

Land and resource rights of the Khwe in Bwabwata National Park

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1 Introduction

This chapter discusses the land rights situation of the Khwe, one of the indigenous and disadvantaged San groups in Namibia. It describes how the Khwe have lost control over land and livelihood opportunities since 1890, and particularly since the 1960s.

Most of the Namibian Khwe live in the stretch of land between the Kavango and Kwando Rivers. This is the main part of Bwabwata National Park (BNP), which is situated at the centre of the ancestral Khwe settlement area (see section 3). It falls within two administrative regions, namely Kavango East and Zambezi. The border between the two regions is at 22° 30' E, just west of Chetto.

About 6 700 Khwe are currently living in the park.¹ BNP is divided into three core areas reserved for wildlife, and a multiple use area where people can settle, plough and use natural resources subject to the park's restrictions. In the villages in the multiple use area, the government of the Republic of Namibia (GRN) provides infrastructure and services such as boreholes, schools, clinics and food aid.

The legitimate body to represent the residents of BNP – namely the Khwe and an increasing number of Mbukushu and other Kavango people – is the Kyaramacan Association (KA). All commercial use of land and natural resources within both the core and multiple use areas, such as the contracting of hunting concessionaires,

1 'BCP Biocultural Community Protocol of the Khwe Community residing inside Bwabwata National Park – Draft Version 27.06.2019', made available by Natural Justice, Cape Town (<https://naturaljustice.org/>).

tourism activities, the commercial harvesting of devil's claw or large-scale agricultural projects, needs to be authorised by the Ministry of Environment and Tourism (MET). Through the KA, the park residents are awarded rights to benefit from natural resources. The KA manages the communal income from tourism and trophy hunting.²

Access to ancestral land and its resources is vital for the economic, social, cultural, psychological and spiritual wellbeing of indigenous people. Having access to sufficient land as a productive asset not only enables long-term survival and various development options, but also fosters dignity and prevents social disintegration.³ For Namibia, deprivation of land together with the limited ability to practise traditional livelihoods and cultural traditions have been identified as causes of the impoverishment, food insecurity, and marginalisation of the San.⁴ For the Khwe in BNP, the deprivation of land and resource rights has not stopped with Namibian independence. Instead, the Khwe in BNP have experienced an increasing influx of non-San persons seeking land for settlement, grazing and crop production on Khwe ancestral land. This is partly the result of the deliberate strategy of the Mbukushu Traditional Authority to increase the number of Mbukushu residents in the park and within the Kyaramacan Association, as well as to extend the cultivated land in those parts of the multiple use areas considered for de-proclamation and transformation into communal land. It is thus also the result of the inability of the national land reform programme to meet the expectations for land held by many Namibians in neighbouring communal areas, given as one of the reasons by new residents for their settling in BNP.⁵ A third reason is the unwillingness or inability of the MET to effectively deal with threats to both Khwe land rights and the natural environment in BNP.

2 Nuulimba, Karine, 'Living in a Park: Strategic Approaches used by Khwe San to Secure Rights in Namibia's Bwabwata National Park', paper presented at the 22nd Conference of the African Studies Association (VAD e.V.), Cologne, Germany, 30 May to 2 June 2012; Taylor, J.J., *Naming the Land: San Identity and Community Conservation in Namibia's West Caprivi*, Basler Afrika Bibliographien, Basel, 2012.

3 Welch, C., "Land is Life, Conservancy is Life": The San and the N̄a Jaqna Conservancy, Tsumkwe District, Namibia', *Basel Namibia Studies Series 20*, Basler Afrika Bibliographien, Basel, 2018.

4 Suzman, J., *An Assessment of the Status of the San in Namibia*, Report No. 4 of 5 on the *Regional Assessment of the Status of the San in Southern Africa*, Legal Assistance Centre, Windhoek, 2001; Dieckmann, U. et al., "Scraping the Pot": *San in Namibia Two Decades After Independence*, Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014; Heim, A. & A. Paksi, 'Low dietary diversity and its influencing factors among a San group in Namibia', *BMC Research Notes 12*, 2019, pp. 365–372 (<https://bmcresearchnotes.biomedcentral.com/articles/10.1186/s13104-019-4408-8>), pp. 365–372. The appropriateness of the denominations 'San' and 'Bushmen' have been discussed at length in the literature. I will use the term 'San' when writing from my own perspective, but stick to the term 'Bushmen' when referring to documents using this term.

5 Boden, G., "Elephant is my Chief and my Councillors are Kudus. We don't talk and I will not get Development", unpublished research report on the status of crop cultivation projects and other livelihood options in Bwabwata National Park, Legal Assistance Centre, Windhoek, 2014.

After introducing the Khwe as indigenous, marginalised and disadvantaged people (section 2), the chapter gives proof of BNP as Khwe ancestral land and outlines customary Khwe land management (section 3), describes the effects of historical developments on Khwe access to land and resources (section 4), and depicts their current land and resource rights situation, and its consequences for Khwe livelihoods (section 5). The account is based on oral and written sources, group discussions, interviews with key informants, and household survey data. Finally, the chapter makes recommendations by referring to the relevant resolutions of the Second Namibian Land Conference held in October 2018 (section 6). Since land rights depend on political leadership rights for their enforcement, the question of governance has to be considered in each section. To date, the Khwe are the sole Namibian San community without GRN recognition for their Traditional Authority (TA). This is the case in spite of the fact that they are a community with a common ancestry, language, cultural heritage, customs and traditions, as required in the Namibian Traditional Authorities Act (No. 25 of 2000). The aim of the chapter is to raise awareness regarding the particular land rights and livelihood situation of the Khwe as residents of a national park and people without a GRN-recognised political leadership.

2 The Khwe as indigenous and disadvantaged people

Rights to and control over land are linked to concepts of collectiveness and distinct cultural traditions in both international law and Namibian legislation such as the Traditional Authorities Act. In the accepted definition of the United Nations, the Khwe are an indigenous people as there is historical continuity between them and pre-colonial societies that developed on their territories, and they consider themselves to be distinct, are a non-dominant sector of society, and are determined to preserve, develop and transmit to future generations their ancestral territories, ethnic identity, and cultural and social practices.⁶ BNP is at the centre of the Khwe ancestral settlement area.⁷ The Khwe have a distinct language and distinct cultural values.⁸ They constitute about 0.25 percent of the national population

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- 6 <https://www.un.org/development/desa/indigenouspeoples/about-us.html>, accessed 31.7.2019.
- 7 Brenzinger, M., 'Moving to survive: Kxoe communities in arid lands', in Schladt, M., *Language, Identity, and Conceptualization among the Khoisan*, Rüdiger Köppe, Cologne, 1998.
- 8 Kilian-Hatz, Ch., 'Khwe Dictionary – With a Supplement on Khwe Place-names of West Caprivi', *Namibian African Studies 7*, Rüdiger Köppe, Cologne, 2003; Kilian-Hatz, Ch., 'A Grammar of Modern Khwe (Central Khoisan)', *Research in Khoisan Studies 23*, Rüdiger Köppe, Cologne, 2008; Köhler, O., *Die Welt der Kxoe-Buschleute im südlichen Afrika – Eine Selbstdarstellung in ihrer eigenen Sprache*, Dietrich Reimer, Berlin, 1989, 1991, 1996, 2018:
- *Band 1: Die Kxoe-Buschleute und ihre ethnische Umgebung* (1989);
 - *Band 2: Grundlagen des Lebens: Wasser, Sammeln und Jagd; Bodenbau und Tierhaltung* (1991);
 - *Band 3: Materielle Ausrüstung: Werden und Wandel; Wohnplatz und Buschlager* (1996);

and, like other San, have a history and current experience of marginalisation characterised by extreme poverty, a low Human Development Index, dependency, political alienation and a variety of social, educational and health problems such as high infant mortality rates.⁹ The commitment of the Khwe to transmit their ancestral land as well as their cultural identity and practices to future generations finds expression in the continuous use of their language and cultural practices, the formation of the Bwabwata Khwe Custodian Committee, and plans for a Traditional Ecological Knowledge Academy. Most recently, they have designed a Bio-cultural Community Protocol (BCP) determining the Khwe community's values, procedures and priorities, as well as the rights and responsibilities under customary, state and international law as the basis for engaging with external actors such as the GRN, companies, academics and NGOs. The Khwe BCP defines BNP and the lifestyle of hunting and gathering as given to the Khwe by God.¹⁰ Once the BCP has been officially launched, it will at least ensure some form of recognition for the collective existence of the Khwe and might help to advocate greater access, use and management rights in the BNP core areas as well as the development of a cultural centre for teaching traditional knowledge to Khwe children in the multiple use area.

Namibia has signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). However, it considers all Namibians indigenous and sees San rights as being adequately respected by their equal enjoyment of human rights as guaranteed in the Namibian constitution. On the grounds that all Namibian citizens who are descendants of pre-colonial communities are indigenous, the Namibian government has also long refused to recognise ancestral land claims of the San as indigenous peoples in terms of UNDRIP. It prefers to speak of “disadvantaged communities” with respect to land ownership and “most marginalised people” with respect to rights to the satisfaction of basic needs. It acknowledges that the San are among the most marginalised people, and has established a San Development Programme under the auspices of the Office of the Prime Minister, but this has been criticised for inadequate funding and the unsustainability of individual programmes, and the attainment of very few long-term improvements.¹¹

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- *Vol. 4.1: The World of the Khwe Bushmen in Southern Africa – A Self-Portrait in their Own Language, Family and Society: Customary Law – Norms and Practices*, edited by Boden, G. & A.-M. Fehn, with assistance from T. Chedau (2018).

This encyclopaedic collection of texts on Khwe culture recorded by Oswin Köhler also covers texts describing Khwe religion, healing, music, dance, games, arts, folklore and traditional ecological knowledge, which are currently being edited.

- 9 Dieckmann, U. et al., ‘Scraping the Pot’; Suzman, J., *An Assessment of the Status of the San in Namibia*, Report No. 4 of 5 on the *Regional Assessment of the Status of the San in Southern Africa*, 2001.
- 10 Biocultural Community Protocol of the Khwe Community Residing inside Bwabwata National Park, 6.
- 11 Dieckmann, U. et al., ‘Scraping the Pot’; Welch, C., ‘Land is Life, Conservancy is Life’.

Although the Khwe in BNP were not expelled from their ancestral land in colonial times, they are collectively disadvantaged with respect to land rights as they have been and remain dispossessed of the self-determined use of their land since the 1960s (see sections 4 and 5). During the Second Namibian Land Conference in October 2018, Khwe representatives were able to draw attention to their case.¹² One of the resolutions passed at the conference called on the GRN to establish a commission of inquiry to look into the matter of ancestral lands. In February 2019, President Hage Geingob announced the establishment of the Presidential Commission of Inquiry into Claims of Ancestral Land Rights and Restitution. In July 2019, the Legal Assistance Centre (LAC) recorded a statement on Khwe ancestral land by Khwe representatives and submitted a Claim of Ancestral Land Rights and Restitution to the commission.¹³ Together with the anticipated launch of the BCP, this gives hope for the recognition of Khwe land use rights and rights to self-determination in the future. However, for today, their situation remains precarious and characterised by insecure land tenure, a lack of self-determination, and poor livelihoods, as described in more detail in section 5.

The hardships experienced by current Khwe lives are certainly partly due to the remoteness of their settlement area and low status on the social ladder. The core problem is the lack of rights to land and resources that would enable the Khwe to live an economically independent life. I will now describe the nature of such rights during pre-colonial times (section 3) and how they were lost in the course of Namibia's colonial and post-colonial history (section 4).

3 Khwe ancestral lands and customary land management

The majority of the Namibian Khwe used to live, as they still do today, in the narrow stretch of Namibian territory between the Okavango and Kwando Rivers, which in 2007, together with the Mahango Park on the other side of the Okavango (see Figure 1 on the next page) became the Bwabwata National Park. BNP is at the core of the ancestral settlement area of the Khwe, which also includes adjacent areas in Angola, Botswana, Zambia, and the eastern part of Namibia's Zambezi Region.¹⁴ Khwe traditional livelihoods were based on hunting and gathering as well as horticulture.¹⁵

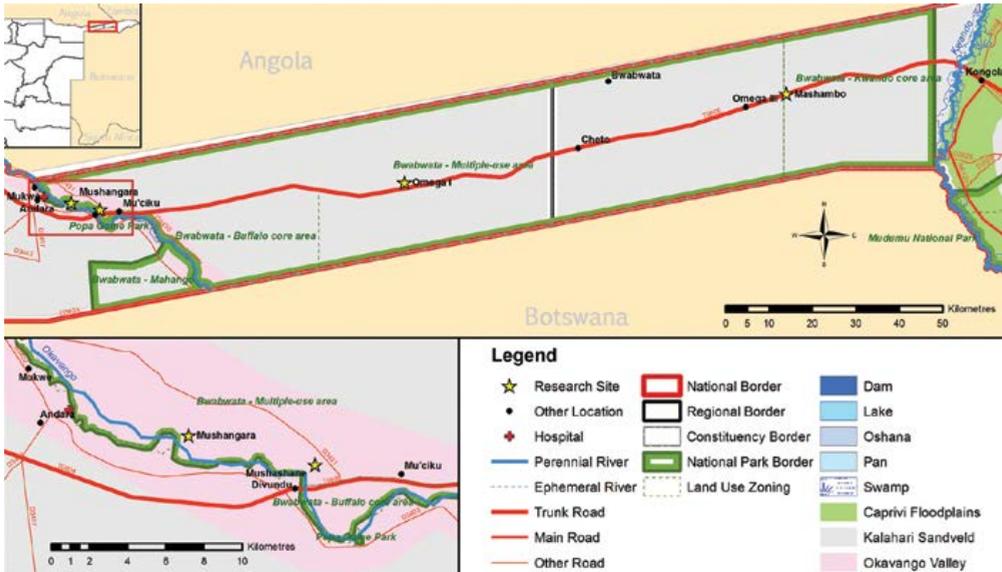
12 David Mushavanga, Khwe representative in the Namibian San Council, pers. comm. 12 March 2019.

13 Statements taken at the Legal Assistance Centre on 30 July 2019 from representatives of the Khwe people, namely Thaddeus Chedau, Alfred Chadau, Xuesom Renah Mushavanga and Stephanus Dikoshi, for 'Submission to the Presidential Commission of Inquiry into Claims of Ancestral Land Rights and Restitution by The Khwe People of Bwabwata', 8 August 2019.

14 Brenzinger, M., 'Moving to survive'.

15 Köhler, O., 'Grundlagen des Lebens'.

Figure 1: Core and multiple use areas in Bwabwata National Park



Source: Dieckmann et al. (eds), *“Scraping the Pot”: San in Namibia Two Decades After Independence*, LEAD Project of the Legal Assistance Centre and Desert Research Foundation of Namibia, Windhoek, 2014.

The earliest written sources dealing with this stretch of land, formerly known as “West Caprivi”, are from German colonial times and depict it as Khwe land.¹⁶ After a reconnaissance trip in 1903, Lieutenant Volkmann from Grootfontein reported that a military post would be very easy to establish between the Okavango and the Tschobe [Kwando] because “only Bushmen were living there”.¹⁷ Franz Seiner, an Austrian geographer and race biologist, sent by the German colonial government to explore the economic value of the strip, called the area between the Okavango and Kwando Rivers “Hukwefeld” after its inhabitants, i.e. the Hukwe, or Khwe.¹⁸

16 Earlier explorers of the wider region, such as:

- Livingstone – Livingstone, D., *Missionary Travels and Researches in South Africa* (Reprint 1858), Johnson Reprint Corporation, New York & London, 1971;
- Holub – Holub, E., *Sieben Jahre in Süd-Afrika: Erlebnisse, Forschungen und Jagden 1872–1879* (Vols 1 & 2), Hölder, Wien, 1881; Holub, E., *Von der Capstadt ins Land der Maschukulumbe: Reisen im südlichen Afrika in den Jahren 1883–1887* (Vols 1 & 2), Hölder, Wien, 1890;
- Schulz & Hammar – Schulz, A. & Hammar, A., *The New Africa: A Journey up the Chobe and down the Okavango Rivers*, William Heinemann, London, 1897;
- Passarge – cf. Wilmsen, E.N., *The Kalahari Ethnographies of Siegfried Passarge (1896–1989)*, Rüdiger Köppe, Cologne, 1997; or travelled along the rivers but not through the dry lands between the Okavango and Kwando.

17 ZBU 1009 J XIIIb 4, Vol. 1, p. 10: Letter of the District Head Grootfontein to the Imperial Government Windhoek, 23 May 1903, National Archives of Namibia.

18 Seiner, F., ‘Ergebnisse einer Bereisung des Gebietes zwischen Okavango und Sambesi (Caprivizipfel) in den Jahren 1905 und 1906’, *Mitteilungen aus den Deutschen Schutzgebieten* 22, 1909, pp. 1–111.

A great number of biographical records and place names provide further evidence of the land between the two rivers being Khwe ancestral land. Köhler (1989) identified about 60 Khwe place names in the Okavango area, while Diemer (1996) and Boden (2005) identified more than 200 in the eastern part of BNP.¹⁹ During German colonial times, the German Imperial Resident of the Caprivi Strip, Captain Kurt Streitwolf, also documented some of these when searching for a reliable travel route on German territory through the dry strip of land between the two rivers, albeit in mutilated forms such as Gaudinga for Kx'eu-dinga, or Gautscha for †Geu-ca.²⁰

The lack of surface water not only presented an enormous obstacle to travellers and administration personnel²¹ but also to agro-pastoralists, who were unable to cultivate fields and keep cattle in the dry lands between the two rivers. Seiner (1913) reported that the “Natives” (the colonial category for Bantu-speaking agro-pastoralists as opposed to “Bushmen”) knew only one water place in the central Hukwefeld (nowadays BNP), namely the Mbukushu village Gauschiku. The “Natives” further told Seiner that it was impossible to keep cattle in the area, which was completely inaccessible for whites and themselves due to the lack of water.²² And according to Schönfelder (1935), who travelled through what is now BNP to recruit mineworkers for the Witwatersrand Native Labour Association, the area offered relatively lush living conditions to “the Bushman” while it was only a migratory area for the Bantu populations whose preferred living places were the riverbanks and valleys.²³ All of these sources confirm that in pre-colonial and early colonial times, BNP was Khwe land. Other people occasionally used it for seasonal grazing in years with good rains, and for trading as well as for capturing and selling Khwe as slaves.²⁴

Customary Khwe land rights on their ancestral land followed the first settler principle. Since time immemorial, the Khwe had lived at permanent settlements in dry riverbeds, close to permanent water sources (dug wells) where they also used to practise horticulture. From such permanent settlements, some residents or groups of residents moved to seasonal water places for hunting and gathering, while other residents, most often elderly people, remained at the permanent settlement.²⁵ Although the boundaries of foraging territories were to some degree fluid and

19 Boden, G., *Prozesse sozialen Wandels vor dem Hintergrund staatlicher Eingriffe: Eine Fallstudie zu den Khwe in West Caprivi/Namibia*, Ph.D. Thesis, University of Cologne, Cologne, 2005 (<http://kups.ub.uni-koeln.de/volltexte/2005/1595/>).

20 Map attached to Streitwolf, K., *Der Caprivizipfel*, Süsserott, Berlin, 1911.

21 Fisch, M., *Der Caprivizipfel während der deutschen Zeit 1890–1914*, Rüdiger Köppe, Cologne, 1996; Streitwolf, K., *Der Caprivizipfel*; Von Frankenberg, V., ‘Vom Sambesi zum Okavango durch das deutsche Hukwefeld, Juni bis August 1911’, *Mitteilungen aus den deutschen Schutzgebieten* 32, 1919, pp. 33–35.

22 Seiner, F., *Die wirtschaftsgeographischen und politischen Verhältnisse*.

23 Schönfelder, E., ‘Südost-Angola und der westliche Caprivizipfel’, *Petermanns Geographische Mitteilungen*, 1935, pp. 49–52, 87–89.

24 Köhler, O., *Die Kxoé-Buschleute und ihre ethnische Umgebung*.

25 Köhler, O., *Die Kxoé-Buschleute und ihre ethnische Umgebung*.

overlapping and could change over time, the overlap and transfer of land use rights relied on mutual agreements and respect for customary law.²⁶

There was also a spiritual aspect to Khwe ideas about sovereignty over land, based on the relationship between ancestors and the right of residence on a certain stretch of land. The Khwe believe that the ancestors, buried on ancestral land, would render foreign settlers sick and thereby repulse them so that their own descendants would be the only ones to live on the land. When someone died, the homestead was deserted and a new homestead was built in the vicinity, i.e. on the same stretch of ancestral land.²⁷

So-called *díxa-//'áé*, literally “responsible owners of homesteads or villages”, presided over the settlements. *Díxa-//'áé* were elders who had detected the water source, founded the settlement and performed the necessary rituals, namely the setting up of the hunting altar and the lighting of the first fire.²⁸ They would also decide when to initiate the harvest of certain veldfruit.²⁹ The *díxa-//'áé* were in charge of the people living in settlements, as well as the resources in the areas surrounding them, including seasonal foraging grounds. Newcomers who wanted to join a settlement had to ask for permission. The *díxa-//'áé* then indicated to them spaces for building a house and clearing a field, and for hunting and gathering. Even though the *díxa-//'áé* usually agreed to such requests, it was and continues to be considered a violation to ignore their authority and settle on a territory without asking for and being granted permission. The *díxa-//'áé* also instructed admitted newcomers in the sustainable use of resources.³⁰

More generally, the *díxa-//'áé* provided guidance and supervised their communities, mediated disagreements within their communities and represented them in issues with other Khwe, as well as non-Khwe. Although the Khwe did not have a paramount chief, *díxa-//'áé* with outstanding conflict solving abilities were addressed and considered in charge of issues also above the local level.³¹

Khwe customary law had different regulations for different types of natural resources. One never denied water to travellers or visitors. Only when people wanted to come and settle for a longer period or permanently at a waterhole, they had to ask the *díxa-//'áé*. The people who prepared fields for cultivation, worked on them and grew the crops were the owners of both the fields and the crops. Honey belonged to the person who spotted the beehive and marked the respective tree.

26 Boden, G., ‘Mapping culture, representing boundaries and politicizing difference: Reflections on two San cases in Namibia’, in Bubenzer, O., A. Bolten & F. Darius (eds): *Atlas of Cultural and Environmental Change in Arid Africa*, Heinrich-Barth-Institut, Cologne, 2007, pp. 112–115.

27 Köhler, O., *Die Kxoé-Buschleute und ihre ethnische Umgebung*; Köhler, O., *Wohnplatz und Buschlager*.

28 Köhler, O., *Wohnplatz und Buschlager*.

29 Köhler, O., *Grundlagen des Lebens*.

30 Köhler, O., *Wohnplatz und Buschlager*.

31 Boden, G., ‘Recognition of Khwe Traditional Authority and their Rights to Traditional Land in Bwabwaba National Park’, unpublished report, Legal Assistance Centre, Windhoek, 2011.

Plant and animal resources were not owned individually, but belonged to the whole group. When an animal, hit by a poisoned arrow, ran into the land of other people, the hunter had to share the meat with the landowners.³²

Because of relocations and the nature conservation status of the land, the boundaries of former foraging territories have lost their practical relevance today. Nevertheless, the Khwe still knew about and respected one another's habitual foraging grounds within settlements at the dawn of the current millennium,³³ and certain Khwe family groups continue to be associated with particular stretches of land to this day. As a result, members of some family groups are still more likely to live in villages situated on their ancestral family territories.³⁴

In the past, non-Khwe neighbours also adhered to the customary law of the Khwe as the original inhabitants, e.g. when Mbukushu came to ask for seasonal grazing rights.³⁵ While the South West Africa Administration (SWAA) kept the agro-pastoralists out of the strip, first for veterinary and later for military reasons, the strip has seen an increasing influx of Mbukushu and other agro-pastoralists since Namibian independence, and even after it became a national park. The next section will show how the Khwe continuously lost authority over their ancestral land as a result of state decisions and actions.

4 Historical changes to Khwe ancestral lands in Bwabwata National Park

During the German colonial period and the first two decades under the SWAA, the strip of land between the Okavango and Kwando, then called “West Caprivi”, remained largely un-administered. Although not profoundly affecting the daily lives of the Khwe at the time, the German colonial power had far-reaching consequences in the long term by determining the national boundaries, thereby dividing the ancestral land of the Khwe and contributing to their economic marginalisation, and by rendering some customary activities illegal, as well as by delineating territories of warfare and refuge.

Government interventions started in 1938, when the SWAA declared West Caprivi a livestock- and Native-free zone, with only the “already resident Bushmen” being allowed to live there.³⁶ The aim was to stop the movement of cattle from

32 Köhler, O., *Customary Law*.

33 Boden, G., *Prozesse sozialen Wandels*.

34 Boden, G. (ed.), *Khwe kúri-|x'ón-dji / Khwe family names* (texts by Fabi Camarongo, Kuconya Djunu, Ou Nboma, Macirico Ndeundu & Nashira /Uingyeu), Kalahari Cultural Heritage Publications, Cologne, 2014.

35 Köhler, O., *Die Kxoé-Buschleute und ihre ethnische Umgebung*.

36 SWAA 2267 A 503/1-7: Letter of Native Commissioner in Rundu, 24th September 1952, National Archives of Namibia.

Angola and Zambia into Namibia in order to protect the white-owned cattle in the commercial farming area by preventing the southward spread of animal epidemics.³⁷ The administration installed two so-called Native Guards, whose prime duties were to enforce the cattle decree and to stop slave raids.³⁸

Under the SWAA, two more governmental decisions recognised West Caprivi as Khwe ancestral land and confirmed their right to use it. In 1949, the so-called Commission for the Preservation of the Bushmen in South West Africa found the Khwe to be the first inhabitants of West Caprivi and advised against resettling them in a Bushman reserve,³⁹ and in 1964, the Odendaal Commission recommended creating a homeland for the Khwe in West Caprivi.⁴⁰

At the same time, the inauguration of Martin Ndumba as Khwe paramount leader amounted to an acknowledgement of the Khwe as a distinct and sovereign people. Martin Ndumba was based at Mutc'iku on the Okavango River. He conveyed local authority to Kandunda Kaseta in Bwabwata, Kyaku Ngoro in Yiceca, and Kapaco in the Kwando area. The Khwe thus interpreted the leadership structure predefined by the SWAA internally according to their own customary law.⁴¹

From the 1960s onwards, however, the SWAA started to change its policy regarding Khwe land rights, and set West Caprivi aside for its own purposes, at first as a nature conservation area, and later for military activities. For the Khwe this meant profound changes in their settlement and land use practices.⁴² In 1963, West Caprivi became a Nature Park,⁴³ which was upgraded and renamed "Caprivi Game Park" in 1968.⁴⁴ Its remoteness and geopolitical position at the borders with Zambia and Angola gave it unique strategic importance for the South African Defence Force (SADF) during the early years of the Namibian war of liberation.⁴⁵ In the 1970s and 1980s, West Caprivi became a military no-access zone in which the SADF built several military camps and recruited Bushmen as soldiers. The Khwe were no longer allowed to forage or live on their ancestral family grounds. Instead, they had to settle in or close to the military camps and became economically dependent on their soldiers' pay. During this period, the number of San residents in West Caprivi

37 Bollig, M., 'The Colonial Encapsulation of the North-Western Namibian Pastoral Economy', *Africa*, Vol. 68, No. 4, 1998, pp. 506–536.

38 SWAA 2267 A 503/1: Letter of the Native Commissioner Rundu to the Chief Native Commissioner Windhoek, 8th February 1950, National Archives of Namibia.

39 SWAA A 267/11/1: Report of the Commission for the Preservation of Bushmen in South West Africa, 1956, National Archives of Namibia.

40 Republic of South Africa, *Report of the Commission of Inquiry into South West African Affairs*, Government Printer, Pretoria, 1964.

41 Boden, G., 'The Khwe and West Caprivi'; Boden, G., 'Recognition of Khwe Traditional Authority'.

42 Suzman, J., *An Assessment of the Status of the San in Namibia*, Legal Assistance Centre, 2001.

43 Republic of South Africa, Proclamation 67/1963.

44 Republic of South Africa, Government Notice 19 of 1968.

45 Kangumu, B., *A Forgotten Corner of Namibia: Aspects of the History of the Caprivi Strip, 1939–1980*, M.A. Thesis, University of Cape Town, Cape Town, 2000.

increased because not only local Khwe but also !Xun and Khwe refugees from Angola were recruited into the SADF. When Namibia attained independence, the South African government offered the San soldiers and their families the option of relocating to South Africa, and about 4 000 San (1 600 Khwe and 2 400 !Xun) were resettled in that country.⁴⁶ However, the majority of Namibian Khwe decided to stay on their ancestral lands in West Caprivi.

The military period resulted in broken up livelihoods and land use practices as large stretches of land were forcefully emptied. The withdrawal of the SADF left many Khwe dislocated from the family territories where they had previously been living, and in a parlous economic position.⁴⁷ After Namibian independence, the Khwe tried to re-establish their occupation of their ancestral lands, but now had to compete with other Namibians with more economic power and better political standing.

In the early 1990s, a rehabilitation and resettlement scheme, based on crop cultivation, was implemented by the Evangelical Lutheran Church in Namibia on behalf of the then Ministry of Lands, Resettlement and Rehabilitation (MLRR) for the “Bushmen ex-servicemen”. Crop cultivation was meant to become the main source of livelihood for the San in BNP. The project was expected to become self-sufficient after seed distribution in the first years, but success was very limited. Field sizes were only 1.8 hectares on average, and the evaluation report of 1994 stated that the harvest projection was about 200 tonnes less than the estimated needs.⁴⁸ Although such precise numbers are lacking for subsequent periods, the ongoing need for food aid shows that crop cultivation within the scheme never became sustainable.

The initial plan was to relocate Khwe from the eastern part of BNP to the so-called “Bagani resettlement scheme” in the very west of the park (locally most often referred to as Mutc’iku, Mashashane and Mushangara villages), where plots were prepared for cultivation in a block-and-plot design through a food-for-work-programme. However, many Khwe originating from the east refused to resettle at Bagani and eventually received GRN services and support at the places where they were staying, or where they went to settle on their former family grounds. In fact, the establishment of new villages after Namibian independence when the Khwe were able to leave the military camps of the SADF confirms the continuing validity of Khwe customary land rights. At the time, many Khwe went back to settle on their former family territories. This holds true for Mashambo, |Ui-tcu-kx’om, Guixa and

46 Suzman, J., *An Assessment of the Status of the San in Namibia*, Legal Assistance Centre, 2001.

47 In addition, they have a tarnished reputation among the SWAPO government for having been unpatriotic to independent Namibia. The ramifications of the Khwe involvement with the SADF are long-lasting and complex, and cannot be discussed in detail here. (For first steps on this terrain see Taylor & Battistoni 2009.)

48 Jansen, R., N. Pradhan & J. Spencer, *Bushmen Ex-Servicemen and Dependents Rehabilitation and Resettlement Programme, West Bushmanland and Western Caprivi, Evaluation (Final Report)*, Evangelical Lutheran Church in Namibia (ELCIN) and Royal Norwegian Embassy/NORAD, Windhoek, 1994.

‡Qowexa, although inhabitants of the latter two villages deserted these villages when seeking refuge in Botswana after being harassed by Namibian security forces at the time of the secessionist upheavals in 1999.⁴⁹ Khwe brought to Mashambo or Omega III after repatriation from Botswana also later went to settle at T'on-xei and Po-ca, thereby acknowledging and respecting the customary land use rights of the original inhabitants of Mashambo and Omega III. They explained that their decision to go and settle on their own former family territory was occasioned by conflicts over the use of natural resources on the ancestral family grounds of their temporary hosts.⁵⁰ Such moves and reasoning confirm a continuous and shared understanding of traditional land use rights among the Khwe.

At first, the government provided services only in the bigger settlements and former military camps, namely the Bagani resettlement scheme, Omega I, Chetto and Omega III. Later, at least some services were also provided in the smaller settlements: Mashambo (1992); |Ui-tcu-kx'om, also known as Katcendje (1992); Mangarandgandja (before 1996); Pipo (1997); Poca (2005); and T'on-xei (2007).⁵¹ The drilling of boreholes also attracted Mbukushu and other Kavango agro-pastoralists with their cattle, who started to move into the strip. Areas deforested for farming by incoming agro-pastoralists, as well as the number of incoming cattle, have continued to increase since Namibian independence,⁵² and even accelerated after the declaration of BNP.⁵³ Nowadays, large parts of what were once the ancestral lands and foraging areas of the Khwe are occupied and used by agro-pastoralists who moved in from other parts of the country. These people have more economic and political capital than the Khwe. Non-Khwe newcomers to BNP usually have substantial herds of cattle, as well as more jobs and cash income. They either informally join family members who were granted access by the former Khwe Chief Kippie George in the early years of Namibian independence or appeal to the Mbukushu Traditional Authority and the Khwe headmen who are co-opted into the ranks of the Mbukushu TA or are collaborating with it.⁵⁴

Martin Ndumba, the paramount leader of the Khwe who was recognised as such by the SWAA, had appointed his nephew Kippie George as his successor. Kippie

49 Amnesty International, 'Angola and Namibia: Human Rights Abuses in the Border Area', AI-index: AFR 03/001/2000 (<https://www.amnesty.org/en/documents/AFR03/001/2000/en/>); Biesele, M. & R.K. Hitchcock, 'Caught in the Crossfire: The Caprivi Strip', *Cultural Survival Quarterly*, 26(1), 2002, p. 30; Boden, G., 'Caught in the Middle: Impacts of State Decisions and Armed Conflicts on Khwe Economy and Ethnicity between 1998 and 2002', in Hohmann, T. (ed.), *San and the State: Contesting Land, Development, Identity and Representation*, Rüdiger Köppe, Cologne, 2003, pp. 161–204.

50 Boden, G., *Prozesse sozialen Wandels*; Boden, G., 'Recognition of Khwe Traditional Authority'.

51 All dates based on information from residents during village group meetings in 2014.

52 World Wildlife Fund, *Report on Mbukushu Migration to Kxoe Use Areas to the East of the Okavango River*, World Wildlife Fund, Windhoek, 1997.

53 Geria, S., 'Khwe injustices in Bwabwata park, Namibia: Letter by the Chairman of the Bwabwata Khwe Custodian Committee to all stakeholders, 2 September 2017'.

54 Boden, G., 'Recognition of Khwe Traditional Authority'; Boden, G., 'Elephant is my chief'.

George was well respected in the Khwe Community, and was the first Khwe Chief to head the application for a Khwe TA in 1997. He died in December 2000 before the application had been decided on. After his replacement by Thaddeus Chedau, the Council of Traditional Leaders came to the conclusion that the area claimed belonged to the Mbukushu TA, but later decided to reinvestigate the claim. A second application headed by Chief Ben Ngobara in 2005 has not yet been dealt with conclusively. By selecting local leaders from the different Khwe villages as senior councillors and traditional councillors, all Khwe applications for a GRN-recognised TA follow the traditional Khwe leadership structure.⁵⁵ The fact that during the first years after independence, the first Mbukushu settlers in the area asked the Khwe Chief Kippie George for permission to settle, shows that at the time, the customary understanding of the area as belonging to and governed by the Khwe was still prevalent, also among the Mbukushu. The failure of the GRN to recognise the Khwe TA and the Khwe as a traditional community, in combination with the efforts of the Mbukushu TA to incorporate the Khwe and their ancestral land into their dominion, has started to erode the customary understanding of land rights in BNP.

As mentioned above, BNP falls into two administrative regions (Kavango East and Zambezi) and constituencies (Mukwe and Kongola). Non-Khwe TAs from both areas claim sovereignty over BNP and take action on the land which falls under their respective administrative units. The Mbukushu TA based in Mukwe claim that the Khwe were their former servants and that BNP as a territory falls under its control and jurisdiction. It actively encourages Mbukushu people to settle there, or at least condones their doing so. Complaints and protests by Khwe leaders regarding the immigration of people and cattle and the deforestation of land for making fields have so far not resulted in action on the part of the MET, under the authority of which BNP as a national park falls.⁵⁶ The actions of Chief Joseph Tembwe Mayuni from the Mashi TA in Zambezi Region are less aggressive with respect to the settlement of his people and generally more supportive of the Khwe. He offered Khwe headmen the option of using the stamp of the Mashi TA for their village-level pleas to the GRN. However, the stamp combined the name of the Khwe village with the coat of arms of the Mashi TA, which suggests at least a symbolic occupation. The practice was stopped by the Regional Councillor of Zambezi Region. This shows that the support from GRN institutions for the Mashi TA in dominating the Khwe is much weaker than it is for the Mbukushu TA.⁵⁷

Since the Khwe do not have a GRN-recognised political leadership of their own, Khwe leaders lack the legal means to enforce their rights and stop immigration. The

55 For more detail on the story of the Khwe application for government recognition of their TA, see Boden, G., 'Recognition of Khwe Traditional Authority'; and The Khwe People of Bwabwata, 'Submission to the Presidential Commission of Inquiry into Claims of Ancestral Land Rights and Restitution by The Khwe People of Bwabwata, 8 August 2019'.

56 Boden, G., 'Recognition of Khwe Traditional Authority'; Boden, G., 'Elephant is my chief'.

57 Boden, G., 'Recognition of Khwe Traditional Authority'.

influence of the unrecognised Khwe TA on the park level is limited to an advisory capacity to the KA. The story of the Khwe application for GRN recognition for their TA is a story of protracted, obstructions and blocking.⁵⁸ The latest reason given in 2008 by the GRN for delaying a decision explicitly refers to the land's status as a national park, and claims that there would be uncertainty regarding the extent of land that would be left as communal areas, and about the numerical ratio of different communities within this area. This is the clearest signal yet that the Khwe might be outnumbered by the ever-increasing new residents on their ancestral lands and within the KA. This can also be inferred from the fact that the MET has asked the KA to review its board structure, as it was no longer representative of the population in the park. The GRN's failure to officially recognise the Khwe leadership has rendered Khwe leaders weak and vulnerable towards the GRN in relation to competing TAs and other outsiders, and has also resulted in dissatisfaction with the leadership among the Khwe themselves, who are frustrated by their limited power and lack of assertiveness. Some Khwe headman have even been misled to collaborate with the Mbukushu Traditional Authority.⁵⁹

5 Current situation

The previous section outlined how the Khwe have lost authority over their ancestral land and self-determination as a people, with serious effects on their livelihoods.

BNP is partitioned into a large multiple use area and three core conservation areas (Kwando in the east, Buffalo in the west, and Mahango across the Kavango River; the Mahango core area does not belong to Khwe ancestral land (see map 1)).⁶⁰ De facto, however, the multiple use area is further partitioned into zones, where cattle are allowed, namely the villages in Kavango East Region with mixed Khwe and non-Khwe populations, and zones, where cattle are prohibited, namely the villages in Zambezi Region, with predominantly Khwe populations. While the Khwe suffer from the restrictions of the park, the new residents, in addition to occupying Khwe ancestral lands without their consent, do not suffer from the same restrictions. This de facto inequality in livelihood options and means of production (for example, oxen being used as draft animals in crop cultivation) constitutes an additional injustice over and above the loss of rights to land and self-determination,

58 G. Boden, 'Recognition of Khwe Traditional Authority'; 'Claims of Ancestral Land Rights and Restitution by The Khwe People of Bwabwata'; Felton, S., "We Want our own Chief": San Communities Battle against their Image', in Le Beau, D. & R.J. Gordon, *Challenges for Anthropology in the African Renaissance: A Southern African Contribution*, University of Namibia Press, Windhoek, 2002, pp. 55–67; The Khwe People of Bwabwata, 'Ancestral Land Rights Claim'.

59 Boden, G., 'Recognition of Khwe Traditional Authority'.

60 Ministry of Environment and Tourism of the Republic of Namibia, *Strategic Management Plan for Namibia's North-East Parks*, MET, Windhoek, 2009.

and furthermore calls the status of BNP as a park into question. In the words of a Mashambo resident: “If we are going to accept this park, all cattle must be removed, then we will believe that this is a park.”⁶¹



Cattle herd between Omega I and Chetto (Photo: G. Boden, 2019)

As a result of the influence of the Mbukushu TA in the part of BNP situated in Kavango East Region, land allocation practices and land tenure security with regard to land use by individuals for homesteads or fields are different for villagers in the eastern and western portions of BNP. The residents of the eastern villages (Mashambo, Poca, Omega III, T'on-xei, |Ui-tcu-kx'om, Pipo, Chetto, Bwabwata), i.e. the villages in Zambezi Region, who are mainly Khwe, are convinced that the land they have been using for crop cultivation will not be taken away from them by other individuals. During a survey in 2014, they stated that they were choosing the land by themselves, not even necessarily involving local headmen. Instead, immediate neighbours would agree about mutual borders. They were confident that no other person would start ploughing on their fields without permission, even if they themselves had not been cultivating it for several years. Here, allocation of and tenure with respect to land for homesteads and fields is still based on established customary rights alone, and people felt that their individual use rights were secure.

In the villages situated in Kavango East Region, however, the situation is very different, and Khwe feel insecure even with respect to land that is individually used

61 Taylor, J.J., 'Naming the Land'; Boden, G., 'Elephant is my chief'.

for homesteads and fields. Not even the resettlement programme of the MLRR has led to secure land tenure on the plots of the resettlement scheme. According to local residents, the MLRR has not updated the registers at least since 1998.⁶² Due to the overflow of the Angolan civil war into northern Namibia from late 1999 until 2002, many Khwe in the Bagani resettlement scheme left their plots for safety reasons and settled closer to each other and closer to the B8 road. This applied in particular to those Khwe who used to live in blocks A–C and H–I of the Bagani resettlement scheme, who still have not moved back; many of their plots have since been occupied and are cultivated by Mbukushu. Most Khwe plot-owners in blocks D–F stayed on their plots during the upheavals of 1999–2002, but even there Mbukushu who at first had started crop fields in areas between the blocks are expanding their crop fields onto the neighbouring resettlement plots of the Khwe. Resulting conflicts are dealt with by Khwe headmen who are cooperating with the Mbukushu Chief, with the effect that land use issues are in fact under his authority. In household interviews conducted in 2014, Mbukushu individuals said they pay “traditional tax” to the Mbukushu TA with the expectation of being able to use the tax book or receipt as a proof of land tenure. A revision of a household-survey from 1998, conducted in March 2019, revealed that most of the resettlement plots in blocks A–C and H–I were now occupied by Mbukushu.

Incidents of individual plots for cultivation being occupied by new residents were also reported in Omega I. Whereas conflicts about land between Khwe are solved by local Khwe headmen, the Mbukushu do not respect the decisions of Khwe headmen. In Omega I too, the first non-Khwe came legally, because they were invited by the GRN to a large-scale agricultural project. Although meant to also serve local San, it nowadays mainly serves non-Khwe, while the Khwe are only workhands on the fields of others. Furthermore, the area cultivated by Mbukushu east of Omega I is constantly expanding. In 1998, there was only one Mbukushu village, namely Shamakwi (translated from Khwe *Kx’ã̃-ca*, i.e. “vulture water”) about three kilometres east of Omega I, but new settlements have sprung up almost every year since 2007, and the cultivated area has been extended for kilometres eastwards from Omega I. Instead of limiting the in-migration of people and cattle into the park, the GRN in fact supports it by providing ever more boreholes to those settlers. Today, Mbukushu are settling and ploughing as far as 15 km outside of Omega I, whereas Khwe, who tried to make a field only three kilometres outside of Omega I, were stopped by the MET, even though the Omega headman had allocated the land. The Khwe headmen in Omega I are unable to stop Mbukushu from settling in their area. They are also unable to stop Chief Mbambo’s vassal headman in Omega I from allocating unoccupied old army houses which the Khwe regard as belonging to their community, or to stop Mbukushu getting most of the jobs in the agricultural project.

62 Boden, G., *Prozesse sozialen Wandels*.

In sum, both the Bagani resettlement scheme and the agricultural scheme in Omega now only partially serve the needs of those for whom they were originally established. In the villages of BNP which are located in Kavango East Region, authority over Mbukushu settlement on Khwe ancestral land is effectively exercised by the Mbukushu TA, both by the granting of permission to settle, and also, in rare cases, by the protection of individual Khwe claims to plots. Khwe can enforce their land tenure rights to certain plots only by approaching Khwe headmen who collaborate with Chief Mbambo. Even when a Khwe person wants to occupy an empty plot and has been given permission to do so from a headman of the Khwe TA, Chief Mbambo's headmen warn those people that they have failed to follow the right channel.⁶³



Panga Nanyambi, a new village east of Omega I (Photo: G. Boden, 2019)

The Khwe have thus lost not only authority over their collective ancestral land to the state authorities, but also a good deal of authority over individual land tenure, in particular in the villages situated in Kavango East Region. The Khwe ascribe all these injustices to the lack of GRN recognition of the Khwe TA. This is seen as the

63 The authority exercised by Khwe headmen has declined and shifted into the hands of Chief Mbambo's headmen, even in the domain of family law. Chief Mbambo's headmen rely on the written customary law of the Mbukushu, identifying fines and fees. Even Martin Ndumba's daughters have addressed Chief Mbambo when they were dissatisfied with the way the commemoration of their father's death was exercised in 2010.

reason why requests and complaints by Khwe in BNP often fail to receive attention, responses or any follow-up from GRN officials. Complaints to the KA, the MET, the Regional Council, various ministries and even the LAC were said not to have led to action or consequences. This also has serious effects on development options since submissions by the village development committees have to be approved by the responsible TA. Here again, the situation is different for villages in Zambezi and Kavango regions. In the Mbukushu-dominated Mukwe Constituency, Khwe members of the Constituency Development Committee were frustrated with the lack of attention they received on the constituency level.⁶⁴

Khwe livelihoods are based on a mixed economy combining crop cultivation, livestock farming, cash income from formal employment, small informal petty businesses (selling traditional medicine, beer, etc.), piecework (mostly on the fields of non-Khwe), craft production (basketry), income from the KA, the use of natural resources, and mutual support. However, revenue from these activities is insufficient for covering even basic needs. The Khwe therefore remain dependent on GRN aid, even for their daily meals.

The following description of Khwe livelihood options, unless otherwise specified, is based on surveys conducted by the author in 2011 and 2014.⁶⁵ In the 2014 survey, Khwe residents of BNP reported that crop cultivation was the most important livelihood option. (The Namibian government has also identified support to communal farmers for crop cultivation as a most promising tool for securing the livelihoods of Namibia's rural population,⁶⁶ including those of marginalised San communities.⁶⁷) The main crops were identified as being maize and mahangu, while some respondents also cultivated watermelons, pumpkins, groundnuts and beans. Soils in BNP are good for crop cultivation in most places. This is one of the reasons why more and more Mbukushu and other Kavango residents come to settle inside the park. Beside the issue of insecure land tenure discussed above, there are two main obstacles hampering crop production: the lack of an efficient means of ploughing; and the increasing number of elephants destroying crops. Both are burdens of the status of BNP as a national park. Ploughing for efficient crop cultivation would depend on either oxen as draft animals, or tractors. However, livestock farming is prohibited in large parts of the park. With hoes or donkeys, it is impossible to plough efficiently. In theory, the MLR provides tractor services and seeds to registered farmers commensurate with field sizes, but these services were said to be unreliable and not made available at the right time, or simply non-existent. Although most people were registered for seed distribution and ploughing services, they start ploughing and planting by themselves at the beginning of the season, and should tractor services eventually materialise, make use of the opportunity

64 Boden, G., 'Recognition of Khwe Traditional Authority'.

65 Boden, G., 'Recognition of Khwe Traditional Authority'; Boden, G., 'Elephant is my chief'.

66 Republic of Namibia, 'Report on the Review of Post-Resettlement Support'.

67 Dieckmann, U. et al., 'Scraping the Pot'.

to expand their fields then. Elephant numbers have increased considerably since 2007, when BNP was proclaimed. Especially in the villages in the eastern part of the park, which has become a corridor for wildlife transboundary movements,⁶⁸ many farmers have stopped cultivating fields because they were frustrated by their efforts increasingly being thwarted by elephants. Unlike in communal areas, crop shortfalls resulting from elephants attract no compensation in the BNP. Furthermore, the increasing number of elephants has also attracted an increasing number of poachers. This has recently led to restrictions being placed on movements and the use of natural resources by villagers, as well as threats and borderline violent assaults by anti-poaching units.

Crop cultivation cannot be discussed in isolation from livestock farming, because efficient crop cultivation still relies on oxen as draft animals for ploughing. As outlined above, the multiple use area is de facto partitioned into zones where cattle are allowed, and zones where they are prohibited. To understand the inherent injustice of this, one has to know that prior to 1996, Khwe households also had up to 50 head of cattle. In 1996, after the outbreak of a bovine lung disease, all the cattle of the Khwe were lost, either being slaughtered or sold for low prices. Due to the lack of oxen as draft animals, crop yields subsequently declined from twenty 50 kg bags of mahangu, to virtually nothing. At the same time, non-San residents of Shamakwi, Omega and Mutc'iku intervened with support from MLRR staff and the Mbukushu TA, and were eventually allowed to keep their cattle, which only had to receive medical treatment. Although the Khwe whose cattle were destroyed were promised compensation in cattle, this was never paid out because of the plans for the area's proclamation as a national park. The money and goats they did receive did not recompense them for their losses, neither in terms of money value nor in terms of the value ascribed to cattle as capital investment and a means of production. Donkeys distributed as part of the San Development Programme and intended as a substitute for oxen as draft animals for ploughs are much less effective. They often fall prey to wild animals, but because of the status of the land as a national park, no compensation is paid out when this happens.

Few Khwe are formally employed. During the survey in 2014, only 32 of the 201 adult respondents in village group discussions (10.9%) had formal employment. The main obstacles to employment are the lack of opportunities within the boundaries of the park, and the low level of school and vocational education. Searching for employment outside the park is difficult because families have to be left behind, and because of alleged discrimination against the Khwe by fellow Namibians.

In many households, money from old age pensions or social grants is the only regular cash income and is therefore essential for survival. However, de facto access to these resources is far removed from *de jure* access. Many old Khwe who on the basis of their date of birth should be entitled to old age pensions do not manage to

68 World Wildlife Fund, 'Wilde Tiere auf Wanderschaft', *WWF Magazin*, 2014 (2), pp. 25–27.

be registered. Reasons include problems with their ID documents, low degrees of literacy and language competence in office languages (English or the vernaculars of the officials), the cost of travelling to the offices of the Ministry of Home Affairs in either Rundu or Katima Mulilo, and problems caused by spelling errors of names, which affects San more than most citizens because the spelling of their names contains orthographic symbols that are not widely known. Where ID documents are missing, affidavits of the TA are required, and obtaining these depends on the goodwill of other TAs.

Food aid also makes up a crucial part of Khwe livelihoods. The GRN has three food aid programmes: the Drought Relief Programme, the San Feeding Programme, and the School Feeding Programme. The School Feeding Programme falls under the auspices of the Ministry of Education, and according to all school principals in BNP, has dramatically improved school attendance, in particular of Khwe children. Drought relief is distributed in times of drought and decided upon on a yearly basis. The San Feeding Programme falls under the San Development Programme, and provides food aid exclusively to San in periods not covered by the Drought Relief Programme. However, it is unreliable, and often of poor quality. In 2014, rations consisted of one 12.5 kg bag of maize meal per person per month up to a maximum of six bags per household, plus two tins of fish per household. According to staff of the Regional Council in Kongola, rations differ over time, are decided upon by the Office of the Prime Minister, and are partly reliant on donor money.

As part of the San Development Programme, several community projects were started, such as community vegetable gardens in the villages of Omega III, Chetto and Mutc'iku, bee-keeping projects in Omega and |Ui-tcu-kx'om, and a bakery project in Mashambo.⁶⁹ In 2019, none of these projects was in operation. Through the programme, donkeys and goats were also given to Khwe households. The goat rearing project provided three goats to selected individuals who had to pass on offspring to others. Some people were able to build up herds, but not necessarily the poorest households. Because of occasional losses to disease, car accidents, wild animals and the occasional outtake of animals for consumption or cash needs, a much larger basis is required for building up herds, in particular in those households where there is no other source of cash.

The KA manages the communal income from trophy hunting and tourism. The bulk comes from the hunting concessions in the two core areas of the park, which are worth N\$4 million per year, shared equally between the GRN and the KA. Benefits from tourism are currently still marginal because the KA does not share in income from entry fees into the core areas, and because tourism facilities in the park are almost non-existent. Benefits are distributed annually to the residents at

69 Until stopped by the Regional Councillor, local Khwe headmen, cooperating with the Mbukushu TA, allowed Kavango residents to share in resources directed to the San by the GRN, e.g. under the food-for-work programme when de-bushing the community garden was undertaken in Mutc'iku.

the discretion of the board, either as cash payment to individuals or in the form of community projects. The KA has also paid for infrastructure, namely offices in five villages and community halls in three. According to its benefit distribution plans, the KA sets sums aside to support vulnerable children and orphans, as well as motivated and well-performing students. Indirect benefits derived via the KA from the hunting concessions are individual employment as trackers, skimmers and cleaners with the hunting companies, the distribution of meat from trophy animals, and payments by the hunting companies for projects and vocational training, partly as determined in the concession contracts and partly paid voluntarily.

The KA, alongside the GRN, is one of two big employers in the park. More than half of the KA budget goes into the salaries of 63 employees (executive staff, community game guards, resource monitors, field officers, security personnel, drivers and community campsite staff). Apart from the salaries, the most important impact of the KA in terms of income generation for individual park residents is through devil's claw harvesting. In cooperation with the MET, the KA had organised and controlled the commercial harvesting of devil's claw. Between 2011 and 2013, the annual total income from this source ranged between N\$434 000 and N\$717 000. In 2017, however, the devil's claw harvesting came to a halt when anti-poaching units of the Namibian Police restricted the movement of local people to a few kilometres around the villages. This affected not only the devil's claw harvesting but also the collection of other natural resources.⁷⁰ Even community game guards and resource monitors in the service of the KA were told to stay at home.⁷¹

As BNP is a national park, the use of natural resources is restricted. Subsistence hunting is prohibited throughout the park. The gathering of bushfood, medicinal plants, firewood and building material is only allowed in the multiple use area, and only for own consumption or use. Gathering has to be performed in a sustainable manner, so, for example, it is prohibited to chop branches to harvest the fruits. Community game guards and community resource monitors are employed by KA to prevent poaching and supervise the sustainable use of plant resources. Currently, the sole plant resources for which commercial harvesting regulations are in place are devil's claw and the leaves of the fan palm, which are woven into baskets. Both activities have ground to a halt in recent years since every person met in the bush runs the risk of being considered a poacher.⁷²

KA benefits can so far only compensate for a small fraction of the wealth that has been lost. Park residents feel that the restriction or loss of earlier livelihood options should be compensated for by opening up access to new livelihood options

70 Braun, W.B., 'Namibia vermittelt Euphorie und Entsetzen: Ein Erfahrungsbericht aus der Sambesi Region – März 2019', *Allgemeine Zeitung*, 23 November 2018 and 10 July 2019; Kooper, L., 'Khwe tribe wants freedom on ancestral land', *The Namibian*, 10 July 2019.

71 Geria, S., 'Khwe injustices in Bwabwata park'.

72 Braun, W.B., 'Namibia vermittelt Euphorie und Entsetzen'; Geria, S., 'Khwe injustices in Bwabwata park'; Kooper, L., 'Khwe tribe wants freedom'.

such as employment, in particular in the tourism sector. They feel particularly disadvantaged compared to neighbouring communities outside the park because tourists currently reside in lodges and campsites beyond park boundaries, and communities there can earn income from employment in the tourism sector, whereas park residents cannot, even though they have to bear the costs of the park status.

Poverty, discrimination and feelings of inferiority are also underlying causes of poor education and health conditions. Khwe learners tend to drop out of schools after the first years of primary education when they have to leave their home villages and join non-Khwe learners in the higher grades of secondary education. Early pregnancy, often also resulting from poverty, is another cause. Education within the park is only provided up to Grade 10. Furthermore, young adults seeking to go back to school some years after dropping out are by then often responsible for families, and face difficulties in being accepted back by the school principals. Preschool, primary and secondary education, mother tongue education, vocational training, and adult literacy courses were on the wish list of Khwe respondents in 2014.⁷³



Khwe Children at Mushashane (Photo: Dieckmann et al., 'Scraping the Pot', 2014, p. 385)

⁷³ Dieckmann, U. et al., 'Scraping the Pot'.

Along with poor educational opportunities, health conditions are also poor. Malaria, tuberculosis, diarrhoea and HIV are the most critical diseases, and in some villages, polluted water is a problem. Clinics are only provided in the four big villages, and hospitals are as far away as Andara and Katima Mulilo, i.e. up to 180 km away. People often lack money for transport, and so cannot get to a clinic or hospital.⁷⁴

In summary, the access to and use of the natural wealth of Khwe ancestral lands are increasingly restricted for the original inhabitants, while other people, recent settlers in BNP as well as people living outside the park, are permitted to benefit from them. These injustices with respect to livelihood options, insecure land tenure and the lack of political power are the most relevant obstacles preventing the Khwe from living a dignified life. Although the Khwe still live on their ancestral land in BNP, they have increasingly lost control over the land and its resources.

6 Recommendations

The inclusion of disadvantaged indigenous communities within a national society entails efficient and accountable institutions that promote development, protect human rights, and ensure that members of such communities contribute to decision-making processes on issues that affect their lives. The Khwe were living in what is today BNP before the German colonial power decided on its borders, and before it was made a conservation area by the SWAA and a national park by the GRN. The Khwe did not have a say in any of these decisions. Restrictions on Khwe livelihoods oblige the GRN to provide alternative opportunities by way of compensation and to ensure food security, as well as peace and general well-being. The development of a diversified repertoire of livelihood options is essential, including through improving crop cultivation, creating job opportunities, allowing and promoting local businesses and sustainable venues for the commercial use of natural resources, and, last but not least, increasing KA revenues.

The well-being of the Khwe will require the provision of infrastructure, ranging from infrastructure for sufficient clean water to clinics and schools for all grades (pre-school up to tertiary education), while ensuring that the provision of government services will not attract more people to settle in the national park. Instead of allowing more people to come into the park, better livelihood options for those who have always been there should be a priority. The unjust treatment and social disparity experienced by the Khwe oblige the GRN to restore justice and guarantee political self-determination by recognising a Khwe TA.

These demands are in line with relevant resolutions of the Second Namibian Land Conference of October 2018, namely resolutions 8, 11, 18, 20, 37 and 38.⁷⁵ All

74 Ibid.

75 Resolutions of the Second National Land Conference, Windhoek, 1st–5th October 2018.

of these depend on the prerequisites of secure land tenure and control over land use practices by a state-recognised Khwe TA.

Resolution No. 8 states that a policy should be developed to ensure the prioritisation of various categories of disadvantaged communities and to review and harmonise all legal instruments related to disadvantaged communities. The current situation of the disadvantaged Khwe in BNP has been outlined in the previous section. Their situation is characterised by extreme poverty, food insecurity, insufficient health and education infrastructure, the lack of access to governmental offices (resulting from both distance and language barriers), and insufficient economic opportunities. The disadvantageous situation of the Khwe is exacerbated by the de facto prioritisation of the agro-pastoralists who recently came to settle in the park. BNP currently falls under two constituencies and two administrative regions. A single administration for all BNP residents would be more effective in doing justice to and promoting the particular concerns and needs of BNP residents.

Resolution No. 11 states that land allocation and administration must continue to rest in TAs and Communal Land Boards, and that “All communal communities should have traditional authorities to deal with land matters in their areas of jurisdiction.” It clearly points out the relationship between TAs and access to and control over land, and acknowledges communities’ need to have their own TA to deal with land matters. Almost 20 years after the promulgation of the Traditional Authorities Act of 2000, the GRN should recognise the Khwe as a distinct cultural community, and thus should recognise their TA. This is essential for the Khwe to feel recognised as fellow Namibians and, in fact, as human beings with their own language and culture.

Resolution No. 18 on wildlife conservation and utilisation rights says that TAs should avoid allocating land to people in wildlife corridors, that proper administration and management of human–wildlife conflict should be provided, and that existing protected areas should be strengthened and developed in terms of infrastructure and marketed to attract more visitors. The Mbukushu TA has continued to allocate land in BNP to its people and thus undermined its conservation status. At the same time, the Khwe are not compensated for losses of crops and domestic animals, and the development of tourist infrastructure such as lodges or a Khwe cultural centre from which the Khwe as original inhabitants would benefit is lagging behind, while benefits from tourism mostly go to people outside the park.

Resolution No. 20 concerning residential land within national parks states that such communities should have tourism concessions in the national parks, that the zonation plans of parks should be maintained and should provide for multiple use areas where communities are residing, and that measures that would reduce the extent of protected areas should be discouraged or not considered.⁷⁶ At present,

76 The first two points of the resolution concern farms close to national parks, but BNP is surrounded by communal land, i.e. there are no farms on which residents could be resettled and assisted with development.

tourism facilities in the park are almost non-existent. This disadvantages the Khwe relative to communities living outside the park who do have lodges and can make money from park visitors. First steps in the direction of the achievement of the conservation aim would be to prevent in-migration of additional people and livestock into the park and to put effective means of registration and control in place. While environmental assessment procedures are in place for businesses, and have prevented the development of tourism and visitor infrastructure in the park, an environmental assessment regarding the in-migration of people and cattle is lacking. This will be necessary for ensuring Namibia's conservational aims in BNP, its obligations within the KAZA (Kavango-Zambezi) Transfrontier Conservation Area, and for fulfilling its responsibilities towards current residents.

Resolution No. 37 acknowledges the need to define ancestral lands and identify communities who have lost ancestral lands, and Resolution No. 38 states that instances of ancestral land loss have to be addressed through a number of measures, including by addressing ancestral land claims. It has been shown above that the main part of BNP is Khwe ancestral land. Many Khwe still live on their ancestral land, but they do not have control over it, firstly because it is a national park, and secondly because other people are increasingly moving into the park, thereby violating both the Khwe's ancestral land rights and also the park regulations. The Khwe have embraced the idea of nature conservation as it is in accordance with their traditional livelihoods. They should be allowed to continue living there, to practise their traditional livelihoods, and to develop tourism enterprises in the park for their own benefit.



Entering the park from the east (Photo: Dieckmann et al., 'Scraping the Pot', 2014, p. 365)

In conclusion, the Khwe are a distinct cultural group with a legitimate and long-standing claim to BNP as ancestral land. The gazetting of the park as such imposes limits on Khwe livelihoods and their ability to participate in decisions that affect their lives. This is aggravated by the failure of the GRN to recognise the Khwe as a group with distinct cultural traditions and the Khwe TA as their rightful means of self-determination. It is also aggravated by a great number of injustices in the form of newcomers and outsiders exploiting assets in the park. This state of affairs can only be changed by establishing communal property rights over BNP and recognising the Khwe TA as a legal body for self-determination. Recognising the Khwe's claim to BNP as their ancestral land and providing them authority over land allocation on their ancestral land by recognising their TA, while developing tourism infrastructure and creating job opportunities in the park would satisfy all relevant resolutions, as discussed above. It would restore justice for a thus-far disadvantaged community (Resolution 8); recognise each community's right to an own TA (Resolution 18); ensure wildlife conservation while simultaneously developing economic opportunities for park residents (Resolution 20); and address ancestral land loss (Resolution 37 and Resolution 38).

