

LOST IN TRANSITION? THE POLITICS OF CONSERVATION, INDIGENOUS LAND RIGHTS AND COMMUNITY-BASED RESOURCE MANAGEMENT IN SOUTHERN AFRICA

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Introduction

Grand visions may still be biased. Celebrated as an ‘international model for conservation’ (National Geographic 1996) the establishment of the Peace Park Foundation in South Africa in 1997 promised indeed a new vision for the protection of wildlife and biodiversity, and a political healing of the ‘scars of colonial history’, i.e. the national borders dissecting Africa according to European design.¹ With its core idea and overall aim to promote and implement the concept of Transfrontier Conservation Areas within the Southern African Development Community region the Peace Parks model grabbed the imagination of the political elites, the development agencies, the tourism industry, the conservationists, and the wildlife managers as no other initiative had done before. Given the increasing scarcity of peace in global relations, this imaginative agenda may well deserve to be wholeheartedly embraced, but on condition that it also confers an all-

¹ At the Berlin Conference 1884 African territories were sliced up without their consent and without regard to people(s), homogeneous or not, or to their cultures, their lands or their identities.

encompassing benefit. A main concern in this regard is the inclusion and participation of indigenous peoples who lived on many of these territories from time immemorial and used their resources for their livelihood. If the peace afforded at the international level comes at a price to be paid by local resource users who are left out of the bilateral or multilateral agreements on huge conservation areas, the picture becomes somewhat less favorable. The question then arises, does the highly loaded moral discourse cover a tacit nationalization of lands, natural resource accesses and control over the lives of local people?

This paper will focus comparatively on the first two Southern African states that entered a bilateral Peace Parks agreement, and their divergent approaches to indigenous development and resource management involving San communities, namely South Africa and Botswana. The two states shared this Peace Parks vision of environmental protection involving local communities to a certain extent. Opened to the public in the year 2000 the first officially declared Kgalagadi Transfrontier Park brought down the fence between the South African and Botswana protection areas of the South-Western Kalahari. The joint conservation management and planning agreements saw winners on all possible sides, as mentioned above, from the political elite to other stakeholders in natural resource management and eco-tourism. Reviewed on the basis of the two dimensions of ecological sustainability and improvement of bilateral international relations, this achievement is indeed remarkable. Furthermore, it has already set an example for the installation of comparable transfrontier conservancies in Southern Africa (foremost the Greater Limpopo Transfrontier Park/Conservation Area covering almost 100,000 square kilometers) and beyond. The usual extensive inter-state negotiations and joint preparations clearly help to build mutual trust, as a precondition for peaceful, constructive and stable relations. If it were not for the possible adverse side effects of such agreements for local and indigenous communities, the two-tiered vision of peace and ecological conservation would deserve little, if any critical attention.

But the legal record and empirical data in both states indicate that the agreements on conservation issues may not stretch to accommodation of the interests of local and/or indigenous communities and the related concepts of development and resource use. A comparative analysis of governance in the field of indigenous-state relations in Botswana and South Africa reveals quite divergent choices of options. Both states clearly consider the development of indigenous populations to be their own internal affairs and have not involved the people originally inhabiting the

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areas in question in these negotiated arrangements.² This neglect of what many indigenous communities (and not only in Southern Africa) consider their older historical rights to land and resources became the target of criticism made public through the attention of world media and through their respective legal struggles. For the late legendary master tracker and long serving South African Park Ranger Karel Vet Piet Kleinman the Peace Park establishment did not mean peace for himself and the community of Khomani-San,³ whose ancestors are buried inside the park, but whose graves cannot be visited except by paying the regular entrance fee:

I could only say, all our people are there in the park, the late Regopstaan Kruiper is buried there and our whole heritage, our life is there; the graves of our ancestors are in the park. So what I can say actually is that it's our life, the park is our life, it's our history, it's our heritage. It's our people's land, we don't want to be treated like tourist people, when we are in the park, we don't want to be treated like strangers, but what we would like to be treated as is the real and true owners of that land, so we would like to be treated fairly as the true owners of that land (Karel Vet Piet Kleinman, interview on 12 February 2004).

In this contribution we wish to shift attention from the transnational perspective of conservation through the creation of transfrontier parks to the recent developments in the wake of local/indigenous land claims on parts of the Kalahari by individuals

² As far as the vast lands of the Kalahari are concerned there can be little doubt as to the first inhabitants and therefore resource users. Cf. for instance Schapera:

Of the people of South Africa of whom there is any definite historical record, the Bushmen are certainly the oldest; the other native peoples show in their traditions that when they first entered the country, they found the Bushmen already scattered over the greater part of its surface ... (Schapera 1930: 26)

³ There is no uniform set of names for some of the larger ethnic divisions. The terms 'San', 'Bushmen', 'Basarwa', 'Khwe' have all been used to refer to peoples with hunting and gathering practices in Southern Africa. Compare discussions inter alia: Mogwe (1992), Hohmann (2003a), Hitchcock and Biesele (2004), Saugestad (2004).

and organizations representing those indigenous communities who see themselves as the true owners of the land.⁴ We will therefore question certain shortcomings in the highly commendable vision of peace behind the transfrontier parks idea. The central aim of these critical reflections lies in the search for alternative options to integrate conservation policies directed to the protection of biodiversity and cultural diversity. Community-based resource management, as a relatively new paradigm of multi-stakeholders governance, appears to offer (more) sustainable solutions in this regard. How could the ambitious promise of transfrontier conservation and external peace foster (more) equitable internal relationships between indigenous communities and “their” governments in the interest of development?

Peace for all? Bilateral Conservation Initiatives and Unilateral Ideas of Development

Based on the premises that peace involves not only governments but also people, the exclusion of those stakeholders with perhaps the strongest affiliation of all to the lands in question may prove an obstacle to achieving the respectable aim. Such considerations point to the tensions between conservationists, development agencies and local actors, particularly in the contested arena of natural resource control, use and management. Critics therefore interpret the peace parks initiative as a more benevolent, but no less harmful policy of indigenous expropriation, access restriction and pretexts for internal displacement than those of earlier periods. In their view there is little difference between earlier forms of land and resource nationalization in the name of conservation and the new form of resource centralization or ‘transnationalization’ in the interest of two or more states. Whereas the first approach used the strategy of a unilateral declaration of national parks and monuments, or game and other reserves, whereby ‘the land authorities involved with wildlife and natural resources ultimately retain control over the land and resources’ (Hitchcock 2004: 226), the second approach worked towards the

⁴ For the controversial discussion as to the adequacy of the notion ‘indigenous’, particularly in Africa and Asia, see for instance Thornberry 2002, Kuper 2003, Barnard 2006. The notion is used in the following pages with relational connotations, as historically constituted and socially variable; and not as an essential(ist) category of external identification (see Zips 2006; cf. Saugestad 2001b: 305-309).

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conservation of large transboundary areas through a bi- or multilateral declaration of peace or transfrontier parks, which was later to be acknowledged and ratified by national legislation. Both conservancy regimes tend to dispossess and disenfranchise local communities from lands and resources, as well as from their territorial and resource rights.

Community-based natural resource management (CBNRM) programs that have gained considerable momentum since the 1990s in Southern Africa, including Botswana and South Africa, may still reflect the hierarchical arrangements introduced by conservancy legislation and governance. This contribution will therefore examine whether this procedural deficit may be one of the key factors in the failure of CBNRM programs to resolve the significant conflicts between conservation and development in Southern Africa. Hitchcock for instance argued against the hegemonic utilization of environmental protection: "Tourism development and conservation were used as justifications for the removal of people from some of the best-known protected areas in Southern Africa" (Hitchcock 2004: 224). According to this critical view, the rhetoric of conservation thus continues to provide discursive strategies for effectively restricting the access of local and indigenous resource users. Then the question of political costs, in the areas of internal and external relations, political stability, empowerment of local communities, and even broad-based economic development, arises. In which way may top-down ordained CBNRM programs suffer from the democratic deficiencies of centralized and unilateral forms of development, resource governance and conservation regimes?

In the worst case scenarios, for which perhaps the Central Kalahari Game Reserve (CKGR) resettlement of its former inhabitants, the G/wi and G//ana First Peoples or San offers a 'good' example, the affected local indigenous communities fell victim to an almost complete alienation. Perhaps with benevolent intentions the Botswana Government removed the remaining San communities from the CKGR, after terminating services such as water delivery, to a newly developed site outside of the conservation area. At this New Xade the relocated groups were to enjoy all the benefits of 'modern civilization', foremost in the areas of health care, schooling and education, electricity, resource supplies, and 'proper' subsistence on the new basis of cattle farming.⁵ In contrast to the ambitious but unilateral

⁵ Cattle were provided by the Government as an incentive for resettlement and a form of compensation for the loss of land and hunting rights.

development plans, the complaints of the relocated San never ceased. In the age of global awareness for the plight of indigenous peoples and the focus shed on these communities through the *International Decade of the World's Indigenous People* declared by the UN General Assembly (1994-2004 and prolonged for another decade), international media and NGOs had more than an open ear for the vociferous charges of internal displacement, human rights violations, and even cultural genocide. Much to the annoyance of the Government, Botswana became the target of a fierce campaign by the well-known activist group Survival International.

However, a wide range of local and international observers demonstrated that the communities concerned suffered from many of the negative side-effects already known to be possible from a vast literature on forced or almost forced migration, and became totally dependant on government and its local institutions. The Botswana Government had perhaps overstretched its developmental capacities by prescribing a particular route for development without sufficient consultation with or the consent of those affected. This was especially unfortunate, as a management plan prepared by the Department of Wildlife and National Parks (DWNP) in 2001 had achieved a high degree of legitimacy through a discursive process involving the communities concerned, local NGOs and government institutions. The *Third Draft Management Plan* for the CKGR focused on an integrated approach to natural resource management by attempting to secure the co-existence of people and the conservation of wildlife. Its primary aim was to create a win-win situation, whereby a compromise between conservation and communities would be established to avoid the relocation of indigenous communities out of the CKGR. It was eventually dropped when the Government decided at Cabinet level to prohibit settlement inside the reserve. A substitute Draft Final CKGR Management Plan of 2002 abandoned the compromise or win-win model for integrated community development through resource use in negotiated community use zones and opted for the concept of 'delivering development' instead (Botswana Institute for Development Policy Analysis 2003: 69-70).⁶

According to the Botswana Institute for Development Policy Analysis (BIDPA), reporting to the Botswana Ministry of Local Government, the Draft Final was not taken back to stakeholders for further consultation (BIDPA 2003). Thus there was

⁶ See Saugestad (2001a: 225) for the compromise on the question of aboriginal rights as an element in the concept of community use zones.

a departure from the participatory methodology employed in drawing up the Third Draft Management Plan. The premises had been that “planning for the co-existence of conservation and community in the CKGR coupled with the continuous involvement of local communities could significantly contribute towards consensus on sustainable utilization of resources within the CKGR” (BIDPA 2003: 70). Instead the established negotiation process built on mutual trust and respect between state agencies, local NGOs and the communities collapsed. In the aftermath the attempted win-win situation tumbled into a lose-lose conflict scenario that seriously harmed Botswana’s human rights record and democratic image. It led to a number of problematic consequences, including: (1) a long and expensive legal struggle resulting in an unexpected decision of the High Court of the Republic of Botswana, which ruled largely in favor of the 189 individual San applicants, most importantly as regarding their right to return to the CKGR (*Roy Sesana et al. vs. Attorney General of the Republic of Botswana*, 13 December 2006); (2) complex problems following the earlier relocation to two settlements outside the CKGR, such as poverty, unemployment, alcoholism and destitution;⁷ (3) the closing of parts of the CKGR for tourism to avoid unfavorable foreign press reportage; (4) a worldwide campaign by the international human rights organization Survival International against the diamond industry. This was based on a conspiracy theory claiming that diamond mining prospects were the sole reason for the internal displacement; (5) greatly increased government expenditure on previously quite self-dependent communities turned into passive welfare dependants; and (6) even an outbreak of violence between former negotiation partners from the San communities and the Department of Wildlife and National Parks (in September 2005).⁸ Furthermore, it is predictable that future generations

⁷ Cf. Saugestad (2001a: 326) for the insufficiency of unilateral government administrative capabilities to tackle all these issues in a top-down framework.

⁸ Survival International’s involvement further hardened the attitudes of Government with a variety of unfavorable results, some of which were: visits of foreign visitors to local communities were restricted, thereby cutting them off from possible revenues through the sale of crafts or the provision of other services such as guided and educational tours on the Kalahari biological environment; some awkward public statements were made by senior Government officials referring to the developmental goal of bringing a very ‘backward’ or even ‘stone age’ people into the modern era, conveying an unfortunate message to a contemporary audience (BIDPA 2003: 71); the space for consultation with local NGOs and interest organizations disappeared after the ‘blood diamond’ scandal-mongering

in Botswana will have to pay the costs of supporting thousands of citizens without serious prospects of ever benefiting from their political involvement, social integration or even their ‘gratitude’.

Whereas Botswana returned to an environmental protection policy that Adams and Hulme (2001: 10) coined “fortress conservation”, and thus moved away from a more participatory approach to conservation and development, the post-Apartheid South African Government sought a rights-based approach. This was adopted as a corrective to past expropriations, relocations and internal displacement of the San communities living in the South-Western part of the Kalahari, the area which became part of the first transnational Peace Park in Africa. An official brochure on transboundary Peace Parks in Southern Africa, compiled for the Southern Africa Initiative of German Business (SAFRI), one of the major donor agencies, states that the Peace Parks model will undo the strict conservation regimes. These, it says, robbed indigenous populations of their lands, resource rights and even access to their historical burial grounds all over Southern Africa. The model is supposed to repair those injustices by returning at least part of the formerly derogated rights, and reconciling environmental protection with ideas of community-based natural resource management. Some of the latter promote the empowerment of indigenous peoples by allowing their self-determined participation in new forms of joint environmental governance and by increasing their land tenure security (Pabst 2002: 17).⁹ South Africa’s rights-based approach with an overall note of reconciliation is consistent with the regular reminders of leading scholars concerned with San and other indigenous peoples to politicians and administrators on the potential complementarity of conservation, community-based natural resource management, and legal recognition of communal, ‘aboriginal’ rights:

It is in the best interests of community-based natural resource management and local communities if the state and other agencies

campaign; and the participatory approaches to decision making processes in the Community Based Natural Resource Management programs, introduced in Botswana in 1993, suffered a severe setback (Masilo-Rakgoasi 2003). See Rozemeijer 2003 for a more general assessment of the assumptions on which the CBNRM approach in Botswana was built, its shortcomings and a critique.

⁹ See Hohmann (2003b: 205-209) for a comparative case involving San communities in Namibian conservancies, and general remarks on the Southern African CBNMR situations in her introduction (Hohmann 2003a).

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recognize those communities officially as proprietary units with de jure rights for land, wildlife, veld (bush) products, minerals, and other natural resources over which they maintain legal control in perpetuity (Hitchcock 2004: 226).

South Africa entered into the bilateral agreement with Botswana on the transboundary status of the 'Kgalagadi Transfrontier Park' in 2000. Just before this, in 1999, the Mandela government negotiated an out-of-court settlement of the Khomani San land claim in the South-Western Kalahari. This agreement, seen in contrast to the client-relationships persisting in other Southern African states' interactions with 'their' indigenous peoples or 'remote area dwellers', stands out as a remarkable breakthrough towards a rights-based approach and legal readjustment of historically strained relations. But the state of community development in the area some years later is ambivalent and rather disappointing. This shows the ambiguities and intricacies involved in relying on a legal settlement alone without sufficient policies and financial means in place for economic empowerment, capacity building and community-based development in cooperation with the beneficiaries of the 'generous' land grant. The restitution of 28,000 ha of lands adjacent to the Transfrontier Park (which itself has a total area of 37,991 km²), over which until the 1930s their forefathers roamed, is not enough. Without innovative management ideas to keep tourists from simply passing through to reach the park with its developed facilities, impressive wildlife and natural scenery, the land is of mere symbolic value. The small amount of wildlife in the area cannot support a hunting and gathering lifestyle, which any way has been largely lost in decades of foraging restrictions. Below we assess some alternative visions of the local communities and their supporters from interest or indigenous rights organizations in Botswana and South Africa. But we first give an overview of the historical tension between environmental and developmental concerns, based on an ideology of conservation regimes through regulated parks which were counterproductive to the interests of local populations (Hohmann 2003: 206). Representations of African landscapes as pristine, 'untouched' wilderness areas fitted the national park ideal, which the tourist industry still promotes in myriads of narrations in Africa and elsewhere (Taylor 2003: 2006). Dominant constructions of 'nature at peace' seek to exclude human interaction through resource use. Ironically, such policies are often directed against those people whose sustainable historical interaction with nature made it possible for the contemporary global community still to enjoy these resources

today.¹⁰

Parks Against People? Conservation and Indigenous Knowledge in the Context of Sustainability

Above all other ethical and legal issues involved, Vet Piet Kleinman sees the 'Parks against People' policies in many countries as a tragic neglect of the conservationist capacities and environmental knowledge of First Peoples:

Everyone should bear in mind that we were the original conservationists for so many centuries, so mutual respect and true partnership would really make it a peace park. We could work together on conservation and environmental issues in order to sustain it for our future generations. (Karel Vet Piet Kleinman, interview on 12 February 2004)

Approaches exclusively in favor of either 'the natural environment' or its inhabitants are criticized for their neglect of participatory modes of governance. Indigenous rights organizations in particular draw attention to the potential of community-based natural resource management policies in local capacity building and responsible, i.e. long-term, environmental decision-making. Human rights NGOs struggle to highlight the false antinomies often drawn by a certain type of 'governmentality' (Foucault 1991) with the object of using conservation discourses against subsistence modes of lifestyle.¹¹ They argue that it remains to be

¹⁰ In this sense, CBNRM is not a new invention, as interest groups consistently argue:

For thousands of years people have been practicing CBNRM by using their natural resources in a sustainable way. But, when National Parks and Game Reserves were set up, hunting for subsistence became poaching and local people were alienated from managing the resources on which they had previously depended. (Kuru Family of Organizations 2004: 2)

¹¹ The common western conception of unspoiled, untouched nature or wilderness permeates conservation thinking. Many, if not most guidelines or policies are based on the assumption that such areas can only be preserved without people (cf.

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determined whether rational negotiations might not produce more sustainable and integrated methods of protecting biodiversity alongside cultural diversity.¹² The Botswana case seems to provide ample illustrations of failures in communication between state agencies and indigenous populations which proved harmful to all the stakeholders involved, including the natural environment itself. As Alice Mogwe, the head of the Botswana Human Rights NGO *Ditshwanelo* underlined:

There would be the need [for the government] to sit down with them [the San] and to say to them: 'look, these are the problems we have, this area is a Game Reserve, you need to work in partnership with us to ensure the wildlife continues to multiply, to ensure that the natural environment continues to be environmentally sustained.' So we need to work as partners in development, not in a unilateral mode of saying: 'that is ours and you are ruining it, so move out!' (Alice Mogwe, interview on 22 February 2005)

An overview of National Parks and Game Reserves provisions and their consequences seems to support the claims of the critics. Conservation through the proclamation of parks has historically functioned as a politico-legal framework which led to the dispossession of earlier inhabitants, without adequate reparations for loss of property, and the restriction of their future access to the 'protection areas', as shown in the table on the next two pages.

Chatty and Colchester 2002).

¹² See for instance Fabrizio and de Wet:

Possible positive impacts of forced removals on conservation are a) the expansion of the country's conservation estate; and b) reduced consumptive use and decreased land deterioration, especially in high-biodiversity areas from which people were relocated. No evidence of negative impacts on conservation prior to people's relocation could however be found in any of the cases studied, and no lasting impacts are evident. (Fabrizio and de Wet 2002: 144)

Park or Reserve Area	Date of Establishment	Size (km²)	Country	Establishment of National Parks (NP), Game Reserves and conservation areas in Southern Africa resulting in involuntary resettlements
ZA: Kalahari Gemsbok NP	1931	9,591	South Africa and Botswana	1,000 Khomani and N amani San were resettled out of the park in the 1930s. The last of the San community were evicted from the Kalahari Gemsbok Park in 1973
BW: Gemsbok National Park	1938	28,400		
Bilateral Agreement: Kgalagadi Transfrontier Park	April 1999	37,991		
Kruger National Park and its predecessors	1926	Ca. 19,000	South Africa	2-3,000 people were moved from Sabi Game Reserve in 1903; 2,000 Makuleke were relocated from Pafuri area (N-Krüger) to the Ntlaveni area in 1969
Central Kalahari Game Reserve (CKGR)	1961	52,730	Botswana	1.100 G wi, G ana and Boolongwe Bakgalagadi were resettled outside the reserve in 1997 and 2002 in nearby areas
Moremi Game Reserve	1964	3,880	Botswana	Bugakhwe and Ani-khwe San were relocated in the 1960s
Nata Sanctuary	1989	230	Botswana	Shua lost access to the sanctuary and its resources

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Chobe National Park	1961	9,980	Botswana	Hundreds of Subiya and some San were resettled in the Chobe Enclave
Tsodilo Hills National Monument; Declared World Heritage Site	1992 2001	225	Botswana	40 Ju 'hoansi San were resettled 5km away from the hills in 1995
Etosha Game Reserve National Park	1907 1958	22,175	Namibia	Hai//om were resettled outside the park or sent as workers to freehold farms in 1954
West Caprivi Game Park. Nature Park by South African admin. Elevated to Game Park. Bwabwata National Park	1963 1968 since 2000	5,715	Namibia	Khwe and Mbukushu were resettled in the early 1960s and Khwe and !Xun San went to South Africa in the 1980s
Hwange (Wankie) National Park. Declared NP	1927 29.1.1950	14,620	Zimbabwe	Batwa (Tuya, Amasili) were rounded up and resettled south of Hwange Game Reserve in the late 1920s

(Compiled through data provided by: Hitchcock 2004: 207; Report by the Interim Indigenous Parks and People Working Group 2003; Hohmann 2003).

Is the discourse of conservation through park formations and regulations indeed a strategic means to pave the way for the expropriation of indigenous peoples? The above chart suggests this. Hugh Akagi, a First Nations chief of the Passamaquody in Canada, also recently argued this by drawing a link between the creation of national parks, internal displacement of indigenous peoples and cultural

genocide.¹³ If that is so, how can human rights and interest organizations enter negotiations with policy makers and governments to empower alternative local views on complementary modes of environmental protection and community-based natural resource management? Hugh Akagi's claim can be heard echoed from indigenous spokespersons around the globe. It questions the legitimacy of national parks proclamations, including the new 'grand vision' peace park initiatives in Southern Africa, if these are made without consultation and participatory involvement of local inhabitants of the areas affected. Implicitly the critique suggests the adoption of an integrated perspective of different development agendas and environmental protection policy measures in Southern African states. This would be used in empirical studies of the impact on indigenous societies of natural conservation policies involving the creation and extension of national parks or (world) heritage sites on 'their' territories.

In the following we will therefore focus on the interplay of these local actors with provincial and state bureaucracies, as well as on the intervention of transnational actors. All these actors apply their own legal frameworks in the highly contested arena of conservation, development and cultural protection. Empirical studies of this legal plurality may analytically combine the praxeological, legalistic and governmental perspectives. The object will be not only to show the complexities of legal pluralism, but also to come closer to solutions for intricate and conflictive relationships that trouble many so-called new management regimes for a sustainable use of natural resources. Because of these pluralist policy frameworks and their implementations, legal actions are often brought with recourse to an international arena as the final forum in which to seek a remedy which will secure serious negotiations. The respective participatory approach appears to be missing, according to a common complaint of NGO representatives working for the protection of indigenous rights, particularly communal land (use) rights:

Sustainable Rural Development can only take place if there is what now in the International Indigenous World is commonly referred to as free, prior consent of the people involved – participation. It means people must be properly informed of what decisions there are and what are the consequences. We have been

¹³ Contribution to a plenary discussion at the International Conference of the Commission on Folk Law and Legal Pluralism in Fredericton, Canada (August 2004).

participating in the Working Group on Indigenous Populations, but our government has not. It was the first time now that our government had to present a report to the Committee of Elimination of Racial Discrimination. Therefore we are having some hope that the human rights standards will slowly go up. (Mathambo Ngakaeaja, interview on 24 February 2003).

“We belong to the Land.” Indigenous Resource and Land Rights in Emerging International Law

Mathambo Ngakaeaja’s comment made in reference to the land claims of various San communities in Botswana reflects a general tendency of support groups such as the Working Group for Indigenous Minorities in Southern Africa, represented by Mathambo Ngakaeaja in Botswana. This is to marry indigenous land claims and international human rights standards with a rights-based approach towards self-determination and development. The United Nations Declaration on the Rights of Indigenous Peoples¹⁴ reveals these current developments in international law in all its paradigmatic force in the Preamble:

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, in their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests

One of the prerequisites for the arduous elaboration of commonly accepted standards for the protection of indigenous rights as an extension to and special case

¹⁴ The Declaration of 2007 is the most comprehensive statement of the rights of Indigenous Peoples, drawn up with direct participation of indigenous peoples, and establishing collective rights to a greater extent than any other document in international human rights law. Although States are not yet legally bound by the Declaration, it may exert considerable moral force, since it was adopted by the General Assembly on September 7, 2007. Not surprisingly, Botswana was at the forefront of opposition to adoption of the Draft Declaration by the General Assembly in December 2006, after it had been adopted by the Human Rights Council (resolution 2006/2, 29 June 2006).

of human rights lies in an equally contested acceptance of plural perceptions of land ownership.¹⁵ When indigenous groups are ‘asked’ or forced by various means to leave their territories and to re-settle on land outside their former ‘commons’, as was the case with the San groups inhabiting the Central Kalahari, they are often presented with small pieces of private lands and comforted with the ‘legal betterment’ of a title deed.¹⁶ But in many cases this ‘privilege’ is still interpreted as an appropriation of communal properties by indigenous land users and not so much as an empowerment with ‘true’ landownership.¹⁷ Indigenous voices from diverse regions of the globe relentlessly refer to themselves as ‘belonging to the land’. They do not speak of the land as belonging to them absolutely, in contrast to modernist prescriptions of private property. Such developmentalist conceptions often fail to concede cultural differences towards land use and possession, as Alice Mogwe shows with regard to the trouble case of the Central Kalahari Game Reserve (CKGR) and the dislocation of its former ‘indigenous’ inhabitants:

They (the San) were given a title deed to that plot of land, this is what they have been told. But understanding land and land ownership culturally, individuals do not own land, the tribe or the group owns a land or holds in trust for you and for future generations. So I think one of our challenges in relation to the whole CKGR issue is really the need to acknowledge that we are dealing with different layers of perceptions, concepts of land,

¹⁵ Common experiences of indigenous peoples include the trans-generational suffering of historic colonization, legal discrimination, political disenfranchisement and the non-recognition of their cultural and intellectual properties. As a consequence, indigenous peoples worldwide struggle for recognition of their specific rights, but the recognition of these rights often comes into conflict with some basic principles of modern constitutional democracy (Kuppe 2004). See also Povinelli (2002) for her critical thesis asserting the perpetuation of injustices through the Australian state’s liberal policy of recognition of aboriginal land rights.

¹⁶ This entitlement may refer to lands that were of no other use before being set aside for the re-settled indigenous communities and are therefore justifiably considered as useless by many beneficial (new) titleholders.

¹⁷ Of course most will insist that the lands ‘belong’ more to them than to any other group or state in a relational socio-legal framework.

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culture relating to land, land-use, recognition of different land-use patterns, because the dominant legal structure does not recognize hunter-gatherers as being able to own land. You got to change and become a settled person to then make use of the dominant forms of land ownership. You may have come across the statement of 1978 which was made by somebody of the Attorney General's Chamber saying that '...because hunter-gatherers are nomadic, they have no rights to land, only to hunting'. (Alice Mogwe, interview on 22 February 2005; see also Hitchcock 2001: 143)

The above table seems to reflect this attitude. (On internal displacement see further e.g: Deng 1998; Credo 1999.) In most, if not all of these examples the relationship of relocated communities to 'their' new lands remained shattered. Alice Mogwe's remarks referring to the San communities resettled from 1997 onwards from the Central Kalahari Game Reserve in Botswana could apply to many of these cases in question:

An interesting point is that people who have been moved to settlements have argued when you ask them: 'why are you not hunting in these areas?' They say: 'this is not our land, we don't know this land, we don't know where to find things.' It is almost as being put in a total stranger's house and told to make a cup of tea. You start hunting for the cups, you start hunting for the kettle, you don't know where the sugar is kept. It is a similar kind of feeling of being disoriented and being put on somebody's land or being put in somebody's house without really given a permission to do so. (Alice Mogwe, interview on 22 February 2005)

Human Rights NGOs such as *Ditshwanelo* in Botswana attest the Government's best intentions in their approach towards the development of indigenous peoples, unlike powerful international NGOs such as Survival International which often tend to ignore empirical local circumstances and use pre-phrased strategies to campaign for international support (and, of course, funding). However, the top-down, paternalistic type of development model, according to which government arrogates to itself the power to decide what is right for its people, becomes the main target of criticism in favor of a rights-based approach to development that acknowledges *de jure* rights to land, wildlife and other natural resources.

Ditshwanelo rallies for concepts such as participation, consultation, empowerment, accountability, “... where people do truly enter into partnership with government in terms of governance issues, in terms of deciding their own future” (Alice Mogwe, interview on 22 February 2005).

Healing Land Grants? Contrasting New Initiatives towards Land Restitutions in South Africa

An assessment of the above-mentioned restitution of 28,000 ha. of lands from the Kgalagadi Transfrontier Park to the Khomani San community by the South African government in 1999 should take into account the paradigmatic change to a rights-based approach in this particular case. Land rights of so-called hunter-gatherer groups in Southern Africa and beyond have never been recognized in modern times. The refusal of recognition has been based on the assumption that hunting and gathering is not a ‘proper’ way of life, and therefore not a legally accepted form of land use (Mathambo Ngakaeaja, interview on 24 February 2003). The legal recognition of historic land rights of the Khomani San and the out of court settlement of their land claim filed on the basis of the new South African land legislation, the Restitution of Land Rights Act 1994, by President Nelson Mandela and his then Vice President Thabo Mbeki was truly different in terms of formal procedure. Admittedly, the narratives used to present and legitimize the setting of a precedent took a highly idealistic, almost religious form of a discourse of healing. Nevertheless, it may be read in the context of the overall political aim of breaking radically with past structures of oppression in order to prove to the South African people and to the world at large that ‘a better world is possible’. But, most importantly, in this case the focus on truth and reconciliation took the legal path of a rights-based approach, although limited to a very small percentage of the lands claimed.¹⁸

Rupert Isaacson’s book *The Healing Land* (2001) describes the vanishing San cultures throughout the Southern African hemisphere and their often failing strategies of cultural survival. Quite consistently with the title of that book, the leading representatives of the ANC referred to their historic return of land, once nationalized through the declaration of a National Park, as a means of healing the

¹⁸ Cf. Zips 2005 for a general discussion of shortcomings in the efforts through the Truth and Reconciliation Commission procedures to bring forth ‘justice’.

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wounds of the past (Robins 2003: 366). What Robins correctly analyses as a highly ambiguous and often contradictory ‘double vision of the cultural politics of community and development’ may perhaps also reflect a new initiative towards governance that meets in a participatory discourse of shared visions. Thabo Mbeki’s speech on the occasion of the Human Rights Day celebration of the signing of the land rights agreement on 22 March 1999 appears revealing in this regard:

We shall mend the broken strings of the distant past so that our dreams can take root. For the stories of the Khoe and the San have told us that this dream is too big for one person to hold. It is a dream that must be dreamed collectively, by all the people. It is by that acting together, by that dreaming together, by mending the broken strings that tore us apart in the past, that we shall produce a better life for you who have been the worst victims of oppression. (Robins 2003: 366)

Leading representatives of the Khomani San community expressed their gratitude to the Mandela government for reviewing the issue of land restitution, including rights of resource use, as a means of a collective legal remedy. This development is therefore important in the light of new initiatives to marry community-based development with land rights or landownership in the realm of human rights acknowledgments.¹⁹ But at the same time the Khomani San land settlement provides an unfortunate reminder that the devolution of natural resource management should be coupled with a grant of adequate resources to cope with the unfamiliar entrepreneurial and conservationist responsibilities.²⁰ It is essential that

¹⁹ In a groundbreaking case which serves as a useful comparator, the Richtersveld Community sued for their land rights. They obtained judgment in their favor in the Court of Appeal, after which the case was taken on appeal to the Supreme Court and finally decided by the Constitutional Court of South Africa. Its ruling acknowledged for the first time that the right in question was indeed ‘indigenous law ownership’, which is interpreted in comparative jurisprudence as substantively identical to an aboriginal title (Chan 2004: 127); see *Alexkor Ltd. and The Government of the Republic of South Africa v. Richtersveld Community and others*, 2003 (12) BCLR 1301 (CC), at para. 62.

²⁰ As indicated by Melanie Wiber and Chris Milley in their Call for Papers for the Symposium ‘Recent Developments in Local/Indigenous Resource Management’ in

there should be joint efforts towards capacity building and the provision of carefully calculated funds to realize whatever projects are considered suitable for a sustainable development of natural resources. Without this the ‘downloading’ of responsibilities remains highly ambivalent and appears indeed doomed to fail as the recent past in the case of the Khomani San land settlement shows. Most of the wild animals on the limited piece of land affected by the land settlement of 1999 adjacent to the Kgalagadi Transfrontier Park have been hunted and killed in the course of a few years. The envisioned eco-tourism plans failed to get off the ground because of a lack of financial means, conceptual expertise and business capacity in this sensible sub-field of the tourist industry. Empowerment in a meaningful sense looks different, according to local voices (Anna Festus, interview on 28 February 2005).

This case of a land dispute settlement between an indigenous community and a national Government nevertheless proves that legal restitutions are not enough without material and logistic means to make good use of the lands and their resources. It may be interpreted as either a ‘cunning’ or a naïve recognition of a legal title, depending on the intentions of the arrogated exclusive (state) sovereignty that backs the entitlement. In either case the ‘generous’ settlement will not lead to a meaningful devolution of resource use rights, and may, on the contrary, provide a reason for the state authorities to retain control over the land and resources.²¹ Practical options to make a living on tiny pieces of ancestral lands with very limited resources available are even less apparent. After all, there have

the course of the 15th International Conference of the Commission on Legal Pluralism in Jakarta, 2006.

²¹ See Povinelli (2002) for her critique of the late liberal state’s ‘cunning of recognition’ in Australian native title legislation; see also Wiber (2003) for her review of Povinelli’s critique of convoluted state attempts to retain control over natural resources despite or even through granting ‘aboriginal titles’. Wiber draws a comparison with the situation in Canada following the ‘landmark’ Supreme Court ‘Marshall decision’, which for the first time recognized community-based fishing rights of the Mi’kmaq and Maliseet First Nations – as long as these did not exceed exploitation beyond the level required to obtain a ‘moderate livelihood’. See also Morton (2006: 125) for a critical review of Povinelli’s charge against late liberal thought, in which he warns convincingly against stretching the argument beyond its grounds and thereby abandoning the fundamental idea of retributive or restorative justice altogether.

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been good reasons for not making the buffer zones around national parks into parts of the reserves. Their (state of) nature and tiny size do not allow the reclaiming of a lifestyle that the indigenous communities were forcefully dispossessed of generations ago. Young Khomani San who have lived on the fringes of the national park since their birth have little idea of hunting or tracking or of the contextual biological knowledge of the Kalahari. They are even less trained in eco-tourism, hotel management or any of the other services that are often expected by the state in return for the recognition of community-based resource rights. Within the hegemonic structure there are generally sanctions threatened in case of inability to function as 'suitable' custodians of internationally-valued biodiversity, particularly animal-wildlife and its exploitation in the tourist industry (Sullivan 2002: 179).

However, leading personalities of the Khomani San living at the borders of the Kgalagadi Peace Park agree that the land claim settlement was important. It was a first step towards transforming the legal-political relationships between indigenous societies and the post-Apartheid state, in contrast to the earlier situation in which they were totally neglected 'dwellers' of remote areas – in the double sense of natural and social remoteness. Land rights and community-based resource control are the crux of serious attempts to take responsibility for the past. Yet, their own vision of community-based environmental policies seeks to integrate the concerns of conservation and management. Indigenous spokespersons such as Dawid Kruiper, the current leader of the Khomani San, or Karel Vet Piet Kleinman, the legendary tracker and former Wildlife warden for the South African National Parks (SANP), appear clad in narratives of reconciliation. They understand very well the need to link their respect towards the first negotiations with government officials with further claims for land rights, access to burial places, and other economic and cultural rights based on land, which they treat as synonymous with their 'freedom':

I would like to thank the government of today for the fact that they have given back parts of our land. We do not have all our freedom back today, but we have much appreciation for the government and especially for Mandela. I would like to just kneel in front of him and take his hand again and thank him for what he did for my people. On the 21st March 1999, our land was officially given back to us by President Mandela. It has taken place here at the Kalahari Molapo Lodge. He has sent Vice-President Thabo Mbeki to come to our people here at the Kalahari Molapo Lodge and officially give our land back to us.

So we are very much thankful for that, at least we have a piece of land back for our people. President Mandela has made it very clear that he gave the land back to the people to whom it belonged, where all their heritage and history are, where all their grandparents and forefathers and ancestors are. (Karel Vet Piet Kleinman, interview on 12 February 2004)

On Entering the Legal Arena. The Indigenous Vision of Parks and Conservation in South Africa

Sometimes referred to as the ‘Professor of the Kalahari’, Karel Vet Piet Kleinman transmitted parts of his extraordinary biological competence to ‘institutionalized’ university professors, both national and foreign. As a relative of the late Regopstaan Kruiper, a well-known San leader and the very person who instituted the land claim, Vet Piet, as he was nationally known, possessed a vast intellectual property of San stories and traditions. Films, TV and a range of other media reported on his extraordinary skills in tracking wild animals and his incredible knowledge of the Kalahari ecosystem. Employed for most of his life by SANP, he acquired his national fame as a tracker legend, and accumulated a symbolic capital through these reports. He became one of the founding members of the Interim Indigenous Parks and People Working Group formed at Augrabies National Park on 6 July 2003, with the overall aim to promote and support the rights of indigenous peoples in South Africa. Perhaps their main focus is on a new vision of an integrated approach towards the protection of peoples’ rights, natural environment protection and community-based natural resource management:

In South Africa, as in other parts of the world, indigenous peoples are an integral part of parks and protected areas. It is important for us that these areas are conserved, and that our history, heritage, traditions and ancestral links to these lands are respected and acknowledged, but we are also concerned about the Earth as a whole. We do not support the concept of pockets of protected areas while the rest of the environment is degraded and despoiled. (Dutton and Archer 2003: 3).

Vet Piet Kleinman was born in the Kalahari Gemsbok Park, before it was even a Game Reserve. He insisted that he remembered a time when his grandparents were free to move in the vast territory of the Kalahari. He was one of the few members

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of his family who managed to obtain a job with the SANP division at Twee Rivieren, and thus to maintain access, at least for professional purposes, to the land of his ancestors. Most of his relatives were forced to exist on the park boundaries and to sell San or 'Bushman' souvenirs to the occasional tourist who would stop on the dusty road to the park. Many worked on the neighboring farms or lived a deprived existence as lumpenproletariat in the nearby towns and cities. A few were living at a farm called Kagga Kama as live 'Bushman showpieces' for so-called eco-tourists.²² From among this group Regopstaan Kruiper together with his first son Dawid Kruiper were the first to sense the dawn of a new South Africa, when the discourse of atonement appeared to take a practical track towards legal restitutive action. It was at Kagga Kama and Welkom that they met the human rights lawyer Roger Chennells who had made a name for himself representing indigenous peoples in Southern Africa. Roger Chennells formulated the claims to landownership and heritage in terms of a communal lands restitution claim.

Regopstaan Kruiper, the father of Dawid Kruiper, was actually the pioneer of the land claim. He was the first with his son Dawid Kruiper, the current traditional leader. Together they were speaking with several people from the media and they started speaking with Roger Chennells, a lawyer from profession. And there the idea of the land claim was born. Because the father of Dawid was saying: 'bring my people back to the Kalahari' and that's how everything started. It's our people's heritage, it is everything for them; they have been born there, they have been living there, and the idea was to bring them actually back to the park. So we are thankful for the land that we received in the park, but we are not yet satisfied, because our people were

²² The farm, owned by an Afrikaaner farmer called de Waal, is located in the Cedarberg, a spectacular rocky area north of Cape Town. It was repeatedly condemned by critics as following in a white settler tradition of exhibiting San and Khoi for the amusement of Westerners going back to the earliest days of the Cape (see e.g. Isaacson 2001: 78-92; Skotnes 1996). Since the local Khomani San community returned to the Western Kalahari and resettled on the land on its restitution in 1999 by the South African Government, Kagga Kamma promotes the historical heritage of San peoples, namely the impressive sites of rock art, on what is a private nature reserve.

moving over the whole park and they have been living over the whole park, they moved over the whole park. So we will probably go back to the government and ask them for some more land (Vet Piet Kleinman and Anna Festus, interview on 12 February 2004).²³

Just retired from his career as a wildlife warden in the SANP administration, Vet Piet Kleinmann wanted to ensure that the legal success bore fruit in community development. For the first five years the land restitution had brought very few, if any, improvements. Not surprisingly, the narrow dimensions of the area released led to over exploitation of the limited natural resources available, and this further reduced its attractiveness for eco-tourism. Therefore, Vet Piet Kleinman had started a well-designed training program for young San in the ‘art of tracking’ and in ‘reading’ nature and animal behavior, when he died in a tragic car accident. The ambitious ecotourism plans for self-management were suddenly brought to a halt, hopefully only temporarily. But his work towards formulating an environmental management plan to protect indigenous access to lands inside the national park as the inalienable ‘source of our existence, our language and our heritage’ was sufficient to show innovative linkages of indigenous rights protection, natural resource management and conservation (Dutton and Archer 2003: 9).

The Interim Indigenous Parks and People Working Group (in which Vet Piet’s cousin Anna Festus remains still a vocal member) made a detailed assessment of the indigenous common lands situations in South Africa’s National Parks. On that basis the Group came forth with a well elaborated ‘to-do’ list to extend the benefits of National Parks beyond the park boundaries to indigenous communities, and at the same time to strengthen conservation efforts through community-based forms of collaboration. One important outcome relevant to a legal devolution of natural resource rights in favor of formerly dispossessed indigenous peoples became ‘South Africa’s Submission to the Indigenous Caucus at the World Parks Congress’ in Durban (from 8 to 17 September 2003). This gave rise to visionary new impulses not only to community-based management planning, but also to effective conservation efforts, all with the overall aim of economic empowerment of formerly disenfranchised and economically depressed groups and their

²³ See Chennells and du Toit (2004) for a discussion regarding land allocation to indigenous peoples and problems of capacity building for the complex management of these common lands.

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individual members (see Dutton and Archer 2003: 7).

However, a cautionary note has been sounded by the Human Rights lawyer Roger Chennells who was involved in the Khomani San lands claim, and later in the famous intellectual property rights precedent on the matter of traditional knowledge of the Hoodia plant (on which see e.g. Duda 2005). According to him the recourse to legal means brought about sensitive ambiguities (as analyzed also by Robins 2003) and a set of complex relationships and networks with diverging and often contradictory expectations. At the core of these challenges were different notions of land and the social relationships regarding land in both the field of cultural ecology and that of legal institutions. The issue concerns a community that appears highly cohesive and consensually oriented only when seen against the background of idealistic stereotyping by outsiders and media coverage in relation to the 'first peoples of the earth'. The process of filing land suits on behalf of such a community emerges as far more complex than merely translating legal frameworks into indigenous notions and worldviews:

The challenge was to trying to treat them so carefully that you did not manipulate them or confuse them by telling them what the options were. So as a lawyer, it's very difficult, not to abuse the powers that we have, derived from knowing the world, knowing the consciousness and the laws of the world. In the Kalahari case, I think we had more time (than in Botswana), and we had a human rights government that was prepared to operate. We had the Mandela Government, which was prepared to talk – and a very good solution was found. You can't really translate these cultures away from the land, the words all mean things related to the land, the plants mean something, the game – all related to their landscape. (Roger Chennells, interview on 20 October 2005)

One of the main concerns of the lawyer working on indigenous land claims can be exemplified by the Khomani San land claim to a portion of their formerly used lands in the Kgalagadi Transfrontier Park. According to Roger Chennells, it requires a peculiar framework to be in place to enable the reconstruction of a community which had lost everything over past decades. For him it may be viewed as a development crisis when San peoples are forced by circumstances to start becoming managers of land, as opposed to people 'who belong to a landscape'. In the case of the San in South Africa the issue is not about protecting their lifestyle,

but rather about transforming it into something which they never had: a managerial attitude towards communal land use. ‘But is it reasonable’, Sullivan asks provocatively, “to expect that a structurally entrenched rural poor should continue to service the fantasies of African wilderness projected by environmentalists, conservationists, tourists and trophy hunters?” (Sullivan (2002: 180) His proposal is simply to have the ‘world’s wealthy’ pay compensation to local communities for the opportunity costs of not converting either land to alternative uses or large mammals to cash. Although this may perhaps be justified, it seems nevertheless short-sighted, if we recall the experiences of local communities converting welfare payments into alcohol and other more or less useful consumer articles. What perhaps appears rather needed are much less ‘spectacular’ procedural commitments. Truly worthwhile would be, for example, participatory explorations of possible and feasible joint initiatives for capacity building in natural resource management, conducted from the point of view of those concerned and not from the desk of international development planning agencies. Without these, even long-term direct payments for the service of maintaining wildlife may result in the alienating experiences of many contemporary indigenous peoples in Southern Africa. One does not even have to recall the depressing life worlds of the institutionalized ‘Bushmen puppet shows’ with their exoticistic representations of ‘authentic hunters and gatherers’ in the tourism industry, or the totally displaced Bushman lumpenproletariat in the suburbs and parking lots of South Africa’s cities.

As yet the ambiguities involved in the ‘politics of recognition’ have not been solved even in the Southern African showpiece case of the Khomani San. As a result of the land restitution, people regained some parcels of the lands of their forefathers. But this was under the expectation that they would use it differently and in accordance with conservation and development expectations (in eco-tourism among others) held by national and international NGOs or institutions. Without sufficient means, expertise, participatory planning and co-operative efforts to make community-based natural resource management work, the successful land claimants have so far been left stranded. Of course, such co-management initiatives also employ ambivalent transformative pressures on indigenous communities to induce them to buy in to a more utilitarian resource management planning. All this of necessity involves a new approach to development, but the potential difference from other models of development forced on indigenous peoples lies in their possible self-determination and a higher degree of freedom to decide their own destiny. Roger Chennells compares the South African initiative towards a rights-based approach (with all its shortcomings and ambiguities) with

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the Botswana ‘solution’. The most important difference appears to him to be in the acceptance of the internal linkage between land control or ownership and reasonable development carried out according to the affected peoples’ own vision:

All the indigenous knowledge goes around the land. So at some level, it’s a personal loss and it’s a collective loss for the San people. What the Botswana government does not understand, and they have not really listened to us, when we’ve tried to explain, that this is a value that the rest of the world is starting to look for increasingly. We’ve tried to explain to the Botswana government, that in Australia they utilize for example the cultural value of Ayers Rock, and Kakadu, where the Aborigines had a relationship to the land. All that translated into huge international money for them to apply for a world heritage site and the world flux to Australia to see that combination of those two – the culture and the land. And that is what the world is so hungry for. The Botswana government thinks that their job is to develop these people fast, and they think that the only one way to do it is to wipe out all of the competing knowledge systems. So it is quite similar to what Mao Tse Tung did, wiping out thousands of years of development in Ming vases and beautiful art and treasures, thinking that this means the people can become focused on a new way. (Roger Chennells, interview on 20 October 2005).

Conclusion

Exasperated by centuries of being legally defined by others, denied the fundamental human right of self-determination in the process, and locked out from resources needed for material survival as well as democratic participation, indigenous peoples entered the arena of human rights in the international institutions from the 1960s onwards. These initiatives led to a multifaceted emergence of new developments in international law and the adoption of reparation policies on the global level of the UN, the regional level of state associations such as the African Union (AU), the Organization of American States (OAS), and the EU, and various nation states. In the process, indigenous representatives and their international supporters, alongside human rights lawyers, formed a new alliance around the term ‘indigenous’. The term is deemed inconvenient by many postcolonial governments who follow the colonial path of denying the legitimate

claims of people(s) who were excluded from political participation and legal self-determination during past centuries.²⁴

A vast literature on the jurisprudence of human rights and international law reveals that the indigenous rights discourses are not about primitivism, cultural purity, or exclusive ancestral roots, but on unfolding notions of equality, procedural justice, and a universal right of self-determination, all promised from the beginning by the very idea of human rights. These new developments towards a pan-indigenous or 'trans-indigenous' movement deconstruct the derogatory original meanings of indigeneity.²⁵ Paradoxically, the term 'indigeneity' (or 'indigenesness') is thereby, on the one hand, reflexively unveiled as an invention in the historical context of the law of nations, used in all its historical versions to deny the *indigenes* any right to govern themselves on their lands and any right not to be conquered (Anaya 1996: 22). On the other hand, the term is at the same time

²⁴ Compare for example a statement made by Mathambo Ngakaeaja on this process:

The tendency that some groups are much more aware of other Bushmen groups and their common interests is owed to the participation of the Bushmen in international circles, whereby we begin to learn lessons from other fellow indigenous brothers and sisters. This is also because of our participation at Geneva and parallel events around that. (Mathambo Ngakaeaja, interview on 6 March 2004)

²⁵ Compare another interview with the national representative of WIMSA in Botswana:

You will find that that movement is actually growing throughout the Southern African region. In South Africa, they have established an institution called South African San Council, a purely political platform for the Bushmen to hear their views and interests. In Namibia such a board is under formulation, here in Botswana, only three weeks ago, we had a first meeting with a brainstorming session and an organization such as WIMSA goes a long way indicating the Pan-San-movement characteristic in terms of uniting in a regional organization such as WIMSA. There is a Pan-San-movement that is growing up. (Mathambo Ngakaeaja, interview on 8 March 2005).

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reconstructed with dynamic new meanings. The historical references to past practices of genocidal violence and ultimate domination are in a way consciously used to encompass and unify the 'downtrodden of the earth'. This aims to enable them to gather communicative competence, political strength and discursive momentum, in arguing their common sort of expropriation and denial of the power to define themselves in the present. The object is that they achieve a self-determined future, based on their regained control over natural resources.

The communicative competence which representatives of indigenous peoples have shown in the process works, like a self-propelling program, against such notions. Notions of primitivism sometimes come from the evolutionist perspectives of some NGOs that regard 'indigenous' as the noble savage of modern times, and sometimes from the viewpoint, adopted by some states, that sees them as 'poor stone age creatures' for whose development the state needs to fulfill its civilizing mission rooted in a doctrine of trusteeship (Anaya 1996: 23-6; for more detailed discussion of the notion of indigeneity see: Barnard 2006; Zips 2006). In either case indigenous voices and their legal or activist supporters are able to demonstrate on empirical grounds that paternalistic policies of transition based on a preconceived notion of 'universal modernity' generally lead to unwanted results and often enough to cultural dissolution. Their eloquent reasoning in the context of institutions such as the UN Permanent Forum on Indigenous Issues send a clear warning to a certain mode of state 'governmentality' that a high degree of cultural diversity may be lost in a top-down ordained process of transition. Seen in this controversial context, the timid initiatives to return common land property to indigenous peoples in South Africa, may prove a ground-breaking first step in the extension of human rights regimes. Specific provisions for indigenous ownership of land may be a prerequisite to the practice of further rights of self-determination and responsible natural resource management.

The depiction of indigenous peoples as 'natural environmental protectors' is a myth in the line of thought of the 'Noble Savage', and may be readily dismissed by a reference to contrary empirical examples. But there can also be little doubt that a high percentage of so-called indigenous communities have proven unaffected either by the 'tempocentrism' inherent in the developmentalist paradigm or by the project of maximized resource exploitation with its pressure to produce at any cost quick economic results and overheated growth rates. Cases from around the globe provide clear documentation that local populations, including indigenous peoples, have been condemned to bear the costs of sustainable development projects, whether in the form of environmental degradation or loss of access to natural

resources, or of land expropriation and forced resettlement. Land settlements through bilateral agreements between indigenous communities and governments may be seen as prerequisites for new management arrangements regarding natural resources, but not as sufficient models of governance in themselves. Only if the devolution of authority rests on equitable and equal negotiations, may a possible complementary mode of sovereignty in respect to indigenous territories create a working basis for capable co-management structures. These need to be built on trust and mutual respect, thus turning the problematic relationships in many countries from the frequent lose-lose position into the highly acclaimed, but seldom attained win-win situation.

Nevertheless there can be little doubt that such a fundamental change of paradigm still has a long way to go before acceptance by many national governments. These often oppose the growing international pressure to address past injustices by at least partially renouncing their monopoly of exclusive sovereign rights on 'their' territory. However, empirical evidence should warn us against developmentalist concepts of forceful integration or assimilation. The anthropological literature provides a rich inventory from around the world of cases where indigenous populations have virtually been lost in their imposed transition. These processes have usually caused tremendous losses of cultural diversity, open conflicts, and, ironically, great financial costs to the state governments in question.

South Africa's distressful experiences of a racist governmentality may evoke new forms of participatory governance under the label of Black Economic Empowerment. These may lead towards integrated and participatory practices of natural resource management and against international trends towards the privatization of lands. Land grants to indigenous peoples such as the Khomani San in the South-Western Kalahari are but one example of this. Yet this example appears to show that the partial renunciation of sovereign rights can serve to augment integrative factors and even to strengthen postcolonial sovereignties by reinforcing the base of legitimacy in pluralist societies. However, empowerment means more than adopting organizational models such as community-based natural resource management. Foremost it demands a strong focus on democratic arrangements as such in order to avoid a mere empowerment of the already powerful local elites. The actual outcomes of new resource management structures will depend on the reasonableness of the decision-making process, that is, the openness of the democratic process to the rational force of argumentative conviction. Unilateral approaches to local development could well lead to a total loss of indigenous cultures in the attempted process of transition, as many human

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rights representatives fear in the Botswana case of forced re-settlement. Whereas community-based management arrangements including land restitution do not guarantee the achievement of the intricate aims of empowerment, environmental protection and sustainable development, at least they are a step in the right direction, provided that they are combined with a democratization process based on communicative rationality, instead of partisan politics.

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