

Aspect Of *Botho/Ubuntu* In Botswana

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ABSTRACT

The objective of this article is to interrogate the concept of Botho/Ubuntu in relation to Botswana and argue that it is more than just an ideology but a way of life for Botswana. It is noted that, there has been much debate on what Botho/Ubuntu is and where it can be found within the Nguni and Bantu speaking people. This article aims to add to such discussion and state that the concept of Botho/Ubuntu also exists in Botswana. In addition, such concept in Botswana is referred to as “Botho”. Botho in Botswana is a basis of various cultural expressions and forms part of the way of live of Batswana. This article will show how Botswana has integrated Botho into its national principle through including it in their national strategy outlined in Vision 2036. It will argue that Botswana needs to take lessons from South Africa and its incorporation of the concept of Botho/Ubuntu into their legal jurisprudence, and incorporate Botho into Botswana legal jurisprudence as well.

1. INTRODUCTION

This paper is going to discuss the concept of *Botho/ Ubuntu* in the context of Botswana. The discussion will center on how Botswana as a country has introduced this concept and how it has been incorporated as a national principle in the Vision 2016 and Vision 2036. The discussion on *Botho/ Ubuntu* relates to the identity of who Batswana are as a nation. It is argued that in order to understand the concept fully, one needs to immerse oneself with the people who practice it on a daily basis. This paper will thus attempt to show how *Botho/ Ubuntu* has been or is centered to the way of life of the country. This paper will do so by exploring the historical background of the concept of *Botho/ Ubuntu*. It will look at how Botswana has shaped the concept and how it has been applied in Botswana. The paper will also discuss how other countries have applied

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Botho/Ubuntu and how such application of this concept may influence or direct how Botswana may improve its application.

2. HISTORICAL BACKGROUND

Historically *Ubuntu/Botho* is as old as human existence and is part of an important part of African history and ethics.¹ It comes from the world wide understanding based on the phrase “*umuntu ngumuntu ngabathu*” and in the Sotho/Tswana the phrase is “*motho ke motho ka ba bangwe*” which translates to (I am a person through other persons).² *Botho/Ubuntu* has also been defined by some authors as the philosophy of life which represents the aspect of humaneness, personhood, morality and humanity.³ The term *Ubuntu* as known in the Republic of South Africa has many names in other African Countries.⁴ For example, in Botswana which is part of the Tswana tribes, it is known as *Botho*, in Tanzania it is referred to as *Ujamaa*,⁵ in Kenya it’s called *Uhuru*,⁶ in Ghana it is referred to as *Consciencism*,⁷ in Zambia they refer to it as *Humanism*⁸ and lastly Senegal refers to it as *Negritude*.⁹ In Zimbabwe it is referred to as *Hunhu* which means humanness to the fullest and noblest sense, somewhat a characteristic of a perfect human being.¹⁰ Samkange and Samkange when explaining *Hunhu/Ubuntu* in terms of the Zimbabwean aspect, they said it means, “the attention one human being gives to another: the kindness, courtesy, consideration and friendliness in the relationship between people, a code of behavior, an attitude to others and to life.”¹¹ *Hunhu* is a person who upholds the “African cultural standards, expectations, values and norms and keeps African identity.”¹² This

1 R. Dolamo, “*Botho/Ubuntu: The Heart of African Ethics*”, *Scriptura* 112, (2013) pp.1-3.

2 Ibid.

3 JY Mokgoro, “*Ubuntu and the Law in South Africa*”, the paper was delivered at the first Colloquium Constitution and Law held at Potchefstroom on the 31 October (1997). The paper was first published by the Konrad-Adenauer-Stiftung in their seminar Report of the Colloquium (Johannesburg (1998)).

4 T. W. Bennet, assisted by A.R Munro and P.J Jacobs, *Ubuntu, an African Jurisprudence*, (Juta and Company (Pty) Ltd 2018).

5 Ibid.

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

10 P Sibanda, The Dimensions of ‘*Hunhu/Ubuntu*’ (Humanism in the African Sense: The Zimbabwean Conception, International Organization of Scientific Research Journal of Engineering (IOSRJEN), Vol 4, Issue 01 January [2014] 26.

11 T M Samkange, *Hunhuism or Ubuntuism: A Zimbabwean Indigenous Political Philosophy* (Salisbury, Graham Pub. 1980).

12 Sibanda (n 10), pp.26.

shows that *Hunhu* or *Ubuntu* or *Botho* is a concept which is very familiar to many Nguni/Bantu speaking countries and identifies as concept or principle which they live by and are measured by.

It is argued that *Botho/Ubuntu* is difficult to define since it originates in the African tradition.¹³ The term *Botho/Ubuntu* originates from African decent particularly the Sesotho Languages such as the Setswana, Sepedi and Sesotho who refer to it as *Botho*, and the Nguni languages such as the isiZulu, isiNdebele, isiXhosa and isiSwati who refer to it as *Ubuntu*.¹⁴ It seems the author could not define the concept of *Botho* but rather stated what it stands for and what it means as a process. For example, the author stated that to some people, *Botho* means “humanity” and the aspect of personhood, while to others say it’s the “ideal of being human”.¹⁵ However, he was right when he said that, “African nations should craft their respective constitutions in a way that enshrines *Botho/Ubuntu* principles, with an ethnic of communalism underpinning them”.¹⁶ *Botho/Ubuntu* signifies that people live together as a community, sharing one world, together at the same time, thus no one is an island.¹⁷ While *Botho/Ubuntu* may be regarded simply as an idea for some, it is more than just a superficial view of what the *Botho/Ubuntu* actually is. Kunene¹⁸ puts it this way:

“For indeed, it is not enough to refer to the meaning and profound concept of ubuntuism merely as a social ideology. *Ubuntu* is the very quality that guarantees not only a separation between men, women and the beast, but the very fluctuating gradations that determine the relative quality of that essence. It is for that reason that we prefer to call it the potential of being human.”¹⁹

The next question would be what goes into making a person human. The values which make a person human are compassion, forgiveness, helpfulness and understanding.²⁰ With additions of characteristics such as wisdom, fidelity,

13 J A Faris, African Customary Law and Common Law in South Africa: Reconciling Contending Legal Systems, [2005] International Journal of African Renaissance Studies- Multi- Inter and Transdisciplinarity , 171.

14 Dolamo (n 1).

15 Dolamo (n 1).

16 Dolamo (n 1).

17 Bennet (n 4), pp.33.

18 M Kunene, “The Essence of being human: An African Perspective in Inaugural lecture 16 August (1996) Durban, 10.

19 Kunene (n 18).

20 Dolamo (n 1), pp.63-69.

hard work, humility, and Godliness.²¹ According to Mertz Godliness being an important aspect as, it is believed that being human, one also contains a spiritual being or life force that has been bestowed by God.²² However, it may be argued that such does not form part of the beliefs of Atheists but only of believers. This brings about the issue of personhood, selfhood and humanness in the moral theory spectrum.²³ This posits that, the goal of one's life should be to become a complete person, a true and genuine human being, which can be achieved through *Botho/Ubuntu*. The underpinning value of solidarity is for the people to take part in mutual aid, to act in ways that are reasonably expected to benefit each other through the spirit of *Botho/Ubuntu*.²⁴ Furthermore, *Botho/Ubuntu* discourages people to think of themselves alone to the exclusion of others and can be termed as anti-egoistic.²⁵ Morally speaking a human right is only guaranteed so long as it does not infringe the right of another person, thus it's a moral right against other people.²⁶

Botho/Ubuntu also goes hand in hand with culture and religion which are said to be the pillars which society is based upon in Africa.²⁷ Bujo explained this when he said:

“as Africans see it, it is impossible to define the human person purely on secular or purely religious terms, since he is both at once. Where one of these dimensions is lacking, one can no longer speak of human person qua human person”.²⁸

Still on the concept of being human, humanness comes through socialization which is enjoyed through interaction with the community.²⁹ Therefore, it is difficult to consider *Botho/Ubuntu* outside of the realm of community.

The aspect of *Botho* goes hand in hand with what is referred to as the Golden Rule. This is a rule which states that, “do unto others what you would

21 A M Ng'weshemi, *Rediscovering the Human: The Quest for a Christo-Theological Anthropology in Africa*, (Peter Lang Publishing Inc, 2002).

22 M Thaddeus, *Ubuntu as a Moral Theory and human Rights in South Africa*, (2011), African Human Rights Law Journal, 537.

23 Thaddeus (n 22), pp.537.

24 Thaddeus (n 22), pp.538.

25 Thaddeus (n 22), pp.539.

26 Thaddeus (n 22), pp.541.

27 Dolamo (n 1).

28 B Bujo, *Foundations of an African Ethic: Beyond the Universal Claims of Western Morality*, (Kena: Pauline's Publications Africa, 2003).

29 Dolamo (n 1).

like them to do unto you.”³⁰ It requires that:

“Everyone ought to act in his relations with others on the same standards...that he would have them apply in their treatment to him, taking into account of and respecting, but not necessarily acceding to, their wishes and desires”.³¹

While the Golden Rule is not a substitute for moral theory it may be considered as a method which is used to make a determination of a line of action.³² The Golden Rule can be interpreted as either particular or general, that is:

“whatever...I would have others do to me or for me, I should do to or for them; and/ or
the general ways in which I would have others behave in their treatment of me. And what I would have them do, in abstraction from any of my particular desire.”³³

However, though the Golden rule is one of many rules found in religions, it has been accorded a particular high standard.³⁴ *Botho/Ubuntu* gives expression to the injunction that one should do unto others as he or she would have them do unto him or her.”³⁵ The values and principles of the Golden rule are aligned to those found in *Botho/Ubuntu*, namely kindness and treating each other kindly, treating the next person how you would like them to treat you.

3. *BOTHO/UBUNTU* IN BOTSWANA

The concept of *Botho* in Botswana originates from culture. This has been passed on from generation to generation mostly through folklores, Setswana sayings.³⁶ They are used to mold the Setswana child from their youth to conform to the community, to reinforce the fact that they are not an island.³⁷ Some of the Setswana saying which highlight this fact and are regarded as intrinsic to what

30 J Gould, [1983] “The Golden Rule”, American Journal of Theology and Philosophy, 73.

31 Gould (n 30).

32 Gould (n 30).

33 W Blackstone, The Golden Rule: A Defence, [1965] Southern Journal of Philosophy, 293.

34 Gould (n 30), 75. See also Mathews 7:12 (New International Version) which provides that “Do to others whatever you would like them to do to you. This is the essence of all that is taught in the law and the prophets.”

35 The Citizen [1978] and others v Robert John Mebride and others CASE CCT23/10 [2011] ZACC 11.

36 Such as “*maele*” and “*diane* (plural), *seani* (singular).”

37 Dolamo (n 1).

Botho means in the context of Botswana include, Mokoma³⁸:

- *Motho ke motho ka batho ba bangwe*³⁹

A person is a person through other people.

This saying is commonly used in the context of *Botho* thus it teaches the community the importance of togetherness and shuns against individualism and egoistic tendencies.⁴⁰

Having identified the three Setswana sayings which teach togetherness, kindness and grooming of young children.⁴¹ These Setswana sayings are the principles of *Botho/ Ubuntu* which promote respect and group solidarity as these saying emphasize the importance of working together as a team. Furthermore, through these sayings, it shows that Botswana recognizes the importance of instilling *Botho/ Ubuntu* from a very young age. Botswana also recognizes the reliance which *Botho/ Ubuntu* places on the community to be able to enforce it.

4. VISION 2016

Vision 2016⁴² was developed in 2006 and was to be achieved in 10 years. Most notable in Vision 2016, was the inclusion of the aspect of *Botho* as a national principle.⁴³ One of the aims of Vision 2016 was to make sure that

38 See also S. A. Mokoma, "Sego sa Diane, Motheo wa Botshelo," published by Thabo S. Dlamini, (2016) pp.72-77. <https://en.calameo.com/books/00504062050fefaaa0c7d> accessed 16 July 2020.

39 J Mugambate and A Nyanguru, Exploring African Philosophy: The Value of *Ubuntu* in Social Work, [2013] African Journal of Social Work, 82.

40 Other Setswana saying which refer to togetherness include: "*Sedikwa ke ntsha pedi ga se thata; Kgetsi ya tsie e kgona ke go tshwaragannwa; Seatla e re go sha, se amogane le se sengwe; Batho ke go thusana, mo dilong isa botshelo;*" which translate to "People should assist each other in life." Such saying encourages teamwork, working together, respecting each other, compassion, treating people the same way you would like to be treated. As no man is an island, and we all need help once in a while, thus the saying promotes the need to give help and also the right to expect or receive help when needed. Thus, this saying promotes values of *Botho/ Ubuntu* within the community or in the next person. As such one must promote the spirit of kindness and compassion. (*Own emphasis*).

Setswana saying teaching about grooming include: "*Boferefere ga se papadi, ga bo a tshwanelwa go itlwaetswa; ngwana ga se wa motho ke wa batho; Lore le ojwa le sa le meti.*" These translate to "Lack of honesty is not an admirable trait, it's not good." This saying warns against dishonesty in society that it is a trait that people should desist from as it brings no peace and harmony. This saying encourages parents to start instilling the values of *Botho/Ubuntu* on a child at an early stage as when the child is young, they absorb easily the information they are given. (*Own emphasis*).

Setswana saying talking about kindness include: "*Moreko ga o ithekolle; mabogo a tlhapisana.*" This translates to "Sharing with each other is a good thing." This saying encourages sharing and caring and promotes it as a value which the society should do as it's praised. The spirit of *Botho/ Ubuntu* shuns upon selfishness especially if your neighbour is lacking on something which you have. (*Own emphasis*).

41 Ibid.

42

43 G Steyn, The Influence of *Botho* on social space in Botswana since independence, [2012] SAJAH, 112.

“*Botho* must permeate every aspect” of life in Botswana.⁴⁴ The core values of *Botho/Ubuntu* were identified as solidarity, respect, compassion, humanness, conformity, human dignity, sharing, unity and solidarity, communalism, universal brotherhood, hospitality and interdependence.⁴⁵ These correspond with the Setswana sayings “Diane”, discussed above. Vision 2016 for Botswana further sought “to build a united and proud nation, which means a society underpinned by resilient family values with a strong sense of tradition and pride in its history. This may be translated to mean, a society sharing the common ideals and symbols of *Botho*.”⁴⁶

Mosienyane states, “Many Setswana concepts relating to space and place were embodied in the concept of *Botho* which is respect for the human being and a human beings connectedness to other people as well as the natural environment and the spiritual realm.”⁴⁷ An example of the communitarianism aspect of *Botho* was a project by the University of Botswana to help student dropouts to get back in school, and obtain work attachments.⁴⁸ This shows how the community is involved in taking care of each other, showing the spirit of working together, showing each other love and compassion. As a result of the community and private company’s involvement, school dropouts were able to write exams again. Notably, “the project participants exhibited *Botho* by generally being well-behaved, showing respect, being punctual and committed to their duties. The students were able to obtain Training Academic Certificates.”⁴⁹

5. VISION 2036

The concept of *Botho* was carried forward in Botswana’s Vision 2036. Here *Botho* has been described as “a well-rounded character, well mannered, courteous and disciplined, who realizes his or her full potential both as an individual and as part of the community to which he or she belongs.”⁵⁰ Particular emphasis should be made that, the fact that Botswana has defined *Botho* for itself, this

44 Vision 2016, Botswana.

45 Steyn (n 42).

46 Steyn (n 42), pp.125.

47 M Mosienyane, “Interview with Debra Percival: ‘Giving Tswana Culture a world vision,’” *The Courier*, (Dec/Jan/Feb), (2009).

48 S Morapedi, *Botho* as a Way of Enhancing Problem Solving in a Community Project: The Case of Moshupa Study Group Project in Botswana, [2018] Botswana Notes and Records, 178.

49 Morapedi (n 47), pp.186.

50 Botswana Vision 2036, available at <https://vision2036.org.bw/national-principles> accessed on 16 June 2020.

means that *Botho* is highly prized to the extent that it is considered a national principle. It requires that the person must realize their full potential not only for themselves but also for the community. Thus, a person who has *Botho*, is caring and loving, respectful, compassionate and cares about their community. The aspect of *Botho* expanded in Vision 2036⁵¹, where reference is made to “social inclusion and Equality”. Inclusivity in the nation includes the marginalized and those with disability, by ensuring that “social protection” is provided. This reinforces the importance of togetherness in family institutions, where it aims to build “strong family institutions” that instill strong values and produce citizens who are responsible.⁵²

We see once again the importance and value which *Botho/Ubuntu* puts on the community that every member of the community must work together, be compassionate against one another and work together to achieve social responsibility. Botswana is also restating the togetherness mantra in its Vision 2036 to include the youth and develop the youth in order to develop the country. The youth of the country which are being nurtured by their parents and the community and taught the values of *Botho/Ubuntu* from a young age. Through the Setswana saying of “Lore lo ojwa le sa le metsi” which means that children should be taught community values, way of life and *Botho/Ubuntu* from a young age, so that they grow up with it.⁵³ Botswana recognized that it needs to work together as a community for the better prosperity of the country.

One of the most thought provoking units of the second pillar is that of “spiritual wellbeing”, which suggests that Botswana will uphold morality and tolerance for one another irrespective of sex, disability, language, age, political opinion or ethnic origin.⁵⁴ This principle goes hand in hand with the Golden Rule that you must do unto others as you would like them to do to you, which has also been provided for in the Bible.⁵⁵ *Botho/ Ubuntu* encourages respect for other people’s dignity which includes the respect and acceptance that a person is more than just a human, but contains a spiritual being. *Botho/ Ubuntu* goes hand in hand with dignity. Therefore, when practicing *Botho/ Ubuntu* one must treat others the way in which the Bible also teaches that people should be treated. In essence *Botho/Ubuntu* and religion have similar teachings which both promote

51 In the second pillar of social development, the country reinforces its socialism.

52 Vision 2036 (n 50).

53 (*own emphasis*).

54 Vision 2036 (n 50).

55 Mathews 7:12 (New International Version).

social harmony of the members of the community.

Motswapong and others consider, “the concept of *Botho/ Ubuntu* for Batswana is a concept of acceptable relational living, which is measured by one’s relationship with the family, community, the environment and the divine powers (ancestors and God).”⁵⁶ In essence they consider that *Botho/ Ubuntu* is still alive. Stating that, baby and bridal showers for example, are motivated by the concept of *Botho*. They argue baby showers assist expectant mothers with advice, food, and assuring the expectant mother that they are part of a caring and loving community.⁵⁷ In addition, Madigela notes that in one of the interviews with bridal shower attendants about *Botho* in bridal showers, one interviewer stating that:

“...*Botho* is sharing and caring. We demonstrate *Botho* here by donating money; we accept help from each other... We teach *Botho/ maitseo*, we teach bride to respect her new family, love the sisters of the groom to exist peacefully with her husband.”⁵⁸

The argument can be made however, that baby showers and bridal showers have nothing to do with *Botho*; rather, they are a means of safe environment spaced for mostly women in an environment that may be hostile and unsafe for women.

Botho is the foundation of the support structures in the community where members of the community need each other, where guidance is shared. As seen from baby and bridal shower the spirit of togetherness shines through, in such community set ups. The way of life of Batswana would be regarded as living as a communalistic society, Mwipikeni.⁵⁹ He argues, “Individuals were close to each other and knew each other”, they had “mutual recognition and interdependence”.⁶⁰ This is still happening in Botswana, as it is a caring and compassionate nation.⁶¹

56 E P Motswapong, M D. Kebaneilwe, T J Madigele, M W Dube, S D Setume and T Moroka-Modie, “A Little Baby is on the way: *Botho/Ubuntu* and Community – Building in Gaborone Baby Showers,” De Gruyter Open, (2018), pp.52.

57 Motswapong (n 53), 63. This is expressed in, “*lorato, neelano le kuthwano* (translated as “love, giving and understanding”). For soon to be married women, bridal showers allow the bride to receive advice on how to live with her in law, what marriage entails, including respecting and loving her husband and new family as a whole.

58 T Modie-Moroka, M W Dube, S D Setume, M Kgalemang, M D Kebaneilwe, R Gabaitse, E Motswapong, T Madigela, *Pathways to Social Capital and the Botho/Ubuntu Ethic in the Urban Space in Gaborone, Botswana*, (Springer Nature Switzerland, 2019).

59 P Mwipikeni, “*Ubuntu* and the modern society,” South African journal of Philosophy, (2018).

60 Mwipikeni (n 56).

61 Letsweletse Motshidiemang v Attorney General and Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) MAHGB-000591-16.

One may argue that such set ups are generally more prominent in villages than in urban areas, be that as it may, the fact that *Botho/Ubuntu* principles are still being practiced by mothers in baby showers and brides in bridal showers in the 21st Century in urban areas shows that the principle, if investigated deeper is prevalent in urban areas as well.

Botswana also upholds highly the value of culture and cultural heritage.⁶² Hence the Constitution of Botswana recognized major tribes in the country such as the “Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa.”⁶³ Yes these tribes are not all tribes in Botswana as the country consists of many tribes, but it is a start to the spirit of togetherness and team work. This is because the chiefs are the ones who help with reinforcing culture and the *Botho* spirit. They are the ones who also teach the community the importance of working together and being respectable to everyone including elders.

However, it may also be argued that the inclusion of only major tribes in the Chieftainship Act⁶⁴ and the Constitution and not all tribes in Botswana is against the spirit of *Botho*, which the country itself prides itself by. In the case of *Kamanakao and Another v. Attorney-General*⁶⁵ the applicant being the Chief of the Wayei tribe sought to have his tribe recognized as a tribe within Botswana. He sought the repeal of section 2 of the Chieftainship Act.⁶⁶ The court held that such section 2 of the Chieftainship Act which only referred to the 8 major tribes was in conflict with section 3(a) of the Constitution of Botswana. In this case the court should have looked at section 78 of the Constitution too as singling out major tribes automatically excludes other tribes, it’s discrimination and does not infer unity and the spirit of communitarianism.

One of the other famous “seane” or Tswana proverb as alluded to above is that of “*motho ke motho ka ba bangwe*”, which translates to “I am, because we are.”⁶⁷ This forms part of what *Botho* is all about. In Botswana the government has went further to try and help citizens of the country with government housing loans through a scheme called Self Help Housing Agency (SHHA) building

62 Vision 2036 (n 49).

63 Section 78 Constitution of Botswana Cap 01:01.

64 (Cap 41:01).

65 [2001] (2) BLR 654 (HC).

66 Section 2 of the Chieftainship Act which only referred to the 8 major tribes.

67 Dolamo (n 1).

schemes.⁶⁸ This also encouraged private companies and individuals to help with identifying needs and assisting where necessary and anyone can donate to the next person.⁶⁹ This helps improve the spirit of *Botho*, and continues to prove that Botswana as a country is a caring and loving nation one which continues to live as a community and take care of others.⁷⁰

Vision 2036 refers to *Botho* as entailing respect, which is similar to the provisions of section 3 of the Constitution of Botswana which refers to respect for the fundamental rights and freedoms of individuals.⁷¹ It is argued that, for the rights to be enjoyed by an individual they must not offend the rights of others. This is where the spirit of *Botho* features in by ensuring that individuals are respectful towards each other and are compassionate towards each other. This goes in line with Article 3 of the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa⁷² which preserves the right to dignity. Likewise, Article 5 of the African Charter on Human and People's Rights⁷³ protects the right to dignity by providing that, "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status..." The spirit of Africanism can be seen in these Charters which preserve the aspect of *Botho/ Ubuntu* such as dignity, respect and compassion. In the words of *S v Makwanyane*⁷⁴, *Botho/ Ubuntu* gives value to human dignity, and there is no *Botho/ Ubuntu* without it.

6. JUDICIAL INTERPRETATION OF BOTHO IN BOTSWANA

There are only a few cases in Botswana where the concept of *Botho/ Ubuntu* has been infused into the court judgments as had been done by the courts of the Republic of South Africa. In the case of *Attorney General v Oatile*⁷⁵, Kirby JP when assessing the quantum damages had the following to say about *Botho*:

68 J Kampamba, S Kachepe, B Nkwae, N G Matlhogojane, T Outule, Housing delivery to the low income in Botswana, [2018] International Journal of Housing Markets and Analysis 356.

69 R M. Molebatsi and N Sello, "Parallel Policy Structure in Botswana: From Devolution to Centralisation under Ian Khama Administration," Vol. 50, A Special Issue on Botswana Notes and Records' Golden Jubilee Volume in Honour of Sir Ketumile Masire, Botswana Notes and Records, [2008-2018].

70 Kenneth Dipholo, Keneilwe Molosi-France, 'State Philanthropy: The Demise of Charitable Organizations in Botswana', [2019], Africa's Public Service Delivery and Performance Review.

71 Constitution of Botswana (n 68).

72 Adopted by the 2nd Ordinary Session of the Assembly of the Union, in Maputo, Mozambique 11th July 2003, which came into force on 25th November 2005.

73 21 October [1986].

74 (CCT3/94) [1995] ZACC 3.

75 [2011] (2) BLR 209 CA.

“Botswana is, as I have said, a developing country with a large land mass and a far-flung population. Income in rural areas is generally low. We have a history of moderation in distribution of the limited resources available for the benefit of the nation, *and generally the spirit of ‘Botho’ prevails — that is, mutual respect and compassion for the young, the elderly, women, and the disadvantaged.*”⁷⁶

Recently, in *Precious Kaje v Oreneile Mhotsha*⁷⁷, Judge Lot Moroka had this to say with regards to the principle of *Botho*:

“...the people of Botswana subscribe to strong cultural values. *The principle of Botho – “You are because I am”; is the over-arching value that holds the nation together. It is based on self-respect, self-restraint and respect for others and sacred institutions. Botswana respect the law not out of fear of sanctions, but out of self-respect.*”⁷⁸

In the case of *Letsweletse Motshidiemang v Attorney General and others*⁷⁹, the court emphasized that the Constitution of Botswana:

“is dynamic, enduring and a living charter of progressive rights; which reflect the values of pluralism, tolerance and inclusivity.”

It is argued that this definition upholds the spirit of *Botho*, which is what the nation lives by, that Botswana as a country has values and promotes tolerance and inclusivity. These values meaning, the values of the country such as *Botho* which entail, respect, love, caring, compassion, group solidarity to mention a few.

Botswana as a country has a Constitution and laws which recognize in a certain extent the value of *Botho*. The courts have of recent recognized that Botswana society uphold the cultural values of *Botho* and togetherness as a nation. The case of *Precious Kaje v Oreneile Mhotsha*⁸⁰ is one of the few

⁷⁶ (own emphasis).

⁷⁷ CVHFT-000237-17.

⁷⁸ Ibid, [68].

⁷⁹ MAHGB-000591-16 judgement delivered in open court on 11th June 2019.

⁸⁰ CVHFT-000237-17.

decisions where *Botho* was explained in the context of Botswana. However, more needs to be done to further reinforce the principle of *Botho* through legal jurisprudence and academic writing. Currently, the sparsity of decisions does not extrapolate what *Botho/ Ubuntu* comprises of in Botswana, unlike South African jurisprudence. It is argued that courts need to be more progressive and transformational in infusing cultural norms and values of Botswana into judicial interpretation.

It is clear from the discussion that, there is very little awareness or at least a lack of interest by the courts to discuss or incorporate *Botho* into judicial rulings. Perhaps the problem may be with the term in which legal arguments are placed before the courts.⁸¹

7. CONSTITUTIONAL ACUMEN OF *BOTHO/UBUNTU*

The concept of *Ubuntu* first appeared in the Interim Constitution of 1993 of the Republic of South Africa. It provides that, the division of a deeply divided society inflicted by apartheid should “be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for *Ubuntu* but not for victimization.”⁸² This has encouraged the integration of African values into the law of the Republic of South Africa especially through case law.

The reference in the interim Constitution of *Ubuntu* is indelibly linked with the move from apartheid to democracy and peaceful co-existence between black and the white South Africans. Mokgoro puts it thus;

*“the values of ubuntu are therefore an integral part of that value system which has been established by the interim constitution.”*⁸³

Although not specifically enshrined in the 1996 Constitution of the Republic of South Africa which contains the Bill of Rights, it identifies similar values to *Botho/Ubuntu*, such as human dignity and equality etc.⁸⁴

In *S v Makwanyane*⁸⁵ Justice Mokgoro said:

“an all-inclusive value system, or common values in South Africa, can form a basis upon which to develop a South African human rights

81 (own emphasis).

82 Faris (n 13). See also preamble to the Constitution of South Africa Act 108 of 1993.

83 Mokgoro (n 3), pp.7.

84 Mokgoro (n 3), pp.7.

85 Makwanyane (n 73), [225].

jurisprudence...one shared value, an ideal that runs like a golden thread across the cultural, is the value of *Ubuntu*- a notion coming to be generally articulated in this country.”⁸⁶

This case has laid the foundation for and contributed to the jurisprudence on *Botho/ Ubuntu* principles in the Republic of South Africa.

One of the most outstanding features of *Ubuntu* highlighted in this case was that of communitarianism, that is:

“Community sense is the value it puts on life and human dignity. The dominant theme of the culture is that the life of another person is at least as valuable as one’s own. Respect for the dignity of every person is integral to this concept.”⁸⁷

The court also stated that the concept of *Ubuntu* when being written about or referred is something which should be desired, one which the nation should undoubtedly strive for.⁸⁸ Referring to humanness, this fundamentally means personhood and morality have particular resonance in the building of a democracy.”⁸⁹ *Ubuntu* has been interpreted as “the grounding for the application of an authentic African equity.”⁹⁰

As may be seen in *Dikoko v Mokhatla*⁹¹ which expounded on the concept of *Ubuntu*, the court said:

“in our constitutional democracy the basic constitutional value of human dignity relates closely to *Ubuntu* or *Botho*, an idea based on a deep respect for the humanity of another. Traditional law and culture have long considered one of the principal objectives of the law to be restoration of harmonious human and social relationships where they have been ruptured by an infraction of community norms. It should be a

86 Ibid.

87 Ibid.

88 *ibid*, [227].

89 *Ibid*, [308].

90 Faris (n 13), pp.179.

91 [2007] (1) BCLR 1 (CC).

goal of our law to emphasize, in cases of compensation for defamation, the re-establishment of harmony in the relationship between the parties...a remedy based on the idea of *Ubuntu* or *Botho* could go much further in restoring human dignity...”⁹²

Critically the aspect of *Botho/ Ubuntu* involves forgiveness, compassion, love, preserving human dignity, group solidarity, respect, morality, conciliation, mutual trust and treating each other the way you would also like to be treated.⁹³

8. ANALYSIS

It is argued that the concept of *Botho/ Ubuntu* is more than just an ideology, it is a concept that is living and breathing, a concept that directs the daily lives of people, and how they treat one another. Moeketsi Letseka⁹⁴ argues and defends the values of *Botho/ Ubuntu* within the context of African heritage. It is to be noted that the Nguni and Bantu speaking communities focus more on the community and living as a community within the values set by the community, as alluded to above. Therefore, the Nguni and Bantu speaking people and cultures believe in *Botho/Ubuntu* as their way of life.

Botho/Ubuntu defines what it means to be human, what it means to be part of society as people exist and live within the society in which they were brought up. To really understand what *Botho/Ubuntu* is, one must look at the social values which it represents such as group solidarity, humanistic orientation compassion, respect, conformity, and collective unity as noted above. Such values are what the community has set for themselves in order to live or co-exist together in social harmony for all. Consequently, *Botho/Ubuntu* is the path

⁹² Ibid.

⁹³ See *Port Elizabeth Municipality v Various Occupiers* [2004] (12) BCLR 1268 (CC) ; *Crossley v National Commissioner of South African Police Service* [2004] 3 all SA 436 (T); *National Union of Metalworkers of South Africa obo Khanyile Nganezi and Others v Dunlop Mixing and Technical Services (Pty) Limited and Others* [2019] ZACC 25; *Union of Refugee Women and Others v Director: Private Security Industry Regulatory Authority and Others* [2007] 4 SA 395 (CC) para 145; *Pharmaceutical Society of South Africa and Others v Tshabalala-Msimang and Another NNO; New Clicks South Africa (Pty) Ltd v Minister of Health and Another* [2005] 3 SA 238 (SCA),[38] per Harms JA; and *Everfresh Market Virginia (Pty) Ltd v Shoprite Checkers (Pty) Ltd* [2011] ZACC 38; 2012 (1) SA 256 (CC); [2012] (3) BCLR 219 (CC). at para 71, the court said *Ubuntu* “emphasizes the communal nature of society and ‘carries in it the ideas of humaneness, social justice and fairness’ and envelopes ‘the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity.’” In addition, in the case of *Bhe and Others v Khayelitsha Magistrate and Others* Case CCT 49/03, the court stated that:

“... the concept of *Ubuntu* “*umuntu ngumuntu ngabantu*” is a dominant value in African traditional culture. This concept encapsulates communality and the inter-dependence of the members of a community.”

⁹⁴ M. Letseka, “In Defence of *Ubuntu*,” Vol. 31, Stud Philos Educ, (2012) pp.47-60.

which leads to building up on a person's humanness.

The principle of the Golden Rule is the groundwork for what is being done in society that is kindness should be rewarded with kindness, and love is rewarded with love. Just as the concept of the Golden rule is as old as time and religion, so is the concept of *Botho/Ubuntu* but with respect to the Nguni and Bantu speaking people. Subsequently since no one would want to be ill-treated, the consequence should or would be that people strive to treat each other well in order to receive the same kind of treatment from others.

The South African Courts have infused the principle of *Botho/ Ubuntu* in all types of cases, from murder, to delict to even contract law. One may then argue that this may show just how much the concept of *Botho/ Ubuntu* is relevant and how it can even assist in conflict resolution. One may argue further that all the values of *Botho/ Ubuntu* cannot be attained at once; they need to be interrogated and developed over time through research and academic rulings. This is where the community fits into the picture since the community; also enforce principles of *Botho/ Ubuntu* in the society.

The 1996 South African Constitution although it did not expressly provide for *Ubuntu*, it did however require the customary courts to apply customary law where it was viewed to be applicable bearing in mind also that *Ubuntu* is an integral part of customary law.⁹⁵ As such this would assist with the Constitution's transformative nature.⁹⁶

While the concept may not be clear or easily understandable, defining *Botho/ Ubuntu* within the Botswana perspective through practical examples of how it has worked for Botswana is necessary. Particularly, that while it is recognized in Botswana it's content and value in legal, judicial, political arena may not be clearly set out. However, it is to be noted from Vision 2016, Vision 2036 and from the cultural sayings which Botswana has provided for that the concept of *Botho/Ubuntu* is alive and if truly harnessed can help in building the communitarianism spirit within the society. Lastly, it can build a community of members who are compassionate, loving, understanding, respectful and care about one other enough to help each other out when help is needed. This discussion has argued that in Botswana *Botho/Ubuntu* has not been completely eroded. It is further argued that if the concept of *Botho/Ubuntu* it is still not

⁹⁵ C. Himonga, M. Taylor and A. Pope, "Reflections on Judicial views of *Ubuntu*," [2013], P.E.R/PELJ, (16)5.

⁹⁶ Ibid.

understood after this, then maybe it should be left to those who understand it to keep it alive as they would know its benefits.

9. CONCLUSION

Botho/Ubuntu is a concept which is prevalent in Africa and some countries have different names for it, meaning the same thing. It is an African concept which promotes humanness, personhood and it goes hand in hand with the human dignity. *Botho/ Ubuntu* can be seen from the values such as compassion, kindness, love, group solidarity, hard work, teamwork, and respect to mention a few. In Botswana the community is very important in enforcing *Botho/ Ubuntu* so much so that they depend on the Setswana saying to teach the children when young the values of *Botho/ Ubuntu*. Botswana has also provided for *Botho/ Ubuntu* in both Vision 2016 and carried forward in Vision 2036 which outlines the values of the nation and what it aspires to be known as. It is still a concept which the nation identifies with on a more theoretical point even during the 21st century through, the spirit of togetherness and love still prevails. The discussion reveals all through from baby showers, the Constitution of Botswana and the courts have begun to recognize the value of *Botho* to the country. However, more needs to be done to infuse the concept of *Botho/Ubuntu* into the law. This discussion has shown that *Botho/Ubuntu* is a living relevant principle in Botswana and the government, as well as the community take part in helping each other to attain their full potential of being human. This discussion has also shown how *Botho* has been defined and that the people of Botswana live by its principles daily. It is contended that, Botswana has defined what *Botho/ Ubuntu* is and has included it as a national principle. However, it is conceded that more needs to be done, particularly through judicial interpretation and robust academic discussions. In doing so, this will enable the *Botho/Ubuntu* values to gain greater prominence in the political, legal and social space of Botswana. In particular, it may then be able to play a greater role in underpinning legal theory and in the application of legal rules including those in property law.