

The=Khomani San Land Claim

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Executive Summary

The =Khomani San land claim, lodged under the legal framework provided by the Constitution, and settled by the South African Government after negotiations rather than being adjudicated in court, is now complete. The complex negotiated final agreement, was finalised, approved by parliament, and celebrated with a formal function during the WSSD on 31 August 2002. The final agreement is of historical importance for various reasons. The only land claim of South Africa's first peoples, it provides a wide range of land use rights, including a total area of 65000 hectares of land in addition to extensive land use rights in and to the recently named Kgalagadi Transfrontier Park.

This brief report is a brief summary of the process followed over the past three years, from the perspective of the legal advisor of the South African San Institute.

Historical, or Background, Facts

The then named 'Southern Kalahari San' were evicted from the Kalahari Gemsbok National Park soon after its formation in 1931, and spread over the Southern Kalahari in a wide diaspora into South Africa, Botswana and Namibia. At the time of the institution of the land claim they were no longer a functioning or definite community. In common with other displaced indigenous peoples, they had become to a large degree assimilated in or dominated by the local pastoralist groups, and the ancient San cultural practices were but sporadically maintained in isolated groups. The Southern Kalahari San were comprised of disparate groups known as the =Khomani, /Auni, and N/amani speaking San. In seeking out the members of the various clans and families that had originated from the claimed land, anthropologists working for the South African San Institute (SASI) discovered that at least twenty old San community members still spoke the old San language that had been confidently pronounced to be "dead" in the early 1970s. After further study and analysis by socio-linguist Nigel Crawhall, this ancient language was named N/u. A dynamic cultural resources and management project is well under way with the aim of recording all existing forms of the San culture, and encouraging ways of reincorporating them into daily life. An entire dictionary of the language is being prepared, songs in the N/u language are being taught to children and elders, and N/u original place names are being recorded. The process of restoring the language and associated culture from a position of near-extinction is dynamic, and has great power to resonate with and empower the reviving community.

First Phase of the Land Claim

In March 1999 the first phase of the land claim was settled, which returned six farms to the San, covering an area of 38000 hectares around the confluence of the Molopo and Nossob rivers, about 50 km south of the now-named Kgalagadi Transfrontier Park. It was agreed that for a period of two years the second phase of the land claim was to be held in abeyance, as the scattered members of what was by now named the =Khomani San (an estimated 1500, named =Khomani after the name of the largest of the original Southern Kalahari San groupings) utilised the period to organise their own self-government, and to commence the novel process of managing resettlement on communally owned farms.

What made this process uniquely challenging was the fact that the community had dispersed to the point that no central coherence remained, and the elected representatives had to lead this re-constituted and “virtual” community without the benefit of past policies or practices. Many of the normal lessons of democracy had to be learned, and in the absence of a functioning “tribal council” or other authoritative body, legislation required the San leaders to operate in accordance with received western notions of “representative democracy.”

SASI focussed its efforts on training and working with the leadership, attempting to ensure good governance and policies that would ensure that the six farms would develop in such a way as to form a proper base for the resettlement of the community. However the new committee began to resent some of the controls on their power that were exerted through SASI, and by the end of 1999, the financial affairs of the San were causing concern to the Department of Land Affairs. An audit was requested, which provided direct evidence of an alarming degree of mismanagement if not theft of communal money. A period of uncertainty commenced, with the provincial leadership of the Northern Cape taking an interest in the San problems, and indicating a new willingness to provide assistance. Eventually new elections were held in July 2000, during which the previous leadership was largely evicted, and a committee largely different from the first was elected.

It should be noted that a particular challenge facing SASI and others assisting with the San process, and one of the issues that had led to tensions in the community, was the difficulty in ensuring that the interests of the more “traditional,” less modern, or less educated members of the community were sufficiently protected. A significant grouping exists amongst the =Khomani San who abhor the constitutional instruments required to manage their affairs. The holding of meetings, recording decisions, keeping of minutes and formulating of land use plans and the like, in accordance with government requirements, are totally foreign to these San, who choose to live away from civilisation. And whilst it is clear that their very existence is of great importance for the identity of the emerging community, how to ensure that they obtain a fair slice of the resources, and are not sidelined by the more effective colleagues, is an ongoing conflict and debate. It is considered that the community must experience the full extent of the conflict brought about by this issue, so that a solution will emerge from their own process and not be imposed from without.

Second and Final Phase

This newly elected =Khomani San committee was required by the government to operate under the supervision of a “task team” comprised of representatives of a broad range of government department representatives. Education, housing, agriculture, conservation, and local government, were represented on the task team, which met once a month and viewed its role as providing a check on corruption and mismanagement.

After some months of training and reorientation, this committee recommitted itself to continuation and completion of the negotiations of the land claim, and confirmed SASI’s role in that process. Farm Africa was the NGO based in Kimberley tasked with providing the committee with guidance and training in managing its various responsibilities.

In October 2000 a subcommittee of the committee with knowledge of the Park was elected in order to carry out the negotiations with SASI. After some months of preparation, including site visits to the Park in order to achieve clarity on strategic

aims and objectives, and a two-day meeting deep in the Park during which the elders conveyed much of their cultural knowledge and requirements to the team, negotiations towards the finalisation of the San rights to the Kgalagadi Transfrontier Park recommenced in May 2001. Meetings took place in the Kalahari, between the SAN Parks and the Mier local council, who as successful land claimants were intrinsically part of the negotiations. An extra effort was made to include the full San committee in every important step of the negotiations, and with the help of Farm Africa, workshops were held with the San from far-flung Northern Cape communities. After some inevitable stand-offs and difficulties between all parties, compromises were reached in each case, and after some arduous months the agreement was brought to a final form approved by the State, the SAN Parks, the San and the Mier.

An ongoing challenge is presented by differences in world view and interests between certain sectors of the San community, emerging as a conventional power-struggle between "clans" for the new resources. The deepest rift, using terminology of outsiders, exists between the "westernized" on the one hand, and those claiming to be more "traditional," San people. The latter descriptions are not accurate, but resolution of this divide, in practical terms involving the securing of power at committee level, and of access to resources (vehicles, jobs, houses, land) is an ongoing preoccupation of those working with the communities.

In essence, what the San have now achieved as a result of the final agreement as it now stands, *in addition to* the six farms (38 000 hectares) transferred in March 1999, is summarised as follows:

- ◆ "Ownership of 25000 hectares" on the Southern boundary of the Park, within which area they will be relatively free, within the limits of a "contract park agreement", to carry out cultural practices, to hunt, collect bush foods, and conduct eco-tourism ventures. These will include walking and overnight trails, four by four routes, etc. It is accepted by the San that no permanent residence will be allowed in the Park.
- ◆ "Priority Commercial Use" of the area between the owned area and the Auob river. In this Zone the =Khomani will be entitled, in addition to all cultural practices, to formulate and conduct eco-tourism projects, in partnership with the SANational Parks or otherwise.
- ◆ "Symbolic and Cultural Use" of an area comprising about one half of the South African section of the Park, namely about 4000 square kilometers in the Southern section of the Park. This right means in effect that the San are able to utilise the entire area of their traditional and ancestral use, for any reason other than commercial. What is envisaged here is the taking of groups of elders and youth deep into the Park, where they can experience the Kalahari as it was, and live off the land as they once did. One or more central sites will be developed where the elders can gather regularly, and which they will utilise as a springboard into the vast red-duned areas of the Kalahari.
- ◆ Commercial Opportunities. The South African National Parks have recognised that the San heritage is and should be inextricably linked with the identity of this section of the Kalahari ecosystem, and intend to find ways to give substance to that notion. A jointly owned (San and SANP) commercial Lodge at the confluence of the Auob and Nossob rivers has been agreed in principle, at which San will be employed not only as trackers but also in other capacities. Further commercial opportunities are being discussed at present, where guests will be

able to explore the Kalahari through the eyes and experience of the =Khomani San.

- ◆ A Community Nature Park, shared between the San and their rural neighbours the community of “Mier” has been agreed in principle covering the area between the small town of Welkom ten kilometers from the Park gate, to the Park itself. This will be utilised to provide opportunities for the sale of crafts and artworks to tourists who do not wish to engage in more arduous journeys off the beaten track and into the Kalahari.
- ◆ A International Heritage Site listing will be applied for in due course, to register the combined natural and cultural heritage (comprised by the interaction between the ancient culture of the ‡Khomani San and the conservation of the unique Kalahari ecosystem). In this respect it is envisaged that the government of South Africa will become an active stakeholder and partner in the process.

The entire =Khomani San/ SA National Parks enterprise is now subject to a contractual “joint management” regime comprised of elected San individuals with appropriate skills, as well as representatives from a council of elders who bring their deep knowledge of the traditional areas and cultural practices to the management. It has been attempted to draw on experiences of “joint management” from some of the Commonwealth Countries (Canada, New Zealand) as well as from the national parks of Australia in this respect. All parties recognise the importance of sensitivity by both the San and the national conservation authority in respect of the cross-cultural nature of the agreement, and in respect of the imperative to bridge the differing world views and priorities of the parties with patience and perseverance.

Conclusion

It seems safe to predict that the entire land claim of the =Khomani agreement will increasingly become acknowledged as an important human rights milestone, in particular recognising the unique rights to land of indigenous peoples, on the African continent. Other hunter-gatherers, such as the Hadza and Batwa, have examined the case study with interest, and hope to extract useful lessons from the precedent.

It is intended to mark the milestone within the next year, at which Aboriginal peoples worldwide, and in particular from Commonwealth countries, will be invited to join the celebration.

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