

RIGHTS TO MACHAVIE (MATLWANG) VILLAGE:

A HISTORICAL STUDY, 1837 - 1991

by

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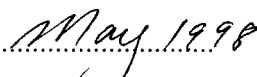
Potchefstroom

November 1997

DECLARATION

I, the undersigned, hereby declare that the work contained in this mini-dissertation is my own original work and that it has not previously in its entirety or in part been submitted at any university for degree purposes.


.....
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DATE

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ABSTRACT

This mini-dissertation investigates the validity of the right to land of the Barolong ba-ga Modiboa of Machavie Matlwang during the period of 1837 - 1991.

Very few works on the resettlement of tribes in the former Western Transvaal have been published regarding the loss of people's right to land. Among others, there are descriptions on the Bakwena ba Mogopa who were relocated to Pachsdraai in Bophuthatswana in 1984. The process of relocating people and resettling them was a process of interaction involving the tribal councils, the Government of the Union of South Africa from 1910 and since 1961, the Republic of South Africa.

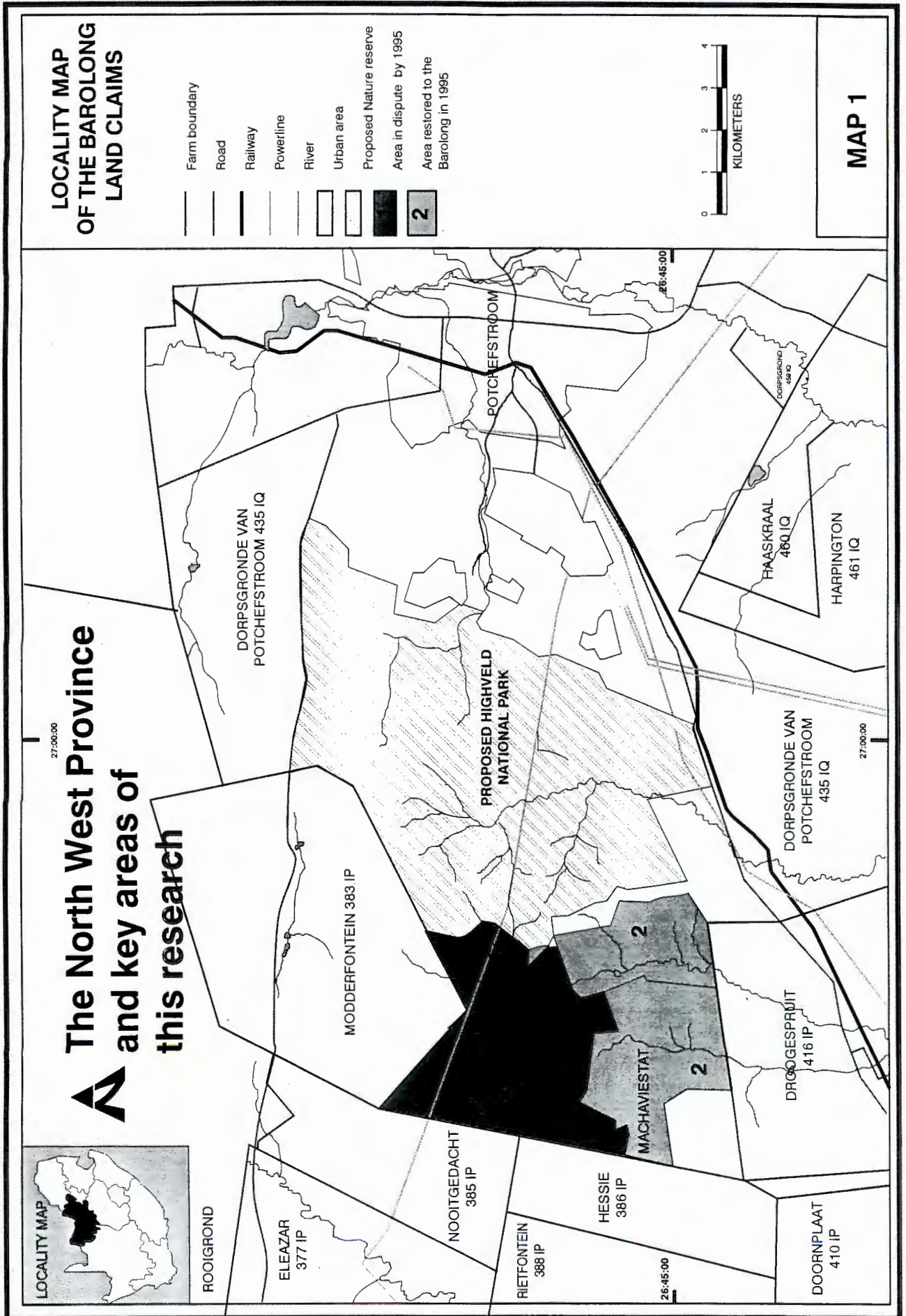
The process of interaction to regain the right to land by the Barolong ba-ga Modiboa extends over three major periods. The first period is 1853 to 1900 in which the negotiations between the Trekker leaders and the Barolong ba-ga Modiboa over land can be regarded as a most important aspect that is also covered in this study. The second period is from 1900 to 1948 during which time the implementation by Government of laws regarding land played a vital role and in time became an important dispute between the white Government and its black inhabitants. This process is also covered in this dissertation. The third period followed after 1948 up to 1991 in which the process of interaction between the Barolong ba-ga Modiboa and the Potchefstroom Town Council concerning land reached a crisis. The Barolong were compelled to settle in various places and this process of relocation became commonly known as forced removals in the late 20th century. This process of the resettlement of communities is a world-wide phenomenon affecting millions of people.

The perception of the land rights as defined by the most important Native Land Act, 27 of 1913 and the Native Trust Land Act, 18 of 1936, classified black land into trust areas, released areas, and black spots. This classification automatically resulted in the (forced) resettlement of people. After 1948 it was even implemented in a stricter way by the implementation of stricter laws.

This research, among others, indicates that the Barolong also settled in the former Orange Free State and the Zuid-Afrikaansche Republiek (former Transvaal Republic) before the Ndebeles and that the blacks, and the Barolong in particular, contributed to the defeat of Mzilikazi in order to

regain land in the former Western Transvaal, which they have occupied before the Ndebele's terrifying Difaqane/Mfecane movement in the Highveld.

As mentioned, this dissertation will cover the history of the Barolong ba-ga Modiboa, the process of obtaining land by them and whether they have a right to land. This will be done against the background of various Government acts with regard to land implemented in the 20th century. This discussion also considers the approaches to land and human rights world-wide.



Map 1: The North-West Province and the key area of this research. Source: Cartography Department, PU for CHE
Map redesigned from Cartographic map by Susan van Biljon - Graphical Department, PU vir CHO

OPSOMMING

Hierdie verhandeling ondersoek die reg tot grond van die Barolong ba-ga Modiboa tot Machaviestat gedurende die periode 1837 tot 1991.

Daar bestaan 'n baie beperkte getal publikasies oor die verskuiwing van swart stamme rakende grondregte in die eertydse Wes-Transvaal. Hieronder tel beskrywings van die Bakwena ba Mogopa wat in 1984 na Pachsdraai in die Bophuthatswana-gebied verskuif is. Hierdie proses van verskuiwing en hervestiging het gepaard gegaan met 'n proses van interaksie en onderhandeling met die stamrade sowel as die Regering van die Unie van Suid-Afrika vanaf 1910, en sedert 1961 die Suid-Afrikaanse Republiek.

Die proses waarby die Barolong ba-ga Modiboa betrokke geraak het om hul reg tot grond te betwis, strek oor drie periodes. Die eerste periode is 1853 tot 1900 waarin die onderhandeling tussen die Trekkeleiers en die Barolong ba-ga Modiboa oor grond 'n vername aspek is en wat dan ook in die studie gehanteer word. Die tweede periode strek vanaf 1901 tot 1948 waarin die implementering van wetgewing ten opsigte van grondbesit mettertyd 'n vername twispunt geword het tussen die blanke regering en die swart bewoners. Hierdie proses word ook in die verhandeling gedek. Die derde periode volg na 1948 en strek tot 1991. Daarin bereik die proses van interaksie tussen die Barolong ba-ga Modiboa en die Potchefstroom Stadsraad rakende grond 'n krisis. Die Barolong was gedurende hierdie periode genoodsaak om van een verblyfplek na 'n ander te verskuif en die proses kan as 'n faset van gedwonge verskuiwing beskou word in die laat twintigste eeu. Hierdie tipe proses van verskuiwing is 'n wêreldwye verskynsel wat miljoen mense reg oor die wêreld raak.

Die siening van grondregte soos dit vergestalt is in die Naturellen Wet, no. 27 van 1913 en die Naturelle Trust Wet op Grond, no. 28 van 1936, het grond aan swart bewoners geklassifiseer as trustgebied, of vrygebiede en swartkolareas (black spots). Hierdie klassifisering het uiteindelik daartoe gelei dat mense (gedwonge) verskuif is. Na 1948 met die nuwe en aanvullende wetgewing, is hierdie klassifisering tot die letter toegepas deur die implementering van strenger wetgewing.

Die navorsing in die verhandeling beklemtoon ook dat die Barolong in die voormalige Vrystaat en Zuid-Afrikaansche Republiek gewoon het voor die koms van die Ndebeles. Verder word ook vermeld dat die Barolong bygedra het tot die val van Mzilikazi om sodoende aanspraak te kon maak op grond in die voormalige Wes-Transvaal, wat voorheen deur hulle bewoon is voor die Ndebele se vreesaanjaende Difaqane/Mfeqane-veldtog op die Hoëveld.

Soos vermeld, sal die Barolong ba-ga Modiboa se geskiedkundige betrokkenheid by die verkryging van grond, en of hulle 'n reg tot grond het, geskets word teen die agtergrond van onder meer die verskeidenheid van wetgewing rakende grond wat gedurende die 20e eeu toegepas is. Hierdie bespreking neem ook die benaderings tot grond en menseregte, wêreldwyd, in aanmerking.

INTRODUCTION

Land reforms in South Africa have been carried out on several occasions by legislation, but the situation in the 20th century remains a difficult one to address. In the light of the above, this mini-dissertation will mainly investigate the validity of land rights to Machaviestat by the Barolong ba-ga Modiboa of Machavie (Matlwang) and the process of resettlement to which they were subjected between 1837 and 1991. An attempt is made to consolidate the various types of land ownership and bring it into perspective with 20th century land rights in terms of legislation and land holding systems as viewed internationally and nationally.

The process of interaction to justify land rights between the Government on a national and local level has resulted in conflicts, disputes and resistance by the affected tribal groups. The source of conflict, as will be reflected in chapters one to four of this study, could be attributed to the various cultural groupings in South Africa and their different views on the exercising of policy on land rights. Land in South Africa and in many parts of the world, as indicated in Chapter one, still exist in the form of customary, estate, leasehold, public and freehold systems, often resulting in controversy.

Due to the growing pressure for land and the right to land, critical measures in the administration of land distribution were adopted by various governments. In South Africa where the competition for land became crucial after the defeat of the Ndebeles in 1837, the following measures were taken: the land tenure system, land rights, land survey, land registration and land acts. The most important Land Acts in South Africa was the *Native Land Act, 27 of 1913* and the *Native Trust and Land Act, 18 of 1936* which demarcated land according to racial groups and classified land into trust areas, released areas and black spot areas. The implementation of the above acts resulted in the resettlement of communities and their relocation to other areas. This process was later in the 20th century also generally called forced removal. Apart from natural land limitations, man-made factors enhanced the need for the demand for land rights. The growth of estates, the population growth rate, Government politics, and market-oriented farming, all put pressure on the right to land.

Background information to basic land rights on international and national level is provided in Chapter one. Against this context, Chapter two will discuss the substantial evidence of the South

African acts which violated fundamental land rights from 1910 - 1948. Chapters three and four which constitute the core of this dissertation, trace the origin of the black tribe and the Barolong in particular and their claim to ancestral land. Chapter three reflects the historical claims made by the Barolong ba-ga Modiboa and the Trekkers in the interior. The process of interaction between the Barolong and the Union Government, later South African Government and specifically the Potchefstroom Town Council over the right to the land of Machavie, is discussed. An analysis of the impact of the process of resettlement on the Barolong ba-ga Modiboa, followed by a process of forced removals, as it was spontaneously called, is made in Chapter four. In conclusion, a critical summary of the experience of the Barolong and the effects of the resettlement process will be provided in Chapter five.

It must be pointed out that although sources are available dealing with land disputes and forced removals of black tribes, very little is available on the Barolong land rights to Machavie. As a result of this limitation, primary sources formed the basis of this research. Data bases that were used are the Kovsidex, Nexus data base, MLA, ERIC, Arts and Humanities Citation index, the combined catalogue of dissertations theses of South African Universities and the Repertoire of South African Journals, Magazines and Newspapers were used to consolidate the scant information available.

All available primary sources were analysed and tested by using the standard historical method of external and internal criticism on sources obtained and used. Primary sources that were consulted are available in the State Archives in Pretoria, the Potchefstroom Town Council and the museum in Potchefstroom. Among others, primary sources such as the original government files, title deed, circulars, notices of removals, correspondence and minutes of meetings of the Potchefstroom Town Council and with the Government of the Union were consulted. Correspondence of the interaction process between the Barolong and the Potchefstroom Town Council constituted a major aspect of the research.

Apart from the primary sources, secondary sources, e.g. a few articles, books and newspapers, were used. Interviews were also conducted on an individual basis with available role players who were witnesses during the process of interaction to claim land rights to Machavie. These were used to fill the gaps in the historical information and were evaluated carefully to determine its authenticity. Despite limited published works on the Barolong, a general background on the Barolong settlement has been recorded by the following historians: G.J.J. Oosthuizen, *The Barolong ba-ga Modiboa of Machavie*; T.R.H. Davenport and K.S. Hunt, *The right to land*; N.E.

Davis, *A hi(Matlwang) victims of forced removals*, Contree; P.L. Breutz, *A history of the Batswana and origin story of South Africa*; P. Maylam, *A history of the African people of South Africa*, and G.N. van den Bergh, *Potchefstroom se eerste swart woonbuurt: Machaviestat 1839–1888*.

The terminology used in this research is adapted to the late 20th century terminology, i.e. in most cases blacks will be used for bantu, natives or kaffirs, as indicated in some sources. Bantu and native will only be used where it refers to previous acts promulgated, such as the *Native Land Act of 1913*.



MACHAVIE VILLAGE – A TOPOGRAPHICAL ORIENTATION

Machaviestat (Matlwang), often spelt by white people as *Matjaviestad*, is situated about 24 km to the west of Potchefstroom along the road to Klerksdorp and opposite the New Machavie railway station. (See map 1 on p xiii). The place was identified by the Barolong of Chief Matlaba as their ancestral land after their participation in the defeat of Mzilikazi in 1837. Hendrik Potgieter, out of goodwill and in a gesture of a long bond of friendship with the Barolong, allowed Chief Matlaba and his people to reoccupy their ancestral land. Apparently it was a gentleman's agreement not recorded anywhere. They were moved by the descendants of the Trekkers to Rooigrond in 1971 after the land of Machavie was proclaimed town lands.

Rooigrond, where they settled temporarily from 1971 to 1995 with the promise of better land later, is about 10 km from Mafikeng in the North-West Province between Mafikeng and Lichtenburg. This temporary settlement at Rooigrond is on the land belonging to Chief Setumo Montshiwa of the Barolong bo-ra Tshidi in the Molopo area. The principal tribe of ba-ga Modiboa is settled at Polfontein under Chief Matlaba. In April 1995, 110 Barolong families were resettled at Machavie after being away for 24 years.

By the time work on this mini-dissertation commenced in February 1996, the Government of National Unity had already promulgated the *Restitution of Land Act, 22 of 1994*, which enabled the Barolong to regain their ancestral land. This act only applies to land lost after 1913 and land confiscated by the Government after 1948 as a result of Apartheid.

CHAPTER ONE

BASIC LAND RIGHTS EXERCISED ON INTERNATIONAL AND NATIONAL LEVEL

1.1 THE BASIC CONCEPT OF LAND RIGHTS AND OWNERSHIP

Land rights are understood and interpreted differently in different parts of the world and definitions and concepts are as many as the world has countries and nations.¹ The concept that needs to be clearly understood in this research is the right to land. There are, however, many rights that the individual can enjoy, as e.g. stipulated by the United Nations Organisation Charter set up after 1945² and the Bill of Rights (Civil Rights Act), made known by President J.F. Kennedy in 1962. Kennedy proposed, among others, that an individual's rights include the right to safety, the right to information, the right to choose and the right to be heard.³ The list of rights continues though, as other writers added further categories, such as the right to honesty, the right to fair agreements, the right to privacy and the right to the correct use and abuse of rights in the market place.

Among all the rights that can be enumerated and discussed, the rights to land and the right to fair agreement have caused the most controversy among nations. Concepts used to define the right to land and ownership change with time, but real rights to land include ownership, servitude, mortgage, pledge and mineral rights and these confer the most comprehensive control over land.⁴

Ownership, according to the present South African legal theory, is defined as the real right that potentially confers the most complete or comprehensive control over a property such as land. This means that the right of ownership empowers the owner to do with his property as he deems fit, only

¹ T.W. Bennet *et al.*, *Land ownership: Changing concepts*, pp. 173, 174, 178.

² A.J. Grant and H. Temperley, *Europe in the Nineteenth and Twentieth Centuries, 1789 - 1950*, pp. 583-584.

³ A.J. Rycroft *et al.*, *Race and the law in South Africa*, p. 172.

⁴ D.G. Kleyn *et al.*, *The law of property*, 3rd, p. 48.

subject to the limitations imposed by public and private law.⁵ The ownership of land is the greatest privilege that a person can have regarding property and thus ownership of land has been modified in many countries by laws of plural societies. In South Africa customary law rights have been modified by common law models of ownership adopted from the western system.⁶ Ownership as stated above differs in the western capitalist system because land right is the prerogative of the state. Ownership likewise will differ in content and function in a socialist country, as the state owns all property rights. In customary African society the land right is vested in the chief in trust for the community. Confining the ownership rights to laws has put restriction and limitation on the individual's right to land.⁷

Another concept related to land rights is occupation, defined as taking possession by a person of a corporeal thing within the sphere of private law which is not in the ownership of any other person, with the intention of becoming the owner. No-one can occupy land belonging to another person with an intention to claim ownership.⁸

1.2 *ACADEMICS' POINT OF VIEW ON THE CONCEPT OF LAND RIGHTS*

Some South African historians and academics in other fields of study express different views on land rights. The complexity of land rights is illustrated by the varying definitions and views one finds from specialists who wrote on these aspects. Maasdorp, a former Chief Justice of the Orange River Colony and Judge President of the Provincial Division in the Orange Free State, holds the view that ownership of property consists in the exclusive right of possession, of enjoyment and of disposing of it. In this light it entitles the owner to claim possession from anyone who cannot set up a better title to it.⁹ This right of possession entitles ownership right to land by an individual or a group of people or a community, and a right to immovable properties on land. According to Carlston, professor of Law at the University of Illinois, land laws consist of legal norms relating to the use of land, and this deals with a situation that involves the human relationship of the individual

⁵ D.G. Kleyn *et al.*, *The law of property*, 3rd, p. 161.

⁶ T.W. Bennet *et al.*, *Land ownership: Changing concepts*, p. 54.

⁷ A.J. Rycroft *et al.*, *Race and the law in South Africa*, p. 162.

⁸ A.J. Rycroft *et al.*, *Race and the law in South Africa*, p. 195.

⁹ A.F.S. Maasdorp and C.G. Hall, *Maasdorp's institution of South African law*, Vol. II, p. 68.

or a group to a specific piece of land for subsistence. In this instance in the American law, the person with relation to a particular land deserves the right to claim it.¹⁰ This kind of law does not exist in South African law procedures.

In his turn, De Klerk from the School of Economics argues that land rights must be balanced against other notions of land right such as birth right, the length of occupancy right and inheritance rights.¹¹ This view, if accepted by leaders in Government, will be inclusive of all other rights a human being is justified to enjoy, and a refusal of the interference of authority as seen with the 1909 Constitution. An interference with these rights will be an abuse of power by authorities or governments of the State. Feinberg, as an historian, contends that after the conquest of black South African societies in the 19th century in the interior of South Africa, the right of Africans to own land was circumscribed and opportunities varied according to the part of South Africa where an African lived. This implies that in certain parts of the country blacks had the unrestricted right to land.¹²

Feinberg puts the land right into time perspective when he states that the right of black Africans to land was circumscribed.¹³ It thus appears as if restrictions were imposed along racial lines. Feinberg also adds that discriminatory laws have limited land rights since the Union Government came into power.¹⁴ Bergh, as a historian, holds the view that 19th century law complicated the issue of land right by attaching race and colour to it and discriminating against certain races.¹⁵ De Klerk, as an economist, argues that there has to be economic planning to regulate the pricing of structures, tax and debt management in agriculture before developing a system of land right. He,

¹⁰ K. Carlston, *Social theory and African tribal organisation: The development of a social legal theory*, p. 444.

¹¹ M. de Klerk, *A Harvest of discontent: The land question in South Africa*, p. 60.

¹² H.M. Feinberg, "Pre-apartheid African land ownership and the implication for the current restitutin debate in South Africa", *Historia*, Vol. 40. No. 2, November 1995, p. 50.

¹³ H.M. Feinberg, "Pre-apartheid African land ownership and the implication for the current restitutin debate in South Africa", *Historia*, Vol. 40. No. 2, November 1995, p. 49-50.

¹⁴ H.M. Feinberg, "Pre-Apartheid African land ownership and the implication for the current restitution debate in South Africa", *Historia*, Vol. 40 No. 2, November 1995, p. 50.

¹⁵ J.S. Bergh and A.P. Bergh, "Grondregte in Suid-Afrika: 'n 19de eeuse Transvaals perspektief", *Historia*, Vol. 40 No. 2, November 1995, p. 46.

however, acknowledges the fact that people have relationship to land, and they qualify to claim the rights to land.¹⁶

Feinberg also adds that at the time of the establishment of the Union of South Africa in 1910, land rights for blacks were recognised. In Natal and in the Cape Colony, people of colour were not discriminated against regarding the right to land.¹⁷ From 1910 onward the Union Government in its day to day administration of the then so-called natives, promulgated various laws to administer native affairs and to have an internal policy to determine the destiny of the natives. Internal policies were abused to the benefit of the Government to deny the African land rights.¹⁸ The Keate Award of 1871 was not intended to deny the African land rights as such, but was aimed at controlling the area of paper claims which had outrun the zones of effective white settlement. White settlers were claiming extensive tracts of territories on the basis of legally prospected agreements with the chiefs of the regions. When the western border of the Transvaal was drawn to prevent further penetration by settlers, the original natives inhabitants had been dispossessed.¹⁹

It was not until the discovery of gold and diamonds after 1860 that legislation reflecting separation, was instituted to keep the rich gold fields for the Government and its white inhabitants. The vast areas of land already occupied by the Trekkers passed into the hands of absent speculators attracted to the mining areas.²⁰ While the Government was waiting to expand its jurisdiction, the Trekkers occupied vast tracts of land and had little reason to seek government approval, which they already possessed. The loan farms were held by wealthier sectors of the community and the rest were reserved as freehold land. It is, however, important to note that by 1910 the quitrent land system, loan freehold system, and perpetual quitrent were entrenched in the Constitution of 1909 and formed the basis for the Union Constitution on land issues.²¹

¹⁶ M. de Klerk, *A harvest of Discontent: The land question in South Africa*, pp. 201-212.

¹⁷ E.H. Brookes, *White rule in South Africa 1830 - 1910*, p. 30.

¹⁸ T.R.H. Davenport, *South Africa: A modern history*, 3rd ed. , p. 257.

¹⁹ T.R.H. Davenport, *The Afrikaner bond: The history of a South African political party, 1880 - 1991*, pp. 85, 87.

²⁰ M. Wilson and L. Thompson, *A history of South Africa to 1870*, p. 425.

²¹ L. Duly, *British land policy at the Cape 1795 - 1844: A study of administrative procedures in the Empire*, pp. 24, 27, 48, 49.

1.3 *LAND RIGHTS AND HUMAN RIGHTS AS FUNDAMENTAL ASPECTS OF LIFE*

Land rights and the acquisition of land as explained by the concepts of ownership and occupational right, are very important aspects in the lives of people. These rights relate to the security of persons, namely life, liberty and property; their right to equality and justice; and their religious, cultural and economic freedom.²² Land is thus internationally accepted as a fundamental necessity of life. It is the very foundation and framework within which social, political and economic activities of a nation function. This is true because society as we know it today cannot exist without land and access to land. Land is a valuable asset of the individual, communities and nations worldwide and the loss of rights to land in many cases cannot be fully addressed by cash payments.²³

Basic land rights and the acquisition of land resulting in ownership may be defined as perhaps the most comprehensive and most genuine way of obtaining a right to land, which means that it is also the land right most worthy of protection in a bill of rights.²⁴ It should also be noted that the South African common law writers agree that ownership, servitudes and the right to inherit a property, especially land, could be regarded as examples of real rights to be protected by law, this also includes possession as constituting a real right.²⁵

As possession of land entitles the possessor some rights, land possession is a real right, as unlawful possession of anything can never be the entitlement of a right. The lawful possessor should be protected by law as unlawfulness is usually regarded as the violation of a right.²⁶ The violation of land rights will be discussed later in this chapter. Some people are, however, granted temporary and limited real rights by way of temporary suspension of some aspects of full and unrestricted ownership, as was done by the colonial powers in America and Africa. The availability of a limited resource such as land for an ever-increasing population, coupled with people's need for access to secure land rights, have resulted in the violation of the real right to land. From the early days of

²² S. Ramaswamy iyer, *Everybody's book of law*, p. 21.

²³ J.A. Umeh, *Compulsory acquisition of land and compensation in Nigeria*, p. 1.

²⁴ A.J. van der Walt, *South African Journal on Human Rights*, Vol. 8 No. 3, 1992, p. 433.

²⁵ D.J. Kleyn *et al.*, *The law of property*, 3rd ed, pp. 48, 49.

²⁶ D.J. Kleyn *et al.*, *The law of property*, 3rd ed, pp. 111, 112.

colonialism in Africa and the occupation of South Africa by the white immigrants as early as 1652, land robbery and violation of rights have become part and parcel of the colonial process.²⁷

In the coastal region at the time of the Dutch settlers in 1652, by contrast, the right of occupation was certainly asserted by the Khoikhoi, but they lost ground in the face of European intrusion. The Khoikhoi lost land rights by agreeing to sign away territories without realising what they were doing, bartering the land and fountains with the assumption that they were granting a right of access rather than exclusive ownership right.²⁸

The right to land is regarded as a fundamental right of a human being, especially in the ideological context of the 20th century, and the individual's interest in land in itself is sufficiently important to justify the claim to land rights. From the western perspective in the common law context, real property includes estates in a single piece of land on which an individual can exercise rights.²⁹ Land as a basic human right for sustenance is viewed and treated in different ways by governments in various parts of the world. There are, however, similarities and differences which will be highlighted in this research. Land rights form part and parcel of basic human rights and in the present law system this means the state is not the sole entity that possesses rights, it is not the Alpha and Omega. The individual person has the direct claims of his basic rights to land from his own state. This means that nations and tribes may retaliate against the state if their entitled rights have been violated. The right to land has been a major cause of disputes throughout the world, resulting in genocide as the state used its right and power to relocate its citizens.³⁰

1.4 THE USE AND ABUSE OF LAND RIGHTS WORLD-WIDE

Various terminologies have been used in different countries to describe the right to land and the type of right an individual has to land. In the context of the property law, ownership of land is understood in its wider context to include land in its totality as the essence of nature. Land in this

²⁷ Z. Skweyiya, "Towards a solution to the land question in Post-apartheid South Africa: Problems and models", *South African Journal on Human Rights*, Vol. 6 No. 2, 1990, pp. 195, 196.

²⁸ T.W. Bennet *et al.*, *Land ownership: Changing concepts*, p. 53.

²⁹ J. Waldon, *The right to private property*, p. 35.

³⁰ A.D. Amato, *International law: Process and prospects*, p. 146.

sense should be interpreted to mean its surface as well as anything that lies underneath, the minerals and soil, underground water and vegetation.³¹ The land law on international and national levels delineates entitlement rights to land, among others, right of access to land, rights to the use of land, rights to the transfer or pledge of land, and the right to the inheritance of land. This would also include the right to hunt, collect firewood, and to cross the land for access to water.³² These rights were often violated in the process of the state defining land rights using western terminologies.

If the state expropriates land rights, it would only be acceptable if such land were for public purposes, and the law were to provide for compensation to the owner. This may be done by determining the amount of the compensation or by specifying the principle to be applied to the owner of the land. What is being expropriated in the given situation is strictly speaking not the land itself, but the right of ownership or limited real rights in respect of that particular land. The compensation payable is usually the market value plus actual financial losses caused by the expropriation.³³ In many instances compensation was not paid to the inhabitants of the land, but only the *ex-gratia* amount was paid, as in the case of Machaviestat in South Africa.³⁴ The amount stipulated would only be paid out after each family had moved out of Machaviestat.

Land ownership in e.g. some African countries provided for communal as well as private ownership. The defence of land by the inhabitants of Madagascar in 1584 against the French conquerors lasted nine years. In the partition of Africa by Europeans, skirmishes occurred and later wars were fought in defence of the land rights between 1879 - 1894.³⁵

In European countries occupational land rights were protected by pre-emption common only in Spain, Belgium, France, India and Japan in the East. This means that the land under lease may only be sold to the tenant or lease-holder, giving him ownership rights before anybody else could be allowed to buy a specific part of that land.³⁶

³¹ T.W. Bennet, *Land ownership: Changing concepts*, p. 153.

³² K. Carlston, *Social theory and African tribal organisation*, pp. 414, 416.

³³ A.J. Rycroft *et al.*, *Race and the law in South Africa*, p. 319.

³⁴ Archives of the Potchefstroom Town Council (A.P.T.C), Potchefstroom, M4/1 File 4807, The Director of non-European affairs, "Machavie Bantu", Agenda 20.3.68, PACT 286: Item 132, 28th March 1968.

³⁵ O. Olivier and A. Atmore, *Africa since 1800*, pp. 118, 122.

³⁶ S. Ramaswamy iyer, *Everybody's book of law*, p. 29.

The state would use its right to acquire land by relocating people from their ancestral land to make that land available to the state. In 1946, the inhabitants of the island of Bikini were relocated from their ancestral homeland because the island was selected as a nuclear test site by the United States of America. The people had no alternative but to submit to relocation to the island of Kili without compensation. The Bikinian ownership rights obtained through conquest by their ancestors, were ignored, if not violated. The social order of the community as defined and structured by rights to land as they had been inherited from previous generations was forced to change.³⁷

Internationally, relocation has taken place in the Argentine in 1948, enforced by the Argentinian Act of 10 September 1948, the Spanish regulation of April 1959, Uruguay Act of 27 April 1954. These acts made tenancy the right of the state to control ownership. The ruling parties in most of the above states had a right to use its discretion to move and relocate people to other areas. In the developed countries of Britain, France and the Netherlands, legislation was codified to make them civil laws to control land acquisition and land rights. Lease contracts existing in many of these countries allowed the state to use its legitimate right to evict the tenant once the land had been made cultivable. Generally, relocation of people was experienced in the following countries: Colombia, Chili, Ceylon, France, Denmark, Cuba, Equador, Belgium, the Argentine, Italy, Japan and Norway, where tenants were shifted from one land to another for the state to use the former land.³⁸

In Russia the legal status of land was closely related to the legal status of the owner. Man did not relate to land as to something alien and outside himself, land was a condition for his existence with no exclusive right to specific tracts of land. The house of Rurick in Russia during the 12th and 13th centuries were the first big land owners, except the Church, but they recognised inheritance rights.³⁹ Occupation was the common method for acquiring land, and the owner had the right to prevent any other person from violating his possession or ownership. He could use reasonable force to resist an intruder. A grant of land could be received from the state by a mere order, or a decree of a court and this type of land did not need to be registered.⁴⁰

³⁷ R.C. Kiste, *Bikinians: A study in forced migrations*, p. 3.

³⁸ E.S. Abensour, *Principles of land tenancy legislation: A comparative study*, pp. 7 - 12.

³⁹ W.E. Butler, *Russian law: Historical and political perspective*, pp. 3, 10.

⁴⁰ S. Ramaswamy iyer, *Everybody's book of law*, pp. 216, 237.

Rulers in some countries such as France often misused the right after conquering smaller countries after wars. Louis XIV of France stated that *I am the state* and this idea resulted in autocracy which was a platform for the abuse of land rights in modern times by simply allocating land to people belonging to a certain class. This also happened in the 10th and 11th centuries, when feudalism was the order of the day.⁴¹ William the Conqueror of England during the 1000s considered himself owner of all the land of England, and he parcelled it out to his barons who became his tenants, and who in turn became his subjects and had to render certain military services or public services of some kind.⁴² He was abusing his right as leader to violate the rights of others to land.

From the above paragraphs it becomes apparent that terminologies used in the legal field defining the state's legitimate rights differ from state to state. The common law also differed from the English law and customary law brought misunderstanding and was interpreted as the abuse of rights. According to the customary land tenure, the land was not owned in the western juridical sense, nor was it a market commodity. The terminologies adopted locally from other legal systems like the Roman Dutch Law introduced other concepts with a different meaning or understanding. The term squatting emanates from a misunderstanding of customary land ownership. Squatting is an ideological concept, considering that unlawful occupation was to a large extent merely an extension of the customary tenure process, and thus squatters were people who were deemed not to have any title and thus no right to land.⁴³

From the discussion above it is clear that land ownership, land rights and land acquisition problems that resulted from relocation and forced removals is a world-wide phenomenon.

1.5 THE USE AND ABUSE OF LAND RIGHTS ON NATIONAL LEVEL

The abuse of land rights at a national level in many countries has been the result of cultural differences. Nationally, land belonged to a native community or village or the family and never to the individual. All members of the tribe had equal rights to the land but in every case the chief or headman had charge of the land. He held the land in trust for the whole community. This kind of

⁴¹ D.J. Harvey, *France since the Revolution*, pp. 4, 5, 13, 14, 40; B. Wolf, *Louis XIV: A profile from the world profiles*, pp. X, 3, 23, 24-26.

⁴² K. Smith and D.J. Keenan, *English law*, p. 324.

⁴³ A.J. Rycroft *et al.*, *Race and the law in South Africa*, pp. 121, 122.

system led to misuse of rights by some chiefs who alienated portions of land and regarded the land as private property. The failure to appreciate this distinction has led to much confusion and abuse of rights by those who see customary law in terms of the concept of ownership.⁴⁴

The chief as trustee could not alienate land, or usurp the individual's enjoyment of land rights. The tribe as eternal corporation of the ancestral shade, the living and those yet to be born, had the right to intervene if the chief abused his position as trustee. The western culture continued to override the legal tribal culture and used the power of the state to usurp the trusteeship right and thus abused it to transfer land rights and titles into the hands of the white colonisers. The process of European colonisation was not a process that enlightened the natives, emancipated, or enriched them. The rapidly expanding, land-hungry Europeans subjected the bulk of the native populations in rural areas to be governed by laws that bound them, that restricted their liberties and abused their rights. Those blacks that managed to cling to the land, became a fretful going to and from between the white man's world and their own without security of their rights. The native wars could not relieve the European pressure upon the natives, trying to justify their right to land and blacks ended in congested native areas as squatters on European farms.⁴⁵

The Babapedi chief, Sekukuni, alleged that the Resident Magistrate of Newcastle wrote that the Broers encroached by decrees upon native territories, commencing by obtaining permission to graze stock upon portions of their land. This was further abused when individual farmers obtained from black chiefs and headmen a sort of right or licence to squat upon certain defined portions of land. These grants were a misuse of power by the chief and these licences constructed as titles ensured permanent occupation. The blacks who had never known a surveyor's beacon or seen a title deed were surprised to be turned into trespassers and law breakers regarding private property and this led to friction between the whites and the blacks. The aggrieved Europeans cried for the land to be cleared of the blacks who refused to recognise their beacons demarcating land.

The whites stated that Sekukuni's land was Transvaal land, *legally* ceded to them by the Amaswazi in 1856. Basic land rights on a customary basis were misunderstood by the Europeans as they usurped the land and it was granted as private property to whites.⁴⁶ Widespread land speculation

⁴⁴ T.W. Bennet, *Land ownership: Changing concepts*, pp. 175, 176.

⁴⁵ C.W. de Kiewiet, *The imperial factor in South Africa*, pp. 3, 13.

⁴⁶ C.W. de Kiewiet, *The imperial factor in South Africa*, p. 183.

took place during the 18th and 19th centuries, making the system of landholding unfavourable to the blacks. Only white burghers could own land in the Northern Transvaal and those blacks who became land owners, could only acquire a title in the name of some European missionaries. In this way Europeans expropriated land belonging to the blacks between the Harts and Vaal River. Stockenstrom awarded about 150 000 acres of land to European claimants. Land was signed away and grants were made without the knowledge of the local chief, and documents which ceded these tracts of land bore half a dozen crosses witnessed solely by friends of the European grantee. The tribal chiefs abused their trusteeship rights and surrendered land with its inhabitants to another yet more strange owner.⁴⁷

The Tswana, Zulu, Xhosa and Sotho tribes of South Africa lived on the land inherited from ancestors under chiefs as guardians with no rights to sell or lease the land to any company without consultation and permission of a tribal council. Land right was communal, but individuals could own private property which guaranteed their exclusive right of ownership and entitled them to use or abuse or alienate the land as they wished.⁴⁸ In most countries where communal land rights were exercised, there were fewer wars of extermination for the purpose of land acquisition as in Nigeria.⁴⁹

Similarities between Africa and South African disputes over land rights and ownership are that these took place during the colonisation period, in the same centuries and decades. South Africa experienced inter-tribal wars of conquest historically known as wars of extermination or Difaqane/Mfeqane during the 17th century. Land rights abused by the Trekkers, established the right to settle on the Highveld according to their own laws by a series of treaties of friendship with African tribal chiefs. Such treaties were made from 1839 with the Bakwena, Taung, Rolong of Moroka, Piet Davids of the Griqua and Sikonyela of the Tlokwa. Potgieter also laid claim by right of conquest to all the land once occupied by the Barolong and Mzilikazi respectively⁵⁰ (see Map 2, p. 12. The circle indicates the area once occupied by the Barolong and Mzilikazi). However, conquest in international law does not grant the right of ownership to land.

⁴⁷ C.W. de Kiewiet, *The imperial factor in South Africa*, p. 185.

⁴⁸ J. Waldon, *The right to private property*, p. 157.

⁴⁹ G.W. Myer, *Land and power: The impact of the land use acts in South West Nigeria*, pp. 1, 2.

⁵⁰ N. Parson, *A history of South Africa*, p. 110.

Source: N.E. Davis, *A history of Southern Africa*, p. 49.

The abuse of land rights by the Trekkers included that blacks in the Transvaal could not take transfer of land and this placed African land in the hands of white trustees. By 1864, the Natal Native Trust was established and took control of all the land known as Crown Land as trustees. The location commission set up by the Pretoria Convention of 1881 assumed the right of trustee for all tribal land which was eventually treated as Crown Land or State Land.⁵¹ A very important aspect is that South Africa, like African countries in general, experienced colonial rule and experienced disputes over land as the population increased and different cultures migrated into others areas.⁵² The only difference was that in South Africa land control was aimed at separating the various races by legislation. This aspect will be discussed in the next chapter. Tenants' rights of pre-emption were not given preference like in Belgium, France, India and Spain, to allow those tenants to purchase land.⁵³

1.6 *THE BAROLONG ba-ga MODIBOA IN THE NORTH-WEST PROVINCE AND LAND RIGHTS*

At local level, in the North-West Province, relocated tribes lost their land rights as land consolidation into Bantustans were implemented. The Barolong ba-ga Modiboa possessed the land of Machavie by right of conquest and received the grant of land as reward for partnership in defeating Mzilikazi. They therefore owned the land by customary law understood as a deed of grant and title deed.⁵⁴

Abuse of rights was committed by Thomas Burger on 11 March 1874 stating that all the territorial rights of the Barolong were, by cession from paramount Chief Moshoeite, the territorial rights of the Zuid-Afrikaansche Republiek (ZAR), and therefore all Moshoeite's people, including Matlaba, chief of the ba-ga Modiboa, were then subjects of the ZAR. During the period 1839 - 1900 the Trekkers claimed that several areas belonged to the Boers. In 1839, the Mooi River area around

⁵¹ The concept "crown land" was also used in the ZAR. See T.R.H. Davenport and K.S. Hunt, **The right to land**, pp. 30, 31; T.R.H. Davenport, "some reflections on the history of land and tenure in South Africa", in T.W. Bennett *et al.*, **Land ownership - changing concepts**, p. 57.

⁵² L. Bergh and A.P. Bergh, **Stamme and ryke**, p. 73.

⁵³ E.S. Abensour, **Principles of land tenancy legislations: A comparative study**, pp. 60, 61.

⁵⁴ N. Parson, **A history of south Africa**, p. 111.

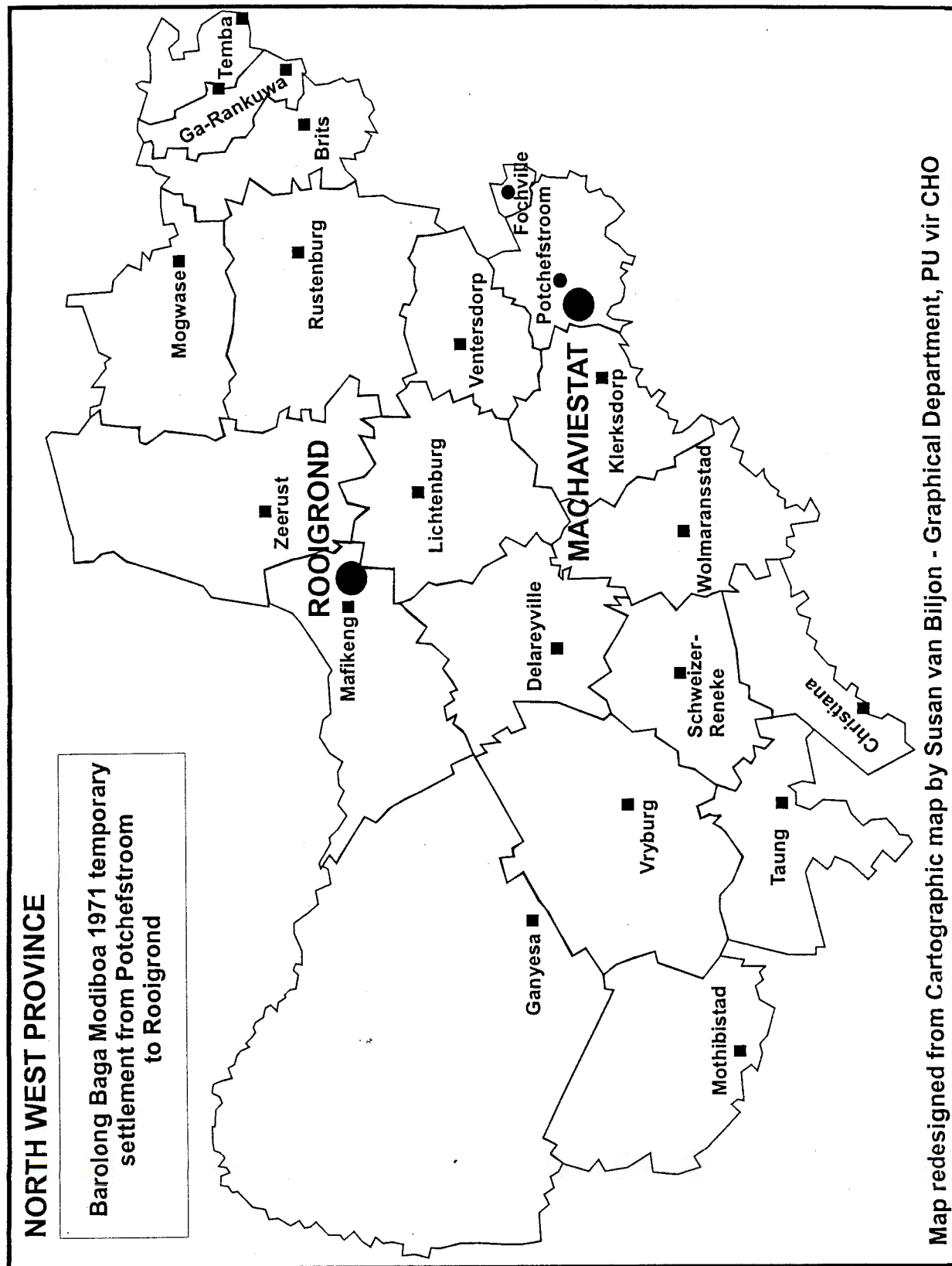
Potchefstroom, including Machaviestat, was declared the town lands of Potchefstroom, and from 1848 several Barolong clans left the area. Only Matlaba's clan remained on the land, until he was offered land near Lichtenburg at Polfontein in 1872. The Barolong ba-ga Modiboa decided to remain on the ancestral land, basing their rights on the treaty with Potgieter in 1837 whereby their right to the country of their forefathers was recognised.⁵⁵

The Barolong ba-ga Modiboa clan is a very small group that remained at Machaviestat, named after their Chief Matlaba. The area is about 24 km west of Potchefstroom along the road to Klerksdorp and about 30 km from Stilfontein (see attached Map 3, p. 15). This Barolong ba-ga Modiboa clan has for many years since 1839 enjoyed communal ownership of Machavie with all the rights to the land.⁵⁶ The historical background of the Barolong will be discussed in detail in Chapter three of this research. However, chapters three and four deal more extensively with the land rights and the land claims made by the Barolong ba-ga Modiboa.

Land is a fundamental necessity for life and is the framework within which the social, political and economic activities of a nation function. The Barolong, like all tribes internationally and nationally, was affected by the transformation of customary land rights to suit the western system of land ownership and land right. The loss of the Barolong's land rights and the process of interaction to regain the ancestral land will be discussed in Chapter two in the light of the South African Acts which violated basic land rights.

⁵⁵ S.M. Molema, *Montshiwa 1815 - 1896*, p. 61.

⁵⁶ APTC, Potchefstroom, 16.6.8 File 1806 (T) correspondence, L.W. Ritch (Solicitor), The Town Clerk Potchefstroom Town Council, 12 August 1922.



Map 3: *****

Source: Cartographic Department, PU for CHE.

CHAPTER TWO

SOUTH AFRICAN LAND ACTS THAT VIOLATED FUNDAMENTAL LAND RIGHTS OF SPECIFIC PEOPLE AFTER 1902

2.1 INTRODUCTION

After a broad view on the recognition of basic human rights and land rights on international and national level was given in Chapter one, this chapter will be devoted to several South African acts which violated people's rights to land after 1902. The twofold aim of the Government to, on the one hand, rule the country, and on the other hand restrict or prohibit certain groups to acquire land by means of law, will be discussed. The reasons for the Government to introduce discriminatory-like acts will also be critically evaluated against the background of forced removals in South Africa.

The 1909 Constitution laid the foundation for the way in which all land acts after 1910 were formulated and developed to eventually give space to only a selected group of people. The Union Constitution that was drafted in 1909 appears not to have been a constitution that was envisaged to accommodate human rights in the modern sense.

Some excerpts from the 1909 Constitution clearly stated that the Union was for Europeans. The Parliamentary representatives were appointed accordingly. To e.g. qualify as a voter, a person had to have resided for five years within the borders of the Union existing at the time and be a British subject of European origin.¹ This confirmed the *Natalse Voortrekkergrondwet 1838* qualification, that a person must have property in land. The Constitution of the Orange Free State of 1854, stated that: *Burgers van den Oranje Vrijstaat zullen bestaan uit alle blanke personen in den Staat geboren ... die één jaar in den Staat hebben gewoond en vast eigendom op hunnen naam*

¹ F.A. van Jaarsveld, 100 Basiese dokumente by die studie van die Suid-Afrikaanse geskiedenis 1648 - 1964, pp. 182, 186, 187.

*geregistreerd hebben ter waarde van minstens Rds 2000.*² The land was thus attached to the white community and it gave them voting, citizenship and land rights.

As in the previous century, it appears that a gentleman's agreement on land was still the order of the day. South African acts which restricted, or plainly appeared to have rather ignored all South Africans the right to property and to freedom of movement, will be covered.³

2.2 *LEGISLATION PRIOR TO 1910*

Prior to the Union of South Africa, the 1909 Constitution had accepted the early custom of acquiring land through occupation by the Dutch. It was also the case with the Tswanas who occupied land in a very similar way. The first British Settlers were allocated 100 acres per man for a £10 deposit and this was not granting any title or right to the land. This could be equated to the quitrent tenure on which rental was paid annually.⁴ The 1909 Constitution did not bring about major changes on land hold, but merely entrenched the former Oranje-Vrijstaat and Zuid-Afrikaansche Republiek constitutions.

In 1887, voters' lists were purified of black voters who did not possess fixed private properties but communal property. This was done to exclude more black voters by raising the voting qualification.⁵ In Natal, blacks were represented by whites in the House of Parliament. There were several South African Native Affairs Commissions set up from 1903 - 1905, the Indigence Commission of 1906 and the Natal Native Commission of 1908. The Transvaal Mining Industry Commission and the reports of these commissions gave the Union of South Africa a basis for a segregation policy affecting land rights.⁶

² F.A. van Jaarsveld, *100 Basiese dokumente by die studie van die Suid-Afrikaanse geskiedenis 1648 - 1964*, pp. 69, 104.

³ R. Reihlley, "International human rights norms in a new South Africa, 1992", *South African Journal on Human Rights*, Vol. 8 No. 3, pp. 172, 173.

⁴ R. Elphick and H. Giliomee, *The shaping of South African society 1652 - 1840*, pp. 473, 474.

⁵ D.J.P. Haasbroek, *Apartheid: A constitutional analysis*, p. 57.

⁶ D.J.P. Haasbroek, *Apartheid: A constitutional analysis*, p. 61.

This type of land right tenure was incomplete because it granted both whites settlers and blacks the right of occupation and not ownership right. Loan farming areas, for example, on which no rent was payable but on which a gentleman's agreement existed, allowed authorities to reclaim land without compensation.⁷ In the early part of the Trekker era, the Voortrekker leaders had tried to acquire titles to specific portions of land by negotiations with African chiefs and they had their successor continued to make treaties with chiefs when it seemed expedient. However, when the Trekkers defeated Mzilikazi they ignored the gentleman's agreement and saw themselves as having acquired the land by conquest.⁸ In this case it can be argued that the Trekkers regarded themselves as successors of Mzilikazi. They claimed to be the owners of the entire area from the Limpopo River to the Drakensberg escarpment, and maintained to have liberated the Barolong and other black tribes from the Matebele oppression. For these reasons, among others, they saw themselves as owners of the land.⁹

2.3 THE 1913 AND 1936 NATIVE LAND ACTS

2.3.1 Preliminaries to the 1913 Land Act

Land measures which already existed before 1910 in the Cape, Orange Free State and Natal as referred to in sub-section 2.3 above, constituted the basis for the Union land policy. In South Africa land issues cannot be discussed separately from the segregation policies, and land became the source around which racial competition, animosity and black anger have often crystallised. From 1910 land reform measures were introduced, which meant the reform of tenure systems or the distribution of land ownership.¹⁰ These land reforms culminated in the acceptance of the 1913 and 1936 Land Acts. Violation of land rights by these acts should be viewed with the understanding that most historians thus far have agreed that the former Transvaal had long been occupied territory by blacks before 1836, and this constituted occupational right.

⁷ Z. Skweyiya, *Towards a solution to the land question in post-apartheid South Africa: Problems and models*, Vol. 6 No. 2, 1990, p. 194.

⁸ M. Wilson and L. Thompson, *A history of South Africa to 1870*, p. 437.

⁹ Compare with L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. 45, 47, 48, 51, 53.

¹⁰ Z. Skweyiya, "Towards a solution to the land question in post-apartheid South Africa: Problems and models", *South African Journal on Human Rights*, Vol. 6 No. 2, 1990, p. 196.

According to the historian Bergh, *Dit is duidelik dat blanke boere in die loop van die 19de eeu grond in den Zuid-Afrikaansche Republiek [ZAR] wat tradisioneel deur die swartman bewoon en benut is beset het. Dit is ook duidelik dat slegs beperkte grondtoekennings in die tyd aan swart gemeenskappe gemaak is. Hierdie aangeleentheid is egter meer ingewikkeld en gekompliseerd as wat dit op die eerste oogopslag mag blyk.*¹¹ The statement has two sides, on the one side the land of the black people had to be legalised and demarcated to accommodate whites in need of grazing land, on the other hand blacks chose to occupy the land in groups and this established communal land occupation with no title to the land. The Commissions of Native Affairs in the various provinces made their recommendations which finally became the segregation policy which was proposed by the South African Party and acknowledged by the South African Labour Party in 1913.¹²

Before the Native Land Act of 1913 a number of other acts were promulgated serving as foundations for the 1913 Land Act. The Land Settlement Act of 1912 was promulgated to extend the various settlements schemes closer to each other in order to enlarge the white rural community. Blacks registered 61 farms prior to 1905 and between 1905 and 1913 these increased to 399 farms purchased by tribal groups and syndicates of Africans.¹³ Act No. 27 of 1913 stopped this rapid growth and it achieved territorial segregation without preventing further land purchases by blacks. The act further encouraged immigrant white farmers to purchase land at one fifth of its market price, while the State paid the remaining four-fifths. This Land Act further gave the poor-white the right to lease land for a five year probationary period, rent-free for five years. He was later allowed to own the land. These preliminary Land Acts violated the black land rights because it discriminated against blacks.¹⁴

¹¹ J.S. Bergh and A.P. Bergh, "Grondregte in Suid-Afrika: 'n 19de eeuse Transvaalse perspektief", *Historia*, Vol. 40 No. 2, November 1995, p. 46.

¹² D.J.P. Haasbroek, *A brief historical survey of the causes for the failure of political liberalism and the rise of differential development (Apartheid) in South Africa*, pp. 14, 15.

¹³ H.M. Feinberg, "Pre-Apartheid African land ownership and the implications for the current restitution debate in South Africa", *Historia*, Vol. 40 No. 2, 1995, p.50.

¹⁴ R.H. Davis, *Capital, state and white labour in South Africa, 1900 - 1960*, p. 108. Due to the nature of this research, as it is a mini-dissertation, more detail on the Native Land Act of 1913 is not provided.

With the introduction of Section (1) of the 1912 Act, the Governor General was authorised to delegate to the Minister of Native Affairs the administration of all the trust land already created. This marked the first violation of African land rights in the Union of South Africa.¹⁵ Under the Union Government the territorial segregation which arose from the pattern of colonial conquest became more defined and was entrenched by the 1913 Land Act.¹⁶ The measures of the 1913 Land Act were thought to be temporary until the final recommendation by the Beaumont Commission, and because the Government could not enact into law the recommendations of the native land commissioners, what was temporary became permanent until 1936.¹⁷ The Government did not expand the available land for purchase, residence and use by blacks, as formerly recommended by the Beaumont Commission.

2.3.2 The Native Land Act, 27 of 1913 and the right to land

The dispossession of black people of their right to land started long before the Union, but the Native Land Act, 27 of 1913 gave expression to the policy of the Government to separate different racial groups and to maintain white supremacy in all spheres of life. For the purpose of this research on land rights to Machavie, the implication of this act is very important. The act prevented black people from owning and acquiring land outside their own areas as defined by the trust and reserve system.¹⁸ This act was opposed and criticised by the African Native National Congress from the onset as it denied blacks access to land and violated their right to land. The bulk of black people occupying land in the Transvaal outside the Government locations were vested in the Minister of Native Affairs in trust, and thus private land bought by tribes were also expropriated and vested in the Minister of Native Affairs in trust.¹⁹ The Native Land Act, 27 of 1913 allocated 87 per cent of the country's best land to the whites who were less than 18 per cent of the country's population. Thirteen per cent of the land was reserved for blacks, despite the fact that they had always

¹⁵ E.H. Brookes, *White rule in South Africa*, pp. 161 / 164.

¹⁶ E. Unterhalter, *Forced removals: The division, segregation and control of the people of South Africa*, p. 5.

¹⁷ H.M. Feinberg, "Pre-Apartheid African land ownership and the implication for the current restitution debate in South Africa", *Historia*, Vol. 40 No. 2, November 1995, p. 50.

¹⁸ R. Olivier and A. Atmore, *South Africa since 1800*, p. 189.

¹⁹ E.H. Brookes, *White rule in South Africa*, p. 165.

comprised more than 75 per cent of the country's population.²⁰ If privately owned land by some blacks were excluded, only 6 - 8% of the 13% land was occupied by the blacks as actual reserved land.²¹

In South Africa the issue of land cannot be separated from the policies of apartheid. Articles which have dealt with the right to land in South Africa are, among others, Bergh's Land rights in South Africa: A 19th century Transvaal perspective in *Historia* 1995; Skweyiya's, Towards a solution to the land question in post-apartheid South Africa: problems and models in *South African Journal on Human Rights*; Van der Walt's The fragmentation of land rights in *South African Journal on Human Rights* and Maylam's A History of the African people of S.A. from the early iron age to the 1970s. The importance of the Native Land Act, 27 of 1913 to the Union as outlined in the journals above, cannot be overlooked because it limited the area of the African reserves, termed the *scheduled land* amounting to 9 million hectares or 7 per cent of the total land surface, and no African could in future purchase or occupy land outside the scheduled area. The act further launched an assault against African share-croppers and rent-paying tenants called squatters.²² The eviction of the share-cropper removed agricultural production in partnership with white land owners, and those share-croppers who remained on the land lost their right to a share of the crop and the security of tenure. Though the act placed some restrictions on whites, preventing them from acquiring land in the reserve areas, it maintained the reserves as a labour reservoir for mining and industrial development in urban areas.²³ The recruitment of labour from reserves was legalised and the enlargement of the reserves was proposed, as overcrowding resulted. The 20th century industrial development promoted the migrant labour system to the detriment of land rights by Africans.²⁴

²⁰ Z. Skweyiya, "Towards a solution to the land question in post-apartheid South Africa: Problems and models", *South African Journal on Human Rights*, Vol. 6 No. 2, 1990, p. 197.

²¹ Compare with A.J. Rycroft, L.J. Robertson *et al.*, *Race and law in South Africa*, p. 10; T.R.H. Davenport, *South Africa a modern history*, 4th ed., pp. 266, 406, 486; B.J. Spies and S.B. Liebenberg, *South Africa in the 20th century*, p. 58.

²² P. Maylam, *A history of the African people of South Africa from the early Iron Age to the 1970s*, p. 173.

²³ E. Unterhalter, *Forced removals: The division, segregation and control of people in South Africa*, p. 5.

²⁴ T.R.H. Davenport, *South Africa: A modern history*, 3rd ed., p. 31.

Amendments were made to the 1913 Land Act which had the same implication of making it impossible or difficult for Africans to obtain access to land. This act gave birth to apartheid and the Group Areas Act, 30 of 1936 which violated black land rights.²⁵ The institutionalisation of grand apartheid segregation had its manifestation in the Native Land Act, 27 of 1913, and laid the foundation for the creation of reserves and later Bantustans, changing the status of many black land owners to labourers and thus violating their right to land. The different administrative control measures forced blacks to sell their labour to the industries, leaving vast areas of their land to the control and ownership of foreign firms and white settlers. The idea of forced removals was coined from this situation to make more land available.²⁶ Other acts which complemented the Land Act, 27 of 1913 before the Native Trust Land Act, 18 of 1936, were the Black Administration Act, 38 of 1927 which empowered heads of states by law to order forced removals of countless people to create more land for whites and further opposed civilisation of the blacks by Europeans.²⁷ The Native Urban Areas Act of 1923 restricted blacks to reserves, as unskilled labour in urban mining and the railways were reserved for poor whites.²⁸

2.3.3 The Development Trust and Land Act, 38 of 1936 and the right to land

The Native Trust and Land Act, 38 of 1936 stipulated that additional land, called release areas, of 6.2 million hectares was to be added to the reserves as defined in the 1913 Act. This set apart about 13 per cent of the South African land for permanent African occupation. According to this 1936 Trust Land Act 18, African peasants could only remain in white-owned land if they were registered labour tenants.²⁹ In terms of the development Trust and Land Act, 18 of 1936 additional land was set aside for occupation and ownership by blacks but this consisted of land next to the reserves.

²⁵ Z. Skweyiya, "Towards a solution to the land question in post-Apartheid South-Africa: Problems and models", *South African Journal on Human Rights*, Vol. 6 No. 2, 1990, p. 196.

²⁶ Z. Skweyiya, "Towards a solution to the land question in post-apartheid South Africa: Problems and models", *South African Journal on Human Rights*, Vol. 6 No. 2, 1990, p. 197.

²⁷ C. Murray and C. O'Regan, *No place to rest: Forced removals and the law in South Africa*, pp. 13, 14, 16.

²⁸ R.H. Davies, *Capital, State and white labour in South Africa*, pp. 109-120.

²⁹ E. Unterhalter, *Forced removals: The division, segregation and control of the people of South Africa*, p. 8.

The act further entrenched the segregatory land system and made available marginal extra land for people in the reserves. Some of the land to be released was already owned or occupied by black people and the balance was still to be acquired by the South African Development Trust.³⁰ Violation of black land rights from this act was the fact that the Prime Minister, via the Governor-general, was given powers to remove any black tribe from one area to another without consultation or prior notice to any person concerned.³¹ Machaviestat did not escape the violation, as laws entrenched the right to remove them.

2.4 OTHER GOVERNMENT ACTS THAT WERE INDICATIVE OF GOVERNMENT POLICY ON LAND RIGHTS

Several other acts adopted the Government which violated black land rights in general, and that were indicative of Government Policy, were the Native Land Act, 27 of 1913; the Native Laws Amendment Act, 38 of 1937; the Group Areas Act, 30 of 1936; Development Trust and Land Act, 38 of 1938; Deeds Registries Act, 47 of 1937; Native Urban Areas Consolidation Act, 25 of 1945; the Bantu Authorities Act of 1951; the Prevention of Illegal Squatting Act, 52 of 1951; the Promotion of the Bantu Self-government Act, 46 of 1959; the Group Areas Act, 41 of 1950 and 1966 and other subsequent acts. These acts complemented each other to preserve the ideology of separate development between the various races and to violate the land rights of black people in South Africa.³²

During the first part of the National Party's government from 1948 - 1960, former acts were therefore further adapted to create a racially discriminating society and institutional segregation in violation of black land rights. Territorial segregation or separation was preached in all government circles as a prerequisite for separate development in the national and political sense.³³ It should also be realised that the pattern of wealth and income distribution and social and political influence were

³⁰ W.L. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, pp. 12, 13.

³¹ C. Murray and C. O'Regan, *No place to rest: Forced removals and the law in South Africa*, p. 19.

³² W. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, p. ii.

³³ T.R.H. Davenport and K.S. Hunt, *The right to the land*, pp. 47, 48, 49.

partly determined by laws governing land rights.³⁴ Blacks were denied the right to land and as a result remained economically dependent on labour. The violation of land rights was further abused by the Group Areas Act, 41 of 1950, which made it compulsory for black people to live in specific areas that had been proclaimed for them and to sell their labour to white farmers.³⁵

The Group Areas Act, 41 of 1950 worked hand in hand with Urban Areas Act of 1952 which deprived Africans of free access and occupation and ownership of land and made the blacks Government tenants on trust land and state land and a source of cheap labour. People were moved to Bantustan locations in an attempt to consolidate their land and remove black spot areas. In the case of Nelspruit and Lichtenburg, people were moved to Kwanyamazane in Kangwane and Itsoseng respectively in Bophuthatswana. The removal of the people at Cross Roads in Cape Town and Kwa-Mashu in Durban was done to comply with consolidation of land for Bantustans. The Tswana, Venda, Pedi, Swazi and Sotho peoples all became victims of forced removals and loss of land rights in South Africa.³⁶

During the apartheid era, the Barolong ba-ga Modiboa were made subordinates in the Potchefstroom area, specifically in the municipal territory, and regarded as squatters or tenants who had to pay rental.³⁷ Massive removals or relocation of people thus took place during this period of the 1960s, violating land rights. As segregation was almost a norm, the idea of creating a black township of Ikageng near Potchefstroom was already evolving by 1959. The Barolong were encouraged to settle in this township, breaking up the unity of the tribe. This is evidenced by Ismael Serwalo's receipt 876 for rental payment of stand No. 157 at Machaviestat dated 08.05.1953 (refer to the attached receipt on p. 25). Machavie was regarded as a location.³⁸

³⁴ R.I. Rotberg and J. Barratt, *Conflict and compromise in South Africa*, p. 17.

³⁵ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. 33, 99, 100.

³⁶ W.L. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, p. 38.

³⁷ N.S.J. van Rensburg, "Limited access to land rights for the powerless in Potchefstroom", *Koers*, Vol. 60 No. 1, March 1995, pp. 594 - 597.

³⁸ Personal interview, A.M. Legae - Ismael Serwalo, Machaviestat, 3 June 1996. "Seralo", as indicated in the text, (see attached document) is the Sotho version of Serwalo in Setswana. This should be understood to refer to the same person. Often the spelling mistake was made by white people who could not pronounce the double consonants "RW", and pronounce it "RA".

15-8-53

POTCHEFSTROOM MUNICIPALITY
MUNISIPALITEIT



MACHAVIESTAD.

876

RECEIVED from
ONTVANG van

Ismael Serwalo

The sum of
Die som van

Three Pounds

in respect of Rent for Stand No.
synde vir Huur vir Standplaas No.

157

for the period 1st July 19
vir tydperk 1ste Julie, 19

to 30th June, 19
tot 30ste Junie, 19

0/17

£ 9

for TOWN TREASURER.
vir STADSTESOURIER.

No receipt valid unless on Official Form.
Geen kwitansie geldig tensy op Offisiële Vorm.

Potchefstroom Herald 8412

MUNISIPALITEIT VAN POTCHEFSTROOM.
MUNICIPALITY OF POTCHEFSTROOM.

LISENSIE VIR WEIDING OP DORPSGRONDE.
LICENCE FOR GRAZING ON TOWN LANDS.

Nº 00805

Datum van Uitgawe
Date of Issue

14-1-53

'n Lisensie word hiermee toegestaan ooreenkomstig Seksie 2 van die Dorpsgrondeverordeninge aan Ismael Serwalo van 157 Mach.

om
graze

12

Osse
Oxen

1

Koeie
Cows

1

Perse
Heifers

Bulle
Bulls

24

Skape
Sheep

2

Varke
Pigs

2

Perde
Horses

Donkies
Donkeys

te laat wei op die Dorpsgronde van die Munisipaliteit.
on the Town Lands of the Municipality.

Ontvang die som van
Received the sum of

Pond
Pounds

Seventeen

Sjellings en
Shillings and

pennies, synde die weiding- en inspuitingfooe verskuldig in verband met pence, being the grazing and inoculation fees due in respect of the said die gesegde lewende hawe vir die jaar 1 Januarie 1953 tot 31 Desember 53 stock for the year 1 January

Inspuiting
Inoculation

Total/Total £

17/-

Skynmeester.—Poundmaster.

15-1-53

Potchefstroom Herald 8412

The attached receipt as proof of rent payment is in the collection of receipts obtained from Ismael Serwalo during an interview. Other receipts in his possession are pound fee receipts, contribution for hiring lawyers receipts which could not be given to me. The grazing licence receipts include those of Samuel Serwalo and Powe.

2.5 MACHAVIESTAT AND THE LAND ACTS

Those Barolong ba-ga Madoboa who settled at Machaviestat were affected by the introduction of the Native Reserve Location Act of 1954 and the Bantu Self-government Act, 46 of 1959, which both legalised the violation of land rights. With the development of the black location of Ikageng near Potchefstroom in 1959, the Barolong were encouraged to settle in the location or to move to Bophuthatswana. This was a violation of land rights.³⁹ The settlement of the Barolong ba-ga Modiboa was regarded as illegal and in terms of the Prevention of Illegal Squatting Act, 52 of 1951 they were to be removed. The act provides for the prevention and control of illegal squatting on public or private land, and the land of Machavie was regarded as public land.⁴⁰

During the period 1960 to 1975, a violation of land rights was further promoted by the promulgation of the Bantu Self-government Act, 46 of 1959. The homelands were established as a form of political control of people removed from white areas declared to be black spots. The black spots, like Machaviestat in a white area, were defined as a small piece of land occupied by blacks away from a homeland or tribal land or reserves within European land.⁴¹ The clearing of defined black spots and demarcation of land for each Bantustan were undertaken to consolidate homeland territories through forced removals. It was during this time that the Barolong of Machaviestat and the Batlounge of Putfontein, Bakolobeng of Rooijantjiesfontein and Bakwena ba Mogopa became victims of forced removals and experienced violations of their customary land rights. It is in the context of this policy of forced removals that homelands have in more recent years come to serve as human dumping-grounds, because it was in the *homelands* that the labour tenants, squatters and *black spot inhabitants* were resettled. Machaviestat was not an exception, as they were squatters on the Potchefstroom town lands in terms of the acts.⁴²

Eviction of the Barolong ba-ga Modiboa followed the general trend of the amendments to the Illegal Squatting Act, 52 of 1951. These amendments were aimed at preventing African people

³⁹ T.R.H. Davenport, *South Africa: A modern history*, 3rd ed., pp. 379, 551.

⁴⁰ W.L. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, p. 38.

⁴¹ *Acquisition of land by South African Native Trust and abolition of Bantu property rights in land in European areas*, p. 6.

⁴² P. Maylam, *A history of the African people of South Africa from the early Iron Age to the 1970s*, p. 175.

from occupying farming land in white rural areas. The laws in South Africa until 1991 were used to destroy property rights of those black tribes who had managed to acquire land and title deeds before 1913. The Native Land Act of 1913 and all other acts which followed, closed the land markets to Africans and opened them to whites.⁴³ Though removals still continued during this period, they met with resistance in many villages and the Machavie people resisted to the last moment. After 1971, the Bantu homelands advanced rapidly towards self-government and by 1977 Bophuthatswana, the Ciskei, Lebowa, Venda, Gazankulu, Qwa Qwa and Kwa-Zulu had become self-governing states. For the whole process to succeed, the land rights of millions of blacks had to be violated.⁴⁴

Black tribes in the Transvaal who lost land as their basic land rights and customary laws were ignored and violated by statutory laws were, among others, the Bakwena ba-ga Mōgopa near Ventersdorp in 1983. The people of Goedgevonden and Doornkop were removed to Ganalaagte and Vrieschgewaght in the Northern Cape, Driefontein and Daggakraal in the Eastern Transvaal and Mathopstad in the Western Transvaal. Potfontein near Lichtenburg were moved to Ramatlabama near Mafikeng. All these tribes with private ownership rights, quitrent titles, in customary law freehold titles acquired before 1913 and some after, lost these rights at the hands of the South African Government's repressive acts.⁴⁵

The Barolong ba-ga Modiboa at Machaviestat west of Potchefstroom saw their occupational rights, inheritance rights, and their right by conquest to the land of Machavie, violated by the Government when they were declared illegal squatters on the townland. The Barolong were excluded from the system of land ownership by the Native Location Commissioner.⁴⁶ Since promulgations in terms of resolution 159 of 18 June 1855 precluded anybody who was not a burgher from owning land in the Transvaal, the Barolong were precluded from burgher rights. Therefore the Barolong were regarded in the Potchefstroom residential area as non-citizen/burghers.⁴⁷

⁴³ M. de Klerk, *A harvest of discontent: The land question in South Africa*, p. 52.

⁴⁴ R.J. Rotberg, J. Banatt and L. Books, *Conflict and compromise in South Africa*, pp. 18, 19.

⁴⁵ M. de Klerk, *A harvest of discontent: The land question in South Africa*, pp. 52, 53, 123, 125.

⁴⁶ N.S. Jansen van Rensburg, "Limited access to land rights for the powerless in Potchefstroom", *Koers*, Vol. 60 No. 1, 1995, March, pp. 600, 601.

⁴⁷ T.R.H. Davenport and K.S. Hunt, *The right to the land*, p. 40.

The concept of land rights as outlined in Chapter one clearly indicated that land is the most important property, that provides security and an economic factor in the lives of people. This proved further that ownership by customary law is accepted internationally and nationally. The Barolong ba-ga Modiboa lost their basic land rights to the Government, because their right by conquest and inheritance was not accepted. The replacement of the vernacular concept of land ownership by the *de jure* concepts has affected black land rights throughout South Africa since the Union Government in 1910.⁴⁸ To further argue the land claims by the Barolong, references were made to the numerous acts passed since 1910.

Chapter three will continue the argument on land rights and claims further by focussing on the historical background of the Barolong and their settlement in the Highveld as well as their initial contact with the Trekkers since the late thirties. The chapter will focus on the land claims by the Barolong against the background of the acts discussed in Chapter two. It will also reflect the customs of land rights of Tswana-speakers and the Barolong in particular with reference to the categories of land rights rules. The western influence to the common principle of land rights as perceived by the Boers will be discussed in relation to the black perspective of land rights. The diverse views of land rights of Machaviestat will be examined in detail to provide a perspective to the life-long dispute of rights to Machaviestat.

⁴⁸ T.W. Bennett *et al.*, *Land ownership: Changing concepts*, p. 173.

CHAPTER THREE

HISTORICAL CLAIMS OF THE BAROLONG WITH REGARD TO MACHAVIE VILLAGE (MATLWANG), 1837 - 1991

3.1 INTRODUCTION

This chapter will be based on historical claims to land by the Barolong. With reference to the theories and ideologies involving basic land rights as accepted internationally and nationally, see Chapter one. The claim to the land of Machavie by the Barolong will further be placed in perspective with some of the South African acts in the 20th century which also violated the right to land for the Barolong ba-ga Modiboa, and the right possessed by the Government to appropriate land. The different concepts and acts used to regulate the right to land by individuals and communities will be applied to weigh the Barolong's claim to land.

3.2 CO-OPERATION AND NEGOTIATION BETWEEN THE BAROLONG IN MACHAVIE (MATLWANG) AND THE TREKKERS – WITH LAND RIGHTS AS KEY FOCUS

The history of settlement in South Africa has been characterised by several movements by various population groups. The most controversial movement was migration, which was the first historically recorded and the most popular movement of people relating to land. In most instances it was natural, but in some instances it was due to force. The search for better grazing was a voluntary movement and fear of another tribe was forced migration. The wars of Difaqane initiated forced migration of various black tribes even before the white settlement in South Africa. The Barolong-ba-ga-Seleka, the main Barolong tribe, settled in Thaba Nchu by 1833, after being forced

out of the Transvaal and Free State by the Matebele. King Moshoeshoe sold the land to the Barolong as a payment for cattle as he saw fit and granted them the usufruct of the land.¹

All the Barolong tribes originated from the Transvaal and found a new home in Thaba Nchu. In Thaba Nchu all the tribes were under Chief Moroka, who also originated from the Western Transvaal.² It is from this settlement at Thaba Nchu that white Trekkers from the Eastern Cape under Hendrik Potgieter met the Barolong and concluded a friendship in 1837. As the Transvaal was unknown to the Trekkers, they relied on the information of the Barolong tribe, giving warning of the Matebele's presence. Despite warnings, Potgieter explored the interior, and this resulted in the fierce attack at Vegkop in 1836 where he lost 4 600 head of cattle, 50 000 sheep and 100 horses. He once again returned to Thaba Nchu for assistance from Chief Moroka.³ The Trekkers survived the attack and the Maritz group joined Potgieter and together they planned a revenge attack against the Matebeles.⁴

At this point it is important to acknowledge the bond between the Barolong and the Trekkers: together they had a common enemy and both wanted the vast open spaces of the former ZAR. The first expedition of 1837 against Mzilikazi consisted of Barolong, Koranas, Griquas and the Trekkers. *Vir die eerste kommando, wat in Januarie 1837 onderneem is, het die hoofde orgeweer een-derde van die nagenoeg 220-sterk mag voorsien. Van die leiers het egter slegs Machavie self die kommando meegemaak, terwyl die ander kontingente ander minderes gestuur het.*⁵ This gave Matlaba a chance to lead the Barolong section of the expedition to Mosega, while Potgieter was the commander of the expedition.⁶

In this expedition, 400 men of Mzilikazi were killed at Mosega, and 7 000 head of cattle and several wagons were captured, whereafter the commando returned to their sanctuary at Thaba Nchu. Mzilikazi was expelled completely from the ZAR and he crossed the Limpopo River to settle in

¹ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., p. 139.

² S.M. Moroka, *Chief Moroka, his life, his times, his country and his people*, p. 42.

³ S.M. Molema, *Monsthiwa 1815 - 1896*, p. 75.

⁴ N.E. Davis, *A history of Southern Africa*, p. 49.

⁵ G. van den Bergh, "Potchefstroom se eerste swart woonbuurt: Machaviestat 1839 - 1888", *Contree*, Vol. 34, 1993, p. 13.

⁶ S.M. Molema, *Monshiwa 1815 - 1896*, p. 76.

former Rhodesia (Zimbabwe)⁷. The success of the 1837 expedition bound Matlaba and Potgieter in a spirit of friendship.

An agreement between the Barolong and the Trekkers was reached that the Barolong should settle in Machavie in 1839.⁸ (See Map 5, p. 42). This was a gesture of goodwill and friendship with the Barolong since the Trekkers arrived in Thaba Nchu.⁹

The Barolong settled at Machavie with the full understanding that they owned the land. From 1833 to 1970 constituted about 133 years of occupation right of the land in Machavie by the Barolong as referred to in customary law in Chapter one.

It is difficult to give concrete documentary evidence of land acquisition, as most agreements between the Trekkers and the Barolong were done verbally. A detailed and recorded account in writing of the manner in which land was parcelled out among the blacks by the Trekkers is unfortunately not available. The fact is, there are cultural differences representing different views to occupational rights and the acquisition of land. There is, however, evidence of occupation of the Transvaal and Free State Republics from the 1760s under Chief Tau.¹⁰ From Tau's chieftdom four chieftdoms developed, named after his sons - Rratlou-Rolong, Seleka-Rolong, Tshidi-Rolong and Rrapulana-Rolong. These tribes occupied the North-Western Cape and South-Western Transvaal before the Matebele wars. After the defeat of Mzilikazi, the descendants of these tribes came to claim their ancestral land.¹¹

⁷ S.M. Moroka, *Chief Moroka, his life, his time, his country and his people*, p. 51.

⁸ G. van den Bergh, "Potchefstroom se eerste swart woonbuurt: Machaviestat 1839 - 1888", *Contree*, 1993, pp. 14, 15.

⁹ G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): victims of forced removals, 1923 - 1995", *New Contree*, Vol. 40, November 1996, p. 134. The background to the name Matlwang comes from the name of their Chief Matlaba of the Barolong ba-ga Modiboa clan. It was often called Matjave by the whites, which later became Machavie. The place shown and given by Potgieter to the Barolong as a result of the promise made with the Barolong for their support against Mzilikazi, became known as Machavie. Potgieter allowed the Barolong to return to their ancestral land in the Western Transvaal in 1839.

¹⁰ S.M. Moroka, *Chief Moroka, his life, his time, his country and his people*, p. 3.

¹¹ P. Maylam, *A history of the African people of South Africa: From the early Iron Age to the 1970s*, p. 46.

According to the traditional view of the blacks, they perceived their possession of land as being the whole of the former ZAR and the Free State and that they therefore had a right to the land. From the white man's perspective, possession was rightfully obtained after several wars to end tribal conflict and violence. As patrons of the local tribes, the Trekkers saw themselves as the directors of available land.¹² It should be noted that in terms of the Executive Council Resolution Article 138, dated the 9th of August 1875, the area Polfontein was allotted as the place of residence for Matlaba in honour of Potgieter's promise. This farm, number 254, extended over 5 069 morgen, Driefontein No. 88, 4 495 morgen, Uitgeput No. 300, 537 morgen and Rutschraal No. 299, 238 morgen. This indicates that large tracts of land had originally belonged to the Barolong in the Transvaal.¹³

As has been said earlier, grants of land to the Barolong for their assistance to Potgieter against the Matebeles were done on purely verbal promises. The commission which started its work in 1875 to parcel out land and issue titles, complicated the land issue, as it recommended Polfontein for the Barolong away from Machavie/Matlwang. This also indicates that Moshoette was recognised as paramount chief of the Barolong and he had ceded all territorial right northward and southward of the Vaal to the ZAR. Disputes between the Barolong chiefs were a result of this land secession to the Trekkers. Much expropriation of black land took place in the Boer republics during the second half of the 19th century. This led to black people living on land privately owned by whites as rent-paying squatters to be evacuated to the reserves. This will be discussed further in Chapter four.¹⁴

From 1881, the Native Location Commission, later called the South African Native Affairs Commission, demarcated the land and by 1905 titles to tribal land were issued. Boers took part in tribal quarrels for land in the Transvaal and seized land as reward for their intervention. Stellaland and Goshen serve as examples of this kind of acquisition. Native land rights received little respect by the Transvaal whites and most tribes such as the Barolong were forced off their ancestral land.

¹² D.G. Kleyn *et al.*, *The law of property*, 3rd ed., p. 118.

¹³ APTC, Potchefstroom, File: 1180 (T), Report by the Commissioner for Native Affairs, Acquisition and Tenure of land by Natives in the Transvaal, pp. 16, 17.

¹⁴ I. Schapira, *The bantu speaking tribes of South Africa*, p. 347.

The location system was introduced for the first time in 1885. A system of administration for black tribal areas was made legal by Law 4 of 1885, and the tribes lost several of their rights to land.¹⁵

With the system of land administration introduced by 1885, all the land belonged to the ZAR government and thus the farms *Machaviestat*, *Schoonheid*, *Dorpsgronde en Welgevonden*, were handed to Potchefstroom as town lands. It was alleged that the farm *Machaviestad* belonged to T. Kruger before 1855 and to Van der Hoff in 1859 that was bought for 1269 pounds and 4 shillings. The tribal land of Machavie was sold to the Potchefstroom Town Council in 1885, *kragtens Transport akte 964/1873*, dated 11th July 1873. It should be noted that the same land was rented to Quaqa and Andries Salon on the 26th February 1855, in terms of the Pacht Contract.¹⁶

The second Pacht Contract was entered into between the Potchefstroom Town Council and Jan Maleka on 26 February 1885 and rent was stipulated at £ 4/10 shillings per year. It is this second Pacht Contract that sealed the loss of land for the Machavie people, as they had been residents on the farm since 1856.¹⁷

In the letter dated 8th October 1913, the town clerk of Potchefstroom indicated to the Union of South Africa that the Barolong lived on the Mooi River near Potchefstroom pending the delimitation of a location which had been promised to them by Potgieter. This was brought under consideration when the farm Polfontein was allotted to Matlaba as a place of residence, confirmed by the Executive Resolution Article 138, of 9th August 1875. The right of occupation by Matlaba was thus regarded as temporary, because Potgieter had made a verbal agreement with the Barolong. The Barolong lost their occupational right of conquest and started paying rent and tax to the Potchefstroom Town Council. They paid one shilling per head of cattle and one penny per head of sheep.¹⁸

The Barolong ba-ga-Modiboa remained settled at Matlwang when the Government granted them land at Polfontein, thereby recognising the right and control by the National Party. The groups that

¹⁵ I. Schapira, *The bantu speaking tribes of South Africa*, p. 354.

¹⁶ APTC, Potchefstroom, Lêer: 16/6/8, 1180, Potchefstroom Stadsraad, Noodsaaklike dienste en infrastruktuur, 1 Julie 1958, p. 1.

¹⁷ APTC, Potchefstroom, 16/6/8 File 1180, Anexure B, Town lands agreement, 7 July 1958, p. 21.

¹⁸ APTC, Potchefstroom, Correspondence letter, File 1180 (T), The Town Clerk of Potchefstroom to the Union of South Africa, 12th August 1922.

followed Chief Matlaba to Polfontein could not be regarded as residents of Machaviestat. The group under Chief Mokate remained at Matlwang on the basis of reward from Potgieter and by right of conquest.¹⁹

The Barolong negotiated with Chief Montshiwa of Mafikeng to give them sanctuary at Rooigrond in 1970 to settle temporarily after they had refused the Potchefstroom Town Council's offer of land in the Pilanesberg. The geographical setting of Rooigrond is 10 km from Mafikeng in the North-West Province along the Mafikeng - Lichtenburg road.²⁰

The Barolong settled temporarily at Rooigrond while the negotiations to regain their rights to Machavie continued. The Barolong also refused to join their principal tribe under Chief Matlaba of the Barolong tribe settling at Polfontein-Modibe near Lichtenburg in 1872.²¹ By 1971, when the Barolong settled at Rooigrond, there were only 44 families. It should, however, not be mistakenly thought that the tribe consisted of only 44 families. Other Barolong families left the village when the Ikageng location near Potchefstroom was established in 1859. Some others, employed in Klerksdorp and Stilfontein obtained houses there, but they still identified themselves as residents of Machaviestat. With the land restitution measures introduced by the Government of National Unity in 1994, the Barolong were allowed to occupy their ancestral land in April 1995. At the time of relocation, 110 families coming from Rooigrond and Ikageng location resettled at Machaviestat (Matlwang).²²

¹⁹ S.M. Moroka, *Chief Moroka, his life, his time, his country and his people*, pp. 11, 38; G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced removals, 1923 - 1995", *New Contree*, Vol. 34, 1996, p. 134.

²⁰ APTC, Potchefstroom, File 1180 (T) letter, M.3/4/4/1/4, Barolong of Machaviestat/Rooigrond, Deputy Minister of Development and Land Affairs to the Resident Minister Civic Centre Methodist Church, 14 August 1986.

²¹ *The Mail*, 18 January 1985.

²² APTC, Potchefstroom, File 1180 (T), The Rooigrond settlement (Bophuthatswana), The legal background to the dispute, pp. 280, 281.

3.3 *LAND CLAIMS DISTORTED BY GOVERNMENT ACTS, 1902 - 1948*

From an international viewpoint of land occupation, the length of stay in an area justifies occupational right, and this is understood by blacks as ownership. It should be agreed that, because of the number of years the Barolong ba-ga Modiboa had lived at Matlwang, it should be regarded as their ancestral land. The tenure of both whites, Khoi and blacks differ, thus Barolong ba-ga Modiboa did not regard a written title deed as significant, but rather that the duration of occupation and historical bond to the land justified proof of ownership. It should be noted again that the process of black land deprivation in the 19th century contributed to wide-spread population movements. The groups tenure system was more favoured by the State and its policies and worked against individual contracts. It is from this point that the idea of trust tenure and reserves for the black population were first put in place. In the various parts of the country small pieces of land were assigned to African reserves.²³

Land policies long before the Native Land Act of 1913 pushed millions of black South Africans into overcrowded and impoverished reserves. On the other hand, capital-intensive agricultural policies led to the large-scale eviction of farm dwellers from their land and homes to create the homelands as reservoirs of labour for capitalist farmers. Labour tenancy developed alongside the cash rent tenancies and share-cropping, forcing most blacks to rather favour the cheaper tenancy on white-held land.²⁴

Ordinance No. 3 of 1866 did not put any Bantu Administration in place, the reserves were rather ruled through proclamations. Tribal lands were incorporated into the Transvaal by the proclamation of 29 April 1868, and the struggle for land became the history of occupation. The Barolong were impoverished in the struggle to regain their lost ancestral land.²⁵ With the development of time and to avoid continual challenges against the white rule of the reserves, more reforms were introduced to entrench control of the reserves by law. Ordinance No. 6 of 1907, put the Reserves Council in place to govern the blacks, and thereby the Barolong lost their rights to their ancestral land.²⁶ In

²³ M. de Klerk, *A harvest of discontent: The land question in South Africa*, pp. 65-66.

²⁴ African National Congress, *A policy framework, the reconstruction and development programme*, pp. 19, 20.

²⁵ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., p. 336.

²⁶ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., pp. 130 - 144.

1908 the Government passed the 1908 Natives Tax Act, which imposed a £2 levy on rent-paying tenants and in some areas of the Transvaal tenants were removed from white farms by direct Government action. African tenancy has thus been prohibited by law since 1908. Many Africans became victims and lost access to land as commercial farming was supported by Government legislation to assist white owners.²⁷

Given the historical background to the South African history of settlement, it is therefore in order to look at some of the land acts from 1913 and their effect on the Barolong tribe. Economic factors such as paying rent for the occupation of land and taxes for grazing left many tribes in big debt. Some tribes paid their debts with parts of their land. The Barolong ba-ga Modiboa, who settled at Machavie/Matlwang, fell victim to the same process of land dispossession by various Land Acts. Chief Matlaba of the Barolong ba-ga Modiboa, having been granted permission by the Boers to settle in Matlwang/Machaviestat in 1839, became a subject of the Boers. In 1847 Matlaba and his tribe were ordered by S.T. Schoeman to leave, disregarding the agreement of Potgieter and the Barolong. After settling in various places, for example Hartbeesfontein and Taung for seven years, he was allowed to return to Potchefstroom by President Pretorius in 1853. It was only in 1875 when he demanded more land for his people, that Polfontein in the district of Lichtenburg was granted to Matlaba. The small clan of Modiboa remained at Matlwang/Machaviestat, because they regarded the land as ancestral land.²⁸

In the same year, 1875, as indicated in a letter dated 17th December 1875 addressed to T.F. Burgers, the ZAR President, written by governor Sche Gouws, a friend of the Barolong chief, requested the Government to allocate him a piece of land from the land belonging to the Machavie people in exchange for ten horses. He, as a trader, wanted grazing for his horses as they were a popular means of transport in the flourishing business in Potchefstroom.²⁹ This indicates that the Barolong were not regarded as the rightful owners, since Polfontein was regarded as their promised land by Potgieter. The land of Machaviestat belonged to the Potchefstroom Town Council and was

²⁷ P. Maylam, *A history of the African people of South Africa: From the early Iron Age to the 1970s*, pp. 141, 142.

²⁸ State Library, Pretoria, File 384, Transvaal Native Affairs Department, Print No. 24, *A Short History of the Native Tribes of the Transvaal*, pp. 8 - 9.

²⁹ National Archives, (NA), Pretoria, Potchefstroom Town Council, File 384, letter dated, 17 December 1875.

rented to the *Native* Barolong for £2 per family, until 1908 when it was declared a location and all past agreements were cancelled. It was on the 30th June 1923 that all residents of Machavie village were offered stands in the Potchefstroom locations, but the Commissioner for native affairs suspended the removal until later.³⁰

It is necessary at this point to look at the South African development of laws that empowered and legalised the relationships of the various populations groups. These laws refuted all past verbal agreements and established a statutory basis for land distribution in South Africa. It should, however, be remembered that the Barolong ba-ga Modiboa were already declared illegals on the town lands of Machaviestat in terms of Ordinance No. 6 of 1907, which put the Reserve Council in place to govern the blacks.³¹

The incorporation of tribal land into the South African land entailed that the blacks, in this case the Barolong, had to pay tax and could be called up for military service. This process separated the black peoples from their ancestral land. By 1895 there were already about 37 reserves and 1,4 million morgen of unmeasured land for the creation of locations or reserves for black people. This land set aside had to be legislated and this was put into effect by ordinances, laws and proclamations from 1913 to 1936.³² Land, set aside for occupation by Africans, was held in trust by the State and administered by the South African Native Trustland.³³

During the period 1936 to 1948, prior to the Nationalist Apartheid Government, the reserves were overpopulated and the State could not make more land available. The Barolong ba-ga-Modiboa was given the option of settling in the location of Potchefstroom or joining the Barolong of Polfontein. The presence of the Barolong on the town lands of Potchefstroom was regarded as burdensome (*las geword*). There were several reasons given, firstly that Machaviestat was a health hazard: *Daar bestaan geen gesondheidsdienste te Machaviestat nie en voorsiening is teen hoë koste, Die naturelle is op 'n lae peil van algemene lewe, Machaviestat is nie 'n arbeidsbron sover Potchefstroom aangaan nie, volgens die kontrak wat gedurende 1906 aangegaan is het die*

³⁰ APTC, Potchefstroom, Minutes, File 461, 9th August 1907, Minutes of the 99th Ordinary Meeting, 9 August 1907.

³¹ C.J. Maritz, *Voortbestaan en nasievorming by Batswana van R.S.A.*, p. 334.

³² C.J. Maritz, *Voortbestaan en nasievorming by Batswana van R.S.A.*, p. 378.

³³ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. 71 - 90.

*Departement van Verdediging die reg om die Potchefstroom Dorpsgronde as oefenterrein te gebruik.*³⁴

Further reforms were made between 1948 and 1950 to eliminate black land ownership in white farming areas and to get rid of African squatting and labour tenancy on white farms. The revision of the 1936 Land Act made anti-squatting provision enforceable. The Barolong ba-ga Modiboa as squatters on the town lands of Potchefstroom were to be removed. The Government introduced the Prevention of Illegal Squatting Act of 1951, affecting a number of villages regarded as settled on black spots. This law compelled Africans to move off public or privately owned land and authorised the creation of resettlement locations or camps.³⁵

All other legislation following after 1951 ensured that Africans would remain subordinate and landless. The Native Building Workers' Act of 1951 and Native Services Levy Act of 1952 took care of location housing policies, attracting blacks to settle in reserved locations and work in urban areas. The Barolong were encouraged to settle in the Ikageng location of Potchefstroom, as they were regarded as subjects of the Potchefstroom Town Council. Major amendments to the above acts and consolidations made it the most complex piece of legislation, legalising the removal of people from one place to another.³⁶ This historical process divorced small-scale producers such as the Barolong of Machavie from their land and contributed to the first stages of compulsory relocation.³⁷

There were several reasons advanced to support the motive to remove Machaviestat. The white inhabitants who were to be removed from the area needed by the military authorities, proposed the extension to be towards the western side. They accordingly supported the removal of Machaviestat because by then there would only be 140 households scattered over a wide area of 15 square miles and they kept 1,200 cattle, 1,370 small livestock. Because each family cultivated approximately 30 - 40 morgen, the production was low and this was viewed as a misuse of the town lands by white inhabitants. The people of Machaviestat were occupying the most fertile town lands and therefore

³⁴ APTC, Potchefstroom, File 1180 (T), Report, (anon.), "Verwydering van Naturelle vanaf Machaviestad, Adjunk Stadsklerk", ADM, pp. 3 - 4.

³⁵ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., p. 373.

³⁶ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., pp. 547, 548.

³⁷ C. Murray and C. O'Reagan, *No place to rest: Forced removals and the law in South Africa*, p. 16.

all whites supported the removal of Machavie. The farms Hesse No. 80 and Nooitverwacht No. 721 were subsequently transferred to the Potchefstroom Town Council in 1905 in exchange for a farm Mooibank by the State. This transfer of land by the state made the Barolong ba-ga Modiboa subjects of the Potchefstroom Town Council.³⁸

The last reason was the possibility of the discovery of gold as it was already discovered on the boundary area of the town lands.³⁹ When the Potchefstroom Town Council declared Machavie a squatter camp or location in 1950, the Government proclamations were already in place. Prof. G. van den Bergh in his journal *Contree, Journal for South African urban and regional history*, gave a clear indication that though no official title deed existed for the occupation of Machavie by the Barolong ba-ga Modiboa, they owned the land as a result of the promise made by Potgieter. The Barolong ba-ga Modiboa had the right of occupation in terms of the period they resided on the land of Machavie/Matlwang. The Barolong had been inhabitants of the area now regarded and proclaimed as town lands for more than 100 years before they were removed to Roosgrond in 1971.⁴⁰

3.4 (FORCED) REMOVALS AND LAND RIGHTS

Large numbers of Africans were moved from land they occupied and isolated farms, as well as from some extensive tracts of land now owned by the State. These lands could not be released for black ownership and these freehold areas were thus identified as *black spots*. The expression black spot is used to describe land and land owned by the church or a mission station leased to individual Africans, in both cases land falling within what the Government had defined as the white area.⁴¹ According to further definitions, all African freehold land acquired before the 1913 Land Act were to be referred to as black spots, and therefore included the Machavie tribal land near Potchefstroom,

³⁸ APTC, Potchefstroom, 16/6/8 File 1180 (T) Ref. 3/3/2/8, C.J.F. Du Plessis / L. De Waal, Barolong en Stadsraad van Potchefstroom, 1992.10.07.

³⁹ APTC, Potchefstroom Report, 1 Julie 1958, Departement van die Stadsklerk/Tesourier, bylaag D, pp. 6 - 10.

⁴⁰ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. X1, 10.

⁴¹ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 45.

Mogopa and Motlatla near Ventersdorp in the Western Transvaal, Putfontein and Rooitjantjiesfontein, near Lichtenburg. The main idea was to consolidate the homeland areas.⁴²

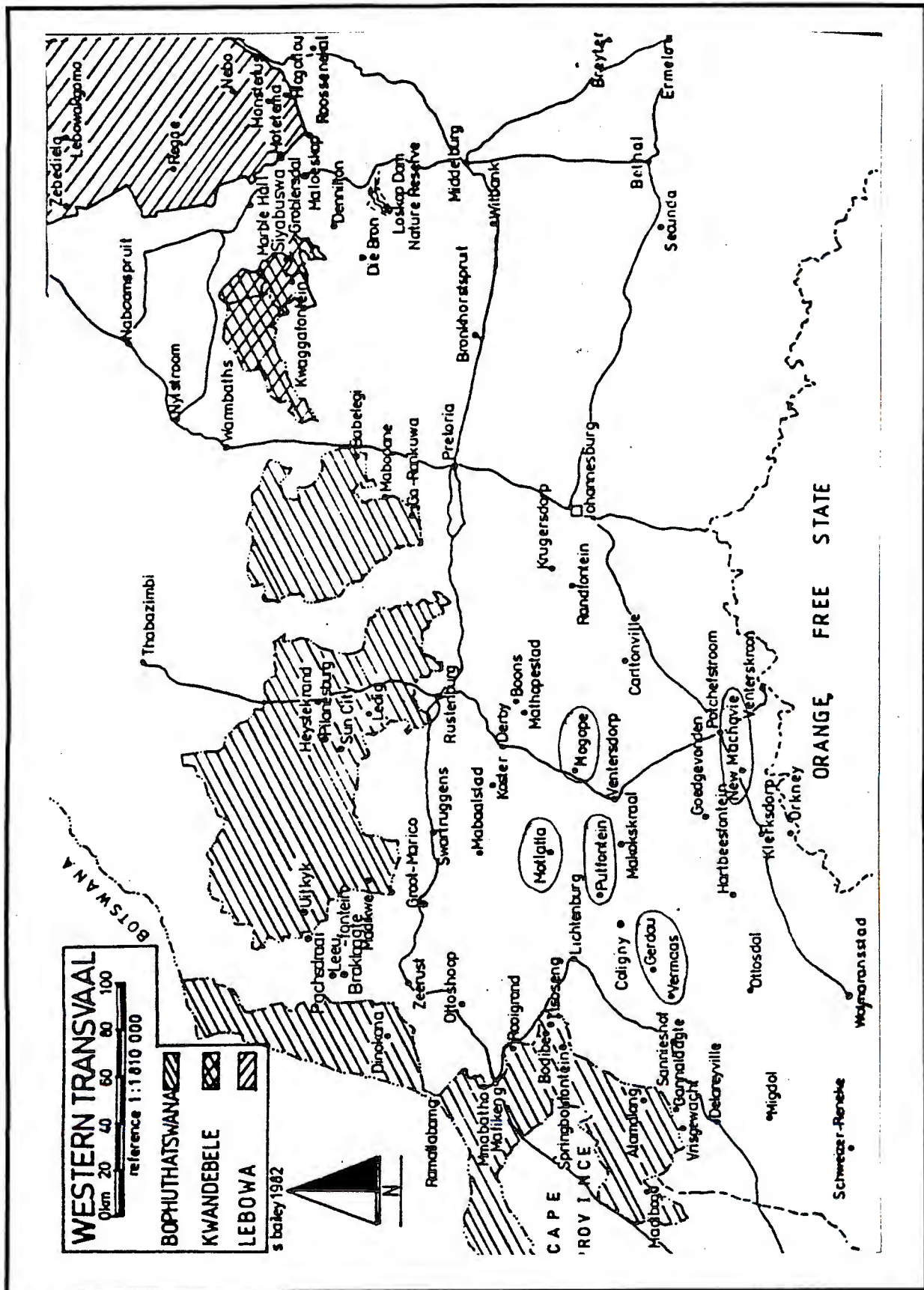
The removal process, with the development of time, has been loosely described in the terms *black spots* and *squatters*, regardless of the actual legal understanding, and has included even the non-freehold land and even State land on which Africans had lived for years, such as the Machavie people. Machaviestat was not classified as a black spot but as a town lands belonging to the Potchefstroom Town Council controlled in terms of the Group Areas Act of 1958. The blacks living on state land were often classified as illegal squatters and were removed when the land was needed for something else.⁴³ The clearance of black spots or squatters meant the suspension of property rights vested in Africans' land. Thereby the Barolong lost their land rights.

Chapter four will look at the rights and powers owned by the Town Council of Potchefstroom regarding the town lands and its inhabitants. Measures used by the Town Council to control its land and use it to the best interest of its inhabitants as well as measures applied to remove the Barolong ba-ga Modiboa from the town lands will be discussed. Further contracts entered into with the Town Council to avoid eviction to Polfontein or Ikageng location will be closely looked into. Land rights will be compared to justify the ownership of the land of Machaviestat by the Barolong ba-ga Modiboa. A further attempt will be made to discuss the powers of the Government to expropriate land belonging to the Barolong ba-ga Modiboa in terms of the Expropriation Act, 63 of 1975, and the basis of determining compensation, as expropriation per definition means, depriving the Barolong of land ownership.⁴⁴

⁴² L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 49.

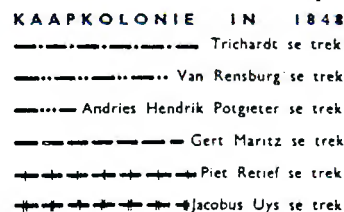
⁴³ W.L. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, pp. 83 - 85.

⁴⁴ D.G. Kleyn *et al.*, *The law of property*, p. 316.



Map 4: Blackspot affected by removals in the Western Transvaal.

Source: L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 49.



Die Groot Trek (1835-1848) Settle on the Barolong area Map 5

CHAPTER FOUR

THE PROCESS OF INTERACTION BETWEEN THE BAROLONG ba-ga MODIBOA AND THE POTCHEFSTROOM TOWN COUNCIL CONCERNING LAND RIGHTS

4.1 INTRODUCTION

Chapter three presented a historical background of the Barolong ba-ga Modiboa and their claim to land. The history of settlement in the interior and the negotiations for the land by especially the Trekkers and the Barolong resulted in interaction that continued for years. Chapter four will concentrate on the process of interaction between the Barolong ba-ga Modiboa and the Potchefstroom Town Council since 1948. The legal implications of land rights and possession will be brought to light by comparing the right to land as viewed by these two different groups, that represented different cultures up to 1994.

The year 1971 represented the peak of forced removals and land consolidation and the creation of the Bantustans in South Africa. The Barolong ba-ga Modiboa, after a long struggle for the recognition of their occupational right of Machaviestat (Matlwang), landed in the foreign barren land of Rooigrond. Their settlement at Rooigrond intensified the process of interaction between the Barolong and the Potchefstroom Town Council until 1994. Their settlement at Rooigrond since 1971 had been a temporary settlement agreement granted by Chief Montshiwa of the Barolong bo-ra Tshidi while interaction with the Potchefstroom Town Council and the Government continued.¹

¹ APTC, Potchefstroom, File 1180, T 8/7/2/2 P 50/1, Deputy Minister: Development and Land Affairs, Ministerial enquiry M3/4/4/1/4 dated 8 March 1985, Deputy Director-general Reference 87/85 (0) Barolong of Machaviestat/Rooigrond.

4.2 *THE BASIS OF THE LAND DISPUTE AND INTERACTION BETWEEN THE BAROLONG AND THE POTCHEFSTROOM TOWN COUNCIL DURING THE 1950s*

The basis of the dispute over land arose from the Native Land Act of 1913, as indicated earlier. It is in this context that the land formerly occupied by the Barolong ba-ga Modiboa next to Potchefstroom was proclaimed as belonging to the Potchefstroom Town Council. Long before the Pacht Contract of 1895 the process of interaction between the Barolong and the Town Council was already under way. This contract was entered into because the Machavie land was sold to the Town Council in 1855. The agreement reached to rent the town lands to the Barolong laid the basis of interaction with the hope of regaining their occupational right.²

The Barolong ba-ga Modiboa entered into the rent agreement with the Potchefstroom Town Council because they regarded Machavie as their ancestral land given to them by the Trekkers as being the land where they had lived before the Ndebele/Matebele started the Mfecane in 1833. (See Chapter three, 3.2). In the traditional way of life, the Pacht Contract mentioned above was regarded as a purchase contract by the Barolong and they saw the ancestral land where they wanted to stay as officially belonging to them. With the monthly rent payments to the Potchefstroom Town Council many of the Barolong were naturally forced to enter into the westernised economic pattern of the cash labour market. The Barolong, having committed themselves to paying rent for their occupation of Machavie, had to take up employment in the towns of Potchefstroom, Klerksdorp and Stilfontein.

Machaviestat was then administered as a location according to the western pattern of administration. Those who were not ploughing, worked for the Potchefstroom Municipality and preferred to settle in the Ikageng black township of Potchefstroom. This marked the removal of the first group of the Barolong from their land in terms of the Group Areas Act, 41 of 1950.³

The negotiations of the Barolong ba-ga Modiboa regarding land with the Potchefstroom Town Council between 1950 - 1971, was a result of the separate development and segregation policy which forced the local government to live up to the policy flaws of the new government. Due to persistent pressure by the Town Council of Potchefstroom, supported by the National Party Government, a few of the Barolong were accommodated in the Ikageng location. In 1967 there

² APTC, Potchefstroom, File 1180, 16/6/8, "Noodsaaklike dienste en infrastruktuur", pp. 1-5.

³ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 99.

were already about 27 families in Ikageng and the Town Council hoped that the rest of the people would follow.⁴ For a time the Town Council relaxed the pressure, however no more voluntary moves occurred.

On a national scale the grouping of chiefdoms and tribes to consolidate land to the Bantustans engaged widespread removals of black tribes. The Barolong were also engaged in an interactive struggle to resist removal and to have occupational rights to the land of Machavie. The process of moving blacks from one area to another was further legalised by the Bantu Authorities Act, 68 of 1951, which provided for the establishment of tribal regional authorities in the reserves. The Promotion of Bantu Self-government Act, 46 of 1959 was passed and extended ethnic segregation to a national scale and intensified the interaction of the Potchefstroom Town Council with the Barolong ba-ga Modiboa.⁵

In the light of the above background of national developments, the issue of the Barolong ba-ga Modiboa came under spotlight of the Potchefstroom Town Council. By 1906, the Town Council had already started a process to have the Barolong ba-ga Modiboa removed from the land now belonging to Potchefstroom. At that time, various reasons were advanced to make the South African Government aware of the intentions to finally remove the Barolong. The first reason was that already in 1875, as promised by Hendrik Potgieter, Polfontein was granted to the Barolong (see Chapter three 3.2.2.). The second reason was that the Potchefstroom Town Council had already entered into a contract with the Department of Defence in 1906 to grant them the right to manoeuvre on the Potchefstroom town commonage and to conduct artillery and shooting practice there.⁶ This contract was signed without consulting the Barolong, because Matlaba, the principal chief, had already settled at Polfontein with the greater portion of the Barolong tribe. The agreements and interaction was mainly between the Department of Native Affairs, the Potchefstroom Magistrate, Town Council and the National Government because the Barolong case had concluded that they were illegals on the town lands.

⁴ For a more detailed discussion see G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced removals, 1923 - 1995", *New Contree*, Vol. 34, 1993, p. 137.

⁵ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 113.

⁶ APTC, Potchefstroom, File 1180 (T), 16/6/8, Ref. 3/3/2/8, Correspondence to Mr Lukas de Waal from Town Clerk, Annexure, D, dated 7 October 1992.

The removal of Machaviestat by the Minister of Bantu Administration was finally agreed to by means of proclamation that the farms Hessie and Nooitverwacht had been sold to the Ministry of Defence. This was intended to end the Barolongs' struggle to own Machavie and legalise their removal. The Ministry of Defence further committed itself to provide transport for the removal of the Barolong, while the Ministry of Native Affairs would pay compensation for removal and not for the land.⁷

In a letter addressed to the Ministry of Native Affairs, Pretoria, dated 22nd January 1925, the Town Council indicated that it had long notified the Barolong to leave the town lands of Potchefstroom. This removal would be taking place after the Barolong had been tenants for an unbroken period of good relationship with the whites of Potchefstroom, since the overthrow of Mzilikazi 1837 till 1925. Several letters dating from 1905 to 1923 refer to contracts entered into with the Barolong to reside in Machavie.⁸

The period 1948 to 1959 involved the Ministry of Defence pressing for the removal of Machaviestat as negotiations with the Barolong had been finalised. The Ministry of Defence based its argument on the agreement of 1906. On the other hand, the Ministry of Native Affairs approached the Ministry of Defence to purchase the farm Hessie and Nooitverwacht, which would also mean including the Machavie farms.⁹ During this period those Barolong who were working for the Municipality *kragtens artikel 2(1) van Wet No. 25 van 1945* were located in the former Potchefstroom location (today known as Ikageng).¹⁰

The negotiation process between the Barolong and the Potchefstroom Town Council between 1960 - 1971 was just a continuation of the 1925 agreements with the Ministry of Defence. More people were to be settled within the borders of the homelands and all areas identified as black spots were to

⁷ APTC, Potchefstroom, File 461, letter, Departement van die Stadskerk, Tesourier, - Raadslid H.H. Holtzhausen, L.P.R., 29 Julie 1958.

⁸ National Archive, Pretoria, File 384, Letter Department of Native Affairs, (DNA) Ref. 75/313, E.R. Harthorne Esq, Natives at Machaviestat, 22 January 1925.

⁹ APTC, Potchefstroom, 6/6/8, File 461: letter Bevelvoerder 11 Pantserbrigadegroep en Troepkommandant - Stadsklerk Potchefstroom, 27 October 1948.

¹⁰ APTC, Potchefstroom, Leër 416, brief, Groothoofkwartier Pretoria - Die Hoofnaturellekommissaris, Potchefstroom, 16 July 1952.

be removed. Homelands were regarded a reservoirs of labour for the developing industrial and manufacturing sectors of the 1960s.¹¹

The Ministry of Defence intensified its demand for more land for military training, and viewing this in an economic light, the Defence Department would pay the Town Council more than they received from the Barolong tribe.¹² Matters took another turn in favour of the Department of Defence as it was said that between 1959 and 1961 the Barolong refused to pay their rent. This refusal to pay rent was because they regarded the land as paid off by their rental from 1885 to 1960s. The Town Council arrested the Barolong and all men were regarded as squatters and consequently prosecuted in the Potchefstroom Magistrate's Court. Their conviction was set aside by the Transvaal Division of the Supreme Court and the Appeal Court.¹³ The National Government insisted on removing the Barolong to Ikageng, which resulted in an interdict against Israel Mokate and his people not to plough the land in 1969. Many blacks who worked for the Potchefstroom Municipality were threatened with dismissal if they did not move and settle in the Ikageng location. As illegal squatters at Machavie, their cattle were impounded and they had to pay the fee of R3,00 per sheep and R15,00 per cattle, donkey and horse for their release (see example on page 48).¹⁴

¹¹ L. Platzky and C. Walker, **The surplus people: Forced removals in South Africa**, p. 117.

¹² APTC, Potchefstroom, File 461, Memorandum van die stadsraad van Potchefstroom insake Naturelle te Machaviestat Potchefstroom – Nie-blanke Sake Komitee.

¹³ G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestad (Matlwang): Victims of forced removals, 1923 - 1995", **New Contree**, Vol. 40, November 1996, pp. 136, 137.

¹⁴ I.S. Serwalo, personal interview, Matlwang, 1 June 1996, receipt number 1262 Municipal Pound, dated 18/1/71, in this instance Serwalo is again written in Sotho as Servalo for the same person. See also G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced removals, 1923 - 1995," **New Contree**, Vol. 40, November 1996, p. 137.

MUNICIPAL COUNCIL OF POTCHEFSTROOM
STADSRAAD VAN POTCHEFSTROOM

No 1262

MUNICIPAL POUND—MUNISIPALE SKUT

RECEIVED from
ONTVANG van Ismael Serwalo 18/1/71 196

the sum of
die som van Negende Rand Cents
Rand 25 Sent

being amount due for Pound Fees, etc., on
synde bedrag verskuldig vir Fooie, ens. op 11/2/71

impounded by
geskut deur [Signature] on 13/1/71 196

Driving Fees—Vervoerfooie R. 5-50

Pound Fees—Skutfooie R. 34-10

Maintenance Fees
Onderhoudsfooie R. —

Damages—Skade R. —

Advertising Charges
Advertensiekoste R. —

Total/Totaal R 39-60

Poundmaster—Skutmeester.
No receipt valid except on Official Form.
Geen kwitansie geldig nie dan slegs op die Offisiële Vorm.

ENSLINE 9930

This municipal pound receipt is proof of payments for the release of livestock impounded by the municipality in an attempt to force the Barolong to resettle in the homeland.

Source: Original with Ismael Serwalo.

4.3 AN INTENSIFIED PROCESS TO REMOVE THE BAROLONG FROM THE TOWN LANDS

The Government, realising that the Barolong were not prepared to accept any alternative nor to leave their ancestral land, intensified the pressure to remove the Barolong ba-ga Modiboa from Matlwang. Negotiations continued and the Machavie people were offered the farm Leeufontein in the Pilanesberg area and a pittance amount of £1 200 as compensation. The tribe, having seen the farm Leeufontein, refused to accept it as alternative to their ancestral land. Those who were employed by the municipality suffered further dismissals for refusing to settle in the township of Ikageng. Their cattle were impounded on a regular basis as they were grazing illegally on the town lands. While the majority opted to settle in the Ikageng location, a group under Israel Mokate as chief negotiated with Chief Montshiwa of the Barolong bo-ra Tshidi for a temporary settlement at Rooigrond. The Barolong ba-ga Modiboa settled at Rooigrond in 1971 and pursued the struggle to regain their ancestral land.¹⁵

The negotiations between the Potchefstroom Town Council and the representatives of the Barolong ba-ga Modiboa reached some temporary agreements. On many occasions the Barolong were not satisfied with the forced agreements made with their lawyers. The lawyers Epstein and Dlamini representing the tribe did not agree on what had already been discussed with the Barolong and the Town Council. The issue was that the *ex gratia* compensation amount £1 200 was inadequate, and was not payment for the land but a subsistence allowance during the removal process.¹⁶

¹⁵ The Potchefstroom Town Council with the assistance of the Department of Defence provided transport, and the police were deployed to keep a watchful eye. Each family received R18,50 as compensation after settling at Rooigrond. After the removal, homes, church buildings and schools were demolished by bulldozers. APTC, Potchefstroom, 16/6/6 File 1180, The Rooigrond Settlement (Bophuthatswana), Legal background to the land dispute, pp. 275-277.

¹⁶ *Vrye Weekblad*, "Ons was voor die wittes hier", 16 September, 1993; *Sowetan*, "Happy to be home", 3 May 1995; *The Star*, "Tribe reclaims ancestral land", 3 January 1991; *The Citizen*, "Tribe told it cannot settle on Potchefstroom land", 8 January 1991.

4.4 *AN ALTERNATIVE LAND OFFER FOR THE BAROLONG*

During the process to remove the Barolong from Machavie, it was stated that they could rejoin the Matlaba people at De Hoop near Lichtenburg, as per letter dated 13.02.1968. The Barolong were offered an amount of R2 400,00 as compensation, which they flatly refused with the aid of the law firm Messrs Minty, Nanbhy and Partners and demanded R32 000,00. The Town Council refused to pay the amount demanded and the further impounding of livestock was stepped up and those working for the Potchefstroom Municipality were threatened with dismissal.¹⁷

The disagreement which existed between the Potchefstroom Town Council and the Barolong had implications, because the Town Council was obliged to fulfil the agreement made with the Department of Defence in 1906. The removal of the Barolong was in compliance with that agreement. Plans were at an advanced stage so that the Department of Defence committed itself to offer free transportation for those who agreed to be resettled in the location. The approval of the establishment of a location near Potchefstroom by the Cabinet, in terms of Article 2(1) Act, 25 of 1945, was in pursuance with the agreement with the Defence Department.¹⁸

Another issue which intensified the negotiation for the removal of the people of Machavie was the fact that since July 1959 the Barolong had refused to pay their annual rent. The argument behind their refusal was that they had entered into a hire-purchase contract with the Town Council in terms of the Pacht Contract of 1885. The outstanding rental was calculated at R9 600,00 and the Barolong ba-ga Modiboa tribe was not prepared to pay. They employed the aid of several lawyers to stop the removal, but all these attempts were in vain.¹⁹

The Barolong ba-ga Modiboa reached a compromise amongst themselves and negotiated for a temporary settlement at Rooigrond in 1971 with Chief Montshiwa, while negotiations and interaction with the Potchefstroom Town Council continued. The settlement at Rooigrond should

¹⁷ G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced removals, 1923 - 1995, *New Contree*, Vol. 40, pp. 137, 138.

¹⁸ State Archive, Pretoria, File 1180, The Town Council Potchefstroom, Minutes, Item 74, Removal of Machaviestat, 28 February 1963, pp. 141, 142.

¹⁹ APTC, Potchefstroom, 16/6/8 File 1180 (T), (onderhoud): "Barolong met Stadsraad van Potchefstroom. 'n Kort opsomming van die historiese verloop met betrekking tot Machaviestat", bylae A-G, lêer 1806, 7 November 1992.

not be understood as acknowledgement by the tribe that they were illegals at Matlwang, but as avoidance of further financial losses for hiring lawyers and paying for the impounded livestock, while the fight with words continued for them to have their land rights recognised.²⁰

4.5 *THE BAROLONG ba-ga MODIBOA AND TEMPORARY RESETTLEMENT AT ROOIGROND*

The temporary spontaneous resettlement process of the Barolong ba-ga Modiboa at Rooigrond is sometimes also called forced removals. Per definition forced removals are achieved by forcing people to move from one place of residence to another without asking their opinion on approval on the matters. According to Unterhalter, forced removals can be regarded as a process of compulsory control, division and the segregation of people.²¹ Although the Barolong resettled at Rooigrond, they were not removed by anybody but were forced to make a decision to resettle themselves.

With the implementation of this process of forced removals, the Government gradually saw the realisation of the Native Trust and Land Act, 18 of 1936 and other acts. The Barolong were like peasants in the Bantustans and had to join a pool of labour for the mines and industries, and even white farmers.²² The Bantu Authority Act of 1951 made the situation attractive for tribal chiefs because they were promised additional land and a monthly salary. The salaried chiefs collaborated with the Government and in most instances agreed to the removal of their tribes without consultation with the tribe. Tribes that were removed prior to 1971 did not receive any proof of ownership of their new areas, as they were still held under the Trust Land Acts.²³

²⁰ APTC, Potchefstroom, File 461, "memo" The legal background to the dispute, The Rooigrond settlement (Bophuthatswana), p. 277.

²¹ E. Unterhalter, *Forced removals: The division, segregation and control of the people of South Africa*, p. 1; G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced removals, 1923 - 1995", *New Contree*, Vol. 40, pp. 137, 138.

²² E. Unterhalter, *Forced removals: The division, segregation and control of the people of South Africa*, pp. 12, 13.

²³ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. 281, 285, 301; M. de Klerk, *A harvest of discontent: The land question in South Africa*, pp. 24, 34.

The Government of South Africa envisaged the realisation of Bantu self-governing states and land consolidation had to be made by rejoining some black spots with homelands with which they associate. Prior to the voluntary trekking of the Barolong ba-ga Modiboa to Rooigrond, they were offered the farm Leeufontein near Pilanesberg. This offer was to consolidate land for the Bophuthatswana homeland and *to remove Machavie from the white South Africa* [sic translated]. The Department of Native Affairs made relative good offers to induce the removal of the people of Machaviestat. They were promised free transport for their households and livestock, temporary tin houses for the first six months, tents for their household goods, pit toilets, water reservoirs, demarcation of the land by the department, and an amount of R19,50 payable to each family removed. These offers could not convince the Barolong ba-ga Modiboa to leave their ancestral land.²⁴

The Barolong ba-ga Modiboa under Chief Mokate, after refusing all offers but realising that they would be subject to continual arrest for trespassing and the impounding of their livestock, temporarily settled at Rooigrond. The Government, hoping that they would finally agree to be incorporated into Bophuthatswana, offered them free transport to Rooigrond and an *ex gratia* grant of R20,00 to each family as a gesture of goodwill.

The Barolong continued the struggle to have their right to Machavie recognised while staying at Rooigrond. Interaction with the Potchefstroom Town Council and the Government was intensified after 1971. They employed several lawyers to have their land rights recognised. Occupational right was based on the length of occupation of a particular area and the continued productive use of the land.²⁵ Historical claims to land can also be based on common law principles, on custom and tribal court decision rather than on laws made by Parliament. As referred to earlier, the Barolong, having stayed at Machavie since 1837, by common law had the right to land.²⁶ Although occupation is not ownership, it lays the basis for the right to land and the claim for occupational rights is further supported by the extensive amounts they used to hire lawyers to regain their ancestral land. For period of their struggle for land, the service of the following lawyers were used: Julius Rudolph & Kie/Co of Klerksdorp, Silver of Johannesburg, Upstain of Johannesburg, Dlamini of Johannesburg,

²⁴ National Archive, Pretoria, File 168, Management Committee Meeting, Item 168, "Verskuiwing van Machaviestat", 29.04.1971, pp. 372, 373.

²⁵ A. Bernstein (red), *Rural-land reforms: Urban Foundation*, p. 4.

²⁶ T.R.H. Davenport, *South Africa: A modern history*, 4th ed., pp. 547, 548.

Rammusi and Nxobo of Durban, who handled their cases until they found themselves at Rooigrond. This is evidenced by receipts of family contributions by J. Serwalo, receipt number B. 1850, dated 14.2.67 to the amount of R10,00 (see example on page 48).²⁷

4.6 THE IMPACT OF RESETTLEMENT IN GENERAL

The impact of forced removals in general should be viewed with the implications of the law in mind. It was not a single incident but numerous incidents which affected the Barolong. Forced removals were introduced to maintain political and economic power in the hands of the white minority and to further perpetuate the dependence of the majority on the labour market. The severest impact of the removals were those of social and economic nature. The economic effect stems from the law in terms of the Native Administration Act, 38 of 1927. *The Act empowered the Governor-General to define boundaries of the area of any tribe or of any location and may after such boundaries as he may deem fit for purposes of the proper government of black people. Thus section 15(1) (b) authorised the President in the general public interest to order that any tribe, portion of a tribe, black community or black person shall withdraw from any place to any other place or to any district or province within the Republic. Such a tribe or person may not at any time thereafter or during a period specified in the order, return to the place from which the withdrawal is to be made or go to any other place except with the written permission of the Secretary for Plural Relation and Development.*²⁸

Once the tribe had been identified for removal by the State, all possible ways were employed irrespective of the losses incurred by the tribe. In the light of the above law, the effects of removals may not appear to have been detrimental to the removed tribes viewed over the short-term. Over the long-term, the removals did untold damage to the tribe removed between 1960 - 1983 involving 3,5 million people.²⁹

²⁷ Interview, M.A. Legae / Ishmael Serwalo (Machaviestat), 1 June 1996.

²⁸ W.L. Seriti, *Legislation affecting the removal of black people from certain areas from the perspective of ownership and occupation of land by black people in South Africa*, pp. 66, 67.

²⁹ C. Murrey and C. O'Reagan, *No place to rest: Forced removals and the law in South Africa*, pp. 8 - 14.

4.6.1 The impact of the temporary resettlement on the Barolong ba-ga Modiboa

The impact of forced resettlement and the extent to which the resettlement upset the social and economic stability of the tribe, were very important, particularly for the Machavie people at Rooigrond.³⁰ The removal of the Barolong from Machavie divided the tribe, as some were offered houses in the location of Ikageng in 1955. This reduced the common allegiance to the ancestral land by the tribe. The principle of divide-and-rule broke the cohesion of the tribe to fight for occupational right. From 1955 only about 67 families remained to face the Town Council, and therefore they could easily be managed by the Government. Loyalty to the land and their chief was weakened in a new settlement. The system of land demarcation was controlled by the Government, they limited livestock and settled them closer together to make land available for grazing and cultivation.³¹

4.6.1.1 The economic and social effect of resettlement

Compensation for the resettlement was not always made by considering the economic situation of the people. The Barolong ba-ga Modiboa, when they resettled, were offered a one-time offer of R19,50 per family. This amount could not provide subsistence for one person for a day.³² The Barolong ba-ga Modiboa, with some autonomy in the administration of their daily lives, found themselves subject to the arbitrary authority of the Bophuthatswana Self-governing State, and lived under heavy oppressive rule. They could not hold meetings to reorganise themselves to further pursue their land rights. At Rooigrond the worn-out tents offered no shelter to their goods in times

³⁰ E. Unterhalter, **Forced removals: The division, segregation and control of the people of South Africa**, pp. 112-113.

³¹ E. Unterhalter, **Forced removals: The division, segregation and control of the people of South Africa**, p. 114.

³² APTC, Potchefstroom, 16/6/8, File 1180, Management Committee Meeting, 19 April 1971, Item 168, pp. 372, 373. The amount offered vary from one report to the other but never exceeded R20,00. Verbal evidence Dudu Modise, former S.A.C.C. fieldworker and T. Mosala, South African Council of Churches.

of summer rains. The iron shacks were no shelter against the rain and cold winters and the impoverished community could not build alternative houses on the place of temporary settlement.³³

The people of Mogapa at Pachdraai suffered the same fate as the Barolong with metal huts or shacks that became blazing hot in the summer sun and ice cold during the winter. Rooigrond was not regarded as home, especially by the old people who were further made to travel to Potchefstroom to collect their pension pay-outs, which had already been outstanding for months. They could not have their pension transferred to Bophuthatswana, unless they accepted the homeland's citizenship. Fear of losing their rights to Machavie prolonged the suffering at Rooigrond.

The job seekers could not find jobs in Bophuthatswana as they were registered according to their references in Potchefstroom, at present $\pm$ 170 km away. Forced removals created new cases of poverty and hardship for the people of Machaviestat. They lost most of their cattle while fighting the Potchefstroom Town Council, and lost what remained due to drought at Rooigrond. There was no economic supplement for the small community in temporary residence at Rooigrond. For a period of more than twenty years at Rooigrond, there were no basic facilities provided for the tribe. There were no roads, basic transport in the form of buses or taxis, no fuel, shops, schools, clinics, a church or a police station to serve the people at Rooigrond. They were literally disowned by the South African Government and they refused incorporation into Bophuthatswana.³⁴

The Barolong tribe has existed in four separate groups since 1971: the Rooigrond group on Montshiwa's land in Bophuthatswana, who suffered the most, the Ikageng location group in Potchefstroom, a small group in Stilfontein, and another in Klerksdorp. This division caused untold moral degeneration and weakened their efforts to return to Machavie. The group at Rooigrond was under constant threat of further removal because they refused to be part of the Bophuthatswana homeland government.

³³ E. Unterhalter, **Forced removals: The devision, segregation and control of the people in South Africa**, p. 113.

³⁴ APTC, C6/2/1/2/22, Potchefstroom, File 1180 (T) Bell, Dewar and Hall, Attorneys, Notaries and Conveyancers, Advisory Commission on Land Allocation, Submission: Machaviestat, Portion 97 of the Town Lands of Potchefstroom, p. 6.

4.6.1.2 Psychological impact of resettlement

The removals had a psychological impact on the Barolong, as indicated by the speech made by Chief Makodi at a meeting at Rooigrond: *We have been thrown away, we feel very much grieved. When I talk of our land I mean the land of our forefathers, the land where our forefathers' graves are. I would like to pose the question: who are the foreigners? I can say that my people were there to accept the foreigners when they came. It is so painful that those people are the ones who are now telling us to go. We grieve for our forefathers' graves which have been ploughed over.*³⁵

This statement represents the spiritual and psychological suffering and the mental depression of the Barolong ba-ga Modiboa. This feeling strengthened the resistance to justify their land rights to Machaviestat.

The Barolong tribe was further grieved by the fact that, while at Rooigrond, Machaviestat land had stood undeveloped for twenty-one years. The Potchefstroom Town Council hired out portions of the land to white farmers to graze their cattle. Prior to the removal of the Barolong, they cultivated the land and produced enough for their subsistence, had cattle for meat and milk, poultry and eggs. All that had disappeared with the removals, but their land was still not used for the intended purpose that had initiated the removals.³⁶

The hardships and losses suffered by the Barolong during removals and after cannot be over-emphasised. The law justified all the actions taken and the Government should carry the responsibility to redress the sufferings. The long struggle in which the Town Council was engaged with the Barolong added further to the economic plight of the people. The legal battle they fought only delayed the process and demanded money from them.³⁷

³⁵ E. Unterhalter, **Forced removals: The division, segregation and control of the people of South Africa**, p. 115.

³⁶ APTC, Potchefstroom, File 1180 (T), C6/2/1/2/20, Advisory Commission on Land Allocation: Machaviestat, Portion 97 of the Town Lands of Potchefstroom, p. 8.

³⁷ L. Platzky and C. Walker, **The surplus people: Forced removals in South Africa**, p. 309.

4.7 *HARDSHIPS FACED AT ROOIGROND*

The loss felt most by the Barolong ba-ga Modiboa was the loss of material goods. When the Barolong tribe was reallocated at Rooigrond, most of their household goods were damaged. The tin houses and the loan tents could not accommodate all their goods and when the loan tents were taken away, many had no shelters to store their possessions. Most people had not even put up any permanent structure to replace the tents. Their belongings were soaked by rain and had to remain exposed to the hot sun in summer. The members of the tribe at Rooigrond did not venture to put up any form of permanent structure such as housing, schools, churches and the like, because they regarded Rooigrond as a temporary settlement and were convinced they would return to Machaviestat.

Rooigrond was not a place for farming and most of the members of the tribe were historically accomplished farmers. The few livestock they brought to Rooigrond kept on dwindling in numbers because the place was not good for cattle-rearing. The Barolong ba-ga Modiboa at Rooigrond subsisted on cash wages by working in Potchefstroom, Klerksdorp and Stilfontein. It was not always easy to find employment, as they were affected by Section (10) of the Native Urban Areas Consolidation Act, 25 of 1945. This act provided that they were citizens of Bophuthatswana and thus should seek employment within the Bophuthatswana territorial borders.³⁸

The Native Urban Areas Consolidation Act, 25 of 1945 contributed further to the unemployment of the people at Rooigrond and intensified the effects of forced removals. This act was central to the establishment and maintenance of the Apartheid system in South Africa, by confining people to the homelands where they were forcefully settled. This system turned workers into commuters or migrant workers, coming home on weekends or at month-end only from Potchefstroom, their home town, and Klerksdorp.³⁹

The only available transport from Mafikeng passing on the main road was 3 km away from the Rooigrond settlement, and they had to walk to catch the bus transport. Rooigrond is $\pm$ 50 km from Lichtenburg town and $\pm$ 190 km from Potchefstroom and about $\pm$ 170 km from Klerksdorp. Given the estimated distances to the neighbouring towns, the cost of transport to reach these place of work and some major services offered by these towns was enormous. The nearest shop to

³⁸ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 9.

³⁹ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 33.

Rooigrond was about 5 km away, a distance they had to do on foot. Prices of goods in this local shop were often too exorbitant and contributed to impoverishing the people. To cite a few examples, between 1971 and 1973 the price of brown bread was 20c, 500 g of powder milk was R1,25, 1 kg of sugar was R1,80, 750 ml of paraffin was R1,00. They had to buy from this local store because travelling to Mafikeng would cost them an additional 45c for a single trip by bus.⁴⁰

Parents at Rooigrond had to organise a local school for their children's education. They employed a private teacher from the village and each parent had to pay 45c per month for each child. The money contributed had to pay the teacher and provide what she needed to teach the children in her own house. All the hardship suffered by the Barolong ba-ga Modiboa at Rooigrond was because of the loss of the communal land rights at the hands of the South African Government.⁴¹

Beyond the material sufferings lie the law and the argument of land rights by the Barolong ba-ga Modiboa. The various land tenure rights were ignored in the case of the people of Machaviestat. In terms of the quitrent tenure system and the black land tenure, the holder in both cases had the right to permanent occupation. The Barolong ba-ga Modiboa had quitrent tenure rights to the land as they were granted the settlement and utilisation of the land by the Potchefstroom Town Council. Although it is argued and disputed by some historians that they had no title deed to the land, the Barolong ba-ga Modiboa had occupied the land for more than a hundred years, meaning right of possession in terms of common law, but not ownership!⁴²

The argument can be carried further that in terms of the quitrent tenure system the holder of such a legally-recognised title pays annual rental to the Commissioner. The holder is thus allowed to occupy the land if he complied with the quitrent payment. The holders of Machavie quitrent were forced to move because they refused to pay their due from 1959 - 1971. The Barolong lost the land of their ancestors because the Commissioner appropriated the land with the intention to compensate them with alternative land that was rejected by the Barolong. The land was taken on the pretext

⁴⁰ APTC, Potchefstroom, Report. File 461, Rooigrond Settlement (Bophuthatswana), pp. 277, 278.

⁴¹ D. Rissik, *Culture shock, South Africa*, pp. 184, 185.

⁴² M. de Klerk, *A harvest of discontent: The land question in South Africa*, pp. 122, 123. Also compare with G.J.J. Oosthuizen, "The Barolong ba-ga Modiboa of Machaviestat (Matlwang): Victims of forced renovals, 1923 - 1995", *New Contree*, Vol. 40, pp. 137, 138.

that it was needed for the benefit of the State.⁴³ If it were true that the Town Council needed the land of Machavie for the benefit of the State, they could have developed the land since 1971, but by 1991 there was still no evidence of any development. The land was rented out to white stock farmers to graze their cattle. During the period of this stay at Rooigrond, negotiations continued as there were other interested parties.

The Potchefstroom Town Council entered into negotiations with the National Parks Board having expressed an interest in developing a national park in the area. The fact that the Town Council could not conclude the agreement with the Parks Board before reaching an agreement with the Barolong tribe, indicates a recognition of their land rights by 1993.⁴⁴

The National Parks Board, realising the legal implication of land rights and the claim by the Barolong tribe, did not make any further agreements with the Town Council. The idea of a national park failed because the Barolong made their demand for the restoration of their ancestral land. It can be generally accepted that whatever the true nature of individual ownership in customary law might be, there can be no doubt at all that the Barolong tribe collectively owned the land of Machavie, and members of the tribe could enforce their individual rights even though they held no registered title deed to the land. The Barolong ba-ga Modiboa was therefore justified in their claim to the land as beneficiaries of the common law trusteeship.⁴⁵

Forced removals have caused abject misery and poverty, a dislocation and breakdown of family and tribal relations. The tribe has disintegrated as a result of the removal in 1971, and all means to have their land back cost them untold damages. The Government also involved millions of rands to effect the process of forced removals. The tribal council of the Barolong ba-ga Modiboa at Rooigrond under self-appointed Chief Makodi continued negotiating for the restoration of their land. There was an agreement reached since 1971 with the Potchefstroom Town Council that the tribe, could visit and clean the graves of their ancestors.⁴⁶ They wrote letters to the Department of Foreign Affairs in Pretoria via the Bophuthatswana Embassy. They communicated with a lawyer for Human

⁴³ M. de Klerk, *A harvest of discontent: The land question in South Africa*, p. 124.

⁴⁴ APTC, Potchefstroom, C6/2/1/22, File 1180 (T), Advisory Commission on Land Allocation, Submission: Machaviestat, Portion 97 of the Town Lands of Potchefstroom No. 435 -10 district of Potchefstroom registered under Title No.: 4663/35, 29.03.1993, p. 10.

⁴⁵ De Rissik, *Culture shock: South Africa*

⁴⁶ *The Star*, "Tribe reclaims ancestral land", 3 January 1991.

Rights Mr. Moletsane, and requested help to regain their land.⁴⁷ During the period of stay at Rooigrond the Barolong ba-ga Modiboa employed and explored all possible means to open negotiations with the ANC President, Mr. Nelson Mandela, through the Administrator of Molopo in Bophuthatswana.⁴⁸

The people of Machavie engaged in legal steps communicating with the Minister of Land Affairs indicating their plight at Rooigrond as the Bophuthatswana Government wanted to remove them from Rooigrond. In 1985 they had serious negotiations with the South African Government over the land rights of the Barolong with the President. They were always referred to the Bophuthatswana Council which also did not regard them as its citizens.⁴⁹ With the full employment of Bell, Dewar and Hall, the Machavie issue was handed to the Land Commission which negotiated an amicable settlement for land restitution. The Barolong ba-ga Modiboa, among other things, agreed to the stipulated size of area being claimed and use of the land as a customary home of all former residents.⁵⁰

The Barolong ba-ga Modiboa was told in no uncertain terms in 1990 that it was impossible for them to return to Machaviestat because the land belonged to the Potchefstroom Town Council. They were referred to negotiate with the Government of Bophuthatswana by the Minister of Agricultural Development, Deputy Minister P.G. Marais.⁵¹ During the negotiations the Barolong Action Committee annually applied to the Potchefstroom Town Council to visit and clean the graves, with the promise – as always demanded – that they would not erect any structures on the property. The Town Council, realising the frequencies of the visits to Matlwang village during Easter and

⁴⁷ APTC, Potchefstroom, 8/9/1 File 1180 (T) correspondence, South African Embassy to the Director General Foreign Affairs, Barolong ba-ga Modiboa: Rooigrond squatters, 12 November 1991.

⁴⁸ APTC, Potchefstroom, File 1180 (T) letter Administrator Molopo to Department of the President, 11.10.1991.

⁴⁹ APTC, Potchefstroom, File 1180 (T) letter - Barolong ba-ga Modiboa to his Majesty the President, 21.03.1986.

⁵⁰ APTC, Potchefstroom, File 1180 (T) letter Messrs Bell, Dewar and Hall, 29 September 1994.

⁵¹ APTC, Potchefstroom, File 768 GB 6/8/1/2 P50/1, "Departement van Ontwikkelingshulp", Pretoria, 10 September 1991.

December months, demanded that written application were to be made in advance for consideration.⁵²

The action of the Barolong to return to their ancestral land was pursued endlessly until the Government of National Unity came into power and introduced the Restitution of Land Rights Bill of 1994. It is through this bill that the Barolong found a hearing and finally their land was restored to them after numerous negotiations and meetings.⁵³ It is important to reconsider the South African laws which justified the Potchefstroom Town Council ownership rights above the Barolong ba-ga Modiboa. Customary law and historical rights to land have been ignored since the Union of South Africa in 1910 and blacks have lost their ancestral land. The Advisory Commission on Land Allocation was established in terms of the Abolition of Racially Based Land Measures Act of 1991.⁵⁴ It is through this act that the outcry of the Barolong ba-ga Modiboa found a hearing and they were granted occupational and ownership rights of Machaviestat in April 1995.

For 24 years the Barolong at Rooigrond remained unemployed but pursued the struggle to regain their land. They still insisted that the South African Government should carry the responsibilities of their conditions, as it had brought them to Rooigrond by force. Nothing positive came from either the Republic of South Africa or Bophuthatswana Homeland to help the Barolong ba-ga Modiboa at Rooigrond.⁵⁵

The Barolong ba-ga Modiboa suffered in almost all respects, as cited earlier. In addition to economic struggles, they suffered through isolation. There was no community organisation to unite all men, as most were migrant workers, and on weekends they had to attend to individual family matters. The interaction with the South African Government was a matter pursued by a few old men under Chief Makodi.⁵⁶

⁵² APTC, Potchefstroom, 16/6/84, File 768, Mr C.J.F. du Plessis/KV Besoek: Okkupasie: Gedeelte van Dorp en Dorpsgronde Potchefstroom, 17 April 1992.

⁵³ APTC, Potchefstroom, File 768, Restitution of Land Rights Bill, Republic of South Africa, B20B - 94, Cape Town, 25 November 1994.

⁵⁴ A. Bernstein (red), *A land claims court for South Africa: Exploring the issues*, p. 3.

⁵⁵ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, pp. 365, 366.

⁵⁶ Interview, M.A. Legae / I. Serwalo, (Machaviestat) 17 July 1996.

4.8 CONCLUSION

Forced removals of the Barolong did not only dispossess them of their land, but also of their houses, personal goods, livestock and above all citizenship rights. They had no political rights in Bophuthatswana nor South Africa while they were settled at Rooigrond. The degree of deprivation of the Barolong ba-ga Modiboa at Rooigrond had damaging social and psychological effects on the community and individuals. Many people nearly lost hope of ever regaining their ancestral land, and they even opted to find settlement in the nearby townships of Itsoseng and Montshiwa.⁵⁷ To promote the decision of tribal members to settle in urban areas of the homelands, attractive promises were made. The Government, however, has made houses available and transport.⁵⁸ These people would be commuters to their places of work, like the Barolong ba-ga Modiboa had to commute on a weekly basis between Rooigrond and Potchefstroom and Klerksdorp from 1971 to 1994. Another controlling measure was the Aliens Control Act of 1986 which authorised a fine of R5 000,00 to employers who employed TVBC workers without work permits or two years in jail, this included the Barolong ba-ga Modiboa while at Rooigrond, and made it impossible for them to find employment.⁵⁹

Victories achieved by the people of Mogopa and Ngema against removals in 1985 through the appeal courts, made the outside world aware of the plights of the African communities in South Africa. This success story encouraged the Barolong ba-ga Modibao to pursue their struggle for ownership of Machaviestat until 1994.

⁵⁷ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 368.

⁵⁸ L. Platzky and C. Walker, *The surplus people: Forced removals in South Africa*, p. 392.

⁵⁹ E. Unterhalter, *Forced removals: The division, segregation and control of the people of South Africa*, p. 42.

CHAPTER FIVE

EVALUATION AND CONCLUSION

5.1 A REVIEW OF CHAPTERS

This research has indicated the emergence of conflict over land rights in Southern Africa since cultural contact occurred in the interior. *Chapter one* of this research focussed on the land rights as accepted on an international and national level to verify the validity of the land claims by the Barolong ba-ga Modiboa. Land is internationally accepted as the most basic property that entitles a person to some other rights. The real right to land includes ownership rights, servitude mortgage rights, pledge rights and mineral rights. The right to land is enshrined in the Human Rights clause of the New Constitution of South Africa and implies that it should be enjoyed by all. The ownership of land is the greatest privilege that a person can have in property, whether by customary law or private law. In South Africa blacks owned land by customary law, which guaranteed their entitlement to the land use.

Taking possession of land belonging to another person is contrary to private law, as it states clearly and is internationally accepted that no one should occupy land belonging to another person with the intention to claim ownership of the same land. It has become clear that a person assumes absolute right to the land because of the activities he performs on a particular piece of land (see 1.2). Laws that were introduced by Government, often discriminated against certain culture groups and limited their access to land and their real right to land. These discriminatory laws have been present in South Africa since the colonial period and were enacted by the Union Government from 1910. Land is thus internationally accepted as a fundamental necessity of life, and it is the very first foundation and framework within which social, political and economic activities of a nation function. This is true because human society as individuals or communities cannot exist without land and access to land (see 1.3, Chapter one). The right to land should not be interfered with or restricted by law, as loss of land right cannot be replaced by cash payment.

The arguments throughout Chapter one revealed that land rights were actually refined and defined by laws which ultimately granted the State powers to relocate people. Although relocation in some countries was peaceful, it violated the rights of others in the process. In general the terms squatting, tenure, relocation and removals were used interchangeably, the essence is that the rights of individuals and communities were violated (see 1.4, 1.5).

The South African situation is slightly different from other countries in that it has a diverse cultural composition with diverse backgrounds. *Chapter two* dealt extensively with the acts which reflected a twofold aim by the Government, on the one hand to rule the country peacefully and on the other hand to protect the other groups by putting restrictions on land acquisition. In South Africa the process of relocating communities adopted the term forced removals, as this was not always positive, because it aimed at segregating cultural groups from each other.

South African Land Acts, which violated fundamental land rights, did not start with the National Party's rule of 1948 as always depicted. The rejection of political equality for blacks and disenfranchisement stated by Lord Milner in 1901, gave birth to separation, later segregation and then relocation and finally forced removals. Various commission reports came up with recommendations to finalise the idea of the territorial separation of blacks and whites. The period 1901 to 1905 was characterised by competition in the purchase of land by both culture groups. Land was redefined and classified to protect the interest of the Government to separate blacks and whites. The Lagden Commission finally gave approval for segregated locations and its rural segregation proposal came to be entrenched in the Native Land Act, 27 of 1913.

The Union of South Africa in 1910 and its legislation were based on the excerpts of the 1909 Constitution which did not accommodate equal land rights for both blacks and whites (see 2.1 and 2.2). The idea of segregation as already stated above, developed into separate development and further interfered with and violated land rights. African customary laws were ignored in the formulation of laws of the Union. The Native Land Act, 27 of 1913 and the Development Trust and Land Act, 38 of 1936, laid the basic foundation of land rights violation (see Chapter two). The main objectives of these laws were accomplished by crowding blacks into the reserves and finally creating Homeland Governments in terms of the Bantu Self-government Act, 46 of 1959, ensuring the political control of all blacks.

The clearing of defined areas called black spots, as land demarcation left some blacks within the white areas, gave rise to the commonly known phenomenon of forced removals. Black tribes of the Western Transvaal that were affected by this process, are amongst others, the Barolong of Machaviestad, Batlounge of Putfontein, Bakolobeng of Rooitjantjiesfontein, and the Bakwena ba Mogopa. Although the Barolong, after resisting the removal negotiated on their own for a temporary settlement at Rooigrond in 1971, in a wider sense this is classified as forced removals. They were regarded as squatters on the town lands of Potchefstroom. The Barolong ba-ga Modiboa at Machaviestad west of Potchefstroom saw their occupational rights, inheritance rights and their right by conquest violated by the Government declaring them as squatters. The quitrent title in customary law and free hold titles were lost at the hand of the law.

In *Chapter three* the historical land claims of the Barolong with regard to the rights to Machaviestad (Matlwang) from 1837 to 1991 were based on internationally accepted principles. Chapter one focussed on this aspect clearly, and Chapter three put their claim in perspective of the accepted basic human right and Land Acts promulgated since 1910. The Barolong had a bond of friendship and this resulted in the defeat of the Ndebele or Mzilikazi, which helped the Barolong to resettle in their ancestral land.

The Barolong ba-ga Modiboa settled at Machavie from 1837 to 1970 - that is 133 years of occupation, which in terms of customary law granted them the right and a title deed to the land (see Chapter one). The Barolong settled temporarily at Rooigrond in 1971, amidst the controversy of their claim to Machaviestad, and negotiated with the Government and Potchefstroom Town Council to have their right to Machavie. The Barolong community was divided by the offers made to them: some found houses in the Ikageng location of Potchefstroom, others settled in Klerksdorp and Stilfontein. The land of Machavie was a black spot on the town lands and could not be given to the Barolong despite all evidence of ownership discussed in Chapter two.

The process of interaction in *Chapter four* between the South African Government, Potchefstroom Town Council and the Barolong, was intensified by the fact that they were temporarily at Rooigrond and had no right to that land. The Barolong resisted being incorporated in the self-governing territory of Bophuthatswana, as this would further guarantee their loss of Machavie. Land consolidation for these self-governing territories resulted in the resettlement and removals of many other tribes and violation of their land rights.

It should be noted that the Barolong was excluded from owning land in the Potchefstroom district by the early principles embodied in the ZAR's Resolution 159 of 18 June 1855. This did not regard the Barolong as citizens and thus gave no land rights to non-citizens. The Barolong had their right severely restricted and violated since the days of the Zuid-Afrikaansche Republiek. Despite all evidence of occupation of Machaviestat by the Barolong ba-ga Modiboa, their right to land by conquest received no attention.

The Barolong, like many other tribes, when removed from their ancestral land, suffered severe loss of property, livestock and moral stability. Compensation for the resettlement of the Barolong at R19,50 per family, was not given as compensation for land, but as subsistence during removals. Rooigrond, being a temporary settlement, no farming was undertaken and apart from that the land was not suitable for crop and stock farming.

There were no facilities such as schools, a church, shop, clinic, police station and post office, and the Barolong had to depend on the neighbouring town of Mafikeng about ± 10 km away and Lichtenburg ± 50 km. Serious discussions were conducted from 1971 to 1995 when the Government decided to resettle the Barolong at Machavie village. After 24 years of deliberations, the Barolong regained their occupational and right to Machaviestat in April 1995.

The right of the people to self-determination was often misused to violate the right to land of communities, and to relocate them to consolidate land for homelands. Forced removal processes were introduced to maintain the right to land for the State and to further the policy of separate development. In this research it has been indicated the plight and losses of the Barolong and the impact the resettlement had on their lives, which should be compensated for by the State, although their settlement at Rooigrond was in essence not part of the removal process.

The right to land should not be politicised and used to violate the rights of people. Land distribution should not be racially bound as in the past, as has been indicated in Chapter three. Land is a very important property, influencing the economic and social status of communities and should be equitably restored to those who rightly deserve it. It has further been indicated in Chapter one that a gentleman's agreements or verbal promises in terms of customary law are binding and should be respected. In the process of reforming land policies and restitution of land, care should be taken not to further discriminate from another angle. Lastly, tribal resolutions should be required during the land restitution process to ensure that exclusive rights are guaranteed to those members and their

descendants who actually paid for the land. Impartiality should always be advocated when dealing with the right to land, as land does not increase as the population increases.

5.2 *EVALUATION AND SYNTHESIS*

The core findings of this study can be divided into subsections supporting the central theoretical statements that have been made. First of all, is the statement that the Barolong ba-ga Modiboa indeed was entitled to some sort of inheritance of land based on the African pattern of land inheritance (occupation). Secondly, this study pointed out the different perspectives on land occupation according to different traditions complicating the situation for the Barolong ba-ga Modiboa. They had to settle within the *rules* of the white people they supported against the Ndebele's of Mzilikazi, which appeared to have changed their views within the framework of the politics of the time. These changes, without doubt, affected the position of the Barolong ba-ga Modiboa at Machaviestat. Another important finding is that quarrels about land are not unique to South Africa and appear to be a world-wide phenomenon.

In fact it can be said that the label forced removals, which normally reflects the South African process of resettlement, very much applies to many cases of forced resettlement abroad. As far as the removal or deprivation of land to the Barolong ba-ga Modiboa is concerned, reference to verbal evidence and interpretations, it can be said that they lived in Machavie village from 1841 to 1885 before the Potchefstroom Town Council (forced) insisted that they pay rent from 1885. After 1948 it became apparent that their right to Machavie was disputed by the Government laws and general western laws which explained what rights to land actually pertained. It appears that the Government acts were aimed at protecting the rights of the South African citizen only and that excluded the blacks. The right to the land of Machavie was then granted in favour of the Potchefstroom Town Council, disregarding the occupational rights of the Barolong.

What is also interesting, is that a general view exists that the Machavie villagers were forced to move to Rooigrond in the seventies, which is factually not correct. The Barolong, realising the sufferings as a result of restriction imposed on them, were amongst others, regarded as trespassers, their cattle being impounded, they were prohibited from ploughing and negotiated on their own to

settle temporarily at Rooigrond. They settled temporarily in the area belonging to the Barolong bo-Ra Tshidi in order to address the land dispute in a different way.

Lastly their settlement at Rooigrond had greatly affected the tribal unity, as men were working far from home, some permanently settled in the Ikageng location, others in Stilfontein and Klerksdorp. Loss of property and livestock would amount to thousand of rands, which could not be compensated for and left the Barolong poor. It will take years for the Barolong ba-ga Modiboa to recover from the effects of resettlement (removals) on their socio-economic life.

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