



The Botswana Kgotla System: A mechanism for Traditional Conflict Resolution  
in modern Botswana. Case study of the Kanye Kgotla



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To God All Mighty be the glory!

*Tusen takk alle sammen!*

## **ABSTRACT**

Botswana with its republic status still has tribal leaders playing a vital role in the development and peaceful progress of its citizens. Chieftainship's influence in modern Botswana continues to be fundamental to the government and community relations. The Kgotla (meeting place for the tribe) has continued to be central in giving a platform to individuals in exercising their democratic rights.

This thesis seeks to look at the Kgotla role in Modern Botswana. The main objective of the thesis is to explore how the Kgotla is functioning and to explore the role it play in addressing conflict arising from within and between its communities in modern Botswana.

The Kgotla has seen epitomizing dispute resolution among its local communities. In addition, the Kgotla has handled both civil and minor criminal cases that the Kgotla administer in its stipulated jurisdiction. Hence, this thesis has used restorative justice approach in relation to the ways in which the Kgotla adopts in efforts of preventing and solving community disputes.

The data for this thesis was gathered during field work based in Kanye. Observations at the kgotla and oral interviews of tribal leaders and community members were done. The data has revealed that Bogosi (chieftainship) as an integral part of Tswana culture play an important role in promoting peace and stability in the country. It has a vital role in community building by providing a platform where people could come with their problems and with the hope of being helped. Apart from the Kgotla seen as the court or arbitration place; it is also the place for socialization and cultural activities.

In conclusion, the observation is that Botswana Kgotla system has been able to mirror with modern developments in the country. It continues to play a role in disputes resolutions at community level.

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**LIST OF ABBREVIATIONS**

RJ- Restorative Justice

NGO- Non Governmental Organisation



## CHAPTER ONE

*“Learning to forgive is much more useful than merely picking up a stone and throwing it at the object of one’s anger, the more so when the provocation is extreme. For it is under the greatest adversity that there exists the greatest potential for doing good, both for oneself and for others”* Dalai Lama in(Braithwaite, 2002:3).

### 1.1 INTRODUCTION

The chief could not believe ‘his ears’ upon hearing the judgement that he has to spend five years behind ‘bars’. He was exasperated by the whole magistrate sentence but little did he know that no one is above the law ‘at least in Botswana’. The chief (regent of Bakwena tribe) i.e. a royal member of the chieftaincy (63 years old) and the president of the Customary Court of Appeal, stole a Billy goat from someone in his community (non royal member). Because of this theft case he had to be suspended from his duties pending his trial. The owner of the goat had decided to take the case to the magistrate court because he believed that the customary court would not deal with him fairly since the accused was a chief. The chief was found guilty of theft and sentenced to four years imprisonment of which he then appealed to the High court (Morewagae, 01- 2010)<sup>1</sup>.

At the High court he lost the appeal and the High Court imposed the minimum mandatory 5 year sentence for stock theft, thereby setting aside an earlier sentence of 4 years imprisonment. In terms of money the goat is valued at P800 which is equivalent to 700 Norwegian kroner.

However, the question is if the case would have been dealt with by the customary court, would the outcome have been the same with regards to the sentencing?

In the summary of the judgement the judge, as if affirming the societal moral obligations (which contradict the common law) says,

“Youthfulness is a standard extenuating circumstance when it results in immaturity, inexperience or exuberance. But old age should not constitute an exceptional extenuating circumstance unless it is accompanied by additional

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<sup>1</sup> <http://www.mmegi.bw/index.php?sid=1&aid=30&dir=2010/January/Tuesday26>. accessed 15/04/10

factors like senility or destitution. 63 is a mature age, and an elder should appreciate the need to abide by the law,"(Morula, 04-2010)<sup>2</sup>

Indeed the above quotation implicates a significant amount considering the age and status of the offender in the community and society at large. A number of issues could be raised such as 'which lessons are set to an individual, a community and society at large? Are there any alternatives in settling community disputes? How do people continue to live together in the same community with an offender or offended and the local community? After prison what does it mean for the chief, the victim and the community?

However, this court and prison issue on the chief made some of his relatives bitterly react to the judge who passed on judgement. Some of the relatives ended up giving more work to the courts because they were accused and charged with nuisance against the judge. Conflicts arose between the family of the offended and the other villagers. The villagers accused them for being insensitive by taking the chief and not only the chief but an elder to court.

Therefore on such bases this thesis intends to explore ways in which conflicts could be transformed before escalating. This thesis' data were gathered and collected in Kanye Kgotla<sup>3</sup> in Botswana. Nevertheless, in order to get more representative data on the roles the chiefs play, as the leaders in the Kgotla concerning how they resolve conflicts in general, the chief in Molepolole and Ramotswa were interviewed. These chiefs were included because they are the paramount chiefs and they are the members of the house of chiefs.

My focus is basically on the role the Kgotla plays in order to promote peace, harmony, unity and democratic values among the local communities in Botswana. In addition the thesis will explore some of the indigenous traditional ways in Botswana which people have adopted when dealing with conflicts. Kanye Kgotla has been used as a case study. My argument is that the Kgotla system in Botswana is playing the role of uniting and building social fabrics and stimulating people to realise the important fabrics used when building local communities in Botswana. Perhaps there are some ways which could help enhance cooperation,

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<sup>2</sup> <http://www.sundaystandard.info/article.php?NewsID=7660&GroupID=1>) accessed 10/07/201

<sup>3</sup> a public meeting, community council or traditional law court of a Botswana village

accommodation, transformation and with that minimise any emergent conflict which could be polarised into violent conflict (Miall, 2007).

### 1.1.1 Historical and modern reflections on the Kgotla

Before Botswana gained independence in 1966, a form of governance (bogosi<sup>4</sup>) existed in the Tswana<sup>5</sup> society (Schapera, 1970). The Kgotla became the main core institution among the local tribes. In each tribal community there were and are still various Kgotla hierarchically organized with the Kgosi<sup>6</sup> being the leader. The Kgotla as a traditional system was and still is an institution serving as a forum for policy formulations, decision making, including political and economic developmental activities and judiciary on litigations. Traditionally, a counsel of advisers mostly from *royal* relatives<sup>7</sup> assisted the chiefs as leaders of the kgotla. But then, due to cultural dynamism and constitutional changes the concept of chieftainship has undergone great changes with regards to the choosing of chiefs in Botswana. Instead of relegating from the royal chief as it used to be in the olden days, the Kgosi can now be elected by the *morafe*<sup>8</sup> or the government. However, his/her children cannot inherit the chieftainship as the custom is with royal chiefs. This elected Kgosi does not have to be someone from the royal family or even someone with any links to traditional royalty but could be anyone from the community. In addition some selected elderly wise men (chosen mostly based on age and knowledge of community issues) assist the chiefs in the kgotla procedure (Schapera, 1994:52-53).

The Kgotla institution continues to play a vital role in modern Botswana in regard to addressing conflicts arising from within and between communities. The Kgotla institution pioneers serious and candid consultation for the community or society at large as well as enriches a solid pattern of interaction at the village or town kgotla. Basic human values of sociability, respect, and inclusiveness are portrayed in a way which makes proceedings take social significance far exceeding that of the adjudication of petty individual cases. In theory

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<sup>4</sup> Chieftainship

<sup>5</sup> A tribe existing in Botswana and in some parts of South Africa

<sup>6</sup> A person so designated by the tribe and recognizes as such by the local government minister

<sup>7</sup> Royal relatives - those traditionally chosen by the local community and are believed to be born chiefs as leaders of the kgotla

<sup>8</sup> Community

the kgotla is inclusive, allowing both royals and commoners to participate equally in decision making at a local community level, i.e. Malata<sup>9</sup>, meratshwana (minority tribes). Dikgosana<sup>10</sup> and dikgosi have the right to be heard and respected. Everyone has a space to dance, stomp, run and jump on it without hindrance. In other words, participation and attendances are open to all members of the community; therefore anyone regardless of social stratification has a space to partake.

Bogosi (chieftainship) contributes to Botswana's democratic values; hence Botswana's democratic and peaceful values have been enshrined within the traditional value system. Nevertheless such values could be critiqued due to globalization as a major phenomenon that is influencing culture and development. Globalization is accompanied by the re-arrangement and reformulation of social order and social organization. For Botswana, traditional Tswana social organization for economic production was set within the context of kinship ideology, emphasizing the communal element. On one side political scientist Isaac Mazonde sees globalization, as being "epitomized by what has been conceived and labeled as modern, and is set on what is largely an individualist norm of operation" (Mazonde, 1998:98).

The tribe's people could bring any sort of cases to the Kgotla but due to limited jurisdiction serious criminal cases, for instance rape, murder and other civil cases such as divorce are matters under common law, mainly because kgotla deals mostly with civil cases other than criminal cases. The cases are mainly presided by Kgosi or Kgosana. But this does not mean all criminal cases are for the magistrate court, some cases such as petty thefts, fights, public nuisance etc can be tried in the Kgotla. The local police officers investigated the criminal cases. The local Police brought the culprits to the court where they will be tried. If culprits are found guilty, they will be sentenced, and the sentences varied from case to case. The customary court uses the customary court penal code in adjudicating its cases. The judgment varies from communal service to reimbursement or corporal punishment (public flogging, which is in the form of several cuts with a cane across the back). Corporal punishment was administered by *mapodisi a kgotla (customary court police)* (Schapera & Comaroff, 1991; Solo, 2005). However, this issue of flogging has actually raised some concerns among human

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<sup>9</sup> Means servants, though this no longer exists in the Botswana constitutional context

<sup>10</sup> Dikgosana (plural for kgosana) means persons recognized as headmen who oversee a cluster (ward) in a village and are advisors to the Kgosi

rights activists, mainly Ditshwanelo<sup>11</sup> in the country. Nevertheless, other people see it as righting the wrongs or reprimanding them (Matemba, 2005). The view is that though it is 'harsh' culprits are being reintegrated into the society. Instead of being sent to 'rot' in prisons or flocking rehabilitation centres. However, "legislators have claimed that public flogging is a deterrent and that the bill is an alternative to imprisonment because currently the prison population has overshoot to over 160 %" (Ibid). In other words, the kgotla could be seen as modeling the standard for ideal social behavior.

Bogosi (chieftainship) has played and continues to play an important role in promoting peace, democracy and political stability in Botswana. In many parts of Africa tribal conflicts have persisted and are a source of destabilization, meaning that democracy seems to be a hard concept for Africa. This has been well acknowledge by President Robert Mugabe on the BBC news when he said that "tjino tjinoti<sup>12</sup>democracy in Africa is a difficult proposition"(BBC news, 15.09.2008) meaning that democracy practices in Africa have not been very successful.

Bogosi<sup>13</sup> is the hallmark of Botswana political culture. The government of Botswana recognizes the institution as envisaged in Botswana's Vision 2016<sup>14</sup>. In the Vision 2016 pamphlet it says that "traditional leaders will be an important part of the democratic process through which the long lasting *Kgotla* system will pass from generation to generation. They will play a significant role as custodians of our culture and tradition..." ("Vision 2016Towards Prosperity for all," 1997:11). Therefore the kgotla institution, as pivotal in the national culture, provides a welcome instrument in the hands of the Botswana state elite seeking to legitimate and perpetuate its position of power.

## 1.2 The Statement of Research Problem

This research seeks to explore the Kgotla and its functions in contribution to conflict resolution or management among the locals. It will explore how the Kgotla has contributed to

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<sup>11</sup> The name of a NGO advocating for human rights in Botswana

<sup>12</sup> This thing called

<sup>13</sup> In this context refers to the institution of traditional leaders or the position of Kgosi

<sup>14</sup> Botswana's long term vision on its accomplishment by the year 2016

Botswana's peace and democratic values as the country is 'said' to have (Tsie, 1996:599-600). Literatures reveal that Botswana has enjoyed and continues to enjoy long standing peace and stability due to the presence of Kgotla as an institution of conflict resolution<sup>15</sup> among the local communities in the country. The country withholds indigenous key tribal institutions such as Bogosi and these are enshrined in Botswana's culture and lifestyles. Because peace is a relative concept that (Galtung, 1996) defines in two comparable epistemologies, I will use Galtung's compatible peace definition:

"Peace as the absence/reduction of violence of all kinds" (p. 9). Here the definition implies that there is violence, therefore peace is needed as a positive against violence, and: "Peace as nonviolent and creative conflict transformation" (p.9). This implies 'conflict oriented' and therefore we need to know about the conflict in order to think about solutions to it, and that the solution should aim at nonviolence actions.

Conflict<sup>16</sup> is inevitable among communities in one way or another but the way we deal with or react to it is very important. How we deal with conflict could prevent or escalate it. Therefore efforts in creating peace are needed to reduce escalation that could result in violence. However, Botswana's peace state from the layman's point of view might be seen overlapping on both definitions. Nevertheless, by critically comparison with Galtung's definition of peace which includes the absence of "structural violence<sup>17</sup>", then just like in many states, Botswana's peaceful status becomes a challenge. Structural violence incorporates a challenge to many states and communities.

The Kgotla is found in almost all the different tribal communities in Botswana. It is presided over by the Dikgosi (chiefs) and Dikgosana (headmen) for dikgotlana (wards) depending on the demographic features. The purpose of this institution is to be engaged in nation-building, interrogating its respective sub-cultures to harmonise and integrate a national diversified culture. Hence, people could be harmonized (Parson, 1984).

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<sup>15</sup> Methods adopted in resolving conflicts or " set of dynamic changes that involve de-escalation of conflict behaviour, change in attitudes and transforming the relationships or clashing interest that are core of the conflict structure" (Ramsbotham, Miall, & Woodhouse, 2005:10)

<sup>16</sup> An intrinsic and inevitable aspect of social change expressed when heterogeneity of interest, values and beliefs arise as new formations due to social change (Ramsbotham, et al., 2005)

<sup>17</sup> Indirect harm not necessarily perpetrated by actors and not necessarily intended ((Miall, 2007)

From the colonial political dispensation, the colonizers recognized the pivotal role that traditional institutions such as Chieftainship and the Kgotla played in the democratic political order and therefore they did not interfere but rather supported the institution even though it was a 'double edged sword' in a way (Solo, 2005). With a lesson from the colonial dispensation, then the kgotla has evolved into consultative machinery through which government policies and initiatives are explained to the populace. It is also the mechanism through which people can express their concerns and even reject policies initiated by the Government. It is commonly said that Sir Seretse Khama, the first president of Botswana "decreed that dikgosi/chiefs would be above politics and any chief who aspired for political activism had to abdicate his bogosi first, before he/she could practice politics" (Dingake, 12 June 2007). By saying this, dikgosi are not involved in politics nor affiliated to any political party, therefore they work as servants between the government and people.

Public consultation (Therisanyo) mostly done at the Kgotla for the local tribal people is an important feature by the public administration in Botswana. Therisanyo at the Kgotla is relatively strong agent of restraint on the Government if it is not done properly. Any project carried out in the village without the consent of the local people may be a hassle. An example of lack of public consultation by the government is the refusal of the Southern Okavango water project by the local community in 1992. Locals were not involved on the plans and due to them being uninvolved, and the circumstances on environmental consequences, the local community rejected the project development at the Kgotla meeting ("Democratic Governance in Botswana," 1998)<sup>18</sup>. According to the writer this demonstrated how "public involvement through the Kgotla can be positive for decision making by keeping the system accountable to the citizenry" (Ibid). This shows how Kgotla consultation is important among the local communities of Botswana and for the government. The government has introduced the kgotla and chiefs even in urban centres so that they can help deal with petty cases that do not need to be in the judicial courts. The Kgosi work hand in hand with people and this has its traditional base on a saying "*Kgosi ke kgosi ka merafe*", literally meaning *the king is king by the grace of the people* (Gulbrandsen, 1995 :1).

The Kgotla system also allows for regular consultation and exchange of views on major national issues between the Government and leaders of various opposition parties. The Kgotla

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<sup>18</sup> <http://www.uneca.org/unsia/cluster/govern/botswana.htm#2.%20THE%20CONTEXT>. Accessed 15/09/10

allows a platform for '*mmualebe o a bo a bua la gagwe*' (*everyone has the right to say what he likes*). By doing so the system encourages tolerance and freedom of expression amongst people with different views. Besides, local communities through their chiefs or any concerned group have the right to request an audience with national leaders, even the president and vice versa. This means that through the Kgosi people could address their inquiries or grievances at their Kgotla to any government right officials. Therefore such observations suggest that democracy in Botswana has gradually been institutionalized and facilitated through consultations in the Kgotla in the urban, semi-urban and rural communities.

For the purpose of not being biased on this institution's advantages my point of departure is based on the following two questions:

1. Is there any justification for this institution's existence in modern Botswana and
2. How has it contributed to or continues to contribute to managing conflicts/disputes among the local communities?

However in relation to modernity, the institution may be challenged due to global developments that have affected old customs of legitimacy of power. Moreover, the issue of power legitimacy under traditional institutions is been challenged by Galtung's definition on positive peace. Positive peace attributes peace as the absence of structural violence thus structural violence includes the "condition that is typically built into many social and cultural institutions" or it has the "effect of denying people important rights such as economic opportunity..., sense of fulfillment and self-worth..." (Barash, 2000:129). The Kgotla, if scrutinised under the concept of positive peace, could be challenged.

### **1.3 Hypothesis**

The Kgotla system as a traditional institution has been a stabilizing factor for peace and still continues to serve, secure and stabilize the rural and urban communities in Botswana.

### **1.4 Objectives**

The objective of this thesis is to describe the Kgotla as a traditional institution, to examine and explore if and eventually how it has served to resolve conflicts and even secure peace among the local communities of Botswana to the present.



### 1.5 Research Questions

- ❖ What is the role of Kgotla as a mechanism of conflict resolution in dealing with disputes within their local communities?
- ❖ Are the local communities satisfied with the services provided at the Kgotla?
- ❖ How has the Kgotla system been integrated into modern Botswana?
- ❖ Is Kgotla used in promoting positive peace building in Botswana?

### 1.6 Relevance of the study

Botswana is a country that has many different people with diverse cultures and beliefs. It is a multi-tribal country. Such tribes include both black and white, the government has recognised this even in the national flag. The flag has black and white collars which symbolize “the racial harmony of the country's people, as well as the pluralist nature of the society” (Mark & Martins, 1999). Moreover, within every tribe there exists the Kgotla which acts as a platform where people can freely come for meetings and other relevant issues. The Kgotla is a central place for the community where everyone is welcome. It also exists as a mechanism for conflict resolution among the local people. The Kgotla is led by the chief, with the help of dikgosana who are leading the wards (dikgotlana). However, it is interesting to note that in Botswana, chiefs are regarded as the custodian of the culture “upholding the moral and ethical standards of the community and performing traditional rites and ceremonies of the tribe” (Nyathi-Ramahobo, 2008:2)

Botswana has been politically stable since independence and it has been internationally acknowledged for its peace and political stability based on the fact that people are consulted at the Kgotla. Decisions are made together with the people (a bottom-up approach). This as a system gives citizens the opportunity to express their views as stated in the Constitution of the Country i.e. (freedom of expression and consultation). The challenge here is that although the country is known for its peace, tranquility and *Kagisano*,<sup>19</sup> there have been some local ongoing conflicts. For instance, in 1999 the constitution was amended following petitions from the minority tribes which felt marginalized in several matters concerning chieftaincy. Upon hearing the minority group's petitions the government adopted the commission known as Balopi commission which aimed at examining some sections in the constitution which

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<sup>19</sup> Unity

were undermining minority tribes in the chieftainship. Then the amendment was done on sections 77, 78, and 79 of the constitution, and the intention was to make them “tribally neutral” (Ditshwanelo, 2008; Nyathi-Ramahobo, 2008).

The other case is the well known conflict between the government of Botswana and the Basarwa<sup>20</sup> on land issues. In 1997, a small group of Basarwa (San) still living in the CKGR were resettled to the two resettlement villages of Kaudwane and New Xade, which according literatures it was against their agreement (Saugestad, 1998). The conflict however escalated and attracted outside human rights group such as Survival International as well as local groups such as Ditshwanelo. The government claimed that they had a mutual understanding with the Basarwa on the relocation; therefore they could not provide the group with basic infrastructure and services while they were within the reserve. On the other hand, the residents of the CKGR represented by First People of the Kalahari refused to move, citing difficult conditions in the new settlements. (Ditshwanelo, 2008)

Although the Basarwa won the case at the High Court, the conflict did not end there (*Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Botswana : Basarwa*, 04 2008). There have been a lot of abrasions between the Basarwa and the government up to now; however, this means that conflict is inevitable in Botswana. Therefore this study will explore the functions of the Kgotla to see how it has and is serving in resolution of disputes in its local communities. The study intends to find out how Kgotla is embedded with democratic values for the stabilization of peace in the country. In other words: does it function in a similar manner as other Conflict Resolution models<sup>21</sup>? Kanye kgotla has been taken as a case study because of its relevance in terms of their leader being the paramount chief. Paramount chiefs are the chiefs of the eight major tribes in Botswana. Kanye chief is the leader of the House of chiefs. Moreover, he has served the government as the ambassador for Botswana in countries such as China. In addition Kanye is the central administration for Ngwaketse region which comprises of other surrounding small villages. All government issues concerning the tribe and customary cases are solved there.

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<sup>20</sup> Commonly known as indigenous people in Botswana (san)

<sup>21</sup> A range of processes aimed at alleviating or eliminating sources of conflict. Processes of conflict resolution generally include negotiation, mediation, and diplomacy (Ramsbotham, et al., 2005:8-9)

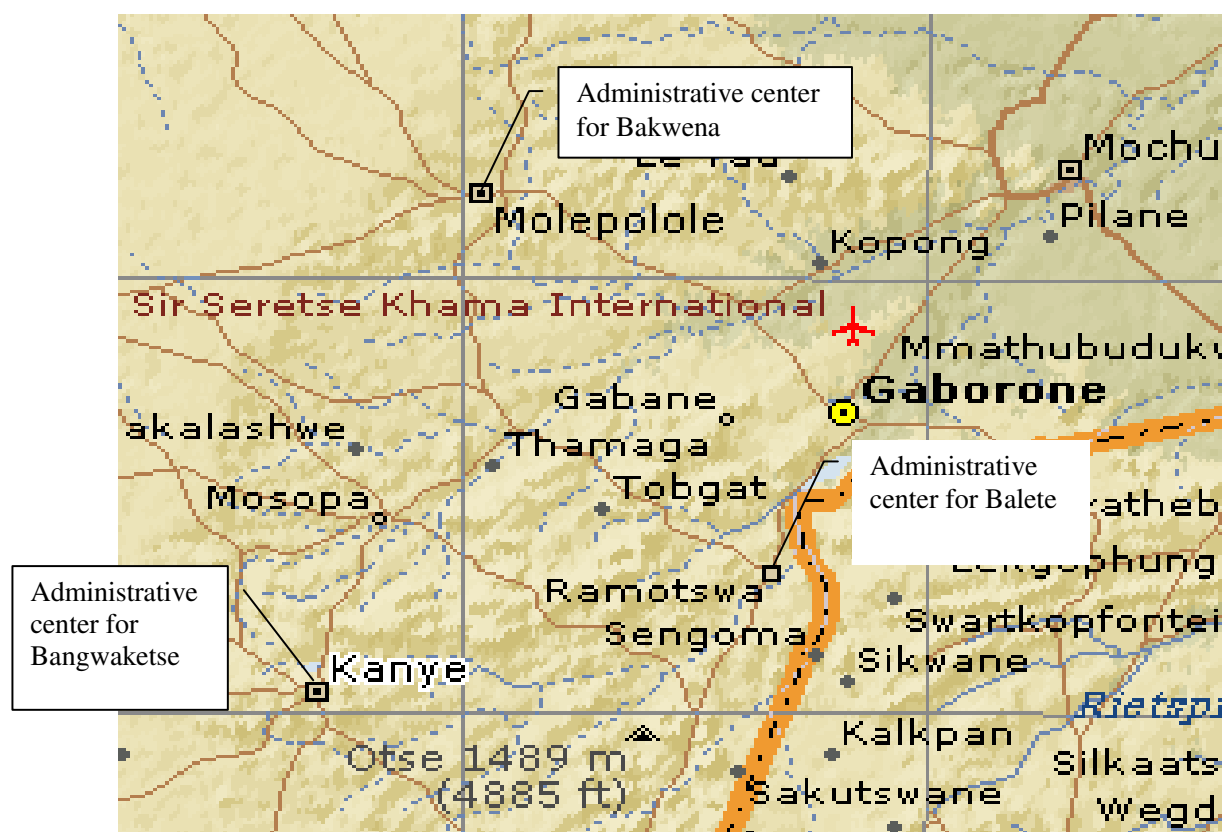
## CHAPTER TWO

### 2.1 METHODOLOGY

This chapter discusses the methodological framework within which the study has been undertaken. The chapter will describe the research techniques and procedures used for the collection of data. It will incorporate general information about the places of field work and the methods adopted on data collection. The field work was conducted mostly in Kanye, both in the local community and the administration including the bogosi people. However, in order to get the gist of the chief's opinion, a research questionnaire was administered among the Bakwena tribe paramount chief, Kgosi Kgari Sechele and the paramount chief of Balete tribe, Kgosi Mosadi Seboko. This was done in order to get the views of the chiefs with regard to the traditional role they play as chiefs in settling conflicts among their tribal people.

#### 2.1.1 The geographical study sites

Figure 2.1



The map shows the three villages in Botswana where the questionnaire was administered. The target was to get views from the paramount chiefs. Adapted:

<http://www.worldatlas.com/webimage/countrys/africa/bw.htm>

### 2.1.2 Kanye

Kanye is a village town located in the southern part of Botswana. Kanye and its surrounding small villages add up to a population of 48,14 (Central Statistics Office, 2001b). It is the capital of the Bangwaketse<sup>22</sup> tribe whose chief was Kgosi Seepapitso IV who died this year, 2010. It is the administrative centre of the Southern District. This includes surrounding small villages and wards around Kanye. All these are subordinates of Kanye main Kgotla and they carry out administrative work in Kanye. Cases failed from the dikgotlana are tried at Kanye main Kgotla. People also get Kgotla services from Kanye Kgotla.

Kanye is traditionally and popularly known as the “jewel of Botswana” because of its unique magnificent scenery and its cultural wealth. There are certain historical buildings dating back to the last century, for example other royal buildings at the main kgotla. Surrounding the village town are lots of stories and myths about various places in Kanye. One of these myths is that there is a great snake which lives in Mmakgodumo Dam and another in Kgwakgwe, and most of the time people do not go there, especially at night.

Bangwaketse had been one of the most influential tribes in Botswana with its controversial leader the late Kgosi Seepapitso IV. Most of people in the Bangwaketse community still cling to their culture and they show much respect to the chieftainship and kgotla by and large. Kanye’s chieftainship with the late Kgosi Seepapitso is known to have seen to challenges and improvements in the democracy of the country. He led the House of Chiefs for many years and he was one of the few chiefs in Botswana who are highly respected due to his way of handling issues that involve his tribe. Seepapitso was the ambassador to the United States, then later China.

Kanye village is privileged in history as one of their first chiefs was among one of the three chiefs who went to Britain to seek protection for Botswana against the Boer invasion in the colonial era. Despite this, and to the contrary, in old Botswana, the Ngwaketse tribe and other eight tribes used to see themselves as superior to the minority tribes (Kalahari, San, Kalanga etc). On those grounds, there had been additional cases of racial slurs leveled against ‘minority’ groups or individuals. For example, a Paramount Chief of Bangwaketse (Kanye

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<sup>22</sup> Tribal name for people original from Ngwaketse areas

people), Kgosi Seepapitso IV, was accused of using racially demeaning language against a local District Officer who was of a different tribe (*International Convention on the Elimination of All Forms of Racial Discrimination*, 1973). Moreover, he was once tried at the magistrate court for undermining the minister on official duty who happened to be from one of the minority tribes.

### 2.1.3 Molepolole

Molepolole is one of the largest village towns in the south east of the county with a population of 62,739 (Central Statistics Office, 2001b). The people who reside in Molepolole are of the Bakwena tribe, and are “one of the principle tribes in Botswana. Molepolole is the central administrative centre for Kweneng district and it is lead by the paramount chief. The district includes small villages and wards surrounding Molepolole. The small villages and wards are lead by dikgosana (headmen); hence these are subordinates of Molepolole main Kgotla. The headmen work with the chief. They deal with cases from their local wards and they can refer failed cases or major cases to the Kgotla. Major civil and other criminal cases are tried in Molepolole Kgotla. Molepolole Kgotla is the central place where people in the whole Kweneng district could get services provided at the Kgotla, such as chief attest.

However, historically during the colonial era, one of the Bakwena first chiefs was among the three chiefs who went to England to seek protection from the British during the colonial era. The chieftainship in Molepolole is among the most respected institution in Botswana because of the way it deals with community issues. Nevertheless, of late the chieftainship in Molepolole has had some disputes concerning the royal succession on the bogosi<sup>23</sup>. “It is perhaps an irony that a tribe that has provided such leadership throughout its history has also been bedevilled by internal strife manifesting itself in protestations, threats of secession and even violence” (Mbuya, 04 2010). In spite of the latest chieftainship conflicts, Bakwena tribe respect their chiefs and the Bogosi in general. Many people still use the Kgotla when reporting internal domestic cases, and they do gather at the Kgotla for meetings and other activities. The chieftainship in Molepolole has maintained its position on uniting its local community. And it continues to transform local conflicts and maintain its favour among the communities.

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<sup>23</sup> Chieftainship

On the other hand, Molepolole is famously known for Logaga Lwa Ga Kabokwe - Livingstone and Sechele's Cave. The cave is about two miles from Molepolole along the Molepolole- Thamaga road.

#### **2.1.4 Ramotswa**

Ramotswa is a village found in the South East District, which is in the southwest of the capital city Gaborone. It has a population of 25,738 (Central Statistics Office, 2001a). It is the tribal capital of the Balete, an ethnic minority tribe historically springing from the Nguni tribe. Ramotswa main Kgotla has a number of wards affiliated to it and the dikgosana on those wards work hand in hand with the chief. Cases are also transferred to the main Kgotla if they have failed in dikgotlana.

One interesting and remarkable change in the history of Botswana concerning Ramotswa is that their contemporary paramount chief is a woman. In chieftainship history there has never been a woman as a paramount chief. Rather women have been a regent even if they qualified to be the chief. They would be regent until the one recognised by the Bogosi claimed the throne; most of the time the rightful person would have been young or away due other reasons. However, the reign of Kgosi Seboko has been seen by many as an example of women empowerment in the chieftainship and the country by in large. She is among the first women in Botswana to have been installed as the paramount chief. Her installation as a paramount chief was a complete ceremony “with the bedecking of a leopard skin around her shoulders – the ultimate symbol of authority of a crowned chief” (Matemba, 2005). She is among the representatives at the house of chiefs. Her installation had been highly appreciated by most of the gender activists in southern Africa.

## **2. 2 METHODS OF DATA COLLECTION**

The study on the collection of data for this thesis is based on both primary and secondary sources. The study is mainly based on a qualitative approach. In most social sciences, qualitative research is used to gain insight into people's attitudes, behaviours, value systems, concerns, motivations, aspirations, culture or lifestyles (Silverman, 2005). In order to gain the insight into the phenomenon, the Kgotla in Kanye village was used as a case study where the

main kgotla is. The primary sources adopted were oral interviews with different stakeholders at the Kanye Kgotla. A questionnaire was used among the chiefs, that is a chief in Kanye (whom due to sickness, his son got to answer the questionnaire), the chief in Molepolole and in Ramotswa. In addition direct observation was done as the main method in gathering the data.

### **2.2.1 Library Research**

I started library research in Botswana Parliament library where I got more information from the constitution of Botswana, the Chieftainship Act and the Customary Penal Code. In addition I visited the University of Botswana library where I read articles and books on the Botswana chieftainship. I made some regular visits at the Botswana national archives and the Botswana Parliament library where I accessed daily newspapers and periodicals, government reports etc.

### **2.2.2 Oral interviews**

I adopted semi-structured directional interviews with mixed a pattern of questions such as open-ended probes and follow-up questions to elicit understanding, meanings and knowledge of respondents (Rubin & Rubin, 2005). The criterion used for choosing group members was random sampling (Bell, 1999) describes interviews as “conversations between interviewer and respondent with the purpose of eliciting certain information from the respondent” (p. 35). On the other hand, (Silverman, 2005) idea is that participants are generally chosen based on their ability to provide specialized knowledge or insight into the issue under study. Generally the majority of chiefs and headmen in Botswana are regarded as wise men with knowledge and proper insight into many cultural aspects including morality.

On education level, generally most of the chiefs and headmen have basic education knowing how to read and write. However, few of them have tertiary education especially those that are of middle age. Therefore in order to get information from them, I had to conduct oral interviews, which saved time because I would be writing responses immediately. Moreover, oral interviews would also be relevant with the level of their education.

On the other hand, oral interviews were also relevant when dealing with informants from the community. Since with oral interviews one can make a follow up to a question, it would be appropriate for me to use them in order to enquire more information from the informants. However, because most of the people living in the village might have a low level of

education, the use of instruments like questionnaires may therefore be constraining. On the other hand, by interviewing I got the chance to understand more by direct interactive group discussion.

### **2.2.3 Questionnaire**

I designed a questionnaire consisting of structured questions with a mixture of verbal probing questions for more explanatory responses. A questionnaire is a “set of carefully constructed questions that are designed to provide systematic information in a particular subject” (Farrant, 1997:60). By using the questionnaire I would be able to get some information without my interference. The questionnaire may seem better in terms of the researcher's interference, because with other methods such as oral interviews the researcher may interfere and distort some information. I designed the questionnaire for the three chiefs I intended to meet. Even though some of the chiefs and headmen have basic skills of writing and reading, I had to design the questionnaire specifically for these three chiefs as an exception. I have read about them and personally I had met them before therefore I knew that the questionnaire will not be a problem to them except only if they did not have time filling it.

Upon designing the questionnaire I took into consideration aspects of age, gender and level of education. I considered age and gender because with these differences, people have different ways of looking at some cultural issues that I think was important to understand. Looking at someone's level of education is important because chiefs deal with laws and procedures; therefore their understanding of the law and procedures of the country is vital. Moreover, our modern chiefs are highly educated and some are even lawyers. And with that, it could be interesting to know as a researcher of how they could function well under customary court system without any “crossing” to the common law. The application of the customary law varies with the common law, for example, Kgotla never have defense counsels. Thus those chiefs who are lawyers by profession may experience a contradiction in laws.

### **2.2.4 Direct Observations**

Direct observation in the form of continuous monitoring was therefore adopted in order to identify the Kgotla functions and procedures. I had to observe a number of things in the Kgotla. For example, kinds of acts conducted in the Kgotla, kinds of cases addressed, how are they solved and by whom. Generally I was there to observe what was going on at the Kgotla with the hope of getting naturally occurring data. Usually direct observation is a method with



which a researcher observes and records behaviour, events, activities, tasks and duties while something is happening (Bernard, 1994). During direct observation it is common for an observer to engage in recording as accurately as possible what is going on. Although the researcher could try to record accurately there is however an element of getting “pseudo-face” because the people observed usually perform better under observation due to the attention paid to them (Filstead, 1970). On the other hand there could be an element of subjectivity of the researcher because the information recorded depends on the researcher’s observations.

However, the observation was done coupled with interviews in order to avoid subjectivity and wrong judgement as much as possible while observing. Direct observation is the most naturalistic non standardized procedure because it occurs in the natural environment, therefore with direct observation one can observe samples of naturally occurring behaviors. (Bernard, 1994)

### **2.3 GETTING READY FOR THE FIELD WORK IN BOTSWANA**

Getting started was not easy for me because I had overlooked the research permit procedures. It was not easy to acquire the research permit because I was an outside researcher even though Botswana is my home country. The government of Botswana has become somewhat skeptic to researchers because of the information they gather and disseminate which sometimes does not reflect facts but mostly opinions, which of course is not academic worth. Before I arrived in Botswana, I had prior arrangement with the University of Botswana on practical matters such as acquiring accommodation because I did not have accommodation in Gaborone. Gaborone is more central when it comes to educational resources such as the National archives, Ntlo ya dikgosi<sup>24</sup>, the Parliament library etc.

I did not know that I had to be incorporated within the summer courses at the University of Botswana in order for me to be recognized as a researcher as well as to get the research permit. Therefore, the University of Botswana registered me as a visiting student, but the whole procedure was tedious. However, because I was incorporated within the University system, I had access to the University of Botswana’s library where I read other materials. In addition, I got the opportunity to visit Ntlo ya dikgosi and there I met several chiefs from

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<sup>24</sup> house of chiefs

different tribes. They had come for their annual meetings. During this meeting I received impressions and knowledge of the functions of the Kgotla in general. Later on, on the first week of July I got the letter of acceptance for my research from the department of tribal administration headquarters.

### **2.3.1 Piloting**

I had designed a questionnaire for the chiefs and oral questions scheme for the headmen and the local community. However, before I started the actual field work in all areas I did pilot questionnaires and oral questions in Molepolole. I asked the chief's permission before piloting my instruments in the Kgotla. Then I gave the questionnaire to one headman to answer it and I continued with the oral interview with some of the elders I met at the Kgotla. The idea was to check the research instruments in terms of sensitivity of questions, clarity, explicitness and relevance as well as testing the time frame especially in completing the questionnaire. Normally in a Botswana set up, village elders and some people (on their own interest) come to the Kgotla every day just to sit around and if there is anything going on, then they could attend to it. By this the Kgotla gives people a platform for socialization. Therefore, due the fact that some people are always in the Kgotla I got the chance to meet them. The reason I chose Molepolole is because it is near Gaborone where I had accommodation. I also grew up in Molepolole and it is like a home to me. I knew the people and the chief there.

Piloting became ideal, because for example in the questionnaire the respondent would put a question mark or sometimes the answer would deviate from what I expected. Therefore, checking the questionnaire responses was good feedback in terms of where I could improve. I had to check for clarity and add more information to some of the controversial and ambiguous questions, hence gaining confidence. In addition, in the oral questions the respondents would also ask for clarity and with this I managed to reframe my questions. This also helped me get the general view of how people could respond.

### **2.3.2 Arriving in Kanye**

I travelled to Kanye for my field work towards the end of the first week of July. Prior to my departure I had made some accommodation arrangement with one local family. I arrived in the afternoon to my host family. I arrived in good time so that I could learn and familiarize

myself with my surroundings (host family, transport, shops and the kgotla place as well as to inquire about some important customs expectations at the kgotla). Initially, before I went to Kanye I had called and informed the tribal secretary that I would be coming to conduct my research in their Kgotla. In addition, they had already received my research permit application and introductory letter from the university of Tromsø and Botswana attached to the application. Therefore, my arrival at the Kgotla was not a shock; I had to introduce myself to the tribal secretary who then introduced me to the tribal administrative staff and the lekgotla<sup>25</sup> in general. Later on, I had to be introduced to the Kgosi (by then the chief's son). Since I came in the morning hours I had ample time to familiarize myself with the village as well as the people around. I wanted to build good rapport with the people since they were my core informants.

The absence of the paramount chief in Kanye had a negative impact to some extent on my research work. He was one of the key people I would have relished to interview as stated in my project proposal. He had been one of the controversial leaders in the country and he led the house of chiefs. I believed that he had good insight into some of the issues concerning chieftaincy in conflict resolution and the Kgotla contribution to democracy in Botswana. The late Kgosi Seepapitso IV had been Botswana's ambassador in America and Japan and I thought he would have good insight into government administrative issues as well as Bogosi (chieftainship). However, despite the paramount chief's absence I found interesting and knowledgeable people in Kanye. Without them I would not have been able to conduct my field work.

## 2.4 Sampling Procedures

The research was based on a purposeful sampling procedure which was aimed at gaining insight into the chieftainship phenomenon. The target population for the study comprised of chiefs (three paramount chiefs from three different villages and other chiefs), headmen and elders (chief advisors), *banna ba lekgotla*<sup>26</sup>, tribal administrators, and the community at large. Due to many people visiting the kgotla every day, I got an opportunity to mingle around with a lot of people. I managed to observe how things are done in the Kgotla through interactions and I did interview different kinds of people. Although I interviewed many respondents; the

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<sup>25</sup> Usually elderly men who sits at the Kgotla

<sup>26</sup> A group of tribal men at the Kgotla

criterion for selection was based on certain characteristics such as age and gender. Although the Lekgotla is formed by mostly men from the age of 21 (*Constitution of Botswana*, 2002), many women also come for meetings and cases that affect them. Therefore, I got the opportunity to interview women too in order to get their views.

## 2.5 PRIMARY SOURCES

### 2.5.1 Oral interview administration

Interviewing is known to be a way of finding out what other people say and think about issues. The interview responsive model helps the researcher to get “depth and detail, vivid and nuanced answers, rich with thematic material (Rubin & Rubin, 2005), hence this enhances the researcher to learn about people’s attitudes and values through explanations. In order to facilitate my interviews, a focus group consisting of eight elderly men (chief advisors), that is, members of the chieftaincy was organized. We all sat in a semi circle arrangement so that we could face each other and see direct facial expressions; people say ‘action speaks louder than words’- physical expressions tell much of someone’s reactions to something. For example, one could say ‘I am fine’; while the expression on the face shows something else. Therefore it could be important for people to be ‘face to face’ when they are talking.

I introduced myself to the group as a formality because most of them had already met before, during the first introduction. I then sought their time and permission to interview them. I had to assure them confidentiality. I facilitated the discussion according to the topics and questions I had. The questions were mostly open ended questions and probing questions in order to obtain in-depth analysis of the topics. During the discussion each member of the group would say what they thought and others would listen and when one finished others took over and at the end they would reach a conclusion by themselves without interfering with one another. This way of giving each other a chance to speak is very common in Botswana and it originates from the traditional proverbs such as “mmualebe a bo a buwa la gagwe”, and mafoko a kgotla a mantle otlhe”. Respectively this literally means *everyone has a right to say what they think* and that *all said at the kgotla is beautiful*.

I took notes on all the discussed points. The atmosphere was good with the sense of respect towards one another. During this meeting there was always a woman in attendance and she was the chief representative’s wife, but she did not participate in answering the questions. I always wanted her to comment but I could not tell her to because it would be to disrespect

her. I should think that her quietness was probably to do with some cultural connotations that limit women talking in the Kgotla. Culturally, the older traditions did not allow women a free platform to comment or say something in the Kgotla, unless given the chance by men, e.g. “*Mme semamang akgela foo*” (*madam, could you comment*). This generally shows the position of women in the society. Moreover, the kgotla is a public institution which also reflects the traditional customs and values of its tribes, and is not an exception in this respect.

The next group consisted of 12 headmen from the surrounding dikgotlana (*wards*), from the neighboring small villages affiliated to Kanye administration. They had come for their annual official monthly meeting; hence it was a good opportunity for me to meet them. The same oral questions as in group one were used. The second group was used in order to consolidate the information and to get different views from other different people. I enjoyed being in both groups and I learnt much from all the discussions. This became absolutely relevant to my study.

The third group of people consisted of village people who were coming to the Kgotla for one reason or another. I managed to interview a mixed group of men and women. There were four women and three men. I had prepared some questions before. We sat in a semi circle for approximately 40 minutes. I conducted the interview and it was quite interesting to hear their views. I jotted down all the points. The questions ranged from simple to more probing questions. Interestingly, during the discussion men dominated the talk even though women were in majority. Probably this could have been due to some cultural notions whereby people believe that men lead and women follow as it has been well documented by (Schapera, 1953). Upon noticing this, I had to direct the questions to women, for instance I would say ‘*ee, mme fale o ka reng ka kang e*’ (yes, madam, what are your comments?).

The last part of my interview was based on people as individuals. I would approach one person and then introduce myself, then ask if he/she could spare some time for the interview. Although most of the people said ‘No’, some said ‘Yes’ and gave their time. Firstly I would ask them if I had ever questioned them before in a group or individually. I did this in order to avoid monotony and redundancy of information. Then if not, I would continue with my interview.

### 2.5.2 Administering Questionnaires

I administered the questionnaires to the paramount chief of Bakwena and Balete, even though according to the proposal the Bangwaketse chief was among the list. But by the time I got there he was on sick leave. I had to give the questionnaire to individual chiefs at different times because their villages were far apart. They had been informed by the department of tribal administration headquarters that I was conducting a research. First I travelled to Molepolole where I met Kgosi Kgari Sechele III. Because I had been there before when I was piloting the questionnaire, I was not new to him. I introduced myself and later on gave him the questionnaire. He asked me to wait for him to finish answering the questionnaire, so I did that. While waiting for the questionnaire, I kept myself busy by going around the Kgotla and chatting with other people. Later on, after 30 minutes he gave back the answered questionnaire.

Then I went to Ramotswa where I met the tribal secretary. The chief was away from the office that day. Therefore, the tribal secretary received my questionnaire so she could pass it on to the chief. Later on I travelled to Kanye where my field work was mostly based. I stayed in Kanye for four weeks. Because the chief was away from duty, I gave the questionnaire to the tribal secretary because she was the one who could decide on the next step. I was almost hopeless due to the chief's absence.

However in Kanye, it took much time for the questionnaire to be filled in. I therefore had to follow up several times by inquiring on the progress. Later, the tribal secretary gave the questionnaire to one headman to fill in, which I then collected. In the meantime, while waiting for the questionnaire in Kanye, I kept on calling the chief in Ramotswa, checking if she got the questionnaire. I had to make an appointment with her too, because I wanted to interview her on the issues of women chiefs as well as to collect the questionnaire. When I finally left Kanye, I went to Ramotswa because I had already made an appointment. It was a great pleasure interviewing Ramotswa chief. We mostly discussed the role of women in chieftainship. As stated in my research proposal, it has been a "trend that in Botswana most of the women were not given a platform for reigning as chiefs". However, the installation of Kgosi Mosadi Seboko and the other female chief, Kgosi Rebecca Banika has signified a remarkable development in Bogosi era. They were some of the few people who challenged the discriminating procedure on the Bogosi in the country (Christensen, 30.09.10). Kgosi Seboko demanded her rights of being the heir after the death of her father and her brother.

### 2.4.3 Doing Direct Observation

My research work was ultimately based on direct observation. The observation was done over a period of three weeks. I had prepared semi-structured observation sheets and on each day I recorded my observations and findings that were of interest according to my schema. I normally came in the morning (0800) to the Kgotla; I would be in the Kgotla vicinity until 1500 hrs because most of the workers leave work around 1630 hrs. I spent most of the time in the Kgotla vicinity because that is where my project was based. Since most of the people came to the Kgotla place, some coming to settle cases with each other, some for administrative purposes, and some coming to give report e.g. when someone has died in the community while others just coming for short and visits at the Kgotla.

Therefore, I had good opportunities to meet different people each day. Since I had built good rapport with the chiefs, elders, people working at the Kgotla and local police officers it was easier to be accepted by other community members visiting the Kgotla. In the Kgotla I observed Kgotla procedures e.g. what the Kgotla is used for, how the chief(s) and other elders are approached by other people. I also observed the dress code for both men and women coming at the Kgotla, the Kgotla workers and the chiefs and headmen dress code. I have to observe how people in the Kgotla seat, i.e. the sitting arrangement for both genders. I observed cases and issues brought in at the Kgotla and how there are handled. I did observe most of the issues and cases that were ongoing in the Kgotla. Some of the issues included death reports, marriage reports, child adoption, and different village development meetings, etc. However, most of the civil cases I observed were conflict-arising cases. I recorded some of the interesting conflicting cases, because I was interested in seeing how such conflict cases are solved. At every moment I was jotting down notes filling in the variables.

In most civil cases the resolutions given were more liked to restorative justice. Although few were punitive but those punitive were mostly of criminal nature. Restorative justice aims at “empowering victims, communities, offenders and families to repair the effects of harmful event...to restore community life” (Walgrave, 2002:1). In many instances, where they had been disputes, people were reconciled. Although in some of the cases the resolutions were more or less of a retributive style, especially on cases that included young people. However, I found it very interesting.

In one civil case I was given the chance to comment, and this was based on the fact that everyone has a say in the Kgotla “*mmualebe o a bo a bua la gagwe*”- *everyone has a right to*

*say what they think*. Basically, in Botswana people believe in certain proverbs which have contributed to building important moral fabrics in the society. People are given the chance to democratically and freely say what they want. The other cornerstone proverb is “mafoko a kgotla a mantle otlhe- *“all said at the kgotla is beautiful”*”. Although this does not mean everything said is good and accepted, but that everyone has a platform to express their views and those views are respected. Being given the opportunity to say something made me feel recognition and appreciation in the Kgotla because it is open and the discussions are open to anyone present. However, upon talking I adopted my skills as a peace student. Having learnt theories of restorative justice and mediation it was easy for me to say something of help. However I was aware of the consequences as a researcher in those circumstances of avoiding involvement, but it was part of the learning experience.

## **2.6 RELIABILITY AND VALIDITY**

### **2.6.1 Reliability**

In order to ensure the reliability of my data presentation I use data collected from the fieldwork through the different research instruments presented in this chapter. I will consolidate the responses on oral interviews which were conducted from different groups, the observation sheet records in which the data were collected over three weeks and in addition the questionnaires. There is high indication of consistent similar ideas on certain discussed issues from all the instruments. As stated, an instrument is said to have high test-retest reliability if it yields similar results when given to the same sample at two different times. (Maxwell, 2005). Though various factors such as time constraints, sampling and availability of variable respondents constrained reliability, I tried by all means to utilize the different types of instruments to get the information needed. Doing participant observation coupled with in-depth interviews provided me with a better way of understanding the concept of Kgotla, the people, the culture and some of the societal expectations. This gave me insight and depth on the phenomenon.

### **2.6.2 Validity**

The information I gathered together with the theories and concepts adopted for this thesis support each other for the fulfillment of the validity of my data. The literature review from related articles, books, journals etc has been compiled as secondary sources.



## 2.7 Personal Reflections and Limitations

Getting started with the field work in Botswana was a challenge; little did I know that I would have to struggle to get the research permit. Although I had sent an application for the research permit before I travelled to Botswana, it was not done before my arrival. After arriving in Botswana I went to the department of Tribal Administration to check on the research permit and there they told me that they are still working on it. The officer in charge also told me that I have to be incorporated within the University of Botswana because the university dealt with all research work in Botswana. Therefore I had to register for summer courses at the University. The whole procedure was tedious and time consuming. Even after doing all the necessary practicalities, I still had to follow up almost every day at the Tribal Administration department. Sometimes I had to push the university of Botswana international student office to help me acquire the permission. Later on, the Tribal Administration officer called me, and told me that I can start my field work. I started with Molepolole, then Ramotswa and finally Kanye where the field work was centred.

The other difficulty was getting into contact with the paramount chief in Kanye. He was away from duty during the time I spent in Kanye. My intention of interviewing him became futile. Initially I had chosen to interview Kanye chief because I thought he might have an insight on several issues in Botswana because he worked as a civil servant on government protocols and he is a chief. Nevertheless, despite the paramount chief's absence I met interesting and knowledgeable people in Kanye without whom I would not have fulfilled my field work.

The other factor has been that of my own intrinsic perception. I am from a minority tribe and doing research based on a major tribe was a challenge. The tribal differences sometimes do exist in the country even though constitutionally they are not accepted. I am from a Kalanga tribe which many people, especially among the major tribes, are referred to as 'lekalaka' instead of Mokalaka in singular - the prefix 'le' belittles people in Tswana context. Moreover, the word 'lekalaka' is impolite because every tribal ethnic group is referred to with the prefix 'Mo' in reference to the tribal name e.g. 'Mokalaka' not 'lekalaka' as many would prefer to say. With this in mind, instilled fear of being victimized, thus I was always careful on many things. Because I knew that any words of tribalism could affect the openness to full participation in research work.

The other issue was language usage. Even though Kanye communities speak Setswana, which is a national language in Botswana, there are however other cultural expressions that if one

does know might be difficult to understand, for example certain proverbs and idioms. On the other hand, elderly people in Botswana normally uses other language expressions that are not learnt in schools, hence such expressions could be difficult to follow. The other problem was that my tribal language is different from the national language, therefore other expressions were difficult to understand, and thus I have to ask them to translate for me.

Being a young woman dealing with an issue in male dominated institutions and especially with elderly people with high status of leadership was quite intimidating. Kgotla is traditionally a place for men and women can only come during Kgotla meetings or when they had something to do at the Kgotla. Historically, just like elsewhere in Africa, chiefs, monarchs and regents have almost exclusively been males and this old tradition still lingers in some African societies. (Schapera & Comaroff, 1991) notes that “in tribal law women in Botswana are treated as perpetual minors, being subject for life to the authority of male guardians; they are also excluded from political assemblies, and... all political offices are normally confined to men” (p. 31). Therefore with all these myths as well as practices around I felt uneasy at the Kgotla even though I was just a researcher.

The other problem I encountered was lack of cooperation especially with the women. They could simply say ‘No’ or some may say that “*talk to the elderly men about bogosi not us*”. And some would say “*I don’t have time for this*” while others excused themselves by saying that they had to go and do home chores. From the cultural point of view I did understand them because this is how women were treated when it comes to Kgotla issues. Like I said before, Botswana’s culture and traditions are rich in proverbs and idioms, some of which were used to desist women from full participation. For example, they would say; “*Ga di nke di etelelwa ke namagadi pele, di a tle di wele ka selomo (mfere)*” literally meaning that *a team of oxen is never led by females or else the oxen will fall into a ditch* (Kaye, Machacha, & Maundeni, 2001). The deeper moral connotation excluded women from leadership and decision making in society. The Kgotla system in Botswana is in transition from old traditional practice, therefore such ideology may still linger in people.

## **2.8 ETHICAL ISSUES**

### **2.8.1 Confidentiality and Consent**

Since the study for my field work was mainly dependent on people, it was crucial to keep high ethical standards in order to promote the good welfare of my informants. Sensitivity of

the matter in hand may not be so important because what might not be sensitive to one might be sensitive to another. Therefore I considered the informants confidentiality and respected their consent when giving information. I had to take into consideration that the informer's identity must be protected and they must be in a place where they feel safe and free. Though Botswana is generally safe and peaceful, nothing should be taken for granted. There are a lot of bureaucracy and protocols to be followed and if one's identity is jeopardized then this may end up putting someone in trouble, which was not my intention. Considerations about all procedural issues of whom, what and how one handles issues are very crucial. (Maxwell, 2005) advocates for the negotiating relationship between the researcher and the community. I had to inform all my informants that their views will be used for this research only and that their identity would be kept confidential. Due to the fact that they knew I was doing my research as part of my university curriculum in Europe. I had to assure them a copy of my research work which would be sent after I have fulfilled my studies. The copy will be put at the University of Botswana library. Apparently many people have been skeptic on western scholars, whom they accuse of not representing their views correctly, and that they are milking Africa for knowledge and use it to fire back against the countries.

## **2.9 Conclusion**

This chapter explained the methodological aspects adopted when carrying out field work in Kanye. The study is based on field work done over one and half (1½) months. The questionnaires were administered in three village towns i.e. Kanye, Molepolole and Ramotswa. But during the administration of the questionnaire I only managed to get information from the two different paramount chiefs in Molepolole and Ramotswa. The questionnaire administered in Kanye was not answered by the paramount chief as it was intended. In addition, oral interview and observation was done gathering data in Kanye Kgotla. Therefore, basing on my own experience and analysis based upon the findings done during the field work, with that I could categorically say that chiefs in Botswana are going to be playing a major role in the lives of their tribes' men and women for the future, and that their significance cannot be underestimated. The field work has given me insight into the workings of a society that I have always viewed from a distance, and the Kgotla institution that I have always lived with but not comprehended adequately. For any research success regardless of whether someone has connection either geographically or socially, there exists the challenge to be well prepared to both adjust and evaluate one's position prior to embarking on the research.

## CHAPTER THREE

In this chapter I will discuss the existing governing laws in Botswana i.e. the judicial law and the customary law which both govern the country. Both laws run parallel and have existed in Botswana since they were fully enacted after independence in 1966. I will also explain how these laws correlate and govern in Botswana.

### 3.1 JUDICIAL PRACTICES IN BOTSWANA



**Figure 3.1** Picture of parliament of Botswana showing the house of chiefs (Ntlo ya dikgosi and The National Assembly). **Adapted from** (*Botswana Parliament*)

Botswana has a bicameral Parliament that is made up of the National Assembly and the House of Chiefs (advisory role). The National Assembly is a representative body that consists of elected members through adult suffrage. The House of Chiefs (Ntlo ya Dikgosi) also operates within the Parliament, as an advisory body but does not form part of the Parliament. The house of chiefs operates on one side while on the other side is the governing parliamentarian, all under the same building. The House of Chief's advise the parliament on matters of custom and tradition, and that includes the reviewing of draft bills before they are considered by the parliament. At the parliament, the president is the head of the executive arm of government but is not directly elected in his/her own right but holds office as the leader of the party with a

majority of directly elected MPs. The president of Botswana is also constitutionally limited to five-year terms of office.

Therefore, with two bodies involved in the affairs of the country meant there is a dual legal system. Botswana operates under the received foreign law, Roman Dutch Law which has been influenced by English Common Law. It is the common law in Botswana. The Roman Dutch Law was inherited in Cape colony in 1652 (Fombad, 2005)<sup>27</sup>. However, the common law subsists side by side with customary law (Molokomme, 1994). The system has as its basis in the legacy of the colonial interaction in 1885 between imperial Britain and the indigenous tribes. From the onset of colonialism in Bechuanaland (Botswana) the Tswana Chiefs had wanted to protect their power from the colonial government even though the logic of colonial rule dictated that they should rule according to the wishes of the British government. Therefore, the conflict of power to rule between the chiefs and the British government had in many respects been the root of the struggle for the independence (Parsons, 2006). Consequently, this system of Law in Botswana was accepted to run concurrently. The penal code takes care of the judicial part used in judicial courts while the customary law operates in the Kgotla or customary courts and both are legal laws governing and recognized in the country by and large.

“Law performs a variety of functions in the society. It is concerned with advancing the welfare of the public, with resolving disputes, maintain in social control, the protection of rights and regulation of politics and the economy, and justice. In some respects law is a system of rules and procedures which ensure that promises are kept and losses are made good; these rules and procedures are mainly enforced by the court” (Boulle, Harris, & Hoexter, 1989:5).

Aristotle’s idea of law is: ‘law is order and good law is good order’. However, this implies that in order to maintain order in the society one needs good laws. Bad laws could also bring anarchy and disorder, because people react to governing laws. Hence, there is need for countries to have laws for the sake of maintaining order.

However running this complex system of laws is a challenge by itself. For example, there has been a recent legal conflict between customary law and the judicial law in Mochudi, the capital administrative centre for Bakgatla tribe. The paramount chief is in defiance of the

<sup>27</sup> <http://www.deepdyve.com/lp/edinburgh-university-press/botswana-and-the-dynamics-of-legal-modernisation-within-a-dual-english-rfBU0MNVa6>

normal statutes of policing, whereupon he has instituted Mephato<sup>28</sup> to police their region against delinquency and deviance. He has with tacit support by his tribe brought a constitutional standoff between the central government and the regional tribal authority. Mephato have taken the law into their own hands by whipping people randomly who 'according to their judgement' are delinquents. This in a way has shown the ubiquity of the dual courts in Botswana as well as challenged the normal understanding of the dual system with regards to the role and powers of the chiefs and the judicial law professionals. At the moment the case between the state and the paramount chief of Bakgatla has been brought before the high court(Ontebetse, 08-12-10)<sup>29</sup>

To clarify this it is important to note that the Bakgatla paramount chief has chosen not to take a seat at the House of Chiefs. Therefore he is not controlled by the government on Bogosi issues. This means that he does not get any financial remuneration from the state. This in a way emboldens him and the tribe that all Bakgatla issues will be dealt with under his authority. The Bakgatla paramount chief is a lawyer by profession, and he believes his actions are in compliance with the Botswana constitution which allows for the dual system.

### **3.1.1 The Roman Dutch Law/ Common Law**

Botswana operates under the common law known as the Roman Dutch law which was inherited from Cape Colony. Its origins are found in the Roman law with influence from Dutch customary law. It was introduced to the then-Cape Colony in 1652. Over the years it has been influenced by the English Common law after the British colonization of the Colony. The Criminal Law of Botswana originated from the English and evidence procedurals are based upon South African Law. This means that in some cases the South African law is used in reference because of some similar crimes in nature. However, some of the complex cases in Botswana are adjudicated by South African judges. In Botswana, it has been developed over the years by statutes passed by the Parliament and Judicial decisions. Legislation refers to laws that emanate from or are passed by the Parliament or bodies to which Parliament has delegated powers to legislate. Laws passed by Parliament are called Acts and orders, proclamations, by-laws, regulations or rules refer to those laws passed by a

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<sup>28</sup> Tribal group after they have traditionally graduated from initiation school

<sup>29</sup> <http://www.gazettebw.com/index.php?...8224%3Athree-judges-to-hear-kgafelas-appeal...>

subordinate/subsidiary body or authority. Therefore legislation comprises of statutes and subsidiary legislation. Botswana's statutes are enacted by the National Assembly as given in terms of section 86 (s86) of the Constitution. The legislation validity depends on compliance with the Constitution. In addition subordinate legislation is subject to the *ultra vires* doctrine (*Constitution of Botswana*, 2002).

### 3.1.2 The Kgotla customary Law Concept

In accordance with the constitution of Botswana, written homogenous or uniform customary laws were enacted in the country for the Kgotla or customary courts procedural. The laws are documented as the customary penal code<sup>30</sup>. However this was indigenous to Tswana people, as it existed even before British rule, although by then the customary laws were unwritten. "Prior to the establishment of the Bechuanaland Protectorate there existed a variety of indigenous legal systems living in tribal areas which is now collectively called customary law"(Booi, 2010)<sup>31</sup>. Therefore the laws received recognition by the ruling government even though they did not get to be incorporated into the general law of the country. The 1966 Constitution of Botswana did not change this position and it remains so today. The customary penal code is applied by all diverse ethnic and tribal groups in Botswana and it is administered in all dikgotla.

Although there are many interpretations surrounding the customary law definition, I will in accordance with the Botswana system define customary law as Attorney General Athalia (Molokomme, 1994) explains as: "traditional norms, values, habits and other principles which have been associated with the various ethnic groups". However, the customary law is therefore used where the Kgotla system exists. In tribal groups where Kgotla do not exist, the customary law cannot be constituted nor could such communities use it within their localities. The customary law is nonexistent in those communities without the Kgotla. The Kgotla is the only traditional recognised court where the rule of customary law is used. Although there were other communities in Botswana such as Basarwa (the San), which did not have Kgotla, the customary law was not in existence. Today however, some Basarwa clans have chiefs such as Kgosi Beslag. On the other hand, Tswana customary laws cannot be traced to any

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<sup>30</sup> Customary law means, in relation to any particular tribe or tribal community, the customary law of that tribe or community so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice("Bogosi Act Chapter 41:01,")

<sup>31</sup> <http://www.nyulawglobal.org/globalex/Botswana1.htm> )access 20/04/2010

simple declaration or proclamation; it was by and large based on the Tswana custom - in other words custom could be said to be the basis of the law.

Although the rule of law by the Kgotla courts existed in the pre-colonial time, such courts were not guided by written laws, but by references to previous decisions reached in the past cases. These courts did not create custom, they merely recognized it, and by so doing they strengthened the obligatory character of a rule or law already in existence. Hence the customary penal code was born. In order to prevent anarchy there should be a law in every country that is meant to deter wrong doing. Law performs a variety of functions in society. It is concerned with advancing the welfare of the population, with resolving disputes, maintaining social control, the protection of rights and regulation of politics and the economy, and justice. In some respects law is a system of rules and procedures that ensure that promises are kept and losses are made good; these rules and procedures are mainly enforced by the courts. In other respects it may be seen as a tool of dominant groups, who use it to give effect to their social policies and to control and sometimes suppress subordinate groups; in this manifestation it is enforced mainly by non-court bodies, often known as tribunals (Richman & Forsyth, 2004).

### **3.2 The head of the Kgotla and the head of the Kgotlana**

According to the constitution of Botswana, chiefs (royal hereditary chiefs or elected) head the Kgotla. The word Kgotla often refers to the highest public meeting, community council or traditional law court in a village. It is usually headed by the village chief, and this could be the paramount chief or regent chief. Within a village there are some clusters of wards<sup>32</sup> known as kgotlana led by Kgosana (headman). Headmen are normally from the royal house too (born to be chiefs). This unit or these wards may be defined as a collection of “households living together in their own hamlet, and forming a distinct social and political unit under the leadership and authority of an inherited headman who has well defined administrative and judicial powers and functions” (Schapera, 1994). However each kgotlana and its people together with their Kgosana manage their own affairs and settle disputes by arbitration involving any of its people. Moreover any case that does not get resolved at the kgotlana is

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<sup>32</sup> A number of family groups, living together in the same village or part of a village



often referred to the Kgotla since all members of the wards, including their leaders in any village, fall under the general control of Kgosi at the Kgotla.

However, the installation of the Kgosi/chief has to be approved by the Government in accordance with the Botswana constitution and the Bogosi act. In Botswana it is commonly known that paramount chiefs only exist within the eight principal tribes<sup>33</sup>; Bakwena, Bangwaketse, Bangwato, Batlokwa, Barolong, Batawana Bakgatla and Balete but this does not mean they are the only tribes in Botswana. Other tribes not regarded as major tribes are called minority tribes. They do not have paramount chiefs, thus they are lead by elected chiefs.

However, within major tribes if by chance the paramount chief is not able to lead, the regent chief<sup>34</sup> is chosen for the position. For instance, Batawana have been lead by different regents and the Bangwato whose chief is the current president of Botswana. Thus, due to the political power he cannot at the same time be the chief.

The administrative work concerning the village is administered at the Kgotla in the village. In each village there is one Kgotla and many dikgotlana around. The Kgosi, on the other hand is the ex-officio, on all government issues. By doing so the government plays on various democratic structures which include both traditional leaders as ex-officio members and elected leadership. In both villages and urban areas, dikgosi work hand in hand with the government to facilitate the government's legitimate responsibility to secure the well-being of the nation through the provision of vital services such as education, health, sanitation etc. in the villages by the local councils and municipalities.

### 3.3 House of Chiefs

The House of Chiefs is an assembly of Botswana's traditional leaders known as chiefs. They are ex-officio and elected members who are an advisory body to Parliament and government on matters pertaining to Botswana tradition and culture, but it does not have any legislative or veto powers. The House of Chiefs is currently composed of eight paramount chiefs from the

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<sup>33</sup> Bakwena, Bangwaketse, Bakgatla, Balete, Bangwato, Barolong, Batawana, Batlokwa as per say by the("Bogosi Act Chapter 41:01,")

<sup>34</sup> A person designated by the tribe according to the customary to be in place of the chief and he/she exercises and performs to the exclusion of all other persons, the functions of the chief("Bogosi Act Chapter 41:01,")

eight principal subgroups of the Tswana- speaking tribes and these chiefs have automatic resumption status which gives them the right to become permanent house members. In addition to the eight existing paramount chiefs are five members specially elected by the president, and 22 members elected from designated regions which include areas for the minority tribes. These elected members hold office for a period of 5 years and then new ones could be elected again (*Botswana Parliament*).



**Figure 3.2** A picture showing the house of chiefs, in local vernacular called Ntlo ya dikgosi. **Photo by** (Piwane Constance Moumakwa: field work 2008)

Parliament is constitutionally obliged to consult the House of Chiefs on any bill that affects tribal organizations, tribal property, customary law and the administration of customary courts. Conversely, the House of Chiefs is constitutionally obliged to consider and submit its resolution, to the National Assembly, on any Bill referred to it by the latter. Members must also be consulted when the constitution is being reviewed or amended. The body has the power to summon members of government on matters concerning tribal people. A draft of any National Assembly bill of tribal concern must be referred to the House of Chiefs for advisory opinion (*Botswana Parliament*)

It is important to note that the leader of House of Chiefs is composed mainly by all chiefs from the major tribes and they have automatic place in the House while chiefs from other tribes are few and they are delegated. However, this set up has led to some critics from NGOs and other scholars in Botswana. Edge and Lekorwe (1998) write that the system is “accused of tribalism” and “as a way of “institutionalizing tribal supremacy...” (Edge & Lekorwe, 1998). Nonetheless, the Wayeyi tribe (one of the minority tribes) when they designated their chief in 1999, there was no government officials attending the traditional ceremony as it has been done when the chief is installed. Neither did Botswana national radio station allowed give a live coverage of the event (Nyathi-Ramahobo, 2008). These issues then led the Wayeyi to later embark on legal action concerning representation in the House of Chiefs. Moreover, other minority groups were also involved in tackling their own chieftaincy discriminated issues. Eventually it led to the Bogosi Act which replaced Chieftainship Act. The Bogosi Act allowed recognition of non-Tswana tribes and their chiefs even though they were would be elected instead of resuming seats as other chiefs from the major tribes.

### **3.4 Conclusion**

Botswana functions under two parallel laws; the customary law and the judicial law and both are supposed to “contribute to the success of the country’s peace and democratic values” (Tsie, 1996). The roots of Botswana's democracy and peace and stability lie in Setswana traditions, exemplified by the Kgotla (Maundeni, 2004). The Kgotla has shown its incredibility by its existence and its functions; it would be like ‘suicide’ to leave it out when consulting local people, at least in Botswana. Therefore the government of Botswana has recognized this in Vision 2016 by acknowledging its importance concerning the local and urban communities in Botswana. The dikgosi in the House of chiefs represent all other chiefs in Botswana. Moreover, all chiefs are the custodians of the customs and traditions of Batswana (people of Botswana). However the Kgotla, compared to the magistrate court, has the powers of its traditional leaders limited by custom and customary law. In both villages and urban areas, dikgosi work hand in hand with the government to facilitate the government’s legitimate responsibility to secure the well-being of the nation through the provision of vital services such as education, health sanitation in the villages by the local councils and municipalities.

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## CHAPTER FOUR

### 4.1 CONCEPTUAL AND THEORETICAL FRAMEWORK

The chapter intends to discuss the theories and concepts underlying Kgotla system in Botswana.

#### 4.1.1 Introduction

The kgotla institution plays a vital role in modern Botswana with regard to addressing conflicts arising from within and between communities. The institution pioneers serious and candid liaison between the government and the community at large as well as enriching a solid pattern of interaction and socialization at the village or town kgotla. Basic human values of sociability, respect, *botho*<sup>35</sup> and inclusiveness are portrayed in a way which makes proceedings take social significance far exceeding that of the adjudication of petty individual cases. This chapter will centre on the concept of restorative justice, linking its argument on the theory of community building and the theory of peace building. The concept of reconciliation will also emerge in the discussion, since most of the work in the Kgotla revolves around people and livelihoods. Additionally, for the purpose of developing conceptual discussions evolving around the research topic, these theories help to explain the functions and roles the kgotla plays as a mechanism in conflict resolutions among the local communities of Botswana. My argument is based on the data collected mainly from Kanye and the views from three chiefs as mentioned in chapter two.

#### 4.2 The Restorative Justice Concept/ Approach

The concept of Restorative Justice (RJ) aims at empowering “victims, communities, offenders and families to repair the effects of harmful event using effective repentance rituals to restore community life” Pavlich in (Walgrave, 2002:1). Although its bases are people as to how they deal with crime, some writers have viewed restorative justice as a phenomenon which is difficult to explain due to its complexity in dealing with wrongdoing (Jeong, 2002). However, other scholars or protagonists view it as a “hospitable, non-alienating, victim-centred and

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<sup>35</sup> Literally refers to a person’s good humanity character

community oriented way to resolve conflicts” Pavlich in (Walgrave, 2002:1). Tony Marshall (1998) sees RJ as a “problem-solving approach to crime which involves the parties themselves and the community in general, in an active relationship with statutory agencies”(Marshall, 1998:5). In other words Restorative Justice brings together victims and offenders and the people around in order to assist victim healing and offender accountability. Restorative justice sees crimes as creating wounds that need to be addressed by holding the offender directly accountable to the people they have harmed while on the other hand helping them too from peril. Apart from crimes, RJ could also be adopted in resolving conflicts between individuals or communities. Conflict here refers to “any discord resulting from almost every aspect of social situations” (Jeong, 2008:6).

On the other hand, Marshall (1999) suggests an RJ definition that is commonly accepted internationally as “a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future”. On this definition, Marshall has been critiqued as his definition limits to explain ‘who or what is to be restored’, and that it does not define the ‘core values of restorative justice...’ such as healing, moral learning, community participation, forgiveness, responsibility, apology and making amends (Braithwaite, 2002:11). Drawing on all the propositions above, one can sum up by saying restorative justice aims at settling conflicts or issues between two or more parties outside criminal courts. In this notion, one can say restorative justice excludes ‘*traditional connotations*’<sup>36</sup>of righting the wrongs by “deterrence, rehabilitation, incapacitation and crime prevention” (Braithwaite, 2002:3). Restorative Justice emphasizes building people’s fundamental fabrics on moral principles, whereas the judicial approach opposes having no room for morality (Walgrave, 2002). For judicial law, crime is crime and it has to be punitive.

In restorative justice processes, offenders should acknowledge the offense they have committed, and if it includes other stakeholders, they should recognize the harm they have caused to them, and then they (the offenders) can express remorse, followed by rectifying the harm or offense. In turn the other stakeholder (offended) has to take the responsibility of accepting the remorse of the offender and then the possibility of disputes settlement between the parties. However the other view of RJ is that if parties want to forgive each other they can do so even though the forgiving part is not necessitated by facilitators.

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<sup>36</sup> Juridical and legal approach on prosecution of the perpetrators of crimes(Kymlicka & Bashir, 2008)

In the literature, forgiveness has been seen as something connoted with religious dogmas and it has been subjected to critique. In the South Africa Truth and Reconciliation Commissions, the reconciliation was by and large based on truth telling and forgiveness. However this truth telling was seen by other scholars as a way of coercing different value systems, especially in a country of multi cultural and multi religious people. Bashir in Kymlicka and Bashir (2008) say “its religious connotations are seen as inappropriate in a secular and multi society, but also because of its emphasis on individual level of confession and forgiveness to the neglect of the larger processes of political transformation”(Kymlicka & Bashir, 2008:14). Nevertheless, others regard that the TRC functioned in South Africa even though the ideology of ‘revealing is healing’ was adopted. Some people believed forgetting the past was noble: ‘bygones be bygones’ (p. 6) and with this community healing and individual healing was vital in the persuasion of national peace(Shaw, 2005).

In my view, forgiveness could be important in order to leave the past and to move on with other issues of life, while I acknowledge that some scars of the past are not easy to forget. One singer in the song *At the foot of the Cross* says “...forgiveness is like a crown” (Moen, 2004) Crowns are normally associated with victory, sovereignty, and empire. It is a visible sign of success and often used by monarchs. Therefore forgiving may mean that one has conquered the historical embedded sorrow in his/her life even though to the other it may mean the opposite.

Restorative justice adopts many different ways of how people handle or solve problems. When solving problems RJ promotes a joint aim on settling issues. These involve the offender, offended and the community. Through the facilitators a settlement has to be reached through negotiation with modification of strategies of maximizing individual benefits. Parties may cooperate to establish agreeable facts by exploring a fair assessment of each other’s claims. The whole idea is to avoid violent confrontations, hence calming the matter. Jeong alludes, saying “in a compromise situation, neither party wins or loses as a result of the trade-off of concessions in favor of what each considers important” (Jeong, 2008). Therefore, restorative justice aims at leaving both parties in harmonious amicable situations after the case.

Comparing RJ to the Kgotla system and basing my discussion on the definitions and explanations above, the Kgotla system functions in settling disputes among its local people

("Bogosi Act Chapter 41:01, "). The tribe's people could bring any sort of cases to the Kgotla and this means that Kgotla or customary court cases and conflicts arising from the local community are tried and resolved in the Kgotla. The cases are mainly presided by Kgosi or Kgosana and/or the chief advisors. They deal with the proceeding and pass judgments on the matters before them. In addition, the hearing is open to all members of the community and they could have a 'say', even though when passing judgement the absolute decision is made by the panel mentioned above.

RJ also aims at reconciling parties at conflict. Veitch stipulates that reconciliation is often discussed in terms of 'restoring moral community' and on this account wrongdoing "alienates the perpetrator both from the victims he has injured (by failing to show respect for them as his moral equals) and from the moral community he has disturbed (by violating its publicly shared norms)" (Veitch, 2007). In other words, wrongdoing has the capacity to destroy social structures in the community. Therefore the community expects its members to follow what is morally accepted by all; otherwise wrong doing undermines both the victim and the community obligations. Therefore, one is bound by some community moral values expected by the community in which one lives.

On the other hand, reconciliation as one element of RJ is initiated by the perpetrator's acknowledgment of the wrongfulness of his act, followed by remorse and reparation, which opens the way for restoration of the community. In divided societies, neither community nor communal norms can be presupposed because the politics of reconciliation turn precisely on the question of belonging and the terms of political association. While moral judgment necessarily presupposes a universal moral community, the politics of reconciliation are always enacted in relation to an anticipated political community that is a contingent possibility of a particular historical context. However, in order to understand the reconciliation politically, we should therefore think in terms of revolution rather than restoration (Roermund, 1997). As such, reconciliation would not begin with the recollection of the prior state of harmony in terms of which our present alienation might be understood and redressed. Rather it would be initiated by the invocation of a 'we' as the basis of a new political order. Bert van Roermund further suggests that in certain circumstances "reconciliation is what makes the revelation of truth possible" (Roermund, 1997)

Although RJ contrarily does not use any common laws like the Kgotla, it is structured. The Kgotla therefore uses customary laws which are documented in the customary penal code. The judgement applied in civil and criminal cases is uniform all over the country and it is only applied in the Kgotla. The customary law among the few civil cases, establishes inter- alia to the privacy of people in regard to personal issues, property and contracts, and provides for redress, if such rights are violated. The law may compel restitution or compensation from the offender. However, the customary law used to address both civil and criminal cases in their tribes and civil wrongs recognized in Tswana customary law included breaches of contract; seduction, adultery and similar offences against family rights; trespass, damage, theft and similar offences against property; defamation and other wrongs while crimes recognized were homicide, bodily assault, sorcery, incest and other unnatural acts (Schapera, 1970). Nevertheless, such offenses still occur in the community but the exercise of the customary law has been curtailed when dealing with many of these offenses. Thus all civil and criminal cases dealt with by customary law are documented in the Customary Court ("Customary courts : Chapter 04:05,").

For example, civil cases in regard to personal property, for instance, if one had stolen a cow; he could pay two or more cows to the offended depending on the gravity of crime. One must understand here that the judgment seeks to provide for coexistence between the offenders and offended. Therefore in any offense or crime tried in the Kgotla, litigation could be in the form of communal service, reimbursement or corporal punishment (public flogging), which is administered by *mapodisi a kgotla*.<sup>37</sup> This in a way gives the offender the chance to be reprimanded and also get the advice on an accepted moral behavior. Hence he/she continues to be reintegrated into the community. The system does not in many cases exclude the wrongdoers from their communities but rather aims at correcting the wrongdoing and promoting the good of the community or society at large. The whole principle of dealing with issues in that manner has its roots on *botho*. The term *botho* is connotated in the concept of "A person's humanity is 'relationally tied to those of others' which in its essence describes ones' attitude and a way of life with one another. (Kimmerle & Wimmer, 1997) in the article; *A New Approach to African Philosophy* says that the first aphorism means that "to be human is to affirm one's humanity by recognizing the humanity of others and, on that basis, establish respectful human relations with them" (p.7).

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<sup>37</sup> Customary court local police officers even though no longer existing



The concept of *botho* is more philosophical and it often evades definition but encourages one to savor intellectually and experientially. It attributes to human acts such as respect, good manners, helpfulness, recognition, concern, compassion, forgiveness, sincerity, generosity, hospitality, brotherhood, sisterhood, caring, sharing and many more such concepts depicting similar experiences. “This principle plays an important role in the way we as Batswana interact in society. It is also through this principle that we are able to derive morality and morality being a sense of behavioral conduct that differentiates intentions, decisions and actions between those that are good and bad” (“*Botho & Vision 2016*,”).

Hence a morally upright person has to adhere to community accepted behavior (Boulle, et al., 1989). This is one of the bases on the function of the *Kgotla* in relation to the community they serve. *Botho* is more encouraged in the community, as the concept is recognized among the five Botswana national principles.

*Bogosi* is the hallmark of Batswana culture and the country’s political life. The government of Botswana recognizes the institution as envisaged in Botswana’s *Vision 2016*<sup>38</sup>. In the *Vision 2016* pamphlet it says that “traditional leaders will be an important part of the democratic process through which the long lasting “*Kgotla*” system will pass from generation to generation. They will play a significant role as custodians of our culture and tradition...” (p. 11). Therefore the *kgotla* institution, as pivotal in the national culture, provides a welcome instrument in the hands of the Botswana state elite seeking to legitimate and perpetuate its position of power.

### **4.3 Positive approaches to Peace Building**

Peace building is based on preventing the recurrence of the violent conflict (De Coning, 2008). The assumption is that peace building is needed in order to avoid the occurrence of violent conflict. In actuality, conflict does not necessarily need to be violent only in order to be avoided. Sometimes conflicts may be positive, aimed at righting the wrongs. In addition to the concept of preventing violent conflicts, peace building could refer to the “full spectrum of intervention that is focused in restoring relations between groups that have been in the conflict” (Makaula & Chiwandamira, 2006:15). In other words peace building may go hand in hand with conflict although peace building could also be solely positive. It is fundamental in

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<sup>38</sup> Booklet on Botswana’s *Vision of progress towards the year 2016*

conflict resolutions to maintain ways by which social integration is promoted for people forwarding peaceful resolutions in conflicts. The goal of social integration is to create “a more stable, safe and just society for all”, in which every individual, each with rights and responsibilities, has an active role to play. As such peace building involves a number of different aspects, which may include forgiveness, cooperation, negotiation, facilitation, creation of mutual understanding, and/or reconciliation” (ibid:15).

Such an inclusion in the society must be based on the principles of embracing and not coercing or forcing, but a diverse participatory process that involves all stakeholders in the decision-making that affects their lives. It is important to understand that social integration is not an end-state that societies can achieve but a dynamic process in which societies engage in order to further human development, that is to say, “an integrated society... continually adapts and adjusts to accommodate different elements and through such adaptation it maintains its inner cohesion” (*UN fiftieth anniversary 1945-1995*, 1995)

The Kgotla in Botswana has played a role in promoting social integration through the immemorial use of idioms, riddles and proverbs that are embedded in Setswana culture. Those idioms, riddles and proverbs are used in many ways. They mostly used to praise, to scold or appraise people’s behavior, hence promote or rather coerce accepted good morals among the people. The idioms, riddles and proverbs encourage people to adhere and thrive for good societal moral values which in a way help them to be tolerant towards each other. The use of such figurative language is common in Botswana, starting at the family level up to the societal level. The Kgotla therefore, took advantage of this and with that they enhanced its entire community by promoting good moral behavior and thus coercing equal opportunity in social gathering.

Batswana’s culture and lifestyles are enshrined in proverbs, idioms and riddles which were/ are used as part of teachings on socialization and teachings on deterrence. Such proverbs, idioms and riddles were metaphorically made based on nature, animals, people, trees, hills etc. Their basis is in metaphors, simile, hyperbole, metonymy etc and all refer to people such as chiefs, general leaders and community. For instance, *Kgosi ke modisa wa batho (the chief is the shepherd of his people)*(Mabena, 1997). This was a mandatory way of indirectly telling the chief that he has a primary task of promoting the interests of the people equally and without any biased or discrimination. The other proverb is ‘*Kgosi ke letlharapa le kotanngwa*

*ke dinonyane tsothe*’ (the chief is a tree branch which every bird seats). The other proverb used to appeal to the chief was that (*the chief is the chief by the grace of the people*) by this it meant that the chief cannot be an island, he has to accept and accommodate all, if not he does not qualify to lead the people. Vice versa, the people need to assist the chief for him or her to be effective.

Other proverbs such as ‘*Mmualebe o a be a bua la gagwe*’ encourages the liberty for freedom of speech and promotes democratic values among people, even the ‘ordinary’ people, by encouraging them to raise their voices in decision making. The Tswana political system is predominately democratic, in the sense that a chief generally had to act with consent of the tribe, though sometimes the chief could act based on his personality traits and the prevailing circumstances. The chief is expected to serve the community as a whole.

Therefore by linking the kgotla to positive peace building, one can already see that proverbs are used to deter people from doing bad, or to put chiefs in the position of mediating. For instance, there is a belief in proverbs such as “*molemo wa kgang ke go buiwa*” (*the good on the conflict is discussion*). By this it is meant that if one has wronged another one, then they have to sit down with other people such as mediators and talk about the issue until it is resolved. The other one is “*ntwa kgolo ke ya molomo*” (*the greatest fight is verbal*). This also opens the platform of discussion and there is an emphasis on avoiding physical fight. The proverbs addressed issues such as community and family life, leadership and teamwork, behaviour, hospitality and nourishment, motivation, situations and human nature. Therefore when someone has wronged somebody, people come together at the Kgotla and they talk about the wrong which in the end could lead to the resolution and this is done in order to promote peace and harmony among communities (no man is an island), i.e. people need each other.

#### **4.4 The theory of Community building**

##### **4.4.1 Definition of term**

The term Community is said to be ‘elastic’, therefore it is often defined by its features, which could be the focus on harmonious type of bonds between people, geographical areas or a group of people living in a particular place or community as an area of common life. In descriptive terms a community is put in three categorical descriptions by (Hoggett, 1997), as

follows; territorial or place - community can be seen as where people have something in common, and this shared element is understood geographically. Another way is interest - people share common characteristics other than place. They are linked together by factors such as religious belief, sexual orientation, occupation or ethnic origin. An example of such will be distinctly different tribes in Botswana in terms of religious beliefs and ethnic orientation.

Hoggett (1997) says that development in what might be called the sociology of identity and selfhood have played an important role in 'opening up the conceptual space within which non-place forms of community can be understood' (Hoggett, 1997:7). In other words identity and selfhood play an integral part in defining groups or communities and these have been seen as the key features in contemporary life. Communities have certain common features which they identify themselves with in order to be belonging to a certain group.

The last category is communion - in its weakest form we can approach this as a sense of attachment to a place, group or idea (in other words, whether there is a 'spirit of community'). In its strongest form 'communion' entails a profound meeting or encounter – not just with other people, but also with God and creation (Smith, 2001). An example from a Botswana scenario would be Badimo (ancestral spirits or literally mean Gods). Different communities in Botswana admonish themselves by associating themselves with certain cults that are relevant to them but not to the other, for instance, the Kalanga tribe associates with Nwali as their creator (Gluckman, 1972:245). Although many groups/tribes in Botswana believe in Badimo with an African notation on African Traditional Religion, many turn to do good in respect of Badimo, because doing bad means provoking the Gods to anger, hence bad things may happen to an individual. This is a common belief in Botswana but their way of worship varies from tribe to tribe and with it makes every tribe unique from each other. The beliefs and the uniqueness on how people serve their gods make each community's identity. Therefore, people could easily associate themselves with one another of the same belief.

In addition, Marglin (2008:20) defines community in terms of providing social glue, binding people together in relationships that give form and flavor to life. It could be a set of social interactions, human behaviors that have meaning and expectations between its members. Normally such behaviors are based on shared expectations, values, norms, customs, beliefs and meanings between individuals. Steven attests saying that "by the same token, community depends on constraints and obligations that transcends the calculation of individual utility"

(Marglin, 2008:20). In regards to the set up in Botswana, the explanation on community above covers the ideology defining different tribes in Botswana. Generally Tswana society is culturally composed in patrilineal, patriarchal and patrilocal ways. Therefore, people tend to associate themselves in line with their families, hence promoting their originality (i.e. the region where their father came from, beliefs, locality, cults etc. It is easy for Botswana to demarcate themselves geographically, culturally and ethnically; thus the constitution of Botswana recognized this and the country is divided into districts and sub districts which corresponds with different ethnic tribes in Botswana.

However, this shows that the members of a community have something in common with each other and these things held in common distinguish them in a significant way from members of other communities. But the fact that people have something in common and live close to one another does not necessarily mean that they have much to do with each other. People could still be individualist and performs things that do not pertain to the rest of the community norms and customs. There could be little or no interaction between neighbors, especially nowadays. Whether people are disposed to engage with one another is dependent upon the norms of a particular society or community and the extent to which individuals make them habits of the heart. (Smith, 2001)

#### **4.4.2 The Kgotla in relation to the theory of community building**

In the Botswana set up, a cluster of families make up a ward and many different wards make up a community in a village. Therefore every dispute in a family is normally solved at a family level and if the family fails it is taken to the kgotlana (arbitration), but this does not rule out the fact that some could actually report their differences to the kgotlana. Senior Legal Officer in the Open Society Justice Initiative Chidi Anselm Odinkalu (2005) in the article entitled *Pluralism and the Fulfillment of need in Africa* says that in Botswana, “dispute resolution in the traditional courts aimed at preventing the rupture of relations, in addition to righting the wrongs”. (Odinkalu, 2005) The process starts at family level where the families or relatives of the disputing parties try to prevent the dispute from getting out of control and becoming a matter of public knowledge. If the dispute cannot be resolved at a family level it goes to the ward *kgotla*, the traditional court that is a localized court in the area where the defendant resides. In case the matter cannot be resolved at the ward *kgotla*, it goes to the main *kgotla* presided over by the chief. The *kgotla* exercises considerable statutory jurisdiction over criminal matters, extending to powers of imprisonment for up to four years.

The Kgotla aims at uniting, reconciling, mediating and restoring people. The kgotla is actively involved in community building, aimed at unifying its local communities. In recognition of Kgotla eminence the government of Botswana installed customary courts, even in urban centres in order to resolve conflicts and petty offences.

#### **4.5 Conclusion**

In retrospect, restorative justice aims at bringing together victims and offenders and the people around in order to assist victim healing and offender accountability. It has therefore become imperative to take note of restorative justice in this contemporary era. It does not matter how many prisons and rehabilitations centres we could build, the fact remains that people will continue to wrong each other and therefore we need restorative justice to prevail in order to build the societies we live in. People need to reconcile with each other in order to avoid hostilities that create more violence. As restorative justice involves a lot of activities it may be seen as positive peace building. And as such it involves a number of different aspects, which may include cooperation, negotiation, and facilitation, creation of mutual understanding, reconciliation and even forgiveness if an individual wants. All in all it encompasses people, and people are in a community. There is a need to resort to some positive measures that aim at building the community to continue living together in exclusion of violence. Moreover, habits such as tolerance, hospitality, loyalty that are needed to pursue a participatory politics of the common good. These are qualities of a good character as well as social virtues; hence the community should emulate them.

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## **CHAPTER FIVE**

### **5.1 DATA PRESENTATION, ANALYSIS AND FINDINGS**

In this chapter I will give the analysis of the data collected during the field work in Kanye main Kgotla, complemented by the views of the two paramount chiefs in Ramotswa and Molepolole. The chapter will analyse and discuss the existing ongoing chieftainship, and its significance pertaining to conflict transformation of the local communities affiliated to Kanye main Kgotla. It will also explore the Kgotla functions in Botswana today. With the aid of the theoretical framework and conceptual approach presented in chapter 4, an attempt will be made to relate these to the data gathered during field work. The intention is not to prove its full efficiency on whether or not it has helped in providing resolutions on all local conflicts in Botswana but to discuss its significance in conflicts resolution. This is based on the data gathered during field work and supplemented by secondary sources.

The chapter is divided into two parts: the first part will interpret the socio-demographic characteristic of the informants through the use of a questionnaire and oral interview. The second part I will expound the analysis of data collected by all the methods used i.e. through questionnaires, oral interviews and observation.

#### **PART ONE**

##### **5.2 Profile analysis**

The respondents are residents of Kanye and surrounding villages affiliated to Kanye main Kgotla. Different groups of people responded. They were either public servants working under Kanye Kgotla or the community members receiving services from the Kgotla. The information given here was gathered through the use of oral interview.

As shown on table 5.1, the socio demographic information includes age, gender, level of education and occupation. In total four different groups of people responded on different days. The interview was conducted for two weeks. 31 people in total were interviewed. The method used was focus group.

Table 5. 1 The table shows the summary of people interviewed.

Group	No. of respondents	Age range	Gender: M /F	Level of education	Occupation
1	8	45-70	m.7 f. 1	6 had primary school, 1 had junior school and 1 had senior secondary school	5 headmen 1 chief advisor 1 chief representative <sup>1</sup> 1 house wife
2	11	45-70	m. 11	11 had primary school	11 headmen
3	7	35-45	m. 4 f.3	2 had primary school, 3 had junior school, 1 senior school and 1 had tertiary level	3 men- construction labourers 1 teacher 2 house wives 1 unemployed
4	5	18-30	m.2 f.3	2 had Primary school, 3 had junior secondary school	1 man- clerk 1 man herdboy 2 women shop assistant 1 woman cleaner

### 5.2.1 Age Disparities

Informants were asked about their age individually and their age is given summarised in the table. Group one and two had 18 different informants. The groups consisted of different headmen and other Kgotla workers. Both groups show age ranges from 45- 70 years. This means that most of headmen are above the age of 40 and these are people considered as advisors, rulers, judges and decision makers in the dikgotlana. They help the chiefs in trying cases in customary courts. They become part of the jury. Traditionally (in the Tswana context) the status of being headmen is associated with old age, experience and wisdom.

The customary law act designates them to preside, make judgment and arbitrate cases and disputes. The headmen help the Kgosi and they are respected as custodians of Tswana culture and the customary law. Their judgment or arbitration in any case or conflict is respected and taken as worthy.

In Bogosi tradition, people who are under the age of 40 are regarded as young, and therefore inexperienced in customary issues. If the chief is of that age, normally a few elders in Bogosi would be chosen as the chief's guardian on custom issues. Nevertheless the chiefs could ascend the throne at the age of 18 as long as the government and the community agree. Chiefs



and headmen could even be on the throne at the age of 70. However, the constitution allows them to retire at the age of 75. Generally in Botswana, elders (not only in the chieftainship) get ultimate respect due to their age and social space. Therefore they are recognized as senior citizens; hence custodians of culture.

Group three and four consisted of people with ages ranging from 18-45. They were ordinary community members. Informants in these groups were chosen purposefully. Within the same group, most of them were coming to the kgotla to reports cases or having been summoned. Their age disparity shows the active group getting services from the Kgotla. However my observation shows that people from the age of 40 often uses Kgotla more than those under the age of 40. Nevertheless most are criminal cases, e.g. fights involving people under the age of 30.

### 5.2.2 Gender Disparities

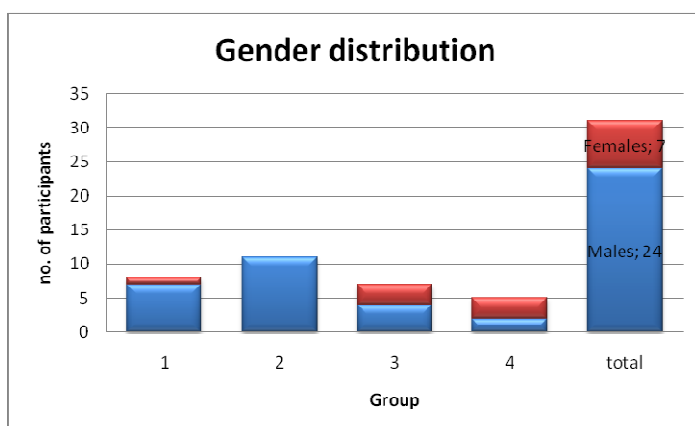


Figure 5.1 Summary of gender distribution of participants in oral interviews at the Kanye Kgotla.

Figure 5.1 shows that majority of respondents were males. Group one has seven males and one female, while group two shows 11 males only. The gender disparity signifies the traditional set up in Tswana tradition. Men usually sit in the Kgotla (Melber, 2007; Schapera, 1994) the majority of informants in group one and two were males as well as headmen. The term '*headmen*' in English denotes a gender aspect, although in Setswana vernacular it is neutral. It is common among communities in Botswana to have headmen or even chiefs as males. However, there have been some changes in the chieftainship.

Nevertheless, group one had one woman, and in regards to the significance of her role in the kgotla system she did not represent much. She was accompanying her husband and

represented women on issues and cases pertaining to them. Personally, I saw it as a complement that the woman was sitting with men in the Kgotla. This would not have been the case in the olden days. This arrangement is at variance with the view that in the traditional Setswana culture women were regarded as socially inferior to men, treated as minors and under customary law “women were subject to guardianship throughout their entire life which could be their fathers or their spouses” (Mikell, 1997:263).

Radijeng (2004) in his thesis on Customary Law and Gender Equality: the Legal Status of Women in Botswana says, “power is predominately in the hands of men who are unwilling to share and extend the same status positions and privilege to women”(Radijeng, 2004:42). As a consequence, women are mostly left subordinated and disadvantaged in customary law practice. The patriarchal structures seen in Bogosi normally determine gender status on the basis of conceptions that do not afford all equal worth and respect. In addition Kgosi Seboko’s views on women status of being leaders is that *“People have been culturally socialised that women cannot be leaders, so this is a challenge people need to face to see the realities of it”* (field work interview 2008).

However, although there might be insignificant number of women sitting in the Kgotla as leaders, most women use Kgotla for conflict settlements. They do attend Kgotla meetings in large numbers. Most women in the community, regardless of their age, do reports cases at the Kgotla while few men do so. And those that do are mostly elderly men in the village. The other group of men prefers taking their cases to the magistrate courts. This also depends on the affordability on legal councils. The research has shown that elderly men usually treasure Kgotla meetings, consultations and listening to trials on any ongoing case at the Kgotla.

### **5.2.3 Education and Occupation**

Table 5.1 shows the level of education of the respondents. They were asked individually about their level of education. The table shows that the level of education is from primary to tertiary level. Group one and two consisted of headmen while group three and four were just ordinary people chosen at random.

Group one and two show that most of our headmen have acquired basic education, i.e. from primary to senior secondary school. In total group one and two shows 17 headmen had

primary education, one had junior secondary school and one had senior secondary school level. This shows the level of education of people sitting and making decisions at the kgotla or kgotlana. However, it also shows that most of the headmen are not highly educated. This is due to the old education system in Botswana. Although they are aged 45-70, many of them grew up during the time when education was scarce. The education system in Botswana developed from 1977, when most of the people got the opportunity to study (Moswela, 2007).

However education does not say much when it comes to chieftainship. The general requirement is that the chief or headman should be able to read and write. This is because they deal with written law and moreover, there are other types of kgotla work that need someone with reading and writing skills e.g. signatures. But when dealing with cases and disputes one needs wisdom, experience and knowledge on tribal customs and tradition. Generally speaking, education does not play much role on people's customs and tradition.

From groups three and four, table 5.1 shows that the level of education ranges from primary education to tertiary education. In total the two groups had 12 people. From both groups four people had primary level, six people with junior secondary level, one with senior secondary level and one with tertiary level. The level of education implies the type of jobs one could get. Few in this group could get white collar jobs while many could achieve blue collar jobs. Only one person had tertiary education, and so had a teaching occupation while the rest in both groups had junior or senior secondary education which indicates a lower level of occupation. However, the education and occupation disparity shows that different types of people come to the Kgotla for different reasons. Some of them had brought cases and some have received summons while others came for other services provided at the Kgotla.

However, this does not mean that only this type of people use the Kgotla. Generally speaking, people of all kinds use Kgotla for one reason or another. When looking at the kinds of people who bring cases and disputes to the Kgotla, people generally assume that these people are often unemployed or employed but not with white collar jobs, and that this is due to the low level of education. Some critiques have been that the people who report their cases to the Kgotla are people who are "deemed to be either less important or poor" (Seretse, 02-2010). The general view is that most of the people who take their cases to the Kgotla are those living in the village. The Kgotla is the court nearest to the local people and the services are free.

However, most of the people feel connected to their chief and their Kgotla; hence the chief is given due respect and trust.

## PART 2

In this part I will analyse and discuss the chieftainship functions as an institution for conflict resolution. With the aid of examples of cases observed in the Kgotla I will explore the roles that the chief in the kgotla plays in conflict resolutions. In expanding the analysis, headmen and Lekgotla (juries) roles will also surface. Moreover, terms such as mediation, restitution, restoration and forgiveness from the field of restorative justice would be used.

### 5.3 Kgotla Structure

**Figure 5.1 Kanye main Kgotla**



**Photo: Piwane Constance Moumakwa/ July 2008**

As mentioned earlier, the Kgotla is an open structure that is open for everyone. Figure 5.1 shows an example of a modern structured Kgotla. In the past it was often a wooden structure in the form of a kraal or sometimes it could just be an open place usually under the shade of a large tree (Mabena, 1997:25). In modern time the structure has not really largely changed; it is

still built in the form of a kraal using large timber. It could be thatched or not. In the Kgotla, men sit in wooden chairs. Although the picture looks dark it also shows the chairs where men usually sit in the kgotla. In the Kgotla the chief and headmen seat in a semi-circle during cases or any meeting. The seating arrangement signifies the equality in the Kgotla and facial confrontation. The belief is 'mafoko a matlhong' (*words are easily spoken out when facing each other*). This also marks each other's facial expressions and deters people from telling lies or misbehaves. However during large gatherings, the chief and his entourage sit in front of the people.

### **5.3.1 Who Uses the Kgotla?**

The Kgotla, by its structural definition, serves all people i.e. men and women regardless of their race, tribe, language, or ethnicity. The chief by job description works in the Kgotla. In the Kgotla he can be approached directly by his community. People could come with news, petitions and complaints. Moreover the government officials could also approach the chief on any discussion involving his village. The chief is the representative and spokesperson for the tribe in all its external relations. However, the community treats their chief with great respect. He/she has the mandate to settle disputes and cases reported at the Kgotla within his jurisdiction under customary law. In addition, the deputy chief, chief representative and other administrative workers also work hand in hand with the chief on daily basis. The headmen work under their kgotlana. Thus the chief could delegate headmen to assist him on presiding over cases or civil disputes and hearing appeals from the verdicts of lower courts.

People usually come to the Kgotla for services; such as chief's signatory, confirmation letters, report cases, report death etc. And with that, different people use the Kgotla for various things. People come to the Kgotla for gatherings and meetings. However, it is interesting to note that during Kgotla gatherings adult men rather than women take most part in the deliberations. This perhaps has an influence on the fact that 'Tswana traditional society is male- dominated' (Edge & Lekorwe, 1998). Few women are able to take part even though they are the majority in attendance.

Although the Tswana traditional society has been male dominated, there has been a remarkable change whereby some women are chiefs. On the other hand, the field work (2008) reflects that in most instances many women use the kgotla. They do report cases and go for

the chief's help when they have disputes to settle. The majority of women attend kgotla meetings and other activities officiated at the Kgotla e.g. marriages officiated at the Kgotla. However, concerning the community involvement on hearing cases or disputes at the Kgotla, the community's attendance varies from day to day. It depends on the case and who is interested, even though the kgotla hearing is open to all community members.

**Figure 5.2**



**A picture of people coming to witness a wedding officiated by the chief  
Photo: Piwane Constance Moumakwa/ July 2008**

### **5.3.2 Examples of Cases tried in the Kgotla**

Because of the dual court system in Botswana, most of the cases that are more seriously criminal as well as more serious civil cases are referred to the magistrate courts. This is due to the modern limited jurisdiction on the customary courts. Nevertheless, customary courts could hear cases depending on the people involved and the type of case. In the customary courts/ Kgotla law enforcement police are used to holding the culprits who break the law. If the case is to be adjudicated within the Kgotla, normally the local police <sup>39</sup>will issue the summons<sup>40</sup> to the culprit. The summons informs him/her of the accusations and by who as well as the date

<sup>39</sup> The local police enforcement no longer operates under the customary courts but they have been merged within the Botswana police of late ( 2009) <http://prgobw.blogspot.com/2009/05/botswana-police-service-and-local.html>

<sup>40</sup> Summons

and time of the hearing. In a case where an investigation is needed, the local police will investigate the matter and file a case against the offender in which he/she will be summoned to the Kgotla. The complain tiff and witnesses will also be summoned with an updated date of the case hearing. To show some of the cases in the customary courts the following cases will be used in the data presented from the field work. The data was recorded during direct observation and registered as shown in table 5.2.

### Case 1

X is a man with other employees; he worked for B plastering B's house. During work, X was very arrogant, uncooperative, used vulgar language towards others and sometimes he would leave for alcohol consumption during working hours. Others realizing this, complained to the employer (B). Then B addressed X on the issue which ended up in disputes, and then B cut out X from work without payment. X became very angry and came to report the case to the chief at Kgotla.

At the Kgotla X as the complain tiff <sup>41</sup>presents his case before the lekgotla (jury) and then the plaintiff B ask X questions for clarification on what he just said. Thereafter the jury gives the plaintiff chance to narrate his story. Then the witnesses state what they know on the case. After deliberation by all sides questions are asked by the Lekgotla in cross-examining for the truth.

The chief comments on X's behaviour to have contributed to his job loss and then the chief referred some questions back to both X and B.

**Chief:** *X, what is your need?*

**X:** *I need to be paid the agreed price i.e. P700, for plastering the house*

**Chief:** *B, what is your need?*

**B.** *I want the court to assess the payment required by X based on the work he did.*

After questioning the two the chief summarised the case and then reprimanded X of bad moral behavior in the community and society at large.

**Chief:** *“the court takes the opportunity to inform X to be serious and work hard if given work to do. You are still young and we encourage you to know that people are looking forward seeing you working hard and improving yourself, your family and the country. You must shy away from toxic drinks because they lead no way.”*

The jury evaluated the case and realized that X indeed had worked for some time for B, but because of his behavior he lost his job and the jury therefore “asks B to pay X, P400, after assessing X work, B has to pay X within 30 days. If B is not satisfied with the judgement, he has to appeal within 13 days to the customary court of appeal.

<sup>41</sup> Complain tiff and plaintiff are Legal terminology used only on case one because of how it was addressed in the customary court.



**Table: 5. 2** Observation sheet schema at Kgotla during court cases (indicating cases, who resided, type of people and resolution reached in each case). *N.B this were real cases and real people therefore discretion is needed.*

day	Adjudicator	Type of case	Age of clients	Resolution/Adjudication
1	headmen	civil case (girlfriend wants to separate from boyfriend)	25-35	separates girlfriend from boyfriend, boy ordered get own accommodation
2	chief	civil case (employee not paid by employer-after conflict)	25-40	employer ordered to pay back the money owed =P400.
3	headmen	criminal case (stolen axe)	22-50	offender ordered to take back the axe or pay P130 in 30 days.
4	headmen	criminal case (one hits & cuts another by broken bottle at night club)	22-32	chief reprimands both men on good behaviour, and then the offender fined P200 to in 30 days to customary court
5	chief	civil case ( man wants his child custody)	30-35	man brought 3 cows to pay the woman, then the court allows him to get child
6	headmen	criminal case (man stole clothes)	25-30	Offender ordered to buy new clothes for victim or pay P130= clothes
7	chief	criminal case (fight between one person and a group)	21-25	offenders got 2 lashes each on bare back ( mabele a podi-goat nipples)
8	headmen	civil case (a woman terribly insults another woman)	26-32	the chief reprimanded both women on good moral behavior and then the offender was sentenced to communal service, to clean kgotla and its surround for 30 days
9	chief	civil case (sister quarreled over home chores)	30- 33	offender apologies and reprimanded of good moral behavior
10	chief	civil case (adultery relationship)	30-40	parents intervenes, & the woman to pay 8 cows to married woman = P10,000
11	chief	Civil case (family disputes over son's burial)	36-60	Both encouraged forgiving & reconciling and burying their dead.
12	chief	Criminal case (man stole goat)	40-45	offender bring 1 goat to court to compensate victim
13	chief	Civil case (2 family fights over compensation after partner/son death)	45-50	1. Families to forgive cooperate, support each other. 2. bring comp. money to kgosi and then discuss more later
14	headmen	Criminal case (burglar)	19 yr old man brought for stealing	offender lashed 3 strokes, ordered to bring stolen items
15	headmen	Civil case (not respecting grandparent)	19-65	3 grandchildren reprimanded and each got 2 stroke each (mabele a podi)



**Case 2: Theft**

If a person has stolen one's livestock or has committed any other common theft, the owner of the livestock/item would report the issue to the headman or the chief at the kgotlana or kgotla. Then if the offender is known, he/she would be brought before the lekgotla for trial at the kgotla. The owner will present his case before the lekgotla after which the accused will also narrate his/her story. If there are witnesses, they will also tell what they know about the case. Questions will be asked by the Lekgotla in cross-examining for the truth. Later the Lekgotla will pass judgment and if the accused is found guilty he/she will be ordered to replace the stolen item. For instance, a goat will be paid by another goat or sometimes the offender may be ordered to pay with 2 goats depending on the length of the case. If household items are stolen one will be ordered to bring them back and consequently they will be returned to the owner. But if they are damaged the offender might have to replace them. Mostly, the emphasis is on restitution. This would be, in a way, reprimanding the culprit to learn a lesson to not repeat the same course of action. It is imperative for the culprit to retribute because by doing so he/she shows the community that he/she is sorry and thus forgiven. The community therefore has to accept him, let bygones be bygones and not stigmatize him in any way.

**Case 3: On quarrels and fights**

Men or women may use vulgar language, quarrel or fight over some issues. The fights might end up in bodily harm. The victim would then report this to the headman or chief at the Kgotla. The case is logged against the offender and he/she will be summoned to the Kgotla. Both parties narrate their stories and it is heard by the chief and the lekgotla. He/she that is found guilty would be fined with community service, i.e. cleaning the Kgotla compound for at least 30 days. The fine could also be in payment where the money is kept at the customary court for village development or any community use. In contrast men could be fined two lashes - mabele a podi <sup>42</sup> to mabele a kgomo <sup>43</sup> (four lashes). The lashes are administered by mapodisi a Kgotla with a new stick from the moretlwa<sup>44</sup> tree on their bare back.

<sup>42</sup> Mabele a podi means goat breast tit

<sup>43</sup> mabele a kgomo means cow breast tit

<sup>44</sup> Moretlwa is a botanical local name; the scientific name is flava (Aganga & Omphile, 2000:5). It literally means cane

**Case 4: Family Conflicts**

Families sometimes have conflicts. It could be conflicts of child custody or relationships etc. The parties may want the third party intervention such as chiefs or headmen. One party (victim) reports the case to the chief or headmen and then the chief summons the other party for the case hearing. In most instances such issues are addressed without public interferences (depending on the sensitivity of the issue); therefore the chief and the headmen are the sole adjudicators of the matter. Both parties tell their part of the story and then the jury evaluates the matter and passes a judgement. Evaluation could come in the form of advice to one party or to both. If it is required that the jury has to separate people in a relationship, then the court has the mandate to do so. If that includes extended families, they will be included in the discussion. Sometimes they will be present to get the chief's word concerning the issue or they could be told to stop their influences "lefoko la kgosi le agelwa mosako" means *the chief word is noted and respected*.

Drawing from the cases presented above, it is apparent that the Kgotla is used for different types of cases which are mostly minor and civil in nature. People in the local community prefer customary courts because it is local. People could walk to their kgotlana or Kgotla without much transport expenses. It is quicker for addressing reported issues, because most of the time the chief or headmen are in the Kgotla. Therefore it becomes efficient when people need their cases to be addressed. Moreover, services at the Kgotla cost nothing. Cases are tried free and participation is free.

The customary courts value community building by peaceful means. The chiefs and headmen are involved in the welfare of their communities. Some headmen go around the ward meeting people in their homes. They get involved in community activities, such as funerals and burials, and by doing so they get to know people. For example, when applying for a national identity card (Oman) in Botswana, the application form requires the chief or the headmen's signatory. In other words, the government regards chiefs or headmen as the community's guardian. This in a way challenges the chiefs and headmen's capacity to know their people and the people's knowledge their traditional leaders. However, one may ask about the logic and the significance in this era. Communities enlarge everyday in terms of population, creating culture and community dynamism.

The definition of a community as discussed in chapter four illustrates community in terms of “providing social glue, binding people together in relationships that give form and favor to life”. Thus most local communities in Botswana are socially glued. This could be through family and neighborhood ties. Therefore, if people have wronged each other in the community, it would not be proper or easy for the wrongdoer to isolate him or herself by shying away from the matter. Tswana people have a saying ‘a wrong does not decay; it is the meat that decays’; *this means that there is no period of prescription to stop suit for a debt or wrong* (Gluckman, 1974:8). This implies the need for people to settle their disputes when they are at fault with one another.

Therefore the dikgosi, dikgosana or lekgotla help to facilitate the discussion in arbitration disputes. They try to solve people’s problems and also try to stop its occurrence so that the people can continue living together in harmony. If disputes are left without resolutions they could disintegrate people and cause enmity and rivalry. And if such behaviors occur in the community then it would not be valued in the community. (Gluckman, 1965a) says “protracted hostilities in a village would completely disrupt life...” (p.125). However, the chiefs and headmen also engage in community social integration by getting involved in community programmes such as ‘twantsho borukhuthi’ - crime prevention. The programme engages community members to find ways in which they could fight deviant behaviors in their communities.

### 5.3.3 Tswana Proverbs used encouraging disputes resolution

Tswana custom encourages verbal confrontation and thus people use proverbs such as;

- ❖ “a wrong does not decay, it is the meat that decays” *this means that there is no period of prescription to stop suit for a debt or wrong*; in (Gluckman, 1974:8).
- ❖ “mafoko a matlhong” (people believe in confrontation ‘verbally’ ). If one has wronged someone it is better to confront each other and sort out the problem than having grudges against each other.
- ❖ “motho o tshwarwa ka loleme, kgomo e tshwarwa ka dinaka” (it’s easy to detect a lie through discussion)

## 5.4 ADJUDICATION AND MEDIATION

The chief, the headman<sup>45</sup> and chief advisors play a vital role in adjudication and arbitration in any case brought to the customary court. The chief or the headman cannot compel villagers to obey them, but “a kind of order does emanate from his court” (Gluckman, 1965b:125). This means that the rule given in the Kgotla or Kgotlana is definite regardless of whether the people obey the chief or not. The chief works hand in hand with headmen; therefore on many occasions headmen are called in to intervene in cases at the kgotla. Headmen are also advisors to the chief, and in addition to those specifically chosen for advisory work. However, a group of headmen and other people adjudicating a case form a jury<sup>46</sup> or Lekgotla.

A dispute in a village between families, members of a family, or members of the community would first be referred to the elders in the family. But if the offended wants to take the issue to the headmen (of arbitration) or the chief at the Kgotla, they are free to do so. However, how people want to channel their cases or disputes depends on the nature of the case or disputes. In the Kgotlana or Kgotla people are allowed to use their own tribal language and they could express themselves anyhow but in decency.

During trial the aggrieved person states his or her case fully to the Lekgotla, then the defendant is called upon to meet the accusations and also state his/her story. In a case requiring witnesses, they are called in to state their part too. After the deliberation by both parties and their witnesses the Lekgotla will follow up with the interrogation in an effort to establish the truth or facts in the case. And during the interrogation it is not one man's duty to cross-examine but everyone (the jury, then later the gathering) is given the chance to ask questions. Procedures are followed, such as one has to raise his/her hand to be given the chance. Discussion goes on until an agreement is reached binding one or both parties. However in other instances, cases are adjourned to allow the prosecution the opportunity of further investigation. The fact that the accused and the aggrieved are involved in the case with equal opportunity makes it possible for both parties to accept the conclusion made by the

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<sup>45</sup> Plural for headman

<sup>46</sup> Jury: wise elderly men regarded to have reputation in settling issues, there could be few women due to modern development but it used to be men only

lekgotla. The issue here is not about winning or losing but to reconcile both parties through mediation.

#### **5.4.1 The role of chiefs, headmen<sup>47</sup> and the Jury in mediation**

The chief, headman or the jury facilitates the mediation. Depending on the matter, for instance a family conflict, the resolution would most likely be mediation. However in many instances of petty conflicts or disputes emanating from the ward, the headman settles them at the kgotlana without the need of going to the Kgotla.

The chief and the jury try to mediate people in many instances, for an example (*case 13, p. 57*) a woman whose partner died experienced that the family of the dead man did not want anything to do with her. Therefore they wanted to stop her from participating in her partner's funeral arrangement. They stated that she was not legally married to their son; therefore they did not know her. They knew that according to custom, if they let her participate, her participation in the funeral arrangement would mean that she would have to perform some cultural rituals. And by doing so it would automatically mean that she was his wife. Therefore she would be entitled to the man's property, which would include compensation and insurance money. With the fear of the customary law that may favour the women, they decided to deny her participation.

Upon this harassment, the woman took her partner's parents to the chief at the Kgotla. The chief then called in all the concerned parties and with the help of the jury (lekgotla) they examined the case. In conclusion the chief advised them and encouraged both parties to cooperate and bury the dead man. The chief then offered them the chance to come back after the burial to discuss the money issue. Both parties were happy with the decision and they agreed with the chief's and the juries' points of view.

However in many cases the Lekgotla's intervention in conflict management is communal in character. That is, the entire community as the jury is involved at various levels in the resolution of the conflict. The Lekgotla is both the jury and judges in most of the cases unless the chief himself wants to make an ultimate rule over a case. The Lekgotla's decision in any

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<sup>47</sup> Plural for headman

case is final and should be obeyed. It is crucial to note that in the kgotla or kgotlana there is no legal solicitor which is in contrast with the magistrate courts. The Lekgotla is both jury and judges in all the cases.

#### **5.4.2 Reconciliation and Forgiveness of Individuals at the Kgotla**

From a general view point reconciliation means “reestablishing of cordial relations”, while (Skaar, Gloppen, & Suhrke, 2005) explicitly associates reconciliation with “forgiveness and creation of mutual trust often expressed in the construction of a common narrative of the past and shared vision of the future” (p. 4). And the *shared vision* refers to the notion of ‘imagined community’ which consequently develops into a nation-state. In addition reconciliation is noted in relation to “a comprehensive reconstruction of social bonds between victims and perpetrators” (Ibid: 4).

Henceforth, processes that lead to reconciliation include healing, forgiveness, restoration etc. However in terms of forgiveness; the notion has largely been associated with Christian views, which notes God’s forgiveness to mankind after the fall in sin. Moreover, the act of forgiveness could include both the victim and the perpetrator. The perpetrator has to acknowledge the wrong doing and as such, ask the victim for forgiveness. The victim has to acknowledge the wrong done and then accept the apology from the perpetrator, thus i.e. forgive. However that does not mean that there always will be someone asking for forgiveness in order for forgiveness to take place. There are instances where the victims’ perpetrators are unknown or have disappeared but the damage has happened. In order to allow the victim’s healing, forgiveness is encouraged.

In the Kgotla proceedings on trials and disputes; the full participation of the community and the juries’ full-dress on cases and disputes stand out conspicuously among the various judicial arrangements. The way, in which a customary court addresses issues, we may be inclined to call some of its redress a quasi-judicial approach. But in reality none of our legal terms are appropriate. The kgotla takes all cases with seriousness, knowing that any conflict could erupt into major gravity that could affect the entire community.

“A conflict over a household utensil may be treated with the utmost seriousness by a Tswana chief’s kgotla, while one

concerned with a large family herd may be solved with little difficulty by informal negotiation or mediation. Neither the gravity of the dispute nor intensity with which it is fought is thus necessarily determined by the material value of the object or right in question” Comaroff and Roberts in (Glickman, 1983:87).

When dealing with disputes the juries listen to the parties in dispute and after the truth or facts have been established they could suggest a settlement depending on the matter. The juries’ suggestion on settling both parties is aimed at reconciliation. Both parties should *at least* provide the platform to concur if the case is to be considered successful. The word *at least* is used here because no one is forced to adhere to the settlement, neither does the jury coerce people to settle. Rather, the jury allows both parties to see the need and the possibility to concur on settlement. Consequently people could forgive each other if need be or they may decide not to. However, there is no coercion on any side rather it is important to settle disputes.

Thus, the settlement at the Kgotla is not forced on people. In many circumstances, the chief or jury would try to provide advice. People at conflict are often given the chance to talk to each other but in respect of the jury. In most Tswana communities the belief is that “*molemo wa kgang ke go buiwa*” (*the good on the conflict is through discussion*). This implies that when people have wronged each other it is imperative to discuss it until they reach the conclusion or solution. After the parties have discussed their conflict face to face, the chief or jury could intervene, leading them to solution or settlement. Disputing parties have to understand and concur with the settlement willingly. Galtung (1996) alludes to this, saying that “if outside parties (sometimes called mediators) use carrots and sticks, paying the parties for accepting and punishing them if they do not, then there is no real acceptability or sustainability, unless one assumes that the mediators are parts of the conflict formation, not outside...” (Galtung, 1996:89). People at conflict should make a free choice on concurrence and if one decides not to, then there should not be coercion.

Although all communities need peaceful solutions to their problems, people should not be forced into them. The inclusion of mediators is for the facilitation of mediation services. In the Kgotla however, the mediator has a direct role to play. The mediator in the Kgotla facilitates and gives second opinions, in an effort to settle a dispute, especially if there are

serious disagreements between parties. Thus, the Kgotla's culture of open discussion is based on the role the community plays in intermediation. While the case might be open for everyone in the Kgotla, mediation does not include just anybody. It needs people with wisdom and knowledge on custom and tradition; "men /women of calibre, with oratorical powers and conspicuous of their wisdom and skill in debating cases (Zartman, 2000:171).

Nevertheless, in some instances the chief could make an authoritative rule regardless of any party. Such instances normally involve people who are being fanatic. When the chief or the jury realises that it is not helping to persuade or negotiate with the parties, due to the nuisance between these parties, the chief could decide to make an ultimate rule. Or, perhaps, in a case where the offender shows remorse and is ready to make amends and the offended is not willing to accept this, then the chief, realising the genuine offer from the offender, could evaluate the offense and he/she could pass judgement or could persuade the offended to forgive.

The chiefs are authoritative figures in the communities and a Tswana proverb backs them up saying, *lentswe la kgosi le agelwa mosako* (*the word given by the chief is respected*). This means that what the chief says, which could be a piece of advice or rule, should be respected.

### **5.4.3 Restitution and Restoration as Moral Obligation in Community building**

People in the local community believe in restitution and restoration. According to the definition of Free Online Dictionary, Restitution is the "act of restoring to the rightful owner something that has been taken away, lost, or surrendered and the second definition is "the act of making good or compensating for loss, damage, or injury; indemnification". And Restoration is defined as "the act of restoring or state of being restored, as to a former or original condition, place and the second definition is "the replacement or giving back of something lost, stolen". In other words the essence of both terms is giving back things to the rightful owner and the morality part involves making good for the wrongs done.

The wrong doing includes the physical and psychological harm to the offended; therefore an appropriate measure has to be found in order to suit the offense. The customary law deals with civil and criminal cases; civil cases may also include physical or psychological harm. Generally speaking, it is easier to deal with material harm than physical or psychological



harm. Although the chief has the mandate to deal with all cases under his jurisdiction, the chief could at times deal with issues that are beyond his prescribed jurisdiction. In other words, due to the fact that chiefs are so close to their communities, they act as people's guardian. Sometimes they do face challenges that make them help their communities through 'thick' and 'thin' times.

For example, it could be a complicated case of marriage that is leading to divorce. Under normal circumstances, marriage and divorce cases are dealt with by the magistrate courts. But individuals may decide to first take their cases to the chief at the Kgotla with the hope that they could get some advice and perhaps save the marriage. In addition, there are many challenges in the community, for example witchcraft cases, petty thefts, sub cultures of deviants etc, which even confuse the common law by its nature because some cultural beliefs cannot be easily interpreted or proved. Nor does morality condone the law; for example, if someone stole something because of a definite need. The law may not condone that theft because theft is theft regardless of the driven force. Therefore, with this the chief has to find some ways of curbing, restoring and reassuring the community and the wrongs done. Moreover, there are no simple measures or written regulations in handling emotional and psychological harm, which are other examples of cases dealt with by the chief. Therefore the chief or headman may become like 'psychologists or counselors', trying to be of help to the victims.

However, in the criminal or civil cases that include material things, the customary law requires that items taken wrongfully are to be brought back to their owner or if not the same item then something equivalent for compensation. The community concurs with customary law and in many instances also with restitution and restoration. Some of the locals take their cases to the Kgotla for redress because they know that at least if they would win the case, then they could get their property back.

Duff in Walgrave (2002) says that

“...crime we should seek restoration, and such related aims as reparation and reconciliation; that we should not punish offenders just for the sake of making them suffer, or to deter them and others; and that our existing criminal procedures-our criminal trials, the kinds of punishment typically imposed

on offenders-are ill –suited to the restorative ends that we should be pursuing” (Walgrave, 2002:82).

However, when asking the people why they use the kgotla instead of magistrate court, one respondent said:

*“re kgotsofalela tiro ya dikgotla ka gore dilo tsa gago di a bowa, mme fa e le ko dikgotleng tse dingwe o kgona go loser selo e ntse e le sa gago ka gongwe wa bo o paletswe ke go tlhalosa ka fa go batwang ka teng .Jaaka nkile ka bona motho gotwe a tlhalose gore kgomo ya gagwe e tsang mme ka mmueledi wa gagwe o ne a bua ka sekgowa o ne a palelwa ke go tlhalosa gore kgomo e tsang ka sekgowa”.*

*We are happy with our courts because one get can his/her things back unlike in other courts whereby you can lose on basis of failing to account as the court wants. For example I saw someone who lost the case on his cow because his lawyer couldn't define fully the description on the color of the cow in English.*

In a nutshell, many people in villages are satisfied with the Kgotla proceedings because of the way their cases are treated and the end result of their cases. For example, it is indeed difficult to describe the livestock identity marks and colours in English. People mark their livestock differently from each other for identity sake; hence Tswana expressions in describing those marks and colours are different from English descriptions. Therefore if one takes a stock theft case to the magistrate court it is not easy to win the case based on technical grounds. On the other hand many people believe in getting their items back, especially livestock; therefore they would definitely take it to the customary court unless the case is complex. Otherwise, taking it to the customary court means a reward in ‘disguise’, the wealth of any Motswana man is based on livestock (Maundeni, 2002; Tsie, 1995) .

Nevertheless the statement above does not implicate that in the customary courts, people just get away with whatever they want. It depends on the evaluation of the jury. But the bottom-line is that in most cases where the offender has been found guilty, the court could require him/her to repay the wrong. Usually men with reputable wisdom, who are clever in dealing with complicated cases, handle the case. If jury members feel that the case is difficult they normally keep quiet and allow others to intervene. The juries compose of several men since it is easier to always get someone who could deal with the case diligently. In one interesting case where a young man had stolen his grandfather’s axe and he did not want to admit the

offense, he tried evading the old men (juries) by asking them endless sophisticated questions. But in the end after the jury's turn on interrogation, one man from the jury asked him;

**Man:** "Fa o bona motho a tshotse kgomo ya gago o dira jang?" (*When you see someone herding your cow what do you do?*)

**Young man:** "Ke a itsaya" (*I take it*)

**Man:** "mme jaanong he, neela monnamogolo selepe sa gagwe ka gore o go bone o se tshotse" (*Then give the old man his axe because he saw you using it*)

From the onset the question asked was very tricky because it probed the perpetrator to put himself in a situation whereby he had to act. Although it seemed that the perpetrator was being coerced in a way by the jury, he ended up admitting the offence before the jury. He however, vowed to look for the axe and return it to the owner and the jury, without wasting time, summed up and closed the case. The victim agreed with the perpetrator that he should return the axe. The chief therefore closed the case and told the offender to give back the axe and that if he did not do so, within 30 days he should pay P130, equivalent to the axe price.

In many cases which include tangible things, the court encourages the restoration or restitution of the items by the perpetrator, but sometimes it is also important for the victim to agree with the adjudication. The jury evaluates the case before they could make the judgement. Therefore in most cases the adjudicated rule suits the offence. For example, in some of the cases recorded (see p.57) the perpetrators paid back the stolen items, either with the same things or something in the same quality as the stolen ones. By being given back the stolen items, the offended are getting back their items which makes them feel good and accept the apology if necessary. The community also feel good because:

1. They think that the perpetrator has learnt the lesson that one does not just take someone's things and get away with it.
2. The perpetrator gets a chance of moving on with life rather than the perpetrator going to prison that could ruin his/her life and other daily activities.

In addition the lesson to the offender is that "the offender may suffer punishment or make amends, for example if one had stolen a cow, he could pay with two or more cows to the offended. This was done as a lesson so that next time the same person does not fall on the victim again" (Schapera, 1994:46).

For the community is very important to make amends because in some instances the people involved might be related in one way or another; “Tswana society are patrilineal or matrilineal” (Mikell, 1997). Therefore breaking those ties by an offence that could be repaired might mean a lot in the community. However exceptions could be made, for example if the perpetrator is a perpetual habitual offender. Many people including the chief would want him/her out of the community and so prison would be the most appropriate place.

However, as opposed to the magistrate courts the mixed views of the people using the kgotla are that there is more fairness and justice at the kgotla than in the magistrate courts. Most of the time they think that the perpetrator could be sentenced to a few years in prison compared to what he/she has done, while others think that sometimes in magistrate courts people ‘*even get away*’ with the offences “*through the help of their legal solicitor*”. However, some of the people generally think that sentencing someone to prison does not pay nor build the perpetrators but rather makes them ‘*more hard core criminals*’. These are just the views of the respondents.

The argument is that, for instance in the customary court, if one has stolen a goat the offended would most likely be compensated by a goat but in the magistrate court one would be sentenced to perhaps five years in prison. However, even the offended would not benefit from the sentence. His/her goat would be gone for good. The example would be the first case used in the introduction of this thesis. The offender (old man of 63 years) was sentenced to five years in prison for stealing a goat. After citing some examples of cases administered at the Kgotla and how they are adjudicated, perhaps one would conclude that the old man would have been saved from prison by restitution of the goat. However, this remains a challenge in society at large. Nevertheless, these views do not dispute the rule of law in Botswana, nor do they say that customary courts are better than magistrate courts.

#### **5.4.4. Important Questions to the offender and victim before the resolution**

Although it might vary from case to case and court to court or chief to chief, I found it very interesting to note that when the chief asked questions such as; **Chief: X**, *what is your need?* **Chief: B**, *what is your need?* The questions were directed to each individual respectively.

This shows the importance of giving the people involved some chance to speak concerning as to why they decided to take their case to court. In a way it corresponds with mediation services whereby each party is asked: *what is your need*. I take this is a vital question, especially when we talk of community building. In a way it showed that the jury does not impose their rule or opinion on any party in mediation. However, the point of departure with mediation services is that at the Kgotla the chief, the headmen or the juries makes a judgement, whereas mediation lets the parties agree upon a settlement.

In a few other civil cases, which mostly involved other family members, the chief would ask the parties involved about their opinion as to a solution to the problem. The parties most of the time suggested some alternatives which the chief and the jury took into consideration at the end.

However, these were just a few examples that occurred during my field work and it does not give an account of whether these questions are posed by all dikgosi. However, as a peace student I found those questions very important especially when dealing with people living together in the community.

#### **5.4.5 Mitigation of offenders in cases requiring verdict by the chief**

In cases where it requires the chief's adjudication, the perpetrator is always given the chance to mitigate before the judgement is made. This shows the similarities with the magistrate courts. Then the chief have to consider the mitigation and then the judgement could be given. Upon the mitigation some offenders could even ask the court for lenience because probably they could not even afford to pay back, then they could ask the chief to sentence them to a few strokes. The bottom line here is that it is very important for the chief to allow the offender to mitigate before giving the verdict. The chief has to consider the mitigation because people normally believe in the Kgosi's mercy.

#### **5.4.6 Obligations of the offended and the offender**

In civil cases that evolve conflicts involving families it is imperative to settle the disputes in a peaceful manner. People have to reach to an agreement and be satisfied with it. Leaving 'stones' unturned might mean long term protracted conflict. However it is important that

mediators are fully aware that people at disputes do not just get into signing or prematurely agrees to the settlement without genuinely meaning it. (Galtung, 1996) suggest that,

“... the most naive view one can possibly have on conflict is to believe that the conflict is solved once the elites from the parties of the conflict formation have accepted the solution, as indicated by their signatures on some document outlining the new formation” (p.89).

Although as a facilitator it is not easy to detect if people are genuine with their vow and it is imperative not to rush to a conclusion. The chief or whoever facilitating on the dispute has to make sure that both parties are satisfied with the agreement made. Both parties have to be drawn into the discussion and they should reach a conclusion in order for them to make a long lasting peace. The family and the community involvement is the stake of one's forgiveness and letting 'bygones be bygones'. The acknowledgment of the wrongfulness in conflict by one or both parties is conducive to create a platform on reparation and remorse, and then eventually followed by forgiveness and reconciliation among people at dispute.

However in Botswana, violent behavior is peripheral to Tswana culture and enjoys no moral support in the kgotla. “The lack of moral support is evidenced by the Tswana language's emphasis on ntwá kgolo ke a molomo” (*conflicts are best solved through discussion*) (Maundeni, 2004:621). In a nutshell people believe in a peaceful resolution, therefore this becomes a mandate for both offender and offended to adhere to peace.

The victim's and the perpetrator's acceptance on restoration creates social harmony among parties. The offended has a moral obligation to accept and forgive the offender, while the offender has a moral obligation not to repeat the offence in the community. However, hard core criminals are sent to prison and rehabilitation centres depending on the gratitude of the offence.

#### **5.4.7 Obligations of the community to the offender**

The community has a moral obligation to support the offender and socially integrate him/her into the community. Alienating the offender would not help but rather stigmatises the offender as a social outcast. Because most of the offences dealt with at the Kgotla arose from

the community, it becomes easier for the offender to be accepted by the community if he/she has amended the wrong. Offenders cannot hide anyway in the community because they are known to most of the people. People's community involvement plays a vital role in the village; for example, during funerals and burials, weddings and any community projects. If one is isolated it would not be easy for him/her to participate in the community; therefore a social network is very important.

However if the offender does not acknowledge his/her wrongdoing by facing and discussing the offence it may alienate him/her from the victims and the way in which they are injured? Failure to show respect to them as his/her moral equals and by failing to adhere to the community's moral standards may complicate everything. However, if this happens the victim and the community may shun away from him/her. This could also affect his/her family. The family may be shunned and regarded as a family of 'vagabonds' or accused of any social disorder that is not emulated in the community.

### **5.5 Kgotla floggings as customary court lesser punishment and its social implication**

The constitution of Botswana in conjunction with the Customary Court Act allows the Kgotla the mandate to administer corporal punishment. The penal code cites that; "Subject to the provisions of subsection (4), no person shall be sentenced to undergo Corporal punishment for any offence unless such punishment is specifically authorized by this Code or any other law"(Chapter 08:01 Penal Code, ) and in the customary act it says that; " Subject to the provisions of subsections (2), (3) and (4) and section 21 and to the provisions of any other law for the time being in force a customary court may sentence a convicted person to a fine, imprisonment, corporal punishment or any combination of such punishments but shall not impose any punishment exceeding those set out in its warrant" ("Customary courts : Chapter 04:05,").

Corporal punishment is recognised in Botswana as part of punishment and it is specifically documented on those it shall affect and how it should be done. For example, when one is sentenced corporal punishment, the chief has to stipulate how many strokes (e.g. *see p. 57*) one will receive as according to the law and it is documented by court clerks in the books. In addition the age of the person to be punished is considered. Men under the age of 18 and those over the age of 40 cannot be sentenced to corporal punishment. On the hand, women

regardless of their age cannot be sentenced to corporal punishment.(Chapter 08:01Penal Code).

Nevertheless, if one asks why there is corporal punishment in the Kgotla, the general answer is; *“it corrects the wrongdoer, and as long as it is done according to the law. It is better to be reprimanded by few strokes than sent to prison which ruins our lives and future just for a small wrong”*. And on the same question the chiefs respond saying *“the kgosi has a moral obligation to evaluate prison terms before sending one to prison, whereby they lose the community sense and also it affects their job if they had one, therefore giving them two or so lashes does not interact with their community involvement”*.

It is interesting hearing such views from the people in the community. Moreover, the law continues to advocate for flogging. The Minister for Presidential Affairs and Public Administration Mr Phandu Skelemani said when reading the proposed bill, *“the Bill proposes that corporal punishment be imposed for a wider range of offences upon male criminals under 40 years of age, and that corporal punishment be permitted in default of payment of fines”*(Farrell, 12.2004)

Kgotla floggings have been seen by old people as good and suitable for offenders. Modernity has crept in the lives of the people however, and many have of course begun to question this age-old cultural practice. The argument among some of Batswana is that it seems to be aimed at people who are deemed to be either less important or poor; therefore its application is questionable as it could be violating people’s human rights. A writer, Gasebalwe Seretse in the article: *Kgotla Floggings and Class among Batswana*, says; *“... in most cases, members of the royal family and other important people in the community would not be subjected to flogging. However, there are a few cases where flogging transcended classes...”* (Seretse, 02-2010)

An example on different views on flogging has been showed recently in Mochudi, where Mephato have taken the law into their hand by beating people randomly with the consent of their chief. This has caused upheaval in Mochudi, because some believe it is the right thing while others refute it. But the bottom line is that, it has not been done accordingly. Corporal punishment is administered by the court and it should be administered in the court after the trial ("Customary courts : Chapter 04:05,"). Mephato have been beating people without regards to age restriction as it is written in the customary penal code and also without discretion of their culprits being male or female. Recently the chief has been dragged to the



high court by some of the culprits and this has caused commotion in the village where others felt the chief rule is acceptable as long as he does it under his jurisdiction.

### **5.6 Kgotla Institution Critiqued**

In the past Kgotla was seen as the ‘veto power’ over all matters concerning the village and its villagers but now times have changed and this is a clear indication that chieftainship is dynamic. Some of the critiques against Kgotla institution as argued by other scholars are that the Kgotla is undemocratic in its nature, for example when it comes to who becomes the chief. The fact that the chief has to be born into the royal family and that it is only his children that can inherit the chieftainship has indeed probed some questions on its democratic ‘voice’. “How can a democratic institution have leaders who attain leadership so undemocratically? (Mbuya, 04 2010). The question of how chieftainship continues in the same people is a challenge. This has led to other people having the feeling that the chieftainship has to be scraped off. Chieftainship in Tswana communities has its origins from the past, therefore chiefs were not democratically voted in the chieftainship. However, even if chiefs were not democratically voted in the position but if the chief did not rule his people well; people often “deposed and deserted him and they could establish themselves under a different chief and thus pay allegiance to him” (Schapera, 1994) .

The other issue is the way people dissent their voices openly at the kgotla. Keoreng on Mmegi Online writes that “the system is skewed against dissenters such that in most cases, one would prefer to keep quiet than risk being intimidated” (Keoreng, 11.02. 2010) The Kgotla is said to be open for all in discussions but the question is; is it really the case. If other people get intimidated, hence reserve their comments in the Kgotla, and then its openness to everyone’s expressing their views would be questionable.

On the other hand, people critique the customary law as more or less like retribution. The reason is that in some offences, such as common nuisance, the sentence is most likely corporal punishment. And the other sentences could be communal service which requires individual’s hard labour, and hence takes their dignity away because they are seen by the public. Therefore equating the sentence to the offence seems more like retribution or retaliation. The retribution or retaliation principle is commonly prescribed as “‘fitting’ counter punishment for an offense” ([http://en.wikipedia.org/wiki/Retributive\\_justice](http://en.wikipedia.org/wiki/Retributive_justice) ). In some cases

where the offender might have stolen or forcefully taken property, the customary law might require the individual to pay or compensate the items. However, on these grounds it is more like retaliation. ‘You take my goat I get yours’, though the other one is lawful. Nevertheless, the Kgotla’s ideology on restoring is to do with building the community. The real essence of retribution is not the point. The Kgotla aims at mending the harm that has been caused.

### **5.7 Changes in the Bogosi institution**

Current data show that Kgotla and chieftaincy as an institution have undergone some changes. There are many factors that have contributed to such changes, an indication that we are living in a changing world. The contributing factors such as education and rise of nation-states (from the 15th to the 20th Century ) occur simultaneously with and as a result of the gradual emergence of capitalism, the growth in commerce, the beginning of industrialization, the spread of literacy, the development of communications, population explosion, and urbanization etc. (Anderson, 1983; Gellner, 1983:75). With such developments the chieftainship and its systems in the local communities might be of the past, if they do not stand up the challenges of modernization where people are deluded with fast modern lifestyle. Globalization accompanied by the re-arrangement and reformulation of social order and social organization in the world has been another factor. “Globalization... is a major phenomenon that is influencing culture and development” (Mazonde, 1998:89), along with other factors such as democratic governance. As such its coherence has affected traditional governance which used to exist: for example, before independence, Botswana had the leadership of chiefs in which the kinship ideology was emphasized as ‘who’ the next leader is. “The introduction of democratic governance, and the advances of globalization, has introduced uncertainties into developing countries such as Botswana. During the colonial era, traditional Tswana governance was overseen by a Kgosi or chief, who was born into that office” (Ibid: 89).

Bogosi has experienced legitimate power declination. The anthropologists Schapera, Comaroff and Roberts, et.al stated that chiefs had ultimate power to rule and to adjudicate cases, but now modernization has ripped them of such power. One Professor Kenneth Good (2008) corroborate saying that the

“House of Chiefs was established, but with no legislative powers. Essentially, the new state established new bodies (parliament, land boards, town and district councils, village development

committees, etc.) has replaced the traditional leaders and transferred authority from the traditional to the modern state”(Good, 2008:78)

Rather the house of chiefs was established as an advisory body to the legislature. However, customary courts use the customary penal code in adjudicating cases. In addition cases tried at the customary courts have been curtailed, especially criminal cases. In the Kgotla the customary law addresses few lesser criminal cases such as petty thefts.

Another development is the issue of chieftainship succession. Conflicts often arose among the Bogosi people on who should succeed, especially if the designated chief has died or if, due to some illness, he or she could not work. Some disagreements surrounding the right heir often arose among siblings. This has its basis in the old cultural tradition which allowed people, especially chiefs, to marry more than one wife. Polygamous families, which resulted in many children being born from different wives, complicate the whole matter. As generation and generation came after another, people began to lose knowledge of the rightful lineage. Traditionally the chief is to be succeeded by the first son of the first wife. However, if the first wife could not bear male children first, but females and later boys, then those girls would not inherit the throne. And perhaps the chief dies before the boy is grown up then, the throne will be held by other royal members but they will act as regents. It could also be other male children of the chiefs from other women. Thus they will be regents too until the rightful heir reaches the age of accountability. Examples of conflicts of succession have been well documented by Botswana historian writer Titus Mbuya about the Bakwena chieftaincy. He reiterates that;

“The practice of polygamy also created a loophole in the rules governing succession and accession to power. Succession to the throne was determined by seniority of the royal wives rather than by the age of a particular candidate. The rule that stipulated that chieftainship should pass from father to son therefore, could be qualified by adding that his son should be from the senior house” (Mbuya, 1999:62).

On the other hand the issue of a chief’s legitimacy of power has been stretched out by unaccepted behaviours in the community. The challenge is posed by many behavioural

changes especially among the youth and middle aged people. Villages are faced with acts like nuisance and juvenile delinquents, small scale criminal cases, such as thefts, fights etc. Therefore, these acts compel chiefs to take action in efforts of protecting the community from such ills. By doing so, they end up in conflict with the constitution concerning their limited power, because some actions they take stretch out their jurisdiction. Chiefs are urged to excise their powers within their parameters to curb such behaviour and by so doing they end up colliding with the country legislative rule which in a way contradict the whole process.

The other dramatic change has been on the issue of women leadership as chiefs in the country. It is a big development in the chieftainship to have women as chiefs. The instalments of Kgosi Rebecca Baneka and Kgosi Mosadi Seboko have made it a milestone. According to Kgosi Seboko, “women chiefs have stepped forward to claim their position” and she concludes by saying women have to stand up and show their potential in the area of their work. She says “women have never had anything on a silver plate, therefore women have to work hard to improve and be accepted as hard workers” (Seboko, field work 2008).

### **5.8 Democratic values as exemplified by the Kgotla**

The Kgotla is an open place in structure and by its nature signifies its openness to its local people. This means that anybody could come to the Kgotla with any issue for discussion as long as the chief as the overseer of the Kgotla agrees with such consultation. By doing so the Kgotla exemplifies its ability in appreciating democratic values, freedom of speech and expression. The simple definition of democracy at least from the Botswana’s general ideology means ‘the government of the people by the people’. That means that all people should be able to have their say in one way or another in everything that affects their lives. Generally, democracy is recognized as the form of government that is best able to facilitate decision making with people’s interest and their human rights in mind and the government should be able to resolve internal conflicts in a peaceful way.

The Tswana political system portrayed in the Kgotla was predominately democratic, in the sense that a chief generally had to act with consent of the tribe, although sometimes the chief could act depending on their personality and the prevailing circumstances (Barei, 2000). In the kgotla adult males could assemble and air their views freely and even influence decisions. I mention *all adult males* here because adult females’ participation during discussions is very

low, even though the women make up the majority of Kgotla attendants. One must understand here that it is not that women are denied to talk at the Kgotla but culture dictates. As mentioned before women were culturally treated as minors and were subjected to their husbands or father; therefore this old orientation still lingers psychologically in many women. However, there are few that could express their views freely at the Kgotla during discussions. More so, that nowadays some female chiefs are leading their Kgotla.

The other trait of democratic values is *Therisanyo* (public consultation). *Therisanyo* is very important in Botswana as a means of communication between the communities and the government. The government of Botswana usually consults people through Kgotla meetings organized by the chief. The chief is the *ex-officio* on government issues. The Botswana Democratic Party (BDP), even before their rule, emulated the ideology of *Therisanyo* which is portrayed at the Kgotla; they launched a newsletter called *Therisanyo* (consultation). The newsletter was meant to be the mouthpiece of the party to its supporters. The first issue of *Therisanyo* stated that the newsletter was ‘a horn’ that will blow to call the people of Bechuanaland from their tribal hiding places and other racial groups and from their racial bigotry to national consultations in frank discussion (Parson & Crowder, 1990). However the newsletter did not go far due to financial constraints, nevertheless the BDP got critics from other parties that the “non-production of *Therisanyo* is a testimony to the BDP’s lack of commitment to the tradition of consultation in taking major national decisions” Makgala in (Melber, 2007:25). Conversely the concept did not die but rather it continued with the leaders. Since independence, BDP has been in power until now; the party leaders have adopted this ways of discussing government policies and initiatives, developments etc with the tribal peoples at the Kgotla. The president and the cabinet ministers usually go around each village addressing people at the Kgotla on any issue the public needs to know or to get the public opinion.

Moreover, the Kgotla’s ideology on openness has also influenced politicians, who use open-air Freedom Squares where anybody could come whenever they hold rallies. The supporters carry their Knitted wooden chairs (chairs normally used in the kgotla by men) for seating especially in villages. “The political meetings which the ruling party and its weak rivals organise there emulate the kgotla pattern, so much so that people may take their own traditional kgotla stools there for seats, or use make-shift seats of rocks.” (van Binsbergen,

1995:25). Nevertheless it is just emulation; Kgotla is not nor could be equated to a freedom square; the debate is open for all people in the Kgotla without any political ideologies.

The kgotla political culture also emphasizes open discussions in everyone's presence. This is done in confrontation with any problem, issue or any matter of concern to anyone. It is seen as an important element in Batswana's culture because it avoids personal confrontation that might create physical violence. "In contrast, violent behavior is peripheral to Tswana political culture and enjoys no moral and media support. The lack of moral support is evidenced by the Tswana language's emphasis on *ntwa kgolo ke a molomo*" - *conflicts are best solved through discussion* (Maundeni, 2004:621).

Nevertheless the democratic values credited for the Kgotla have been seen by other scholars as pseudo or rather none existing; "this consultation enabled the Chief to indicate his own views which the advisers could then disseminate among the people..." (Melber, 2007:25). In other words, it meant that most of the time the decision could have been based on the chief's opinion without the influence of others, hence the questioning of democracy. The other view is that the decisions at the kgotla are predetermined by the tribal leadership and by doing so it "was mere window dressing" (Ibid: 23). This view has recently been echoed by another political scientist, Professor John Holm. He believes that consultation was a symbolic act designed to make people believe they have a say in a decision when in fact the leaders were doing what they had always planned. While other writers say "The royal relatives were critical in limiting discussion at the kgotla, because they spoke first and set the agenda" (Holm & Molutsi, 1989:326). Yet another political scientist, Mahmood Mamdani, charges that "in the colonial period this public assembly was turned into a forum where decisions were announced but not debated" (Melber, 2007:23).

## **5.9 Conclusion on the Empirical findings and Analysis**

In this chapter I have discussed and analysed the data gathered during field work in Kanye. The profile analysis shows that the Kgotla is used by both males and females, although females make up the majority of attendants. Few men attend Kgotla meetings but they are the core people in decision making at the Kgotla. The chiefs and headmen make decisions, judge and adjudicate cases and their age goes from 45 and above unless one by royal status is born a

chief, while the victims' age cuts across all the ages even though mostly they are under the age of 40. The level of education seems not so high among all the groups.

The data show that the Kgotla is not just a court for cases but it is also place where disputes, conflicts, abrasions in the community can be addressed amicably with the help of other people. Open confrontation and open discussions are important elements in addressing problems. The proverb 'ntwa kgolo ke ya molomo' which literally means *greatest fight is by mouth* (conflicts are best solved through discussion) radiates the whole idea of avoiding direct violence and is the belief of many. Violence is shunned by many as not tolerated and it would even lack moral support from the public or the media. Therefore peace and stability is built among people. Like, (Miall, 2007) says, conflicts are inevitable due to social change and therefore in order to avoid its intensification into violent conflict some amicable measures should be carried out. Such measures could include the use customary courts as exemplified in Botswana. "A peaceful society is presented as one in which conflict is resolved through debate and compromise and where the rule of law is effective, thus providing the conditions for stability" (Bonta, 1996:410)

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## CHAPTER SIX

### 6.1 SUMMARY AND CONCLUSIONS

In this thesis I have looked at Bogosi in general, encompassing the general views on the institution and how it has functioned in the local communities in Botswana. With the support of the data gathered during field work I have come to the conclusion that the Kgotla system as a traditional institution has stabilized peace and social unity among the rural and urban communities in Botswana. The Kgosi is the core pinnacle of the Bogosi and Kgotla system. In other words, if the Kgosi is deducted from Bogosi and the Kgotla, the system would be dysfunctional and perhaps not continue to exist. The state of Botswana has maintained Bogosi institution functioning in many areas through the country. The Kgosi among the eight major tribes is 'born' and he/she inherits the chieftainship and among the minority tribes chiefs are elected. Bogosi was and is an integral part of Setswana culture and it is the hallmark of Botswana customs and traditions; when it collapses the whole traditional leadership would collapse.

Botswana, just like any country with monarchs, has sustenance Bogosi institution as a traditional figure. The late Kgosi Seepapitso IV of Bangwaketse said "their forefathers left the Bogosi institution for the people as a heritage because they had a vision..." and he urged people to respect Bogosi and said "dikgosi should be given the respect they deserve as they have played and continue to play an important role in promoting peace and stability in this country..." (Phuthego, 2007:3)<sup>48</sup>.

In addition, Kgotlana is the closest to the people, that is, the community lives in the Kgotlana. Thus, cases around them are first addressed in the Kgotlana and if they fail then the next move is to the Kgotla. However, other cases could be taken to the Kgotla without having gone to the Kgotlana. It all depends on individuals. In other words, the kgotlana serves as the 'open eye' and 'mouthpiece' of the people in the ward, and so problems are easily dealt with by a small community before they could spread to the main Kgotla where it involves the larger community, hence attracting much public attention. It is indeed inevitable that within the communities there exist conflicts, disputes, offences etc and as such one may say 'problems exist with people and people exist with problems'. Based on such an analogy then people

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<sup>48</sup> <http://www.gov.bw/Global/MLG/Newsletters/BLP%20Final%20News%20Letter-fynal.pdf>



needs to find resolutions or answers to their problems in order to maintain peace and harmony. “Peace not only is the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation”(Bonta, 1996). The Kgotla by its nature of open discussion portrays freedom of speech at kgotla gatherings which is reflected by the sayings: ‘mmualebe o a bo a bua la gagwe’; *i.e. everyone has the right to express their opinions*, and secondly “mafoko a kgotla a mantle otlhe”; *i.e. all that is said at the kgotla is respected*.

It is worth noting that disputes and challenges do occur at every level within and between families, communities, institutions and countries regardless of the level of development. When such challenges are intensified social relations become fragmented and conflicts could escalate into violence and war. Therefore it would be expedient for any society, country and state to face all the challenges in an amicable way.

“A society for all must be equipped with appropriate mechanisms that enable their citizens to participate in the decision-making processes that affect their lives, and ultimately shape their common future. Participatory dialogue is an important policy tool that can offer a range of practical means, and, therefore, should be considered as part of building more cohesive societies, as well as building peace, including in post-conflict societies”(Bonta, 1996).

This thesis has contributed to various discussions in an effort to show how the Kgotla functions as a traditional mechanism enabling communities’ involvement in settling disputes and solving cases which are mostly civil and a few less serious criminal cases. The thesis used the theory of restorative justice, community building and positive peace building on elaborating the discussion. The idea focused on the importance of making peace among locals. The thesis has discussed the means of communication between the community and the government; Therisanyo is (consultation) an example of democratic values epitomized by the Kgotla. Therisanyo is often encouraged in families and communities at large when it comes to discussions at any level. It has also become an effective tool for the government when discussing policies and initiatives which concern village development in the country.

## **6.2 The summary on the constitution of Botswana concerning flogging**

The constitution of Botswana is clear on allowing the customary courts to administer flogging. It has to be done within the court after one has been found guilty of the offence.

Moreover it is stipulated on who should be flogged and it gives a description of the part of the body where the beating has to take place. However, there have been calls by Human Rights Organisations and other Non Governmental Organisations to abolish corporal punishment. The question now is, why it is, that it falls upon ‘deaf ears’ in the government?

### **6.3 Recommendations**

It is high time for the government to initiate research that will seek to understand the public view concerning corporal punishment at the Kgotla. The research should include all stakeholders and it has to aim at finding solutions to such offences that have been punished by corporal punishment.

The Botswana government, in recognition of the work and the role the chiefs and headmen play in the mediation of conflicts in the Kgotla, could enact mediation services training for chiefs and headmen in order to equip them with good mediation skills.

Finally restorative justice theories could be incorporated within the education systems in countries or any facilities meant for conflict management. This will be done for the purpose of equipping people with skills that will aim at managing conflicts before they could escalate into violence.

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APPENDIX 1



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**MEMORANDUM**

**To:** WHOM IT MAY CONCERN  
**From:** Buzwani C. Mocheregwa, International Education & Partnership  
**Date:** 04 June 2008  
**Subject:** **LETTER OF INTRODUCTION – PIWANE C. MOUMAKWA**

This letter serves to introduce Piwane C. Moumakwa as a Master's student in Peace and Conflict Transformation (MPCT) from the University of Tromso. Mrs. Moumakwa is a visiting scholar at the University of Botswana, here to do a research on the Traditional peace building processes in Botswana, with a focus on the Kgotla system as part of the fulfillment of her degree requirements.

The above mentioned research will be done at Kanye village from the 03 June to 31<sup>st</sup> July 2008.

Your assistance in making her research successful will be most appreciated.

Thank you

  
Buzwani C. Mocheregwa  
Administration Officer





APPENDIX 2



To whom it may concern

Your ref.:

Our ref.: ESA

Date: 20.05.2008

**CONFIRMATION – MRS. PIWANE CONSTANCE MOUMAKWA**

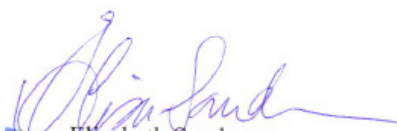
We confirm that Mrs Piwane Constance Moumakwa, born November 10, 1973, is a student enrolled at the Master of Peace and Conflict Transformation/MPCT-programme 2007-2009 at the University of Tromsø, Norway.

Piwane Constance Moumakwa is planning to do field work in Botswana the months of June, July and August 2008. We hope that you may assist her in any possible way.


Please contact the Centre for Peace Studies if you have further inquiries.

Yours sincerely

Percy Oware sign.  
Academic Director  
Centre for Peace Studies (CPS)



Elisabeth Sandersen  
Head of Administration  
Centre for Peace Studies (CPS)



**FACULTY OF SOCIAL SCIENCE**  
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## APPENDIX 3 Oral Interview Questions

**Specific Objective**

1. To examine the role of Kgotla as a mechanism of Conflict Transformation.

**Specific focus:** This study will shed light on the role of Kgotla in conflict transformation in Botswana: *case study of Kanye*

**SECTION 1****PART 1****(PERSONAL INFORMATION)**

**Place of residence:**  Kanye  visiting Kanye

If from Kanye, ward you reside in \_\_\_\_\_

**Age:**  18-30  31- 45yrs  46-64yrs  65 and above

**Gender:**  Female  Male

**Education:**  primary,  junior secondary,  senior secondary,  vocational training  college  university

**Occupation:**  unemployed  village elder  government official  
 private employment

**PART 2**

1. Do you know who the kgosi (Chief) is for Kanye?  yes  no
2. Is he/ she important to you  Yes  No
3. Have you attended any kgotla meetings?  yes  no
4. If no, why haven't you attend kgotla meetings?

---

5. If yes, what kind of meetings do you mostly attend?

---

6. When did you last attend a kgotla meeting?  yesterday  less than a month ago  last six months  last year  don't remember

7. Do you think people have regard for kgotla meetings?  Yes  No

8. What do you think is so important about kgotla meetings?

---

9. Do you think is it important to have a chief and headman?  Yes  No

10. If yes or no, why?

---

11. What do you think is important about Bogosi in Botswana?

---

12. If Botswana was to face out Bogosi do you think your reasons above will be valid?

---

13. In your opinion do you think Bogosi role has changed with time?  Yes  No

14. If yes, what are the changes?

---

15. Do you think the change(s) (if there is) are good () or bad ()

16. Have you ever attended any cases administered / presided by the chief at the Kgotla?

Yes  No

17. What was the case about?

---

(Civil or criminal case)

18. How was the case resolved?

---

19. Did you think the resolution was fair to the offender?  Yes  No

20. Did you think it was fair for the offended?  Yes  No

21. In general what can you say about the civil cases presided over here?

---

22. In general what can you say about the civil cases (e.g. settling conflicts between people) presided here?

---

23. a. The way criminal and civil cases are handled do you think they have positive impact in building people?  Yes  No

b. If yes

How? \_\_\_\_\_

---

24. Which moral values do you think people value in Kanye?

i)  Cooperation

ii)  Respect

iii)  Obedience

iv)  Peace

v)  Disrespect

vi)  Violence

vii)  Sharing

viii)  Friendliness

ix)  Forgiveness

x) Other (s) such as \_\_\_\_\_

---

25. Do you think Dikgosi have influence in people's behavior in Botswana?  yes  no

In what manner

---

26. What do you wish to see happening in your country at large on the bogosi issue?

---

27. Do you think there is peace in Botswana? \_\_\_ Yes \_\_\_ No

Elaborate: \_\_\_\_\_

28. Do Dikgosi contribute positively to peace? \_\_\_yes \_\_\_no

In what manner

---

29. Should Botswana continue to have dikgosi? \_\_\_yes \_\_\_no

Briefly explain why yes or no

---

30. Do you think Bogosi contributed in a way to what is Botswana today? \_\_\_ Yes \_\_\_ No

Elaborate: \_\_\_\_\_

SECTION 2

PART 3

To examine the relationships between chieftainship and democracy in Botswana

1. Who represents you best: \_\_\_politician \_\_\_dikgosi?
2. Do you think Botswana is a democratic country? \_\_\_yes \_\_\_No
3. If yes or no what makes you think like that?
4. Do you think Bogosi contributes (d) to democracy in Botswana? \_\_\_Yes \_\_\_No
5. Do you think the affiliations and elections of parties and voting free and fairly conducted in Botswana? \_\_\_Yes \_\_\_No
6. Dikgosi and politics, should they mix? \_\_\_yes \_\_\_no

Why or Why not?

---

7. What role does chieftainship play in politics of present day Botswana?

---

8. Do chiefs serve as political leaders by way of being intermediaries between the modernizing bureaucracy and the custom bound populace? Yes\_\_ No\_\_

9. Since the rule of BDP government, the institution has been practiced hand in hand with the government; do you think they could be any changes to the institution in the long run if different political leaders? Yes\_\_ No\_\_

10. Support your answer

---

SECTION 3

PART 4

To examine the participation of women in the traditional male dominant institution

1. Should women be Kgosigadi (female chief)? \_\_yes \_\_no

Elaborate your response

---

In the history of Botswana few women have been allowed to rule as regent and in this modern times there has been changes on the chieftainship for example the reign of *Kgosigadi* Rebecca Banika of Pandamatenga and *Kgosigadi* Mosadi Seboko of Ramotswa

2. Now since Botswana is now having female chiefs, do you think their leadership is different from male chiefs? \_\_\_Yes \_\_No

If yes, what do you think is different?

---

3. Whom do you believe leads better? \_\_\_ Male chiefs or \_\_\_ Female chiefs \_\_ Can't tell

4. Briefly explain your reason of choice
- 

5. What can you say about the endowment of *Kgosigadi* Mosadi Seboko of Ramotswa as an example of women chiefs in the country at large?
- 

6. What do think of women empowerment in Botswana?
- 

7. Do you think the participation of women chiefs has an impact on the Bogosi in the modern era?

\_\_\_ Yes \_\_\_No

Elaborate on your response

---

8. In your view would you like to have women (leaders) as chief or president? \_\_Yes \_\_No \_\_\_ Can't tell

Explain your view

---

Thank you for the knowledge shared! Pula!!!!!! Wetsho!

## APPENDIX 4: QUESTIONNAIRE FOR THE CHIEFS

**INTRODUCTION**

I am a Motswana student reading for Masters in Philosophy of Peace and Conflict Transformation in the University of Tromsø in Norway (Scandinavian country) and currently I am affiliated to the University of Botswana. In fulfillment of my degree I am carrying out a research project on the Kgotla system as a Botswana's traditional or indigenous institution that has served as a conflict resolution and secured peaceful Botswana.

Please be fair and frank in answering the questions. Your identity and responses will be kept confidential and be used for this research only.

Thank you.

**Instructions**

1. In answering questions, please put a tick in the appropriate spaces provided.
2. Comment freely where applicable
3. Feel free to use Setswana if needed

**Specific Objective**

2. To examine the role of Kgotla as a mechanism of Conflict Resolution.

**Specific focus:** This study will shed light on the role of Kgotla in conflict resolution in Botswana

**SECTION 1****PART 1****(PERSONAL INFORMATION)**

**Place:** \_\_\_\_\_

Kgosi \_\_\_\_\_

Community \_\_\_\_\_

**Age:** \_\_\_ 18-30 \_\_\_ 31- 45yrs \_\_\_ 46-64yrs \_\_\_ 65 and above

**Gender:** \_\_\_Female \_\_\_Male

**Education:** \_\_\_primary, \_\_\_junior secondary, \_\_\_senior secondary, \_\_\_vocational training \_\_\_college \_\_\_university

Any political affiliation: \_\_\_yes \_\_\_no

**Marital status (if you don't mind)** \_\_\_Single \_\_\_Married \_\_\_Widow \_\_\_Divorced \_\_\_Separate

1. How long have been the chief? \_\_\_years, since I was young\_\_\_ Can't remember \_\_\_
2. Are you from the royal house? \_\_\_Yes \_\_\_No
3. Are you the first born in your family? \_\_\_ Yes \_\_\_No
4. Since you have been the chief are there challenges that have you encountered from the other royal members? Yes\_\_\_ No\_\_.

How did you overcome them?

5. Which challenges have or are you encountering from the community nowadays?

6. How do you overcome them?

- 
7. Do you sometimes call for the Kgotla meetings? \_\_\_Yes \_\_\_No
8. How often do call for Kgotla meetings in a year? \_\_\_\_\_
9. Do you think people have regards for Kgotla meetings? \_\_\_Yes\_\_\_ No
10. Botswana is being regarded as a peaceful country. In this sense do you think Botswana is peaceful? \_\_\_Yes \_\_\_No  
Why Yes or no?
- 
11. Do you think the leadership of Dikgosi has a contribution on this? \_\_\_ Yes \_\_\_No
12. In a changing world whereby people are talking of Human rights, in your view what do you think of Botswana in regards to Human Rights?
- 
13. I know that in most Kgotlas corporal punishment is used as a way of righting the wrongdoers, in your view in regards to human rights do you think in one way or another the use of such could be violating someone's human right? \_\_\_Yes \_\_\_No
14. Do you think corporal punishment deters wrong doing? \_\_\_Yes \_\_\_No
15. This modern days, there so many challenges posed by crime in the society: what is the role of Kgotla and chieftainship in crime prevention?
- 
16. Nowadays we see that the trend of who becomes Kgotla has changed in Botswana in terms of political influences, what do you think of the prevalence of elected chiefs instead of born kingship in Botswana?
- 
17. Do you think women are capable of ruling the people as chiefs? \_\_\_Yes \_\_\_ No
18. Explain your response
- 
19. Do you see this as women empowerment in the Bogosi role in building the nation of Botswana? \_\_\_Yes \_\_\_No
20. What is the contribution of the Dikgosi in Botswana's democracy?
- 
21. Do you think women can be better Dikgosi than men Dikgosi, looking at that most women are the backbone of the families? \_\_\_Yes \_\_\_No \_\_\_ Can't say  
Explain your response
- 
22. Do you think the Kgotla still serves as a forum for everyone's in the community to express their views; freedom of expression nowadays? \_\_\_Yes \_\_\_No
23. Are there challenges in the Chieftainship role in the present Botswana? \_\_\_Yes \_\_\_No
24. If there are changes how are you able to resolve them as Dikgosi?
- 
25. In the olden days (before Botswana's independence) how were conflicts transformed in the communities?
- 
26. How were Dikgosi able to solve conflicts with neighboring communities, for example in marking territories (Ga- Ngwaketse, Ga- Kwena Etc?)
- 
27. In the independence Botswana how does Dikgosi settle disputes among the neighboring communities?
- 
28. How are you able to maintain order in your community these days?
-

---

29. Recently there have been a lot of debates (chieftaincy bill) that is on scraping out the Bogosi what is your view on such concerns?

---

30. Is there any justification of this institution existence in modern Botswana?

---

31. In the early independence days Botswana used to experience tribalism; major groups against the minority groups and it seem nowadays things have changed what has brought about the changes?

---

32. What is the general feeling of your people on representation of Ntlo ya dikgosi?

---

33. Do you think Ntlo ya dikgosi represents the general view of Bogosi in Botswana? \_\_Yes \_\_No

34. As people's leaders do you view politics in Botswana as representing the desires of your community? \_\_Yes \_\_No \_\_\_ I can't say

35. Since independence BDP has been governing the country do you think is fair to the interest of other opposition political leaders? \_\_Yes \_\_No \_\_\_ can't say

36. Do you think there may exists changes in the Bogosi institution peradventure a different party rules? Yes\_\_ No\_\_

37. Do you for seen any eruptions of internal wars in Botswana if other parties presses on? \_\_Yes \_\_No \_\_\_ can't imagine

38. As Dikgosi seeing that nowadays armed conflicts can broke out easily among people as we saw in Kenya etc, peradventure conflict arises in Botswana; which measures would you make as intermediaries in transforming the conflict?

---

39. What role does chieftaincy play in the politics of modern Botswana?

---

**THANK YOU VERY MUCH FOR THE KNOWLEDGE YOU SHARED! PULA!  
PULA!!!!!!!!!!**