

## Minority Tribes in Botswana: the Politics of Recognition

By Lydia Nyati-Ramahobo

Botswana is reportedly one of Africa's 'most stable countries.'<sup>1</sup> It has grown from one of the poorest nations of the world into an economic success story. Good economic policies have resulted in Botswana being one of the fastest growing economies in Africa and it is now classified by the World Bank as a middle income country.<sup>2</sup> It is a multiparty democracy and elections are held every five years. Botswana is also well known for its adherence to the rule of law, human rights and good governance. In its 2008 report, Transparency International,<sup>3</sup> an international civil society organization based in Berlin, rated Botswana as 36<sup>th</sup> out of 180 countries, with a corruption index of 5.8, an indication that it is one of the least corrupt countries in Africa.

In sharp contrast to this image, Botswana laws permit discrimination on the basis of ethnicity, language and culture. The goal at independence was to assimilate all ethnic groups into the Tswana culture and create a mono-ethnic state, a model found in most British colonies.

Specifically, these laws are a) Sections 77 to 79, 15 (4) (d), 15 (9) of the Constitution; b) Section 2 of the Chieftainship Act<sup>4</sup> and c) the Tribal Territories Act. Agitation against these assimilation laws and distribution of wealth has been expressed since 1969.

The consequences of this colonial arrangement are still seen in Botswana today. Eight Tswana tribes (a numerical minority in the country,) continue to enjoy the privileges associated with official recognition, whilst many of the other 38 tribes have experienced culture and language loss, disproportionate poverty, and invisibility on the national scene.<sup>5</sup>

But though assimilation policies are still in place, there are indications of a slow shift in practice towards recognizing minorities and the value of cultural diversity.<sup>6</sup> The new President Seretse Khama Ian Khama, son of Botswana's independence leader, who took office in April 2008, appears to have a new vision for Botswana. He is on record as saying, 'My Government's position is that our arts, culture and heritage must be celebrated nationwide so that we can all truly enjoy our unity in diversity.'<sup>7</sup> This recognition of the value of Botswana's diversity is a welcome one, but must be backed up by action and key reforms.

The purpose of this briefing is to highlight the plight of the non-Tswana ethnic groups. It argues a positive case for

recognizing minority rights by showing that diversity can unite a nation, as well as assist in economic progress, consolidate a peaceful society and lead to a more vibrant democracy. This briefing deals firstly with the history of Tswana hegemony, and the mechanisms which continue to perpetrate it. It then looks at the consequences of non-recognition on the other minority tribes and the efforts which have been made to secure the equal treatment of all Botswana's citizens.

### Recognition for the Tswana tribes

#### Historical backdrop

In 1885, the then-Bechuanaland became a British protectorate<sup>8</sup> and in 1933, the British authorities recognized eight tribes in the Chieftainship Act as follows: the Barolong, Bakwena, Bangwaketse, Balete, Bakgatla, Batlokwa, Bangwato and Batawana. These eight tribes speak dialects which are mutually intelligible and collectively known as the Setswana language. They share similar cultures and histories. They collectively make up about 18 per cent of the population.<sup>9</sup> Six out of the eight tribes reside in the Southern part of the country near the capital city, Gaborone. Two others (the Bangwato and Batawana) reside in the Central and Northwest (Ngamiland) districts respectively and are numerically inferior to the tribes they rule over.<sup>10</sup>

Professor Neil Parsons,<sup>11</sup> a British historian at the University of Botswana, observed that it was upon Tswanadom<sup>12</sup> that the British founded the colonial state of Bechuanaland, which was in turn and in many ways the foundation for the sovereign state of Botswana. He maintains that the concept of 'Tswanadom that is both philosophical and territorial has led many observers to assume that Botswana is a mono-ethnic state... but only in so far as the Tswana minority have successfully imposed its culture on the majority population of the extreme diverse origins.' The recognition was a colonial error that has rendered the majority of the country's peoples not only invisible but also insignificant.

Recognized tribes enjoy linguistic and cultural rights not enjoyed by the non-recognized tribes. These include access to the institution of chieftaincy, permanent membership to the House of Chiefs as of right, group rights to land, territorial and ethnic identity, a celebration of one's culture in the public domain and the use of one's language in education and the media.

## Chieftaincy

In Botswana, chiefs are viewed as the custodians of the culture of the people. Part of their role includes upholding the moral and ethical standards of the community, and performing traditional rites and ceremonies.<sup>13</sup> Formal recognition of a tribe, therefore, is recognition of the culture of the people. It means that the tribal group can designate a chief, in accordance with their customs at the district level and the Minister will then recognize him or her at a traditional ceremony. S/he is then placed on the government's pay roll. This chief can be consulted on matters that affect the well-being of the people and through the permanent membership to the House of Chiefs provided for in sections 77 to 79 of the Constitution, they are able to advise Parliament on tribal matters. The recognized chiefs of the eight Tswana tribes rule over other tribes whose chiefs are not recognized. They have the powers to recommend to government the appointment of sub-chiefs, senior chiefs' representatives and headmen.

Since independence, none of the non-Tswana tribes have had their chief recognized as per this process. While some non-Tswana tribes have designated their chiefs in accordance with their customs, government has not recognized them. For instance, the Bekuhane<sup>14</sup> tribe from the Chobe district in the North-East of the country designated their chief, Chief Sinvula, in 1968. The tribe staged a celebratory ceremony, but only the District Commissioner attended. Chiefs of the Tswana tribes and the Minister of Local Government did not attend. The Government owned monthly magazine *Kutlwanao* reflected on the occasion 18 years later, and referred to him as a sub-chief.<sup>15</sup> He was however admitted to the House of Chiefs on a five year term, which was renewed until 1994 when he was voted out and replaced by Sub-Chief Mologasile, from the Tswana-speaking Batawana tribe. This demonstrated that being admitted to the House of Chiefs on a five year term is no guarantee for recognition of a chief and his tribe, or recognition of their culture.

When the Wayeyi designated their chief in 1999, no government officials attended the traditional ceremony, and the national radio station was banned from giving a live coverage of the event. The Wayeyi later embarked on legal action which was to have far-reaching effects. Eventually it led to the Bogosi Act - which allowed for recognition of non-Tswana tribes and their chiefs - replacing the Chieftainship Act. However, the precise scope of the Bogosi

Act is uncertain, and ultimately its implementation will depend on political will to tackle the current imbalances on the part of Botswana's ruling elite.

## The House of Chiefs

Under the original provisions of the Constitution, the House of Chiefs consisted of three categories of membership. First, eight ex-officio members who were the chiefs of the eight Tswana tribes, (as indicated above, this membership was permanent and of right); second, four elected members who were elected from the sub-chiefs in the four former Crown lands; and third, three specially elected members who need not have any tribal association. These provisions were amended in 2005. However, the amended provisions (while expanding the membership of the House,) did nothing to end discrimination. Membership remains subject to a three tier system consisting of the chiefs of the eight areas belonging to the Tswana tribes and of the four former Crown lands, five persons appointed by the President, and a maximum of twenty people selected by regional electoral colleges, who serve for five terms each.

The superficial nature of the constitutional amendments can be seen in Section 78 (1). The amendments replace references to particular named Tswana tribes to those who are chiefs of particular areas. But the areas are still those dominated by Tswana chiefs. Thus, whilst less overtly discriminatory, the effect is still the same. Similarly, on paper, it was a positive step to give the four minority-dominated former crown lands the option of nominating a permanent chief to the House, or to elect regional representatives for a five year term.<sup>16</sup> In practice, they elected representatives for a five year term, a less powerful position compared to having a recognized chief of equal status with the Tswana chiefs.

Moreover, although it is positive that the 22 minority dominated regions were accorded the opportunity to elect a member to the House for a five year term, these members are not elected by the people in the region but by sub-chiefs and headmen who belong to that region. This system is still open to Tswana control as the sub-chiefs and headmen are supervised by the Tswana chief. The tribes in the twenty-two regions also continue to be unrecognized under the Constitution. Therefore, although the House of Chiefs has expanded under the new provisions from 15 to a maximum of 37 after the Constitutional amendments, there still remains no recognition of any other ethnic group besides the usual eight Tswana tribes.

# Rights to Tribal Territory, Land and Identity

## Tribal Territory

Land, territory and identity form the core of recognition and non-recognition of tribes in Botswana. The Tribal Territories Act of 1933 created boundaries called tribal territories which are currently referred to as 'districts'.<sup>17</sup> The territories were named after the recognized Tswana tribes.<sup>18</sup> For instance, reference to Kgatleng district in the South-East means the land of the Bakgatla tribe and thus accords to them group ownership rights. Only one of the eight tribes did not have a territory, the Barolong tribe. This omission was addressed during the 2005 review of the Constitution and they now have a territory as stated in the new Section 77 (1). A similar approach was, however, not extended to the non-Tswana tribes who have been omitted since colonial times.

The Chiefs of the eight Tswana tribes reside in major villages or towns within each territory, which are officially identified and referred to as belonging to these tribes. For instance, the recent Botswana Review of Commerce and Industry, published in cooperation with the Ministry of Trade and Industry, stated that, 'Maun is the tribal capital of the Batawana.'<sup>19</sup> In reality, Maun – the tourism capital of Botswana and the administrative centre of the northern Ngamiland – is dominated by the Wayeyi tribe and significant numbers of other tribes such as the Herero and Mbukushu can also be found there.<sup>20</sup> However, due to the assimilation policy, they are not recognized and, since its establishment in 1915, Maun is seen to belong to the recognized Batawana tribe.

The review of the Constitution transferred the concept of tribal territory from the old Chieftainship Act to the Constitution. All 'tribal territories' as defined in the Tribal Territories Act and Section 2 of the old Chieftainship Act, were transferred into Section 77 (1) of the amended Constitution and each territory resumed the names of the eight Tswana speaking tribes, thus making their supremacy both cultural and territorial. Another effect of the change was to make the discrimination more difficult to challenge in a court of law because these provisions are now embedded within Botswana's state Constitution.

## Land Boards

In 1970, The Tribal Land Act<sup>21</sup> was enacted and it established Land Boards to regulate, allocate and manage the use of land. These Boards were also named after the eight recognized Tswana tribes, thus further fostering the Tswana identity, sovereignty and control over resources. For instance, the Tawana Land Board was named after the Batawana tribe and the Ngwaketsi Land Board, after the

Bangwaketsi tribe. All land certificates issued to individuals state that the piece of land is situated in a specific tribal territory. For instance, if an individual is allocated a piece of residential plot in the Central district, the certificate would read, 'Situated in the Bangwato Tribal area'. In this way, the Tswana identity is projected and preserved even though over 20 other tribes reside in the Central district. These other tribes are not recognized but sub-classified under the Bangwato tribe. 'We are regarded as aliens in our own country, it makes me feel like a non-citizen when I look at my land certificate,' said a Kalanga headman.<sup>22</sup>

The Tswana chiefs are ex-officio members of the Land Boards. As such they participate and influence decisions about land use and land allocation. Since independence, the post of Land Board Secretary, the chief executive of each Land Board in each territory, has been held by mainly the Tswana tribes, through ministerial appointments without advertisement or competition. Of the 12 Land Board Secretaries currently in post, nine are Tswana and only three are Kalanga, and no other ethnic group has held the position. Tswana chiefs are also ex-officio members of the District Council Boards and as such they participate and influence developments in the district. The concept of tribal territory coupled with group rights, and participation in the decision making process, has provided the basis for the Tswana to control resources on behalf of the state and strengthened their ethnic identity in a hegemonic sense.

## Ethnic and national identities

Typically, the Tswana elite have dealt with the issue of non-Tswana ethnic identity by framing it in negative terms. Those who raise these issues are fomenting 'tribalism' and traditionally viewed as divisive by Botswana's Presidents. Assimilation has been endorsed as desirable, at the highest levels. Former President Mogae is reported to have said that all people who live in the Central District should consider themselves Bangwato,<sup>23</sup> thus enforcing Ngwato hegemony over tribes such as Basarwa, Bakalanga, Babirwa, Batswapong and others who reside in the various sub-regions of the Central district.

Attempts to deny Botswana's ethnic diversity fly in the face of international human rights norms and standards; for example, Article 1 of the UN Declaration on Rights of Peoples belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM) places states under an obligation to protect ethnic, cultural and linguistic identity, as well as create conditions for the promotion of that identity.

But denial of that identity is not just a breach of international legal undertakings; it is also deeply offensive to individual citizens belonging to non-recognized tribes. When asked, 'What hurts you most on the issue of minorities?' a resident of Seleka village in the Tswapong region in Eastern Botswana said, 'To be called Matswapong'. In Setswana, the prefix ma-, when it refers to

tribes, is derogatory. This issue was also highlighted by a Wayeyi community leader in Sepopa who said, 'We the Wayeyi are despised, we are called *makuba* and we cannot have a chief, and they say this is democracy.'<sup>24</sup> When asked what he would say to President Mogae if he met him, a 13 year-old boy from Gumare in the Northwest said, 'I would tell him that I would like to be a Mueyeyi because my parents are Wayeyi.'<sup>25</sup>

Botswana's language policy provides another mechanism for reinforcing Tswana hegemony over other ethnic groups. English is the official language, and Setswana is understood (although not officially stated) to be the national language. None of the other 26 languages is permitted in public life such as schools, radio and the *kgotla* (traditional court) and other social services. Tswana-speaking public officers such as nurses, teachers and the police are posted to non-Tswana villages. They use Setswana and apply Tswana customs in the deliverance of their services. 'My daughter's name is Maya and the nurse translated it into Setswana and wrote it on her card as Otsile', reported a workshop participant.<sup>26</sup>

The assimilationist policy was meant to build a monocultural nation. But it is being resisted by minority communities. 'I am finding it hard to appreciate Setswana, especially in school, because I am Kalanga,' said a caller on a radio program that was addressing the issue of why people prefer English to Setswana.<sup>27</sup> Such attitudes suggest that national identity would be strengthened, not weakened by a more inclusive approach.

## The media

The state-run and private media have also been an important vehicle for reinforcing Tswana control. Setswana is the only local language on the media. This policy has served to promote Tswana culture while other cultures remain invisible. The state owned Radio Botswana operates two stations RB1 and RB2. The government also publishes The Botswana Daily News, an English-language newspaper that is distributed free of charge across the country and has a Setswana section. Currently, there are three private radio stations but they are state-assisted and they operate within government policies. There are about seven privately owned English language newspapers.

There have been examples of censorship. For instance, a documentary on the history of Botswana which had been airing every Wednesday in 2005 was, on the instructions of the Director,<sup>28</sup> edited to remove sections that addressed the plight of the non-Tswana tribes as well as the San people. The sections featured members of non-Tswana groups, and detailed the struggle for recognition by minority groups in Botswana. 'Our histories seem not important and our children seem not to have the right to know about it – the government is fighting us,'<sup>29</sup> said one of the leaders of the associations.

However, some progress is being made. In recent years, primary school radio lessons do refer to the histories,

cultures, traditions, norms and values of the non-Tswana,<sup>30</sup> though this is done less frequently compared to the Tswana tribes. 'They are trying these days,' stated a school teacher.<sup>31</sup>

Importantly, the government is now considering a language policy that will introduce the use of local languages in schools. The Report on Compliance with the International Covenant on Civil and Political Rights (ICCPR)<sup>32</sup> summarized the response from the Minister of Justice, Defense and Security, Honorable Pandu Skelemani on the issue as follows, 'Funds permitting, pre-primary education would be introduced under the National Development Plan 10, which would open the way for other languages to be taught. In that case, children would be taught in the language dominant in the area where their schools were located.'<sup>33</sup>

This move is not only desirable in terms of compliance with international legal norms, but also a matter of practical necessity. For example, despite the devastating prevalence of HIV/Aids in Botswana, (the country has the second highest-rate of adult infection in the world,) the public messages on HIV/AIDS have been communicated in Setswana and English only, and the majority of the peoples' languages have not been utilized to address the pandemic.

## Effects of non-recognition on Minority Tribes

About 37 other tribes exist in Botswana, though the state does not recognize them. The total non-Tswana population is generally estimated at about 60 per cent.<sup>34</sup> However, some scholars have put it much higher than - possibly as high as 90 per cent.<sup>35</sup> In Botswana, therefore, the ethnic and linguistic minorities are the numerical majority. As a consequence of the discrimination they face, minority tribes have experienced cultural erosion and invisibility as citizens. Lack of recognition has also led to the inadequate provision of social services, such as education, in rural and minority dominated areas,<sup>36</sup> resulting in disproportionately high levels of poverty. There are also governance issues, with the imposition Tswana chiefs and headmen onto the non-Tswana giving rise to conflict. These are discussed in more detail below.

## Regional disparities and poverty

The main hospitals, senior secondary schools and government departments are concentrated in the Southern part of the country within a 50km radius of the capital, Gaborone. Other parts of the country, including minority-dominated ones, lack critical services. For instance, there is only one hospital in the Northwest district which has a population of 122,000. 'That is caused by discrimination,' stated a traditional leader in the Chobe district.<sup>37</sup>

Education standards in rural minority-dominated areas are generally lower than elsewhere. The 2005 statistical data on achievement at primary school indicates that areas dominated by the non-Tswana such as Kgalagadi, Ngwaketsi West, Kweneng East, Ghanzi and Ngamiland have the highest number of school dropouts, the highest repetition rates and the highest number of untrained teachers.<sup>38</sup>

The low attainments rates are partially explained by the State's official language policy. It is no coincidence that the poorest areas for education achievement such as Gantsi, Kgalagadi and Ngamiland, also have low figures for the use of Setswana in the home, 20 per cent, 53 per cent and 59 per cent respectively.<sup>39</sup> Yet Setswana is the language they meet on the first day of schooling. In the school system, they write the same examinations as those from the native Tswana speaking regions.

The non-Tswana reside mainly in smaller and more rural villages. There, the infrastructure – roads, electricity and clean water – is generally poorer, and the economic opportunities are limited.<sup>40</sup> They come to the main villages to seek employment opportunities and other services, such as appeals on cases tried at the village kgotla, renewal of identity cards; large shops; banking facilities, access to markets for their products and access to medical referral services, among others. Some eventually leave their home areas for good, and live in the main settlements.

The United Nations Development Program (UNDP) report for 2007/2008 indicated that Botswana's Human Development Index (HDI) is 0.654 and the country ranks 124 out of 177 countries. The report indicates that countries with lower GDP than Botswana are at the same level on the HDI.<sup>41</sup>

The conclusion from this is plain. While Botswana is richer, it has not addressed poverty any better than poorer countries. The UNDP report says, 'Within the rural districts, child malnutrition tends to be above the national average in Southern, Kgalagadi, Ghanzi and some Central districts such as Mahalapye and Tutume. Within these districts, the prevalence rates are 20 per cent higher than the national average of 5.2 per cent.'<sup>42</sup> It continues, 'Income poverty also remains a major challenge and it is the minority tribes living in rural areas, especially women who suffer the most.'<sup>43</sup>

If Botswana is serious about tackling poverty, it must address the underlying causes and review the discriminatory laws, which influence the thinking of decision makers in planning and implementing the development agenda. This agenda needs to be implemented in an equitable manner, taking care of the most vulnerable and empowering rural communities to work towards self-reliance.

## Relocations and evictions

The territorial power of the Tswana also meant that the non-Tswana could not claim collective land rights and they could be moved from their ancestral locations to other places as the administration wished without consultation.<sup>44</sup> For instance, the Batawana removed the Wayeyi and the River Bushmen from their ploughing area which is now the Moremi Game Reserve in 1963,<sup>45</sup> without compensation.<sup>46</sup> The non-Tswana have been the most affected by government initiatives to move people or relocate from one area to another, sometimes to pave way for development. This removal increased after the establishment of the Land Boards in 1973 to administer the Tribal Grazing Land Policy (TGLP) of 1975.<sup>47</sup> The policy called for zoning of land into commercial and communal areas, thus causing movement of the people.

One recent controversy surrounds the expansion of the airport at Maun, in the Northwest of the country, traditionally the gateway for Botswana's safari industry. 'Our policy is to relocate anyone, irrespective of tribe in order to carry out our mandate to provide services to the people. The Maun airport is an important development and the people must move', stated the Assistant Minister Works and Transport, Frank Ramsden on the relocation of the people of Botshabelo ward in Maun. But others see these removals as politically motivated.<sup>48</sup> In July 2008, the Member of Parliament was voted out during the primary elections for his ruling party. He was a Wayeyi and the people moved from his constituency were Wayeyi.<sup>49</sup>

However, the government has sometimes been sympathetic to the removal of minority people. For instance, in the case of Batswapong of Lotlorenge and San of Jamakata, government rescinded the decision to relocate the people, instead, their settlements were recognized as villages. This came as a result of the efforts of the Lentswe la Batswapong, a registered association to advocate for the rights of the Batswapong people.<sup>50</sup> They corresponded with the Ngwato Land Board. In the case of Jamakata, the area Member of Parliament, Pono Moatlhodi opposed the relocation, raised a question in Parliament and threatened to take the matter to court.<sup>51</sup>

## Imposition of Chiefs, Sub-chiefs and headmen

Another visible effect of non-recognition is the imposition of Tswana chiefs and other categories within the Tribal Administration, onto the non-Tswana areas. In an incident at Nokaneng, after the Wayeyi people elected a senior chief representative, Batawana Regent refused to recommend him to government for payment. The Wayeyi nominated chief took the matter to court and won.<sup>52</sup> He was then installed in May 2006. In another incident, the Batswapong wanted to install their chief. The Minister referred them to the Bangwato Chief for permission to do

so. It was refused; they have since not installed their Chief.<sup>53</sup> They further elected a village headman, and the Bangwato chief has refused to recognize him to date.<sup>54</sup>

As these examples illustrate, the election of headmen and other ranks within the tribal administration has become highly contentious. A summary of the issue is provided in the government newspaper, the Botswana Daily News, 'Botswana's chieftaincy has in recent years been hit by crisis with key players at each others' throats and petitioning the courts. Succession disputes had, in some instances, divided the villagers into warring factions and at times halting development projects.'<sup>55</sup>

## Cultural erosion and assimilation

Some of the most notable areas of cultural loss are language loss, degeneration of customary law, and loss of traditional skills. The decline of local languages is evident across the country. For instance, a significant number of Khoesan languages are reported to have disappeared, including Haba, Ts'ao, Xam, and Xegwi,<sup>56</sup> as well as some dialects of Ikalanga language such as Ndalaunde.<sup>57</sup> Shiyeyi, Sebirwa, Nambya and Setswapong are some of the languages that are not being passed onto the children in areas where they were traditionally spoken.<sup>58</sup> Data from the 2001 census indicated that 78 per cent of the population speak Setswana in their homes.<sup>59</sup> This figure includes both first and second language speakers (the latter being in the majority) and is an indication of language shift and assimilation.

However, it is interesting to note that recent studies also indicate that school children identify with their ethnic groups even when they have lost the ethnic language and speak Setswana at home.<sup>60</sup> This suggests that even though languages may be imperilled, the consciousness of ethnic difference is not being lost.

The application of Tswana customary law has also had a negative impact on the non-Tswana traditions. The Customary Courts Act: (Cap 04:05) and the Common and Customary law (Cap 16:01) define 'customary law' in relation to Section 2 of the old Chieftainship Act and the new Bogosi Act, meaning it is the law of the eight Tswana speaking tribes.

The Setswana language and customary laws have typically been used to make customary law decisions. Since some of the Tswana tribes, especially the Batawana in Ngamiland,<sup>61</sup> the Bangwato in the Central district, the Bakwena in Kweneng and the Bangwaketsi in Ngwaketsi district were a numerical minority compared to the non-Tswana tribes they ruled over, there was shortage of people of Tswana tribes to be appointed. The non-Tswana headmen were therefore, sent to their own villages. They however, had to apply the Tswana customary law for two reasons. First because they were subordinates to the Tswana chiefs and therefore had to follow the rules, and second, by that time (around 1952) Tswana customary laws had been the norm for a long time and most ethnic groups had

become accustomed to them.<sup>62</sup> For instance, the ovaHerero, Wayeyi and some Khoesan groups who were matrilineal in inheritance and marriage adopted patriarchal Tswana customs as applied in traditional courts.

## Traditional Skills

Most young people complete 10 years of basic education and if they cannot proceed to senior secondary school, they are most likely to remain unemployed.<sup>63</sup> More often than not, they either had no opportunity to acquire traditional skills, or if they did, they had lost them during formal schooling. 'I cannot make a basket' lamented a standard seven pupil at Ikoga Primary School.<sup>64</sup> But traditional skills represent a means of becoming self-employed. These include making baskets, building traditional huts, carving, making mats, song and dance and traditional healing, to mention a few.

The government under the new president is beginning to recognize the economic value of these traditions. 'Botswana has an abundance of traditional dancers, few of whom have been able to use their artistic talent to earn a living,' stated President Khama.<sup>65</sup> Under his leadership dancers will be better supported through the Department of Culture and Youth.<sup>66</sup> This is not just an important economic objective, but also a recognition of how Botswana's cultural diversity can contribute to the nation's prosperity.

## Efforts to address the imbalance

In 1969, efforts to raise awareness of the imbalance between the Tswana and non-Tswana started in earnest.<sup>67</sup> Before this, attempts were made to influence the formulation of the Constitution in preparation for independence. Members of the opposition parties who participated in the Constitutional talks with the colonial government had expressed their dissatisfaction on lack of consultation with non-Tswana communities.<sup>68</sup> Since then the agitation has been in the form of parliamentary motions, formation of linguistic associations, litigation, national debates, and the utilization of United Nations monitoring mechanisms. The government's reaction and efforts have been gradual but inadequate as shall be discussed below.

## Parliamentary motions

A Member of Parliament for the opposition Botswana People's Party, Philip G. Matante, moved that the 1965 general elections be deplored as they were based on tribalism. He noted that chieftaincy had played a major role in the election process, in favour of Sir Seretse Khama of the Botswana Democratic Party, who was chief of the Bangwato tribe.<sup>69</sup> This motion was defeated. In 1988, Maitshwarelo Dabutha Member of Parliament for the

Botswana National Front (BNF) moved that Sections 77 to 79 of the Botswana Constitution be amended, as they excluded other tribal groups from representation in the House of Chiefs. The motion was again defeated. A third and successful attempt was in 1995, when a member of the ruling Botswana Democratic Party, Oliphant Mfa tabled the same motion.

Another successful motion was on the use of other languages in education and other social domains, tabled by a member of the ruling party in 1997, Mr Itani Chilume. These parliamentary motions continue to highlight the need to address cultural rights in Botswana. Their translation into action would acknowledge and enhance the country's cultural diversity.

## Formation of linguistic associations

Another form of agitation for recognition was the formation of ethnically based associations. The Kalanga tribe was the first to form the Society for the Promotion of Ikalanga Language (SPILL) in 1991. Currently there are about 13 of these, and in 2002, they formed a coalition called RETENG: *The Multi-cultural Coalition of Botswana*.<sup>70</sup> The organisations have each focused on developing writing systems for their linguistic groups, organising annual cultural events and as a collective, engaged in advocating for the rights of the non-Tswana tribes at the national and international levels. In the period between 1995 (following the passage of the motion on Section 77 to 79) and 2008, their activities as individual associations and as a collective, raised the voice for the recognition of non-Tswana tribes, promoted multilingualism and called for a shift towards 'unity in diversity'.

It is worth noting the role of minority women in efforts to advance the activities of these national associations. They form the majority of dance groups, and through their messages in song, they educate their audiences. They work to enhance cultural industries such as basket making and other decorative items. They also form a majority in the committees for these organisations. For instance, in the 13 village committees of the Kamanakao Association, (a registered Association in Gaborone that advocates for the recognition of the Wayeyi tribe,) women are the majority. They play key roles in organizing events, such as the girls' initiation ceremony where they teach motherhood and about HIV/AIDS. However, the majority of them do not hold leadership positions, such as chairpersons, in these committees.

## Litigation

Litigation has also been utilized. While there have been several court cases related to election of headmen and sub-chiefs, one notable case was that of the Basarwa of the Central Kgalagadi Game Reserve (CKGR) on the issue of

land rights. They had been evicted from their ancestral land, the CKGR and the court ruled in favour of their return to the reserve in December 2006.<sup>71</sup> Unfortunately, the government has chosen to interpret this ruling narrowly, and the numbers of San able to return have been limited.<sup>72</sup>

## National debates

There have been three major national debates on the discriminatory nature of Botswana laws and the exclusion of the non-Tswana ethnic groups from public space. The first was the Presidential Commission appointed by former President Mogae in 2000.<sup>73</sup> The Commission visited 41

### The Wayeyi case

In 1999 the Wayeyi tribe decided to designate their chief and submitted his name for recognition. As expected, on the basis of the laws, government did not accept it. The Wayeyi then took Government to court to challenge the Constitutionality of the Chieftainship Act, the Tribal Territories Act and Sections 77 to 79 of the Constitution. Their challenge to the Tribal Territories Act was later dropped. They demanded that the Chieftainship Act be declared discriminatory, that they be recognized as a tribe and that their chief admitted to the House of Chiefs on an equal basis to the Tswana. They further demanded that adult literacy programs should be initiated in Shiyeyi and their children should be taught in mother tongue in the early years of education in areas where the language is spoken.

They claimed that these laws violated their fundamental rights stated in Sections 3 and 15 of the Constitution.<sup>74</sup> In 2001, the High Court ordered that 'Section 2 of the Chieftainship Act (Cap 41:01) be amended in such a way as will remove the discrimination complained of and to give equal protection and treatment to all tribes under the Act. If other laws have also to be amended to accord the applicants this right, then necessary action must follow' (pages 60-61 of the judgement).<sup>75</sup>

However, dissatisfaction with the Bogosi Act and 2005 Constitutional review led to a case being lodged with the African Commission on Human and Peoples Rights. Before the case came before the African Commission in May 2008, the government indicated a willingness to engage in dialogue, and offered the Wayeyi a place in the House of Chiefs, on a five-year basis. Whilst the Wayeyi are anxious that this House of Chiefs position is on a discretionary rather than a statutory basis, the offer nevertheless indicates a willingness on the part of the Khama government to engage with the issues raised by the African Commission case.

villages and towns, held 43 public meetings, listened to 38 oral submissions, and received 10 group and 40 written individual submissions. One of the findings of the Commission from the public views was that, 'listing of the eight tribes in Section 78 to the exclusion of other tribes was inherently discriminatory'.<sup>76</sup>

The Commission submitted a report to the President in November 2000. The draft government White Paper No.1 of 2001 was submitted to Parliament in April 2002 and one of its major recommendations was that all members of the House of Chiefs should be elected at the regional level by the people of that region, thus eliminating the ex-officio membership, and the supremacy of the eight Tswana tribes. This was bitterly contested by Tswana chiefs through public meetings organized in their capital villages of Serowe, Molepolole, and Mochudi. The second draft rescinded this position and maintained the status quo of the supremacy of the Tswana chiefs and the discrimination of the non-Tswana tribes. It is the revised draft government White Paper No.2 of 2002 that has been in effect through the Constitutional review of 2005, with the cosmetic changes discussed earlier.

Former President Mogae initiated two more debates on the issue by holding public meetings in May 2002 and March 2008.<sup>77</sup> He visited over thirty villages explaining the provisions of the amendments to the Constitution and Bogosi Bill as a compromise. The majority of the people continued to express their dissatisfaction for the amendments. 'We are aware that what we have done is not enough' said the Minister of Justice, Defence and Security.<sup>78</sup> Thus, the need to further review the Constitution seems obvious.

From the debates it was clear that the majority of the people were indeed not happy and would like to see change. This conclusion was further corroborated, in a University of Botswana study conducted in 2007, which observed that 'a significant number of respondents suggest that the Constitution should be reviewed so that it equally recognizes all cultures found in Botswana'.<sup>79</sup>

Although the public debates are a welcome indication of a democratic state,<sup>80</sup> action to address the injustices identified in this process are equally necessary. Otherwise the consultation is likely to be seen as an empty gesture.

### Utilization of United Nations Mechanisms

In 2002 the Committee on the Elimination of all forms of Racial Discrimination (CERD) was 'concerned by the discriminatory character of certain domestic laws such as the Chieftainship Act and the Tribal Territories Act, which recognize the Tswana speaking tribes'.<sup>81</sup> It recommended the amendment of the laws and in 2006, it drew the state's attention to Articles 2 and 5 of the Convention. One of its concluding observations was that, 'The Committee, while taking note of the willingness of the state party to ensure better representation in the House of Chiefs, remains

concerned that Bill 34 (2004) amending sections 77 to 79 of the Constitution reproduces discriminatory rules relating to the participation of ethnic groups in this institution'.<sup>82</sup>

In 2004 and 2005, the Working Group on Minorities reminded, 'states to ensure that persons belonging to... minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law'.<sup>83</sup> In March 2008 the Human Rights Committee (HRC) monitoring the ICCPR also expressed concern that, 'Despite recent amendments, the current rules regarding appointments to the Ntlo ya Dikgosi, [House of Chiefs] do not make provision for the fair representation of all tribes'.<sup>84</sup>

The Special Rapporteur on the Right to Education, Vernor Muñoz Villalobos visited Botswana in 2005. He noted that one of the challenges facing the country was the area of intercultural education. He stated that, 'It is important for cognitive development of the individuals to be taught in his or her mother tongue and see that their culture is acknowledged as an integral part of the culture of the country as a whole'.<sup>85</sup> He recommended the development of an intercultural education experimental program. He further recommended the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and adoption of a rights based approach to education.<sup>86</sup>

### Government efforts

Ethnic equality has been one of the most sensitive issues in Botswana.<sup>87</sup> While the debates have not threatened the stability of the nation, they have been highly emotional at times. 'When people want war, war they should get', stated a letter written by one of the Sub-chiefs from the Bangwato tribe.<sup>88</sup> The associations which have advocated for reform have been viewed with uneasy tolerance and described as politically motivated by those in power.<sup>89</sup>

The government's response has been notably positive on several counts. The passage of the motion to review sections 77 to 79 of the Constitution in 1995 may be viewed as one of them. This is especially so because Parliament has been dominated by the ruling party since independence: the passage of any law needs Parliamentary support. The opening up of national debates, which were broadcast live on national radio, indicated the government's willingness to engage communities on this matter of great national interest, for a solution. These debates provided an opportunity for both minority and majority groups to discover how deep the wounds were, and to find a way to speak with one voice on common issues. The government has also been willing to engage in dialogue with the UN and the international community on these issues. There has been more government funding for linguistic associations to host cultural festivals. In July 2008, for the first time,



President Day holidays were marked with cultural competitions in performing arts.

## Future Directions

The law continues to deny non-Tswana ethnic groups several rights. In terms of identity, these include the right to recognition as a tribe with a distinct language and culture, the right to educate children in their languages and about their histories, customs, values and culture and to access information and enjoy their language and culture on national radio and television. They are also denied group rights to land, representation in the House of Chiefs on an equal basis, access to social services, and a share in the wealth of the country. These imbalances must be addressed so that non-Tswana ethnic groups are assured of their equality before the law and, their cultural diversity is recognized.

At the workshop on the Botswana Consensus on the Rule of Law and Good Governance, on 6 May 2008, the Attorney General stated the need to, 'Review the Constitution and enhance the protection of fundamental human rights.'<sup>90</sup> This should provide a golden opportunity to address the imbalances with regard to recognition and protection of minority groups. At the same event, a High Court judge said, 'Laws must be human rights oriented and should include socio-economic and cultural rights.' A Constitutional review should be inclusive of sections 77 to 79; 15 (4) (d), 15 (9) of the Constitution and the Tribal Territories Act and its related laws.<sup>91</sup> These sections permit discrimination and as such give preferential group land rights to the Tswana tribes.

As stated earlier, a willingness to provide mother tongue education has been expressed by government officials. The Minister for Education, Honourable Jacob Nkate also expressed this desire at a workshop on the development of Ciikuhane language, held in Kasane, on October 25, 2006.<sup>92</sup> At a cultural festival organized by RETENG on November 25th, 2006, former President Mogae said inclusion of other languages in the school curriculum will be done as soon as funds are available.<sup>93</sup> This willingness has not yet translated into action, but nevertheless, it is an encouraging new development.

In September 2008 the national television station increased the number of times the news would be presented. Currently, all the hourly news slots are in Setswana and English. Some news slots could be read in other languages, in recognition of Botswana's diverse communities. So much can be achieved in this area even before a Constitutional review.

## Conclusion

Scholars have argued that it is not indigenous or minority status or unique cultures that mean minority groups warrant special attention, but the injustice they suffer due to that status.<sup>94</sup> Their struggle is about livelihood, liberty, poverty alleviation, and access to development and public services.<sup>95</sup> Though the struggle by minority groups is culturally oriented, its goal is economically and socially focused.<sup>96</sup>

The non-Tswana tribes are frustrated not only because they cannot pursue their traditional culture, but also because the majority of them are impoverished, marginalized, and exploited by the dominant groups, with the support of the state, to which they remain loyal. Adherence to human rights must be inclusive of the principles of equality before the law. Discriminatory laws and Constitutional provisions that entrench discrimination fall far short of the international standards on equality and non-discrimination.

President Khama, in his inaugural speech in 2008, said, 'No one should need to live an undignified life...Anything in life that brings you suffering affects your dignity.'<sup>97</sup> The lack of recognition of the non-Tswana tribes, the invisibility and potential disappearance of their cultures is something that has brought emotional and psychological suffering, and as such has affected their dignity.

Recognition of minority ethnic groups and bringing their cultures to the public space would unite the country and enrich its culture for economic development.

## Recommendations

### To the government of Botswana:

- Expedite the envisaged Constitutional review
- Include sections 77 to 79; 15 (4) (d), 15 (9) of the Constitution to guarantee non-discrimination, cultural rights and equality of all tribes before the law; the Tribal Territories Act and its related laws to provide equal land rights to all tribes.
- Ratify and domesticate the ICESCR and integrate in domestic law the International Convention on the Elimination of all forms of Racial Discrimination (ICERD).
- Develop a national program to address regional disparities in the provision of social services and the distribution of the wealth of the country.
- Develop radio and television programs that focus on diverse cultures of the country. All cultural festivals should be covered on national radio and television in order for the nation to appreciate its diversity.
- Establish community radio stations should broadcast in the various languages (as well as English and Setswana) in each region as a way of promoting and nurturing linguistic and cultural diversity.
- Introduce mother tongue education in those languages that have writing systems and reading materials. The development of the writing systems of other languages should also be developed.
- Review the school curriculum to teach the histories, values, traditions and customs of all ethnic groups in Botswana.
- Recognize chiefs designated by their tribes in accordance with the new Bogosi Act and the chiefs should be admitted to the House of Chiefs on ex-officio membership. Other ethnic groups should be assisted to designate their chiefs, if they so wish, and should be recognized as well.
- Include ethnic identity as well as language use in the next population and housing census.

### To local and international NGOs

- Continue to lobbying for reform and place the issue of ethnic equality on the political agenda before and after the October 2009 elections

- Carry out research on discrimination on the basis of tribe on the job, schools and other social services
- Develop programs to teach in local languages and continue to develop unwritten languages
- Conduct public debates across the country on the recognition of all tribes in Botswana
- Initiate a process of dialogue with government on the recognition of all tribes in Botswana.

### To the international community

- Continue to encourage Botswana to ratify and implement relevant international instruments and meet its human rights obligations
- Encourage Botswana to review its Constitution and relevant laws in compliance with international standards
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