

AFRICA RENEWAL

United Nations Department of Public Information.

Reprinted from Vol. 21 No. 1 January 2007



Panos Pictures / Sven Torfinn

Maasai women in Kenya at a rally to protest their political marginalization and the sale of their communal lands.

‘Indigenous’ people fight for inclusion

Press for an end to discrimination and marginalization

By **Gumisai Mutume**

The San, the indigenous people of the Kalahari Desert in Botswana, won a major victory in December 2006, at the end of the longest and most expensive court proceeding in that country’s history. The High Court ruled that the state had wrongfully evicted them from a reserve four years earlier and that they could return home. Civil society activists around the world hailed the ruling as a historic precedent for the rights of indigenous people everywhere, especially in Africa, where many governments have been reluctant to recognize the concept of indigenous rights.

The Botswana case stemmed from the San’s eviction from the Central Kalahari Game Reserve (CKGR), one of the world’s largest reserves, in 2002. In response to a class action suit filed

by the San that same year, the court ruled that the government had acted “unconstitutionally” and “unlawfully.” According to Mr. Rupert Isaacson of the Indigenous Land Rights Fund, a San advocacy group, “The removals were accompanied by beatings and the destruction of water sources.”

The British colonial government created the reserve, which is 52,800 square kilometres — larger than Switzerland — during the days leading up to Botswana’s independence in 1966. Anthropologists maintained that the San had inhabited the area for at least 40,000 years, but that their numbers were declining at an alarming rate. The colonial administration deemed them to be “endangered” and established the CKGR as a refuge.

After independence, the new government in Botswana

encouraged the San to move out of the park into state-assisted settlements that were within reach of modern services such as schools and clinics and where they could assimilate into modern society. But many San refused, preferring to remain in a natural habitat where they could continue to live as hunters and gatherers, as they had done for thousands of years. Finally, the government decided to evict 3,000 San from the reserve, setting off the legal action.

Despite the court settlement, the battle is not over. The court ruled that the 189 applicants in the case and their children may return to the reserve. Some activists, such as members of the First Peoples of the Kalahari, contend that the ruling should cover all 50,000 San in the country. But the government of Botswana maintains that other San who wish to return may do so only if they apply for and obtain permits from the state.

Who is indigenous?

The case of the San in Botswana brings to the fore a delicate question in Africa: who is an indigenous person? Some communities claim indigenous status in Africa today on the grounds that their ancestors resisted the influence of the massive waves of migration of Bantu-speaking agro-pastoralists who migrated from western to southern Africa beginning around 1000 BC. While some were subsumed by those migrations, others maintained their distinct linguistic, cultural and social characteristics, largely as communities of hunters, gatherers and herders.

Later, Arab language and culture spread across northern and eastern Africa. And finally, a number of European countries colonized the continent, bringing their own influences. Those colonial governments often favoured the dominant, food-producing populations they found in their new colonies and marginalized the “aboriginal” peoples, as some historians refer to the indigenous people who had settled on the land before the Bantu.

Most governments that came to power following independence have been reluctant to acknowledge claims to rights, especially political rights, on the basis that a particular community regards itself as indigenous. After all, government officials argue, all black Africans consider themselves indigenous to the continent.

Mr. Nigel Crawhall, director of the Indigenous Peoples of Africa Coordinating Committee (IPACC), says the argument for recognizing indigenous rights does not rest on historical precedence. Communities arising from the Bantu migrations, he acknowledges, are just as African as everyone else. “The claims of indigenous peoples need to be seen in the context of their systematic discrimination and marginalization” under contemporary political and economic conditions.

“It was colonialism that brought new economic and political structures that reinforced the power of agricultural peoples over herders

and gatherers, and set down the rules of who had access to the state apparatus,” Mr. Crawhall explains. This meant that during colonial rule, agricultural peoples had easier — if still very limited — access to education, health care and other social services that were almost completely denied to indigenous communities. When colonialism ended, it was these educated elites who were able to take over the institutions of political and social power.

Bottom of the hierarchy

At the bottom of the colonial hierarchy were nomadic hunters and gatherers. They often withdrew into less hospitable environments, such as deep forests and deserts. In the worst cases, as in colonial South Africa, recalls Mr. Crawhall, European settlers tried to virtually exterminate the San. “They were hunted on horseback, killed with diseases, families were destroyed and children were given to other people as servants,” he told *Africa Renewal*.

Among Africa’s many indigenous peoples are the hunter-gatherer forest peoples (“pygmies”) of central Africa, nomadic pastoralists such as the Maasai and Samburu in East Africa, the San in Southern Africa and the Amazigh people (Berbers) of North Africa and the Sahel.

“We may not all agree on the definition of indigenous or the

Ms. Adophine Muley, representing the Twa “pygmies” of the eastern Democratic Republic of the Congo, at a UN press conference on indigenous issues.



UN / Stephanie Holyman

categorization of communities as indigenous,” notes Ms. Angela Khaminwa, a Nairobi-based expert on social inclusion policies. “Regardless of what label we place on ethnic communities that maintain traditional lifestyles and livelihoods, there is no doubt that many of these communities are vulnerable to labour and sexual exploitation.”

Many such groups are struggling with the encroachment of farming into their areas. Others are threatened by conservation policies intended to protect species of animals and plants, but that forbid local communities to hunt or gather. Their languages and ways of life are being eroded. “The hesitancy of governments to address the issue of internal difference full force may be due to a need to promote national cohesion,” says Ms. Khaminwa. Giving a community special protection, she adds, might be perceived as political favouritism.

The fears of African governments are not baseless. Insurgents and politicians have all too often dwelt on ethnic differences to mobilize support against their competitors. Claims by different ethnic communities over land and mineral rights, often justified on the basis of historical precedence, have frequently contributed to armed conflict.

‘A legitimate call’

The UN estimates that there are about 370 million indigenous people in more than 70 countries around the world. They are among the most marginalized people in economic, social and cultural terms. Despite the challenges, the world’s indigenous people have scored notable achievements in their efforts to reclaim rights during the last decade, designated by the UN as the International Decade of the World’s Indigenous People (1995-2004). That period saw many changes in Africa, notes Mr. Crawhall. One of the most profound was “the rise of an organized civil society representing diverse indigenous peoples from one end of the continent to the other.”

These civil-society groups lobbied the African Commission on Human and People’s Rights, a continental body, to recognize that the concept of indigenous peoples is applicable in Africa. In 2003 the commission adopted a report of the commission’s Working Group on Indigenous Populations/Communities, which acknowledged that “certain marginalized groups are discriminated against in particular ways because of their particular culture, mode of production and marginalized position within the state ... [a] form of discrimination that other groups within the state do not suffer from. The call of these marginalized groups to protection of their rights is a legitimate call

to alleviate this particular form of discrimination.”

The adoption of the report, in theory, subscribed all 53 member governments of the commission to the aims of promoting indigenous rights. But in reality, the majority of countries continue to struggle with putting such concepts into practice, explains Ms. Lucy Mullenkei, director of the Indigenous Information Network in Kenya. While a number of African governments argue that recognizing indigenous rights will foster ethnic tensions, “we who are working among indigenous communities still say we want to have these people recognized in order to deal with issues of marginalization and so forth,” she told *Africa Renewal*.

Under pressure from organizations representing indigenous people, some countries have made significant progress, she notes. Recently, Burundi amended its constitution to guarantee representation in the national assembly to the indigenous Twa people, who live in several countries in Africa’s Great Lakes region. In neighbouring Rwanda, the government is working with the main Twa organization to investigate war crimes perpetrated against them during the 1994 genocide, in which an estimated one third of all Twa in that country were killed.

Elsewhere in Africa, Cameroon recognizes “pygmies” and nomadic pastoralists as indigenous people. The government agreed to comply with policies to compensate and resettle indigenous people affected by the construction of the Chad-Cameroon oil pipeline, an initiative supported by private investors and the World Bank. Morocco lifted a ban on the teaching of the Amazigh (Berber) language in schools and has set up a national commission to formulate policies on indigenous language and culture.

Contentious negotiations

The Decade of the World’s Indigenous People also helped activists focus their attention on the creation of a Permanent Forum on Indigenous Issues at the UN and draft a declaration

Declaration on the Rights of Indigenous Peoples

The draft declaration addresses individual, collective, cultural and identity rights. It extends to indigenous people the rights to education, health and employment. It also grants them the right to self-determination, to maintain their distinct political, legal, economic, social and cultural institutions and to enjoy all the rights contained in the Universal Declaration of Human Rights.

As with other UN declarations, it is not legally binding. But upon adoption it would set international standards on the treatment of indigenous people. It calls for resources to promote indigenous culture and languages, confirms the right of indigenous peoples to lands, territories and resources and recognizes their right to their means of subsistence and development. The declaration outlaws discrimination against indigenous people and states that if their rights are violated, they are entitled to just and fair redress.

on the rights of indigenous peoples. The Permanent Forum, which held its first meeting in 2002, gathers annually at UN headquarters to give a voice to the world's indigenous people at an intergovernmental level.

Representatives of indigenous people and the international community first began working on the declaration on the rights of indigenous people in 1985. The draft was completed in 1993 (see box) and has been under negotiation since then. On the International Day of the World's Indigenous People in August 2006, then UN Secretary-General Kofi Annan described it as the product of "many years of complex and at times contentious negotiations." The declaration, he said, was "an instrument of historic significance for the advancement of the rights and dignity of the world's indigenous peoples."

The expected adoption of the declaration by the UN General Assembly in November of that year, Mr. Annan noted, would be a major achievement. But that was not to be. Namibia and other African countries, joined by Australia, New Zealand, Canada and the US, blocked the adoption of the agreement.

The Namibian representative to the meeting explained that some of the declaration's provisions ran counter to the national constitutions of a number of African countries. However, he added, the declaration was of such critical importance that it was only "fair and reasonable" to defer its adoption to allow more consultations.

Kenya's representative said the declaration contained a number of contradictions. For instance, it talks of "self-determination" as if it were referring to people living under colonial rule. In his country, he said, all citizens enjoyed the right to self-determination. Another African delegate noted that the concept of self-determination was in direct contradiction to efforts to integrate indigenous people into the mainstream of society. The declaration was divisive, he argued, isolating groups and inciting them to establish their own institutions alongside existing central ones.

The General Assembly delayed the adoption of the declaration until its next session, in September 2007. The failure to approve the draft declaration surprised many observers because in June 2006, African and other states had adopted it at the UN Human Rights Council. "We feel very sad about the failure to adopt the declaration," says Ms. Mullenkei, a member of Kenya's indigenous Maasai community.

Ms. Mullenkei notes that many of the concerns that African countries are now bringing up have been debated for a long time, over two decades of negotiations. She believes the real reasons for blocking the resolution are political and economic. Many of the countries opposing the declaration fear that it would give indigenous people the authority to reclaim land and seek compensation for centuries of discrimination.

"All these years that the discussions on the draft declaration have been going on, we barely had African governments participating," Ms. Mullenkei says. "And then at the last minute they come in and say no to the draft declaration. This takes us back many years." But, she adds, it

is now too late for governments to break the momentum. She foresees more progress on indigenous rights in the near future. ■

Africa Renewal is published in English and French by the Strategic Communications Division of the United Nations Department of Public Information, with support from UNDP, UNICEF and UNIFEM. Its contents do not necessarily reflect the views of the United Nations or the publication's supporting organizations. Material from this magazine may be freely reproduced, with attribution to "United Nations Africa Renewal," and a clipping would be appreciated.

Correspondence should be addressed to: The Editor, Africa Renewal Room S-955, United Nations, NY 10017, USA, Tel: (212) 963-6857, Fax: (212) 963-4556
e-mail: africarenewal@un.org

Subscribe to *Africa Renewal*

Annual subscriptions are available to individuals for \$20 and to institutions for \$35. Please send an international money order or make cheques payable in US dollars, drawn on a US bank, to the "United Nations" and send to Circulation at the address shown above. For those who lack the means to pay the subscription fee, a limited number of complimentary subscriptions are available. Please send a clearly written application to the editor.

Visit us on the web at www.un.org/AR