includes not a single phrase from a single Bushman. So, in conclusion and to set the record straight, here are some things Bushmen told us recently.

'Officials said that if diamonds are found, the people must be chased away.' 'We have lived on the land for years and when something precious on the land is found and we are thrown out, the government is not respecting our human rights.' 'If prospectors find diamonds and just ask us politely "Why don't you move a distance away as we are going to mine?" that would be better rather than sending people far away off their land.' 'Survival is doing the right thing. We, the community, have asked Survival to campaign. We've tried to negotiate with the government, and this has achieved nothing. So we asked international organisations for help. So don't stop campaigning. That way maybe we can have our land ... There's no way we can part with Survival. We want to work with Survival until the end of the struggle.'

It goes without saying that Survival will not let these people down, whatever devices are conjured

up by disaffected anthropologists, diamond companies, British and American PR companies (now contracted by the government, at huge expense to the people of Botswana), or anyone else to discredit or halt their campaign.

Survival International is a worldwide organisation supporting tribal peoples. It stands for their right to decide their own future and helps them protect their lives, lands and human rights.

Response from James Suzman to Stephen Corry

Survival International director-general Stephen Corry's reply to my article does not lack passion. Fair enough I suppose. I not only criticise Survival International's intervention in Botswana's Central Kalahari but also query the integrity of their raison d'être, viz the standing of ILO Convention 169 (ILO 169) on the rights of indigenous people. Survival International's evident sense of persecution has also doubtless been amplified by critiques of the indigenous rights movement in recent editions of *Current Anthropology* and *American Anthropologist* (Kuper 2003 [and respondents] and Hodgson et al 2002).

I would, however, have welcomed a more considered response from Survival International since this is a topic ripe for debate. Pulpit pounding, mud-slinging and nay-saying may make dramatic reading but, as Beteille (1989:191) makes clear in his discussion of the politics of indigenism, 'it is doubtful how much moral excitation can contribute to solving practical problems' since it 'undermines intellectual clarity' and 'vitiates the understanding of the real roots of . . . problems'. Corry does nevertheless point to one important issue that warrants further discussion. This concerns the status of ILO Convention 169 and the question of indigenous rights in southern Africa.[1]

Although in the 14 years since it was finalised ILO 169 has been ratified by only 17 states, it has nevertheless formed the template for the beneficial agreements made between 'indigenous' minorities and national governments in Australia, Scandinavia and the Americas. However, the effectiveness of a strategy in some contexts should not allow us to presume its effectiveness in all others. ILO 169 is not straightforwardly exportable to post-colonial Africa (Suzman 2001C, Kuper 2003). For an international instrument to be credible it needs to be (near) universally applicable or at least represent something close to a global moral consensus. With only 17 ratifications this is not the case with ILO 169. This lack of international consensus is also reflected by the fact that the draft UN Declaration on indigenous rights has remained a draft for upwards of a decade due to widespread concern that: 'anything more ambitious than pursuit of an end to discrimination is. . . an invitation to contests over power and a multiplication of the woes of strident ethno-nationalism' (Niezin 2003:196).[2]

In part these problems have emerged because the concept of the 'indigenous' is underwritten by an 'anachronistic anthropology' that constitutes identities as contemporary accretions of ancestral essences (Kuper 2003). Tim Ingold reflects on the absurdity of a definition of indigenism based on ancestry when he inquires, 'if indigenous people are marked out by their common possession of an ancestral essence, how can some persons claim to be more indigenous than others?' (Ingold 2000:137). Curiously, the same 'anachronistic anthropology' is also invoked by the far right to justify its opposition to immigration, inter-ethnic marriages, etc (Kuper 2003:390). Given that few European proponents of indigenous rights would consider themselves allies of the jack-boot and goose-step brigade, this suggests that the contemporary indigenous rights discourse, as promoted in the west, is the progeny of a world view that differentiates conceptually between a First World ordered around market forces and civil society and a Third World composed of organic islands of discrete culture (Chanock 2000).

Six African states did indeed ratify ILO 169's predecessor, ILO Convention 107,[3] although hindsight reveals these ratifications were no more than window dressing. I am, however, confused by Survival International's suggestion that ILO 107 is analogous to ILO 169. In 1989, the ILO abandoned Convention 107 in favour of ILO 169 arguing that the former was hamstrung by several critical 'weaknesses'. The most glaring of these, the ILO notes, was Convention 107's insistence 'that integration into larger society was the only way forward for indigenous peoples and that all decisions regarding their development were the concern of the state' (ILO 1996:1). In other words, ILO 107 is problematic because its guiding principle is exactly the same as that which drives Botswana's

assimilationist policy towards San[4] and other minorities. Likewise ILO 107 (article 12) empowers governments to move indigenous people without their consent if such a move is deemed to be 'in the interest of national economic development'. By contrast, ILO 169 has a far stronger devolutionary pedigree. It demands that indigenous people are granted special (albeit limited) rights of self-determination in addition to title over their ancestral lands.

For an organisation whose cause is the progeny of cultural relativism Survival International is remarkably intolerant of African and other 'exotic' perspectives on ILO 169. Corry implies that a rejection of ILO 169 is a rejection of any form of minority rights and that this will bring the whole edifice of human rights crashing down like a house of cards. This is obviously not the case given that so few countries have ratified ILO 169 and that the human rights edifice stands strong. It is in fact easier to argue that the presence of voluntary international instruments that seek to privilege any groups in perpetuity on the basis of their ethnicity poses a far greater threat to the emergence of a unitary global culture of human rights than its absence (Suzman 2001; Chanock 2000; Kuper 2003).

Even assuming that it is otherwise unproblematic, ILO 169 copes poorly with the complex dynamic that exists between 'the citizen' and 'the subject' in post-colonial Africa (Mamdani 1996). For four decades Africa has been crippled by ethnically motivated conflicts. African governments in the process of nation building understandably now tread very carefully around 'ethnic issues'. Following long periods of consultation states like South Africa and Namibia have now enacted legislation to accommodate the often-conflicting aspirations of the numerous diverse ethnic groups that make up their citizenry.[5] These statutes[6] are considerably more sophisticated than ILO 169, remain consistent with constitutional provisions for equality and most importantly, are locally appropriate. In broad strokes they recognise the cultural rights of minority populations and likewise afford traditional authority structures and customary law limited formal recognition. They do not, however, grant any groups formal rights or privileges that exceed those granted to any other or that might challenge or undermine the integrity of the state and its organs. In Namibia where the status of the San is of even greater cause for alarm than in Botswana, the problem is not the absence of appropriate legislation, but the government's ongoing failure to implement this legislation equitably to benefit all its peoples (Suzman 2001A).

South African delegates have indeed made some 'laudable representations' on indigenous issues to the UNWGIP. To its credit South Africa has also enthusiastically embraced its Khoisan heritage (see Barnard 2003). However, the formal affirmation of the special place of the Khoisan people in southern Africa's heritage does not involve granting their descendents any special privileges – indeed, South Africa is both constitutionally and by treaty[7] bound not to grant special status to anyone on the basis of ethnic identity.[8] As Kuper (2003) points out, the only indigenes privileged in South Africa are phantoms who 'have long since vanished from the scene'.[9]

Corry cites the recent land claim in the Richtersveld as an example of South Africa's positive attitude towards the idea of indigenous rights.[10] Reading beyond the headlines reveals that this is not the case. All land claims recognised by the incumbent government are based on the Restitution of Land Rights Act of 1994.[11] This Act dismisses the possibility of ancestral claims to land as unworkable and inappropriate to the desired end of 'equitable redress'. It empowers the government only to recognise claims made by peoples removed from land specifically 'as a result of past racially discriminatory laws or practices' during the modern apartheid era (ie, subsequent to 1913). The basis to the complex Richtersveld claim (which was initially dismissed by the land claims court) is not their asserted indigenism as Corry presumes, but the argument that they are entitled to restitution under the Restitution of Land Rights Act despite the fact that they relinquished their land over half a century before the 1913 cut off date. As the Richtersvelders' attorney, Henk Smith, has pointed out, 'the only conceivable constitutional matter raised in the application for special leave to appeal is what the constitutional interpretation of the words "as a result of past racially discriminatory laws or practices" should be.' Far from supporting the Richtersveld claim the government is opposing it and is now seeking redress in the Constitutional Court with one hand while trying to sell the land privately with another.[12]

South Africa's radical mining law reform programme is of some pertinence to this discussion. This programme seeks to 'transfer control of the mining

industry, from the white minority that formerly ruled the country to the black majority' in fulfilment of commitments laid out in the ANC's 1955 Freedom Charter (Walde 2003). The Minerals and Petroleum Resources Development Act enacted late last year will vest progressively all subsurface mineral rights in the state as is the case in Botswana and Namibia. This will effectively divorce prospecting and mining rights issues from land rights issues.[13] Ultimately this will also prevent the Richtervelders from gaining automatic subsurface rights in the Richtersveld should the Constitutional Court rule in their favour. Affirmative action it seems does not always dance easily to the tune of 'indigenous' rights. One wonders if Survival International, to borrow a Ghanaian reformulation of a popular phrase, will consider this 'an alarm for a cause'.

It is on land rights issues that ILO 169 is exposed as inadequate in the southern African context. Notwithstanding the complexity of such claims, if a land restitution programme were conducted on the basis of aboriginal title Khoe and San would arguably be entitled to claim much of southern Africa despite comprising a fraction of the regional population. But the past three centuries have also seen something in the region of a hundred fold increase in population in southern Africa resulting in the emergence of a large rural proletariat dependent on subsistence farming. It has also seen numerous massive population displacements and endless changes in land use and tenure. It is for this reason that regional governments have unanimously chosen to initiate land reform programmes that seek to effect a more equitable present rather than unravel an impossibly tangled past. Rather than diminish claims like those of the Central Kalahari Game Reserve (CKGR) people, the invocation of contemporary social justice rather than ancestral right grants them greater resonance and authority.[14]

Other aspects of the South African situation expose further practical problems with ILO 169 (Kuper 2003; Waldman 2001; Suzman 2001A; Robins 2001 B). For a start, there are few South Africans who cannot claim some 'indigenous' Khoisan ancestry hence making the identification of indigenes nigh impossible (see Ellis 2001; Singer & Weiner 1963; Nurse, Weiner & Jenkins 1985). There are also few groups in southern Africa that would not be entitled to claim special status as 'tribal people' in terms of ILO 169. Ever since Prince Leopold's keen-eyed draughtsmen carved Africa up at the 1890 Berlin Conference it has been a continent of tribal minorities. In no southern African state does one 'ethnic' community comprise a statistical majority of a national population. Understandably then, where the term 'indigenous' is deployed in South African statutes it is defined broadly according to the moment of European colonialism and therefore includes the many ethnic groups that comprise the 'Bantu-speaking majority'[15] of South Africa's population (Robins 2001A:39)It is therefore not surprising that San have not been able to capitalise on their indigenism to the same extent as other, better off, yet dubiously 'indigenous' African peoples like the Himba or Masai[16].

Survival International is indeed correct that Botswana should take a page from South Africa's book on minority rights issues.[17] As I made clear in my initial piece, Botswana's policies towards minorities are the root cause of this problem. The Botswana government needs to review existing legislation with a view to ensuring compliance with UN covenants.[18] Using the models developed and tested by their regional neighbours would be a good place to start. More generally there are good grounds to address the needs of the regions' 100,000 strong San population as a priority. Not because they are 'indigenous' but because they are the most conspicuously marginalised of southern Africa's peoples and doing so would serve the interests of social justice (Suzman 2001A, 2001C).

Survival International is also correct that San voices must be taken seriously. But the San voice is neither as unified nor as constant as Survival International presumes. In the Central Kalahari, for example, the relocation process has driven a wedge down the middle of a vulnerable and confused community such that government propagandists have found it as easy to produce quotes from San that support the relocation as Survival does from San that oppose it. Solutions do not emerge when the only voices that are listened to are those that conform to one's prejudices. The Botswana government and Survival International are equally guilty of this mistake.

In January negotiating team lawyers won a High Court appeal that paves the way for the CKGR peoples to pursue their grievances through Botswana's lower courts later this year. These hearings may well

expose the issues at the core of this sorry saga and in doing so provide the catalyst necessary for the Botswana government to address positively problematic elements in contemporary policy.

The rhetoric of 'strategic essentialism'[19] as deployed by Survival International has doubtless worked in some instances. However, in the CKGR case it has alienated NGOs and the government alike, granted the latter the leverage necessary to end negotiations and has arguably set the resolution of this crisis back by several years. International advocacy groups like Survival International can play an important role in places like the Central Kalahari. To do so, however, they must first abandon naïve dogmatism in favour of balanced research as a precursor to intervention. Well-informed advocacy is far harder for an errant government to write-off as nonsense than crude sensationalism. Likewise, rather than trying to shove an evidently problematic international instrument down the throats of unwilling Africans, Survival International would do well to examine what the African experience can contribute toward the design and ratification of international instruments that can realistically protect the interests of marginalised minorities like the San.

It is difficult not to be struck by the irony of Corry's subtitle 'blaming the messenger'. So for the record:

- I was surprised to learn that I am 'British' and that I would think differently had I taken the trouble to visit the Bushmen. While I have had a research post at Cambridge since late 2001 and studied in Scotland, I was born in and have lived in southern Africa almost all my life (I am drafting this reply from Namibia). I have lived and worked among San in Namibia and Botswana more or less continuously from 1992, initially as an anthropologist but latterly on behalf of NGOs including WIMSA, Oxfam, the Legal Assistance Centre, the European Commission, Open Channels, etc. Consequently I remain caught in a complex network of friendship and relations in particular among the Ju/'hoansi (whose language I am most proficient in) (see Suzman 2000). In 1998 I was appointed by a network of San NGOs to lead a three-year field investigation into the human rights status of San throughout southern Africa in compliance with a resolution passed by the ACP-EU (see Suzman 2001A, 2001B; Robins 2001 A; Cassidy, Good, Mazonde & Rivers 2001, etc)
- the articles I published here and in the *Weekly Mail* in South Africa were drafted with the cooperation of the Negotiating Team in November 2002.[20] They commented on drafts and gave the green light to me to publish expressly because they wished to distance themselves publicly from Survival International's campaign. The articles were written to coincide with press statements made by the negotiating team to the same end
- De Beers is big enough to fight its own corner. I, along with the Negotiating Team, diplomatic observers, San CBOs and NGOs among others, am satisfied that diamonds are not the cause of the evictions. Eventually I am sure that this particular red herring will start to smell. Before taking up my ACP-EU commission I did do a one-month consultancy for De Beers in March 1998 – nearly a year after the relocations began in earnest. I was commissioned to brief the company on Botswana government policy concerning San because it claimed to be mystified by the government's decision to relocate the people of the CKGR and feared the impact of this on its standing. Corry neglects to mention that the report I produced was highly critical of the relocations or that I gave a copy of it to him. I cannot imagine why he would say the report was written before the relocations. I have also recently advised De Beers concerning its financial support of various San related projects in southern Africa.

Notes

1 The arguments that I outline here have all been made elsewhere. See Suzman 2001A, 2001B, 2001C, Wilmsen 1996, Beteille 1998 and Kuper 2003 and responses.
2 If and when it is ratified it will be a non-binding 'declaration' (rather than a treaty, convention or covenant) and hence have no legal force.
3 ILO Convention 107, concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries entered into force in 1957.
4 Bushmen, Basarwa etc.
5 In Namibia which, like Botswana, has a population of fewer than two million this has involved the formal recognition of over 50 distinct self-identifying 'tribal' communities.
6 See the Constitution of Republic of South Africa Act 22 of 1996 (chapter 12) Traditional Leaders Act of 1994, etc and in

Namibia, the Traditional Authority Act of 1996, Council of Traditional Leaders Act of 1998 and the Communal Lands Reform Act of 2003.

7 Most significantly the African Charter on Human and Peoples' Rights.

8 Demonstrating its inclusive nature, constitutional clauses concerning the protection of Khoe and San languages also call for the promotion of immigrant languages like Hebrew Gujerati, German and Greek. RSA Constitution, Articles 6 (1)-6(5).

9 Whereas in Botswana and Namibia locally born San populations comprise significant minorities (3.3 per cent and 1.8 per cent respectively), in South Africa they comprise less than 0.02 percent of the national population (Suzman 2001A). Indeed, the largest group of San living in South Africa (3000 !Kung and Kxoe) were moved there from Angola and Namibia having fought for the South African Defence force in the Angolan civil war and Namibian liberation war between 1974 and 1989.

10 He might have also mentioned the famous 1997 land grant to the scattered remnants of the N/u speaking Khomani San community who now exercise conditional rights over parts of the Kgaligadi Transfrontier Park in South Africa (Robins 2001 A)

11 The Land Reform (Labour Tenants) Act 3 of 1996 and the Extension of Security of Tenure Act 62 of 1997 also play some role in the recognition of land claims.

12 The mining company Alexkor that currently holds the Richtersveld concession is state owned. See *The Star* (Johannesburg) 14 May 2003.

13 Corry glibly contradicts my assertion concerning subsurface mineral rights in Botswana. One can only assume that he has not read the relevant acts. The Mines and Minerals Act of 1977 would be a good start.

14 There is a vast literature detailing these issues. See for example, Murray 2002; Angula 2000; Adams Sibanda and Turner 1999, etc.

15 Zulu, Sotho, Tswana, Xhosa, Shangaan, Pondo, etc.

16 This problem is discussed in Igoe's (2002) excellent paper on how Masai have managed to exploit the indigenous rights movement with uncanny success.

17 Corry refers to a report I recently drafted for the Minority Rights Group International (MRG) on Namibia in which ILO 169 appears in the recommendations (Suzman 2002). Had he read it carefully he will see that it states clearly that the MRG alone authored the recommendations.

18 Botswana has thus far neglected to ratify the UN Covenant on economic social and cultural rights, perhaps the most important instrument protecting the rights of minorities. In late 2000 it ratified the UN Covenant on Civil and political rights (but not its optional protocol).

19 Robins in response to Kuper 2003:398.

20 The Negotiating Team comprises representatives from the Botswana Council of Churches, the Working Group of Indigenous Minorities in Southern Africa (WIMSA), the First People of the Kalahari, BOCONGO and Ditshwanelo (the Botswana Centre for Human Rights). It is represented by the South African lawyer Glyn Willliams. First People of the Kalahari is a community organisation headed by the G/wikhoen Roy Sesana and is the nominal representative of the evictees in the NT. Ditshwanelo is the spokesman for the NT.

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