

Violations of Linguistic and Cultural Rights of Minority Groups in Botswana

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RETENG: The Multicultural Coalition of Botswana

Statement to the Working Group on Minorities

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Thank you Mr. Chairman. My Name is **Lydia Nyati-Ramahobo**. I am a member of the Wayeyi, one of the unrecognized ethnic groups in Botswana. I am here representing a Coalition of thirteen (13)

Associations registered to advocate for the linguistic and cultural rights of the non Tswana speaking groups. Botswana is Africa's shining example of democracy with a vibrant economy due to good governance. This is an achievement all Batswana cherish and we would like to jealously guard this well deserved image of our country.

Background

The marginalization of non Tswana speaking ethnic groups¹ is sanctioned by law of which **Section 2 of the Chieftainship Act** is central.

1.

The Judgment on the Wayeyi case (Misc 377/99) observed that 'the discriminatory effect of the definitions in this section leads to serious consequences when it is remembered that this Act is one of the three laws that define which tribal community can be regarded as tribe, with the result that such a community can have a chief **designated in their custom**; who can get to the House of Chiefs (**established in Sections 77 to 79 of the Constitution**)² and that only a tribe can have land referred to as a Tribal Territory' , (**established in the Tribal Territories Act**)³ (page 51).

2.

The Issues

The practical realization of the three laws is that the Tswana speaking tribes are consulted on decisions affecting their lives through their chiefs, and have sovereignty over and group rights to land, have their language used in education, the national radio and other social domains. All non Tswana groups are not recognized hence denied of all these fundamental human rights enshrined in the UN Declaration on the Rights of Persons belonging to Minorities (UNDM), the Universal Declaration on Human Rights (UDHR, article 7) and the International Convention on the

Elimination of all forms of Racial Discrimination (ICERD, article 5). The discrimination is based on the assimilationistic policies⁴ in which the non-Tswana speaking tribes are officially referred to by names of the Tswana tribes with whom they share territories. Their song and dance are officially referred to as Tswana, in violation with Article 1 of the UNDM, the right to promotion of the identities of minorities.

3.

In 1999 the Wayeyi installed their Chief in accordance with 1. their custom and asked government to Linguistic and Cultural Rights of Minority Groups in Botswana <http://209.85.129.132/search?q=cache:M3X9aD7iZYoj:www2.ohchr.o...>
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recognize him, but on the basis of the laws, he could not be recognized and the Wayeyi went to court challenging the three laws (Misc 377/99). They won the Chieftainship Act and the court ordered that the definitions in Section 2, should be reviewed to bring about equality among all tribes and the Wayeyi in particular ⁵ Government decided to review Sections 77 to 79 of the Constitution following the recommendations of a Presidential Commission of Inquiry of 2000⁶. Bill No. 31 of 2003 to review the Sections brings the definitions of chief and tribe from the Chieftainship Act into the constitution and translates them into Setswana, leaving their discriminatory nature unchanged⁷. It maintains three ⁸unequal categories of representation and continues to recognize the eight Tswana Speaking tribes at the exclusion of others⁹ in violation of Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which calls for equality before the law.

2.

The Bill further leaves the Tribal Administration structure, established on the basis of the discriminatory definitions, in tact and this is in violation of the recommendations of the CERD (August 2002, paragraph 10). The only change the Bill brings is to increase the number of elected headmen, a subordinate position, into the House, which does not amount to a review of the law. The headmen are to be elected by electoral colleges and not the people in violation of article 25 of the ICCPR, Article 3 of the African Charter on Human and Peoples' Rights (ACHPR) and Article 2.3 of

the UNDM.

3.

Intensification of Discrimination

There have been signals of intolerance on minority groups as they advocate for their rights. For instance, the Wayeyi Chief, Shikati Kamanakao died mysteriously on May 6, 2003¹⁰. Negligence within the investigation process was noted in the Forensic report.¹¹ This indicated a lack of value for the life of those who are members of the minority groups, taking leadership in advocating for minority rights.

4.

Government continues to impose the Batawana chief onto the Wayeyi tribe against their will, and reject their new Chief in violation of Article 19 of the ACHPR.

5.

In September 2003, the Tswana speaking Bangwato used emotional language as they rejected the proposal of the non Tswana speaking Batswapong to install their chief in accordance with their custom. The Minister of Local Government instructed them to obtain permission from the Bangwato.

6.

In the last session of the House of Chiefs (January 26 - February 6, 2004), which discussed the Bill mentioned above, the Tswana speaking Chairperson of the House, denied two non Tswana speaking sub chiefs of Chobe and North East districts the right to contribute to the debate and this was reported in the Government Newspaper of Friday January 6th, 2004.

7.

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Recommendations

We recommend that Government should engage in meaningful dialogue with representatives of minority groups and the Wayeyi in particular with the aim of having their concerns taken on board before Bill No. 31 of 2003 to amend sections 77 to 79 of the Constitution can be submitted to Parliament. I am happy and grateful to report that, the Assistant Minister of Presidential Affairs has promised us that this will be possible.

1.

In order to enhance the already well established democratic tradition, Minority

languages should be used in the state media with immediate effect and in education in those languages that have writing systems.

2.

The relocation of the Basarwa and Wayeyi from their ancestral lands should be discontinued and those wishing to return should do so and services provided

3.

The Office of the Attorney General should appoint a Coroner to conduct an inquest into the death of Wayeyi Chief and into the investigation exercise that took place thereafter, to establish its credibility. A report should be submitted to the Wayeyi and the family of the chief.

4.

The Non Tswana wishing to designate their chiefs in accordance with their customs should do so without permission from the Tswana speaking chiefs they share the same territory with, and such chiefs should be recognized by the State.

5.

The Working Group and the International Community should encourage Botswana government to ratify the first protocol of the International Covenant of Political and Civil Rights and Article 14 of the ICERD as mechanisms to strengthen its democratic tradition.

6.

The Working Group should draw to the attention of Botswana, its consistent and persistent violations of both national and international standards on issues of minorities, done under the pretext of state sovereignty and territorial integrity.

7.

A Country Rapporteur on Botswana should be appointed to study the situation in a holistic manner.

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¹ These groups are together estimated to make over 60% of the

population. There is no data on ethnicity in Botswana, the last data was compiled by Isaac Schapera in 1948.

2 Text in bold and parenthesis in this sentence is added by the author.

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3 The Tribal Territories Act demarcates the country into eight territories and four tribal communities. The eight territories are ruled by the eight Tswana speaking chiefs as defined in the Chieftainship Act, and the non Tswana living in the areas can be moved at any time as observed by Schapera (1952) and currently still in practice. It is under this legal framework that the Basarwa are relocated from the Central Kalahari Game Reserve against their wish, and the Wayeyi from the Okavango delta, the Moremi Game Reserve and Ditshiping, without proper compensation, and consultation to enable them to make informed decisions. Relocation is a silent genocide on the culture of the people and their economic activities, it ushers them into poverty and dependence, hence the act is in violation of Article 2 of the UNDM.

4 Refer to the report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, 2001/57.

5 The judgment further stated that "We therefore order that Section 2 of the Chieftainship Act (Cap 41:01) be amended in such a way as will remove the discrimination complained of and to give equal protection and treatment to all tribes under the Act. If other laws have also to be amended to accord the applicants this right, then necessary action must follow' (pages 60-61 of the judgment). The Wayeyi lost the challenge on sections 77 to 79 of the Constitution because the discrimination contained here is protected in Sections 3 and 15 of the Constitution. The challenge on the Tribal Territories

Act was later dropped from the case.

⁶In 2000, The President established a Commission of inquiry into Sections 77 to 79 of the Constitution, following a motion tabled and accepted by Parliament in 1995. The

Recommendations of the Commission were rejected by the Majority of the population.

⁷Experience has indicated that Acts of Parliament are easy to challenge and be declared unconstitutional, hence the effort to bring them into the Constitution is to protect their discriminatory nature from future challenge.

⁸ The categories are: The Tswana designate their chiefs according to their custom, which is permanency and hereditary (called kgosi in Setswana), the four districts of Chobe, Gantsi, Kgalagadi, and North East elect a sub chief (also called kgosi in Setswana) for a five year term, and in the rest of the regions which are all non Tswana, the electoral college will elect a headman to the House for a five year term.

⁹ Full analysis of the Bill and the Bill are available and were also submitted to the Special Rapporteur on Racism and CERD Secretariat.

¹⁰ This was the same day the judgment on the case in which the Chief had been referred to by a derogatory term was passed. It had been postponed from April 24 to this date, and he lost the case on technical grounds.

¹¹ Police officer assigned to investigate the case was granted leave during the same week.

The police refused to investigate his clothes which had substances all over. They agreed to take samples of the clothes seven weeks later after the story of their refusal appeared in

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the newspapers. Only three of the seven samples were sent for forensic examination and the report indicated that the clothes had been washed before submission. The Wayeyi and family of the Chief raised a number of unclear issues and submitted these to the Police and there has never been a response.