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All prior experiences demonstrate the necessity of embedding any teaching programme within the interdependent context of Student Teachers, learners and community. Therefore, a relevant School Readiness Programme can only emerge from permanent communication with and within these contextual fields. The dynamic process of development and implementation is therefore regarded as equally important as the actual programme itself. The methodological concept of switching between theoretical sessions in Baraka, data collection in the villages and practical teaching, shall facilitate the communication-oriented process of "making school". It shall also ensure that all circumstances are taken into account that finally determine the reality to be coped with by all parties involved.

The start of regular schooling as from January 1994 will likewise be the touchstone for the students' commitment and the starting-point for a new era in the Nyae Nyae area, that all who are involved can look forward to in anticipation.

### 3. OUTLOOK AND CONCLUSIONS - LOOKING BEYOND NYAE NYAE: NATIONAL BENEFITS OF THE PROGRAMME

The Namibian Ministry of Education and Culture has already incorporated the Village Schools Project into the national Basic Education Reform Programme. Information is constantly being exchanged in order to create a forum for fruitful exchange of ideas that will ultimately benefit the whole nation in the striving for a relevant primary school curriculum.

The community-based approach of the Village Schools Project could serve as a catalyst for other marginalized groups to set up their own mother tongue teaching programme and/or schools project. Likewise, it takes pressure off existing government schools that might have problems adapting to the needs of a marginalized community. In view of the facilitation of such a development, the NNDFN will desk-top publish a series of booklets on teacher education called TEACHI, that will be based on the dynamic processes within the teacher training group. Therefore, the applied methodology could be useful for any other community-based teacher training project in the country.

The Village Schools Project makes full use of the constitutional provisions with regard to Namibia's language policy, which allows for mother tongue teaching for the first three years of schooling, and tries to translate the provisions into educational practice. In combination with the high degree of community involvement, as encountered in the Nyae Nyae region, the findings of the project will demonstrate the great opportunities for previously oppressed people. While under colonial rule there were no possibilities to develop a marginalized people's own culture to the full, the Namibian constitution now actively encourages such a process.

The community-based Village Schools could be regarded as the practical application of the constitutionally provided opportunities. They educate learners and communities to become politically active members of the Namibian society who are then able to participate fully in the construction of their country and their own destiny.

## THE RIGHTS OF BASARWA AS HUMAN RIGHTS

By

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### 1. Background

Much of the known research conducted about the Basarwa peoples has been carried out by non-Batswana whose primary concerns were either academic 'discoveries' or reviews for the government. This has meant that much of the research was not participatory or action-oriented. The major benefits have not therefore been focused as responses to processes experienced by the 'target group' but rather placed within a context of responses to a predetermined framework of government service-oriented programmes.

### 2. Human Rights Scenario

The risks inherent in the categorisation of rights in terms of 'generations' has created the tendency to prioritise rights and to therefore ignore the inalienability and inseparability of human rights. The first generation of rights has been described as those pertaining to the civil and political. These include the 'liberal' rights relating to freedom of speech, freedom of movement, freedom of association, etc. These are the focus of organisations such as the Amnesty International. For many the 'protection of human rights' means the protection of political prisoners, victims and survivors of torture, etc. The protection of these rights alone has for long been considered a reliable indicator of the existence of a functioning democracy. Botswana has been categorised as a shining example of a democracy based upon this analysis.

The second generation of rights includes those of an economic, cultural and social nature. For many Asian and other developing regions, this has meant, for example, that a focus on such rights as food, employment, and equitable maternity leave benefits, were categorised as being of more inherent importance than the right of assembly. Despite strides in this area, countries such as Cuba have been considered to violate human rights primarily because the 'liberal' rights do not appear to have been adequately protected.

The third generation of rights refers to those of development and solidarity. Despite the Declaration on the Right to Development, such rights tend to become meaningless due to the perceived difficulty in defining and locating accountability in situations where individuals are unable to survive with dignity. Such an abuse has, in effect, not been recognised as a violation of a human right despite the affirmation of the right to development by the World Conference on Human Rights.

What is clear is the effect which context has on interpretation and prioritisation of rights. The entire body of human rights is located within a dominant culture of perceived gender-neutrality and within the apparent framework of the utopian classless society. This is suggested by the lack of implementing machinery to address the differences which contribute to the actual violations of rights. Based upon these gender-blind and class-blind assumptions flow development programmes which serve ultimately to perpetuate the status quo, or as Desmond Tutu once said, 'to make the chains of bondage a little bit more comfortable'.

The Remote Area Development Programme (RADP) which has been in existence since 1974 tends to fall into this trap. The underlying philosophy of the programme is laudable. There was realisation that the 'Bushmen', as they were referred to within the context of the Bushmen Development Programme, were marginalised and through the Programme attempts were made to include them in development. The changing of the name of the programme to Remote Area Development Programme illustrates the shift of focus away from being ethnic-group specific to a geographical context. By subsuming the Basarwa peoples, 'the poorest of the poor' under the label Remote Area Dwellers, issues relating to them, issues which would have raised questions as to why this group in particular is amongst the poorest of Batswana, were hidden from sight.

The approach adopted by the government to respond to the marginalisation of the Basarwa was that of assimilation or integration through the provision of infrastructure, e.g. clinics, schools, etc. However, assimilation needs to be closely examined to understand upon whose terms assimilation occurs. Where it is imposed through lack of true consultation, programmes are doomed to failure. The revision of the RADP is a response to the realisation that development entails more than availability of infrastructure. Constrained access is therefore a result of the exclusion of social, cultural and economic aspects.

### 3. Implications for human rights research

Whether or not Africa in general, and Botswana in particular, accept that indigenous peoples exist on our continent should not blind us to the fact that the Basarwa peoples, as an identifiable group, share several characteristics of economic, social, cultural, political and gender marginalisation with other identifiable groups which are described as being indigenous within their contexts, e.g. the Aboriginal peoples of Australia, the Adivasis of India, the Native Americans, and the Native Canadians. 1993 has been declared the International Year of Indigenous People and recognised as such by several countries. This was welcomed by the World Conference on Human Rights which also recommended that the General Assembly of the United Nations proclaim an International Decade of the World's Indigenous People, to begin from January 1994. To date there is no Declaration on the Rights of Indigenous People, but it is in the making.

The United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is ineffective because of inadequate implementation of its provisions. The World Conference on Human Rights called upon States and the international community to promote and protect the rights of persons belonging to the minorities set out in the Declaration.

With rights identified in terms of internationally recognised norms, a standard is established against which to measure violations or lack of protection of human rights.

### 4. The case of the Basarwa peoples

Areas which require human rights research have been indicated by the Basarwa people themselves at various fora, e.g. the National Seminar held in Ghanzi in 1992. The areas include the following:

#### a) Land

Ownership, control and access are key concerns in relation to the land issue. The Central Kgalagadi Game Reserve existed prior to independence and was apparently transferred to the Basarwa by the colonial power. To date there is little evidence of ownership in the forms of control and access. A people forcibly removed from ancestral lands become a lost people. True consultation is crucial if the right to development is to be respected. Related to the land issue are those concerning access to natural resources, and the implications of land use plans and policies from which the Basarwa believe they have been excluded. An example lies in the creation of Wildlife Management Areas (WMAs) in which Basarwa communities were already living before they were designated as WMAs. One of the effects of this has been that Basarwa living in those areas are not permitted to keep livestock because of the need to keep livestock and wildlife separately to avoid the spread of foot and mouth disease. The right of the freedom of movement is curtailed where peoples are forcibly relocated.

#### b) Torture

There have been numerous allegations of the torture of Basarwa peoples who are 'caught poaching'. This violates not only the Constitution of Botswana, but also the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. Research is to be started up in this area by the end of 1993.

#### c) Self-determination

The right of people to self-determination has been described as a 'democratic right or principle' (Shivji 1989). However, unless this concept is understood to exist as a continuum ranging from autonomy within the State to total secession, it is considered to be threatening. Some argue that self-determination weakens the State to the extent that foreign powers may take advantage. This fear emanates from the reluctance of several States to recognise unity in plurality. The Basarwa peoples have begun to articulate concerns relating to the corrosion of their lack of identity. This has led to negative interpretations of what they say concerning their demand for 'their' land.

The two concepts of the right of people to self-determination and the right to development need to be explored within the context of a unitary State comprising minorities and indigenous peoples.

#### d) Conclusion

Despite the clearly urgent need for relevant research in the above-mentioned areas, there is also need for attention to be focused on the empowerment of the Basarwa peoples through various methods. These include empowerment through use of legal provisions to protect their human rights in accordance with both national and international law. However, law alone is insufficient and requires will for it to be realised. Government policies should be developed to reflect a commitment to human rights concepts, and the peoples of Botswana should be encouraged to actively participate in the protection of the rights of the Basarwa peoples.

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## THE CONSTITUTION AND MINORITY RIGHTS

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### 1. INTRODUCTION

1.1 Constitutions have become a central feature of political and legal life in modern societies. The basic regulatory function of a constitution is to provide a fundamental law of the land from which all laws within a state derive their validity and authority. The term "constitution" is traditionally understood in two different senses, the "abstract" and the "concrete"(1). The abstract usage refers to the system of laws, customs and conventions which define the composition and powers of organs of the state, and regulates the relations of those organs inter se. In its concrete sense, the term denotes an identifiable document (or set of documents) in which are stated the most fundamental laws of the land (i.e. - the laws of the constitution). Both of these meanings will inform our discussion.

1.2 A constitution serves various purposes. In addition to establishing and defining the basic structures of the state, the constitution also states the basic philosophy underlying a particular state (e.g. whether the state is theocratic, secular, a sovereign republic, unitary in character or a federation) (2). In this regard, a constitution is a programmatic document embodying the ideals toward which a nation strives.

At another level, the constitution is not merely a fundamental law of the land. It is a social charter or contract embodying and encompassing the aspirations of a nation. It is a contract detailing the essential conditions to be observed between those who govern and those who are governed. So fundamental is this consideration, it has been maintained that a government which violates the charter is to be rejected and/or disobeyed.

The constitution of Botswana (3) adopts the ideals of a liberal democratic state. It includes a bill of rights predicated on a commitment to the rule of law and human rights. Great emphasis is placed upon the individual and the assurance of her/his liberty, freedom and equality with fellow individuals.

Constitution-making, however, is not always a smooth process. Often the exercise is attended with the bitterest of struggles. Ultimately, what goes into a constitution is a function of the configuration of forces (political, social, cultural or economic nature) at play in the making of a state. It has been suggested by some scholars of a Marxist persuasion that the form and content of a constitution represents truce lines in the on-going class struggle.

Despite the avowed claims of equality, constitutions do not necessarily (or always) afford equal protection to all sections of the society. Disparities in material well-being often render void the promise of equality guaranteed by the constitution. This is especially the case with

