

Observations on the State of Indigenous Human Rights in Botswana

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

Cultural Survival
2067 Massachusetts Avenue
Cambridge, MA 02140
Tel: 1 (617) 441 5400
www.culturalsurvival.org
agnes@cs.org

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I. Executive Summary

Botswana has a reputation for low poverty levels and an invested, efficient government. However, this does not extend to Indigenous Peoples, who are not officially recognized by the constitution. Many Indigenous communities live at the bottom of the socioeconomic ladder.¹ Botswana voted in favor of the UN Declaration on the Rights of Indigenous Peoples and is a signatory to CEDAW, CERD, and the CRC.²

Indigenous Peoples in Botswana face food scarcity and hunger, and lack access to education and clean drinking water. In June 2015, President Khama declared Botswana “drought-stricken,” a status that was exacerbated by the privatization of water in the country.³ This disproportionately affects Indigenous Peoples.

Indigenous Peoples, especially those living in the Central Kalahari Game Reserve, contend with discrimination and harassment, as well as a hunting ban that infringes upon their livelihoods. Indigenous women suffer discrimination and physical and sexual violence.⁴

II. Background

The population of Botswana is a little over 2,200,000⁵ and approximately 3.3% of the population considers itself Indigenous. The largest Indigenous group are the San, also called the Basarwa. As of summer 2015, there were 62,500 San living in Botswana. The San are perceived to be largely hunter-gatherers, but in reality make a living in a myriad of different ways including agro-pastoralism. Many San live in eastern Botswana and in the Kalahari Desert, in both rural and urban areas. There are more than 15 sub-divisions within the San, each with their own language and unique aspects of their culture.⁶

Other Indigenous Peoples in Botswana include the Balala, who number approximately 1,700, and the Nama, who number approximately 2,100. They live in southern Botswana and speak Khoekhoe.⁷ The Nama (who also live in South Africa and Namibia) are the largest group - and possibly the last - of the Khoikhoi people whose culture and language are slowly disappearing.⁸

III. Past UPR Recommendations

1. *Ensure that tourism development in the Central Kalahari Reserve allows Indigenous Peoples to continue with its traditional practices, including hunting and harvesting for subsisting, as well as access to water. (Mexico, Cycle 2)*
2. *Adopt effective measures to enhance the participation of Indigenous Peoples on issues affecting them and their rights as Indigenous Peoples. (Finland, Cycle 2)*

3. *Take all appropriate measures, including adequate resource allocation, to strengthen Indigenous children's equal access to education, including, when possible, education in their own language.* (Finland, Cycle 2)
4. *Intensify efforts to combat violence against women.* (Republic of Congo, Cycle 2)

The Government of Botswana has made some progress in implementing these recommendations and others like them. It created the Remote Area Development Programme which benefits people living more than 15km outside of villages. Those with no water, access to land, or access to other services such as healthcare and education qualify for support within this program. The government grants qualifying citizens five cattle or fifteen goats, and gives children food, toiletries, bedding, and transportation to school.⁹

However, there is still much room for improvement. In 2015 at the UN Permanent Forum on Indigenous Issues, Leburu Andrias made a joint statement on behalf of the Ngamiland Council of NGO's and the Indigenous Peoples of Africa Coordinating Committee. He recommended that states collaborate with civil society "to assist in providing food, water, and health services to indigenous peoples in their own territories, including territories inside national parks and game reserves, such as the Central Kalahari Game Reserve, Botswana."¹⁰

Civil society and Indigenous initiatives also have also played a role in supporting the implementation of these recommendations. WIMSA, the Working Group of Indigenous Minorities in Southern Africa, created an education program in 2002 with a focus on collaboration between the government and communities to find "regional solutions to San education problems."¹¹

IV. Continuing Rights Violations

A. Constitutional Recognition (UNDRIP Articles 3, 4)

According to the Indigenous World's 2016 yearbook update on Botswana, "The Botswana government does not recognize any specific ethnic groups as indigenous to the country, maintaining instead that all citizens of the country are indigenous."¹² This stance originates from Botswana's independence when it "de-emphasized ethnicity."¹³

The constitution of Botswana outlines the rights due to all citizens, including the rights to life, property, health, and education. However, at no point does it explicitly recognize Indigenous Peoples, or even "minorities."¹⁴ There are also no laws recognizing or protecting Indigenous rights,¹⁵ because the government views the idea of Indigenous Peoples as "separatist." However, the Basarwa self-identity as Indigenous and the African Commission regards them as such.¹⁶

In Botswana's constitution, section 3 states that every individual is entitled to fundamental rights and freedoms (as defined in the articles of the constitution) regardless of race, color, sex,

religion, or political views. However, this does not expressly condemn discrimination, leaving room for interpretation within the law.¹⁷ This lack of legal recognition also prevents Indigenous chiefs from fully participating in decision-making processes that affect them and their people.¹⁸

Without explicit constitutional recognition, Indigenous Peoples living in Botswana can continue to be harassed and intimidated, denied access to education and health services, and denied the right to their land.

B. Tourism, Hunting and Land Rights (UNDRIP Articles 4, 10, 18, 26(1) & (2), 28, 29(1))

The issue of land rights is incredibly important to Indigenous Peoples. Not only does land provide a place to live and a livelihood, but it is also often central to the culture and heritage of Indigenous Peoples.

Botswana's 1968 Tribal Land Act, (amended in 2008) recognizes community rights to receive compensation for their lands that are expropriated by the state under the authorization of the 1955 Acquisition of Property Act. However, the legislation requires that community land be registered with the state in order to receive compensation, rather than respecting Indigenous communities' rights to lands they have *traditionally owned or used* as stated in Article 28 of the UNDRIP. Crucially, these laws do not establish time requirements for delivering compensation for lands acquired¹⁹, violating UNDRIP Article 10 which states that no relocation shall take place until *after* agreement on just and fair compensation has been reached.

A report²⁰ published by the World Bank found that: "While the government has tended to pay handsomely for freehold land acquired by the state, the compensation offered by land boards for repossessed tribal land has been inadequate...Land boards have argued that, since tribal land is 'free', it is impossible to quantify, in monetary terms, loss of rights to use a particular piece of land beyond the unexhausted improvements on it (e.g. standing crops, boreholes, fences, buildings, ploughing). Thus, to land boards, compensation does not need to reflect the development value of land, even in peri-urban areas."

The ineffectiveness of land rights in Botswana is most notable in the case of the Central Kalahari Game Reserve (CKGR). In 1986, the government passed a policy to relocate Indigenous Peoples living in the CKGR to settlements off the game reserve, and this policy was put into action in 2002²¹ This was contested by the Basarwa in *Roy Sesana v the Attorney General of the Republic of Botswana*²², and in a crucial decision, the High Court ruled on December 13th, 2006 that the Basarwa's rights had been violated because there had been inadequate consultation to ensure their true consent was obtained before the relocation. The Court ruled that the deprivation of water and food and other services, as well as the deprivation of the possession of their land and special hunting licenses, were all unlawful. The ruling gave the Basarwa the right to return home. It also deemed hunting bans against the Basarwa unlawful, stating that it was "tantamount to

condemning them to death by starvation.”²³ Despite this ruling, most Basarwa still have not been adequately compensated for this forced relocation.²⁴

A decade after the Roy Sesana case, the Basarwa must still apply for monthly permits to live on their land, and for special hunting licenses to be able to hunt on the game reserve. Despite the ruling that the eviction was unlawful, the government of Botswana continues to restrict the Basarwa’s access to land that the High Court deemed lawfully belonging to the community.²⁵

Hunting is also forbidden on game reserves such as the Central Kalahari. The Basarwa rely on hunting and gathering, yet they are denied special licenses to access the resources on the reserve that they once lived on.²⁶ Indigenous Peoples who have lived in one place, using its resources, for centuries are adept at the “sustainable use” of flora and fauna. In other words, using resources “at a rate within their capacity for renewal.”²⁷ As long as Indigenous Peoples’ use of resources remains sustainable in this way, their access to the land is not a threat to conservation. Under Botswana’s 1992 Wildlife Conservation and National Parks Act, the government claims exclusive ownership over conservation areas, ignoring the fact that the biodiversity of many areas are a direct result of the stewardship and sustainable use of these areas by communities over centuries, not in spite of it. Article 8 (j) of the Convention of Biological Diversity, to which Botswana is a signatory, commits State parties to respect and maintain the knowledge, innovations and practices of Indigenous and local communities which are relevant for conservation and sustainable use of biological diversity. Indeed, in her report on Indigenous Peoples and Conservation, UNSR Vicky Tauli Corpuz noted, “Over the past decade, increasing evidence supports the correlation between secure Indigenous tenure and positive conservation outcomes, at times better than those achieved in State-managed protected areas.”

In January of 2014, President Khama declared that the hunting ban would now cover all of Botswana, effectively criminalizing hunting to feed a family. However, wealthy tourists and trophy hunters can still hunt within Botswana for a steep price. Banning hunting in order to feed families, but allowing the wealthy to hunt for trophies, illustrates the deeply rooted racist beliefs.

Jamunda Kakelebhone, a San from Botswana said, of the hunting ban, “We have survived for millennia in one of the world’s driest areas but they treat us as stupid. We are hunter-gatherers yet we get arrested. We cannot damage the wildlife. If we kill one animal we eat it for a month. We are not allowed to hunt but others can.”²⁸

A recent - and deadly - development in the hunting ban debate was the implementation of “shoot-to-kill” policy against poachers who, in this case, are often Basarwa trying to provide for their families.²⁹ Members of the Botswana police, the Botswana Defence Force (BDF), fly over the game reserve in helicopters, looking for hunters. The lucky ones are only harassed or arrested. The rest are shot on the spot.³⁰ The policy first emerged in 2013 when Pono Moatlhodi,

the Deputy Speaker of the Botswana Parliament, called for such a policy to combat poaching. The policy has been upheld by Environment Minister Tshekedi Khama, who has stated that the policy applies even if poachers have surrendered.³¹ In an interview he said “It’s a culture; we have to kill the supply to starve the culture. That is one of the reasons why, in Botswana, with our anti-poaching unit, we don’t necessarily interrogate the poacher. That is a position adopted to send a clear message to say, if you want to come and poach in Botswana, one of the possibilities is that you may not go back to your country alive.” The policy is technically unofficial, and President Ian Khama has not answered questions regarding the BDF and this policy.³²

Indigenous Peoples are also not able to profit off of tourism on their land. “In 2015, some community trusts with San majorities were taken over by private companies which kept the bulk of the funds generated by ecotourism to themselves.” In May of that year, the Basarwa addressed these issues at the United Nations Permanent Forum on Indigenous Issues.³³ This privatization of both tourism and water, as well as claims on their land, have shut the Basarwa out of their livelihoods and basic needs. In the past, former UN Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, condemned Botswana for its treatment of Indigenous People, saying that Basarwa living in the Central Kalahari Game Reserve “face harsh and dangerous conditions due to lack of access to water.”³⁴

C. Children and Education (UNDRIP Articles 7(1), 14(1) & (2), 22(1))

Botswana has a relatively strong education system that offers free primary and secondary education. However, due to the fact that it doesn’t recognize specific ethnic groups, the education policy in Botswana has a tendency to serve to assimilate non-Tswana individuals (including Indigenous children) into Tswana culture.³⁵ Tswana are an ethnic group native to southern Africa, including South Africa and Botswana. Botswana is majority Tswana and the country is named for the group.³⁶

The government does not discourage or deny the existence of Indigenous languages. However, English is the official language of Botswana and Setswana is the national language. Schools teach only in English and Setswana. State-run media, including T.V. and radio, broadcast only in English and Setswana. Government meetings, including sessions in Parliament, are conducted mostly in English and occasionally in Setswana. This places the Tswana culture and language in a dominant position over the languages and cultures of other communities, including those who self-identify as Indigenous.³⁷

Both Setswana and English are considered core subjects in the curriculum, which means that all students must study those languages and pass exams in those languages. This same status is not afforded to other languages. Aside from impeding the ability of children to learn their mother

tongue and keep their cultural heritage alive, this also disadvantages Indigenous children by forcing them to learn in a language other than their first.³⁸

The remote nature of the living spaces of Indigenous communities has also been an obstacle to educational attainment. Many Indigenous villages are too small to afford their own school, so instead children must travel great distances, up to 70 km, in order to attend school. The government has attempted to remedy this by building hostels near schools where children can stay for long periods of time in between trips. However, homesickness, travel costs, and inconvenience have still led to a high desertion rate among Indigenous children.³⁹ The acceptability of corporal punishment, which is prohibited under the Convention on the Rights of the Child which Botswana has ratified, is also a cause for desertion. Corporal punishment is considered acceptable in Tswana culture, but not in Basarwa culture. Due to the level of desertion before completion, 77% of Basarwa are illiterate.⁴⁰

A Naro speaker belonging to the Basarwa in Botswana, Xhwaa Qubi, said the following about education for Indigenous children in Botswana: “When the education system was put in place, all our children received a 12 year sentence to learn a foreign language and a foreign way of life.”

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V. Questions

1. What measures are being taken to legally and constitutionally recognize Indigenous Peoples in Botswana?
2. What efforts are being taken to secure Indigenous Peoples' land rights?
3. How are Indigenous Peoples' rights to sustainable hunting being implemented in conservation areas and game reserves?
4. What measures are being taken to make school more affordable and convenient for Indigenous children?
5. What efforts are being made to create and implement Indigenous-language curriculum?

VI. Recommendations

Cultural Survival urges the government of Botswana to:

1. Adopt ILO Convention No. 169.
2. Recognize Indigenous Peoples within the constitution of Botswana and enact legislation that explicitly protects the rights of Indigenous Peoples.
3. Recognize the authority of Indigenous chiefs and facilitate their participation in any official policy issues that affect their people.
4. Engage Indigenous Peoples to develop policies for the sustainable use of resources by Indigenous Peoples within the Central Kalahari Game Reserves and other federally-protected land which they have traditionally lived on, and compensate those Indigenous Peoples who were forced to relocate.

5. Consider a co-management policy of National Parks and Wildlife Conservation Areas with Indigenous Peoples
6. Amend the Acquisition of Property Law and Tribal Land Act to establish a specific timeline for compensation.
7. Immediately end the “shoot-to-kill” policy for Indigenous hunters or ‘poachers’.
8. Engage Indigenous Peoples to develop a benefits sharing policy regarding tourism on their land.
9. Ensure that all Indigenous Peoples have adequate access to clean water.
10. With the participation of Indigenous Peoples and children, develop policies to improve Indigenous children’s access to education.
11. Immediately end the practice of corporal punishment in schools.
12. With the participation of Indigenous Peoples, create and implement Indigenous-language curriculum.
13. Ensure Indigenous participation in decision-making at all levels in all matters affecting them.
14. Invite the UN Special Rapporteur on the Rights of Indigenous Peoples to visit Botswana.
15. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples’ Outcome Document.

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⁴ Ibid.

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