

The limitations of research codes and contracts

Ethnography and agency among San hunter-gatherers of Southern Africa

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Abstract: Research among hunter-gatherers has often been exploitative, based on neo-colonial and/or contemporary socio-economic power imbalances. Consequently, research codes and contracts have been created with the important goal of empowering them; such instruments seem to be on the rise globally. In this article, we focus on this phenomenon among the San of Southern Africa, and we contribute to the professional and public debate on such formalising instruments, with a specific focus on ethnography. Based on our collective experiences, we demonstrate that in the case of

the San codes and contracts, there are three limitations when regarded as instruments of empowerment. First, there are practical constraints for many San when it comes to familiarising themselves with the contents of such instruments. Second, some codes and contracts are too general, failing to differentiate between media and different types of research, such as human genetics or ethnography. Third, as political instruments based on, at times questionable, leadership structures and 'communalisation', codes and contracts can disregard the differences between and agency of San individuals, especially the most marginalised. We argue that codes and contracts need to allow the San a greater say in their development and how these instruments are applied and by whom, while leaving space for individuals to make their own choices regarding research participation. Moreover, the limitations we identify are important for consideration when such instruments are applied among other hunter-gatherer groups globally.

Keywords: hunter-gatherers, ethnography, agency, research, San, Southern Africa

Introduction

Throughout history, the San hunter-gatherers (or Bushmen)¹ of Southern Africa have been 'over-researched', often in an exploitative manner. In her groundbreaking work *Decolonizing Methodologies: Research and Indigenous Peoples*, Linda Tuhiwai-Smith (1999:24) explained that '[r]esearch within late-modern and late-colonial conditions continues relentlessly and brings with it a new wave of exploration, discovery, exploitation and appropriation'. She notes, however, that 'the ways in which Indigenous communities can protect themselves and their knowledges, the understandings required not just of state legislation but of international agreements – these are the topics now on the agenda of many Indigenous meetings' (Tuhiwai-Smith 1999:25). More recently, in Southern Africa, San leaders have increasingly become 'convinced that most academic research on their communities has been neither requested, nor useful, nor protected in any meaningful way' (Schroeder et al 2019:73).

Our own experiences – from San authors and academics alike – affirm such sentiments to a degree, with community members often seeking practical, constructive assistance beyond the parameters of the (ethnographic) research. Ethical concerns have arisen among the San owing to researchers' failure to consult prior to publication, or to communicate research results (made opaque through academic jargon) back to communities, along with the use

1. Since 'there is no universally acceptable collective term' (Armstrong & Bennett 2002:193), we use the term 'San' here, recognising that, although 'San' is currently the preferred term, many individuals still refer to themselves as 'Bushmen'. Both terms, however, have colonial, patronising and derogatory connotations (Gordon & Douglas 2000).

of degrading language and essentialising cultural assumptions (Armstrong & Bennett 2002; Nordling 2017; SASI 2017; Tuhiwai-Smith 1999). More generally, research is at times imbued with echoes of neo-colonial relations, wherein socio-economic power imbalances are perpetuated, while Indigenous knowledge of hunter-gatherers is neglected (Koot 2016; Tuhiwai-Smith 1999). In fact, historically, much research (including ethnography) was mobilised in support of imperial endeavours (Dodsworth & Cheeseman 2018; Tuhiwai-Smith 1999). Early encounters between the San and colonial settlers between the end of the sixteenth century and the early nineteenth century led to the subjugation and genocide of many San (Bregin 2000; De Prada-Samper 2012; Hitchcock & Babchuck 2011). Thus, the people 'we' study have long been 'the victims of unjust societal arrangements' (Kunnath 2013:742). Early anthropological accounts constructing San as 'savage' or 'primitive', with their fixation on physical characteristics, contributed to their positioning (Barnard 2007; Gordon & Douglas 2000). Such representations continued to feature in popular anthropological spectacles and imagery until well into the twentieth century (Gordon 1997; Gordon & Douglas 2000). Moreover, a focus on 'pure' or 'genuine' San has led to some groups being researched more than others, and as a consequence receiving more development support (Robins 2001). Together, this has resulted in socio-economic power inequalities remaining entrenched within many research relationships, to the frustration of many San (Tomaselli 2005), and such racial and power asymmetries have similarly been prevalent in the historical evolution of development more broadly (Pailey 2020).

Over the past few decades, research power inequalities in particular have led to the creation of research codes and contracts, and their number seems to be increasing globally, including with a specific focus on hunter-gatherers. These are formalising instruments that aim to regulate research and which are designed to protect San people, empower them and improve the behaviour of researchers. The key codes and contracts created especially for the San are the WIMSA (Working Group of Indigenous Minorities in Southern Africa) Media and research contract (WIMSA 2001), the SASI (South African San Institute) Guidelines, consent instruments, procedures and protocols for DNA sampling with San traditional communities in Namibia (Stephenson et al 2016), and, most recently, the San code of research ethics (SASI 2017; see also Nordling 2017) (see Table 1).

Table 1 Key codes and contracts for the Southern African San

Code or contract	Access	Year
<i>WIMSA media and research contract</i>	Koot (2013:300–303): https://stasjakootblog.files.wordpress.com/2017/05/2013-koot-dwelling-in-tourism-asc-54-koot-new.pdf	2001
<i>SASI guidelines, consent instruments, procedures and protocols for DNA sampling with San traditional communities in Namibia</i>	https://12ebe7cc-83ea-938a-ff56-b1dc3f7ac632.filesusr.com/ugd/ecae59_00d10f74086441d9ad62736cdd000667.pdf	2016
<i>San code of research ethics</i>	http://trust-project.eu/wp-content/uploads/2017/03/San-Code-of-RESEARCH-Ethics-Booklet-final.pdf	2017

The WIMSA contract was developed by the non-governmental organisation (NGO) WIMSA (established in 1996), which has not existed since approximately 2016 (Schroeder et al 2019). Despite this, its contract has been widely used by other San organisations in the area over the years, including SASI and more recently the South African San Council (SASC). We recognise and understand why such codes and contracts have been produced and strongly support their goals. However, in this article, we aim to contribute to the professional and public debate about these instruments through addressing three of their limitations that are often overlooked. This, we hope, will enable more nuanced understandings of research expectations and outcomes for the San and other hunter-gatherer groups, research institutions and researchers alike. The three key issues we focus on are: first, the practical constraints for many San and the disinterest among others when it comes to familiarisation with the contents of these codes and contracts. Second, some codes and contracts are too general and fail to differentiate between media and (different types of) research, eg ethnography and human genetics. Third, and most important, as political instruments codes and contracts disregard the agency (one's capability to influence the course of events, see Giddens 1984) of many San, especially the marginalised. They can even serve to silence community members because such agreements are controlled by (local) elites, and thus do not always acknowledge the heterogeneity of, and different interests within, San communities.

In what follows, we first describe some of our collective empirical experiences with ethnographic research, and how this has been affected by codes and contracts. Next, in view of the contemporary recognition of the importance of 'impact' in academic research, we provide examples in which ethnographic research has contributed to San well-being and/or development, reflecting

upon the three limitations we have identified. Finally, we argue that if codes and contracts are to achieve their intended goal of empowerment, they need to explicitly allow a much greater say for San in their development and how these are applied and by whom, while leaving space for individuals to make their own choices regarding their participation in (ethnographic) research. Moreover, the limitations we identify are important for consideration when such instruments are applied among other hunter-gatherer groups globally.

Navigating codes and contracts in the field

In the first half of 2019, in accordance with the San code of research ethics (SASI 2017), one of the authors approached the South African San Institute (SASI) to discuss potential ethnographic research in collaboration with the #Khomani San in the Northern Cape, South Africa. Unfortunately, prior attempts to contact the South African representatives of the South African San Council (SASC) – which played an important role in crafting the Code (SASI 2017) and which is responsible for its implementation – were unsuccessful (both via SASI, which was not fully functioning at the time, and directly with the SASC). This problem of communication is widely acknowledged, and Neldner et al (2020:4) are not alone in observing that ‘[t]he SASC do not have a website, so can be difficult to locate, and when researchers do manage to contact them, the SASC often fail to respond’.

In the end, the researcher decided to go in person to the Northern Cape to try to contact the SASC upon arrival. After a few days, a meeting had been organised. During this meeting, the SASC representatives berated her about several general research issues in which she had no involvement. They then criticised her supervisor (who was not present at the meeting) for presenting his research a few days earlier to the local Community Property Association (CPA) management committee, a government official and international donors (CPAs were created in South Africa as structures for communities to reclaim land and manage it collectively, see eg Holden 2007). This presentation had, in fact, been organised in line with Code requirements, as ‘[f]ailure by researchers to meet their promises to provide feedback is an example of disrespect’ (SASI 2017). In fact, he had organised the presentation directly with the local #Khomani CPA and its government appointed advisor because, as with his student’s situation, the SASC had not responded to any requests during his preparations, and the available online documents did not specify concrete procedures. When the researcher tried to explain her supervisor’s situation to the SASC members,

their anger clearly increased, which turned her own situation into a desperate one if she wanted their approval for her own research.

After requesting a ‘facilitation’ payment – a suggestion within the WIMSA contract (WIMSA 2001), the instrument used by the SASC to implement the San code of research ethics – the point most emphasised by the SASC was that *all* research activities were to be run past it first. This could still be regarded as a simple communication issue, if not for the Council’s explanation that the researcher would not be allowed to meet with the marginalised and ‘uneducated’ members of the community. This was because, as the SASC claimed, such individuals would be unable to provide her with the ‘right’ information, would only complain and would still fail to exercise their voting rights at meetings anyway. Moreover, SASC explained that *if* it was to grant her permission, it would have to pre-approve all respondents. Laura Foster (2018) faced a similar issue when she conducted her research with the #Khomani: the SASC facilitated her research, meaning that Foster only conducted interviews with #Khomani individuals recommended by the SASC and community leaders. As a result, Julie Grant (2020:2) notes that ‘within the #Khomani community it may be problematic to extrapolate the findings’ as representative of the broader community.

Over the following four weeks, in an effort to further explain her plans and approach, the aforementioned researcher sent to SASC a booklet she used on ethical approaches to research with communities living in and around nature conservation areas (Tapela et al 2009), along with a letter from her supervisor detailing the university’s ethical guidelines. This was, however, to no avail. Because of the ongoing uncertainty of the situation, she then decided to abandon her fieldwork plans with the #Khomani, as her time and funds were running out. While she was waiting for the SASC’s decision, however, she was able to have several informal conversations with the #Khomani (but she refrained from holding ‘officially’ planned interviews). During these conversations, several #Khomani commented that they were willing to talk to her, or to assist her as a translator, but only if she had an official letter from the SASC. Otherwise, they feared punishment from members of the Council.² Some #Khomani, however, were completely disinterested and/or unaware of the roles and responsibilities of the SASC, while others expressed strong disapproval of their tactics. For example, one #Khomani stated that he was capable of making

2. See Castelijn (2019) for an example from Namibia in which marginalised Hai//om and !Xun have also been hesitant to express themselves because they fear local leaders or others who are more powerful.

his own decisions, and on another occasion a family ironically refused to work with a researcher who approached them *with* an SASC signed contract, as they felt that the Council did not represent them. The family agreed to participate in the research when it was determined that they could draw up and sign their own contract with the researcher. Foster (2017) also comments that during her research several community members were ‘distrustful’ of the Council, while others questioned the Council’s claims to represent them. In reality the SASC has very little to do with the community itself, as it sits in Upington, 200 km away (see also Grant 2020; Neldner et al 2020; Parkington et al 2019). Furthermore, although SASC members are technically ‘elected’ (elections were held in 2001, 2003, 2006 and 2018; see also Neldner et al 2020), many of the #Khomani farm residents with whom we have worked do not recall participating in any such elections, while others commented that they are unsure if the SASC is still in existence.

These kinds of issues are not exclusive to South Africa, but extend into neighbouring nations. In Namibia, some of the authors have similarly experienced lengthy delays when trying to obtain research contracts in addition to challenges navigating unclear procedures for negotiating and signing the necessary agreements. In some cases, NGOs wanted to see the research proposal before supporting the process of getting the WIMSA contract signed. These NGOs, however, would often fail to send any response after a proposal had been sent. The signing itself was in the end mostly done with a community-based organisation (CBO). However, very often the CBOs would also not respond, or have awareness about the contract and its requirements. For instance, another of our authors was informed by NGO staff in Namibia in 2010 that a contract was crucial to be able to do research, and he moved to the research area with the idea of getting the contract signed by the CBO (in this case, a communal conservancy). However, nobody he asked was aware of the contract’s existence, including two San authors of this paper from that area, and neither did people in the conservancy show any real interest in it. In South Africa, this same author presented his proposed research to an NGO in 2010 before conducting fieldwork, but was only asked to sign the WIMSA contract (which he did) by email in 2012, long *after* his fieldwork had been completed (cf Koot 2013).

In another case, in 2018, a conservancy manager demanded payment of N\$2,000 – approximately €121 at the time – from a researcher, claiming this was a formal requirement before signing the WIMSA contract. It could be that this idea was based on the original WIMSA contract (WIMSA 2001) in which remittances are promoted, but this is not certain. Either way, this researcher decided to pay the requested amount but via the bank account

of the conservancy where she was planning to conduct her research, rather than paying the manager directly. On another occasion elsewhere in Namibia, another of our authors faced an even bigger request during a government facilitated community meeting: while the researcher was allowed to sit in on the meeting, government officials – without knowing any details about his research or his relationship with the community – explained that ‘researchers like you are coming here, using the knowledge of the people, and bringing no benefits to the community. The researchers should buy cars and build hospitals and schools’ (fieldnotes, 13 February 2018). While providing such infrastructure is far beyond the resource capabilities of most researchers, in principle we do not disagree with the sentiments that researchers should contribute where possible in appropriate ways (material or otherwise). Indeed, in the weeks after, the (white) researcher in this case was asked for a variety of additional, mostly financial, types of support, and it seems as if the government’s comment also partly increased further expectations of this kind, echoing a neo-colonial development discourse (cf Pailey 2020).

Monetary requests are also not uncommon in South Africa. Many of these are reasonable, for example, for hiring assistants and/or translators, who tend to have a big impact on ethnographic research findings (Middleton & Cons 2014). Some requests, however, have been made informally and ranged from NGO field-office staff attempting to apply a surcharge on contracts after terms have been agreed and approved by the head office, to the implementing body requesting funds to enable them to travel, be accommodated and fed in a hotel in the provincial capital where they claimed the research proposal would be discussed. In this particular instance, the body’s chairman telephonically indicated he had concerns with the submitted proposal but could not provide any detail as to what these were. He further indicated that the body would not be able to discuss the research proposal at their quarterly meetings anytime soon as the schedule was full for the next nine months. The request was never put in writing officially and, as the researchers did not have the funds for the costly trip, eventually they conducted their research elsewhere. It is, of course, very reasonable to discuss a research proposal, however, in this case, given the refusal to discuss details over the phone or commit anything to writing, the researcher had the impression the project was being targeted for an enjoyable night away rather than for an in-depth discussion of the proposal.

While some research can lead to the unjust commercialisation of products related to local traditional knowledge, ethnographic research rarely results in direct financial benefits for the researchers, beyond their salaries or stipends. In the case of *hoodia* – a medicinal plant of the Kalahari used for appetite

suppression – for example, the #Khomani San showed strong sentiment in favour of intellectual property protections, as a result of outsiders' unauthorised attempts to capitalise on the community's knowledge of the medicinal properties of the *hoodia* plant (Foster 2018; Wynberg et al 2009). Or, in another case, the alleged failure of novelist Rupert Isaacson (2001) to share profits from his spiritual travel book *The Healing Land* with the #Khomani people might have made life more difficult for ethnographers: his position as a commercial author is in some ways similar to that of ethnographers, since it included participatory observation and conducting interviews. In such instances, where financial benefit results from local knowledge, we endorse the equitable distribution of benefits among the communities involved.

The positive role of ethnography

As these examples show, while codes and contracts attempt to empower, prevent harm and improve researchers' behaviour, they can also serve to create ambiguity through functioning as political and economic instruments, often to the detriment of ethnographic research that in many cases explicitly aims to aid the communities of study. It is important to recognise that – alongside the negative histories of over-research and exploitation that codes and contracts seek to address – there are also many benefits that communities have gained from research (Hitchcock et al 2006). In a series of court cases in which various San groups have been involved, much of the argumentation has been based on ethnographic and ethnohistorical research, or was derived from detailed interviews that have been used to inform affidavits. For example, San groups from the Central Kalahari Game Reserve (CKGR) in Botswana filed two legal claims against the government, to reverse their relocation from the reserve and their right to hunt (won in 2006), and later to solidify their right for water in the reserve (won on appeal in 2011) (Bennett & Hitchcock 2016; Hitchcock et al 2006; Hitchcock in press; Sapignoli 2018; Zips-Mairitsch 2009). Nevertheless, in recent years these 'victories' have often been considered hollow as the government has not fully implemented the High Court rulings (Bennett & Hitchcock 2016; Sapignoli 2018). In South Africa such ethnographic and ethnohistorical information has been crucial in the land claim of the #Khomani (Koot & Büscher 2019; Puckett 2018; Robins 2001). This has also been the case in Namibia with the foundation of the Nyae Nyae Conservancy in 1998 (Biesele & Hitchcock 2011), and the court order in 2016 against illegal fencing in the Nꞑa Jaqna Conservancy (Van der Wulp & Koot 2019; Welch 2013).

The importance of such research continues today, for instance to inform the contemporary collective action lawsuit of the Hai//om (which was rejected by the High Court, but is at the time of writing the subject of an appeal). This legal case will likely further benefit from work by, among others, Dieckmann (2007), Koot & Hitchcock (2019), Suzman (2004) and Widlok (2003). The same applies to the Khwe of the Bwabwata National Park in Namibia, who are currently considering a similar collective action lawsuit, for which research by Boden (2009) or Taylor (2012), among others, can play a crucial role.

Other important examples in which ethnography has supported the San include the creation of the Kalahari Peoples Fund (KPF) in 1973 by a variety of researchers, mostly anthropologists from the US. KPF has supported projects for hundreds of thousands of dollars over the years, and today, they still fund a variety of projects based on long-term relationships between ethnographers, San people, and their neighbours such as Nama, Bakgalagadi and Tswana. The KPF's activities include educational initiatives, water provision, sports and heritage projects, supply delivery, the facilitation of human-rights conversations regarding schooling in Botswana and, most recently, the support of the translation and communication of COVID-19-related information to San groups in South Africa and Namibia (Hitchcock et al 2006; KPF 2020). Other ethnographers have disclosed issues such as physical and financial exploitation of San working at farms (Suzman 2000; Sylvain 2001), in media spectacles (Gordon & Douglas 2000), or in tourism and nature conservation (Gressier 2020; Koot, Hitchcock & Gressier 2019), while again others have collaborated to build up hands-on development projects (Koot 2012) or Indigenous knowledge projects that emphasise historical ties to specific lands and the environment (/Omis 2021).

Furthermore, ethnographers often bring short-term direct benefits to a selection of people within communities, such as small appreciations for interviews (in some cases after long negotiations, see eg Chege 2014), food sharing, financial rewards for assistants and translators, transport (including emergency cases to a clinic or hospital, cf Widlok 1999), health education and first aid, support with reporting crimes to the police, and assistance in reporting and registering new-born children, among other things. Of course, these benefits are not a solution to structural problems for larger groups, and it differs from researcher to researcher what one can and does offer, but these benefits are highly valued locally. In fact, some of us (ie San authors of this paper) have worked with researchers (and a variety of other 'outsiders') for many years and for us the various streams of support, benefits and income this has generated has been enriching our lives. These ranged from some cash or food

handouts for small jobs to weeklong overseas travels to create awareness about contemporary San and hunter-gatherer issues. Moreover, such direct benefits are expected with good reason: many San are well aware that academics receive relatively high salaries and make careers (partly) based on their input, although of course it is important to differentiate between (Masters and PhD) students, postdoctoral researchers and full-time academic professionals in this regard. Then again, such benefits can also create a situation in which (at times unreasonable) expectations are raised, and this can increase competition and discord among those keen to take on jobs such as translating.

On a broader level, San and ethnographers together are involved in a variety of activist endeavours, in which the voices of San and researchers blend in support of a variety of political, developmental and advocacy goals (HG-EDU 2020; Puckett, Kazunobu & Hitchcock 2018). Research and San activism can thus strengthen each other as, for instance, in Barnard's book *Anthropology and the Bushman* (2007) or more recently in *Senri ethnological studies 99: research and activism among the Kalahari San today: Ideals, challenges, and debates* (see Puckett et al 2018). Nonetheless, regarding the aim of contributing to a greater well-being for the San, we recognise there is still much work to do, since

greater coordination and collaboration among anthropologists, linguists, geographers, activists, development workers, San-related NGOs, and San communities, families, and individuals would go a long way toward resolving social, economic, and political constraints and [toward contributing] substantially to greater well-being for the San and their neighbors in southern Africa. (Puckett et al 2018:13)

Discussion

Alongside issues relating to exploitative or excessive research practices, it should be recognised that ethnography has often been beneficial to the San, and continues to be so. We understand that local, marginalised groups and the institutions they work with often want more direct benefits from researchers, but one of ethnography's crucial strengths is its longitudinal research and engagement with people, often based on repeated visits over the years and in the maintenance of contact during periods of physical absence (see eg O'Reilly 2012). It is the case that most ethnography can be regarded as 'basic' (or 'fundamental' or 'pure') research, which is driven by curiosity and is 'undertaken with a primary purpose of the advancement of knowledge for its

own sake' (Bentley et al 2015:690). Importantly, an exception to this is when ethnographers, especially since the growth of applied 'development anthropology' in the 1970s, have often reinforced dominating and Western-centric models of (knowledge and power about) development and views of modernisation, lauded with 'cultural sensitivity' and 'local knowledge' (Escobar 1991). And since Escobar's provoking paper, applied practices of ethnography only seem to have increased, and the idea that research necessarily always needs to have a directly visible 'impact' more generally (Dodsworth & Cheeseman 2018).

Yet, despite this, the style of deep immersion, fundamental ethnography is arguably among the methodologies that, in the long run, provide the most benefits, albeit in ways not always foreseeable, since it does not usually generate findings initiated by a practical or applied question. Thus, to state that '[r]esearch and media contracts need to be drawn up in such a way that research is [...] managed for the benefit of the community [or else] should be refused' (Schroeder et al 2019:81), is not only reductive, but is much easier said than done. It sells short the long history of ethnographic research among the San that has proven beneficial in the long run without pre-decided plans for specific 'benefits'. The urge to make research more directly beneficial suits the agendas of many contemporary research funders, including those in 'development', who increasingly request that research should have an 'impact' (Dodsworth & Cheeseman 2018). But 'benefits' are themselves ambiguous: what is beneficial for one person/institution can be a threat to another. Furthermore, it is unclear who receives the benefits, and who decides this. And the important question remains as to whether fundamental ethnographic research (without a direct 'impact') can still be conducted. Fundamental research adds to the total body of knowledge and often informs practicalities and applied implementations at a later stage, in ways not always immediately obvious, for a variety of actors, including private sector parties, CBOs, NGOs and governments.³ Many ethnographers, due to their close links to community members, of course also *want* their research to be beneficial, but often research papers and reports end up in governments', NGOs' or CBOs' drawers. This raises the question how research can be made more beneficial, and who is responsible for this, which often remains unclear. Additionally, the divergent positioning of researchers should

3. In fact, governments are also tightening their grip on research among San: in Botswana, for instance, a lawyer who collaborated with ethnographers to defend several San groups was in 2013 told he needed to apply for a visa, which 'effectively restricted him in terms of providing advice to his clients in Botswana' (Bennett & Hitchcock 2016:26). Moreover, in Namibia intelligence services have followed authors of this paper around in their cars, or sat in on meetings (announced and unannounced).

also be considered: Masters students often move on in life after graduation, whereas PhD students, post-docs and full-time academics often build up longitudinal relationships, with different benefits and risks arising accordingly. Regardless, we believe some practical recommendations for researchers are to clearly articulate previous benefits from earlier (fundamental) research already in proposals, and to take dissemination seriously, for instance by sending written work or provide access to online blogs about one's work. In case of longitudinal relations, we feel the importance of explanations in the communities of one's research are at the core. If one feels unjustly restricted by more powerful actors, we suggest to discuss this with community members if at all possible, other related institutions and/or other researchers who have long-term relations with the said community, although we realise this might not be a solution in the short run.

The mentioned codes and contracts specifically aimed at the San (SASI 2017; Stephenson et al 2016; WIMSA 2001) are not the first of their type and they seem to be on the rise globally; other hunter-gatherer groups (such as Inuit, Canada's First Nations and Australian Aboriginals) have created similar codes, for example the Code of ethics for Aboriginal and Torres Strait Islander research (AIATSIS 2020). Although the intentions of the most recent San code of research ethics are to be praised, the details remain unspecified (SASI 2017), making it subject to multiple interpretations. This carries the danger that they lead only to further ambiguity. Furthermore, with a few notable exceptions, most codes are presented as a guideline for *all* researchers. In the case of the WIMSA media and research contract (WIMSA 2001), there is a much stronger focus on media than on research. Nonetheless, it has been widely used by several NGOs also for researchers. In contrast, the Guidelines, consent instruments, procedures and protocols for DNA sampling with San traditional communities in Namibia (Stephenson et al 2016) was, as the name implies, specifically focused on human genetic research, which makes for a crucial difference when compared to other disciplines. Geneticists may consider 'good scientific practice [that which] allows other scientists to try to replicate analyses' (Reich, cited in Nordling 2017). This may be true for 'objective' sciences, but such an approach does not allow for the complexities of ethnographic fieldwork which depends on the co-construction of knowledge between researchers and participants, and in which data are often based on long-term relationships that create trust, friendship and at times also antagonism.

Ethnographers, and other researchers too, are thus actors in a political playing field. Therefore, it is important to increase awareness of these positions and the consequences they can have when 'gatekeepers' influence decisions

about research conducted among marginalised and disempowered groups such as San hunter-gatherers. Representing people in centralised bodies often contradicts the goals of creating the empowerment and self-sufficiency that such gatekeeping institutions and powerful elites simultaneously claim to support (Armstrong & Bennett 2002; Dodsworth & Cheeseman 2018; Tomaselli 2016). When governments, NGOs or CBOs decide who can or cannot do research among the San, they essentially reduce community members' agency (Tomaselli 2016), in the sense that the San cannot decide for themselves who they wish to engage with, and under what circumstances. While we agree that '[e]ven the most vulnerable of our hosts exhibit positive agency, and actively leverage the research relationship to insist that their voices be heard beyond their villages' (Tomaselli 2016:806), some of us have also seen this agency being reduced to a very low level in which fatalism and acquiescence predominates. To curb the San's ability to make their own decisions is highly problematic, especially when gatekeepers disregard marginalised people as potential respondents because they are 'uneducated', while directing researchers towards favourable respondents, as described in the South African example above (see also Foster 2018; Grant 2020). It then becomes questionable whether codes and contracts indeed empower marginalised communities, or whether they in turn become political instruments of power over others. Moreover, if contracts are used by local elites for financial gain, or people in the communities reject codes or are unaware of their existence, or NGOs variously ignore or adhere to codes at will, their empowering value remains ambiguous. This is not to say that we are against any type of structure for research: indeed, in addition to specified codes and contracts for particular groups such as anthropologists, comprehensive and effective ethical guidelines already exist (see eg AAA 2021; ASA 2011) and address critically important ethical issues pertaining to free, prior and informed consent, transparency and the accessibility of research, albeit these inevitably leave much space for interpretation. Of course, these anthropological guidelines are not specifically focused on hunter-gatherers, but among local San groups, further concrete ideas have been proposed and enacted by community members.

Today, for example, several #Khomani continue to express a desire to establish a #Khomani Welcome Centre on their lands in the Kalahari, not only to showcase tourist activities and accommodation, but also to gain some control over the access and activities of outsiders who are visiting their lands. These plans are currently advancing, however, for research the SASC will continue to be the body responsible for approvals. Importantly, we want to stress that access and intellectual-property permissions can, of course, serve as vital elements

in a variety of systems designed to improve San control over their lands and livelihoods. Many San communities – and hunter-gatherers globally – rightly continue to seek to increase control over their property, ideas, practices, knowledge and lands. But protective measures can also hamper this and might allow injustice, inflexibility, prejudice or corruption to take root. They should thus not be considered a-political, as the examples in our paper show. While recognising the importance of establishing and enforcing San communities' rights, it is also clear that such protections and controls must be created and implemented carefully, in order to avoid introducing opportunities for outsiders or individual community members themselves to abuse these systems to advance their own agendas or personal gain.

Another related concern is that codes and contracts construct 'communities' as homogeneous through structures of centralised representing bodies and leaders. This way, they deny the internal diversity of communities, which have, of course, multiple actors, ideas, interests and ideologies (Agrawal & Gibson 1999; cf Armstrong & Bennett 2002). Codes and contracts work on the assumption that institutionalised leaders or Traditional Authorities (TAs) represent the communities, although it often remains obscure which leaders are actually meant (Chennells & Steenkamp 2018; SASI 2017; Schroeder et al 2019; Stephenson et al 2016; WIMSA 2001). Additionally, in many San communities, traditional leadership is heavily contested: given the absence of elections, leaders are sometimes appointed by, or function under, the influence of the central government. And in some cases, these governments do not allow San groups to have their own TAs: ambiguity exists caused by the presence of multiple (self-ascribed) leaders, and often leaders are on bad terms with the people they ostensibly represent (Castelijns 2019; Hitchcock et al 2021; Hitchcock et al 2006; Koot & Hitchcock 2019; Van der Wulp & Koot 2019). Furthermore, an important larger homogenising concern with all three instruments presented here (SASI 2017; Stephenson et al 2016; WIMSA 2001) is that they take 'the San' for granted at a much larger scale, categorising them as a 'pure' group of people who live in isolation, while in reality many groups are hybrid, and it is not always clear who actually *are* truly San, and who are not (Koot & Büscher 2019; Parkington et al 2019). Such homogenisation has wide-ranging impacts and 'has been one element in the denial of a political dimension to the San, blurring any distinctive identities, different demands or varied aspirations' (Armstrong & Bennett, 2002:193). This complicates matters further when contracts need to be signed to conduct research among 'the San', leaving open questions about who in particular geographical areas belong to that category, and based on which characteristics, while leaving unresolved related questions of what to do

with people of 'mixed' descent and others living in the area, who are often also marginalised.

Conclusion

In sum, we identify three important limitations of codes and contracts for ethnographic research among the San of Southern Africa but with larger global relevance for hunter-gatherers: first, there are practical issues to communicate the contents of codes and contracts more broadly within the communities. As a result, many San do not seem to be aware of them or they simply do not show any interest. Second, codes and contracts are too generally aimed at 'research' without differentiating between media encounters and (methodological) types of research, eg human genetic research or ethnography. Third, and in our opinion most importantly, codes and contracts can be and are used as instruments of political and/or financial gain, reducing the agency of San hunter-gatherers (especially the most marginalised), and at times even instigate fear. We are not denying the value of formal structures for research among the San, but believe there need to be instruments that allow individuals the autonomy to make participation decisions for themselves. We thus argue that if codes and contracts are to achieve their intended goal of empowerment, they need to allow San to have a much greater say in the development of the codes, and how these are applied and by whom, while leaving space for individuals to make their own choices regarding research participation. Furthermore, the three limitations as identified in this article are important for consideration when such instruments are applied among other hunter-gatherer groups elsewhere.

What is critical is the provision of clear and comprehensive information about a research project: San (and others, eg government officials) should be given realistic guidelines and information about what the research entails, and the possible implications of participating. To this end, it is important that consent forms are accessible and provide such insights, including explanations about how and why (ethnographic) research is/can be valuable. This would create a more complete and realistic understanding of the research, which encourages trust and well-informed decision making throughout the process. Of course, for a large part it is the responsibility for ethnographers themselves to communicate this, since in many cases they have much closer ties to community members than some of the gatekeepers, while elected bodies can work to support the provision of education where appropriate. Connected 'representative' institutions and/or gatekeepers, in collaboration with engaged

researchers, can play a crucial role in this, raising realistic expectations for different types of research, while providing support if things ‘go wrong’. Research capacity building is an important way to inform people, and through which ethnographers, NGOs, CBOs and experts in the communities could together outline and communicate the potential for both value *and* exploitation stemming from research. With this information, hunter-gatherers are very well capable of making up their own minds and deciding for themselves.

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