

From a Phone Call to the High Court: Wayeyi Visibility and the Kamanakao Association's Campaign for Linguistic and Cultural Rights in Botswana.

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Abstract

This paper by the Coordinator of the Kamanakao Association reflects upon the Association's campaign against tribally discriminatory laws, against the social stigma of past serfdom, and for human rights and democracy in Botswana. The campaign made Wayeyi from the North West District highly visible on the national scene. Through litigation up to the High Court, the Kamanakao Association broke new ground for judicial review in the broad public interest. The advance was for the cultural rights of 'minorities' in general, and not only in the interest of the Wayeyi. The most favourable High Court ruling recognised Yei cultural distinctness, allowed them to secede from the tribe of their past overlords, the Tawana, and concluded a landmark case in the wider fight against state-backed tribal discrimination and denial of language rights. As an insider's account mainly about recent events, but seen in a perspective extending to precolonial times, the paper focuses on strategies for and against change. These are the strategies effecting the power relations, in turn,

between the Yeyi and the Tswana, former serfs and overlords, the Yeyi and the Government, and the Government and the Tswana speaking tribes unfairly privileged by the tribally discriminatory laws.

Introduction: The Question of Our Own Invisibility

On the mid-day news for February 17th, 1995, Radio Botswana made a challenging announcement. It was at once full of promise yet uncertain, especially for listeners living in the capital Gaborone while strongly identifying, on a tribal basis, with people, language and culture denied recognition by the state. Passed by Parliament, according to Radio Botswana, was a motion to amend the Constitution's tribally discriminatory sections 77, 78, 79. After the newscast, I was phoned by Mr. Kelebogile Shomana, a fellow tribesman from Seronga, working in Gaborone. 'This is good news', he said, 'But what about us, Wayeyi? We are so invisible, even if they review the constitution, would they recognize us?'¹

The Underlying Wayeyi History

¹ R. Werbner, 'Citizenship and the Politics of Recognition' in I. Mazonde (ed), *Minorities in the Millennium: Perspectives from Botswana*, (Gaborone, Lightbooks for the University of Botswana and the International Centre for Contemporary Cultural Research, 2002), pp.117-135.

Underlying Mr. Shomana's question was the feeling we both shared, he as a mechanical engineer and I as an academic, specializing in linguistics and education, that our people for too long had been denied recognition of their rights as a tribe with a culture and a language of their own. Not being visible was a condition imposed on our people over a long history, we knew. First, in pre-colonial times, around 1820, came the Tswana-speaking Batawana (an offshoot of the Bangwato) who invaded the Wayeyi from what is now the Central District, took their land and cattle, and gradually subjected them to a form of serfdom. This was part of a major expansion of the domain of Tswana-speaking peoples, until it extended across most of what is now Botswana, the Wayeyi being on the margins, at the very western frontier of this penetration into areas of culturally very different people. The Wayeyi themselves (commonly called Bayeyi – a Tswanalised version of the word) were 'the first Bantu-speakers to emigrate to the Okavango delta'.² arriving from DiYeyi between 1750 and 1800 or earlier, perhaps as early as 1000 A.D.³

Today, the Wayeyi constitute about 40% of the population of the North West District in Botswana,⁴ roughly 37000 people, the total population, according to the 1991 census being 94 000.⁵ They are the largest tribe in the district. Their highest concentrations are in the Maun/Sankuyu areas, Tsau, Nokaneng,

² T. Thomas. *A History of Ngamiland 1750-1906: The Formation of an African State*. (Gaborone, Macmillan, 1985).

³ M. Andrew. *Peoples' Rights: The Case of Bayei Separatism. Human and Peoples' Rights project*, Monograph No. 9. (Roma, Institute of African Studies of Lesotho, 1990).

⁴ A. Lars-Gunnar and J.Tore, *Languages in Botswana: Language Ecology in Southern Africa*, (Gaborone, Longman 1997).

⁵ Results of the 2001 population and housing census were not released yet.

Gumare, Sepopa and Seronga. There are also Wayeyi in the Central District, although their number is not estimated, in the Letlhakane, Mopipi, Rakops, Xumu, Khumaga, Makalamabedi, and Motopi areas. In Namibia Wayeyi are estimated to be more than 20 000. The Wayeyi are the main makers of the famous Botswana baskets and the mokoro-poll bearers in the Okavango Delta.

At the very onset of the colonial period came the second phase in making the Wayeyi invisible. The British Government drew eight colonial boundaries, dividing the whole Protectorate into tribal territories (see the eventual crystallization of this in the Tribal Territories Act⁶), where the colonial power recognised the Tswana speaking tribes and their chiefs as the subordinate sovereigns. It was not a matter of colonial recognition solely for the powerful, such as the Bangwato, the Bakwena, the Bangwaketse, who could thus effectively dominate subject peoples on behalf of the colonial power. 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 Tswanadom, as the British historian Neal Parsons calls Tswana cultural and political dominance in public life,⁷ and it was upon Tswanadom that the British founded the colonial state, which was, in turn and in too many ways, the foundation for the sovereign state of Botswana. The colonial laws, such as

⁶ Republic of Botswana, *Tribal Territories Act*. (Gaborone, Government Printer, n.d.)

⁷ P. Neil, 'The evolution of modern Botswana: Historical revisions'. In L. A. Picard (ed.), *Evolution of Modern Botswana: Politics and Rural Development in Southern Africa*. (Lincoln, Nebraska, Nebraska University Press and London, Rex Collings, 1985, Pp. 26-39).

the Chieftainship Act,⁸ 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).

Unlike the patrilineal Tswana-speaking tribes, the Wayeyi are originally matrilineal in inheritance of property and in succession to office, including chieftainship. The matrilineal 'parents' would give their daughter in marriage, the maternal uncle being the leader of the wedding arrangements, and the paternal 'parents' would only be informed. Thrusting towards assimilation, remaking matriliney in a Tswanalised, patrilineal mold, the domination of the Batawana as rulers has eroded the Wayeyi laws, values and language. This is one of the motivating factors for the struggle over tribal rights.

All of this was as well known to Mr. Shomona as it was to me, being an academic who had become acutely conscious of Tswanadom as a force even in the life of our liberal university in Gaborone. But what we both knew, too, was that the history of our people was also a long history of moving from acceptance of invisibility, during moments of apparent submission to Tswanadom, to open opposition and public resistance. Reflecting this, and again understood in the background of my conversation with Mr. Shomona, is a subjective image of penetrating endurance. It is the way that the Wayeyi imagine themselves in their respect for water and, indeed, their affinity with water.

⁸ Republic of Botswana, *Chieftainship Act*. (Gaborone, Government Printer, n.d.).

The Wayeyi cannot drink water that is disturbed or in motion. For instance, if one is in a canoe (*owoto*), as it moves over the water, one cannot fetch water to drink. It is believed that the drinker might have an accident on the way. Experts in water hunting- and most of their food is in the water or reverie areas such as the delta- Wayeyi always boast of their ability to penetrate silently like water, hence undefeated. They would say “*Watshara wa tshapi wa siya sha mazi ha wanga, wakuru wa vundja indowa*” (meaning - We the water people, who do not use medicine to break walls but like the current of a mighty stream, cannot be stopped, we make our way through the thickest of the thickets).⁹ As they meet one another, one will say, “*Watshara*” – and the other, in reply, “*Watshapi*”, expressing mutual solidarity. This spirit characterised the Wayeyi struggle for freedom before independence and during the current period.

It was in 1936 that the Wayeyi began their modern 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 their colonial overlord, the Tawana Paramount Chief Moremi III.¹⁰ Sympathetic to the cause of the Wayeyi, and his mother was apparently herself a Moyeyi, this Chief had at some point ordered all Batawana to move back to Kgwebe Hills – their settlement. However, Chief Moremi III died in a mysterious car accident before the Wayeyi could submit their demands. It was to his wife Elizabeth Pulane Moremi III, then the regent, that Wayeyi submitted the following demands on July 15th, 1948:

⁹ T. Tlou, *A History*, p.13.

¹⁰ The Chieftainship act establishes the office of Chief. However, in everyday speech, this is referred to as Paramount chief (*Kgosi Kgolo*- the big chief). The two terms are used interchangeably in this text.

- a. Wayeyi should have their own dikgotla [tribal courts] in and around Maun, the capital village;
- b. They should have representation in all tribal activities & secret meetings;
- c. They should have and use land freely;
- d. No Motawana should inherit Moyeyi property after death.¹¹

On September 13th, 1948 Pulane delivered her judgment.¹² Wayeyi were allowed to have their chiefs in and around Maun. The Batawana and Wayeyi interpreted this court order differently. It meant, for the Batawana, that the Wayeyi could only install headmen, while they remained under the overall rule of the Batawana. In this they were supported by the British High Commissioner, who stereotyped the Wayeyi as being too immature to rule themselves.¹³ Against that, the Wayeyi interpretation was that it meant autonomy, and that they could have a paramount chief like the Batawana, because this was the reason they went to court in the first place. As paramount chief designate, they identified Mbwe Baruti from the genealogy of Hankuze, the leader, in ancient times, of one of the three original groups of Wayeyi immigrants from Diyeyi. Unfortunately, on the eve of the installation ceremony, Mbwe Baruti turned down the offer due to intimidation and pressure from the Batawana. The Wayeyi then decided to defer the installation, but identified seven headmen in seven villages as follows: Moeti Samotsoko for Maun at the Boyeyi ward, Mpho Moyungwe at Tsau, Motlalentwa

¹¹ A. Murray, *Peoples' Rights: The Case of Bayei Separatism*.

¹² Samotsoko vs. Pulane – case number 1948HCTLR75

¹³ A. Murray, *Peoples' Rights*, Pp.40.

Zimwana for Nokaneng, Naga Uvuya for Gumare, Zhamu Maruzhi (Translated as Marotsi) for Sepopa and Taolo Mafoko for Seronga ward.¹⁴

Although *dikgotla* [tribal courts] were established in these villages, the colonial government did not provide any infrastructure for them. For instance, there were no offices or staff, only the headman sitting by 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 the Wayeyi had and perpetuated the dominance of the minority Batawana over the majority Wayeyi. In accord with that, the land in which the Batawana found the Wayeyi and their neighbours, the San, (now called Basarwa, in Botswana), was declared the land of the Batawana tribe by the present government.

Subjugation of the Wayeyi and discrimination against them, and in turn, resistance, continued even after the installation of Wayeyi village headmen. In 1946, during the population census, each Mueyeyi was asked to declare being either a Mueyeyi or a Motawana. Those who said they were Wayeyi were arrested and imprisoned. Sometimes, they were threatened with deportation to

¹⁴ L. Nyati-Ramahobo, 'Linguistic and Cultural domination: The case of the Wayeyi of Botswana' In H. Batibo & B. Smieja, eds; *Botswana: The future of minority languages*. (Berlin, Peter Lang, 2000, Pp 217-234).

DiYeyi. At this time, Wayeyi were used as serfs to supply water during hunting. A Motawana would ride a horse and, expected to keep pace with it would be a Moyeyi, carrying a calabash of water. The idea was that when a Motawana stops his horse, a Moyeyi should be around to provide the water (for legal and institutionalized forms of discrimination see the sections below). '*Makoba*' was the Batawana's derogatory term for the Wayeyi. No one knows exactly what this term means, but all agree it is derogatory.¹⁵ Some people say it is a Lozi word for a stupid person, of below average intelligence, while others think it means running behind a horse as a slave and others say it means a lazy person.¹⁶ Amongst those arrested for fighting against such torture, running behind a horse as a slave, were Mr. Boitshwarelo Jane (a teacher) Mr. Ozoo Salepito, Mr. Naga Ovuya, Mr. Ramaeba Mosupukwa, Mr. Seboko Sashandi, Mr. Chombo Saudu and Mr. Saucho Goipatwabotho to mention a few.

In 1962, Mr. Pitoro Seidisa (a Moyeyi from Gumare) started working with Professor Ernst Westphal of the University of Cape Town to develop the Wayeyi orthography as a popular writing system, to compile a dictionary, and to translate some of the Gospels. The Batawana interpreted all of this cultural

¹⁵ When the present Paramount Chief, Tawana, used the word to refer to Wayeyi on December 19, 2002, Minister Nkate wrote to Kamanakao Association ... My own socialization growing up in Ngamiland is that the term is derogatory in reference to Wayeyi. (page 2 letter dated January 17th, 2002)

¹⁶ E. Wayne, 'The Autobiography of Motsamai Mpho' (Gaborone, Lobopo Publishers, 1996, Pp 7).

A. Sutherland, 'Economic differentiation and cultural change among Yeyi in Northwest district in Botswana' (Ph.D. thesis, University of Manchester, 1984, Pp 85).

development as a plot to challenge their chieftainship; they hearked back to the case in 1948. As a result, Mr. Seidisa was imprisoned on his way from one of his meetings with Professor Westphal in Cape Town. Mr. Seidisa had gone back and forth, collecting data among the Wayeyi and then returning to work with Professor Westphal in Cape Town. It was on a trip home to collect more data, that Mr. Seidisa was arrested by Police Officer Rashiya (a Moyeyi) at Seronga under the orders of the Sub-Chief Labane (a Motawana). Pitoro was handcuffed and tied to a bed for four days, and his family was not allowed to see him. He was later transferred to Maun, and imprisoned for months until he asked for permission to see the magistrate. When the case was heard, Mr. Seidisa was acquitted of the offense. Amongst those arrested for giving unacceptable evidence were Mr. Kenewang Mandja and Mr. Hauqhaho Moxhaakhwe. Mr. Seidisa later launched a case against Labane and Police officer Keetile for ill treatment while in custody and unprecedented arrest. Regent Pulane dismissed the case since Labane and Keetile were her allies. As a result of this resistance against efforts to develop Shiyeyi, some of the projects Seidisa and Westphal started were not completed and whatever was done remained with Professor Westphal, who stated in his will that all the materials should be burnt after his death.

The use of Shiyeyi language in social domains, most of all in the public domain was negatively affected by serf status of the Wayeyi. At independence, in addition to ceasing licenses from Wayeyi *dikgotla*, Government declared that

no language other than Setswana could be used for teaching or any other public purpose. Languages that were taught in schools before Independence, such as Ikalanga had to be stopped. So that while Wayeyi were and still are the majority in their home district, and numerous elsewhere, their language became a minority language.

The Powerful Definition of 'Minority' in Botswana

At this point, and leading directly to my answer to Mr. Shomana, I have to say something about what 'minority' and 'majority' mean in Botswana, at least in much official, state-backed usage. The numbers definition, measuring the few (the minority) and the many (the majority), is sometimes used in everyday life. But even more important for state-backed official use is the distinction between the powerless and the powerful, without reference to numbers.¹⁷ The power in the case of official use is the state power and not the people's power, and here the meaning of 'minority' and 'majority' is grounded in Tswanadom, originally backed by the colonial state under the British and now sustained by the postcolonial state. This was a direct, if significantly intensified, inheritance from the colonial state: under the postcolonial state, Tswana ethnicity came to represent the state identity and the Tswana tribes came to symbolise the state power and the values of nationalism. To talk now of the major or majority tribes is to refer, in official discourse, to the Tswana-speaking tribes. When a member

¹⁷ See the similarity to sociological usage, in B. Ferdman, 'Ethnic and Minority Issues in Literacy'. In D. Wagner, R. Veresky, and B. V. Street, (eds), *Literacy: An International Handbook*. (Boulder, Westview Press, 1999), pp. 95-101.

of one of these Tswana-speaking tribes publicly asserts his or her tribal identity as a Mokwena, for example, the assertion is welcomed, since it is taken for granted that making Tswanadom visible and advancing national unity are one and the same thing.¹⁸

It hardly needs saying that for minority assertions of identity, the contrary is true. If a member of a minority takes pride in his or her own tribal identity, claiming to be, say, a Muyeyi, the very identification is often taken to threaten national identity and foster tribalism. The enduring power relations are such that the Tswana are the masters of the non-Tswana, at least in tribal administration. The Tswana continue to run the courts under tribal administration; the judge at the top is the Tswana paramount chief. In brief, the Tswana continue to govern the non-Tswana on behalf of the state, there is no postcolonial break with the colonial past.¹⁹ 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.

What does need to be spelled out here is the link, continuing from the colonial to the postcolonial state, between identity and public administration. The colonial state took the expansion of Tswanadom for granted. Colonial boundary making was meant not to limit the incorporation of subject communities but to regularize the territorial administration by subordinate

¹⁸ For a discussion of minority challenges to assimilationist nationalism, see R. Werbner, 'Citizenship' and this volume, Introduction, and below.

¹⁹ On the postcolonial process of tribal re-integration, see R. Werbner, 'Introduction', in this volume

sovereigns, the paramount chiefs, within clearly defined compartments. Distinct modes of leadership and governance among the subject communities themselves were largely ignored. They were expected to assimilate into the Tswana speaking tribes, and only on this basis were they allowed access to subordinate office at the level of headman or sub-chief. It is a legacy from the colonial to the postcolonial state that the non-Tswana have been regarded as neither constituting tribes nor having the right to tribal land in a territory of their own. The Tswana hegemony is being defended in the name of nation unity. It is in defence of the wrong impression, created in the international community, that Botswana is a mono-ethnic society; hence no other tribe or language exists officially other than Tswana.

The Formation of the Kamanakao Association

'I was listening to the radio too', I answered Mr. Shomana in agreement, 'and I am thinking of all the material I have been collecting on my people and wondering what to do with it". We then decided to meet to set a date for a public meeting to discuss the way forward.

Seven Wayeyi attended the first meeting, on March 25th, 1995. Other meetings followed, as the numbers kept increasing. We decided to found an association, calling it *Kamanakao*, meaning 'their remnants'. The name reflects its main aim, namely to develop and maintain the remnants of the Shiyeyi language and culture, as part of the overall national Botswana culture. On

November 9th, 1995, we registered the Kamanakao Association officially, as a state recognized society, intended to address the socio-cultural needs of the Wayeyi.²⁰

My part in the Association's campaign needs to be known, from the start, in order to position the rest of my arguments in this paper. As the Coordinator of Kamanakao Association, I myself influenced certain reactions from Government. At first, because I am a woman, the Government acted as if the Kamanakao Association were weak, in ways women are supposed to be, and as if it could quietly undermine the activities of the organisation, until it would simply die a natural death. Breaking the silence, Government began to pay serious attention when the matter was already in court, when Wayeyi were too visible to be ignored any longer. The perceived weakness turned out to be an actual strength, because being ignored and dismissed as a "dreamer" meant that I, and in turn the Association, had space for forging ahead with our activities at our own pace. Moreover, being Dean of the Faculty of Education at the University of Botswana meant that I served the Association's need for a Coordinator who had the resources to communicate with the membership. The level of technology that is currently available, including cellular phones and faxes, also made the struggle much easier by facilitating quick and timely decision-making by the membership of the organisation in contact with me and

²⁰ The Kamanakao Association is currently developing a cultural centre at Gumare.

others in different parts of the country, from the capital city of Gaborone to Wayeyi wards in the Northwest District.

One of the Association's initial efforts on behalf of the Shiyeyi language was to hold workshops. These provided opportunities for collecting linguistic data which I and other linguists needed to analyze and describe the phonetic system of Shiyeyi. Elders made videotaped presentations on their histories, oral traditions, stories, poems and songs to inform the linguistic analysis. The issues these and other Wayeyi presenters from different villages came back to, again and again, were issues of servitude, and not merely in the past. They grieved about the present chiefship and passionately expressed their strong feeling that they were not free so long as they were under the rule of a Motawana chief imposed by Government. They looked upon the Kamanakao Association as their savior.

A special meeting was called to address the issue of chiefship at Seronga on November 28th, 1998). The question for the meeting was: Did Wayeyi want a chief of their own? If so, was he to be a paramount chief or an elected one? It was agreed unanimously that Wayeyi want a paramount chief.

The Seronga declaration read as follows:

- a. The Wayeyi people would like to have a paramount chief
- b. The capital for Wayeyi should be Gumare – where the paramount chief would reside.

- c. The Task Force is charged with the responsibility to find a suitable candidate for the chieftainship and work out the modalities for installation.
- d. That the candidate should have the following characteristics: intelligent, educated, humble, have experience with dealing with people and government bureaucracy, have a vision for Wayeyi and have good communication skills.
- e. In order to avoid tragedies experienced in 1948, security measures were to be taken seriously.
- f. The installed chief's first assignment would be to lead the negotiations for a segregated area of jurisdiction between Wayeyi and Batawana.

The Identification of the Chief.

As agreed in Seronga, nominations were to be sent to the Task Force. These were to be preferably from the three original lineages - Hankunze, Qunku and Matsharatshara. However, it was allowed that in case the rightful people were not willing, any capable candidate could be identified. Five names were submitted between November 1998 and April 1999. Two of the candidates were from the Hankunze lineage, one from Matsharatshara and another from the Qunku lineage. The fifth candidate who later declined, was not known to be from any of the three lineages.

Each of the candidates submitted a CV with a statement of his vision for the Wayeyi people. The Task Force studied these. As the number was small

enough, it was decided that all candidates should be interviewed. Five elders from Seronga, Gumare, Sepopa, Maun and Boteti area were to join three members of the Task Force and conduct the interviews in Gaborone, and three of the five came. The interview panel was composed of six members. After all candidates were interviewed a review meeting immediately followed and the panel unanimously agreed on the candidate from the Matshartshara lineage. In order to avoid threats from the Batawana, an appeal was made to the general public not to reveal the name to everyone but elders in some main villages. This request was well received.

The Installation

The installation followed a series of consultative meetings before and after the Seronga declaration with the following relevant government officials:

On September 18th, 1998 a meeting was held with Kgosi Tawana II and all sub-chiefs in the Northwest district. Purpose of the meeting was 1) to inform him of the activities of Kamanakao Association; 2) to request the support of all sub-chiefs to ensure successful implementation of the programmes and 3) to inform Kgosi Tawana II that Wayeyi were considering having their own paramount chief. They further clarified that the decision is yet to be finalized, and when it has, the Association will support such a course. Kgosi Tawana said that should Wayeyi choose to have a chief of their own he had no problem

with that. He also urged sub-chiefs to support the activities of Kamanakao Association²¹.

On October 20, 1998 – Wayeyi representatives met the Vice President Lt. Ian Khama Seretse Khama. The purpose of the meeting was to inform him that Wayeyi have expressed their desire to have their own chief. The idea would be fully discussed at the Seronga meeting in November. But preliminary discussions already indicated that they would like to have their chief installed in April 1999. Representatives wished to have advice from Government so as to share it with Wayeyi at the November meeting. Khama said that, if Wayeyi would like to have a paramount chief, they need to talk to Kgosi Tawana and discuss the issue of land division. If they wish to have an elected chief, then the issue of land does not arise. This was rather surprising as no law makes a direct relationship between the chief and land, but rather the Tribal Territories' Act²² makes reference to the tribe. In other words, land belongs to the tribe. This means that if the Wayeyi could be defined as the one of the eight tribes mentioned in the constitution, then the land in which they live would automatically be said to belong to them. The power of land allocation as stated in the Land Act of 1970²³, rests with the tribe and not the chief. The powers of chiefs to allocate land was taken away from them by the British Order in

²¹ D. Caitlin, "Bayei can have their own chief, says Tawana" Mmegi, 25 September – 1 October, 1998. Pp 6).

²² Republic of Botswana, 'The tribal Territories Act: Cap 32:03' (Gaborone, Government Printer, 1933)

²³ Republic of Botswana, 'Tribal Land Act: Cap.32: 02' (Gaborone, Government Printer, 1970)

Council of 1890²⁴ and the Minerals' Act of 1933²⁵. It was therefore not clear why Tawana was perceived to have powers to allocate land to the Wayeyi. The Wayeyi interpreted Khama's suggestion as a strategy to fan conflict between the two groups, something the Wayeyi were not interested in. November 28th, 1998 was the Seronga meeting, which made the final declaration, stated above.

On February 23rd, 1999 – a second meeting was held with Khama to inform him that Wayeyi would install their chief in April but have not talked to Kgosi Tawana for the simple reason that it is Government's responsibility to give Wayeyi their land as it has done with other tribes.

On April 15th April 1999, there was a meeting with Minister Kwelagobe, the then Minister of Local Government, Lands and Housing. Representatives of Kamanakao Association in January had proposed this meeting. In February a plea was made to the Minister to adjust his busy schedule and meet with representatives, even after hours for about half an hour. On the 14th, April 1999, Minister Kwelagobe's office informed members that the meeting has been scheduled for the 15th at 2:30. The Minister informed members that they have to submit the name of their chief to Kgosi Tawana, who would submit to the Minister. This was meant to demonstrate the fact that the Wayeyi were subjects of the Batawana. He also informed members that he was suggesting they wait

²⁴ L.Nyati-Ramahobo, 'The language situation in Botswana' *Current issues in Language Planning*, 1, 2 (2000), Pp. 243-304.

²⁵ Republic of Botswana, "Mines and Minerals Act: Cap 66:01"(Gaborone, Government Printer, 1933).

for Tawana who had gone overseas. Members reported that Kgosi Tawana was asked, in writing in January, to fix the time for a meeting. Another letter was written to him in March but he responded to neither of them. Members learned within the week that he had gone to the United States. The fact that he left without making arrangements with his office indicated that he did not take the issue of the Wayeyi chieftainship seriously.

The Kamanakao Association reached a consensus about the next step. Our Chief is to be a Wayeyi Chief, they agreed. Though it would be fitting to have Tawana attend, they reasoned, the installation could not be postponed because of his absence- after all, the acting Chief in his office could represent him. Members also felt that section 4 1 (a) of the Chieftainship Act allows the tribe to assemble and designate their chief. Only 4 1 (b) requires Government to recognise the chief. It therefore follows that what is necessary is for the tribe to assemble, hence there was no need to wait. It must be stated that in practice, this process is not the same. Instead, the people identify their chiefs, next government endorses the chiefs and starts paying him or her, and finally a designation ceremony is held, presided over by the Minister of Local Government. Obviously, this was not going to be case with the Wayeyi who were not recognised as a tribe. The responsible Minister stated that the Chieftainship Act, and the Tribal land Territory Act and sections 77-79 did not allow Wayeyi to have their own chief. Instead, Tawana is their Chief. He suggested we see the Attorney General for a more detailed explanation, a

suggestion the representatives rejected on the basis that the laws were discriminatory and the Wayeyi intended to disregard them and defy Government.

This restoration of Chiefship by Wayeyi was understood in terms of ancient ideals of leadership. According to these chiefly ideals, the role of a Wayeyi leader is to guide his people and give directions. He would lead the hunting expedition and when all the meat had been taken to the meeting place (*shishaka*), he would distribute all of it to his people equally. During harvest, the Chief would receive and bless produce from his people. He was expected to play an integral part in the medical practices and traditional rituals, which are to strengthen and protect his people. He would attend to disputes and seek reconciliation. The Chief or leader is called *Shikati* or *Mukando*. He is an integral part of the marriage negotiations and rituals. He is to be informed on all matters concerning his people. His people respect him and such respect is demonstrated by moving their hands together as if clapping, but without making any sound, followed by the words “*Baba, Baba, Baba Shikati anga*” (Father, father, father, my chief).

The *Shikati* or a village *Mukando* is designated by sitting him on a wooden chair (*shipuna*) or a round and smooth stone (*indemu*). He is dressed with a lion or leopard skin or just a hat of such skin. This is because he is expected to be as fierce as a lion or tiger. He is also given an axe, a knobkerrie and a flywhisk. The flywhisk is a sign of dignity amongst the Wayeyi people – with it

he is to remove from his body flies and other insects that might bring him disease. It usually has medical charms to protect him from his enemies who might be sending him diseases and other mishaps through *muti*, charms. The axe is symbolically used to mean that he has to cut trees and clear the way for his people – a symbol of good leadership. This was the Wayeyi customary law applied during the designation of *Shikati Kamanakao*.

The installation itself took place on April 24th, 1999 at Gumare. It was performed by Mr. Gaesemodimo Nxookhwe, a tribesman from Seronga. Mr. Elisha Mouti read the Keynote address, which was meant to be delivered by Member of Parliament Mr. Olifant Mfa. On his behalf. Mrs. Dikeledi Keamogile gave an account of the genealogy of the Wayeyi Chieftainship. The process of identifying the Chief was narrated by Mr. Simon Meti- Chairperson of the Association. *Shikati Kamanakao* gave an acceptance speech- taking responsibility as Chief of the Wayeyi people. Mr. Otukiseng Sakudze gave a vote of thanks.

The Ministry of Local Government barred government officials from attending. But Some Wayeyi sub-chiefs attended the ceremony and many Wayeyi dignitaries attended. *Shikati Calvin Diile Kamanakao I* was installed before an estimated crowd of over two thousand self-sponsored people. The event was characterised by Shiyeyi song and dance. Representatives of the Mayeyi Traditional Authority from Namibia also attended the ceremony.

The state radio was barred from giving live coverage of the occasion. A short newscast on the event was aired three days later in a rather negative tone. The Association was told to ask for permission to hunt a lion from Kgosi Tawana and Ministry of Local Government, Lands and Housing. This was rather unusual as neither Tawana nor this Ministry deal with wildlife.

It became clear that the current government supports the tribal rule of a minority tribe over the majority. This was a reaffirmation of Tswanadom as representing the state power.

On May 13th 1999, Shikati Kamanakao I met with his Council at Maun Secondary school chapel to consolidate the demands the Wayeyi wished to submit to government, in addition to forwarding his name for recognition as paramount chief of the Wayeyi. The following were agreed upon as issues and demands to be submitted to the Minister of Local Government, Lands and Housing by the Kamanakao Association or its representative. They rejected the suggestion that the submission should be made through Chief Tawana, as he would obviously have a conflict of interest.

Issues and Demands

The issues

- a. We the Wayeyi are a full-fledged tribe. We have to be recognised as such and accorded the right to self-representation in the House of Chiefs by our Paramount Chief Kamanakao I.
- b. Government imposed the word Batawana to refer to all tribes in Ngamiland and disregarded their true ethnic identities. The Wayeyi would like to be referred to as such and not as Batawana as the groups are linguistically and culturally distinct and originated from different backgrounds and identities. Wayeyi need not renounce their ethnic identity in order to be accepted, like all of Botswana's citizens, as Batswana.
- c. Contrary to Sections 3 and 15 of the constitution, Sections 77-79 of the same constitution discriminates against the Wayeyi (and other ethnic groups) on the basis of ethnicity and violates their human right to self-determination –by denying them the right to be represented by their chief.
- d. Government imposed Kgosi Tawana and his predecessors as Chief of the Wayeyi without consent.
- e. Government gave away Wayeyi land to Batawana following undemocratic criteria.

The Demands

- a. That the Wayeyi should no longer be under the rule of the Batawana chieftainship.

- b. That their Chief Calvin Keene Diile Kamanakao I should be recognised by the Minister concerned and admitted into the House of Chiefs as a Paramount Chief and should attend the next meeting of the House.
- c. That all Boyeyi *dikgotla* that were established in 1948 be re-established with the main *kgotla* to be situated at Gumare where the paramount chief would reside.
- d. That a line of land demarcation be made to separate Wayeyi jurisdiction from Batawana. The demarcation should respect the 1948 boundaries both in and outside Maun. (This demand was later dropped.)
- e. The Wayeyi should no longer be called by the derogatory name of *makoba*, which the Batawana prefer. Such an act should constitute an offence.
- f. Wayeyi children are to be taught in Shiyeyi at pre-school and early grades.
- g. That adult literacy programmes be established in Shiyeyi speaking areas.
- h. That government should protect the interests of the Wayeyi by taking appropriate action against those attempting to divide the tribe using undemocratic means and causing confusion over the chieftainship issue, because this may lead to unnecessary ethnic violence.

These demands were later included in a legal application before the courts.

The Court Case

In the meeting of May 13th, 1999 the Wayeyi Chieftainship Council agreed that a lawyer should be consulted to put the demands in legal language and submit the name of the Chief to the relevant Minister. The following response to the

lawyer's letter to the Minister was given by the Deputy Attorney General Mr. Kirby:

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 clients: 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.²⁶

The Wayeyi then resolved to challenge the constitutionality of the Sections 77-79 of the Constitution, the Chieftainship Act and the Tribal Territories Act (which was later dropped from the case). After several postponements, the first part of the case on preliminary issues was heard on June 19 –20, 2001. The main issue raised by Government was whether the court had the jurisdiction to hear the case. Judgement on this matter was delivered on July 20th, 2001. The court ruled that it had the jurisdiction to hear the case, and that the state failed to have the affidavits of Shikati Kamanakao, and Professor Nyati-Ramahobo (for the Kamanakao Association) struck off. The substantive case was finally heard on September 12 –13, 2001 by Chief Justice Julian Nganunu, Justice Unity Dow and

²⁶ Letter from the Deputy Attorney General, 15th, July 1999 .

Justice Maruping Dibotelo. Attorneys Gabriel Kanjabanga & Taimu represented the applicants, while Counsel Tshepho Motswagole and Nchunga Nchunga represented the state.

Judgement on the demands was as follows. First, on the declaration of sections 77 to 79 as discriminatory, unconstitutional and null and void, the Court ruled that the sections were discriminatory along tribal lines. However, the discrimination was protected by section 15 (9) of the constitution. This declared the Botswana Constitution discriminatory, and yet upheld a special feature that protects this discrimination. On the issue of declaring the sections unconstitutional, the court stated that it, the Court itself, being a creation of the constitution, 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 it will not benefit the nation to simply declare them unconstitutional.

Second, on the declaration of the Chieftainship Act as discriminatory and unconstitutional, the court ruled that the Chieftainship Act was discriminatory and unconstitutional as it denied the Wayeyi equal treatment and protection like the eight Tswana speaking tribes, violating their constitutional rights stated in section 3a of the Constitution. They issued two orders, a general one to Government on

all tribes in Botswana and another specifically to the Wayeyi as the applicants in the case.

The first order read as follows:

We therefore order that Government should 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 any other laws have also to be amended to accord the applicants this right, then necessary action must follow (page 61).

The second read:

“The order we issue is this 1) We direct that Section 2 of the Chieftainship Act (Cap 41:01) be amended to afford equal treatment and equal protection by that law to the applicants. 2) Save as mentioned in paragraph 1 hereof the application of the applicants fails in all other respects and it is dismissed. 3) each party to pay its costs (Page 62).

3. The third issue was the recognition of *Shikati* Calvin Kamanakao by the Minister concerned and finally, the fourth demand was the use of Shiyeyi as a medium of instruction in schools.

The Court’s response on recognition of the Chief 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 of the customary law of the tribe as the applicant’s papers were silent on this matter. This was an oversight on the

part of the judges as the applicants' papers contained the report on the installation, which clearly described the Wayeyi customary law on designating chiefs as described above. Thirdly, ordering the amendment of the Chieftainship Act to bring about equality meant that Government was at liberty to choose the best way to achieve this, and it was not necessarily by including Wayeyi as the ninth tribe but it was open to some other mechanisms.

A more positive outcome was the declaration of the Wayeyi as a tribe separate from the Batawana. According to this, the Wayeyi achieved freedom from Batawana domination. The judgment states, 'It is agreed that they (Wayeyi) form a separate tribal group with their own ethnic language and culture',²⁷ and this issue was never in dispute in the Court. Furthermore, the Court afforded the Chief of the Wayeyi a *locus standi*, that is, as a Chief of a tribe, whose rights had been trampled upon, he had the right to bring the application to court. The recognition was that the Wayeyi are a tribe worthy of having a chief of their own. The declaration of these sections as discriminatory and the Justices revelation that this discrimination was protected by other sections (15 (9) of the constitution was a major victory for the so-called minority groups in Botswana. Over years, Government had been trying to lull the nation into the mind-set that these sections were not discriminatory.

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

²⁷ *High Court Judgement*, p.7

speaking tribes desired, making the Act apply to them 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. Among such laws, obviously, must be Sections 77 to 79, since membership in the House of Chief is one of the rights enjoyed by Chiefs who are defined in Section 2 of the Chieftainship Act. Consequently, amending the Chieftainship Act makes the amendment of these sections urgent, if not mandatory. While the High Court could not declare these sections unconstitutional, and they could not be struck off, leaving a vacuum, the Court stated that they were discriminatory, and implied that, like the Chieftainship Act, they should be amended.

Group rights to land are among the rights enjoyed by the tribes who are defined in Section 2 of the Chieftainship Act as stated earlier. Review of the Tribal Territories Act is mandatory. Otherwise, the non-Tswana tribes 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 provided 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.

On the issue of language, the Court stated that it did not have full information on the resource implications of this demand. The Court could order Government to do so, but the resources may not be available and the Court could not supervise demands that are outside the law. It has to be noted that recognition of Chiefs and the use of their language, are rights that are automatically enjoyed by the eight tribes recognized by the Chieftainship Act. The recognition of the eight Tswana-speaking tribes was the basis for the Setswana language being recognized as a national language. If other tribes were to be recognized, their languages should also be recognized, at least to some level. The simple reason is that everyone agrees every tribe has a language and culture, hence its recognition is a recognition of its existence in its totality. 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 sat 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. 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.

In dismissing the Kamanakao Association’s demands for recognition of their chief and the use of their language in schools, the Court made this clear statement :

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.²⁸

A week after the judgement came out, Parliament passed the national cultural policy. This recognizes Setswana as the only national language and asserts:

...other Botswana languages, which form part of the multilingual and multicultural diversity and 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.²⁹

This seemed to be an acknowledgment of the valuable use of other languages in development even though the policy fails to accord them full use and recognition.

²⁸ *High Court Judgement*, p.58

²⁹ Ministry of Labor and Home Affairs, Department of Culture and Youth, *National Cultural Policy*, adopted by Parliament, November 2001, p. 20.

Chief Tawana of the Batawana tribe submitted a motion to appeal the entire judgment, but he later withdrew for unstated reasons. The order had far reaching implications for his chieftaincy. Tribal equality will mean that Tawana would be a Chief without a tribe, because his own tribe, the Batawana, are almost extinct.

The Government media, in particular, The Botswana Daily News and the news on Radio Botswana, highlighted the negative aspects of the judgement, denying some of the demands of the application. This reflected the intent to set people's minds ready for "no change". None of the media fully publicised the court order, except one radio programme, which discussed the court order with Chief Tawana, six weeks after the judgement.³⁰

It was as if, for the Government media, the judgement did not present an order of any great significance. Section 2 of the Chieftainship Act was suddenly regarded as trivial. One Minister (who is also the member of Parliament in the Wayeyi area) wrote to the Kamanakao Association, essentially saying the court order does not mean much; hence the Wayeyi should not expect change, because Tawana will continue to be Paramount Chief of Batawana (using the term in its inclusive sense meaning all the tribes in Ngamiland).³¹ The same message was given by Tawana himself to the *kgotla* meeting he held on

³⁰ Radio Botswana, *Interview with Chief Tawana*, 8th January 2002, morning show.

³¹ J. Nkate, *Letter to the Kamanakao Association*, unpublished correspondence, 17th January, 2002.

December 19th, 2001, and in his subsequent radio interviews.³² In the Government media, and its agencies there was no explanation of the rights and privileges the Tswana speaking tribes derive from this section. None of the Government officials informed the public about the Court order in their general meetings.

The Government's attitude of "silence in court" on the Court Order was perceived to be strategic, in a number of ways. Many critics felt that the intent in down playing the court order was to dampen the spirit of the Wayeyi and other minorities; it was to get them to be disillusioned with the power of their own agency. The silence was also seen as a face saving strategy, avoiding recognition that a minority group, such as the Wayeyi, could compel the mighty Government to accept change. Given such an ambiance of disillusionment and lowered expectations, so the strategy was perceived, it would be all that much easier for the Government's Paramount Chief, Tawana III, to continue to impose himself onto the Wayeyi, as will be seen later. After all, with an eye on the coming 2004 general elections, the Government wanted as many people as possible to think of it as being a good government, bringing positive change voluntarily, and not merely under great pressure.

The strategy was further perceived in relation to party politics. If it was a victory for the minorities, then it was also a victory for the opposition politicians

³² Radio Botswana, *Interview with Chief Tawana*, 8th January 2002; G. Molapisi, 'I remain Kgosi despite Govt. ruling – Tawana. *Botswana Daily News*, December 21, 2001, p.2

who supported them. Avoiding recognition of an opposition victory was in the ruling party's obvious interest; hence the public silence, as it were, another strategy for making subject communities invisible. The strategy to suppress the significance of the judgment was felt, therefore, to be motivated by a "fear of vengeance" through political disloyalty by a minority.

For Wayeyi, one of the expected outcomes of the court order was the suspension of the House of Chiefs. But Government went on with business as usual, and the House met on January 28th, 2002. Shikati Kamanakao and the Kamanakao Association went to court to apply the judgement to the operations of the House of Chiefs. The main petition was that the House of Chiefs should not meet until the Chieftainship Act is amended, to effect the court order and ensure equality. As it is, the House of Chiefs is not properly and legally constituted, hence no law can pass through it. A second request was that, the court should provide an interpretation of the judgement 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 had to prove that the words as defined in the Chieftainship Act, have no relevance whatsoever to their use in these Sections.

The application was heard on Tuesday January 29th, 2002 and was dismissed. The Wayeyi lawyers were ordered to pay costs on the grounds that they did not provide the necessary advice to their clients. The Wayeyi viewed this as a cheap strategy to divide them from their lawyer. They wrote affidavits to reconfirm their confidence in their lawyer and decried the judge, Justice Chatikobo, not one of the panel for the earlier ruling, as a political tool.

During the hearing, the judge's attitude confirmed my own suspicions about political bias. I felt that the request for an interpretation, like the earlier case, caused grave irritation to this Government, which is itself notorious for ignoring court orders and more than ready to ignore this one as well. In the initial minutes of the hearing, the judge could hardly allow the Wayeyi lawyer to complete a sentence without interruption and introduced issues regarding the House of Chiefs, although the defence did not raise these. In this way, the judge implied that the case was about getting the Wayeyi Chief into the House of Chiefs. Against that, the application clearly stated that the House was at the time improperly constituted and could not pass any law. Hence the Wayeyi would not want their Chief to be in such a House, until the law was amended. Meeting on February 2nd 2002 at Shorobe, the Wayeyi resolved to appeal the judgement, which was felt to be highly biased and irrelevant to the issues we raised.

The Revised Draft White paper

At the time of the High Court ruling, Government had apparently prepared a Draft White Paper, amending the discriminatory sections of the constitution, but the Draft was not presented until after the ruling. The Draft was briefly introduced in Parliament in November 2001, and was made available for public consideration. Members of Parliament were to consult further with their constituents before the February Parliamentary session. The drafting of this paper was necessitated by several factors. First, as stated earlier, a motion had been passed in Parliament in 1995 to amend the sections. No action had been taken to implement the motion. The same motions had been tabled and failed to pass in 1969 and 1988. Second, in March of 2000, the Kamanakao Association had written to the United Nations Secretary General, informing him of the cultural discrimination enshrined in Botswana laws and the Wayeyi 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 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. Third, the Court's declaration of the sections as discriminatory made it mandatory for a democratic state such as Botswana to review such laws. Fourth, the relationship between the Chieftainship Act and Sections 77 to 79 is such that the amendment of the Chieftainship Act dictates the amendment of these Sections. Even if the Court did not order its amendment, circumstances

dictated it. The only advantage Government gained from the court not ordering the amendment is that this allows the Government room to manipulate the wording of any amendment to suit its political agenda, while the problem of ethnic inequality remains. The change recommended in the report of the Commission was the increase in the number of elected members of the House of Chiefs from 15 to 33, and the elevation of the four previously elected sub-chiefs with the option for *ex-officio* membership. These were from the colonial crown lands from the Kgalagadi, North East, Chobe and Gantsi regions. The eight Tswana speaking tribes would continue to be ex-officio members, while those from non-Tswana speaking tribes would be members of the House in a subordinate status, as elected sub-chiefs. None of the non-Tswana speaking areas would have had their ethnicities recognized, because territoriality would have served as the basis for representation in these regions. On the other hand, the ethnicities in the Tswana speaking regions would continue to be recognized. Thus the subjugation and non-recognition of the non-Tswana speaking tribes would continue. In an immediate response, Wayeyi, other so-called minorities and many members of the general public viewed the recommendations in the report as cosmetic.

As a response, in 2001, Government presented its first Draft White Paper³³, which removed the ex-officio membership of the eight Tswana speaking groups,

³³ Republic of Botswana, 'The Draft White paper on Sections 77, 78 & 79 of the Constitution' (Gaborone, Government Printer, 2001)

and subjected each member of the House to elections, by the Electoral College in each region. However, the paper reserved the status of territorial head (or paramount chief) for the eight Tswana speaking tribes. This was done by a definition of which regions and districts could designate territorial heads, and these were confined to the Tswana speaking regions and districts. By so doing, the Government had not adequately addressing the issue of constitutionally perpetuated tribal inequality between Tswana speaking and non-Tswana speaking tribes. Nor was it fully responding to the spirit of the Court order. Like the report of the Commission, the Draft White Paper aimed at changing the language and not so much the substance, and it stated 'Government accepts the position to change the language in so far as such mentioned sections are concerned, in order to remove the perceptions held by some sections of the society'.³⁴ Indeed, one of the terms of reference for the Presidential Commission prior to the Draft White Paper was 'to review sections 77 to 79 of the Constitution of Botswana, and seek a construction that would eliminate any reasonable interpretation that renders the Sections discriminatory'. The intention was clearly not to bring about equality, but to seek a safer language to maintain tribalism. The Draft appeared to achieve its goal of changing the language in the following way: the name of the House was changed from House of Chiefs to *Ntlo ya Dikgosi* (a direct translation from English to Setswana); Chief to *Kgosi* (another direct translation), but this term was now to be used to refer to the elected non-Tswana sub-chiefs; a colloquial term, Paramount Chief, which was not in any law

³⁴ Republic of Botswana, 'The Draft White Paper' Pp 17)

before, was now being legalized in the term, territorial head, to refer to *kgosikgolo*, its equivalent colloquial term in Setswana now being equally legalized. This was seen by many as an entrenchment of Tswana domination, strengthening Tswana domination over the non-Tswana and not addressing the issue of ethnic inequality.

The Draft White paper was tabled before Parliament on April 15th, 2002 and its discussion was to begin on April 18th, 2002. However, on March 28th, 2002, the Tswana speaking Bangwato tribe (Vice-President Khama's tribe) had called a *kgotla* meeting in which they objected to the decision to subject their Paramount chief to elections and the removal of their ex-officio status. They, in no uncertain terms, stated their resistance to equality with other tribes³⁵. As a result of this and other similar sentiments expressed in other Tswana speaking areas, the President announced at the meeting of the ruling Botswana Democratic party's National Council on March 30th, 2002 that he had decided to reinstate the *ex-officio* membership of the eight Tswana speaking tribes, but the non-Tswana regions would continue to elect their members to the House³⁶. He appointed a panel, including some from his cabinet and at least one backbencher, to prepare a second Draft White Paper, went on a tour of the Tswana speaking areas to apologize for the mistake, and further promised them that he will not force them to accept Government's position against their will. This resulted in the Revised

³⁵ L. Tutwane, 'Bangwato reject White paper' (Mmegi Monitor, April 02-03, 2002, Pp 2)

³⁶ S. Mogapi, 'President Mogae backtracks' (The Botswana Gazette, April 10th, 2002, Pp. 1)

Draft White Paper³⁷, which essentially maintained the recommendations of the Report of the Commission, which largely maintained the *status quo*, as I show below in detail. The Revised Draft White paper was then tabled before Parliament on April 22nd, 2002 and its discussion commenced on April 25th and concluded on April 30th, 2002 when Parliament adopted it without modifications. What was striking about the debate was that while most Parliamentarians from minority tribes spoke of the need for change to achieve equality, they went ahead to adopt the Paper, which not only maintained the status quo but further entrenched Tswana domination. However, it must be pointed out that some made it clear they were doing so with reservations.

The President then continued to consult with non-Tswana speaking tribes, after the adoption of the Revised Draft White paper by Parliament. When he was asked at the Babirwa *kgotla* meeting³⁸, what was the purpose of his visit, since the White Paper had been adopted, he said, it was to consult and inform people about the contents of the White paper. It was clear that, while the President was not willing to force government ideas on some people, he certainly was doing so with the non-Tswana speaking tribes. On May 2nd, 2002, the first meeting of members of the so called minority groups representing thirteen (13) organizations met at the City Hall in the capital Gaborone, to address the Revised Draft White Paper. A consensus was reached that they must present a

³⁷ Republic of Botswana, 'The revised draft white paper on Sections 77, 78, & 79 of the Botswana Constitution' (Gaborone, Government Printer, 2002)

³⁸ Botswana Television news, (May 3rd, 2002, 2100 hrs)

statement to the President indicating their non-acceptance of the Draft White Paper. The presentation was made on May 20th, 2002 to a junior officer at the Office of the President. The media was not permitted to cover the event. The meeting also resolved to form an organization, which will be made up of all marginalized tribes in order to move forward in unity on the emancipation path.

The Revised Draft Paper has several key features. First, while the earlier draft indicated how each of the three sections of the constitution would read, the revised one did not, but only contained the decisions. It recommended, that government would proceed to make the law needed to amend the sections. To some, this meant that the Revised Paper was only a draft, and the law making process may incorporate inputs that came after its adoption by Parliament. To others, the adopted ideas would see their way into the law. The final decision would largely depend on the strategies the non-Tswana put in place to expose the unfairness of the consultative process and the inadequacies of the Revised White Paper: their plans were to continue with the struggle until it is won.

Power and Decision Making

Efforts to continue to diminish the Wayeyi identity through the abolition of their *dikgotla* have continued to the present day.³⁹ The process was silent and took

³⁹ L. Nyati-Ramahobo, Participation of chiefs and elders in decision-making processes among the Wayeyi communities. Paper presented at the UN Human Rights Commission Workshop on '*Multiculturalism in Africa: Peaceful and constructive group accommodation in situations involving minorities and indigenous peoples*'. February 18-22, 2002, Gaborone.

place over 30 years. Of the seven *dikgotla* established in 1948, all except the one at Gumare are currently non-functional, and even the Gumare one is lower in status than the one under the Batawana rule in the same village. The numerical preponderance 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. Their *dikgotla* have a Muyeyi senior chief's representative with Wayeyi headmen in predominantly Wayeyi villages. But officially, these headmen are under the supervision of the Batawana Paramount Chief, and they have to identify themselves and their *dikgotla* as Batawana, or be stigmatised as "tribalistic", a threat to "nation building" and not obedient to the Batawana rule. Over fifty percent of the headmen of record and senior chiefs' representatives in Ngamiland are Wayeyi. But they did not play any role to protect the Wayeyi *dikgotla*, out of fear of victimization, fear all the greater in the absence of any organized leadership for the defence. In no way did the Wayeyi leadership participate in the decision to abolish their *dikgotla*.

As the Batawana diminished in number overtime, faced extinction, and felt threatened, they tried to reestablish their identity. Between 1995 and 2000, they established new *dikgotla* in the Wayeyi dominated villages of Nokaneng, Gumare, Sepopa and Seronga. They divided the Wayeyi; the *dikgotla*, whose residents had to be referred to as Batawana, were given Tawana traditional *kgotla* names, such as Mabudutsa, Meno, and Mopako, a reestablishment of the diminishing tribal power. While the Wayeyi were not happy about this, and talked about it,

they had no leadership to organize themselves to oppose it. This was for the same reasons that the Wayeyi headmen did 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 can appoint a headman or senior chief's representative, he must consult with the tribe. This procedure was violated in several instances. In matters of appointment, the Batawana Chief now makes it his practice to ignore the wishes of the people, which are normally reached through a consensus of the elders first. In one of the villages, most votes for headman went to a candidate not liked by the Chief. The name of the defeated candidate was submitted, for appointment, at first. The people's preferred candidate was not recognized until three years later. In another village, the appointment of a Senior Chief's Representative was made without consultation with the people. This Representative, opposing the activities of the Kamanakao Association, has discouraged people from speaking Shiyeyi in funerals. In a third village, the elders were able to oppose this imposition and their candidate was finally appointed. Overall, within the tribal administration under Tawana III, the participation of village elders and headmen is limited and often ignored.

Nevertheless, 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 Kamanakao I. Their participation in the Kamanakao

Association's committees has significantly shaped the strategies at various points of the struggle. Some have attended the court hearings and the annual cultural festivals, made presentations on the histories of the Wayeyi, and contributed funds for the court case. One of the Senior Chiefs' Representatives attended regularly until he was seriously warned. Many Wayeyi in his village believe he was promised a bribe.

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 Land Board 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. The Chief of the Batawana has not held public meetings outside Maun since the installation of Shikati Kamanakao in 1999. Wayeyi elders wrote a letter in July 1999 informing Tawana 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 state is clearly not neutral in these matters of tribal administration. Because the Tswana speaking Batawana represented the state power, the state

defended them. 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, formed to revive the *kgotla*, held negotiations with the Batawana, in vain. After the installation of Shikati in 1999, the Batawana Chief instructed the Wayeyi to elect a headman for Boyeyi 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 Maun's Boyeyi ward elected Jacob Moeti as headman and asked Shikati Kamanakao to preside over the designation ceremony. They submitted Jacob Moeti's name to Government, but he was not recognized. However, on May 8th, 2002 Mr. Jacob Moeti defected from Kamanakao Association, but clanged to the headmanship, and further claiming to be paramount chief of the Wayeyi as his son had. This followed the inclusion of his name on the list of names of headmen who would be paid by Government. The Wayeyi viewed this as bribery and a betrayal of the struggle. They then installed Thebe Rammokolodi as headman of the Boyeyi ward. Tawana has since made threats to install Moeti at the same ward an the Wayeyi have vowed to stop him. A similar episode occurred with the headman elected at the Sanyedi ward in Maun. Government has refused to recognize him, on the grounds that the Batawana Chief did not designate him. In another case, a man nominated by the Wayeyi to be headmen for Nokaneng's Boyeyi ward, was not recognized for three years. Transferred to the so-called Batawana *kgotla* in 2001, 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, he has not been recognized by Government because 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, as a Motawana, he is currently paid, having been designated by the Batawana Chief in 2001.

The practice, then, is that if the Wayeyi designates a MUYEYI headman, the Government does not recognize him, unless he is 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 Government pay and loyalty to the liberation of their people. Currently, all five headmen installed have chosen the latter, except for Moeti who defected. 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 preside over the ceremony. Examples are the Seronga and Ditshiping cases where the designation ceremonies by the Batawana chief's representative were boycotted. Six people attended the Seronga ceremony and nine, the Ditshiping one. By contrast, in Maun, at ceremonies presided over by the Wayeyi Chief, one hundred and seventy eight (178) people attended the designation of headman Moeti and three hundred and two (302), the designation of the Sanyedi headman. The people's power is clearly with their Chief, and the

rejection of the Wayeyi headmen designated by their Chief is a rejection of the will of the people, and the decisions of the village elders.

Women have played a significant role in the struggle for freedom of the Wayeyi. They organize and make arrangements for all the village visits by *Shikati* Kamanakao I. They have developed choirs whose songs of freedom express their anger against the current government and their hope for the future. These choirs compete for prizes at the annual cultural festival. The women's wing is the most active of the organs of Kamanakao Association. Each year, they perform the girl's initiation ceremony, and the initiates compete for prizes at the annual cultural festival. They volunteer to donate grass for building the cultural center and their leaders speak at all meetings of the Association. They also participate in the development of the Shiyeyi language in workshops, and the literacy committee is 80% female.

Asserting the Status Quo after the Court order

The Botswana Government has never been ambiguous about its policy that minority groups should accept the *status quo* and assimilate into the Tswana identity. Hence they were to be admitted into the House of Chiefs not on an equal footing, but as subordinates. In his Christmas message, President Mogae equated the ethnic composition of Botswana with 'scrambled eggs'.⁴⁰ He was making a pitch for the idea of ethnic neutrality, that nobody should be crying for

⁴⁰ F. Mogae, 'Christmas Address to the Nation', *Botswana Television*, December 25th, 2002.

their ethnic identities, since these have been eroded by intermarriages, social migration and so on. While this is true for all ethnic groups, Government went ahead to recommend the Revised 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. On February 26th, 2002, President Mogae again spoke on the radio, announcing that the review of sections 77 to 79 of the Constitution would not bring about significant changes, for the eight Tswana speaking chiefs would continue to be paramount chiefs over other tribes under their own. These other non-Tswana speaking tribes would only have representatives in the House of Chiefs, reaffirming that equality was not the goal for the review. This was to assure the nation that the review of these sections would not be bound to the spirit of the Court order. In effect, it gave legitimacy to Tawana's planned activities of installing headmen among the Wayeyi *dikgotla*, as shown below. But, also as discussed below, in my report of the responsible Minister's promises for change in chieftaincy, it was not to be the Government's final word.

Following his appeal on the main court case, before his withdrawal, Chief Tawana made it his mission to impose himself on the Wayeyi people, while provoking them. On December 19th, 2002, he addressed a meeting at the Batawana *kgotla*, where he misinformed the people that the Wayeyi lost their case and he remains Chief, whether they like it or not. He referred to them as '*makoba*', (on the meaning of this word, see my section on the 'definition of minority' above). The Wayeyi took exception to this, but he insisted that he will

continue to use the term.⁴¹ He went on radio and national television using the term again. Upset by this, the Wayeyi wrote him an open letter, summarized as a talking point in a leading newspaper.⁴² Tawana knew well that the term was derogatory; indeed, he knew that the regent of the Batawana tribe in the 1940s, his grandmother Pulane, sentenced Mr. Serero for referring to Mr. Ramaeba Musupukwa as a '*Mokoba*'.⁴³ Tawana used this insulting term to intimidate and provoke the Wayeyi, so that they would take the law in their own hands and derail the real issue at hand. This strategy bore no fruit.

Because Tawana used the derogatory term at the *kgotla* while on duty, the matter was reported to the Minister of Local Government, his supervisor. To date (May 2002), the Minister has not responded to the Wayeyi letter dated January 16th, 2002. Actual visits to the Minister's office have also been in vain. To Wayeyi, Tawana's behavior was a reflection of the Government's attitude towards them. Hence, at that moment, the Wayeyi felt unprotected from abuse and it was as if, through Tawana, the Government, too, was abusing them. Should the Government not act on this matter, the Wayeyi have resolved to take it, too, to court.

⁴¹ S. Mogapi, 'Kgosi Tawana is unrepentant', *Botswana Gazette*, January 16th, 2002, p.6.

⁴² 'Court order gives legitimacy to our cause-Wayeyi', *Mmegi/Reporter*, January 11-17, 2002, p.23.

⁴³ Minutes of the meeting of the Wayeyi Chieftainship Council, January 12, 2002, held at Sanyedi ward.

On February 27th, 2002, Tawana scheduled a meeting to install Maun headmen, one at the Sedie ward and another at Sanyedi ward, where Shikati Kamanakao I had installed the people's choice on June 16th, 2001. By planning to install another chief at this ward, Tawana tried to make a power play and demonstrate to Government that the Wayeyi were loyal to him. To the Wayeyi, this was unforgivable provocation. Tawana believed that the Wayeyi did not know their rights and he could continue to trample upon them. The Wayeyi of Boyeyi and Sanyedi wards wrote him a letter warning him not to come to the Sanyedi ward. They also informed the Police and District Commissioner. On February 3rd, 2002, the Wayeyi called a general meeting to talk about Tawana's intent. The meeting, which was well attended with the Botswana Police recording the proceedings, unanimously agreed that Tawana was not welcome. The meeting further denounced a claim to the Wayeyi chieftainship by Moeti Moeti as part of a malicious Government strategy to divide the Wayeyi people.

Following this meeting, Tawana postponed the installation to March 5th, 2002 because he was warned not to come uninvited and against the wishes of the people. A prospective headman, Mr. Molefabangwe Sethare, and his friend Mr. Makata wrote Tawana a letter inviting him to come to the Sanyedi Ward. These individuals had been serving as divisive elements in the ward, together with two Councilors from the ruling party. Their group claimed to have a membership of

217 people.⁴⁴ However, after studying the list on November 2, 2001, I found the membership was no more than eight people. The rest on the list were people unaware of being on it, and not members. Some, hearing about this secretive list of names, had confronted members of this group and objected to the inclusion of their names without their consent.

On the morning of March 5th, 2002, Chief Tawana's uncle Mathiba and his entourage came to the Sanyedi Ward and found no one, not even Mr. Makata and Mr. Setlhare, at the *kgotla*. Wayeyi, hearing about this visit, came to the Sanyedi ward and appointed people to stand guard for the whole day. Around three p.m., Chief Tawana came to the Sanyedi ward, found the ward elders, and instructed them to go to the *kgotla*. They refused, and rehearsing their objections to his use of the derogatory term and their intent to deal directly, under their own Chief, with the Government, they made it plain that they did not want him; hence he should leave peacefully and never come back. Tawana left the Sanyedi ward, disappointed and very obviously disgraced.

The Wayeyi also made their opposition visible at general meetings held at Boro ward, during the installation of headman Motswagole Mokgwathi on March 16th 2002, and at Sedie ward on March 17th, 2002. They passed a series of resolutions against Batawana rule and in favour of Shikati Kamanakao, himself a key speaker at the meetings. Government's failure to recognize Wayeyi as a

⁴⁴ G. Nkala, 'Strange twist in the Bayei chieftainship dispute'. *Mmegi Monitor*, July 17-23, 2001, p.3

tribe despite the court order was felt to be a clear sign of the deterioration of democracy in Botswana. However, the Wayeyi also felt that they must lead the way by recognizing and respecting themselves and not colluding with a discriminatory tribal administration.

As the Wayeyi have made their opposition increasingly more visible, Chief Tawana has been disgraced repeatedly. In one such incident, on March 7th, 2002, Chief Tawana tried to skip a line at the bank. The Wayeyi, who are numerically dominant in Maun, shamed him by ordering him to join the tail of the line, and take his turn like any ordinary person. In another incident, he had sent his people to Sehitwa village to ask for donations for his court case over his defamation of Shikati Kamakanao as someone bordering on madness. The people of Sehitwa told Tawana's people that they would contribute money if Shikati Kamanakao would also get a share to meet his need for support. The Wayeyi say that Tawana will continue to have a hard time, because his continued discriminatory practices violate the court order and, indeed, prejudiced his own appeal case, which he eventually withdrew.

In preparation for their annual cultural festival, the Wayeyi of Gumare decided to hold regular meetings at the Boyeyi *kgotla*. In response, in a letter dated March 12th, 2002, signed as Chief of the Batawana, and addressed to all chief's representatives and headmen in Ngamiland, Chief Tawana instructed that the Kamanakao Association was not permitted to hold *kgotla* meetings without his permission. Further, anyone attending such an unauthorized meeting would be

guilty of an offence contrary to section 22 of the Chieftainship Act. In Tawana's view, the court order, affirming the autonomy of the Wayeyi as a tribe, does not exist, it is business as usual, and according to the Botswana Daily News headline, he claims, "I remain Kgosi despite Government ruling – Tawana".⁴⁵

In view of its interpretation of the court order, Kamanakao Association wrote back, in a letter of March 22, 2002, reminding Tawana about the Court order and that he is not the Chief of the Wayeyi tribe since he is a Motawana. Furthermore, section 22 of the Chieftainship Act states '... a person shall be guilty of an offence if he commits any act with the intent to undermine the lawful power and authority of a Chief' (41:9). Tawana's interpretation is that this covers the directive he issued to discriminate against Kamanakao Association. However, the section does not authorize unlawful powers, such as the power to discriminate and ignore the court order. Accordingly, the Kamanakao Association's letter also informed Tawana that the Association would not seek permission from him while other organizations do not have to do so. Tawana was reminded that the court order is law, while his letter seeking to enforce discrimination is not lawful and will be rejected with the contempt it deserved. Carrying this opposition forward, on March 28th, 2002, the Wayeyi of Gumare from all the districts they are represented converged and held a meeting at the Boyeyi *kgotla* in Gumare. They continued to meet at the *dikgotla* in defiance of Kgosi Tawana's orders. Government's aim is to test the waters and see whether

⁴⁵ G. Molapisi, 'I remain Kgosi', p.2.

the Wayeyi would be submissive to Tawana's tactics, and if they were, then that provided a platform for ignoring the court order.

What facilitated the struggle?

Above all, much is owed to patience, to a democratic attitude, and to peaceful determination on the part of the disadvantaged peoples of this country. Within the Wayeyi community, the strength of the organisation was the spirit of self-reliance. The people sponsored all the public meetings the Chief held, and these are over 30 at the moment. The people funded the court case as well, the minimum contribution being Pula 500.00 per member.

Secondly, the independence of the Judiciary has contributed significantly to our seeing the light at the end of the tunnel. But even this Judicial contribution has to be seen with the people's contribution in the foreground. In the case of the Wayeyi and the Kamanakao Association, the success at the grass-roots level is so tremendous that it influenced the judgement, for this took into account moral understandings currently widespread among the people. If, at the grass-roots level, people were passive and even not supportive of the activities of the Association, there would have been a different view of these moral understandings.

Thirdly, the role of the media cannot be over-emphasized. The issues on tribalism flooded the papers since the Wayeyi court case was submitted to court

in August 1999. The Presidential Commission under Patrick Balopi, which led to the Revised Draft White Paper, brought the media show on the matter to a climax. The media, while educating the people on the issue and promoting the campaign, not only weighed the good and bad sides of the issues but also exposed the dirty tactics intended to silence the public. The debate was always hot and controversial, exposing the issues and bringing them to the fore.

The greatest advantage the organisation had, and still has, is our choice for Chief of an independent businessman, intelligent, patient, and highly committed to the cause. Being independent of Government for a salary and for leave days made his schedule of activities flexible enough to attend to issues as and when necessary. His character is also an advantage; he did not feel threatened, when refused recognition by Government. He has the courage to communicate with high Government officials, such as the Vice President, which enables him to read the Government's mind, rightly. His marketing strategy takes the issues to the people so that they follow the events, contribute to planning the strategies, and feel connected him. The fact that he comes from the Central District connects the Wayeyi people across their two main districts, uniting the tribe in solidarity. The major issue facing the people was the divide and rule strategy employed by Government. Conscious of that, the people made sure that this did not happen.

The support of other minority groups played a major role, too. As soon as the date of the High Court case was set in 2001, five minority groups sent letters of

support to the organisation. Some sent representatives to the hearings. Individuals contributed money to the court case. Our lawyers were committed to the case, they enjoyed their work and they could not be moved. Human Rights organisations also played a critical role. Ditshwanelo and UN Human Rights Commission seminars highlighted the issues in very public debate in Gaborone. Also valuable was this Special Issue's conference held in Gaborone by the University of Botswana and the University of Manchester's International Centre for Contemporary Cultural Research (ICCCR). The conference brought in anthropologists as international experts on tribal and ethnicity issues, and the discussions engaged the Government in contributing to the issues. The conference has already resulted in a book, which because it is published and easily available in Botswana, will obviously keep the issues alive, in public within the country.⁴⁶ Indeed, the growing public awareness revealed a great deal about our nation, in the midst of controversy. All these efforts were of great assistance in moving the issue forward, revealing what is wrong and focusing on what should be done to put that right.

Future directions

The Kamanakao Association has been informing the United Nations Human Rights Commission (UNHRC) on the developments on this lawsuit since March 2000. The relocation of the Basarwa from the Central Kalahari Game Reserve is

⁴⁶ I. Mazonde, (ed), *Minorities in the Millennium: Perspectives from Botswana*. (Gaborone, Lightbooks for the University of Botswana and the International Centre for Contemporary Cultural Research, 2002).

another thorny issue facing Botswana's Government, and already well known to the UNHRC. The UNHRC decided to have its workshop on "Multiculturalism in Africa: Peaceful and constructive group accommodation in situations involving minorities and indigenous peoples" February 18-22, 2002 in Gaborone. During that week the UN presented its declaration on minority rights to the Government. Further to that Botswana was summoned to appear before the UN Committee on the Elimination of Racial discrimination (CERD) in Geneva.⁴⁷ Following these events, the Minister of Local Government announced in Parliament that her Ministry was in the process of amending the Chieftainship Act to make the definition of Chief broad enough to include headmen and sub-chiefs.⁴⁸ The Minister also made it clear that the amendments are not a result of the court order but a long-standing decision, reflecting long-term Government policy. Expectations now are that in accordance with the spirit of the court order, amendments will be made to other laws, which are closely linked with it, such as the Tribal Territories Act, and which are obstacles in according equal treatment and protection to other ethnic groups in Botswana. Equality is the only acceptable result in all such amendments.

The High Court has done justice to the issue of minorities in Botswana. It is now incumbent upon Government to implement and correct the obvious wrongs, which have the potential to reverse the gains of democracy. A new dispensation

⁴⁷ G. Ngakane, 'Botswana to be grilled by UN Rights Body. *Mmegi Monitor*, March 05-11, 2002, p.2.

⁴⁸ B. Letsididi, 'Government amends Chieftainship Act', *Botswana Guardian*, March 15th, 2002, p.9.

in which tribal equality is a value is needed to empower communities. The issue of ethnic inequality has affected the participation of the marginalized groups in decision-making processes on matters that affect their lives. They will be able to define their destiny and the general welfare of their people. Clearly, the struggle will go on, until the right to equal protection is achieved. If Botswana fails to solve its problem, internally, the international community will have to be engaged, even more, to facilitate the process. The disadvantaged groups will not accept continued insubordination.

The intentions of the Wayeyi and others is that, should the amendments of the relevant laws be cosmetic and fail to achieve ethnic equality, they will be rejected with the contempt they deserve, and the struggle will continue. Through the Kamanakao Association, the Wayeyi have officially rejected the Revised Draft White Paper, as it does not achieve equality. The court order is law and it calls for the dismantling of tribalism in our laws. For the Wayeyi, and other minorities, any amendments, not taking the court order adequately into account, will be lawless, and treated as a contempt of court. The Wayeyi and other marginalized groups will continue to fight for their rights and the development of their language and culture as part of the national culture.

Conclusion

In Botswana, the state cannot credibly claim neutrality.⁴⁹ Yet currently, in the Revised Draft White Paper, the Government policy is presented as if it advanced a move away from ethnic identity to regional identity. In this way, the Government appears to legitimise itself through the myth of ethno-cultural neutrality.⁵⁰ Nevertheless, in the same White Paper, Tswana ethnic identities are preserved and Tswandom is strengthened. All of this fits unresolved contradictions and dilemmas, which still underlie public policy.

Different perspectives are brought to bear, on the one hand, by the state, which protects the Tswana identities, or grudgingly makes compromises about them, and on the other, by the non-Tswana who usually have no state protection. The state finds it appropriate to reserve group rights, along with tribal territory, for the Tswana speaking tribes and individual rights for others, in the name of “national unity”⁵¹ This Government strategy, empowering the Tswana, disempowers the non-Tswana. 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 a distinct state identity within the international community. The state defines the struggle of the non-Tswana to preserve their identities as a rejection of Government’s efforts to build a modern

⁴⁹ J. Solway, this volume.

⁵⁰ W. Kymlicka, ‘Nation-building and minority rights: Comparing West and East’, *Journal of Ethnic and Migrations Studies*, 26, 2, pp. 183-212.

⁵¹ On an alternative minority strategy, among Kalanga, in which elites support group cultural rights but call for the end to tribal territories, see R.Werbner ‘Citizenship’, pp. 123-24.

and united state through assimilation, with one language, one culture and one flag.

Not surprisingly, it is with a somewhat jaundiced eye that the state views the establishment of cultural associations, the Non-Governmental Organisations which aim at developing and preserving minority languages.⁵² The negative criticism, voiced by President Mogae himself,⁵³ is that such cultural associations easily slide into undermining development by seeking for the revival of old traditions and resisting mono-culturalism.⁵⁴ From a perspective of the state, the non-Tswana resistance to assimilation is a dangerous quest for cultural purity and linguistic isolation, as it were, an apartheid project in disguise. At the same time, ethnic equality is viewed as a threat to the state's political power, which has been built through exploitation and assimilation of illiterate ethnic minorities.

Against that is the counter-perspective among non-Tswana. In the eyes of the non-Tswana, state policy is defined in terms of an exclusionary stance, targeting them with non-recognition, denigration and possibly human rights violations. As the non-Tswana see it, their cultural associations are seeking for self-definition, because self-definition means their cultures can be preserved and remain dynamic by means of their own choices, control and wishes, and not through forced assimilation. They are resistant to a state favoured ideology of cultural shift, which would force them to abandon everything about themselves and

⁵² On President Mogae's mixed views in a televised address to SPIL, the Kalanga association, see R. Werbner, 'Citizenship', pp.127-29

⁵³ R. Werbner, 'Citizenship', p. 128.

⁵⁴ L. Nyati-Ramahobo, 'Linguistic and Cultural Domination' pp. 218-34.

embrace the language and culture of the Tswana speaking groups. 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. They search for a place to exist and be recognised as a significant part of a whole. They demand the actual equality of citizens as the basis for democracy. The official view is, to use a favoured image of President Mogae's, that the non-Tswana should be scrambled eggs with no identities, and yet the Tswana should preserve Tswanadom for the sake of the state. To the non-Tswana, this is state-backed discrimination; it denies publicly equal treatment of their ethnic and cultural identities and protection of all the rights that go with these.

These opposing perspectives, grounded in conflicting assumptions, have prolonged the debate, making the Government resistant to change. It has made non-Tswana conclude, on the other hand, that the Government needs drastic pressures to force it to change, such as from High Court litigation and judicial review, from the appeal to the opinion of the international community and from political education to initiate change through the ballot box. The Government is facing a dilemma, whether to appease the numerically perhaps less significant but politically more powerful, i.e., the Tswana speaking tribes, or the numerically perhaps more significant but politically less powerful, namely the non-Tswana groups. It is torn between utilizing state power to continue to oppress the non-Tswana or acceding to the people's power and addressing the concerns of the

non-Tswana. The decision-making processes on matters of concern to minorities are made within this context of power imbalance. The legislative changes to be brought about by the court order and other reviews provide a window of opportunity for once marginalized groups to participation in decision-making processes.

The exclusion from the House of Chiefs is an exclusion from a decision making process provided for under section 88 (2) of the Constitution. This section states that a bill amending the Constitution, affecting the designation, recognition or removal of sub-Chiefs and headmen, affecting customary law and affecting tribal organization must pass through the House of Chiefs.⁵⁵ This means that those tribes who are not represented in the House of Chiefs would not have their customary law contributing to the laws of Botswana. This also gives the House a major cultural significance; hence it is important to have equal tribal representation. The currently marginalized ethnic groups cannot compromise the right to recognition, and to appropriate representation.

⁵⁵ G.Baruti, 'The Revised White Paper on Sections 77 to 79 of the Botswana Constitution' Paper presented at the Meeting of the Marginalised Groups, May 2, 2002, Pp. 2-3)