

# Botswana Notes and Records

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## Botswana Notes and Records



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## **A Chronology of the Central Kalahari Game Reserve: Update III, 2002 – 2012**

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### **Abstract**

The Central Kalahari Game Reserve in Botswana has seen disagreements between local people and both local and international non-government organizations and the state over land and resource rights. Botswana government policy has tended to emphasize biodiversity conservation, high-end tourism, mining, and settlement development outside of the reserve. Residents and former residents of the reserve attempted to secure their rights to live in and utilize the resources of the reserve through negotiation, lobbying, and, eventually, the filing of two legal cases in the High Court. This paper discusses the issues relating to the Central Kalahari during the period beginning January, 2002, when the second major relocation of residents of the reserve occurred, through 2012, when some of the former residents of the reserve had returned to the Central Kalahari after having won what some see as two precedent-setting legal cases.

### **Introduction**

The central Kalahari region of Botswana has been the centre of dispute and controversy since at least the early 1980s. The year 2011 was the 50th anniversary of the declaration of the Central Kalahari Game Reserve (CKGR), Botswana's largest protected area and the second largest game reserve in Africa. The CKGR was the subject of two highly publicized High Court legal cases, one in 2004-2006 and the second in 2010-2011. It was and is the subject of intense interest on the part of international indigenous peoples' rights non-government organizations, including three of the oldest and largest, namely the International Work Group for Indigenous Affairs (IWGIA), which funded First People of the Kalahari (FPK), the first and national-level San organization in Botswana, from 1993-2004; Cultural Survival (CS), which produced a series of articles and press releases on the central Kalahari beginning in the late 1980s and culminating in a special issue of the Cultural Survival Quarterly in 2002 (Lee, Biesele and Hitchcock 2002); and Survival International (SI), which produced 'Urgent Action Bulletins' on the central Kalahari situation beginning in 1989, and helped fund the lawyers involved on the side of the applicants in the CKGR court case (the San and Bakgalagadi) starting in November 2004. The Kalahari Peoples Fund (KPF), an American organization that provides assistance to the peoples of the Kalahari, sought to bring attention to the CKGR issue from the mid-1970s onward. The American Anthropological Association (AAA) sought to get the Botswana government to reverse its position on the CKGR through a series of letters and reports, starting in 1996, prior to the first removals of people from the reserve.

The CKGR is a place where local people, including both San and Bakgalagadi, sought legal rights to land and resources, and the right to live in the land of their ancestors. The government of Botswana, for its part, opted to relocate the people of the CKGR, maintaining that it did so for purposes of both conservation and development (see [www.gov.bw](http://www.gov.bw)). There has been considerable debate regarding the reasons for the government's decisions to relocate people outside of the CKGR (see, for example, Hitchcock 2002). One position is that the resettlement was done for purposes of allowing mineral exploration and exploitation, particularly diamonds (see Corry 2003 and 2011; Survival International 2003a, 2003b, 2004 and Good 2003 and 2009). A second position is that the relocation efforts were a result of pressures brought to bear on the government by ecologists and conservation organizations. As Morton, Ramsay, and Mgadla (2008:70), for example, noted, 'International conservationists pressured

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the Botswana government to remove the Basarwa from the CKGR’.

Debate about the implications of the CKGR relocations and policies pursued by the government took place in international journals such as the *Journal of Southern African Studies* (Hitchcock 2002); *Before Farming* (Corry 2003; Suzman 2003/4 and Saugestad 2006); *Africa* (Solway 2009); the *Botswana Law Journal* (Ng’ong’ola 2007); *The International Journal of Human Rights* (Saugestad 2011; Hitchcock, Sapi gnoli and Babchuk 2011); and *Diaspora, Indigenous, and Minority Education* (eg Sekere 2011). Discussions and debates about the CKGR took place on the worldwide web and on social networking sites (eg Facebook and Twitter) as well as in the international media (eg in South Africa, Britain, France, Italy, Germany, Spain, and the United States).

There have been two overviews of events in the CKGR, one published in 1999 (Hitchcock 1999) and a second in 2001 (Hitchcock and Vinding 2001). The present list of chronological events goes from 2002 to 2012. During this period, the second major relocation of people out of the CKGR was carried out by the government of Botswana in January-February 2002; a legal case was brought against the government of Botswana by the residents of the CKGR in 2002 and 2004-2006. A second legal case on CKGR water issues was filed in June 2010 and rejected by a High Court Judge, L Walia on 21 July 2010. The second CKGR court case judgment was appealed on 1 September 2010 and decided in favour of the claimants by a panel of Botswana Court of Appeal judges on 27 January 2011. It is clear that the CKGR issue cannot be understood by chronicling events simply within Botswana’s borders. Botswana, like all countries, is affected by global social, economic, and political forces, including ones exerted by multilateral institutions such as the United Nations, the African Union, the International Finance Corporation (IFC), and the International Court of Justice (ICJ). Attention was also be paid to the CKGR issue by international human rights organizations such as the African Commission on Human and Peoples Rights (2008) and United Nations Special Rapporteur on the human rights and fundamental freedoms of indigenous people (Anaya 2010).

One of the most significant of the international indigenous rights organizations to bring pressure upon Botswana was London-based Survival International. Between 2002 and 2012 SI was one of the key players to influence events and perceptions relating to the CKGR. SI produced a series of reports, bulletins, and op-ed pieces in newspapers about the CKGR and related issues beginning in the late 1980s and continuing to the present. SI also provided back-up financial and advisory support to people working on the CKGR issue in Botswana. SI organized street protests around the Botswana embassy in London.

In the early part of the new millennium SI initiated what came to be known as the ‘blood diamond’ campaign which, according to one of the anonymous reviewers of this paper, ‘struck terror into the hearts of Botswana’s leaders’. This campaign, which focused on Botswana’s diamond policies as well as those of De Beers and Debswana, arguably had a major role influencing the positions of Botswana’s leadership on the CKGR issue before, during and after the High Court ruling of December 2006. For a discussion of the role of SI vis a vis the CKGR issues, see Solway (2009).

This chronology seeks to address the various issues relating to the CKGR. Some of this information was drawn from reports on the CKGR, from High Court transcripts, from academic papers, books, websites, and from media coverage of the CKGR. Information was supplemented with detailed interviews and field work in Botswana over the period from 2002-2012.

### **The Developments in 2002**

In January 2002 the Botswana government informed the remaining residents of the CKGR that they were shutting down the wells and stopping all food deliveries inside the reserve. The government shut down all services in the CKGR on 31 January 2002. In late January and early February 2002, the government moved people and their possessions out of the reserve. Houses were dismantled, fruit trees uprooted, and water tanks were destroyed. Livestock (goats, sheep, donkeys, and horses) were loaded on trucks or scattered into the bush, and people were placed on the trucks and moved out of the

reserve to two resettlement sites, one in Ghanzi District (New Xade) and the other in Kweneng District (Kaudwane). The CKGR matter was brought to the High Court on 19 February 2002 on behalf of the people of the CKGR (Roy Sesana and 243 others) by a legal team headed up by Glyn Williams and Barrister John Whitehead of Chennels Albertyn, South Africa (Roy Sesana, Kiewa Setlhobogwa, & 241 Others v the Attorney General of Botswana, Case No. 52 of 2002). The legal claim was dismissed by Judge Dibotelo of the Botswana High Court on 19 April 2002. The dismissal of the case was appealed, and it was ruled that the case should be heard in the High Court. Ditshwanelo, the Botswana Centre for Human Rights, held a seminar on the CKGR issue in March 2002.

According to Botswana government figures, compensation paid to people totalled 4.4 million Pula in cash (at that time approximately US \$900,000) to 730 households. In addition, 2,300 cattle and 2,018 goats were given to 602 people (5 head of cattle and 15 goats per beneficiary) ([www.gov.bw](http://www.gov.bw)). Discussions with some of the people who were relocated indicate that some of them received compensation while others did not. Still others said that they received only a portion of the compensation that the government had promised. Government's position was that all people directly and indirectly impacted by the relocation were compensated appropriately.

### **The Developments in 2003**

Preparations of the legal case were on-going, and there were meetings of the CKGR Negotiating Team in 2003 along with a legal team working on behalf of the people of the CKGR. The CKGR Negotiating Team consisted of representatives of a number of Botswana non-government organizations: Ditshwanelo, First People of the Kalahari, Kuru, and the Botswana Christian Council. The legal team that was assisting the Negotiating Team consisted of representatives of Chennels-Albertyn, a South African legal firm, led by lawyer Glyn Williams.

In 2003, the Botswana Institute for Development Policy Analysis (BIDPA) did a review of the country's Remote Area Development Programme (RADP), the programme aimed at helping people residing outside of gazetted villages (BIDPA 2003). The Minister of Local Government, Margaret Nasha, said in March 2003 that the San have the same rights as other Botswana, noting that they can apply to land boards as other citizens do. In response, FPK and other San advocacy groups pointed out that San have not been given grazing or water rights by land boards except in two cases, one in Shaikarawe, Ngamiland based on a case brought by Ditshwanelo that was settled out of court, and one in Ghanzi District, Dqae Qare, a freehold farm purchased for San ownership and use.

### **The Developments in 2004**

A meeting of the Negotiating Team was held in February 2004 in which the situation of the CKGR legal strategy was outlined, and recommendations were made as to how to proceed. Two members of FPK attended the United Nations Permanent Forum on Indigenous Issues meetings in April, 2004. The CKGR High Court case began in July 2004 with hearings at New Xade in the Ghanzi District. The lawyers in the case were Sidney Pilane on the government side and John Whitehead and Glyn Williams along with Duma Boko and Chris du Plessis on the side of the applicants. Only 3 witnesses gave testimony in the first phase of the case (July 2004), including two San along with George Silberbauer, now a retired anthropology professor living in Australia (Sapignoli 2009). Professor Silberbauer had been the Bushman Survey officer in colonial Botswana (the Bechuanaland Protectorate) from 1958-1966 and was involved extensively in the establishment of what became the CKGR.

Between the 4 and 7 July the court and the lawyers did an Inspection in Loco in the CKGR. They went to Kaudwane, Kukama (Gugamma), Kikao, Mthomelo, Metsiamonong, Molapo, Xaka, Xade, and New Xade. The case was continued until November 2004 in part because the legal team ran out of funds. The case was moved to Lobatse where the High Court sat. In the July-November period, discussions were held among some of the applicants (those who brought the case before the court). As a result of these discussions, the decision was made to bring new lawyers into the case. Funds were

also sought for the support of the lawyers and legal proceedings in a fund-raising tour of the United States sponsored by the Indigenous Land Rights Fund and the Kalahari Peoples Fund (October 2004). A second phase of the legal case began in Lobatse on 5 November 2004 with some new lawyers on the side of the people of the CKGR. These lawyers included Mr. Gordon Bennett, an international lawyer from the United Kingdom, and Mr. Gideon Duma Boko from Botswana. For the respondents the lawyers were Mr. Pilane, Mr. Molodi, and Mr. Manewe. Issues that were heard in this phase of the case revolved around the length of time that the San and Bakgalagadi had resided in the CKGR, how the relocation happened and if the residents of the CKGR moved out voluntarily or were forced out, the process of consultation, livelihoods of reserve residents, and the use of natural resources by residents of the reserve.

### **The Developments in 2005**

The CKGR case continued. In February 2005, Botswana President Festus Mogae declared Professor Kenneth Good, an Australian political scientist at the University of Botswana, a prohibited immigrant (PI). Good appealed the case unsuccessfully, and was deported on 17 June 2005. He was an outspoken critic of Botswana on issues relating to the treatment of San peoples and issues surrounding the Botswana government's commitment to transparency, accountability, and participatory democracy (see, for example, Good 1999, 2003, 2009; Taylor and Mokhawa 2003).

On 6 March 2005 the United Nations Committee on Racial Discrimination questioned the government of Botswana on its handling of the CKGR issue. From 15-23 June 2005 a visit was made by two members of the Working Group on Indigenous Populations/Communities of the African Commission on Human and Peoples' Rights (ACHPR) to Botswana –Andrew Ranganayi Chigovera, Chairperson, and Dr Naomi Kapuri, member (see ACHPR 2008).

In September 2005 the government of Botswana announced that those people still living in the reserve would be required to leave it and that henceforth the CKGR was to be off limits to residential use. The Department of Wildlife and National Parks refused entry on the part of the lawyers involved on the side of the San and Bakgalagadi seeking rights to return and live and use the resources in the reserve, which was in contradiction to the orders of the High Court, which said that they should have the right to enter the reserve to confer with their clients. On 12 September 2005 the CKGR court case was adjourned to 6 February 2006. That same day, 12 September, armed police and wildlife officers entered the reserve and told people living there to leave. On 15 September 2005 a radio transceiver belonging to the First People of the Kalahari was confiscated, making it impossible for communications to be maintained between people in the reserve and those outside.

On 24 September 2005 a group of 28 people attempted to enter the CKGR to bring food and water to their relatives and friends. Many of these people, including four members of FPK were arrested and kept in jail for several days. The group was charged with unlawful assembly, but subsequently the charges were dropped. In late September 2005 a group of foreign nationals visiting the CKGR including the head of Human Rights Watch along with Rebecca Adamson of First Nations Development Institute (now First Peoples Worldwide), Rupert Isaacson of the Indigenous Land Rights Fund (ILRF), and Gloria Steinem of the Ms Foundation were escorted out of the reserve by armed police and wildlife officers. Subsequently, a meeting was held between President Festus Mogae and members of this group concerning the situation in the CKGR and what to do about it. No conclusions were reached as a result of the meeting. On 29 September 2005 Roy Sesana of FPK was told that he has received the Right Livelihood Award (the 'alternative Nobel Prize'); he accepted the award at a meeting in Europe on 9 December 2005.

On 28 October 2005 the High Court ruled that one San man, Amogelang Segotsane and his family had the right to go back into the reserve and to take water with them. The High Court also ordered that his goats, which had been confiscated, be returned to him.

In November 2005, a BBC Radio 4 programme entitled 'Crossing Continents' addressed the issue of charges of genocide in the CKGR (Kenyon 2005). This was part of a series of discussions in Botswana and internationally concerning the ways to interpret what had happened in the CKGR. Some organizations had argued that the events were evidence of either genocide or ethnocide (cultural destruction) while others said that the treatment of the people of the CKGR was discriminatory but not genocidal (see Corry 2003; Suzman 2003-2004, Arce-Whyte 2004; Isaacson 2004; Kenyon 2005). On 30 November 2005, it was announced that an elderly San woman, Qoroxloo Duxee, who was found dead in the reserve on 10 November, had an autopsy performed that revealed that she had died of 'dehydration, starvation, and shock' (for a discussion of the life, death, and legacy of Qoroxloo Duxee, see Workman 2009:15-19, 66-72, 203-221, 239-242).

### **The Developments in 2006**

On 8 February 2006 the case resumed, with government lawyer Sydney Pilane arguing that the government was within its right to remove people from the CKGR in the interest of conservation, tourism, and development. On 22 March 2006 it was announced that a 'mystery disease' had killed six San in New Xade. Concerns about the health of people affected by the CKGR resettlement were raised in the British medical journal *The Lancet* (see Ohenjo et al, 2006).

In May 2006 it was estimated that 10% of the original applicants in the legal case had died since the CKGR High Court case began in July 2004. In July 2006, 135 additional CKGR residents asked to be added to the list of those who were seeking redress from the government of Botswana for being removed from the reserve and denied access to resources but this request was denied.

In September 2006 the Botswana Congress Party (BCP) issued a 'Position Paper on the Relocation of Communities: The Case of the Gana and Gwi of Central Kalahari Game Reserve (CKGR)' which took strong issue with the government of Botswana's position on the CKGR relocations.

On 17 October 2006 the African Commission on Human and Peoples' Rights (ACHPR) expressed concern to the government of Botswana about the treatment of the people of the Central Kalahari. On 26 October 2006, Andrew Sesinyi, Deputy Permanent Secretary in the Ministry of Communications, Science and Technology, warned the media (newspapers, television, and radio) in Botswana to ensure that all negative reports on the CKGR issue were to be counterbalanced by government of Botswana statements. He said that the privately owned media 'were rallying behind the enemy' (Mmegi Online 26 September 2006).

In November 2006 after the UN Human Rights Council meetings in June 2006 at which the draft Declaration on the Rights of Indigenous Peoples was presented, a group of African states led by Namibia and Botswana raised questions about the Declaration's principles and implications (African Group of States 2006).

On 13 December 2006 after the longest and most expensive legal case in Botswana history, the judgments of the three High Court judges were announced. The rulings of the judges were 1) that the people of the CKGR did not give their consent when they were removed from the reserve, 2) the removals were unlawful, 3) the people who had been removed had the legal right to return to the CKGR, 4) the people of the CKGR had the right to apply for Special Game Licenses from the Department of Wildlife and National Parks, and 5) the government's refusal to allow the applicants to enter the CKGR without permits was both unlawful and unconstitutional. It was also decided that the government did not have to provide food, water, or other basic services to people in the CKGR. The High Court ruling stated that the CKGR applicants had been compensated adequately but that they had not been consulted sufficiently, a ruling that was in accord with Botswana's constitution.

On 14 December 2006 the Attorney General of Botswana said that Botswana would comply with the rulings issued by the judges, and that the government would not provide services to people in the CKGR. On 20 December 2006 the Botswana government announced that it had decided not to appeal the legal case (for the transcripts of this case, see High Court of Botswana 2004-2006). For

analyses of the first CKGR case, see Saugestad (2006 and 2011), Ng'ong'ola (2007), and Sapignoli (2009 and 2012).

### **The Developments in 2007**

In January 2007 people returning to the CKGR were stopped by government officials and police. After appeals were issued, some CKGR former residents were allowed to return to the reserve, and by May 2007 there were some 200 people in the reserve.

In June 2007 it was announced that a mining company, Gem Diamonds, had purchased the mining licenses for sites around Gope in the CKGR, an area of 745 sq km, where in the past De Beers and Falconbridge, Ltd. (Xstrata) had found kimberlite deposits indicating the presence of diamonds. The company paid a reported US \$34 million for the license. Gem Diamonds maintained that it has policies in place that govern its relationship with local communities and that these will ensure environmentally sustainable exploitation of mineral resources.

### **The Developments in 2008**

Environmental Impact Assessments (EIAS) of the Gope diamond mine were conducted in 2008, with the result that the mine was cleared to go forward. On 12 June 2008 the new President of Botswana, Ian Khama, agreed to a request from Roy Sesana and four other residents of the CKGR that negotiations regarding issues of land and resource rights and entry into the Central Kalahari should take place. It was decided that parties to these negotiations would be as follows:

- 1.) a CKGR Residents Committee, consisting of two representatives each from Mothomelo, Kikao, Gope, Kukama, Molapo, and the resettlement sites of New Xade, Kaudwane, and Xere (Metsiamonong refused to take part);
- 2.) Government, with some 7 ministries represented (eg chair: Minister of Foreign Affairs and International Co-operation, Minister of Environment, Wildlife, and Tourism, Minister of Lands and Housing, Minister of Local Government, the Office of the President, Minister of Defence, Justice, and Security, and the Ministry of Energy and Water Affairs), plus representatives from the Attorney General's Chambers and several others); and
- 3.) the CKGR Coalition, consisting of Botswana NGOs Ditshwanelo, Botswana Council of Churches (BCC), Botswana Council of Non-government Organizations (BOCONGO), the Kuru Family of Organizations (KFO), First People of the Kalahari, and the Working Group of Indigenous Minorities in Southern Africa (WIMSA), with the San Studies Centre of the University of Botswana as an observer. Ditshwanelo was designated to be the Secretariat for the negotiation meetings.

The first negotiation meeting was held between the Residents Committee and government and the CKGR NGO Coalition on 26 November 2008. On 3 November 2008 President Ian Khama delivered a report to Parliament which included statements on the CKGR issue. As of December 2008, there were 5 community trusts in Ghanzi, some more developed than others. Efforts were also being made to develop a community trust at Kaudwane in the Kweneng District.

### **The Developments in 2009**

From 19 to 27 March 2009 a visit was paid to Botswana by the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, James Anaya. The Special Rapporteur visited places in the CKGR and two of the settlements outside of the CKGR, Kaudwane and New Xade, as well as other places in Ghanzi and North West Districts or Ngamiland (eg D'Kar, Shaikarawe, Tsodilo and Mababe) (for the report on this trip and the conclusions drawn, see Anaya 2010).



In May 2009 the Botswana government said that plans were being made for an environmental impact assessment (EIA) of a possible Trans-Kalahari Railway from Mahalapye across the CKGR to Ghanzi District and on to Walvis Bay in Namibia.

In June 2009 a Universal Periodic Review (UPR) of Botswana was carried out by the Human Rights Council in Geneva. Botswana responded to the UPR results in September. A second CKGR Negotiation meeting was held on 11 September 2009. Consultations followed that meeting in which government officials met in the CKGR and the resettlement communities (28 September, 2009, 5-10 October, and 10 November 2009). The communities included Xere, Molapo, Kaudwane, New Xade, Mothomelo, Metsiamonong, and Kukama. These meetings addressed the results of the consultations and the negotiations.

In December 2009 a new tourist lodge was opened in the Deception Valley, Kalahari Plains Camp, owned and operated by Wilderness Safaris. There was also a tourist lodge in the north western part of the CKGR, Tau Lodge at Tau Pan, owned and operated by Kwandu Safaris. Survival International wrote to both the government of Botswana and Wilderness Safaris, complaining that the presence of the lodge was not agreed upon by local people in the CKGR and that tourists would be able to benefit from drinking water and a swimming pool, but not the people residing in the vicinity of the lodge. Both government and Wilderness Safaris issued statements defending the ways in which the decisions had been taken.

### **The Developments in 2010**

In March 2010 goats of people in the CKGR were confiscated by government officials. In the same month a meeting was held by President Ian Khama at New Xade in Ghanzi District but no mention was made of the CKGR issue.

On 29 April 2010 Phologo J Gaumaku, the Charge D'Affaires of the Permanent Mission of Botswana to the United Nations, spoke at the 9th session of the United Nations Permanent Forum on Indigenous Issues in New York on the issue of boarding schools and indigenous peoples.

In May 2010 there were an estimated 500-600 people in the CKGR in 5 communities. Some of these communities expanded when school children were on vacation from schools in Kaudwane and New Xade. People attempting to enter the reserve reported that they were assessed as to whether they were part of the original group of applicants to the CKGR court case, and if they were not, they were refused entry.

The CKGR water case began in the High Court (9 June 2010); the case was rejected by High Court Judge, Walia (21 July 2010). In September the lawyers for the people of the CKGR appealed the High Court decision, and it was decided in November that the Court of Appeals would hear the case. On 22 July 2010 the African Commission on Human and Peoples' Rights ruled against Botswana on behalf of Professor Kenneth Good, who had brought a case against Botswana for violation of his rights. The Commission recommended to Botswana that it should take steps to ensure that Sections 7(f), 11(6) and 36 of the Botswana Immigration Act and its application conform to international human rights standards, especially the African Charter. The ACHPR also recommended that Botswana pay compensation to Professor Good. On 28 July 2010 the UN General Assembly formally recognized water as a fundamental human right through a General Assembly Resolution.

On 10 August 2010 the African Commission on Human and Peoples' Rights issued a press release on 'The Situation Facing the Bushmen of the Central Kalahari Game Reserve in Botswana'. The African Commission argued for fairer treatment of the people of the CKGR in accordance with international human rights standards and the African Charter on Human and Peoples' Rights. As the ACHPR said, 'The right and access to water are essential to the full enjoyment of the right to life and all the rights contained in the African Charter. A denial of such right is a denial of the basic right and the denial of the right to life as enshrined in the article 4 of the African Charter.'

Consultations were held on the proposed Ghanzi Copper Project by Hana Mining project authorities and government in Ghanzi, D'Kar, and Kuke on 24 and 25 September 2010. Ghanzi residents were told about the plans for the establishment of a copper mine that would affect the north eastern Ghanzi District, a portion of southern Ngamiland, and a small part of the north western portion of the CKGR near Tsau Gate.

In November 2010, a San man from the CKGR, Smith Moeti spoke at the African Commission on Human and Peoples' Rights 48th Ordinary Session (10-24 November 2010). He described the complex situations facing the people in the CKGR. He spoke of the lack of access to water in the CKGR, which he said was severe. He also pointed out that the people in the CKGR had not been given hunting licenses, arguing that they needed these licenses to provide food to sustain themselves.

In 2010 the book *Tears for My Land* was published by Kuela Kiema, who had been born in the CKGR (Kiema 2010). A visit was paid to the CKGR by a New York Times reporter in October 2010, resulting in significant publicity about the CKGR issue, particularly that relating to the denial of access to water (see Bearak 2010). In December 2010 a CKGR negotiation group meeting was held in Gaborone at which the results of discussions in the CKGR were addressed. The conclusions of these meetings have not been made public.

Also in 2010 Albert Barume, a lawyer, published a book on the land rights of indigenous peoples in Africa, citing the 2006 Central Kalahari case as an important one in terms of the constitutional recognition and protection of indigenous peoples' rights (Barume 2010:164-173).

### **The Developments in 2011**

This year was the fiftieth Anniversary of the Central Kalahari Game Reserve. On 27 January 2011 the Botswana Court of Appeals ruled on behalf of the San and Bakgalagadi on the CKGR water case, which had been argued by Gordon Bennett, the same lawyer who had been in the first CKGR court case (see Sapignoli 2012; Sarkin and Cook 2010-2011 for analyses of the CKGR water case).

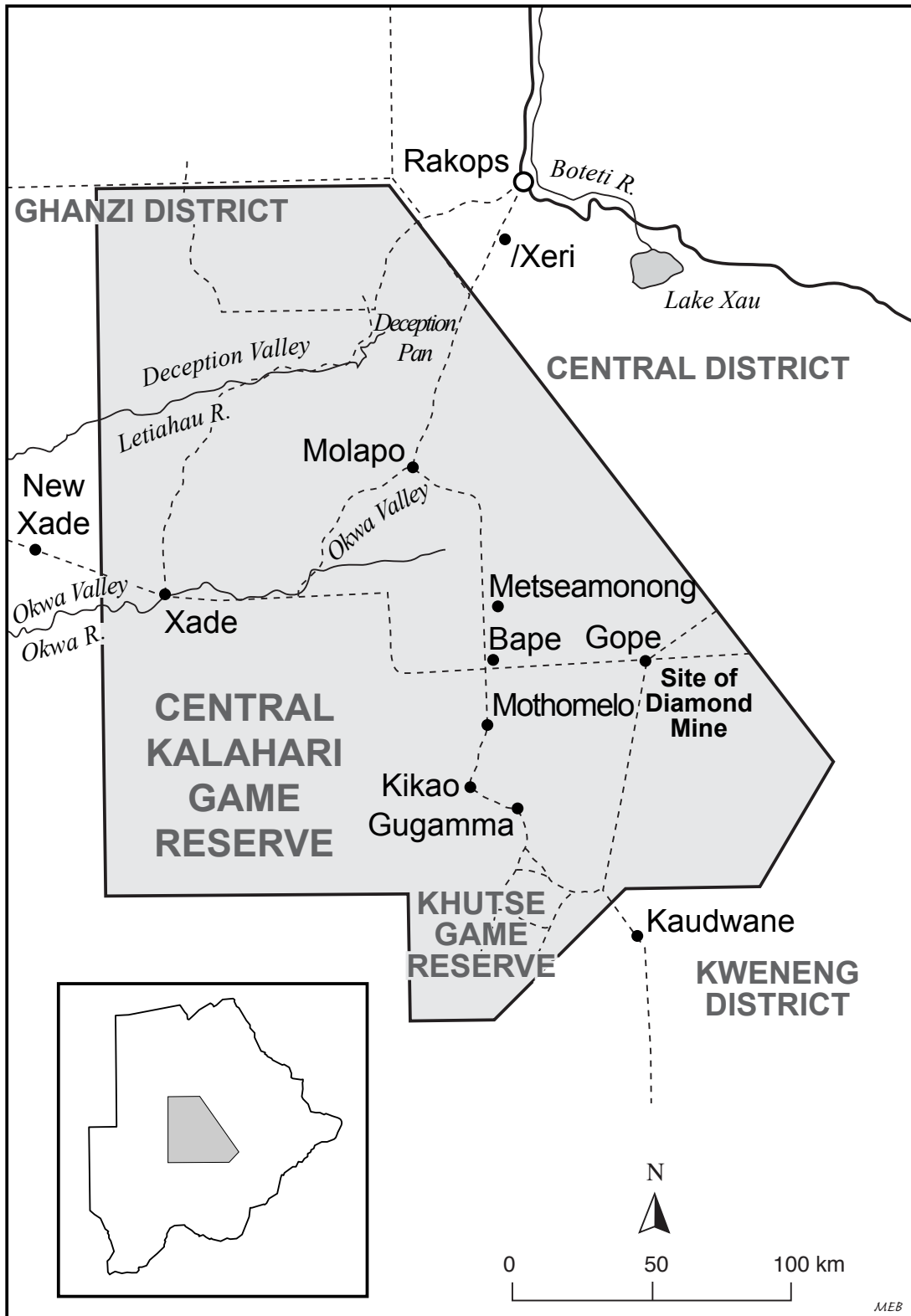
In February, a visit was made to the CKGR by two ministers, those of Foreign Affairs and Environment and Tourism, for consultations. One of the issues that was raised in the discussions was the possibility of a 'third relocation' meaning that people in the CKGR may be requested to move from their present locations to Mothomelo or another single location in the CKGR (for data on the communities in the CKGR over time, see Figure 1 and Table 1).

During the 10th session of the United Nations Permanent Forum on Indigenous Issues, held from 16 to 27 May 2011, the Special Rapporteur on indigenous people remarked on the issue of the human rights to safe drinking water and sanitation. He mentioned the CKGR water rights case as a great achievement. He went on to say, 'This decision was very important not only adding to jurisprudence protecting indigenous rights to remain on their ancestral lands, but also further solidifying the status of the right to water under international law'.

In June 2011 two FPK members visited Canada and spoke about the CKGR court cases and the situations of the CKGR peoples on Canadian radio. Roy Sesana was a featured speaker at the annual meetings of the opposition Botswana National Front (BNF) in Tsabong in July.

Assessments were carried out of the proposed copper-silver mine in the Ghanzi and North West Districts in July-August 2011. Residents of Ghanzi and Ngamiland said to interviewers involved in the social impact assessment of the proposed mine that 1) they utilized the area in the north western CKGR for purposes of natural resource exploitation, 2) some of them had lived there until the 1970s, and 3) they still used the area frequently for travel, camping, and for hunting and gathering purposes as well as for visiting culturally significant sites including graves. In August the 2011 Botswana National Census was carried out. Concerns were raised about the utility of the census by some of the people in the CKGR, a number of whom chose not to participate in the census. As one CKGR resident put it, 'Count us dead'.

Figure 1: Map of the CKGR and Khutse Game Reserve



**Table 1: Population Data for Communities in the Central Kalahari Game Reserve, Botswana, 1988-89 – 2012**

Name of Community	1988-89	1991	1996	1999	2002	2012
Bape	110	41	-	0	0	0
Gope	100	43	110	10	11	24
Kukama	-	-	26	0	11	65
Kikao	104	98	30	25	13	25
Matswere	-	-	18	0	0	0
Menoatshe	50	-	-	0	0	0
Metseamonong	90	71	130	130	17	120
Molapo	202	61	113	130	14	130
Mothomelo	145	149	272	150	10	150
Serube	68	-	-	0	0	0
!Xade	791	528	701	0	0	0
Xaxa	-	3	0	0	0	0
TOTALS	1,660	994	1,400	445	76	514

(Note: the drop between 1996 and 2002 is due to the relocation of people from the Central Kalahari Game Reserve communities to areas outside of the reserve; the large-scale change between 1996 and 1999 is due to the relocation of people in May-June, 1997 to New Xade in Ghanzi District and Kaudwane in north eastern Kweneng District; the figures for 2002 are from mid-February 2002 and are for adults who registered with First People of the Kalahari as part of the legal effort; some of the data were obtained from people working in the CKGR in 2011-2012. No figures are yet available from the August 2011 Botswana national census.)

In August-September drilling for water took place in the CKGR. The drilling and repair of water-related facilities was carried out by a non-government organization, Vox United, in consultation with First People of the Kalahari. Significantly, the funds for the work were provided by Gem Diamonds, based on an agreement between Gem and the people of the CKGR. Potable water was struck at Mothomelo but other drilling in the reserve did not result in water of such quality that could be used by people. On 5 September 2011 a celebration was held at Mothomelo to commemorate the availability of water for local people in the CKGR for the first time in 9 years.

## **The Developments in 2012**

Two San from Botswana, one from the Botswana Khwedom Council, and the other from Kuru, were among four San who attended the 11th session of the United Nations Permanent Forum on Indigenous Issues (UNPFII) in New York in May 2012. At the meetings, a San Caucus was formed, and a statement was made by the Caucus outlining the concerns of San people, focusing in part on land and resource rights issues which, in their view, continue to be problematic. It was clear to the San and their supporters that more work needs to be done regarding the CKGR consultations and implementing the decisions of the two CKGR court cases. From the standpoint of the government of Botswana, the negotiations were on-going, even though there had been no formal meetings since December 2010. The CKGR Residents Committee continued to meet, and the CKGR non-government organization group working on community natural and cultural resource mapping in Molapo continued to visit the CKGR, most recently in May 2012.

The Special Support Group (SSG) of the Botswana Police entered the reserve on 5 May and arrested half a dozen people for alleged violations of Botswana's hunting laws and established a camp near Metsiamonong. FPK and other organizations were involved in advising the people who had been arrested for hunting on what their rights were in the period from May to September 2012. A consultation meeting on the Hana Mining Company plans regarding the copper-silver mine likely to affect the CKGR was held on 13 July 2012 in Mothomelo. In November 2012 the Department of Wildlife and National Parks announced that although a hunting ban was going to be in place by 2013, people dependent on traditional (subsistence) hunting would still be allocated special licenses and hunting permits.

## **Conclusions**

At community meetings held in the Central Kalahari in September, 2012 local people said that they would be willing to continue negotiations with the government of Botswana over the Central Kalahari Game Reserve in the hopes of coming up with an agreement that would satisfy all sides. Discussions continued on issues such as hunting and community rights in Communal Use Areas being incorporated into a new CKGR management plan in the latter part of 2012. Plans were being made for visits to the CKGR by various organizations and individuals who were hoping to help provide some resolution to the outstanding issues facing the people of the Central Kalahari and the government of Botswana. The UN Special Rapporteur on the human rights and fundamental freedoms of indigenous people, the African Commission's Working Group on Indigenous Populations/Communities, Ditshwanelo, and San advocacy organizations First People of the Kalahari and the Botswana Khwedom Council continued to raise concerns about the treatment of people in the Central Kalahari and elsewhere in Botswana. This was especially important given that remote area settlements in several districts were told that they had to relocate, and in at least one, Ranyane, water was cut off by the Ghanzi District Council on 7 December, 2011 (Gaotlhobogwe 2012). Reports about these issues were being prepared for the meetings of the Human Rights Council of the United Nations when Botswana was to come before the Council as part of the Universal Periodic Review (UPR) in January, 2013. Debate continued in the legal and academic communities as to whether the government of Botswana was in compliance with the rulings of the two CKGR court cases and the importance of these cases as legal precedents for human rights worldwide.

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