

IWGIA STATEMENT

The High Court ruling in Botswana is a milestone for the recognition of indigenous peoples' rights in Africa

On the Botswana High Court made a historical ruling on the rights of the San/Bushmen people to live in the Central Kalahari Game Reserve. Since the founding of the Bushman organisation, the First Peoples of the Kalahari, in the early 1990s the Bushmen have defended this right and in the end they brought the legality of the eviction from the Game Reserve to the Court.

The recent ruling by the High Court is in a number of ways a win-win case. It is a legal victory for the Bushmen and it is a political victory for a democratic system of which the independence of the Court is vital. The Bushmen might have been sceptical that the court would rule against the state, but the outcome of the High Court ruling has given new strength to the legal system.

But the Botswana High Court ruling have much larger ramifications than the decisions about the rights of the Bushmen to live in the Central Kalahari Game Reserve. For about 20 years the United Nations have drafted a declaration on the rights of indigenous peoples. Included in the text that was adopted by the UN Human Rights Council in June 2006, and that is currently under consideration of the General Assembly for its final adoption, is a paragraph that states that 'Indigenous Peoples have the right of self-determination'. Some states have expressed the fear that this will imply that indigenous peoples have the right of secession. This is however unfounded and far from the reality in which indigenous peoples in Africa lives, and the claim of the Bushmen to live in the Central Kalahari Game Reserve if they so wish is exactly a claim of the right of self-determination. It is a right not to be evicted from their lands without their consent.

Some African governments, Botswana included, have been very sceptical about the Declaration of the Rights of Indigenous Peoples. The Botswana High Court ruling should remove that scepticism. The indigenous Bushmen expressed confidence that their claim for self-determination could be accommodated by the existing legal structures and the ruling confirmed the integrity of a state institution vis-à-vis this claim.

IWGIA expects that the High Court ruling will encourage African governments to endorse the UN Declaration on the Rights of Indigenous Peoples. Africa has already taken a lead when the African Commission on Human and Peoples' Rights adopted a report on indigenous populations and communities in Africa. This process has been noticed all over the world and with the High Court ruling in Botswana another milestone on human rights in Africa might have been reached and should be used for the advantages for marginalized peoples in all parts of the world.

We all know that for legal decisions to be realised in a long perspective there is a need for political will. There are practical steps to be taken if the rights of the Central Kalahari Bushmen shall have any practical implications. Although the High Court ruling did not include such issues we urge the Botswana government to take the necessary measures for providing services for those people who want to live in the Central Kalahari Game Reserve.

13 December 2006