



# **AN ASSESSMENT OF THE NAMIBIAN GOVERNMENT'S APPLICATION OF THE SOCIO-ECONOMIC RIGHTS OF THE SAN PEOPLE**

by  
Sylvia Hamutumwa

*Thesis presented in partial fulfilment of the requirements for the degree  
of Master in Public Administration in the Faculty of Economic and Man-  
agement Sciences at Stellenbosch University*

Supervisor: Dr Dirk Brand

March 2024

## **Declaration**

By submitting this thesis electronically, I declare that the entirety of the work contained therein is my own original work, that I am the authorship owner thereof (unless to the extent explicitly otherwise stated) and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

Signature:

Date: March 2024

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## **Opsomming**

Die studie is onderneem om die Namibiese regering se toepassing van sosio-ekonomiese regte van die San-mense te assesser en om te bepaal hoe hulle die marginalisering van die San-mense hanteer het met betrekking tot die bevordering, beskerming en vervulling van hul sosio-ekonomiese regte. 'n Gevallestudieontwerp is gebruik met 'n fokus op die San-mense en 'n kwalitatiewe benadering is gevolg wat op 'n lessenaarstudie gesentreer was.

Die studie het bevind dat die regering daarin geslaag het om sosio-ekonomiese regte toe te pas deur middel van strategieë soos die San-ontwikkelingsprogram. Die beleid het egter sommige sosio-ekonomiese regte soos sanitasie, maatskaplike toelaes en gesondheid oor die hoof gesien. Die onvermoë om die kollektiewe status van die San-volk te verander is egter te wyte aan ongelyke verspreiding van hulpbronne, gebrek aan befondsing en beperkte politieke wil ten opsigte van die substantiewe sosio-ekonomiese regte van die San-mense. 'n meer omvattende strategieë en inisiatiewe moet opgestel word met aangewese befondsing en 'n nasionale taakspan bestaande uit San-mense wat verseker dat mandate nagekom word. Die regering het sosio-ekonomiese regte in 'n groot mate vir sommige toegepas en in 'n mindere mate vir ander. Die studie het tot die gevolgtrekking gekom dat die regering beperkte sukses behaal het in die toepassing van sosio-ekonomiese regte aangesien die sosio-ekonomiese lewens van die San nie drasties verander het nie.

## **Summary**

The study was undertaken to assess the Namibian government's implementation of socio-economic rights for the San people and to determine how they addressed the marginalization of the San people regarding the promotion, protection, and fulfillment of their socio-economic rights. A case study design was used with a focus on the San people, employing a qualitative approach centered on a desk study.

The study found that the government succeeded in applying socio-economic rights through strategies such as the San Development Program. However, the policies overlooked certain socio-economic rights, including sanitation, social grants, and health. The inability to change the collective status of the San people is attributed to uneven resource distribution, lack of funding, and limited political will regarding the substantive socio-economic rights of the San people. More comprehensive strategies and initiatives need to be devised with designated funding and a national task force comprising San people to ensure mandate fulfillment.

The government applied socio-economic rights to a significant extent for some and to a lesser extent for others. The study concluded that the government had limited success in implementing socio-economic rights, as the socio-economic lives of the San people did not change drastically.

## **Acknowledgement**

My heartfelt thank you to the following people, who were instrumental in allowing me to complete the research successfully.

- The Almighty for his presence and love, which gave me strength to complete the assignment
- My husband, Roberto Elifas and my daughter, Hazel Grace for their support and unconditional love and understanding which contributed directly to my success.
- My family and friends for their love, encouragement and support.
- To my supervisor, Dr. Dirk Brand who was always available and willing to support.
- Mr Keith Mashiri, for his time, unwavering support and assistance.

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## List of acronyms and abbreviations

Socio-Economic	Social and Economic
San	Khoi-San
MEM	Minimal enforcement model
SEM	Substantive enforcement model
CBD	Central business district
SADC	Southern Africa Development Community
IWGIA	International Work Group for Indigenous Affairs
OSDO	Omaheke San Development Organization
IPPR	Institute of Public Policy Research
SDP	San Development Programme
NNDFN	Nyae Nyae Development Fund Namibia
UNESCO	United Nations Educational, Scientific and Cultural Organization
UN	United Nations
NGO	Non-Governmental Organization
HPP	Harambe Prosperity Plan
GRN	Government
SEP	San Education Programme

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## **CHAPTER 1: Introduction and Problem Statement**

### **1.1. Introduction**

This chapter provides background information and the rationale for the research study. The aim of the study is to analyze the Namibian government's application of the socio-economic rights of the San people, and this chapter provides the foundation of the study by introducing the reader to the fundamental themes that will be addressed in the research study. The chapter includes the problem statement, research questions of the study, study objectives, potential value of the study, limitations or scope of study, delimitations of the study, and the outline of the dissertation.

### **1.2. Background/rationale of the study**

Human rights are the set morals agreed upon by society to be the focal point of protecting all human lives. The people residing in a country are the beneficiaries of human rights and fundamental freedoms as they actively participate in the actualization of these rights and freedoms (United Nations Human Rights, 1993). The above sentiments cover the basis of these human rights, which show the main aspects from which socio-economic rights are derived. However, international human rights law as a notion struggles with establishing the precise means to measure the effective enforcement of social and economic rights (McKeever & Aolain, 2004). The lack of measurement has created a situation in which policies and initiatives merely promote rather than protect and fulfil socio-economic rights as intended. By definition, the socio-economic rights give people access to basic needs such as shelter, education, employment which are necessary for them to live a dignified life (Khoza, 2007). As a notion, the economic and social spheres of human rights differ from the political and civil spheres in the sense that a community or government will have to be more proactive in ensuring their realization (Reichert, 2015). Hence, socio-economic rights allow human beings to live a dignified life and governments should be more vigilant in ensuring

their materialization. Under normal circumstances the government and civil society have the obligation to ensure citizens and government institutions are held accountable if they do not respect, protect, promote, and fulfil socio-economic rights. This is of particular importance especially for vulnerable and disadvantaged groups in society (Khoza, 2007). “Chapter 3 of the Namibian Constitution stipulates that fundamental rights and freedoms such as respect for human dignity, property, education, and administrative justice are enforceable by the courts as prescribed in the Constitution” (Republic of Namibia, 1990). The courts have a critical role to play in ensuring effective protection and promotion of socio-economic rights into material entitlements (Ngang, 2014). There is general disagreement amongst scholars on what constitutes the appropriate means or model that enforces socio-economic rights. Some people see socio-economic rights as basic human rights protected under a constitution, while others view them as policy issues and not as individual rights.

In relation to social and economic rights in Sub-Saharan Africa, South Africa is an outlier as being the most progressive country when it comes to judicial enforcement of rights (Dinokopila, 2011, p. 1). However, Namibia, a counterpart of South Africa, still lags due to the different enforcement models for socio-economic rights. The substantive, minimal, and pragmatic enforcement models were articulated in the work of Grainne McKeever and Fionnuala Ni Aolain titled *Thinking Globally, Acting Locally: Enforcing Social and Economic Rights in Northern Ireland* of 2004. The authors focused on the judicial role that enforces socio-economic rights, with the analysis focusing on the entirety of the national government. This paper follows a different trajectory which rather focuses on the Namibian government and how it enforces socio-economic rights through the judiciary. The courts have a role to play to ensure the enforcement of socio-economic rights, in conjunction with checks and balances which ensures no overstepping of acceptable boundaries of

the judicial role (McKeever & Aolain, 2004, p. 2). The problem with socio-economic rights is that they mostly contain policy choices, and judges' do not interfere with them since they are the domain of the executive.

For dozens of years, scholars have argued about justiciability of socio-economic rights. Justiciability refers to matters that the court can settle. For instance, in 2022, 8 members of Namibia's Hai/San community lost a supreme court appeal against a high court judgement that stopped their intent to sue the government with regards to the recognition of their ancestral land rights (Menges, 2021, p. 1). The outcome of the trial was not what the community hoped for and did not support adequate protection of their socio-economic rights. This gives rise to the primacy of the substantive model in other human rights areas. As a result, not limited to the models, civil liberties are still not universal in the 21st century, particularly for marginalized communities in Namibian societies. It was envisaged that the advent of democracy was meant to bring equality before the law for every Namibian citizen and rectify historical wrongs that disenfranchised the Indigenous people. However, according to Dinokopila (2011, p. 2). Namibia as a country has socio-economic rights that are only expressed as a directive principle of state policy. Having such principles is meant to steer the government in advocating and applying of policies in conjunction with the courts in the interpretation of government obligations concerning rights. McKeever and Aolain (2004) described this as amounting to the Namibian government implementing both minimal and substantial enforcement of socio-economic rights:

“The minimum enforcement model seeks to protect due process rights in the social and economic rights sphere. It does not guarantee formal rights explicitly defining social and economic rights. The substantive enforcement model seeks to define and enforce a set of social and economic rights protections. There are many variations on this model, which

range from the entrenchment of a single substantive social and economic right into the legal framework of the state to the enforcement of multiple rights. Such entrenchment can be achieved by either constitutional or legislative means.” (McKeeve and Aolain, 2004)

An example of substantive enforcement is the right to access housing in South Africa and the Convention on Human Rights is an example of minimal enforcement. This is when the state acknowledges and transcribes the rights in the Constitution but there is no comprehensive policy or legal action specifically tied to the promotion, protection, and fulfilment of these socio-economic rights. The objective enforcement of socio-economic rights lacks an urgent impetus and imperative. The Declaration of the Vienna Conference (1993) places great value on the indivisibility of these rights. Despite this, states still use different models of application of these rights, which has created divisions on the understanding and comprehension of the issues. In academic circles, the debate focuses on which models best serve both the nation and marginalized groups, given that enforcing these rights carries the opportunity cost of making some citizens feel excluded.

It is against this preceding background that this research study focuses on how the Namibian government has applied socio-economic rights. Moreover, the study also entails a reflection on the current situation, viz. the international law embedded in the African Charter on the Rights and Welfare of the Child in (2004), and the Namibian Constitution as well. There are values and principles transcribed in the Constitution of Namibia that include but are not limited to, respect for the supremacy of the Constitution, fundamental rights and freedoms, recognition of inherent dignity and human worth, and recognition of the equality of all human beings, among others (Republic of Namibia, 1990). This supplements the view that general notions of enforceability are grounded in formal legal rules of standing and inclusive forms of review, oversight, and

supervisory reporting of those excluded from the rights (McKeever&Aolain, 2004). This study is important because due regard is given to the policies and measures applied by the Namibian government to validate their constitutional obligations designed to respond to both the individual and collective nature of minorities and Indigenous peoples. Below is the problem statement of the study.

### **1.3. Problem statement**

The protection and enforcement of socio-economic rights remain elusive in many countries. Africa is a good example where socio-economic rights are fraught with a web of complex issues that affect the protection and enforcement of these rights (Dinokopila, 2011, p.1). One of those complex issues is the different enforcement models which have led governments to propose ambiguous pledges that do not change the collective status of those they are meant to benefit. For example, the Namibian government in the early 2000s made stern commitments to address the dire plight of the San people, initially classifying them as marginalized and warranting collective assistance. However, San communities in the Omaheke region have resentment as their classification is discriminatory and leads to further segregation and humiliation (Xoagub, 2019, p. 6). This is exacerbated by low levels of education, which have affected the economic, social, and political standing of San people in Namibia (Hamutumwa, 2019, p. 7). As highlighted in article 2 of the Namibian Constitution all citizens possess a right to education, and the State has the obligation to provide reasonable facilities to render effective this right for every resident within Namibia (Namibian Constitution, 1995, Article 2, Section 2). In addition, equality and freedom from discrimination stipulate that no person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status. (Article 2 Section 1, Namibian Constitution, 1995). A mitigating factor in the promotion and protection socio-



economic rights in Namibia is that individuals cannot institute legal proceedings on behalf of a class of people to which they belong in terms of the current Namibian law (Menges, 2022, p. 1). As a result, the San people could not sue the government for appropriating their ancestral land in Etosha National Park. In addition, to legal woes, poverty has become a common feature of the San identity creating discriminatory descriptions such as "underclass", a status of high level of political, social, and economic exclusion, and limited access to social services (Tjirera, 2022, p. 1). In the scope of socio-economic issues, constitutions differ in their approaches. Some provide directly applicable socio-economic rights, while others include policy directives that guide socio-economic development but are not directly enforceable. Namibia's Constitution has policy directives to guide socio-economic development that has failed to change the collective status of the San people. Towards that end, the purpose of this study is to assess the Namibian government's application of the socio-economic rights of the San, focusing on the failures and successes. In addition, there is limited work on the issue, which has contributed to exacerbating the crisis. Thus, in 2022, the San people are still unaware that some Namibian laws do not recognize avenues to protect their rights. The concept of enforcement is not only a theoretical but also a practical concern and this thesis seeks to assess how it has been applied by the Namibian government. The following section will focus on the research questions that will guide the study.

#### **1.4. Research questions**

The research study seeks to answer the following questions:

1. To what extent has San marginalization inhibited application of socio-economic rights?
2. In what ways has the application of principles of state policy directed the Namibian government in the application of the socio-economic rights of the San?

3. How can the Namibian government improve the enforcement and protection of socio-economic rights for the San people?

### **1.5. Research objectives**

- To assess the extent to which San marginalization affects the application of socio-economic rights.
- To investigate the Namibian government's constitutional obligations and principles of state policy in the application of the socio-economic rights of the San people.
- To recommend strategies for the appropriate enforcement and protection of the socio-economic rights of the San people.

### **1.6. Potential value of the study**

No conclusive study has yet been carried out on the different models of enforcement of socio-economic rights that are applicable in the Namibian context and specifically targets the San people. As a result, the knowledge gained from this study will be of substantial use to the government, particularly the executive. This will ensure the rights of all Namibian citizens are protected, promoted, and fulfilled, mainly addressing the plight of the San people, who are mentioned in this study. In addition, the study will also provide the necessary information to the National Planning Commission of Namibia to assist in policy formulation on how to address the marginalization of the San people through policies aimed at improving their socio-economic conditions. In addition, the Omaheke San Development Organization will benefit from the data on the marginalized San people by providing insights on how to achieve a pragmatic model of enforcement as opposed to the substantive and minimal models.

This will be accomplished by examining the prospects and challenges of Namibia's government's application of socioeconomic rights to marginalized groups. Moreover, this study will assist policymakers in creating coherent policies that move beyond constitutional obligations. As for the high inequality rate persistent in Namibia, a closer look at the law-making system may provide a basis to rectify the problem by ensuring the rights of all citizens are protected to ensure equality for all. While this study falls within the field of public management, the research also deals with policy analysis and the relevant legal frameworks in order to provide a comprehensive response to the research questions.

## **1.7. Scope and limitations of the study**

### **1.7.1. Scope of the study**

The current study is limited to San people in Namibia, despite San people living around other parts of the world in countries such as South Africa and Botswana. Thus, by focusing on the San people in Namibia alone, the study becomes manageable, given the limited time and the available resources to complete the project. In addition, the study focuses only on applications of socio-economic rights by Namibian government. Namibia has three branches of government, but the main focus will be on the executive with the judiciary receiving only a passing mention. The study only covers the social and economic rights of the San people being enforced because these form the core of the rights of every citizen in Namibia.

### **1.7.2. Limitations of the study**

The study is conducted as a case study of the San people of Namibia. Results of the study may not be generalized to San people in other countries. Results cannot be generalized because of the different enforcement and application of socio-economic rights. In addition, the study will only focus on socio-economic rights and not on the implementation of other human rights. The study

of socio-economic rights has been neglected in academic literature in Namibia and as a result, information on the topic is limited. This will create problems in acquiring information.

Adding to that, there is a study delimitation that creates specific parameters for the researcher to focus on. The research study does not cover aspects that do not cover application of socio-economic rights by the Namibian government, such as political rights. However, the study takes a historical approach to events that have occurred. This approach focuses on how the government has applied the socio-economic rights of the San people concerning the promotion, fulfilment, and protection of these rights. In addition, the study will only focus on the post-independence period when the Southwest People's Organization party came to power in Namibia and subsequently designated the San people as special Indigenous people in 2002.

### **1.8. Research design and methodology**

The research study design refers to the blueprint or the format in which a study is structured to be conducted successfully (du Plooy-Cilliers et al., 2014). This is a descriptive study in foundations that analyzes the application of socio-economic rights by the Namibian government. The study takes the form of a desktop research study based on secondary data. Some of the data will be collected from primary sources such as legislation, court cases, constitutions, and official documents such as UN, SADC, and AU conventions and protocols. In addition, the study makes use of secondary data sources such as documents, journals, online articles, research, newspaper articles, and reports. Thus, the body of knowledge forming the research is based on existing literature in the field. The unit of analysis is the San people in Namibia and the study utilizes qualitative approach to formulate the research design of the study.

“Historical research tries to methodically interpret the different complexities of people's lives with regards to their meanings, events, and even ideas of the past that have influenced and shaped the

present" (Berg & Lure, 2012, p. 305). As part of this study, the people are the San, and the events involve how the government applied socio-economic rights. In addition, there will be principles of state policy that influence the government's responses to socio-economic needs. Historical research relies on a wide variety of sources, both primary and secondary sources, including unpublished material. The study adopts qualitative research as opposed to quantitative. When your, "objective is to understand, explore, or describe people's behaviours, attitudes, or trends, you use the qualitative research approach" (du Plooy-Cilliers et al., 2014; Neuman, 2006). Thus, the study adopts the qualitative method because it is a flexible and non-linear approach. This approach allows for the researcher to have a more coherent and comprehensive research study. In addition, the qualitative approach takes the form of a descriptive study. The information above relates to how the study will be organized and conducted, and this methodology will allow for the analysis of the application of socio-economic rights by the Namibian government.

### **1.9. Structure of the research study**

This theme focuses on the pattern, or how the research study is structured, to create a comprehensive and coherent research study paper. The outline of the thesis follows Mouton's (2001:122-125) structure for a thesis. The research study proposal consists of seven chapters. Below is a chronological breakdown of how the study has been conducted as per the different chapters.

**The first Chapter:** introduces the study or topic by giving the context of the research. The chapter describes the fundamental issues investigated how they are investigated, why they are investigated, and where they are investigated. The chapter also provides information about the orientation of the

study, the problem statement, the research questions, the delimitations, and significance of the study, as well as the limitations experienced during the study.

**The second chapter:** contains the methodology of the study. It addresses the methodology that is used to explore the research problem and answer the research questions. It contains the qualitative historical study design, the research methodology, data analysis, procedures, and the research ethics that are adhered to throughout the research. Justification of the methodology chosen is provided as well. To undertake this study, a systematic examination was carried out of some of the available documents, such as constitutions, articles, published books, and journals. There is a handful of scholarly writing on the government's enforcement and applying of socio-economic rights and what role courts play in applying the rights of the San people. Thematic analysis is used to analyse the thesis using socio-economic rights, constitutional obligations and strategies of government are the main basis of themes in the research study.

**The third chapter:** The literature review of this research study is thematically organized, with specific themes below addressing the research questions and objectives based on previous literature pertinent to the research topic at hand. This section presents the relevant and empirical literature that has been identified and arranged by previous scholars into themes relating to the topic. In addition, the chapter examines in detail various bodies of literature that provide differing opinions on the application of the socioeconomic rights of the San people while addressing each of the previous objectives stated in Chapter 1. In addition, it provides information on the historical study focus, which is the San person. The literature review provides a historical context for the San people, focusing on how they have been marginalized in post-independent Namibia. It discusses the post-independence socio-economic environment of the San people as well. Emphasis

is placed on socio-economic rights and the marginalization thereof. To have a comprehensive understanding, a historical background of the San people is provided to trace the application of their rights in Namibia.

**The fourth chapter:** constitutes the existing constitutional obligations and principles of state policy that are pertinent to the application of socio-economic rights in Namibia and other parts of the world. Adding to that, examples of cases in Namibia in which legal frameworks have been used are provided as well. The San case against the Namibian government is discussed.

**The fifth chapter:** provides the theoretical framework of the study. The chapter narrows down what has been written by other scholars at different levels on the application of socio-economic rights. In addition, the different enforcement models are outlined in this chapter, namely the minimal enforcement model, the substantive model, and the pragmatic model. This aids in establishing the model that is used in Namibia. The main focus is on the application of socioeconomic rights in Africa, specifically Namibia. This allows the research to pinpoint any gaps in the literature as well as any objections and differences that earlier scholars have raised.

**The sixth chapter:** contains the discussion and presentation of the research results or findings. The chapter examines themes established in the thematic analysis.

**The seventh chapter:** This chapter contains concluding remarks of the study and necessary recommendations.

## **1.10. Conclusion**

This chapter has thus far provided a conclusive basic orientation of the study. This was supported by articulating the orientation of the thesis and the fundamental problem therein. Moreover, the

researcher provided research questions and objectives the thesis seeks to address. The background of the study was discussed to give context and justification for why the study was warranted in the first place. The main problem of the study has been established as being the use of a minimal judicial enforcement model, which has hampered the promotion, protection, and fulfilment of socio-economic rights. As a result, research questions and objectives aid in analyzing the application of socio-economic rights by addressing the stated questions and objectives. However, the study is limited by being desktop research, which only focuses on socio-economic rights, ignoring other rights such as political ones.

In addition, the potential value of the study is discussed, which provides insight into those who would benefit from it. These are mainly the key stakeholders, such as the Namibian government, the Omaheke San Development Organization, and the San communities. By now, the reader is aware of the topic at hand, the problem, and the significance of the study, the research questions, and the limitations of the study.



## **CHAPTER 2: Data gathering and data analysis**

### **2.1. Introduction**

Data gathering and data analysis involve methods that will be used to collect data, answer the research questions, and address the research objectives as mentioned in Chapter 1. This research study aims to assess the Namibian government's application of socio-economic rights for marginalized people, specifically focusing on the San people. The chapter entails the methodology that will be used to conduct the study. It includes the research design, population, sample, research instruments, data analysis procedures, and research ethics, which will be adhered to too. Furthermore, the research design and methodology of this study were specifically chosen to address the problem statement, which will assess the government of Namibia's ostensible minimal enforcement of the socio-economic rights of the San people.

### **2.2. Research design**

The research design refers to the strategy used to integrate different components of the study in a way that ensures that the research problem and objectives are addressed effectively (Du Plooy-Cilliers et al., 2014, p. 118). The research design constitutes the blueprint for the collection, measurement, and analysis of data. It is thus the unit of analysis that, in large part, influences how the research methodology will be done. This will be a descriptive study using the qualitative historical method that aims to describe the Namibian government's application of socio-economic rights to marginalized San people in the country. The application of socio-economic rights by the San dates to the 2002 pledge by the government and follows the subsequent application of the rights till now, hence the use of the historical method.

### **2.2.1. Unit of analysis**

The study's primary unit of analysis is the San people in Namibia. The term "unit of analysis" refers to the focus of a particular study. Similarly, it is the main parameter being investigated in a research paper (Babbie, 2010, p. 98). The San people are the main unit of analysis given the Namibian government's commitment in 2002 to change their collective status through the application and enforcement of their socio-economic rights. The research will focus on the Namibian government's main model of socio-economic rights application to marginalized groups. One of the core functions of the government is to enforce and apply rights to citizens accordingly and fairly.

There are different tribes in the San community and all experience the same problem, albeit to varying degrees. In addition, the San people are sparsely populated, living in remote areas on the outskirts of central business districts (CBDs). In addition, the Namibian government will be another secondary unit of analysis, being a key stakeholder in the application of socio-economic rights. The study includes references to the courts where necessary, while the focus is on the role of the executive arm of government.

### **2.2.2. Research methodology**

The research study is in the format of what can be defined as a qualitative approach as opposed to a quantitative one. Qualitative research is mostly used in the social sciences and aims to narrate and describe a certain phenomenon. The study also seeks to explore, understand, and describe how the Namibian government has applied the socio-economic rights of marginalized groups to a case study of the San people. Du Plooy-Cilliers et al. (2014) stated that when the objective of a study is to understand, explore, or describe people's behaviour, attitudes, or trends, you use the

qualitative research approach. Qualitative research examines the ideas, motives, themes, words, observations, and transcripts (Babbie, 2010, p. 100).

The qualitative research in this study will take the form of a historical method. The purpose of the historical method is to describe and examine past events to understand present patterns and predict future scenarios. The research examines the previous cases of applying the socio-economic rights of the San people. The stated research design above will aid in answering and addressing the research objectives stated in Chapter 1. In addition, the methodology used will allow for a critical analysis of the Namibian government's application of socio-economic rights to marginalized groups. To support the design chosen, below are the methodology to be used and the research instruments that will be utilized.

### **2.2.3. Population**

The population of the study relates to the variables that will be used as part of the study. This includes the Namibian government and the total population of the San people. According to the latest report of the International Work Group for Indigenous Affairs, the San people number between 28 000 and 35 000, translating into less than 2% of the total national population of Namibia (Tjirera, 2022). The Namibian government is also included as part of the population as well as the designated authority responsible for the application of socio-economic rights.

### **2.3. Research instruments**

The research study will take the form of a desktop study utilizing secondary sources, given the historical method. A literature review was conducted to collect information from primary sources, such as the Constitution, legislation, and government reports, as well as secondary sources that

will form the basis of the study. This was sourced libraries, government websites and public record information from the courts. In addition, more information was sourced from archives, published papers, reports, and legal documents such as constitutions. In the context of this study, it will include all sources of information that do not involve field surveys.

The study will make use of sources such as published and recognized books, academic journals, official documents, newspaper articles, internet articles, research theses, and reports. The secondary sources supporting the research will be based on existing literature in the field that is relevant to the thesis. The literature review and documents will form the non-empirical aspect of the study. Following the collection of data from secondary sources, there is a need to thoroughly analyze the available data to make sense of all the literature. This will facilitate giving recommendations and conclusions in Chapter 7.

#### **2.4. Data analysis**

Data analysis is extremely critical in research as it establishes trends and patterns in the data. The data analysis section explains how data will be analyzed and presented in the form of results and recommendations. Neuman (1997, p. 427) defined data analysis as "examining, sorting, evaluating, comparing, and synthesizing coded data". The qualitative data method will be used to analyze the data. This will include reports, journals, legislation, constitutions, books, newspaper articles, and online articles. By using the historical method, data will be either rejected or accepted, and it will also be possible to identify conflicting evidence based on the data.

The researcher used a thematic analysis as a data analysis method. The themes in the thesis are derived from the research objectives and research questions outlined in Chapter one. These include

dynamics of marginalisation, socio-economic rights, constitutional obligations, and strategies to promote, protect and fulfil socio-economic rights. These will be further subdivided to describe where the government fulfils, promotes, or protects in the application of socio-economic rights. For example, protection relates to what the government has done legally to protect human rights. Under fulfilment, the researcher focuses the anatomy of socio-economic rights to establish a clear distinction on what the government has made progress in towards mitigating marginalization. With regards to promotion the researcher focuses on what the government has done in promoting socio-economic rights. Thematic analysis is a good research approach when you are trying to find out something about people's views, opinions, knowledge, experiences, or values from a set of qualitative data (Caulfield, 2019). This supports the qualitative approach of the research study. Thematic analysis is used to identify and interpret different themes and patterns. Themes will be established from the collected data that will answer the research questions and address the research objectives.

## **2.5. Research ethical considerations**

In the pursuit of objective research as opposed to subjective research, there is a need to adhere to some ethical principles. Ethics are the moral or professional code of conduct that sets a standard for attitudes and behaviour (du Plooy-Cilliers, 2014, p, 263). These research ethics will assist the research in eliminating bias, ensuring anonymity where required, and above all, ensuring the objectives of the research are met without breaking any ethical principles. The information gathered will not be falsified to favour any outcome of the research.

In addition, the information gathered will be analyzed objectively rather than subjectively by ensuring that the researcher approaches the study without personal beliefs or convictions. The

researcher will also avoid bias throughout the research. This will be achieved by not favouring any outcome or group that is included in the research. The study will be approached with an open mind, not allowing previous predispositions to influence the analysis and review of the study.

## **2.6. Conclusion**

In conclusion, this chapter concentrated on the research methodology that was employed for the study. It outlined the research design, which is based on a qualitative approach, with the study being a descriptive one. The study will also be conducted through desk research, which has the same limitations as not conducting field surveys. In addition, the chapter also contains research instruments and data analysis procedures that the researcher intends to use to carry out the study. Content analysis will aid in creating themes that address the research questions and objectives. The following chapter contains the literature review, which provides a thorough analogy of what other scholars at different levels have contributed, commented on, and analyzed about the topic.

## **CHAPTER 3: Literature review**

### **3.1. Introduction**

Literature review pertains to the critical analysis of previously published works in relation to the topic, research questions and objectives as well. As part of the review of literature, information is discussed and published, usually covering a period which has an organizational pattern that combines both summary and synthesis (Washington University, 2023). The literature on socio and economic rights enforcement in the domestic sphere has concentrated on the role of the courts and judges in marshalling and managing these claims (McKeever&Aolain, 2004). This is why the judiciary features more in the research than the entirety of the Namibian government. The following theme focuses on the history of the San people, which is the cornerstone of the assessment for the research study. Suzman (2001, p.2) noted that, the issue of classifying and identifying the San is contentious because the San do not share a common historical identity in Namibian context which has contributed to their current marginalization.

### **3.2. Who are the San people?**

The name San or Bushman historically was imposed by imperialists on diverse indigenous inhabitants of southern Africa following the in-migration of pastoralist and agrarian Bantu-speaking societies (Suzman, 2001, p). This set the foundation as the indigenous people have continued to be viewed and understood by the perception of the imperialist as opposed to who they were. Their nomadic lifestyle made them live in bushes foraging food. However, these same names have continued throughout history which demeans the San people as a group. Currently, the communities that define themselves as the San are those who speak the Khoe or San languages in countries such as Namibia, Botswana, and South Africa. Below is a picture depicting the San people.

## Picture of San people



Source (Jurga, 2023)

The picture above is a depiction of the San people in the Omaheke Constituency, Namibia. These people live a nomadic lifestyle rooted in their traditions, as evidenced by their clothing and housing. A recent report by the International Work Group for Indigenous Affairs (IWGIA) estimated that the San people number between 28 000 and 35 000, which translates into less than 2% of the total national population of Namibia (Tjirera, 2022, p. 1). Some census calculations estimates stipulate that the San people represent 1.33% of the population in Namibia, which includes the, Khwe, the Hai||om, the Ju|'hoansi, the! Kung, the! Xun, the Khwe, the Naro, and the!



Xoo (Mamo, 2022, p. 102). The population of the San people is significant to the research as it highlights why the San fail to garner enough support to secure their needs. By representing only 1.33% of the population the San people cannot create a formidable political party to have a say in the political arena. This is despite the San being one of the first ethnic groups to occupy southern Africa, predominantly in Botswana and South Africa in the desert areas. The San were one of the first native inhabitants of southern Africa, who live as hunter-gatherer, nomads who travelled across the entire Southern African region (Tjirera, 2022, p.1). Their main source of living was and continues to be based on subsistence farming combined with hunting and gathering. The over reliance on subsistence farming has limited the transition in the formal economy. Their way of living creates a limitation on the full realisation of economic rights. The hunting and gathering lifestyle have forced San people to live on the outskirts of towns, not within reach of education and health facilities. Given the different ethnic groups among the San, the different languages have also influenced the locations in which they reside in Namibia. Below is a table outlining the San languages and dialects by location in Namibia.

***Table 1: San dialects and demography in Namibia***

<b>San Language</b>	<b>Dialect Group</b>	<b>Location in Namibia</b>
! Kung	! Kung (//’Henga Kxausi and Omatako! Kung)	Otjozondjupa; Omaheke; Kavango
	Mpungu OvaKwankala	Kavango Omusati, Oshana, Ohangwena, Oshikoto (“the 4 ‘O’ Regions”)
	! Xu (Vasekele)	Otjozondjupa

		Kavango Caprivi
	Ju/'hoansi	Otjozondjupa Omaheke
	Omaheke Ju/'hoansi (ǀAu//eisi, Makaukau and Auen)	Omaheke
! Xo	N//usan	Omaheke
Khoe	Nharo	Omaheke
Kxoe	//XoKxoe //OmKxoe BugaKxoe BumaKxoe	Kavango and Caprivi
Hai//om (Khoekhoegowab)	Keren	Oshikoto Kunene
	Kwankala	Kavango Oshikoto
	! Kung-Hai//om	Kunene Oshikoto

Source: Compiled by the author (2023)

Table 1.1 above shows the different dialects of the San people in Namibia, which have influenced their demographic distribution across the country. Most of the San people in Namibia are located mainly in the northern and central parts of the country in the 4 "O" regions. The themes of demography and population described below will further describe the San people.

### **3.3. Remoteness of the San people**

This theme describes the location distribution of the San people in Namibia, who generally live in remote areas of the country. Due to the remote lifestyle of the San people, census counts have been unreliable due to the difficulty in attaining accurate information that is based on their correct population number and living dynamics. However, despite living in remote areas, the San have adapted and continue to live and survive in Namibia. Each San group, as identified in the dialect location table, has its distinct character based on its language but still maintains similar customs and traditions. For the past half a century, the majority of Namibian San have been directly integrated into the previous colonial political economy, allowing their population to increase within their defined regions (Suzman, 2001, p. 4). This has allowed them to maintain the hunter-gatherer lifestyle.

Historically, the San population was entirely made up of hunter-gatherers, but recent historical indications show that different San groups also engage in nomadic lifestyles and subsistence farming as a way of living. “In addition, the San people have a heavily rely on their place of living and access to traditional lands and natural resources is critical to their survival” (African Commission’s Working Group of Experts on Indigenous Population/Communities, 2005). The San’s primary source of survival is the land on which to hunt for wildlife and wild fruits. Adding to that, their lives and cultures are drastically different from the dominant groups in Namibia. The remoteness, difference in culture, and demographic distribution has contributed to the marginalization of women, rural peasants, and workers, exacerbating their political weakness. The following theme focuses on the marginalization of the San people.

### **3.4. The dynamics of San marginalization**

The history of the San people is somewhat similar to how they have been relegated to second-class citizens in some African countries. As a root of identification, marginalization and living in squalor have become synonymous with San identity. San people are described as being an underclass group with enormous political, social, and economic exclusion which creates limited access to food, fresh water, formal education, and housing (Tjirera, 2022, p. 1). As a result of this classification San people in the Omaheke region feel discriminated against which has led to their further isolation and humiliation (Xoagub, 2019, p. 6). This trend has continued among citizens and policymakers in the country. The term "marginalized community" relegates these individuals to second-class citizens with limited rights and access to national services. However, one ponders what marginalization means in this context.

Being disenfranchised or marginalized happens when individuals or group of people in society are unable to participate in certain aspects of society or access basic services or opportunities. The inability to access basic services can be measured in economic, social, or political terms. These are the community groups regarded as the most ravaged by poverty in comparison to other communities in Namibia (Xoagub, 2019, p. 6). The San are one of the most disenfranchised people in Namibia and are not afforded the same level of opportunities to essential social services such as land, healthcare, and education.

#### **3.4.1. Dependency**

The marginalization of the San people has created a cycle of dependency that has limited their socio-economic growth. As a dependent group, the San heavily rely on government assistance and

subsistence methods of food production. These have created a dependency syndrome. Traditionally the San have been located on the outskirts of society which has exacerbated poverty and a lack of opportunity creating push factors for them to relocate to urban areas, where they are forced to live on the margins (Minority Rights Group International, 2021). The San have become dependent on living on the margins of town to ensure they have access to services while depending on their hunter-gatherer lifestyles. This is because, in Namibia, the San people lack access to direct income and hence rely heavily on subsistence modes to sustain their lives. This has resulted in incredibly low living standards and food insecurity in their communities. Due to landlessness, lack of education, social stigmatization, high mobility, extreme poverty, and dependency the San fail to break free from the self-producing cycle of marginalization in which they are trapped (Suzman, 2001, p. 117).

Food security is another aspect ravaging the San people communities, statistically as many as 70 percent of Namibian San people rely heavily on erratic state funded food programmes (Suzman, 2001, p. 17). This has hampered their overall development, causing food insecurity in their communities and exacerbating life expectancy, which was 22% lower in 2001 than the national average. San people suffer a lot with diseases due to poor health conditions, which is exacerbated by discrimination in service provision, geographic isolation, and language barriers (Minority Rights Group International, 2021). Access to services, living in remote areas and language barriers continue to create a cycle of dependency for the San people.

### **3.4.2. Social problems**

This theme focuses on the social problems being experienced by the San people due to marginalization. The dependency highlighted how the San are food insecure but included in the

formal business environment. In addition, an estimated 80% of the San people have been displaced from their ancestral lands and resources which have made them the most marginalized group riddled with poverty (Mamo, 2022, p.102). The issue of marginalization has also continued with the poor application of the socio-economic rights of the San people. Some studies highlight that they are the only ethnic group in Namibia whose health status has declined since independence in 1990 (Amnesty International, 2021, p. 1). This is despite being designated as a special group, which requires state action to ensure their collective status is changed. However, decades after independence, their health situation has deteriorated instead.

In addition, the ever-increasing discrimination against the native San people in Namibia has denied them access to healthcare (Amnesty International, 2021). This has left them vulnerable and exposed to deadly diseases and viruses ravaging communities located in the Omaheke and Otjozondjupa regions. Adding to that, dependency on development assistance focused on medical aid highlights that the San people have contributed to high levels of HIV and malaria, which affects many San communities (Minority Rights Group International, 2021). The government has failed to build hospitals and provide access to medication that is close to San settlements. This role has been filled by NGOs such as their Cross, which operates on a limited budget and meets immediate needs. As a result, there has been high rates of childhood and maternal deaths and exacerbated by increased levels of malnutrition as well (Amnesty International, 2021). Education and declining health have become continuous problems for the San people.

The problem of declining education and health is rooted in the classification of the San people as a marginalized group. The Namibian government does acknowledge the San people as a special

group and hence prefers to use the term "marginalized communities" when speaking about the San people and other groups in Namibia.

### **3.4.3. Common stereotypes**

This theme addresses the aspect of discrimination using various themes to expand on the topic of how the San people are treated in the country. Suzman (2001, p. 17) noted that as a dialect group, they are conspicuously disadvantaged vis-à-vis all other language groups in Namibia on almost every available social-economic indicator. As a result, other ethnic groups have created stereotypes that have disadvantaged the San people.

The common stereotype targeting San people is that of second-class citizens stemming from marginalization. As a result, the San people are viewed as being backward, which affects their integration into education and the formal economy. Tjirera (2022, p. 1) noted that the San people's suffering is concerning because their situation has deteriorated compared to other social groups over time. In comparison with other ethnic groups in the country, the San people are the most marginalized and stereotyped. San communities are still subjected to the worst kinds of discrimination and oppression by other citizens, similar to what they endured during pre-independent Namibia (Xoagub, p. 6). This has affected San people, particularly children, who are targeted in schools because of how they look and how they dress. The discrimination started during apartheid but continued in the post-independence period.

Despite being one of the first settlers in the country, the San people have been subjected to too much discrimination. The San people have endured most of Namibia's worsening poverty and the HIV/AIDS epidemic due to discrimination (Minority Rights Group International, 2021). The San

community remains the most marginalized community in Namibia. The absence of socioeconomic policies, as well as their implementation or enforcement, has contributed to the San people being treated as citizens with no rights. Minority Rights Group International (2021) said that “most San people lack land rights and face rampant societal discrimination.”

### **3.5. Conclusion**

Chapter 3 has provided information on the case study, giving insight into the issue of marginalization that has affected the San population. In addition to this the chapter gave a historical background of the San people, the different communities amongst the San people, the dynamics of San marginalization and derogatory connotations that have been associated with the San people because of these stereotypes. For the government to promote, fulfil and protect socio-economic there should be an understanding of the root cause and the areas that need urgent attention with regards to marginalization. Despite the San being the first inhabitants of Southern Africa, they lag behind in economic, social and political aspects as compared to other ethnic groups. Information from the review shows that the San over rely on subsistence farming and nomadic lifestyle which has affected their transition into the formal economy. As a group that is stringent on their culture, the government application of socio-economic rights should maintain this. This will allow the San people to be more receptive of change.

As a community their continued marginalization has made it difficult to apply their socio-economic rights. Dependency, common stereotypes, and traditional ways of living have kept the San in a cycle of marginalization, which makes the protection, promotion, and fulfilment of their socio-economic rights even more pertinent. Human rights are fundamental, as they reflect the basic needs of every citizen which should be applied to mitigate the continued relegation of San people



to second class citizen status. Community town hall meetings should be engaged with the San people regularly to tackle the issue of remoteness when it comes to inclusion in the application of these rights. The review has highlighted the need for both the San people and the government to work in unison in the application of socio-economic rights. A panel with representatives from all mentioned San ethnic groups will allow for a holistic approach that caters for everyone without alienation. Further questions have been raised given how evidence has shown the responsibilities of both parties is required in the application of socio-economic rights. Is the government aware of the root problems, has any recommendation been made since the pledge in 2002 and what is government prioritising in addressing the rights of the San people? The next chapter will elaborate on the frameworks the government applies in the application of socio-economic rights which will help to address the questions highlighted above.

## **CHAPTER 4: Legal frameworks governing the application of socio-economic rights by the government.**

This theme is relevant to the thesis as it discusses some legal objections and guideline the government of Namibia must adhere to in the application of socio-economic rights. By reflecting on these frameworks governing application of socio-economic rights a conclusion can be drawn for the recommendations on whether the government needs to amend its policy. Namibia is a signatory to many legal frameworks which creates an obligation to fulfil this commitment. This is important as it heavily influences the directive principles of the state in the application of socio-economic rights. These are listed below.

### **4.1. International Human rights instruments signed and ratified by Namibia.**

#### **4.1.1. Ratified United Nations human rights instruments.**

International instruments are adopted throughout the world, with each state choosing which ones to support and which ones to reject. As a result, ratifying and being a signatory are subjective as per country. The Ministry of Justice (2020, p. 14) noted that since 2020, the Republic of Namibia has ratified the following international human rights instruments:

- ❑ “International Covenant on Economic, Social, and Cultural Rights (ratified November 28, 1994);
- ❑ International Covenant on Civil and Political Rights, including Optional and Second Optional Protocols (ratified November 28, 1994);
- ❑ Convention for the Elimination of All Racial Discrimination (ratified on behalf of Namibia by the United Nations Committee for Namibia on 11 November 1982);

- ❑ Convention for the Elimination of All Forms of Discrimination Against Women (ratified 23 November 1992); Optional Protocol (ratified 26 May 2000);
- ❑ Convention Against Torture and Cruel and Inhumane Treatment (ratified 28 November 1994);
- ❑ Convention on the Rights of the Child (ratified 30 September 1990);
- ❑ Optional Protocol: Sale of Children (ratified: 16 April 2002);
- ❑ Optional Protocol: Armed Conflict (ratified 16 April 2002);
- ❑ The International Criminal Court's Rome Statute (ratified on 25 June 2002).

The above-stated instruments guide how the government of Namibia promotes and protects human rights. By ratifying these and becoming a signatory, Namibia pledged to the international community to uphold the human rights, including socio-economic rights, of every citizen. The following instruments are specific to countries within the African Union.

#### **4.1.2. Ratified and acceded to OAU and AU instruments**

Before being called the African Union, the organization was named the Organization of African Unity, and the AU was created as a new organization out of the OAU. The OAU spearheaded the African cause for political, social, and economic liberalization. Despite the name change, the legal instruments on socio-economic rights were not changed but rather refined and kept in place. After the apartheid period, Namibia became a member of the AU and accepted these legal instruments. The Ministry of Justice of Namibia (2020, p. 14) said that the Republic of Namibia, since independence, has signed, ratified, and acceded to the following OAU/AU instruments:

- ❑ The African Charter on Human and Peoples' Rights, July 30, 1992; and

- ❑ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, on 11 August 2004.

The above instruments reflect Namibia's commitment to the universal application of human rights domestically and internationally. These international legal instruments must be read together with the Namibian Constitution. Namibia is one of the few countries in the Southern African Development Community (SADC) that has second-generation rights in its Constitution. Generally, the Constitution is the legal basis for the protection of human rights since a human rights bill is normally contained there. The courts then give guidance regarding the legal protection of human rights. The current situation of the San points to this fact, as the legal instruments merely reflect constitutional obligations but lack full application and enforcement of the rights of the San people. Socio-economic rights are second-generation rights that require positive action from the state. The following theme further describes the governing frameworks for the application of socio-economic rights from a general perspective before focusing on Namibia.

#### **4.1.3. International and regional frameworks governing socio-economic rights**

Socio-economic rights have been recognized under the Universal Declaration of Human Rights (Dinokopila, 2011, p. 8). This applies to all states, including Namibia, which ratified the Universal Declaration of Human Rights concerning enforcement and protection, with discretion based on domestic and political history influencing the extent of the rights. Epuvelda (2003, p. 9) noted that, Namibia's obligations under international human rights instruments require a status report from Namibia like other signatories whereby they report regularly to the treaty supervisory bodies established by human rights instruments. The report entails how the country has and is

implementing the instruments Namibia is a signatory to, and this includes the progress on the enforcement and application of human rights concerning the agreed instruments.

Socio-economic rights are protected under several thematic international instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Rights of Persons Living with Disabilities (CPLWD), and the Convention on the Rights of the Child (CRC) (United Nations Industrial Development Organization, 2009). Universal human rights are also protected under various regional human rights treaties such as the African Charter, the African Charter on the Rights and Welfare of the Child (ACRWC), and the Protocol to the African Charter on the Rights of Women in Africa (African Women's Protocol) (Dinokopila, 2011, p. 6). The African charter forms the basis on how states amend the application of socio-economic rights which will reflect both their domestic and international commitment towards that goal.

#### **4.2. Separation of powers**

The theme of separation of powers focuses on the constitutional powers prevalent in Namibia that guide the application of socio-economic rights. The doctrine of separation of powers is a constitutional tool aimed at allocating powers and functions to different branches and spheres of the government towards achieving a common goal for the country (Namibian Constitution, 1990). These branches or arms of government are the executive, legislative, and judicial branches of government with distinctly defined boundaries and functions. The separation of powers doctrine has been used as a basis of argument by some institutions, claiming that the judiciary, in its attempt to settle and determine socio-economic rights in society, is usurping the powers and functions of other institutions that are legitimately entitled to decide on such issues. Proponents of the doctrine

of the separation of powers have expressed concerns, claiming that the meddling of the courts in the domain of policymaking is politically and legally incorrect. Consequently, the judicial enforcement of socio-economic rights has increasingly suffered setbacks, which have primarily retarded the constitutional vision of social transformation (Ngang, 2014).

In Namibia, the judiciary has its own administrative and financial independence (United Nations Human Rights Office of the High Commissioner, 2016). The independence of the courts is established by the Constitution in line with the separation of powers doctrine, and the Office of the Judiciary provides the administrative independence of the courts. In line with Article 78(5) of the Namibian Constitution, Namibia has made the monumental move to establish an independent body of the judiciary that separates it from the Ministry of Justice which is called Office of the Judiciary which administratively and financially independent (Ministry of Justice, 2020, p. 36).

#### **4.2.1. Responsible institutions for the application of socio-economic rights in Namibia**

The main national human rights institution dealing with human rights protection in Namibia is the Office of the Ombudsman. The office of the Ombudsman as per Section 89 of the Constitution of Namibia is an independent office and is solely accountable to the Constitution and the law. Its role is to handle human rights complaints for all Namibian citizens. As such, the office offers impartial and amicable justice when rights are circumvented upon and means to correct this. As part of its jurisdiction, they have recently promoted human rights through visits and information campaigns with marginalized minorities in remote areas. The office has also embarked on the distribution of pamphlets in various local languages containing information on human rights. “The Inter-Ministerial Technical Committee on Human Rights may be considered another national human rights institution, though its function is mainly the preparation of the state’s periodic reports to

human rights monitoring bodies” (Country Report, 2009, p. 30). The judiciary plays an important role in the recognition and protection of socio-economic rights, and this will be discussed in detail in a later section. The Namibian Judiciary Act of 2015 strengthens the independence of the judiciary and provides for the administration of the courts.

#### **4.2.2. The role of the judiciary in the enforcement of socio-economic rights in Namibia**

The Judiciary plays a vital role in the application of socio-economic rights. Its powers are enshrined in the constitution of a state. The Namibian Constitution provides that it is supreme, and all three arms of government derive their authority from it (Namibian Constitution, 1990). This means that all branches of government submit to the Constitution and every action must be consistent with the constitutional prescripts. However, under constitutional supremacy, the judicial branch acquires a much more prominent role. This is because the judiciary has the task of policing the boundaries of action taken by the political branches to ensure that they stay within the bounds of the Constitution and the law.

The judiciary is mandated to comprehend its constitutional duty and ensure that constitutionally protected socio-economic rights are realised through a generous contextual interpretation giving content to these rights (Namibian Constitution, 1990). Therefore, the broad range of socio-economic rights in the Constitution presents the courts with an important opportunity to develop the legal system to be more attuned to poverty, social marginalization, and respect for human dignity and fundamental rights. The next section will focus on the legal and institutional framework that is aimed at protecting the socio-economic rights of the San people.

### **4.2.3 Legal and institutional protection of socio-economic rights in Namibia**

The government of Namibia has been hailed since independence for its adherence to human rights, which is commendable. Namibia is a party to several international instruments, as stated previously. However, Namibia is still one of the most unequal nations in the world, and years after independence, the situation is rather stagnant, if not deteriorating. According to Viljoen (2006), scholars debate the inherent resource-dependency and fulfilment of socio-economic rights which depends on the availability of public resources. However, these resources are already limited hence the worsened scarcity and unavailability to marginalized people. Decisions on how to use and distribute such limited resources, as well as related priorities and allocations, are made by the executive and legislature, respectively. These are within the scope of the obligations of the executive and legislative branches.

Human rights, including some socio-economic rights, are already in the Constitution, except health rights, as mentioned earlier. According to the Namibian Constitution (1990, p. 16), primary education is compulsory, and the state is responsible for providing reasonable facilities to give effect to this right for every resident within Namibia. For example, the government is responsible for building public schools that are available to everyone. Health rights fall under the principles of state policy. Most of them are in progress as part of the Harambee Vision 2030 of shared prosperity. Article 95 of the Namibian Constitution under the topic promotion a of welfare of the people is where there are principles of state policy, which give constitutional direction about the development of socio-economic policies. According to the Namibian Constitution (1990, p. 52), the government is responsible for consistent planning to raise and maintain an acceptable level of nutrition and standard of living for Namibian people and improve public health. This is a holistic



approach in provision of health care as the government must plan and maintain the provision of good nutrition and constantly improving public health. As a result, the Constitution gives primacy to education in comparison to health rights. All three branches of government render and give effect to socio-economic rights through recognition, promotion, and protection.

Land rights have equal importance as education rights, and the Ministry of Lands deals with these matters. Article 16 (1) stipulates that all persons shall have the right in any part of Namibia to acquire, own, and dispose of all forms of immovable and movable property, individually or in association with others, and bequeath their property to their heirs or legatees; provided that the parliament may, by legislation, prohibit or regulate as it deems expedient the right to acquire property by persons who are not Namibian citizens (Namibian Constitution, 1990, p. 16). To support this legislation, the government enacted the "willing buyer, willing seller" policy, under which people can only acquire land, specifically their ancestral land, based on the seller's willingness. This has proven difficult as the owners of the land are not willing to part with what they deem to be their inheritance.

Education rights are consistent with international commitments to achieve universal primary and secondary education as part of the Sustainable Development Goals. Thus, all persons shall have a right to education in Namibia (Namibian Constitution, 1990, p. 16). In comparison to other rights, land and health have ineffective legal instruments to protect and fulfil the rights of the San. Evidence of this is shown by the land policy, which has not been effective enough to recognize and protect the San ancestral land. For example, the San were arbitrarily evicted from their Etosha ancestral land, although the Constitution of Namibia stipulates that there should not be any arbitrary evictions. The same cannot be said for education, where policy and implementation have

been successful. This is despite both education and land being recognized by the Namibian Constitution as rights for every citizen.

#### **4.3. Application of the San people's socio-economic rights by the Namibian government**

This theme focuses on some of the efforts made by the Namibian government to assist marginalized groups, particularly the San people. Policy initiatives have been put in place, such as the San Development Programme, which was guided by principles of state policy. This serves as an example of government application of socio-economic rights responding to socio-economic needs by giving effect to socio-economic rights and using principles of state policy constructively. An allocated budget was made, and implementation guidelines were established.

The focus is on the policy initiatives that the government has embarked on to change the collective status of the San. According to Mamo (2022, p. 105), Namibia made progress in the development of policies regarding access and benefit-sharing agreements involving genetic resources related to the Nagoya Protocol in 2021. In addition, there have also been gardening projects in Khwe's Babatwa National Park that contribute to the food sufficiency of the local communities, which are complemented by trophy hunting initiatives. However, the people still want more benefits from their resources. Due to the marginalization factors outlined in the theme on the history of the San people, the San have had to rely on the government and its policies to alleviate these pressures. For example, the National Resettlement Policy of 2001 gave effect to special protections for marginalized groups such as the San people (United Nations Human Rights Commission, 2008). There have been other policies and strategies, all aimed at changing the collective status of the San people. The San people consider pensions, food aid, and other forms of welfare as being vital for their survival (Suzman, 2001, p. 117).

According to Odendaal and Hebinck (2021, p. 17), as the result of the various legal cases filed by the San communities, the appeal of the Hai||om collective action case was heard by the court, and a ruling was made by the court. This ruling was seen as unfair and unjust as it did not protect and promote the San people's right to land. The Supreme Court indeed ruled that the members of the San community did not use the right legal vehicle to submit their claims. It is a technical matter, but according to the court, there are other ways for the San to legally organize themselves and institute such a claim. The case fell through due to a procedural technicality under which individuals cannot bring a class action lawsuit against the government. This is evidence of minimal enforcement when it comes to land rights involving the San people. Specific complaints were made to the Nama Jaqna Conservancy Committee by !Kung and Vasekele San women about cattle from other tribes eating their crops on their land (Mamo, 2022, p. 106). Despite recognizing and promoting the rights, the protection has rather fallen short, as the San people continue to complain to the government about how their rights are not protected. As a result, activism among marginalized groups like the San has increased.

Rickard (2002, p. 1) stated that eight Hai||om members testified before the courts that the park was originally the group's ancestral land, but that the Hai||om had been dispossessed on their land before independence. The court in the Etosha case did not rule on the land itself. There was a technical problem with how the San made the claim. This approach resembles both the MEM and SEM in that recognition, promotion, and protection are subjective as per given rights. This is primarily due to the Namibian government's lack of a comprehensive and coherent strategy that can satisfy the basic needs of the San people over a long-term period. The available legal instruments facilitate adequate recognition, but promotion and protection are still ineffective despite laws put in place and supported by constitutional obligations.

#### **4.4. San Development Programme**

Under the theme of policy issues, the San Development Programme is an example that will be reviewed to highlight the government's application of socio-economic rights. In the year 2005, the government approved the creation of the San Development Programme, which is dedicated to the development of the San communities so they can be integrated into the mainstream social and political systems following the Harambe Prosperity Plan (Anaya, 2013, p. 6). The San Development Programme was the policy framework adopted to help the San people (United Nations Human Rights Commission, 2008, p. 2) and was instituted to address the plight of the San people by focusing on key development initiatives, for example in education.

It was meant to address the lack of education among the San people by offering scholarships and establishing learning programmes (Committee on Economic, Social, and Cultural Rights, 2016). In order to improve access to education for marginalized children, the Ministry of Education, in collaboration with non-governmental organizations (NGO) introduced programmes such as the Nyae-Nyae Village School Programme in Otjozondjupa Region, with a community-based curriculum with the San language as the medium of instruction (The Republic of Namibia, 2020, p. 31). This addresses the issue of whether access to education facilitates the San people in the country, which was questioned in 2016 by the Committee on Economic, Social, and Cultural Rights. The Republic of Namibia (2020) also stated the following:

“The San people, Ju//hoansi an umbrella San language development is coordinated by the Namibia Institute of Educational Development (NIED) through the Curriculum Panel Committee. Materials such as textbooks are developed to reflect the culture and context of the communities. Currently, NIED is working on literature and reader books for primary schools in Jul//hoansi...” (Republic of Namibia, 2020).

In 2009, the programme was transformed into the San Development Division, which currently operates within the office of the Prime Minister and has a budget of approximately N\$ 2.4 million (Anaya, 2013, p.6). This is one of the mainstream government policies aimed at enforcing socio-economic rights. It was carried out under the substantive model as the development model was in line with the Harambe Prosperity Plan of Vision 2030. Anaya (2013, p. 6) noted that the mandate of the division has expanded since its creation working in areas such as land and resettlement education, economic development, and food security. Nonetheless, the division has been chastised for failing to effect meaningful and effective change for the people it is supposed to assist.

In addition, several San people in Namibia have benefited from legislation devolving user rights over wildlife to communities” (Suzman, 2001, p. 20). The government of Namibia’s main aim was to improve drastically the progression of San in areas such as education, literacy, and resettlement (United Nations Human Rights Commission, 2008, p. 2). Another major hindrance has been the government’s lack of financial commitment to assisting the San people as opposed to the other groups. For example, the United Nations Human Rights Commission (2008, p. 3; Anaya (2013), held a similar view that there were budgetary discrepancies between government spending for the San people and that of the Ovahimba people. There is a perception that within the government’s financial planning and distribution there are some ethnic groups who are favoured over the San.

As the most marginalized group, the San people should receive most budgetary allocations. This highlights a situation in which the government’s financial plans fail to protect and enforce socio-economic rights rather than being an enforcement model that creates obstacles in the pursuit of these rights.

As a result, the San people generally must pursue a variety of strategies for income generation, food provision, and shelter. The successful application of socio-economic rights detailed in the

literature review highlighted that is not solely reliant on the chosen enforcement models but also the government's financial commitment and the opportunity cost of supporting another marginalized group are all critical factors. The available policies are supplemented by the Namibian government's policies to ensure that rights are enforced and protected. For example, the San people have benefited from the conservation initiative, as mentioned earlier.

#### **4.5. Government response to the implementation of San people rights**

The San Development Programme (SDP) highlights one of the focal responses by the Namibian government in the implementation of San socio-economic rights. The SDP was initiated as a policy in conjunction with Vision 2030, which is the latest development plan of the Namibian government. This epitomizes the SDP as a policy directive of the government. Anaya (2013, p. 6) noted that the SDP was initiated and dedicated to the development of the San communities so they can be integrated into the mainstream social and political systems following the Vision 2030 of the Harambe Prosperity Plan (HPP). Through the ambitious HPP, Vision 2030, and the National Development Plans, societal problems were to be tackled (Nyae Nyae Development Fund Namibia, 2017). As such, the SDP was meant to address the societal problems of the San people, as described earlier. These include:

- Rampant social discrimination,
- Viruses ravaging San communities, such as HIV,
- High child and maternal mortality,
- Declining education and health, and
- Lack of political representation.

From the list above, the government has only addressed the need for education as a priority, while other societal problems have lagged. It operates under the Prime Minister's office and has a budget of approximately 2.4 million Namibian dollars (The Namibian, 2018, p. 1). The government's expenditure on education is about 8.4% of the GDP of the national budget every year (Ministry of Justice, 2020, p. 54). The Ministry of Education has one of the highest budgets in Africa, with N\$ 13.1 billion. This shows commitment to educating the citizens of Namibia in general.

**Education:** An example of an education programme for the San is the Nyae-Nyae Village School Programme in the Otjozondjupa Region, where the curriculum is community-based, and the San language is the medium of instruction. Education is a good foundation for creating political mobilization. However, rampant social discrimination can be addressed through laws that restrict discrimination in school admissions and job employment.

**Health :** The SDP neglected to prioritize health concerning viruses, child, and maternal mortality. Covid-19 demonstrated how the government must upgrade facilities to ensure that all health problems are addressed in the event of an emergency. Economic disparity has improved in recent years but remains extremely high. "While Namibia measured 63.3 on the Gini coefficient in 2003 (with 100 being perfect inequality), Namibia improved to 60.8 in 2012" (Aiken, 2018). Brayhill (2009) said that the San still struggle with economic dependency, alcoholism, malnutrition, and societal breakdown, all of which continue to threaten their survival. These factors are beyond government budgets but affect the implementation of socio-economic rights, which exacerbate the marginalization of the San people in Namibia.

**Program Implementation :** The question lies in whether the San have been integrated into the mainstream social and political system as was intended. Budget limitations still present an obstacle

to ensuring the effectiveness of SDP. The government has worked with limited funding while the problems continue to grow. As such, integrating the San into mainstream economic and political life has proven difficult. Most funding is extra budgetary, and implementation has been contracted to a community-based organization that is highly active and enthusiastic but has management challenges (UNESCO, 2018).

The San still live on the outskirts of towns and are too remote from social services. Hence, the initial programmes aimed at their socio-economic rights should focus on creating economic hubs around the San communities that reflect and are centred on their way of life. Brayhill (2009) said that many of the San's problems are made worse by policies created by the government that do not consider the San's culture legitimate or allow their political participation. Part of the San development programmes should have been enhancing political participation, which reinforces integration into the formal economy. However, this requires a lot of funding and assistance from other organizations. The government alone cannot change the collective status of the San people but if stakeholders are present, such as a civil society organization, it can go beyond what the government does. The different stakeholders can improve the lives of everyone in Namibia, including the San community (NNDFN, 2017).

Using the theoretical framework, the SDP falls under the pragmatic model in terms of applying the socio-economic rights of the San people. This exemplifies the desired model for applying socio-economic rights despite budget limitations. This is because the SDP is a proactive development strategy that serves to embed social and economic rights into policy and practice. It goes beyond socio-economic rights to include political representation, which ensures the needs of



the San people are recognized, promoted, and protected in the long term. The following theme focuses on education.

#### **4.5.1. San Education Programme (SEP) analysed**

This theme focuses on the Namibian government's initiative to implement the right to education for the San people. Amongst all the socio-economic rights education has been applied to a larger extent in comparison with other rights. Brown and Hai Ambo (2015, p. 320) said that education is a basic human right as recognized in the Namibian Constitution (GRN, 1990, Article 20). This is also evident from various international policy documents such as the - International cooperation, international trade and the Convention on the Rights of the Child (UNCRC), (UNICEF, 1990), the UN Millennium Development Goals (UN, 2008), and the Dakar Framework for Action (UNESCO, 1990). As part of the Constitution of Namibia, there is a duty to promote human rights, which embraces awareness-raising and educational measures concerning socio-economic rights (Liebenberg, 2010, p. 34). Thus, the government has the responsibility to put in place structures that ensure the San realize their right to education. In hindsight, the apartheid Bantu education system, which created a working class rather than entrepreneurs, explains the need to educate the San. It was education before independence that separated learners depending on their race, gender, ethnicity, language, and disability (Brown & Hai Ambo, 2015, p. 310). As such, the San Education Programme (SEP) was meant to address such problems that persisted after the independence period with inclusion in the formal education system.

From the data gathered there is evidence that the SEP in Namibia has been one of the most successful high-profile initiatives under the Office of the Prime Minister. From 2003 to 2008, the SEP resulted in an increase of 842 San children in pre-primary school and 658 in primary school

(UNESCO, 2018). The improvement in the number of enrolled children makes the SEP one of the most successful applications of social rights by the GRN. Success stems from creating a San-centred approach, given that it was created with the consultation of the San people. Hence, the curriculum reflects the San cultures and communities. Inclusion has been created by having a curriculum that is in the San language.

"Various commitments by the Ministry of Education (ME) have been made to support San children so that they have access to formal education in an inclusive society by placing San children in public schools and hostels while waiving their school fees" (Brown & Hai Ambo, 2015, p. 310). One of the programmes was so successful that it was exhibited at the 2009 World Conference on Sustainable Education in Germany. UNESCO (2018) noted that:

The project that was established continues to support 4 Early Childhood Development (ECD) Centres in the Ohangwena region (Ekoka, Ouhalamo (Eenhana), Eendobe, and Onamatadiva). Additionally, three primary schools are supported, more particularly their hostels, through an established feeding program (these primary schools are: Ekoka Combined School, Oshisho Combined School, and Hainyeko Primary School). Two resource Centres were established, one at Onamatadiva and another at Ouhalamo ECD Centre, and a total of eight teachers were trained under this project.

The SEP is accompanied by food programmes to ensure the children have a source of food. However, what the programme fails to include is adult education, which would ensure that older people can also be educated. This ensures that the San people have formal education that allows them to be integrated into the formal economy through nationally recognized education programmes.

Despite the constitutional and educational reforms promoting the social inclusion and equality of the San, they remain a significantly disadvantaged group (Brown & Hai Ambo, 2015, 314). This is due to education programmes only focusing on children, a lack of job opportunities after education completion, and the failure to tailor education programmes to support San lifestyles. The San heavily rely on agriculture; hence, their education should focus on that through innovative technology. Although the government has lagged, headway has been made in meeting education needs with increased facilities and enrolments in different regions across the northern part of Namibia. Educating the San children will allow the upcoming generation to have a foothold in the formal economy and garner support for political mobilization as they will appeal not only to the San but to other communities as well. The following theme focuses on the land rights and housing needs of the San.

#### **4.5.2. Land and agriculture initiatives**

The issue of land has impacted the entire Namibian population, not just the San people. This makes it one of the most difficult and controversial rights to apply for, given the general national need for land. Socially disadvantaged Black or Coloured citizens own only 16% of the land (Namibia Statistics Agency, 2018). As part of the disadvantaged citizenry, the San people continue to be further marginalized through unplanned resettlement and the appropriation of their ancestral land, such as Etosha, Namibia. Very few places remain that cater to the San and are solely owned by them. Located in remote north-eastern Namibia, close to the Botswana border, the 9 000 km<sup>2</sup> Nyae Nyae Conservancy is one of the last two remaining San lands (Taylor, 2021). These are the few lands owned by the San that represent their lifestyle, hence the need to apply these rights. However, the areas allocated to the San continue to be remote areas within Namibia. The goal is to integrate

the San and bring them closer to social services, so having them in remote northern areas merely creates a short-term solution.

The San are limited in numbers, with their population representing approximately 1.3 to 2% of the total population. The data gathered shows that the San are not able to mobilise their masses to attain political representation that can champion their cause for land rights. This affects their political will and public demand for land in urban areas. A good example is the appropriation of the San's ancestral land in Etosha Game Park. Evidence from the literature shows that there is a lack of legal instruments that can guarantee their unqualified socio-economic rights where there is no arbitrary eviction. Africa.com (2019) noted the following: Namibia has a relatively “new formal legal framework for land rights; in many cases, it continues to acknowledge aspects of customary law”. In most communal areas, traditional leaders continue to control the allocation and use of land, applying customary law under the oversight of the Land Boards. This has been worsened by the nomadic lifestyle of San communities, which makes it rather difficult to settle and create value on a given piece of land. As a result, failure in application lies in the dynamics of customary law and the control of traditional leaders. Women do not benefit from land rights as much as the men who control the distribution. This is primarily due to traditional land ownership within the San communities. Traditional authorities manage San conservancies (Taylor, 2021). As such, among the San, only the Ju'hoansi is recognized as having a conservancy. As such, within the San communities, women are marginalized in land ownership. Thus, a strong culture of socio-economic rights embedded in justiciable or effectively binding constitutional provisions can help ensure that groups such as women and children are entitled to a fair share of national resources and can enjoy the material conditions necessary for dignity and well-being (Ahmed & Bulmer, 2014, p. 19). However, the government has not put in place legal modalities to ensure that there

are similar enforcement models for all ethnic groups. As a result, the San believe there are two distinct sets of rules. Nonetheless, there are signs of the San people attaining their land rights but equality between men and women should be established concerning land rights.

#### **4.5.3. San entrepreneurial initiatives**

This theme focuses on the economic aspects of the application of economic rights. These entrepreneurial activities are meant to integrate the San people into the formal economy and move them away from the subsistence way of livelihood. Meriam Webster (2022) defined entrepreneurial as "having to do with the creation and development of economic ventures of, relating to, characteristic of, or suited to an entrepreneur". Thus, in the application of the San's economic rights, the government must create a conducive environment to establish and develop economic ventures. This starts with education, in which the Namibian government has made progress.

#### **4.6. Conclusion**

In summary, the chapter provided information on the legal framework guiding the promotion, protection, and fulfilment of socio-economic rights. By being a signatory and ratifying various international instruments, Namibia shows that it is committed to human rights. This is supported by constitutional obligations, which are implemented through the principles of state policy. This shows that the government is aware of the root causes of San marginalization. What lacks is the concrete policy that is designated to the application of the rights of the San people. The San people are not the only ethnic group in Namibia which means they are other groups who equally deserve their rights to be applied as well. Despite such commitments, some rights, such as land and health,

require more promotion and protection to ensure the collective status of the San is changed. Of note is how some rights, such as education, have been fulfilled through the San Development Programme.

A note worthy effort from the government is the establishment of designated institutions to apply socio-economic rights of the San. The government by being a signatory domestically to international frameworks, shows a pledge to addressing and applying socio-economic rights in general. However there a limitation in the effort and commitment in the application of socio-economic rights primarily finance. Limited funding forces the government to ration the funding of socio-economic rights and to also distribute to other ethnic groups in Namibia.

Namibia, in the enforcement and application of socio-economic rights, makes use of both the MEM and SEM models. This is subjective as per rights, as different ministries are responsible for the implementation of specific rights. There is too much bureaucracy in the application of the rights due to different ministries working towards the application of the rights of the San people. This creates difficulties such as ministry overlap and redundancy in monitoring and evaluation as some ministries such as education perform better than the ministry of health in the application of the rights of San people. As a result, singular ministry that's responsible for socio-economic rights should be established with a designated budget and regular monitoring and evaluation. This should be supported b y a concrete policy not only for the San but for every marginalized group in Namibia.

Positive effort should be noted with evidence of relevant legal and institutional framework that has been put in place in Namibia. This is based on the separation of powers creating clear lines of authority, which is aimed at ensuring the enforcement of socio-economic rights. It is more likely

that the protection and fulfilment provided by these legal institutions has been ineffective due to the lack of participation of the San people.

In most cases the government of Namibia makes use of the substantive model, as evidenced by the educational programmes offered to the San people with a curriculum reflective of their languages. This has been an effective method in the application of socio-economic rights as it has increased and made it easy for the San people to learn in their language. However, the remoteness of the San still makes it difficult for the majority to access the education offered. The SDP is a noteworthy effort to create economic and political inclusion of the San people. Politically this is difficult due to the nomadic lifestyle of the San people which makes difficult to mobilise politically and champion their cause. This also contributes to having very few San people in the formation of policies that are meant to address the concerns of the San people. In addition, the resettlement of the San people has been poorly executed with arbitrary evictions without any compensation once this is done. The following chapter narrows down the theoretical framework for the application of socio-economic rights. The chapter analyzes the different models that have been applied in Namibia in the application of socio-economic rights, pointing out the socio-economic beneficiation or not of the models.

## **CHAPTER 5: Application of socio-economic rights in Namibia**

### **5.1. Human rights era**

The purpose of the theoretical framework is to ensure that there is a connection between socio-economic rights and theories of justice, which will facilitate a comprehensive analysis through the lens of these theories. Theories of socio-economic rights defend different schools of thought, which is a right to this or that good or opportunity, such as housing, health care, education, and

social security (Waldron, 2011, p. 773). Human rights, according to this theory, are more requirements than entitlements for the marginalized. This places justice at the heart of ensuring the protection of socio-economic rights. Waldron (2011, p. 775) noted that there is a structural relationship between socio-economic rights and theories of justice, which is a fascinating intellectual conundrum.

Human rights are a contentious issue which has created philosophical debates amongst different schools of thought for a long time. You can trace this from the writings of the Greek philosopher Aristotle on man's natural rights to the Sustainable Development Goals (SDG), which have become a goal for every nation. Some scholars such as Edmund Burke argues against Universal human rights declarations such as the French Declaration, which inscribed natural rights and argued that those rights were benefits won within each society (Heard, 1997). This created a subjective perspective as opposed to an objective one within the rights contexts. This analogy relegates human rights to only resulting in benefits, as opposed to the requirements for Indigenous people. Human rights are inherent to every individual, yet their significance ultimately rests on the cultural norms and values unique to each society. Indigenous people are the most socially, politically, and economically marginalized groups in the world (Shrinkhal, 2019, p.1). In this context, the native people do not benefit on those human rights as everyone does. Human rights became a proper subject in international law as international theorists accepted that natural law moral concepts of rights could form the basis of what States adopted and recognized as international law (Magalanes, 1999).

States over the years have sternly followed the fundamentals of natural law as moral concepts, hence the initial establishment of the Millennium Development Goals. The modern human rights



debate relished the welfare of human beings and governments believe that rights belong to any individual as a result of being human; independent of acts of law (Mazel, 2009). This gave impetus for states and international organizations to establish their founding principles based on these rights. The United Nations Charter, adopted in 1945, was the first universal treaty to express human rights and self-determination of people, as well as uphold fundamental freedoms (Shrinkal, 2019, p. 2). The international community paved the way for scholarly debates on the applicability and justifiability of these rights once they were in the international arena rather than the domestic sphere. A good example is the work of McKeever and Aolain, where they outlined different models of judicial enforcement, which will be explained below as part of the theoretical framework.

## **5.2. Models of enforcing socio-economic rights**

This theme focuses on the different models of economic rights enforcement and protection. This is a relatively understudied area concerning socio-economic rights. The main source for this theme will be the work of McKeever and Aolain, which was mentioned in the background of the research. Namibia's foreign and domestic policy falls short of the true desire to create equality through human rights, despite championing the cause on an international arena. The models will aid in identifying why there has been a lack of commitment. These will be outlined in a tabulated format.

*Table 2: Enforcement models for socio-economic rights*

Model	Definition	Applicability	Example
<p><b><u>Minimal enforcement model</u></b></p>	<p>This model seeks to protect social and economic rights, but it does not guarantee formal rights explicitly defining social and economic rights.</p> <p>It avoids claims of judicial overreach, hence changing the perception of socio-economic rights.</p>	<p>This model operates through the courts, which have the legal capacity to decide whether access to particular services provided by the state to citizens and others is fair, impartial, non-discriminatory, and subject to procedural protection.</p>	<p>For example, courts intervene when people are excluded from accessing shelter, which violates basic rights.</p> <p>The exclusion of the San peoples from their ancestral land (Etosha) shows this.</p>

<p><b><u>Substantive enforcement model</u></b></p>	<p>This model has many variations, but it seeks to define and enforce a set of socio-economic rights. Variations range from the incorporation of single substantive socio-economic right into the state's legal human rights framework to the enforcement of multiple rights.</p>	<p>The applicability lies in the entrenchment of such rights, which are achieved through constitutional or legislative means. Substantive rights are given formal legal status on par with entrenched political and social rights. However, the implementation has lagged due to the need for political will and public demand.</p>	<p>An example of this model includes the provision to protect the right to an education that is in the Namibian Constitution, which stems from the specific social and political history of the Constitution-making process that signalled a move away from apartheid policies.</p>
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<p><b><u>Pragmatic model</u></b></p>	<p>This model seeks to move beyond discussions about socio-economic rights outside an exclusive judicial sphere and focus on other legitimate legal and political means to achieve the mainstreaming of socio-economic rights.</p>	<p>This requires the government to tackle the issue of socio-economic rights through proactive development strategies, which serve to embed social and economic rights into policy and practice.</p>	<p>An example is the San development programme, which aimed to progressively embed the protection of the natural resources of the San people. It moved beyond the courts and brought into effect the participation of NGOs representing the San people as well, to further the protection of these rights.</p>
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Source: McKeever & Aolain, 2004

The table above outlines the different models of judicial enforcement of socio-economic rights and also provides the legal context for the government's constitutional obligations that answer to socio-economic needs. The minimal enforcement model almost entirely avoids the issue of substantive rights. As a result, it merely provides a veneer of legal application of socio-economic rights while impeding progress due to the emphasis on individual concerns. Melber (2016, p. 11) noted that double standards and selectivity are the order of the day in the Namibian government's application

of socio-economic rights. Furthermore, McKeever and Aolain (2004, p. 4) noted that acceptance of the judicial process is selective, with some rights given priority over others, and that international and domestic law are not the same.

As a result, one of the disadvantages of constitutional examples like Namibia is that these rights are accompanied by structural limitation clauses that heavily weigh on the applicability of these rights, which are primarily governed by government spending. Budgetary allocations come into play concerning the extent to which a certain right will be applied. The following themes will elaborate on the issue.

### **5.3. Constitutional obligations of the Namibian government**

This theme addresses the obligations that the Namibian government has put in place in the Namibian Constitution to govern the application of the socio-economic rights of the San people and every citizen in the country. The Constitution of Namibia was enacted in 1992 after Namibia achieved its independence and it became the supreme legal document guiding state action towards its citizens. The Namibian Constitution affirms that all treaties are binding upon the Republic Namibia; this includes the general rules of public international law, which are incorporated into domestic law (Anaya, 2013, p. 6). The theme will focus on obligations that speak to the San people rather than the overall obligation to all Namibian citizens. Article 5 of the Namibian Constitution is the guiding article in the application of all rights. The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature, and Judiciary and all organs of the Government and its agencies, and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed (The Office of the Ombudsman, 2016). The courts are present to enforce the laws that govern the

state. To that end, the Constitution of Namibia stipulates that all people are equal before the law. However, the San people are not able to sue the government in a class action lawsuit in which their rights are not protected. This has affected the commitment made by the government in 2002 to change the collective status of the San as marginalized people.

In 2002, the Namibian government acknowledged the devastating effects of apartheid, which disenfranchised the San people. The San people were subsequently designated as "special people" to afford them special status for state programmes and interventions. However, this was not enshrined in the Constitution but merely a policy directive of the Namibian government with a pledge to the international community on human rights. Affirmative action in the Constitution should rectify these challenges. The Namibian Constitution (1990) noted that: Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically, or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programs aimed at redressing social, economic, or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the defence force, the police force, and the correctional service. (Committee on Economic Social and Cultural Rights, 2015).

The list above reflects affirmative action pledges to Namibians in general and the San people in particular. This serves citizens who have a history of discrimination and marginalization within Namibia. Toward that end, the government of Namibia has made some efforts through the principles of state policy and specified programmes in education and land reform. However, some areas, such as health and sanitation, have deteriorated. It is against this constitutional and legal

background that the Namibian government must develop and implement policies and allocate budgets to respond to the socio-economic needs of the San.

### **5.3.1 State policy principles in applying the San people's rights**

This theme reinforces what the Constitution stipulates in Article 95 which describes the human, social, and economic rights governing the Namibian state. Under Article 95, the government of Namibia is guided by the Principles of State Policy which necessitate the government developing and implementing policies and allocating budgets to respond to the socio-economic needs of the San. As part of the Principles of State Policy, there is a fundamental notion enshrined in the (Constitution of Namibia, 1990) namely that the state shall actively promote and maintain the welfare of the people by, among other things, putting in place policies aimed at the following:

1. "Assuring that every citizen has a right to fair and reasonable access to public facilities and services following the law;
2. Ensuring that the legal system seeks to promote justice based on equal opportunity by providing free legal aid in defined cases with due regard to the resources of the state;
3. Ensuring that the state provides consistent planning to raise and maintain an acceptable level of nutrition and a standard of living for the Namibian people and improves public health; and
4. Encouraging of the mass the population through education and other activities and through their organizations to influence government policy by debating its decisions."

The above principles have guided the state of Namibia in applying human rights in general and socio-economic rights in particular. Through principles of state policy, the Namibian government

has established programmes such as the San Development Programme, which will be discussed in the following chapter. These will guide how the government has recognized and promoted socio-economic rights and if they have been fulfilled. The constitutional legal context of applying socio-economic rights is guided by the principles of state policy.

Principles of state policy in the Constitution are important because they have a constitutional status. They are important in shaping government policy on socio-economic issues and in determining how socio-economic rights are implemented. There are a few examples of constitutions in southern Africa that include socio-economic rights. Given that these rights are crucial, and these states are in one economic bloc, they should be followed throughout the southern region. Such consistency may create a sense of urgency and accountability in ensuring that states promote, protect, and fulfil these socioeconomic rights.

Thus, the pragmatic model espouses states acknowledging socio-economic rights in their constitutions and being supported by international legal instruments. Nonetheless, the substantive model remains the more desirable of the two to ensure sustained legal protection through the courts in the socio-economic sphere. Namibia has used all enforcement models, but substantive enforcement models have taken precedence.

#### **5.4. Socio-economic rights of the San people**

This theme aims to elaborate on socio-economic rights, stating their status and applicability and focusing on three major ones in the analysis. A commonly held notion is that socio-economic rights are not rights but claims to be followed based on political preference (McKeever&Aolain, 2004, p. 6). These claims are rooted in the political history of a given nation and how its Constitution



was created. Of notable value is how the promotion and protection of human rights are matters of priority for the international community in general (Human Rights Commission, 1993).

Despite negative connotations over group rights, the SWAPO led Namibian government has recognised the direct needs and status of the San people (Minority Rights Group International, 2016). However, it is this degree of recognition that has led to complacency in the Namibian government's application of socio-economic rights. The marginalization of the San people has become a cycle of dependency due to the loss of land and access to resources (Tjirera, 2022). This has been made worse by the state continuation to revert to old apartheid references of segregation which describe the San as marginalized people as opposed to indigenous or native Africans (Xoagub, 2019, p. 6).

The argument focuses on the domestic justifiability of these rights, as well as further exploration of the lingering perception of socioeconomic rights' lack of justifiability and the effect of enforcement (McKeever & Aolain, 2004, p. 4). In the Namibian context, as mentioned in the background, socio-economic rights are part of the Namibian Constitution, hence the primacy of the substantive model of enforcement when it comes to these rights. There are three generations of human rights, which are found in many constitutions, with some going a step beyond others in their inclusion. Williams (2004) noted the definition, generation, and example of human rights:

*Table 3: Categorization of rights*

	<b>Definition</b>	<b>Examples</b>	<b>Government Application</b>
<b>First Generation</b>	Civil and political rights	Right to vote, freedom of assembly; freedom of speech; freedom of religion; right to be treated with dignity	These are regarded as negative rights; the state is required restraint from certain actions
<b>Second Generation</b>	Economic, social, and cultural rights	Right to employment; right to housing; right to adequate food and clothing; right to adequate health care; right to social security	These require positive action by the state. They form the basis for state welfare concepts. Feature in African Charter on Human and People’s rights
<b>Third Generation</b>	Rights at the collective level for communities, populations, societies, or nations	Right to economic development; right to benefit from world trade; right to breathe unpolluted air; right to live in a cohesive and harmonious society	These rights were a response to global interdependence, as individual states cannot resolve problems in isolation from the other states.

Source: Williams, 2004

Williams (2004) is of the view that the first-generation human rights are regarded as more important as compared to other rights. This is a similar case in the Namibian Constitution as well, which is attributed to a country's historical background and how it shaped its political trajectory. In many countries, this has influenced which rights are prioritized, for example, "first generation" and "second generation" rights. A good example is Chapter 3 of the Namibian Constitution, which focuses on the recognition, protection, and promotion of fundamental human rights and freedoms. Furthermore Chapter 3 outlines equality and freedom from discrimination, the right to property, the right to culture, and the right to education, among other rights (Anaya, 2013, p. 5). These rights are expanded to include the protection of life, respect for human dignity, protection and liberty, slavery and forced labour, equality and freedom from discrimination, arrest and detention, a fair trial, privacy, family, children's rights, property, education, culture, and fundamental freedoms.

Despite recognizing all these rights, the Namibian government's policies have failed to prioritize the commitment they made to the San people in 2002. As such, the need to protect, promote, and fulfil socio-economic rights has become secondary, and budget allocations have become subject to other areas (Melber, 2016, p. 11). Contrary to popular belief, customary law is incorporated into Namibia's legal framework through Article 66 (1), which states that both customary and common law are valid if they do not conflict with each other (Anaya, 2013, p. 5). The UN Human Rights Council has adopted a resolution recognizing a safe, clean, healthy, and sustainable environment as a human right and calling on states to work alongside indigenous people on its implementation (Mamo, 2022, p. 8).

There is a call to move beyond customary law. Human rights and fundamental freedoms are the birth rights of all human beings; their protection and promotion are the first responsibilities of

governments (Human Rights Commission, 1993). The study focused on the three primary rights of land, education, and health. These will shed light on the socio-economic issues being faced by the San people. In addition, the rights will be further divided into unqualified and qualified rights beyond the ones stated above. The next theme focuses on the first and most controversial one, which is the right to land.

#### **5.4.1. Land rights and tenure**

This theme focuses on land rights and how they apply to the San people in Namibia. Land rights and tenure were chosen as they are predominantly the rights the San people are championing to be protected and enforced. In this current climate, the San people settled and utilized lands in Namibia under several different arrangements, each of which had different magnitudes concerning security and control, none of which were wholly adequate or without problems (United Nations Human Rights Commission, 2008). “In 1991, land rights in the Otjozondjupa region (former Bushman land) based on the n! ore (hunting territory) system were acknowledged, though inadequately defined, and government support was forthcoming in the subsequent peaceful persuasion of Herero pastoralists who had moved into the region to leave, though some subsequently returned” (Minority Rights Group International, 2016). This was the first acknowledgement and application of socio-economic rights by the Namibian government. However, the application was merely recognition without a concrete enforcement mechanism. As a result, the San people are still marginalized in the country. Eighty per cent of the San people have been removed from their ancestral lands and resources taken away from them, and which has placed them in the category of poorest people in the country (Tjirera, 2022, p.1).

“Hai/Om groups have petitioned for land rights after being pushed out of the area occupied by the huge Etosha National Park, but thus far, they remain the only San group to not have access to communal lands” (Minority Rights Group International, 2021). Thus, some San groups have been afforded land, but some are still neglected. The ranks of landless San squatting on the margins of towns continued to grow (Minority Rights Group International, 2021). In 2002, the land rights of the San also came under scrutiny in Namibia in an extremely critical report compiled by the Legal Assistance Centre (LAC), based in Windhoek. The report claimed the government had made plans to give the San people land through the Land Reform Act of 1995 (Act 6 of 1995) but had made little effort to deliver.

Land rights are a contentious issue in Namibia because of the disastrous failure of the willing buyer and willing seller policies, which impacted all Namibians, including the San people. Concerning land reform programmes, there were special protections for groups such as the San, and these were specifically aimed at women (United Nations Human Rights Commission, 2008, p. 2). Women are more marginalized than men in the San, so they receive special attention. Fewer than 15% of Namibia's San people retain de jure rights to land (Suzman, 2001, p. 18). This means the San people cannot use judicial means to claim land that is ancestrally and rightfully theirs, which is in line with the minimal judicial enforcement model.

This has contributed to the San being nomads and economically dependent on the government. “Despite having been identified as one of the principal groups meant to benefit from the government purchase of commercial agricultural farmland under the mandate of the Agricultural Land Reform Act (ALRA), fewer San people have benefited from the programming due to the Act not affording adequate land and tenure rights that it confers on recipients” (Suzman, 2001, p. 118).

The proposed communal lands bill that has been used in Namibia still fell short of protecting the land rights of the San people. The next theme will focus on education as one of the social rights of the San people.

#### **5.4.2. Education rights**

This theme addresses the aspect of education that is enshrined in Articles 13 and 14 of the Namibian Constitution. Due to the disenfranchised history of the San people, they were never afforded access to basic education, contributing to high illiteracy rates in their communities. Anaya (2013, p. 2) despite the commitment to universal education upon independence, the Namibian government has not increased efforts to address the difficult educational situation of the San and Himba people, especially those who lag in educational attainments in comparison to other groups. This dates to pre-independence educational setups. Official estimates suggest that more than half (55.6%) of the San have never accessed formal education and are, therefore, illiterate (Minority Rights Group International, 2021). “Research has shown that the indigenous people of Namibia, particularly the San people, also suffer from low levels of education” (Committee on Economic, Social, and Cultural Rights, 2016). However, the government has since made strides in the pursuit of universal education. For example, since few San people were able to complete secondary education, the government implemented free education for all in 2016 (Minority Rights International Group, 2021). By implementing education programmes, the government is giving effect to the social right to education of the San people.

However, it comes with the shortcoming of neglecting other minority groups in the country. The government must provide education for everyone without special privilege of the San people as it is a basic right to everyone. The lack of access to education is an issue that is not only affecting

the San people in Namibia. Education in Namibia is compulsory for 10 years between the ages of 6 and 16. Thus anyone beyond the age of sixteen must pay to access government education facilities. Government should allow for free adult education for San people to create a culture of learning amongst all ages. According to the Ministry of Justice (2020, p. 30), the indigenous group consists of farm worker children, San children, Ovate children, and Ovahimba children. These other groups besides the San also require assistance. Without the provision of education, the San people have no means to challenge the government's application of socio-economic rights.

The high mobility, free education, social prejudice, and problems with cultural adaptation have contributed to the relative lack of success in attempts to provide formal education to the San people (Suzman, 2001, p. 20). Concerning the government's provision of education, there have been major efforts, but the internal cultural complexities of the San have limited the full realization of this right.

#### **5.4.3. Access to appropriate health care**

The Namibian Constitution does not include a right to healthcare, but it is one of those important social needs that is dealt with in the Principles of State Policy in Section 95 of the Constitution. However, in the Constitution, there is the right to equality and dignity, which is relevant, but it is not specific about access to healthcare. A closer examination of healthcare as a critical aspect of social life will reveal why it should be considered a right. The apartheid regime ensured that health care services were provided along ethnic lines, which marginalized the black majority in the country. The most affected were the San, given how they are already marginalized within the black majority population in Namibia. Since independence, the government of Namibia, "under the Ministry of Health and Social Services, has focused on providing health care to all Namibians,

which more recently has included a shift to the disadvantaged groups” (Anaya, 2013, p. 17). Namibia has further marginalized those groups that cannot afford premium health care services. The problematic health situation San people have, besides being remote from health facilities is them being chased away from health care facilities as they cannot afford them. Unlike education healthcare is not free, which requires the San to first travel and pay for those services. A recurrent issue is the San over reliance on subsistence ways of living which exacerbates poverty. There is limited disposable income to access the good health facilities in Namibia let alone travel to them. Job creation is required amongst the San people to have money towards accessing health facilities. From the government’s end mobile hospitals should be put in place that are in accessible areas for the San people. The lack of health care is another critical issue affecting most indigenous people in Namibia, particularly the San (Committee on Economic, Social, and Cultural Rights, 2016).

This observation made through an independent organization in 2016, and six years later, the situation has worsened. States should warrant access to health care as a human right, including timely, acceptable, and affordable health care of appropriate quality for all people (Amnesty International, 2022). “Higher rates of poverty mean many communities struggle to buy medicine or pay for transport to distant health facilities for treatment” (Amnesty International, 2022). In addition, an estimated 80% and more of the San live over an hour away from health services, and this has worsened with the effects of the global corona virus (Hamutumwa, 2019). Most government healthcare amenities are located further away from San communities, yet the Namibian authorities do not have alternatives in place, such as mobile health clinics and services, drastically affecting the San people (Amnesty International, 2022). Concrete efforts should be made to ensure the San people have access to adequate and efficient health care services. It is high



time that the authorities stopped neglecting the San people, recognize their right to health, and ensure access to healthcare like any other people in Namibia (Amnesty International, 2022).

This problem boils down to the lack of economic opportunities for the San people rather than a problem with the enforcement mechanism. San mothers in Divundu testified to the Special Rapporteur from the United Nations that they were chased from hospitals because they could not afford it (Anaya, 2013, p. 17). If the San people had equal economic status, they could easily afford standard health care. However, this is also exacerbated by the nomadic nature of the San people, which makes them, live far from hospitals. The following theme will now concentrate solely on enforcement models.

### **5.5. The status of socio-economic policy initiatives in Namibia**

This theme focuses on the status of socio-economic needs in Namibia as socio-economic rights are divided into qualified and unqualified ones. The study focuses on how the government responds to or does not respond to socio-economic needs, some of which are expressed through direct socio-economic rights, such as the right to education, and others through the Principles of State Policy. Indigenous groups in Namibia, including the San and Himba people, continue to be particularly disadvantaged more than 20 years after the country's independence (United Nations Human Rights Commission, p. 2013). Dominant stereotypes of the San are almost uniformly negative, which has created perceptions of social inferiority that have influenced policy implementations in Namibia (Suzman, 2001, p. 117). Even though Namibia is a signatory of international human rights conventions with international commitments to protect the indigenous people, it is still lagging in the application of socio-economic rights. With reference to the Harambe

Prosperity Plans of the Namibian government, the shared prosperity is far from being realised with the San people marginalized in areas of education, land and health rights.

The Legal Assistance Centre (LAC) and other organizations, including the division of marginalized communities in the office of the Vice President, called for greater attention to be paid to issues faced by indigenous women and children, including issues surrounding abuse and discrimination (Mamo, 2022, p. 104). In Namibia, indigenous women currently face difficulties gaining access to land, which harms their economic status in comparison to men. As a result, the San people face additional gender discrimination. For various reasons, the Namibian government has been unable to give practical effect to positive policy statements and, in several instances, has failed to adhere to stated policies or the letter of the law when dealing with San populations (Suzman, 2001, p. 20).

Despite this, Namibia regularly provides a mid-term report on the Human Rights Council's universal periodic review of Namibia, and the last was in 2021 (Mamo, 2022, p. 102). The report stipulated that Namibia had not sufficiently addressed the rights of marginalized groups and made a dozen recommendations. Such as taking measures to combat discriminatory practises, developing a comprehensive legal framework to fully eliminate discrimination against minorities and continuing to advance human rights based on training programmes for public service (Human Rights Council, 2021, p. 11). These tasks are under the Office of the Ombudsman. Apart from the Ombudsman Office, there are other institutions responsible for ensuring the protection of rights (International Labour Organization and African Commission on Human Rights, 2009, p. 41).

## 5.6. Summary

The San people have suffered from poor access to education which has contributed to them having the lowest literacy rates in Namibia (United Nations Human Rights Council, 2015). The social discrimination in schools and educational curricula shows by having education learning mediums that do not reflect San languages and culture. Concerning health rights, the government has lagged in recognition and promotion. There are very few facilities that are not near the settlement areas of the San people. For example, vaccinating the San people has proven difficult, and common killer diseases such as malaria and cholera continue to be prevalent. This problem is noticeable throughout Africa. According to Ghai and Cottrell (2004), most judiciaries in Africa do not enforce socio-economic rights because many countries do not guarantee their enforcement. Concisely, the promotion of socio-economic rights in Namibia is evident, but the protection and fulfilment which are putting measures in place to eradicate marginalization have not reached the intended targets set in the 2002 pledge by the government. This chapter addressed the objective of the thesis on how the government has applied socio-economic rights. In the analysis of evidence from the literature shows that the government heavily relies on the pragmatic model of applying socio-economic rights.

The previous chapter discussed data collection and research methodology to analyze data while adhering to research ethics. Pertinent reports, the Constitution, documents, and published research were part of the data collected and reviewed. The next chapter presents the data analysis of the desktop study by linking the non-empirical data collected concerning the case study of the San people. The data is drawn from the literature review in chapter 3, while chapters 4 and 5 provide the legal framework and the discussion of the socio-economic situation of the San. To answer the

research questions and address the research objectives, thematic analysis was used to identify common themes relevant to the study. In thematic analysis, the researcher closely examines the data to identify common themes, topics, ideas, and patterns of meaning that come up repeatedly (Caulfield, 2019).

The Namibian government has had some successes and some failures when it comes to putting socio-economic rights into practice. The presentation of research results entails providing an analysis of the data collected through the desktop study. According to McKeever and Aolain, the theoretical model in Chapter 2 was useful in determining whether the application of socio-economic rights through different application models was beneficial. In addition, among the three questions, the first relates to how the Namibian government has addressed the marginalization of the San people. The objective is to ascertain whether marginalization has been addressed or not. To answer the research question and address the objective data collected from the desktop study, the debate over socio-economic rights has now shifted from desirability to problems of enforcement (Shehu, 2013, p. 102)

## **CHAPTER 6: Data analysis and research findings**

### **6.1. Introduction**

The data analysis and research findings chapter refer back to the information gathered, written and reviewed in the previous chapters. This chapter utilises the theoretical framework encompassing the research by pointing out the different enforcement models. The models are the means through which the government applies the socio-economic rights of the San people. It is important to note that the government utilises all the models highlighted which makes the application process subjective as per each right, in the success and failure. The outlining of socio-economic rights aids in the description of which model is most used in Namibia

### **6.2. Different socio-economic rights**

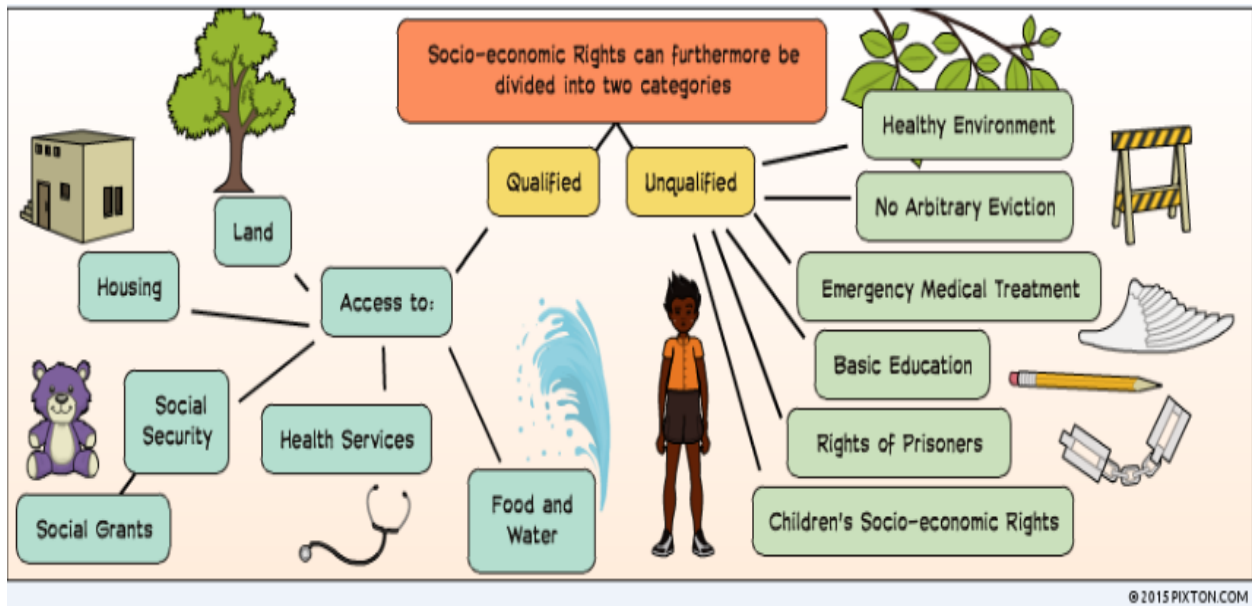
The focus of this theme is to analyze the different socio-economic rights in categories to establish which ones the Namibian government has applied, and which have been ignored. Constitutions per country differ due to the history of the country; some rights are included in the Constitution, and some are not. Primarily, the first category of rights entrenches the right for everyone to have access to adequate housing, and health care services, including reproductive health care, sufficient food and water, and social security (Liebenberg, 2010). Data shows the way of living of the San people makes it difficult for the benefits of these rights to be fruitful. The remoteness of the San and reliance on subsistence methods of living limit access to social security. However, this is only for the San living on the outskirts of towns, it would be unjust to generalize on the conditions of San as they are those who are educated, live in urban areas, and have access to social security. To apply a given right, several factors must be considered, most of which are centred around a budget. This creates priorities based on which category of rights will be applied first. Categorizing rights are outlined in the constitutions of most countries.

With regards to differentiating socio-economic rights the ones mentioned above deal with human needs rather than entitlements. Data from the literature review highlighted different perspectives of socio-economic right given that some are needs and some are entitlements. This perspective heavily relies on what the government views as a need or an entitlement. Given that it requires significant government funding to ensure every citizen benefits equally, it is the government which determines the success and failures in the application of these rights. Both traditional civil and political (first-generation) rights and socio-economic (second and third generation) rights are contained in the Namibian Constitution (Mubangizi, 2006, p. 8). Thus, by having the socio-economic rights in the constitution the government acknowledges a formal obligation to resolve these. However, each constitution is subjective as per country. Waldron (2011) identified (1) housing; (2) healthcare; (3) education; and (4) social security as the main socio-economic rights. Housing relates to affordable housing with all the necessary amenities including electricity and water. Healthcare focuses nutritional standards, public healthcare, access to health care facilities and universal access to these facilities. Education forms the basis of employment, access to free primary and secondary education and ethnic centred learning curriculums. Lastly social security provides material needs to individuals such as protecting children and old age people. From the list above, housing, education and healthcare are entitlements to every citizen, whilst social security as part of socio-economic rights is a need. As such, one can deduce that socio-economic rights are concerned with material dimensions of human welfare which can be entitlements or needs. Given the putative aim to establish the application of the socio-economic rights of the San, it is pertinent to understand and analyze which are within the government's focus. The ones mentioned above include land, social security, employment, and education needs.

### 6.2.1. Qualified and unqualified socio-economic rights

These rights are specific to the San people, given their history of marginalization. However, evidence shows that socio-economic rights can be qualified or unqualified despite the history of marginalization. The diagram below depicts this.

**Figure 1: Qualified and unqualified socio-economic rights**



Source: Legal Hero (2022)

The above picture depicts the category of social and economic rights but goes further to distinguish between qualified and unqualified socio-economic rights. Qualified socio-economic rights have to do with access to a certain entitlement. San people are entitled to access to housing, land, food and water, social security, and health services. These rights are universal to every citizen as they contribute to the development of the society. Due to the San peoples' subsistence nomadic way of living some of the qualified rights are not realised. The government cannot provide stable housing, health services, food and water to people who are constantly moving. This creates a government

approach centred on resources, where the focus is solely on essential services like healthcare provision. As a result, socio-economic rights are qualified only if the state (government) has sufficient resources to fulfil them. It means that the state will give effect to these rights depending on its budget and available resources (Legal Hero, 2022). The Namibian government has prioritized qualified rights such as health, land, food, water, and social security except for education as an unqualified right.

To what extent has the Namibian government addressed the marginalization of San people socio-economic lives? This question should be addressed to measure the success and failure of the government in the application of socio-economic right. The government of Namibia has managed to address San marginalization to a less extent. Notable changes cannot be disputed in the socio-economic lives of the San people. Despite being the original inhabitants of most southern African countries, the San people continue to live marginalized and displaced livelihoods (Brown & Haihambo, 2015, p. 310). The government has primarily addressed socio-economic issues through substantial efforts in land and education, with comparatively less emphasis on health services. Provision of good health care has been difficult, due to constant migration of San people. Land and education have been success due to both domestic and international support to secure these rights. Not only the San struggle with access to land and education in Namibia, but hence comprehensive national policies were also established subject to every ethnic group.

### **6.2.2. Marginalization**

This theme further elaborates on the different socio-economic rights. Marginalization has been used as a theme as it sheds light on which areas the San need help in. From the data gathered there is a different degree of marginalization which is subjective to specific rights. Several factors



contribute to the San's marginalization, which covers their social, economic, and political lives. These include dependency, inequality, poor health, lack of housing or land, and social discrimination, and the San are the most affected in Namibia as a community. There is no single policy that deals with marginalization. Masterclass (2022) described the two different forms of marginalization which include economic, political, and social marginalization.

- **Economic marginalization:** Economic marginalisation refers to disparities in amassing wealth or getting a job.
- **Social marginalization:** When someone cannot participate in everyday leisure activities, it is known as social marginalization.

Firstly, the government acknowledged the San as a special indigenous group, thereby providing funding with the cooperation of NGOs to assist the San communities. However, from the perspective of the San people in the literature review, they do not want to be called "marginalized" as that invites social discrimination. The San people feel that being defined as a marginalized group has contributed to them being relegated to second-class citizens. This reinforces social discrimination because other ethnic groups regard them as a special group of underprivileged people. Under the African Charter, in line with the principle of interdependence and indivisibility of rights, the statement reiterates the obligations of the state to eliminate all forms of discrimination (Khoza, 2004, p. 338). Namibia being a signatory to this African Charter; hence, they have a duty under international law to obey and enforce the Charter (Shehu, 2013, p. 104). The African Charter recognizes the need for socio-economic rights for every African. This provision, on the other hand, only focuses on women, children, and internally displaced people. There is a lack of voice for the indigenous people on the international stage; hence, their plight is not an international priority but

a national one. The following themes focus on efforts that have been made by the Namibian government in applying socio-economic rights.

### **6.2.3. Limitations on qualified and unqualified socio-economic rights application**

The previous theme established the areas in which government can act which include housing land, social security, basic education, healthy environment, food, and water, among others. An analysis of the thesis shows that there are limiting factors in the application of these rights whether it is qualified or unqualified socio-economic rights. Thus, the research will analyse these and draw recommendations for the next chapter on how to overcome the limitations. In the case of unqualified socio-economic rights, the state must give effect to these rights and implement them, but this does not mean the state must make these rights available immediately or without delay (Legal Hero, 2022). The government has the prerogative to determine the timeline when these rights can be fulfilled. This reflects the commitment the government made in 2002, to deal with basic education, healthy environment, no arbitrary eviction and right of prisoners but it has taken almost 20 years to make significant progress in dealing with these issues. Xoagub, (2019) highlighted this by acknowledging that the San are still viewed as second class citizens. Thus, there is no impetus to immediately apply unqualified socio-economic rights, but merely make a commitment towards addressing them. The government has adopted this lacklustre approach for qualified rights such as health care. Shehu (2013, p. 102) said that “unlike the traditional, first-generation rights, the enforcement of socio-economic rights puts huge financial claims on the state and also involves legislative appropriation, without which the executive cannot effectively enforce such rights even when the judiciary orders enforcement of the rights in deserving situations.”

Evidence shows that in the case of unqualified rights, the government has lagged in their enforcement, but the government still must provide for them. A good place to start would be to change the budget to focus on more areas that are critical and urgently needed by citizens. Khoza (2004, p. 337) said that the state should spend more on health than on defence. Funds should be channelled towards developing domestic issues. Covid-19 was a good example of how the government needs to invest more in health care to avoid being overwhelmed and some citizens not having access to health facilities and medicine. Thus, while the government may make commitments to the implementation of socio-economic rights, it is ultimately the budget that determines the pace of completion and which rights will be prioritized at the lowest cost.

The categories identified in the review of literature are more concerned with qualified rights, which the government is obligated to provide. However, to change marginalization, all rights should be applied, irrespective of being qualified or unqualified. This will be the only way to change the welfare of the San people. The marginalization of the San people shown in the literature goes beyond the factors mentioned above. There is also dependency, social discrimination, sanitation, and a lack of political representation, which should go hand in hand with the factors mentioned above. Socio-economic rights can only be recognized if they include food, water, shelter, health care, education, and social security (Liebenberg, 2010). From the ones mentioned above, only social security is not explicitly mentioned in the Namibian Constitution.

Evidence shows that lack of political will and mobilization of San people inhibits application of their rights. The San people do not have concrete political representation at a local and national level which sidelines their needs in favour of other dominant ethnic groups. Qualified socio-economic rights have garnered more support as they are recognised internationally and require

states to implement. However, unqualified socio-economic rights should be used as buffers for qualified socio-economic rights. Socio-economic rights are referred to as "second generation" as opposed to civil and political rights, which are "first generation".

Another important obstacle of these rights is their justiciability, or the court's ability to hear these cases to resolve them. Waldon (2011) noted this through the structural link between justice and socio-economic rights. Mazel (2009) believed that socio-economic rights should be applied as basic human rights and should be independent of acts of law. Thus, socio-economic rights should be mandatory requirements rather than extensions of state policy directives. The literature review outlined some rights as needs and some as entitlements. This relegates some rights as unimportant and contributing to the marginalization of the San people.

In a situation where these rights are not mandatory requirements, it makes them nothing more than symbolic gestures of a progressive judiciary in delineating the meaning of these rights (Khoza, 2004, p. 334). A good example is countries that do not include socio-economic rights Constitution as substantive rights, to reject the application of the implied rights doctrine is bound to deny the marginalized groups sufficient protection (Dinokopila, 2011, p. 154). Namibia balances this out by having some rights in the constitution. However, for San people to really deal with their marginalization, all their socio-economic rights should be awarded legal status to ensure the government can be held accountable for not applying them.

Unlike traditional rights, socio-economic rights have far-reaching implications for the policy-making competence of the executive branch of the government (Shehu, 2013, p. 102). Thus, to create long-lasting change, qualified rights should be reinforced by unqualified rights. This ensures the limitations of either are dealt with during the application process. The government must divert

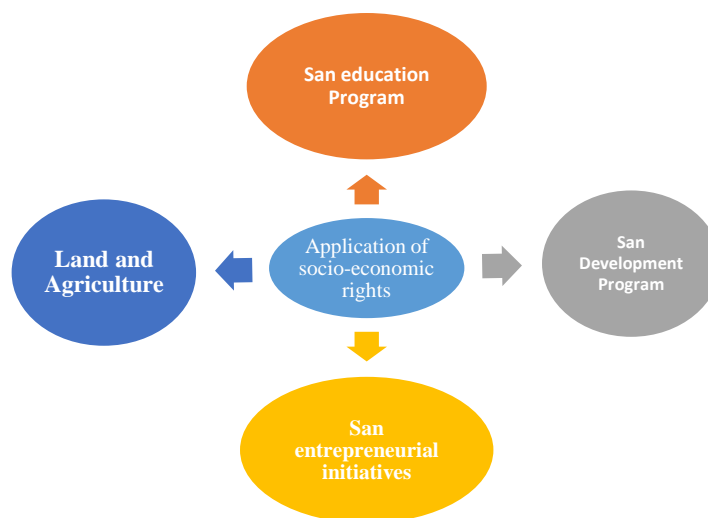
funds from other ministries, such as defence, to focus on the implementation of socio-economic rights. In addition, the government can make unqualified socio-economic rights equal to qualified rights supported by acts of law in their enforcement and application. The following theme focuses on the success and failures.

### 6.3. Namibian government successes and failures in applying Socio-economic rights

#### 6.3.1. Formulation and implementation

This theme is essential as it establishes what the government is addressing when applying socio-economic rights which will show whether the government has been successful or not. The Namibian government has dealt with the marginalization of the San people by formulating and implementing an array of strategies in addressing socio-economic rights. These have resembled initiatives carried out to mitigate the marginalization of San people in the country. These strategies are in the form of initiatives for socio-economic needs of San people which include:

**Figure 2: Strategic areas in applying socio-economic rights**



Source: Compiled by the author (2023)

From the above initiatives or policies, only housing, health, sanitation, and integration into the formal economy have been identified as key initiatives that can address the marginalization of the San people. Focusing on the data gathered, the government's side has been dismally lacking or has been tortoise-like in pace (Khoza, 2004, p. 335). Due to the remoteness of the San people, the formulation and implementation of policies tends to be difficult, which in turn does not create an inclusive approach in the application of socio-economic rights. This is supported by San people being too far to access basic services such as hospitals by living on the fringes of society. To be successful, the formulation and implementation process should include the San people and put them at the helm of applying their right as part of the government. The issue of not having inclusive policies is exacerbated by San people not having enough political will to mobilise which has created a weak link between the San people and the State. As part of applying socio-economic rights the government should have a means to create a civic culture amongst the San people. Thus, the government should educate and train San people to be part of the formulation and implementation process.

Namibia's failure is in line with the reasoning proposed by Shehu (2013, p. 102). Shehu was of the view that if Africa in general recognized the rights of Indigenous people, more support would be garnered to ensure effective recognition, promotion, and protection of these rights. Thus, a universal recognition of the rights of Indigenous people will ultimately fast track the application domestically. However, this is subjective to every country and their constitution as they have different developmental trajectories and problems relating to the Indigenous. An international commitment will put more pressure on the domestic application accompanied with checks and balances to ensure they are carried out. All African countries should embrace the rights of Indigenous people such as universal primary and secondary education as part of the sustainable

development goals. Such an approach will ensure all rights are entitlements and states can request international funding to complete these like the Sustainable Developmental Goals.

The Namibian government has made concrete efforts in most of the socio-economic rights as substantive rights with the San people, having a San based curriculum in education and establishment of conservancy settlements for the San people. . In applying the socio-economic rights, a designated office of the ombudsman has been established which accredits the rights to have legal status and mentioning the San people and Namibian citizens in general entitled to have free universal access to these rights. However, this has only been visible in three specific areas which are education, land, and healthcare. These have been made part of the national development policy of Namibia. The government's willingness to embrace and enforce socio-economic rights is determined by national policies and administrative procedures for the equitable distribution of public resources (Palmer, 2009, p.1). In the application of socio-economic rights, the government of Namibia is limited by funding which results in inequitable distribution of these public resources. The San people by virtue of relying on subsistence means of having to struggle to afford tertiary education. This is because the free education only caters for learners up to the age of 16. As a result, there should free education for adults who have been previously disadvantaged as well. It is recommended that there should be was equitable distribution, the San should be better off in comparison to other ethnic groups since the 2002 pledge by the government. Their lack of inclusivity of San people in policy formulation as noted earlier has created gaps in the national policies and allocation of the necessary funds to address the marginalization of San people.

It is the distribution of public resources that ultimately determines the level at which the government is successful or failing in the application socio-economic rights. Thus, the application

of socio-economic rights requires significant government funding to make any headway. Shehu (2013, p. 102) said that the nature of socio-economic rights depends squarely on the state of the economy of the country and the effective management of its economic resources. Namibia is one of the most unequal countries in the world (World Bank, 2022). Namibia's socio-economic architecture is riddled with inequality, which makes it difficult to make long-lasting resource distributions that change marginalization. Namibia is one of the most unequal countries in the world which reverberates to the general society and affects the San people more. To address grass roots problems, the national economic problems such as inequality should be addressed.

Namibia can draw lessons from countries that have had similar initiatives, such as South Africa, which deinstitutionalized socio-economic rights. South Africa has made progress in changing the collective status of the San through various initiatives guided by policy directives. Muwanigwa (2004) said that South Africa has made some progress in recognizing the rights of the San people through negotiated settlements and court action. The review of the literature shows that the government of Namibia has been unsuccessful when it comes to negotiated settlements and court action. The Etosha case is a good example where the San people failed due to a legal issue of being unable to represent yourself in a class action lawsuit. As a result, San people cannot champion application of their socio-economic rights, as they cannot represent themselves in court in that pursuit. The following section focuses on the success or failure in the enforcement of socio-economic rights once the formulation and implementation has been completed.

#### **6.4.5. Application of socio-economic rights**

This theme analyses the findings as per right focusing on education, health, land and other unqualified rights. Crucial to the application of socio-economic rights is the model used to apply



and enforce these rights whether it is successful or not in fulfilling its mandate. The Namibian government has generally used all enforcement models; however, there are different degrees to which each model has been used as per socio-economic rights with different degrees of success or failure.

**Land Rights:** Primarily with land disputes, the Namibian government has utilized a more minimal enforcement model. Evidence of this is shown by how land disputes have been dealt with within the courts. For example, the class action lawsuit from the San community against the Namibian government was dealt with in the Namibian Supreme Court. The court decided that the San people did not use the correct process to claim their ancestral land in Etosha. Moreover, land disputes do not qualify as part of the substantive model as they are premised on providing a service in a fair, impartial, and non-discriminatory manner. When enforcing land right the government has been unsuccessful, as land is a substantive right guided by a national policy. However, the government retains powers to possess where necessary in violation of ancestral land rights. Thus, all qualified socio-economic rights should be applied under the substantive model.

**Education and Health rights :** The substantive model has mainly been used for education and health rights. However, both the minimal and substantive enforcement models overlook the application of employment and sanitation rights. The government has created subject model for each other than having a single holistic approach. One the government enforces a given right with a specific model it overshadows some areas of marginalization of San people mainly employment and sanitation, which contributes to high levels of unemployment and poor health among the San people. The government of Namibia has a constitutional obligation to respond to every need of the San people in Namibia, and as such, the pragmatic model should be used for both qualified and

unqualified rights. One of the major successes is having the socio-economic right enshrined in the constitution. The Namibian Constitution (1990, p. 65) provides as follows in respect of land, education, and health:

Article 16 on property rights stipulates that all persons shall have the right to all forms of immovable and movable property.

Article 20 Section (1) states: “All persons shall have the right to education, primary education being compulsory, and the state shall provide reasonable facilities to render effective this right to every resident within Namibia.”

Article 95, Section (e) assures that, “every citizen has a right to fair and reasonable access to public facilities and services; (i) In that regard, there should be consistent planning to raise and maintain an acceptable level of nutrition and a standard of living for the Namibian people and improve their public health”.

The shortcoming lies in the fact that the San are not stipulated in these policy directives as priority beneficiaries. As a result, the provision is for every citizen group in the country, which is not the San people alone given that constitutional and universal rights should provide for all. This reflects to the lack of equitable distribution of public resources towards addressing the commitments made above. A good example of this is the significant disparities in social and physical living conditions which fuel health inequality in Namibia thus the right to health is inhibited by low income, a lack of education, and inadequate sanitation and water supply, among other challenges (Aiken , 2018). The problems mentioned above all contribute to the failure in the enforcement of socio-economic rights. Evidence from the literature review shows that, using the pragmatic model proposed by

McKeever and Aolain, unqualified socio-economic rights can be given legal status and garner public support in exchange for a government obligation to provide. Nonetheless, the success of the selected model lies in the government's ability to fund different projects. Ultimately, the more funding that is available, the easier it will be to adopt different models of application and enforcement.

Another success in enforcement is that the substantive model is explicit in the constitutional obligations on education, housing, and health. As highlighted above, these are included as principles of state policy in Article 95, which makes them constitutional obligations that direct state policy. The conundrum lies in the lag in applying these rights, stemming from the unequal socio-economic architecture of Namibia and a lack of funding. The general inequality in Namibia generally puts the majority of the population in a worse off condition. The San bare the brunt of the inequality being the minority and one of the marginalised groups. This makes funding difficult, with the few resources only being shared amongst the few.

This has been exacerbated by several factors, such as lack of demand, dependency, social stigma, extreme poverty, remoteness, and the limited number of San people. As noted earlier, the number of people is significant in garnering public will and political mobilization.

**Civic Culture :** The San only represent 2% of the population, hence the lack of political will to effect resource mobilization. The ability to effect meaningful change in socio-economic lives stems from political will. The San people do have political rights, but a civic culture severely lacks, which has contributed as one of the reasons why there is a weak link between the state and civil society. There is a need to ensure San actively participate in politics, as this will allow them to make policies within structures of government that reflect the needs of their community. However,

there are limitations in mobilising the San into one group. The demography of having different San dialects creates a division amongst the San, evident by their spatial distribution across Namibia.

Aiken (2018) said, “another problem in mobilising people and resources is that sign Namibia is vast size; the country is sparsely populated with 2.8 persons per square km, making it more difficult and expensive to ensure that people in remote areas have access to quality health services and education”. In conclusion, the Namibian government has arbitrarily applied all three models. Success has been realized, however, only under the SEM, in which education was enforced. Nonetheless, the application of socio-economic rights in Namibia complements both the minimal and substantive enforcement model. The Namibian government and non-governmental organizations (NGOs) have made efforts to alleviate the transitional difficulties of the San (Brown & Hai Ambo, 2015, p. 314). The models used by the government should be backed by NGOs, which bring funding, to ensure success can be achieved under any enforcement model. The failure to appropriately apply socio-economic rights cannot be boiled down to the model alone, but other factors have contributed to this such as finances, lack of political will, lack of national policy on mitigating San marginalization and limited numbers of the San.

## **6.5. Constitutional obligations and principles of state policy**

### **6.5.1. Policies and Strategies**

This theme analyses the constitutional obligations and principles of state policy that Namibia has adopted in the application of socio-economic rights of the San. This theme elaborates and answers the second and last objective of the thesis of constitutional obligations and principles of state policy have directed the Namibia government’s policies and strategies in applying socio-economic rights.

Brown & Haihambo (2015, p. 314) said that "among the rights applied by the government, there are conservation rights in certain areas (Tsumkwe), poverty alleviation programs, food for work schemes, and free access to education". These are some initiatives that have been carried out in the application of the socio-economic rights of the San. The Constitution of Namibia has been the guiding document in the application of socio-economic needs. Being the supreme law in the country, the Namibian Constitution has directed the application of socio-economic rights. Of note is how Namibia was the first country in southern Africa to adopt a constitution that included a Bill of Rights (Mubangizi, 2006, p. 8). As a result, the Constitution has ensured that all rights may be enforced by the courts (Liebenberg, 2010).

However, where socio-economic rights have been constitutionalized, the rights remain problematic or controversial when it comes to enforcement (Shehu, 2013, p. 103). Hence, the fact of merely having the rights as part of the Constitution does not guarantee the smooth application of these rights. Consequently, the Namibian Constitution includes socio-economic (second and third generation) rights. Some of these only appear as principles of state policy in the Namibian Constitution. Evidence from the data collected shows that the ones included are merely acknowledged rather than strictly adhered to. Mubangizi (2006, p. 8) noted that:

Chapter 3 of the Namibian Constitution is not solely concerned with civil and political rights but also seeks to protect certain economic, cultural, and social rights, generally referred to as "second generation" rights in international law, albeit in a somewhat limited and modest fashion.

However, the Principles of State Policy do not make human rights enforceable. Rather, only the rights contained in the Bill of Rights are enforceable. One can argue that these principles assist in

the adjudication of socio-economic rights issues since a court can reflect on how the government used the principles in the development of its plans. This is despite the choice by the authors of the Constitution to handle some economic and social matters outside the rights context and specifically as policy goals (Mubangizi, 2006, p. 10). To apply socio-economic rights, the Namibian Constitution has provisions for establishing institutions designed to promote and protect the rights of citizens in general and the marginalized in particular. Brown & Haihambo (2015) said that "since its independence from apartheid South Africa, the Namibian Government, as a member of the UN, has embarked upon various projects and interventions to secure the rights of their Indigenous communities, including those of the San".

Evidence from the literature shows that, the government made its initial commitment in 2002 through a pledge to the San, in which they were designated as a special group warranting special attention. The government paid special attention to the protection, promotion, and fulfilment of the San's socio-economic rights for them to be on par with other communities in the country. The Ombudsman office in Namibia was established to deal with the protection and enforcement of socio-economic rights. The office has been supported by NGOs such as the OSDO, which creates contact links between the San communities and the government. The Ombudsman plays a critical role in the protection and enforcement of socio-economic rights in Namibia. This is because the role of the Namibian courts in enforcing socio-economic rights is effectively limited by the Constitution (Mubangizi, 2006, p. 11). As a result, more needs to be done to include the courts through the Constitution, which will ensure socio-economic needs are mandated through court action.

The data gathered demonstrates the general application of socio-economic rights rather than being specific to a specific marginalized group such as the San. The robust approach taken by the Northern Ireland government allows Namibia to draw some lessons from how they have judiciously and effectively used cross-cutting rights to protect socio-economic rights (Dinokopila, 2011, p. 154). The Northern Ireland Act of 1998 established the Northern Ireland Human Rights Commission (NIHRC) to advise the government on human rights issues and on the creation of a Bill of Rights for Northern Ireland (McKeever & Aolain, 2004, p. 9). Thus, independent institutions should be established that advise the government on the implementation of socio-economic rights. What is important is that these institutions are comprised of people from marginalized groups so that they can champion the cause of their people. In this way, the rights proposed will reflect the needs that the people feel are immediate and require more attention.

Evidence shows that other countries have similar commitments in their constitutions to South Africa. South Africa, like Namibia, has not only constitutionalized but also enshrined socio-economic rights in law with constitutional obligations. In comparison, the Constitution of Namibia does not go quite as far as the Constitution of South Africa in protecting socio-economic rights (Mubangizi, 2006, p. 10). "One of the distinguishing features of the final South African Constitution is its far-reaching commitment to the principle of the interdependency of all human rights, civil and political, as well as economic, social, and cultural rights" (Liebenberg, 2010). The Namibian Constitution has similar attributes to South Africa's, but the difference lies in the implementation. However, evidence shows that there is no necessary correlation between the inclusion of socio-economic rights in a country and the level of socio-economic rights enjoyed in practice by citizens (Ahmed & Bulmer, 2014, p. 18).

"Implementation takes place through the legislature by the enactment of necessary enabling legislation, through the executive and state administration by the adoption of appropriate policies, and through the judiciary by interpreting and making the relevant orders of enforcement" (Mubangizi, 2006, p. 10). However, within all these rights, civil and political rights seem to be privileged as compared to socio-economic rights. This contributes to the lagging behind in addressing some of the socio-economic issues of the San. Nonetheless, efforts have been made to ensure resources are provided for the San. The existence of the ombudsman as one of the legal institutions within the realm of protecting and promoting rights could help in strengthening the implementation of socio-economic rights. Despite a backlog of cases and a limited budget, simply being a point of protection and enforcement of socio-economic rights goes a long way. The government, however, should decentralize the office into the regions to have traditional offices that tackle San problems within their areas.

## **6.6. Possible gaps and strengths in policies and strategies**

### **6.6.1. Weak link between the State and San people**

The San community has been described as having political weakness, which has created a weak link between them and the state. San leaders maintain that the San people remain oppressed and marginalized. Freedom House (2018) said that despite all ethnic groups being represented in parliament, the San ethnic group has faced restrictions on their political rights due to widespread discrimination and marginalization. Because the San do not actively participate in politics, it is difficult to rally enough support to champion their cause in their region. Geographically, the San occupy parts of Namibia, Botswana, and South Africa, creating a spatial distribution within the



Southern Africa region. To have a good political base requires population mobilization, which contributes to creating a strong civil society.

Of great importance is how the Namibian Constitution provides rules of engagement with marginalized people in general and the San people in particular through policy directives. Freedom House (2018) said that equal access to justice is obstructed by many factors, including economic and geographical barriers, shortages of public defenders, and delays and backlogs lasting up to a decade. The delays and backlogs in these cases represent the SEM. This should be addressed by removing geographical barriers, such as remoteness. The government has an overall obligation to remove all underlying factors that contribute to San marginalization, starting with the inequality problem that is prevalent in the country. Socio-economic inequalities do not disappear simply because equal legal rights are introduced (New Era, 2018).

### **6.6.2. The duty to protect, promotes, and fulfils socio-economic rights**

The above analysis highlights how the government of Namibia should play a more active role in the application of the socio-economic rights of the San. The state has a fundamental role in the application of socio-economic rights, which cannot be relegated to one institution such as the courts. Liebenberg (2010) listed three duties of the government concerning socio-economic rights: protect, promote, and fulfil. Evidence from the initiatives taken by the government, such as the SDP and education initiatives, indicates that the government has managed to promote these rights. However, the government still fails to protect and fulfil the application of the San rights. The continued inequality shows how the government is failing to protect and fulfil socio-economic rights. Even though, between 1990 and 2019, Namibia's Human Development Index (HDI) increased by more than 11% from 0.581 to 0.646, Namibia remains one of the most unequal

societies in the world, where 50% of the population earns less than N\$ 1 400 per month (New Era, 2018). Liebenberg (2010, p. 33) said that "in respect of socio-economic rights, states are explicitly required to create reasonable legislative and other measures within the available resources to achieve progressive realization of each of the rights". The underlying inequality should be addressed as the government's first mandate before developing policies.

The continued lag in the application of these factors has continued as the government has failed to address the obstacles limiting the overall change in the collective marginalization of San communities. Khoza (2004, p. 334) said that there was a tendency to propose a multiplicity of institutions as a solution to the lack of implementation of socio-economic rights. The government of Namibia has succeeded in this aspect as they rely on working directly with NGOs that focus on a particular socio-economic right, such as UNESCO with education. This reduces overlap and duplication in the implementation of socio-economic needs. A local labour expert in Namibia warned that without a fundamental change in Namibia's social and economic architecture, the country will continue to see rising levels of inequality (New Era, 2021). To address the socio-economic marginalization of the San, the government must change its socio-economic structure. The socio-economic structure has perpetuated marginalization and inequality in the country. San people have become the most affected people as the foundation of addressing socio-economic marginalization remains the same. This creates short-term solutions for long-term problems.

## **6.7. Conclusion**

This chapter provided the analysis of the research study. The purpose of the study was to analyze the extent to which the Namibian government has managed to advance the socio-economic rights of the San people. Using content analysis, specific themes which include different socio-economic

rights, successes and failures of socio-economic rights and constitutional obligations and strategies were noted. These were further subdivided to illicit a critical analysis and elaborate on the theme. Thus, socio-economic rights are different for every nation as they are subjective. Some are viewed as needs and some as entitlements, which are further divided into qualified and unqualified socio-economic rights. Qualified rights carry more weight as they are in line with universal human rights. Surprisingly, the unqualified socio-economic rights have been applied more as opposed to qualified ones. This has created a pool of successes and failure in the application of socio-economic rights due to several limitations. The government has managed to apply the rights of the San people to a large extent. Although there is no overall improvement in general specific efforts have been made in areas of education, integration in social economy and land rights.

The successful application of the socio-economic rights of the San is hindered by Namibia's socio-economic architecture of inequality. This allows for short-term solutions to long-term problems. This does not overshadow major policies or initiatives in education, land distribution and employment that have been carried out in an effort to apply socio-economic rights. These have been done at a slow pace, which explains why San people are still viewed as "second class" citizens. Hence, success can be observed in the application of rights such as land and education. However, without also addressing the political marginalization of the San, they will remain on the fringes of society without changing their collective status. Although socio-economic rights may not benefit everyone, their application helps to promote a more inclusive and economically egalitarian society (Ahmed & Bulmer, 2014, p. 19). As a result, the principles of state policy should prioritize resource distribution to the marginalized groups who should get at least the bare necessities before other groups benefit. This study highlighted the complexities in interpreting and giving effect to socio-economic rights by a government. It is not only a question of legal

interpretation, but as this analysis indicated, the formulation and management of policies are critical for the realization of socio-economic rights of people.

## **CHAPTER 7: Summary, conclusion, and recommendations**

### **7.1. Summary of the study**

This chapter provides the summation of ideas discussed in the previous chapters, which include orientation of the study, the literature review, theoretical framework, research methodology, and data analysis. In addition, the key findings of the study are presented together recommendations for the key stakeholders mentioned in the potential value of the study theme.

### **7.2. Introduction**

The orientation of the study gave a background of the study based on San marginalization and how the government has applied socio-economic rights to address this problem. This formed the basis of research problem the continued marginalization of San people despite a commitment to change the collective status of the San people. To narrow down the study specific research questions and objectives were put forward which were answered and addressed throughout the thesis. In addition, particular stakeholders were identified who will make use of the information gathered and the recommendations that will be explained in the next chapter. However, the study cannot be generalized to other nations although comparisons are made because of the study limitations which are reflective of the experience in Namibia. The following topic explains the theoretical framework that guided the research study.

### **7.3. Data gathering and analysis**

The data collection and analysis were guided by the research methodology in Chapter 3 of the research study. The unit of analysis was discussed, and the use of the qualitative approach and how it fits into the desktop study of the research were explained. Given that this was a desktop study the researcher made use of secondary data sources such as reports, research, and published journals

relevant to the topic. The themes that are shown in Chapter 6 of the study were made with the help of content analysis. As part of content analysis themes centred around different socio-economic rights, success, and failures in terms of rights and the possible gaps and strengths in the policies and strategies.

#### **7.4. Case study of the San people**

The San people, one of the marginalized groups in Namibia, were used as the focus of the study. The choice to use the San people was influenced by the pledge by the Namibian government in 2002 to change the collective status of the San people. This was discussed in Chapter 3 of the study, which outlined the different dynamics of marginalization that the government was meant to address through the application of socio-economic rights.

#### **7.5. Theoretical framework**

The theoretical framework of the study provided the perspective to analyse the current situation and the parameters to judge the application of socio-economic rights to the San people. This was covered in Chapter 3, where three different models were presented: the minimal, substantive, and pragmatic models. The chapter also briefly discussed how the models are used and applied in the Namibian context. The MEM was identified as being used for education and health rights, whereas the SEM has been used for land rights that require political will. A combination of both models has been used for specific rights, but educational rights stand out as they fall under the PEM. Chapter 3 dealt with how the models are used and which model would best suit the Namibian socio-economic architecture. The theoretical framework aided in discussing how the government

has applied socio-economic rights through the lens of different models. This helped in the data analysis chapter as well.

## **7.6. Research findings**

The Namibian government has had several successes in enforcing socioeconomic rights using different policies and strategies. These have been influenced by constitutional obligations and principles of state policy enshrined in the Constitution. As a result, policies such as the San Education Programme, San Entrepreneurial initiatives and land conservancy schemes have assisted in addressing some rights of the San people. Although there has been some lag in the application of the rights, there has been notable headway in education and integrating the San into the formal economy. An effort must be made to acquire land and protect the San's sanitation rights. The principles of state policy in the Namibian Constitution prioritized rights to education and health. The Constitution is explicitly committed to redressing and transforming socio-economic exclusion and marginalization (Liebenberg, 2008, p. 468). The duty to promote has been achieved, and thus the government must focus more on the fulfilment and protection of the socio-economic rights to achieve the 2002 pledge to change the collective status of the San. Namibia's socioeconomic architecture has been a major impediment to fulfilment. The socio-economic architecture of Namibia hinders the full realization of the socio-economic rights of the San. Obstacles such as remoteness, social discrimination, and political weakness have been exacerbated by the socio-economic architecture that perpetuates inequality in Namibia.

The data collected from secondary sources indicate that the Namibian government has applied the socio-economic rights of the San, but the collective status of the San has not changed. A combination of both MEM and SEM is being used in Namibia, subject to socio-economic rights.

The application of socio-economic rights is not done by the government alone; other stakeholder organizations such as UNESCO and the UN assist the government in the application of socio-economic rights. Thus, the government alone cannot apply and enforce socio-economic rights, but it requires support from other organizations within the country. However, the underlying problem in the lag in applying the socio-economic rights of the San is the socio-economic architecture, which perpetuates other forms of marginalization within the San. To properly apply the socio-economic rights of the San, they should be accompanied by political rights that allow the San to have representation. By having more representation, the San can have a sound and overreaching public will to garner support from other communities to have their rights promoted, protected, and fulfilled. The study also revealed other obstacles that hinder the full realization of San socio-economic rights, but the weak link is primarily between the state and the San people, and the entrenched history of marginalization affects the San people more. Of greater importance is how the Namibian Constitution affords legal status to particular socio-economic rights, which allows the courts to enforce them. Policy and initiatives are directed by principles of state policy within the Constitution.

### **7.7. Summary of research findings**

The aim of the study was to assess the Namibian government's application of the socio-economic rights of the San people. It aimed to describe how the government has enforced and applied these rights to address the marginalization of the San people. As part of the research findings the researcher noted that there are different types of socio-economic rights. These are in two categories the unqualified and qualified rights which make a distinction between entitlements and needs. Although qualified socio-economic rights are more urgent, the government has made progress in



the unqualified ones. In addition, these socio-economic rights are described as being substantive which means they are given legal status and are at par with political rights. These require political will to achieve, which San people severely lack which has hindered their application. However, above all it is political will and lack of funding that creates obstacles in the application of socio-economic rights. Currently the government of Namibia funds the defence sector more than the health sector. These funds should be channelled towards the defence of socio-economic rights such as education, housing, sanitation, and social security. The first objective elaborates on the findings of the study on how despite having the rights in the constitution, their application lags.

**The first objective** of the study was to assess how the San marginalization has affected the application of socio-economic rights. The purpose was meant to analyze the dynamics of San marginalization from those imposed by others to those self-imposed on how they affect the application of socio-economic rights. In economic terms, the San people still live on the fringes of society and the outskirts of towns, away from public services. This has made it difficult for the San to be integrated into the formal economy; hence, they still maintain the hunter-gatherer lifestyle. For those living in remote areas it becomes difficult to distribute public resources towards the application of socio-economic rights. Due to their dynamics of marginalization their needs and entitlements generally differ from other ethnic groups. The San want to maintain their way of living and at the same time want to be integrated in the formal economy. A gap needs to be bridged that addresses the marginalization whilst respecting the way of living of San people. To do this, the government should work hand in hand with NGOs who have regular direct contact with San people. Non-governmental organizations are more involved in the implementation of the San rights. Although efforts have been made through programmes, the San remain a marginalized group due to the inequality in Namibia, which affects them more. To fully address the

marginalization of San people, the term "marginalization" must be removed as it invites social discrimination. Thus, the marginalization of San people affects the application of socio-economic rights to a lesser extent. This is because the San people have made efforts by calling on the government to assist and some in areas such as Omaheke region are willing to be integrated into the economy. This is evident by the creation of Omaheke San Development aimed at championing the cause of the San people. More organizations like this should be created throughout Namibia. The next topic now entirely focuses on the government, on what they have done, what has guided the government and how they have applied socio-economic rights.

**The second** objective of the study was to investigate how the constitutional obligations and principles of state policy have directed the application of socio-economic rights by the government of Namibia. This objective was explained based on 3 initiatives that have been carried by the government which are SEP, land, agriculture, and San entrepreneurial initiatives. These initiatives have been mainly focused on addressing qualified socio-economic rights. The distribution of funds towards this initiative has mitigated their actual intended success. If the government has a targeted fund, it will see more success in areas such as health, land distribution and education. This should be supported by San led initiatives, with their own personal funding.

To elaborate, the principles of state policy basically should guide the action plan in the application of socio-economic rights, supported with a designated fund towards that goal. The government has, in large part, utilized the Constitution in its application of socio-economic rights to the Namibian population in general and the San community in particular. The government's efforts are guided by principles of state policy that outline commitment to the application of education,

health, land, working conditions, and dignity as a right afforded to every citizen. Aspects such as sanitation are not included but fall under health rights.

The study found that the government has obligations to fulfil the mandates in Article 95 of the Namibian Constitution in the application and enforcement of socio-economic rights. Hence there are specific programs that have offered partial success such as education and some failures such as land distribution. Structures and frameworks have been put in place such as the ombudsman office that solely focus on the application of social economic rights. However, having different ministries in the application of socio-economic rights creates duplication and overlap which tends to overlook some rights. For example, the ministry of education has had better success in applying education rights of the San, as compared to the ministry of health in creating more access to health services.

The mandates concerning education, health, and land have been fulfilled through principles of state policy. However, there are no policy directives specifically for marginalized people and how they should be prioritized in application of socio-economic rights. This affects the collective status of the San, as resources are distributed first to political strongholds rather than the San, who lack adequate political representation. Nonetheless, the study did establish the obligations of the Namibian government in the application of socio-economic rights, and these should be promoted, protected, and fulfilled through the values and ideologies that reflect the San people's way of living. Both parties should work together, rather than the top-down approach being currently implemented. This gives room to explain some necessary recommendations below as part of the last objective.

### **7.7.1. Recommendations**

The third objective of the study was to provide recommendations for the government on how to apply the socio-economic rights of the San. The recommendations focus on three dimensions of how the government can promote, protect, and fulfil their application of socio-economic rights. As mentioned earlier socio-economic rights are different, some are qualified and unqualified or substantive or not substantive, hence some require the government to protect, some require promotion so that marginalization is reduced, and some require to be fulfilled. For example, a policy framework should be created that outlines the rights of San people all being defined as qualified so that they attain the same effort in applying them. The Constitution determines second generation rights, which should include ancestral land rights for minorities in Namibia which the government can implement in several ways. Socially, the government has made headway through education programmes and the setting up of facilities for primary education within the San communities. Of greater importance is how the curriculum reflects San culture and languages. Education is a good start for the San people to diversify their way of life. In addition, healthcare and land rights still lag due to a lack of funding and few policy initiatives.

## **7.8. Recommendation 1**

### **7.8.1. A designated fund for supporting the application of socio-economic rights.**

Throughout the research one of the main limitations was the lack of funding and unequal distribution of resources meant for applying socio-economic rights. The budget for applying socio-economic rights is derived from the national budget targeted for development. However, the 2002 pledge by the government should be strengthened by creating a fund solely meant with dealing with the health, employment, education, social security, housing, and children's socio-economic

rights. This should be managed by the San represented organization such as Ohameheke San Development Organization. These should be partnered with NGOs which will act as check and balance to ensure the funds are appropriately used. To cement the availability of funding, there should be offshoot programmes accompanied with job opportunities that ensure that those educated can be employed and self-sufficient and contribute to the fund for applying socio-economic rights. This will slowly reduce the dependency on the government to do everything for the San such as access to health facilities and the building of schools.

### **7.8.2. Providing adult education**

The government has been successful in providing education. However, this has mainly been for children and has neglected the adult population of the San people. Vocational schools can be created that represent the San way of life and business practices like the children's curriculums which are taught. For example, the programmes should focus on enhancing and improving technology in the subsistence farming methods of the San to make them commercial. In addition, education is a legal right, which makes it an obligation of the government to provide for both children and adults of marginalized communities.

The educational experiences of Indigenous San children in Namibia reflect discrimination, isolation, and compromised quality of education, and that their identity and indigenous knowledge are not fully embraced in the broader education system (Brown & Haihambo, 2015, p. 310). As a result, main streaming is being attempted by persuading the regional authorities to take full responsibility for the education of the San. Secondly, the government is working in conjunction with UNDP to coordinate all government efforts with the San and have them under the umbrella of the National Planning Commission to ensure universal education is provided (UNESCO, 2018).

Brown and Hai Ambo (2015, p. 314) noted that this programme is an example of where the government requires other stakeholders to participate for the programme to be successful, as the government alone cannot fully guarantee the application of education rights. However, the presence of these NGOs has allowed the government to lag and take a back seat in ensuring the fulfilment of education rights. As per the policy directive in the Constitution, the government should promote, protect, and fulfil these education rights.

### **7.8.3. Establish a national policy for applying San socio-economic rights**

Although Namibia is a signatory to a substantial number of legal frameworks domestic and foreign, there is not one directly for the San people of Namibia. Constitutional obligations are inclusive for everyone in the country, specific attention is needed for the implementation of socio-economic rights of San people. Similar to the Harambe Prosperity plan, a San Socio-Economic policy should be established with a 5-year plan of defined targets and structures to allow for monitoring and evaluation. This should be afforded legal rights that are enforceable in courts as well. Land, Education and Health are the main priorities of the government. The new policy should include:

- Housing
- Economic opportunities
- Food/nutrition
- Water

This will ensure the policy tackles every aspect of the socio-economic lives of the San. This policy should be created with San consultation and having the San people participate in its execution. An allocated budget should also accompany the policy with each right having a legal and equally

weighted right to uphold it. Given that the San are marginalised every right including those mentioned above should be deemed as qualified to ensure they are afforded the same importance in application.

Currently only qualified socio-economic rights use legislation as part of application, while unqualified rights with the exception of basic education and children's socio-economic rights are substantive. By making all socio-economic rights substantive these can be applied through constitutional and legislative means. For example, making housing and land substantive, the San can seek to settle arguments through legal means while representing themselves. This should be supported by a designated organization as mentioned above that ensures the government fulfils its mandate and commitment. By having representation on a local and national level enough support can be garnered both domestically and internationally to change the collective status of the San people.

## **7.9. Recommendation 2**

### **7.9.1: Inclusion of the San people in the application of socio-economic rights**

Currently the implementation of socio-economic rights is a top-down approach. As a result, the San people are not included in the formulation of policies and strategies. A holistic approach needs to be created that involves the San in the application of their rights, to ensure the San way of life is maintained. The power imbalance in society has remained, and, therefore, inequalities continue to reproduce themselves (New Era, 2018). Power imbalances are solved through inclusivity and representation. San socio-economic should be determined and formulated by the San, for the San people, with the San people. This ensures San people where the limited funds are distributed based

on the need that mitigates their marginalization the most. This reduces over reliance on external help from government and NGOs which will be a huge step towards decreasing dependency.

**Access to Education and Healthcare:** The cornerstone of inclusion is mobilising which ensures there is adequate representation of the San people. Educational campaigns should be carried out to promote civic culture amongst the San people. In turn this will improve the political presence of San people in Namibia in government and ultimately strengthening the link between the State and San people. The Namibian Government should advocate for the establishment of healthcare facilities in close proximity to San settlements, ensuring easy access to essential medical services and the same time promote culturally sensitive healthcare practices and engage with traditional healers to create a holistic healthcare approach that combines modern medicine with traditional knowledge.

**Ensuring Food and Water Security:** The Government and other stakeholders that represent the San People must advocate for the development of agriculture and food production programs tailored to the traditional practices and preferences of the San people. Furthermore, they should collaborate with agricultural experts and local communities to identify and implement sustainable, culturally sensitive farming techniques that align with the San community's way of life.

**Water Infrastructure development** by lobbying for the improvement of water infrastructure in San settlements, it will contribute to ensuring reliable and sustainable access to clean water sources. Including relevant authorities to implement water harvesting technologies, boreholes, and other water management strategies that align with the environmental context of the San people.



Economic Empowerment Programs: Propose the implementation of economic empowerment programs tailored to the San people, focusing on skill development, entrepreneurship, and sustainable livelihoods. Collaborate with NGOs and private enterprises to create opportunities for economic growth and self-sufficiency within the San community.

Policymakers and stakeholders can contribute to a more inclusive and equitable society, safeguarding the socioeconomic rights of the San people in Namibia, in following these recommendations.

### **7.10. Recommendation 3**

#### **7.10.1. National taskforce on application of socio-economic rights.**

The recommendation above focuses on the promotion of socio-economic rights as it alters stereotypes associated with the San communities. A good suggestion was made to create a national task force and national special rapporteurs over and above national human rights institutions, to monitor the implementation of the rights (Khoza, 2004, p. 337). A task force comprising of San people and other stakeholder within society should be established. This taskforce will work part and parcel with the government in formulating, reviewing, applying and enforcing socio-economic rights. The taskforce should also be responsible for sourcing funding in support with the government to change the collective socio-economic lives of the San people.

#### **7.10.2. Monitoring and evaluation**

Lastly the researcher recommends a monitoring and evaluation policy on the application of socio-economic rights. Having such a foundation, will ensure annual needs assessments are conducted on what the San need when it comes to their socio-economic lives. In addition, this can be used to

measure the progress of each specific right to avoid other rights lagging. The next topic concludes the research study and sum-mates all the ideas put forward in the research study.

Settlements should be established that group the San into one community without distorting their way of life. This will allow provision of education, inclusion in the economy and politically mobilisation with the growth in population. The government approach in the implementation of the SDP should improve in prioritising resettlement first then addressing other issues. A categorical list with timelines should be stipulated with specific goals to be achieved in literacy, health, political life and land distribution in a new amended SDP.

### **7.11. Conclusion**

The data collected from secondary sources was presented, analyzed, and explained following the main themes and parameters used in the research study. In formulating the thesis, “desktop” research was utilized focusing on secondary data sources. Desktop research was used due to limitations of conducting interviews, time constraints and resources to complete a field study. To support this problem statement was put forward with research questions and objectives to guide the thesis. In an effort to answer the research questions and addresses the study objectives a review of the literature was carried out in chapter 3, 4 and 5. While reviewing the literature possible gaps were identified in the literature review which the study aimed to fill. The study made use of books, academic journals, newspaper articles and reports, pictures, internet articles, official documents and statements, constitutions, and working papers. This aided in creating themes that are necessary for drawing the following conclusion from the research. Three distinct themes were noted namely different socio-economic rights, possible gaps, and successes in applying socio-economic rights

strategies and constitutional obligations. These were further subdivided to elaborate on the topic and address the research objectives.

In a nutshell, socio-economic rights vary, leading to differences in their application. As a result, the government's application of socio-economic rights has had a mixture of success and fail with the application of socio-economic rights being successful to a less extent, as the collective status of the San people has not changed. The government has prioritised the rights that are in line with Sustainable Development Goals such as Universal Primary Education at the expense of public health, social security, land, and housing rights of the San people. This has fast tracked some rights at the expense of others creating different effects on the socio-economic life of San people. In addition, the difference in success has been attributed to lack of funding due to unequal distribution of public resources and the lack of political will to champion qualified socio-economic rights. As a result, the government still lags in some important respects.

The application of socio-economic rights has been done through policies and strategies by the Namibian government. Constitutional obligations and principles of state policy have guided government action in the application and formulation of socio-economic rights. However, not all are executed through principles of state policy as the government is limited by funding. Rights such as sanitation, socio security, social grants and housing have been applied to a lesser extent. Thus, recommendations were made which include a designated fund for socio-economic rights, a national taskforce on the application of socio-economic rights and inclusion of the San people. Although these are not proven, they can be a starting point to gathering similar success in the provision of education for the San people.

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