

**The Protection and Promotion of the Rights of Indigenous People in Africa: A
Case Study of the *Basarwa* in Botswana**

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DECLARATION

I, Bonolo Ferim née Matlho, hereby declare that this research project titled: '**The Protection and Promotion of the Rights of Indigenous People in Africa: A Case Study of the *Basarwa* in Botswana**' is entirely my own original work. It has not been submitted before for any other degree at another university.

Signature

.....

Date

.....

DEDICATION

This work is dedicated to the *Kua* people of Botswana. May their dream to be recognised as the indigenous people of Botswana be realised. May their struggle for the promotion and protection of their rights come to fruition.

ACKNOWLEDGMENT

I do give thanks to God Almighty for giving me the strength and endurance to undertake this study.

My profound appreciation next goes to my supervisor, Prof. N.S. Rembe. His constructive criticisms, guidance, tolerance and advice were instrumental in making this research a success.

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My thanks also go to all the members of the Matlho and Ferim families. Your love was a pillar of my strength.

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Last but not the least, I thank all my numerous friends whose names it is better not to mention than to omit.

ABSTRACT

Amnesty International (2009:1) reports that despite some progress over the last decade, indigenous peoples around the world continue to live in hardship and danger. This is due to the failure of states to uphold their fundamental human rights. The persecution of minorities by intolerant majorities is still a major cause of international unrest in various parts of the world (Sohn, 1981: 272). Against this backdrop, this study set out to investigate the extent to which the rights of the *Basarwa* in Botswana are promoted and protected by the government. Methods of data collection included questionnaire, interviews, books, journal articles and internet publications.

The study found out that the government of Botswana does not promote and protect the rights of the *Basarwa* in Botswana. They are instead being considered as a primitive and backward people and hence, a developmental problem by the government of Botswana. Other violations of their rights include: non-recognition as the indigenous people of Botswana, derogatory names-calling, forced land evictions and other forms of social and economic exclusion.

The study recommends the following: The need for the government of Botswana to recognise the *Basarwa* as a distinct and unique ethnic group in the country; the need for dialogue between the *Basarwa*, the government of Botswana and NGOs; the need for the government of Botswana to ameliorate the quality and accessibility of social services for the *Basarwa*, particularly in the areas of health and education; and the need for both the public and private sectors alike to provide the necessary skills for employment of the *Basarwa*.

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CHAPTER ONE

1.1 Background to the study

Paragraph two of the United Nations (UN) General Assembly Resolution 50/157 of 21 December 1995 titled: Programme of Activities for the International Decade of the World's Indigenous People, records that there are many indigenous peoples in the world. They include the Indians of the Americas (for example, the Mayas of Guatemala or the Aymaras of Bolivia); the Inuit and Aleutians of the circumpolar region; the Saami of northern Europe; the Aborigines and Torres Strait Islanders of Australia; and the San people of Botswana. These indigenous peoples have retained social, cultural, economic and political characteristics which are clearly distinct from those of other segments of the national populations. They are defenders of traditional lifestyles. Griffin (2002:29) argues that even though they are technologically less advanced than land users from western societies, they are more environmentally friendly. In spite of this, indigenous people have experienced poverty, inequality and degradation of traditional lifestyles by their respective governments. This is as a result of colonisation, displacement, alienation and incorporation into global economies. This is in sharp contrast to Article 1 of the Universal Declaration of Human Rights, 1948, which states inter alia, that 'all human beings are born free and equal in dignity and in rights'. Any form of discrimination and persecution on the grounds of race and ethnicity are clear violations of these principles.

Discrimination includes overt forms such as institutionalized racism, alienation, exclusion and genocide. It may also involve more covert forms whereby certain racial and ethnic groups are prevented from enjoying civil, political, economic, social and cultural rights enjoyed by others. Maybury-Lewis (1999:872–938) documents how the ostracism of indigenous people is usually

resorted to when outsiders wish to seize lands and resources which they occupy. In such cases, indigenous populations are simply considered to be in the way of national development, extraction of resource or dam building. Such ostracism can sometimes take the form of the creation of national parks. Colchester (2004:145) argues that protected areas were conceived as land arrogated to the state and managed for the benefit of future generations but to the exclusion of residents. The author further argues that the creation of national parks tend to usurp rights of indigenous peoples. It evicts them from their homelands and provokes long-term social conflict. Such has been the situation in Botswana.

Nyati-Ramahobo (2008:4) records that Botswana is a multi-ethnic state comprising of forty five tribes. In spite of this, the author argues that the country's constitution continues to discriminate in favour of those from the dominant Tswana-speaking group. Most of the laws of Botswana recognise and protect the rights of the Tswana-speaking group with regard to ethnic identity (including language and culture), land and chieftaincy. However, no such recognition or protection is given to the non-Tswana-speaking ethnic groups. Indeed, following independence in 1966, the only languages allowed for public purposes or in teaching in schools were Setswana and English.

The *Basarwa*, who are also known as the San people or Bushmen, are the indigenous people of Botswana. According to the Minority Rights Group International (2008:1), they are traditionally hunter-gatherers and their presence is thought to date back to at least 40,000 years. This predates that of the Bantu-speaking people of the region. However, there has been a demise in the traditional lifestyle of the *Basarwa* since independence. This has been as a result of long period

of competition with pastoralists, loss of hunting territory to ranches and game parks, declining game, and alternative economic opportunities. The government of Botswana has also been intolerant of the *Basarwa* unique culture. The latter have been regarded as an embarrassment for a modern state with one of the strongest economies in Africa. The *Basarwa* have thus been moved into squalid resettlement camps where there is no opportunity to pursue their traditional way of life. They face high rates of unemployment, alcoholism and have been exposed to HIV infection (Minority Rights Group International, 2008:1).

The government of Botswana's undermining of the rights of the *Basarwa* was evidenced in 1997, 2002 and 2005 when it initiated forced evictions of the *Basarwa* from the Central Kalahari Game Reserve (CKGR) (Minority Rights Group International, 2008:1). This was in contravention of Section 14 of the Constitution of Botswana, which upholds the *Basarwa*'s claim to the land. This section provides for the *Basarwa*'s freedom of movement within, as well as the right to reside in the CKGR. Section 8 further prohibits the deprivation of property. It states that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired. The section further provides that where it is necessary or expedient to take such property in the interests of defence, public safety, public order, public health or for development purposes, such property will be deemed to have been lawfully acquired. Further, Article 2 of the International Labour Organisation (ILO) Convention 169 calls for consultation of indigenous peoples before steps like these can be taken. In other words, it discourages the imposition of policies and lifestyles upon a minority by a politically dominant group.

Eide (1993:221) lists four reasons why states are generally reluctant to take minority rights seriously. These are attributed to their deeply shared perception that (i) it would encourage outside interference; (ii) minority problems are diverse and it is doubtful that there are universal solutions; (iii) minority rights threaten the cohesion of states; and (iv) rights for minorities would discriminate against majorities.

However, with the formation of the United Nations after the Second World War, concerns for the rights of minorities were more or less absorbed into the wider desire for the protection of individual human rights as a whole. The issue of minority rights is important for the stability and prosperity of the multi-religious and multi-cultural modern nation-state system. However, it remained peripheral to international human rights law. The League of Nations had a limited, yet discernible, vision for the protection of minorities. There were several bilateral Minority Treaties, each signed between one of the countries in question and the League. The treaties were signed between the League and some of the newly established nations: Poland, Yugoslavia (also known then as the Kingdom of Serbs, Croats and Slovenes) and Czechoslovakia. The Treaties were the cornerstone of the League's system of minorities. Their aim was to protect the minorities without alienating the majority of the countries population. The Council of the League (rather than the more encompassing Assembly) had the right and obligation to raise complaints of treaty violations. Individual Council members had the unique privilege of placing complaints on the agenda, even through the petitions for that could be send from any source. If the accused government and the League could not reach a satisfactory compromise, the final decision was referred to the Permanent Court of International Justice (Fink, 1988:249).

The United Nation's approach was characterised by both inability and unwillingness to consider the position of minorities (Rehman, 2000:226). However, since the 1990s the issue of the international protection of minority rights made a serious comeback on to the agenda of international law and relations. The Indigenous and Tribal Peoples Convention of 1989 is a convention adopted under ILO Convention 169. It is a major binding international convention concerning rights of indigenous peoples.

The drafting and subsequent entry into force of the European Framework Convention on National Minorities and the establishment of the Organisation for Security and Cooperation in Europe (OSCE) High Commissioner on National Minorities are other promising developments in this regard. In addition, the Office of the High Commissioner for Human Rights (OHCHR) has amongst its objectives the promotion and protection of the rights of indigenous people (OHCHR, 2004:6). It seeks to empower indigenous people to make choices which would enable them to retain their cultural identity while participating in their political, economic and social life. Moreover, the development of the jurisprudence of the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the International Criminal Court has emerged as valuable tools in advancing the cause of minority protection.

The UN considers indigenous peoples as being minorities. It may thus be pertinent to refer to the view that all human rights exist for the benefit of individuals who are weak, and who need protection from oppression, persecution, exploitation, and deprivation by those who are strong. If their weakness derives (as it usually does) from the dominant group, they will see themselves

and be seen by their oppressors, as a minority, regardless of how many they are. In that sense therefore, all human rights exist for the protection of minorities (Sieghart, 1986: 168).

1.2 Statement of the Problem

Griffin (2002:31) is of the opinion that many indigenous people perceive themselves as intrinsic elements of natural resources. They prefer to live within their means and not export elements of the environment to other places and people. This is in contrast to many features of modern technological societies that wish to exploit resources for high levels of wealth generation. This dichotomy has been one of the core causes of conflict between modern industrialized societies and indigenous people.

Nyati-Ramahobo (2008:1) asserts that the goal at independence was to assimilate all ethnic groups into the Tswana culture and create a monoethnic state, a model found in most British colonies. In spite of the numerous international human rights conventions that have been signed and ratified by Botswana, the government is still keen on changing the ‘primitive’ traditional societies of the San people. It has embarked on numerous occasions to forcefully evict the *Basarwa* from the Kgalagadi game reserve and integrate them into the ‘modern’ society. This has resulted in lengthy court battles (For instance, *Sesana and Others v Attorney General*) and has greatly undermined the rights of the San people.

The eviction of the *Basarwa* from the CKGR which resulted in one of the longest and most expensive court proceeding in that country’s history, is an indication that the government has undermined the rights of the San people. The government has largely persistently denied the

Basarwa access to water and refused them permission to hunt, in spite of a High Court ruling authorising otherwise. Claims that the eviction of the *Basarwa* was to better their lives remained questioned by many human rights activists. Laski (1967:89) argues that governments are judged by the extent to which they contribute in enhancing the welfare of its citizens. There is thus a need to investigate the extent to which the government is promoting and protecting the rights of the *Basarwa*.

1.3 Research Questions

- To what extent are the rights of the *Basarwa* in Botswana promoted and protected?
- What should the government do to ensure that the rights of the *Basarwa* in Botswana are promoted and protected?

1.4 Purpose of the Study

The purpose of this study is to investigate the extent to which the rights of the *Basarwa* in Botswana are promoted and protected by the government.

1.5 Objectives of the Study

The objectives of the study are:

- To investigate the extent to which the rights of the *Basarwa* are promoted and protected by the government of Botswana;
- To identify mechanisms that could be put in place to ensure that the rights of the *Basarwa* in Botswana are effectively promoted and protected.

1.6 Hypothesis

The rights of the *Basarwa* are not effectively promoted and protected by the government of Botswana.

1.7 Significance of the Study

This study will explore the extent to which the rights of the *Basarwa* in Botswana are protected. It will thus be a contribution to existing academic literature on the rights of indigenous people.

In addition, the study will provide recommendations on mechanisms that could be put in place to ameliorate the plight of the *Basarwa*. This will provide valuable information to relevant policy makers and avert violent conflict between the state and the *Basarwa*.

The recommendation that will be made in this study could also be beneficial to parties which are grappling with issues of rights of indigenous peoples.

1.8 Delimitation

This study is limited to the rights of the *Basarwa* in Botswana. It will also be limited in time from independence till the present as there is a need to establish what progress has been made with regard to the protection and promotion of the rights of the *Basarwa* during this period. Finally, it will concentrate largely on the Kgalagadi and Ghanzi districts as it is the home of the *Basarwa*.

1.9 Definition of Concepts

- **Human rights law:** refers to the body of international law designed to promote and protect individual and peoples' rights at the international, regional and domestic levels. The bulk of human rights law is primarily made up of international treaties and customary international law, and its norms have been adopted in national constitutions and laws.
- **Race:** a group of people of common ancestry distinguished from others by physical characteristics such as hair type, colour of eyes, skin, etc .The term 'race' in human rights law is sometimes used to encompass groupings which may fall into distinctive biological racial groupings.
- **Indigenous people:** Refers to tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations (Article 1 of ILO Convention No. 169, Concerning Indigenous and Tribal Peoples in Independent Countries). They are people and/or communities who claim a historical continuity and cultural affinity with societies endemic to their original territories that developed prior to exposure and interactions with Western culture. These communities therefore consider themselves distinct from the majority culture(s) that have contested their cultural sovereignty and self-determination (Cobo, 1987: para. 379).
- **Minorities:** These are groups numerically fewer to the rest of the population of a state, They possess ethnic, religious or linguistic characteristics differing from those of the rest of the population. They show a sense of solidarity, directed towards preserving their

culture, traditions, religion or language (Capotorti, 1992:505). Within a state, minorities are not necessarily indigenous peoples but indigenous peoples are usually minorities.

- **Discrimination:** Discrimination is an action that treats people unfairly because of their membership in a particular social group. Discriminatory behaviours take many forms, but they all involve some form of exclusion or rejection.
- **Basarwa:** This refers to the indigenous people of Botswana. Even though the name is considered offensive by some indigenous people, it is the official term used in Botswana. Hence, for the sake of consistency and clarity, it will be the term used in this study. Besides, the term is partially acceptable by some indigenous groups.

1.10 Limitations

Access to the *Basarwa* people may be limited due to distance and inadequate funding. Besides, communication might be difficult due to language barrier between the *Basarwa* and the researcher. In addition, access to official information pertaining to the research problem might be difficult to obtain.

In order to overcome this, the researcher will request funding from Ditswanelo organization. This will enable the researcher to make arrangements for transport to the Kgalagadi and Ghanzi districts of Botswana. In addition, the researcher will make use of the services of an interpreter who is fluent in both *Sesarwa* (*Basarwa* language) and English. With regard to access to official documents, the researcher will obtain a letter of institutional support from the University of Fort Hare. This letter will indicate that the research project is purely for academic purposes.

1.11 Presentation of the chapters

Chapter one will provide an Introduction to the study. It will consist of: background and statement of the problem; research questions; aims and objectives of the study; hypothesis; significance of the study; and definition of concepts.

Chapter two will review literature and present the theoretical framework.

Chapter three will be Methodology. It will cover the methods of data collection; data analysis; sampling; reliability; validity and ethical considerations.

Chapter four will deal with presentation and interpretation of the findings.

Chapter five will provide conclusions and recommendations of the study.

CHAPTER TWO: LITERATURE REVIEW

2.1 Conceptualizing Human Rights

Human rights are rights and freedoms to which all humans are entitled. Proponents (such as Feldman, 2002:51) of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human. Human rights are thus conceived in a universalist and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within the international context (Nickel, 2006:1). However, there is no consensus as to the precise nature of what in particular should, or should not, be regarded as human rights in any of the preceding senses. Hence the concept of human rights has been a subject of intense philosophical debate and criticism.

Galenkamp (1991:291) is of the opinion that the terms ‘minority rights’ and ‘human rights’ are not contradictory but complementary to each other. A rigid, watertight distinction between the two terms is inappropriate. In explaining the meaning of these terms, Galenkamp further argues that the concept of human rights is a concept with modern connotations, designed mainly to protect individuals against the modern state. However, collective rights are linked to a traditional worldview and aim at the protection of some specific and distinctive characteristics of traditional groups. It is, therefore, implausible to denote collective rights as human rights.

Sieghart (1986:594) lists the following collective rights as having some legal status: the right of peoples to self-determination, the right to environment, and fundamentally the rights of minorities. Others include: the right to exist; right to identity i.e., the right to preserve or protect

one's identity; the prohibition of racial, religious and linguistic discrimination; and the right of indigenous peoples to preserve their culture. Since the UN has not developed clear-cut ideas about the holder of the right to self-determination, minorities also can be considered as 'people' and therefore holders of this right (Ermacora, 1983: 251).

Dinstein (1976:102) seem to argue that collective human rights are already recognized by international law with regard to peoples and minorities. The author further argues that international law recognizes the following collective rights: peoples' right to life, self-determination, and minorities' rights to the preservation of a separate identity.

2.2 Conceptualizing Minorities and Indigenous Peoples

Oestreich (1999:108) asserts that the United States' Congress laid the foundation for the first important international instrument that paid attention to 'ethnic' (denoting national minorities) rather than religious protection. It recognized the right of Poles to retain their own culture and institutions. However, it did not allow any international supervision of minority rights, but at least it did express international concern for minorities. There are other questions which warrant discussion. The first set of questions includes: are minority rights individual, collective or both? Are minority rights also human rights? Article 27 of the International Covenant on Civil and Political Rights (ICCPR) states that minority rights are also human rights. Capotorti (1992: 505) argues that Article 27 grants only individual rights. However, he adds that the rights in question will be exercised by their holders in community with other members of their group.

Henrard (2000:30) however, states that there is no generally accepted definition of minority, neither at the international level, nor at the European level. There does not seem to be a certain measure of agreement regarding essential elements of such a definition, even though some of these ‘common ‘ elements are being criticized and are not always being interpreted in the same way. Furthermore a transaction towards a more pragmatic approach in this regard can be noticed, more prevalently at the European level, but is also beginning to take root at the international level.

Having ethnic, religious and linguistic characteristics different from those of the rest of the population should be the starting point of every effort to formulate a definition of minority. This is a crucial factor to distinguish the minority from population groups. However, Parker (1993:23) takes a radically different view. He patently disagrees with the thesis of the separate characteristics. He maintains that the fixation with separate and distinct features would amount to a deviation from the equality principle and make a departure from basic human rights thinking. According to Parker (1993:23-65), a minority should be defined as a ‘group of people who freely associate for an established purpose where their shared desires differs from that expressed by the majority’. However, this stance is prone to criticism. The author simply denies that a group of people can have inherently different characteristics but fails to offer any further arguments to support his statement. Further, he fails to conflate the definitional question with the substantive issue concerning the meaning of the equality principle and its implications for minorities.

Shaw (1992:23) illustrates the following objective and subjective criteria as being essential characteristics in the definition of minorities.

From the objective minorities:

- (a) must be an objectively distinct group;
- (b) the group in question will constitute a numerical minority within the state;
- (c) must be free from domination: the aim of this is to avoid a situation where a minority dominates and persecutes a majority;
- (d) as stipulated in article 27 of UDHR, namely that the Article applies “in those states in which, ethnic, religious or linguistic minorities exist”

From the subjective criteria;

- (a) there should be a sense of community, that is, members should wish to continue to exist as a group and not to be assimilated into the surrounding population;
- (b) the goal, the sense of community is traditionally expressed in one way or the other in terms of the preservation of the distinctive traditions and character of that community.

In order to examine the nature of the group that would constitute a minority, one must first extract the notion of ‘peoples’ in the full international sense of self determination. It is then possible to have a clearer perception of the holders of minority rights as ethnic, religious and linguistic groups are indisputably covered. However, while indigenous people are a category that overlaps with minorities, they are likely to diverge. A variety of relevant defining characteristics are apparent, and it is clear that a central core exists with regard to the definition of minorities. The most important feature is that the group must exist as a separate and distinct entity. The subjective element, or sense of community, is inextricably bond up with this, and although there may be differences within the group as to how far they wish to maintain their distinctiveness, there can be no doubt that this desire to preserve group identity is a significant factor. The fact

that it has proved so difficult to agree on a definition of minorities when the core elements are apparent, is a reflection of the fears of States, particularly in the third world, as to the consequences that may ensue. For example, there is a threat that the recognition of minority rights may lead to secessionist demands, or at the least to difficulties in achieving a national consensus. In the last resort, reassurance and encouragement, coupled with a healthy measure of international supervision, is likely to prove more effective than an agreed formula of words (Shaw, 1991:23-30).

ILO Convention 169 adopted on 27th June 1989 advances two sets of criteria to identify groups to which the Convention applies. Article 1 (1) of the Convention considers indigenous peoples as:

- Tribal people in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.
- Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

It is obvious that these definitions are not easy to apply as there are marked differences in the practices of states. However, the second classification has greater complexities, as it presents three criteria which are only sufficient in combination. The criteria are:

- (1) descent from certain group;
- (2) antecedence of these groups compared with others; and
- (3) retention of separate institutions (in whole or in part).

Brownillie (1991:63) argues that many scholars are specialists in human rights, rather than general international law, and specialist in indigenous peoples rather than human rights. It does not seem to occur to them that their subject of special interest belongs to a much wider world of normative development - a world in which the concepts lying to hand have more fluency and political acceptability. He further states that the heavy reliance on the still relatively controversial category of 'indigenous people' is difficult to understand and indicates some sort of snobbery.

In spite of their individual focus, minority rights can be exercised 'in community' with others. Some of these rights are linked to the individual's belonging to a specific group. They are originally not aimed at enhancing the group itself, but rather stem from the recognition that, in order to be enjoyed by individuals, these rights require collective exercise. To the contrary, for indigenous rights, the subject in most cases is the group. Sedletzki (2009:47) argues that one of the main struggles of the indigenous movement has precisely been the battle for the recognition of the rights of indigenous 'peoples' - and not 'people'. This implies that they apply to the group as a whole, and not only to its individual members. This approach has been reflected in ILO Convention No. 169. The Convention lists a set of peoples' rights while, when relevant, referring

specifically to the ‘members’ of these peoples. Similarly, the subjects of rights in the United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP) are in most cases the peoples, rather than the individual. The UNDRIP makes a clear distinction in this regard. In its preamble, it recognizes that: ‘indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind’. It also reaffirms that ‘urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources’ (General Assembly Resolution 61/295 on 13 September 2007). The recognition of collective rights eventually leads to a higher degree of autonomy for the group. The right to self-determination of indigenous peoples is understood in international standards within the context of states’ sovereignty. However, it is exercised through self-government rights, including with respect to the right to education (Sedletzki, 2009:47).

Against this backdrop, the fundamental difference between indigenous peoples and minorities lies in indigenous peoples’ ties to their territory of origin or their pursuit of as specific livelihoods when a nomadic, hunters and gathers. In many indigenous belief systems, land has a symbolic and spiritual value, as well as a social and economic function within the group, even for those who live outside of the homeland. As a consequence, the characteristic of being ‘indigenous’ as defined by the relationship to the land or livelihood for nomadic peoples impinges on all aspects of life. Given this premise, while minority rights are solely individual rights that can be exercised in community with other members of the group, indigenous rights also include rights to be exercised by the group itself (Sedletki, 2009:48).

Brolmann and Zieck (1993:187-220) are of the opinion that the lack of a universally accepted definition of indigenous peoples is no surprise. They maintain that the term 'indigenous people' is a convenient shorthand term for a great and varied number of communities in the world. In addition to problems which are inherent in the use of such terms, the current classification of population groups into 'peoples' and 'minorities' does not seem to accommodate indigenous peoples. Besides, indigenous peoples themselves object to being regarded and treated as minorities.

With regards to the definition of indigenous people Gilbert (2011: 249-250) argues that the debate on the definition of who indigenous peoples of Africa are and whether such a category is relevant to the continent, has undermined progress on the protection of their rights in Africa. There is general agreement at the international level that a strict legal definition of indigenous peoples might not be necessary. However, some voices have also expressed the need to define who the rights holders of the emerging human rights regime for indigenous peoples are. The need for a definition was highlighted by several of the African States involved in the debate that lead to the adoption of the UNDRIP in Africa in 2009.

However, Brownille (1991:59-60) maintains that indigenous communities, people and nations are those who have a historical continuity with pre-invasion and pre-colonial societies that developed on their territories. They consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit knowledge to future generations. Their ancestral territories and their ethnic identity are their basis of their continued

existence as peoples in accordance with their cultural patterns, social institutions and legal systems.

General Assembly Resolution 61/178, entitled Working group of the Commission on Human Rights (1994) notes that the groups who identified themselves as indigenous peoples share the following characteristics:

- (a) Their culture and way of life differ considerably from the dominant society, to the extent that their culture is under threat of extinction;
- (b) The survival of their particular way of life depends on access to lands and natural resources;
- (c) They suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society;
- (d) They often live in inaccessible regions and are often geographically isolated;
- (e) They are subject to domination and exploitation within national political and economic structures.

2.3 The Protection of the Rights of Minorities and Indigenous Peoples

The United Nations General Assembly Resolution 61/295 adopted on 13 September 2007, titled: United Nations Declaration on the Rights of Indigenous Peoples, affirms the rights of indigenous peoples. It recognizes the right of all peoples to be different, to consider themselves different, and to be respected as such. It also reaffirms that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind. It recognises the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other

constructive arrangements with States. Article 5 for instance, maintain that ‘Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State’.

However, Amnesty International (2009:1) reports that despite some progress over the last decade, indigenous peoples around the world continue to live in hardship and danger. This is due to the failure of states to uphold their fundamental human rights. Indigenous peoples are being uprooted from their lands and communities as a consequence of discriminatory government policies, the impact of armed conflicts, and the actions of private economic interests. Cut off from resources and traditions vital to their welfare and survival, many indigenous peoples are unable to fully enjoy such human rights as the right to food, the right to health, the right to housing, or cultural rights. Instead they face marginalisation, poverty, disease and violence – in some instances extinction as a people.

In support of this view, Shah (2010:1) argues that indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources. In spite of this, their rights have been violated throughout history. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world’s indigenous peoples.

Ramcharan (1993:95) focuses on the experience with fact-finding into the problems of minorities and places it into the following categories: Traditional methods of fact-finding; fact-finding by international secretariats; fact-finding by international monitoring organs; judicial and quasi-judicial fact-finding; the United Nations Secretary-General, World Council of Churches and International Alert. He further states that when moving away from the issues of fact-finding into the existence and problems of minorities, the question that needs to be asked is: is enough being done to report on violations of the rights of minorities so that attention may be paid to those violations? On this issue one has, so far, had to rely on fact-finding into human rights problems in general. Does general human rights fact finding do justice to the problems of minorities? This is an issue that needs to be examined.

The kind of treatment meted out to minorities is a good test of a country's tolerance and maturity. History demonstrates that the ill-treatment of minorities can be, and has been and still is, a cause of international friction and even war. The persecution of minorities by intolerant majorities is still a major cause of international unrest in various parts of the world, Botswana being a case in point. Western response to this problem has been suggestions on both the right to self-determination and the linguistic and institutional rights of minorities. These suggestions have largely failed (Sohn, 1981: 272).

Lerner (1993:54-55) states that the main virtue of the League of Nations system was perhaps that it acknowledged a fact of life in all its implications - namely, minorities exist. They are real, visible, and identifiable components of society. They have their needs and aspirations. Therefore minorities are bearers of rights. Throughout this contribution, Lerner argues in favour of a

collective approach and the recognition of group rights since “the individual-centered system alone, even if combined with the non-discrimination rule, cannot adequately ensure the right of individuals as members of a group, and certainly not of the group as such. In the author’s, opinion, the failure of the international community to prevent and adequately respond to present minority conflicts has less to do with the question of individual versus collective rights than with the lack of explicit obligations to affirmative state action and, above all, lack of efficient prevention and enforcement measures.

Vijapur (2003:367) argues that one of the critical reasons for past and on-going ethnic crises the world over is the fact that minority ethnic groups are excluded from participating in the power-sharing and decision-making processes of their political system. The author argues that there is a need for a formal or informal arrangement for power-sharing to be guaranteed to all minorities. There is also a need for such minorities to be accorded legal protection and the practising of tolerance towards them. Without these, the author argues, peace is not possible in multi-ethnic states. Hence, it is necessary for the government to implement adequate advancement opportunities for minority groups or their individual members in order to ensure equal enjoyment of human rights and fundamental freedoms. However, since affirmative action can lead to group conflict, such measures should not be continued beyond the time when equality has been achieved.

Positive discrimination measures are temporary and compensatory. Protective measures providing for special rights for minority groups produce equilibrium between different situations and should be maintained as long as the groups concerned wish. These measures include efforts

to allow minorities maintain their own languages, cultures, and religious practices, and to establish schools, libraries, churches, and similar institutions. Such policies towards minorities do not constitute discrimination and are temporary measures to achieve the objective of full enjoyment of their rights (Vijapur, 2003:368).

In a report commissioned by the sub-Commission on the Prevention of Discrimination and Protection of Minorities presented in 1983 by Martinez Cobo, the Special Rapporteur, pays considerable attention to land rights. One of the principal recommendations is that it must be recognized that indigenous peoples have a natural and inalienable right to retain the territories they possess. It calls for the return of land of which they have been deprived and to be free to decide as to their use and development. Other concerns include: the recognition of the right of all indigenous nations or peoples to the return to and control of sufficient and suitable land; to enable them to live an economically viable existence in accordance with their own customs and traditions; and to develop fully at their own pace.

From a rather radical standpoint, Gilbert (2005:317) argues that self-determination has been qualified as a remedial right. Thus, people should have a right to secede from a state that is discriminating or committing gross human rights violations. The author interprets it as a right to break away from a government that excludes people of any race, creed or colour from political representation. Hence, indigenous groups have often appropriated the term self-determination to express the essence of their political claims (Thornberry, 1991:14-15).

The most challenging claim to self-determination comes from indigenous peoples. Their claim relies on the fact that they have a traditional form of government and have specific rights over their traditional territories and thus are a people entitled to self-determination. Since in most countries they live on the margins of society, facing discrimination, exploitation, and dispossession, indigenous peoples seem particularly entitled to claim the right to self-determination. The Human Rights Committee has recognized that based on their right to self-determination, indigenous peoples have the right to access their natural resources as a right to subsistence. In the Committee's view, Article 1 of the ICCPR entails their right to participate in decisions affecting their natural resources (Gilbert, 2005: 318).

In spite of all these, traditional human rights standards are simply unable to address some of the most important and controversial questions relating to minorities. Even in liberal democratic societies, members of cultural minorities may endure human rights violation due to a tyranny of the majority. The problem with the concept of human rights is not that it gives the wrong answer to questions, but that it often gives no answer at all. The right to freedom of speech, for example, does not tell us what language policy a society ought to have. The principles of human rights leave such matters to majoritarian decision-making, and this may result in minorities being vulnerable to injustice (Kymlicka, 1995: 4, 5, 109).

Gilbert (2011:246) states that until recently, the African Commission on Human and Peoples' Rights, had kept a low profile on the issue and had not always interpreted indigenous peoples' rights favourably. From this perspective Commission's communication submitted by the indigenous Endorois community against Kenya casts new light on the rights of indigenous

people in Africa. The decision which has already been hailed as a 'landmark' touches on several crucial issues regarding the development of the human rights of indigenous people in Africa. The groundbreaking decision did not materialize unexpectedly as it is part of a wider evolution of the Commission regarding indigenous peoples, human rights in Africa. It echoes the work of the Commission's own Working Group of Experts on Indigenous Population/Communities (Working Group) which was established in 2001 with the mandate to focus specifically on the promotion and protection of the rights of indigenous people in Africa (Gilbert, 2011:246).

In addition, there are several international human rights documents that specifically aim at promoting the rights of indigenous peoples. Article 27 of the International Covenant on Civil and political Rights, which protects the cultural rights for minorities. It maintains that 'in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.' Besides, the United Nations Declaration on the Rights of Indigenous Peoples developed a strong legal connection between access to land and cultural rights of indigenous peoples. Article 32.2 of the Covenant states that: 'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representatives institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.'

It is thus important that when the government of a particular country decides to develop indigenous people, their rights should also be respected so they should be informed of such developments. With regard to the right of indigenous people to development, Gilbert (2011:263) states that, large-scale development projects may have a negative impact on indigenous peoples' culture and identity. The imposition of large scale infrastructure projects on indigenous lands without their consent often result in their removal. Generally speaking, for indigenous people, large scale developments occurring on their traditional territories usually mean encroachment on their right to live in their lands.

When it comes to human rights violations of indigenous communities, and especially their land rights, such violations are emerging from similar situations in Africa: the establishment of national parks and conservation areas, mining, logging, plantations, oil exploration and dam constructions; biased development policies and expansion for agricultural production. As it was with the *Basarwa* case in Botswana it is not surprising that in the Endorois case in Kenya, the issues behind the removal of the community from its ancestral territory were similar. While the main aim was the establishment of a conservation area to allow the development of tourism in the region, there was also a project to allow ruby mining in that area. Gilbert (2011:264) maintains that when it comes to development and exploitation of natural resources, states often argue that they cannot stop such large scale developments that will bring significant wealth to the whole country in order to protect just a few people.

However, significant strides were made towards the recognition of the rights of indigenous peoples at the Second International Decade of the World's Indigenous People (2005-2015) proclaimed by General Assembly resolution 59/174. The Programme of Action was adopted by

General Assembly resolution 60/142 and is contained in document A/60/270, sect. II. The goal of the Decade is the further strengthening of international cooperation for the solution of problems faced by indigenous people in such areas as culture, education, health, human rights, the environment and social and economic development, by means of action oriented programmes and specific projects, increased technical assistance and relevant standard setting activities.

The five objectives of the decade are:

1. Promoting non-discrimination and inclusion of indigenous peoples in the design, implementation and evaluation of international, regional and national processes regarding laws, policies, resources, programmes and projects.
2. Promoting full and effective participation of indigenous peoples in decisions which directly or indirectly affect their life styles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspect of their lives, considering the principle of free, prior and informed consent.
3. Re-defining development policies that depart from a vision of equity and that are culturally appropriate, including respect for cultural and linguistic diversity of indigenous peoples.
4. Adopting targeted policies, programmes, projects and budgets for the development of indigenous peoples, including concrete benchmarks, and particular emphasis on indigenous women, children and youth.
5. Developing strong monitoring mechanisms and enhancing accountability at the international, regional and particularly at the national level, regarding the implementation

of legal, policy and operational frameworks for the protection of indigenous peoples and the improvement of their lives.

The Indigenous Peoples of Africa Co-ordinating Committee (IPACC) is one of the main trans-national network organizations recognized as a representative of African indigenous peoples in dialogues with governments and bodies such as the UN. IPACC identified several key characteristics associated with indigenous claims in Africa. They include:

- political and economic marginalization rooted in colonialism;
- de facto discrimination based often on the dominance of agricultural peoples in the State system (e.g. lack of access to education and health care by hunters and herders);
- the particularities of culture, identity, economy and territoriality that link hunting and herding peoples to their home environments in deserts and forests (e.g. nomadism and knowledge systems);
- some indigenous peoples, such as the San and Pygmy peoples are physically distinct, which makes them subject to specific forms of discrimination.

At an African inter-governmental level, the examination of indigenous rights and concerns is pursued by a sub-commission established under the African Commission on Human and Peoples' Rights (ACHPR), sponsored by the African Union (AU) (successor body to the Organization of African Unity (OAU)). In late 2003 the 53 signatory states of the African Charter adopted the Report of the African Commission's Working Group on Indigenous Populations/Communities and its recommendations. The Report observes that certain marginalized groups are discriminated in particular ways because of their particular culture, mode of production and

marginalized position within the state. The call of these marginalized groups to the protection of their rights is a legitimate call to alleviate this particular form of discrimination.

The adoption of this Report at least notionally subscribed the signatories to the concepts and aims of furthering the identity and rights of African indigenous peoples. The extent to which individual states are mobilizing to put these recommendations into practice varies enormously. However, most indigenous groups continue to agitate for improvements in the areas of land rights, use of natural resources, protection of environment and culture, political recognition and freedom from discrimination.

CHAPTER THREE: RESEARCH METHODOLOGY

3.1 Research Approach

Research is a structured enquiry that utilizes acceptable scientific methodology to solve problems and create new knowledge that is generally applicable. Scientific methods consist of systematic observation, classification and interpretation of data. Although we engage in such process in our daily life, the difference between our casual day-to-day generalisation and the conclusions usually recognized as scientific method lies in the degree of formality, rigorousness, verifiability and general validity (Padmanabhan, 2006:3).

This is a predominantly qualitative case study research. Denzin *et al* (2005:387) posit that qualitative research is a method of inquiry employed in many different academic disciplines. Qualitative researchers aim to gather an in-depth understanding of human behaviour and the reasons that govern such behaviour. The qualitative method investigates the *why* and *how* of decision making, not just *what*, *where*, *when*. The research thus entailed why and how the government of Botswana has either undermined or protected the rights of the San people of Botswana.

An advantage of qualitative research according to Patton (1990:13-14) is that it permits the researcher to study selected issues in depth and in detail. Qualitative methods are helpful not only in giving rich explanations of complex phenomena, but in creating or evolving theories or conceptual bases, and in proposing hypotheses to clarify the phenomena. Besides, value of the qualitative research consists in the validity of the information received. People are interviewed so as to obtain data that would be taken as correct and believable reports of their opinions and experiences (Schwartz, 2011:1).

This research is a case study of the San people in Botswana. Yin (1989:22-26) maintains that a case study is an empirical inquiry that investigates a contemporary phenomenon within its real life context, using multiple sources of evidence. The case study method of research is a study where a limited number of units of analysis are studied intensively. The units may include individuals, groups and institutions. The main purpose of the case study method of research is to direct the researcher towards understanding the uniqueness and idiosyncrasy of a particular case in all its complexity (Welman et al, 2005:193). Anderson (1993:152-160) adds that it is concerned with how and why things happen, allowing investigation of contextual realities and the differences between what was planned and what actually occurred. A case study is not intended as a study of an entire organisation but rather focuses on a particular issue, feature or unit of analysis. The research thus adopted a post-positivism approach whereby the task of the researcher was to appreciate the different constructions and meanings that the San people place on their experience (Easterby-Smith *et al*, 1991:23-25).

However, Johnson (1994: 88) argues that case studies have been criticized as lacking in scientific rigour and reliability and they do not address the issue of generalizability. In spite of this, this method enabled the researcher to gain a holistic view of a certain phenomenon or series of events and it provided a round picture since many sources of evidence were used. Another advantage of the case study method is that it is useful in capturing the emergent and imminent properties of life within San communities. This is because case studies ‘x-ray’ the ebb and flow of organizational activity, especially where it is changing very fast. Generalizations can thus be

made in case studies through the use of multiple cases which can lead to some form of replication.

3.2 Methods of Data Collection

According to Mouton (2002:67), data collection involves applying the measuring instruments to the people or the cases selected for the investigation. Data collection was extensive, consisting of both primary and secondary sources. Primary sources included interviews and questionnaires while secondary sources entailed relevant books, journal articles and internet publications.

The following instruments were applied or used in data collection:

3.2.1 Interviews

Conducting interviews is a traditional method used by social scientists for extracting information through well-placed individuals in the society and institutions. It is part of the ethnographic approach, often used in situations where access to official records or data is weak or non-existent. Where official records exist, it is used as a means to gain further insight by questioning key people about specific social, political and economic problem. Social scientists also use the approach within the field of social interactionist or ethno-methodological research. Key informant interviews consist of asking questions that are mainly semi-structured or open, allowing detailed, full answers to be obtained from respondents. This approach contrasts with quantitative questionnaires, which allow only controlled and structured responses within narrow parameters (McNamara, 2007: 1).

Patton (1990:10) states that the data from interview consist of direct quotations from people about their experiences, opinions, feelings, and knowledge. Benny *et al* (1970:175-181) point out that an interview is the favoured tool of social scientists as it relies on verbal accounts to learn about social life. However, it is sometimes difficult to determine how many people to interview in qualitative study. Some researchers try to interview as many people familiar with a topic or event as possible. However, Taylor (1984:93-98) states that there is no simple formula for a successful interviewing. Nonetheless, the researcher will take into consideration the following points:

- (a) The researcher chose an interview environment and conditions in which the participants felt comfortable, secure, and at ease enough to speak openly about their point of view.
- (b) Being Nonjudgmental: the researcher refrained from making negative judgement about respondents or events. The purpose of the interview was to find out what views people hold; therefore, their views should be unbiased by evaluative responses on the researcher's part.
- (b) Give respondents the liberty and time to talk. The researcher also avoided presenting "yes" or "no" questions which tends to stifle detail.
- (c) Payed attention to respondents. As Cottle (1973:351) clearly expresses paying, attention also means being open to seeing things in a new and different ways.
- (e) Probing: the interviewer continually encouraged interviewees to provide detailed descriptions of their experiences. What was said in the interview was used to determine or define further questioning.

Twenty interviews were conducted with relevant role players in Botswana. They include Botswana government officials (municipal officials and Rural District Administration officers)

workers in human rights organizations in Botswana (Ditshwanelo and Botswana Council of Churches) and some key individual who are well knowledgeable about the San people (Botswana Centre for San Studies). These individuals have shown interest in the promotion and protection of the rights of indigenous people. Patton (1990:10) states that the purpose of interviewing is to find out what is in someone else's mind. That is, people are interviewed to find out from them those things we cannot directly observe. The other purpose of the interview was to get information that will improve the problem being investigated.

In conducting the interview the researcher used an interview guide. According to Patton (1990:10), an interview guide is a list of questions or issues that are going to be explored in the course of the interview. An interview guide was prepared in order to make sure that basically the same information is obtained from a number of people by covering the same topics. The interview guide provided topics or subject areas within which the interviewer was free to explore, probe, and ask questions that elucidated and illustrated that particular subject.

3.2.2 Questionnaires

According to Mellenbergh (2008:211) a questionnaire is a group of sequence of questions designed to elicit information upon a subject, or a sequence of subjects, from an informant. Against this backdrop, an open-ended questionnaire was used because of its ability to reach a large number of people relatively easily and economically. Hence, a total number of 30 open-ended questionnaires were distributed to individuals who have shown interest in the promotion and protection of the rights of *Basarwa* in Botswana. They included workers in human rights advocacy organisations such as Ditshwanelo, Botswana Council of Churches, Botswana Centre

for San Studies and some government officials. Whilst still having a structured sequence and focus predetermined by the researcher, the unstructured questionnaire were based on open-ended questions allowing respondents the freedom to answer in their own words and therefore to provide greater qualification in their response.

3.2.3 Secondary Sources

Secondary sources used include text books, journal articles and internet publications. Stewart (1984:11-12) is of the opinion that secondary sources provide relatively quick, inexpensive and readily available answers to the problem under investigation. Besides, it is usually the point of departure for primary research. An investigation of secondary sources thus help define the agenda for subsequent primary research by suggesting which questions require answers that have not been obtained in previous research. It thus targets gaps and oversights in knowledge by providing the possibility of combining the information from several different sources to reach conclusions that are not suggested by any one source.

3.3 Methods of Data Analysis

Data analysis consisted of corroboration of all the various sources of data collected and a content analysis. Efforts were made to ensure the highest level of data accuracy. In accomplishing this, any information which was unclear was clarified. This was done by authenticating primary data with secondary data. Besides, a content analysis of the various responses from the respondents was done so as to identify similar themes, facts, arguments raised and patterns.

3.4 Validity of Data

A central issue in qualitative research is validity (also known as credibility and/or dependability) of data. Hammersley (1990:57) states that validity is the truth interpreted as the extent to which an account accurately represents the social phenomena to which it refers. There are many different ways of establishing validity, including: member check, interviewer corroboration, peer debriefing, prolonged engagement, auditability, confirmability, bracketing and balance.

The researcher ensured the validity of the research by comparing different methods, for instance questionnaires and interviews, to see whether they corroborate one another. This form of comparison, called triangulation, derives from navigation, where different bearings give the correct position of an object. The purpose of corroboration was not to confirm whether people's perceptions are accurate or true reflections of a situation but rather to ensure that the research findings accurately reflect people's perceptions, whatever they may be. Corroboration helped increase the probability that the findings will be seen as credible or worthy of consideration by others (Stainback & Stainback, 1988:80-81). The researcher also ensured the validity of documents by corroborating evidence gathered from the sources so as to prevent incorrect data from being included in the data base.

In addition, the researcher bore in mind Wolcott's (1990:121) guides to ensuring the validity of research throughout the research process. They include the following:

- Be a listener. It was the researcher's task to properly interpret the responses of the subject(s).

- Record accurately. All records were be maintained in the form of detailed notes or electronic recordings. These records will also be developed during rather than after the data gathering session.
- Initiate writing early. The researcher made a rough draft of the study before going into the field to collect data. This allowed the researcher to be more prepared to focus on information that met the specific identified needs of the research.
- Include the primary data in the final report. The inclusion of primary data in the final report will allow the reader to see exactly the basis upon which the researcher's conclusions were made.
- Write accurately. Incorrect grammar, misspelled words and inconsistent statement can jeopardize the validity of an otherwise good study. These were avoided in the study.
- Seek feedback. The researcher allowed others to critique the research manuscript following the developmental process. Professionals and research subjects were included in this process in order to ensure that information is reported accurately and completely. This included the researcher's supervisor, staff at the University of Fort Hare's Teaching and Learning Centre and staff at human rights advocacy organisations in Botswana.

3.5 Ethical Considerations

The researcher made sure that this study does not impact negatively on anyone assisting this study. Given the fact that information was obtained both from primary and secondary sources, ethical issues involved include: informed consent, anonymity of respondents and confidentiality. Besides, all sources from which information was obtained have been duly acknowledged. All forms of research misconduct, fabrication and plagiarism have been avoided.

CHAPTER FOUR: PRESENTATION OF RESEARCH FINDINGS

4.1 Introduction

With a population of 1.9 million and a per capita GNI of US\$6240 in 2009, mineral-rich Botswana has been described by the World Bank as ‘one of the world’s great development success stories. It has transformed itself to an upper middle income status from being one of Africa’s poorest countries at independence in 1966 (World Bank, 2010:1). A stable multi-party democracy, albeit with a single dominant party in power since independence, Botswana has a reputation for sound governance and has been characterised as Africa’s clearest example of a ‘developmental state’. It has been consistently rated by Transparency International as the least corrupt state on the continent and by the World Economic Forum (2010:73) as one of the most competitive in Africa.

Nevertheless, Botswana’s future as a beacon of successful social and economic development in Africa is clouded by some pressing concerns. Even though some inhabitants have benefited from these achievements, the new wealth is very unevenly distributed and many individuals and groups are marginalized - economically, socially and or geographically. Botswana’s impressive track record of good governance and economic growth supported by prudent macroeconomic and fiscal management, stands in contrast to the country’s high levels of poverty and inequality and generally low human development indicators. Botswana’s economic progress over the past 40 years has significantly raised living standards for many with poverty rates declining from over 50 per cent at independence to under 30 per cent today. In spite of this, significant and stubborn pockets of poverty remain especially in rural areas (World Bank, 2010:1).

Nyati-Ramahobo (2008:5) supports that while Botswana is richer, it has not addressed poverty any better than poorer countries. Within the rural districts, child malnutrition tends to be above the national average in Southern, Kgalagadi, Ghanzi and some Central districts such as Mahalapye and Tutume. Within these districts, the prevalence rates are 20 per cent higher than the national average of 5.2 per cent. Income poverty also remains a major challenge and it is the minority tribes living in rural areas, especially women who suffer the most. The author also argues that if Botswana is serious about tackling poverty, it must address the underlying causes and review the discriminatory laws. These laws influence the thinking of decision makers in planning and implementing the development agenda. This agenda needs to be implemented in an equitable manner, taking care of the most vulnerable and empowering rural communities to work towards self-reliance (Nyati-Ramahobo, 2008:5).

According to Anaya (2010:7) numerous ethnically distinct groups that are indigenous to the African continent live in Botswana, speaking approximately 28 different languages or dialects. They fall primarily into five linguistic-tribal groups: the *Tswana*, the *Basarwa*, the *Bakgalagadi*, the *Wayeyi*, and the *Hambukushu*. The *Tswana*, comprised of 8 sub-groups, are politically and numerically dominant throughout Botswana. *Tswana*-speaking groups began to migrate into the area no later than 1200 AD. During the past few centuries, the presence of *Tswana* groups increased, and over time the Tswana established effective control over the territory, in some cases displacing other groups, primarily *Basarwa*, from their land. During colonization, the British colonial powers negotiated primarily with the dominant *Tswana* tribes. The legacy of this prioritization of *Tswana* interests and culture over non-dominant tribes in Botswana persists in the social and political dynamics of present-day Botswana (Anaya, 2010:7).

4.2 Overview of the *Basarwa* in Botswana.

Minorities at Risk Project (2003:1) reports that the people collectively known as the *Basarwa*, Bushmen or *Basarwa* are some of the last nomadic hunter-gatherers on earth. They are very distinct from the majority Tswana ethnic group. Moreover, they speak a variety of Khosian click languages and have a distinctive appearance. In addition, they have their own customs and animist beliefs. The *Basarwa* in Botswana were previously concentrated in the Kalahari Desert where they had moved to avoid the encroachment of other groups. Until the start of the Agricultural Revolution, the *Basarwa* occupied most of Southern Africa to the southern part of the Sahara. As technological innovations associated with agriculture spread, so did the Bantu blacks from the east and the Nilo-Saharan blacks from the Sahara. Both groups migrated south, and along with whites from Europe, encroached on *Basarwa* land. As a result, *Basarwa* moved further into the Kalahari Desert to maintain their way of life (Minority at Risk Project, 2003:1).

Kiema (2010:67) states that a name is a sterling silver, and accepting any other is the same as surrendering. The author maintains that the *Basarwa* have been labelled, or given an identity by outsiders. Some of these names include: Bushman: meaning people without their own land; people who wandered around the bush looking for food; people with no emotional attachment to any land. There is also the name *Basarwa* which originally meant *bas a rua* or those with nothing: no tribal territory, no livestock, no culture, no property, no rights, no language, no ethnic identity, no human dignity, even no chief. These names have gained popularity with those involved in 'improving' their conditions, but due to the ignorance of some academics and agencies, many people understand the term '*Basarwa*' to be the most neutral and unifying name of all the first inhabitants of Southern Africa, excluding the khoekhoe (Kiema, 2010:70).

A respondent laments that ‘the new names imposed on the *Basarwa* have resulted in self-condemnation, self estrangement, submission, powerless, apathy, dependence, loss and the erosion of our identity.’ The *Basarwa* claim that the name ‘*Basarwa*’ marginalises them and that it is a name given to them by other people in order to demean their stature in society. They lament the fact that both terms ‘*Basarwa*’ and ‘Bushmen’ as applied to them, are insulting and unfit in a democratic society (Amanze, 2006:108). A respondent maintains that *Kua* is the appropriate name for the *Basarwa*. It is a name used by the *Dxanakhoe*, *Dcuikhoe*, *Tshila* and others of all from what is now known as the CKGR, referring to all non-Bantu groups who speak click languages including the *Nama Damara (Khoekhoen)*. ‘The *Basarwa* are also entitled to this right, and do not want to be subject to the composition and imposition of names that reflect the views of our oppressors’ (Kiema, 2010:68).

The *Basarwa* as they are commonly known in Botswana, have lived in the region known today as the Central Kalahari Game Reserve (CKGR) for over 400 years. Nthomang (2004:415) records that the CKGR was established as a game reserve under the Game Proclamation Act through the High Commissioners Notice on February 14th 1961. The CKGR covers 52,800 square kilometres. One of the main reason for establishing the reserve was to allow the *Basarwa* and the Kgalagadi to continue their traditional lifestyle if they wished. It was also meant to provide protection for *Basarwa* displaced from the Gantsi farms. The rights of the residents of CKGR were recognised by the British colonial government. They were guaranteed exclusive rights to practice their traditional hunting and gathering lifestyle under the system of traditional land usage (Silberbauer, 1965:138). When Botswana was declared independent in 1966, the exclusive rights accorded to the *Basarwa* by the British colonial government were not abolished.

The constitution of Botswana, Article 14 in particular, gives the *Basarwa* a right to reside in the CKGR that the government of the day cannot take from them.

Ditshwanelo (2007:1) reports that Botswana currently has an estimated population of about 60,000 *Basarwa*. They are spread across all parts of Botswana, particularly the Southern, Kweneng, Kgatleng, Ghanzi, Kgalagadi, Central and North West Districts. The *Basarwa* have inhabited Southern Africa for at least 40,000 years. As such, they may be categorized as “indigenous peoples” because they are said to be descendants of the original populations residing in the area that is now known as Botswana. The concept of private ownership of land as it is understood in present day Botswana did not exist in their culture.

Traditionally, every *Basarwa* group is familiar with the environment in a particular area and relocation to a new area, with a new habitat, can have an acute and adverse effect. Effectively, this meant that independence in the 1960s was granted to the major Tswana groups. Without the formal acknowledgment of the *Basarwa* peoples’ existence within the Kalahari, there was no opportunity for land use patterns in the *Basarwa* traditional areas to find “official recognition”. When the Kalahari Desert was declared Crown land by the former colonial Government, the *Basarwa* and other major inhabitants became unlawful occupiers on their traditional lands. The major implication of the declaration was the denial of land entitlements to specific groups and this contributed to the marginalization still being experienced by the *Basarwa* today (Ditshwanelo, 2007:1).

Stidsen (2006:506) posits that the majority of the approximately 50,000 *Basarwa* continue to face a number of serious problems. These include widespread poverty, lack of secure land and resource access, and human rights abuses. In many ways the *Basarwa* occupy the lowest rung of a multi-tiered socio-economic system. A substantial proportion of the *Basarwa* population live below the poverty line. They face problems ranging from lack of access to land and social services to high rates of unemployment. In a number of cases, *Basarwa* were moved from their ancestral territories into large-scale settlements where water, schools and health posts are provided, but little else. Many of these settlements are characterized by poverty, disease, nutritional stress, internal conflict and social dissatisfaction. The vast majority of the *Basarwa* in Botswana are no longer hunters and gatherers but depend on a mixed economy which includes livestock, crop production, wage labour, and subsistence support to the destitute (Saugestad, 2001:131).

As a result of the above, a study conducted by Wily (1979: 55) concluded that the *Basarwa* were then already far removed from the nomadic, pristine human foragers depicted in popular literature. The *Basarwa* became an increasingly impoverished, landless ethnic group largely dependent on government poverty-alleviation policies.

4.3 Violations of the Rights of *Basarwa* in Botswana

The International Work Group for Indigenous Affairs (2011:1) records that in Botswana, the *Basarwa* identify themselves as indigenous peoples. There are an estimated 50,000 to 60,000 *Basarwa* in Botswana, which is approximately three per cent of the country's population. At independence the government of Botswana adopted a policy of non-racialism which de-emphasized ethnicity. However, the plight of the *Basarwa* has become a dent on the face of the

country. Although the country is generally applauded by donor nations for its commitment to democracy, and health and social programmes, the *Basarwa* issue has continued to tarnish the government's reputation.

4.3.1 Lack of Recognition

The first indication that the rights of the *Basarwa* are not effectively promoted in Botswana is the fact that they are not officially recognized by the government of Botswana as the indigenous people of the country. All respondents and interviewees were unanimous that there is no legislation that recognizes the *Basarwa* as the indigenous people of the country. They maintain that the government is not committed to maintaining the *Basarwa*'s way of life. Instead, it is attempting to 'Tswanalize' the *Basarwa*. The Government of Botswana on its part, maintains that it considers all Batswana to be 'indigenous'. The government further argues that Botswana is inhabited by many different ethnic groups that occupied the geographical areas of present-day Botswana at different times in history. However, the integrationist model of development adopted by the government of Botswana does not recognize the cultural uniqueness of the *Basarwa* (Ditshwanelo, 2002:1).

This stance is probably perpetuated by the fact that the international community has not adopted a universal definition of indigenous peoples. The prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights. Taylor (2007:5) states that at the end of November 2006, Botswana and Namibia took a leading role in successfully mobilizing African states to postpone voting on the draft Declaration on the Rights of Indigenous Peoples during the 64th UN General Assembly. In doing so, they rejected the

notion that the *Basarwa* should be recognized as more ‘indigenous’ than other southern African inhabitants, and that they should have the right of self-determination.

Attempts to deny Botswana’s ethnic diversity fly in the face of international human rights norms and standards. For example, Article 1 of the UN Declaration on Rights of Peoples belonging to National or Ethnic, Religious and Linguistic Minorities, places states under an obligation to protect ethnic, cultural and linguistic identity. It urges states to create conditions for the promotion of the identity of indigenous peoples. As a consequence of the discrimination the minority tribes in Botswana face, the *Basarwa* have experienced cultural erosion and invisibility as citizens. Lack of recognition has also led to the inadequate provision of social services such as education. This has resulted in disproportionately high levels of poverty, language loss, degeneration of customary law, and loss of traditional skills among the *Basarwa* (Nyati-Ramahobo, 2008:4-6)

4.3.2 Forced Land Evictions

The relationship between the government of Botswana and the *Basarwa* has attracted considerable attention nationally and internationally in the recent past. Underlying the controversies over the development of *Basarwa* have been the issues of land rights. The Botswana government has made different responses to these issues. Firstly, it declared an area which the *Basarwa* consider to be their ancestral land a reserve. Secondly, the government designed and implemented a resettlement policy that involves relocation of *Basarwa* from that area declared a reserve, to government created settlement under the Remote Area Development Program (Nthomang, 2004:53).

Mutume (2007:6) states that the British colonial administration had deemed the *Basarwa* to be “endangered” and established the Central Kgalagadi Game Reserve (CKGR) as their refuge. After independence, the new government of Botswana encouraged the *Basarwa* to move out of the park into state-assisted settlements that were within reach of modern services such as schools and clinics. Seeing that the *Basarwa* are committed to maintaining their way of life, such action begs the question as to why the government is so keen to integrate the *Basarwa* into other communities. One reason advanced for this is that the provision of services such as water, health and education within the reserve is very expensive, because of the enormity of the area to be covered. A second reason is that the serviced communities were growing rapidly, and were beginning to deplete the natural resources around them. Another issue to consider was also the nomadic nature of the communities themselves (Botswana Institute for Development Policy Analysis, 2003:1).

This led to a land reform process, starting with the Tribal Grazing Land Policy of 1975 and ended with an overall loss of land that had economic as well as cultural significance to the *Basarwa*. After independence, in the 1970s, the Botswana Government launched the Bushmen Training and Settlement Project, which piloted a resettlement scheme and expanded support for primary education of *Basarwa*. This initiative was pioneered by the Reformed Church of Botswana mission at D’Kar to prepare their children for more positive and productive roles in society (Cukuri *et al*, 2000:1).

The Botswana Institute for Development Policy Analysis (BIDPA) (2003:7) reports that the initiative was further advanced in the 1970 - 75 National Development Plan. It had a specific

objective of helping *Basarwa* adapt to the fast evolving economy of Botswana, under a project in the Ministry of Local Government and Lands. In 1975, Government launched the *Basarwa* Development Project. It recognized the cultural, social and the spatial constraints that were thought to be impediments to *Basarwa* from obtaining benefit from national economic development. The 1974/75 Rural Incomes Distribution Survey (RIDS) showed that severe poverty was not only confined to *Basarwa* as an ethnic group has also affected many people in geographical locations outside organized villages. This led in 1978 to the replacement of the *Basarwa* Development Programme with the Remote Area Development Programme (RADP). The new programme's emphasis was characterized by a change from ethnic identification of beneficiaries, to geographic targeting of all people that lived in remote areas. Thus the new targets became all marginalized communities in the remote areas of Botswana (BIDPA Report, 2003:7).

BIDPA (2003:8) further reports that the RADP evaluation of 1985 led to the initiation of the Accelerated Remote Area Development Programme in 1987. Hence a special rural development programme was launched in 1989, covering seven areas that were most affected: the North-West, Kweneng, Central, Ghanzi, Kgalagadi, Southern, and Kgatleng districts. The new initiative was aimed at establishing permanent settlements, promoting productive economic activities, and providing public services, as a means to improve the living conditions of the people inhabiting these remote areas. This would be the basis for integration of marginalized communities into the mainstream of society.

The RADP was supposed to target citizens of Botswana who live in settlements located far from centres of basic services and facilities. The targeted people are characterized by severe poverty, lack of incomes and education, low literacy levels, and depend on a deteriorating ecological resource base. The areas most affected are the western districts of Ghanzi and Kgalagadi, western Kweneng and Southern districts. The Programme also recognized that there are ethnic groups in remote areas, notably the *Basarwa*, who are historically disadvantaged. Thus, they cannot easily take advantage of their entitlements under the constitution and legal framework without special assistance. The programme thus aimed at providing economic opportunities, political self reliance, reduction on dependency, social integration and awareness of rights human (Saugestad, 2001:128).

An important aspect of RADP policy is that of developing settlements for remote area dwellers “to accommodate all the landless inhabitants of remote areas as guided by the district settlement strategy” (Government of Botswana, 2009:11). The government sees this as a way of extending standard services to *Basarwa* and other remote area dwellers, as this is their right. The provision or withdrawal of these services has sometimes proved controversial, as the case of Central Kgalagadi Game Reserve (CKGR). In this case, the policy came to be seen as supporting an agenda of clearing *Basarwa* from ancestral lands to make way for tourism and mining concessions. This thus deprived them of their customary hunting and gathering livelihoods (Nthomang, 2004:54).

Hitchcock (1999:51-55) reports that in March 1997, the Botswana Minister of Local Government, Lands, and Housing requested a budget of 6 million Pula (about US \$1.5 million)

to resettle people outside of the CKGR. Some of these funds were to be used in the development of New !Xade, a resettlement location outside of the CKGR in the Okwa Wildlife Management Area in Ghanzi District. The resettlement of several hundred people out of !Xade to New !Xade was carried out in May, 1997. New !Xade consisted of little more than lines of tents and a water storage tank; there was no functioning borehole in the area and water had to be piped from some 60 kilometers away. According to people who were moved, little if any attention was paid to local patterns of kinship and social organization. The distribution of people in the settlement was such that relatives and friends were sometimes separated from one another, something that was alien in their former home (Hitchcock, 1999:51-55).

However, many *Basarwa* refused to relocate, preferring to remain in a natural habitat where they could continue to live as hunters and gatherers, as they had done for thousands of years. Finally, the government decided to evict 3,000 of them from the reserve, setting off the longest and most expensive court case in the country's history (*Roy Sesana and Others v the Attorney General*, 52/2002). On December 13, 2006, the Court ruled that the refusal to allow the *Basarwa* into the Central Kalahari Game Reserve (CKGR) without a permit, and the refusal to issue special game licenses to allow the Bushmen to hunt, was "unlawful and unconstitutional". It also found that the Bushmen were 'forcibly and wrongly deprived of their possessions' by the government. The Court also ruled that the 189 applicants in the case and their children may return to the reserve. Some activists, such as members of the First Peoples of the Kalahari, contend that the ruling should cover all 50,000 *Basarwa* in the country. However the government of Botswana maintains that other *Basarwa* who wish to return may do so only if they apply for and obtain permits from the state (Mutume, 2007:2).

According to the Section 14 of the Constitution of Botswana, all citizens of the country have land rights. It maintains that all Batswana have the right to sufficient land to meet their needs. However, Stidsen (2006:508) argues that the *Basarwa*'s land rights, have never been recognized fully. When they lived traditionally as hunters and gatherers, they were seen as having no land of their own and as having no need of any. Since the latter part of the 19th century, they have gradually lost their customary land areas to settlers, cattle farmers, mines, natural parks and game reserves, and to government programs such as quarantine camps for livestock and agricultural experiment stations.

The *Basarwa* have experienced a long series of relocations into government-established settlements. They were being displaced from ranches in 2005 and their attempts to obtain compensation for loss of their assets made little headway. Even more problematic is the fact that those *Basarwa* who were resettled years ago are sometimes faced with the threat of a potential relocation. This is the case, for example, with the community of Ngwatle in Kgalagadi District, which is in an area that the Botswana Government would like to turn into a wildlife zone, they would connect the Kgalagadi Transfrontier Park in south-western Botswana to the Central Kalahari Game Reserve. Many *Basarwa* today continue to face the prospect of losing their homes and lands because of government decisions or the actions of non-governmental organizations or the private sector in Botswana (Stidsen, 2006:508).

Section 14 of the Constitution of Botswana supports the *Basarwa*'s claim to land. It guarantees the *Basarwa*'s freedom of movement within, as well as the right to reside in the CKGR. Section

8 further prohibits the deprivation of property. It states that no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired. The proviso is that where it is necessary or expedient to take such property in the interests of defence, public safety, public order, public health or for development purposes, such property will be deemed to have been lawfully acquired.

GALDU (2011:1) a Resource Centre for Rights of Indigenous Peoples reports that the way the Botswana government has been treating the indigenous peoples in Botswana is deplorable. They have been evicted three times from their homeland in CKGR in 1997, 2002 and 2005, when the government had the project of making the CKGR a natural and protected sanctuary. Their homes and schools have been destroyed and their lives deeply affected by the use and threat of violence. Kiema (2010:106) reports how the Botswana minister for Local Government made an announcement in 2001 that she would cut water supply and other services to anyone left in the CKGR. The government further stated that should the *Basarwa* community insist to stay in CKGR, they would have themselves to blame for the acute shortage of water as the government will not provide water. Not only were the services provided by government terminated but the *Basarwa* traditional means of survival were also restricted when Special Game Licences were withdrawn. In mid 2011, the government approved a three billion dollars diamond mine in the Central Kalahari game reserve (GALDU, 2011:1).

In the case of *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v Nigeria*, the court ruled that:

“... the role of the state is to prevent the violation of any individual’s right to housing by any other individual or non-state actors like landlords, property developers, and land owners, and where such infringements occur, it should act to preclude further deprivations as well as guaranteeing access to legal remedies. The right to shelter even goes further than a roof over one’s head. It extends to embody the individual’s right to be let alone and to live in peace - whether under a roof or not” (International Network for Economic Social and Cultural Rights, Communication No. 155/96).

The International Covenant on Civil and Political Rights (ICCPR) also applies to cases of forced evictions. In article 17(1), the ICCPR sets out the protection against forced evictions in the following terms:

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”.

Dube (2008:1) argues that despite such provisions, the government used powers conferred upon it by the National Parks and Game Reserve Regulations effectively to force the *Basarwa* out of the reserve. The government invoked the need to protect the viability of the wildlife population in the reserve, the prohibitive cost of the provision of basic services to the settlements, and its desire to introduce the *Basarwa* to the mainstream Botswana society. These reasons were advanced as justifications that would make the government actions lawful. Such reasons go against the tenets of democracy, which manifest themselves in a country’s ability to tolerate and respect the choices made by its minorities. It is a human rights violation for states to impose on its minorities a way of life they may not want, and do not seek to live. It is in this spirit that Article 2 of the ILO Convention 169 calls for consultation of indigenous peoples before steps to

evict them can be taken. Even though Botswana is not a signatory to the latter instrument, the Convention discourages the imposition of policies and lifestyles upon a minority by a politically dominant group. The incidence of forceful eviction of the *Basarwa* thus constitutes a violation of their right to life, dignity, equality, freedom and security of the person, as well as privacy (Dube, 2008:1).

Radipadi (2006:162) points out that the relocation of the *Basarwa* was made in bad faith to make way for the diamonds prospecting in the area. It is emblematic of the disregard for what the Botswana government has for the human rights and cultural identity of the largest remaining population of the indigenous people of Southern Africa, the *Basarwa*. The government of Botswana has dismissed these accusations as being fanciful. It contended that the relocation was beneficial to the *Basarwa* in that it encouraged them to lead modern lives more sensitive to their natural and human rights. She argues that the *Basarwa*, like any other community, are entitled to development and equal concern. In addition, the government reiterated the need to protect the wildlife in the Reserve. However, the government's approval of a 3 billion dollars mine deal in the CKGR is final proof that the government's argument was a farce (Radipadi, 2006:162). One interviewee questions who has the potential to damage the wildlife more: the people who have lived there for thousands of years, or a \$3billion mine with roads, power lines, thousands of tons of waste and hundreds of people going to and fro?

4.3.3 Social and Economic Exclusion

The *Basarwa* are recognised by the African Commission on Human and Peoples' Rights (African Commission) as an indigenous people, and is the only group in Botswana that is self-identifying as an indigenous people in terms of the international understanding of that term

(IWGIA Report, 2011). However, the *Basarwa* consider themselves to be politically, socially and economically marginalized. Indeed, there is evidence to suggest the *Basarwa* are at the bottom of the economic, political and social strata in Botswana (Mazonde, 2004:138).

There is enough evidence of various attempts made by the government of Botswana to evict the *Basarwa* from the CKGR and integrate them into other communities in Botswana. However, the *Basarwa* are committed to maintaining their traditional way of life. Faced with this plight, the government is deliberately excluding them from socio-economic services. According to GALDU (2011:1), President Ian Khama was reported as having referred to Bushmen as 'primeval', 'primitive' and 'backward,' during a visit at the country's largest diamond mine. Responding to a wave of protest organized by an International human rights organization, the President is said to have accused the Bushmen of living a 'life of backwardness' 'a primitive life of deprivation co-existing alongside wild animals', and 'a primeval life full of hardship and indignity. This follows comments revealed by Wiki leaks of the United States' condemnation of the eviction of the *Basarwa* from the CKGR in 2005. Ambassador Joseph Huggins is reported to have said in 2005 that the Bushmen had been 'dumped in economically absolutely unviable situations without forethought, and without follow-up support. The lack of imagination displayed... is breathtaking' (GALDU, 2011:1). The government of Botswana thus views the *Basarwa* issue as simply a 'development' or economic problem.

This disdain for the *Basarwa*'s traditional lifestyles expressed by the country's leadership has permeated all facets of the Botswana society. Minorities at Risk Project (2003:1) document some of the numerous socio-economic challenges facing the *Basarwa*. Their traditional chiefs are

often denied recognition thus limiting their power and authority compared to other tribal groups. In addition, the *Basarwa* face de facto restrictions from their place of residence and have limited access to civil service, education and higher office. Furthermore, they have problems with the judicial system in terms of higher arrest rates, harsher sentences and the inability to properly defend themselves because of language barriers. Poverty and unemployment plague the group as the authors maintain that more than 50 percent of *Basarwa* live below the poverty line. Those who attempted to remain on their traditional land risked resettlement and many denied land rights because of the prospect of resettlement. Furthermore, the government had imposed a quota restriction on what they could hunt, and *Basarwa* are often arrested and harassed as ‘poachers’. Basically, the government has limited what they can get from the land, therefore they do not have enough to sustain life and thus, the government sometimes has to give out food rations. The resettlement areas are not large enough to sustain hunter-gatherer populations of the current size and are in poor conditions. In general, the socio-economic status of those who have been resettled has declined since resettlement. Alcoholism is rife, and the camps lack access to basic water and sanitation, health care and even water (Minorities at Risk, 2003:1).

Cultural assimilation is another major challenge that the *Basarwa* in Botswana are facing. Armstrong and Bennett (2002:118) explain that one reason why the resettlement of the *Basarwa* has been such an impoverishing experience is that they are expected to integrate into the mainstream society on its terms instead of on their own terms. For the *Basarwa*, assimilation means adopting the language and lifestyle of the Batswana, while their own languages and culture steadily erode away.

According to Le Roux (1999:1), one of the greatest challenges that is faced by the *Basarwa* children in terms of assimilation is the education system in Botswana. Efforts to bring the children into formal education began in the late 1960s. *Basarwa* children were brought from their homes to boarding schools. However, they did not stay longer than a few months. The parents argued that they could not afford the fees and hence they did not encourage their children to attend. The children who did attend often dropped out shortly afterwards because of discrimination from their peers and because of the challenge of trying to learn in a different language. Even today, schooling is in English and Setswana, and taught almost exclusively by teachers who do not speak a San language. Often the teachers are not able to pronounce the children's names correctly because of the difficulty with 'clicks,' so they simply give them new names (Armstrong and Bennett, 2002:118). The high dropout rate of San children from school has also contributed to the high illiteracy rate among the San.

The exclusion of the *Basarwa* people from the history of Botswana is a clear indication of discrimination. Kiema (2010:67-68) argues that:

“Botswana's history writers must acknowledge the fact that our people stayed in different times within their tribal lands. Eighteen years after Botswana independence, Tlou and Campell (1984) carried out their studies but they did not write about the places where they found us. Just like the Bangwato, the Bakgatla, the Bangwaketse and other tribes, we have our sedentary villages. While naming Bantu-occupied villages, Tlou and Campell showed no interest in any of our villages. Moreover, the *Basarwa* have consistently been portrayed as people who have never taken part in the events that have shaped our present

situation. Their contributions have been excluded. All that is written in Botswana's history books about us can be summarised in this way:

- (a) They do not feature in pre-colonial history of Botswana except as the first inhabitants of southern Africa;
- (b) They do not feature in Botswana's colonial history except as expert hunters;
- (c) They do not feature in the struggle for Botswana independence; and
- (d) They do not feature in the history of contemporary Botswana as we are still portrayed as 'stone age –people'.

Thus, the general perception obtained from all the interviewees was that the *Basarwa* are unhappy with the lack of official recognition of their traditional leaders in the same way that Tswana traditional leaders are recognised. Furthermore, they are not keen on education, largely due to fears that the government education policy is geared towards destroying their culture and assimilating them into Tswana society. The use of Tswana language as a medium of instruction in schools places the *Basarwa* students at a disadvantage, as this policy does not always respond to their needs. The *Basarwa* also believe that government policies, including the education and traditional leadership policies, are discriminatory. Hence, there is an overwhelming conviction among the *Basarwa* and NGOs in Botswana alike that government policies are a threat to their existence. They argue that these policies are aimed at assimilating the *Basarwa* into Tswana society and are designed largely without the input of the indigenous peoples.

4.4.1 Organizations Involved in the Promotion and Protection of the Rights of the *Basarwa*

There is sufficient evidence to demonstrate that the government of Botswana is unwilling to promote and protect the rights of the *Basarwa* as the indigenous people of Botswana. In spite of

this, there are numerous non-governmental organisations (NGOs) which are involved in the promotion and protection of the rights of the *Basarwa*. They include the following:

4.4.1.1 *Ditshwanelo*

This is an advocacy organisation with a key role in the promotion and protection of human rights in Botswana society. The Centre seeks to affirm human dignity and equality irrespective of gender, ethnicity, religion, sexual orientation, social status or political convictions. In pursuit of its mission, the organisation seeks to educate, research, counsel and mediate on issues of human rights, with specific reference to the marginalized and the disempowered. Furthermore, due to their commitment to the indivisible nature of human rights, this mission extends to regional and international levels. Throughout its existence, it has been the only organisation in Botswana taking a comprehensive approach on human rights. It prioritises most of its work on groups in society who are most vulnerable and least supported by other organisations. Examples include those living in poverty and do not have access to justice, such as the *Basarwa* and other ethnic groups. Others include immigrants and refugees, those facing the death penalty, gays and lesbians, and domestic workers. The organisation has a specific focus on children and young people, both in raising awareness of their rights and in ensuring that they are the next generation, they have an understanding of other people's rights and their own responsibilities (Ditshwanelo, 2011:1).

4.4.1.2 *Botswana Council of Churches (BCC)*

Botswana Council of Churches is a longstanding partner of Global Ministries. It was founded in 1966 and has 35 member churches and Christian organizations, which constitutes most of the churches in Botswana. It is a non-profit membership organization, committed to the principles

of equality, justice and peace. Although the Council started as a purely theological entity with few members, it has since broadened its scope and the membership has risen and continues to grow across the country. Its portfolio of programmes includes political education, information, youth work, children, refugee work and other issues relevant to women's status. Due to the prominent role it has played in issues concerning the poor and other disadvantaged groups in Botswana since 1966, BCC has in practice been used informally by many other NGO's, both national and international, to seek information and help during disasters. It consistently receives requests from the public in general to assist on various aspects of need (Global Ministries, 2011:1).

The BCC felt that the uprootment of the *Basarwa* from the CKGR had adverse effects in their livelihood and needed to be stopped. Since then, the Council has continued to intervene whenever necessary on behalf of the *Basarwa*. Consequently, the BCC has participated in discussions on government policy and attended to concrete examples of abuse and discrimination experienced by the *Basarwa*. The BCC has established itself as one of the main facilitators in the striving for equal rights for the *Basarwa* in Tswana society. In response to the situation of the *Basarwa* with regard to land, the BCC organised workshops to sensitise the masses. One of these workshops was held in Gaborone in September 1997 under the theme, "Indigenous Peoples' Spirituality and Land". Amongst the objectives of this workshop was to advocate for indigenous social justice on issues such as self-determination and land rights (Amanze, 2006: 111).

4.4.1.3 The Research Centre for San Studies (University of Botswana)

This is a new centre that has been opened in the University of Botswana. It focuses on widening the scope of research on matters relating to better understanding of San issues and building their capacity both academically and in other areas. Other objectives include:

- To work towards providing small grants and scholarships for San youth into higher learning institutions perhaps Technical (vocational) Colleges.
- To set-up a micro lending scheme for the San who might have graduated through the San Research Centre scholarship programme and similar disadvantaged members of the society in Botswana.
- Encourage the financial institutions, through their corporate social responsibility programmes to support a National Financial Literacy Programme.

Other organisations include:

- The Kuru Development trust: It is an organisation in Botswana dedicated to alleviating the problems encountered by the *Basarwa* communities spread across the country. It started in 1986 and is one of the oldest civil society groups working among the San people.
- Thuto Isago: It is one of the Gantsi based Christian NGOs working with the San .Thuto Isago works mainly in the area of education. Some of their activities include:
 - (1) returning or reintegrating San Children back into the schools, and
 - (2) developing edutainment strategies and programmes compliant to the San way of life
- True Love Waits: this is an NGO's that that was started by the Gantsi Ministries Fraternal. It seeks to promote HIV/AIDS prevention among Gantsi youth in general. The programme focuses on the *Basarwa* youth. It helps the *Basarwa* youth to overcome

barriers like language and find appropriate ways of addressing the challenges of HIV prevention within their cultural context.

- Yoho: It operates country wide. Yoho is involved in some of the *Basarwa* Youth Empowerment strategies. Some of the activities that this project facilitates include athletic and recreational activities and music and dance festivals.
- Tea Mase: It is one of the few *Basarwa* NGO's founded and run by the San for the San. It looks at some of the problems and challenges that this population group faces in Botswana from the perspective of the *Basarwa*.

4.5 Conclusion

The chapter set out to investigate the extent to which the rights of the *Basarwa* in Botswana are promoted and protected. It gave an overview of the *Basarwa* as the indigenous people of Botswana and also highlighted how they came to occupy the controversial CKGR. Issues with regards to the violations of the rights of the *Basarwa* were also highlighted. They include: non-recognition of the *Basarwa* by the government of Botswana as the indigenous people of the country; forceful eviction from the CKGR by the government; social and economic marginalisation and the government's drive to assimilate the *Basarwa* into the wider Tswana culture. There is thus an obvious disdain for the *Basarwa* by the government of Botswana. This is largely due to the former's commitment to maintain their traditional lifestyles in the CKGR, as opposed to government's plans to exploit diamond in the area. The *Basarwa* are thus facing the wrath of the government and have been persecuted on numerous occasions. In spite of this, human rights organisations such as Ditshwanelo and the Botswana Council of Churches, have been proactive in protecting and promoting the rights of the *Basarwa*.

Taylor (2007:3) argues that the power dynamics over land and natural resources have fostered contemporary economic and political marginalization of the *Basarwa*. The *Basarwa*'s resistance to these processes has been mixed with a significant degree of compliance to socio-economic integration, dependency and land appropriation. This is in order to gain access to economic and social networks which sustain them in the face of disenfranchisement and transformation. This conformity takes the debate away from the perspective in which the *Basarwa* were represented as victimized, 'traditional' noble savages. It instead reveals their agency as being in continuous negotiation for their access to resources under complex historical and contemporary circumstances.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

Nyati-Ramahobo (2008:9) argues that it is not indigenous or minority status or unique cultures that mean minority groups warrant special attention, but the injustice they suffer due to that status. Their struggle is about livelihood, liberty, poverty alleviation, and access to development and public services. Botswana has made remarkable economic growth since the early 1980s. The country's ability to invest extensively in the social sector and increase access to social services is also outstanding. In spite of this, the *Basarwa* who live in remote areas are generally excluded from the fruits of social development enjoyed by mainstream population groups. The experience of the past three decades in Botswana has shown that past and current government development policies and programmes have been unable to mitigate poverty, deprivation and marginalisation of the *Basarwa*. The realities of the daily life of the *Basarwa* include: dependency on the government welfare programmes; top-down approaches to local development; lack of consultation; lack of respect and recognition; denial of the right to participate in local development processes; and subordination of the *Basarwa*'s interests to those of the dominant Tswana-speaking groups (Nthomang, 2002:168).

These issues have made the *Basarwa* in contemporary Botswana to be disadvantaged in a number of ways. First, they have less access to government services than other people who live in established villages and fall outside the scope of some national development programmes. Secondly, most of them are very poor as they are paid extremely low wages or are not paid at all for their labour. Thirdly, they tend to rely to a large extent on hunting and gathering activities for their subsistence. These activities are unproductive due to drought and the grazing of cattle in

their former hunting area. Fourthly, the *Basarwa* are used widely as a source of cheap labour for herding cattle belonging to other ethnic groups, while they themselves own very little livestock. Fifthly, *Basarwa* are culturally and linguistically distinct from the majority of the population. Consequently, they face severe difficulties in participation in the formal education system and as a result, have extremely low levels of literacy and skills needed for employment. Finally, they have little or no representation either in any of the local or national land boards, or in other national or democratic fora (Amanze, 2006:108-109).

Many stereotypes still prevail that describe them as ‘backward’, ‘uncivilized’, ‘primitive’ and ‘uncultured’. This is an embarrassment to modern African states. Such negative stereotyping has legitimated official discrimination, marginalization, subjugation, exclusion and dispossession of the *Basarwa* by government institutions and other dominant Tswana group. The *Basarwa* also abhor the use of derogatory names such as ‘Bushmen’ to refer to their tribe. They argue that such names demean them and perpetuate the stereotype which considers their cultural practices as backward and primitive. This discrimination inflicts profound suffering among *Basarwa* communities. It is in violation of Article 5 of the African Charter on Human and Peoples’ Rights, which states that every individual shall have the right to respect for the dignity inherent in a human being and Article 19, which states, inter alia, that all peoples shall be equal and enjoy the same respect.

Most international human rights instruments protect the rights of the individual. However, indigenous peoples need the recognition of specific collective rights for their survival as marginalised human groups. These rights include: rights to their lands, territories and resources;

to maintain their cultures; to recognition of their distinct identities; to self-government and self-determination; and to free, prior and informed consent in decisions that may affect them. Such rights are considered the minimum standards for the protection of their survival as distinct peoples. They are intended to address the challenges most indigenous peoples face around the world. Given the absence or diminished existence of these rights in Botswana, the distinct lifestyle and culture of the *Basarwa* is rapidly being eroded (UN Development Group, 2008: 9). The *Basarwa* in Botswana are today merely eking out a living on the margins of survival. The government of Botswana continuously neglects and undermines their distinct lifestyle through non-recognition and marginalisation. There is thus ample evidence that the government of Botswana is not promoting and protecting the human rights of the *Basarwa*.

5.2. Recommendations

Based on the findings above, the following recommendations are made:

5.2.1 Government Recognition of Basarwa as Distinct Ethnic Group

There is a need for the government of Botswana to recognise the *Basarwa* as a distinct and unique ethnic group in the country. Acknowledging the *Basarwa* as the indigenous people of Botswana is a stepping stone towards the promotion and protection of their rights.

5.2.2 Empowerment of NGOs to Assist the Basarwa

Non-governmental organizations such as Ditshwanelo and the Botswana Council of Churches need to be empowered both by the government and international donors. They can play a role in enhancing dialogue between the *Basarwa* and the state. This will help mitigate the animosity that currently exists between the two parties and pave the way for their economic development.

5.2.3 Skills to Empower the Basarwa for Employment

There is need for both the public and private sectors alike to provide the necessary skills for employment of the *Basarwa*. This will go a long way not only to end discrimination, but also to tap on the indigenous expertise and cultural knowledge among the *Basarwa*.

5.2.4 Amelioration of Quality and Accessibiilty of Social Services for the Basarwa

There is a need for the government of Botswana to ameliorate the quality and accessibility of social services for the *Basarwa*, particularly in the areas of health and education. Such facilities should take into account the indigenous cultures and lifestyles of the *Basarwa*. Besides, derogatory practices and labeling should be avoided.

5.2.5 Dialogue between Government and Basarwa

The issue of the rights of the *Basarwa* appears to be a sensitive one for the government of Botswana. It is therefore important to engage in dialogue in order to highlight awareness and dispel potential misunderstandings.

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APPENDIX 1: QUESTIONNAIRE

Dear respondent,

My name is Bonolo Matlho. I am doing a Master's degree in Human Rights in the University of Fort Hare, South Africa. I am currently doing a research project titled, 'The Protection and Promotion of the Rights of Indigenous Peoples in Africa: A Case Study of the San People in Botswana.' This project is a requirement for the award of my degree.

Find below a number of questions which will assist me in completing my thesis. Your honest response to these questions will be invaluable in the completion of this work. This research is purely for academic purposes. Your anonymity is thus guaranteed and no harm will come to you from completing this questionnaire.

QUESTIONS

1. Does the government recognise the San people as a distinctive ethnic group in Botswana?

.....
.....

2. Is there any specific legislation that caters for the Social Welfare of the San people (e.g. education, health)?

.....
.....

3. Is the government of Botswana committed to maintaining the San people's way of life? Elaborate.

.....
.....

4. Why is the government of Botswana committed to integrating the San people into other communities as evidenced by previous case laws?

.....
.....

5. Seeing that the San people are committed to maintaining their way of life, why do you think the government was or is still committed to evict the San out of their ancestral land?

.....
.....
6. Do you think that actions to force the San people out of their ancestral habitat constitute a violation of their Human Rights?.....
.....

.....
7. Does the government of Botswana have any formal channels to communicate with the San people, considering there lifestyle? Elaborate.
.....
.....

8. Do the San people have any representatives in government/local councils?
.....
.....

9. What are the roles of those representatives if any?
.....
.....

10. What is your organisation doing in the promotion and protection of the San people in Botswana?
.....
.....

11. Do you think the government is doing enough in preserving the distinctive lifestyle of the San people?
.....

12. What mechanisms do you think the government should implement in the promotion and protection of Human Rights of the San people?
.....
.....

THANK YOU!