

Unity, diversity or separation? The Bakgatla-ba-Kgafela in the borderlands of Southern Africa

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Introduction

Traditional institutions are still relevant actors in Southern Africa, offering support, basic services and ethnic identity to traditional communities. These institutions have been integrated into the legal and institutional pluralism in the democratic dispensation. Their persistence and resurgence as well as their changing role in the postcolonial period consequently challenge the state and traditional communities in various contexts – reaching from the local to the national level and even straddling existing borders.¹ This particularly affects chiefdoms that are spread across international or regional borders due to migration and changing boundaries in the nineteenth and twentieth century.²

The Bakgatla-ba-Kgafela³ are located in Botswana and South Africa and have experienced divergent development caused by changing legal frameworks and ways of institutional integration and internal dynamics affecting either one or both parts of the chiefdom. Migration and resettlement of parts of the tribe in 1871 have led to challenging periods of co-operation, cohesion and conflict in their cross-border relations.

This article will illustrate the respective legal and institutional frameworks in Botswana and South Africa since colonialism. Taking the example of the Bakgatla-ba-Kgafela, it will be shown which obstacles and potential benefits they opened for traditional communities in a cross-border context and how the chiefdom has dealt with them. The analysis will include the external factors and internal dynamics

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1. See P. Englebert, "Back to the Future? Resurgent Indigenous Structures and the Reconfiguration of Power in Africa", in O. Vaughan (ed.), *Tradition and Politics: Indigenous Political Structures and Governance in Africa* (Africa World Press, Ibadan, Nigeria, 2003), pp 33–60.
2. An exemplary chiefdom which has experienced a divided history across the border of Botswana and South Africa are the Barolong-boo-Ratshidi. Until the Union of South Africa was formed in 1910, they were under the rule of the governments of the Cape Colony, Bechuanaland Protectorate, the Transvaal Republic and the Orange River Colony. In 1970, the tribal entity was divided and the independent chiefdom of the Barolong was formed in Botswana. See J.L. Comaroff and S.A. Roberts, *Rules and Processes: The Cultural Logic of Dispute in an African Context* (University of Chicago Press, Chicago and London, 1981), pp 22–23; Z.K. Matthews, "A Short History of the Tshidi Barolong", *Fort Hare Papers*, 1, 1, June 1945, pp 9–28. For further examples of ethnic relations across international borders, see A.I. Asiwaju (ed.), *Partitioned Africans: Ethnic Relations across Africa's International Boundaries 1884–1994* (C. Hurst & Company, London, 1985); I. Griffiths, "The Scramble for Africa: Inherited Political Boundaries", *The Geographical Journal*, 152, 2, 1986, pp 204–216; C. Keulder, *Traditional Leaders and Local Government in Africa: Lessons for South Africa* (Human Sciences Research Council of South Africa, Pretoria, 1998).
3. The Bakgatla-ba-Kgafela are one of five branches of Bakgatla in Botswana and South Africa and the only chiefdom straddling the border between the two countries. The other branches are the Bakgatla-ba-Mmanaana, the Bakgatla-ba-Mmakau, the Bakgatla-ba-Mosetlha, and the Bakgatla-ba-Motsha. In this text, any shortened reference to the Bakgatla refers to the Bakgatla-ba-Kgafela.

determining and shaping both parts of the chiefdom and will be concluded by an outlook on the future scenario the Bakgatla-ba-Kgafela will potentially face after more than 140 years of cross-border relations – either as a united chiefdom, as two diverse traditional communities under one common tribal umbrella, or as independent chiefdoms finally giving in to the obstacles and challenging cross-border division.

The impact of colonialism on traditional institutions and communities

Colonialism has affected the previously independent chiefdoms by introducing new forms of governance and jurisdiction and by establishing a pluralistic institutional and legal order.⁴ In South Africa, a period of Dutch colonialism was superseded by British dominance from 1806 onwards. In Botswana, external influence came primarily from Boer and British territorial expansion in the nineteenth century.⁵ In 1885, the Bechuanaland Protectorate was established and became a High Commission Territory⁶ in 1891. The territories south of the Molopo River bordering the Transvaal became the Crown Colony of British Bechuanaland.⁷ The role of traditional institutions in South Africa has been shaped by the colonial model of indirect rule due to Britain's prevalent interest in the country, whereas their counterparts in the Protectorate enjoyed much more freedom of action under parallel rule till the 1930s.⁸

A basic form of administration was set up in 1891 and the limits of the Protectorate's jurisdiction were defined. Traditional institutions of the main Tswana chiefdoms were the highest organs representing African interests while the resident commissioner acted as the direct link to the British high commissioner.⁹ Traditional institutions became the administrators of the local communities in the newly created tribal reserves.¹⁰ In 1934, their powers and independence were severely curtailed when the high commissioner was empowered to appoint,

4. See J.A. Aguda, "Legal Development in Botswana from 1885 to 1966", *Botswana Notes and Records*, 5, 1973, pp 52–63; J. Lewin, "The Recognition of Native Law and Custom in British Africa", *Journal of Comparative Legislation and International Law*, 20, Third Series, 1, 1938, pp 16–23.
5. See H. Zins, "The International Context of the Creation of the Bechuanaland Protectorate in 1885", *PULA: Journal of African Studies*, 11, 1, 1997, pp 54–62.
6. See Foreign Jurisdiction Act of 1890; Order in Council of 9 May 1891.
7. See Proclamation No.1 of 30 September 1885; C. Dundas and H. Ashton, *Problem Territories of Southern Africa. Basutoland, Bechuanaland Protectorate, Swaziland* (South African Institute of International Affairs, Cape Town, 1952), pp 21–24; K.O. Hall, "British Bechuanaland: The Price of Protection", *The International Journal of African Historical Studies*, 6, 2, 1973, pp 183–197; P. Maylam, *Rhodes, the Tswana, and the British: Colonialism, Collaboration, and Conflict in the Bechuanaland Protectorate, 1885–1899* (Praeger, Westport: CT, 1980), pp 11–48; K. Shillington, *The Colonisation of the Southern Tswana, 1870–1900* (Ravan Press, Braamfontein, 1985).
8. As Lord Hailey has stated, the policy of the early Bechuanaland Protectorate's government towards chiefs has been the allowance of a "maximum of internal independence". See L. Hailey, *Native Administration in the British African Territories, Part V, The High Commission Territories: Basutoland, the Bechuanaland Protectorate and Swaziland* (Her Majesty's Stationary Office, London, 1953), p 195. See also Dundas and Ashton, *Problem Territories of Southern Africa*, pp 49–54; J.C. Myers, *Indirect Rule in South Africa: Tradition, Modernity, and the Costuming of Political Power* (University of Rochester Press, Rochester, 2008), pp 1–22.
9. See O. Vaughan, *Chiefs, Power, and Social Change: Chiefship and Modern Politics in Botswana, 1880s–1990s* (Africa World Press, Trenton, 2003), pp 27–29.
10. See Proclamation 9 of 29 March 1899. The tribal reserves encompassed the Ngwato, Kwena, Ngwaketse, Tawana and Bakgatla Reserves. See Hailey, *Native Administration in the British African Territories*, pp 197–201, 205–206.

recognise, suspend or remove them. They were placed under the authority of the resident commissioner, had to follow his instructions and were obliged to conduct certain prescribed duties.¹¹

The foundations for independence of the Protectorate were laid down in the early 1960s.¹² Simultaneously, a reformed local government system, based on district councils, was introduced.¹³ After the first national elections in 1965 and the granting of internal self-government, Botswana eventually gained independence in 1966.¹⁴

The Union of South Africa was formed in 1910, after the South Africa Act of 1909 was passed by the British parliament. The Union comprised the provinces of the Cape, Natal, Orange Free State and Transvaal.¹⁵ The Union's legislation attempted to establish uniform administration of African affairs and to limit the powers of the chiefs by controlling them and by vesting authority in the governor-general and the headmen of the chiefdoms.¹⁶ The Native Administration Act laid down the general principles upon which the African population was to be governed.¹⁷ The governor-general became the "supreme chief" in Transvaal, Natal and Orange Free State and was empowered to create and divide African tribes and to appoint any person as a chief or headman.¹⁸ Accordingly, the original system of internal control of traditional institutions was set aside. The Act provided for a separate governance and legal system, subjecting Africans in the provinces to the executive.¹⁹

In 1961, the country became the Republic of South Africa.²⁰ In the apartheid era, traditional institutions could exert enormous power and authority, but they were, at the same time, under the control of the republican government; it strictly limited non-compliance and opposition.²¹ The Promotion of Black Self-Government

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11. See Sections 7, 8, 10 and 17 of the Native Administration Proclamation No. 97 of 1934. This Proclamation marked the transition from parallel to indirect rule. From 1957 onwards, a form of direct rule was implemented in the Protectorate. See K.C. Sharma, "Traditional Leadership and Rural Local Government in Botswana", in D.I. Ray and P.S. Reddy (eds), *Grassroots Governance? Chiefs in Africa and the Afro-Caribbean* (University of Calgary Press, Calgary, 2003), p 252.
 12. See Order in Council No. 134 of 1965, replacing the Protectorate (Constitution) Order in Council of 1961.
 13. See J.E.S. Griffiths, "A Note on Local Government in Botswana", *Botswana Notes and Records*, 2, 1970, pp 64–70.
 14. See F.S. Khunou, "Traditional Leadership: Some Reflections on Morphology of Constitutionalism and Politics of Democracy in Botswana", *International Journal of Humanities and Social Science*, 1, 14, 2011, pp 86–87.
 15. The Orange Free State and the Transvaal, the former South African Republic (ZAR), were Boer republics annexed by the British after the South African War.
 16. According to section 147 of the Act, traditional institutions and communities fell under the authority of the governor-general. See also L. Bank and R. Southall, "Traditional Leaders in South Africa's New Democracy", *Journal of Legal Pluralism*, 37/38, 1996, pp 410–412.
 17. Act, No. 38 of 1927, later renamed the Black Administration Act.
 18. See Sections 1, 2(7), (8) and 5 of the Native Administration Act.
 19. With the Natives Land Act of 1913, the boundaries of the African reserves in the provinces of the Union were defined by national law. See H.M. Feinberg, "The 1913 Natives Land Act in South Africa: Politics, Race, and Segregation in the Early 20th Century", *The International Journal of African Historical Studies*, 26, 1, 1993, pp 65–70.
 20. See Republic of South Africa Constitution Act, No. 32 of 1961.
 21. See C. Murray, *South Africa's Troubled Royalty: Traditional Leaders after Democracy, Law and Policy*, Paper No. 23 (Federation Press in association with the Centre for International and Public Law, Faculty of Law, Australian National University, Annandale, NSW, 2004) [http://www.publiclaw.uct.ac.za/usr/public_law/staff/Troubled%20Royalty%]

Act²² and the Black Authorities Act²³ determined segregation of black people and set up three tiers of administration based on the traditional institutions in those areas.²⁴ Subsequent legislation provided for self-government and independence of these so-called “homelands”, which were dissolved in 1994 and re-incorporated when apartheid ended.²⁵

Legal and institutional pluralism and traditional institutions

Constitutionally, Botswana and South Africa recognise and formally integrate traditional leadership. However, in Botswana, traditional institutions have been widely marginalised since the 1960s.²⁶ Evolving nationalism, the role of Botswana’s first president and paramount chief of the Bamangwato, Seretse Khama, and the ongoing threat of a potential incorporation into South Africa have facilitated democratic change.²⁷ In South Africa, a contrasting, partly controversial development has taken place with a resilience and even resurgence of traditional institutions.²⁸

In Botswana, legislation has established complete supremacy of the national government over traditional institutions which is reflected in the authority of the Minister of Local Government to recognise, appoint, suspend or depose them as he sees fit.²⁹ Tribal administration is one of the pillars of the local government system in the sixteen administrative districts, operating alongside the district administration, district councils and land boards.³⁰ Most of the former

20LPP%20No%2023%20Murray.pdf> 17 June 2011], pp 3–5; I. van Kessel and B. Oomen, “One Chief, One Vote: The Revival of Traditional Authorities in Post-Apartheid South Africa”, *African Affairs*, 96, 1997, pp 563–564.

22. Promotion of Bantu Self-Government Act, No. 46 of 1959.

23. Black Authorities Act, No. 68 of 1951.

24. See Section 2 of the Black Authorities Act. Section 3(3) of the Act provided for the composition of the organs along the administrative hierarchy.

25. Self-Governing Territories Constitution Act, No. 21 of 1971. See F.S. Khunou, “Traditional Leadership and Independent Bantustans of South Africa: Some Milestones of Transformative Constitutionalism beyond Apartheid”, *PER* 12, 4, 2009, pp 81–125; F.S. Khunou, “Traditional Leadership and Self-governing Bantustans of South Africa: Through the Eye of the Needle of Constitutional Democracy”, *International Journal of Business and Social Science*, 2, 18, 2011, pp 237–252.

26. See Griffiths, “A Note on Local Government in Botswana”, pp 64–70; D.S. Jones, “Traditional Authority and State Administration in Botswana”, *The Journal of Modern African Studies*, 21, 1, 1983, pp 133–136.

27. See Section 151 of the South Africa Union Act of 1909 which contained provisions for a possible future transfer of the High Commission Territories to the Union. See M. Lange, “Developmental Crises: A Comparative-Historical Analysis of State-Building in Colonial Botswana and Malaysia”, *Commonwealth and Comparative Politics*, 47, 1, 2009, pp 9–15; Vaughan (ed.), *Tradition and Politics*, pp 59–96.

28. See N. Oliver, “The South African Constitutional Policy and Statutory Framework for Traditional Leadership and Institutions”, in M.O. Hinz and F.T. Gatter (eds), *Global Responsibility, Local Agenda. The Legitimacy of Modern Self-Determination and African Traditional Authority* (LIT Verlag, Berlin, 2006), pp 213–238; B. Oomen, *Chiefs in South Africa: Law, Power and Culture in the Post-Apartheid Era* (James Currey Publishers, Oxford and Pietermaritzburg, 2005), pp 87–115; J.M. Williams, *Chieftaincy, the State, and Democracy: Political Legitimacy in Post-Apartheid South Africa* (Indiana University Press, Bloomington, 2010), pp 84–97.

29. Sections 5, 13, 15 and 16 of the Bogosi Act. Additionally, Section 23 limits the tenure of office of a traditional leader in Botswana. Also see Jones, “Traditional Authority and State Administration in Botswana”, pp 134–136.

30. K.C. Sharma, “Role of Local Government in Botswana for Effective Service Delivery: Challenges, Prospects and Lessons”, *Commonwealth Journal of Local Governance*, 6, 2010, pp 135–136.

powers and duties of traditional institutions have been transferred to the other institutions of the local government system. They mainly perform ceremonial, judicial and administrative tasks within the traditional community and function as mediating and consultative bodies at local and national level.³¹

Traditional institutions lost formal control over land and resource allocation when their previous authority was transferred to and vested in the land boards, and tribal mineral rights were transferred to the state.³² They are consequently suffering from an acute lack of an independent resource basis because they only receive a salary as civil servants³³ and are granted an annual budget from the government for tribal administration.³⁴ The actual powers of traditional institutions derive from the prominent role that customary law and customary courts play.³⁵ The majority of civil cases and a significant number of criminal cases are still dealt with by traditional institutions.³⁶

South Africa has adopted a federal system of government with nine provinces and metropolitan, district and local municipalities.³⁷ Most of the formal duties of traditional leaders are directed towards fostering and promoting development and service delivery in the African communities and they work in co-operation with and support of local government.³⁸ Depending on the hierarchy level, traditional leaders have to be recognised either by the president of the country or by the premier of the relevant province. Their removal has to be initiated by the royal family and formalised by the president or the premier.³⁹ A Commission on Traditional Leadership Disputes and Claims and provincial committees have been established for the investigation of disputed leadership positions; recognition of the boundaries of the traditional communities; and for the establishment, dis-establishment, division or merging of tribes.⁴⁰

Legislation on the role of traditional institutions in land management and jurisdiction has proved controversial because South Africa's Communal Land

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31. See Section 17 of the Bogosi Act. Also see S. Düsing, *Traditional Leadership and Democratisation in Southern Africa. A Comparative Study. Botswana, Namibia, and South Africa* (LIT Verlag, Hamburg, 2002), pp 171–173, 177–186.
 32. See Sections 3, 13 and 19 of Tribal Land Act, No. 54 of 1968; Mineral Rights in Tribal Territories Act, No. 31 of 1967; Section 3 of the Mines and Minerals Act, No. 17 of 1999.
 33. See Section 2 of the Bogosi (Prescribed Rate of Salary) Order of 1966.
 34. Interview conducted with a male representative of the tribal administration of the Ministry of Local Government in Gaborone on 25 June 2013. The tribal administrations of the individual chiefdoms have to submit their estimated budgetary needs and requests annually to the Ministry of Local Government.
 35. See Customary Courts Act and Customary Law Act.
 36. Interview conducted with a male representative of the tribal administration of the Ministry of Local Government in Gaborone on 25 June 2013. Customary courts in Botswana do not fall under the Administration of Justice but are overviewed and controlled by the tribal administration.
 37. See Local Government: Municipal Structures Act, No. 117 of 1998.
 38. Functions inherent to traditional leadership are the administration of "affairs of the traditional community in accordance with customs and tradition" and the performance of "functions conferred by customary law, customs and statutory law consistent with the Constitution". See Section 4(1)(a) and (l) of the Traditional Leadership and Governance Framework Act, No. 41 of 2003.
 39. See Sections 8–12 of the Framework Act; Sections 13, 14, 19, 20 of the North West Traditional Leadership and Governance Act of 2005.
 40. See Sections 21–26A of the Framework Act.

Rights Act of 2004 (CLaRA),⁴¹ was suspended in 2010 and the proposed Traditional Courts Bill,⁴² introduced to regulate customary courts which still fall under Sections 12 and 20 of the Black Administration Act, lapsed in 2014.⁴³

Another important part of the legislative framework refers to land tenure and mineral resources. According to the Mineral and Petroleum Resources Development Act, the state is the custodian of South Africa's petroleum and mineral resources.⁴⁴ Two aims of this Act – the participation and beneficiation of historically disadvantaged persons and the development of the mining areas – are of major importance to traditional communities.⁴⁵ Additionally, the Act provides communities with a preferent right to apply for a prospecting or mining right for any land which is registered or to be registered in the name of the community concerned, on condition that the mining project contributes to the development and benefit of the respective community.⁴⁶

As this overview shows, legislation in Botswana tends to marginalise and control traditional institutions; while in South Africa traditional communities have been empowered. Consequently, traditional communities that straddle the borders of these two countries may well face challenges or gain potential advantages in this cross-border context.

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41. CLaRA would have, *inter alia*, vested the control over the occupation, use and administration of communal land in traditional councils and undermined tenure security of the rural population. See Claassens and Cousins on the problematic communal land tenure reform in post-apartheid South Africa. A. Claassens and B. Cousins (eds), *Land, Power and Custom: Controversies Generated by South Africa's Communal Land Rights Act* (UCT Press, Cape Town, 2008). Due to the suspension of CLaRA, communal land tenure is still regulated by the Interim Protection of Informal Land Rights Act, No. 31 of 1996 and Section 7 of the Land Affairs General Amendment Act, No. 61 of 1998.
 42. Traditional Courts Bill (B1-2012), replacing the Traditional Courts Bill (B15-2008) of 2008. The Repeal of the Black Administration Act and Amendment of Certain Laws Act, No. 28 of 2005 excluded Sections 12 and 20. Since then, the application of these provisions had been extended annually until a final date was removed by the Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act, No. 28 of 2012. See Thihe and Buthelezi on the problematic impact of the proposed Bill. T. Thihe and M. Buthelezi, "Discourse and Debate: Democracy in Action: The Demise of the Traditional Courts Bill and its Implications", *South African Journal on Human Rights*, 30, 1, 2014, pp 196–205.
 43. See Traditional Courts Bill (B1-2012) Negotiation Mandates of the Provincial Legislatures [http://www.lrg.uct.ac.za/usrlrg/docs/TCB/2013/TCB_NegotiatingMandates_04022014.pdf > 10 June 2014].
 44. Section 3(1) of the Mineral and Petroleum Resources Development Act, No. 28 of 2002, amended by the Mineral and Petroleum Resources Development Amendment Act, No. 49 of 2008.
 45. See Section 2 of the Act. The aims listed in the Mineral and Petroleum Resources Development Act are supported by a Charter which provides the framework and sets concrete targets. See Section 100(2)(a) of the Act. The Broad Based Socio Economic Empowerment Charter for the South African Mining Industry was published in 2002 and amended in 2010 (Government Notice No. 838). Major targets listed in the Charter were: ownership in mining companies and employment opportunities for historically disadvantaged persons; contribution to community development; a certain quota of local procurement and facilitation of local beneficiation of mineral commodities. See Sections 2.1, 2.2, 2.3, 2.4 and 2.6 of the Charter.
 46. See Section 104(1) and (2) of the Act.

The Bakgatla-ba-Kgafela

The Bakgatla-ba-Kgafela are located in the Kgatleng district in Botswana and in the Bojanala Platinum District in South Africa.⁴⁷ They originate from the north western Pilanesberg area of the former Transvaal.⁴⁸ In 1869, *Kgosi Kgamanyane*⁴⁹ refused to provide men from his chiefdom for a dam project initiated by the then commandant-general Paul Kruger and this dispute escalated into the public flogging of *Kgosi Kgamanyane* and led to the flight of some members of the chiefdom to contemporary Botswana.⁵⁰ They resettled in the territory of the Bakwena in 1871, which caused a long-lasting conflict between both tribes.⁵¹

Kgosi Kgamanyane's successor, *Kgosi Linchwe I*, tried to restore and strengthen relations and his authority over the Bakgatla-ba-Kgafela resident in the Transvaal.⁵² This involved, inter alia, joining the British side in the South African War and fighting against the Boers. In addition to motives connected with tribal unity, Linchwe also intended to increase economic and political control in the Transvaal.⁵³ He tried to gain official recognition as leader of both tribal entities but his request was denied and he had to appoint a regent in Moruleng, a constellation which is still valid today.⁵⁴

During the apartheid era in South Africa, the Bakgatla-ba-Kgafela became part of the homeland of Bophuthatswana and were ruled by *Kgosi Tidimane Pilane*. In Botswana, Linchwe II was paramount chief from 1963 to 2007.⁵⁵ Since *Kgosi Tidimane's* resignation in 1993, *Kgosi Nyalala Pilane* has been the South African regent. *Kgosi Kgafela II*, the first son of *Kgosi Linchwe II*, was installed in 2008 after his father's death in 2007. His persistent opposition to the provisions of chieftainship in Botswana and his subjection to the authority of the Ministry of Local Government have led to on-going disputes. The situation was further aggravated when Kgafela and other members of the tribal leadership were

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47. The tribal headquarters are in Mochudi and Moruleng.
 48. See R.F. Morton, "Chiefs and Ethnic Unity in Two Colonial Worlds. The Bakgatla Baga Kgafela of the Bechuanaland Protectorate and the Transvaal, 1972–1966", in Asiawaju (ed.), *Partitioned Africans*, pp 128–130; I. Schapera, *A History of Bakgatla-bagaKgafela* (Phuthadikobo Museum, Mochudi, 1980), pp.7–9.
 49. Paramount Chief of the Bakgatla-ba-Kgafela.
 50. See B.K. Mbenga, "Forced Labour in the Pilanesberg: The Flogging of Chief Kgamanyane by Commandant Paul Kruger, Saulspoor, April 1870", *Journal of Southern African Studies*, 23, 1, 1997, pp 127–140; R.F. Morton, *When Rustling Became An Art: Pilane's Kgatla and the Transvaal Frontier 1820–1902* (New Africa Books, Cape Town, 2009), pp 77–81.
 51. See Schapera, *A History of Bakgatla-bagaKgafela*, pp 10–13.
 52. As Morton has pointed out, it was the early colonial policy in the Protectorate and the Transvaal which facilitated internal forms of cross-border governance concerning the leadership over the Bakgatla-ba-Kgafela. See Morton, "Chiefs and Ethnic Unity in two Colonial Worlds", pp 127–154, pp 132–137. See also R.F. Morton, "Linchwe I and the Kgatla Campaign in the South African War, 1899–1902", *The Journal of African History*, 26, 2, 1985, pp 171–172.
 53. For an overview of the motives and the role of the Kgatla in the South African War, see Morton, "Linchwe I and the Kgatla Campaign in the South African War", pp 169–191.
 54. Interview conducted with a royal family member and male representative of the tribal administration in Mochudi on 27 June 2013.
 55. From 1969 to 1972, *Kgosi Linchwe II* served as Botswana ambassador to the US. From 1991 to 2007, he was the president of the Customary Court of Appeal in Gaborone. During his absence, *Kgosi Mmusi Kgafela Pilane* acted as his regent from 1969 to 1972 and from 1991 to 1999. From 1999 to 2007, *Kgosi Mothibe Linchwe* took over the regency. See J. Ramsay, "Kgosi Mmusi aKgafela aLinchwe aPilane (1914–2006)", *Sunday Standard*, 15 June 2006.

involved in illegal public floggings of community members. In 2011, the tense situation escalated, with Kgafela facing criminal charges for the flogging and his official de-recognition as paramount chief. In the following year, he left Botswana and re-located to the South African headquarters in Moruleng.⁵⁶

Cohesion, co-operation and a challenging relationship⁵⁷

The first years of the international context of colonisation in Botswana and South Africa aggravated tribal division of the Bakgatla-ba-Kgafela because confusion arose on the character of the chiefdom. Were they subject to the Transvaal authorities, the Bakwena in Kgatleng, or an independent chiefdom? With the final demarcation and definition of the boundaries between the Bakgatla and Bakwena territory in 1896 and 1899, not only was the dispute between these tribes settled but the Bakgatla-ba-Kgafela were recognised as an independent chiefdom in the Protectorate and in the Transvaal.⁵⁸

By purchasing farms in the Transvaal, there were increased cattle holdings on both sides of the border, offering refuge to migrating Bakgatla and other tribal groups. In addition to the engagement in the South African War, *Kgosi* Linchwe managed to restore and uphold cohesion.⁵⁹ His attempts to extend the territory by including land previously belonging to the Bakgatla and to receive official recognition as chief in the Transvaal in 1902 were denied because he had not been under the control of the Transvaal colonial administration. Instead, he appointed his brother Ramono as deputy who was officially recognised as chief in Moruleng with Linchwe being the actual leader of the whole chiefdom.⁶⁰ To further deepen the relations, Ramono was joined by a family of each of the five main Bakgatla sections into which Mochudi was divided⁶¹ and headmen descending from the same paternal line were responsible for the administration of the respective sections.⁶²

Tribal unity was also challenged by internal strife and a new pass law implemented by the Transvaal Native Affairs Department not only requiring Africans to carry passes but also limiting cross-border visits of the Bakgatla-ba-Kgafela in Moruleng.⁶³ Internal conflicts arose on succession and leadership of the chiefdom on both sides of the border. Occasional attempts to install an independent chief in the Transvaal were obstructed by Linchwe.⁶⁴ In the

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56. See L. Maleke, "Kgafela Re-locating to South Africa", *The Monitor*, 13, 11, 19 March 2012.
57. Between April and September, field research was conducted in the Bakgatla territory in the Kgatleng District in Botswana and in the Moses Kotane Local Municipality in South Africa. In the course of the research, representatives of traditional communities, tribal leadership and local government institutions were interviewed. Parts of the arguments in this and the subsequent section are based on the information gathered and data retrieved during this research.
58. C.J. Makgala, *History of the Bakgatla-baga-Kgafela in Botswana & South Africa* (Crick, Pretoria, 2009), pp 102–121; Schapera, *A History of Bakgatla-bagaKgafêla*, pp 11–15.
59. Morton, "Chiefs and Ethnic Unity in two Colonial Worlds", pp 132–134.
60. Schapera, *A History of Bakgatla-bagaKgafêla*, pp 20–21.
61. Wards (*dikgoro*) of the Bakgatla-ba-Kgafela in Kgatleng are Kgosing, Morema, Mabudisa, Tshukudu and Manamakgote.
62. Morton, "Chiefs and Ethnic Unity in two Colonial Worlds", p 141.
63. See Makgala, *History of the Bakgatla-baga-Kgafela in Botswana and South Africa*, p 167.
64. Makgala gives the example of Moselikatse and his son Mokae. The strife for an independent chiefdom in Moruleng occurred in the period between *Kgosi* Kgamanyane's relocation and the appointment of *Kgosi* Ramono's successor in 1917. See Makgala, *History of the Bakgatla-baga-Kgafela in Botswana and South Africa*, pp 169 and 227–228.

Protectorate, the Bakgatla leadership was engaged in permanent quarrels after Linchwe's death caused mainly as a result of poor leadership on the part of Molefi and the continued interference of Isang, the acting regent from 1920 to 1929.⁶⁵

From 1934 onwards, traditional leaders became part of the local administration and lost their sole accountability to their communities. In the Transvaal, the Bakgatla regent was subjected to the authority of the governor-general in his role as "supreme chief". In this changing political environment, the ongoing feuds between Isang and Molefi in Mochudi weakened their ties with the Bakgatla in Moruleng.⁶⁶

Under *Kgosi* Linchwe II, stable leadership in Mochudi was restored. Nevertheless, the chiefdom faced major challenges on the matter of independence. The role of traditional institutions was transformed because the members of the traditional community were able to participate actively in political processes. At the same time, the Bakgatla-ba-Kgafela in Moruleng suffered under apartheid and the former cohesion and unity of the tribe was only upheld by family ties and Mochudi's seniority. The chiefdom faced another challenge when Linchwe II lost most of his previous authority and Tidimane was empowered as traditional leader in Bophuthatswana.⁶⁷ Consequently, traditional institutions and communities in both parts of the chiefdoms were more engaged in adapting to the new dynamics; consolidating their position; and fulfilling the roles assigned to them by the legislative framework; than to fostering tribal cohesion.

Kgosi Linchwe II put emphasis on the cultural and ceremonial role of traditional institutions and the reintroduction of certain traditions that had been abandoned in most Tswana chiefdoms during Christianisation. In 1975, he revived the initiation schools which had previously been a cultural practice to enhance unity and ethnic identity of the Kgatleng Bakgatla.⁶⁸ Additionally, he implemented various projects aimed at local development, improvement of infrastructure, community welfare and preservation of culture. Among other projects, the Phuthadikobo Museum was built in Mochudi in 1971. A similar museum, the Mphetho Museum, was opened in Moruleng in 1998.⁶⁹

65. See Schapera, *A History of Bakgatla-bagaKgafela*, pp 22–27.

66. See R.F. Morton, "The Politics of Cultural Conservatism in Colonial Botswana: Queen Seinwaeng's Zionist Campaign in the Bakgatla Reserve, 1937–1947", *Pula: Botswana Journal of African Studies*, 12, 1/2, 1998, pp 22–43.

67. *Kgosi* Tidimane Pilane had been chairman of the Tswana Territorial Authority from 1961 onwards. See J. Butler, R.I. Rotberg and J. Adams, *The Black Homelands of South Africa. The Political and Economic Development of Bophuthatswana and KwaZulu* (University of California Press, Berkeley, Los Angeles and London, 1977), p 52.

68. See Ø. Gulbrandsen, *The State and the Social: State Formation in Botswana and Its Precolonial and Colonial Genealogies* (Berghahn Books, New York and Oxford, 2013), pp 148–150. For a more detailed elaboration on the former Bakgatla-ba-Kgafela initiation schools, see M.N. Mosothwane, "An Ethnographic Study of Initiation Schools among the Bakgatla ba ga Kgafela in Mochudi (1874–1988)", *PULA: Botswana Journal of African Studies*, 15, 1, 2001, pp 144–165; and Makgala, *History of the Bakgatla-baga-Kgafela in Botswana and South Africa*, pp 305–307.

69. Both Bakgatla museums serve a variety of purposes, including community education and information; revival and promotion of customs and traditions; research; organisation of ceremonies and events; editing of publications; and organisation of archival records. See J. Ramsay, "Kgosi-e-kgolo Linchwe II (1935–2007)", *Sunday Standard*, 26 August 2007 [http://www.sundaystandard.info/print_article.php?NewsID=1943] 4 May 2014]; Makgala, *History of the Bakgatla-baga-Kgafela in Botswana and South Africa*, pp 312–313, 337–338; S. Grant, "The Phuthadikobo Museum: A Record of Involvement and Achievement, 1976–2006", in *Botswana Notes and Records*, 38, 2006, pp 60–73.

During apartheid, *Kgosi* Linchwe II had supported the liberation struggle and had been part of the underground machinery of the African National Congress (ANC). Without acknowledgement of the homeland government, the Bakgatla secretly kept and distributed weapons that enabled ANC military action in South Africa.⁷⁰ *Kgosi* Tidimane, also a critic of the homeland policy and rival of Bophuthatswana's President Lucas Mangope, became the founder and leader of the Seoposengwe (Unity) Party, the main opposition party in parliament in 1972.⁷¹ His commitment to Bakgatla unity was limited by two factors: As party leader he had to appeal to a broader constituency. Secondly, his powerful but fragile position as traditional leader made him accountable to the apartheid government and open alignment with the Bakgatla-ba-Kgafela in Kgatlang would have led to his removal from tribal office.

Cross-border relations in this period declined and *Kgosi* Linchwe's authority ceased with *Kgosi* Tidimane establishing quasi-independent rule. *Kgosi* Linchwe II remained the formal head of the chieftom but he lost his former prerogative to instruct and control his regent in South Africa and was excluded from interfering in the internal affairs in Moruleng.⁷² The rift escalated in 1993 when *Kgosi* Tidimane had to retire due to his advanced age and was at first temporarily replaced by *Kgosi* Nyalala Pilane. Tidimane strongly opposed *Kgosi* Pilane's appointment because he favoured a split-up of the tribe and the establishment of an independent Bakgatla chieftom in Moruleng under the leadership of his son. The subsequent court case was decided in the Supreme Court in Mafikeng and confirmed by President Nelson Mandela.⁷³ The official recognition of *Kgosi* Nyalala Pilane in 1996 was also evidence of *Kgosi* Linchwe's continued authority over Moruleng.⁷⁴

A strict business orientation, strategic investments and negotiations from the beginning of the 1990s onwards enabled the tribal leadership in Moruleng to receive royalties from mining and to enter into joint ventures and acquire shares in

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70. Interview conducted with a member of the royal family and senior representative of the tribal administration in Mochudi on 27 June 2013. Also see M. Gaotlhogwe, "Linchwe Held ANC Weapons", *The Monitor*, 13, 18, 14 May 2012 [<http://www.mmegi.bw/index.php?sid=1&aid=240&dir=2012/May/Monday14>] 18 May 2012]; S. Motseta, "Kgosi Linchwe was an Anti-Apartheid Stalwart says Mbeki", *The Tswana Times*, 11 May 2012 [<http://www.thetswanatimes.co.bw/news/politics/180-kgosi-linchwe-was-an-anti-apartheid-stalwart-says-mbeki.html>] 18 May 2012].
 71. See Butler, Rotberg and Adams, *The Black Homelands of South Africa. The Political and Economic Development of Bophuthatswana and KwaZulu*, pp 52–53, 60–61; A.J. Jeffery, *Conflict at the Crossroads in Bophuthatswana* (South African Institute of Race Relations, Johannesburg, 1993), pp 43–46.
 72. Interview conducted with a male representative of the tribal headquarters and member of the traditional council in Moruleng on 22 August 2013; and a female relative of *Kgosi* Tidimane Pilane in Moruleng on 9 September 2013.
 73. The Bophuthatswana Supreme Court ruled in favour of *Kgosi* Linchwe II and confirmed his superiority over the Bakgatla-ba-Kgafela in South Africa. See L. Lerato, "Kgafela Vows to Fight to the Death...", *Mmegi Online*, 22 August 2014 [<http://www.mmegi.bw/index.php?aid=45380>] 3 September 2014]. Also see R.L. Sklar, "The Premise of Mixed Government in African Political Studies", in Vaughan (ed.), *Tradition and Politics*, pp 24–25.
 74. See O. Molopyane, "Battle for Bakgatla-Ba-Kgafela Leadership", *TNA: The New Age*, 5 October 2012 [http://thenewage.co.za/50427-1007-53-Battle_for_BakgatlaBaKgafela_leadership] 11 May 2014].

mining companies in the Platinum Belt in the North-West Province.⁷⁵ As a result, they were able to generate a sound financial base independent of government, and have become one of the wealthiest tribes in South Africa. This wealth and the role of *Kgosi* Nyalala Pilane have led to opposition factions within the chiefdom. Pilane has been facing charges for corruption, fraud and misuse of tribal funds in recent years and his position as Bakgatla leader has been questioned.⁷⁶ While some members of the community and the royal family reject him as rightful leader or strive for secession, others refuse to recognise the Bakgatla-ba-Kgafela in Botswana as the senior house.⁷⁷

In this regard, *Kgosi* Pilane was partly dependent on *Kgosi* Linchwe's ongoing support to defend his position against opposition. On the other hand, *Kgosi* Linchwe and the tribal administration regularly received money from Moruleng. The close relations with *Kgosi* Pilane and regular exchange and participation in *kgotla* meetings of the tribal leadership in Mochudi and Moruleng also meant further control and power over the financial and mineral resources in South Africa.⁷⁸

Kgosi Kgafela's coronation in 2008 was a major event because it was the first time since 1963 that the Bakgatla-ba-Kgafela had enthroned a paramount chief. The tribal administration in Moruleng contributed logistically and financially to the ceremony in Mochudi.⁷⁹ It was attended by the tribal leadership and members of both parts of the chiefdom, international media, and President Ian Khama⁸⁰. Shortly after *Kgosi* Kgafela's installation, attempts were made to stress the cultural and traditional relations and revive cross-border events which had been organised regularly in the past. This involved co-operation of the Bakgatla

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75. See A. Manson and B. Mbenga, "Bophuthatswana and the North-West Province: From Pan-Tswanaism to Mineral-Based Ethnic Assertiveness", *South African Historical Journal*, 64, 1, 2012, pp 111–113.
76. See W. Dibakwane, "Bakgatla Call for Molewa's Removal", *Sowetan LIVE*, 23 June 2008 [http://www.sowetanlive.co.za/sowetan/archive/2008/06/23/bakgatla-call-for-molewa_s-removal] 11 June 2014]; W. Dibakwane, "Bakgatla Suspend their Chief", *Sowetan LIVE*, 12 February 2008 [<http://www.sowetanlive.co.za/sowetan/archive/2008/02/12/bakgatla-suspend-their-chief>] 11 June 2014]; W. Dibakwane, "Jubilation after CHIEF Convicted", *Sowetan LIVE*, 4 June 2008 [<http://www.sowetanlive.co.za/sowetan/archive/2008/06/04/jubilation-after-chief-convicted>] 18 May 2014]. Accusations concerning potential misuse and mismanagement of funds as well as opposition against Nyalala Pilane's position as chief of the Bakgatla in South Africa were brought forward and confirmed during several interviews conducted in Mochudi, Moruleng and surrounding villages in August and September 2013.
77. A special royal council, consisting of different representatives of the royal family, has been established to advise the tribal administration and control internal matters.
78. Interview conducted with a male community member in Mochudi on 18 June 2013. Interview conducted with a royal family member and male representative of the tribal administration in Mochudi on 27 June 2013. Interviews conducted with a member of the royal family in Mochudi on 16 September and with a male community member in Kraalhoek on 18 September 2013.
79. See M. Gaothobogwe, "Platinum Glitters at Kgafela II Coronation", *The Monitor*, 25, 140, 22 September 2008 [<http://www.mmegi.bw/index.php?sid=1&aid=2&dir=2008/September/Monday22>] 29 December 2012]. He states that "with more than 14 buses loaded with visiting South Africans, who came to witness the coronation, the event was as much a South African affair, as it was local".
80. President Ian Khama attended the ceremony in his capacity as paramount chief of the Bamangwato and draped *Kgosi* Kgafela II with the traditional leopard skin as tradition requires. See W.G. Morapedi, "Demise or Resilience: Customary Law and Chieftainship in Botswana in the 21st Century", in J. Fenrich, P. Galizzi and T. Higgins (eds), *The Future of African Customary Law* (Cambridge University Press, Cambridge, 2011), pp 262–263.

museums in Mochudi and in Moruleng⁸¹ and a long-term marketing campaign designed to establish “Bakgatla-ba-Kgafela” as a brand. Major cultural events were the initiation schools re-introduced by *Kgosi* Kgafela II from 2009 to 2011 which also encompassed initiatives from South Africa.⁸²

While Kgafela was still in Mochudi, relations between him and Nyalala Pilane were fruitful. *Kgosi* Kgafela received financial support from him which also included finances for the construction of his office building and his court cases. This meant that *Kgosi* Kgafela could remain financially independent from the government in Botswana and *Kgosi* Pilane could retain his position as Bakgatla leader in Moruleng.⁸³ In 2012, *Kgosi* Kgafela’s official de-recognition and his pending court case motivated his relocation to South Africa.⁸⁴ Initially he was welcomed and supported by the tribal administration in Moruleng and *Kgosi* Pilane even helped him to attain South African citizenship.⁸⁵

However, the previously cordial relationship began to come under strain when *Kgosi* Kgafela’s residence status became permanent. He imposed himself on the Bakgatla throne in South Africa after years of independent rule. The sudden grab for power estranged the tribal administration and community members alike. On the other hand, the office of the senior traditional leader in Moruleng is inseparably linked with the business wing of the Bakgatla and therefore with power and immense financial resources. Understandably, *Kgosi* Nyalala Pilane was very reluctant to lose control of this political and financial clout.⁸⁶

Problems between *Kgosi* Pilane and *Kgosi* Kgafela became increasingly fraught when Kgafela sued Pilane for corruption and misuse of tribal funds and ordered an audit of tribal operations – with a negative outcome for the administration in Moruleng.⁸⁷ In July 2012, *Kgosi* Pilane gave way to the pressure exerted by *Kgosi* Kgafela and submitted a retirement letter which he withdrew shortly afterwards.⁸⁸ The traditional administration in Moruleng started to sideline

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81. Interviews conducted with the museum directors in Mochudi on 8 July 2013 and in Moruleng on 15 August 2013.
 82. See M. Gaotlhobogwe, “New Bakgatla Regiments Parade In South Africa”, *The Monitor*, 26, 129, 31 August 2009 [<http://www.mmegi.bw/index.php?sid=1&aid=5&dir=2009/August/Monday31>] 14 January 2012].
 83. See N. Ntibinyane, “Kgafela vs Nyalala”, *The Midweek Sun*, 14 November 2012 [<http://www.themidweeksun.co.bw/news/3950-kgafela-vs-nyalala>] 10 June 2014].
 84. The Bakgatla community in Botswana was at first informed that *Kgosi* Kgafela II moved to South Africa to solve leadership problems among the Bakgatla across the border. He relocated to South Africa with his whole family and applied for citizenship. See N. Ntibinyane, “Kgafela Applies for SA Citizenship”, *Botswana Guardian*, 22 October 2012 [<http://www.botswanaguardian.co.bw/news/526-kgafela-applies-for-sa-citizenship.html>] 11 May 2014]. As *Kgosi* Kgafela II is still awaiting criminal charges which prevent him from crossing the border into Botswana and his official de-recognition as paramount chief has not been lifted, his relocation is no longer temporary. Additionally, he has emphasised that he will remain in South Africa until the leadership struggle around *Kgosi* Nyalala Pilane is resolved. This development was confirmed in interviews conducted with two senior representatives of the tribal administration in Mochudi in June, July and September 2013.
 85. Interview conducted with *Kgosi* Nyalala Pilane in Moruleng on 12 September 2013.
 86. See Ntibinyane, “Kgafela vs Nyalala”.
 87. See G. Khanyile, “Bakgatla Tribe Men Facing Corruption Probe”, *IOL NEWS*, 14 October 2012 [<http://www.iol.co.za/news/south-africa/north-west/bakgatla-tribe-men-facing-corruption-probe-1.1402519>] 11 May 2014]; O. Molopyane, “Feature: Bakgatla will Probe Audit Report”, *TNA. The New Age*, 9 August 2012 [http://www.thenewage.co.za/63811-1007-53-Feature_Bakgatla_will_probe_audit_report] 11 May 2014].
 88. See I. Selathwa, “Power Struggle among Bakgatla-ba-Kgafela”, *The Botswana Gazette*, 17 October 2013 [<http://www.gazettebw.com/?p=5510>] 12 May 2014].

Kgosi Kgafela and a paradox situation evolved: While the seniority of Mochudi was still reinforced when *Kgosi* Kgafela relocated, from August 2012 onwards, he was no longer accepted as paramount chief by parts of the royal family.⁸⁹ Additionally, opponents began to argue that tribal unity had already ended in the nineteenth century with the division of the chiefdom.⁹⁰ Neither the Bakgatla website nor any future vision documents include *Kgosi* Kgafela or paramountcy in Botswana any longer except for a reference to common customs and origin in the Transvaal.⁹¹ *Kgosi* Kgafela and *Kgosi* Pilane have cancelled any personal relations and the issue of leadership and succession had been contested in the South African courts since then.⁹² In addition, the North-West's Committee on Traditional Leadership Disputes and Claims is currently investigating leadership claims in Moruleng. The dispute between *Kgosi* Kgafela and *Kgosi* Pilane has escalated, and the outcome of the Committee's hearings and investigations will determine Pilane's successor and future leader of the Bakgatla-ba-Kgafela in South Africa, although *Kgosi* Kgafela still tries to oppose the secession in court.⁹³

Cross-border relations of the Bakgatla-ba-Kgafela communities

An assessment of the community level highlights the profound impact of division and divergent development. In Botswana, independence was accompanied by strategies to promote national unity and eradicate tribalism. In addition, increasing urbanisation, migration and resettlement as well as modernisation have facilitated the evolution of a new national identity which exceeds tribal affiliation, particularly among the younger generation of the Bakgatla-ba-Kgafela.⁹⁴ Because since

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89. Fuelled by a secession claim of a Bakgatla village in South Africa, factions within the royal family who had already given support to *Kgosi* Tidimane's attempt for an independent chiefdom in South Africa and had opposed Nyalala Pilane's appointment, have started to work together in solving leadership claims in Moruleng. These factions argue that there is no legal basis for a cross-border paramountcy and Mochudi's seniority. For further information on the secession claim, see Pilane and Another v Pilane and Another (CCT 46/12) [2013] ZACC 3. Interviews with representatives of the royal family in South Africa were conducted in Moruleng and Mochudi on 22 August, 11 September and 16 September 2013. *Kgosi* Kgafela's attempt to receive recognition as paramount chief in Botswana and South Africa was only recently turned down by the North-West High Court. See M. Mguni and L. Maleke, "Kgafela Loses SA Chieftainship Case", *Mmegi Online*, 22 August 2014 [<http://www.mmegi.com/index.php?aid=45382>] 11 September 2014].
 90. See O. Molopyane and S. Tongo, "Confusion Rules on Chieftaincy of Bakgatla-ba-Kgafela", *The New Age*, 8 August 2012 [http://thenewage.co.za/printstory.aspx?news_id=58484&mid=53] 12 May 2014].
 91. See N. Ntibinyane, "Moruleng 'Moves on' without Kgafela", *The Midweek Sun*, 12 September 2013 [<http://www.themidweeksun.co.bw/news/4470-moruleng-moves-on-without-kgafela>] 10 June 2014]. Also see the fact sheet about the Bakgatla-ba-Kgafela in Moruleng [<http://bbkta.net/factsheet/>] and the organisational chart presented on their website [<http://bbkta.net/structure/>].
 92. See Ntibinyane, "Kgafela vs Nyalala". Also see N. Ntibinyane, "All the King's Men", *Botswana Guardian*, 15 June 2013 [<http://www.botswanaguardian.co.bw/news/557-all-the-king-s-men.html>] 11 May 2014]. This article gives an overview of Kgafela's supporters in Botswana and South Africa.
 93. This was confirmed by several members of the tribal leadership in Moruleng. Commission hearings where evidence was presented by the different houses of the royal family took place in Mogwase in 2013. *Kgosi* Kgafela was absent during these meetings. Also see T. Kgalemang, "Kgafela Applies for Trial in SA", *Botswana Gazette*, 20 February 2012 [<http://www.gazettebw.com/?p=7055>] 10 June 2014].
 94. See J.D. Holm and E. Bothale, "Persistence and Decline of Traditional Authority in Modern Botswana Politics", *Botswana Notes and Records*, 40, 2008, pp 74–87. Holm and Bothale list several obstacles to traditional leadership which have led to the diminishing relevance of traditional institutions in Botswana. These include limited powers of traditional institutions and competition with government institutions; urbanisation; depopulation of rural

separation in 1869 the tribal capital has always been Mochudi, members of the traditional community in Kgatleng have never experienced cross-border leadership. Relations with the Bakgatla in South Africa were mainly based on family ties.⁹⁵

A similar tendency, although in a different context, can be observed in South Africa since 1994 with the emergence of a new feeling of national pride and unity. The sense of tradition and tribal belonging faded, giving way to a new identity as citizens of a democratic South Africa.⁹⁶ Several younger interviewees⁹⁷ in and around Moruleng stated that customs and traditions have become of minor importance. They are seen as being “old-fashioned” and incompatible with a modern, democratic environment. However, the rather traditional character of the Bakgatla-ba-Kgafela in Botswana still contrasts sharply with the development the Bakgatla-ba-Kgafela have experienced in South Africa. There, many traditions have been abandoned and local progress and development have been promoted instead. Traditional communities only share a few commonalities and events like the initiation schools have sometimes tended to emphasise alienation rather than cohesion in Moruleng.⁹⁸

The reactions to *Kgosi* Kgafela's re-location reveal some of the major obstacles to tribal unity. Several village inhabitants admit to being surprised and suspicious because they did not perceive Kgafela as their leader while he was in Botswana. Particularly since the time of diminishing cross-border relations under Tidimane, allegiance has for the most part been directed towards tribal leadership in Moruleng.⁹⁹ The financial support of the Bakgatla-ba-Kgafela in Mochudi has

villages; and influx of foreigners into tribal areas; labour migration and the absence of vital parts of the community; general lack of interest in village affairs; increasing identification and commitment to democracy.

95. Ethnographic interviews with community members were conducted in the Kgatleng district between June and September 2013.
96. Interviews conducted with representatives of the tribal administration in Moruleng on 22 August 2013 and 12 September 2013 have revealed the impact of this changing attitude. In addition to increasing mobility and labour migration due to the mining industry, the minor importance of belonging to a particular tribe in post-apartheid South Africa has also shaped the strategies and programmes of the tribal leadership. They are not solely appealing to the Bakgatla population but are directed towards a much broader audience at regional, national and even global level.
97. The respondents were aged between 20 to 35 years.
98. Group discussion with several younger community members (male) conducted in Moruleng on 6 September 2009. This opinion was also expressed by other community members who haven't experienced the initiation schools revived by *Kgosi* Linchwe II. For these community members, the revival of old customs and traditions means a certain backwardness and incapability of addressing relevant issues and modernisation in South Africa. However, a different attitude was found among the older community members interviewed between August and September 2013 in the area around Moruleng. They emphasised the importance of education, traditional values and knowledge passed on during the ceremonies.
99. During the interviews conducted in August and September in the Bakgatla villages around Moruleng, the majority of the respondents – regardless of their age – have expressed ambiguities towards *Kgosi* Kgafela's new role in South Africa. His relocation was welcomed by those community members who were opposing Nyalala Pilane as Bakgatla chief and who were criticising potential misuse of tribal funds and neglect of certain Bakgatla villages. The following arguments were presented by interviewees rejecting *Kgosi* Kgafela's move to Moruleng: loyalty and support of *Kgosi* Nyalala Pilane; the way Kgafela II has tried to take over power in Moruleng without introducing and presenting himself as the new leader; the on-going criminal charges against *Kgosi* Kgafela in Botswana which he should have solved prior to his relocation; and the potential economic motives due to the wealth of the Bakgatla in South Africa.

also raised critical voices as a waste of resources which might instead have contributed to local development. Some informants strongly criticised *Kgosi Kgafela's* grab for power which they felt was unseemly and resembled imposition. One important statement, stressed by other respondents, highlights the general problem of cross-border chiefdoms. They feel that a traditional leader who is not permanently resident in the chiefdom; who is citizen of another state; and who does not fall under the same constitution, is not entitled to rule over the Bakgatla-ba-Kgafela in Moruleng.¹⁰⁰

Future perspectives of the Bakgatla-ba-Kgafela

The Bakgatla-ba-Kgafela discussed in this paper exemplify the twofold challenges divided chiefdoms face in Southern Africa since colonialism and democratisation – the challenge of adapting to the changing political and legal environment within their respective countries and finding new approaches to uphold tribal cohesion. With the exception of the apartheid years, the leadership in Moruleng and Mochudi successfully pursued strategies to promote tribal unity. Over the years, however, the Bakgatla-ba-Kgafela experienced a clear power shift with Mochudi's declining superiority and disempowerment due to their limited role in the legal and institutional pluralism in Botswana and Moruleng's growing autonomy and economic potential. The previously existing mutual dependency was replaced by an individual and divergent development in each country.

A final conclusion on the future perspectives of the Bakgatla-ba-Kgafela in Botswana and South Africa cannot really be reached because the events in Mochudi and Moruleng are still pending. In comparison with the historical obstacles and challenges the chiefdom has experienced and managed to solve, the present situation indicates a severe decline and negative trend in tribal relations. The recent years under *Kgosi Kgafela's* rule proved to be the most challenging ones because they coincided with internal strife in Mochudi and Moruleng. His relocation and the leadership vacuum *Kgosi Kgafela* left behind in Mochudi fuelled the demise of Bakgatla cohesion.¹⁰¹ Meanwhile, the necessary steps have been taken at leadership level to finalise official separation and to establish an autonomous Bakgatla chiefdom in South Africa. Although the decision of the Committee on Traditional Leadership Disputes and Claims is still outstanding, it seems as if cohesion of the Bakgatla-ba-Kgafela has been eroded

100. Several interviewees would not share this rigid attitude and emphasised their loyalty to *Kgosi Kgafela*.

101. At the time of *Kgosi Kgafela's* relocation and afterwards, several members of the tribal leadership were suspended due to their involvement in the floggings and a second major court case. *Kgosi Kgafela's* deputy in Mochudi has been one of them and the government has denied extending his contract. In the meantime, factions of supporters and opponents of *Kgosi Kgafela* have also evolved in Botswana among the royal family. As a consequence of his de-recognition, relocation and the conflicts in Moruleng, *Kgosi Kgafela* is actually neither ruling in Botswana nor in South Africa. His financial independence from Botswana's government puts greater weight on his traditional birthright as leader of the Bakgatla and the loyalty of the traditional community. Nevertheless, his absence from Mochudi and the loss of financial support from Moruleng have seriously decreased *Kgosi Kgafela's* influence. Additionally, contact between him and his deputy in Mochudi was reduced to a minimum and even ceased at one time. Particularly during the suspension of most of the tribal leadership, *Kgafela II* did not interfere nor was he available for advice or consultation. This has been confirmed in several interviews conducted with the tribal leadership in Mochudi and Moruleng between June and September 2013.

beyond reconciliation.¹⁰² The limited contribution at the community level will ensure a certain continuity of tribal cohesion, but not necessarily under one leadership. It looks as though the chiefdom is currently closing the circle of potential scenarios presented in the introductory section – following a path which has led them from unity to diversity and final separation.

Abstract

The integration of traditional institutions in the aftermath of colonisation and apartheid in Southern Africa has not only affected governance and jurisdiction in individual countries but has also left a lasting imprint on traditional communities and institutions. Due to migration and changing colonial borders, the Tswana chiefdom of the Bakgatla-ba-Kgafela in Botswana and in South Africa have experienced different paths of development, and both parts of the tribal entity have had to adapt to various social environments, legal frameworks and institutional set-ups. The research analyses the consequences of the geographical division and separate development of the Bakgatla-ba-Kgafela. Internal dynamics like adaptation, modernisation and assumption of new traditions have interacted with external factors such as the impact of legal and institutional pluralism in Botswana and South Africa. The article discusses how the Bakgatla-ba-Kgafela have dealt with these obstacles and whether cohesion has been maintained by the traditional leadership and communities. After periods of close co-operation, cross-border rule and mutual support of the tribal leadership, they are currently facing serious threats to tribal unity.

Keywords: Traditional institutions; legal and institutional pluralism; Bakgatla-ba-Kgafela; cross-border relations.

Opsomming

Die integrasie van tradisionele instellings in die nadraai van kolonialisering en apartheid in Suidelike Afrika het nie alleen staatsbestuur en regspraak in individuele lande geraak nie, maar het ook 'n blywende stempel op tradisionele gemeenskappe en instellings afgedruk. Weens migrasie en veranderende koloniale grense het die Tswana-kapteinskaps van die Bakgatla-ba-Kgafela in Botswana en in Suid-Afrika verskillende ontwikkelingsbane meegemaak, en beide dele van die stam-entiteit moes by verskeie sosiale omgewings, regsraamwerke en institusionele opsette aanpas. Die navorsing ontleed die gevolge van die geografiese verdeling en afsonderlike ontwikkeling van die Bakgatla-ba-Kgafela. Interne dinamiek soos aanpassing, modernisering en die oorneem van nuwe tradisies het opt eksterne faktore soos die impak van regs- en institusionele pluralisme in Botswana en Suid-Afrika ingewerk. Die artikel bespreek hoe die Bakgatla-ba-Kgafela hierdie struikelblokke hanteer het en of kohesie deur die tradisionele leierskap en gemeenskappebewaar is. Na tydperke van noue samewerking, oorgrens-regering en onderlinge ondersteuning van die stam-

102. A reconciliation between the tribal leadership in Botswana and South Africa might only occur if the Commission or the High Court decide in favour of Kgosi Kgafela II. An interview conducted with a member of the royal council in Moruleng on 22 August 2013 as well as the arguments presented in the North-West High Court emphasise the seriousness of Moruleng's secession plans. See N. Ntibinyane, "Is Kgafela Kgosi Kgolo in SA?", *Botswana Guardian*, 7 July 2014 [<http://www.botswanaguardian.co.bw/news/941-is-kgafela-kgosi-kgolo-in-sa.html>] 11 September 2014].

Pörsel - The Bakgatla-ba-Kgafela in the borderlands

leierskap word hulle tans deur ernstige bedreigings ten opsigte van stam-eenheid in die gesig gestaar,

Sleutelwoorde: Tradisionele instellings; regs- en institusionele pluralisme; Bakgatla-ba-Kgafela; oorgrens-verhoudings.