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Alternative Report Submitted to the  
HUMAN RIGHTS COMMITTEE  
On the International Covenant on Civil and Political Rights  
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**'if you want to get rid of a tribe, deny them of their identity,  
take away their land and kill their leaders'.**

### **Summary of Key Issues**

1. Botswana laws permit discrimination on the basis of ethnicity and language. Specifically, these are: a) Sections 77 to 79, 15 (4) (d), 15 (9) of the constitution. The amendments through Bill number 34 of 2005 were cosmetic and left the discrimination intact. b) Section 2 of the Chieftainship Act and the c) the Tribal Territories Act.
2. The discrimination denies non-Tswana ethnic groups the following rights: a) group rights to land, b) representation in the House of Chiefs; c) the right to educate their children in their languages; c) the right to educate their children about their histories, customs, values and culture; d) the right to enjoy their languages and culture on national radio and television. All non-Tswana children are taught in and about Tswana cultures at the expense of their own.
3. The Wayeyi went to Court and the Section 2 of the Chieftainship Act was annulled, and an order to make all ethnic groups equal was issued. There has been no action to recognize the Wayeyi chief and admit him to the House of Chiefs. Instead the discrimination in this Act was transferred to the Constitution as part of the amendment exercise.
4. There is evidence of discrimination with regard to employment in certain jobs, for instance, the post of Land Board Secretary has been reserved for the Tswana since independence.

## 0. Introduction

0.1 This report is submitted by RETENG: The Multicultural Coalition of Botswana and Minority Rights Group International (London). RETENG is a Coalition of 13 organisations and informal groupings devoted to the promotion and preservation of the linguistic and cultural diversity of Botswana's heritage. RETENG was founded in 2002 as a response to the government's failure to amend section 77 to 79 of the constitution in such a way that would address the discrimination the nation had been complaining about since independence. Individual member organisations of RETENG had been in existence before 2002, and the coalition was meant to bring these lone voices together for a common cause. Minority Rights Group International is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples Rights.

0.2 A draft report was prepared by the Secretary General based on the previous reports submitted to various UN bodies. Members of the Executive Committee commented on the report, and this final version was then approved by the Executive Committee. There was a decision to focus on case studies such as the Wayeyi who continue to be unrecognised, their culture suppressed and are continuously intimidated despite the favourable ruling of the Botswana High Court in 2001. The case of the Wayeyi and others here presented would illustrate the violation of Articles 25, 26 and 27 of the Covenant and the plight of all other ethnic groups in Botswana.

0.3 The report is in four sections. The first section provides a brief background on the economic, political, social and cultural climate in the country. Section 2 presents case studies in the following order: Gana and Gwii; The Tsua, Tqii Xu Xani; Batswapong; Bekuhane; Bakgalahari; and Wayeyi . The fourth section provides recommendations.

## **Section 1: General Information**

### **1.1 The Economy:**

1.1.1 Botswana has grown from one of the poorest nations of the World to an African success story. The main sources of revenue are its diamonds, tourism and the cattle industry. Good economic policies have resulted in Botswana being one of the fastest growing economies in Africa. However, there are challenges facing the nation, one of which is the equitable distribution of wealth. Botswana's gini co-efficient is one of the world's highest. Regional disparity is also notable with the southern part being the hub of infrastructural development at the expense of other regions in the country. Due to social and cultural discrimination, the areas occupied by the non-Tswana lack basic social services such as water, health facilities, adequate and well-

equipped schools. The non-Tswana have to travel miles to access services in villages identified as belonging to the Tswana speaking groups. Thus the majority of the non-Tswana are poverty stricken, ravaged by disease, largely illiterate and jobless.

## **1.2 Political Development**

1.2.1 Botswana is a multiparty democracy and elections are held every five years. In recent years, there has been a proliferation of opposition parties; a factor, which has rendered the opposition ineffective, hence the country has essentially become a one party democracy. The Botswana Democratic Party has ruled since independence, but the opposition has gained in popular vote. The main opposition, the Botswana National Front has been riddled with factions, which led to a split just before the 1999 elections, and another split in 2007. This is another major factor, which has made the opposition ineffective, in addition to lack of funds. Elections in Botswana have been described as free but not fair given the advantage the ruling party has with regard to resources, the media and its control over structures, such as the tribal administration, village development committees and the civil service.

1.2.2 Following the Vice Presidency of Khama, members of the ruling party have not been free to discuss issues in Parliament according to their individual conscience, but rather have been subjected to party positions. Some have been heavily criticised by the leadership for being critical of government stance on some issues, including the Intelligence Bill which many see as indication of the erosion of democracy.

1.2.3 There are a number of issues which have brought the state of democracy in question. The president is not elected by the people but by the Central Committee of the party that wins elections. Opposition parties are not funded and they have been calling for proportional representation and financial assistance for a long time without success. Civil servants go to the polls a week earlier. The ballot boxes are kept in custody of district commissioners, the loyal servants of government, they are then transported miles to the counting centres with the rest of the votes. This system is highly suspicious and lacks transparency. Human Rights institutions such as the Ombudsman and the Directorate of Economic Crime have lost credibility in the eyes of the public as they fail to deal with people in high positions.

## **1.3 Social Development**

1.3.1 Botswana is one of the few African countries, which has achieved universal basic education. Almost all primary school leavers proceed to junior secondary schools and attain ten years of basic education. From 1982 to 2005 basic education was free. However, beginning 2006 school fees were introduced and children whose parents are deemed fit to pay are returned from school for not paying fees. The other challenge is access to senior secondary schools and tertiary levels. The number of senior secondary schools is only a fifth of the number of junior secondary schools. This means that most junior secondary school leavers have to look for training

opportunities. Unemployment among junior secondary school leavers and across other sections of the population has increased over time.

- 1.3.2 Data from the 2001 census also indicated that 78% of the population speak Setswana in their homes (Nyati-Ramahobo and Chebanne 2003). This figure includes both first and second language speakers. The non-Tswana-speaking areas of Gantsi, Kgalagadi and Ngamiland also reported low figures for the use of Setswana in the home, 20%, 53% and 59% respectively. This meant that 80% of the children in Gantsi, 47% of those in Kgalagadi and 41% of those in the Ngamiland district, speak languages other than Setswana at home.
- 1.3.3 The latest available statistical data on achievement in the primary school system is for 2005, and it continues to indicate that areas dominated by the non-Tswana (most of which are rural) such as Kgalagadi, Ngwaketse west, Kweneng west, Ghanzi and Ngamiland have the highest school drop out rates, the highest repetition rates and the highest number of untrained teachers.
- 1.3.4 The primary health care system has been developed across the country with clinics in the remotest areas. However, most of the clinics lack medication, transport and personnel. Main hospitals are concentrated in the Southern part of the country within a 50km radius, while for instance, there is only one hospital in the Northwest district which has a population of 122 000. The government of Botswana is making tremendous effort in combating the HIV/AIDS scourge, which still remains one of the major challenges facing the nation. ARV is provided in most primary hospitals in the country and public education has borne results over time.

#### 1.4 Socio-Cultural Development

- 1.4.1 Botswana adopted an assimilationist model for socio-cultural development of its people. The British Government drew eight internal colonial boundaries, dividing the whole Protectorate into tribal territories (under the Tribal Territories Act of 1933) where the colonial power recognized the Tswana speaking tribes and their chiefs as the Queen's subordinate sovereigns. Colonial recognition was not only granted to the warlords, such as the **Bangwato**, the **Bakwena**, the **Bangwaketse**, who could thus effectively dominate subject peoples on behalf of the colonial power, but included also, as subordinate sovereigns, were the militarily powerless, **Balete**, **Bakgatla**, **Batawana**, **Barolong** and **Batlokwa**, because these five Tswana speaking tribes were seen to share a common language and history with the warlords.
- 1.4.2 The eight Tribes spoke the same language and share a main features in their culture with differences in some respects. They represented Tswana culture, as the British historian Neal Parsons calls Tswana cultural and political dominance in public life and it was upon Tswana culture that the British founded the colonial state, which was, in turn and in many ways, the foundation for the sovereign state of Botswana. Parsons (1985) maintains that the concept of "Tswana culture that is both philosophical and

territorial has led many observers to assume that Botswana is a mono-ethnic state". He (1985: 27) goes on to say that this is so "only in so far as the Tswana minority have successfully imposed its culture on the majority population of the extreme diverse origins" ...but even then "ethnic identities have not disappeared". The Government refers to all the people living in Botswana as Batswana, since the non-Tswana are not recognised and are expected to assimilate into Tswana and have their own languages and cultures disappear. The Tswana make 18% of the population while the non-Tswana make 60% (refer to Appendix 1). For instance, the Bakwena who enslaved the Bashaga are estimated at 60 000 including assimilated from other ethnic groups, while the Bashaga are estimated at 189 000.

1.4.3 At independence, English was declared the official language, and Setswana was understood (not officially stated) to be the national language. Languages, which were taught in schools such as Ikalanga, were banned and no other language was permitted in public life such as schools, radio and at the *kgotla* (tribal court) In preparation for independence in 1966, election pamphlets were written in English, Afrikaans, Setswana, Otjiherero and Ikalanga (Winstanley, 1965). In 2004, television advertisements were aired in Naro, Shekgalahari, Shiyeyi and Ikalanga. The use of these languages on television and radio did not continue after the elections. However, the government does support cultural activities of various ethnic groups with little coverage of dance, but speeches and interviews.

1.4.4 Tswana speaking public officers such as nurses, teachers and the police were posted to non-Tswana villages and were expected not to learn the local languages but to use Setswana only and apply Tswana customs as the standard norms. This is still the case to the present time. The non-Tswana began to have low self esteem and aspire to learn Setswana language and culture. The idea was to build a nation with one language, one culture and one flag. At the *kgotla*, the Tswana chiefs used Tswana customary law to make decisions, and it has become the standard while the customary laws of other tribes have been ignored and disappeared with time. For instance, the ovaHerero, Wayeyi and some Khoesan groups are matrilineal in inheritance and marriage customs but these are never applied at the *kgotla*.

1.4.5 Homogeneity and the suppression of diversity was the goal for building a united and proud nation. Reference to other ethnic groups has been termed 'tribalism' and viewed as divisive by Botswana's Presidents. For instance, all media is expected to refer to Tswana ethnic groups by their tribal name ( e.g. a radio announcer would say, this is a Bakwena dance) but not the non-Tswana, they are to be referred to by their region (this is the people of Northeast singing). The assimilation model denies non-Tswana ethnic groups the right to identity.

1.4.6 Non-Tswana song and dance is taught to Tswana dance groups and the latter area sent abroad to perform this dance as a Tswana dance. In 2005, a Hambukushu woman (non-Tswana) was taken to Disney land to show case the basket they make, she was being identified as a Tswana who has gone to show case Tswana art. Thus

the assimilation is taken to unacceptable degrees in Botswana, especially within the Government media.

1.4.7 For instance, the first President, Sir Seretse Khama informed the nation that his party stood for a gradual but sure evolution of a nation state "... to which tribal groups will, while in existence, take secondary place". (Carter and Morgan 1980: 291). This was in reference to the non-Tswana speaking groups, whom while in existence, were not legally recognised, while the Tswana, including his own, were recognised in the constitution and in practice. In 1989, the second President, Sir Ketumile Masire, asked Batswana "not to spoil the prevailing peace and unity in the country by fighting for ethnic language groupings to take precedence over Setswana, and that tribes insisting that their languages become media of instruction within their respective areas would break up the nation" (*Botswana Daily News*, June 30, 1989, number 123: 1). It should be noted that the non-Tswana have never agitated for their languages to take precedence over any language, but rather, for more languages to be used in education and the media. The President's position is a reflection of the "one-language one-nation" myth, or the orientation to view language diversity as a problem and not a resource (Ruiz 1984).

1.4.8A journalist reported on the visit of the third President, Festus Mogae, who was Vice President at the time, to Dukwi and Moseitse villages in the Central District to defuse tension between the Ngwato and the Kalanga tribes after two sub-chiefs from the former were imposed on the latter. He is reported to have said that all people who live in the Central District should consider themselves Bangwato. (Moeti 1998). In October 1999, the Vice President, Ian Khama Seretse Khama said the same thing to the Bakalanga in Nkange, thus justifying Ngwato hegemony over tribes like Basarwa, Bakalanga, Babirwa, Batswapong and others.

1.4.9 On March 15<sup>th</sup>, 2007, the Vice President Khama, also informed his audience at Sepopa that the Wayeyi should not be agitating to have a chief, because as long as they live in the Batawana territory, they are Batawana and the Batawana chief is their chief. He gave an example of the Assistant Minister, Honourable Ambrose Masalila and Honourable Minister Sheila Tlou who were in his company on the tour, that they too cannot have chiefs since they reside in Bangwato territory and he is their chief. The implication of such statements is that non-Tswana-speaking tribes will continue to be classified under Tswana-speaking tribes, hence their languages and cultures will continue to be sub-cultures of the Tswana cultures, if not eradicated. The non-Tswana tribes are therefore denied their right to identity. The case of the Wayeyi below would illustrate this violation more fully.

1.4.10 The Local government structure is also biased towards the Tswana. The post of Landboard Secretaries is not by merit, but they are appointed by the Minister of Local Government. Currently, out of the 12 land-boards, nine are headed by Tswana and only three Kalangas. No other tribe is represented in that position. Most District Chairpersons are Tswana, the only recognised

Chief in the District is Tswana chief, and the District Commissioner is most likely to be Tswana and only some Kalanga<sup>1</sup>.

1.4.11 Television documentary on the history of Botswana which had been airing every Wednesday in 2005 was edited to remove parts that addressed racial discrimination. In these parts, members of RETENG: Profs Mogwe, Ramahobo and Roy Sesana featured, detailing the struggle for recognition by minority groups in Botswana. Another feature was on the Kalanga chief Nswazwi and how he resisted the ill-treatment of the Ngwato chief, Tshekedi. While there were advertised as the next episodes, they never saw the light of the day.

1.4.12 Popular music from artists who sing in languages other than Tswana (except Kalanga) has been 'silenced'. One of them went to Radio Botswana to enquire why his albums are not played and he was told 'that is a sensitive issue' I cannot help you right now (Sunday Tribune -July 17-23, 2005, page 13).

1.4.13 It is important to note that as citizens of Botswana we value and take pride in the achievements of our country. It is the democratic environment that enables us to air our views and expect our voices to be heard. We appreciate and value Setswana as a national language, and endorse the importance of a national culture as a recipe of all other cultures represented in the country. We however, believe that unity in diversity has greater returns in nation building and the diversification of our economy than a strive for mono-culturalism.

## **Section 2: Case Studies**

Botswana laws have fostered Tswana supremacy over other tribes and have translated into the discriminatory practices. These practices are carried out on the non-Tswana since they have no linguistic and cultural rights granted to the Tswana as stated above. The following case studies illustrate the violation of articles 25, 26 and 27 of the Covenant.

### **A. The Gana and Gwii – First People of the Kalahari (see report from FPK)**

1. Our member organisations – the First People of the Kalahari have gone to court on their relocation from the CKGR. We await the court's decision and if positive we hope that government will implement. Meanwhile some have been arrested for hunting in the reserve.

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<sup>1</sup> There is a group of Kalanga elite who support Tswana hegemony in exchange for cabinet posts.

2. In 2003, Minister of Lands, Dr. Magaret Nasha went around the country addressing public meetings on the sale of land to foreigners. Part of her agenda was to have voice against the allocation of land to Basarwa. In these meetings members of the ruling party were used to reject the idea of having exclusive land for Basarwa (Daily News, Wednesday August 20, 2003 No. 156).
3. There have been serious violations of Human rights in the CKGR. These include torture, starvation to death, detention and verbal abuse. This matter will be detailed by Ditshwanelo and the FPK reports to CERD during this session.

**B. Tsua/Kua (San)- Tsua/Kua Group - Relocation**

3. The relocation of the Tsua/Kua San people in the Western Sandveld and Jamakata in the Central District is still eminent. Their misery not to bury their dead in the land of their owners (cattle ranchers) still continues, and they have to use the little money they get from government on the old age pension scheme to travel to near by villages and bury their dead in Tswana customs, with Western food and coffins.
4. They are faced with illiteracy as the Lutheran Bible Translator Missionary who was working there teaching them has gone back to the States. Her involvement with the plight of the Tsua/Kua, and the negative attitude of the Mahalapye district Council towards her work, is felt to have contributed to the decision not to renew her contract. Other factors related to her Church also contributed to her departure.

**C. Tqii Xu Yani - (San)**

5. They run a development trust. A rich man was allocated a borehole in their farm area. They went to court and won. However, their borehole has been sold to another rich man and they are currently, seeking legal advice.
6. Their children have been relocated to a hostel far away from the parents against their will

**D. The Batswapong - Lenstwe la Batswapong**

7. They wanted to install their chief. The Minister referred them to the Bangwato Chief for permission to do so. They have since not installed their Chief. They further elected a village headman, and the Bangwato chief - have refused to recognise him Kgamane rejects Sefhare headman - Mmegi, Friday December 19, 2003. page 3).



8. Government would like to impose one of their own choice. They were threatened not to participate in the language development project run by RETENG and funded by the Canadian High Commission. They are now left out of the project completely.
9. The Batswapong of Lotoreng are facing eminent relocation against their wish.

**E. The Bekuhane – Ciciya Nkulu Trust (Chobe Crown Land)**

10. They installed Chief Sinvula in 1968 as their paramount chief. He was in the House to Chiefs for only five years and due to his political orientation, he never returned. Last year, the government initiated a counter group to advocate for Chief Chika, who is well known as a sympathizer to the ruling party. In January 2005, it was Chika that was 'elected' by other three senior chiefs' representatives in the area to the House of Chiefs as sub-chief of Chobe (in Setswana he is a kgosi).
11. This is one clear indication that government does not support non-Tswana to have their rightful birth chiefs, installed in accordance with their customs to be admitted to the House. It is also clear evidence that the so called 'elections' do not reflect the people's choices. The politicization of chieftaincy coupled with visible manipulations are likely to cause problems across the country.
12. The Bekuhane have been seeking legal opinion to go to court on this state of Affair, but the major constraint has been lack of funds and also most lawyers have been intimidated from handling such cases.
13. It has to be noted that paragraph 11 does provide for them since they live in a crown land (thought not recognized) but government manipulated the situation so that not the rightful chief of the Bekuhane is currently in the House.
14. The House of Chiefs as composed in January, 2005 has resulted in a non rightful chief (Chika) being admitted to the House. The Bekuhane will not have their rightful Chief (Sinvula) in the House. Only the 'elected' one is in the House. The Bekuhane are denied representation by their rightful chief through systematic manipulation.
15. The local traditional groups (mainly composed of women) have been discontinued from performing in local hotels in Kasane and the surrounding tourist areas. Instead, groups from schools' have been recommended and they sing and speak in Setswana.

### **G. The Bakgalaharhi (Chelwa ya Shekgalaharhi)**

16. The proximity of Shekgalaharhi language to Setswana has been an aggravating factor in the demise of the language. It is estimated that complete language shift from mother tongue to Setswana as the first language amongst the Bakgalaharhi is estimated to be approximately 63.6%, with the rate of shift being higher in villages than in towns (Smeija 2000).
17. In 2005 three Bakgalagadi groups, the Bangologa of Kalfontein, the Bakgwatheng of Lekgwebe and the Baboloungwe and Bashaga of Letlhakeng installed their Paramount Chiefs. We are yet to see if the government will bring them to the House of Chiefs.
18. A workshop on the development of Shekgalaharhi was scheduled for Hukuntsi in July 2005. A Mokgalagadi man and a senior government official, who is married to one of the Tswana tribes, and staunch supporter of the ruling party wrote letters discouraging people from attending the workshop. The workshop was rescheduled to another village and it was successful.

### **H. The Wayeyi People**

- 19 The Wayeyi are one of the 45 tribes in Botswana. 'It is agreed that they form a separate tribal group with their own ethnic language and culture (Misca 377/99). There are about 70 000 Wayeyi and they live mainly in Ngamiland (Northwest District), with some in the Central district. Tlou (1985) estimates that Wayeyi must have come to Botswana around 1750, while Murray (1990: 4) estimates that the Wayeyi must have come as early as 1000 AD, and stayed long enough with the Khoesan to the extent that their language (Shiyeyi) acquired clicks from the San languages. The Wayeyi are reported to be "the first Bantu-speakers to emigrate to the Okavango delta" (Tlou, 1985:11). They found the Basarwa (Khoisan) of Xanikhwe ethnicity. They came in three groups each with its leader, Hankudze led the first group of Wayeyi who settled in Ncame (lake Ngami) where they hunted and did fishing. Here they also met the Basarwa (Khoisan).
- 20 The second group was lead by Qhunku and his brother Qhunkunyane. This group came via the delta and settled at Tubu and later Gumare, Karwanga (Nokaneng) and Tjau (Tsau) (Tlou, 1985, Mandja, 1997 video presentation). They later met with the Hankuze people. Matsharatshara led the last group (with his brother Matshara) and it came through the Sankuyu, Matlapaneng area, spread along Ngamiland and finally settled in the Boteti area with the Deti (another Khoisan group).

- 21 The Wayeyi engaged in a peaceful struggle for their liberation for 71 years. They have been denied the right to partake in the conduct of public affairs through their feely chosen chief, they have further been denied their entitlement to the protection of the law and equal treatment under the law. They have been discriminated against on the basis of their tribe and their language and culture, customs and traditions have been suppressed and are faced with extinction. In recent years, other tribes in Botswana have joined the struggle for about ten years now.
- 22 Around 1820 the Batawana (an offshoot of the Bamangwato tribe) invaded the Wayeyi from the Central District who took their land and cattle and subjected them to slavery. A Wayeyi family would cultivate their field, harvest it and give all the produce to their Motawana master. One such family was stopped from producing food for a Motawana family by the Kamanakao Association in 2002. They would hunt during the winter season and make tons of biltong and be expected to give all of it to their Motawana master while his family remained in poverty. A Motawana would come into the Wayeyi family a choose a slave. MmaMotamedi (a MUYEYI old lady) told a story of how her parents had to dig a grave and pretend that she was dead in order to avoid being taken as a slave by a Motawana called Monawane. She passed away in 2006.
- 23 As time went on, the Batawana informed the Wayeyi, according to their culture they should be a paramount chief who can rule over everyone else in the territory. Some Wayeyi found the idea attractive while others wanted their chief Hankudze to be the overall leader. The Batawana took Hankudze on a hunting expedition, and he was never to return.
- 24 In preparation for the 1936 population and Housing Census, the Batawana started harassing the Wayeyi and forcing them to identify themselves as the Batawana. In each village, the kgotla meeting would be called, people would line up and each person would be asked to say what their tribal affiliation was. Those who said they were Wayeyi were beaten up and threatened with imprisonment (Story told by Samati Samoka, Puso Meti and Zhamu Marotse, 1999). It was during this time that the Wayeyi started to fight for their freedom from Batawana bondage. Despite this gross amount of intimidation, the Wayeyi made 39% (16 496)<sup>2</sup> of the population of Ngamiland, making them the largest group in the reserve, while the Batawana made 17% (7072) (Tlou, 1985) including Wayeyi and other ethnic groups who succumbed to the pressure.
- 25 The struggle went on for a period of ten years in which the Wayeyi women refused to clear the Batawana kgotla, some families were now refusing to give their produce to their masters and Wayeyi girls were no longer given as slaves to Batawana. However, the use of Shiyeyi language had declined and most young people were identifying themselves as Batawana.

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<sup>2</sup> Total population of Ngamiland was 42,158

- 26 In 1946, another population and Housing Census was underway and the same intimidation was carried on. The population of the Wayeyi declined to 13,261 and that of the Batawana was increased to 8, 124 (Tlou, 1985:9), still making the Wayeyi the most numerous in Ngamiland. In 2004, RETENG conducted a study on ethnic identity in Maun (capital of Ngamiland) and most young people while stated that they speak Setswana, still identified as Wayeyi. This was also the same with Hambukushu and Herero. Batibo (et.al 2005) conducted a similar study at Sepopa (a Hambukushu and Wayeyi village) and he found that most students at junior secondary school, identified themselves according to their ethnic groups and not as Batawana. It is for this reason that the present Government is reluctant to include ethnicity in the Housing and Population census, but rather ask people what language they spoke.
- 27 The Wayeyi submitted their demands to Chief Moremi III of the Batawana in May 1948. This Chief was sympathetic to the course of the Wayeyi as his mother was reported to have been a Muyeyi. He had at some point ordered all Batawana to move back to Kgwebe Hills - their settlement. However, Chief Moremi died in a mysterious car accident before the Wayeyi could submit their demands to him. His wife Elizabeth Pulane Moremi became Regent. Wayeyi then submitted the following demands to her on July 15<sup>th</sup>, 1948:
- a. They should have their own *dikgotla* in and around Maun
  - b. To have representation in all tribal activities & secret meetings
  - c. To have and use land freely
  - d. That no Motawana should inherit Muyeyi property after death.
- 28 On September 13<sup>th</sup>, 1948 Pulane delivered the judgment on these demands. Wayeyi were allowed to have their headmen in and around Maun (their capital town). They identified Mbwe Baruti from the Hankudze genealogy as their paramount chief. On the eve of his installation, he changed his mind and detracted due to intimidation from the Batawana. The Wayeyi then installed seven headmen in seven villages, hoping to identify another person as paramount chief in the future. Moeti Samotsoko was installed as headman at the Boyeyi ward in Maun, Mpho Moyungwe at Tsau, Motlalentwa Zimwana at Nokaneng, Naga Uvuya at Gumare, Zhamu Marotse (Maruzhi) for Sepopa and Taolo Mafoko for Seronga. Each village had a stamp written on the outer circle 'Batawana adminsitration' and in the inner circle 'Boyeyi ward' and the name of the village. This indicated that the Wayeyi were still under the Batawana rule since they failed to identify a chief (paramount chief in colloquial terms).
- 29 All the Wayeyi *dikgotla* did not have offices or staff, only a table under a tree. As time went on, each case tried by a Muyeyi headman had to be judged at the Batawana *kgotla* by a Motawana headman or the Batawana Chiefs' representative. In 1965, just before independence, the incumbent government revoked all warrants/licenses from the Wayeyi *dikgotla*. The only *dikgotla* to

try cases were those of the Batawana. The Wayeyi *dikgotla* were only to arbitrate. This disempowered the Wayeyi and perpetuated the dominance of the minority Batawana over the majority Wayeyi to the present. The land in which the Batawana found the Wayeyi and Basarwa was declared Batawana's territory by the present government, following the colonial Tribal Territories's Act. It is currently administered under the Tawana Land-board.

- 30 Serfdom, affected the use of Shiyeyi language in social domains. The Wayeyi were beaten up for speaking Shiyeyi to Batawana and as a result, most Wayeyi made all efforts to speak Setswana. In 1962, Mr. Pitoro Seidisa (a MUYEYI from Gumare) started some work with Professor Ernst Westphal of the University of Cape Town to develop the writing system for Shiyeyi. The Batawana thought that this was another effort to challenge their rule. Mr. Seidisa was arrested and imprisoned for developing the Shiyeyi language and Professor Westphal wrote in his will that all Shiyeyi materials should be burned.
- 31 In those areas where the Batawana were not resident, Shiyeyi continued to be used for daily life, though an endangered language since it is not being passed on to children. In Sankuyu, Ditshiping, Seronga, Sepopa, Ikoga and Zhawo, children under the age of 5 understand the language, but cannot speak. In these areas, adults between 15 and above are fully bilingual in Shiyeyi and Setswana. In areas such as Tsau, Nokaneng, Maun and Shorobe, adults above 40 speak Shiyeyi while others do not. In Maun, a predominantly Wayeyi town, its cosmopolitan and tourist nature was instrumental in the disappearance of Shiyeyi. Most residents of Maun do not speak Shiyeyi except those who have just settled in from other villages such as Seronga in search for jobs. With revival efforts which began in 1995, one could hear Shiyeyi more often than it was the case ten years ago in Maun.

### **The Kamanakao Association and the Wayeyi Struggle**

- 31 Kamanakao Association was formed in March 1995 by Wayeyi to continue the work started by Seidisa and Westphal and address the socio-cultural needs of the Wayeyi. Its main aim is to develop and maintain the remnants of the Shiyeyi language and culture, as part of the overall national culture. It currently has published an orthography and developed 20 pre-school materials ready for printing and many other adult literacy materials.
- 32 One of its first activities was the development of the Shiyeyi language. Workshops were conducted to collect data on the language to enable linguists to analyze and describe its linguistic system. In order to do this, elderly people made presentations on their histories, oral traditions, stories, poems and songs. Many presenters in several villages described issues of servitude and recalled them with great sorrow. It became clear from these that Wayeyi were still unhappy about the issue of

chieftainship and they felt that they were not free for as long as a Motawana chief was imposed on them by government. They looked upon Kamanakao Association as their savior. A special meeting was called to address this issue at Seronga on November 28<sup>th</sup>, 1998. The meeting was to clearly indicate whether or not Wayeyi want to revive their chieftainship and have a Muyeyi paramount Chief. The meeting agreed unanimously that they wanted a paramount chief.

- 33 After extensive consultations with relevant government officials including the Minister of Local Government Lands and Housing responsible for Chieftainship issues, Vice President Khama and Chief Tawana of the Batawana Tribe, the Wayeyi installed their Chief Calvin Diile Kamanakao on April 24,1999. They submitted his name to government for recognition, in addition to other demands. The government responded in a letter from the Deputy Attorney General Ian Kirby dated July 15, 1999, essentially informing them that current laws do not recognise the Wayeyi as a tribe that could have a chief.
- 34 Earlier on in April the Deputy Permanent Secretary in the Ministry of Local Government had written a letter to the Coordinator of Kamanakao Association stating that the Wayeyi could not install a chief since “Chief means a Chief of one of the tribes. And Tribe means the Bamangwato tribe, the Batawana Tribe, the Bakgatla Tribe, The Bakwena Tribe, The Bangwaketse Tribe, the Bamalete Tribe, The Barolong Tribe. Bayeyi Tribe do not fall under this interpretation (page 2 of letter dated 19<sup>th</sup>, April, 1999).
- 35 The Wayeyi then resolved to challenge the constitutionality of Sections 77-79 of the Constitution, the Chieftainship Act and the Tribal Territories Act. They launched a court case at the High court in June 1999. While waiting for the date of the case to set, they wrote to the UN Secretary General in March of 2000, informing him of the cultural discrimination enshrined in Botswana laws and their efforts to fight these in court. In June 2000, the Botswana representative to the United Nations wrote to the Botswana Government to provide its version of the story. In July 2000, the President appointed a Commission of inquiry (**The Balopi Commission**) into Sections 77,78 and 79 of the constitution as a response to the UN enquiry. The Commission began its work in August 2000 and submitted a report to the President in November. Before then, a motion had been passed in Parliament in 1995 to amend these sections, but no action had been taken to implement the motion. The same motion had been tabled and failed to pass in 1969 and 1988.
- 36 After several postponements, the case was heard on September 12-13<sup>th</sup>, 2001 and judgment was delivered on November 23<sup>rd</sup>, 2001.

37 The court observed that:

In regard to the present case the breach which the applicants have successfully demonstrated is that brought about by the provisions of Section 2 of the Chieftainship Act in defining 'tribe' and 'chief' in terms that exclude the Wayeyi and other tribes and ethnic groups. They have proved in our opinion that these definitions omit them and as such they are not treated equally under this law and therefore there is a contravention of their right to equal treatment and equal protection of the law as ordained in Section 3(a) of the Constitution (page 60).

38 The court further observed that

the right to the protection of the law means more than simple assistance by law enforcement agencies. It connotes equality before the law, as well as equal treatment under the provisions of the law. Any inequality which is entrenched by law is not equal protection under the law for those disadvantaged by that law' (page 49-50).

39 It went on to say that

the discriminatory effect of the definitions we have referred to in Section 2 of the Chieftainship Act leads to serious consequences when it is remembered that this Act is one of the three laws that define which tribal community can be regarded as tribe, with the result that such a community can have a chief; who can get to the House of Chiefs and that only a tribe can have land referred to as a Tribal territory' (page 51).

40 This statement exposed the deep meanings of the definitions contained in Section 2 of the Chieftainship Act, how they translate into practice and link with other two laws (the tribal Territories Act and Sections 77 to 79 of the Constitution). Embedded within the definitions are all the rights and privileges that come with the recognition and protection under that law. The definitions resulted in the current discriminatory tribal administrative structure, which recognises the chief of the Tswana only as well as their language and culture and made the rest of the ethnic groups invisible and unable to bring their culture to the public sphere.

41 It is due to these definitions of who can be chief, who can be tribe and who owns the territories as contained in Section 2 of the Chieftainship which provide all cultural rights to the Tswana and denies the same to the non-Tswana tribes. In this regard, languages of the non-Tswana cannot be taught in schools or used in the media since they do not exist. Their histories, traditions and customs do not form part of the school curriculum since they do not exist. Thus a challenge to the Chieftainship Act is the door way to all cultural rights and not just chieftaincy. Thus in order to achieve equality, the tribal structure must also recognise the Wayeyi and other tribes in their own right and their chiefs.

42 The court therefore 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).

- 43 Obviously the 'other laws' was referring to Sections 77 to 79 of the Constitution and the Tribal Territories Act which are closely related to the Chieftainship Act as observed earlier.
- 44 The Court further observed that '  
 ...having section 2 of the Chieftainship Act declared ultra vires the Constitution does not necessarily mean that the Wayeyi will be included therein to be the ninth tribe. It may well be that the legislature, in its wisdom, will create equality between tribes by removing the special status of the eight tribes... and undertake such consequential amendments as shall be necessary (page 58).
- 45 The first Draft White Paper to amend Sections 77 to 79 of the Constitution in 2002 did remove the special status of the eight tribes and made all chiefs to be elected at the regional level. The second White paper reversed this suggestion and maintained the status quo. Bill number 34 amending these sections of the Constitution was passed by Parliament on April 14, 2004 and implemented on February 1<sup>st</sup> 2007. This Bill did not attempt to achieve equality in any manner but rather entrenched discrimination into the Constitution.
- 46 While the government stated that the purpose of the amendment was to make the sections tribally neutral, the Bill went rather far in projecting Tswana supremacy. It simply translated the definitions of 'chief' from English to Setswana and to be inclusive of sub-chief. The definition of 'tribe' was made part of the territorial phenomena, in which all former 'tribal territories' have now resumed the names of the eight Tswana speaking tribes. In other words, names of tribes which were stated as nouns in the constitution were morphologically transformed into locatives by adding 'Ga- or Goo-' before the name of the tribe or '-ng' at the end of the tribal name.
- 47 In Setswana, such locatives carry the double meaning of both the name of the place and the people to whom the place belongs. For instance, the word Goo-Tawana means the place of the Batawana tribe. Semantically, therefore, this morphological exercise is a continuation of the recognition of the Tswana tribes and their sovereignty over the districts (Republic of Botswana, 2003). The transfer of the concept of 'tribe' into the Constitution in this manner did not eradicate the embedded discriminatory meaning it carried while it was still in the Chieftainship Act, but rather protected it by inserting it in the Constitution. Thus the amendment of the Constitution was not a progressive move in a democratic spirit but rather a further violation of the right to identity on the part of the non-Tswana tribes.
- 48 The amendments of Sections 77 to 79 of the Constitution only increase the number of headmen elected by other headmen from 4 to 22 and no other tribe was recognised. The Wayeyi and other tribes are, therefore, not given equal protection and treatment, either under the old definitions contained in Section 2 of the Chieftainship Act, or under the new meanings contained in the revised Sections 77 to 79 of the Constitution.
- 49 The elections for the 22 members were held on November 16, 2006 and the New House of Chiefs was inaugurated by the President on February 1, 2007. The Wayeyi are not represented in the House (Appendix 2). Before the elections, the Government



engagement Mr. Gaerolwe Kwerepe to take a tour of Ngamiland and influence the elections. He met with most of the Senior Chief's Representatives, Headmen of record and paid headmen of arbitration. He informed them how the government would like the elections to go on. When he met with the Wayeyi Chief, who is a Headmen of record at Nokaneng, his story was different, he informed the Wayeyi chief that he is campaigning to be elected and has been sent by the Batawana Chief to seek the support of those who will take part in the elections.

- 50 Another incident that took place was the payment of those headmen who were seen to have accepted the Batawana identity. An oldman at Tubu informed the Kamanakao Committee on the 10<sup>th</sup> of October, 2006 that he has been paid P1,900.00 and he does not understand what the money is for. He stated that he did not know that by not opposing Batawana he was to transfer his identity and that he would like now to join the Kamanakao Association because he is a MUYEYI.
- 51 The Wayeyi have continued to face serious discrimination and intimidation ever since the installation of their Chief in 1999. The idea of government is to deny them their identity and accept that of Batawana who are almost extinct. The following are some examples of how they have continued to suffer acts of oppression:

#### Acts of Oppression

- 52 On May 6, 2003 the Wayeyi Chief, Calvin Keene Diile Kamanakao died mysteriously. He was brought to the hospital dead, with watermelon spills on his shirt, jacket and vest and a green substance on the collar of his shirt. This same green stuff was also found on the passenger door he seated when arriving at the hospital. On May 8<sup>th</sup>, 2003 the investigating officer went on leave after the case was reported and was assigned the matter on May 7<sup>th</sup>. On the same day the lady who had brought Calvin to the hospital moved out of her house. The police did not carry out any investigations in her house, they said it was not important.
- 53 The lady acknowledged that she invited him to her place. She first denied any information about the watermelon. Later she reported that she ate a melon before the arrival of Calvin. This was after Mr. Supang reported having found watermelon remnants in her kitchen on the day Calvin died. She however continued to deny that Calvin did eat a watermelon. An autopsy was carried out on May 13<sup>th</sup> revealed that he was hypertensive and the cause of death is heart failure. It also revealed watermelon seeds and juice in Calvin's stomach. The family pathologist, recommended that the mode of death should be investigated further since the story from the lady, did not augur well with someone dying from a heart attack nor were the stains on his clothes.
- 54 The Police were not interested in investigating his clothes or the car he was driven in, until the story appeared in the papers seven weeks later, then they agreed to take the clothes for testing. The forensic report indicated that the clothes had been washed before submission to the laboratory (see Appendix 3). Despite requests by the family and the Wayeyi, to appoint a coroner to investigate the death of Shikati Kamanakao, the Government has not responded.

- 55 Following the Death of their chief, Wayeyi designated another chief, DL Samagabadi, (a councillor for the ruling party) on September 28<sup>th</sup>, 2003. He also died of 'heart disease' on January 11<sup>th</sup>, 2005. On March 25<sup>th</sup>, 2005, they designated Shikati Fish Malepe Wuzuwo and his name was submitted to the Minister of Local Government and there has never been a response.
- 56 After the passage of Bill No. 34 of 2004 on April 14, 2005, the Tswana speaking Batawana Regent Kealetile Moremi undertook a tour of the Northwest District (Ngamiland). The purpose of her visit was to inform the tribes that she is their paramount chief and she has come to introduce herself and see her people.
59. The Wayeyi informed her in no uncertain terms that she is not their chief, and they are awaiting government to recognize their own chief. They shall not accept a chief from another tribe to be imposed on them at any time (Wayeyi Reject Batawana Regent (The Mirror, July 27- August 2, 2005, page 8).
60. At Nokaneng, the Tswana speaking Batawana Senior Chief's representative, Mr. Charles Letsholathebe summarized the Wayeyi position when he said 'We have heard the same story since we our meeting at Beetshaa. It is only at Xauxau where we did not hear these words, that you have your own paramount chief. Please note that we are not against that, it is your government which has sent us here to tell you that Kealetile is the only recognized paramount chief who will rule all tribes in Ngamiland' (the Mirror op.cit) .
61. T he Batawana Regent has imposed a headman on the people of Makalamabedi, a Wayeyi dominated area. They have rejected the headmen (Ngami Times May 20-27, 2005 - Villagers in astonishing attack on Kgosi Moremi).
62. A headmen died in Tubu, the government has imposed someone elected by six (6) people and has refused to recognize the one elected by 179 people (Mr. Seepetswe Aaron), simply because he supports the Wayeyi struggle for recognition. Two other headmen died in Gumare at Boyeyi(Mr. SP Seidisa) and Legonono ward (Mr. Bontlebokae Motlalentwa). In May 2006, elections were held for the two wards and Mr. Edule Khumalo Ovuya and Mr. Boikhutso Mosimane were elected respectively. Since they both support the Wayeyi struggle, they have not been paid to-date. The plan is to impose puppets in the two traditional courts in Gumare, the capital of the Wayeyi tribe.
63. The Wayeyi have suffered open discrimination from government due to the fact that they took the government to court (MISCA 377/99) they have successfully denounced Tawana rule and it is currently surviving only due to government's imposition, as it was the case during the colonial rule.
64. The cause of Wayeyi is a struggle for identity, for freedom to profess their culture and use their language in education, the media and other social domains. They have

been forging their struggle peacefully for 71 years and they remain hopeful for a positive change.

**Section 3: Recommendations**

- 4.1 The State should review all discriminatory laws in order to meet its obligations under International Covenant on Civil and Political Rights and recognize all tribes;
- 4.2 The Wayeyi Chief should be admitted to the House of Chiefs and so should be chiefs of other tribes;
- 4.3 All Headmen elected by the people should be paid
- 4.4 Government should develop a pilot program in mother tongue education in public school system, for at least three linguistic groups and seek for donor funds to implement it.
- 4.5 Other languages should be used on national radio and newspaper.
- 4.6 The school curriculum should be reviewed to teach the histories, values, traditions and customs of all ethnic groups in Botswana.

**Signature:**

Mr. Batshani Ndaba - Chairman \_\_\_\_\_

Prof. Serara Sello Mogwe - Vice Chairperson \_\_\_\_\_

Prof. Lydia Nyati-Ramahobo (Secretary General) \_\_\_\_\_

Mr. Tibapi Gucha (Administrative Officer) \_\_\_\_\_

Mr. Ndana Ndana (Treasurer) \_\_\_\_\_

Dr. Makali (Member) \_\_\_\_\_

Mr. Bennet Maifala (Member) \_\_\_\_\_

Mr. Sam Digwa (Member) \_\_\_\_\_

January 11, 2006