

Participation of Chiefs and Elders in decision-making processes Among the Wayeyi Communities

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Abstract

This paper discusses the participation of Wayeyi headmen and elders in decision -making processes on issues that matter. Four examples are used to illustrate this process. The abolition of the Wayeyi *dikgotla*ⁱ, the removal of the Wayeyi from the delta, the cattle lung disease and the dredging of the Boro River are examples indicating that the Wayeyi elders’ decisions do not contribute significantly to Government’s decision-making process. Their aspirations are met with opposing positions from Government. The recent developments brought about by the Wayeyi Court case may begin to bring a ray of hope to the situation, and improve the participation of the Wayeyi and other non-recognised tribes in decision-making processes. The Wayeyi took Government to court for discriminating them along ethnic and linguistic lines, by not accepting their chief. They concluded that they were being denied representation in the House of Chiefs, a legislative body,

which advises government on important matters concerning the welfare of the people. They challenged the constitutionality of Sections 77-79 of the constitution, The Chieftainship Act, and the Tribal Territories Act.ⁱⁱ The Court ordered the review of the Chieftainship Act to accord equality and of any other law that may impact on the enjoyment of the rights derived from the Chieftainship Act. The paper concludes that the Court order if implemented will positively affect the participation of the so-called minority groups in decision-making processes within their communities. The struggle to preserve and promote the minority languages will continue and the development of the cultures of these peoples will also continue through project implementation by Non-Governmental Organisations.

Historical Overview

In order to understand the role of Wayeyi headmen and elders in decision-making processes, one needs to understand the power relations that exist between the various ethnic groups in the country and between the groups and the state. Of importance to this discussion are the concepts of majority and minority identities. In Botswana these terms are used in the sociological sense, meaning the powerful and the powerless (Ferdman, 1999), without reference to numerical significance. The power in this case is the state power and not the people's power.

Historically, three Tswana speaking tribes had military power, that is the Bakwena, Bangwato and Bangwaketsi,

more so for the first two. They subjugated other non – Tswana speaking tribes such as Bakgalagadi, Babirwa, Batswapong, Wayeyi, Hambukushu, Ovaherero and the Kuhane (also known as the Basubiya). The British Government drew eight colonial boundaries within the country and the Tswana speaking tribes were recognised as the sovereigns of these tribal territories. These tribes included the militarily powerless, Balete, Bakgatla, Batawana, Barolong and Batlokwa (refer to the Tribal Territories Act). These five Tswana speaking tribes were seen to share a common language and history with the first three, hence together would come to symbolise Tswanadom in the sovereign state of Botswana. The laws, such as the Chieftainship Act, which established the institution of chieftaincy, recognised the eight Tswana speaking tribes as the only tribes in the country, and their chiefs as the only chiefs (Section 2 of the Chieftainship Act). Sections 77 to 79 of the Constitution which defines the composition of the House of Chiefs and establishes it as part of the legislative branch of Government, limits the membership to the eight Tswana speaking tribes, with permanent membership while the non-Tswana can only be there for five years as elected members not as chiefs by birth. Tswana ethnicity therefore came to represent the state identity and the Tswana tribes assumed and came to symbolise the state power and nationalism. The Tswana speaking tribes are therefore referred to as the major or majority tribes. When a member of one of these tribes discloses their tribal identity as, for instance, a Mokwena, they are viewed to be advancing national unity.

The non-Tswana speaking tribes were on the other hand incorporated into the Tswana ruled boundaries and their languages, cultures, including their leadership and governance systems were excluded from the public domains of education, the media, the courts and so on. They were expected to assimilate into the Tswana speaking tribes. Their local governance could be at the level of headmen or sub-chiefs, who could not act independently but represent the Tswana chief of the region. The non-Tswana, therefore, according to the state, do not constitute ethnic groups, have no group rights to land and have no languages and cultures to preserve. Consequently, they have no state power, hence referred to as minority tribes. When a member of these tribes discloses their identity as for instance, a Mueyeyi, they are viewed to be threatening national identity and foster tribalism. The power relations are then such that the Tswana are the masters of the non-Tswana, and they (Tswana) govern the non-Tswana on behalf of the state. In this context, it is easy to understand why the state would defend the Tswana, when the non-Tswana raise issues of concern with regard to their identities and their ethnic and linguistic rights. The state cannot claim neutrality (Solway, 2000). Currently, Botswana is claiming the myth of ethno-cultural neutrality (Kymlicka, 2000), by selling the idea of moving away from ethnic identity to regional identity (Government White paper, 2001). But in the same paper, the Tswana ethnic regional names are preserved and their to rule over other ethnic groups is retained.

In this power paradigm, different theoretical frameworks are employed by the state, which protects the Tswana identities on one hand, and by the non-Tswana who have no state protection on the other. For instance, the state finds it appropriate to reserve group rights to land for the Tswana speaking tribes and individual right to land by the non-Tswana in the name of “national unity”. This is a strategy to disempower the non-Tswana, as they could not collectively defend their land when necessary, while the Tswana can do so. When the state propagates the assimilation of the non-Tswana into the Tswana, it claims to be doing so for the benefit of the non-Tswana through social incorporation and for the protection of the state identity within the international community. To the non-Tswana, it is defined in terms of the exclusionary theory, non-recognition, denigration and possibly human rights violation. The state defines the struggle of the non-Tswana to preserve their identities as a rejection of Government’s efforts to build a modern and united state through assimilation, with one language, one culture and one flag. The non-Tswana, believe that nationhood can only be achieved through unity in diversity, a recognition of and a willingness to preserve all the languages and cultures of the country as resources. The state views the establishment of Non Governmental Organisations which aim at developing and preserving minority languages as systems that are seeking for revival of old traditions and resisting monoculturalism (Nyati-Ramahobo, 2000). To the non-Tswana, they are looking for self-definition in which their cultures can be preserved and remain dynamic through their own choices, control and wishes, and not through forced

assimilation. They are resistant to the ideology of cultural shift, in which they are forced to abandon everything about themselves and embracing the language and culture of the Tswana speaking groups. To the state, they are looking for linguistic and cultural purity. To the non-Tswana speaking groups, theirs is a search for a place to exist and to be recognised as a significant part of a whole and equality of citizens as the basis for democracy. In his Christmas message President Mogae equated the ethnic composition of Botswana to scrambled eggs (TV message, December 25, 2000). He was selling the idea of ethnic neutrality, that nobody should be crying for their ethnic identities since these have been eroded by intermarriages, social migration and so on. While this is true for all ethnic groups, Government goes ahead to recommend the Draft White paper of 2001 to Parliament, in which the ethnic identities of the Tswana are preserved, as if they were immune to such social dynamics and social processes as marriage. The state theory is therefore that, the non-Tswana should be scrambled eggs with no identities, but the Tswana should preserve Tswanadom for the sake of the state. To the non-Tswana, this is discrimination and lack of equal treatment and protection from the state of their ethnic identities. Ethnic equality is viewed as a threat to the state's political power, which has been built through exploitation of illiterate political minorities who make up the numerical majority of the nation.

These opposing theoretical frameworks have prolonged the debate, making the Government resistant to change. It has on the other hand, made the non-Tswana to conclude that the

Government needs drastic measures to force it to change, such as court intervention, the involvement of the international community and political education to initiate change through the ballot box. The Government is facing a dilemma, whether to appease the numerically insignificant but politically powerful Tswana speaking tribes or the numerically significant but politically powerless non-Tswana groups. It is torn between utilizing the state power to continue to oppress the non-Tswana or accede to the people's power and address the concerns of the non-Tswana. The decision-making processes on matters of concern are made within this context of power imbalance.

The Wayeyi & Batawana relationship

The Wayeyi (commonly called Bayeyi – a Tswanalised version of the word) came to Botswana from DiYeyi between 1750 and 1800 or earlier (Tlou, 1985). Murray (1990: 4) estimates that the Wayeyi must have come as early as 1000 AD. 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 and Bugakhwe ethnicities. The first group of Wayeyi was lead by their Chief Hankuze. They settled in Ncame (Lake Ngami) where they hunted and did fishing. Here they also met the Basarwa (Khoisan). The second group was lead by Qunku and his brother Qunkunyane. This group came via the delta and settled at Tubu and later Gumare, Karwanga (Nokaneng) and Tjau (Tsau) (Tlou, 1985, Mandja, 1997 video presentation) (see Map 1). They later met with the Hankuze people. Matsharatshara led the last group (with his brother Matshara) and it came through the Sankuyu,

Matlapaneng area and finally settled in the Boteti area with the Deti (another Khoisan group). These group leaders were brothers, Matsharatshara being the eldest and Qunku the youngest.

Around 1820 the Batawanaⁱⁱⁱ (an offshoot of the Bamangwato tribe) evaded the Wayeyi from the Central District who took their land and cattle and subjected them to some form of slavery (Tlou, 1985). The 1936 national population census indicate that the Wayeyi constituted 39% of the population of the Ngamiland district in Bechuanaland. This made them the largest group (16,495) in the district. The Batawana made 1.7% (7,072) of the population. This was the last census to give ethnic and linguistic information. The next was the 2001 census and the results are not yet available to the public. The total population in this area as per 1991 census was 94 000. If the 39% proportion is to be used, this means that they were about 37000 Wayeyi in the district in 1991 (Andersson & Janson, 1997). There are also Wayeyi in the Central District and their number is not estimated.

In 1936 the Wayeyi began to fight for their freedom. The struggle went on for a period of ten years and in 1946, they were ready to submit their demands to Chief Moremi 111 of the Batawana. 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 initial settlement. However, Chief Moremi died in a mysterious car accident before the Wayeyi could submit their demands to him. His

wife Elizabeth Pulane Moremi 111 became Regent. Wayeyi then submitted the following demands to her on July 15th, 1948:

- a. They should have their own dikgotla^{iv} 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 Mueyeyi property after death (also reported in Nyati-Ramahobo, 2000).

On September 13th, 1948 Pulane delivered the judgment on these demands (Samotsoko vs. Pulane – case number 1948HCTLR75). Wayeyi were allowed to have their chiefs in and around Maun (their capital town). The Batawana and Wayeyi interpreted this court order differently. The Batawana understood this order to mean that the Wayeyi could only install headmen while they remained under the overall rule of the Batawana. As Pulane put it, “*Bayeyi ba ka ipusa fela fa ba ka nna le boikobo mo Batawaneng*” (Bayeyi can only gain self rule if they are obedient to the Batawana (Prof. Westphal’s notes, 1962). The British High Commissioner also felt that the Wayeyi were immature to rule themselves (Murray, 1990). On the other hand, the Wayeyi understood it to mean autonomy, and that they could have a paramount chief like the Batawana, because this is the reason they went to court in the first place. They identified Mbwe Baruti from the Hankuze genealogy as paramount chief designate. Unfortunately, on the eve of the designation ceremony, he turned down the offer due to

intimidation and pressure from the Batawana. The Wayeyi then decided to defer the identification and designation of a paramount chief, but identified seven headmen in seven villages as follows: Moeti Samotsoko for Maun at the Boyeyi ward, Mpho Moyungwe at Tsau, Motlalentwa Zimwana for Nokaneng, Naga Uvuya for Gumare, Zhamu Maruzhi for Sepopa and Taolo Mafoko for Seronga ward (Nyati- Ramahobo, 2000). Although they established *dikgotla* in these villages, the colonial government did not provide any infrastructure for the *dikgotla*. For instance, there were no offices or staff, only the headman and a table under a tree. As time went on, a Motawana Chief or his representative, eventually judged each case heard by a Mueyeyi headman. On the eve of Botswana's independence, in 1965 the incumbent Government ceased all licenses from the Wayeyi *dikgotla*, reducing their status from courts of record to courts of arbitration. The only *dikgotla* to try cases and provide all main services were those of the Batawana. Clearly, this was a systematic move to eliminate the existence of the Wayeyi *dikgotla*, hence their autonomy and identity. This move took away the little political power of the Wayeyi had and perpetuated the dominance of the minority Batawana over the majority Wayeyi. The land in which the Batawana found the Wayeyi and Basarwa was declared Batawana Territory and it is currently administered under the Tawana Land-Board. The following examples of participation in decision-making by Wayeyi elders are taking place in this current context.

Participation in Decision-making processes

Four examples will be discussed to illustrate the participation of headmen and elders in decision - making processes among the Wayeyi communities. The first one is the silent death of the Wayeyi *dikogtla* and the reestablishment of Tawana *dikgotla* in Wayeyi dominated villages, a process to suppress and oppress the Wayeyi identities and reinforce the Tawana identity, which represents the state power and state identity. The second example is the policy of relocation of non-Tswana groups to give way to national development. This is the acculturation process in which, once the so-called minority groups leave their natural environments, their culture will change to the “national culture”. It is in line with the assimilation principle in which the non-Tswana have to give up every of theirs including land to serve the interests of the State. The third example was the incidence of the cattle lung disease, which resulted in the eradication of all the cattle in Ngamiland, subjecting its citizens to poverty, dependence on government rations, and perceived generation of political loyalty. Finally is the 1994 dispute on the dredging of the Boro River, in order to provide water to the diamond mines.

1. *Dikgotla*

Efforts to continue to diminish the Wayeyi identity through the abolition of their *dikgotla* have continued to the present day. The process was silent and took place over 30 years. Of the seven *dikgotla* established in 1948, six are currently non-functional except for one at Gumare, and it is of a lower status to the one under the Batawana rule in the same village. The numerical significance of the Wayeyi over

Batawana and other tribes however, dictates that they continue to be appointed as headmen of record and arbitration under the Batawana regime. These *dikgotla* have a Muyeyi senior chief's representative with Wayeyi headmen in a predominantly Wayeyi village, such as those mentioned earlier. But officially, these are under the supervision of the Batawana paramount chief and they are to identify themselves and their *dikgotla* as Batawana. Should they identify themselves as Wayeyi, they are viewed as "tribalistic" and not obedient to the Batawana rule hence a threat to "nation building". Over fifty percent of the headmen of record and senior chiefs' representatives in Ngamiland are Wayeyi. But they did not play any role to counter the abolition of the Wayeyi *dikgotla*, which were established in 1948. This was for fear of victimization and more so without any organized leadership for that purpose. The Wayeyi leadership therefore, did not participate in the decision to abolish their *dikgotla*.

As the number of the Batawana diminished overtime and faced extinction, the Batawana began to feel threatened and started to reestablish their identity. Between 1995 and 2000, they established new *dikgotla* in Wayeyi dominated villages of Nokaneng, Gumare, Sepopa and Seronga. They divided the Wayeyi and those who live in these *dikgotla* were to be referred to as Batawana and the *dikgotla* were given Tawana traditional *kgotla* names, such as Mabudutsa, Meno, and Mopako, a reestablishment of the diminishing state power. While the Wayeyi were not happy about this, and talked about it, they had no leadership to organize themselves to oppose such a move. For the same reasons,

the Wayeyi headmen not stop the abolition of their own dikgotla or the expansion of the Tawana chiefdom.

Section 20 of the Chieftainship Act provides that before the Chief of the region could appoint a headman or senior chief's representative, he must consult with the tribe. This procedure was violated in several instances. In one of the villages a candidate for the post of headman was voted for, but the chief did not like him. The name of the one who was defeated was submitted and was appointed first. The one preferred by the people was not recognized until three years later. In another village, the appointment of a Senior Chiefs Representative (SCR) was made without consultation with the people. This SCR has been against the activities of Kamanakao Association, including discouraging people from speaking Shiyeyi in funerals. It is therefore, common practice for the Batawana chief to ignore the wishes of the people, which are normally reached through consensus of the elders first. However, in one village, the elders were able to oppose this imposition and their candidate was finally appointed. The participation of village elders and headmen is therefore limited and often ignored.

However, the Wayeyi elders and headmen have played a significant role in the recent struggle to secede from the Batawana, more especially after the installation of Shikati Kamanakao¹. They have participated in the various committees of the Kamanakao Association and contributed significantly in shaping the strategies at various points of the struggle. Some have attended the court hearings, and

the annual cultural festivals, make presentations on the histories of the Wayeyi, and contribute funds for the court case. One of the SCRs used to attend until he was seriously warned. Many Wayeyi in his village believe he was promised a bribe. The state is clearly not neutral in this matter. The power struggle is quite pronounced between the Wayeyi and the Batawana. In April 2001, at the annual festival, Shikati Kamanakao instructed the people not to attend kgotla meetings at the so-called Batawana kgotla especially in Maun. This message was adhered to and poor attendance has characterized these meetings since then. The most embarrassing event was the opening of the Landboard offices at Gumare, in November 2001, which the Wayeyi silently boycotted. They also boycotted the President's Day, which was celebrated in Maun on June 15th, 2001. To date, they only attend when the meeting has something to do with the Wayeyi court case. Chief of the Batawana has not held public meetings outside Maun since the installation of Shikati Kamanakao in 1999. Wayeyi elders wrote him a letter in July 1999 informing him that he is no longer chief of the Wayeyi. The role of the headmen and village elders has therefore been quite pronounced in the context of the struggle.

The headman of the Boyeyi ward in Maun was transferred to work at the Batawana kgotla in 1982 as part of the silent abolition of the Wayeyi wards and has not been replaced. Since then a Committee of Wayeyi elders was formed to revive the kgotla and they were holding negotiations with the Batawana without success. After the installation of Shikati in 1999, the Batawana chief instructed the Wayeyi

to elect a headman and submit the name to him. The abolition of Wayeyi dikgotla was now turned into a strategy to reestablish the Tawana power in this kgotla. However, In June 2001, the Wayeyi elders in the Boyeyi ward in Maun elected a headman and asked Shikati Kamanakao to preside over the event. They submitted the name to Government and he has not been recognized yet. A similar episode occurred at the Sanyedi ward in Maun. Government has refused to recognize headman Sanyedi of the Sanyedi ward and Jacob Moeti of the Boyeyi ward, as the Batawana chief did not designate them. While the Wayeyi had nominated a head for Boyeyi ward in Nokaneng, he was not recognized for three years. In 2001, he was transferred to the so-called Batawana kgotla where he was recognized as a Motawana and placed on the Government pay roll. The Wayeyi then nominated another headman for this ward in 2001 and like the ones in Maun, Government has not recognized him as the ceremony to designate him was presided over by Shikati Kamanakao of the Wayeyi and not the Batawana chief. The headman for the Boyeyi ward in Seronga was for a long time not paid, but was designated by the Batawana chief in 2001 and he is currently paid, as a Motawana. The pattern then, is that, if the Wayeyi chief designates one, then Government does not recognize that headman, unless designated by the Batawana chief. This is a way to continue to subjugate the Wayeyi under the Batawana rule. The headmen have to choose between financial incentive and loyalty to the liberation of their people. Currently, Five headmen have chosen the latter. What is notable is that, since the designation of Shikati in 1999, when there is a vacancy,

and the Wayeyi nominate a headman, they demand that their chief and not that of the Batawana should designate him. Examples are the Seronga and Ditshiping cases where the designation ceremonies by the Batawana chief's representative were boycotted. Six (6) people attended the Seronga ceremony and nine (9) for the Ditshiping. On the contrary, one hundred and seventy eight (178) people attended the designation of the headman Moeti at the Maun ward and the three hundred and two (302) attended the designation of the Sanyedi ward headman in Maun, a ceremony presided over by the Wayeyi chief as well. The people's power is clearly with their chief. The nomination of the village headman is normally through consensus among the village elders' consultative mechanisms. The rejection of the Wayeyi headmen designated by their chief is therefore a rejection of the will of the people, and the decisions of the village elders.

2. Forced Removal of the Wayeyi from the Okavango Delta

Some Wayeyi and the Khoisan of the Bugakhwe and Xanikhwe clans have lived in the Delta from time immemorial. They have not caused any environmental problems, but have developed sophisticated means to take care of their environment on which they depend for a living. For years, Government has refused to recognise Zhao (or Jao- a tswanalised version), a Wayeyi dominated settlement in the delta, as a village worthy of social amenities such as schools and health facilities since 1972. Government has come up with several strategies to remove them from the delta and they have resisted. The most recent

was the engagement of a foreign Non Governmental Organisation (the Kuru Family of Organisations – formerly Kuru Development Trust) to establish a Trust called JAKOTSHA incorporating three villages of Zhao, Ikoga & Etsha. The residents of Zhao have argued that this incorporation would not be fair, as people from the two recognised villages would come to compete for polling jobs in Zhao, while they would have nothing to compete for in the two villages. Their approach is that the NGO should find projects for each village to create jobs within their own environments. The other bone of contention was that this NGO formed cultural organisations for the Hambukushu and the Bugakhwe and works closely with these. On the other hand, it does not have anything to do with the Wayeyi organisation, Kamanakao Association. It works with individual Wayeyi especially those who are known to be dissociating themselves from the Organisation due to some political influences. The village elders, and their headmen eventually engaged a lawyer to declare their position, namely not to join JAKOTSHA. Since then several Government officials have visited the island to try and convince the people to join the Trust. The last meetings were at Zhao and Etsha 6 on December 10th, & 11th, 2001 respectively. In these meetings the people made their position clear, that what they want is to have their village recognised as such, and provided with social amenities. They also stated that they want Mr. Jan Droshky's Company to have its concession renewed as they have enjoyed working with him in the area of tourism for years. They saw the removal of Mr. Droshky's Company as a way to bring in those who would be aligned with JAKOTSHA

Trust and remove the Wayeyi from the Delta, declaring it a tourist centre in which no one can claim land ownership. This would leave them landless and the alternative will be move to Etsha 6, a point from which where every one would compete for polling jobs in the delta. The District Commissioner who did not want to listen to what the people were saying addressed the meetings, and the Etsha meeting was almost confrontational. The District Commissioner told the Wayeyi headman in Etsha 6, Mr Mabe Dodo that he should not speak, as he has no authority over land. The headman was trying to explain the fact that, the Land Board Act states that people have the right to inherit land from their ancestors, and the issue of concessions and formation of trusts, does not seem to be sensitive to this matter. As a result, while people outside the delta have the right to land inheritance, those around and in the delta are being denied this right on the basis of the state tourism plan. The District Commissioner shouted at him and asked him to sit down. In all these meetings, the Wayeyi were against JAKOTSHA, except for the three Board members, who were selected by the Foreign NGO to represent the people. The District Commissioner concluded the two meetings by telling the people that, due to the three members who supported JAKOTSHA, everyone was being asked to accept JAKOTSHA. This issue is still pending and the operations of JAKOTSHA have not yet taken ground. It is clear that the participation of elders and headman in decision- making is limited and often met with hostility from Government agencies.

3. The cattle lung disease

In 1995, the cattle lung disease broke out in Xaudum, Northern part of Sepopa (see Map), close to the Namibian boarder. The Government decided that the best way to deal with the matter was to kill all the cattle in the whole of Ngamiland District. Consultations were carried out with the Chief of Batawana and not with the local headmen in the villages. He understood the message to mean that only those in the Okavango sub-district (North of Gumare) were to be killed. This meant that only the Hamhukushu, Wayeyi, and other non-Tswana speaking groups would be affected. While those in the Maun area where the numerically insignificant Batawana live would be saved. On the basis of this information he agreed to the eradication of the cattle.

However, as Government's intention was to eradicate cattle in the whole district, arrangements were made to do so. When the eradication team came closer to Maun, Chief of Batawana and his elders decided to send a delegation to Gaborone, the Capital to see the Minister of Agriculture and the President about saving their cattle. They were unfortunately not successful. This incident demonstrated the fact the Batawana chief does not represent the aspirations of the non-Tswana speaking peoples of Ngmiland, but those of the Batawana tribe. The cattle industry is the traditional source of income for all the rural peoples of Botswana. Ironically, the voices of other tribes in determining their fate, and contribute to how they should be compensated were not found to be unnecessary. The Batawana voice, which represents the state power, was the

only voice to be heard. The unrecognised non-Tswana has to give up that which is theirs for the state to function.

4. Dredging of the Boro River

In 1994, the Government decided to dredge the Boor River, which is on the mouth of the Katanga delta around the Manu area (refer to Map). The reason for this was to bring more water to the Okapi and Letlhakane Diamond mines in the Central district (Map). This decision was objected to by international organizations like Green Peace and the local people. A meeting was held at the Maun kgotla at which the local people who are over 60% Wayeyi explained the damage that this activity would result in. The Wayeyi are the river people as explained earlier and they spend their lively hood in the deep waters. All other tribes including the Batawana were also against the move. As a result, the Government retracted from the decision. This is an example as to when does the Government listen to the voices of the elders. Most people felt that the Government retracted because of the involvement of the international organizations and possibly the Batawana, and not necessarily because of the unrecognized groups. Whatever was the reason, the important thing is that the Government listened.

Recent developments

Prof. Westphal, a linguist from the University of Cape Town started developing the Shiyeyi language in 1960. He worked with Mr. Pitoro Seidisa and they developed a dictionary, orthography and translated portions of scripture. This work was disrupted as all the Wayeyi involved in this

work were arrested by the Batawana in 1962 including Mr. Seidisa. Prof. Westphal stated in his will that the Shiyeyi materials should be burnt. However, Mrs. Westphal saved them and they were made available to the Kamanakao Association. This Association was formed in March 1995 by Wayeyi to continue the work started by Seidisa and Westphal. Its main aim is to develop and maintain the remnants of the Shiyeyi language and culture, as part of the overall national culture.

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 in Shiyeyi. 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 imposed on them by Government ruled them. They looked upon Kamanakao Association as their savior. A special meeting was called to address this issue at Seronga. The meeting was to clearly indicate whether or not Wayeyi wanted to revive their chieftainship and have a Muyeyi paramount chief. The meeting agreed unanimously that they wanted a paramount chief.

After extensive consultations with relevant Government officials including the Minister of Local Government Lands and Housing responsible for Chieftainship issues at the

time, the Vice President Khama and Chief Tawana of the Batawana Tribe, the Wayeyi installed their Chief Calvin Diile Kamanakao on April 24, 1999 against the odds. They submitted his name to Government for recognition, in addition to other demands. The government's response was essentially that the current laws do not include the Wayeyi as a tribe worthy of representation in the House of Chiefs. The laws only recognize paramount chiefs of the eight Setswana speaking tribes. The Wayeyi then resolved to challenge the constitutionality of the Sections 77-79 of the Constitution, the Chieftainship Act and the Tribal Territories Act. The case was heard on September 12 –13, 2001. Chief Justice Juliana Nganunu, Judge Unity Dow and Judge Maruping Dibotelo heard the case. Below were the demands the Wayeyi submitted to High Court.

- a. The declaration of sections 77 to 79 as discriminatory, unconstitutional and nul and void. The court's ruling on this was that the sections were discriminatory along tribal lines but the discrimination was protected by section 15 (9) of the constitution. This declared the Botswana Constitution discriminatory, with a special feature that protects this discrimination. On the issue of declaring the sections unconstitutional, the court stated that it, being a creation of the constitution it has no power to declare any part of the constitution unconstitutional, hence null and void. It further observed that declaring these sections unconstitutional would not bring about the results the Wayeyi desired. These Sections only establish the House of Chiefs, but not the institution of chieftaincy, hence will not benefit to amend it and not the chieftainship Act. At

the time of the ruling Government had already drafted a White paper amending these sections. However, the general public viewed the amendment as cosmetic, and not addressing the issue of tribal inequality the sections perpetuated between Tswana speaking and non-Tswana speaking tribes. At the time of writing this paper, the Draft White paper was yet to be presented to Parliament.

- b. The declaration of the Chieftainship Act as discriminatory and unconstitutional. The court ruled that Chieftainship Act was discriminatory and unconstitutional as it denied the Wayeyi equal treatment and protection like the eight Tswana speaking tribes, violating their constitutional right stated in section 3a of the Constitution. Government was ordered to amend Section 2 of the Chieftainship Act “in such a way as will remove the discrimination complained of and to give equal protection and treatment to all tribes under that Act. If other laws have also to be amended to accord the applicants this right then necessary action must follow” (page 61 of the Judgment).
- c. The recognition of Shikati Calvin Kamanakao by the Minister concerned;
- d. The use of Shiyeyi as medium of instruction in schools and;
- e. The establishment of Wayeyi *dikgotla* in Ngamiland.

The Court’s response on c) above was that there was another claimant to the Wayeyi chieftainship, hence the court could not order the Minister to recognize under such

circumstances. Secondly, it was not clear if the designation ceremony satisfied the requirement to do so according to the customary law of the tribe and the applicant's paper were silent on this matter. Thirdly, by ordering the amendment of the Chieftainship Act to bring about equality means that Government was at liberty on the best way to achieve this, and not necessarily by including Wayeyi as the ninth tribe but some other mechanism. There are two ways to achieve equality among tribes, the first is the abolition of the institution of chieftainship, in which no tribes will have a chief and house of chiefs is abolished. The second option is to bring the historically disadvantaged groups aboard, in which case all tribes including the Wayeyi, will be represented by their chiefs. This argument also applied to e) above. On the issue of language, the Court stated that it did not have full information on the resource implications of this demand. They may order Government to do so, but the resources may not be available and the court cannot supervise demands that are outside the law. It has to be noted that the demands c-e, are rights that are automatically enjoyed by eight tribes that are recognized by the Chieftainship Act. By virtue of being included in the definitions of "chief" and "tribe" the chiefs of the eight Tswana speaking tribes are automatically endorsed by Government as soon as their names are submitted. For instance, the Balete submitted the name of their chief Mosadi Seboko in November 2001 and she is to sit in the House of Chiefs in January 2002. The Wayeyi on the other hand submitted the name of their chief in June 1999; he has not yet been endorsed, even after the court order. This means that if the court order is implemented

through the inclusion of other tribes, and the Wayeyi are included as part of this definition, the recognition of their chiefs should be automatic. No other law establishes dikgotla for the eight Tswana speaking tribes other than the Chieftainship Act, hence, this should be automatic if the amendment maintains the institution of chieftainship and definition of tribe becomes inclusive of the Wayeyi and other tribes in accordance with the court order. It is through the recognition of the eight Tswana speaking tribes that the Setswana language was recognized as a national language. This means that if other tribes were to be recognized, their languages would also be recognized. This is for the simple reason that it is a given that every tribe on earth has a language and culture, hence its recognition is a recognition of its existence in its totality. A week after the judgment came out, Parliament passed the national cultural policy, which recognizes Setswana as the only national language and asserts “ other Botswana languages, which form part of the multilingual and multicultural diversity and are a rich resource of cultural heritage should be harnessed and assisted to develop through research and documentation and other media such as the development of the dictionaries, orthographies, textbooks, etc., so that cultural knowledge is available through these languages. Language development will enhance national understanding, national unity and effectively assist and facilitate participation in developmental issues(Ministry of Labor and Home Affairs, Department of Culture and Youth - page 20). This seems to be an acknowledgment of the use of other languages in development.

It is clear that the judgment was sensitive to the efforts Government had already embarked on, and decided to dismiss them from the application on technical grounds. Some people think this was a good face saving strategy. The Court made a clear statement that “We mention however that the refusal to order as applied for is not an expression that the issues involved in this case must be ignored. On the contrary we wish to emphasize the urgent requirement on the part of the Government of Botswana to attend to them lest they bedevil the spirit of goodwill existing between the different tribes and communities of this country” (page 58). On the surface then, it may look like the Wayeyi lost demands a, c, d and e, while in effect, b) alone provides all of them and the above quoted statement, coupled with on going Government efforts, it is appropriate to say the judgment has achieved all that is needed to address the issue of ethnic discrimination in Botswana. The Court deemed the amendment of the Chieftainship Act to be the instrument that would bring about the results the Wayeyi and the non-Tswana speaking tribes desired as it has for the eight Tswana speaking tribes. The Court Order therefore, calls for the inclusion of all tribes and the amendment of any other law that needs to be reviewed to provide the Wayeyi the full rights and privileges emanating from the definitions of “chief” and “tribe” and the chieftainship Act as a whole. One of such laws is obviously Sections 77 to 79 since membership to the House of Chief is one of the rights chiefs defined in Section 2 of the Chieftainship Act enjoy. Consequently, amending the Chieftainship makes the amendment of these sections mandatory. The Court therefore, while it could

declare these sections unconstitutional, hence cannot be struck off to leave a vacuum, it declared them discriminatory, hence could be amended in its relation to the Chieftainship Act. Group rights to land, is one of the rights the chiefs defined in Section 2 of the Chieftainship Act enjoy. This automatically calls for the review of the Tribal Territories Act otherwise the chiefs of the non-Tswana would not enjoy equal treatment so far as land is concerned. The phrase “any other law” is comprehensive enough to include any law that has a bearing on the rights provided for in the Chieftainship Act. It provides an opportunity for Government to bring about equality and eliminate protected discrimination, which creates disparity in the treatment and protection among the tribes of Botswana. The Court found the need to provide Government with an opportunity to address the issue of tribal discrimination that is enshrined in Botswana laws. The expectation is that, since the Draft White Paper on Sections 77 to 79 of the Constitution came out before the court order, it must be reviewed in the light of this order with the goal to achieve equality, which it currently lacks and seems to maintain the status quo. This window of opportunity will bring better participation of the marginalized groups in decision-making processes.

Future Directions

These new developments bring about hope in the resolution of a long-standing problem in the laws of Botswana. The issue of ethnic inequality has affected the participation of the marginalized groups in decision-making processes on matter that affect their lives. The laws, which foster this

inequality and their practical implementation by Government has been a visible bone of contention within the Botswana society. The judgement is being challenged by Kgosi Tawana at the Court of Appeals at the time of writing this paper. Should he lose the case, there will be hope for legislative changes that will bring about equality among the tribes of Botswana. This will affect in a positive sense, the decision-making processes of Wayeyi leaders. They will be able to define their destiny and the general welfare of their people. On the other hand, should Tawana win, the ray of hope will just diminish and the struggle will go on, perhaps getting on to higher grounds. The challenge facing non-Tswana speaking groups is whether or not Government will implement the court order if Tawana loses. Already, there seems to be signs of unwillingness. The Government media came out very negatively on the judgement, highlighting on the negative aspects of the judgment with regard to the demands of the application. It did not even publicize the court order. When reading the Government media, mainly the Botswana Daily News and the Radio Botswana news, one got the impression that this was a judgment, which did not issue any serious order to worry about. Section 2 of the Chieftainship Act was all of a sudden regarded as trivial with not much to offer, one Minister wrote to the Kamanakao Association (letter dated January 18th, 2002). This was the same message Kgosi Tawana gave to the *kgotla* meeting he held on December 19th, 2001, and his subsequent radio interviews (Radio Botswana 2, January 8th, 2002). In the Government media, and its agencies there was no explanation on the rights and privileges the Tswana speaking tribes derive from this

section. None of the Government officials informed the general public about the Court order in their general meetings. In fact, Government's attitude is that of "silence in court" on the Court Order. One of the expected outcomes of the court order was the suspension of the House of Chiefs. But Government seemed to go on with business as usual. Shikati Kamanakao and the Kamanakao Association have applied to the court to interpret the judgment in relation to the operations of the House of Chiefs. The reasoning here is that:

1. The Chieftainship Act has been declared discriminatory and Government has been ordered to review the definitions of the terms "tribe" and "chief" to achieve equality. These two terms represent the key players in the institution of chieftainship, by defining who is a chief, and who are the tribes they represent. The terms therefore having been found to exclude the Wayeyi and other tribes in Botswana in their definitions have been found discriminatory hence nullified. The Court Order is law and it was effected, on the 23rd November 2001, meaning that tribes are now equal, what we await for is the review of the relevant law and other machineries to put that equality into practice.
2. The terms "chief" and "tribe" are used in Sections 77 to 79 of the Constitution but are not defined within the Constitution. Since ex-officio membership to the House is a right or a benefit one derives from being chief of a tribe, the meanings of these terms as used in

the said Sections have always been derived from the definitions in Section 2 of the Chieftainship Act. This is logically so since the House of Chiefs cannot exist independent of the institution of chieftainship and its key players being chiefs and tribes. On the other hand, the institution of chieftainship can exist without the House. Hence, the logical dependence of the Constitution on the Chieftainship Act for the definitions of these two terms.

3. Declaring these terms discriminatory and subjecting them to a redefinition means that the membership of the House is automatically questioned and is subjected to redefinition. The Question is under what law are the eight chiefdoms constituted for them to meet if the chieftainship Act is nullified and more specifically the definition of “chief”? Further, under what law are the tribes they are to represent constituted if the chieftainship Act is nullified and specifically the definition of “tribe”. While the House exists as established in Sections 77 to 79, its membership is yet to be defined for as long as the meanings of the words, which define the key players in its composition, being “chief” and “tribe” are annulled and yet to be defined.
4. The continuation of business as usual is a perpetuation of the discrimination the Wayeyi have complained of and it is tantamount to ignoring the Court Order. As a result, this conduct can go on for years while we watch and continue to live under discrimination.

5. The prayers are that the House of Chiefs should not meet until the Chieftainship Act is amended, to effect the court order and ensure equality. Should the interpretation given by the application be found erroneous, the court should provide an interpretation of the judgment in relation to the operations of the House of Chiefs. Specifically, 1) its relation to the Court order on the definitions of “chief” and “tribe” as stated in the Chieftainship Act and 2) the rights and privileges of those who are included in these definitions, and 3) the use of these terms in Sections 77 to 79 of the constitution. The state has to prove that the words as defined in the Chieftainship Act, have no relevance whatsoever to their use in these Sections.

The application is to be heard on Tuesday January 29th, 2002. This case is important in publicising the Court Order, which Government has wished to push under the carpet. Further, its outcome will determine not just the fate of the House of Chiefs, while the amendment of the Chieftainship Act is awaited for, but the interpretation and strength of the Court Order.

Conclusions

The participation of the Wayeyi headmen, elders and women in decision-making processes has been evident as far as the struggle for liberation is concerned. Otherwise the decisions of the village headmen have simply been to complement those already made by Government through the Tswana speaking Batawana chiefdom. The Court has done justice to the issue of minorities in Botswana. It is

now incumbent upon Government to implement and correct this obvious wrong, which has the potential to reverse the gains of democracy. A new dispensation in which tribal equality is a value is needed to empower communities to make decisions about matters of concern to the welfare of their people. The patience and the peaceful struggle the disadvantaged peoples of this country have put forth has to be acknowledged. The democratic atmosphere, within which the non-Tswana speaking tribes have exploited to forge their struggle, is the basis for the gains achieved up to this point. The independence of the Judiciary has contributed significantly to the light that is at the end of the tunnel. The marginalized tribes will continue to develop their languages and cultures, within the spirit of the recently adopted national cultural policy.

The Kamanakao Association has a proposal to develop a cultural centre at Gumare. The plot for the centre is now fenced and a traditional house is erected. Due to lack of funds, the centre has not gone beyond this stage. The aim is to develop cultural tourism for the local communities and offer a place they could sell their local products at their own determined prices. The Centre will be the venue for the annual cultural festival and also for use by other groups for various purposes that promote and preserve the cultures of the local communities. Another on-going project is the development of writing materials for Shiyeyi. The main problem with this project is lack of a full time coordinator to work with the trained writers and edit the materials timely for publication. The Association has published a phrase book for teaching Shiyeyi, a translation Hymnbook.

It has developed a picture dictionary for children's literacy, a storybook, a primer and an orthography awaiting funding for publication. The development of a general dictionary and more storybooks are ongoing.

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ⁱ A traditional meeting place where the Chief consults, informs and attends to disputes amongst his people. Essentially the Wayeyi wanted to have their own chiefs in their villages.

ⁱⁱ Section 77 reads "There shall be a House of Chiefs for Botswana. The House of Chiefs shall consist of a) ex-officio members b) four elected members and c) three specially members. Section 78 reads "The Ex-officio members of the House of Chiefs shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa tribes, respectively". **The Chieftainship Act** states that the term tribe "means the Bamangwato tribe, the Batawana tribe, the Bakgatla tribe, the Bakwena tribe, the Bangwaketse tribe, the Bamalete tribe, the Barolong tribe or the Batlokwa tribe. All the tribes speak Setswana. It further states, "Tribal territory means respectively, the Bamangwato, Batawana, Bakgatla, Bakwena, Bangwaketse, Bamalete and the Batlokwa tribal territories. as defined in the Tribal Territories Act, the area known as the Barolong Farms as described in the Botswana Boundaries Act, and any other area which may be added to any such areas by any enactment". **Note:** This means that only the eight Setswana speaking tribes are regarded as tribes, and only they have the right to land as a group right. The rest of the estimated 26 tribes are not regarded as such and can only have access to land as individuals. This means that Setswana speaking tribes have group rights to land while non-Setswana speaking groups have no group rights to land.

ⁱⁱⁱ All the eight Setswana speaking tribes have the name of the tribe starting with "Ba", one person from the tribe is "Mo---" their language starts with "Se". For example, Batawana (the people), Motawana (one person from the Batawana tribe); Setawana (the dialect of Setswana this tribe speaks). Equally, citizens of Botswana are Batswana, one citizen is a Motswana, and the national language is Setswana. This prefixing rule has been generalized to non-Setswana speaking tribes – e.g. Bayeyi (the Wayeyi people), Moyeyi (one member of the Wayeyi tribe, in Shiyeyi it would be Muiyeyi), Seyeyi (the Shiyeyi language of the Wayeyi).

^{iv} A traditional meeting place where the Chief consults, informs and attends to disputes amongst his people. Essentially the Wayeyi wanted to have their own chiefs in their villages.