The aim of *Southern African Field Archaeology* is to communicate basic data to professional archaeologists and the public.

Manuscripts of original research undertaken in southern Africa will be considered for publication. These may include reports of current research projects, site reports, rock art panels, rescue excavations, contract projects, reviews, notes and comments. Students are encouraged to submit short reports on projects. *Southern African Field Archaeology* also welcomes general information on archaeological matters such as reports on workshops and conferences.

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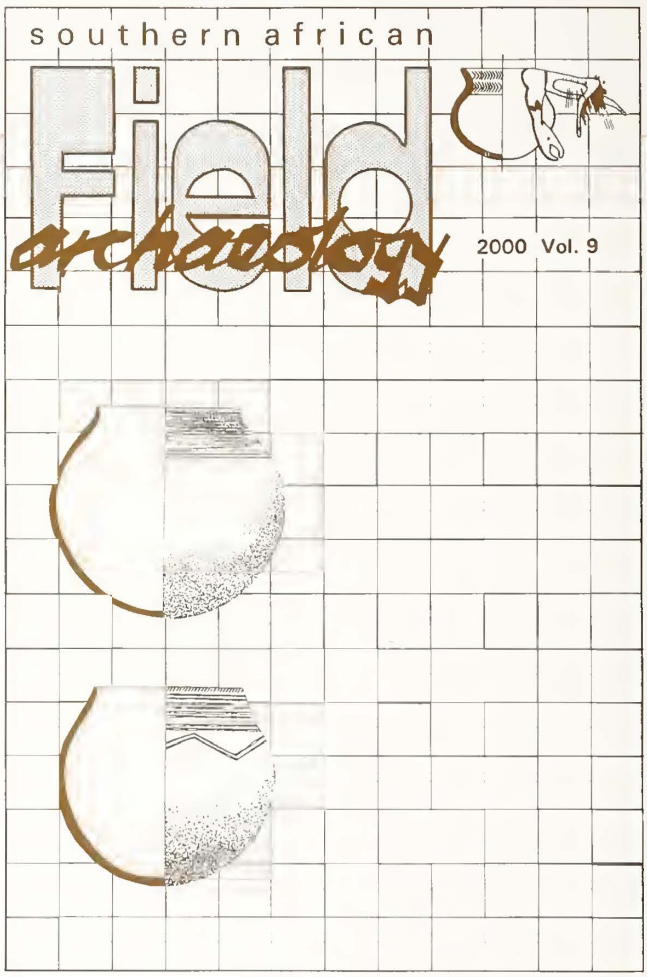

Cover illustration:
Ceramic vessels from a Late Iron Age site in the Makgabeng area, Northern Province, p. 75

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OPINIONS

INDIGENOUS INTELLECTUAL PROPERTY RIGHTS AND ARCHAEOLOGICAL INVOLVEMENT: ARE WE PREPARED FOR THE CHALLENGE?

A previous columnist has highlighted the role of "intellectual property rights" in the context of indigenous claims to the cultural heritage of South Africa (Ouzman 1999:57-59). Towards the end of this interesting article a plea was made for more partnerships between indigenous systems of archaeological knowledge and non-indigenous archaeology in order to aid in the de-colonisation of archaeology as a discipline (*ibid*). Elsewhere post-colonial societies such as Australia, New Zealand, and Canada saw major changes surrounding long-standing claims for indigenous rights to land and cultural heritage towards the closing decades of the 20th century. These changes have dramatically affected the way in which archaeology is conducted in those countries. Accelerating developments have forced archaeologists and the bureaucracies which govern their work to become increasingly aware of indigenous people's sensitivities about archaeological activities, particularly those concerning human skeletal remains, special places on the land, cultural artefacts, and rock art (Lilley 2000). The very recent interest in Khoisan skeletal remains in South African museums (Ouzman 1999; Legassick & Rasool 2000) is a direct outflow of a

larger international movement.

An immediate and obvious question would be one of identifying legitimate indigenous identities. Who are indigenous in the South Africa context? The present South African government regards all peoples or their descendants who lived in South Africa prior to European colonialisation as indigenous. From an international perspective there is no clear definition of the concept of 'indigenous peoples'. It is a collective term that has come into usage fairly recently. It is only as recent as 1993 that the United Nations Working Group on Indigenous Peoples prepared a draft declaration on the "rights of indigenous peoples" which were adopted in 1994 by the UN sub-commission and passed on to the Commission on Human Rights. The draft declaration dealt with the areas of self-determination, language and culture, and intellectual and cultural property. Before this period most national policies were based on an ideal of assimilation and the merging of cultures into a dominant mainstream of thought.

In the most general terms, 'indigenous peoples' are distinct peoples with their own languages, cultures and territories, who have lived in a country since times far prior to the formation of the current nation state. They have become marginalised in their own lands by more assertive groups of different cultural and ethnic origin, or have been driven off their lands by force. The peoples concerned strongly resist being defined by others and use their own names to designate themselves, such as the Ainu, Saami, Inuit, Dine, Maori, Naga and Ju'hoansi (Staehelin 2001).

The term 'indigenous people' is clearly more complicated when referring to the African situation. The case for "indigenousness" is clear in Australia and the Americas, where peoples had occupied their territories exclusively before colonialisation by Europeans and where they are politically marginalised. It can therefore be argued that all black Africans were indigenous during the colonial era, when they were subject to white domination (Maybury-Lewis 1999:3). Unlike other indigenous peoples, however, black Africans are in political power today and represent the majority population in most nation states of modern Africa. In fact, indigenous minorities such as the San and Khoe of southern Africa and the aBatwa of central Africa today have more in common with indigenous peoples elsewhere in the world than do the majority black African population. Non-Governmental Organizations and writers often used the terms "First Peoples", "First Nations", "First Indigenous Peoples", and/or indigenous minorities to distinguish these peoples from the majority populations in the African context. However, most African governments do not officially endorse these distinctions. This is perhaps most evident in the case of Botswana where it's large San population has been officially designated, as "Remote Area Dwellers" (RAD's) - a term which refers to all people, San and others, living outside of villages in rural areas. This term is indicative of the efforts of the Botswana government to avoid identifying people on the basis of their ethnicity, in a clear break from the basis of apartheid terminology (Hitchcock 1998). It is also indicative of an ambivalent attitude towards recognizing San culture and intellectual property rights. Given the recent apartheid-era history of South Africa and the present mandate on nation building it is not surprising that ethnic divisions are not particularly emphasized by the South African government. However, the concept of indigeneity is clearly important as is evident in the high priority given to "Indigenous Knowledge Systems" (IKS) as a focus area of research by the National Research Foundation (NRF) and the recent incorporation of a southern San rock painting in the country's Coat of Arms. South Africa has also recognized the cultural rights of its indigenous minorities in her constitution (Section 6.2 and 6.5). In 1998 the government officially sanctioned indigenous minority issues with the launch of the Khoisan Legacy Project. These developments are in line with the United Nations affirmation of the special rights of indigenous minorities which states that:

> for indigenous people all over the world the protection of their cultural and intellectual property has taken on growing importance and urgency. They cannot exercise their fundamental human rights as distinct nations, societies and peoples without the ability to control the knowledge they have inherited from their ancestors (United Nations 1997).

Where does this leave the archaeological fraternity in South Africa? As Ouzman (1999) so clearly states South Africa's majority Black population is, by and large, dismissive of the limited leverage archaeology is able to offer them. It has predominantly been the dis-empowered minority groups, and by implication the various Khoisan organizations, which have been using versions of the past (theirs and those presented by archaeologists and other academics) to publicly air their concerns. This process was initiated by the *Miscast Exhibit* in 1995, and the *Khoisan Identities and Cultural Heritage Conference* in 1997. With the establishment of the Khoisan Legacy Project and the Khoisan National Committee in 1998 Khoisan groups began to take control of their own identity, indigenous knowledge, and intellectual property. In fact, recent years has seen a plethora of groups and individuals claiming indigenous minority or "First People" status. Although some of these have demonstrable historical links with known indigenous groups in the past others are less clearly defined. As these former subjects of colonial and post-apartheid governments seek to recover and assert their ethnic distinctiveness, they quite naturally turn to those elements that are perceived as being the most authentic and the apparent essences of their culture. Elsewhere the academic fraternity has often taken a paternalistic and subtly contemptuous view of this sort of essentialism. Most appear to support the philosophy of indigenous self-determination while proffering constructivist critiques that undermine their subjects notions of cultural authenticity (Watanabe 1995). At the same time, their irony and word plays often leave their audiences

unsure of exactly where they stand politically and thus provide a safeguard against attacks on their work. Such safeguards may become increasingly important for the archaeological fraternity, as the descendants of past societies researched by archaeologists are ever more likely to be the consumers of archaeological writings.

Interestingly, in South Africa archaeologists have generally been reluctant to accommodate indigenous versions of the past in research publications and official documents. Although indigenes verbally voiced their opinions during the public debates at the *Miscast Exhibit* and various national and international conferences since 1996, academic contributions and outlooks have typically dominated the accompanying publications. It is also significant in this regard that the formulation of the New Heritage Bill had heavy archaeological input but little or no contribution from indigenous minorities. In this sense it can be argued that archaeologists have been privileged, as legislation to protect archaeological sites and artefacts has been written more or less for our benefit and to our specifications. Archaeological artefacts may, for instance, be accessed for academic research by *bona fide* researchers. However, it is questionable if indigenous groups would have similar accessibility to what they may regard as their intellectual and cultural property. Material items of the past are effectively the property of the state and under governmental bureaucratic systems of protection, as in museums. The philosophy underlying this legislation is that archaeological artefacts and other items of cultural heritage belongs to the nation and not to individuals or specific ethnic groups. Effectively this would mean that such items could be appropriated as symbols of national identity by the modern nation state - sometimes without the consent of the indigenous minorities concerned. The inclusion of Drakensberg San rock art in the South African coat of arms and the logo of the South African Olympic team would be good examples in point. To the best of my knowledge this process took place without consulting relevant southern San interest groups yet it had significant archaeological input.

The reasons for this apparent lack of consultation with indigenous minorities are multifaceted. Archaeologists, like everyone else, are suspicious of groups or organizations who after more than a century of silence suddenly raise to the surface to claim indigenous and/or 'First People' status. Although some of these groups do have demonstrable historical links with known Khoisan groups of the historical period others are less clearly defined. Given the present political landscape of South Africa political and economic opportunism should not be ruled out as the soul motivating factors for many of these claims. However, archaeologists are also partially to blame for perpetuating versions of the past, which advocate the complete extinction of some groups. In fact, the assumed extinction of the southern San has most probably been the reason for not consulting these First People of southern Africa on the incorporation of San rock art as national symbols in the post-apartheid South Africa. Yet, the southern San is very much alive and some still regard rock art as having spiritual and psychological value (Prins 2000, 2001). As Trigger wrote "what we believe about historical groups helps to shape our opinions of their descendants" (1989:11). For instance, the image conjured up of the San in popular archaeological imagination is one of genetically and culturally distinct hunter-gatherers who lived in particular ecological nodes. Yet this image will not apply to the majority of San people today who have not only undergone major socio-economic change but may also have been altered genetically. Clearly notions of ethnic identity drawn from archaeological stereotyping may not always be adequate to understand and define the dynamics of contemporary ethnic groups and it may be more productive to use anthropological and sociological insights.

That the international movement in recognizing indigenous claims to intellectual property, including cultural heritage, has also caught on in southern Africa is beyond doubt. The Work Group for Indigenous Minorities (WIMSA) and it's satellite body in South Africa the South African San Institute (SASI), for instance, is in the process of formulating a San rock art claim. Here it is interesting that various San groups (those with historical links to the rock art and others) clearly regard San rock art as an important collective expression of San cultural heritage. The exact form, which such a claim may take, and the various implications are still unclear. But it is certain that archaeologists will have to engage in a more productive and intimate manner with indigenous minority groups and forsake the "we know best or lets ignore them," attitude which has been so prevalent in the past. The recent engagement between Khoisan groups and some archaeologists at the *Human Remains in Museums* seminar at Kimberley (September 2001) is a step in the right direction and will hopefully clear the path for future collaboration.

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Previously *Southern African Field Archaeology* was published twice a year - two issues per volume. To save time and money it was decided to combine the two issues into one volume, which will be publish once a year.

Alex Schoeman, co-editor for the past 3 years returned to the University of the Witwatersrand. The Editors would like to thank her for her commitment to the journal and wish her the best in her new position.