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The Bushmen of Botswana — From desert dwellers to world citizens

A J G M Sanders, Principal Researcher in the Institute of Foreign and Comparative Law, and Associate Professor in the Faculty of Law of the University of South Africa, looks at the traditional Bushmen, their position in Botswana and their position in the international law and comes to the conclusion that only through consultation will it be possible to ascertain and provide for the Bushmen's particular needs.

Introduction

When, in the seventeenth century of the European calendar, the Dutch colonists of the Cape of Good Hope first met the hunter-gatherers who lived on the savannah or *bosveld*, they called these people *Bosjesmannen*. By that time Bantu-speaking pastoralists and cultivators had already penetrated the central Southern African savannah from the North, and the Tswana among them called the hunter-gatherers *Sarwa*, an adaptation from the Hottentot word *San*. It was, in fact, the Khoi-Khoi (pronounced *khwe-khwe*) or *Hottentotten* as the Dutch called them (because of the stuttering sound of the Khoi-Khoi language), who had been the first outsiders to come into contact with the hunter-gatherers of Southern Africa, whom they collectively called *San*, meaning "food-gatherers". *San* is also the appellation currently in vogue among the handful of academics who dedicate themselves to the study of the hunter-gatherers of Southern Africa. They feel that the term *Bushmen* has acquired too much of a pejorative connotation. However, the same now holds true of the terms *San* and *Sarwa*.

Unfortunately, a derogatory association is often the fate of any appellation of a marginal group, even when in its original form it was merely descriptive and meant no harm.

In this article the hunter-gatherers of Southern Africa will be referred to as *Bushmen*. This term need not carry any stigma of contempt and, despite academic attempts to popularize the word *San*, has remained the one most widely used.

The *Bushmen* have inhabited Southern Africa for longer than any other surviving group. At present they number about 50 000, of whom 30 000 live in Botswana and 20 000 in Namibia. They are the last remnants of a Stone Age people who were once scattered all over East, Central and Southern Africa and, according to recent archeological data, were this region's sole inhabitants for at least 30 000 years.

Their history, life-style, language and physical appearance distinguish the *Bushmen* sufficiently, in their own minds as well as the minds of others, as a recognizable ethnic group.

Traditionally, the *Bushmen* operate in small bands, and subsist on game

hunted with bow and poisoned arrow and on gathered wild foods. Their present habitat is confined to the most arid part of the central Southern African savannah: the Kalahari Desert.

The *Bushman* languages, characterized by the frequent use of click-consonants, constitute yet another feature which sets the *Bushmen* apart from their neighbours, with the exception of the Khoi-Khoi.

Bushman rock paintings bear authentic witness to *Bushman* physiognomy. These multicoloured, realistic miniatures, painted on the walls of rock shelters overlooking the plains of traditional *Bushman* lands, relate in a most fascinating way the *Bushmen's* traditional life-style, their encounters with foreign invaders, and their own distinctive physique. In these paintings the *Bushmen* depicted themselves as wiry and, in comparison with their Negroid and Caucasoid invaders, small in stature. However, since then, the genetic line between the *Bushmen* and their neighbours has become blurred as a result of intermixing, and in most regions the physical *Bushman* type has disappeared to such an extent that only

language and life-style remain as clearly distinguishing Bushman features.

What is left of authentic Bushman society operates under severe alien pressure. Only the Bushmen in Botswana's Central Kalahari Reserve — which is a game reserve, not a "Bushmanstan" — still subsist exclusively on game and wild plants. The overwhelming majority of the Bushman population of Botswana, however, live a sedentary life on land that is no longer theirs, and commercialization is turning more and more of them into squatters. Interestingly, there has been little acculturation between these sedentary Bushmen and their commercial overlords. Hence the central government's "Bushman problem".

In order to grasp the nature and size of the "Bushman problem", which has recently also assumed an international dimension, it is imperative first to have a closer look at the cultural traits of traditional Kalahari Bushman society.

Traditional Kalahari Bushman society

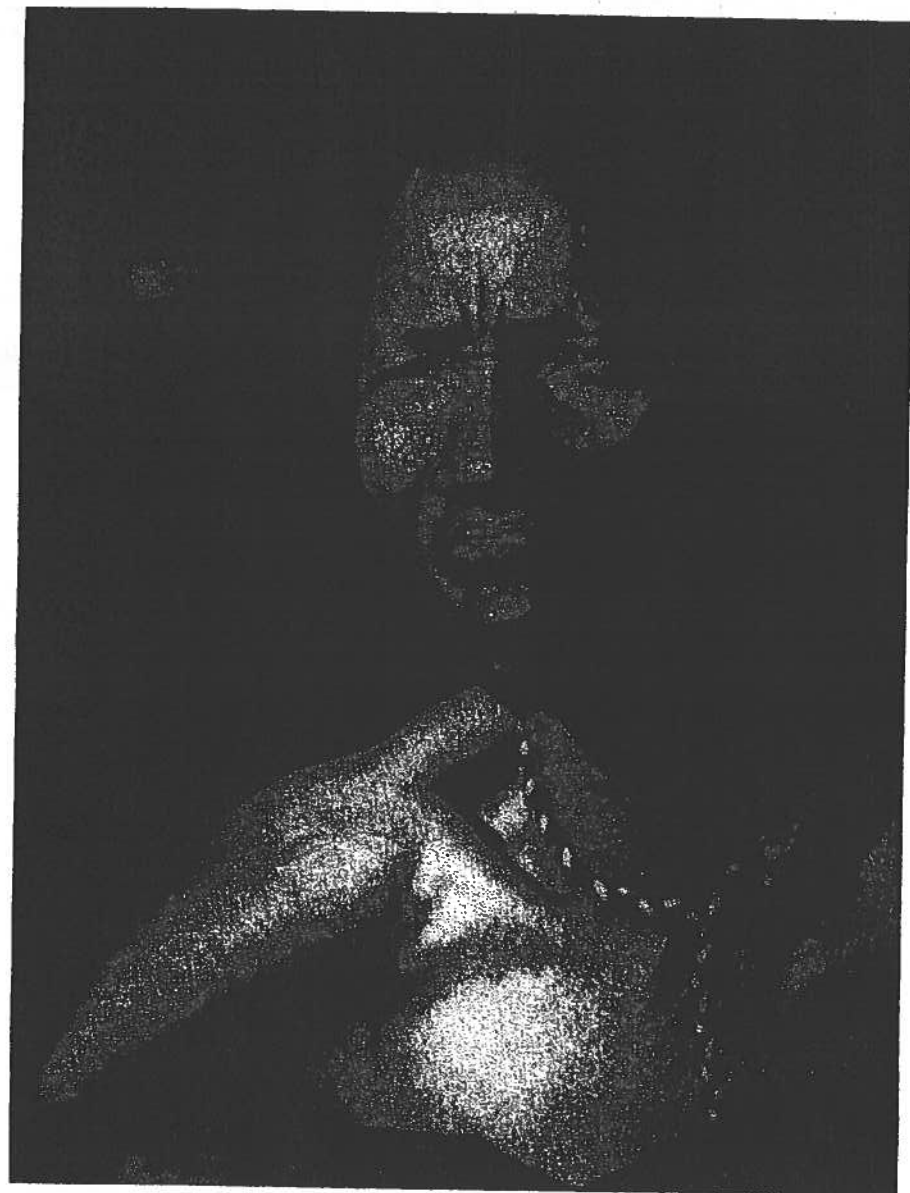
Archeological and linguistic evidence indicates that today's Kalahari Bushmen are the descendants of local Bushmen rather than of Bushmen refugees driven from other parts of Southern Africa into the Kalahari by European and Bantu-speaking African settlers. It is therefore possible to speak of an *aboriginal* Kalahari Bushman culture.

The Bushmen of the central Kalahari Desert are present-oriented, and live a thoroughly pragmatic life in their quest for survival as hunter-gatherers.

Subsistence hunting and gathering requires mobility and group formation. In a habitat as barren as the central Kalahari Desert, the groups or bands, as they are known in the literature, are necessarily small in size and highly mobile, seldom numbering more than fifty people.

Each band consists of several inter-related families. The band constitutes the largest social unit, but the family is the most cohesive and enduring social unit. The family is also the basic unit of inter-band migration and the formation of new bands.

The formation of a new band is a comparatively rare event, but inter-band migration is a common occurrence. No



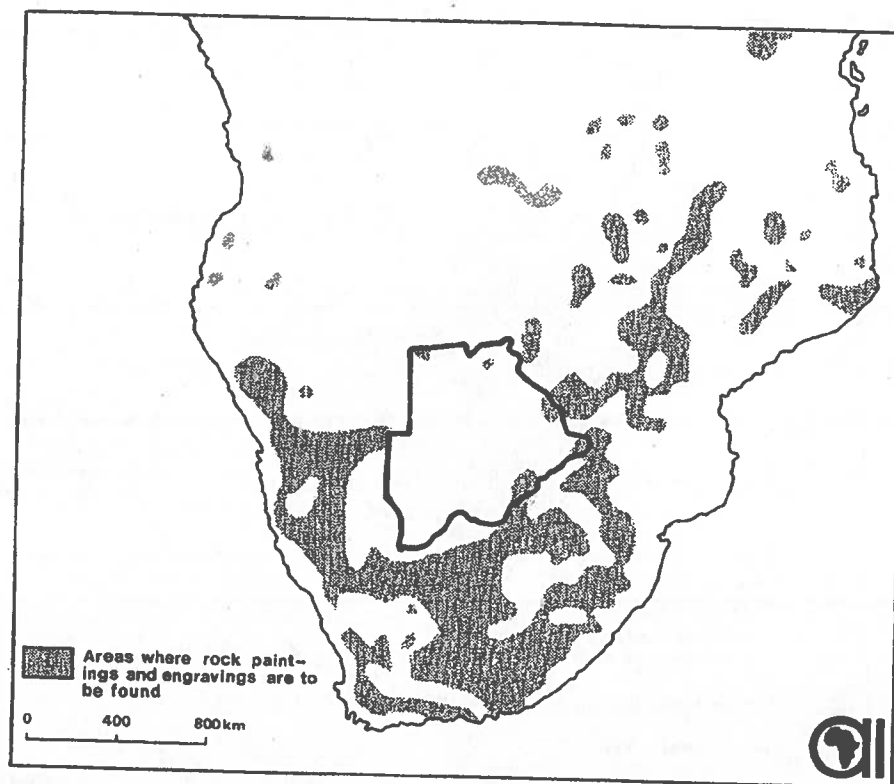
band forms a closed community. In fact, the average band is a rather fluid group which fragments and realigns continuously, and it is often difficult to distinguish between migrants and visitors. Major factors inducing migration or protracted visits are food supply, marriage, and the alleviation of tense social relationships.

Despite frequent social interaction between individual members and households of the various band societies, and the total absence of inter-band warfare, no society embracing the individual bands exists. Each band considers itself to be complete and autonomous, and the separate bands do not interact

through organized economic, ritual or other social activities.

Each band has its own rather ill-defined area within which it moves. It is not the area itself that the members of the band think of as theirs, but the right to use its resources. People from neighbouring bands will need permission to hunt and gather in the area or to draw water there. Permission will usually have to be obtained from the founder-members of the band, their eldest descendants or long-standing members who act as spokesmen for the band.

The band has no chief or leader. Traditional Bushman society simply does not lend itself to a centralized,



Distribution of rock paintings and engravings in Southern Africa (Source: Thomas Tlou & Alec Campbell, *History of Botswana*, Gaborone: Macmillan, 1984)

hierarchical structure with specialized personnel and roles. Decisions affecting the social life of the band are reached through discussion, in which all adult and near-adult members of the band may participate, and in which women have an equal say. Discussion is informal, is not conducted in any special place, and seldom takes the form of a single, set-piece debate.

Although status plays a role within the family and there is a division of labour according to sex — women doing the foraging and men the hunting — there are no classes within the band. Band society is basically egalitarian.

This egalitarian character finds expression in, and is preserved by, the sociability of its members. Bushmen attach great value to giving and receiving, borrowing and lending, and entertainment in the form of visiting, talking and dancing. Their sociability is more than just a valued end in itself; it also plays a pragmatic role. Sharing possessions, for example, not only strengthens the sense of fellowship, but also promotes the mobility of the band. Talking keeps them in touch with one another's feelings, releases tensions, and is

instrumental in settling disputes and formulating decisions. With regard to dancing, the Bushmen's trance dance deserves special mention, for it is their major ritual and involves the entire band. With the support of the women, who sit in a circle around the fire, clapping and singing, the male dancers work themselves into a state of transcendence and enter the realm of the supernatural to plead for the health of individuals and the community. The trance dance is performed at night, may last for hours on end and is the focus of religious life among the Bushmen.

Not only is there a minimum of religion, as Europeans know it, in Bushman society, there is also a minimum of law.

Family law: The parent-child relationship is the only relationship in Bushman society in which authority is inherent. Parental duties, however, are considered to be more important than parental rights.

A man's familial duties extend beyond the parental sphere and include a duty to support his own and his wife's parents, siblings, and other dependent close relatives. Should a man decide to migrate, he takes with him those among

the above-mentioned relatives who need or want to accompany him. In this way, whole segments of bands join other bands.

Marriages are generally arranged by the couples themselves, but parental approval is required in respect of young people. Bushmen do not conclude matrimonial property settlements. A person may marry either within or outside the band, but because of the strict taboo on incest, marriage partners are often selected from other bands. Although polygamy occurs, it is not common. Levirate and sororate are also practised. Divorce is accomplished by the unilateral decision of either spouse or by mutual consent — the only semblance of formality is the act of parting. Incompatibility and adultery are the main causes of marital break-up. After divorce the father takes custody of the children, but as long as a child is still breast-fed it remains with the mother. The band regrets divorce but attaches no social stigma or legal impediments. Divorce is not uncommon among young couples, but overall marriages are notably stable.

Property law: In a society where personal belongings are few, property law revolves around the use of the common wealth. In Bushman society it is rainwater, waterholes, patches of wild plant food and wild animals which constitute common wealth.

Rainwater belongs to no one, but the permanent and semi-permanent waterholes are band property.

Wild plant foods, which constitute 60 to 80 per cent of the Bushmen's subsistence base, are also considered to be the property of the band, but once collected belong to the collector. The women daily collect wild plants to feed family and visitors.

Game belongs to no-one until it is killed. Small animals become the property of the man who killed them, and are consumed by his family. Large animals are hunted by a party and belong to the owner of the first arrow to penetrate the animal sufficiently for its poison to take effect. As a result of the common practice of borrowing and lending, the owner of the arrow need not be one of the hunters and, indeed, may be male or female. The owner has to distribute the meat, as large animals are shared with everyone in the band, visitors included, according to definite rules. Whoever

receives, later gives in turn, so that everybody gets some meat.

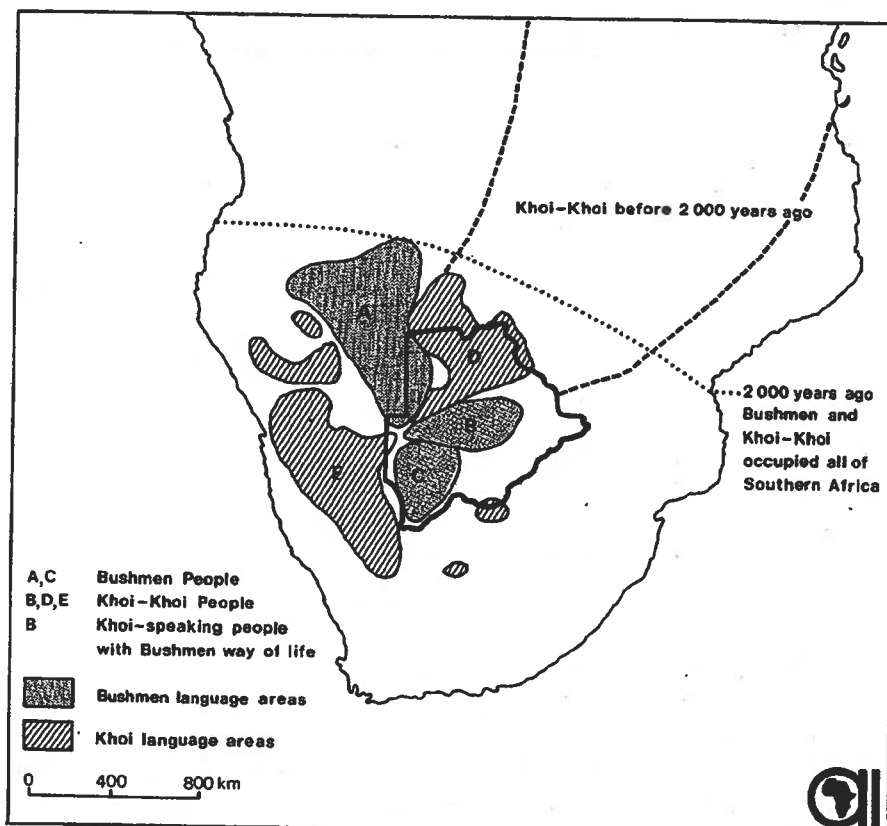
Hunting parties seldom consist of more than four or five men and have no formal leader. Once an animal has been wounded, the hunters may follow it into the territory of a neighbouring band. Should neighbours cross the hunters' track, they will be given a present of meat, but no tribute is obligatory.

Law of succession: As personal property is extremely scarce in Bushman society, and of neither great nor lasting value, succession to interests in gift-giving partnerships is the only important issue. In order to ensure the continuation of major partnerships, older Bushmen, on becoming less mobile and less productive, will gradually pass their partnerships on to their children or younger siblings. If a partnership has not been disposed of by the deceased, his children or siblings may ask the remaining partners to continue the relationship by offering them his possessions.

Contract law: Without a social contract, there would be no band society. However, the need for *private* contracts — contracts between individual band members on individual matters, is less apparent. Certain forms of contract are frowned upon, notably commercial contracts, as bargaining is seen as likely to create social tension.

Social wrongdoing: The small, face-to-face and indeed "footprint-to-footprint" community of the Bushman band is generally at peace, as there is little inclination or scope for antisocial action. The wrongdoings which are most feared, occur least — namely physical violence, incest, flagrant adultery, and theft. Most disputes concern the distribution of food.

Settlement of disputes: Disputes among individual members of the band are judged by band opinion and controlled by band action, rather than being settled by the parties concerned. As violence is greatly feared, the band will make every effort to solve a dispute through discussion which, in appropriate cases, may take the form of public shaming and ridicule. If a dispute cannot be resolved in this manner and the offender is unwilling to leave the band, he will be "eased out". However, an offender's departure could be more harmful to the band than his original offence. Every effort, therefore, is made to avoid conflict.



Distribution of Bushmen and Khoi-speaking peoples, 1960 (Source: Thomas Tlou & Alec Campbell, *History of Botswana*, Gaborone: Macmillan, 1984)

Alien inroads on Kalahari Bushman society

Traditional Kalahari Bushman society lacked the resources to resist the incursions of the Khoi-Khoi, Bantu-speakers and Europeans.

The Khoi-Khoi emerged in Southern Africa some 4 000 years ago. Entering from the West they gradually spread over a wide area, the core of which today is the Cape Province of the Republic of South Africa. The Khoi-Khoi were Stone Age nomads who kept herds of cattle and sheep in addition to being hunter-gatherers. They moved around in groups, each with its own leader.

For a long time the Khoi-Khoi and the Bushmen lived in peace, so much so that their contact resulted in the emergence of remarkable physical and linguistic resemblances. But as the herds of the Khoi-Khoi increased, the resources of the Bushmen came under pressure, with the result that the Bushmen sometimes preyed upon the Khoi-Khoi's domesticated animals. Historical records show that when the Dutch settled at the Cape

of Good Hope in 1652, considerable hostility existed between the Khoi-Khoi and the Bushmen.

It was approximately 2 000 years ago that Bantu-speakers first appeared in Southern Africa. They were an Iron Age people who lived a sedentary life as farmers-cum-pastoralists, and were grouped in chiefdoms, and later even kingdoms headed by a paramount chief.

The first Bantu-speakers to arrive in Southern Africa entered via the east coast, and settled in what is today Swaziland, Natal, Transkei and Ciskei. These migrants were given the name of Nguni, after their particular Bantu dialect. The second wave of Bantu-speaking settlers consisted of people using the Sotho dialect, of which Tswana forms a subgroup. They entered inland and concentrated in present-day Botswana, Transvaal, Orange Free State and Lesotho.

The Bantu-speaking tribes and the Bushmen certainly did not clash when they first met. In fact, all the evidence points towards considerable intermixing over a long period. Early rock paintings depict scenes of peaceful coexistence;

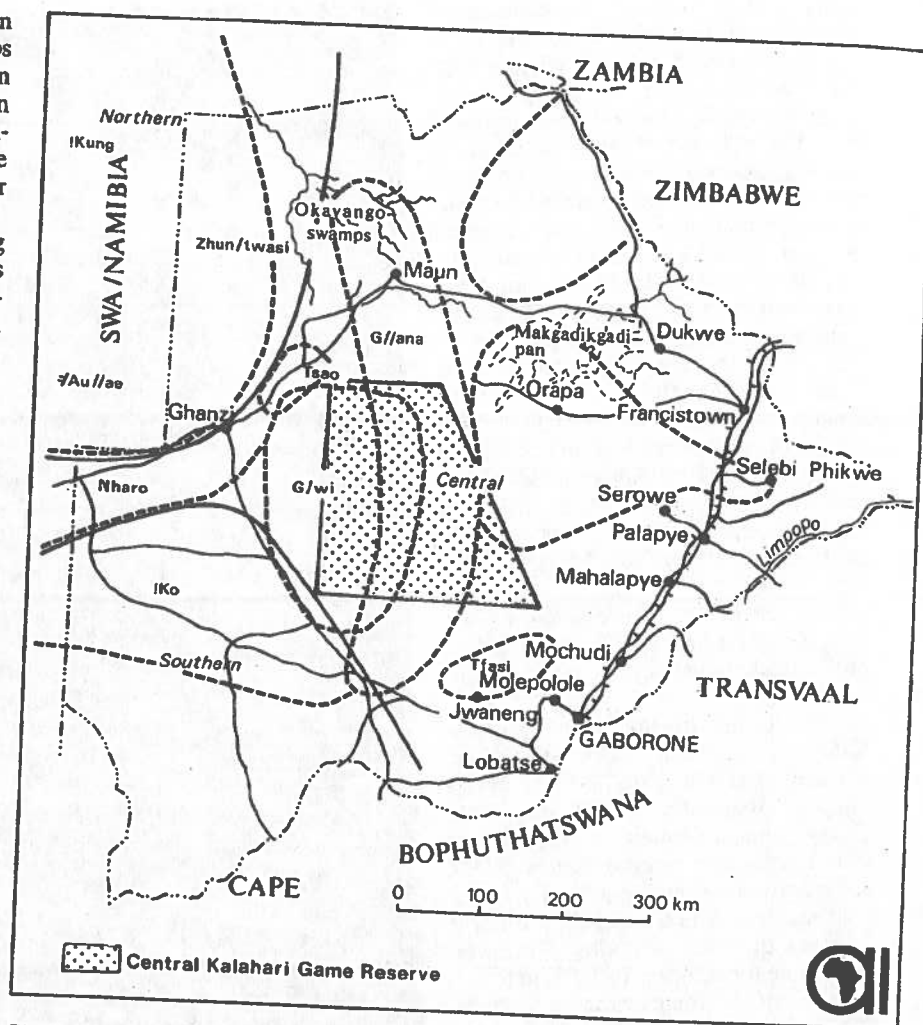
Bushman features, such as a light skin colour, almond-shaped eyes, thin lips and high cheekbones, are common among the Bantu-speakers of Southern Africa; and "click" phonemes were incorporated by the Swazi, the Zulu, the Xhosa and the Southern Sotho into their languages.

However, as the Bantu-speaking tribes claimed more land for their herds and crops, their relations with the Bushmen became less cordial. In the eastern and central parts of Southern Africa conflict came to a head during the nineteenth century, when these tribes and newly arrived groups of European settlers declared war on the Bushmen. European weaponry ensured that by the beginning of the twentieth century the Bushmen in the central and eastern parts of Southern Africa had been annihilated — the Cape Bushmen having been exterminated earlier by European frontier farmers. The last of the Bushman rock paintings bear witness to this shameful chapter in the history of Southern Africa.

Although contact between Bantu-speakers and Bushmen in the sparsely populated western part of Southern Africa has generally been peaceful, it has turned many Bushmen into the serfs of Bantu-speaking masters. Living on the fringes of Bantu village society, the Bushman serfs would hunt for skins, look after stock, clear agricultural fields, and do domestic work in return for protection and a constant supply of food. Among the Bantu-speakers in the western part of Southern Africa, the Tswana in particular have made, and still make, use of Bushman labour in this fashion.

These days, the Bushmen in Tswana society are treated humanely, but they are still denied tribal membership and can therefore not lay claim to the use of tribal land or access to the tribal courts. Intermarriage is rare, especially between Bantu women and Bushman men.

It used to be the tribal chiefs and other prominent members of the tribe who owned Bushman serfs. Serfs and their descendants were permanently attached to the households of their masters. In terms of Tswana tribal law they could be inherited, and could be sold, lent or given away. In 1936, under the British administration, the Bushman serfs were formally freed, in the sense that they



Distribution of Bushmen in Botswana (Source: Jiro Tanaka, *The San — Hunter-gatherers of the Kalahari*, Tokyo: University of Tokyo Press, 1980)

could no longer be legally held in "slavery". Nothing, however, was done to alleviate the economic plight of the Bushmen concerned. They were left in the hands of their masters, who not only continued to exploit their labour but also attracted additional Bushman tributary labour as they extended the permanent grazing area for their herds further into the Kalahari. This extension was made possible by drilling boreholes — a technique introduced by the Europeans — which made it possible for livestock to stay in the Kalahari throughout the year.

Whereas hitherto Botswana's leading tribal cattle-owners have accommodated the local Bushmen, they are now increasingly regarding their arrangement with the Bushmen as a liability, in that the Bushmen's consumption is said to outweigh their productivity. Botswana's

post-independence elite of prominent cattle-owners has become rather sophisticated and ranks among its members the country's leading politicians, civil servants, entrepreneurs, and other leading wage-earners. Certainly, commercial beef production along capitalist lines is uppermost in their minds.

Indeed, it was in order to promote commercial beef production that the Botswana government launched its "National Policy on Tribal Grazing Land" in 1975. This policy brought about fundamental changes in the existing system of tribal land tenure. Implemented by Land Boards, the policy divides the country's tribal land into three different types: traditional communal zones, in respect of which the customary system of land tenure is retained; new commercial zones to be leased to and be fenced by individual

owners of large herds, for commercial ranching; and additional reserves to be set aside for the future as a safeguard for the "poorer members of the population".

However, it soon became apparent that the policy had been based on a mirage. Botswana simply does not have the vast tracts of land promised for commercial ranching or as a future safeguard for the poor. The pressure on overgrazed communal lands has not been alleviated, and the change from cattle-herding around cattle-posts to commercial cattle-ranching within fenced lands is bound to hurt the Bushmen in particular. Apart from the detrimental effect of fences on the hunting and gathering economy of the Bushmen, leaseholders may resort to an "exclusive" mode of land tenure, easing out, if not ordering off the land, all unwanted people. Literally thousands of Bushmen, among others, could be dispossessed in this way, and their fate will be similar to that of the Bushman squatters in the Ghanzi district.

Ghanzi lies in the central-western Kalahari, not far from Botswana's border with Namibia. Until the turn of this century, Ghanzi was Bushman country. Today, the Bushmen of Ghanzi, of whom there are approximately 5 000, are merely squatters on a block of freehold ranches. The Ghanzi farm block is a relic of the infamous European "Scramble for Africa". In 1898, in order to prevent German expansion from South West Africa (Namibia) eastwards, Cecil John Rhodes' British South African Company settled some twenty impoverished Boer families — mostly from the defunct Republic of Goshen in the western Transvaal — as leasehold ranchers in the Ghanzi area.

These early European settlers sank wells but did not fence their lands, using Bushman labour to herd their cattle. The mode of land tenure of the early settlers was "inclusive" in the sense that over and above the rations the Bushmen received in return for farm and domestic labour, they were allowed, albeit grudgingly, to hunt and gather on the farms. Gradually, a class of "farm Bushmen" developed, consisting of numerous small groups, more or less permanently attached to the European ranches. However, this arrangement between ranchers and Bushmen was not to last.

In 1959, the country's central administration, which was still under British



control, converted the system of land tenure in respect of the Ghanzi farming block from leasehold to freehold. New ranches were proclaimed and put up for sale. Many were acquired by outsiders. One condition of sale was that the purchaser must erect boundary fences. As cattle-breeding became increasingly sophisticated, more and more "farm

Bushmen" were reduced to the status of squatters. The days of casual, intermittent, unskilled labour interspersed with periods of hunting and gathering were gone. With the ranches fenced in, modern ranching techniques were introduced and trucks were used to transport cattle to the abattoir in Lobatse instead of trekking cattle across the Kalahari.

Many Bushman herdsmen became redundant. Cash wages were introduced and attracted Bantu-speakers, who are regarded by the ranchers as more skilled farm labourers and are employed more readily than Bushmen. This is true particularly of the big ranches, most of which are now run by companies in order to gain tax benefits and comply with government policy that the ranches be Botswana-owned.

At present, an estimated 90 per cent of the Bushmen in the Ghanzi district are unemployed squatters on the ranches and the Ghanzi commonage. They beg for food and resort to stock theft as game and wild plant foods are suddenly no longer found in the area. Economic deprivation has been accompanied by serious social disruption. Commercial competition among these "squatter Bushmen" has replaced the custom of open-handed sharing, and alcoholism, promiscuity and prostitution are rife.

The plight of the Ghanzi Bushmen raises the question of the acculturation of Bushman society in Ghanzi and in Botswana as a whole.

It is indeed striking that all over Botswana, even among the most sedentary Bushmen, the organizational model of Bushman society has remained close to that of the traditional, mobile band society. Until now, alien cultures have had but a marginal effect on traditional Bushman culture. Although contact with alien cultures resulted in the majority of Bushmen leading a sedentary life around boreholes, tribal villages and ranches, and sometimes even in the disappearance of the band structure, band values have survived. Some areas have acquired hereditary headmen, but their status is not the same as that of the African tribal chief. Alien beliefs — Bantu as well as European — have also had an impact on Bushman culture by bringing a new content to the traditional trance dance and giving rise to a group of professional traditional healers.

So far, the acculturation process has been slow and gradual, but post-independence educational and other development programmes have brought about a different pattern. Young Bushmen are losing interest in their traditions and culture. This should come as little surprise in view of the disregard of other sectors of the population for Bushman

culture, and their own inherited lack of self-esteem.

The position of the Bushmen under the national law of Botswana

The colonial government (1885–1966) regarded the Tswana tribes as its principal concern, for Britain had extended its jurisdiction to "Bechuanaland" at the request of the Tswana chiefs, who desired protection against Boer incursions. Committed to a policy of preserving tribal political organization in principle, the colonial government set up a system of indirect rule, with tribal Tswana chiefs acting as its agents within defined tribal territories.

The colonial administration made no special provision for the Bushmen, who were assigned neither land nor a role in government. A measure of protection was offered to their laws, however, albeit on paper rather than in practice. Section 4 of the Bechuanaland Protectorate General Administration Order in Council of 9 May 1891 is relevant in this regard. It enjoined the High Commissioner to "respect any native laws and customs by which the civil relations of any native chiefs, tribes or *populations* under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction" (my emphasis) when issuing proclamations for the protectorate.

Acknowledging the existence of a "Bushman problem", the colonial administration declined to make a decision in favour of either integration or segregation. In fact, its concern for the Bushmen never extended beyond offering protection against ill-treatment by others, and even this limited form of concern was rather ambiguous.

Informed by concerned European missionaries of the ill-treatment of Bushmen by Tswana tribesmen, the colonial administration initially denied the missionaries' allegations that Bushmen were held in slavery, choosing to describe the position of those Bushmen who were permanently attached to Tswana tribesmen, as a form of "hereditary service".

In 1926, however, under pressure from the League of Nations which had

embarked upon an international inquiry into slavery, the British government, through its High Commissioner in South Africa, issued a declaration to the effect that it was opposed to the practice of compulsory labour in the Bechuanaland Protectorate. In 1936, upon further pressure from the International Labour Organization, the High Commissioner issued two proclamations: the Native Labourers' (Protection) Proclamation and the Affirmation of the Abolition of Slavery Proclamation. The first of these regulated the conditions under which "natives" could be employed as servants; the second "affirmed" that "the legal status of slavery does not exist, and that slavery in any form whatsoever is unlawful".

In 1966, the Bechuanaland Protectorate became the independent Republic of Botswana. The new government continued to recognize tribal chiefs, tribal courts, tribal law and tribal land. The Bushmen, however, remained a landless class with no institutions of their own, although they are recognized in terms of the Independence Constitution and its enforceable Bill of Rights as full and equal citizens.

A remarkable illustration of the Bushmen's full and equal citizenship is provided by the Boake case — criminal trial 32 of 1978 (23 November 1978) in the High Court of Botswana. The accused, a 23-year-old Bushman herdsman, had been charged with the murder of a tribal policeman in the Kalahari. Counsel for the defence endeavoured to introduce the customary ideas and practices of the area in order to show that the accused's behaviour was perfectly reasonable within his frame of reference. Chief Justice Hayfron-Benjamin, who heard the case, was unconvinced. "Underdevelopment", he said, "is a misfortune, and no useful purpose would be served by treating it as a privilege. The standard of conduct required by law of all persons is that of a reasonable man." Having said this, he proceeded to analyse the evidence and concluded that the accused had been the victim of an unlawful arrest and wrongful imprisonment by the deceased policeman, with prospects of subsequent improper prosecution. As a matter of law he had been entitled to use reasonable force to extricate himself from the position in which he had been placed. The question was whether the prosecution had established that the

force used by the accused had in the circumstances been unreasonable. In the opinion of the Chief Justice the answer to this question lay, at least partially, in the country's Constitution: "The right to liberty is enshrined in the Constitution, and to subject its enjoyment to conditions of humiliation would be demanding and unreasonable. To fight to be free cannot be regarded as unreasonable conduct." After scrutinizing the circumstances which had led the accused to attack the deceased with a knife, the Chief Justice acquitted him, as the use of the knife in the circumstances could not be said to have been so excessive as to have been unreasonable.

Whereas the court's interpretation of the right to freedom must have caused unease in executive quarters, the court's remark that no useful purpose is served by treating underdevelopment as a privilege was undoubtedly welcomed by government. Any scheme which is "for Bushmen only" is felt by the government to compromise its ideology of nationalism.

The government of Botswana has stated as its policy the integration of all the country's 30 000 Bushmen with the rest of the country's population, which now stands at approximately one million. The following quotation from the *Botswana Daily News* of 8 February 1988 is indicative of the government's determination:

For many years, the government has been persuading Basarwa [Bushman] who live in the Central Kgalagadi Game Reserve that outside the reserve lies a better life. The reasons the government puts before them are that the game reserve should be secured for animals as it is in the interest of the nation. The government has reserved a place for them outside the game reserve where they will be provided with social facilities such as clinics, schools and water, where they can settle and build permanent homes.

This quotation is from a report on an address by the Ghanzi District Commissioner explaining to Bushmen living in the game reserve why they have been asked to leave the reserve. The government's development policy for the Bushmen clearly concentrates on the provision of major social services, the three primary areas being health, education and domestic water supply.

For about five years the government had a "Bushman Development

Programme", which began as an American private initiative. In 1975, however, this special programme was incorporated in a new "Remote Area Development Programme" (RADP), applicable to "all those living outside organized village settlements". Remote Area Development Officers are now attached to the District Councils, but may run their own projects using central government funds. International aid donors make available additional funds for specific projects, and local welfare organizations, churches and concerned individuals also give assistance.

The RADP is in line with the Botswana government's reluctance to run separate development schemes for the benefit of ethnic groups. It is also an attempt to divert international attention away from the plight of the much-publicized Bushmen and towards the government's national social welfare programme. The truth is that the RADP faces some very serious problems with regard to the Bushmen.

Central government encourages Bushmen to congregate in villages, but individual Bushman bands often prefer to have their own development scheme or to be left alone. On the other hand, what hope is there of having Bushmen who are long-term residents in the tribal areas admitted to tribal membership, should they want it? As a matter of interest, the country's statute law contains no definition of "tribesmen". The Customary Law Act of 1969 distinguishes between two categories of "tribesmen". The first category consists of members of a "particular tribe", but the Act is silent about the criteria of such membership. The second category is composed of members of a "tribal community" which is defined in the Act as a community living outside a tribal territory, but organized in a tribal manner. Most likely, it was the intention to include the Bushman bands in this category. In terms of the Tribal Land Act of 1968, Bushmen — provided they can prove established tribal residence — ought to qualify as "tribesmen" so that tribal land may be allocated to them. With regard to the tribal courts, the Customary Courts Act of 1961 enables "non-tribesmen", upon their consent in writing, to be defendants in a civil trial or the accused in a criminal trial, before a tribal court.

As full and equal citizens of the

Republic of Botswana, Bushmen naturally have the right to vote, access to the general law courts, and — if they have the necessary capital — the chance of acquiring freehold land in the freehold areas. In practice, however, the Bushmen are a marginal people. Now they are being told by the central government to integrate with the rest of the population. The fact that the Bushmen have the least say in how this integration should take place is a fatal flaw in the government's policy.

The position of the Bushmen in international law

The last few years have witnessed increased international attention on the rights of indigenous or aboriginal peoples, as special minority groups. In 1971, the United Nations' Commission on Human Rights' Sub-Commission on the Prevention of Discrimination and Protection of Minorities initiated a study of the problem of discrimination against indigenous populations. This was completed in 1983 and now serves as a guideline for the Working Group on Indigenous Populations, appointed by the Sub-Commission in 1982 to prepare a "Draft Declaration on Indigenous Rights" for approval by the UN General Assembly.

The first problem the Working Group was called upon to resolve, concerned the definition of the term "indigenous". Whereas most UN member states agree that indigenous or aboriginal minority groups deserve special state protection and that their position is a matter of legitimate concern to the UN, some member states prefer the view that problems concerning indigenous populations arise only where there are imported populations of Europeans, as in the Americas and Australasia. In recent years this attempt to associate indigeness with historic European colonialism has begun to break down.

The next item on the agenda of the Working Group was to define the content of indigenous or aboriginal rights. In this respect one may observe increasing support among UN member states for a "bottom-up" policy which allows an indigenous population to determine its own place in the national society, rather than for a "top-down" policy of integration and assimilation. There is a

growing recognition of the need for affirmative action — action which extends beyond mere non-discrimination. The focus is on cultural rights, land rights and collective political rights, all within the framework of the national state. UN member states are agreed that the right to secede should not form part of the aboriginal rights presently being formulated. However, this does not deny an aboriginal people the right to what may be described as “internal” — as distinct from “external” — self-determination.

Conclusion

Growing international recognition of aboriginal rights ought to help the Botswana government to overcome its unease towards a special development programme for its Bushman population, as well as to overcome its qualms that to allocate certain areas to the Bushmen for their exclusive use would be to set up South African-type “homelands”. In fact, it is hard to see how national principles could be compromised by a development scheme for Bushmen providing for Bushman land, in a country which, in its very core, is structurally plural and acknowledges the institution of tribal land.

People need a land base if they are to develop in their own right. In view of the individualistic nature of Bushman bands, various territories will have to be set aside for them. Nevertheless, Bushman band structure perhaps provides more of a solution to economic problems than to socio-political ones, and may well be dispensable where the Bushmen's economy is no longer based primarily on subsistence hunting and gathering. Only through consultation

will it be possible to ascertain and provide for the Bushmen's particular needs within the broader framework of the nation state. Such an approach would be in line with the Botswana government's declared policy of “*therisanyo*”, which means “consultation”.

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