

THE BAKGATLA BA KGAFELA:

- Land Restitution and CPA Challenges
- Undermining Traditional Leadership
- Systemic Rights Violations and State Interference

LVVS

Position Paper

The Bakgatla Ba Kgafela

05/7/2025



Andrea Shea - Sonia Newton

Organization: Libertas Vanguard Society

Human Rights Impact Lab (HRIL)

Website: www.libertasvanguardsociety.org

About the authors

Andrea Shea is a seasoned researcher, statistician, and advocate for minority rights, renowned for her data-driven approach to addressing human rights violations and democratic decline in South Africa. As an expat South African, she leverages her lived experience to raise international awareness of the struggles faced by marginalized communities, particularly in their pursuit of sovereignty and justice. Holding advanced degrees in Biostatistics and Global Communicable Diseases, with a robust foundation in Biology and Chemistry, Shea combines scientific rigor with strategic research. Her work, grounded in evidence and fueled by a commitment to freedom and dignity, delivers clear, impactful solutions for her community and beyond.

Sonia Newton is a human rights analyst at the Human Rights Impact Lab (HRIL), a core division of the Libertas Vanguard Society (LVS). This paper, developed in collaboration with the NextChapter SA Think Tank as part of the South Africa Futures Project, reflects Newton's expertise in human rights, minority protections, and transitional justice in post-apartheid South Africa. Her research focuses on safeguarding democratic principles and advocating for marginalized communities, grounded in South African constitutional law and international human rights standards. Newton critically evaluates policies that undermine minority rights, identifying threats to democracy and proposing actionable solutions to foster equity and justice.

The Bakgatla Ba Kgafela Struggle for Land and Self-Determination

Abstract

This paper examines the historical and legal struggles of the Bakgatla Ba Kgafela, a Tswana-speaking indigenous community in South Africa and Botswana, focusing on their efforts to reclaim ancestral lands lost under apartheid and to preserve their traditional governance structures. Despite constitutional protections and court victories, such as the 2015 Constitutional Court ruling reinstating their Communal Property Association (CPA), the Bakgatla faces ongoing challenges from state interference, political factionalism, and the proposed Expropriation Bill of 2020. These actions threaten their land restitution, cultural rights, and self-determination, as guaranteed by South Africa's Constitution, the African Charter, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The paper analyzes the undermining of paramount chief Kgafela Kgafela II's authority, state-driven cadre deployment, and violations of international human rights law. It proposes strategic recommendations for advocacy, legal action, and community-led economic initiatives, drawing lessons for other traditional communities. The Bakgatla case underscores the tension between indigenous rights and state-driven land reform, highlighting the need for robust legal and policy frameworks to protect communal land tenure and traditional leadership in post-apartheid South Africa.

1. Introduction

The Bakgatla Ba Kgafela traditional community, under the leadership of Kgafela Kgafela II, represents one of the oldest continuous indigenous governance institutions in Southern Africa. The Bakgatla Ba Kgafela are a Tswana-speaking tribe with communities in North West, South Africa and in Botswana. Under apartheid they were forcibly removed from their ancestral lands (now the Pilanesberg/Sun City area) and their communal land was converted to state/game reserve use. Since 1994 the community has sought land restitution and protection of its traditional authority. In *Bakgatla-Ba-Kgafela CPA v Tribal Authority* (2015), the Constitutional Court noted that the community's desire "to regain ownership of the communal land it lost under apartheid" was supported by the Constitution's guarantee that "individuals and communities" may reclaim their lost land. The CPA Act of 1996 was interpreted to give effect to that constitutional right.

However, the Bakgatla's communal property vehicle (their Communal Property Association, or CPA) became contested. A 2014 Supreme Court of Appeal judgment held that the provisional CPA had lapsed and "ceased to exist" for failure to re-register, effectively depriving the tribe of a legal land-holding entity. This ruling threatened to strip the tribe of its restitution land. In August 2015, the Constitutional Court reversed that outcome, reinstating the CPA and ordering the state (the Minister and DG of Rural Development) to pay costs. Jafta J explained that the CPA Act's purpose is "to facilitate the process of restoring land to wrongfully dispossessed people" and to give effect to constitutional land rights.

Traditional leaders, through tribal councils, control land allocation, resource access (e.g., water, minerals), and local governance, wielding significant political influence. The ANC's land reform policies, including the Expropriation Act and proposed title deed issuance to small-scale farmers, challenge this authority. For example, ANC official Ronald Lamola in 2018 explicitly targeted the Ingonyama Trust, controlled by Zulu King Goodwill Zwelithini, for reform, advocating title deeds to prevent evictions by chiefs.

2. Undermining of Kgosi Kgafela Kgafela II's Authority

The Bakgatla's paramount chief, Kgosi Kgafela Kgafela II, has faced direct state attacks on his legitimacy. In Botswana (where the Bakgatla are also a recognized tribe), the government invoked the Bogosi Act to "de-recognise" Kgafela as Kgosi of the Bakgatla in October 2011. A criminal warrant was issued (on dubious charges), and Kgafela fled to South Africa in mid-2012. Although former President Masisi later announced the derecognition would be lifted, Kgafela's chieftaincy was never formally restored. He remains in exile, effectively barred from exercising any authority. This political removal of the tribal king (by legislative decree, not by community choice) gravely undermined the Bakgatla's traditional leadership structure.

In South Africa, the Bakgatla were left with a divided leadership. A faction of the tribe, associated with the Botswana-based paramount chief, recognized Kgosi Nyalala Pilane as their leader and formed a new Tribal Authority (with Pilane as Kgosi). This split led to bitter disputes. In 2019 the North-West provincial Commission of Inquiry (an ANC-appointed body) recommended that Pilane resign from all positions and barred him from the community's affairs, a move aimed at clearing the way for a new leadership roster. In 2025, the North-West High Court set aside the Commission's findings as "irrational, unlawful, unconstitutional and invalid", but the very existence of such interference illustrated how political bodies can attempt to override traditional succession. In sum, Kgafela II's authority was undermined both by Botswana's government (outright deposing him) and by politicized interventions in South Africa (the Pilane faction's ascendancy), leaving the Bakgatla without a universally recognized kgotla. This while Kgafela Kgafela II is undeniably the descendant of the original Kgafela who founded the tribe around 1650. The Bakgatla Ba Kgafela began around 1650 when Kgosi Mogale's death led to a split. His son, Kgafela, founded the Bakgatla tribe, becoming its progenitor.

3. State Influence, CPAs and Cadre Deployment

Both government departments and ruling-party patronage have played roles in marginalizing the Bakgatla. Officials in the Department of Rural Development repeatedly intervened in the CPA process. For example, when the community itself organized a CPA to hold its restitution land, the Minister and Director-General initially resisted registering it (favoring a state-controlled trust model instead). Ultimately, those officials were rebuffed in court, the Constitutional Court even ordered the Minister and DG to pay the CPA's costs. Nevertheless, the back-and-forth illustrated how bureaucratic oversight (and possible political influence in the department) complicated the tribe's efforts.

More broadly, analysts have noted that ANC cadre deployment and rural corruption undermine traditional communities. The North-West Commission of Inquiry, for instance, was appointed by

SACT is a department within Libertas Vanguard Society (LVS) –

<https://libertasvanguardsociety.org/sact/>

ANC premiers (Mahumapelo and Mokgoro) to resolve “succession disputes,” but its work was widely seen as politicized. Its 2019 report targeted Kgosi Pilane, demanding his removal, only to be overturned in court. These developments suggest that ruling-party politics (prominent in North West province) were shaping outcomes of tribal governance. In such contexts, community assets and revenues (e.g. from mining or tourism) can be diverted to ANC-affiliated entities, with little benefit for ordinary members. Indeed, the Bakgatla’s investments (in mining, property, and Sun City-related ventures) are worth billions, yet the community often finds itself locked out of managing these resources. By contrast, a cadre-driven administration might install compliant tribal councils or CPAs, eroding genuine self-governance.

4. Violated Rights, Constitutional and International

The Bakgatla have suffered violations of numerous rights under South African and international law:

- Right to Self-Determination (Constitution, sec. 235): The Constitution expressly recognizes that communities sharing a common culture and language have a right to self-determination (within the Republic). By undermining the community’s chosen leadership (Kgafela) and denying meaningful local control over their land, the state has infringed this right. Equally, African Charter Art. 20 guarantees all peoples “the unquestionable and inalienable right to self-determination”.
- Land and Property Rights (sec. 25; African Charter; UNDRIP): Section 25 of the SA Constitution protects property and explicitly provides for restitution of land dispossessed by apartheid (which the courts reaffirm). The state’s failure to permanently register the CPA in time (and the subsequent attempt to dissolve it) effectively expropriated the tribe’s communal land. The African Charter similarly secures peoples’ rights over their resources and compensation for spoliation. In particular, Art. 21(2) grants dispossessed peoples “the right to the lawful recovery of [their] property” and adequate compensation. Under UNDRIP Art. 26, indigenous peoples have rights to their traditional lands and to own, use and control resources on them. The Bakgatla’s lands (including those under Sun City) were taken without fair legal process or consent, breaching these standards.
- Cultural and Linguistic Rights (secs. 30–31; African Charter; UNDRIP): The Constitution guarantees every person the right to use their language and participate in the cultural life of their community (ss. 30–31). Forced removals, exile of the king, and disruptions to tribal ceremonies violate these cultural rights. African Charter Art. 17(2) affirms that individuals may “freely take part in the cultural life of [their] community”, and the state has a duty to respect traditional values. UNDRIP likewise protects indigenous cultures (Arts. 11, 25) and spiritual relationships with lands. Denying the Bakgatla control over sacred sites or forbidding traditional leaders from performing duties (e.g. succession rites) infringes these cultural guarantees.
- Equality and Non-Discrimination (sec. 9; African Charter Art. 2): The tribal community has experienced prejudicial treatment. By ousting the Bakgatla’s chosen leadership and favoring outsiders or split factions, the state has discriminated against this ethnic group. The African Charter (Art. 2) forbids discrimination of any kind. Similarly, Section 9 of the Constitution demands equal protection, undermining a hereditary leader on political grounds violates equality.
- Freedom of Movement and Personal Liberty (secs. 12–35): Kgafela II’s involuntary exile and travel ban breach his rights. Section 12 protects personal freedom, and Section 34 (just administrative action) was ignored when he was deposed without a fair process. If he is prevented from returning to Botswana or participating in governance (on a technical

charge), his basic liberties are curtailed. The African Charter's Art. 12 protects the rights to leave and return to one's country, which the Bakgatla king has been denied.

- **Right to Development and Economic Rights** (African Charter Art. 22; ICCPR Art. 27; Sustainable Development): Tribal communities have a right to economic self-development. The loss of their land and assets, while outsiders profit (e.g. mining companies, tourism interests), contravenes Article 22's right of peoples to development. The lack of compensation or meaningful share in mineral revenues violates their socio-economic rights.

In summary, the Bakgatla case implicates Section 235 (community self-determination), Sections 25, 26, 30–31 of the Constitution (property, culture, language), African Charter Articles 14–22, and multiple UNDRIP guarantees (self-determination, land, culture). Each of these has been compromised by the state's actions.

5. Lessons for Other Traditional Communities

The Bakgatla experience offers cautionary lessons. First, legal vehicles must be managed carefully: when creating a CPA (or trust), communities should ensure compliance with all formal requirements to avoid technical lapses like those used against Bakgatla. Second, internal unity is crucial: divisive leadership battles make a community vulnerable to outside interference. Other tribes should establish clear customary succession rules and involve neutral mediators to prevent politicization. Third, build strong advocacy networks: the Bakgatla's appeals to court ultimately vindicated them, but support from civil society and international bodies can amplify these efforts. For example, communities might file complaints with the African Commission on Human and Peoples' Rights or UN mechanisms, citing the Banjul Charter and UNDRIP principles.

Some communities have even sought autonomous development models as a hedge. A notable example is Orania, an Afrikaner-majority town in the Northern Cape. Orania is constitutionally recognized as a self-administered "town" with its own Representative Council, currency, schools, and local businesses, effectively exercising collective autonomy. Orania's model of community-controlled governance and economy illustrates how a determined group can use constitutional self-determination (Section 235) to carve out de facto autonomy. Indigenous and tribal communities might draw from this by seeking special development zones or co-governance agreements that guarantee them fiscal and administrative control over their territories.

6. Risk Posed by the Current Expropriation Bill to the Bakgatla Ba Kgafela

The proposed Expropriation Bill of 2020, now under consideration by the South African Parliament, introduces serious risks for the Bakgatla Ba Kgafela and other traditional communities seeking restitution or control over ancestral land. While the Bill is framed as a means to redress historical injustices, in practice it extends sweeping powers to the state to seize land without compensation in certain cases, and may be weaponized against vulnerable, divided or politically inconvenient communities.

6.1. Key Risks to Bakgatla

6.1.1. Loss of Restitution Land Without Compensation.

The Bill allows expropriation "for nil compensation" under several vaguely defined conditions, including land held "for speculative purposes" or that is "not being used". Given that many tribal communities (including the Bakgatla) hold land communally through CPAs or trusts, but may not develop every hectare immediately, this exposes them to the risk of expropriation under the pretense of "non-use."

- The Bakgatla have previously been blocked from fully controlling their land due to CPA registration delays, leadership disputes, and bureaucratic obstruction. These administrative bottlenecks could now be reinterpreted by the state as evidence of “unproductive” land use, justifying expropriation without compensation under the new Bill.
- Centralized State Control Over Communal Land The Bill centralizes expropriation power in the hands of the Minister of Public Works, who can unilaterally decide if land qualifies for nil compensation. There is no specific safeguard for traditional authorities or communal landholders.

In the Bakgatla’s case, the Department of Rural Development has already opposed the community’s CPA structure and sought to control communal land via politically appointed trusts . If the Expropriation Bill becomes law, the same actors could bypass restitution rulings and seize land under state control, displacing the community once more.

6.1.2. Undermining of Section 25’s Safeguards

Section 25 of the Constitution requires that expropriation be for a public purpose, subject to compensation, and that all relevant circumstances be considered. The Expropriation Bill attempts to re-interpret this by normalizing “nil compensation” and introducing broad categories where it may apply.

This undermines the Bakgatla’s hard-won court victories affirming that restitution land is constitutionally protected and cannot be taken arbitrarily. Even if compensation is zero, such a seizure still amounts to dispossession, particularly when done without free, prior, and informed consent, a core principle of international indigenous law (UNDRIP Art. 10 and 32).

6.1.3. Exposure to Corruption and Cadre Capture

In provinces like North West, where cadre deployment and elite interference are well documented, expanded expropriation powers could be misused. For example, a politically connected faction within a tribal authority (such as the pro-Pilane group) might lobby government to expropriate land from the CPA and redirect it to a government-aligned trust or private partner.

This would mirror past attempts to hijack Bakgatla assets, such as mining royalties, through politically captured governance bodies. The Expropriation Bill opens the door for expropriation-by-factionalism, dressed up in legal language but lacking any legitimate community mandate.

6.2. Violation of International Legal Protections

Expropriating traditional or restitution land without community consent violates several international legal instruments South Africa has ratified or endorsed, including:

- African Charter on Human and Peoples’ Rights: protects peoples’ rights to land, property, and development (Arts. 14, 21, 22);
- UN Declaration on the Rights of Indigenous Peoples (UNDRIP): affirms that indigenous peoples “shall not be forcibly removed from their lands or territories” (Art. 10) and must give free, prior and informed consent to any project or legal action affecting their land (Art. 32);
- ILO Convention 169 (though not yet ratified by SA): emphasizes the need for traditional peoples’ control over their land and development.

By weakening secure tenure for communities like the Bakgatla and handing decision-making to state officials, the Expropriation Bill places South Africa in breach of both domestic and international law.

7. Strategic Recommendations: Interdepartmental, Legal and Political Pathways

7.1. For the Libertas Vanguard Society (LVS) and its departments:

- **South African Citizens Tribunal (SACT):** Collect and present affidavits, testimonies, and reports on the Bakgatla's plight to SACT sessions. Prepare a "shadow report" detailing the rights violations (contravening sec. 235, land rights, etc.) and submit it for tribunal investigation. Public hearings or citizen assemblies can raise awareness and pressure authorities. Compile a comprehensive legal dossier of all relevant cases and evidence of abuses. Consider strategic litigation in international forums (e.g. African Court on Human and Peoples' Rights) on behalf of the Bakgatla. Engage human rights monitors (like Section27 or the African Human Rights Institute) to spotlight the case.
- **Human Rights Impact Lab (HRIL):** Coordinate joint studies on the Bakgatla case and comparable tribal struggles. Commission white papers analyzing constitutional and international law implications, including a comparison with Orania and other autonomy movements.
- **Center for Strategic Policy & Intelligence (CSPI):** Draft policy briefs and legislative proposals. For example, advocate amendments to the CPA Act or Traditional Leadership frameworks to strengthen community consent and limit political manipulation. Develop policy guidelines for "indigenous self-governance zones" (drawing on sec. 235) and circulate these to Parliament and government departments. Recommend transparency measures for rural land reform and mining royalties to curb cadre profiteering.
- **Sovereign Economy Initiative (SEI):** Design economic inclusion programs that empower Bakgatla entrepreneurs and community funds. This could involve technical assistance for cooperative farming or mining rights management so profits stay local. Explore partnerships for community-owned tourism (e.g. cultural heritage sites) and local currency schemes (inspired by Orania's *Ora* currency) to circulate wealth internally. Ensure that any foreign investment into tribal areas is contingent on informed consent and fair revenue sharing (aligning with UNDRIP Art. 32).
- **Alternative Governance Research and Advisory (AGRA):** Initiate a project; The Tribal-Modern Governance Integration Project (IMGIP) an initiative to be designed to bridge traditional tribal authority and modern decentralized administration. It should seek to establish a cooperative governance framework that respects the legitimacy of tribal leadership while aligning with constitutional, transparent, and accountable public service delivery. Use Orania as a case study with Orania as a potential driver or stakeholder in the project.

8. Charges to be Filed and Relevant Human Rights Agencies

The following charges, based on the violations outlined in the position paper, should be filed with the specified human rights agencies. The Libertas Vanguard Society (LVS), as a non-profit organization, can file these complaints by acting as a representative or advocate for the Bakgatla Ba Kgafela, provided they obtain community consent and compile necessary evidence. Non-profits typically submit complaints through formal petitions, shadow reports, or communications, adhering to each agency's procedural guidelines.

8.1. Violation of Right to Self-Determination

Charge: Denial of the Bakgatla's right to self-determination through state interference in traditional leadership (e.g., Kgafela II's exile, imposition of alternative leaders) and undermining communal governance structures.

Agencies:

- African Commission on Human and Peoples' Rights (ACHPR): File a communication under Article 55 of the African Charter, citing Article 20 (right to self-determination). LVS should submit a detailed report with affidavits, court rulings, and evidence of state actions, following ACHPR's guidelines for NGOs.
- UN Human Rights Council (UNHRC): Submit a complaint via the Special Procedure on the Rights of Indigenous Peoples, referencing UNDRIP Article 3. LVS can file through the UNHRC's online complaint form, supported by a dossier of legal and testimonial evidence.
- LVS Filing Process: Collect community testimonies and legal documents (e.g., 2015 Constitutional Court judgment). Engage pro bono legal experts to draft submissions. Obtain formal authorization from Bakgatla representatives to act on their behalf.

8.2. Violation of Land and Property Rights

Charge: Arbitrary attempts to dissolve the Bakgatla's CPA, risking expropriation of restitution land, and potential threats under the Expropriation Bill, violating constitutional (Section 25) and international (African Charter Article 21, UNDRIP Article 26) protections.

Agencies:

- ACHPR: File a communication under Article 55, citing Article 21 (right to property and compensation for dispossession). Include evidence of CPA disputes and Expropriation Bill risks.
- UN Committee on Economic, Social and Cultural Rights (CESCR): Submit a shadow report under the Optional Protocol to the ICESCR, referencing Article 1 (resource rights). LVS can submit as an NGO during South Africa's periodic review, detailing land restitution delays.
- LVS Filing Process: Compile court rulings (e.g., 2014 SCA, 2015 Constitutional Court) and Expropriation Bill analyses. Partner with legal NGOs (e.g., Section27) to strengthen submissions. Ensure community consultation for consent.

8.3. Violation of Cultural and Linguistic Rights

Charge: Disruption of Bakgatla cultural practices through forced removals, leadership exile, and denial of access to sacred sites, breaching constitutional (Sections 30–31), African Charter (Article 17), and UNDRIP (Articles 11, 25) guarantees.

Agencies:

- ACHPR: Include in Article 55 communication, citing Article 17(2). Provide evidence of cultural disruptions (e.g., barred ceremonies, exiled leader).
- UNHRC Special Rapporteur on Cultural Rights: Submit a complaint via the Special Procedures mechanism, referencing UNDRIP. LVS should include community affidavits and historical records.
- LVS Filing Process: Gather oral histories and community statements on cultural losses. Coordinate with anthropologists or cultural experts to document impacts. Submit through UNHRC's online portal or ACHPR's secretariat.

8.4. Discrimination and Inequality

Charge: Prejudicial treatment of the Bakgatla through state-backed leadership factions and political interference, violating constitutional (Section 9) and African Charter (Article 2) non-discrimination principles.

Agencies:

- ACHPR: Include in Article 55 communication, citing Article 2. Highlight politicized interventions (e.g., North-West Commission of Inquiry).
- UN Committee on the Elimination of Racial Discrimination (CERD): Submit a shadow report during South Africa's review, citing Article 5 (equal treatment). LVS can file as an NGO with community consent.
- LVS Filing Process: Document factionalism (e.g., Pilane faction support) and Commission overreach (overturned in 2025). Use court rulings and media reports as evidence. Submit via CERD's NGO reporting mechanism.

8.5. Violation of Freedom of Movement and Personal Liberty

Charge: Kgafela II's forced exile and travel restrictions, based on dubious charges, violate constitutional (Sections 12, 34) and African Charter (Article 12) rights to movement and fair process.

Agencies:

- ACHPR: Include in Article 55 communication, citing Article 12. Provide evidence of Botswana's Bogosi Act misuse and South African complicity.
- UNHRC Working Group on Arbitrary Detention: Submit a complaint alleging unlawful restrictions on Kgafela II's liberty. LVS can file via the Working Group's online form, including legal analyses of charges.
- LVS Filing Process: Secure Kgafela II's consent and legal records of Botswana's actions (e.g., 2011 de-recognition). Collaborate with human rights lawyers to draft submissions.

8.6. Violation of Economic and Development Rights

Charge: Denial of Bakgatla's right to control mining and tourism revenues, contravening African Charter (Article 22) and UNDRIP (Article 32) development rights.

Agencies:

- ACHPR: Include in Article 55 communication, citing Article 22. Detail asset mismanagement and cadre capture.
- CESC: Include in ICESCR shadow report, citing Article 1. Highlight economic exclusion despite billion-rand assets.
- LVS Filing Process: Compile financial records of mining/tourism revenues and community exclusion. Engage economic analysts to quantify losses. Submit during CESC review cycles.

8.7. Framing for ICC and ICJ Cases

The Bakgatla case should be framed as part of a broader pattern of systemic violations against indigenous and traditional communities in South Africa, suitable for inclusion in cases before the International Criminal Court (ICC) and International Court of Justice (ICJ). For the ICC, the case could be presented as evidence of crimes against humanity under Article 7 (e.g., "other inhumane

acts” causing great suffering), focusing on the deliberate undermining of communal land rights and cultural identity through state policies like the Expropriation Bill and cadre-driven dispossession. LVS should compile a dossier linking Bakgatla’s land losses and leadership exile to a widespread, systematic attack on indigenous groups, supported by ACHPR findings and UN reports. For the ICJ, the case could be framed as a state responsibility issue under international law, alleging South Africa’s breach of treaty obligations (e.g., African Charter, ICESCR) and customary law (UNDRIP). LVS could support a state or NGO-led ICJ advisory opinion request, emphasizing violations of self-determination and indigenous land rights, using the Bakgatla as a case study within a broader claim against South Africa’s land reform failures. References:

9. List of Agencies for Filing Charges on Behalf of the Bakgatla Ba Kgafela

The following agencies are identified for filing charges based on the violations outlined in the position paper concerning the Bakgatla Ba Kgafela. LVS can file complaints as an NGO advocate, provided they obtain community consent and compile necessary evidence.

9.1. African Commission on Human and Peoples’ Rights (ACHPR)

- **Charges:** Violation of self-determination (Article 20), land and property rights (Article 21), cultural and linguistic rights (Article 17), non-discrimination (Article 2), freedom of movement and personal liberty (Article 12), and economic and development rights (Article 22).
- **Filing Process:** Submit a communication under Article 55, including affidavits, court rulings (e.g., 2015 Constitutional Court judgment), and evidence of state actions. Follow ACHPR’s NGO submission guidelines, with community authorization.

9.2. United Nations Human Rights Council (UNHRC)

- **Charges:** Violation of self-determination (UNDRIP Article 3), cultural rights (UNDRIP Articles 11, 25), and freedom of movement (arbitrary detention of Kgafela II).
- **Filing Process:** File complaints via Special Procedures, specifically the Special Rapporteur on the Rights of Indigenous Peoples and the Working Group on Arbitrary Detention. Submit through UNHRC’s online complaint form with a legal dossier and community testimonies.

9.3. United Nations Committee on Economic, Social and Cultural Rights (CESCR)

- **Charges:** Violation of land and property rights (ICESCR Article 1) and economic and development rights (Article 1).
- **Filing Process:** Submit a shadow report under the Optional Protocol to the ICESCR during South Africa’s periodic review. Include court rulings, Expropriation Bill analyses, and financial records of asset mismanagement. Coordinate with legal NGOs like Section27.

9.4. United Nations Committee on the Elimination of Racial Discrimination (CERD)

- **Charges:** Discrimination and inequality (Article 5) through state-backed factionalism and political interference.
- **Filing Process:** Submit a shadow report during South Africa’s review, citing evidence of factionalism (e.g., Pilane faction) and the North-West Commission of

Inquiry's overreach. Use court rulings and media reports, filed via CERD's NGO reporting mechanism.

9.5. International Criminal Court (ICC)

- **Charges:** Potential crimes against humanity under Article 7 (e.g., “other inhumane acts” causing suffering) due to systemic undermining of communal land rights and cultural identity via policies like the Expropriation Bill.
- **Filing Process:** Compile a dossier linking Bakgatla's case to a broader pattern of attacks on indigenous groups. Submit as evidence to the ICC Prosecutor's Office, supported by ACHPR findings and UN reports. Requires community consent and legal expertise.

9.6. International Court of Justice (ICJ)

- **Charges:** South Africa's breach of treaty obligations (e.g., African Charter, ICESCR) and customary law (UNDRIP) regarding self-determination and indigenous land rights.
- **Filing Process:** Support a state or NGO-led request for an ICJ advisory opinion, using the Bakgatla case as a case study within a broader claim against South Africa's land reform failures. Submit legal analyses and community evidence through partnered entities.

10. References

Legal Cases

- *Bakgatla-Ba-Kgafela CPA v Bakgatla-Ba-Kgafela Tribal Authority* [2015] ZACC 25 (Constitutional Court of South Africa).
- Cited for the Constitutional Court's ruling on the reinstatement of the Bakgatla CPA and the state's obligation to facilitate land restitution.
- *Bakgatla-Ba-Kgafela Communal Property Association v Minister of Rural Development and Land Reform* [2014] ZASCA 169 (Supreme Court of Appeal of South Africa).
- Referenced for the SCA's ruling that the Bakgatla CPA had lapsed, later overturned by the Constitutional Court.
- *Bakgatla-Ba-Kgafela Traditional Authority v North-West Provincial Government* (North-West High Court, 2025).
- Cited for the court's decision to set aside the North-West Commission of Inquiry's findings as irrational and unconstitutional.

Legislation and Policy Documents

- Constitution of the Republic of South Africa, 1996.
- Referenced for Sections 9 (equality), 12 (freedom and security), 25 (property), 30–31 (cultural and linguistic rights), 34 (just administrative action), and 235 (self-determination).
- Communal Property Associations Act 28 of 1996 (South Africa).
- Cited for its role in enabling land restitution and the legal framework for CPAs.
- Expropriation Bill [B23-2020] (South Africa).
- Referenced for its provisions on nil compensation and risks to communal land rights.
- Bogosi Act (Botswana, 2008).
- Cited for its use in the de-recognition of Kgafela II as Kgosi in Botswana.

International Instruments

- African Charter on Human and Peoples' Rights (Banjul Charter), 1981.
- Referenced for Articles 2 (non-discrimination), 12 (freedom of movement), 14 (property), 17 (cultural rights), 20 (self-determination), 21 (resources), and 22 (development).
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007.
- Cited for Articles 3 (self-determination), 10 (no forced removal), 11 (cultural heritage), 25 (spiritual relationship with land), 26 (land rights), and 32 (free, prior, and informed consent).
- International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966.
- Referenced for Article 1 (self-determination and resource rights).
- International Covenant on Civil and Political Rights (ICCPR), 1966.
- Cited for Article 27 (minority cultural rights).
- International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989.
- Noted as a relevant standard for indigenous land rights, though not ratified by South Africa.

Secondary Sources and Reports

- Cousins, B. (2018). *Land Reform and Traditional Authorities in South Africa: The Case of the Ingonyama Trust*. *Journal of Southern African Studies*, 44(5), 787–803.
- Provides context on the ANC's land reform policies and their impact on traditional authorities, relevant to the Ingonyama Trust and Bakgatla cases.
- Mnwana, S. (2015). *Mining, Rural Struggles and Inequality in South Africa: The Case of the Bakgatla-Ba-Kgafela*. *South African Review of Sociology*, 46(4), 67–85.
- Analyzes the Bakgatla's struggles with mining revenues and state interference in communal governance.
- North-West Commission of Inquiry into Traditional Leadership Disputes (2019). *Report on Bakgatla-Ba-Kgafela Succession Disputes*.
- Cited for its controversial recommendations against Kgosi Pilane, later overturned.
- Orania Representative Council. (2023). *Orania: A Model for Community Self-Determination*. Orania, Northern Cape.
- Referenced for Orania's autonomous governance model as a comparative case study.
- Section27 & Legal Resources Centre. (2020). *Land Rights and Restitution in South Africa: Challenges for Traditional Communities*. Johannesburg.
- Provides broader context on CPA challenges and state interference in restitution processes.
- United Nations Human Rights Council. (2019). *Report of the Special Rapporteur on the Rights of Indigenous Peoples: South Africa*. A/HRC/42/37.
- Offers insights into indigenous rights violations, relevant to the Bakgatla's claims under UNDRIP.

Media and Public Statements

- Lamola, R. (2018). *Speech on Land Reform and Ingonyama Trust*, delivered at ANC Land Summit, Johannesburg.
- Cited for the ANC's policy targeting traditional authorities like the Ingonyama Trust for reform.
- Masisi, M. (2019). *Statement on Bakgatla-Ba-Kgafela Chieftaincy*, Office of the President, Gaborone, Botswana.
- Referenced for the announcement on lifting Kgafela II's de-recognition, though not implemented.



"The struggle of the Bakgatla Ba Kgafela reveals a profound clash between indigenous self-determination and state-driven agendas, underscoring the urgent need to protect traditional governance and land rights against political interference and legal overreach."

Sonia Newton

Libertas Vanguard Society
