Vulnerability and Indigenous Communities: Are the San of South Africa a Vulnerable People?

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Introduction

In recent years, healthcare ethics, international law, and political philosophy have been moving closer together. The previously missing links are considerations of justice and their recognition through legal instruments. The most obvious example to date is the topic of benefit sharing.

Benefit sharing is a technical term, which was popularized by the Convention on Biological Diversity (CBD) adopted at the 1992 Earth Summit in Rio de Janeiro, Brazil:[1] The CBD was the first international treaty to recognize that the conservation of biodiversity is a "common concern of humankind."[2] Today, its 190 Parties cooperate to stop the destruction of biodiversity by attempting to ensure its sustainable use and by requiring users of this natural wealth to share the benefits with those who provide knowledge of and access to genetic resources.

The San Peoples of Southern Africa (also known as Bushmen)[3] are one of the few indigenous populations who have concluded a major benefit sharing agreement with the biotechnology industry to date. Their traditional knowledge of the *Hoodia* succulent was used to obtain a patent on the plant's appetite suppressant properties, currently being developed into a food product for a dietary range.

The overall aim of the paper is to examine the notion of the San's collective vulnerability, with reference to potential exploitation rather than fair benefit sharing. This task will be undertaken in the light of the following definition:

> To be vulnerable means to face a significant probability of incurring an identifiable harm while substantially lacking ability and/or means to protect oneself.[4]

I start by giving a brief history leading to the modern San setting. This will illuminate how harm was imposed on the San by other peoples. Second, I summarize the benefit sharing case briefly. Third, I discuss the hunter–gatherer origins and culture of the San peoples in relation to the collective trauma they have undergone. Fourth, I examine how lack of access to land and resources could contribute to a situation of collective vulnerability. The paper ends by summarizing the factors that make the San vulnerable to being harmed in the

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light of the above definition while aiming to provide some thoughts on how such harm could be avoided in the future.

A Brief and Harsh History

The San of Southern Africa have lived by hunting and gathering in small groups for thousands of generations south of the Congo-Zambezi watershed.[5] It is difficult to describe the history of indigenous peoples, and of the San in particular, without gasping anew at the arrogance and folly of those who presided over the colonial effort. The wisdom of the day, applied equally in the Americas, Australasia, and Africa, was that indigenous peoples were subhuman, primitive, and thus not deserving of normal treatment. The land they inhabited was "terra nullius"[6] meaning belonging to nobody. The complex languages they spoke were scorned as being no more than animal sounds. One observer wrote that "their speech it seemed to us inarticulate noise, rather than language, like the clucking of hens, or gabbling of turkeys."[7] The explorer le Vaillant described the "Houswaana" (his name for the San) as a fiercely independent and nomadic people. In the capitals of the West, San captives were put on show under banners such as "Earthmen; only specimens ever seen in Europe." The following extract from the London Press indicates the breathless ignorance that prevailed:

> It is impossible to look at the specimens brought before us without feeling a strong conviction, from their defective physical and mental organisation, that they are of a race sentenced to speedy extinction. . . . They cannot compete with stronger minds and bodies, and can only live in the bush. When that is invaded, they will become extinct.[8]

Historical accounts of the 18th century in South Africa reflect nothing short of a systematic genocide of the San inhabitants. The exhibition *Miscast* at the South African National Gallery in 1996 was a shocking reminder to the world of this recent genocide. Photographs of dead San men and women hanging from trees after "hunting parties, and of heads and body parts preserved for research, spoke eloquently of the merciless carnage wreaked on generations of San in the name of civilization."[9]

The San no longer exist in the vast fertile regions of South Africa where they once hunted freely, having retreated generally to the inhospitable regions that were less desirable to the colonial farmers. Although the first waves of pastoralist tribes from the north began to displace them from fertile grazing lands as early as 2000 years ago,[10] the more radical ravages of the colonial powers reduced them to their present locations. The major San populations now live in the Kalahari semi-desert regions of Botswana and Namibia, with smaller populations scattered in remote areas of South Africa, Angola, Zimbabwe, and Zambia.[11] Living conditions vary widely, some continuing to hunt and gather on traditional lands, others eking out humble lives in rural poverty, working for low wages on neighboring farms. Some San communities are relatively self-sufficient from a mixed economy including small-scale farming, wage employment, and community-based development, and other groups enjoy tourism as a further source of income. It is a tribute to San resilience that they have overcome many obstacles to retain their languages, cultures, and beliefs.

Yet, a comprehensive assessment of the status of the San in 1991 confirmed that the San are in each country the poorest of the poor and beset by a formidable range of poverty-related problems. Their previously nomadic ways, essential to survival, are largely treated as inconvenient vagrancy and repressed.[12] Studies of individual San communities reflect a general and persistent state of dysfunction, violence, alcoholism, and social breakdown.[13] Despite the fact that the San's regional council WIMSA[14] has with the help of dedicated nongovernmental organizations (NGOs)[15] achieved some success in articulating San rights to intellectual property and related heritage rights, the somber conclusion drawn by Suzman regarding their continued status as the poorest of the poor remains starkly relevant.

The San Benefit Sharing Case

In 2001 the San challenged the South African Council for Scientific and Industrial Research (CSIR), who had registered a patent relating to the appetite suppressant properties of the *Hoodia* succulent, following leads provided by San traditional knowledge. Although the Convention on Biological Diversity required the CSIR to enter access and benefit sharing negotiations with the San, no such effort was made. Only when local NGOs and the media pointed out the exploitative nature of this omission were negotiations started. Within two years, this resulted in a benefit sharing agreement, which is widely acclaimed as the first viable example of an indigenous people securing financial benefits under the currently evolving international access and benefit sharing regime.[16]

Despite the apparent success of the *Hoodia* case, the fact remains that the San as a people have endured almost irreparable harm. The question posed in the remainder of this paper is whether they "face a significant probability of incurring an identifiable harm" and how this relates to "their ability and/or means to protect themselves." I concentrate on their potential vulnerability as traditional knowledge holders. The following are the main events/situations, which can lead to identifiable harms in this context:

- Outside use of traditional knowledge without prior informed consent.
- Outside use of traditional knowledge without benefit sharing.
- Difficulties of providing legitimate, representative structures for negotiations.
- Difficulties of representatives to negotiate effectively and equitably with biotechnology partner.
- Difficulties of dispensing incoming benefit sharing funds fairly.

Let us now look at three factors contributing to the potential vulnerability of the San before assessing their impact on potential identifiable harms.

A Hunter–Gatherer Legacy?

It is generally accepted that our ancient ancestors were hunter–gatherers, namely, peoples that survived primarily through the bounty of their natural environment. Humankind's evolution over millennia has been characterized by a relentless drive toward development that has seen civilizations and empires develop

around agriculture, trade, and conquest of others. Much research has been done on hunter–gatherer peoples. Some authors became engrossed in the question of why some societies developed rapidly to become conquerors of their neighbors, whereas others, often of similar genetic origin, remained apparently locked in an ''original'' or ''primitive'' state.[17] The capacity to form settlements, to claim ownership of fertile territory, and to develop, defend, and expand territory is what leads to wealth and power. Hunter–gatherers, according to Brody, are characterized, among others things, by a deep satisfaction with and acceptance of their natural environment, imbued with little desire to protect, conquer, or develop.[18]

A plethora of books and journal articles has distilled the characteristics of San societies of yesterday: small nomadic bands, roaming widely over traditional regions, following the seasonal supply of bush foods, maintaining an egalitarian social structure, with rich traditions of oral myth and folklore and ancient healing systems based on deep knowledge of plants, linked with religious beliefs and customs. Such ancient traditional knowledge has become recognized over the past decades as being crucial to unlocking nature's biodiversity.

Material possessions of the San were limited to those that were functional, and survival depended on extreme mobility and intimate knowledge of nature. Little effort was devoted toward accumulating material wealth in any form. The question to be posed, in considering the San of today, is what are the consequences for hunter–gather societies, when they are forcibly displaced from the land within which their entire world had meaning.

An initial uncontroversial conclusion is that a worldview based on hunting and gathering is innately lacking in many of the requirements for success in the modern world. Ambition to succeed or excel materially, so essential as a motivator in Western culture, is a foreign notion, regarded with suspicion. San languages contain no words to convey the meanings of ''work'' or ''ambition'' (Nigel Crawhall, personal communication, March 2008). The very concept of planning for the future is alien to peoples who live off their land, day by day. One can thus readily accept that societies that have a recent history of hunting and gathering do not have the means to exercise collective power.

The *Hoodia* case showed that the San were vulnerable to exploitation by users of their traditional knowledge. Contrary to binding CBD legislation, their prior informed consent was not obtained. Only with the help of outsiders (NGOs and the media) were San voices made to be heard, leading to a benefit sharing agreement. Lack of viable governance structures outside South Africa meant that South African San had to negotiate on behalf of those separated by national borders. Whether incoming funds will be distributed effectively and fairly remains to be seen. Following the above definition, one could say that the San were contingently vulnerable to exploitation. A lack of means (e.g., information, education, funds to employ outsiders) meant that the protection of their traditional knowledge was precarious.

Collective Trauma

In a study of collective trauma suffered by indigenous peoples, Sousan Abadian concluded that unresolved collective trauma is the oft-ignored root of much of present-day dysfunction. And from the brief history section above, it is clear that the San suffered such trauma. Abadian describes unresolved collective trauma as

being a failure of entire communities to productively integrate, move through, and release traumatic experiences. The shared experience of past trauma profoundly distorts individual perceptual filters, values, and behaviors. Significantly, she states, the provision of monetary funds alone is not sufficient to bring about the healing. Alcoholism, violence, and apathy continue to destroy the social fabric of indigenous societies, and indigenous children in their turn carry and perpetuate the burden of their parents' unresolved pain in a "never ending spiral of trauma and violence."[19] Well-meaning governments and NGOs ponder helplessly on the apparent inability of indigenous communities to organize themselves to escape the cycles of poverty and dysfunction. It should be better understood that current dysfunction such as widespread alcoholism is a by-product of nonvalidated and suppressed grief, rage, and shame.[20]

Past trauma thus affects the ability of indigenous peoples to act, to advance, and to function in a modern world. Abadian describes how they tend to mistrust those in authority and to suspect all outsiders of being in conspiracy against them. Low personal capacity to engage is driven by pervasive low personal self-esteem. Collectively, these factors lead to dysfunctional communities whose members no longer interact in constructive ways, who feel alienated and deeply hopeless. Leaders reflect the deep problems wracking their communities, and likewise suffer from the alienation, lassitude, and lack of self-esteem recorded by Abadian's research. Women in San society bear the brunt of the misery associated with communities living in abject poverty.[21] At a meeting held in Maun during October 2006, San leaders were brutally honest with themselves in describing the many ways in which they continued to fail their communities. These included lack of work ethic, lack of skills, lack of accountability, abuse of alcohol, abuse of power, and lack of confidence when meeting government and other officials.[22]

As is clear from Abadian's research, peoples who have a history of collective trauma carry an unconscious burden that translates into cycles of dysfunction and that affects the very functioning of their leaders. While this psychological burden remains unattended, such peoples are unlikely to effectively protect themselves. According to the above definition, lack of means to protect oneself refers to a contingent factor, which could be remedied with, for instance, monetary funds, education, and so forth. However, if traumatic experiences are very deeply ingrained in individuals, one could almost speak of a lack of ability to protect oneself, as in the case of the mentally ill. Yet such a statement cannot be generalized across an entire subpopulation.

Loss of Land

Domination of weaker peoples by the strong and relentless acquisition of land and resources is a central theme running through the history of humankind. Restitution of traditional lands together with self-determination are regarded by indigenous peoples as the highest priorities in the evolving international legal instruments. The very identity of an indigenous people, reflected in the blend of knowledge and spirituality that subsists in its culture, dissipates and becomes meaningless when removed from traditional lands.[23] Without their land, an essential part of their identity is lost forever.

The San of Southern Africa initially lost their lands to successive invasions of pastoralists over millennia, and then were subjected to a far more radical process

with the arrival of the European settlers in the 17th century. The current status of the San peoples reflects this massive dispossession, with a relatively small percentage of the estimated 100,000 population living on their own traditional land. One would imagine that national constitutions and internationally accepted notions of human rights have halted this process, but the colonization of San land continues to this day.[24]

In the well-known Central Kalahari Game Reserve (CKGR) case, San activists challenged their eviction in 2001 by the government from the reserve, where they had lived for thousands of years. Despite the government's fervently expressed belief that Botswana citizens should not live like animals and that it had a duty to ''civilize'' the San by removing them from the bush, the High Court ruled in favor of the San in December 2006.[25] There was no apparent understanding or empathy for the unquantifiable loss that would follow the uprooting of peoples that had lived for thousands of years in harmony with nature. Seemingly unaware of the damage caused by its policies, the Botswana government proudly boasted of its successful ''re-settlement'' of about 1500 San from the CKGR to New Xade, a dusty new village outside the game reserve, where they currently languish in alcoholism and despair.

The lack of sensitivity of those in power toward silent minorities should not be a matter of surprise, as governments generally utilize their bureaucracies to advance the interests of politically powerful groups. In Namibia, the government has recently announced a decision to allocate a large portion of San communal land, held by the !Kung peoples in a registered conservancy, for farmers. The San's current use of the land in a traditional manner is simply regarded officially as nonuse. Although the government's official position is that the San are free to apply for farms, it is a known fact that the San would not meet the criteria for land allocation, which requires capital and a cattle-farming record.

Loss of land such as that experienced by indigenous peoples, resulting from continued exploitation by others, attacks and diminishes the very core of their identity, and their confidence as a people. This process leads inexorably to visible harm, namely, the material and spiritual poverty described above. As with collective trauma, the loss of land and the related attack on indigenous people's identity almost means that the San lack the ability to protect themselves, rather than simply the means. But as noted beforehand, such a statement cannot be generalized across an entire subpopulation.

Conclusion

The destruction that has been visited upon San peoples over the ages is indisputable. However, the question remains to what degree are the San of today, supported as they are by a positively evolving international consensus on the rights of indigenous peoples, still vulnerable as peoples with reference to protecting their traditional knowledge?

There is little doubt that a culture evolved for countless millennia as hunters and gatherers does not provide a people with an inherent ''ability and means to protect themselves.'' There is substantial evidence to the effect that egalitarian hunter–gatherer societies are intrinsically lacking in the powers required to enforce their will on others, such as that fostered in hierarchical societies based upon the accumulation and protection of wealth. Competition rewards power,

and until recently, indigenous peoples, many of them hunter–gatherers, have lost land, identity, and standing through failure to successfully compete. Rights, such as the rights secured through the CBD, have to be demanded and such demands require strong leaders and strong governance structures.

The San's recent history is one of subjugation, followed by various forms of slavery or low status serfdom. Women in San societies endure a form of double jeopardy, being discriminated against by society both for their sex and for their Sanness, thereby bearing the brunt of the societal tensions resulting from the unprocessed collective trauma visited on them. For instance, as Alvarez-Castillo et al.[26] have noted, increased violence against and sexual abuse of San women have been reported over the last decade. If Abadian's research is to be understood, the cruel history of the San is a powerful determinant of the prevailing lassitude, depression, and dysfunction that is currently visible among their communities. Development strategies for the San aiming at restoring power would thus be advised to consider methods of healing the traumatic past, in order to unlock the victim status resulting from unresolved past trauma. Deeply rooted low self-esteem understandably diminishes the capacity of San leaders to acquire the confidence and the collective will to prevent the significant probability of incurring identifiable harms, that is, the exploitation of their traditional knowledge without fair benefit sharing.

The formidable task facing modern San peoples is surely to honor their proud origins, to accept the loss of land and culture that has been their lot in history, and to formulate a strategy for recovery. The aim should be to eventually reverse the victim status that is a source of donor assistance. As hunter–gatherers who were successfully dominated and exploited for centuries, the vastness of the injustice and the collective harm visited upon them should be acknowledged, processed, and accepted. By examining the roots of their vulnerability, they may acquire the ability and the means to turn their tide.

The definition provided above, which singles out a significant probability of incurring an identifiable harm as the primary criteria for a determination of a group's vulnerability, resonates strongly with this study of the San world. As the discussion above further indicates, the requirement that such a group should in addition substantially lack the ability and means to protect themselves completes an investigation that, it is suggested, is appropriate and practical. Researchers dealing with indigenous groups or peoples that meet the terms of the definition in the manner of the San should carry this awareness with them, as well as comply with the requirements for engagement with vulnerable subjects.

Notes

1. Convention on Biological Diversity. 1992. Article 1. Objectives, available at http://www.cbd.int/convention/convention.shtml (last accessed 14 April 2008).
2. See note 1, Convention on Biological Diversity 1992, Preamble.
3. The words "San," "Bushmen," and "Mosarwa" (Botswana) are outsiders' words for peoples who know themselves by different names. Although "San" seems to be gaining popularity among nonspecialists, as well as San leaders, many ethnographers have reverted to the word "Bushman"; see Barnard A. *Hunters and Herders of Southern Africa. A Comparative Ethnography of the Khoisan Peoples*. New York: Cambridge University Press; 1992:8.
4. Schroeder D, Gefenas E. Vulnerability: Too vague and too broad? *Cambridge Quarterly of Healthcare Ethics*, this issue, 113–121.

5. Lee RB. Introduction. In: Lee RB, DeVore I, eds. *Kalahari Hunter Gatherers: Studies of the !Kung San and Their Neighbours*. Cambridge, MA: Harvard University Press; 1976:3–20 at p. 5.
6. Terra Nullius is a Roman Dutch Law phrase meaning land which belongs to nobody. In practice the doctrine justified the colonial annexation of new countries, implying that tribes inhabiting the land did not display a civilized form of ownership.
7. Terry E. *A Voyage to East India Wherein Some Things Are Taken Notice of, in Our Passage Thither, But Many More in Our Abode There*. London: J Wilkie; 1777:16.
8. Glenn I. The Bushmen in Early South African Literature. In: Skotnes P, ed. *Miscast, Negotiating the Presence of the Bushmen*. Cape Town: University of Cape Town Press; 1996:41–9, at p. 48.
9. See note 8, Skotnes 1996:39.
10. See note 3, Barnard 1992:28.
11. Although Suzman (2001) estimated 80,000 in 2001, a more recent estimate by WIMSA (personal correspondence, September 2006, former WIMSA coordinator Axel Thoma) places the San population at 100,000 (Angola 3,400, Botswana 49,000, Namibia 38,000, South Africa 7,500, Zambia 1,300, Zimbabwe "a few hundred"); Suzman J. ed. *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek: Legal Assistance Centre; 2001.
12. See note 11, Suzman 2001.
13. Sylvain R. Drinking, fighting and healing. San struggles for survival and solidarity in the Omaheke Region, Namibia. In: Hitchcock RK, Ikeya K, Biesele M, Lee RB, eds. *Updating the San: Image and Reality of an African People in the 21st Century, Senri Ethnological Studies* 2006;70:131–50. Dieckermann U. *Hai//om in the Etosha Region. A History of Colonial Settlement, Ethnicity and Nature Conservation*. Windhoek: John Meinert Printing; 2007. Guenther M. From "Lords of the Desert" to "Rubbish People." The colonial and contemporary state of the Nharo of Botswana. In: Skotnes P, ed. *Miscast. Negotiating the Presence of the Bushmen*. Cape Town: University of Cape Town Press; 2006:225–38.
14. Working Group for Indigenous Peoples of Southern Africa. This regional council, based in Windhoek, is comprised of elected San Councils from Botswana, Namibia, and South Africa and aims to articulate the regional political and human rights voice of the San; see http://www.san.org.za/wimsa/ (last accessed 15 Dec 2008).
15. The Kuru Family of Organisations, eight allied NGOs, has 21 years of experience in providing development assistance to the San; see http://www.kuru.co.bw/ (last accessed 15 Dec 2008).
16. Wynberg R, Schroeder D, Chennells R, eds. *Indigenous Peoples, Consent and Benefit Sharing – Learning Lessons from the San Case*. Berlin: Springer; forthcoming in 2009.
17. Diamond JM. *Guns, Germs and Steel. The Fates of Human Societies*. New York: W.W. Norton and Company; 1999.
18. Brody H. *The Other Side of Eden. Hunters, Farmers, and the Shaping of the World*. New York: North Point Press; 2001.
19. Abadian S. *From Wasteland to Homeland: Trauma and the Renewal of Indigenous Peoples and Their Communities*. Cambridge, MA: Harvard University Press: 1999:186.
20. Staehelin I. *Lost, Contested and Found. The Recovery of Bushman Identities through Access to History and Cultural Heritage*. Masters thesis. Boston University; 2001:4.
21. Felton S, Becker HA. Gender perspective of the status of the San in Southern Africa. In: Suzman J, ed. *An Introduction to the Regional Assessment of the Status of the San in Southern Africa*. Windhoek: Legal Assistance Centre; 2001.
22. Summary extract of workshop for 40 San leaders held by funders EED and NCA, from private notes of the workshop facilitators.
23. Barsh R. Is the expropriation of indigenous peoples' land GATT-able? *Review of European Community and International Environmental Law* 1999;10:13–26.
24. Wilmsen EN. Can Namibian San stop dispossession of their land? In: Wilmsen EN, ed. *We Are Here: Politics of Aboriginal Land Tenure*. Berkeley: University of California Press; 1989.
25. Roy Sesana and others v. the Attorney General; High Court of Botswana, Misc 52 of 2002. Despite winning the case, the San remain largely settled in the resettlement village, without the means to return to their lands.
26. Alvarez-Castillo F, Lucas Cook J, Cordillera R. Gender and vulnerable populations in benefit sharing: An exploration of conceptual and contextual points. *Cambridge Quarterly of Healthcare Ethics*, this issue, 130–137.