

Hunting Justice: Displacement, Law, and Activism in the Kalahari

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This book is about the exclusion and marginalisation of a community of San in Southern Africa, in the Kalahari of Botswana. The San of Botswana are a hunting people known internationally as indigenous Bushmen (p. 2). Their exclusion extends from pre-colonial times where the Bushmen were slaves of the ruling class Tswana, to the colonial consideration of them as racially inferior, and finally to the contemporary instances of forced displacement of the San and their lack of rights and access to resources and land (pp. 73–74). This historically and socially engrained racism has left the San, and other Bushmen, in a state of destitution. Following their 1997 and 2002 forced removals from the Central Kalahari Game Reserve, they engaged with an indigenous rights advocacy community at home and abroad, as well as in the courts and at the polls (pp. 57–63). Maria Sapignoli aptly calls this their ‘hunt’ for justice – a multi-decadal-long engagement with the state and international law. By doing a deep review into formal legal processes, in addition to an ethnography of justice activism regarding the resettlement of the San from their lands, Sapignoli gives an in-depth explanation of the path the San took for justice and, importantly, how they became legal subjects along the way.

Sapignoli describes the San’s rights in Botswana as limited to equal citizenship, with their indigeneity unrecognised. This is in part due to the contested definition of indigeneity in Botswana, and Africa more broadly. Academic and legal scholars have differing definitions of what it means to be indigenous, as does the Botswana state. Definitions include traditional ways of life; the status of ‘first people’; certain types of knowledge, such as a deep familiarity to one area; various types of cultural traditions; and many more. Even within the group of scholars who recognise indigeneity in Africa, the definitions vary greatly. Part of the uncertainty of indigeneity is the unknown of who arrived where first (Wilmsen, 1989). However, an explanation of these definitions on indigeneity is not included in this book. The issue of claiming indigenous status in Africa is instead explained through the definitions of international organisations, although much later in the book than might be expected for a fundamental grounding of the issue of indigenous displacement (pp. 166–173). Despite this, there is no doubt that the arguments made in this book add a crucial component to our understanding of the internationally sensationalised removals from the Central Kalahari Game Reserve.

The first six chapters of the book provide context and develop some critical concepts that Sapignoli uses to make her main argument. Chapter 1 introduces the concepts of judicialisation and juridification. Sapignoli defines judicialisation as the ‘transfer of decision-making rights from the legislature, the cabinet, or the civil service to the courts’ (p. 9). As the San relied more on the courts, Sapignoli describes them as judicialising their way of life. Through this process, they began to reconceive of themselves as legal subjects, which Sapignoli defined as juridification (p. 10). I found that these terms were somewhat lost after the first chapter until the end of Chapter 6. Yet, Sapignoli still makes a compelling argument for both judicialisation and juridification by the end of the book.

In Chapter 2, Sapignoli describes the resettlement of San and Bakgalagadi from the Central Kalahari Game Reserve. The government of Botswana justified the resettlement with their stated belief

that it is ‘totally unfair to leave a portion of our citizens undeveloped under the pretext that we are allowing them to practice their culture’ (p. 34). As Sapignoli describes it, the issue here is that the residents of these communities were not consulted in the decision for their resettlement and, at the time of removal, they were ignored when appealing to government employees to stop destroying their homes and villages – all of this despite the fact that the reserve was made to allow San Bushmen the right to choose their lifestyle, including the right to hunt (p. 37). Within the last few decades, however, many San have been killed for hunting, with tensions increasing after the 2014 ban on hunting with a ‘shoot to kill’, anti-poaching policy (pp. 279–280). This ban is in concert with the focus on wildlife conservation in the Botswanan government. It is therefore not a surprise that another line of government reasoning for removing the San is the separation of nature and civilisation. To describe this, Sapignoli uses the term ‘fortress conservation’ to represent the practice of removing people to create an ‘unspoiled wilderness’ (p. 52). Ironically, that wilderness welcomed tourists for safaris following the removal of San. A third motive for removals revealed outside of government disclosure, which is arguably the most controversial, was for diamond and mineral prospecting that followed relocation (pp. 54–57). These instances of resettlement and their connected government motives are not unique to the Central Kalahari Game Reserve or to the San; they have occurred throughout Southern African history. Intriguingly, Sapignoli describes in short order some of the other, lesser-known instances of removal and human rights violations in Botswana (p. 64).

Chapter 3 describes the social and historical context of the San and other indigenous peoples in Botswana – specifically how the socio-economic hierarchies became the way they are today, with their origins in pre-colonial and colonial periods. Sapignoli notes that Bushmen, including minority groups other than the San, were enslaved during the pre-colonial era by the Tswana (p. 73). This slavery evolved into injustice and marginalisation in their role at the lowest end of the social order as *malata* or ‘serfs’ during the colonial period. Interestingly, some also described this serfdom as slavery (p. 74), making the distinction between slavery in the pre-colonial period, and serfdom in the British colonial period, less clear. However, later into the British colonial period, minority ‘serfs’ transitioned to the underclass as the socio-economic condition of Botswana began to change. As the underclass, they were living in new ‘conditions of economic and political marginality’ where they were getting paid a low salary without access to resources or land rights (p. 88). As part of their low status in the pre-colonial and British colonial eras, the San (or Basarwa, as they are called nationally, often derogatorily) were not allowed to autonomously participate in the law but were ruled through the law by a majority Tswana ruling elite (p. 78) (although, it is not clear from this book when during the pre-colonial period the Tswana migrated to Botswana). Tswana men were the only ones with access to land grants and, by extension, the accumulation of wealth, in addition to being the majority in power (p. 76). As Sapignoli calls it, this Tswana overlordship has remained since pre-colonial times, as many of the governing elite today are from the Tswana majority (p. 88). Some of the tactics that the Tswana leadership would use to maintain power included incorporating minority dissent and delegitimising the San’s nomadic form of subsistence. When minority civil servants would find their political voice and speak out against the injustices they experienced during the British colonial era, the chiefs would recruit them to the government party, effectively silencing them and keeping the peace (p. 75). The strategy of majority Tswana to incorporate minority dissent has been maintained into the present day (p. 321). Nomadic ways of life, such as those of the San, were not seen as legitimate and, resultantly, not included in land allocations during the colonial period (p. 80). All of this culminated in the San being landless, poor, discriminated against and exploited – characteristics that describe the ‘Bushmen problem’, which Sapignoli describes later in the book (Chapter 9) as similar to the ‘Indian problem’ in the Americas (pp. 84, 331). This could have been described as the ‘indigenous problem’, making way for theoretical work on issues of indigenous dispossession, for what Sapignoli describes generally as exploitation of people with subsistence-based economies who are unwilling to give up their land. The question remains how to legally reconcile similar impacts between indigenous and minority communities associated with different international and national laws and, resultantly, ways of judicialising. In the case of Botswana, for example, indigenous and minority people

are seen as one and the same, which is in stark contrast to international laws, such as the Declaration of the Rights of Indigenous Peoples, that recognises indigenous minorities separately from other minorities.

The 1975 Tribal Grazing Land Policy (TGLP) in Botswana was designed to provide more communal land, commercial land and land for the poor but, in the end, the majority of the land provided was commercial (pp. 97–101). Sapignoli notes that the TGLP benefitted White ranch owners and Tswana elites more than others (p. 100). The lands that were reserved for the poor were instead turned into Wildlife Management Areas (WMAs) and communal land was enclosed to make way for commercial land (p. 98). A new land-tenure policy developed in 2015 will allow individuals with the means to privatise leasehold and communal land (pp. 100, 279). The proximity of this policy to the publishing date of Sapignoli's book likely accounts for the minimal explanation of impact on the San and other indigenous minorities. Based on Sapignoli's work, however, the San will likely be dispossessed in an entirely new way. In fact, as this 2015 land policy begins to take hold, resettlement is being carried out with San communities (Robert Hitchcock, personal communication, 2018).

The subject of Chapter 4 is the connections the San had cultivated with non-governmental organisations (NGOs) and the NGOs they had developed on their own. The list of NGOs that were and are involved with the San took up two pages of the book. However, Sapignoli argues that NGOs have had a negligible impact. She uses the First Peoples of the Kalahari as an example of the complexities involved in San NGOism, with this particular organisation being founded and run by San. She also focuses on a number of international organisations that were involved with the San including Survival International, the International Work Group for Indigenous Affairs and the Working Group of Indigenous Minorities in Southern Africa. These larger NGOs often provided the means, such as funding, for San delegates to travel to advocate for their rights at the UN and throughout the world, as well as pay for their court fees. In addition, Survival International, one of the most involved international NGOs, launched an ad campaign that was a caricature of DeBeers Diamond Company's famous ad 'Diamonds are Forever' that instead stated 'Bushmen are not forever' (p. 150). This actually influenced DeBeers to sell the diamond mine in the Central Kalahari Game Reserve to Gem Diamonds. That mine has since shut down.

International recognition of San removal from the Central Kalahari Game Reserve would not have been as effective as it was without San activists, such as Roy Sesana, John Hardbottle and Jumanda Gakelebene, speaking out forcefully about their right to their land (pp. 124–137). Through their activism, the self-image of San leaders became political by thinking of themselves within the rights-bearing mechanisms of the state – one of the many ways the San became legal subjects, although Sapignoli only briefly mentions juridification at the beginning of Chapter 4. Generally, she described NGO encouragement of indigenous people to expand local indigenous leadership, as well as their political and legal representation, to ultimately juridify 'political relationships' (p. 113). Additionally, given the rise of the indigenous movement, the framing of the issue as indigenous dispossession brought attention and resources, and eventually the San's dispossession became a commodity for national and international NGOs (p. 154). At the UN, the topic of Chapter 5, the San struggled within a completely different power structure that required them to develop higher levels of expertise. Sapignoli specifically points out that the San were seeking political autonomy and self-determination within another state-centred institution when advocating at the UN (p. 199). This is an example of juridification that Sapignoli does not point to until the end of the book. Given her theoretical focus on judicialisation and juridification, it would have been useful to have made these substantive connections clearer.

The second half of the book begins with Chapter 6, where the seminal, four-year-long court case *Sesana and Others v. the Attorney General of the Republic of Botswana* that focused on the 2002 removals is described in detail. Importantly, the ruling was in favour of the San and mandated the government to allow the applicants to move back into the CKGR (p. 246). A disagreement in the ruling was who had the right to live in the reserve, which could be described as a failure of judicialisation and juridification. The government took the approach that only the applicants were allowed to move back into the reserve (pp. 253–254). On the other hand, the San's lawyer, Gordon Bennet, saw the

verdict as applying to everyone who had been removed in 2002 (p. 254). In addition to many dispossessed family members and other San unable to return to their villages, the applicants were not able to bring livestock, food, or water into the reserve, and non-applicants could not visit their family (pp. 263–265).

Given these contestations, in 2013 and subsequent years, the San turned back to court to fight for their fundamental rights, such as the right to water, the right to hunt and the right to bring livestock into the reserve (such as before relocation), as well as to clarify who was allowed to enter the reserve (Chapter 8). Around that same time, the government placed Gordon Bennet on the list of people who needed a visa to get into the country and put restrictions on that visa, effectively barring Bennet from the country (pp. 259–260). Nonetheless, the applicants acquired the right to drill boreholes for water (p. 292), compensation for livestock that the government confiscated (p. 298) and confirmation that they had the right to hunt (p. 301), although the applicant list from the *Sesana* case was not expanded by the court to allow family members and other dispossessed San back into the reserve (p. 296). Sapignoli astutely described this as ‘litigating a way of life’, which led the San to have greater dependency on systems of law. Through these processes, they also began to think of themselves as legal subjects. By making these arguments, Sapignoli successfully describes the process of juridification.

Sapignoli also clearly makes the point that the courts are not enough to ensure that the government respects the San’s rights, in what she describes as a ‘schizophrenic tension’ between the court-sanctioned dialogue with the San and Bakgalagadi and the government’s denigrations of their way of life and discussions of further removals (p. 257). Specifically, she says that the Botswana government ‘has invoked neoliberal good governance and goals of equality alongside a more implicit obstacle to justice: an element of perverse ... racism that gives the San’s struggle for justice some of its distinct qualities’ (p. 333). In other words, tensions in the government are founded on racism, where goals of equal citizenship clash with the San being unable to participate as equal citizens due to their classification as inferior, as well as their multiple displacements. Yet other tensions exist in the San’s use of the courts, where the legal system is both ‘a source of repression and a necessary instrument of subsistence’ (p. 325). A final tension as argued by the author in the San’s use of the courts, as well as their advocacy at the UN, is ‘the law as an empowering influence and an oppressive marginalizing force’ (p. 328). In the courts, the tension is a general lack of alternative sources to liberate the San and allow them to enjoy their fundamental rights. At the UN, the tension is centred on the lack of knowledge and resources, including funding. Sapignoli does a good job highlighting these nuanced effects of the San’s negotiation with the government, as well as their use of national and international legal systems.

Additionally, Sapignoli highlights what she calls the violence of repetition – ‘the form of discursive power that takes effect through reiteration, with simple messages conveyed the same way in multiple venues year after year’ (p. 333). Violence of repetition is a tactic the government of Botswana employed by discursively counter-acting the San’s justice claims in national and international venues on an annual basis. Repetition is a way that a state can protect their reputation by reiterating a story of the state’s record of compliance with citizens’ fundamental rights (p. 196). This repetition does not change their violation of the principle of Free, Prior and Informed Consent, but it does shape people’s perceptions and take attention away from the harms inflicted on indigenous peoples (p. 201).

Overall, I found Sapignoli’s account of the San’s search for justice to be thorough, compelling and novel in argumentation. Due to the ethnographical approach Sapignoli took, she was able to add an interesting argument to a case that has been widely studied. Unfortunately, while she describes the merit in her ethnographical approach, the methods are unstated, which is a disappointment for anyone interested in an ethnographical approach to legal issues. However, the explanation and theoretical reasoning that surely arose from her ethnography are impressive. A theme that is pointed to in the conclusion – what one San leader, Jumanda Gakelebone, termed his key to success – is that the San were able to pursue a multi-faceted strategy of resistance by engaging not just in the legal system, but also in politics with the aim of achieving parliamentary representation (pp. 317–318). I find the

multiple-strategy approach to be a potentially useful takeaway for indigenous activists around the world, experiencing similar situations of dispossession and marginalisation.

Reference

Wilmsen EN (1989) *Land Filled with Flies: A Political Economy of the Kalahari*. Chicago: University of Chicago Press.

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