

San Land Rights in Botswana

A Critical Analysis

ROBERT K. HITCHCOCK, MARIA SAPIGNOLI, AND
SMITH MOETI

Introduction

As Africa's oldest multiparty democracy, the Republic of Botswana in southern Africa has long been viewed as a country with a superb human rights record (Samatar, 1999). However, in the past four decades, the actions of the Botswana Government involving the country's Indigenous minorities has called into question this reputation (Barume, 2014; Ndahinda, 2011; Nyati-Ramahobo, 2009; Saugestad, 2001). Botswana has a complex history when it comes to the recognition of Indigenous Peoples, San and Bakgalagadi, and their rights to their ancestral territories.

At the time of Botswana's independence on September 30, 1966, there was only one place in the country where San (Bushmen) and Bakgalagadi had constitutionally recognized land rights: the Central Kalahari Game Reserve (CKGR). In 1997 and 2002, however, the residents of the Central Kalahari were involuntarily relocated to areas outside of the CKGR by the Botswana Government. Some of the former residents were only able to return to the Central Kalahari after a two-and-a-half-year-long legal battle in the country's High Court, the longest and most expensive litigation case in the nation's history (Ng'ong'ola, 2007; Sapignoli, 2017; Zips-Mairitsch, 2013). Some analysts have seen the situation in Botswana as an example of the "judicialization of African politics" (Brett, 2018; Sapignoli, 2018).

As a landlocked country, Botswana is 581,730 square kilometers in size, roughly the size of Kenya. It is culturally diverse, supporting some thirty-six different ethnic groups. Botswana endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in

September 2007. However, the country raised objections to an earlier draft of the Declaration at a meeting in late 2006 of the Third Committee of the United Nations General Assembly in New York, and at a meeting of the Assembly of Heads of State and Government of the African Union in January 2007 (see African Group of States, 2006; African Commission on Human and Peoples' Rights, 2007). The concerns raised by Botswana, Namibia, and the other African states included the following: (1) the definition of Indigenous Peoples, (2) the issue of self-determination, (3) the issue of land ownership and the exploitation of resources, (4) the establishment of distinct political and economic institutions, and (5) the issue of national and territorial integrity (African Group of States, 2006; Barume, 2009). These concerns became a major topic of discussion in Botswana, and after endorsing the UNDRIP, efforts were made by various non-government organizations (NGOs) and the United Nations to distribute copies of the UNDRIP to people in both urban and rural communities. While Botswana endorsed the UNDRIP in September 2007, it has not been ratified in the Botswana Parliament. However, the UNDRIP has been used by San advocacy groups at the community level to familiarize them with human rights principles, including land rights.

While Botswana does not recognize its 60,000-plus San peoples as "Indigenous," holding instead that all citizens of the country are Indigenous, it does have a Remote Area Development Program with the target population being all those people living in remote parts of the country, which includes San peoples (Republic of Botswana, 2009). It also has an "Affirmative Action Framework" aimed at assisting people in what are known as "remote area communities," of which there are seventy-three at present (Ludick, 2018; Republic of Botswana, 2014) (see Figure 10.1). The problem for San in these settlements, however, is that people there do not have officially recognized land tenure rights. The remote area settlements are open to anyone who wants to come and live there.

Historically, San have faced dispossession as a result of several processes: (1) pre-colonial incursions of other groups, most of them agropastoralists over the past 2,000 years, who incorporated San into their social and economic systems, and denied them land rights; (2) the granting of land by the colonial administration to people of European backgrounds in the form of freehold ranches and farms; (3) the introduction of land reform programs in the post-colonial period (1966–present); and (4) the taking of land for mines, roads, trek routes, and protected areas.

This chapter considers two questions: (1) What are the mechanisms for recognizing Indigenous Peoples' land rights in Botswana? (2) How



Figure 10.1 Remote area communities in Botswana

have these mechanisms and rights performed in practice? The balance of this chapter examines the ways in which the Government of Botswana has dealt with the land rights of San peoples, and then assesses the strategies employed by San and their supporters to get their land rights recognized.

A Brief History of San Dispossession

San and their ancestors resided in the Kalahari Desert region of Botswana for thousands of years. San moved about the landscape from one

resource patch to another, depending on resource type and density, numbers of people in each group, and season (Barnard, 1992; Silberbauer, 1981; Tanaka, 1980). Virtually all San groups claimed rights to their territories, or areas they recognized as belonging to them, and had *de facto* rights of long-term occupancy and use (Barnard, 1992; Silberbauer, 1981; Tanaka, 2014). San territorial units are known as a *nong* (Naro), *gu* (G/ui), *g'u* (G//ana), *n//olli* (!Xôó), and a *n!ore* (ǀX'ao-||'aen).

San were pressed into service as herders and field hands when agro-pastoralists moved into the Kalahari some 2,000 years ago. They had to seek permission from traditional authorities of other groups if they wanted land for residential, agricultural, or other purposes (Hitchcock, 1980; Schapera, 1938, 1943). As Schapera (1953, p. 37) pointed out:

In the Western tribes, there was formerly also a class of “serfs” (*malata*) consisting mainly of Sarwa and Kgalagadi but also (in the north) of Pedi and Koba. These people, found in the country occupied by the Tswana, were parceled out in local groups among the chiefs and other leading tribesmen. They and their families were permanently attached to the families of their masters, to whom they paid special tribute and whom they served in various menial capacities; such property as they acquired was at their master’s disposal.

Over time, the servile status of San and Bakgalagadi was transformed, with stipulations by Tswana chiefs and by the Bechuanaland Protectorate authorities who declared slavery illegal in the 1930s (Datta & Murray, 1989; Schapera, 1970).

The Colonial Period

The British sought to influence the positions of the Tswana *vis-à-vis* San in five ways. First, the British Protectorate and British government officials made proclamations in public meetings in 1926 and 1936 that slavery was illegal (Miers & Crowder, 1988). Second, in the early 1930s, the British Government called for an investigation into Tswana slavery (Tagart, 1933). Third, individuals who mistreated San were investigated and tried in local courts. Fourth, reports were sent to the British High Commissioner in Cape Town regarding persistent beatings, torture and murder, and enslavement of San in Bechuanaland. Fifth, individual Bechuanaland Protectorate officials sought to assist San communities, setting aside land for San in such places as Letlhakane in the Ngwato District, and Olifonts Kloof in Ghanzi District. It should be noted, however, that these resettlement sites did not last very long (Silberbauer, 1981).

The London Missionary Society and individual clergymen and clergywomen also sought to improve the lives of San under the Tswana during the British Protectorate (see the London Missionary Society, 1935). There were also individual anthropologists who sought to get better treatment for San through their reports, two examples being Schapera (1939) and Silberbauer (1965). Chiefs themselves also sought to get better treatment of San through proclamations, visits to officials in England, and efforts to resolve disputes between individual San and those who had employed them (Schapera, 1970). Despite all these efforts, San felt that they were worse off at the end of the British colonial period than they were at the beginning (Gulbrandsen, 2012).

The Constitutional Republic

At Independence on September 30, 1966, Botswana's new constitution addressed the land and resource rights of the country's citizens (Republic of Botswana, 1966). The introduction of a *Tribal Land Act* (1968), which took effect in 1970, removed power for land away from the chiefs and gave it to district land boards (Republic of Botswana, 1968). The introduction of a land reform program, the Tribal Grazing Land Policy (TGLP) in 1975, guaranteed that every Motswana (citizen) had the right to enough land to meet their needs (Republic of Botswana, 1975).

Today, Botswana is made up of three kinds of land: freehold (private), state land, and communal (tribal land). The rough breakdown is 5.7 percent freehold, 17.4 percent state land (including parks and reserves and national monuments), and 29.8 percent (or 173,432 km²) communal (see Table 10.1). The tenure in tribal (communal) areas became alienable over time after the introduction of the Tribal Land Act, which went into effect in 1970. This alienability makes the Botswana case distinct from many other jurisdictions around the world (see the chapters from Australia and Canada for example).

The majority of San peoples reside in communal areas. The land use planning process introduced by the TGLP resulted in District Councils and Land Boards dividing tribal land up into subcategories, including commercial leasehold ranching zones, reserve areas (set aside for the future), and communal lands (Table 10.1). As it worked out, the commercial leasehold ranching zones became the primary focus of the District Councils and Land Boards, and what was then the Ministry of Local Government and Lands (Peters, 1994; Hitchcock & Sapignoli, 2019; Wily, 1979, 1981). Subsequent land use zoning efforts resulted in the

Table 10.1 Land zoning categories in Botswana

Type of Land	Land Zoning Category	Amount of Land	Percentage of Country
Freehold land	Freehold farms	32,970 km ²	5.7
State land	Parks and reserves	101,535 km ²	17.4
	Other	32,455 km ²	5.6
Tribal land	Communal	173,432 km ²	29.8
	Commercial	51,094 km ²	8.8
	Wildlife Management areas	129,450 km ²	22.2
	Leasehold ranches	3,351 km ²	0.6
	Remote area Dweller settlements	3,523 km ²	0.6
	Other land	53,910 km ²	9.3
Total	All land	581,720 km ²	100.0

Data obtained from the Ministry of Lands and Housing, the Ministry of Local Government and Rural Development and the Ministry of Environment, Wildlife and Tourism, Government of Botswana. The category “other” includes land in towns and land set aside for government purposes, such as trek routes and quarantine camps for livestock.

setting aside of Wildlife Management Areas (WMAs), multiple-use zones in which wildlife-related land uses were supposed to receive priority (Republic of Botswana, 1986). Over time, the land boards allocated water points for domestic animals not only in the communal and leasehold areas, but also in the WMAs, which shifted land use toward livestock production (Adams et al., 2003; Cullis & Watson, 2005; Keeping et al., 2019). In addition, community members in the settlements in WMAs engaged in small-scale livestock production and initiated gardening and tourism projects, which transformed local landscapes (Cadger & Keep, 2013; Hitchcock, 2021).

A Community-Based Natural Resource Program was introduced in 1990 (Republic of Botswana, 1990), which gave communities rights over wildlife if they formed community trusts – management bodies that had a constitution, land use plan, and formal structure (Rihoy & Maguranyanga, 2010). The communities had the option of leasing out rights to wildlife to private companies or keeping the wildlife quota for themselves and engaging in subsistence and tourism. By 2014, there were

over 180 community trusts in the ten districts of the country. It is important to note that the community trusts had rights over wildlife but no rights to wild plant resources, grazing, or water in these areas. They also did not have *de jure* land rights or sub-surface rights.

Community trusts had management councils that were similar to traditional San community leadership systems. The difference is that officers in community trusts were elected by community members, while San leaders usually arose from within local bands based on their personal qualities, knowledge of San customs, even-handedness in dealing with others, and awareness of the natural resources and important places in their areas.

A countrywide hunting ban declared by the Botswana Government (Republic of Botswana, 2014) led to a shift from community management to private company management in the community trust areas. Many of the communities that had community trusts in 2014 found that wildlife rights and benefits from tourism were done away with. In community trusts in the North West District, for example, tourism benefits flowed to private safari tourism companies (Joseph Mbaiwa, personal communication, 2019; Mbaiwa, 2017, 2018). The rights to tourism and to hunting became a key focal point of debate in the lead-up to the 2019 elections. With the election of Mokgweetsi Masisi, moves were made toward opening up hunting, particularly to foreign safari hunters. No guarantees were provided by the new government for subsistence hunting rights for citizens dependent on wild fauna and flora.

The introduction of a new national land policy in Botswana in 2015 (Republic of Botswana, 2015) led to a trend toward privatization of tribal lands and a land rush into communal and wildlife management areas (Isaacs & Manatsha, 2016). The only places that did not experience this land rush were protected areas such as the Kgalagadi Transfrontier Park and Chobe National Park, and lands that were already in the hands of people with leasehold rights. The Central Kalahari Game Reserve was the only area set aside purposely for San in 1961, in this case to protect the *modus vivendi* of the people residing there, and at the same time conserve flora and fauna (Silberbauer, 2012).

Efforts to Secure Land Rights for San

Many of the efforts to secure land rights for San consisted of setting up settlements in which San could reside and pursue their livelihoods, particularly in the 1930s, such as the case of Olifants Kloof, in what is

now the Ghanzi District, and one in the Letlhakane area of the Ngwato (Central) District (Silberbauer, 1981). Faith-based institutions established mission stations aimed at assisting San, as seen, for example, at D'Kar in Ghanzi District in 1973 and Ka/Gae in Ghanzi District in 1975–76. There are only two places where San own their own land in Botswana (i.e., they have *de jure* [legal] tenure rights). These are D'Kar, a 3,000-hectare community in central Ghanzi District, north of Ghanzi Township, which belongs to a church (originally, the Gereformeerde Church, the Dutch Reformed Church in Namibia); and the Dqae Qare Game Farm in Ghanzi District, a 7,500-hectare freehold farm that is now owned by a Naro San community trust, the D'Kar Trust (Bollig et al., 2000).

An important effort to promote San land rights was led by Elizabeth Alden Wily, who persuaded the government to establish a Bushmen Development Program (BDP) in the Ministry of Local Government and Lands in Gaborone in 1973 (see Wily, 1979). This program initially supported San, but subsequently expanded to cover all people in remote areas living outside of government-recognized settlements (Gulbrandsen et al., 1986). In the 1970s and 1980s, communal service centers were established in commercial ranching areas, and people from the ranches were moved into them. In those service centers, the residents were provided with water, social infrastructure (schools, health posts), community centers, and meeting places (*dikgotla*) where community members could meet with government officials and village headmen and headwomen (Hitchcock, 1988).

San Land Rights in Ghanzi District

One of the strategies employed by the BDP was to establish a set of resettlement sites for San living in the Ghanzi Farms, or in the town of Ghanzi, and who for all intents and purposes were landless (Wily, 1982). The original plan was to establish four resettlement localities in Ghanzi District: East Hanahai, West Hanahai, Rooibrak, and Groot Laagte (see Figure 10.2 for a map of Ghanzi District). East and West Hanahai were made up primarily of Naro San and some G/ui and G//ana. Groot Laagte in the northern part of the district contained primarily Ju/'hoan-speaking #X'ao-||'aen. Rooibrak, which did not become a resettlement site because it lacked sufficient water to sustain the population, and would have supported Naro, as well as some G/ui and G//ana.

The implementation of the Ghanzi settlement schemes did not go as smoothly as hoped. As soon as the resettlement sites were designated,

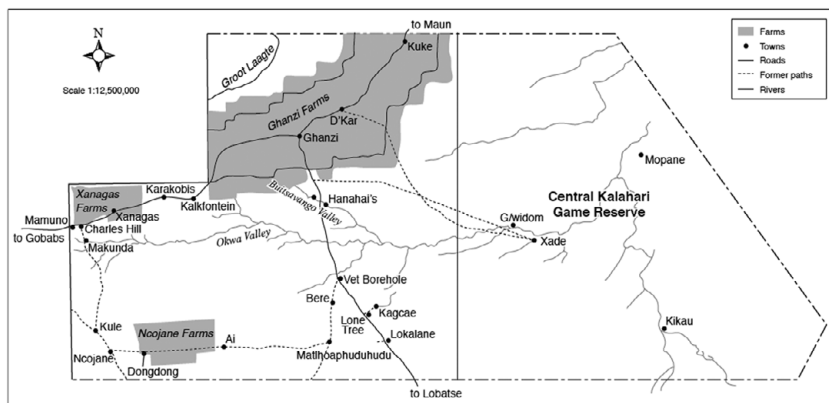


Figure 10.2 Map of Ghanzi District and CKGR

people from other groups began to move into them with their livestock. A second problem related to the size of the area to be allocated. While San and their supporters believed that the settlement areas should be large enough to accommodate foraging, residence, arable agriculture, and livestock raising, along with sufficient room for growth of human and livestock populations, the Ghanzi District Council decided to allocate blocks of land 20 by 20 kilometers in size (400 square kilometers) for the settlements (Hitchcock, 1988; Wily, 1979, 1982). These areas turned out to be too small to sustain people through hunting and gathering. In many of the settlements, much of the wildlife and wild plant resources were exploited heavily both by residents of the settlements and outsiders. Agriculture and livestock keeping expanded as wild resources declined, which affected livelihoods in the settlements.

Ghanzi District, it turns out, is an important district to examine for a variety of reasons. First, it is a large district, 117,910 square kilometers, and it lies in the western Kalahari Desert region of Botswana, an area with a high-water table that attracted livestock keepers and settlers (Russell & Russell, 1979). Second, it is the district with the highest percentage of San. Third, Ghanzi contains the most diverse types of land, from freehold farms to leasehold ranches, and from communal land to WMAs (see Table 10.2, see Ghanzi District Development Plan 2009). There are also some subcategories of land, including areas set aside as leasehold (long-term leases for commercial land) and land designated for specialized purposes (e.g., land for trek routes and veterinary camps).

Table 10.2 Land zoning categories in Ghanzi District, Botswana

Land category	Area (in square kilometers) (km ²)	Percentage of district
<i>Communal Area</i>		
Mixed farming, grazing, and arable area	17,619	14.94
Remote Area Dwellers Settlements	2,415	2.05
Ghanzi Township	133	0.11
Miscellaneous land (e.g., trek routes, villages)	973	0.83
<i>Freehold and Leasehold Land</i>		
Ghanzi Freehold Block	10,480	8.88
Xanagas Freehold Block	1,374	1.14
Ncojane Leasehold Farms	1,664	1.41
State Land Extension Farms	3,784	3.2
Kuke State Land Leasehold Farms	430	0.36
Artificial Insemination (AI) Camp, Veterinary Services	15	0.001
<i>Commercial Areas on Tribal Land</i>		
Makunda FDA Ranches	444	0.37
SE Ghanzi SDA Ranches	924	0.78
<i>Wildlife Management Areas</i>		
Groot Laagte WMA	3,908	3.31
Matlo-a-Phuduhudu WMA	8,816	7.47
Okwa WMA	13,618	11.55
<i>Conservation Area (State Land)</i>		
Central Kalahari Game Reserve	52,313	44.36
Total	117,910	100.0

Note: Data obtained from the Ghanzi District Council. The abbreviations used here are as follows: WMA stands for Wildlife Management Area, FDA for First Development Area, SDA for Second Development Area (both TGLP commercial ranch areas), and RAD for Remote Area Dweller.

A sizable proportion of the Ghanzi district consists of a single protected area, the Central Kalahari Game Reserve. The Central Kalahari is considered state land, and it is overseen by both the Ghanzi District Council and the central government which determines policy in the area. When the game reserve was first declared, European farmers in the Ghanzi Farms opposed the idea, because they feared the reserve would serve as a locale for people to escape farm work and potentially serve as a

base for people engaged in livestock theft (personal communication, 1978; Silberbauer, 1981). At the time of its declaration, there were 3,000 to 5,000 people who had some form of rights in the CKGR. In the 1980s, however, the Government of Botswana established a commission of inquiry into the status of the CKGR, in part as a response to concerns expressed by ecologists and others that the wildlife and habitats in the reserve were being affected by the presence of large numbers of people who had moved to one of the communities in the reserve, !Xade (Government of Botswana, 1985). The government rejected many of the conclusions of the Central Kalahari Commission, recommending instead that reserve residents be relocated to other places. Several reasons were given for this decision: first, the government wanted to promote wildlife conservation in the reserve; second, the government felt that wildlife-related tourism was an important way to have the state benefit from the resources in the reserve; and third, it was argued that people inside the reserve were no longer living as hunter-gatherers, but instead were keeping livestock and engaging in other “non-traditional” activities inconsistent with wildlife conservation (Ministry of Commerce and Industry, 1986).

The Botswana Government began encouraging people to resettle outside of the reserve by utilizing a number of techniques, some of them coercive. Arrest rates for illegal hunting increased substantially, and people suspected of poaching were sometimes beaten and tortured (Mogwe, 1992). Food and water deliveries under the government’s Remote Area Development Program slowed, and for some communities in the reserve stopped altogether. In some cases, individuals’ livestock were confiscated. Eventually, two major relocations of reserve residents occurred, one in May–June 1997, where some 1,760 residents were moved from !Xade in the reserve to New Xade outside the western boundaries of the CKGR.

A second set of relocations took place in January–February 2002, when some 2,000 people were loaded on trucks and moved out of the reserve to three resettlement sites: New Xade, Kaudwane in Kweneng District, and Xere in Central District (Sapignoli, 2017, 2018; Zips-Mairitsch, 2013). At first San and Bakgalagadi in the reserve attempted to negotiate, but these negotiations did not change the government’s mind about the relocations. Then people from the reserve engaged in demonstrations against the government’s decisions. San formed their own non-government organizations aimed at promoting their rights. People from the central Kalahari and support organizations, notably the First People of the Kalahari which had been founded in 1993, engaged in lobbying

efforts at the international level to highlight this injustice, traveling to New York, Geneva, and London, among other places. When these efforts failed, the people of the CKGR opted to go to court, filing a legal claim against the government (High Court of Botswana, Affidavit, 2002). While at first the High Court rejected the legal case on the basis of technicalities, eventually the Central Kalahari case was heard in the High Court over the period from July 2004 to December 2006 (see Sapignoli, 2018 for a detailed description of this legal case). A third small-scale removal of people from the Central Kalahari Game Reserve occurred in 2005 (Sapignoli, 2018).

In December 2006, three High Court judges ruled largely for the applicants, arguing that they (1) had the right to return to the Central Kalahari, and (2) had the right to hunt for subsistence in the reserve (High Court of Botswana, Affidavit, 2006). The day after the judgment was issued, however, the Attorney General of Botswana stated the government was under no obligation to offer services in the reserve, including food and water provision (Molokomme, 2006). The people of the Central Kalahari went back to court in 2009, seeking a right to water in the Court of Appeal, the country's highest court. The people of the Central Kalahari won this case, setting an international precedent for Indigenous and other peoples' right to water (Court of Appeal, Botswana, 2011; Morinville & Rodina, 2013; Sapignoli, 2018).

From our field work in January 2022, we documented some 350 people in five communities inside the CKGR, earning their livelihoods through gathering wild plant foods, delivering government food, growing crops in small gardens, and maintaining small-livestock (goats and sheep) and poultry production. People in the reserve are still not allowed to hunt, which is unlikely to change despite a promise by the Botswana Government in May 2019. It is important to note here that Botswana is the only country in Africa to have had a nation-wide subsistence hunting law, which lasted from 1979 to 2004. The regulations were specified in the Unified Hunting Regulations of 1979 (Hitchcock et al., 2012; Republic of Botswana, 1979). It should be pointed out, however, that dozens of people were arrested by wildlife officers and police despite their possession of subsistence hunting licenses in the period from 1970 to 2004, calling into question the effectiveness of the licensing system. One of the complaints about this hunting system in late 2021 related to communities' dissatisfaction with how private safari companies were getting allocations of animals to hunt, but communities were not allowed to benefit from the hunting license allocation.

The Ghanzi District Council and the Residents of Ranyane

The Ghanzi District Council also used heavy-handed tactics against San residents of villages in the communal areas of the district. This can be seen, for example, in the case of Ranyane, a small village consisting of several hundred Naro San, and a few Ngologa Bakgalagadi in the southern part of Ghanzi District. The Ghanzi Council argued in 2010 that the people of Ranyane had to move to another village, Bere, because Ranyane was located in a “wildlife corridor.” Over the next two years the Ghanzi Council engaged in intimidation and harassment of Ranyane residents in an effort to get them to relocate (Gaotlhobogwe, 2012). Eventually, the Council shut down the borehole in Ranyane, leaving residents without water for themselves or their animals. The Council did this despite Botswana government policies, including the *National Settlement Policy* of 1998 (Republic of Botswana, 1998) which guarantees villages of over 500 people the right to water, and the National Water Policy of 2012 that guarantees all Botswana the right to water (Republic of Botswana, 2012).

In response, the people of Ranyane took the Council to court in 2013 (High Court of Botswana, 2013). The Ranyane people failed in their effort to get the High Court to support them remaining at Ranyane; about half of the population was moved in 2013 to Bere, another Ghanzi remote area settlement. The rest of the people remained at Ranyane and earned a living through foraging and working for livestock owners in the vicinity of the village. In 2018, the remaining residents of Ranyane sought government recognition of their community as an official gazetted settlement (see Baaitse, 2018; Mokwape, 2018), but as yet neither the Ghanzi District Council nor the Botswana Government has responded to this request.

The effort to establish three Remote Area Dweller (RAD) ranches in Ghanzi District was also largely unsuccessful. The three farms, designated NK 173 (near West Hanahai), NK 164 (near Chobokwane), and NK 145 (near Groot Laagte) were allocated officially to the Ghanzi District Council on behalf of San in February 1990. The Ghanzi District Council had approached a consortium of NGOs, including the Kuru Family of Organizations and Permaculture, to assist in the development of the farms. The Norwegian development agency (NORAD) pledged P360,000 (then about US\$180,000) for water and fencing on the farms (NORAD office, personal communication, 1991). As it turned out, however, the government took over these ranches, a process that also occurred in Ghanzi District in the new millennium.

Barriers and Opportunities for San Land Rights

The government is the biggest obstacle for San land rights in Botswana. The government has steadfastly refused to negotiate San land rights. It has not honored requests by San organizations, the Commissioner for Indigenous and Human Rights, the Human Rights Council, and various international Indigenous rights NGOs to change its land rights policies.

In the 1990s, and the first decade and a half of the twenty-first century, a number of communities in Ghanzi District formed community trusts under the government's Community-Based Natural Resource Management Program (Republic of Botswana, 1990). San communities were able to get rights to resources through these trusts. This strategy worked until 2014, when the Government of Botswana imposed a hunting ban. Since that ban, the trusts have largely lost control of their areas to private safari companies. Table 10.3 presents data on these community trusts, which engaged in a variety of projects ranging from tourism to wild animal sales and to craft production. It is currently unclear what the status and rights of the community trusts are.

Another way that San who were dispossessed of their lands sought to get at least some land and resource rights was to form alliances with mining companies, some of whom, such as DeBeers Botswana and Gem Diamonds, argued on behalf of San with the government. It is estimated that at least 300 San were dispossessed by the establishment of the DeBeers Orapa diamond mine in 1967. In the case of the diamond mines around Letlhakane in Central District, another 500–1,000 San were dispossessed (Keikabile Mogodu, personal communication, August 2022). Compensation in the form of alternative land or cash was not provided to those people who were required to leave their residential, arable, and grazing lands (Botswana Khwedom Council, personal communication, 2022).

More recently, mining corporations have exercised a certain degree of social responsibility. San communities and individuals required to leave their areas because of mining operations in Ghanzi and North-West Districts have received some cash in exchange for the loss of their land rights. In the case of the new copper-silver mines in northern Ghanzi and southern Ngamiland (North-West District), San were consulted ahead of time and had the opportunity to argue for fair and just compensation for their losses. The problem, however, is that many of the promises of cash and alternative land have yet to be honored by the new mines and their owners.

Table 10.3 Community trusts in Ghanzi District, Botswana, that are or were involved in community-based natural resource management activities

Name of Trust and Date of Founding	Controlled Hunting Area (CHA), Support Organization	Number of Villages Involved, Population Size	Project Activities
Aushuxalu Conservation Trust (Bere), 2006	Okwa WMA (13,618 km ²)	One village (Bere), 800 people	Community tourism, crafts, tracking activities, bush (veld) products
Huiku Community Based Conservation Trust, 1999	Groot Laagte WMA (GH 1), (3,908 km ²) Kuru Family of Organizations	Two villages (Groot Laagte and Qabo), 1,013 people	Community tourism, lodge, crafts, bush (veld) products
D’Kar Kuru Trust, 1999	Dqae Qare freehold farm (7,500 ha), D’Kar Kuru Trust	One village, (D’Kar), 943 people	Community tourism, crafts, lodge at Dqae Qare in Ghanzi Farms
Kgoesakani (New Xade) Management Trust, 2000	GH 10 (1,248 km ²), Government of Botswana	One village (New Xade) (Kgoesakani) 1,800 people	Community tourism, crafts related to the Central Kalahari Game Reserve
Xwiskurusa Community Trust, 1996	GH 10 (1,248 km ²), Permaculture Trust	Three villages (East and West Hanahai, Ka/Gae), 1,247 people	Community tourism, crafts, bush (veld) products
Chobokwane Community Trust, 1999	GH 11, Matho-a-Phuduhudu WMA (8,816 km ²)	One village (Chobokwane), 489 people	Community campsites, crafts, bush (veld) products
Komku Development Trust, 1999	GH 11 (8,816 km ²), First People of the Kalahari	One village, Buitsavango, 200 people	Community campsites, crafts, dances

Note: Data obtained from the Ghanzi District Council, the Kuru Family of Organizations, and the IUCN (World Conservation Union) CBNRM Support Program (www.cbnrm.bw and www.iucnbot.bw).

Conclusion

In 2023, it was uncertain whether the community trusts in the communal areas and Wildlife Management Areas in Botswana still had the right to make their own decisions, and whether people there had resource and land tenure rights. The lack of clarity on the land issue in communal areas is the most crucial problem facing Indigenous and minority communities in Botswana. As Wily (2018) pointed out, Botswana's protections for the tenure rights of people in communal areas are weak, and as a result "the law is to blame" (Wily, 2011). San and other minority communities in Botswana's communal areas continue to be vulnerable to expropriation, a process seen, for example, among San communities not only in Ghanzi District, but also in Central, Chobe, Kgalagadi, Kgatleng, Kweneng, and North-West Districts. The land tenure status of gazetted remote area settlements is unclear as well. Majority San communities have thus far been unable to obtain *de jure* land and water rights in the tribal land areas of Botswana.

Another strategy that San employed in an effort to get their land rights recognized was to take part in the political process (for comparison, see the chapter by Baird on Cambodia and Thailand in this book). In 1989, several San from Ghanzi District ran for Parliament (Hitchcock & Holm, 1993). In 1994, only one San was elected to Parliament, Kgosi (Chief) Rebecca Banika, a Shua (//Gorokhwe) San from Chobe District. At the council level, however, a sizable number of San in Ghanzi have run successfully for positions in the Ghanzi District Council. In 2019, there were six San on the Ghanzi Council, one of whom, Hunter Sixpence, was the Ghanzi Council chairperson. Another San, Jumanda Gakelebone, a G//ana from Mothomelo in the Central Kalahari Game Reserve, was the district councillor for New Xade. Mr. Gakelebone was re-elected to the Ghanzi District Council during the recent October 23, 2019, elections in Botswana. He now plans to run for the chairmanship of the Ghanzi District Council. One of the issues he will be pushing for is clarification of the rights of the people of the Central Kalahari Game Reserve.

One of his strategies (and that of other San activists) has been to form alliances with international organizations such as the Forest Peoples Programme, Minority Rights Group International, the International Work Group for Indigenous Affairs, Land is Life, and in the past, Survival International. Some of these organizations have provided funding for the activities of San organizations, and others have provided resources to allow international travel. This strategy has been partially

successful, but the drop-off in funds to cover the costs of legal cases continues to be a major challenge.

As it stands now, water and social services such as education and health are provided in most of the seventy-three recognized remote area settlements in Botswana. However, water provisions were stopped in those places where the government wanted people to relocate, such as Ranyane in western Ghanzi District and in the Central Kalahari Game Reserve. As discussed, these decisions were successfully challenged in the High Court. But as yet the government and district councils have failed to implement these High Court judgments.

A critical analysis of the land rights of San and Bakgalagadi in Botswana reveals that they generally lack clearly defined land tenure rights. While the government pays lip service to “land rights for all” in its constitution and land policy papers, it is apparent that the district land boards and the government ministries responsible for land, such as the Ministry of Lands and Housing, and the Ministry of Local Government and Rural Development, have deliberately chosen not to allocate land to Indigenous communities, nor have they ruled on behalf of those communities that have filed appeals with the government. The new Botswana land policy (Republic of Botswana, 2015) has mainly served to allow individuals with means (i.e., those who are wealthy) to take over land occupied by poorer people, including those who define themselves and who are recognized internationally as “Indigenous Peoples.”

San, for their part, continue to seek recognition of their land rights through organizing themselves, seeking funding to support negotiations, lobbying government and, in some cases, taking the government to court, with a certain degree of success. One way that San can ensure that they have their rights to land defined more clearly is to have them spelled out in a future “white paper” on Botswana land policy. It would also be useful to have the rights of Indigenous Peoples included in a new version of the Botswana Constitution.

In many ways, Botswana provides an all-too-common example of the problems of land rights for Indigenous Peoples in Africa and elsewhere across the world, as reflected across this book. Part of the reason for this situation is the weak protections of communal land rights. San in Botswana have faced challenges when it comes to political recognition and acceptance by the government of the concept of Indigeneity as a basis for rights. Interestingly, Botswana government officials regularly attend the United Nations Permanent Forum on Indigenous Issues (UNPFII) where they meet with representatives of San organizations.

However, Botswana government officials have been reluctant to meet face-to-face with representatives of San communities in Botswana itself. Thus, it remains to be seen what progress local and international efforts will bring when it comes to ensuring greater security of land tenure for the country's Indigenous Peoples.

Acknowledgments

We thank the Government of Botswana for permission to carry out this research. Support for the research upon which this paper is based was provided by the U. S. National Science Foundation grants (NSF-Soc. 75-02253, BNS 76-19633), the International Work Group for Indigenous Affairs (IWGIA), Hivos (the Netherlands), the Norwegian Agency for International Development (NORAD), the U. S. Agency for International Development (USAID), the United Nations Development Program (UNDP), and the Remote Area Development Program, Government of Botswana. William Nikolakis, Jumanda Gakelebone, Melinda Kelly, Sidsel Saugestad, and Elizabeth Alden Wily provided useful information and editorial suggestions. We wish to express our sincere appreciation to my informants for the valuable information that they provided to us.

References

- Adams, M., Kalabamu, F., & White, R. (2003). Land tenure policy and practice in Botswana: Governance lessons for Southern Africa. *Austrian Journal of Development Studies*, 1, 55–74.
- African Commission on Human and Peoples' Rights. (2007). *Advisory opinion of the African Commission on Human and Peoples' Rights on the United Nations Declaration on the Rights of Indigenous Peoples*. Banjul, The Gambia: African Commission on Human and Peoples' Rights, African Union.
- African Group of States. (2006). *Draft aide memoire: United Nations declaration on the rights of indigenous people*. New York: African Group of States.
- Baaitse, F. (2018, Aug. 21). Fight for survival: Lawyers argue that Ranyane village deserves recognition. *The Voice*.
- Barnard, A. (1992). *Hunters and herders of Southern Africa*. Cambridge: Cambridge University Press.
- Barume, A. (2009). Responding to the concerns of the African states. In C. Charters & R. Stavenhagen (eds.), *Making the declaration work: The United Nations Declaration on the Rights of Indigenous Peoples* (pp. 170–182). Copenhagen: International Work Group for Indigenous Affairs.

- (2014). *The land rights of Indigenous Peoples in Africa* (2nd ed.). Copenhagen: International Work Group for Indigenous Affairs.
- Bollig, M., Hitchcock, R. K., Nduku, C., & Reynders, J. (2000). *At the crossroads: The future of a development initiative. Evaluation of KDT (Kuru Development Trust), Ghanzi and Ngamiland Districts of Botswana*. Amsterdam: Hivos Foundation.
- Brett, P. (2018). *Human rights and the judicialisation of African politics*. New York: Routledge.
- Cadger, K., & Keep, T. (2013). Contextualizing development projects among the San of Botswana: Challenges of community gardening. *Development in Practice*, 23(7): 811–825.
- Court of Appeal, Botswana. (2011) *In the Court of Appeal of Botswana held at Lobatse. Court of Appeal No. CACLB-074-10. High Court Civil Case No. MAHLB 000 393-09 In the matter between Matsipane Moselethanyene, First Appellant, and Gakenyatsiwe Matsipane, Second Appellant, and the Attorney General Respondent. Heard 17 January 2011 and delivered 27 January 2011*. Lobatse, Botswana: Court of Appeal.
- Cullis, A., & Watson, C. (2005). *Winners and losers: Privatizing the Commons in Botswana*. London: International Institute of Environment and Development.
- Datta, K., & Murray, A. (1989). The rights of minorities and subject peoples in Botswana: A historical evaluation. In J. Holm & P. Molutsi (eds.), *Democracy in Botswana* (pp. 58–74). Gaborone: Botswana Society.
- Gaotlhogogwe, M. (2012, March 15). Basarwa, Bakgalagadi in another forced relocation. *Mmegi On-Line*.
- Government of Botswana. (1985). *Report of the Central Kgalagadi Reserve Fact Finding Mission*. Gaborone, Botswana: Government Printer.
- Gulbrandsen, O. (2012). *The state and the social: State formation in Botswana and its precolonial and colonial genealogies*. New York: Berghahn Books.
- Gulbrandsen, O., Karlsen, M., & Lexow, J. (1986). *Remote Area Development Programme*. Gaborone, Botswana: Government Printer. Republic of Botswana
- High Court of Botswana. (2013). *MAHGB-000295-139 In the matter between Dithame Mmakgomo, First Applicant, and 11 others vs Ghanzi Land Board, First Respondent, Ghanzi District Council, Second Respondent, and Ghanzi District Commissioner, Third Respondent, 24 May 2013*. Lobatse: High Court of Botswana.
- High Court of Botswana, Affidavit. (2002). *Central Kalahari Legal Case No. MISCA 52/2002 in the Matter between Roy Sesana, First Applicant, Keiwa Setlhobogwa and 241 others, Second and Further Applicants, and the Attorney General (in his capacity as the recognized agent of the Government of the Republic of Botswana)*. Lobatse: High Court of Botswana.
- (2006). *Judgment – Central Kalahari Legal Case No. MISCA 52/2002 in the Matter between Roy Sesana, First Applicant, Keiwa Setlhobogwa and 241*

- others, *Second and Further Applicants, and the Attorney General (in his capacity as the recognized agent of the Government of the Republic of Botswana)*. Lobatse: High Court of Botswana.
- Hitchcock, R. K. (1980). Tradition, social justice, and land reform in Central Botswana. *Journal of African Law*, 24(1), 1–34.
- (1988). *Monitoring, research, and development in the remote areas of Botswana*. Gaborone: Ministry of Local Government.
- (2021). *Kgalagadi Drylands Ecosystem Project Indigenous Peoples Planning Framework (IPPF)*. Gaborone, Botswana: Government of Botswana and United Nations Development Programme.
- Hitchcock, R. K., & Holm, J. D. (1993). Bureaucratic domination of African Hunter-Gatherer societies: A study of the San in Botswana. *Development and Change*, 24(1), 1–35.
- Hitchcock, R. K., & Sapignoli, M. (2019). The economic well-being of the San of the Western, Central, and Eastern Kalahari desert regions of Botswana. In C. Fleming & M. Manning (eds.), *The Routledge handbook of Indigenous well-being* (pp. 170–183). New York: Routledge.
- Hitchcock, R. K., Sapignoli, M., & the San Caucus. (2012). Subsistence hunting and social justice in Botswana. www.justconservation.org
- Isaacs, S. M., & Manatsha, B. T. (2016). Will the dreaded ‘yellow monster’ stop roaring again? An appraisal of Botswana’s 2015 land policy. *Botswana Notes and Records*, 48, 383–395.
- Keeping, D. R. Kashe, N., Langwane, H.K., Sebati, P., Molese, N., Gielen, M-C., Keitsile-Barungwi, A., Xhukwe, Q., & !Nate, B. (2019). Botswana’s wildlife losing ground as Kalahari Wildlife Management Areas (WMAs) are dezoned for livestock expansion [Unpublished manuscript]. <https://doi.org/10.1101/576496>
- London Missionary Society. (1935). *The Masarwa (Bushmen): Report of an Inquiry by the South African District Committee of the London Missionary Society*. Alice, South Africa: Lovedale Press.
- Ludick, S. (2018, Dec. 3–5). *Botswana report*. Sub-Regional Workshop on Inclusive Development for San People in the Framework of the United Nations Declaration on the Rights of Indigenous Peoples, Windhoek, Namibia.
- Mbaiwa, J. E. (2017). Poverty or riches: Who benefits from the booming tourism industry in Botswana? *Journal of Contemporary African Studies*, 35(1), 93–112.
- (2018). Effects of the safari hunting tourism ban on rural livelihoods and wildlife conservation in Northern Botswana. *South African Geographical Journal*, 100(1), 41–61.
- Miers, S., & Crowder, M. (1988). The politics of slavery in Bechuanaland: Power struggles and the plight of the Basarwa in the Bamangwato Reserve, 1926–1940. In S. Miers & R. Roberts (eds.), *The end of slavery in Africa* (pp. 172–200). Madison: University of Wisconsin Press.

- Ministry of Commerce and Industry. (1986). *Report of the Central Kalahari Game Reserve Fact Finding Mission*. Gaborone, Botswana: Ministry of Commerce and Industry.
- Mogwe, A. (1992). *Who was (t)here first? An assessment of the human rights situation of Basarwa in selected communities in the Gantsi District, Botswana*. Gaborone, Botswana: Botswana Christian Council.
- Mokwape, M. (2018, Sept. 14). Ranyane residents want recognition. *Mmegi Online*.
- Molokomme, A. (2006). *Attorney General's statement on the outcome of the case of Roy Sesana and others vs. the Attorney General*. Gaborone: Attorney General's Chambers, Government of Botswana.
- Morinville, C., & Rodina, L. (2013). Rethinking the human right to water: Water access and dispossession in Botswana's Central Kalahari Game Reserve. *Geoforum*, 49, 150–159.
- Ndahinda, F. M. (2011). *Indigeness in Africa: A contested legal framework for empowerment of 'marginalized' communities*. New York: Springer.
- Ng'ong'ola, C. (2007). Sneaking Aboriginal title into Botswana's legal system through a side door: Review of *Sesana and Others v. the Attorney General*. *Botswana Law Journal*, 6, 103–123.
- Nyati-Ramahobo, L. (2009). *Minority tribes in Botswana: The politics of recognition*. London: Minority Rights Group International.
- Peters, P. (1994). *Dividing the Commons: Politics, policy, and culture in Botswana*. Charlottesville, Virginia: University Press of Virginia.
- Republic of Botswana. (1966). *Constitution of Botswana*. Gaborone, Botswana: Government Printer.
- (1968). *Tribal Land Act (1968)*. Gaborone, Botswana: Government Printer.
- (1975). *National policy on tribal grazing land*. Gaborone, Botswana: Government Printer.
- (1986). *Wildlife Conservation Policy*. Gaborone, Botswana: Government Printer.
- (1990). *Community-Based Natural Resources Management Policy*. Gaborone, Botswana: Government of Botswana.
- (1998). *National Settlement Policy*. Gaborone, Botswana: Government Printer.
- (2009). *Remote Area Development Program (RADP)*. Gaborone, Botswana.
- (2012). *Botswana National Water Policy, October 2012*. Gaborone: Ministry of Minerals, Energy and Water Resources.
- (2014). *Supplement C. Wildlife Conservation and National Parks (Prohibition of Hunting, Capturing, or Removal of Animals Order, 2014)*. Gaborone: Government of Botswana.
- (2015). *Land Policy*. Gaborone, Botswana: Ministry of Lands and Housing.
- Rihoy, L., & Maguranyanga, B. (2010). The politics of community-based natural resource management in Botswana. In F. Nelson (ed.), *Community rights*,

- conservation, and contested land: The politics of natural resource governance in Africa* (pp. 55–78). London: Earthscan.
- Russel, M. & Russell, M. (1979). *Afrikaners of the Kalahari*. Cambridge: Cambridge University Press.
- Samatar, A. I. (1999). *An African miracle: State and class leadership and colonial legacy in Botswana development*. Portsmouth, New Hampshire: Heinemann.
- Sapignoli, M. (2017). “Bushmen in the law”: Evidence and identity in Botswana’s High Court. *Political and Legal Anthropology Review (PoLAR)*, 40(2), 210–225.
- (2018). *Hunting justice: Displacement, law, and activism in the Kalahari*. Cambridge: Cambridge University Press.
- Saugestad, S. (2001). *The inconvenient Indigenous: Remote area development in Botswana, donor assistance, and the First People of the Kalahari*. Uppsala, Sweden: Nordic Africa Institute.
- Schapera, I. (1938). *A handbook of Tswana law and custom*. London: Frank Cass.
- (1939). A survey of the Bushman question. *Race Relations*, 6(2), 68–83.
- (1943). *Native land tenure in the Bechuanaland Protectorate*. Alice, South Africa: Lovedale Press.
- (1953). *The Tswana*. London: International African Institute.
- (1970). *Tribal innovators: Tswana Chiefs and social change, 1795–1940*. London: Athlone Press.
- Silberbauer, G.B. (1965). Report to the Government of Bechuanaland on the Bush Man Survey. Government of Bechuanaland.
- (1981). *Hunter and habitat in the Central Kalahari Desert*. New York: Cambridge University Press.
- (2012). Why the Central Kalahari Game Reserve? *Botswana Notes and Records*, 44, 201–203.
- Tagart, E. S. B. (1933). *Report on the conditions existing among the Masarwa in the Bamangwato Reserve of the Bechuanaland Protectorate and certain other matters appertaining to the Natives living therein*. Pretoria, South Africa: Government Printer.
- Tanaka, J. (1980). *The San, hunter-gatherers of the Kalahari: A study in ecological anthropology* (D. W. Hughes, Trans.). Tokyo: Tokyo University Press.
- (2014). *The Bushmen: A half-century chronicle of transformation in hunter-gatherer life and ecology* (M. Sato, Trans.). Kyoto: Kyoto University Press.
- Wily, E. A. (1979). *Official policy towards San (Bushmen) hunter-gatherers in modern Botswana: 1966–1978*. Gaborone, Botswana: National Institute of Development and Cultural Research.
- (1981). *The TGLP and hunter-gatherers: A case study in land politics*. Gaborone, Botswana: National Institute of Development and Cultural Research.
- (1982). A strategy of self-determination for the Kalahari San (The Botswana government’s programme of action in the Ghanzi farms). *Development and Change*, 13(2), 291–308.

- (2011). 'The Law is to Blame': The vulnerable status of common property rights in sub-Saharan Africa. *Development and Change*, 42(3), 733–757.
- (2018). Collective land ownership in the 21st century: Overview of global trends. *Land*, 7(2), 68.
- Zips-Mairitsch, M. (2013). *Lost land? (Land) rights of the San in Botswana and the legal concept of Indigeneity in Africa*. Copenhagen: International Work Group for Indigenous Affairs.