

A Survival International Report to the Human Rights Committee



**Survival is an NGO in Consultative
Status with the United Nations' ECOSOC**

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Survival 

Comments concerning Botswana's initial report to the Human Rights Committee in relation to compliance with the International Covenant on Civil and Political Rights, with specific reference to the Gana and Gwi Bushmen and Bakgalakgadi of the Central Kalahari Game Reserve.



WHO ARE THE BUSHMEN?

The Gana, Gwi and Tsila are part of the group of tribes known as 'Bushmen' who are among the earliest inhabitants of southern Africa. They are probably the last Bushmen living self-sufficiently. Men hunt antelopes with spears or bow and arrows, and women gather wild tubers and fruits. They speak a click language and are famous for their musical abilities. In the trance dance healers use the rhythm of singing, clapping and dancing to contact ancestral spirits who help them cure sick people.

The Central Kalahari Game Reserve (CKGR) lies in the middle of Botswana and covers approximately 52,000 square kilometers (an area larger than Switzerland). It was created in 1961 to protect the traditional territory of the 5,000 Gana, Gwi and Tsila peoples (and their neighbours the Bakgalagadi), and the game they depend on. The protection the reserve offered to the Bushmen was written into the Botswana Constitution with the agreement of Botswana's first democratic government.

In three big evictions, in 1997, 2002 and 2005, virtually all the Bushmen and Bakgalagadi were forced out of their lands in the CKGR by the Botswana government. They were originally told that the clearances were taking place because diamonds had been found on their lands. Later the government claimed that the evictions were to provide development to the people and to protect wildlife in the reserve.

During the evictions, the Bushmen's homes were dismantled, their school and health post were closed, their water supply was destroyed and the people were threatened and trucked away. There was no real attempt to consult the Bushmen in advance about the removals.

Most of them now live in resettlement camps outside the reserve. Rarely able to hunt, and arrested and beaten when they do, they are dependent on government handouts. Many have become gripped by alcoholism, boredom, depression, and illnesses such as TB and HIV/AIDS.

In December 2006, the Bushmen won an historic legal victory when Botswana's High Court ruled that the 2002 evictions (which affected around 750 people) were 'unlawful and unconstitutional' and that the people had been forcibly evicted without their consent. The three judges also held that the government had acted unlawfully when it refused to issue hunting licences to the Bushmen.

WHAT IS THE CURRENT POSITION?

Since the court ruling of December 2006, families have started the process of returning to their homes. There are now approximately 90 - 100 people back in the reserve. Survival estimates that a further 800 - 1,000 would like to return home.

The Botswana government has still made very few concrete steps to facilitate the Bushmen's return to the CKGR, or to implement the 2006 High Court ruling generally.

The people are being hindered in their return by:

1 Fear

The Bushmen have been psychologically affected by many incidents of torture and beating by wildlife guards in recent years. Since the court ruling, people in the resettlement camps have also been approached by government officials (including a visit by the President of Botswana, Festus Mogae), attempting to persuade the people not to return to the CKGR.

They need reassurance from the government that incidences of torture, harassment and beatings will no longer be tolerated.

2 Lack of transport

People were originally moved out in dozens of trucks over a two-month period. They have extremely limited resources and most are simply not in a position to transport themselves and their possessions (blankets, pots, water containers and small numbers of livestock) back into the reserve.

The government has refused to assist with transport, despite the court ruling that the evictions were unlawful.

3 Lack of water

The Bushmen have been told that they may not install a pump at their own expense at their old water borehole in Mothomelo, inside the reserve. The reason given by the government was that the borehole 'belongs to the government'. After the Bushmen's attorney complained, the government suggested that the Bushmen apply to the Department of Wildlife for a permit to use the borehole, which they did in early April of 2007. No response has been forthcoming and government officials continue to tell Bushmen inside the reserve and in the resettlement camps that they will not be allowed to use the borehole.

Currently, all water supplies have to be brought in on trucks. Most people are unable to afford to do this.

This constitutes a clear breach of Article 1(2) of the Covenant, which guarantees that no people shall be deprived of its means of subsistence.

4 Government's continued refusal to let the Bushmen hunt

All three judges of the Botswana High Court ruled that the government acted illegally when it refused to issue the Bushmen with hunting permits in 2002. Nevertheless the government continues to refuse to allow the Bushmen to hunt inside the reserve. **This also constitutes a clear breach of Article 1(2) of the Covenant.**

5 **Government's reticence to return livestock to the reserve**

In 2005, the government confiscated all of the livestock – mainly goats – owned by the Bushmen, citing a case of sarcoptic mange disease. This disease posed no threat to either the people rearing the livestock, or to the wildlife in the reserve

In November 2007, the government announced that the confiscated goats would be made available to be returned to their owners inside the reserve. Although this is a welcome development, the vast majority of goats initially confiscated have since died or disappeared. The government has not proposed to replace or offer compensation for the goats that died in its custody, nor has it suggested any time frame or procedure for enacting their return

The Bushmen rely on goats to provide milk and meat for their children in times of drought. Along with the refusal to allow the Bushmen to use their borehole to extract water, and to hunt on their lands, **Survival believes that the refusal to allow their small numbers of goats into the reserve without any scientific justification constituted a breach of Article 1(2) of the Covenant.**

6 **Government limit on the number of Bushmen allowed to return**

The Botswana government has declared that only the people listed in the court papers (229 people), along with their minor children, may return to the reserve. The court judgment, however, refers to the Bushmen's constitutional right to their land. The government has refused to accept that this applies to all those evicted in 2002, and probably also all those evicted in 1997, totaling around 2500 people. They have announced that only those on the list may return home.

The position taken by the government since the court ruling conflicts with the legal record. In 2004, the Attorney General agreed that the case should have legal affect not just for those listed in the court papers, but for all those who were relocated in 2002.

The government's refusal to acknowledge the right to return of all the relocated Bushmen constitutes a breach of Article 11(1) of the Covenant, which protects the right of free movement and freedom to choose his residence.

COMMENTS ON THE STATE PARTY'S REPORT

Contrary to the State Party Initial Report CCPR/C/BWA/1 of May 2007, the evictions were not based on the conclusions of the 1985 Fact Finding Mission to the CKGR (paras 279-283). In fact, the Mission advised against removing the people from the game reserve:

It is apparent to the Mission that the desires of the human population can only be satisfied without damage to the wildlife and other natural resources of the Reserve by segregating the wildlife from that human development which is incompatible with wildlife conservation. **One way this could be achieved would be by resettlement of the residents to one or more locations outside the Reserve. This is neither desirable nor practicable.** The only other way perceived by the Mission would be to zone the Reserve (page 33).

The State Party claims that the Mission found that a number of locations were rapidly evolving into permanent, settled agricultural communities. Survival has been unable to identify the passage in the report that comes to this conclusion. When challenged, government officials have also been unable to identify from where this information is said to have come.

The State Party also claims that the Mission found that people living inside the Reserve had largely abandoned their traditional way of life and were now hunting with guns and from four-wheel drive motor vehicles. In fact, there is nothing in the report to lead the government to this conclusion. When challenged, the government has been unable to explain why they continue to make this false claim. When questioned during the court case, the former Director of Wildlife admitted that the government had no reason to suppose that the Bushmen hunt with guns.

In paragraph 281 of its report, the State Party claims that a group of people agreed to relocate in 2001. The High Court of Botswana has since concluded that these removals took place forcibly and without the Bushmen's consent.

CONCLUSIONS

Survival International would like the Committee to request the Botswana government to fully implement the December 2006 judgment in a spirit of justice and fairness to its people.

Survival hopes that the Botswana government will be encouraged to take at least the following steps:

- Allow all Bushmen who wish to return to the reserve to do so without the need for a permit.
- Allow the Bushmen to use water boreholes already existing in the reserve and also to sink their own where this becomes necessary.
- Allow the Bushmen to hunt and gather within the game reserve, in accordance with the court judgment.
- Provide transport for the Bushman families and their possessions and livestock to be returned to the reserve, or at least provide financial assistance for them to arrange this for themselves.



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