

**Supplementary Report for the Committee on the Elimination of  
Racial Discrimination**

**Submitted for Botswana**

**From: DITSHWANELO – The Botswana Centre for Human Rights**

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## **1. INTRODUCTION**

### **A. Botswana**

Botswana is a landlocked country situated in Southern Africa. It shares its border with Namibia, Zambia, Zimbabwe and South Africa. More than half of the country lies within the tropical zone north of the Tropic of Capricorn and it has a land area of approximately 581, 730 square kilometers. The population of Botswana is estimated at 1,700,000.<sup>1</sup> The majority of the population lives along the eastern corridor in some of the largest traditional towns in Southern Africa. The rest of the country is sparsely populated. Botswana has experienced a high degree of urbanization and the urban population accounts for about 25% of the total population. The population contains significant diversity in language and culture, approximately 60% of the people are of Tswana heritage, 3-4% of the population comprises the Basarwa or San peoples, other groups include the Herero, Kalanga and Mbukushu and Yei peoples.<sup>2</sup>

Botswana gained independence from Britain in 1966, after being a British protectorate from 1885. It has been hailed as a shining example of democracy in Africa and enjoys socio-economic stability. In 1997, the UNDP Human Development Report ranked Botswana 4<sup>th</sup> and 5<sup>th</sup> in terms of gender-related and human development indices. Since independence, Botswana has experienced one of the world's fastest-growing economic rates – between 11% and 13% annually. Despite the praise it has received, 47% of the population lives below the poverty datum line. Clearly, there is need for more people to be actively engaged in development.

The national language of Botswana is Setswana and is spoken by over 96% of the population. English is the official and business language of the country and about 40% of the population can read and speak English. Botswana has a republican form of government headed by a President.

### **B. DITSHWANELO – The Botswana Centre for Human Rights**

DITSHWANELO is the Botswana Centre for Human Rights, located in Gaborone and Kasane, Botswana. The Centre is an advocacy organization that plays a key role in promotion and protection of human rights in the Botswana society. The Centre seeks to affirm human dignity and equality irrespective of gender, ethnicity, religion, sexual orientation, social status, or political convictions. In pursuit of this mission, we seek to educate, research, counsel, and mediate on issues of Human Rights, with specific reference to the marginalized and disempowered. However, due to our commitment to this indivisible nature of Human Rights, this mission extends to regional and international levels. DITSHWANELO is the only Human Rights Advocacy Group that exists within Botswana, does not receive funding from the Government of Botswana and is completely independent of the Government of Botswana.

DITSHWANELO wishes to submit this shadow report for Botswana to the Committee on the Elimination of Racial Discrimination for its review at the August 2002 meeting. We have opted to focus on one particular issue with respect to Botswana and its compliance with CERD and that is the plight of the Basarwa<sup>3</sup> or San peoples. The most recent submission by the Government of Botswana to CERD, was a more overall

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<sup>1</sup> See Annexure 1, Government of Botswana, “Consolidated Report on the International Convention on the Elimination of All Forms of Racial Discrimination”, 2002.

<sup>2</sup> Africa - the South, 1st Edition (Lonely Planet Publications, Hawthorn, Australia; 1997), p.114.

<sup>3</sup> Please see below for an explanation of the Basarwa people and their circumstances.

analysis of the legal instruments relating to human rights in Botswana, and therefore, did not adequately address the problems being faced by the Basarwa peoples.

DITSHWANELO has a history of offering assistance to and working with the Basarwa communities. Since the inception of DITSHWANELO in 1993, the center has been repeatedly approached by Basarwa communities and by San based NGOs to intervene and assess the disadvantaged situation in which the Basarwa communities find themselves. The communities often fear for their livelihood, their future and are often unaware of the steps they can take to protect and/or promote their basic human rights or how to seek redress when their rights are being violated.

Following a request from the Basarwa in the Central Kalahari Game Reserve in 1996, via the First Peoples of the Kalahari, DITSHWANELO became engaged in the land rights issues in that area. Through partnership with WIMSA and the Kuru Development Trust, concerns of the communities in Shaikarawe and D'kar were referred to DITSHWANELO IN 1998. In 2002, DITSHWANELO was approached for assistance by the Member of Parliament responsible for the Moseitse area concerning the Basarwa from his constituency. They have recently expressed concern publicly about the violation of their rights. All of these gave DITSHWANELO their mandate, which is extremely important in Tswana communities and cultures.

The report will provide background information on the Basarwa people, their plight with respect to land use, human rights, social and economic rights, international legal instruments and norms that are being violated with respect to their case, illustrations of attempts at peaceful resolution, and conclusions or questions that CERD may pose to the Government of Botswana. This report shall be accompanied by relevant reports, newspaper articles, press statements, letters, a documentary, supporting documentation from the national archives and court case documentation.

## **2. The Basarwa People and the Central Kalahari Game Reserve (CKGR)**

### **A. History, Culture and Statistical Information**

The Basarwa have been known variously as Bushmen, San, Remote Area Dwellers(RADs), and *Batho ba Tengnyanateng*.<sup>4</sup> The Basarwa<sup>5</sup> have inhabited Southern Africa for at least 40,000 years. The origin of the word Basarwa was explained as being “*ba ba-ba-sa-ruing dikgomo*” (those who do not rear cattle<sup>6</sup>). The Basarwa have reluctantly accepted this name because the implication of the name is that the norm is to “rear animals” and so people who do not are defined in negative terms.<sup>7</sup>

The Basarwa may be categorized as “indigenous peoples” because they are said to be descendants of the original populations residing in the area now known as Botswana. The traditional Basarwa or San peoples were nomadic hunters and gatherers who travelled in small family bands. They followed the water, game and edible plants, everything needed for daily existence was carried with them. Water was easily obtained from underground water sources. The concept of “private ownership” of land did not exist, as it is understood in terms of the general law of present-day Botswana. Every group is familiar with the

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<sup>4</sup> A report by Alice Mogwe, Commissioned by the Botswana Christian Council (BCC), “Who was (T)Here First?”, December 1991 – March 1992, p. 2.

<sup>5</sup> The name Basarwa is the officially recognized term which is a Tswana derivative.

<sup>6</sup> This is the translation from Setswana into English.

<sup>7</sup> Ibid, p.3.

environment in their particular area and re-location to a new area with new environmental surroundings may mean the risk of death for some Basarwa.<sup>8</sup>

The Basarwa argue that historically they preceded the settlement of black people and white people. They argue that in 1885, the British Government failed to determine who else occupied the area and thereby entered into an agreement with the Bantu people only. Effectively, this meant that independence was eventually granted to the major Tswana groups in the 1960's. When the Kalahari Desert was declared Crown land (state land) by the former colonial government, the Basarwa and other major inhabitants became unlawful occupiers on their traditional lands. The major implication of the declaration was the denial of land entitlements to specific groups and this contributed to the marginalisation still being experienced by the Basarwa.<sup>9</sup> The Basarwa have experienced and continue to experience a great deal of alienation within Botswana. Development and the creation of "settled communities" placed them in a difficult position as this continuously threatened their nomadic hunter-gatherer way of life. Without the recognition of the Basarwa peoples' existence within the Kalahari, there was no opportunity for land use patterns in the Basarwa traditional areas to find "official recognition".<sup>10</sup> According to Hitchcock (1987) and Hitchcock *et al* (1989), the quality of life for the Basarwa declined during the colonial period.<sup>11</sup>

The Department of Wildlife and National Parks strictly enforces stringent rules concerning what and how the Basarwa may hunt animals. Special licenses are issued, but they must use traditional methods of hunting, i.e. the bow and arrow.<sup>12</sup> This coupled with the forced removal from traditional land areas, in which they know the flora, has led to increased alienation and destruction to their culture. The Government does not recognize the right of the Basarwa to land, but only to hunting.<sup>13</sup>

The majority of the Basarwa have low levels of education, do not own land and depend upon government drought relief programmes.<sup>14</sup>

## **B. The CKGR (CENTRAL KALAHARI GAME RESERVE)**

The Central Kalahari Game Reserve (CKGR) is located in the Ghanzi District of Botswana (central Botswana) and was gazetted in 1961. The CKGR is 52, 245 square km entirely within the Kalahari region. The annual rainfall is about 350mm and is very variable. The land lacks any features that can retain water beyond the few months of the wet season. There is no permanent surface water and the vegetation is a shrub and low tree savannah with a ground cover of tufted perennials. The climate is classified as semi-

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<sup>8</sup> Ibid, see p.6 "Antidotes for poison which is used on the arrow are available from particular plants. For a Mosarwa located in an area other than his own, unfamiliarity with the flora could well cost him his life. This, apparently, has been overlooked in the government's resettlement programmes."

<sup>9</sup> Alice Mogwe and Daniel Tevera, "Land Rights of the Basarwa People of Botswana," in Environmental Security in Southern Africa, ed. Tevera, D. and Moyo, S., (Southern African Regional Institute for Policy Studies, SAPES Books, 2000; Harare), p. 79.

<sup>10</sup> Mogwe A., "Will Basic Human Rights and Individual Freedoms Continue to be Protected?", in Brothers, S. et al (eds.) *Botswana in the 21<sup>st</sup> Century*, The Botswana Society, pp. 49-67.

<sup>11</sup> See Mogwe, A. and Tevera, D., "Land Rights of the Basarwa People in Botswana", p. 76.

<sup>12</sup> See Annexure 2. Letter from Director of Wildlife and National Parks to DITSHWANELO, 4 July 2002, Re: Special Game Licence.

<sup>13</sup> See Mogwe, A. and Tevera, D., p. 5, "However, in relation to land rights of Basarwa, the official government opinion has been that "Masarwa have always been true nomads...the true nomad Masarwa can have no rights of any kind except rights to hunting." This was taken from the opinion expressed by the Attorney General's chambers in 1978.

<sup>14</sup> *Op Cit*, Mogwe and Tevera, p. 76.

arid. Droughts are frequent in the Kalahari, therefore, flora and fauna are adaptable to conditions of water scarcity. However, man-made influences, such as roads, fences and loss of access to natural water sources have made the effects of drought even worse.

The larger mammals that exist are mostly antelopes with a few giraffes and are adapted to survive without water to drink. Wildlife numbers have been increasing steadily since the droughts of the mid 1980s and the biomass in 1996 was double that of 1986. Predators are fairly numerous and the reserve contains an important population of wild dogs. However, in the past, there used to be zebra, impala, buffalo and occasionally elephants in the northern parts of the CKGR. They used to move from northern Botswana but are now unable to do so due to fences that now block their routes.<sup>15</sup>

The location of the CKGR has been the domain of the Basarwa for many centuries. It was only in relatively recent times, the last 160 years, that Bantu speaking people have moved into the area. During the 1950s, there was much international concern about the plight of what were then called “Bushmen”. Farms in the Ghanzi<sup>16</sup> area and other developments, were contributing to the displacement of the Basarwa. This concern and that of the former colonial Bechuanaland Government, led to the “Bushman Survey” of 1958 – 1964 carried out by Mr. George Silberbauer and that in turn led to the creation of the CKGR<sup>17</sup>.

Government Savingram no. 10840 111 (25) of February 9, 1961<sup>18</sup> from the Resident Commissioner of Mafeking to the High Commissioner of Cape Town, explains a primary objective of the creation of the CKGR:

Briefly, the object of the reserve is to protect the food supplies of the existing Bushmen population in this area, which has been estimated to approximately number 4000, from the activities of the European farming community at Ghanzi and visitors to the Territory, who are entering this area in increasingly large numbers either to poach game for biltong or to shoot predatory animals such as lion and leopard for their skins.

During the 1980s, much concern was given to the purpose of the CKGR and this led to the 1985 Fact-Finding Mission by the Government of Botswana. This study was criticized for starting off with an outdated premise that wildlife and people are incompatible. However, it also stated: “on February 14, 1961, the Bechuanaland Protectorate set aside the CKGR to protect wildlife resources and reserve sufficient land for traditional use by Hunter-gatherer communities of the Central Kgalagadi.” Despite any criticisms, the study came up with three recommendations:

1. That traditional areas be declared communal cells within a proposed wildlife management area;
2. That people are removed from the reserve;
3. The designation of the CKGR as a Biosphere reserve.

The Government chose the least recommended option – removal from the reserve. However, the Fact-Finding Mission states:

Although this is not considered to be a viable option by the Mission, it still has to be reported on because it is specifically mentioned for inclusion in the terms of reference...Apart from the creation of a

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<sup>15</sup> P.14, “Third Draft Management Plan, Central Kalahari Game Reserve and Khutse Game Reserve”, Department of Wildlife and National Parks, Botswana, May 2001.

<sup>16</sup> Ghanzi is located in central Botswana.

<sup>17</sup> Refer to Annexure 3 - Note on Proposed Game Reserve and the Bushmen by G.B. Silberbauer, 19 May 1960 and letter to Government Secretary of Mafeking from G.B. Silberbauer 28 April 1960

<sup>18</sup> Refer to Annexures 4 to 10 – Savingrams, notices and Letters

frustrated group of people, it would probably lead to total dependence on handouts since they would have lost their forage areas, and not be familiar with the veld foods in new areas.

Out of necessity, the people of the Central Kalahari have developed highly flexible land-use strategies in order to cope with this uncertain environment, which has enabled them to survive severe drought. Hunting and gathering is an important form of land-use that can adequately, consistently and sustainably meet the basic nutritional needs of the residents of the CKGR. Modern agriculture in the Kalahari requires considerable financial subsidization, often results in land degradation, and fails in times of drought. There is little prospect for industrial development due to lack of water, infrastructure and natural resources of commercial value. Tourism has the greatest potential to generate income with the least environmental cost – but is of limited potential. The use of veld products deserves recognition as a valid and appropriate form of land-use that can sustainably and adequately meet basic economic needs where other forms of land-use fail.

The CKGR communities occupy clearly defined traditional territories, which encompass all the natural resources required to meet their long-term needs. As such, the territories are self-contained ecological and economic units. They also have in-depth knowledge of local faunal and floral dynamics, but only within their respective traditional territories. Within these territories, they employ highly complex and flexible land-use strategies that have successfully sustained them for many generations – even during drought – yet without harming the ecosystems on which they depend. If moved from their traditional territories, they are unable to make effective use of their natural resources.<sup>19</sup>

Before the 1980s, the CKGR communities used the full extent of their traditional territories. However, resident communities are smaller and less mobile today than in the past. This is due to increasing pressure to become settled, restrictions on subsistence activities, and the re-location of people to settlements outside of the reserve. This reduced mobility has in some cases resulted in the depletion of natural resources in the immediate vicinity of the CKGR villages and changes in hunting techniques. However, the application of traditional land-use and conservation principles continues to ensure that long-term socio-economic needs are met with minimum impact on the ecosystems.

The number of people residing inside the CKGR today is approximately 50(as of July 2002)<sup>20</sup>, significantly lower than the historical norm of between 3000- 5000. This number is well below the overall human carrying capacity of the reserve. Despite instances of inappropriate hunting methods, the CKGR residents have negligible impact on the CKGR wildlife population.<sup>21</sup>

The “Third Draft Management Plan” by the Department of Wildlife and National Parks, proposed the creation of Community Use Zones (CUZs).<sup>22</sup> “The communities have traditional boundaries and methods of regulating resource uses, so the CUZ concept is not new to them...The establishment of the CUZs acknowledges the presence of the people in the CKGR and empowers them to use their resources

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<sup>19</sup> Please refer to the following reports available at the Department of Wildlife and National Parks: “Territoriality and land-use in surveyed traditional territories of the CKGR,” January 2001 and “Updated Report: Traditional Territories and Land-Use in the CKGR”, May 2001.

<sup>20</sup> Reliable figures from eyewitness accounts within the CKGR.

<sup>21</sup> See Annexure 11 - Aerial surveys show that since the drought of the 1980s wildlife numbers are either stable or increasing inside the CKGR. Albertson, A., “The CKGR and Sustainable Development”, March 2002.

<sup>22</sup> Please refer to Section D for a more comprehensive explanation of the CUZs and CBNRMs.

sustainably.”<sup>23</sup> This Third Draft Management Plan had been approved by the Ghanzi District Council on 30 March 2001 and by the Kweneng District Council on 31 May 2001.<sup>24</sup>

### **C. Re-location of the Basarwa**

In January 2002, the residents of the CKGR requested the President of Botswana not to terminate the provision of basic and essential services to the residents of the CKGR on 31 January 2002<sup>25</sup>. In 1997, some residents of the CKGR were moved to two settlements outside the Reserve called Kaudwane and New Xade. Prior to and since the removals of 1997, the Government has always maintained that it will not “force” anyone to leave the game reserve. The termination of services by the Government effectively forced most people out of the reserve, as they have no access to basic resources. This is contrary to the Government’s stated position in accordance with policies as they existed prior to 1998 and as they currently exist. The residents are determined to remain on their ancestral land and have taken the Government to court to obtain the appropriate urgent relief.

On 19 February 2002, the residents of the CKGR filed their claim at the High Court in Lobatse. The residents are claiming that the termination of services by the Government, to the CKGR is unlawful and unconstitutional (these provisions from the constitution shall be cited in subsequent sections to follow below). These services include the provision of drinking water, the provision of food rations to the registered destitutes and orphaned children, the provision of transport for children to and from school and the provision of healthcare.

The residents claim that the Government is obliged to restore the basic and essential services, which it terminated on 31 January 2002, and also obliged to continue to provide these services to the residents. They further claim that those who have been effectively forced to move from the CKGR due to the termination of services, should be returned to their ancestral land in the Reserve, as they have been unlawfully dispossessed of their land.

On April 10, 2002, the residents of the CKGR brought an urgent application to the Lobatse High Court. They asked the court to declare that the Government’s decision to terminate the basic and essential services to the residents of the CKGR was wrong. On 19 April 2002, Judge Dibotelo dismissed the application filed by the residents. He also instructed that the applicants pay the costs incurred by the State in challenging the application. He however directed that the applicants may begin new proceedings, if they should wish to do so. On Thursday July 11, 2002, Mr. Roy Sesana and 247 other residents of the CKGR, brought an appeal against the decision of Judge Dibotelo on 19 April 2002 to the Court of Appeal. The Court of Appeal Judges suggested to both lawyers representing the residents and the Attorney General, that they consider agreeing to an order that the application of Mr. Sesana and the others be urgently referred back to the High Court, for witnesses to give verbal evidence. The Court of Appeal commented that such an order would allow the case to begin without it becoming delayed by technical issues. The

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<sup>23</sup> See Annexure 12, Chapter 9 of the “Third Draft Management Plan”, point 9.5 and page 35. “Community Use Zones shall be for the use of designated communities living in or immediately adjacent to the national park or game reserve....may only be used to conduct commercial tourism activities and for the sustainable use of veld products but not for any form of hunting unless otherwise provided for under these Regulations...persons who can rightly lay claim to hunting rights in the CKGR may be permitted in writing by the Director to hunt specified animal species and collect veld products in the game reserve and subject to any terms and conditions and in such areas as the Director may determine.”

<sup>24</sup> See Annexure 11 - Albertson, A., “The CKGR and Sustainable Development”, March 2002.

<sup>25</sup> Prior to this request, meetings were requested with the Vice President of Botswana and the Minister of Local Government. A meeting was held with the Minister of Local Government on December 14, 2001.

residents of the CKGR appealed, precisely because the ruling of Judge Dibotelo in April 2002, had prevented them from presenting their case, as he had struck it down because of a technical point. The lawyers of both parties agreed to the proposal of the Court of Appeal. The residents of the CKGR are deciding whether they will be able to get to Court to present their cases in person, due to financial constraints, the Court of Appeal agreed that the matter be postponed pending either the referral of the dispute back to the High Court for the hearing of verbal evidence, in Gantsi, or for the launch of fresh proceedings, on affidavit (written statements), in Lobatse.

The residents are determined to remain on their ancestral land. There are a few residents who have managed to remain in the Reserve, despite action by the Government to encourage them to leave. The situation of these people is now critical as they are now forced to rely on limited natural water resources. Recent attempts to provide water and food to them were prevented by the Government.

In February to March 2002, the First Peoples of the Kalahari made an attempt to supply the remaining residents with food and water. They were issued with a permit to enter the Reserve on the condition that they would not do anything that would interfere with the Government's re-location policy. In issuing this permit, Ms. Moremi, the Permanent Secretary in the Ministry of Trade, Industry, Tourism and Wildlife, explained to the First Peoples of the Kalahari that the condition in the permit meant that they could not provide food and water to the remaining residents.

In May 2002, Mr. Amogelang Segootsane, a resident of the CKGR, made an attempt to take water in to his and other families still residing within the Reserve. On arrival at the entrance to the Reserve, Mr. Segootsane was refused entry with the water by DWNP officials. He returned to Gaborone and sought assistance of the Office of the Ombudsman. The Office of the Ombudsman set up a meeting for him with an official of the Wildlife Department. The Wildlife Official asked him to write a letter requesting such permission. He then faxed a letter dated 29 May 2002 in which he requested that he be allowed to take water to Khukamma, Metsiamanong and Gope to the sick, the orphans and expectant mothers. In their response dated 30 May 2002, the Wildlife Department referred Mr. Segootsane to the Ministry of Local Government and the Kweneng District Council. The letter stated that the Department of Wildlife could only consider the request to enter the Reserve after the request to provide drinking water was dealt with by the other authorities.<sup>26</sup> The residents are requesting permission, but do not believe that they ought to be required to seek permission to take food and water to their homes for personal consumption. They are however, obliged to do so due to the unlawful conduct of the Government.

It has become painfully clear that the Government of Botswana has adopted a very hardened stance with respect to the re-location of the Basarwa from the CKGR. Even more disturbing are their attempts to subvert the course of justice and deny basic human needs to the Basarwa.

#### **D. Opinions of the Government of Botswana**

The Government established in 1997, the resettlement village of New Xade to which a number of residents claim they were forcibly resettled. After 1997, the Government continued to extend the resettlement village of Kaudwane<sup>27</sup> to the south of the CKGR. Numerous problems have been recognized with the resettlement policy and within the resettlement villages. These include high levels of unemployment and alcoholism,

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<sup>26</sup> For additional information please see annexures 13 – 16, Letters to and from the DWNP, Amogelang and DITSHWANELO

<sup>27</sup> Both New Xade and Kaudwane are resettlement locations found outside of the CKGR.

extensive degradation of the fauna and flora surrounding these villages, which are themselves located in Wildlife Management Areas, and the breakdown of traditional cultures and norms. The Government maintains that it has not forced any of the residents who have re-located to the resettlement villages to do so.

Despite the policy of resettlement with the attendant provision of services to the resettlement villages, the Ministry of Trade, Industry, Wildlife and Tourism developed and adopted in 1999, a Community Based Natural Resource Management Programme (CBNRM) to be implemented by its Department of Wildlife and National Parks (DWNP). The goal of this programme is:

“To effectively conserve the biodiversity of Botswana, while ensuring that Batswana appreciate and benefit from the sustainable utilization of the wildlife resources. DWNP believes that its success will be reflected in sustained biodiversity in the contribution of the wildlife sector to the nation, in delight of those who experience the natural assets of the country, in staff satisfaction, in the enthusiastic support of Government and in the pride of citizens.”

In order to achieve the goal of this programme, DWNP recommends that communities organize themselves to manage their own natural resources. This programme has been applied to communities living in wilderness areas elsewhere in Botswana with relative degrees of success. The Remote Area Development Programme was an evolution of the Bushman Development Programme of 1975 located within the Ministry of Local Government and Lands.<sup>28</sup> It has been stated that Remote Area Dwellers “should be all people living outside organized village settlements”, but it is clear that they are often equated with the Basarwa. The aim of this programme is to focus on the land needs of the Basarwa.

Notwithstanding its resettlement policy, the Government has continued to provide the residents with certain basic services, which are considerably less than services that it provides to other remote rural communities in the country. Minister Nasha (Minister of Local Government) refuted any threats to cut services to the residents of the CKGR in a newspaper article in *Mmegi* on 20-26 April 2001<sup>29</sup>, when she categorically stated that it was not the policy of the Government to cut services. However, threats to do so resurfaced in August 2001 by Minister Kokorwe (Assistant Minister of Local Government)<sup>30</sup>. In October 2001, President Mogae stated in his opening address to Parliament that services would be cut at the end of January 2002.

The Government maintains that the reason for its decision to cut services to the residents of the CKGR was due to the cost of providing services to the residents. It claims that these costs amount to P55,000<sup>31</sup> per month. However, no figures are given regarding the cost of providing services to the resettlement villages. It has been said that a large part of the cost of providing services to the residents is the cost for providing water. The purpose of the negotiation process is for the sharing of ideas aimed at reaching a goal acceptable to all participants. With the Government deciding not to revisit their decision to cut services in January 2002, opportunity for discussion of possible alternative solutions were prevented. There was therefore, no occasion for the discussion of the draft Water Provision Strategies for the CKGR Communities

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<sup>28</sup> It should be noted that this programme has undergone several evolutions from “Bushman Development Programme” to “Basarwa Development Programme” to “Extra-Rural Development Programme” and then to “Remote Area Development Programme” in 1986. See *op cit* Mogwe A. and Tevera, D.

<sup>29</sup> See Annexure 18. *Mmegi*, 20-26 April 2002

<sup>30</sup> See Annexure 19. *Mmegi*, 17-23 August 2001

<sup>31</sup> See Annexure 20. Press statement by DITSHWANELO January 31, 2002. The currency of Botswana is the Pula, approximately 6 Pula are equivalent to 1 USD.

produced by the technical Expert of the Negotiating Team.<sup>32</sup> Also there is no reason why the Government should not agree to the offer by the European Union to support a sustainable programme of development for Basarwa in the CKGR.

Government has stated previously that it only provides services to settlements with more than 500 residents.<sup>33</sup> There are many examples of small settlements around the country with fewer than 500 people, which still receive services. In addition, the Government rightly uses its discretion to provide services to settlements with less than 100 residents – for example in Ngwatle in Kgalagadi District, and other settlements in this district.

The Government has also been of the opinion that people and game reserves are incompatible with wildlife and tourism. However, this notion is old-fashioned and outmoded as the conservation practices by indigenous persons in Africa of their wildlife resources demonstrates. As discussed previously, the wildlife biomass in the CKGR has doubled since 1986, despite the residents having pursued their traditional hunter-gatherer culture.<sup>34</sup> In addition, the game densities in areas occupied by the residents within the CKGR are low, and according to DWNP the southern part of the Reserve has little tourist potential. Additionally, the Government has expressed deep reservations about the Basarwa being used as tourism showpieces. It would appear that they believe this would negatively impact upon Botswana, demonstrating that the people are “not developed or backwards”.

Some have speculated that mining interests are dictating the Government policy. The Government has stated on occasion that the presence of persons resident in the CKGR is incompatible with mining interests. De Beers have confirmed, and this is recorded in the “Third Draft Management Plan”, that it is unlikely that the Gope Mine will proceed. De Beers confirm that the alleged need to resettle people out of the CKGR is not in any way related to the Gope Mine.

The Government has also stated that it is necessary to move the people out of the CKGR in order to develop them. This argument ignores the fact that the realization of the true wealth of the residents of the CKGR in the most cost-effective manner for their benefit and for that of people of Botswana, lies in the sustainable use of their resources on their land. In a wilderness area with minimal tourist potential should the indigenous people not be removed, the eco-tourist opportunities will be increased if the people are allowed to remain and, by their presence and the practice of their traditional lifestyle, attract tourists to the region. The exercise by the residents of their rights and the recognition of this potential cannot be considered as attempts to ensure that they are “kept primitive”. The overcrowding of the resettlement centers with their high levels of unemployment and alcoholism will arguably result in the San “remaining more primitive” than if they participated towards their development by the implementation of the CBNRM programme.

A South African Documentary (Carte Blanche) was produced in March 2002, upon the plight of the Basarwa in the CKGR. Minister Nasha expressed her views on the development of the Basarwa: “Do you allow a section of the population to continue... living in the manner they are doing and not accessing information, not accessing education for their children and health facilities and all those things that every other

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<sup>32</sup> See Annexure 21. Draft Water provision Strategy for the CKGR Communities, December 2001. See also section 4 of the report for a full explanation of the CKGR Negotiating Team.

<sup>33</sup> See Annexure 22. Williams, G., “Executive Summary III, The Case for Continued Negotiations and the Withdrawal of the Threat to Cut Services,” written for the Negotiating Team 27 November 2001.

<sup>34</sup> Ibid.

Motswana has free access to...” She also states that “we once had the same problems with elephants.” The film crew of Carte Blanche attempted to video-tape the resettlement of the people from the CKGR, but were harassed by the officials despite the fact that they had a letter of permission from the President of Botswana to be present. Huts were being systematically dismantled and boreholes were emptied.<sup>35</sup>

### **E. Basarwa Viewpoints**

It has been highlighted above that there are several scientific justifications as to why the Basarwa should be entitled to stay within the CKGR if they so desire. In addition, we will highlight the legal instruments, which support the desire of the Basarwa to stay within the CKGR in the following sections below.

The Basarwa reject the argument that they are causing depletion of the wildlife populations. In addition to the statistical information already provided, they argue that they have lived side by side with the animals for thousands of years without any problems. They see it possible that they can effectively and responsibly co-exist with the animals and manage the present wildlife areas.

It must also be understood that many of the Basarwa moved to the new settlements out of fear due to intimidation practices of the authorities. Intimidation came in the form of threats: “we were promised that a bulldozer would come and bulldoze us out of that area.”<sup>36</sup> Others have remained because they are determined to stay on their ancestral land despite the consequences.<sup>37</sup>

The Basarwa also argue that they have not been consulted as to their fate. They do not understand why they do not have access to development within their ancestral land.<sup>38</sup> The Government’s failure to truly consult the Basarwa with respect to their development is not only contrary to international legal norms, but contributes to the belief that the Basarwa are not “full citizens”.

There are several problems associated with the resettlement villages:

1. The villages are located in resource-poor areas outside of traditional territories.
2. Communities lack the necessary knowledge of fauna and flora dynamics in these foreign areas to sustainably manage and conserve local natural resources.
3. The high concentrations of people there and the resultant depletion of natural resources makes sustainable resource utilization extremely difficult or impossible.
4. The Wildlife Management Areas in which the resettlement villages are located have low and/or rapidly dwindling numbers of wildlife due to livestock development and uncontrolled hunting. There is little prospect for sustainable community-based hunting in the Okwa Wildlife Management Area (New Xade) and certainly no prospect for sustainable hunting in the 5 km wide strip of Wildlife Management Area between Kaudwane and the CKGR boundary.

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<sup>35</sup> Refer to annexure 23. Carte Blanche documentary.

<sup>36</sup> A representative of the Basarwa from the CKGR gives his answer to why some residents moved to the new settlements. Seminar held in Gaborone in March 2002 by DITSHWANELO on the Central Kahlari Game Reserve.

<sup>37</sup> Incentives from the Government to move were cattle and cash. The Government preferred to give cattle as it was viewed as a means towards “development” for the Basarwa. However, verbal eyewitness accounts tell of incidents where cattle are provided as part of a resettlement package and then slaughtered by the Basarwa, despite the fact that they were supposed to be used to build up a herd over the period of 5 years. The problem of course lies within the crux of this western notion of “development”, Basarwa have never reared cattle and are hunter-gatherers.

<sup>38</sup> DITSHWANELO, “When Will this Moving Stop?, Report on a Fact-Finding Mission of the Central Kgalagadi Game Reserve, April 10 –14, 1996”.

5. Attempting to concentrate the remaining residents in the resettlement villages of New Xade and Kaudwane as well, will exacerbate the already deteriorating social conditions of poor dietary intake, alcoholism, depression, unemployment and apathy.
6. Lack of resources and poor prospects of sustainable income-generating enterprises will increase dependencies on government food aid and services.
7. Deteriorating socio-economic conditions leads to growing resentment of the CKGR and negative tourist perceptions.<sup>39</sup>
8. During the first resettlement of residents from the CKGR, the additional residents being resettled in the same area were resented for encroaching upon the “original” residents new space. This in turn created ethnic divisions and tension amongst the different Basarwa communities as they viewed the new residents as additional burdens on the already scarce resources available. In addition, leadership became a problem due to the already existing leader in the resettlement area. The Government’s refusal to acknowledge this leadership only exacerbated the problem when the new groups were moving in to the settlement.

Despite the level of aid provided to developing settlements, unless communities become self-sufficient they will always be a burden to government resources. With the implementation of the envisaged Community Use Zones (CUZs) management system, Central Kalahari communities have a realistic chance of achieving self-sufficiency. The envisaged Community Use Zones management has two objectives:

1. Maintain eco-systems integrity and promote biodiversity;
2. Ensure the socio-economic sustainability of resident CKGR communities.

Mini-management plans were to be produced on the basis of the Third Draft Management Plan for each CUZ detailing the terms and conditions for natural resource use and the development and operation of commercial ventures. Only the most sustainable hunting, gathering and farming methods will be permitted and these activities will be carefully monitored by Resource Management Committees in each CUZ – in partnership with the Department of Wildlife and National Parks.<sup>40</sup>

### **3. Legal Instruments**

#### **A. ICERD**

The Republic of Botswana acceded to the International Convention on the Elimination of All Forms of Racial Discrimination on February 24, 1974. The Government of Botswana failed to produce reports for the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth reports which were due on 22 March 1985, 1987, 1989, 1991, 1993, 1995 and 1997, which had not been submitted as of 2002. It is therefore, crucial that we assess the obligations that ICERD places upon signatories and analyze this in terms of the situation being endured by the Basarwa peoples of Botswana. The preamble to the International Convention on the Elimination of All Forms of Racial Discrimination states:

“Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and

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<sup>39</sup> This list was obtained from *op cit*, Albertson, A., March 2002.

<sup>40</sup> It should be noted here that a “Final Management Plan” was created. It is believed that it mainly considers CUZs adjacent to the new settlement areas (New Xade and Kaudwane). In contrast with the consultative process in the preparation of the Third Draft Management Plan, the Negotiation Team and residents (current and former) of the CKGR were excluded from consultation. As at 5<sup>th</sup> July 2002, this Plan was before the decision makers in Government.

security among peoples and the harmony of persons living side by side even within one and the same State,”

Article 5 states:

“In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- a. The right to equal treatment before the tribunals and all other organs administering justice;
- b. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- c. Political rights, in particular the right to participate in elections....to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- d. Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) .....
  - (iii) .....
  - (iv) The right to own property alone as well as in association with others;
  - (v) The right to inherit;
  - (vi) The right to freedom of thought, conscience and religion;
  - (vii) The right to freedom of opinion and expression;
  - (viii) The right to freedom of peaceful assembly and association
- e. Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care<sup>41</sup>, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities.

It should be noted that “racial discrimination” as defined in ICERD covers a wide range of discriminations, including those against minority or indigenous peoples. Clearly, within the framework of ICERD, the Basarwa are entitled to many economic, social and cultural rights as well as civil and

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<sup>41</sup> With respect to the Basarwa peoples, it should be noted here that the Government of Botswana has not sought the option of “alternative health” or medicine. This creates additional problems because the Basarwa, as with many African cultures, do not fully understand western ideas of medicine and health , nor are these methods always applicable or helpful.

political rights, as listed above. The Government of Botswana, however, would argue that it has provided these rights to all citizens of Botswana including the Basarwa. The key is that these services and rights are only being provided upon conditions of re-location and not in consultation with the Basarwa communities. One of the key issues here is that the Government of Botswana have and are adhering to a development model, which does not necessarily work within this context. If 47% of the population are below the poverty datum line, then surely the current model of development needs revisiting. A rights based approach would be an alternative worth considering not only for the Basarwa but Botswana as a whole.<sup>42</sup>

In terms of the economic, social and cultural rights, it is important to note the obligations with respect to education and employment. Employment within the resettlement villages is a large problem for the Basarwa. It would be in the best interests of all citizens of Botswana if employment was linked to the culture of the Basarwa and environmentally sustainable within the resettlement villages. While the Basarwa are given the right to education, the education they receive is not culturally linked nor does it take note of their cultural identity.<sup>43</sup>

There are also many cases of abuse that the Basarwa have endured at the hands of Government Officials or law enforcement officials. This is in contravention of article 5 (b) of the Convention. Examples of such instances were reported in DITSHWANELO's Fact Finding Mission of the CKGR in 1996, "When Will this Moving Stop?". Reference to cases in Xade of a Mosarwa man named Gaolakwe who allegedly died after being assaulted and sustaining injuries to the kidneys by game wardens, and of another man in Gope who was allegedly castrated. In another instance, in Mothomelo, the fact-finding mission was informed by a witness that he was apprehended by the Botswana Defence Forces(BDF) in February 1996 when he and a companion were stalking gemsbok near the borehole. The soldiers *"took away their bows and arrows and pointed their guns at them. They were asked whether they had licenses – they said that they did. The soldiers did not ask to see the licenses. They made them dig a hole and told them that they were going to bury them in the hole. After the hole had been dug, the Basarwa people were told to fill it up again. They were then taken to their huts and told to stay there and not leave their huts at all. They were told that if the BDF came back and found that they were not at home, they would be in big trouble."* It should be noted that action was taken via a letter by DITSHWANELO to DWNP and copied to the BDF Commander, regarding this allegation. The BDF Commander responded by saying they denied any such allegations.

According to the Molapo community (inside the CKGR), 20 men and four women were beaten up by officials from the wildlife department and local police department in Rakops around the 29<sup>th</sup> of August 2000. Some men were taken into the bush near Molapo and tortured over a three to six day period until

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<sup>42</sup> Article 1 of the UN Declaration on the Right to Development states: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

<sup>43</sup> See Annexures 24 and 25, Daily News Articles of 1/3/99 and 4/3/99. Student unrest at the Otse Primary Schools led to death and exodus of students. One eight year old girl died after 120 children disappeared from the school on February 16<sup>th</sup>, 1999. The eight year old girl is said to have died of fatigue, hunger and thirst after traveling 38 of the 120 km to her home village. Her body was devoured by wild animals after her brothers had left her behind to travel the rest of the 82 km to inform their parents of her situation. The students fled on allegations that the school's matron was ill-treating them.

they had stated that they had killed eland and/or giraffe. One man, Methambo Sesana, was allegedly beaten and died one week later.<sup>44</sup>

## **B. ILO Conventions**

The ILO Convention No. 107 on Tribal and Indigenous Peoples of 1957 has been superseded by the Convention No. 169 of 1989, for this reason we shall focus on the later. It should be noted that the Republic of Botswana is not a signatory to the ILO Convention No. 169. However, the Convention represents the international standards that should be applied to tribal and indigenous peoples throughout the world, and therefore, we shall make reference to it for this purpose.

The following provisions of Convention No. 169 are pertinent with respect to the Basarwa peoples:

Article 4: requires ratifying States to adopt special measures for safeguarding the persons, institutions, property, labour, cultures and environment of indigenous and tribal peoples.

Article 5: establishes that, in applying the Convention, ratifying States must recognize and protect the social, cultural, religious and spiritual values of indigenous and tribal peoples, respect the integrity of their values, practices and institutions.

Article 6: requires, among other things, that ratifying States consult indigenous and tribal peoples through appropriate procedures, particularly through their representative institutions when legislative or administrative measures that may directly affect them are being considered and provides that States should establish means for the peoples concerned to develop their own institutions.

Article 7: establishes, among other things, the right of indigenous and tribal peoples to decide their own priorities for the process of development and to exercise control over their own economic, social and cultural development, and establishes the obligation of ratifying States to take measures to protect and preserve the environment of the territories inhabited by these peoples.

Article 8: requires States to take indigenous and tribal custom and customary law into account when applying national laws and regulation to the peoples concerned.

Article 13: requires governments to respect the special importance to the cultures and spiritual values of indigenous and tribal peoples of their relationship with the lands or territories that they occupy.

Article 14: establishes that ratifying States shall recognize the rights of ownership and possession of the peoples concerned over the lands that they traditionally occupy, and that States shall establish adequate procedures within the national legal system to resolve land claims brought by indigenous and tribal peoples.

One of the Basarwa's (those resident within the CKGR) most significant claims is to the lack of consultation between the Government of Botswana and themselves over issues of development and re-location. ILO Convention No. 169 clearly outlines that they have the right to be consulted in conjunction with development. It also states that they must be given ownership rights over traditional lands, which should be resolved through adequate procedures within the national legal system. The Basarwa have never been given "ownership" rights over their traditional lands nor has any adequate measures been taken to address

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<sup>44</sup> See Annexure 26. Survival International's record of the Molapo Community Meeting of 20 January 2001.

these claims. The most recent attempt by the Basarwa to address the cutting off of the provision of water and basic services has not been resolved through “adequate measures” within the national legal system, as the substantive matters of the case were not heard due to technical grounds being the basis of the decision of the Court. This decision was made, despite the urgency of the application.<sup>45</sup>

The Basarwa also argue that their cultural and spiritual values have not been respected. They wish to remain upon their ancestral land, where their ancestors have been buried because culturally it is important for them to consult their ancestors on decisions. Essentially, the very core of the Basarwa’s culture, their wishes and rights have been violated.<sup>46</sup> As stated previously, Botswana is not a signatory to No. 169, however it is an international legal instrument, which sets minimum standards, establishes the basic rights of indigenous and tribal peoples and is the cornerstone of many policies and programmes affecting indigenous peoples.

### **C. African Charter on Human and Peoples Rights**

The African Charter on Human and Peoples Rights is an important and relevant legal instrument in terms of the Basarwa’s rights. The relevant provisions are:

#### Article 12 (1)

Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

#### Article 13(3)

Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

#### Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### Article 17 (2)

Every individual may freely, take part in the cultural life of his community.

#### Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

#### Article 20 (1)

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<sup>45</sup> The appeal was heard on July 11, 2002, please see Press Statement V (Annexure 17) re: the July update. The application to hear the merits of the case is to be dealt with in 2003.

<sup>46</sup> See the Special Rapporteur’s Report on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavehagen, submitted pursuant to Commission on Human Rights at the 58<sup>th</sup> session on December 24, 2001 (E/CN.4/2002/97). Annexure 1, paragraph 13, Case 9: In Botswana and Namibia the Bushmen, numbering around 800,000 have been the victims of discriminatory practices and their survival as a distinct people is endangered by official assimilationist policies. Of particular concern is the fact that many groups have been dispossessed of their traditional lands to make way for game reserves and national parks.

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.

#### Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

#### Article 29 (7)

The individual shall also have the duty: To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society.

Within these provisions we can see the emphasis placed on the right to development, the right to ensure African cultural values, the right to property, the right to freedom of movement, the right to chose and be consulted with respect to development and the right to equality. Many of these rights are similar to ILO Convention 169, of which Botswana is not a signatory. However, Botswana is a signatory to the African Charter.

Once again, we can highlight that the right to chose and be truly consulted with respect to development has not been adhered to by the Government of Botswana. The right to property has also not be respected, as we illustrated the government position in previous sections with respect to the Basarwa.

### **D. The Constitution of Botswana and other national legal instruments**

The following sections of the Constitution of Botswana of 1966 are relevant in assessing the rights of the Basarwa to the occupation as well as hunting and gathering activities within the CKGR:

#### Section 3:

“Every person in Botswana is entitled to protection for the privacy of his home and other property and from deprivation of property without compensation.”

#### Section 8(1) (b) (ii):

“...no interest in or right over property of any description shall be compulsorily acquired except where provision is made by a law applicable to that taking of possession or acquisition..”

#### Section 14 (1)

Protects the freedom of movement “throughout Botswana” and the “right to reside in any part of Botswana”.

Sub-section 14 (3) (c) acknowledges, if not explicitly at least by implication, that Bushmen have interests in, or rights over (as referred to in section 8(1) (b) (ii)) “defined areas of Botswana”, and certain “persons who are not Bushmen” might be excluded from such areas “to the extent that such restrictions are reasonably required for the protection or well-being of Bushmen”.

The Prescriptions Act (Chapter 13:01) states that it is possible for a person by prescription to become the owner of land and/or acquire rights in land if he has possessed that land “openly and as if he were the

owner of the land for an uninterrupted period of 30 years” (Section 3). A community may also acquire rights by prescription.

The Basarwa can claim that they occupied and used the land within the boundaries of the CKGR since time immemorial, and even if this was not respected can claim without doubt that they have been there since at least 1961, when the CKGR was proclaimed. They have occupied and exercised their traditional way of life within the CKGR long beyond the period of 30 years. In addition, the Basarwa have claims to the land of the CKGR because they hold aboriginal title to the area. They are the descendants of the original occupants of the CKGR and this title to the land was established many years before the establishment of the Bechuanaland Protectorate in 1885.<sup>47</sup>

#### **4. Efforts Towards Peaceful Resolution**

##### **A. The CKGR Negotiating Team**

The Negotiating Team was established during late 1997 to early 1998. The members of the Team were comprised of the following: the CKGR Committee<sup>48</sup>, the Kuru Development Trust (now the Kuru Family of Organizations (KURU)), the Working Group for the Indigenous Minorities of Southern Africa (WIMSA), DITSHWANELO and the Botswana Council of Churches. The only representatives with decision-making powers are the fourteen delegates comprising the CKGR Committee and one delegate each from First Peoples of the Kalahari (FPK), KURU and WIMSA (all of which are Basarwa based NGOs). The Team’s activities are coordinated by FPK, KURU and WIMSA.<sup>49</sup>

On many occasions, the Negotiating Team has sought to open negotiations with the Government of Botswana with respect to the claims of the residents of the CKGR. The first meeting held with the Government of Botswana was with the outgoing President, Sir Ketumile Masire in 1998. The Negotiation Team agreed to obtain an individual mandate from each person claiming a right to own, to live in and reside and to utilize the resources of the CKGR to ensure there could be no argument about their mandate to represent the residents of the CKGR. The mandates were obtained following the second meeting with Minister Kwelagobe (Minister of Local Government, Lands and Housing, as it was titled at that time) during September 1998, in which the Minister disputed the mandate granted to the Negotiating Team by the residents of the CKGR. FPK was mandated by the Negotiating Team to approach residents of the CKGR to register their claim to the land. At the same time, each person also petitioned the Government of Botswana to recognize and acknowledge: 1. rights of ownership to and the use of the land in the CKGR; 2. constitutional rights to the provision of services and in particular to water, health and education in the CKGR. At the time that each resident’s claim was registered, each resident in turn “authorized the Negotiating Team to represent ...the residents of the CKGR to negotiate these rights on (his/her) behalf. If

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<sup>47</sup> See Annexure 27. Executive Summary I “The Legal Basis for the Claim by the Residents of the CKGR to Their Land”, Williams, G. for the Negotiating Team.

<sup>48</sup> The residents of the CKGR called upon the First Peoples of the Kalahari (FPK) to assist them in claiming their rights of ownership to, and the use of land in the CKGR, and the provision of services in 1996. During this time, FPK facilitated elections in the villages within the CKGR for two village delegates to a village committee to represent each village in pursuing the land claims of the residents. The delegates in turn formed a committee representing the Reserve as a whole, known as the CKGR Committee.

<sup>49</sup> See Annexure 28. Executive Summary II “The Mandate of the Negotiating Team, its Advisers and Legal Advisers,” Williams, G.

these negotiations fail (he/she) further authorizes the Negotiating Team to take whatever steps may be necessary to institute (his/her) claims in the High Court of Botswana.”<sup>50</sup>

Approximately 250 persons, at that time, living in, or alternatively having the right to lay claim to, the land within the CKGR registered their claims. Taking into account dependant children of these persons, FPK and the Negotiating Team represent approximately 850 persons with a right to claim land rights in the CKGR.<sup>51</sup>

One of the most significant roles played by the Negotiating Team was the series of negotiations with the DWNP concerning the participation of the residents in the CBNRM programme. A series of negotiating meetings were held between August 2000 and May 2001, which resulted in an agreement relating to the contents of the Draft Management Plan between the Negotiating Team representing residents of the CKGR and the DWNP. This agreement is contained in the Third Draft Management Plan.<sup>52</sup>

### **B. Third Draft Management Plan (sustainable development)**

In the previous section 2, where we highlight the Government of Botswana’s viewpoints and the Basarwa viewpoints, we discussed the Third Draft Management Plan for the CKGR. Additionally, in section 3, we mentioned that the Third Draft Management Plan has been surpassed by the Final Management Plan, to which neither the Negotiating Team nor the Basarwa were invited to contribute. During July 2002, the Cabinet noted the Final Management Plan. The plan is to be made available to the public by mid-September. Once again, it would appear that the Government of Botswana does not appear to “truly consult” the Basarwa of the CKGR with respect to their future.

It is important to note here that the Third Draft Management Plan was an effort to look at alternative means of resolution to the plight of the CKGR residents and sustainable development. It clearly outlined the means by which the residents could continue to live within the CKGR without disrupting the wildlife or natural resources within the reserve. The Third Draft Management Plan states:

“Traditional conservation measures are used to ensure that resources in each territory are used sustainably as the people’s lives depend on them. They are well aware of how many people a territory can support. These territories are well known and represent the minimum area required for the long-term survival of the people. If greater recognition is given to the traditional land-use systems in future, it will benefit from more sustainable resource use, and veld products would not be depleted around villages.”  
(9.3.1)

The Third Draft Management Plan was produced in close consultation with the CKGR Negotiating Team, the CKGR Communities, technical advisers to both the DWNP and CKGR Negotiating Team.<sup>53</sup> The DWNP acknowledges that traditional resource-use strategies, and access to territorial resources, are vital for the long-term socio-economic sustainability of communities residing in the Kalahari Desert ecosystem. An important step in the right direction would be for the Government of Botswana to revisit the Third Draft Management Plan and to continue to include and negotiate with the CKGR Negotiation Team, Technical

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<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> The Third Draft Management Plan was subsequently presented and awaiting discussion and ultimately approval at the Ministerial level.

<sup>53</sup> *Op Cit*, Albertson, A. , March 2002.

Advisors, and the CKGR Communities to obtain an adequate solution to the problems of the Basarwa within the CKGR.

### **C. UNESCO World Biosphere Project**

There is a possibility that the CKGR could be declared a biosphere reserve under UNESCO's "Man and Biosphere Programme". UNESCO has a network of biosphere reserves globally. In order to qualify for designation, a biosphere reserve has to fulfill three functions:

1. The conservation function – to contribute to the conservation of landscapes, ecosystems, species and genetic variation;
2. The development function – to foster economic and human development which is socio-culturally and ecologically sustainable;
3. The logistical function – to provide support for research, monitoring, education and information exchange, related to social, national and global issues of conservation and development.

Clearly, the CKGR could qualify under the above categories as a biosphere reserve. This would create huge benefits for tourism in Botswana. In addition, it would contribute to the conservation of land, resources and cultures within Botswana. Internationally this would certainly only help to boost the reputation of Botswana.

### **D. Botswana Culture of Consultation and Discussion**

It is important to note that there exists a very strong culture of consultation and discussion within Botswana. This tradition has quite often been cited as one of the cornerstones to the success of the country both economically and in terms of maintaining peaceful resolution to conflict. The importance of mentioning this cultural aspect is that it would appear that the Government has not fully adhered to this culture with respect to the Basarwa peoples and the CKGR. It should be noted that this cultural trait is more often associated with the dominant Tswana culture. Additionally, it is important to note that ILO Convention 169 places great emphasis upon the need for consultation with indigenous or tribal peoples with respect to their development.

The current need to seek legal redress within the High Court of Botswana has meant that there has been a great failure on the part of the Government of Botswana to seek a more peaceful resolution to the situation facing the Basarwa of the CKGR. This adversarial nature of court cases will eventually lead to a winner and a loser situation as opposed to a more desirable "win – win" result that could be achieved through consultation and discussion.

### **E. Gemsbok Park Success**

During the late 1990's, Southern Kalahari San claimed extensive rights to a large portion of the Kalahari Gemsbok National Park<sup>54</sup>. However, a process of negotiation between the San community and the South African Government has produced a large victory for indigenous peoples. The following factors have been critical to the success of the Kalahari Gemsbok Park negotiation process:

1. All parties were made fully aware of the relevant international human rights and conservation conventions, with the implications thereof;
2. The San were recognized and respected as a distinct group, with the inherent right to form their own Community Based Organisation, and to assert and negotiate their claim to their traditional lands;

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<sup>54</sup> This Park is located within Southern Kalahari located within The Republic of South Africa.

3. The Government through the South African National Parks, displayed an ability to extend the traditional conservation paradigm to include enlightened international development perspectives on heritage, people and parks;
4. All role players with a substantial interest in the matter were welcomed to take part in or contribute to an inclusive negotiation process;
5. The interests of all parties were exchanged in a transparent negotiation process that was founded upon a search for common ground, as opposed to ... or accusatorial legal process;
6. An independent facilitator/mediator guided the process in order to ensure the free flow of information in an environment of trust.<sup>55</sup>

The factors outlined above illustrate the many steps that can lead to success with respect to the Basarwa of the CKGR and their land rights. They also clearly highlight the many points we have outlined within this report that have not been adhered to by the Government of Botswana during this process of resettlement.

## **5. Conclusions**

### **A. International Support**

While many important efforts and achievements have been highlighted within this report with respect to the NGOs within Botswana and the Southern African Region in terms of the plight of the Basarwa, it is important to recognize the urgency of the situation requires international support as well. International support can be given in many forms and should not be limited in its scope. A few examples of such support would be:

1. Support from the UN – both financially and in terms of advocacy (for example CERD's role);
2. Support from international donors – both diplomatically and financially;
3. Coverage by the international press;
4. A spokesperson of international eminence to raise the profile of the plight of the Basarwa.

We call upon CERD to investigate the case of the Basarwa peoples living within the CKGR. CERD should request the Government of Botswana to report back to the Committee on the progress of the situation of the Basarwa within the next 6 months. Key questions for CERD to pose to the Government of Botswana are:

1. What intentions does the Government have to resolve the situation?
2. Can CERD come to investigate the situation on the ground in Botswana?
3. Why have the negotiations failed at this point? Is the Government willing to commit itself to further rounds of negotiations prior to cessation of services or resettlement of the residents?
4. Does the Government fully understand its obligations under international law? And does it understand the international legal norms prescribed to indigenous peoples under ILO Convention 169?
5. Can the Government please produce the "Final Version of the Management Plan" to both CERD and the Negotiating Team?

### **B. Re-open the Discussions**

As we have stated in previous sections of this report, we call upon the Government of Botswana to re-open the discussions for negotiation to settlement between the Government and the Basarwa residents of the

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<sup>55</sup> See Annexure 29. Chennells, R., "Human Rights and Development", a paper presented to the Conference on Human Rights and Democracy, 17-19 November, 1998 in Gaborone, Botswana organized by DITSHWANELO.

CKGR. The Government should take note of the Special Rapporteur's Report on Human Rights and Indigenous Peoples, in particular paragraph 83 which states: "Recent experience has shown that economic growth must go hand in hand with social concerns if the results are to be effective and make a difference in the lives of individuals and communities. A new approach seems to be taking hold in international discourse: human *rights centered sustainable development*, meaning that unless development can be shown to improve the livelihoods of people within the framework of the respect for human rights, it will not produce the desired results. This approach may be of particular importance for indigenous peoples whose human rights have frequently been neglected when not actually impaired by traditional economic development approaches."

It should not be brushed under the carpet, for the consequences of ignoring this matter are far too grave. It is within the interests of the Government, the Basarwa and all Batswana to have a peaceful and appropriate resolution to the situation being faced by the residents of the CKGR.