

Violations of Linguistic and Cultural Rights: The Case of the Wayeyi People in Botswana: Paper presented at the International Congress on 'The New Architecture of Peace'. Baile Herculane, Romania. 23-25 May, 2003.

**Lydia Nyati Ramahobo,
University of Botswana**

Abstract

The recognition of Tswana ethnic groups, and the exclusion of all other groups who spoke languages other than Setswana is reflected in colonial laws still in force today. These have resulted in more than 65% of the population being unrecognized. The recognised Tswana minority speaking ethnic groups came to represent the State power through the institution of chieftaincy and sovereignty over land. One of the unrecognized ethnic groups, the Wayeyi challenged the laws in court and the Chieftainship Act in particular was annulled and government was ordered to amend it and bring about equality to all linguistic groups in the country. Sections 77 to 79 of the Constitution proved hard to challenge, so that even though the court found them to be discriminatory, could not order their amendment for the reason that such discrimination was protected by Sections 3 and 15 of the same constitution. This meant that there was need to appeal to a higher international law to which Botswana has ratified. The UN Committee on the Elimination of all forms Racial Discrimination recommended to the Botswana government to review all the discriminatory laws. To date the government has designed more discriminatory strategies, including killings, to oppress the Wayeyi and other unrecognized groups. In agitating for their cultural rights therefore, non-Tswana speaking groups must demand constitutional recognition, as the means to enjoy their linguistic and cultural rights. The international Community is called upon to take interest in this potentially volatile matter to prevent conflict.

Introduction

The Economy

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. The Southern part is mainly inhabited by the six of the eight Tswana speaking tribes recognized as the only tribes in the country. The development in this region has caused rapid urbanization of this part of the country, where the capital city

Gaborone is situated, thus justifying more resources to be directed in this region at the exclusion of other regions dominated by the unrecognized non-Tswana speaking tribes.

Political Development

Politically, Botswana has 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 factionalism, which led to a split just before the 1999 general elections. This is another major factor, which has made the opposition ineffective.

Social development

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. The latest available statistical data on achievement in the primary school system is for 1997. It indicates that minority dominated areas (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 (Nyati-Ramahobo, 2000). In these areas languages other than Setswana are spoken at home, while the school system demands the use of Setswana and English only.

The primary health care system has been developed in the country with clinics in the remote areas. However, health issues are still a challenge in the country, with larger populations sharing inadequate facilities especially in rural areas. Inadequacy of health personnel is also a major problem in the country. 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.

Socio-Cultural Development

Botswana adopted an assimilationistic model for socio-cultural development of its people. The British Government drew eight internal colonial boundaries, dividing the whole Protectorate into tribal territories (see the eventual crystallization of this in the Tribal Territories Act below, 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 powerful, 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 powerful.

They represented Tswanaedom, as the British historian Neal Parsons calls Tswana cultural and political dominance in public life and it was upon Tswanaedom that the British founded the colonial state, which was, in turn and in many ways, the foundation for the sovereign state of Botswana today. Parsons (1985) maintains that the concept of “Tswanaedom 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”.

Assimilationistic Policies and Laws

The assimilationistic policies are crystallised in the Chieftainship Act of 1933, currently still in operation, which recognised the eight Tswana speaking tribes as the only tribes. This meant that only these tribes can have recognised chiefs for consultations on development issue, only their language and cultures can be recognised as part of the national culture, at the exclusion of 25 other languages and cultures. The other law is the Tribal territories Act described above. In practice, this law means that non-Tswana speaking tribes can be moved from their ancestral land without compensation. For example, the Wayeyi were moved from the current Moremi Game Reserve without compensation, also from Zhao, Gxoro and Ditshaping. The Basarwa are currently being forced from the Central Kalahari Game Reserve, the Sandvelds and the Nxai Pan areas without consultation, as they have no chief to consult, and without compensation as they have no ancestral land to claim as far as this law is concerned.

Further, the resources from their areas are used to develop the areas of the eight Tswana speaking tribes, while the non-Tswana areas are left undeveloped, with very little services in education, health and infrastructure. For instance, the Jwaneng and Orapa diamond mines do not benefit the people in the immediate environment, but the royalties go to the chief of the Bangwaketse in Kanye and the Bangwato in Serowe, to develop these villages. Thus development in Botswana discriminates along ethnic lines. The assumption is that the land belongs to the eight tribes, though it is administered by the landboards. Members of the eight Tswana speaking tribes chair the main landboards, in their capital villages and make decisions. The non-Tswana are served by sub-landboards, which can make limited decisions. Sections 77 to 79 of the Constitution, which submit only the chiefs of the eight Tswana speaking tribes to the House of Chiefs. Section 88 of the Constitution makes it mandatory for any bill that deals with custom and culture to pass through the House of Chiefs. This means that, those tribes not represented in the House of Chiefs are denied the right to participate in decision-making and their culture is excluded from the national culture.

The totality of these laws in practice, mean the following for the unrecognised tribes:

- They cannot have a chief of the same status of as the Tswana chiefs.
- They cannot be represented by their own chiefs in the House of Chiefs,

- They are not consulted on major decisions affecting their lives, for instance, on the mass killing of the cattle in the Ngamiland District in 1995. Only Tswana chiefs are consulted.
- They have no group rights to land, hence cannot claim royalties, can be relocated without land compensation, and cannot have reserved places to bury their chiefs like the Tswana tribes.
- Their areas have remained largely rural after 38 years of independence. They are undeveloped with the least services such as hospitals, roads and employment opportunities. They make the major part of the 47% of the population that lives below the poverty datum line.
- Their languages and cultures are excluded from the media, education, the legal systems and all other social domains.
- They have agitated about this situation since independence through Parliamentary motions in 1969, 1988 and 1995, without action from government.

The Case of the Wayeyi

The case of the Wayeyi is used to illustrate the plight of non-Tswana speaking ethnic groups in Botswana. Much as the Wayeyi and Bekuhane and others were subjugated by the numerically insignificant Batawana, the Bakalanga, Batswapong, Babirwa, Basarwa and others were equally subjugated by the Bangwato in the Ngwato reserve. The Bakwena and Bangwaketsi enslaved the Bakgalagadi in the Central reserves. The story of the Wayeyi is similar in some ways (being subjects of another tribe) but different from others in terms of the degree of enslavement and the efforts made to attain freedom. The ordeal the Wayeyi are going through, would apply to any of the unrecognised ethnicities if they tried to fight for their rights like the Wayeyi are doing.

Historical Background

1. 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 Qanikhwe ethnicity. They came in three groups each with its leader, and settled in Ngamiland (Northwest district).
2. 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. 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 III 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 settlement. However, Chief Moremi died in a mysterious car accident before the Wayeyi could submit their demands to him. His wife Elizabeth Pulane Moremi III became Regent. Wayeyi then submitted the following demands to her on July 15th, 1948:

- a. They should have their own *dikgotla*¹ 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.

On September 13th, 1948 Pulane delivered the judgement 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. This meant that the Wayeyi were still under the Batawana rule since they failed to identify a chief (paramount chief in colloquial terms).

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.

Shiyeyi Language and Culture

Serfdom, needless to say, affected the use of Shiyeyi language in social domains. At independence, in addition to revoking licenses from Wayeyi *dikgotla*, government declared that no other language could be used for teaching or any other public purpose, except Setswana and English. Though the Wayeyi were and still are the majority, their language became a minority language. 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.

Formation of Kamanakao Association

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 an orthography ready for publishing, a hymnbook, a phrase book to teach Shiyeyi, a transitional primer, a picture dictionary in print, a grammar book in press, a story book, a draft dictionary, a draft religious dictionary, a religious music

¹ Traditional courts

cassette, 12 videos cassettes on cultural events, an annual calendar and it organizes an annual cultural festival.

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

The Installation

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 against the odds. 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. It reads as follows:

Thank you for your letter of June 16th, 1999. As you are aware chieftainship issues are governed in Botswana by the Constitution and by the Chieftainship Act. Please would you particularize under which sections of these instruments you wish action to be taken in respect of your client: A) To have him recognized as a Chief and so come on to the Government payroll, B) to have him made a member of the House of Chiefs. If, as I suspect, neither is possible under the existing law, then no doubt your client will petition his MP to have the law changed, if such is the will of Parliament.

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 19th, April, 1999).

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. After several postponements, the case was head on September 12-13th, 2001.

The Judgment

1. The Wayeyi had abandoned the challenge to the Tribal Territories Act. This meant that judgment had to focus on the Chieftainship Act, the recognition of their Chief and Section 77 to 79 of the Constitution.
2. The Chieftainship Act: The High Court declared the Wayeyi a separate tribe from the Batawana (page 7 of the judgment). The *locus standi* of their organisation, Kamanakao Association and their Chief Kamanakao was established (pages 4-7). The Court ruled that the Wayeyi have successfully, demonstrated that the Chieftainship Act is unconstitutional and discriminates them on the basis of tribe, contrary to section 3 (a) of the Constitution. It ordered Government 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).
3. This then meant that they issued an order to give equality among tribes with immediate effect (page 59) and the Wayeyi became equal to the Batawana. The court further directed that the Chieftainship Act be amended to give Wayeyi equal treatment and protection under this Act (page 62), meaning that the law has to be reviewed and the necessary structures put in place to achieve equality.
4. Recognition of Shikati Kamanakao 1: While his *locus standi* was established as chief of the Wayeyi with the right to take the matter to court on his behalf and on behalf his people, the court ruled that it could not order recognition since there was a claimant of the Wayeyi chieftainship. Moeti Moeti had filed an affidavit on the eve of the court case, stating that he is the chief since his grandfather Moeti Samotsoko was one of the seven headmen installed in 1948. He further stated that as chief of the Wayeyi, he supports the insubordinate status of the Wayeyi under the Batawana rule. By filing an affidavit, he was fighting on the side of Government for the status quo.
5. Sections 77 to 79 of the Constitution: The court ruled that these sections were discriminatory, as they accorded ex-officio membership to House of Chiefs only to eight tribes at the exclusion of others (pages 35-37). The Court further observed that though the sections were discriminatory, the court had no jurisdiction to declare one part of the constitution unconstitutional. (As noted earlier government is trying to amend section 79 to increase elected members only but not to achieve equality among tribes). It further observed that the discrimination contained in these sections, the Chieftainship Act and the Tribal Territories Act, were protected by Sections 3 and 15 of the Constitution.
6. In August 2002, a registered Coalition of NGOs called *RETENG: The Multicultural Coalition of Botswana* was invited to provide an alternative report to the United Nations Committee on the Elimination of All forms of

Racial Discrimination (CERD). After examining the state party report and the shadow report, CERD observed that :

The Committee expresses concern that Sections 3 and 15 of the Constitution do not fully respond to the requirements of article 1 of the Convention. The Committee is concerned by the discriminatory character of certain domestic laws, such as the Chieftainship Act and the Tribal Territories Act, which only recognise the Tswana-speaking tribes. Other tribes, especially the Basarwa/San peoples, are reported to suffer from cultural, social, economic and political exclusion, do not enjoy group rights to land, and do not participate in the House of Chiefs. Noting that the amendment of sections 77 to 79 of the Constitution is currently in process, the Committee recommends that recognition and representation of all tribes in Botswana be ensured on an equal basis in the Constitution, and that the Chieftainship Act and the Tribal Territories Act be amended accordingly.

Enforcing the status quo

1. To date the government has not acknowledged the existence of the court order or the CERD report. To the contrary, the status quo has been enforced with better discriminatory strategies on the ground. For instance, some Wayeyi headmen have been removed from government payroll, as they spoke against the Government White Paper during the Presidential tour on the amendment of sections 77 to 79. This paper was rejected by the co coalition of marginalized tribes. Currently, the Wayeyi have developed strategies to peacefully protest against the imposition of the Batawana Chief over them and the non-recognition of their chief.
2. On May 6, 2003 the Wayeyi chief mysteriously died. He was brought the hospital unconscious, half dressed and with watermelon spills on his shirt and vest and a different substance on the collar of his shirt. Twenty-two (22) days later, the Police described their investigations as still at an embryonic stage.
3. On May 14th, 2003 his ex-wife, who is a member of the eight Tswana speaking tribes sponsored a few relatives to oppose the burial of the chief at the tribes capital village, but his village where he would be buried like an ordinary person. The matter went to court and the ruling allowed Wayeyi to bury the Chief at Gumare.
4. On the eve of his burial, the Government, through the Land Board obtained a court order to bar Wayeyi from burying their Chief in the Cultural Centre for which they have a 50-year land lease.
5. In February 2003, The Batswapong, one of the marginalized tribes were denied the right to install their chief, by the Minister of Local Government who referred them to get permission from the Tswana speaking Bangwato tribe.
6. The Basarwa continue to be forced out of the Central Kalahari Game Reserve.

Conclusion

Tribal discrimination has taken deep roots in Botswana. The government is believed to be divided with the President's camp fighting for reform. On the other hand, another faction is fighting for the status quo. This situation is not

only volatile but un-conducive to address the issue objectively by government. Further, continued discrimination and intimidations by government forces on the oppressed people is most likely to cause conflict despite the patience exercised since independence. Peace therefore is being challenged in Botswana, which has a record of stability and an example of democracy. To the contrary, peace in Botswana has been defined as the absence of war and the silence of the majority of the oppressed citizens. Globalisation must provide a forum for the international community to take interest in the affairs of Botswana now than later. Peace in Botswana is peace elsewhere. Botswana is largely dependent on other countries, hence should not be immune to a friendly advice to prevent a major challenge to peace. The new architecture of peace should take root through collaborative research on the cultural issues in Botswana and educate the international community on the realities that are threatening peace.