

William Ellis

Pringle, J.A. 1982 *The Conservationists and the Killers*. Cape Town: TV Bulpin and Books of Africa.

Smith, A. 1996 Khoi/San relationships: Marginal differences or Ethnicity. In P. Skotnes (ed.), *Miscast.: Negotiating the Presence of the Bushmen*. Cape Town: UCT Press.

Wells, M. 1996 *The Economic and Social Role of Protected Areas in the New South Africa*. Johannesburg: LAPC (Policy paper no.26).

Sound
pop. #'s p. 275

(2001) *Africa's Indigenous Peoples: 'First Peoples' or 'Marginalised Minorities'?*
James Suzman ed. Alan Barnard + Joshua Kennell
Edinburgh: Centre of African Studies

INDIGENOUS WRONGS AND HUMAN RIGHTS:
NATIONAL POLICY INTERNATIONAL RESOLUTIONS AND THE
STATUS OF THE SAN OF SOUTHERN AFRICA

James Suzman

pp. 273-287

The past two decades have seen a global discourse on 'indigenous rights' going from strength to strength. This is reflected in among other things by the United Nation's declaration of the period 1993-2003 as the 'Decade of Indigenous People'; the recent decision to establish a permanent forum for indigenous peoples at the UN; the ratification by a number of countries of the International Labour Organisation's Convention 169; and the development by some national governments of policies that devolve a degree of autonomy to and hence grant some sort of *special* status specifically to 'indigenous' minorities living within their national territories. Among NGOs, community organizations and others, the label 'indigenous' has joined the vocabularaia arsenal necessary to secure the funds of donors and at the same time the ascendance of the 'indigenous' as a special category in international law offers some palpable opportunities for those who can negotiate their way into this problematic social category.

With such developments taking place, growing concern has been expressed concerning the status of indigenous minorities in Africa including San/Basarwa/Bushman populations. Reflecting these concerns, the ACP-EU Joint Assembly passed a resolution in March 1996 recognising the 'special difficulties encountered in integrating hunting and gathering peoples in agricultural industrial states' and 'noting the lack of accurate overall information on the present condition and prospects of the San'. On the basis of the resolution, the Joint Assembly requested the Commission to undertake 'a comprehensive study of the San people. . . in the light of international conventions'.¹ This paper draws from some of the main issues raised in this

¹ This paper is based on research conducted on behalf of the European Union's Regional Assessment of the Status of the San in southern Africa (see Good et al. 2000; Madzudzo 2000; Robins 2000; Brenzinger 2000; Suzman 2000a & 2000b)

'comprehensive study', proposes a strategy to deal with them and identifies a number of areas for further research.

Despite the 'increasing momentum of the indigenous rights bus and the clear problems experienced by San (Bushman) communities in southern Africa, national governments in the region have rejected the possibility of ratifying international agreements aimed specifically at the securing or expanding the rights of ethnic or other minorities specifically within an indigenous rights framework. This has in some instances exposed a clear rift in the thinking of some members of the donor community and southern African Governments. Analysis of this rift in thinking not only exposes some of the myriad complexities of identity politics in post-apartheid southern Africa, but also reveals something of the multiple and often contradictory positions that constitute the southern African subject in this era of nation building and globalization (Comaroff and Comaroff 2000).

This paper is based on the understanding that, in Namibia and Botswana in particular, there is a clear need to motivate for a substantial adjustment in policy in order to meaningfully improve the status of the San relative to others and moreover that these adjustments will require the recognition of an 'ethnic' component to San social economic and political marginalization (Saugestad 1998; Gordon 1992; Suzman 2000c). In deference to the theme of this volume I will deal on a practical level with the very applied question of what grounds are most appropriate to lobby for these changes taking into account the prevailing attitudes, agendas and policies in these countries and the socio-economic status of the San population as a whole. While by no means my original intention, I problematize the idea of 'indigenous rights' and in so doing raise some ethical, theoretical and practical questions that have a bearing on global debates concerning the relationship between individual ('human') and cultural (collective) rights. I restrict my discussions here to the particularities of the problematic status of San populations in southern Africa and make no presuppositions about the exportability of my applied arguments to other 'minority situations' in Africa or elsewhere.

I argue that in spite of the fact that international agreements pertaining to the rights of indigenous peoples do indeed provide a suitable blueprint for the establishment of a policy platform appropriate to dealing with San needs,

the promotion of San interests primarily as an indigenous rights issue is not the most expedient course of action available at the moment. What I suggest here is that, given the dominant meanings attached to the notion of 'indigenouness' in southern Africa, and the variety within and permeability of the category 'indigenous', that far greater scope exists in the pursuit of San rights issues within a more straightforward human rights framework. Put simply, I argue that it is far more profitable to focus on the status of the San as a marginalized minority rather than indigenous people. Moreover I suggest that an explicit focus on indigenous rights might well detract from the very compelling arguments that can be made in favour of the San by reference to their clearly marginal status vis-à-vis others throughout the region.

Table 1. San populations in Southern Africa by country²

Country	Total San Population (Hitchcock 1996)	Total San Population (Regional Assessment)	%age of Total National/Regional Population
Botswana	49475	47675	3.3
Namibia	38275	32000	1.8
South Africa	4700	4350	<0.02
Zimbabwe	1275	2500	<0.02
Angola	9750	1200	<0.01
Zambia	1600	300	<0.01
TOTAL	105075	88025	+/-0.14

² Estimates of numbers of San in the region have varied considerably over the past 100 years. Although data is more complete today than ever before, some speculation is called for in assessing numbers of San in the region. Identity switching, movements and migrations in response to war, population pressure, ecological constraints, and the inaccuracy of census data all hinder the accurate assessment of southern Africa's San population.

The Status of the San in Southern Africa

Southern Africa is home to a linguistically diverse San population of between 85 000 and 90 000 people, a total somewhat lower than figures usually cited.³ Although they are spread throughout the region by far the largest proportion of the San population live in Botswana and Namibia where, constituting between one and three percent of their respective total national populations, they can be thought of as statistically significant minorities.

San populations constitute the most conspicuously marginalized of all socio-linguistic communities in the region by a considerable margin.⁴ Notwithstanding a few clear exceptions, San in southern Africa region are marked by:

- An almost universal lack of *de jure* land rights or equitable access to natural resources.
- Extreme poverty and dependency on welfare programmes, food aid, piece-meal labour and begging
- Very low levels of basic literacy and numeracy compounded by poor school attendance and high drop-out rates.
- Poor basic health care, squalid living conditions, a high incidence of social (in particular alcohol related) problems and life expectancy considerably lower than national averages.
- Weak representation in political structures or administrative structures and limited capacity to advocate their own interests at a national, regional or local level
- A sense of sometimes extreme social and political alienation from the mainstream compounded by social discrimination and prejudice.

Both Namibia and Botswana rank among the world's most unequal societies with *gini* coefficients in the region of 70% (UNDP 1999).

³ See Suzman (2000b) for a more detailed discussion on the reassessment of San numbers in the region.

⁴ For considerably more detailed descriptions of the social, political and economic status of San in their respective countries of abode see (Good et al. 2000; Madzudzo 2000; Suzman 2000a & 2000 b)

Consequently San are joined by many others at the hungry end of the economic pile. What makes San stand out, however, is the extent to which they are almost universally impoverished relative to others. This is especially true if less easily quantifiable data such as secure access to land and natural resources (which provide a major point of differentiation between San and other rural poor) are factored into the equation. The gap between San and others is best illustrated by reference to Namibia where despite the fact that San per capita income is just under half that of the national average, their Human Poverty Index (HPI) in 1998 of 58.1 is almost three times that of the national HPI of 20.5 (UNDP 1998).⁵ Similarly, the Human Development Index⁶ of San in Namibia is considerably lower than that of any other socio-linguistic group (see Figure 1).

So clear is the extent to which class and ethnic identity are bound up in the case of San that some commentators have argued convincingly that the 'traditional' hunting and gathering lifestyle of the San represents and adaptive response to poverty (e.g. Wilmsen 1989; Gordon 1992). While, in the case of Kalahari Basin San populations, this argument is not strongly supported by socio-linguistic or historiographic data (see for example Lee and Guenther 1991 and 1995) there is little question that San integration in and growing dependency on the colonial political economy over the last century was very much on others' terms. Moreover, it is clear that their participation in it was limited by various mechanisms to the absolute lowest rung (Wilmsen 1989; Motzafi Haller 1986; Suzman 2000c).

The failure to recognize and make allowances for these more ethereal dimensions to San social marginalization has been perhaps the largest obstruction to the success of development programmes aimed at changing the status of these communities.

⁵ This is well illustrated by reference to the next poorest language group in Namibia, Kavango speakers whose per capita income is only 20% higher than the San but whose HPI, is just over half that of the San. The HPI is calculated from data concerning, access to safe water, illiteracy, life expectancy, proportion of income spent on food and poor living standards (UNDP 1998 and 1999).

⁶ The Human Development Index is calculated from data relating to health, income, access to basic resources and education (See UNDP 1998).

- A top-down, non-consultative and paternalist approach to San development that effectively disempowers San at a variety of levels and actively discourages their participation in decision-making processes
- Limited Government commitment to expanding or protecting San land rights and access to natural resources.

Contributing to these problems has been the fact that the status of the San in Botswana and Namibia is conceptualized by their respective governments as an explicitly socio-economic issue. Consequently important questions pertaining in particular to cultural identity, social discrimination, secure access to land and political relations are not included in the equation. The failure in particular of the Governments of Botswana and Namibia to establish a policy platform appropriate for addressing the self-evident problems experienced by San communities and the unwillingness of these Governments to make special allowances for San populations has unquestionably served to increase the clamour for San related issues to be pursued within an 'indigenous rights' framework.

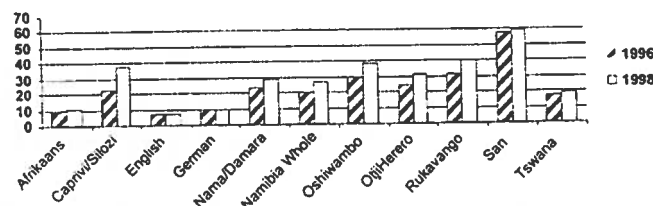


Figure 2. HDI by language group in Namibia, 1998

Another concern has been the fact that where policies have favoured San, Government officials have often proved to be either unwilling or unable to implement these effectively (Good et al (2000); Suzman (2000a and 2000b)). This problem has been most marked in Namibia, where there has been a clear reluctance to turn favourable policy statements and laws that should benefit San into reality. Indeed, the case of Namibia demonstrates the extent to which apparently good policy can be subverted in the course of its realization

through being refashioned in terms of local knowledge, practice and power relations. Thus, for example, despite the fact that San are identified in policy as one of the principal intended beneficiaries of resettlement land purchased under the Agricultural Land Reform Act, Government has established no effective measures to facilitate San access to this land and has arguably discriminated against San in this process. As a result only an insignificant proportion of San have benefited from the programme⁸ and moreover, where they have benefited, they have not been granted the full rights stipulated in law. Similarly in terms of the formal recognition of traditional authority structures, government has complied neither with the spirit nor letter of the law as far as San are concerned.

ILO Convention 169

The current benchmarks against which the relationship between indigenous peoples and their respective nation states are measured are the International Labour Organisation's Convention 169 (ILO 169) and, the draft United Nations Declaration on the Rights of Indigenous Peoples. These documents share the same fundamental principles that include the devolution of partial social, economic and political autonomy to indigenous peoples and the broad recognition of their rights to land. In these documents, the ILO and the UN working group effectively call for 'special rights' to be conferred to indigenous peoples.

In line with the precepts of modernist development thinking, the most common strategy adopted by national governments vis-à-vis indigenous minority populations during the 20th century involved attempts to 'integrate' or 'assimilate' them into 'mainstream society'. It is now 'generally admitted that policies of assimilation and integration aimed at bringing these groups [indigenous peoples] into the mainstream . . . are often counter-productive' (UN Commission for Human Rights 1997), and the idea that indigenous people should be granted the social and physical space to determine the pace and form of their own development within the framework of the state is

⁸ 223 of the estimated landless San population of +/- 21 000 in Namibia have been resettled on land purchased under the ARLA.

becoming more popular. This shift in thinking was motivated not only by the fact that assimilationist policies rarely worked, but also because of a growing conviction that indigenous people had the 'fundamental right' to maintain a distinct culture and way of life, distinct territories and manage, as fully as possible, their own development.⁹ From this perspective, the best way to achieve the meaningful participation of indigenous minorities in the nation state is to accommodate their difference and recognize it as an important component of the national identity.

At present ILO 169 is the only legally binding agreement dealing specifically with the 'rights' of indigenous peoples. The basic philosophy of Convention 169 is that the cultures, lifestyles and customary laws of indigenous or tribal peoples should be respected and that these peoples should be entitled to 'exist as parts of national societies with their own identities, their own structures and their own traditions' (ILO 1996:3). Compliance to ILO 169 requires that:

- National Governments should enable the participation of indigenous peoples at all levels in decision-making processes that effects them and establish structures necessary to facilitate this process. (Article 6)
- Indigenous peoples have the right to decide their own development priorities and to exercise control over their won social cultural and economic development. (Article 7)
- Indigenous peoples' rights of ownership of the lands they traditionally occupy are recognized. (Articles 13-15 and 17-19).

Several countries have ratified ILO Convention 169 or endorsed its guiding principles and others still, such as the Netherlands and Denmark

⁹ This shift is captured by changes made to ILO conventions concerning indigenous peoples. The ILO's first convention for indigenous peoples (no 107) was adopted in 1957 but revised in 1988 into its current form (ILO 169). This was done following the assessment that 'certain weaknesses' in Convention 107 in particular, the 'assumption that integration into larger society was the only way forward for indigenous peoples and that all decisions regarding development were the concern of the State rather than the people most affected' (ILO 1996:1)

have developed their own national policies in line with its key stipulations.¹⁰ Additionally, these principles have been referred to in a number of international agreements and declarations in which indigenous rights issues have arisen.¹¹ Few political systems cater well for minorities especially in nation states that are by and large culturally or politically homogeneous (See Roulet 1999). Part of the rationale behind establishing these standards has doubtless been because, almost universally, indigenous minority interests have been overlooked in the process of nation building and that, as a result, indigenous peoples are often economically, politically and culturally marginalized (ILO 1996). However, these standards appeal for authority by reference to an apparently autonomous set of 'indigenous rights' rather than minorities relative status within their respective nation states- a major reason why no African country (despite almost universal membership of the ILO) has yet adopted or even seriously debated the adoption of ILO 169.

From a straightforward development perspective, the adoption of policies commensurate with the ILO 169 would be an obvious course of action to take in order to improve the status of southern Africa's San populations. In a number of important ways, the terms of the convention provide a rubric for dealing with a number of the thornier issues associated with San development specifically in relation to capacity building and empowerment at a local level.

Local and International Definitions

Establishing an unambiguous definition of the term 'indigenous' has proved problematic. Consequently the ILO and UN working group have adopted fairly broad working definitions of the concept in order to allow for some

¹⁰ No African countries have adopted ILO 169. Countries that have adopted it include Norway, Mexico, Bolivia, Peru, Denmark, Honduras, Guatemala, Honduras, Costa Rica and Paraguay. Organisations such as the European Commission and the World Bank have adopted policies to indigenous minorities that are largely in line with ILO 169 (See EC 1999).

¹¹ These include the 1997 Project American Declaration on the Rights of Indigenous Peoples, the Rio Declaration (Principle 22 and Agenda 21), the Convention on Biodiversity, the Convention on Climate Change and the Convention on Desertification.

flexibility in its application.¹² Flexibility notwithstanding, the San peoples of southern Africa fall comfortably into the category which is defined by reference to the following criteria (See UN Doc No. E/CN.4/Sub.2/1986/87):

- Historical continuity with pre-colonial societies
- Strong links to territories
- Distinct social, economic and political systems
- Distinct language culture and beliefs
- Form non-dominant societies
- Identify themselves as distinct from national societies

Notwithstanding the appropriateness of ILO 169 or the draft UN Declaration as a developmental rubric appropriate to addressing the needs of many San, national governments have not responded positively to them. The Government of Botswana has explicitly rejected the possibility of dialogue on the granting of any special rights to its indigenous San population (or indeed any other minority group) and the Namibian Government has studiously avoided debate concerning the status of the San in terms of a lexicon of 'indigenous rights'. In both countries national governments have made it clear that from their perspectives, indigenesness is defined exclusively by reference to European colonialism rather than any other historical moments and that by virtue of this, all of the majority Bantu populations are indigenous. Thus for example, responding to a question posed in parliament concerning what plans the Government of Botswana had made regarding the San population to mark the UN's declaration of the decade of Indigenous People, Botswana's Minister for Local Government Lands and Housing stated that nothing was planned since 'All Batswana [citizens of Botswana] are indigenous'.¹³ While the Minister's comments have met with some criticism

¹² The ILO considers 'indigenous people' to be 'peoples in independent countries who are regarded as indigenous on account of their descent from populations which inhabited the country at the time of conquest or colonization, or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic and political institutions'

¹³ In the South African Constitution, the term 'indigenous' refers explicitly to the majority Bantu population rather than just Khoesan populations. Similarly

(see e.g. Saugestad 1998; Lane 1997), they did not stir much controversy at home.

Despite the fact that there is no official recognition of San as an 'indigenous people' in terms of ILO or UN definitions, the majority population in southern Africa (government officials included) consider San to be an aboriginal or 'first people', whose presence predates the arrival of Bantu or white colonials in the region. Moreover, the majority of the southern African population construct this aboriginality as intrinsic to San social identity. While the particular values and meanings ascribed to the notion may differ, there is a clear correspondence between labels for San in most southern African languages and the euro-american concept of the 'indigenous' or 'aboriginal'. Oshihierero speakers, for example, refer to San (among other more derogatory labels) as 'Ovakuruha' a term meaning 'first people' or 'those who were here first'. For many Africans, like Europeans, San are considered to have an autochthonous relationship with land; represent a less socially developed order of mankind and maintain an organic relationship with 'nature' (See Guenther 1986; Wilmsen 1989; Suzman 2000c etc.). If this is the case why is there such reluctance among southern African Governments to acknowledge San 'indigenesness' in policy?

When a dodo is a prodigious nuisance

The rejection of 'indigenous rights' (as envisaged in ILO169) by southern African governments is justified broadly by reference to nation building and the need to pursue an explicitly non-ethnic form of nationalism (see Saugestad 1998; Hitchcock and Holm 1993). Pivotal to the discourse of nation building is the pursuit of 'national unity', a task that (in the southern African context) requires the subordination of traditional or tribal allegiances in favour of a national identity. Development within a framework of 'national unity' is intrinsic to the nation-building goal and demands the reconfiguration of national social, political and economic relations by reference to indices other than ethnicity.

In Namibia, the term indigenous is popularly understood to refer to all Bantu and Khoesan Namibians.

In terms of this priority, and in spite of the emphasis placed in ILO 169 that indigenous rights are ultimately subordinate to broader national interests, national Governments reason that the promotion of indigenous rights in the way envisaged by the ILO would result in the de facto prioritization of the interests of one ethnic group over all others. This it is reasoned further, might well lead to the greater valorization of ethnic identity, greater social division and ultimately subvert the all-important task of nation building. In countries where national populations are comprised of a number of diverse self-identifying ethnic communities such considerations cannot be taken lightly. Certainly the notion of Indigenous rights cannot reasonably establish the apparently objective credibility of arguments in favour of universal human rights. Indigenousness in this context appeals, on one level at least, to a signifier of identity as arbitrary as red hair or, for that matter, blue blood or white skin. It is clear that naturalising and universalising 'indigenous rights' in this way allows political communities or movements to claim an otherwise absent ideological legitimacy or moral authority to justify actions that may well sit uncomfortably with a universal doctrine of individual *human* rights as was the case in Fiji during earlier this year.

Within Namibia and Botswana, while there is, as I have noted, popular consensus that San populations do constitute an aboriginal or a 'first people', the meanings attached to this notion are a far cry from the romance of Rousseau's second discourse. Indeed, in Botswana and Namibia alike, the majority of people would sympathize with Charles Dickens's opinions who when writing of the 'Bushmen' stated that 'I beg to say that I have not the least belief in the noble savage and consider him a prodigious nuisance and an enormous superstition. . . I don't care what he calls me. I call him a savage and I call a savage something desirable to be civilized off the face of the earth' (Dickens 1853:1). This perspective was echoed somewhat more pragmatically by the current President of Botswana, Festus Mogae, when as vice-president in 1997 he inquired, 'How can you have a stone-age creature continue to exist in the time of computers? If the Bushmen want to survive, they must change, otherwise, like the dodo they will perish' (The Star 19 June 1997).

The language of social development in southern Africa is explicitly linear and understandably so given some of the practical socio-economic problems that Governments in third world countries are confronted with.

Moreover when viewed through the lattice of global structural relations it is certainly not surprising that third world elites rarely romanticize 'under-development' or correspondingly the people or ethnic groups they associate with it- people who in the interests of nation building should indeed 'be civilized [*developed*] off the face of the earth'. The president of Botswana's 'adapt or die' attitude to the San does have a certain resonance that is hard to ignore. As much as it betrays the fact that to him the meaningful identifiers of San social identity are bound up inextricably in the iconography of primitivism and poverty he is correct in asserting that the present situation of the San is not sustainable. With in the region of 70% of all San dependent on limited welfare resources, supplemented by casual labour and begging the issue of development is a priority. The rejection of the category 'indigenous' in official policy in southern Africa is not so much a rejection of the belief that San constitute a first people, but a rejection of some of the meanings attached to the notion and the obligations that would arise from its formal acceptance.

The key problem with international agreements aimed explicitly at indigenous people is that they require the conceptual and legal abstraction of these people from the nation as a whole. They effectively (although not necessarily practically) provide a means to shift debate concerning their status outside of the context of the broader national interest. It allows for people that can prove their status as 'indigenous' to appeal to an ostensibly separate set of rules to others in order to further their status. It is this process of abstraction that southern African Governments find difficult to swallow, especially since from their perspectives this process is premised on what they consider to be a curious and apparently ill-informed romanticism tied to a poor understanding of the problems of post-colonial southern African nationhood. In several instances, Government officials in Botswana have made it clear that they consider the promotion of indigenous rights to be driven by a desire among some 'foreigners' to keep San backward in order that they may be 'studied or filmed' (See Saugestad 1998:130-131).

The concern for indigenous rights issues in western countries is doubtless motivated to some degree by a residual mythology of the noble savage and peppered with a healthy dose of post-colonial guilt. Perhaps the plight of peoples like the San attract our attention in the West because, to borrow Ramos' (1993:65) phrase they 'project more eloquently to the West a

symbol of the pristine good-life endangered by the brutality of capitalist expansion'. Ongoing debates concerning the accommodation of certain customary or tribal laws and practices in contemporary states remind us that a universal doctrine of human rights is, like all 'rights' narratives, neither natural nor absolute, but a cultural or political *fiction*. Because rights narratives are often associated 'with Western thought and a western world view in the eyes of the general [Southern African] populace', we are reminded how rights narratives can sometimes be interpreted as Eurocentric and 'intolerant of competing world views' (Nhlapo 2000:137). If this is the case for human rights then, it is easy to understand how 'indigenous rights', can be dismissed as yet another example of the western tendency to universalize its own apparently arbitrary morality.

To be sure the obvious unease that ILO 169 provokes is partially a function of the fact that few southern African Governments have lived up to stated constitutional principles in their dealings with ethnic minorities. It is also reflective of the extent to which narratives that ascribe 'special' status to indigenous peoples are premised on a somewhat simplistic opposition between the colonizer and colonized that may be applicable in northern Europe or the Americas but fails to accommodate the often bewildering complexity of political relations and social identities in southern Africa on the cusp of the third millennium. These difficulties are well illustrated by reference to the land issue in Namibia.

Land dispossession has arguably contributed more than anything else to San social and economic marginalization. The present situation is such that it is arguable that a failure to provide San with greater secure access to land or natural resources will seriously limit the potential success of development interventions undertaken on their behalf across a wide range of sectors (Suzman 2000a). However arguments for greater land access expressed by reference to 'indigenous rights' appeal explicitly to *ancestral* or aboriginal title claims to land that, given the radical changes in tenure that have taken place in the region over the past two centuries, are simply unworkable (see Hangula 1998). In a region where subsistence farming and hence adequate access to land are the main source of livelihood for the predominantly rural population discussions on land access must be mediated by demographic and economic realities to be realisable. In other words, it is essential that San

claims to land are mediated by an appeal to achieving equity or parity with others rather than by reference to 'apparently' objective rights pursuant to their privileged status as aboriginals. Thus, for example, in the case of the Central Kalahari San populations in Botswana (G/wikho and G//anakhoe) which has been a favoured cause among indigenous rights lobbyists, Government has repeatedly refused to engage in dialog with San groups as long as this dialog remains framed as an 'indigenous' rights issue. They have however been amenable to discussions within existing constitutional or legal frameworks and have made a number of important concessions based on this (Suzman 2000b).

Equally tricky are questions relating to multi-culturalism in poly-ethnic states. The ILO's Convention 169 although aimed most explicitly at indigenous peoples also accommodates 'tribal' peoples - a designation that could well be applied to most peoples in southern Africa. Indeed, in terms of cultural continuity and the coherence of 'traditional systems' San are in many instances, by virtue of their particularly harsh experience of colonialism, somewhat less 'tribal' than many of their neighbours.¹⁴ Tswana tribal hegemony in Botswana notwithstanding, all southern African countries make explicit provision for the nominal continuity of their diverse tribal or community structures and institutions although for obvious reasons these always remain subordinate to the principal organs of state. This process has been far from straightforward as customary rights and practices are rarely in step with modern, liberal constitutions, or universal doctrines of individual human rights. To confuse the issue further the singling out of any one particular (minority) tribal community or group of communities on the basis of their aboriginality for special attention could well provoke conflict. After several centuries of colonial rule during which rights were rationed according to ethnicity and administered through quasi-autonomous 'ethnic' sub-states, it is understandable that southern Africans are wary of bestowing any special status to peoples simply on the basis of ethnic identity.

¹⁴ This is well illustrated in Namibia where of the over 30 'traditional' or 'tribal' communities formally recognized by government in 1996 in terms of the Traditional Authorities Act, not one of the six distinct San applications were recognized. Subsequently two of the six authorities were formally recognized.

These problems would be less marked were emphasis shifted away from questions pertaining to any special status conferred on San pursuant to their being 'indigenous' and instead towards the clear extent to which they are disadvantaged vis-à-vis others and the immediate causes of this. Because the degree to which San are and have been disadvantaged relative to others is so unambiguous there is ample room for the promotion of San rights issues within the far more straightforward paradigm of human rights. Most importantly appealing to human rights allows for San claims to be mediated by and within the framework of the broader national interest and the quest for parity- a process that would be far more likely to find favour with the powers that be. De-emphasising aspects of indigenouness in arguments in favour of the expansion of basic rights for San in southern Africa may well detract from their romantic appeal to westerners who have, after all, not got as worked up about other, less high profile minority rights issues.

The problem of authenticity

Ignoring for a moment, the Botswana minister's assertion that 'all Batswana are indigenous', a further reason for not focussing on their 'indigenous' status as a means of expanding rights for San peoples is that there is simply too much variation in the category for it to justify the kinds of intervention that will be needed to effect any meaningful positive adjustment to the their status relative to others..

The highly marginalized San communities of southern Africa are not the region's only indigenous peoples by ILO standards. The majority of the genetic and, to some extent, cultural descendents of the region's earliest inhabitants comprise Nama (Khoekhoegowab) and Afrikaans speaking populations living primarily in Namibia and South Africa and whose status is not generally comparable to that of the San. In South Africa, there are currently in the region of 300 000 Griquas and growing numbers of 'coloured' people who claim Khoesan ancestry and, in Namibia, there are around 200 000 Khoe speakers.¹⁵ Although within these groups, there are people that are

¹⁵ Given the long history of interaction and assimilation there are of course many other peoples and communities that could claim to be indigenous by

as socio-economically disadvantaged and politically marginalized as the majority of San, they constitute a minority. Moreover, it is clear that, in terms of capacity, ability to mobilize resources and political influence their collective status does not compare with that of the San. This is well illustrated by reference to HDI statistics for Namibia where, in 1998, Nama/Damara (Khoe) speakers had an HDI close to three times that of Namibia's San population (see Figure 2). This situation is further complicated by the emergence of a number of revivalist Khoisan groups such as the Khoesan Representative Council and the Cape Cultural Heritage Development Council whose membership is drawn from the large mixed race or 'coloured' community based mainly in the Cape. These groups have all emerged recently and have appropriated or rediscovered their long dormant 'Khoesan' identity with a view to being regarded as an indigenous population and gaining rights or status as a result of this (ILO 1999:10-11).

At this juncture to conflate the status of these better organized, wealthier and more empowered groups with that of the San might not only lead to the marginalization of San within indigenous movements, but also might draw attention away from or even trivialize the seriousness of their current situation. Tied to this, there is a hint of political opportunism in some people's quest to gain recognition as 'indigenous' especially among revivalist Khoesan groups such as the KRC. Were San issues to be conflated with their agendas, this would arguably taint the credibility of the San case and certainly draw attention away from some of the more pressing problems experienced by them. Similarly there is a risk that other better organized groups could capitalize on the difficulties experienced by San and so draw valuable resources away from where they are needed most.

There are further aspects to the problem of identity politics that bear mentioning in this regard. San are by no means a homogenous group. The power relations that evolved in colonial southern Africa meant that in spite of their historical, geographical and cultural diversity southern Africa's San population came to be classified in uniform terms. A collective San identity remains of secondary importance to the majority of San who, after all, remain highly disaggregated and for the most part, suspicious of and uncomfortable

virtue of Khoesan ancestry a fact they point out is clearly manifest in language, cultural practice and for that matter, genetic make up.

with centralized or hierarchical institutions. Over the last few years there have also been a number of instances where San have made it clear that they do not wish to conflate their identity with others that fall into the broader category. Thus for example, few Ju/'hoansi in the Nyae-Nyae area would claim to share a common identity with other San groups such as the Kxoe of the West Caprivi and Okavango Delta or the Hei//um of central Namibia.

Other options and International Instruments

While ILO 169 and the UN Draft declaration provide a useful benchmark against which to assess the status of the San in southern Africa, it is clear that bestowing any special status or rights on San as an 'indigenous minority' in the short term would not necessarily serve their immediate interests.¹⁶ Given the current opposition to the idea of 'indigenous rights' in the region, and the broad range of people to which it could be applied, a far more practical strategy in the short term would be to pursue San rights by explicit reference to the extent of their socio-economic, and political marginalization and its clear coincidence with ethnic identity. Circumstances in southern Africa are very different to those in Europe and the Americas and, San and San organizations will have to be content at present to pursue rights issues within the framework of international law to which their respective national Governments are party and this does not, at present, include ILO Convention 169. Arguments for affirmative action acquire their moral authority in specific contexts and are justified by reference to the status of the intended beneficiaries relative to others in any particular context. While, to be sure, the current status of the San is tied to their 'indigeness' insofar as they are an aboriginal population that has been largely disenfranchised, indigeness itself is insufficient cause to justify their being granted special status. However, if we consider the status of the San on the basis of a 'detailed articulation of wrongs and needs' (Chanock 2000:36) a considerably stronger case exists.

¹⁶ It would also raise numerous difficult questions concerning who is in fact entitled to benefit from such a program. As was noted earlier San social

Although the ILO Convention 169 and the draft UN Declaration on the Rights of Indigenous Peoples have no legal status in southern Africa, there are other conventions, covenants and treaties to which San can appeal in order to lobby for the establishment of a policy framework more suitable to their needs. These include Agenda 21 of the Rio Earth Summit, the UN Declaration on the Elimination of all Forms of Racial Discrimination, the UNESCO Convention against Discrimination in Education and, most significantly, the UN Covenant on Civil and Political Rights. Unlike ILO Convention 169 these documents appeal to a universal model of 'human rights' that are clearly less objectionable to national governments in southern Africa and more in tune with the rhetoric of nation building.

Outside of agreements dealing explicitly with Indigenous rights issues, the UN's Covenant on Civil and Political Rights is the most important as far as San are concerned. In countries where it has been ratified, this covenant provides a rubric for dealing with most, if not all of the issues that are key to securing San collective or individual rights. Specifically, this covenant makes provision for all people's right to self-determination including the collective right to 'freely determine their political status, freely pursue their economic and social development and to freely dispose of their natural wealth and resources' (Roulet 1999:83). Most important from the San perspective is Article 27 of the Covenant which guarantees the rights of ethnic minorities in countries that have ratified the covenant to enjoy 'in community. . . their own culture, to profess or practice their own religion or to use their own language' (Roulet 1999:3). In Namibia, South Africa and Zimbabwe this covenant is legally binding and hence provides one option for San to lobby their interests and if necessary seek redress through legal channels.

By appealing to this Covenant as opposed to ILO 169 focus can be placed more pointedly on the extent of San social, political and economic marginalization without invoking complicated and effectively irresolvable debates regarding who is indigenous and who is not and indeed whether 'indigeness' is sufficient cause to justify the granting of special status on any one population group anyway. There is greater scope for dialogue if debate is reframed in a lexicon more appropriate to national agendas and

identity is fluid and this makes it very difficult to identify who would in fact be entitled to these rights.

concerns. Specifically this would allow attention to be focussed on the very real problem of discrimination, the unambiguous clarity of the extent of San social and economic marginalization and the need for national governments, San community organizations and leaders to act decisively to offset what is an increasingly tricky situation. However, this does not mean that there is no role for ILO 169 in southern Africa. Problems with the concept of the 'indigenous' notwithstanding, the convention provides a useful blueprint for a development methodology that is relatively useful for dealing with many of the problems encountered by San peoples (and other minorities) in an effective manner and, very importantly, within the framework of the nation state.

Debates on 'rights' issues are rarely straightforward not least because they are often motivated by real problems that impact on real people. There is a tendency in the West, which is after all the birth place of human 'rights' (Chanook 2000), to regard rights as absolute and natural whether in the context of the rights of the child, the rights of women or, increasingly indigenous people. But ongoing debates in Africa and elsewhere remind us that rights are neither natural nor universal but are political and cultural constructs. As much as their fictional nature does not necessarily detract from their desirability, it does remind us to be more cautious in our blanket acceptance or promotion of them. The status of the San in southern Africa show us firstly that the concept of indigenous rights is not necessarily useful to those it is intended to help and secondly that the idea of indigenous rights is somewhat more problematic than is popularly understood in the West. Certainly, the concept of the 'indigenous' has not received much attention from scholars not involved in the applied task of attempting to define it or the apparently transcendent rights that the global community *should* grant those that fit into this category. Also, an analysis of the ways in which people appropriate, negotiate and claim an 'indigenous' identity in the light of the growing globalization of 'rights' narratives associated with the category could provide some compelling insights into the increasingly tangled web of identities that constitute the post-colonial subject in the new millennium. This is especially true in the case of San communities who have yet to embrace a national identity in anything but the most superficial of ways

and who (in some cases) are seeking to anchor local level political aspirations in the fertile soil of a global indigenous rights framework.

References

- Barsh, R. 1996. Indigenous peoples and the UN Commission on Human Rights: A case of the immovable object and the irresistible force. *Human Rights Quarterly* 18: 782-813.
- Chanook, M., 'Culture' and Human Rights: Orientalising, Occidentalising and Authenticity. In M. Mamdani. (ed.). 2000. *Beyond Rights Talk and Culture Talk; Comparative Essays on the Politics of Rights and Culture*. Cape Town: David Philip Publishers.
- Dickens, C. 1853. *Household Works*. London.
- Gordon, R. 1992. *The Bushman Myth: The Making of a Namibian Underclass*. Oxford: Westview Press.
- Guenther M. 1980. From 'Brutal Savages' to 'Harmless People': Notes on the changing Western image of the Bushmen. *Paideuma* 26:123-140.
- 1986. 'San' or 'Bushmen'? In M. Biesele, K. Gordon and K. Lee (eds.), *The Past and Future of !Kung Ethnography*. Hamburg: Helmut Buske Verlag (Quellen zur Khoisan-Forschung 4).
- Hangula, L. 1998. *Ancestral Land in Namibia*. Windhoek: University of Namibia (SSD Discussion Paper no. 20).
- Hitchcock, R. 1992. *Communities and Consensus: An Evaluation of the Activities of the Nyae Nyae Farmers Co-operative and the Nyae Nyae Development Foundation in Northeastern Namibia*. Windhoek and New York: Ford Foundation.

James Suzman

----- 1996. *Kalahari Communities: Bushmen and the Politics of the Environment in Southern Africa*. Copenhagen: IWIGIA.

Hitchcock, R. and J. Holm. 1993. Bureaucratic domination of hunter-gatherer societies: A study of the San of Botswana. *Development and Change* 24: 305-308.

International Labour Organisation. 1996. *Indigenous and Tribal Peoples: A Guide to ILO Convention 169*. Geneva: ILO.

----- 1999. *Indigenous Peoples of South Africa: Current Trends*. Geneva: ILO.

Lee, R. and M. Guenther. 1991. Oxen or onions: The Search for trade (and truth) in the Kalahari. *Current Anthropology* 32: 592-601.

----- 1993. Problems in Kalahari historical ethnography and the tolerance of error. *History in Africa* 20: 185-235.

----- 1995. Errors compounded: A reply to Wilmsen. *Current Anthropology* 36: 298-305.

Le Roux, W., 2000. *Torn Apart: San Children as Change Agents in a Process of Acculturation*. Windhoek: WIMSA/Kuru Development Trust.

Motzafi-Haller, P. 1986. Whither the 'True Bushman': The dynamics of perpetual marginality. *Sprache und Gesichte in Afrika* 7.1: 295-328.

Nhlapo, T. 2000. The African customary Law of Marriage and the Rights Conundrum. In M. Mamdani. (ed.). 2000. *Beyond Rights Talk and Culture Talk; Comparative Essays on the Politics of Rights and Culture*. Cape Town: David Philip Publishers.

Ramos, A. 1992. Reflecting on the Yanomami: Ethnographic images and the pursuit of the exotic. In G.E. Marcus (ed.), *Rereading Cultural Anthropology*. Durham, NC: Duke University Press.

James Suzman

Saugestad, S. 1996. *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance and the First People of the Kalahari*. Faculty of social Science, University of Tromsø.

UNDP, 1996. Namibia Human Development Report

— Suzman 2000c. *Things from the Bush: A Contemporary History of the Omaheke Bushmen*. Basel: PSI Publishing.

UNDP, 1998. Namibia Human Development Report.

Wilmsen, E. 1989. *Land Filled With Flies: A Political Economy of the Kalahari*. Chicago: University of Chicago Press.

EU San Assessment Publications

— Brenzinger, M. 2000. *An Assessment of the Status of Angola's and Zambia's San Populations*. Windhoek: Legal Assistance Centre/EU.

— Good, K., Mazonde, I., Rivers, R., and Cassidy, L. 2000. *An Assessment of the Status of Botswana's San Population*. Windhoek: Legal Assistance Centre/EU.

— Madzudzo, E. 2000. *An Assessment of the Status of Zimbabwe's San Population*. Windhoek: Legal Assistance Centre/EU.

— Robins, S. 2000. *An Assessment of the Status of South Africa's San Population*. Windhoek: Legal Assistance Centre/EU.

— Suzman, J. 2000a. *An Assessment of the Status of Namibia's San Population*. Windhoek: Legal Assistance Centre/EU.

— 2000b. *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek: Legal Assistance Centre/EU.

Town