

INDIGENOUS NEGOTIATIONS CASE STUDY

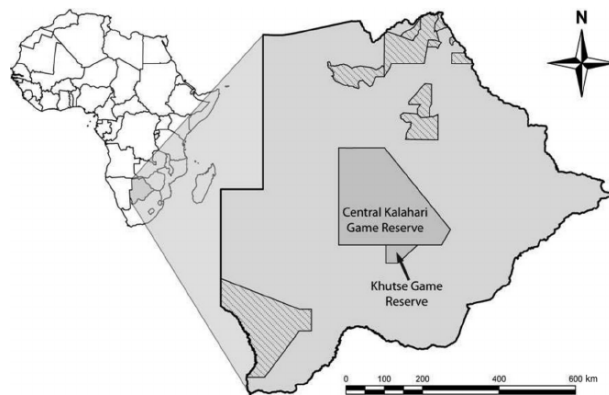
San Settlement in the Central Kalahari Game Reserve, Botswana

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1. [The Negotiation Challenge](#)

In Botswana, the San or Bakhwe peoples, collectively referred to by outsiders as the “Bushmen,” are considered the original indigenous peoples. The San and other members of San-speaking indigenous groups have historically occupied territories across Southern Africa, including Botswana, with evidence of habitation in these areas dating back over 70,000 years. Historically, the San lived in small groups and were nomadic in nature, with their movements happening largely within their ancestral lands.

In the post WWII period, like many other African nations, the land known today as Botswana was held as a protectorate by the British Empire. In 1961, the colonial government created the Central Kalahari Game Reserve (CKGR), a 52,000 km² protected area situated squarely in the middle of the country.



While the San were allowed for more than two decades to live within the bounds of the CKGR without interference, in 1997 the forcible resettlement of San communities outside the boundaries of the protected area began to be enforced. This resettlement took place under the auspices of “moving the San closer to development” and bringing them closer to government provided services such as schools, piped water, electric, and more, although critics of the move attest that the discovery of diamond deposits within the CKGR around this time may have prompted the decision. The San people resisted this movement, with all but 5 communities being forcibly removed to New Xade, the closest settlement outside of the CKGR. The relocated peoples were told they could still have free access into the reserve for purposes like hunting and cultural ceremonies, but this promise was not upheld.

After this involuntary resettlement, the relocated peoples’ access to the Central Kalahari Game Reserve was cut off – representatives of the government claimed that the San had *voluntarily* relocated, and therefore had no desire to return to the settlements within the CKGR. About 5 settlements remained in the northern portion of the CKGR, and in 2002, the government set about instigating their resettlement by cutting of public services, going so far as to seal the government operated borehole (water source) to force people out.

Over 200 of the San people affected by this second resettlement effort immediately appealed to Botswana's High Court for relief. In late 2006, after the longest trial in Botswana's history, the Court ruled that the San residents had a lawful and constitutionally protected right to live in the CKGR, that they had been removed from it "forcibly or wrongly and without their consent", and that the Government's refusal to allow them to return to their homes without permits was unlawful and unconstitutional. Despite the High Court order of 13th December 2006 that the zoning of CKGR was preceded by the Bushmen's occupation of the area and therefore that the forced removal of the San had been unlawful, the government has continued its refusal to recognize the rights of the indigenous peoples of CKGR to return to their ancestral lands.

2. [Context](#)

People and Communities Living Within the CKGR

The San/Bakhwe are generally referred to as the indigenous peoples of Botswana. Like other San groups in Botswana, the San of Central Kalahari Game Reserve historically practiced a hunting and gathering lifestyle. They lived in small groups and were nomadic in nature, with their movements generally around and within their ancestral lands. In modern Botswana, the San/Bakhwe have become a minority group and are marginalized such that they have been displaced from their traditional lifestyle of hunting and gathering, which has since declined.

The population of San within Central Kalahari Game Reserve (CKGR) stood at 820 people, although an accurate number is hard to come by, as the government has continuously downplayed this number for political reasons. Most San people in their various settlements (Metsiamaong, Molapo, Mothomelo, and Gugamma & Gope) retain social, cultural, economic and political systems that are different from those of the dominant culture in Botswana.

In terms of education, the formal education of the San is characterized by a significantly higher dropout rate among girls than boys, contrasting with the far more gender balanced national averages. Felton and Becker (2001) noted that there are several gender specific and gender neutral factors that affect San educational performance, and stem from cultural factors as well as the system of formal education. Early sexual relationships, early marriages and young motherhood contribute to girls dropping out and underperforming in school. Educators also perceive San as lacking self esteem, suggesting that the loss of traditional education systems and puberty rites has led to a decrease in the transmission of knowledge and values to youth (ibid.). While all southern African San are extremely marginalized, Felton and Becker's gender analysis indicates that San women are subject to multiple forms of marginalization, as they are discriminated against as San, as women, and as San women, by their broader national societies and within their own communities.

Despite a lack of formal education and literacy, especially amongst the older generations, many San and specifically the most senior members of the community have a vast indigenous knowledge which is the basis for local-level decision making in agriculture, health care (medicinal plants), food preparation, education (indigenous), natural resource management, and a host of other activities.

San livelihoods are primarily dependent on wildlife and veld (open grassland) resources. These people know of many grave sites, which have considerable spiritual importance to them. Residents are still organized into small groups with their own territory, of which they have a detailed knowledge. They only use the resources within their territory, the boundaries of which are still well known. They employ traditional conservation measures to ensure that these resources are exploited in a sustainable manner.

Like many indigenous peoples around the world, the San's livelihoods, culture, and their identity is very much connected to their territory. And like many other indigenous groups, they have been subject to evictions and violent conflict as a result of their land being targeted for development by outside actors. At present, the economic livelihoods of the San of CKGR rely on a number of issues, namely short-term manual jobs offered by the government in the villages/settlements (New Xade, Kaudwane, Xere) such as road clearing and building construction. These economic livelihoods are most based outside of the CKGR. Most people also rear goats, horses and donkeys and to some extent some do plough for agricultural purposes.

Governance and Decision-Making

The traditional leadership and governance of the San communities is of a fluid composition, with ever-evolving tribal bands and leadership based on consensus. San decision-making was a group affair and not an individual issue, driven by consensus instead of individual authority. The inability or refusal of outsiders to recognize the leadership formations in San communities does not in actual fact mean that these communities lacked such leadership. San traditional leadership style and decision making process is different from that of the Tswana and other mainstream groups. Therefore to claim non-existence of any form of leadership among the San is incorrect.

Historical Context for Land Claims

In 1885, the British made Botswana, then called Bechuanaland, a protectorate, and by 1933, had formally recognized eight tribes, Barolong, Bakwena, Bangwaketse, Balete, Bakgatla, Batlokwa, Bangwato and Batawana, as Tswana tribes. These groups had similar dialects and a shared history, though they also made up the minority in the country (Nyati-Ramahobo 2008). These eight Tswana tribes enjoyed privileges that were not afforded to the non-Tswana tribes, including collective land rights (ibid.). For non-Tswana tribes, their inability to claim collective land rights has meant that they could be moved from their ancestral lands without consent. For instance, the government removed the G/anakhwe and G/wikhwe from their ancestral land, which is now the Central Kalahari Game Reserve, in 2002. The non-Tswana have been the most affected by government initiatives to move people or relocate from one area to another, sometimes to pave way for development.

3. Key Actors in the Negotiation

San Bushmen

In Botswana, the San or Bakhwe peoples, collectively referred to by outsiders as the "Bushmen," are considered the original indigenous peoples. The San and other members of San-speaking indigenous groups have historically occupied territories across Southern Africa, from South Africa through Botswana, Namibia, Angola, Zambia and more, with evidence of habitation in these areas dating back over 70,000 years. Historically, the San lived in small groups and were nomadic in nature, practicing a hunter-gatherer lifestyle and governing through collective decision-making.

Roy Sesana

Roy Sesana is an elder within the San communities fighting to regain access to the CKGR. Originally, Roy was an advocate for San reentry in to the CKGR, and led the establishment of First Peoples of the Kalahari (FPK), a community organization advocating for San land rights. In 2015, Roy was placed on the pay role of the Government of Botswana, who appointed him their liaison to the San peoples on the issue of reentry to the CKGR. Currently, San community members view Roy as a "sell out" who no longer represents their interests in the negotiation. Roy has also been made the chairperson of the "CKGR

Consultative Committee," a body established by the government. This move has surprised the indigenous communities living within the reserve.

Survival International

Survival International is an international non-profit organization dedicated to protecting the lives and land of tribal and indigenous peoples. In Botswana, Survival International has been supporting the San in their claim to reestablish rights to settle within the CKGR. Survival International lead a number of publicity campaigns on behalf of the San to highlight their plight, which saw many funding institutions make donations to cover the legal costs of the cases, including salary for a lawyer to litigate their claims in court.

Gordon Bennett

Gordon Bennett, a UK-based lawyer, has been the longstanding legal representative of the San as they press their claim for access to the CKGR within Botswana's legal system. In 2006, Mr. Bennett successfully argued for the rights of the San to return to the CKGR, and in 2011, again successfully argued for their rights to drill their own boreholes (water sources). In 2013, Mr. Bennett was blocked from entering Botswana, and has been unable to enter the country since.

4. [The Negotiation Process](#)

The heart of the issue between the San peoples and the Government of Botswana is the assertion of the San of their rights to access to the CKGR, which they see as part of their ancestral homeland, and the Government of Botswana's refusal to recognize these rights. Since the first forced evictions of the San from the CKGR in 1997, the San and the Government of Botswana have gone back and forth through various legal and extrajudicial methods to try and resolve the dispute.

The San peoples are recognized as having lived in the area that preceded the creation of the CKGR since time immemorial. The CKGR was established in 1961, with no consultation of the people living in the area. The reasoning for the CKGR's creation was two-fold: 1) to provide land for the protection of local wildlife and 2) to provide sufficient residence for the San people who were already living there well before the creation of the CKGR. While the San were allowed to reside within and practice their traditional hunter-gatherer lifestyle within the CKGR for more than two decades, the Government of Botswana reversed its position on this issue in the mid-1980s. Around this time, resettlement in the name of wildlife conservation and tourism promotion was advocated by a number of African governments and environmental NGOs. By 1984 the government had a change of policy based on a perceived incompatibility of San communities living side by side with wildlife. The reason advanced for such a change of policy were that human settlements such as the San encampments were incompatible with conservation of wildlife within the CKGR, and could lead to sprawl and land use conflicts. The government felt it was necessary, therefore, that the indigenous communities be accommodated elsewhere outside the CKGR.

Beginning in 1997, San people began to be relocated outside of the CKGR, under the pretext of bringing them closer to development (the government claimed it was too difficult to provide services to them inside the CKGR). According to supporters of the San, this period also coincides with the first discoveries of diamond deposits within the CKGR, and may have prompted the government's reversal in policy. People resisted this movement, but they were removed to New Xade, the closest settlement outside of the CKGR. They were told they could still have free access into the reserve, but this promise was not upheld. After

this resettlement, the relocated peoples' access to CKGR was cut off, with the given reason being that they had voluntarily relocated so they do not want to go back.

About 5 settlements refused to relocate and remained within the boundaries of the CKGR, so the government cut off services being provided to them. In 2002, the government came to forcibly remove these last remaining inhabitants of the CKGR by sealing off the government maintained borehole (water source) to force people out. Some people were removed entirely in settlements such as Molapo, Mothomelo and Gope, while in Metsiamanong and Gugamma, people refused to move and continued living in these communities. Government representatives came through and dumped the water stores of these households out into the sand, offering them no recourse but to leave.

In 2005, the government again tried to pressure the remaining San out of the CKGR by removing all domestic animals cared for by the communities (horses, donkeys, goats, sheep and dogs), under the pretext of an outbreak of what they called "Sarcoptic Mange." The government used the outbreak as a reason to cause the remaining San communities to move out of the reserve. However, this move by the government did not bear any fruit, as people continued to rely on their traditional survival tactics that enabled them to survive the harsh conditions of the desert. Some people who had relocated had also started coming back to their ancestral land (CKGR).

Such resettlement has major human rights implications, especially in terms of reducing the standards of living and contributing to cultural extinction. Prior to the resettlement process initiated by the government, the San people had freely practiced their cultures without restriction. The medicinal plants that people freely used in their cultural activities were found in advance in their ancestral lands. The San easily located the medicinal plants in these areas, enabling them to practice their cultures with ease. When they had free access to their lands, they also had more access to game. The Central Kalahari is a vast area where wild animals and fruits were found in abundance. The stratification of the animals, wild fruits and so on were known by the San people and people had various food options. As a result, their livelihood were well balanced.

However, upon relocation to the newly resettled areas, the San could no longer move freely as their travel was limited to a 20 km radius, making their nomadic lifestyle impossible. Hunting of wild animals and gathering of wild fruits is a key part of San culture, but restrictions on movement abruptly ended these practices, which has led to erosion of San culture. As a result, the San have now lost their sense of community and traditional identities.

The San resettled into New Xade and other communities outside of the CKGR also face elevated rates of alcoholism, illiteracy and communicable diseases like tuberculosis and HIV/AIDS, as compared to non-resettled populations. The San/Khwe people are traditionally nomadic, but with permanently established settlements around which they moved in search of water, wild animals and wild fruits. This lifestyle promoted positive mental health as it enabled the San/Khwe to not dwell on their problems, and the movement that was part of their lifestyle promoted good physical health. After resettlement, their lifestyle became more sedentary, and has negatively impacted both their mental and physical health.

In 2002 the plight of the San was picked up by international NGO Survival International, which raised funds to hire the UK lawyer Gordon Bennett to begin representing the San's legal interests. In late 2002, Gordon Bennett helped to guide the First People of the Kalahari, a San rights organization lead by San activist Roy Sesana, to file a case against the Government of Botswana to seek the right for the relocated San to return to the CKGR. In December 2006, after the longest ever court case adjudicated by the High Court of

Botswana, the court passed down a historic ruling in favor of the San. By a 2–1 majority, the court ruled that the government’s refusal to allow the San into the CKGR without a permit, and the refusal to issue special game licenses to allow the San to hunt, was "unlawful and unconstitutional".

Despite this victory, the ruling of the High Court did not compel the government to provide services, such as access to drinking water, to any San who returned to the reserve. As such, the San, as advised by Gordon Bennett, filed a new claim with the Court of Appeals for the right to reopen the original water borehole in the reserve, which was capped in the evictions of 2002. In 2011, the Court ruled in favor of the San’s right to reopen or drill new boreholes, but many of the San within the CKGR still face blocks by the government in their attempts to gain access to water. In 2013, Mr. Gordon Bennett, the San’s legal counsel, was blocked from entering Botswana, and has been unable to obtain a visa to enter the country since.

During this same period of court cases and appeals, First Peoples of the Kalahari (FPK), the main advocacy organization internal to the San community within the CKGR, began to fall apart. In 2006, FPK received a major donation from an international funder, but an employee within FPK misused the funds. That employee wasn’t part of the CKGR community, but because of this perceived reputation of an inability to responsibly handle funding, donations to FPK began to dry up. The leadership of FPK at the time didn’t know what to do, due to lack of capacity and education, so FPK essentially dissolved.

In 2015, the Government of Botswana decided to reinstate many social services to communities living in the CKGR, with an apparent intention to encourage negotiations over the settlement of San within the CKGR. At this time, the government proposed the creation of a “CKGR Consultative Committee.” Roy Sesana, former director of First Peoples of the Kalahari, was appointed by the government as Chairman of this Committee, in a role intended to act as a liaison between the San and the Government in the dialogue around the issue of San settlement within the CKGR. As chairman, Roy began receiving a government paycheck. A secretary to the committee was also appointed by the government – this person was not a resident of CKGR and was not conversant in the Bushman language. Many of the San within the CKGR began questioning the legitimacy of this committee because of a perceived conflict of interest; many believed that it was staffed by coopted former community leaders and outsiders to the community. The mandate of the committee was also unclear.

In an attempt to gain clarity on the purpose of the “CKGR Consultative Committee,” the San communities within the CKGR wrote to the government (the District Commissioner & Ghanzi District Council Secretary). The government responded through the District Commissioner and the Council Secretary, stating in its letters that the government had decided to reinstate services to communities in the CKGR and that anyone requesting clarifications should consult the CKGR Consultation Committee. They added that reinstatement of public and social services also included the establishment of a community trust called Memoghamogu Community Trust. The community is unclear on how the trust, once established, will compensate them for the lack of legally confirmed rights to occupy their ancestral land. Arrangements around the establishment of the trust are unclear and controlled by the government, and the San people are reluctant to agree to a trust they do not understand and did not ask for. In 2006, the High Court also stated that the government’s refusal to issue special hunting licenses to the San was also unlawful and unconstitutional. Therefore, establishment of a trust has been a nonstarter for the San until the issuance of hunting licenses is reinstated.

5. Current Situation on the Ground

Currently, although the San have been legally allowed reentry into the CKGR, resistance from the Government of Botswana in providing them access to basic services like water and licenses to hunt has limited their ability to fully return to their ancestral lands and resume their traditional hunter-gatherer lifestyle. Many of the San who can trace their ties back to the land that is now called the CKGR still remain in settlements outside of the reserve, and face undue economic and social challenges due to the loss of their cultural structures that are inherently tied to their ancestral lands.

The case for the San's ability to lastingly resettle within the CKGR hinges on asserting and gaining formal recognition of their ancestral claim to the lands upon which the CKGR is sited. If the San can successfully petition for recognition of the CKGR as tribal land, a formal designation of collectively held land in Botswana, they have a stronger standing from which to assert their rights to live and hunt within the CKGR. While positive steps forward have been made for the San through rulings passed down by Botswana's legal institutions, the core issue of the San's legal claim to the land has not been ruled upon.

It has been difficult for the San to organize around a particular strategy for the assertion of their land rights due to barriers in accessing information. Many factors lead to these difficulties, including a traditionally fluid governance structure that makes it difficult to organize around a central cause, dispersed and remote communities that make communication both difficult and costly, a relative lack of capacity amongst the San elders (little formal/Western education and low literacy), and tactics put forth by the government to distract from the larger land tenure issue, such as barring the entry of the San's legal counsel or proposing a community trust that they did not ask for.

Current efforts within the San communities in the CKGR include pushing to reorganize and reconvene the former First Peoples of the Kalahari organization as a new institution that can lead the San push for recognition of their land rights. Younger generations of San are leading efforts within the CKGR to organize people around this cause. They are travelling to the different communities to update them on the current status of their access to land, as well as to gather their insights on the land claim issue, and to socialize the idea of reestablishment of FPK with a new board of directors. As the San begin to organize more systematically around the need to assert their rights to the land upon which the CKGR is situated, they can reach out to other allies to generate more support and international pressure for their claim.

6. Broader Implications

Rights of access to and ownership of land are central issues to indigenous peoples the world over. Because indigenous cosmologies, cultures and livelihoods are often tied so closely to the lands on which they live, land tenure can be key to indigenous peoples' continued existence. In many cases, however, including in the case of the San in Botswana, indigenous peoples lack formal recognition of their rights to land. Establishing the ancestral rights of the San and validating their claim to ownership of the lands where the CKGR sits would establish an important precedent for other indigenous land tenure claims.

Sources

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