Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights Versus Economic Development

Amelia Cook* and Jeremy Sarkin**

I. BOTSWANA TODAY ................................................................. 458
II. THE POLITICAL CONTEXT ..................................................... 460
III. THE ECONOMIC CONTEXT .................................................. 461
IV. WHY BOTSWANA HAS PROSPERED ...................................... 463
V. BOTSWANA'S LUCKY BREAK .................................................... 466
VI. IS BOTSWANA A MIRACLE IN THE AFRICAN CONTEXT? ........... 471
   A. Laws and Practice .......................................................... 474
   B. Politics ........................................................................ 475
   C. Criticism ....................................................................... 476
   D. Civil Society and the Media .............................................. 477
   E. Economic Issues ............................................................. 479
   F. Minority Groups ............................................................. 480
   G. Human Rights in General ................................................. 481
   H. HIV/AIDS .................................................................... 485
   I. Diversifying the Economy .................................................. 486
   J. Unemployment ............................................................... 487
   K. "Negative Peace"* ........................................................ 488
VII. CONCLUSION .................................................................... 488

In November 2008, former President of Botswana, Festus Gontebanye Mogae, received the Ibrahim Prize for Achievement in African Leadership.¹ The Mo Ibrahim Foundation awards this prize to a democratically-elected

* Editor of Publications for the Fares Center for Eastern Mediterranean Studies at Tufts University.
** Distinguished Visiting Professor of Law, Hofstra University Law School 2008–2009.
former African head of state who has served within the limits set by the domestic constitution and has left office in the prior three years. The Foundation assesses Sub-Saharan leaders on their exercise of leadership and their country’s performance during their term in office. It is the largest annually-awarded prize in the world and consists of $5 million over ten years and $200,000 annually thereafter for life. The Foundation also considers granting an additional $200,000 per year for ten years to leaders who take on public interest activities and espouse good causes. The citation notes that former President Mogae won the award because, among other things:

[Botswana’s] democracy was strong, stable and rooted in the rule of law. Botswana was widely regarded as one of the more effective countries in the world in combating corruption. . . . President Mogae’s outstanding leadership has ensured Botswana’s continued stability and prosperity in the face of an HIV/AIDS pandemic which threatened the future of his country and people. . . . The Prize Committee believes that good governance requires an environment conducive to peace, security and development, based on the rule of law and respect for human rights. Botswana has had to address the challenge of advancing each in a balanced way. This has been helped by the independence and integrity of its institutions which bodes well for further progress towards spreading wealth and opportunity across all sectors of Botswana society.

The awarding of this prize to President Mogae offers a context in which to evaluate whether Botswana deserves the oft-used moniker, “the African Miracle.” The international community has long considered Botswana a

---

4 Howden, supra note 1.
7 Abdi Samatar, AN AFRICAN MIRACLE: STATE AND CLASS LEADERSHIP AND COLONIAL LEGACY IN BOTSWANA DEVELOPMENT passim (1999).
success story on the African continent. Since achieving independence in 1966, it has maintained high economic growth, sound fiscal policies, and regular elections, which have fed this image. However, this label of success has led to inadequate questioning of what occurs beneath the façade in Botswana. Inequality, discrimination, the dominance of a single political party, the government’s aversion to criticism, and an array of human rights abuses are among the many problems afflicting Botswana. The country has made especially slow progress toward improving many social and cultural rights.

Achievements such as Botswana’s noteworthy economic growth, political stability, and regular elections often eclipse issues like human rights, which remain on the periphery of most analyses of Botswana. However, human rights issues present a significant threat to Botswana’s positive reputation. One of these issues concerns the long and complicated relationship between a minority ethnic group, the San, and the ruling elite, who mostly come from the Tswana ethnic group. The ethnic division has led to the San’s vulnerable position in Batswana society today. No example better demonstrates the limits of democracy in Botswana than the eviction by the Government of Botswana (“GOB”) of San bushmen from their homeland in the Central Kalahari Game Reserve, presumably to further the exploration of potential diamond mines. This controversy over land rights between the San and the GOB has led to the longest and most expensive court case in the

---

10 See Kenneth Good, Bushmen and Diamonds: (Un)Civil Society in Botswana 6–8, 23 (2003) (reviewing the limitations of Botswana’s liberal democracy, violations against the rights of the San, and issues of inequality and an undiversified economy).
12 The San are also known as the “Bushmen” or the Basarwa. See Sidsel Saugestad, The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance, and the First People of the Kalahari 28 (2001).
13 See infra notes 32, 36–37.
14 “Batswana,” as opposed to “Botswana,” refers to the people of Botswana.
15 Good, supra note 10, at 20–24.
history of the country, known simply as the Central Kalahari Game Reserve (“CKGR”) case.\textsuperscript{18}

The CKGR case serves as a reflection of the GOB’s general failure to uphold many of the basic tenets of human rights, especially in regard to indigenous and otherwise marginalized groups. The case has finally begun to draw international attention, however meager, to Botswana issues other than its growth rate and the regularity of its elections.\textsuperscript{19} Potentially, it could pave the way for more rigorous assessments of what it means to be a success story in Africa. Although the San won the case,\textsuperscript{20} the government has not cooperated in implementing the ruling,\textsuperscript{21} raising many questions about the democratic process in Botswana. Furthermore, the “win” has led to very few changes to the San’s position in society.\textsuperscript{22} This Article is less concerned, however, with the CKGR case than with the question of Botswana’s majority group and its promotion and protection of democratic and human rights, especially among minorities.

On the African continent, many argue that the need for economic growth and political stability outweigh, at least in the short term, the need to ensure proper compliance with international human rights law. This is supposedly so because economic and political improvements are often predecessors to advancements in human rights.\textsuperscript{23} In many ways, this stance is difficult to refute. Creating a stable and thriving democracy is critically important to the advancement of human rights.\textsuperscript{24} Economic growth is also important because it can lead to improved education,\textsuperscript{25} which in turn can lead to improved


When considering the state of affairs in many African countries, such basic improvements in quality of life are invaluable. Yet the question remains, when will it be time to confront longstanding violations of human rights in countries that have already experienced economic growth, political stability, and the establishment of a functioning democracy?

This Article investigates the claim that Botswana is the “Miracle of Africa” in the context of its political, economic, and human rights record. It contextualizes the arguments and findings that scholars make today about Botswana’s success in achieving economic prosperity, political stability, and sustained growth. This Article then compares these accounts to Botswana’s record in a number of other areas, including its treatment of marginalized groups, especially the Batswana indigenous population. This Article inspects the historical development of Botswana, the political and economic context of the country, and Botswana’s marked prosperity.

Part I introduces the general question under review: should modern-day Botswana be regarded as the “African Miracle?” Part II provides a brief overview of the political situation in Botswana, and introduces the idea that some of the country’s achievements have come at the expense of fundamental human rights. Part III reviews the economic context of the country. Part IV examines why Botswana has been able to prosper to the extent that it has. Part V, on the other hand, argues that some of Botswana’s accomplishments stem from elements of good fortune, including its unique colonial experience, the discovery of diamonds shortly after independence, and the political dominance of a single ethnic group.

Part VI investigates the “Miracle” adage in more depth, noting Botswana’s successes while also exposing several problematic practices related to governance and the marginalization of minority groups. It analyzes the role of civil society and the media, as well as the extent to which they can operate freely. Certain economic issues, including economic inequality, are explored to lift the veil on the Botswana “Miracle.” This Part reviews Botswana’s compliance with its international human rights obligations and the extent to which it has enacted into domestic law the rights enshrined in ratified international treaties. The findings of international human rights treaty bodies on Botswana are also explored in this section. Additionally, the section examines Botswana’s stance on the death penalty, the situation in its prisons, its HIV/AIDS epidemic, and the role of its national human rights institutions. While certain elites benefit from Botswana’s accomplishments, many citizens have been excluded from and marginalized by them. This Part assesses the cost of success at the expense of some Batswana citizens’ human rights. This Article concludes that other African countries can learn many lessons from Botswana. However, Botswana must also diversify its economy, deal with high rates of unemployment, especially among marginalized

groups, and take steps to address a number of human rights concerns in order to function as an example for the rest of the continent.

I. Botswana Today

The goal of this Article is not to diminish Botswana’s successes, many of which are highly commendable, but to explore those features of its democracy that threaten Botswana’s image and its ability to serve as an example for other African nations. While the international community hails Botswana as a beacon of democracy, several issues—especially those concerning human rights threaten this adage. Since independence, the GOB has pursued a policy of non-racialism with regard to Botswana’s indigenous groups. This policy has allowed it to violate the rights of many of the country’s indigenous and otherwise marginalized groups, placing them far outside the walls of Botswana’s “Miracle” democracy. Not only do these groups have little means of actively participating in the decision-making processes of government, but many of their basic social, cultural, political, and economic rights are violated consistently in pursuit of a non-racial, nationalist policy. In reality, this policy simply supports the political, economic, and cultural status quo as established by the dominant ethnic group, the Tswana. Although there are many other ethnic groups living in Botswana, the Tswana have long-dominated the political realm. As a result, not all of Botswana’s people benefit from the fruits of the country’s successes; democracy and human rights are protected for only so many in Botswana.

---


29 “Non-racialism” refers to the GOB’s policy of portraying Botswana as a non-racial, culturally homogenous state, based—as it argues—on the dominance of a single ethnic group, the Tswana. This has led to a lack of recognition for other, unique ethnic groups, like the San. SAUGESTAD, supra note 12, at 29, 77.

30 Id. at 54.


32 Some researchers have concluded that the Tswana are not numerically dominant in Botswana, but are politically dominant and succeeded in building the post-independence political system around their culture and language. For more discussion, see Minority Rights Group Int’l, Minority Tribes in Botswana: The Politics of Recognition (2008) (prepared by Lydia Nyati-Ramahobo), http://www.minorityrights.org/download.php?id=622.

33 Solway, supra note 31, at 714.


35 Sebudubudu & Osei-Hwedie, supra note 16, at 35–53.
Common wisdom on the Botswana “Miracle” suggests that the country provides a model for others to follow.36 Others certainly can learn valuable lessons from Botswana in many regards. The country’s economic policies are exemplary. The GOB has taken preventative measures to avoid “Dutch Disease;”37 built a cushion of financial reserves to counter fluctuations in international prices for primary exports and to strengthen its currency; taken steps to anticipate future troubles, and relied on experts to plan responses to possible disasters; historically focused on education; and avoided extreme foreign debt.38 The regularity of Botswana’s elections39 since gaining independence in 1966 is commendable.40 Efforts to foster a sense of national unity, especially by Botswana’s first president, Sir Seretse Khama, proved successful in many regards during the post-independence process of nation-building and peace-keeping.41 Furthermore, Botswana has been fairly successful in developing initiatives that protect the environment, especially through the use of Community-Based Natural Resource Management, which often focuses on combining eco-tourism, conservation, and the livelihoods of indigenous groups.42 However, it would be a shame if other nations followed the same path as Botswana, marked by sacrifices of basic human rights tenets. Botswana’s successes are, to a degree, the result of the hard work of the country’s leadership.43 They are also due, in significant measure, to good

37 See generally W.M. Corden, Booming Sector and Dutch Disease Economics: Survey and Consolidation, 36 OXFORD ECON. PAPERS 359 (1994) (consolidating and reviewing the existing body of literature on Dutch Disease and booming resources sectors, beginning with a core model and extending to historical application). “Dutch Disease,” also known as “the resource curse,” refers to the phenomena of a boom in natural resources drawing enough foreign capital that the value of the local currency is driven up and domestic goods are rendered less competitive. See The Devil’s Excrement, ECONOMIST, May 22, 2003.
38 Stephen L. Lewis, Explaining Botswana’s Successes, in DEVELOPING CULTURES: CASE STUDIES 3, at 8, 16–17, 20–21 (Lawrence Harrison & Peter Berger eds., 2006).
41 Lewis, supra note 38, at 17.
43 Lewis, supra note 38, at 12.
fortune, including the country's unique Protectorate experience,\textsuperscript{44} perceived homogeneity,\textsuperscript{45} and diamond resources.\textsuperscript{46}

It is problematic that labels such as “Africa’s success story” or “Africa’s miracle,”\textsuperscript{47} based simply on national economic performance and political stability, are so flippantly used to describe Botswana. Such labels give the impression that as long as a country experiences economic growth and regular elections, the protection of other basic human rights is not important. A country that denies many basic human rights should not be regarded as Africa’s “Miracle”—such a definition of “Miracle” sets the standard too low. The African situation is not so wretched that the protection of human rights is of no consequence. Africa’s “Miracle” should be a country working toward addressing pitfalls, not shying away from them. Botswana is in a comparatively advantageous position, having a 2008 per capita GDP of $13,900, the fourth highest GDP per capita in Sub-Saharan Africa,\textsuperscript{48} and a stable political environment in which to work. These advantages provide the means to address many human rights issues.\textsuperscript{49} Thus, it cannot—should not—be praised for settling for anything less.

\textbf{II. THE POLITICAL CONTEXT}

From 1885 to Botswana’s independence in 1966, the country was the British Protectorate of Bechuanaland.\textsuperscript{50} The British established the Protectorate at the behest of two paramount chiefs—Khama and Setshele—who were seeking protection from the Boers’ imminent plans to expand northwards from South Africa.\textsuperscript{51} As a Protectorate, Botswana suffered less colonial intrusion than many of its neighboring countries, which European nations ruled more bureaucratically as colonies.\textsuperscript{52}

Since its independence from Great Britain, Botswana has maintained functioning democratic institutions, good relations with its neighbors, and a

\textsuperscript{44}SAUGESTAD, supra note 12, at 97.
\textsuperscript{46}Diamond Country, supra note 36.
\textsuperscript{47}SAMATAR, supra note 7, at iii.
\textsuperscript{49}J. CLARK LEITH, WHY BOTSWANA PROSPERED 4 (2005).
\textsuperscript{50}AFRICANA, supra note 34, at 290.
\textsuperscript{51}Id.
\textsuperscript{52}SAUGESTAD, supra note 12, at 69–70.
flourishing economy. It is a parliamentary republic with a sound institutional structure based on Roman-Dutch law and local customary law. Botswana has enjoyed free and fair elections every five years since 1966, although a single political party, the Botswana Democratic Party (“BDP”), has dominated politics throughout this period. Opposition parties, including the Botswana National Front and the Botswana People’s Party (which recently joined forces), as well as the Botswana Congress Party, have not been able to present significant competition.

The BDP’s dominance has historical roots in Tswana elite’s gradual establishment within the country. The Tswana power base grew as the group began to seize land and political control in the 1800s. Other ethnic groups have never been powerful enough to unseat the Tswana, which accounts, in part, for the historical lack of ethnic strife in Botswana that has plagued so many African countries. Since independence, the Tswana have marginalized and disempowered minorities, effectively preventing them from mounting any possible resistance to the current Tswana-based power structure.

III. THE ECONOMIC CONTEXT

Economically, Botswana has performed very well since 1966, maintaining one of the highest economic growth rates in the world. The Economist notes that Botswana had the fastest growing income per person over the thirty-five year period prior to 2002. Despite this high growth rate, 23.8 percent of the population was unemployed in 2004. As a result, more than 47 percent of

---

53 See generally Lewis, supra note 38 (reviewing Botswana’s achievements as well as the policies that the author proposes helped Botswana secure these achievements).
54 CIA WORLD FACTBOOK, supra note 48.
55 GOOD, supra note 10, at 9.
57 SAUGESTAD, supra note 12, at 70, 73.
58 GOOD, supra note 10, at 14.
61 Diamond Country, supra note 36.
63 CIA WORLD FACTBOOK, supra note 48.
the population lived below the poverty line.\textsuperscript{64} Income disparities are among the worst in the world.\textsuperscript{65}

Diamonds have played a major role in the story of the “African Miracle” over the course of the last forty years.\textsuperscript{66} In 1967, geologists from the mining company De Beers discovered a kimberlite pipe\textsuperscript{67} slightly northeast of the Central Kalahari Game Reserve in Orapa, near the Makgadikgadi Pans.\textsuperscript{68} De Beers’ discovery of these diamond resources provided Botswana, one of the world’s poorest countries at that time, an immense windfall.\textsuperscript{69} Since this discovery, the diamond industry has been the cornerstone of the Botswana economy.\textsuperscript{70} The government has maintained control of this resource by creating Debswana, the national diamond company, which it owns in equal partnership with global diamond giant De Beers.\textsuperscript{71} Without the discovery of diamonds, it is unlikely that Botswana would have been able to prosper to such an extent.\textsuperscript{72} After all, despite Botswana’s good fortune in some areas, the country is unlucky in many other areas: only 0.65 percent of its land is arable;\textsuperscript{73} it is landlocked and thus has high transportation costs;\textsuperscript{74} it suffers

\begin{thebibliography}{9}


\bibitem{66} Robinson & Parsons, \textit{supra} note 59, at 134.


\bibitem{69} Taylor & Mokhawa, \textit{supra} note 17, at 262.

\bibitem{70} \textit{Diamond Country}, \textit{supra} note 36.

\bibitem{71} \textit{GOOD}, \textit{supra} note 10, at 17.

\bibitem{72} Ellen Hillbom, \textit{Diamonds or Development? A Structural Assessment of Botswana’s Forty Years of Success}, 46 J. MODERN AFR. STUD. 191, 201 (2008).

\bibitem{73} CIA WORLD FACTBOOK, \textit{supra} note 48.

\bibitem{74} Hillbom, \textit{supra} note 72, at 201.
\end{thebibliography}
from regular droughts; and it has limited potential substitutes for the role diamonds play in its economy.

IV. WHY BOTSWANA HAS PROSPERED

There are many reasons for Botswana’s post-Protectorate success. Some reasons stem from Botswana’s unique history and context, a few are coincidental, and several are the byproduct of efforts by the country’s leaders. Academics have debated these achievements, resulting in many assessments applauding Botswana and a handful that note Botswana’s success story is not without significant flaws.

Botswana’s trajectory seems to have gone nowhere but is up since its precarious and poverty-stricken position in 1966. In 1999, Abdi Ismail Samatar wrote *An African Miracle: State and Class Leadership and Colonial Legacy in Botswana Development*, one of the first explorations of the story of the “African Miracle.” In the last decade, the debate over Botswana’s achievements has flourished. Those who applaud Botswana as “the African Miracle”—including scholars such as Abdi Samatar, Daron Acemoglu, Simon Johnson, James A. Robinson, J. Clark Leith, and Stephen Lewis, as well as former president of Botswana, Quett Masire, who recently published his memoirs—point to its political stability, regular elections, consistent economic growth, and sound investment policies. Botswana succeeded in these regards, as a brief summary of these achievements will demonstrate.

Following the discovery of significant diamond reserves, the GOB pursued sound fiscal policies ensured that the country’s diamond wealth was

---


76 Hillbom, supra note 72, at 201.


79 SAMATAR, supra note 7, passim.

80 Dozens of articles have been published which review the achievements and failures of Botswana with regard to several topics: the economy, the political context, indigenous and minority rights issues, the environment, the mineral sector, and so on. Many of these articles are cited herein.

81 See SAMATAR, supra note 7; Acemoglu et al., supra note 77, at 2; Lewis, supra note 38; LEITH, supra note 49.

82 See generally MASIRE, supra note 77.
The government has increased investment through “responsibly handled dealings with foreign corporations and management of state enterprises.” Botswana’s leadership has ensured that it has utilized the wealth afforded by its natural resources wisely and accomplished great economic feats. In turn, since its independence, Botswana has maintained one of the highest GDP growth rates—not only in Africa, but also in the world. From 1970 to 1999, Botswana’s GDP growth rate has averaged 8.3 percent.

Although the country’s economic prosperity is based primarily on wealth from diamond mining, it also arises from the beef exports and a growing tourism industry that revolves around Botswana’s many game reserves, open landscape, and the biodiversity of its crown jewel, the Okavango Delta. The resulting financial base has provided the government with resources to construct and maintain a solid infrastructure, including roads, telecommunication systems, hospitals, hotels, and schools. The presence of a well-maintained infrastructure, complemented by consistent political stability, has incentivized foreign investment, furthering economic progress.

Unfailing political stability has also proved central to Botswana’s success. Since its independence in 1966, Botswana has held free and fair elections every five years, and maintained well-developed democratic institutions in comparison to its African neighbors. Traditional Batswana society is noted for its open discourse on public issues, which takes place in the communities...

---

83 See Lewis, supra note 38, at 16.
86 The African Exception, supra note 62.
90 LEITH, supra note 49, at 11–12.
92 Lewis, supra note 38, at 6, 11. However, Botswana’s electoral system and its electoral commission are criticized as being in need of reform. See generally Mpho G. Molomo, The Need for Electoral Reform in Botswana, 4 Afr. J. CONFLICT RESOL. 55 (2004) (addressing Botswana’s “First-Past-The-Post” electoral system, its stability, and its shortfalls in support of “internal democracy”).
through the kgotla, an institution of the chieftaincy system in which the chief and community leaders discuss issues of concern in a neutral setting.  

Francis Nyamnjoh thoroughly documents Botswana’s incorporation of the chieftaincy system into its modern government in her article, *Chieftaincy and the Negotiation of Might and Right in Botswana Democracy*. 

There has been so little internal or external conflict in Botswana in recent history that some authors have referred to the political situation as “dull.” In its 2008 Corruption Perceptions Index, Transparency International ranked Botswana the best-performing country in Africa, with a global ranking of thirty-six, which it shared with Malta and Puerto Rico. 

The country has been lucky to have some of the more commendable African leaders. Noteworthy among them are the three chiefs, Bathoen, Khama (the Great), Sebele, who traveled to England in 1895 to petition the Queen not to hand over Botswana’s lands to Cecil Rhodes, and the Republic’s first President, Sir Seretse Khama. Khama’s focus on accountability and political consultation, his push to de-racialize the political system, his responsible fiscal policy, and his contingency planning are all achievements emblematic of his successful and popular leadership. 

The combination of these positive economic and political factors has led to endless references to Botswana as Africa’s “Miracle,” not just by a handful of academics, but by the media and many others. While these same commentators deplore the tragedies of failing African economies and corrupt governments, they reference Botswana as a remarkable exception to the overall condition of the continent. Clearly, Botswana has succeeded by many standards in pulling itself out of devastating poverty and building

---

93 **MASURE, supra note 77, at 62–63.**

94 **See Francis B. Nyamnjoh, Chieftancy and the Negotiation of Might and Right in Botswana Democracy, 12 J. CONTEMP. AFR. STUD. 233 (2003).**

95 **GOOD, supra note 10, at 8.**

96 **TRANSPARENCY INTL, CORRUPTION PERCEPTIONS INDEX (2008), available at http://www.transparency.org/policy_research/surveys_indices/cpi/2008. In comparison, South Africa was ranked 54, Mozambique 126, Angola 158, Zambia 115, and Namibia 61, while the United States was ranked 18. Id.**

97 **SAUGESTAD, supra note 12, at 68–69.**

98 **See Lewis, supra note 38, at 10, 17 (recounting Khama’s leadership in difficult, racially-tense times, and speaking generally to the GOB’s foresight).**

99 **See SAMATAR, supra note 7; see also Acemoglu et al., supra note 77; Gadibolea Gadibolea II, Commentary Bemoans Signs of “End of Democracy” in Botswana, BOTS. GAZETTE, Nov. 19, 2008; Ian Taylor, The HIV/AIDS Pandemic in Botswana: Implications for the “African Miracle,” in THE POLITICAL ECONOMY OF AIDS IN AFRICA 151 (Nana Poku & Alan Whiteside eds., 2004).**

100 **See SAMATAR, supra note 7, passim; Acemoglu et al., supra note 77, at 2–3.**

101 **Stephen M. Kapunda, Diversification and Poverty Eradication in Botswana, 17 PULA BOTS. J. AFR. STUD. 51, 54 (2003).**
the foundation for a functioning democracy.\textsuperscript{102} However, as Francis Nyamnjoh notes, “Real democracy means much more than the right to vote or to be voted for, especially as these rights do not always deliver the recognition, representation and entitlements that individuals and groups seek in any given context.”\textsuperscript{103} One must ask, is Botswana truly a progressive and democratic state simply because it holds elections and maintains a high GDP?

V. BOTSWANA’S LUCKY BREAK

If Botswana is to serve as an example for other African countries, it is important to note that many of Botswana’s successes are the result of happenstance rather than intent, and therefore cannot be replicated. Among the non-replicable factors that have played significant roles in Botswana’s success are its distinctive colonial context, which helped facilitate the political dominance of a single ethnic group, and the existence of some of the most significant diamond deposits in the world.\textsuperscript{104}

While most European colonies in Africa were governed by direct rule, the British governed Botswana indirectly in the form of the Bechuanaland Protectorate.\textsuperscript{105} At the time, the British saw the region as an empty scrubland, worth little more than a buffer zone between their enemies and a road heading north.\textsuperscript{106} Though this region aroused little interest regarding the natural resources or crop production found in other colonies, was sparsely populated, and was more or less politically irrelevant at the time, the British decided it was worth protecting in order to avoid expansion of other colonial powers.\textsuperscript{107} At the invitation of two paramount chiefs, who feared invasion from the Boers in the south, the British cemented their control of the region by establishing the Bechuanaland Protectorate in 1885.\textsuperscript{108}

Because Britain’s financial resources were already strained by its other colonies around the world, it wanted to avoid the cost of micro-managing yet another African nation.\textsuperscript{109} As a consequence, the choice of the protectorate model of governance had significant impacts on Botswana’s political...


\textsuperscript{103} Nyamnjoh, \textit{supra} note 94, at 233.

\textsuperscript{104} Acemoglu et al., \textit{supra} note 77, at 3, 11, 12, 29.


\textsuperscript{106} SAUGESTAD, \textit{supra} note 12, at 70.

\textsuperscript{107} Olmstead, \textit{supra} note 84, at 817.


\textsuperscript{109} SAUGESTAD, \textit{supra} note 12, at 70.
leadership.\textsuperscript{110} The protectorate model meant limited colonial interference in the pre-existing forms of governance.\textsuperscript{111} In fact, the Crown specifically instructed its first Assistant Commissioner to the Protectorate “not to interfere with the Native Administration; the Chiefs are understood not to be desirous of parting with their rights of sovereignty, nor are Her Majesty’s Government by any means anxious to assume the responsibilities of it.”\textsuperscript{112} In 1891, the British government specifically ordered the High Commissioner to “respect any native laws or customs by which the civil relations of any native chiefs, tribes, or populations under [British] protection are now regulated.”\textsuperscript{113} The British left the Botswana more or less to rule themselves and therefore only minimally interrupted functioning political systems in the country.\textsuperscript{114}

The relevance of past indirect rule in Botswana is highly significant today. Limited interference in all aspects of life meant the British colonial footprint was much less pronounced than in other African nations.\textsuperscript{115} Local leadership and a partially homegrown political framework already existed at independence, whereas other liberated countries had to recreate such frameworks nearly from scratch.\textsuperscript{116} Indirect rule also meant that the transition to independence was less brutal.\textsuperscript{117} Botswana was a peaceful Protectorate, and its people did not have to rise up against its colonizers in a violent manner to become the country it is today.\textsuperscript{118} The British relinquished their protectorate fairly easily, due in part to its perceived lack of value. However, the absence of struggle in Botswana at independence may also have affected levels of political consciousness adversely during the post-colonial period.\textsuperscript{119}

While there is much debate over how imbedded the colonial footprint is in former colonies today, this Article argues that its footprint is intrinsic in


\textsuperscript{111} Molutsi & Holm, \textit{supra} note 39, at 324.

\textsuperscript{112} Olmstead, \textit{supra} note 84, at 820.

\textsuperscript{113} \emph{Id.} at 821 (insertion in original).

\textsuperscript{114} \textsc{Saugestad}, \textit{supra} note 12, at 70.

\textsuperscript{115} Molutsi & Holm, \textit{supra} note 39, at 324.

\textsuperscript{116} See Proctor, \textit{supra} note 105.

\textsuperscript{117} \textsc{Saugestad}, \textit{supra} note 12, at 70.

\textsuperscript{118} \emph{Id.}

modern African statehood. Colonialism changed the entire mapping of the African continent, instilled foreign institutions, and destroyed much of Africa’s historic institutional framework. Colonizers generally removed the traditional institutions for leadership training and forced the African populations into obedience. The protectorate model minimized this destructive colonial legacy, which may account for Botswana’s straightforward transition to independence, successful democratic institutions, and commendable leadership. A combination of British cooperation with the Batswana in governing the country during the Protectorate era, and the fact that power was in the hands of a few local elite, made the transition to independence even easier. As Kenneth Good notes, “a major reason for this smoothness was that the transfer took place collaboratively between an indigenous elite and a colonial elite, with little or no engagement by the people.”

Botswana also benefited from what others have termed its ethnic homogeneity, which is more accurately described as the dominance of a single ethnic group. According to some sources, the Tswana people, who are comprised of several subgroups, constitute a significant majority at 79 percent of the population. The Tswana are descendents of the Sotho peoples of Southern Africa who arrived in Botswana in the 1800s. There are roughly 5 million Tswana across Botswana, Namibia, and South Africa today. Tswana descendents speak Setswana, creating a near-universal native language spoken by 78 percent of the national population. In the late 1800s, the group began to take land and to dominate the political process through the chieftainship system.

123 SAUGESTAD, supra note 12, at 70–71.
126 CIA WORLD FACTBOOK, supra note 48.
127 AFRICANA, supra note 34, at 1891.
128 Id.
129 CIA WORLD FACTBOOK, supra note 48.
130 Olmstead, supra note 84, at 813.
In 1933, British authorities officially recognized the eight principal Tswana-descended ethnic groups in the Chieftainship Act. At independence, the law carried over this distinction into the Botswana Constitution, which stipulates in §§ 77–79 that a representative of each Tswana tribe will serve in the House of Chiefs, a governmental advisory committee. The four representatives from minority ethnic groups serving in the House of Chiefs are referred to as "sub-Chiefs." Complaints by minority groups eventually led to a Presidential Commission, appointed in 2000, which examined the question of whether §§ 77–79 of the constitution are discriminatory and found that they were. The government published a White Paper in 2002, in which it accepted the Commission's findings and agreed that the language in this section should be changed. However, scholars have argued that the constitutional amendments made in 2005 did not eliminate its discriminatory nature, as specific references calling for chiefs from the eight dominant Tswana tribes were simply replaced by references calling for chiefs from districts controlled by these same tribes.

While there is great diversity among small ethnic groups within Botswana, the political dominance of one group more or less eliminated the threat of ethnic battles for power, such as the conflict between the Hutu

---

131 Nyati-Ramahobo, supra note 32, at 1. The eight groups are: the Barolong, Bakwena, Bangwaketse, Balete, Bakgatla, Batlokwa, Bangwato, and Batawana. Id.


134 Nyati-Ramahobo, supra note 32, at 2.


136 Id.

137 See Nyati-Ramahobo, supra note 32 (exploring the marginalization of non-Tswana tribes in Botswana).


139 Fombad, Constitutional Protection Against Discrimination in Botswana, supra note 135, at 156.

and Tutsi in Rwanda, or between Arab northerners and black southerners in the Sudan. However, the absence of ethnic conflict does not necessarily indicate that the Batswana are less prone than other peoples to ethnic violence. The Tswana have simply marginalized existing minorities to the point that minorities have little chance of impacting the Tswana’s dominance in the political sphere. These minority groups, which include thirty-eight other ethnic groups, struggle to gain official recognition from the government—a battle they have not yet won—let alone meaningfully participate in the political process. Beyond the discrimination espoused in the constitution, which does not officially recognize the non-Tswana tribes, the Tswana’s dominance is also reflected in Botswana’s official languages. The GOB permits only the use of Setswana and English in schools and in government, which affects linguistic minorities’ access to social services. These two languages also dominate the media.

Botswana’s third good luck charm was the fortuitous discovery of diamonds just after independence, when Botswana was one of the poorest nations in the world. De Beers geologists found diamonds in Orapa in 1967. Had knowledge of the diamonds surfaced even a year earlier, it could have changed the course of Botswana’s modern history. While the wealth afforded by the diamonds would exist regardless of the date of their discovery, the British may not have relinquished control of the Protectorate quite so easily or quickly had they known of Botswana’s diamond deposits. At the very least, they likely would have pushed for mineral concessions as a contingency for independence. Instead, the newly independent government was able to maintain control of its diamond resources by creating Debswana, the national diamond company it owns in an equal partnership with the


142 Id. at 196.
144 Nyati-Ramahobo, supra note 32, at 1.
145 Id. at 3.
146 Id. at 4.
147 Id.
148 Id.
149 Taylor & Mokhawa, supra note 17, at 262.
150 Debswana, supra note 68.
global diamond conglomerate De Beers. The fortuitous discovery of
diamonds jump-started the nation’s fledgling economy. Without diamonds, Botswana may have remained among the poorest nations in Africa.

Because Botswana is so often treated as a model of success in Africa, it is highly relevant that three factors—diamond wealth, limited colonial intrusion, and the dominance of a single ethnic group—cannot easily be replicated by other countries. What the country’s leadership was able to do with these elements of fortune is important and often admirable. However, a closer examination of Botswana’s political and economic context shows, despite some good decision-making, Botswana can do much more to ensure that all of its citizens benefit from this fortune. It can also better protect the human rights of all Batswana and should work to ensure a more even application of these rights among its citizenry.

VI. IS BOTSWANA A MIRACLE IN THE AFRICAN CONTEXT?

On October 6, 2008, the Mo Ibrahim Foundation (“Foundation”) recognized Botswana when it released its 2008 Ibrahim Index of African Governance. First published in September 2007, the Ibrahim Index of African Governance is “a comprehensive ranking of African countries according to governance quality.” It assesses national governance against fifty-seven criteria intended to capture the quality of services that governments provide to their citizens. It is meant to focus on the experiences of the people of a country, using criteria that are divided into five categories. It is interesting to note that, according to the Index, almost two-thirds of sub-Saharan African countries—thirty-one out of forty-eight—recorded an improvement in government performance between 2000 and 2006. The Foundation notes further that the largest improvement occurred in the category “Participation and Human Rights,” in which twenty-nine

---

151 GOOD, supra note 10, at 17.
152 Taylor & Mokhawa, supra note 17, at 262.
155 Ibrahim INDEX OF GOVERNANCE, supra note 153, at The Meaning of Governance 2.
156 The five categories are: safety and security; rule of law, transparency, and corruption; participation and human rights; sustainable economic opportunity; and human development. Ibrahim INDEX OF GOVERNANCE, supra note 153, at The Meaning of Governance 1.
countries demonstrated progress. On releasing the index, Mo Ibrahim himself noted that:

Obscured by many of the headlines of the past few months, the real story coming out of Africa is that governance performance across a large majority of African countries is improving. According to this comprehensive analysis, progress is being made across the continent against a range of key governance indicators.159

However, other findings contradict this analysis. While the last few years have shown signs of hope for human rights on the African continent, recurring instances of flagrant human rights abuse, and the debilitating violence that often accompanies the abuse, continue to afflict large swaths of the continent. In its 2008 World Report, Freedom House noted that:

The year 2007 was marked by a notable setback for global freedom. The decline, which was reflected in reversals in one-fifth of the world’s countries, was most pronounced in South Asia, but also reached significant levels in the former Soviet Union, the Middle East and North Africa, and sub-Saharan Africa.162

The decline is, therefore, not specifically an African problem, but a global one. However, the Report also noted that:

While in the last several years the sub-Saharan region has made incremental if uneven progress, the year 2007 saw the deterioration of freedom on the continent. Fifteen countries in sub-Saharan Africa registered reversals of sufficient magnitude to be noted in the survey, while six countries registered improvements.163

The fifteen countries experiencing declines were Cameroon, Central African Republic, Chad, Comoros, the Democratic Republic of Congo, Guinea-Bissau, Kenya, Lesotho, Madagascar, Malawi, Mali, Niger, Nigeria, the Republic of Congo (Brazzaville), and Somalia; while those demonstrating improvements were Côte d’Ivoire, Mauritania, Mozambique, Rwanda, Sierra

158 Id.
159 Id.
161 Id.
162 Id.
163 Id.
Leone, and Togo. The imbalance between the number of African countries showing improvements and those showing declines indicates there are still many countries on the African continent that will continue to violate human rights with relative impunity. The Freedom House research suggests that the number of countries that are experiencing positive developments in the area of human rights is in decline.

According to the Mo Ibrahim Index, Botswana marginally improved in three out of five categories: Participation and Human Rights; Sustainable Economic Opportunity; and Human Development. Botswana’s score remained the same in the Safety and Security category; however, this is the country’s weakest category and the only one in which it ranked outside the top ten. Botswana fell slightly in the Rule of Law, Transparency and Corruption category. The Index shows that, between 2005 and 2006, Botswana improved its overall score to seventy-four out of one hundred, but remained in fourth place out of sub-Saharan Africa’s forty-eight countries.

Although scholars and analysts accurately have recognized Botswana’s success in achieving political stability and economic growth, it is important not to end the analysis there. Several scholars have devoted their work to dissecting the myth of the Botswana “Miracle” and exposing the limitations of democracy and human rights suffered by many Batswana. Among the problems they cite are the dominance of the ruling party, unchecked presidential power, limited freedom of expression, economic disparities that are among the worst in the world, preferential treatment for certain ethnic groups, and levels of HIV/AIDS that threaten the very existence of a future work force. Some scholars, such as Jacqueline Solway, Richard Werbner, Keitseope Nthomang, and Sidsel Saugestad, have focused on the inadequate protection of minority and indigenous rights in Botswana. Clement

---

164 Id.
165 Id.
168 See examples of such work, infra notes 176–83.
170 Good, supra note 10, at 9.
Ng'ong'o and Robert Hitchcock have written extensively on land rights and indigenous groups. The works of Ian Taylor and Francis Nyamnjoh uncover the historical roots of—and limitations to—democracy in Botswana. Finally, Bugalo Maripe, Scott Pegg, and Kenneth Good have exposed restrictions on freedom of expression due to government control of the media, academia, and access to information. Good, who is among the most notable critics of the GOB, has explored rarely-exposed violations of human rights, the severity of economic inequality, and constraints on the democratic process. Digging beneath the surface exposes significant limitations to the story of the Botswana “Miracle” and reveals a far less commendable democracy beneath.

A. Laws and Practice

Although Botswana is considered one of Africa’s most successful multiparty democracies, the system contains political practices and laws that are decidedly undemocratic. For example, the constitution provides the President with unrestrained powers, authorizing him to make many decisions without input. He has direct control over the police, the information and broadcasting sector, the Directorate on Corruption and Economic Crime, and the public service. The President appoints the Vice President and all cabinet members, and is permitted to appoint four Specially Elected Members of Parliament. A 1998 constitutional amendment allowed the Vice President to automatically succeed the President upon his retirement.


175 See Taylor, supra note 119; Nyamnjoh, supra note 94.


177 See, e.g., Good, supra note 10.


179 BOTSW. CONST. ch. 4, § 47(2). Section 47(2) provides, “In the exercise of any function conferred upon him by this Constitution or any other law the President shall, unless it is otherwise provided, act in his own deliberate judgment and shall not be obliged to follow the advice tendered by any other person or authority.” Id.

180 Good, supra note 10, at 9.

181 Id.
permitting recent Presidents Ketumile Masire and Festus Mogae, who “had no popular constituencies whatsoever,” to come to power.182

B. Politics

Political campaigning is another major issue. The Botswana Democratic Party (“BDP”) has been in power so long that other political parties have rarely stood a chance against it. The Botswana National Front is the BDP’s main adversary, but its apparent inability to mount any threat to the BDP has rendered it and other parties, including the Botswana Congress Party, largely helpless, as potential constituents are not likely to contribute to a lost cause.183 The U.S. State Department’s 2007 Country Report on Human Rights Practices in Botswana expresses concern about BDP candidates’ “preferential access to state-owned television during much of the campaign.”184 Furthermore, the BDP’s impartiality is constrained by the fact that, “in a country where the ruling party has been so dominant for so long, the distinction between party and government interests is clearly blurred.”185 Regular elections are not enough to indicate a functioning democracy. As Sir Ketumile Masire, former President of Botswana, noted:

A fixation on natural electoral practices, without considerations of broader democratic practices in the economy and social sphere, creates skepticism. There is much in the African experience that suggests that a broader view of democracy building that encompasses social dynamics is not only necessary, but essential for any of the policy perspectives that we are seeking to establish.186

The election process in Botswana was historically tainted by the fact that the public did not perceive the Supervisor of Elections as independent.187 The Independent Electoral Commission, which replaced the Supervisor for the election of 1999 and subsequent elections, is also suspect. This is due to two factors: the President appoints the CEO, and the staff are under the control of the public service.188

182 Pegg, supra note 176, at 830.
183 Taylor, supra note 119, at 218.
185 Taylor, supra note 119, at 218.
187 Tsie, Botswana’s Independent Electoral Commission, supra note 45, at 145.
188 See id. at 146, 149.
Purveyors of the rosy Batswana myth often praise the country’s strong leadership. Botswana has had commendable leaders, such as the country’s first President, Sir Seretse Khama. However, Botswana’s “strong” leadership could, in fact, be indicative of an authoritarian or elite culture.189 Botswana is noted for “historically high levels of social control possessed by its ruling elites.”190 While Batswana society has certainly remained stable, Good argues that stability is actually based on critically low levels of popular participation, “a handmaid to elitism.”191 Even the kgotla, Botswana’s traditional democratic platform for political representation, as Larry Swatuk claims, “allows for the illusion of inclusion and open (though limited) expression of opinion by the citizenry, but . . . the agenda is set and key decisions are taken by the ruling class.”192 Essentially, as Good and Taylor argue, “Botswana’s democracy is highly elitist, power is excessively centralized in the presidency, secrecy and non-accountability in government are pervasive, and there is growing autocracy.”193

C. Criticism

Another issue of concern is the GOB’s aversion to criticism and its efforts to eliminate disparagement of the government from public discourse. A telling case of the limits of democracy in Botswana was the 2005 deportation of Kenneth Good, vocal critic of the government.194 The government expelled Professor Good, a 72-year-old Australian academic, after he had spent fifteen years teaching at the University of Botswana.195 President Festus Mogae declared Good a “Prohibited Immigrant” and gave him two days to leave the country, exercising his executive right to forgo any explanation for the eviction because he deemed it an “issue of national security.”196 It is widely assumed that the GOB deported Good because of his criticism of the government.197 As Scott Pegg notes, Good’s deportation “painfully confirms the validity of many of his arguments about the nature of democracy in

189 GOOD, supra note 10, at 7.
190 Id.
191 Id. at 8.
193 Pegg, supra note 176, at 830.
195 Pegg, supra note 176, at 829.
196 Id.
197 Id. at 830.
Since that time, the government has made it more difficult for foreign journalists and academics to obtain visas. The Minister of Labour and Home Affairs, Charles Tibone, recently invoked a clause from the Immigration Act regarding visa requirements in order to target seventeen individuals from abroad who he perceived as inclined to criticize the government. The list includes Good's colleague Ian Taylor, an academic who often criticizes government actions against the San. The targeted individuals, unlike other visitors, must now obtain a visa before traveling to Botswana.

D. Civil Society and the Media

Botswana also suffers from a weak and apolitical civil society, evinced in part by low voter turnout in the 1990s. National elections in 1999 showed a 42 percent turnout, very low in comparison to the turnout in much of the rest of sub-Saharan Africa in the 1990s, which often pushed 80 percent. There are low levels of political consciousness and a weak civil society in Botswana, due in part to the "lack of any meaningful 'struggle' for independence and the concomitant absence of a tradition of questioning." This legacy also may result from historical domination by the chiefs and other elites. Batswana often tend to go with the flow when it comes to politics. As Swatuk claims, "public opposition to the ruling party is frowned upon, as is aggressive, confrontational styles of political activism." Perhaps because of this, Botswana's NGOs are hesitant to address controversial issues such as human rights, gender equity, capital punishment, political education, the San, or democracy. One of the biggest concerns in any weak civil society is that there is little chance of consolidating an opposition group.

198 Id.
200 Id.
201 Id.
202 Id.
204 GOOD, supra note 10, at 5.
205 Taylor, supra note 119, at 221 (citing Holm et al., The Development of Civil Society in a Democratic State: The Botswana Model, 39 AFR. STUD. REV. 2 (2003)).
206 Swatuk, supra note 192, at 109.
207 Id.
208 Id.
209 GOOD, supra note 10, at 6.
that is strong enough to force the government to address democratic deficiencies, specifically in the form of human rights abuses.

Government influence and certain laws also severely limit the freedom of the media in Botswana. While there is independent media, the government dominates most of the media through state television, two radio stations, and its newspaper, the Daily News. State media rarely criticizes the government and often favors the BDP. The Office of the President has direct control over the Daily News, and public officials are forbidden to talk to the press. Furthermore, the 1986 National Security Act forbids publication of information relating to national security and generally restricts access to information. There is no freedom of information legislation and the public does not have access to government documents. Until the end of 2009, the government website had a link to the laws of Botswana labeled “restricted access;” the page said “access forbidden” and noted that Botswana’s laws were not yet available on the internet for public use. Additionally, the government has been known to intervene and censor the media when it covers sensitive topics, including the cancellation of live radio panel discussions on state-owned broadcasting. According to the U.S. State Department’s 2007 Report on human rights in Botswana, government journalists often censored themselves. In 2005, the government deported at least two foreign journalists, in addition to Good, whose reporting was critical of the government, without justification other than national security concerns. The government also has attempted to enact a piece of legislation entitled the Mass Media Communications Bill, which would place further checks on free media, such as bestowing power upon the government to

---

210 See Maripe, supra note 176.
211 U.S. DEPT OF STATE 2007, supra note 184.
212 Id.
213 Id., supra note 10, at 9.
217 Id., supra note 10, at 12.
220 Id.
221 Taylor, supra note 119, at 220.
register and deregister newspapers at will.\textsuperscript{222} Some argue that this bill directly contradicts constitutionally-protected freedom of expression rights.\textsuperscript{223} Since 2008, the GOB has been trying to impose a statutory press council on the country, further attempting to control the media and make it as compliant as possible with the wishes of the state.\textsuperscript{224} The task of the press council will be to adjudicate complaints against the media.

\textbf{E. Economic Issues}

In addition to political issues, several economic concerns highlight that the description of Botswana as Africa’s “Miracle” fails to convey meaning for all Batswana. While Botswana has experienced noteworthy economic growth over the last forty years, its “national success conceals hugely different outcomes among the local population,” who suffer significant disparities in wealth.\textsuperscript{225} According to the U.N. Development Programme Human Development Indicators, Botswana ranks third highest in the world in its Gini coefficient, a measure of the inequality of income distribution, behind Comoros and Namibia.\textsuperscript{226} It has a Human Development Index rating of 125 out of 182 countries.\textsuperscript{227} As Good notes, “high growth has not ameliorated the socioeconomic inequalities long existing in the country.”\textsuperscript{228} From 2000 to 2007, 31.2 percent of the population lived on less than $1.25 per day, while 49.4 percent of the people lived on less than $2 per day.\textsuperscript{229} The richest 10 percent of the population have access to a 51.2 percent share of income or expenditures.\textsuperscript{230} Therefore, as Ian Taylor argues, “the creation of a more equitable society and fairer distribution of resources remains Botswana’s greatest development challenge and one which will define the success or otherwise of the post-independence project.”\textsuperscript{231} As of yet, Botswana has not been successful in translating its mineral wealth into overall poverty reduction, and many Batswana continue to suffer at the bottom of the
economic food-chain. Thus, while Botswana is doing well economically, its riches are not trickling down to those who most need assistance. Advances in socioeconomic rights are not occurring even though Botswana has some capacity to make improvements to the lives of its poorest inhabitants.

F. Minority Groups

This economic differentiation is most exemplified by the San, a group of traditional hunters and gatherers that live in the Kalahari region and are one of Botswana’s most marginalized minorities. “Belonging to a marginalized, often stigmatized, indigenous minority,” Sidsel Saugestad notes, “almost invariably includes a state of abject poverty,” and the San are no exception.232 Olmstead writes, “the San have largely been denied the fruits of Botswana’s rapid economic growth and social development,” as they endure chronic poverty and unemployment and are forced to depend on handouts from the government to survive.233 In general, the Tswana have historically treated the San as second-class citizens, often taking them as servants or slaves.234 More recently, tremendous tensions between the government and the San led to the prominent land rights conflict in the Central Kalahari Game Reserve and the ensuing court case.235 The San residents of the Central Kalahari Game Reserve suffered the following at the hands of the government: forced removal, termination of basic and essential services, “dismantling of existing infrastructures, the confiscation of livestock,” restriction of movement, harassment, and ill-treatment.236

The marginalization of ethnic minorities is a major issue in Botswana. While Botswana premised its nation-building on over-emphasized ethnic homogeneity, in fact, the ruling Tswana elite simply ignored the heterogeneity that existed.237 In Botswana, as in many African countries, borders were drawn in such a way that disparate ethnic groups were brought together under the umbrella of a single nation. This delineation of borders effectively split ethnic groups across national boundaries, including the Ju/hoansi people in the northwest of Botswana, whose population stretches across the Namibian border, and the many Setswana speakers who live

232 SAUGESTAD, supra note 12, at 31.
233 Olmstead, supra note 84, at 799.
234 SAUGESTAD, supra note 12, at 31, 40, 93.
235 See supra notes 18–22 and accompanying text.
237 SAUGESTAD, supra note 12, at 68–69.
within the borders of South Africa.\footnote{Id. at 199.} Despite frequent government claims to the contrary,\footnote{Id. at 68–69.} there is significant ethnic diversity in Botswana.\footnote{Id.} The Tswana simply comprise a critical mass and often control perceptions of this diversity.

Botswana has enjoyed some measure of improvement in the representation of minority groups. In fact, members of ethnic groups not officially recognized by law, such as members of the Kalanga and Bakalagadi ethnic groups, often participate in the government.\footnote{U.S. DEPT OF STATE 2007, supra note 184.} In 2006, twenty-three minority members held seats in the sixty-one-seat parliament, ten held seats in the twenty-seat cabinet, and five were represented in the High Court.\footnote{Id.} However, these groups often are forced to toe the line of the Tswana political leaders and Chiefs in order to maintain their posts.\footnote{Id.} For this reason, the presence of representatives from minority groups in government positions has not led to better representation of the interests of those minorities.\footnote{Id.} The GOB has failed in many regards to protect the rights of Botswana’s indigenous groups, and there is often little recourse for these groups to seek justice within their own national borders.

\textbf{G. Human Rights in General}

On the human rights front, in general, Botswana suffers a number of shortcomings. While Botswana is a party to many international treaties and conventions, it often shows only limited support for the human rights agreements that it has signed and ratified.\footnote{See LONE LINDBOLT, QUESTIONING THE UNIVERSALITY OF HUMAN RIGHTS: THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS IN BOTSWANA, MALAWI AND MOZAMBIQUE 247 (1997).} For example, it never submitted a state report to the African Commission on Human and Peoples’ Rights as required by Article 62 of the African Charter on Human and People’s Rights.\footnote{African [Banjul] Charter on Human and Peoples’ Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); see AFR. COMM. ON HUMAN AND PEOPLE’S RIGHTS, MISSION REPORT TO THE REPUBLIC OF BOTSWANA (2005), available at http://www.achpr.org/english/Mission_reports/mission%20report_Botswana.pdf (noting Botswana did not submit a report).} The Commission condemned this failure in a 2005 visit to the country.\footnote{AFR. COMM. ON HUMAN AND PEOPLE’S RIGHTS, supra note 246, at 10.} In addition, the country failed to submit a report to the Committee
Against Torture. The Committee on the Elimination of Racial Discrimination (“CERD”) lamented the fact that Botswana’s constitution and domestic law “do not seem to respond fully to the requirements of the Convention.”

It noted, for example, that Article 15 of the constitution permits derogations from international obligations prohibiting racial discrimination. CERD also noted that Botswana has various laws, including the Chieftainship Act and the Tribal Territories Act, which recognize only the Tswana people, and not other groups in the country. Therefore, CERD indicated that these laws and others violated the Convention. It specifically found that the political system discriminated against San people. Interestingly, in Attorney General v. Unity Dow, the Court of Appeal of Botswana determined that citizenship laws allowing only male citizens to pass citizenship status onto their children amounted to sexual discrimination. The court poignantly noted, “Botswana seeks to avoid violating international law where possible.” The court went to great lengths to expound upon Botswana’s image as a liberal democracy and its


250 Id. ¶ 300.

251 Id. ¶ 301.

252 Id.


256 Bahdi, supra note 256, at 555.
loyalty to the human rights agreements it has signed.\footnote{Id. at 593.} In practice, the GOB has not always lived up to this image.

The treatment of women and women’s rights, which was the key issue in the Unity Dow decision,\footnote{Attorney-General v. Unity Dow, 1992 BLR 119 (Bots.).} is a tremendous problem in Botswana. Domestic violence is pervasive, and few women hold political positions. In 2008, there were only seven women in the sixty-one seat parliament, five female cabinet ministers out of twenty, three female judges out of thirteen on the High Court, and two women among the fifteen members of the House of Chiefs.\footnote{Human Rights Council, Working Group on the Universal Periodic Review, \textit{Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(c) of the Annex to Human Rights Council Resolution 5/1}, ¶ 15, U.N. Doc. A/HRC/WG.6/3/BWA/3, (Sept. 15, 2008).}

The GOB has yet to enact many of the treaties it has signed into domestic law, including the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Rights of the Child, and the Convention Against Torture. In this regard, the U.N. Human Rights Committee (“HRC”) noted that the ICCPR is “not directly applicable” in domestic law, and that the laws of the country do not contain several of the rights contained in the Convention.\footnote{Human Rights Comm., \textit{Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant}, ¶ 6, U.N. Doc. CCPR/C/BWA/CO/1 (Apr. 24, 2008) [hereinafter Human Rights Comm., \textit{Consideration of Reports}].} It also noted the numerous reservations Botswana entered with respect to the ICCPR.\footnote{Id. ¶ 14.} The Committee on the Rights of the Child has recommended that Botswana withdraw its reservation to Article 1 of the Convention on the Rights of the Child\footnote{Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1456, 1577 U.N.T.S. 3, \textit{available at} http://www2.ohchr.org/english/law/crc.htm. Article 1 of the Convention provides that “[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” \textit{Id.} art. 1.} and make the Convention applicable in Botswana.\footnote{Comm. on the Rights of the Child, \textit{Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Botswana}, ¶ 9, U.N. Doc. CRC/C/15/Add.242 (Nov. 3, 2004).} In 2008, the HRC also expressed its concern that the exceptions to the Botswana constitutional right to be free from discrimination did not comply with Articles 2, 3, and 26 of the ICCPR.\footnote{Human Rights Comm., \textit{Consideration of Reports, supra note 261}, ¶ 9.} CERD noted that the country was reluctant to recognize the existence of indigenous peoples on its territory and urged Botswana to respect and protect the existence and
cultural identities of all ethnic groups, as well as to review its policy on indigenous peoples.\textsuperscript{266}

Botswana’s stance on the death penalty also continues to be problematic, especially in light of its mandatory imposition for certain crimes and the country’s low rate of commutations.\textsuperscript{267} The HRC criticized the fact that Botswana laws do not define torture, and suggested that the GOB make torture a grave criminal offense and provide reparations to victims of torture.\textsuperscript{268} Such measures are especially important due to reports of torture and the impunity of security services.\textsuperscript{269}

Botswana’s prisons also received criticism from the HRC, specifically in regard to overcrowding, the large percentage of persons awaiting trial, and the length of detention before trial.\textsuperscript{270} The HRC suggested that the state increase its efforts to ensure that prisoners are kept in humane and dignified conditions by ensuring healthy conditions and adequate access to healthcare and food.\textsuperscript{271} The HRC also condemned Botswana’s laws on corporal punishment.\textsuperscript{272}

The Office of the Ombudsman in Botswana,\textsuperscript{273} which is a public, extra-ministerial institution, was established by the Ombudsman Act of 1995.\textsuperscript{274} It is charged with investigating “maladministration” and making recommendations to the government.\textsuperscript{275} However, the effectiveness of the office is questionable.\textsuperscript{276} In his meeting with the African Commission, Ombudsman Lethebe Maine claimed to have received very few complaints thus far, save a few protestations of human rights abuse by prisoners.\textsuperscript{277} The

\textsuperscript{266} CERD, Consideration of Reports Under Article 9, supra note 236, ¶ 9.
\textsuperscript{267} Human Rights Comm., Consideration of Reports, supra note 261, ¶13.
\textsuperscript{268} Id. ¶ 15.
\textsuperscript{270} Human Rights Comm., Consideration of Reports, supra note 261, ¶ 15.
\textsuperscript{271} Id. ¶ 17.
\textsuperscript{272} Id. ¶ 18.
\textsuperscript{275} AFR. COMM. ON HUMAN AND PEOPLE’S RIGHTS, supra note 246, at 17.
\textsuperscript{276} See id.
office has a limited mandate. As a result, it faces criticisms of being weak, ineffective, and without the resources to function effectively.\textsuperscript{278} Furthermore, the President appoints the Ombudsman in consultation with the leader of the opposition party, and the government funds the position.\textsuperscript{279} Especially where governments are guilty of human rights violations, a presidential appointee is unlikely to be impartial. While acknowledging the Office of the Ombudsman, the HRC found that there was no national human rights institution, and therefore called on Botswana to establish such an institution in accordance with the Paris Principles.\textsuperscript{280}

\textbf{H. HIV/AIDS}

Extremely high levels of HIV/AIDS are an issue of major concern in Botswana.\textsuperscript{281} The country has one of the highest percentages of HIV-infected persons in the world.\textsuperscript{282} At its peak in 2003, the level may have reached nearly 38 percent of the population.\textsuperscript{283} Although the birth rate is now 2.289 percent,\textsuperscript{284} past negative population growth (estimated at negative 0.4 percent in 2006)\textsuperscript{285} suggests that the population was shrinking as a result of HIV/AIDS. In 2006 Botswana’s life expectancy was one of the lowest in the world—ranked 223 overall—due to the impact of HIV/AIDS.\textsuperscript{286} It has now risen to 61.85 years (61.72 years for men and 61.99 years for women), which gives it a ranking of 178 out of 223 nations globally.\textsuperscript{287} Botswana also suffers

relationship between women’s “life events” and their subsequent criminal behavior, linking poverty and prisoner status. Overcrowding in prisons and extensive pre-trial waiting periods adversely affect the rights of detainees. See JEREMY SARKIN, HUMAN RIGHTS IN AFRICAN PRISONS (2008).\textsuperscript{278}


\textsuperscript{279} Fombad, Enhancement of Good Governance in Botswana, supra note 274, at 57.

\textsuperscript{280} Human Rights Comm., Consideration of Reports, supra note 261, ¶ 8. The Paris Principles emerged on Oct. 7–9, 1991, from a workshop regarding the role, status, and function of the National Human Rights Institutions, and were adopted by a U.N. Human Rights Commission Resolution in 1992 and the U.N. General Assembly in 1993. Id.


\textsuperscript{282} Id.; see also Peggy G. Ntsane & Julia Preece, Why HIV/AIDS Prevention Strategies Fail in Botswana: Considering Discourses on Sexuality, 22 DEV. S. AFR. 347 (2005).


\textsuperscript{284} CIA WORLD FACTBOOK, supra note 48.


\textsuperscript{286} Index Mundi, supra note 285.

\textsuperscript{287} CIA WORLD FACTBOOK, supra note 48.
from a culture of stigmatization of infected persons, a prejudice that only makes the problem more difficult to address. Local myths, detailing how one can “cure” oneself of the disease, actually spread it further. In addition to the humanitarian crisis it causes, the HIV/AIDS epidemic in Botswana merits great economic alarm as the current rate of infection, and the number of deaths it portends, could leave too few people to run the growing economy in future years.

I. Diversifying the Economy

The need to diversify the economy looms large in Botswana. Diamonds and beef are the country’s only significant exports, yet both face threats to their long-term existence. Miners will eventually cease to find new diamond sources. Further, the international media can easily affect the diamond market—which depends heavily on public perception—as human rights messaging, such as the “conflict diamonds” campaign, have exhibited. Severe overgrazing and a lack of water sources in most parts of the country threaten the cattle industry, as does the risk of disease and its effects on market preferences. Furthermore, beef exports make up a mere 3.1 percent of export earnings, and the diamond industry subsidizes the cattle industry.

In May 2006, DeBeers and the GOB signed a deal that created the Botswana Diamond Trading Company (“BTDC”) in the hope that Botswana’s diamond income would remain secure for decades. The deal included the creation of four cutting factories in Botswana, aiming to increase the tiny portion of the labor force (1.5 percent) that the diamond industry employed at that time. These factories will allow a Batswana workforce to cut and polish diamonds. Yet, despite the industry’s profitability and the additional labor the BTDC employs, the reality is that the diamond industry is capital-

292 Taylor & Mokhawa, supra note 17, at 264.
293 Darkoh & Mbaiwa, supra note 225, at 160–61.
294 Id. at 151.
296 Id.
intensive and requires limited labor. The government will need to do much more with future diamond revenues and focus on economic diversification to address issues of poverty, unemployment, and income inequality.

Botswana must establish alternative industries to replace the role that cattle and diamond exports play in the economy. The primary alternative thus far has been a policy of high-cost, environmentally low-impact tourism that seeks to preserve Botswana’s environment for the long term. This policy has served the country well, but it is not enough. In addition, the government has begun to encourage a growing manufacturing sector; however, manufacturing is nowhere near the size necessary to replace diamond revenues.

J. Unemployment

High levels of unemployment also threaten the “African Miracle.” At 23.8 percent in 2004, Botswana was certainly not at the top of the list among African countries, but unemployment was high enough to be of great concern. Aside from indicating wealth inequities, high unemployment can eventually lead to civil unrest.

A severe lack of workers’ rights makes this situation worse. According to Ian Taylor, the ability of workers to strike is extremely limited, the registration of new unions is nearly impossible, and a general strike is entirely infeasible in Botswana. He concludes that “profound restrictions—enshrined in law—limit the potential of workers to organise effectively and exercise their democratic right to withhold their labour.” Interestingly, Taylor points out that the working class is a likely sector of society from

---

297 Taylor & Mokhawa, supra note 17, at 263.
301 Tsheko, supra note 291, at 19.
303 But see id. (indicating that the current unemployment rate is 7.5 percent, based on 2007 figures).
305 Taylor, supra note 119, at 227.
306 Id.
which political opposition to the BDP could materialize.\textsuperscript{307} Making it difficult for the working class to mobilize through unions helps to suppress that threat. Therefore, GOB control of the labor movement reflects a possible political strategy. The employment situation in Botswana is a potential issue for political discourse, the benefit of which could be its ability to create a more active civil society.

\textbf{K. “Negative Peace”}

As Kenneth Good has said, modern Botswana represents a “negative peace.”\textsuperscript{308} Simply put, the issues outlined above negate Botswana’s touted image of stability and growth. Admittedly, Botswana has been successful in the post-colonial nation-building period in many ways, but it is certainly not the beacon of democracy that it is often portrayed to be. “Botswana has combined high growth rates and visible ‘development,’” Taylor writes, “with a structural autocracy that belies its benign image internationally.”\textsuperscript{309} African nations, when looking to Botswana as a progressive example, should acknowledge these facts that tarnish the myth of the “African Miracle.”

\textbf{VII. CONCLUSION}

Since independence in 1966, Botswana has enjoyed much success, especially in comparison to many post-colonial African nations. It has evolved from one of the poorest countries in the world to a symbol of political stability, economic growth, international investment, and development in Africa.\textsuperscript{310} Thus, the international community has spent several decades praising the country of Botswana for these achievements.

While these achievements deserve acknowledgement and respect, Botswana has fallen short of its image as the “African Miracle” in many ways. The GOB has failed to address many issues of great concern to a country that could be emblematic of what is possible in Africa. These include severe inequality, government aversion to criticism, limitations on civil society and the media, the dominance of a single political party, extensive executive authority, unemployment, the HIV/AIDS epidemic, and the marginalization of minority groups, among others. With regard to indigenous issues, the government has used its policy of non-racialism to prove that it is highly sensitive to racial issues and that it strives to provide equal rights to all Batswana. However, the condition of various groups of its people exposes that this image is a distortion. From the minority groups’ vantage points, it seems as though non-racial policies allow the GOB to marginalize the

\textsuperscript{307} Id.
\textsuperscript{308} GOOD, supra note 10, at 24.
\textsuperscript{309} Taylor, supra note 119, at 216.
\textsuperscript{310} Taylor & Mokhawa, supra note 17, at 262.
concerns of minorities in a Tswana-dominated society. To various degrees, many of Botswana’s minorities are suffering.

On a number of other fronts, Botswana’s human rights record is wanting. The GOB has not incorporated into domestic law several of the human rights treaties that Botswana has ratified. The government has failed to submit many of the reports required by these agreements. There is no national human rights institution, thus recourse for citizens is not what it ought to be. The Office of the Ombudsman is not playing such a role. Due to this void, an institution is needed that can promote and protect the rights of all the citizens of the country.

Botswana cannot serve as an example for Africa unless it confronts these fundamental failures. The country’s stability and available capital give it the capability to address some of these tough problems. Botswana has the resources required to truly promote a democracy based on the rule of law and human rights. Until the country takes action to address these essential shortcomings, the international community should refrain from referring to Botswana as the “Miracle of Africa.” For Africa to truly succeed, both African nations and the rest of the world must set the bar higher.