
Canadian-African Human Rights Engagements: A Literature Review and an Agenda for Future Research

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CANADA-BOTSWANA HUMAN RIGHTS ENGAGEMENTS: A CRITICAL ASSESSMENT OF THE LITERATURE AND A RESEARCH AGENDA

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Abstract

This article discusses the past and present of Canada-Botswana human rights engagements, offering an insight into their nature and significance. The article highlights that despite the absence of strong diplomatic ties between the two countries, there nonetheless have been significant human rights engagements. The engagements, though not entirely systematic or clearly defined in their focus, have certainly improved the human rights situation in Botswana. It is also noted that the sustainability of these engagements is questionable considering that the weak ties between the two countries have resulted in reduced Canadian funding to Botswana. In the end, the article emphasizes that there is a need to undertake extensive research on Canada-Botswana human rights engagements. This is so as to understand the nature and extent of the engagements, to measure their impact, and to use such research findings to inform future human rights engagements.

1. DIPLOMATIC RELATIONS between Botswana and Canada date back to 1966, the year in which Botswana gained its independence from British colonial rule.¹ It appears that the relations between the two countries were and continue to be based on their "...common approach and commitment to human rights, freedom of expression, rule of law and democracy".² The assumption is that (at least in part) bi-lateral relations between the two countries should be geared towards the attainment of these common ideals.

The bi-lateral relations between the two countries straddle many areas of state cooperation, such as trade and investment, and, most significantly, development assistance.³ This article is focused, however, on the human rights engagements between Botswana and Canada in

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¹ Government of Canada, Embassy of Canada to Zimbabwe, *Canada-Botswana Relations*, online: <www.canadainternational.gc.ca/zimbabwe/bilateral_relations_bilaterales/canada_botswana.aspx?lang=eng>.

² *Ibid.*

³ *Ibid.*

pursuit of the common goals highlighted above. These engagements have been focused on many sub-areas of human rights, and over the years, Canada has supported a diverse range of human rights initiatives in Botswana (as in the rest of the African continent).

In light of the dearth of literature on the subject of this article, research surrounding this area is important, as it will bring to the fore the nature and extent of the engagements between the two countries on matters relating to human rights, as well as their attainments, problems and prospects. In this sense, this article attempts to: (a) identify the (strategic) focus of Canada's interest in human rights issues in Botswana; (b) consider their sustainability; and (c) investigate whether the two countries have drawn, or can draw, lessons from each other on how to deal most effectively with certain human rights issues that affect them both. A good example of such an issue is the treatment of indigenous peoples in both countries and the quest of indigenous peoples to achieve unhindered enjoyment of their human rights. A better understanding of the issues highlighted above is likely to be useful to policy-makers, academics, and practitioners who are interested in the human rights engagements between Canada and Botswana. The conclusions drawn from this article will thus provide insight into possible areas of further research.

It is against this background that this article looks at the bilateral relations between Botswana and Canada, with a specific focus on their engagements in the area of human rights. Following this brief introduction, Part II of the article highlights the current human rights situation in Botswana with particular emphasis on the promotion and protection of the rights of marginalized groups in the country. Part III of the article discusses the evidence of Canadian-Botswana human rights engagements. Part IV provides a critical reflection on human rights engagements. Part V draws some conclusions and makes recommendations.

II. THE HUMAN RIGHTS SITUATION IN BOTSWANA

The following discussion on the human rights situation in Botswana is put forward for two main reasons. First, it will provide a background to a later discussion in this article on human rights engagements. Second, and most importantly, the discussion will assist in a process of developing suggestions on ways of improving and making more effective future human rights engagements.

Recently, there have been concerns that Botswana is not doing well vis-à-vis respect for the rule of law and human rights.⁴ This worry has had much to do with the fact that, as a dualist state, international treaty law does not become part of the laws of Botswana unless specifically incorporated into it through an Act of Parliament. As such, treaties creating rights and obligations for the inhabitants of Botswana do not, immediately upon their ratification, create rights and obligations that are enforceable in the courts. This concern is also rooted, in part, in the fact that the Constitution of Botswana is silent on the status of international (human rights) instruments. However, Section 24 of the *Interpretation Act* provides that such treaties may be used in the interpretation of the law where the wording of the statute is ambiguous.⁵ It is perhaps due to the declining levels of the promotion and protection of human rights in Botswana that countries like Canada have raised some concerns about human rights issues in Botswana. For example, during the Universal Periodic Review process in 2009, Canada offered some advice to Botswana regarding a number of such issues,⁶ including Botswana's compliance with the

⁴ See generally Bonolo R Dinokopila, "Bringing the Paris Principles Home: Towards the establishment of a National Human Rights Commission in Botswana" (2012) 14 U Botswana LJ 45 at 46 (arguing that Botswana's human rights record is declining due to the absence of sufficient human rights protection mechanisms) [Dinokopila, "Bringing the Paris Principles Home"]. See further Amelia Cook & Jeremy Sarkin, "Is Botswana the Miracle of Africa? Democracy, the Rule of Law, and Human Rights Versus Economic Development" (2010) 19 Transnat'l L & Contemp Probs 480; Duma G Boko, "Integrating the Basarwa under Botswana's Remote Area Development Program: empowerment or marginalization?" (2002) 8:2 Austl J H R 153.

⁵ *Attorney General v Dow*, [1992] BLR 119; *Kenneth Good v The Attorney General* [2005] 1 BLR 462.

⁶ See generally *Report on the Universal Periodic Review: Botswana*, UNHRC, 10th Sess, UN Doc A/HRC/10/69 (2009).

International Covenant on Civil and Political Rights (ICCPR); the promotion and protection of socio-economic rights of indigenous peoples living or formerly living in the Central Kalahari Game Reserve (CKGR); the death penalty; and the de-criminalization of homosexual relationships or consensual same-sex relations between adults.⁷ It is also perhaps necessary to highlight that Botswana has, in the past, made some recommendations to Canada during the UPR process. Botswana has congratulated Canada on the laudable efforts the country has taken in so far as the promotion and protection of human rights in concerned.⁸ Botswana has also encouraged Canada to strengthen measures aimed at eliminating racial profiling in law enforcement and employment.⁹

The following is a brief discussion on the promotion and protection of the rights of the following groups in Botswana: minority ethnic groups, women, refugees, people with disabilities, people living with HIV/AIDS, asylum seekers and immigrants, and members of the LGBTIQ community, among others. Other issues, such as the death penalty, are also highlighted.

A. THE PROMOTION AND PROTECTION OF THE RIGHTS OF THE MARGINALIZED PEOPLE IN BOTSWANA

Minority ethnic groups such as the *Basarwa* continue to be marginalized by the current policies adopted by the Government. The *Basarwa* have been economically and politically marginalized from the time Botswana gained independence in 1966. They have, as a result, lost access to most of their traditional lands in fertile regions of the country and are vulnerable to exploitation by their non-San neighbors. Their relative isolation, limited access to education, ignorance of the nature of the textual affirmations of their civil rights, and lack of adequate political

⁷ *Ibid.*

⁸ See generally *Report on the Universal Periodic Review: Canada*, UNHRC, 24th Sess, UN Doc A/HRC/24/11(2013).

⁹ *Ibid.*

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representation, also continue to hinder their ability to enjoy their human rights more fully.¹⁰ It has also been pointed out that:

[a]llegations of torture of the Basarwa by members of the dominant group, coupled with an apparent indifference and reluctance to react to such allegations, indicate the extent to which the human rights of the Basarwa are violated mainly because their rights are not recognized. Despite legal protection under the constitution, practical protection is not guaranteed.¹¹

Nevertheless, attempts by the *Basarwa* to challenge their forceful relocation from the Central Kalahari Game Reserve (CKGR) and the cessation of the provision of essential services by the Government have been partly successful in the past. In their challenge, the litigants in *Sesana and Others v The Attorney General*¹² asked the Court to declare their relocations from the CKGR to settlements outside the Game Reserve to be unlawful. The litigants further asked the Court to order the Government to restore the provision of water, health services, and food to those peoples who refused to relocate and were still resident in the CKGR. The Government's position was that the CKGR was a wildlife area and that the continued residence of people in the CKGR was incompatible with wildlife protection and social development.¹³ In the end, the Court found for the Government with respect to the provision of essential services. It held that the Government's actions were not illegal as the residents of the CKGR were consulted before these services were terminated. The Government was therefore not obliged to restore such services.

¹⁰ Dinokopila, "Bringing the Paris Principles Home", *supra* note 4 at 65; Ditshwanelo, The Botswana Centre for Human Rights, *Shadow Report to the United Nations Committee on the Elimination of Racial Discrimination* (Geneva: International Federation for Human Rights, 2006) at 10.

¹¹ Alice Mogwe, "Human Rights in Botswana: Feminism, Oppression, and "Integration"" (1994) 19:2 *Alternatives: Global, Local, Pol* (1994) 189 at 193.

¹² *Sesana and Others v The Attorney General*, [2002] 1 BLR 452 (HC) [*Sesana*]. For a detailed discussion of this case, see Bonolo Ramadi Dinokopila, "The Judicial Enforcement of Socio-Economic Rights in Botswana and the Case of Basarwa in the Central Kalahari Game Reserve (CKGR)" ANCL-RADC Annual Conference Working Paper, [online: <www.anclradc.org.za/sites/default/files/images/the_enforcement_of_socioeconomic_rights_in_botswana._full_paper._by_boo_lo_ramada_dinokopila.doc>](http://www.anclradc.org.za/sites/default/files/images/the_enforcement_of_socioeconomic_rights_in_botswana._full_paper._by_boo_lo_ramada_dinokopila.doc).

¹³ *Sesana*, *ibid.*

However, the Court also held that the relocation of the residents of the CKGR was forceful, unlawful, and unconstitutional and that the Applicants were entitled to return to the CKGR.

The decision somehow reinforced the argument at the time that the actions of the Government were contrary to the provisions of the *African Charter on Human and Peoples' Rights* (African Charter or Charter) and therefore contrary to Botswana's obligations under the Charter.¹⁴ It must be noted that Botswana and Canada are faced with a similar issue of striking a balance between the promotion and protection of the indigenous people and the development of those communities. In both countries, there appears to be a challenge in so far as ensuring that indigenous peoples are able to enjoy their rights without interference or undue limitation on their rights. The Botswana case discussed above highlights this predicament, and Canadian cases also point to this challenge. In the end, it can be argued that the two countries can learn from one another about measures that may be taken to ensure that there is no violation of the rights of their indigenous communities.

In the area of socio-economic rights, judicial decisions have failed to conduce to the better protection of socio-economic rights in Botswana. In fact, there is strong evidence to suggest that the Botswana courts may be unwilling to adjudicate on matters relating to socio-economic rights. In 2015, the Court of Appeal, in its consolidated decision in *The Attorney General & Others v Dickson Tapela; The Attorney General & Others v Gift Brendan Mwale*¹⁵ (*ARV cases*), seemed to indicate the Court's reluctance to follow Justice Dow's approach in the *Sesana* case. This is not surprising because the Court of Appeal, in its *obiter dictum*, seemed to endorse the position taken by Justice Phumaphi in the *Sesana* where he seemed to suggest that

¹⁴ See the amicus brief prepared by Allard K Lowenstein International Human Rights Law Clinic, online: <www.law.yale.edu, Yale Law School>

¹⁵ CACGB – 096- 14 [unreported]; CACGB – 076- 15 [consolidated & unreported judgment].

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the courts are not well placed to adjudicate on issues relating to socio-economic rights. Rejecting the approach by the High Court in the two cases, the Court of Appeal pointed out that:

Sight must also not be lost of the fact that constitutional rights do not extend in Botswana to socio-economic rights, such as the right to health, the right to shelter, and the right to clean water. This is deliberate and is appropriate in view of the manpower and financial constraints experienced particularly by developing countries. Some countries, by their own choice, have included such rights in their Constitutions. Botswana has chosen not to do so, but strives nonetheless to achieve those ideals where resources allow. Any attempt by the Courts to confer socio-economic rights, such as universal access to health care, by the overbroad construction of sections of the Constitution such as section 4 (the right to life) and section 7 (the prohibition on inhuman or degrading punishments or other treatment) as Dingake J. appears to suggest, would, in my judgment, be overstepping the bounds of judicial discretion. That would be venturing into policy areas and budgetary concerns which are properly to be addressed by the other arms of Government.¹⁶

The above is not to suggest that the courts have been more activist in terms of the promotion and protection of civil and political (CP) rights. Even though CP rights are constitutionally protected in Botswana, they have not enjoyed expansive implementation and protection by the courts either. This is notwithstanding the fact that Botswana is viewed as offering a relatively better system for the protection of human rights in Africa.¹⁷ For example, sex work is illegal in Botswana despite the fact the sex industry has grown considerably over the years. The Government is thus failing to protect those engaged in the sex trade and access to available HIV/AIDS interventions is undermined by the risk of criminal prosecution. Many *Batswana* (i.e. people of Botswanan), legislators included, have in fact expressed discomfort at the possibility of legalizing prostitution.

Subject to certain exceptions, abortion is also prohibited in Botswana, mostly relating to medical grounds as found under article 14 of the Protocol to the African Charter on the Rights of

¹⁶ *Ibid* at para 73.

¹⁷ Dinokopila, "Bringing the Paris Principles Home", *supra* note 4 at 56.

Women.¹⁸ This is despite the argument that a considerable number of women reportedly cross the border into South Africa to carry out abortions. To that end, there are growing concerns that the increase in unsafe abortions is a threat to the reproductive health rights of women in Botswana.

To date, Botswana retains the death penalty as a method of punishment for murder, treason and piracy.¹⁹ The Constitution of Botswana provides for the death penalty²⁰ and the President is the only person who can pardon those who have been sentenced to death.²¹ Clemency has never been granted to a prisoner as of date. The method of execution in Botswana is by hanging. Since independence, more than 40 people have been hanged, and several others are still on death row. One of the key issues surrounding the death penalty is that of legal representation. The low quality of legal representation in death penalty cases is a serious issue in Botswana.²² There are many reasons why this might be the case, but in particular the issue surrounds the nature of the *pro deo* (or *pro bono*) system.²³ There is no requirement for *pro deo* counsel to be an experienced criminal practitioner; in fact, many *pro deo* counsels are junior and inexperienced lawyers who may have little or no criminal trial experience.²⁴ Their ability to properly conduct regular consultations, investigations, and legal research, and to gain expert evidence and assemble witnesses is often very limited.²⁵ Other key concerns related to the death

¹⁸ See generally Stephanie S Smith, “The challenge of procuring safe abortion in Botswana” (2013) 17:4 Afr J Reprod Health 43; Hilary White, “Abortion push escalates in Botswana” *Life Site* (5 May 2012), online: <www.lifesiteneews.com/news/abortion-push-escalates-in-botswana>.

¹⁹ See generally Kealeboga N Bojosi, “The death row phenomenon and the prohibition against torture and cruel, inhuman or degrading treatment” (2004) 4 Afr Hum Rts LJ 303.

²⁰ *Constitution of Botswana, 1966*, s 4(1).

²¹ *Ibid*, s 53.

²² Linda Pfothenauer, ed, *Know Your Law: A guide to conducting death penalty cases*, vol 7 (Ditshwanelo: The Botswana Centre for Human Rights, 2005) at 1.

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ *Ibid*.

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penalty is the continued secrecy surrounding the execution of those condemned to be hanged. Relatives are not allowed to attend the execution, or visit the burial ground. There is also the problem of prolonged delays between sentencing and execution. This delay in itself amounts to inhumane, cruel, and degrading treatment.

The treatment of refugees and illegal immigrants appears to be an area, albeit subject to little scrutiny over the years, that further exemplifies the extent to which the human rights offered by Botswana falls short. The *Refugee (Recognition) Act* provides for the granting of asylum or refugee status in accordance with the 1951 *UN Convention Relating to the Status of Refugees*. The Government has adopted a legal framework aimed at providing protection for refugees and asylum seekers.²⁶ The system for granting refugee status though accessible is secretive and very slow.²⁷ Botswana has also adopted tougher and more exclusionary policies, such as the imposition of stiffer immigration penalties, detention policies, imprisonment, and other deterrent mechanisms, in an attempt to control the movement of people into the country.²⁸

The *Penal Code of Botswana* criminalizes same-sex relations, a law which clearly violates an individual's rights to his/her sexual orientation. Currently, the laws in Botswana, as well as societal attitudes more generally, point to a concerning level of intolerance towards homosexuality. In the case of *Kanane v State*,²⁹ the Court of Appeal was of the view that gay men and lesbian women do not represent a group or class of people that require protection. By refusing to decriminalize same-sex relations and by declaring the sections of the penal code which criminalize such relations to be constitutional, the courts have further demonstrated that

²⁶ See Onkemetse B Tshosa, "National refugee Laws in the light of international standards: some reflections on the Refugee (Recognition and Control) Act, 1967 of Botswana" (2007) 5:6 U Botswana LJ 49.

²⁷ See generally Elizabeth Macharia- Mokobi & Jimcall Pfumrodze, "Advancing refugee protection in Botswana through improved refugee status determination" (2013) 13 Afr Hum Rts LJ 152.

²⁸ See generally Eugene Campbell & Jonathan Crush, "They Don't Want Foreigners": Zimbabwean migration and the rise of xenophobia in Botswana" (2015) 6:2 J Migration & Culture 159.

²⁹ [1995] BLR 94.

they are reluctant to adopt progressive trends taking place elsewhere. Notwithstanding this history, the LGBTIQ community in Botswana has grown considerably in the years since the aforementioned decision.³⁰

It is only recently (in 2016) that the Court of Appeal confirmed that the registration of a non-governmental organization (NGO) that advocates for the rights of members of the LGBTIQ community was not in contravention of the provision of the *Societies Act*.³¹ This case arose from the refusal of the Registrar of Societies to register the said NGO on the basis that it sought to promote illegal activities, the illegal activity being homosexuality.³² The Court ordered that the organization be registered and concluded that the NGO did not set out, as per its objectives, to pursue illegal activities.³³

While Botswana has made considerable progress in its collective national effort to better the lives of the citizenry at large, there is still a need to encourage the Government to domesticate most of the country's international human rights treaty obligations. What is more, there are certain human rights issues that need more attention than others, in particular those issues concerning marginalized groups and citizen empowerment policies. As discussed above, many issues relating to equality and the protection of human rights remain a challenge in Botswana. A lot can thus be done, especially through Canada-Botswana human rights engagements, in so far as the promotion and protection of human rights in Botswana is concerned. Botswana's relatively good human rights record notwithstanding, some

³⁰ See generally Emmanuel K Quansah, "Same-sex relationships in Botswana: Current perspectives and future prospects" (2004) 4 Afr Hum Rts LJ 201.

³¹ Court of Appeal, *The Attorney General of Botswana v Thuto Rammoge and 19 Others*, (2016), Civil Appeal No CACGB-128-14 (Republic of Botswana).

³² *Ibid.*

³³ *Ibid.*

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implementation gaps exist. Once filled, these could bring extended and/or better human rights protection to segments of Botswana's population.

III. EVIDENCE OF THE HUMAN RIGHTS ENGAGEMENTS

Perhaps owing to its middle-income status, Botswana has not been receiving any significant level of developmental assistance from Canada. Nevertheless, there is some evidence to suggest that there have been instances where the Canadian Government has supported local human rights initiatives. Two preliminary observations emerge from the available evidence with regards to Canada-Botswana human rights engagements. Firstly, the initiatives that have been supported by the Canadian Government have been geared towards the promotion of human rights, freedom of expression, the rule of law, and democracy in Botswana. This is certainly in line with the ideals, highlighted above, that are said to be the cornerstone of bi-lateral relations between the two countries. Secondly, most of these initiatives have been led and undertaken by local non-governmental organizations with little to no evidence on the activities that were led by the Government of Botswana and supported by their Canadian counterpart.

The Canada Fund for Local Initiatives (CFLI) is one of the vehicles through which there has been collaboration between Botswana NGOs and agencies of the Canadian Government.³⁴ The CFLI has also been instrumental in providing some support for local organizations that promote democracy, human rights, and the rule of law in Botswana. Over the years, this Canadian-funded initiative has provided financial support for small Botswanan NGOs and community-based organizations to promote economic and social development at the community

³⁴ World University Service of Canada, *Canada Fund for Local Initiatives*, online: <wusc.ca/en/program/canada-fund-local-initiatives>.

level.³⁵ These goals have been achieved through the execution of technical, economic, educational, cultural, or social development projects.³⁶ For example, the CFLI has provided support to community-based Early Childhood Development initiatives, some of which target orphans and vulnerable children.³⁷ Additionally, the Fund has supported economic empowerment initiatives that target orphans, vulnerable individuals, and caregivers.³⁸ The initiative has also assisted in undertaking projects on health and HIV/AIDS with a bias towards youth, women, and persons with disabilities.³⁹ The World University Service of Canada (WUSC), on behalf of the Embassy of Canada in Harare, managed the funds that were availed by the Canadian Government for supporting some of these initiatives.⁴⁰ It appears that the main objective of some of the projects is to contribute to “the overall goal of reducing poverty”⁴¹ in Botswana. This initiative was implemented for a limited period of two years. It is questionable whether the goal of these projects, i.e. reducing poverty, could have been met within such a short period of time.

Through the now defunct Canadian International Development Agency (CIDA), the Canadian Government implemented a development assistance program in Botswana for a long time. The Agency provided funds to a number of local NGOs, including those working on issues related to human rights. For example, CIDA provided substantial funding to one of the most active NGOs in Botswana, the Botswana Network on Ethics Law and HIV/AIDS (BONELA) to carry out activities that are geared towards promoting the rights of People Living with

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Government of Canada, Global Affairs Canada, *Project profile – Canada Fund for Local Initiatives (CFLI) – Botswana – 2011-2012*, online: <w05.international.gc.ca/projectbrowser-banqueprojets/project-projet/details/a034392004>.

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HIV/AIDS (PLWAs). This was done through activities such as human rights education, the provision of legal aid, and public interest litigation.

It has been noted that even though Canada has significantly reduced its bilateral development assistance to Botswana over the years, the Canadian Government continues to support Botswana's efforts to reduce poverty and to realize the human rights of its citizens through a variety of other channels.⁴² To this end, the Canadian Government supports HIV/AIDS related programs, the training of Botswana health professionals, and outreach programs serving orphaned and vulnerable adolescents as well as their caregivers.⁴³

It is apposite to point out that a lot of activities that were undertaken in Botswana with the assistance of the CIDA were largely executed by local NGOs, and have, for the most part, remained undocumented. Most such activities largely sought to address many of the social injustices that existed – or continue to exist – in Botswana. The absence of a clear research agenda to document and study these engagements is perhaps due to the fact that there are no strong diplomatic ties between the two countries, which thus necessitates further research so as to influence further engagements. In 2013, during a visit to Botswana, Canada's Governor General David Johnston indicated that "trade relations and people exchanges between Botswana and Canada have not reached a threshold that would make Canada consider opening a fully-fledged High Commission office in Botswana".⁴⁴

⁴² Ponatshego H Kedikilwe, "Canada has been a friend indeed" *Sunday Standard* (24 May 2013), online: <www.sundaystandard.info/%E2%80%98canada-has-been-friend-indeed%E2%80%99>.

⁴³ Gowenius Toka, "Botswana to make the most of Canada's Governor General's State visit" *Sunday Standard* (12 May 2013), online: <www.sundaystandard.info/botswana-make-most-canada%E2%80%99s-governor-general%E2%80%99s-state-visit>.

⁴⁴ Spencer Mogapi, "Canada not about to set up diplomatic office in Botswana" *Sunday Standard* (19 May 2013), online: <www.sundaystandard.info/canada-not-about-set-diplomatic-office-botswana-%E2%80%93-governor-general>.

In the absence of prolific programs and activities carried out jointly by the Canadian and Botswana governments, the World University Service of Canada (WUSC) has been put forward as a "...key education partner for Education in Botswana".⁴⁵ Pursuant to its mission statement and commitment towards making a contribution to the development of Botswana, WUSC sends Botswana students to pursue their education in Canadian universities or colleges. It is recorded that:

1000+ students from Botswana have come to Canada to pursue undergraduate, graduate and post-graduate studies since 1981;
25+ universities and colleges across Canada have welcomed these international students;
92% of students graduate and return to their home country, where they can work and contribute to their community's and country's development;
Major fields of study include engineering, telecommunications, geometrics, food science, agriculture, geochemistry, economics and geophysics.⁴⁶

It is expected that the empowerment of youth through formal education will improve the development of the country. The skills they acquire during their training will become relevant to the various sectors of the economy, especially the mining and agricultural sectors. There is therefore no doubt that this is a significant contribution to the country's economy by Canada. The point is that Canada, through these means has assisted significantly in securing the enjoyment of the rights to education of *Batswana* who have benefited from these programs.

WUSC, CECI, and other stakeholders, recently undertook a study on youths' perceptions of HIV/AIDS with a view to using this knowledge to design an HIV/AIDS prevention strategy.⁴⁷ It is reported that due to the findings of this research, a local stakeholder called the Tertiary Education Council (TEC) was awarded about 18 million Botswana Pula (approximately

⁴⁵ Toka, *supra* note 43.

⁴⁶ World University Service of Canada, *Botswana*, online: <wusc.ca/en/category/region/africa/botswana>.

⁴⁷ Uniterra (a WUSC & CECI Program), *Tapping into Batswana Tertiary Youth's Knowledge and Perceptions of HIV/AIDS to Design a Prevention Strategy: Results and Lessons Learned* (Uniterra: 2014), online: <assets.wusc.ca/Website/BotswanaTEC.pdf>.

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\$2,155,000 CDN) by the Botswana National AIDS Prevention Support Project (BNAPS) to implement the Tertiary HIV and AIDS project (teAIDS).⁴⁸ This project was designed to strengthen the capacity of tertiary institutions to better respond to the causes and consequences of HIV/AIDS among tertiary youth in Botswana.⁴⁹

In addition to the above, the WUSC program has focused on strengthening the capacity of NGOs in Botswana. According to this organization:

WUSC's program has focused on strengthening national-level NGOs to provide more inclusive, improved and increased HIV and AIDS services, to increase the integration of equality between women and men and to engage in policy dialogue for the benefit of disadvantaged or marginalized communities. WUSC has been working in Botswana since 1980, strengthening the capacity of local organizations, government departments as well as individuals in their efforts to contribute more effectively to the development of the country and the social welfare of the population.⁵⁰

Apart from providing exchanges and volunteer programs, civil society in Botswana has benefited immensely from these programs. It is worth noting that, notwithstanding these efforts, civil society in Botswana is weak as a collective. To that end, it is necessary for one to further analyze the impact that these CIDA financed initiatives have had on the overall "development of the country and the social welfare of the population", particularly if its main partner has been the civil society.

Another source of evidence of human rights engagements is the Immigration and Refugee Board of Canada's response to information request on the treatment of homosexuals by the society and government in Botswana.⁵¹ The concluding section of this "response" is consistent

⁴⁸ *Ibid* at 1.

⁴⁹ *Ibid*.

⁵⁰ World University Service of Canada, *supra* note 46.

⁵¹ Government of Canada, Immigration and Refugee Board of Canada, *Botswana: Treatment of homosexuals by society and the government; legal recourse and protection available to homosexuals who have been subject to ill-*

with the earlier argument in this article that the rights of members of the LGBTIQ community in Botswana are still threatened by discriminatory laws, to the extent that sexual acts between homosexuals are outlawed, and therefore same-sex relations are substantively banned.

The initiatives discussed above are an indication of the areas wherein various stakeholders from Botswana and Canada came together to undertake human rights activities. It is possible that if in-depth research is carried out, we will be able to identify more initiatives of this kind. The available information is indicative of the research possibilities that exist. It is also an indication of the nature and extent of Canada's involvement or engagement with human rights issues in Botswana. The discussion below offers a reflection on the challenges and prospects of such Canada-Botswana engagements on human rights issues.

IV. CRITICAL REFLECTIONS ON THE EVIDENCE

Canada-Botswana human rights engagements bring to the fore a few issues that are worth highlighting. It has been made clear by the Canadian Government that there are neither enough trade relations nor sufficient transfer of persons between Canada and Botswana for Canada to maintain a strong diplomatic presence in Botswana. It is therefore possible to speculate that there may be a correlation between mission presence and the extent of Canada-Botswana human rights relations. This in turn may have negatively affected the efforts of the Canadian Government to promote democracy, human rights, and the rule of law in Botswana. Further research is required to establish or disprove the validity of this point.

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It is also worth noting that the scope of the human rights engagements between Canada and Botswana does not appear to have been clearly defined. It is commendable though that some of these interventions have been aimed at addressing issues relating to HIV/AIDS, given the high prevalence of HIV/AIDS in Botswana and the high need for programs aimed at reducing the spread of HIV/AIDS. The research project that was carried out by WUSC on the prevalence of HIV and the attitude of tertiary education students demonstrates the potential that targeted research interventions have for human rights engagements. More of these interventions are necessary to ensure that there is a proper response to the challenges faced by the people of Botswana in relation to the existence of legal barriers, particularly with respect to the provision of services to members of marginalized communities, including sex workers, members of the LGBTIQ, and prisoners.

The information that is available thus far indicates that the two countries have not engaged on all aspects of human rights. For example, there is no evidence that suggests that any of their human rights engagements have been directed towards securing the protection of economic, social, and cultural rights. The evidence simply indicates that the interventions are rather general in nature and likely result from what Canada desires to fund, rather than from what the country may actually need. There are, of course, instances where the needs of the country coincide with available funding. Such an approach is, however, unsustainable and must be replaced by a more organized approach when carrying out human rights engagements.

As a result of the limited engagement on human rights issues and the lack of a clearly delineated scope for human rights engagements between the two countries, it is difficult to fully conceptualize the nature of the engagement on matters of human rights. In other words, it is difficult to determine the factors that influence, positively or negatively, the human rights

engagements, although, it could be deduced from available information that funding is mostly provided by Canada. It can therefore be safely concluded that the nature of the engagement is such that Botswana is more of a receiver in its relations with Canada.

Notwithstanding the fact that Canada provides funding to Botswana, it could be argued that it does not have significant influence in Botswana's human rights affairs. As was previously alluded, the reduction in developmental assistance is attributable to the fact that Canada's interests in Botswana are not as elaborate as they are in other countries, such as South Africa. The inescapable conclusion is therefore that human rights engagements will dwindle since, in most instances, developed countries, such as Canada, are only interested in the human rights affairs of those developing countries in which they hope to invest more. This is generally because Canada has made it clear that there is not enough trade and human exchange between the two countries to warrant the country's full presence in Botswana. It is therefore possible that human rights engagements between the two countries are not wholly tainted by the imperialist intentions that developed countries often known for. To the extent that Canada is in a position to play an influential role in informing human rights protection efforts in Botswana, this represents a missed opportunity. It is obviously not ideal in so far as the promotion and protection of human rights in Botswana is concerned.

It is beyond doubt that Botswana offers itself as a good example when it comes to the observance of democracy and human rights. Of course, this is relative to the rest of Africa, but its positioning on such matters provides a good platform for a future research agenda on its engagements with countries like Canada in the areas of democracy and human rights. An assessment of the available literature indicates that Botswana's position and the relatively high democratic/human rights pedestal upon which it sits in Africa, has not been fully taken

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advantage of by Canada with respect to fostering a much greater volume/intensity of human rights engagements with Botswana.

Given how understudied and generally invisible human rights engagements have been thus far, there is a need for further research into the extent to which these human rights engagements and initiatives have assisted in addressing some of these human rights implementation and enjoyment gaps in Botswana (and even in Canada). The research will also assist in ascertaining the relevance of human rights engagements and will measure their impact. Perhaps the research will answer some of the questions that are raised by this article, such as the motivation behind Canada's funding patterns for human rights engagements in Botswana.

V. CONCLUSION

The fact that Canada has had a significant level (albeit not an overwhelming amount) of human rights engagements with Botswana and has supported various pro-human rights activities in the country is evident. However, these engagements have been limited in nature and there is no visible commitment on the part of both countries to do more than what has already been done. This is despite the fact that there is evidence of implementation gaps on the part of Botswana (and even Canada) towards their international human rights obligations. There still exist growing concerns over issues pertaining to ethnic discrimination, xenophobia, and other related intolerances in Botswana. Women, children, refugees, asylum seekers, and members of the LGBTIQ community continue to be marginalized in the country as well. There is also growing inequality in Botswana, which underscores the fact that there is a need for greater focus, as a country, on issues relating to social justice. To that end, if Canada is going to continue funding human rights initiatives in Botswana, there is a need for more focused engagements. Obviously,

such targeted engagements can only be successful after extensive research issues, such as the nature, extent, and impact of the past and existing human rights engagements, are resolved.