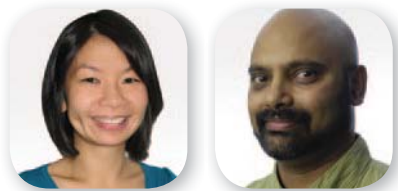


Moving from Recognition to Realization: Botswana court upholds Kalahari Bushmen's right to water



by **Emma Lui and Anil Naidoo**

On January 27, 2011, the Botswana Court of Appeal set an international precedent and upheld the Kalahari Bushmen's right to water by quashing a 2010 decision that denied the Bushmen access to a water borehole on their ancestral lands.

"This is a major win; it's the first test case of the UN resolutions on the right to water," said Maude Barlow, Council of Canadians Chairperson and former Senior Advisor on Water to the 63rd President of the UN General Assembly. The UN passed two resolutions last year recognizing the right to water and sanitation.

After the court decision, a Bushman spokesperson said, "We are very happy that our rights have finally been recognized. Like any human beings, we need water to live."

The significance of this decision is profound. Just one week before the historic UN resolution recognized the human right to water, the high court in Botswana had denied the Bushmen access to water. The Bushmen appealed the ruling, putting the question before the court again. That decision, which cited the UN resolution, provides a clear "before and after" illustration.

THE BUSHMEN'S LONG-STANDING BATTLE

The Kalahari Bushmen have been embroiled in a 30-year battle for their right to ancestral lands and the right to water. After diamonds were discovered in their lands in the late 1980s, the Bushmen were forcefully evicted from the area in 1997, 2002 and again in 2005. A court ruled that

they were allowed to return in 2006. However, they were denied access to a borehole, their main source of water. The Bushmen resorted to using rain-water, melons and roots for drinking water. While the Bushmen were denied access to their water source, the government allowed Gem Diamonds to drill new boreholes for its mining project. The government also permitted Wilderness Safari to build a tourist camp – complete with swimming pools – on the Kalahari reserve.

THE UN RESOLUTIONS ON THE RIGHT TO WATER

On July 28, 2010, the UN General Assembly unanimously passed a resolution recognizing the right to water and sanitation. One hundred and twenty-two countries voted in favour of the resolution, no country opposed, and 41 countries – including Canada – abstained. In September 2010, the UN Human Rights Council (HRC) passed a resolution also recognizing the right to water and sanitation. This second resolution recognized the right to water as already entrenched in international law. Catarina de Albuquerque, the UN Independent Expert on human rights obligations related to access to safe drinking water and sanitation, highlighted the significance of the HRC resolution, noting that "this means that for the UN, the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding."

WHAT DOES THIS MEAN FOR CANADA?

Canada has taken the long-standing position that the right to water does not

exist. The Canadian government has falsely argued that if Canada recognizes the right to water, the United States could make claims to Canada's water.

There is no evidence to support this claim. In fact, it seems there are other political considerations that have held Canada back from supporting the human right to water.

A look at the lack of clean drinking water on First Nations reserves provides better insight into why the Canadian government denies that the right to water exists. As of December 31, 2010, there were 117 First Nations communities in Canada under boil-water advisories. In March 2010, 49 First Nations' water systems were classified as "high risk."

However, since the HRC and the Independent Expert have clarified that the right to water exists and is now legally binding, Canada can no longer deny there is a right to water. The decision upholding the Kalahari Bushmen's right to water sets a powerful legal precedent affirming that water is a legally entrenched fundamental human right.

The UN resolutions give hope to the 1.2 billion people who do not have access to clean water, and establish a legal precedent to work from. The world's response to these resolutions needs to be much more vigorous. The Council of Canadians will continue to fight to make the human right to water an undeniable realization for the world's most vulnerable people.

Emma Lui is the National Water Campaigner and Anil Naidoo is the Blue Planet Project Organizer for the Council of Canadians.