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Alternative Report Submitted to the
HUMAN RIGHTS COUNCIL

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**'if you want to get rid of a tribe, deny them of their identity,
take away their land and kill their leaders'.**

Summary of Main Recommendations

1. The Wayeyi and their chief should be recognized at equal level with the Tswana tribes and so should be the Bekuhane and Babirwa who have already designated their chiefs. All other non-Tswana tribes¹ should be supported to designate their chiefs in order to achieve equality of all tribes and recognize cultural diversity in the country;
2. Government should engage with the San groups to address issues related to land and education of their children;
3. Linguistic diversity should be recognized and supported through education and the media;
4. There is need to review the Constitution to make it compliant with international laws as ratified by Botswana and to domesticate all ratified conventions and protocols;
5. There is also need to ratify the Convention on Social, Economic and Cultural rights and Article 14 of the International Convention on the Elimination of all forms of Racial Discrimination, in order to strengthen Botswana's adherence to the International Bill of Rights.

¹ There are 45 tribes in Botswana who speak 27 languages (including the 8 Tswana tribes)

Summary of Key Issues

1. Botswana laws permit discrimination on the basis of ethnicity, language and culture. Specifically, these are: a) Sections 77 to 79, 15 (4) (d), 15 (9) of the constitution; b) Section 2 of the Chieftainship Act² and c) the Tribal Territories Act.
2. In the Wayeyi case of 2001 the High Court ruled that these laws were discriminatory and need to be amended (Misca 377/99). In 2002 and 2006 the Committee on the Elimination of all forms of Racial Discrimination (CERD) made the same observations and recommended the amendments. In March 2008 the Human Rights Committee monitoring the International Covenant on Civil and Political Rights (ICCPR) made the same observations and recommended further amendments.
3. The discrimination under both the old and the revised laws continue to deny the non-Tswana ethnic groups the following rights: a) the right to recognition as a tribe with a distinct language and culture b) group rights to land, c) representation in the House of Chiefs (Ntlo ya Dikgosi); d) the right to educate their children in their languages; c) the right to educate their children about their histories, customs, values and culture; d) the right to access information and enjoy their languages and cultures on national radio and television and e) access to certain jobs, especially those related to management of land such as Land Board Secretaries.
4. The amendments to the Constitution in 2005 (sections 77 to 79) continued to discriminate the non-Tswana from permanent membership to the House of Chiefs. The three unequal categories of membership remained as follows: a) the eight (8) Tswana chiefs admitted on the basis of hereditary custom and permanency at the district level with powers to supervise all tribal matters and rule over all other tribes in the district, with their language and culture being on the public domain; b) Twenty two (22) sub-chiefs and headmen elected by other sub-chiefs and headmen in the 22 regions on a five year term, with no powers but report to the Tswana chiefs, and on lower salaries, and not representing any tribe; c) Five (5) members, especially appointed on a five year term by the President at the village level with no powers not representing any tribe or region.
5. Section 3 of the new Bogosi Act No.9 of 2008, which resulted from the amendment of the Chieftainship Act, permits the Minister to recognize a tribal community as a tribe. Section 21 of this Act also permits the Minister to recognize a chief designated by a tribal community. These two sections provide a window of opportunity for the

² Now abolished and replaced by the Bogosi Act No.9 of 2008

recognition of non-Tswana tribes and their chiefs. However, the recognition remains discretionary and the rights to be enjoyed through this recognition are not stated. With regard to the recognition of the chief, it is unclear as to which category they would be recognized under.

6. The amendments to the Chieftainship Act through the Bogosi Act therefore, did not address the discrimination, due to its discretionary nature and its non-compliance with sections 77 to 79 of the constitution, in that, according to the latter, there cannot be more than 12 members in category (a) above) giving room for a maximum of four (4) non-Tswana chiefs to have the same status as the eight (8) Tswana. In other words, if more than four tribes are to be recognized at equal level as the Tswana, then the Constitution will need to be amended.
7. There have been no efforts to amend Sections 15 (4) (d), 15 (9) of the Constitution and the Tribal Territories Act. These sections contain derogations which permit non-prohibition of discrimination and give group rights to land to the Tswana tribes as sovereigns of the districts respectively.
8. Following the cosmetic amendments of the two laws, there has been no practical change with regard to linguistic and cultural rights of the non-Tswana tribes. However, there has been increase in funding of cultural activities of non-governmental organizations.
9. All non-Tswana children are taught in and about Tswana cultures at the expense of their own, and as a result they develop low self-esteem and under achieve in schools. The Tswana make 18% of the population, while the non-Tswana make 60%. Thus the policies of forced assimilation, if not curbed, will see the disappearance of over 60% of the nation's cultures.

The Wayeyi Case (see main report for details)

10. In 1948 and 1999, the Wayeyi went to the High Court and Section 2 of the Chieftainship Act was annulled, and an order to make all ethnic groups equal was issued. After six years of no action, the Wayeyi submitted the case for admissibility to the African Commission on Human and People's rights. The matter was to be heard in May 2008. However, government requested that dialogue be carried at the local level with the Wayeyi.
11. The first meeting was held on May 20th, 2008 and the Wayeyi were asked to submit an application to be recognized as a tribe in line with the new Bogosi act. The application was submitted on June 20th, 2008 and they are awaiting the decision.

12. Further, the Wayeyi chief was admitted to the House of Chiefs as an especially elected member with no powers and still under the Batawana rule (see category (c) above).
13. While the Wayeyi remain hopeful and optimistic on their application for recognition, they continue to experience acts of discrimination, intimidation divisive tactics. The Batawana chief continues to impose herself on the Wayeyi people and refuses to recommend payment for headmen installed by the Wayeyi.
14. The Wayeyi cultural activities are silently barred from radio and television coverage. Their Human Rights Defender has also been silently barred from public utterances on radio or television.

Other Non-Tswana Tribes (refer to main report for details)

15. While section 21 of the Bogosi Act permits the Minister to recognize a designated chief, there has been evidence of intimidation for tribes wishing to designate their chiefs. The case of the Batswapong illustrates this. In 2003, they were asked to seek permission from the Bangwato (The Tswana tribe which rules over the Batswapong in the Central District) before they could designate their chief, and such permission was denied.
16. There have also been reports on a ‘divide and rule’ strategy to destabilize further efforts in this direction much more recently. This means that implementation of sections 3 and 21 will remain difficult. This is exacerbated by the fact that only four slots exist at the moment for membership in the House of Chiefs while there are 45 tribes in Botswana.
17. The Basarwa of the Central Kgalahari Game Reserve (CKGR) are members of RETENG coalition and they are struggling on the implementation of the December 2006 ruling to return to their ancestral land. They need water, food, school medical facilities and roads in the CKGR. Their own report to the Council will provide details on this matter.
18. The main issue for all non-Tswana is non-recognition as tribes, as symbolized by non-admission to the House of chiefs to represent their own tribes at equal basis with the Tswana. It is recognition that has carried and provided all the social, economic and cultural rights of the Tswana and the non-recognition has denied the non-Tswana the same rights.

Recommendations

19. The State should review all discriminatory laws in order to meet its obligations under International law and recognize all tribes;
20. The Wayeyi Chief should be admitted to the House of Chiefs and so should be chiefs of the Bekuhane and Babirwa who have designated their chiefs. Other tribes should be assisted to designate their chiefs if they so wish and be recognized;
21. The State should engage with the San communities to address issues of land and the education of their children;
22. All Headmen elected by the people should be paid;
23. Government should develop a pilot program in mother tongue education in public school system, for at least three linguistic groups and seek for donor funds to implement it.
24. Other languages should be used on national and community radio stations, television and newspapers.
25. The school curriculum should be reviewed to teach the histories, values, traditions and customs of all ethnic groups in Botswana.
26. Botswana should domesticate all conventions it has ratified and should ratify the Convention on Social, Economic and Cultural rights in order to meet the standards of the Bill of Rights.