



Rethinking the human right to water: Water access and dispossession in Botswana's Central Kalahari Game Reserve



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ARTICLE INFO

Article history:

Received 28 May 2012

Received in revised form 23 June 2013

Available online 24 July 2013

Keywords:

Human right to water

Dispossession

Privatization

San and Bakgalagadi

Botswana

Central Kalahari Game Reserve

ABSTRACT

This paper engages debates regarding the human right to water through an exploration the recent legal battle between San and Bakgalagadi and the government of Botswana regarding access to water in the Central Kalahari Game Reserve. The paper reviews the legal events that led to the realization of the human right to water through a decision of the Court of Appeal of Botswana in 2011 and the discursive context in which these events took place. We offer a contextual evaluation of the processes that allowed the actual realization of the human right to water for the residents of the Central Kalahari Game Reserve, revisiting and extending dominant lines of inquiry related to the human right to water in policy and academic debates. Adding to these discussions, we suggest the use of 'dispossession' as an analytical lens is a useful starting point for a conceptual reframing of the human right to water. Doing so helps to expose some of the problems with the public/private binary, often at the centre of these debates, allowing for greater nuance regarding the potential of the human right to water in different contexts.

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1. Introduction

On April 1, 2010, Survival International, an international advocate for tribal peoples' rights worldwide, published an article entitled "'Pioneering' plan to give Bushmen armbands as tourist lodge opens" (Survival International, 2010). The piece announced that in response to a critique of the "immoral policy" allowing the establishment of tourist lodges with swimming pools in the Central Kalahari Game Reserve (hereafter CKGR), while denying Bushmen access to water, the government of Botswana came up with a plan to provide them with armbands to ensure their safety. The armbands are intended to protect Bushmen "in case they fall in the pool whilst trying to drink it." Tongue-in-cheek and making light of the rather dire situation facing the indigenous peoples of the CKGR, the mock article went on to quote the fictitious and aptly named welfare minister, Letthem Drinkbeer:

This scheme shows that we have the welfare of the Bushmen very much in mind. To those who think for some reason that opening lodges for tourists in the Kalahari while we are banning the Bushmen from accessing their water borehole is

immoral, I say, 'would you prefer your tourists sweaty?'[...] And as [the Bushmen] should have realized by now, it will be much better for them to go back to the relocation camps, where there is no shortage of home-brew and other alcoholic beverages to quench their thirst, rather than persisting in living on their 'ancestral land' in the Kalahari. (Survival International, 2010)

Foregrounding an absurd declaration, the piece provides a satirical commentary on widely contested state interventions that have long denied San and Bakgalagadi¹ people of Botswana the ability to reside on their ancestral lands in the CKGR (Hitchcock et al., 2011; Resnick, 2009; Saugestad, 2006; Solway, 2009; Taylor, 2007). In 2006, after a decade of persistent social struggles and legal battles that followed the forced relocation of the 1990s, San and Bakgalagadi were legally allowed to return to their traditional lands in the CKGR. However, access to water resources in the reserve remained prohibited, which posed an immense burden on their livelihoods. After continued legal struggle, this time in the Court of Appeal, the situation changed in January 2011 when San and Bakgalagadi finally won

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¹ The indigenous peoples of the Central Kalahari Game Reserve have many names, including 'Bushmen' which is considered derogatory (for a complete discussion, see Saugestad, 2001). The population involved in the legal case discussed in this paper is comprised of San groups, including, G/ui (or G/wi) and G//ana, and of Bakgalagadi (Hitchcock et al., 2011). For the purposes of this paper, which focuses specifically on the populations removed from the CKGR and later involved in the court cases at hand, we use 'San and Bakgalagadi' (as used by Hitchcock et al., 2011; Saugestad, 2011; Resnick, 2009), and at times 'indigenous populations of the CKGR'.

their case against the government allowing the appellants to use the borehole at Mothomelo once again,² as well as to drill new boreholes at their own expense (Hitchcock et al., 2011; Botswana Court of Appeal, 2011). This successfully ended a 10-year-long legal struggle over the right to access water in the CKGR and marked a significant triumph for global water justice movements. It also rectified a situation that had granted return to traditional lands, but denied access to water resources used prior to the relocation.

In the policy realm, the increasing interest in the human right to water (hereafter HRW) has gained considerable momentum, particularly coinciding with the United Nations General Assembly's adoption of a resolution recognizing access to clean water and sanitation as a human right on July 28, 2010 (A/RES/64/292 of 28 July 2010). This was further acknowledged by the UN Human Right Council's confirmation that states have a legally binding responsibility to respect, protect and fulfil this right (A/HRC/15/9 of 6 October 2010). This marked a crucial moment in international water governance discourse by signifying a move towards addressing water inequalities, affirming a universal ideal that all people should have access to water, regardless of ability to pay. As such, the adoption of this resolution marked an important milestone in long-standing international water justice initiatives. Considering the growing acceptance of and support for the HRW and in light of existing calls for more context specific and geographically bounded conceptualizations of the HRW (Sultana and Loftus, 2012, p. 9), we offer a review and a discussion of the outcomes of the legal case granting San and Bakgalagadi the right to water in the CKGR. In this paper, we offer an analysis of court documents and mobilize secondary data related to this case to consider and contribute to on-going academic and policy debates regarding the HRW and its strategic potential for marginalized populations. Further, as we detail, the realization of the human right to water in the CKGR has been crucial for indigenous socio-economic struggles and livelihoods, even in the absence of a constitutional provision guaranteeing the HRW at the national scale. Specifically, our analysis proposes a focus on dispossession processes and seeks to not only lend greater nuance to on-going conceptual-theoretical debates oftentimes concerned with questions of public/private provision, but also to offer an alternative way of evaluating and envisioning, the HRW.

The literature around the HRW presents a range of disparate case studies, as well as conceptual-theoretical debates related to the HRW's potential to secure water access for marginal and vulnerable populations. In particular, among critiques of the concept, there is a concern that the HRW is limited as an approach, given that it might be consistent with privatization trends, or given the western- and individual-centric nature of 'rights talk' (Bakker, 2007, 2010a). We review this discussion in more detail in Section 2. We then go on to more fully outline the historical and legal context in which the Botswana case unfolded in order to offer some reflections on how the HRW played out in Section 3. Finally, in Section 4, we draw on our case study to revisit key issues related to the HRW concept and offer some nuance regarding its potential as a strategy to open up spaces of negotiation for indigenous and marginalized populations (see also Miroso and Harris, 2012). While it has been argued that the concept is increasingly used by conflicting agendas and thus risks becoming

an 'empty signifier' (Sultana and Loftus, 2012; Bakker, 2007, 2010a), we argue that the case at hand does not only offer an example of its 'on the ground' success in securing access to water, but also of how the HRW proved a useful strategy to advance the struggle of San in maintaining traditional livelihoods and access to traditional lands threatened by developmentalist and conservationist policy agendas. We further engage with discussions around the underlying processes that deprived San and Bakgalagadi of their access to water as well as the factors that contributed to the realization of the HRW in this context to argue for a reframing of the concept. Specifically, we propose one possible avenue for enriched discussions through a focus on 'dispossession' processes.

2. The human right to water debates

The HRW has gained significant currency among scholars and policy-makers internationally, particularly among local and global water justice movements (Sultana and Loftus, 2012; Miroso and Harris, 2012). The HRW was recognized in 2002 by the UN Committee on Economic, Social and Cultural Rights on the basis that it is required for leading a healthy and dignified life and therefore a prerequisite for other rights, such as the right to life and health (Anand, 2007; Brooks, 2007; Cahill, 2005; McCaffrey, 1993). The right to water later gained official international legal recognition as a human right in the UN General Assembly and the UN Human Rights Council in 2010 – an event that arguably marked a significant victory for the global water justice movements who had been fighting for its acceptance at earlier international policy fora (Sultana and Loftus, 2012).

Discussions around the HRW as a concept and a policy mechanism are particularly concerned with its limitations and several scholars have addressed the many challenges facing the concept (see Sultana and Loftus, 2012 for a recent edited collection on the HRW, as well as Miroso and Harris, 2012; Bakker, 2007, 2010a; Parmar, 2008; Anand, 2007; Mehta, 2006). Some of the critiques suggest that the HRW is western-centric insofar as it has western origins, and draws on ideas of neutrality, universality, and sense of justice and equity (Miroso and Harris, 2012; Parmar, 2008; Bakker, 2007, 2010a). The HRW has also been criticized for being inherently individualizing (Sultana and Loftus, 2012) and presenting little concern for context specificity (Miroso and Harris, 2012; Bakker, 2007). In addition, it is claimed that it is anthropocentric in its focus, privileging the needs of human populations over the needs of other organisms or the ecosystem as a whole (Bakker, 2010a; see Brooks, 2007, for a discussion on the need to extend the definition of the HRW to include the right of water to support ecosystems). Critiques maintain that, as with other human rights, the concept is state-centric given that it depends on states for its adoption and implementation (McCaffrey, 1993). Others have suggested that adopting the HRW is only a formal provision, a change on paper, oftentimes facing significant problems of implementation and enforcement (Miroso and Harris, 2012; Bakker, 2007, 2010a; Anand, 2007; Mehta, 2006).

Bakker (2007, 2010a), in a critique that has gained much traction, contends that the HRW discourse has been largely conflated with commons/commodity or public/private debates in which water justice activists engage the language of HRW in an attempt to resist privatization – a strategy that she suggests fundamentally undermines or limits its potential as a social justice strategy (see also Sultana and Loftus, 2012). She concludes that the concept is intrinsically flawed and ill guided to resist current shifts towards neoliberal water governance as

Pursuing a 'human right to water' as an anti-privatization campaign makes three strategic errors: conflating human rights and

² As we detail in Section 2, there are a number of boreholes in the CKGR, including prospecting boreholes drilled by mining companies, most of which are under government control. However, the borehole at Mothomelo is particularly important in this case since it was included in the appellants' legal claims, which sought to "recommission, at their own expense, a borehole at Mothomelo in the Central Kahlari Game Reserve, and to sink other wells or boreholes in order to access water for domestic purposes, in accordance with s. 6 of the Water Act Cap 34:01" (Court of Appeal of Botswana, 2011).

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