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in the Age of AIDS, Gender,
Governance, and Development**

Edited by Donald I. Ray, Tim Quinlan,
Keshav Sharma, and Tacita A.O. Clarke

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16 The Role of the House of Chiefs (*Ntlo ya Dikgosi*) in Botswana

Keshav C. Sharma

This chapter examines the envisaged and actual role of the House of Chiefs (*Ntlo ya Dikgosi*) in Botswana by outlining its composition, powers, functions, and performance. It discusses measures for reforms related to its composition, authority, administrative machinery, relations with the National Assembly, and capacity building. It concludes by pointing out how the government has demonstrated its interest in mending rather than ending this House. The changes in the composition of this House following the Presidential (Balopi) Commission receive specific attention.

1. INTRODUCTION

The establishment of the House of Chiefs (now known as *Ntlo ya Dikgosi*) by the Constitution of Botswana was a significant recognition and mark of respect for traditional leaders. The House of Chiefs in Botswana was established primarily for giving traditional leaders a forum at the national

level where they could articulate their views on matters of interest to their tribes. The autonomy of the House of Chiefs vis-à-vis the National Assembly is very limited. This House is not like a second chamber of legislature such as the House of Lords in the UK or Senate in the United States. This House does not have revisory jurisdiction on legislation, which is the sole responsibility of the National Assembly. This House cannot initiate legislation and does not have any authority in the process of approval of the national budget, which is also the sole prerogative of the National Assembly. The National Assembly is not obliged to accept the recommendations or opinions of the House of Chiefs. A minister of the National Assembly could consult the House for its opinion but is not obliged to accept it. The National Assembly might take note of the views of this House if it considers it politically expedient to do so or if it considers these to be in keeping with the national interest.

2. COMPOSITION (2004), POWERS, AND FUNCTIONS OF THE HOUSE OF CHIEFS

In accordance to the constitution and prior to the implementation of recommendations of the Presidential (Balopi) Commission in 2004, the House of Chiefs consisted of three categories of membership: eight “*ex-officio*,” four “elected,” and three “specially elected.” *Ex-officio* members were those for the time being performing the functions of the office of chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana, and Batlokwa tribes (Section 78). Elected members were those elected from among their own number by the persons for the time being performing the functions of the office of sub-chief in the Chobe, Northeast, Ghanzi, and Kgalagadi districts (Section 79.1). The specially elected members were elected by the *ex-officio* and elected members of the House of Chiefs from among persons who were not within the preceding five years actively engaged in politics (Section 79.2).

The constitution defined the role of the House of Chiefs as follows. The House is entitled to submit resolutions on the bills referred to it by the National Assembly. The National Assembly cannot proceed upon any bill (including any amendment to a bill) that, if enacted, will alter any

of the provisions of the constitution or affect the designation, recognition, removal of powers of chiefs, sub-chiefs or headmen; the organization, powers, or administration of customary courts; customary law, or the ascertainment or recording of customary law; or tribal organization or tribal property; unless a copy of the bill has been referred to the House of Chiefs and a period of thirty days has elapsed from the date when the bill was referred to the House of Chiefs. Any minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House and for that purpose the minister or his representative may attend the proceedings of the House. The House of Chiefs is entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interests of the tribes and tribal organizations it represents and to make representations thereon to the president or to send messages thereon to the National Assembly (Sections 85–88).

3. ADMINISTRATIVE MACHINERY SERVING THE HOUSE OF CHIEFS

The House of Chiefs meets in the parliament building. As its total membership was not very large (15 members in all before 2004), the House met in a small chamber adjacent to the chamber where parliamentary sessions were held. With the renovation and extension of the parliament building, construction of a larger chamber for sessions of the National Assembly, and enlarged membership (35) of the House of Chiefs in 2005, it started having its sessions in the chamber previously used by the National Assembly. The House of Chiefs by convention meets soon after the session of the National Assembly and its session normally lasts for three weeks or less. The House conducts its business in English but its members also frequently use Setswana. The proceedings are published in English. These are not up to date and are not verbatim record of proceedings like Hansard of the National Assembly.

The members of the House elect its chairman and deputy chairman. A small staff of public servants who are administratively under the clerk of Parliament serves the House. The main administrator serving the House

is the secretary to the House. The secretary is responsible for preparing for the meetings of the House and keeping minutes of all the proceedings. The secretary keeps custody of all the bills, papers, and other documents placed before the House. This officer's services to the House are somewhat similar to those rendered by the clerk of Parliament to the National Assembly. For strengthening the administrative machinery serving the House of Chiefs, the Balopi Commission recommended that the House should have a hierarchy of officers parallel to, and independent of, that of the National Assembly. In this regard, the House should have its own speaker, who shall not be a member of the House, a clerk, a committee system, and support staff, with privileges and functions similar to officers serving the National Assembly. The government did not accept this recommendation, observing that, although the principle of capacity-building for the House is acceptable, the proposals will result in duplication of structures, which was not acceptable. The government also did not see the need to accept the Balopi Commission's recommendation that there should be a joint committee of the members of the House of Chiefs and members of Parliament, which will act as a link between the two Houses, facilitating communication between them. On the recommendation of the Balopi Commission that the status of members of the House should be enhanced, the government did not see the need for any action as it felt that "the status of the House of Chiefs is sufficiently enhanced." Similarly, the government did not see any need for action on the recommendation that the House should have a budget devoted to it on the ground that "Head 10 Part II of the Estimates of Expenditure under Parliament is devoted exclusively to the House of Chiefs." The Balopi Commission's recommendation that "Members of the House of Chiefs should be afforded the same minimum facilities, as are Members of the National Assembly both in the House and in the territories they represent" was not accepted on the ground that *dikgosi* are provided with facilities under tribal administration. Moreover, the government felt that "comparison with Members of Parliament was inappropriate given the different roles that the two perform." It is interesting to note that the House of Chiefs was in agreement with the government and not with the Balopi Commission with regard to the above-mentioned recommendations.

4. ASSESSMENT OF THE ROLE PERFORMED BY THE HOUSE OF CHIEFS

If we look at the role and functions of the House of Chiefs in terms of the constitutional provisions, Sections 85 and 88(2) define the role of the House of Chiefs as follows:

Section 85(1):

The House of Chiefs shall consider the copy of any Bill which has been referred to it under the provisions of section 88(2) of this constitution and the House shall be entitled to submit resolutions thereon to the National Assembly.

Section 88(2) states:

The National Assembly shall not proceed upon any Bill (including any amendment to a Bill) that, in the opinion of the person presiding, would, if enacted, alter any of the provisions of this constitution or affect (a) the designation, recognition, removal of powers of Chiefs, Sub-Chiefs or Headmen; (b) the organization, powers or administration of customary courts; (c) customary law, or the ascertainment or recording of customary law; or (d) tribal organization or tribal property, unless (i) a copy of the Bill has been referred to the house of Chiefs after it has been introduced in the National Assembly; and (ii) a period of 30 days has elapsed from the date when the copy of the Bill was referred to the House of Chiefs.

Section 85(2):

Any resolution which has been submitted to the National Assembly in accordance with the last foregoing subsection shall forthwith be laid before the Assembly by the Clerk of the Assembly.

Section 85(3):

Any Minister who is responsible for a Bill such as is referred to in subsection (1) of this section, or his representative, may attend the proceedings of the House when the copy of the bill is considered.

Section 85(4):

Any Minister may consult the House of Chiefs in respect of any matter on which he desires to obtain the opinion of the House, and for that purpose the Minister or his representative may attend the proceedings of the House.

Section 85(5):

The House of Chiefs shall be entitled to discuss any matter within the executive or legislative authority of Botswana of which it considers it is desirable to take cognizance in the interest of the tribes and tribal organizations it represents and to make representations thereon to the President, or to send messages thereon to the National Assembly.

Section 85(6):

A person attending the proceedings of the House of Chiefs by virtue of the provisions of subsection (3) or (4) of this section shall be entitled to take part in the proceedings of the House relating to the matter in respect of which he attends as if he were a member of the House; Provided that he shall not be entitled to vote in the house.

The role, effectiveness, and performance of the House of Chiefs seen in the context of the above constitutional provisions have been limited. This was also the view of the Balopi Commission (2000). The main criticisms related to the effectiveness of the role played by the House of Chiefs, as also documented by the Balopi Commission (62–64), are on the following lines:

(a) Government and the National Assembly have not taken the House seriously. The resolutions of the House have not made any significant impact on the public policies or legislation adopted by the Government and the National Assembly. (b) Members of the House have lost a sense of direction. Instead of cultural concerns, they involve themselves in matters that belong to the domain of politicians. (c) The House has rarely come up with anything of public value. This may partly be attributed to the calibre of its members. (d) The existing composition of the House is not fully representative of the nation's diverse cultural heritage. (e) The House has denied itself the ability to bring in members with additional skills as members of the eight listed tribes have caucused together to ensure that only their preferred candidates are selected. (f) Members of this House have failed to consult with the communities they represent. (g) The powers of the House have been too limited. This has reduced its effectiveness. (h) The House does not have sufficient capacity to carry out its mandate. (i) The public has very little information about the deliberations of the House as the media ignores it.

The members of the House of Chiefs have from time to time expressed their grievances and frustration about their own role and the reasons for lack of their effective contribution. The Balopi Commission also recorded the views of the members of the House on their own effectiveness (pp. 64–65). The members of the House feel that their effectiveness has been compromised over the years by inadequate capacity and the failure of politicians to take the House seriously. They observe that: (a) The House has limited powers and is not in a position to initiate any legislation. (b) The House can only meet when there is government business to discuss, irrespective of whether members themselves see the need to meet. (c) Members of the House do not have a specific budget to allow them to consult with communities. (d) The House has little in the way of a secretariat and no research capacity.

It is interesting to note that the same House of Chiefs, which registered its frustration with the Balopi Commission about its inability to initiate legislation, its insufficient independent budget provisions, and its inadequate secretariat facilities, rejected the favourable recommendations of the Balopi Commission in this regard and agreed with the stand taken by the government. (See the following pages for further discussion.)

Official reports of the meetings of the House of Chiefs reveal that there has been an improvement in the quality of debates in the House and the nature of questions and motions tabled. However, one could sometimes feel that the Chiefs could do better by concentrating on matters related to culture, chieftainship, and tribal matters, instead of taking interest in matters such as the telephone billing system of the Botswana Telecommunications Corporation, quality of blankets and bed covers used by patients in hospitals, shopping plastic bags as health hazards, etc. (Official Report of the House of Chiefs, June 2000), or why mathematics is a compulsory subject for a certificate or diploma in Accounting Studies offered by the University of Botswana, or why some district labour officers have official telephones at their residences (Meeting of the House of Chiefs, August 2001).

At this time when the country is faced with an HIV/AIDS epidemic of serious proportion, one expects that the members of this House will express their concern by taking an increased interest in deliberations related to this matter. The chairman of the House in the June meeting of 2000 observed:

[T]here is a concern from our communities that we seem to be dragging our feet in giving this matter the necessary attention it deserves.... The nation is calling upon us to contribute in this national fight against this dreaded disease ... we should be seen to be taking this fight in our own hands, we have to help in publicizing some of the huddle that stand as obstacles in our nation, as we try to fight this HIV/AIDS scourge. (House of Chiefs Meeting, June 2000, 105)

The members of the House could demonstrate more active leadership inside and outside the House, in the community, and in the forum of *Kgotla* on measures that need to be undertaken related to the spread, prevention, cure, and impact of HIV-AIDS epidemic.

As we expect a more prominent role from traditional leaders in the HIV-AIDS inflicted society, their active interest and pronouncements with regard to undesirable customs (such as exorbitant funeral expenses) and harmful social behaviour (such as excessive drinking and alcoholism) are a matters of some satisfaction.

Lavish spending on funerals has come under attack by the members of the House of Chiefs as increasingly the people are spending large amounts on expensive caskets, coffins, black clothes for the widow, transport for the corpse, and feasts, creating a serious financial strain on families. *Kgosi Garebekwena* moved a motion in the House of Chiefs (in May 2002) asking the government “working in conjunction with District Authorities and relevant government organizations to educate and encourage Batswana to reduce their funeral and bereavement expenses.” The motion was passed with overwhelming support. In response to that motion, Minister of Local Government *Margaret Nasha* agreed with the chiefs that today’s mourning process was expensive, unnecessary, and even acultural. She expressed perplexity at the round-the-clock overfeeding of mourners, citing an example whereby traditional dishes like *serobe* (shredded tripe and intestines) are served to mourners at four in the morning and *seswa* (pounded beef) following two hours later. “Now really, who eats *serobe* at four in the morning, even at their own house?”, *Nasha* asked. (*Botswana Guardian*, 24 May 2002). *Kgosi Tapson Jackalas* of North-East lamented the post-burial “after-tears” sessions as another money-wasting activity. These sessions come a few hours after the burial and after the mourners have wiped off their crocodile tears. Participants meet at some convenient place to play loud music and consume large quantities of alcohol. The members of the House of Chiefs have been in agreement that they, along with ministers and MPs, should decry and discourage the funeral expenses when they address *Kgotla* meetings.

Denouncing the alcohol abuse, the members of the House of Chiefs have made scathing statements about *Chibuku*, its brewers, sellers, and drinkers. Highlighting the link between *Chibuku* consumption and AIDS infection, they have exhorted the *Chibuku* distributors to join in the AIDS war by distributing condoms to far-flung places where they have customers. *Kgosi Mosadi Seboko* tabled a motion that requested the government to review laws relating to the governing of *Chibuku* and similar brews manufactured commercially on a large scale. The motion asked for the sale of *Chibuku* to be licensed and like other types of alcohol to be sold outside homes. *Kgosi Seboko* also said that the involvement of school children in the sale of *Chibuku* was not in their best interest as an extra-curricular vocation as it interfered with their education and that some of them ended up drinking. She complained that a *Chibuku shabeen* was not the best place

to raise children as they could pick up vulgar language from foul-mouthed persons. *Kgosi* Rebecca Banika has held the view that *Chibuku* consumption was depleting the manual labour base, leading to a situation where employees had to engage the services of Zimbabweans. In one of the tribes in her area, abuse of *Chibuku* was so rampant that dusk-to-dawn drinking by couples was the norm. She has observed that that was the reason why members of this tribe are dirt poor and had to rely on the government for assistance. *Kgosi* Basiamang Garebekwena asked the minister of Trade, Industry, Wildlife and Tourism to consider reducing the alcoholic content of beer brewed in Botswana from 5 per cent to 3.5 per cent and raise the price of spirits and imported beer by further increasing tax on these commodities in order to discourage the high rate of alcohol consumption. *Kgosi* Garebekwena also wanted the minister to regulate the distribution of *Chibuku* in rural areas where its high consumption was evidently affecting productivity and spread of AIDS.

One of the significant developments in the history of the operation of the House of Chiefs has been the membership of female chiefs beginning with the election of *Kgosi* Rebecca Banika from Chobe in 1999 and inclusion of *Kgosi* Mosadi Seboko as *ex officio* member after becoming the paramount chief of Balete in 2000. Her election as chairperson of the House soon after becoming a member, was a significant development. *Kgosi* Banika, the thirty-two-year-old mother of five, made history by becoming the first woman member of the "House of Male Chiefs." Before coming to the House of Chiefs, she was the only female member of the Chobe Land Board for a period of five years. As the representative of the Chobe district, *Kgosi* Banika has ruled over ethnic groups such as the Basubiya, Bakalanga, Bananjwe, *Basarwa*, and some people of Tswapong extraction. Banika herself comes from *Basarwa* lineage (*Mmegi*, 28 Jan.–3 Feb., 2000). *Kgosi* Banika is the third born in a family of four but the chieftainship baton was passed on to her as her elder sisters were unwilling to serve the institution. Banika believes that she has always been destined for leadership and she mentions the clubs and associations she led during her school days at Maun Secondary School, where she completed her secondary school certificate ('O' levels). *Kgosi* Mosadi Seboko of Balete, who was the apparent and automatic successor to her late brother Seboko, had to fight for her position because of being a female. The resistance to her fight, however, was not insurmountable. Through the *Kgotla's* democratic

method, the Balete unanimously elected her in preference to her male cousin in December 2001, and, following her election and recognition by the minister of Local Government, she became an *ex-officio* member of the House of Chiefs. She started work amidst whispers of discontent among some tribal chauvinists in the tribe, but she was not perturbed by that, as those opposed to her leadership soon realized that she was as capable as any leader. Actually she did not face any serious resistance to her leadership at the *Kgotla*; if there was any resistance, it was within the royal family (Interview, 2002). She is reported to have made the following observation to *Mmegi* (11–17 January, 2002):

What Balete need is a leader. Whether the leader is a man or a woman is immaterial. The key thing is education. People need to be educated to understand that a woman is capable of being a Kgosi. Other than the unwritten customary rites and practices, bogosi (chieftainship), is mainly administrative. As a former administrator, I do not anticipate problems in my new profession as Kgosi.... When I assumed office, I never thought for once that I would need to prove to Balete that I am as capable as my brothers were. I know that as a human being I am not infallible. All I am asking of my people and Batswana is to realize that and not to crucify me when I err only because I am a woman.

It is interesting to note Mosadi's observation when she says that Batswana recognized the important role of a woman or mother and thus addressed their chiefs as "Mmabatho," which means Mother of All and not "Rabatho." "I remember people used to answer 'Mma!' and not 'Rra' when my father called them."

There has been very little resistance to the female membership of the House of Chiefs nationally. Even the senior male chiefs as members of the House have accepted the change without serious reservation. This is evident from the fact that, after her elevation to the throne of Balete, *Kgosi* Mosadi was unanimously elected chairperson of the House of Chiefs. She decided to step down voluntarily after serving a term, not because of any opposition, but because she wanted to devote more time to her other chieftainship responsibilities (Interview with *Kgosi* Mosadi).

The female members have not only changed the gender of the House, but some of their contributions and issues raised by them, such as *Kgosi* Banika's motion in 2000 to introduce corporal punishment for women in customary courts, have aroused considerable public discussion. Introducing this motion, *Kgosi* Banika said:

I am putting before you this very sensitive request because I am deeply hurt by the way our women and their children suffer. The fact that most women in the rural areas are single mothers, they do not have jobs and they are sole bread winners in their respective families, when they are convicted of a crime and sent to prison, their children and extended families suffer a lot. Considering the AIDS scourge, a lot of women are burdened with the responsibility to look after their sisters' children; so you could imagine what will befall families such as these when the breadwinner is in prison. It is a very pathetic situation. That is why I came up with this motion that, wouldn't it be better if such women are lashed because since I joined the service, I have observed that corporal punishment rehabilitates as compared to prison sentence. (Official Report of the House of Chiefs, June 2000, 102)

During that session of the House, some members spoke in support of the motion and no member raised any dissenting voice. But, the then minister of Lands and Housing, Mr. Nkate, did not support the motion and made the following observation:

[T]he infliction of corporal punishment is prohibited by law on women and on men who are above the age of 40. It goes without saying therefore that we would have to go and amend the law, and amending the law inevitably will bring with it a lot of publicity, publicity which will, I submit with the greatest respect Mr. Chairman, be adverse for the image of our country. The trend internationally and I dare say even in Botswana the high court has held that in some instances corporal punishment is some form of torture, is inhuman and degrading.... I think it would be regressive. I do not think it would

be a progressive step to take. I certainly think it would expose us and our good image to undue criticism and animosity from the international community.

Minister Nkate added:

Our culture holds women and their being sacrosanct and it is that culture in fact, that has led to the sort of laws that we have now in our statutes.... Lately the violence against women is on the increase in this country. The question that we have to ask ourselves is whether we would not be sending the wrong message if we were ourselves as government or yourselves as Dikgosi in legal institutions be seen to be going in that direction, would that not weaken our message against violence on women? Can we ourselves inflict corporal punishment on women and then be heard to argue in the same vein that we are going to discourage the advent of violence against women?

The minister finally pleaded that the matter should be left to rest for the time being and be put to a referendum for ascertaining the views of Batswana on the matter. *Kgosi* Banika finally agreed reluctantly in the House with this view of the minister but has not changed her views on the matter.

There is an increased harmony and cordiality between the government ministers who appear before the House of Chiefs (to respond to the questions and motions presented in the House or for consulting the House on bills under consideration in the National Assembly) and the members of the House of Chiefs (who have felt in the past that they are not taken seriously by the government ministers). This can be discerned from the increasing seriousness with which ministers have responded to the motions and questions raised in the House. A statement of the previous chairman of the House (*Kgosi* Seepapitso), while bidding farewell to the House on his appointment as ambassador to the United States in 2000, is indicative of increasing cordiality between the government ministers and the House of Chiefs:

It has been common in my membership of the House, that many times issues are lost in antagonism between magosi and ministers. But this time around I have found very objective arguments. Not necessarily agreements, disagreements at time, but overall I think the spirit displayed has been very good. I have seen members on both sides of the House smiling to each other on occasions. Maybe we are getting rid of the antagonism that we used to see. I know I am one of those who could be blamed for such antagonism. But, I am glad to say I think the spirit of co-operation and team work on both sides of the House has improved, and let us hope that it continues, for the good of this nation. (Official Report of the House of Chiefs, June 2000, 106)

5. MEASURES FOR STRENGTHENING THE HOUSE OF CHIEFS

Observers, from time to time, who have tried to address the above-mentioned weaknesses and to enhance the effectiveness of the House, have suggested various measures. The Balopi Commission also recorded the measures suggested by the public and the members of the House of Chiefs themselves to enhance the effectiveness of the House (67–71). These can be summarized as follows:

- (a) The House of Chiefs should be restructured in order to make it more representative. The Chiefs of one ethnic group could not effectively represent the culture of other ethnic groups.
- (b) The House should be more accountable. Chiefs should consult more with their people.
- (c) The House should be given greater powers.
- (d) The House should be able to initiate legislation.

- (e) The House should be able to veto at least some types of legislation such as those dealing with matters of customary law, culture, and land.
- (f) The capacity of the House should be strengthened by improving secretarial support, better facilities such as office space and computers, and greater budgetary support.
- (g) The status and conditions of service for members of the House should be improved.
- (h) The House should be accorded greater coverage by the media.
- (i) The number of specially elected members of the House should be increased. This way the House could become more representative and could accommodate excluded ethnic minorities, women and youth.
- (j) The House should focus on issues of culture and should be primarily concerned with codifying, harmonizing, and periodically reviewing customary law; promoting national cultural norms, with respect to such matters as funerals, marriage procedures, and inheritance; developing the National Development Plan's chapter on culture in development; assisting in curriculum development; and initiating programs necessary to promote the goal of building a united and proud nation, with special reference to the traditional concept of Botho.
- (k) There should be greater provision for the training of members of the House through both in-service training and academic preparation.

Although the above-mentioned measures have been discussed from time to time for strengthening the House of Chiefs, one of the most serious concerns and discomforts has been the composition and membership of this House. Some sections of the population have felt that the composition of the House as it was up to 2002 did not accord equal treatment to all the tribes of the country and tended to be discriminatory. In 1988, the then BNF member of Parliament, the Honourable Mr. M. Dabutha,

tabled a motion demanding that the constitution of Botswana should be amended to give equal treatment to different tribes in the composition of the House of Chiefs in accordance with the principles of democracy and equality. Parliament rejected that motion after a full debate. On 17 February 1995, Parliament adopted a motion tabled by the member of Parliament for Sebina-Gweta, the Honourable Mr. Oliphant Mfa, to amend Sections 77, 78, and 79 of the constitution (related to the composition of the House of Chiefs) in order to render them tribally neutral.

6. PROPOSED REORGANIZATION OF THE HOUSE OF CHIEFS FOLLOWING THE BALOPI COMMISSION REPORT

Following the 1995 motion by Honourable Mr. Mfa, President Festus Mogae appointed a twenty-one member commission of enquiry in to Sections 77, 78, and 79 of the constitution on 28 July 2000. (Contents of these sections have been elaborated above while discussing the composition of the House before the appointment of the presidential commission.) A former minister and member of Parliament, Mr. P.K. Balopi, headed this commission. The commission submitted its report on 15 December 2000. The terms of reference of the commission were:

- (a) To review sections 77, 78, and 79 of the constitution of Botswana and to seek a construction that would eliminate any interpretation that renders the sections discriminatory;
- (b) To review and propose the most effective method of selecting members of the House of Chiefs; and
- (c) To propose and recommend measures to enhance the efficiency and effectiveness of the House of Chiefs.

The commission observed that it is necessary to change the three sections to ensure that they do not, if objectively read, reasonably cause offence to any citizen. The commission was of the view that a proportion of the nation's citizens interpret Sections 77, 78, and 79 of the constitution as

being discriminatory. Even if the sections are not discriminatory, the fact that enough of the citizenry has the perception that they are is sufficient cause to warrant the change. The commission recommended that no tribe or ethnic community should be named in the constitution.

Before coming to this conclusion, the commission also noted the views of those who held that there was nothing discriminatory about sections 77, 78, and 79 if we understand the historical background. Followers of this view held that the eight tribes listed in Section 78 as *ex-officio* members of the House of Chiefs were not to be seen as representatives of various tribal communities in the districts concerned, which during the colonial era, had been either crown lands or, in the case of North-East, concession lands. These areas thus had not been gazetted as tribal territories under the 1933 Act. Each of these tribal communities was under its own sub-chief, with no single chief having status of a territorial chief over the entire district. In this context, one of the principal architects of the constitution, former president Sir Ketumile Masire, stated to the commission:

If, however, people of Ghanzi, Kgalagadi, Chobe or North-East feel their Chiefs should be *ex-officio*, they should have a Paramount Chief... The stumbling block to taking this option is the multiplicity of tribes in the area all of whom state historical reasons why the Paramount Chief should come from their tribe. (Balopi Commission Report, 19)

Defending the Sections 77, 78, and 79, Sir Ketumile Masire further observed,

Sir Seretse Khama was passionately anti-discrimination and could not have conceivably allowed any discriminatory provisions in the Constitution. He was, in fact, not particularly in favour of chieftainship because he considered it divisive. To him, talking of republicans as junior or senior tribes would have been an anathema.

Although the Balopi Commission took note of these views, it finally recommended that Sections 77, 78, and 79 needed to be removed. The government accepted this recommendation of the commission (White Paper,

6). From the time of appointment of the Balopi Commission to the adoption of a white paper by the National Assembly, the country witnessed intense discussions surrounding ethnic politics (as discussed below).

The Balopi Commission also observed that the name “chief” is seen by some as demeaning. As a title, “chief” does not fully and truly reflect the attributes associated with the institution of traditional leadership in Botswana that is *bogosi*. It noted and agreed with the view that the former colonial government, in order to downgrade and subordinate their status to that of the British monarchy, imposed the title “chief.” It recommended that the name “*kgosi*” should be used in place of “chief” and the nomenclature of the House of Chiefs should be “*Ntlo ya Dikgosi*.” The government accepted this recommendation (White Paper, 7).

The Balopi Commission recommended prohibiting the members of the House of Chiefs from active participation in party politics. The government accepted this recommendation. The commission further recommended that no specially elected member of the House should have served in the elective offices of councillor or member of Parliament, and/or to an office within any political party for at least three years before becoming a member of the House. The government did not accept this recommendation and observed that “active participation in politics prior to being Member of the House of Chiefs shall not bar any person from being a Member of the House of Chiefs.”

The Balopi Commission recorded the views of those in favour of retaining as well as those opposed to the continuation of the House of Chiefs. Those opposed to the continuation of this House believed that it has outlived its usefulness; it had become an anachronism and is not consistent with democratic values of equality and meritocracy; it has become divisive and is a potential threat to national unity. They further observed that it is not representative of the public as a whole; it is ethnically exclusive and is not contributing anything of substance to Botswana’s development.

Those supporting the continuation of the house believe that the House of Chiefs has a continuing role to play in the protection and promotion of those aspects of our culture that will enhance Botswana’s future development. There was a considerable body of opinion that equated the survival of the House of Chiefs with the survival of chieftainship itself, asserting that the abolition of the former would inevitably lead to the demise of the

latter. Its supporters see chieftainship as the “glue” that binds together communities and the nation as a whole, and a tribal leader is seen as a symbol of the embodiment of the values, history, and traditions of his people. The supporters continue to regard chiefs as an embodiment of the nation’s cultural identity and a living link to their past. Many emphasize the need to continue to build and consolidate the nation’s democracy on the foundation of its traditional institutions. The Balopi Commission noted these views and found these consistent with Botswana’s development strategy, Vision 2016.

The Balopi Commission observed that there is widespread dissatisfaction with the current method of selecting members to the House of Chiefs. The commission recommended that territoriality, rather than any actual or perceived membership of a tribal or ethnic group, should form the fundamental basis for representation. No tribe or ethnic community should be listed in the constitution in relation to the composition of the House of Chiefs. The territorial model recommended by the Balopi Commission provides for division of the country into twelve territories coinciding with eight tribal territories and the four districts of Ghanzi, Kgalagadi, Northeast, and Chobe. Of the twelve territories, six should be further divided into regions. Considerations of population distribution and density, the territory’s vastness and population, existing sub-district structures, settlement formations, and the need to ensure wide representation guided the recommended division of six out of twelve territories into regions. The six territories to be sub-divided into regions are: Central Territory (6 regions); Ngamiland Territory (3 regions); Kweneng Territory (3 regions); Ngwaketse Territory (3 regions); Gantsi Territory (2 regions); and Kgalagadi Territory (2 regions). The six territories to remain undivided are: Kgatleng, Tlokweng, Maletle, Borolong, North-East, and Chobe.

The commission recommended a three-tier structure for the proper and accountable representation of Botswana in the institutions of chieftainship at territorial and national levels (pp. 111–42). These tiers will consist of: (a) an Electoral College (b) a Local Chamber of Chiefs, and (c) the National House of Chiefs. Each territory or region shall have its own electoral college for designating representatives to Local Chamber of Chiefs and the National House of Chiefs. The electoral college will consist of headmen of record up to and including the deputy chief. The territorial *kgosi* will have the right to attend meetings of the colleges in their

respective territories. In addition, other individuals may be included in the electoral college to ensure adequate representation as applicable to each territory. The local tribal administration in consultation with the minister responsible will identify such individuals. Each electoral college will determine its chairperson. The function of the electoral colleges will be two-fold: (1) to designate the members of the Local Chamber of Chiefs, and (2) to present to members of the Local Chamber of Chiefs suggestions and views from the people of the territory to be taken to the House of Chiefs, and to receive from the members of the Local Chamber of Chiefs feedback from the House of Chiefs for transmission to the people. The local chamber will be composed of the head of the tribal administration as an *ex-officio* member, and other members designated by the electoral college in the region and/or territory concerned. The Local Chamber of Chiefs will function as the local division of the national House of Chiefs. Each of these chambers will be a consultative forum for members of the House of Chiefs and other chiefs within the respective territories. The person for the time being performing the functions of chief in each of the twelve territories will be an *ex-officio* chairman of the Local Chamber of Chiefs. He shall also be an *ex-officio* member of the national House of Chiefs. Members of the Local Chamber of Chiefs will serve for a period of three years, except for territorial heads of tribal administration, who will be *ex-officio* members. The government did not accept the recommendation on the "Local Chamber of Chiefs" on the ground that "it creates unnecessary and unwieldy bureaucracy at local level" (White Paper, 25). The House of Chiefs was also in agreement with the decision taken by the government.

The government decided (Revised White Paper, 2002) that:

- (a) There shall be NTLO YA DIKGOSI for Botswana which shall consist of 35 members.

- (b) Members of NTLO YA DIKGOSI shall be: (i) Twelve (12) Members who for the time being perform the functions of Kgosi or designated to be a representative of Kgatleng District, Kweneng District, Barolong and Ngwaketse in the Southern District, Ga-malete and Tlokweng in the South East District, Gammangwato in the Central District, Goo

Tawana and Chobe in the North West District, North East District, Gantsi District and Kgalagadi District. (ii) Twenty (20) Members who shall be designated from the Districts. This number will vary depending on whether Districts of Gantsi and Kgalagadi opt to be among the Twelve (12) above. (iii) Five (5) Members who shall be specially appointed by His Excellency the President for the purpose of injecting special skills and obtaining a balance in representation. (See Appendix 1, Revised White paper, 2002.)

(c) In respect of the Twelve (12) Members, each district shall designate Members to Ntlo ya Dikgosi according to their established norms and practices or through the existing method of selection.

(d) In respect of the Twenty (20) Members, each region shall designate Members to Ntlo ya Dikgosi through Regional Electoral colleges.

(e) The districts of Chobe, North East, Gantsi and Kgalagadi will have the option of designating a Member each to Ntlo ya Dikgosi on a permanent basis. In this event, the Districts of Gantsi and Kgalagadi will have no representation at the regional level.

(f) In the case where Gantsi or Kgalagadi or both opt to designate a Member each to Ntlo ya Dikgosi on a permanent basis, the number of regional representatives will reduce from Twenty (20) by either Two (2) or Four (4) depending on whether only one or both choose to opt. (Revised White Paper, 2002, 21–23.)

The National Assembly deliberated on the Revised White Paper (2002) on the Balopi Commission Report in April 2002 (Hansard No. 138, 2002). Although the White Paper was approved by the National Assembly, some members, particularly those belonging to the tribes other than the so-called privileged eight, expressed their discomfort with the final

decision of the government as outlined in the White Paper. Thus Hon. Joy Phumaphi, Minister of Health, representing Francistown East constituency, made the following observation:

Unfortunately the draft that is before the Honourable House today does not achieve equal access to all tribes, and it does not achieve equal treatment of all Chiefs in the House. This is unfortunate Mr. Speaker. It is unfortunate because it is an anomaly within the Constitution which needs to be rectified. (Hansard, 2002, 78)

Mrs. Phumaphi pointed out that

... the tribal groupings that seek representation are not just the eight tribes that were originally there ... neither is it the four other tribal groupings that previously had to elect representatives, but it is all the tribal groupings that are in this country.

She drew the attention of the House to the appendixes in the Balopi Commission Report, which listed nineteen tribal groupings and sixteen *Basarwa* groups (80). She considered it

... unfortunate that some members of our society are not ready for a Constitution that is going to achieve an equitable treatment of all tribal groupings in this country. It is unfortunate because one would have thought Mr. Speaker and hoped and prayed that after 30 years of independence this country would be ready to treat all tribal groupings equitably. Unfortunately this White Paper ... is a compromise and it does not remove discrimination. (79)

Another member of Parliament from North-East constituency, Hon C.J. Butale, observed that he did not support the amendment to Section 78 and that his constituency was supportive of the first draft of the White Paper (102). He was of the view that “the so-called minority tribes have been compromised for the sake unity” (103). According to the Hon. B.

Gaolathe, Minister of Finance and Development Planning and Specially Elected Member of Parliament, who belongs to the North, “we would not be honest to ourselves to say that this paper fully addresses what the Members of Parliament wanted to be covered by promoting nation building and amending the constitution such that it becomes tribally neutral” (168). Nevertheless, Hon. Gaolathe adopted a conciliatory view and considered it as “a step in the right direction. Let us not throw the bit because it is a brick on the top of the house that we are building. It is the right brick, the right size. Let us put it on, others would come later” (168). Concluding that debate in the National Assembly on the Revised White Paper on the Balopi Commission Report, the leader of the House, Hon. Mr. Daniel Kwelagobe, Minister of Presidential Affairs and Public Administration, paid tribute to members “for the dignified and constructive manner in which they contributed to the debate.” Hon. Kwelagobe responded to a sentiment expressed by some members who felt they and their constituents had been short-changed by not being given time and further opportunity to consult on the Revised Draft White Paper:

The position of government is that the initial consultative process precipitated comments and feedback which formed the basis of the revisions, there would not have been any ground to warrant those revisions if it were not for the feedback. (187)

To those who expressed dissatisfaction with the revision of the First White Paper, Mr. Kwelagobe said:

I cannot agree more with colleagues who made the point that the alteration of the first Draft White Paper in order to accommodate the variety of concerns which emerged, is a demonstration of a responsive government. Whilst there were observations and expressions of some disappointment by some Honourable Members that some of the content of the first Draft White Paper were dropped, there is merit in the argument of those who said that as a nation, we are accustomed to gradual change. The solution required was not one which should lead to disintegration as may have happened if we insisted on the first Draft White Paper in its entirety. Future

generations will review our work and move us forward as appropriate if they find that we did not go far enough. (188–89)

To those who felt that retaining of the names of Kweneng and Kgatleng Districts was not quite in keeping with the effort for giving tribally neutral image to the districts, Hon. Kwelagobe made the following observation:

Honourable Mothibamele expressed the view that the names Kweneng and Kgatleng were retained because those with power to say No, said No. Mr. Speaker, I do not think that this view takes account of the contributions to the debate on this issue from many quarters. The fact of the matter is that, the first Draft White Paper went out as consultation document and it became clear that the proposed names were not critical to the solution sought. As government we needed to ensure that we have as much support as possible for the elimination of discrimination in sections 77, 78, and 79 of the constitution and arguments over change of names were not deadly central to the matter. (191)

The House of Chiefs gave its views on the Balopi Commission Report only after the government had already issued the White Paper in 2002. The House of Chiefs could have given its independent views on the Balopi Commission Report in its session held in August 2001 before the production of the White Paper by the government, as the report had already been published in November 2000 and the National Assembly had not yet considered it. The chairman of the House did indeed move a motion in the August 2001 session of the House of Chiefs for consideration of the Balopi Commission Report but the House was not ready for discussion. Thus, the House failed to demonstrate leadership with regard to matters pertinent to chieftainship. The House of Chiefs eventually deliberated (2002) on the Balopi Commission and recorded its views. Some of the significant observations of the House of Chiefs on the Balopi Commission Report were as given below.

With regard to the Balopi Commission recommendation and the government stand that territoriality rather than actual or perceived membership of a tribal or ethnic group should form the fundamental basis for

representation, the House “strongly feels that Ex-Officio status in membership of the House should not be subjected to selection or election process therefore ‘chiefs’ in tribal territories should remain members of the House by virtue of their office and position.” The House of Chiefs was in favour of increasing membership of the House to forty in all, consisting of the following:

- (a) Eight (8) Ex-Officio Members from eight tribal territories.
- (b) Additional members appointed customarily from their territories as follows: Bakgatla Tribal Territory – 2; Bakwena Tribal Territory – 3; Balete Tribal Territory – 1; Bangwato Tribal Territory – 7; Bangwaketse Tribal Territory – 3; Batawana Tribal Territory – 3; Batlokwa Tribal Territory – 1; Barolong farms – 1.
- (c) Eight elected Members from the four districts namely: Chobe, North-East, Kgalagadi, Gantsi.
- (d) Three (3) Specially Elected Members.

On the Balopi Commission recommendation that the status of members of the House should be enhanced, the House of Chiefs observed, “The status of the House of Chiefs is sufficiently enhanced as per Constitution.” The House did not see any need for a joint committee of the members of the House and members of Parliament or for separate budget provision for the House, as recommended by the commission. The House also rejected the Balopi Commission recommendation that the House should have a hierarchy of officers parallel to and independent of the National Assembly (its own speaker, a clerk, a committee system, support staff, with privileges and functions similar to officers serving the National Assembly). The House felt on this recommendation that there was no need for “duplicating Parliament.” The House was not supportive of the Balopi Commission recommendation that members of the House of Chiefs should be afforded the same minimum facilities, as members of the National Assembly both in the House and in the territories they represent. In this context, the House noted “that facilities under Tribal Administration are available to substantive holders of Chiefs, Sub Chiefs or persons acting on their behalf.”

The House did not accept the Balopi Commission recommendation that it should be able to initiate legislation and should have the right to promote private members' bills. For the House "the present way of sponsoring motions is adequate for the advisory function." The House accepted the recommendation of three specially elected members but preferred their election by the House instead of appointment by the president.

A close examination of the deliberations and recommendations of the House of Chiefs on the Balopi Commission Report and the decisions of the government outlined in the White Paper reveal how little impact, if any, the House had on the outcome of the government decisions. The nature and timing of the deliberations of the House on the Balopi Commission Report are also revealing in terms of its inability to demonstrate leadership.

7. CONCLUSION

The establishment of the House of Chiefs by the constitution of Botswana was a significant recognition and mark of respect for traditional leaders. This House has served as a forum at the national level, where the traditional leaders articulate their views on matters of their interest. The role performed by the House has been somewhat limited and it has not made any significant impact on the public policies or legislation adopted by the National Assembly. The members of this House have expressed their frustration from time to time about the lack of seriousness attached to this House by the cabinet and the National Assembly.

Official reports of the meetings of the House reveal that there has been an improvement in the quality of debates in the House and the nature of questions and motions tabled. The cordiality between the House and the cabinet ministers has also improved. However, this House needs to focus its interest on matters related to culture, chieftainship, and tribal matters, instead of those that can be better attended to by the National Assembly. The members of the House could take a more active interest inside and outside the House on matters related to spread, prevention, cure, and impact of the HIV-AIDS epidemic. Pronouncements by some active members of the House with regard to undesirable customs (such as

exorbitant funeral expenses) and harmful social behaviour (such as excessive drinking and alcoholism) are a matter of some satisfaction.

The membership of female chiefs, beginning with the election of *Kgosi* Rebecca Banica from Chobe in 1999, and inclusion of *Kgosi* Mosadi Seboko as *ex officio* member after becoming paramount chief of Balete in 2000 and her subsequent election as chairperson of the male-dominated and tradition-minded House, has not only changed the gender of the House but some contributions and issues articulated by them, such as those discussed above, have made a difference to the general perception of the possible role of female chiefs in contemporary Botswana.

Besides various measures that have been discussed from time to time for strengthening the House of Chiefs, one of the most serious concerns and discomforts, as discussed above, has been its composition and membership. The changed composition of the House after 2005 might not have made it tribally neutral altogether; nevertheless, it is a significant improvement over the past.

Whatever the effectiveness of the House of Chiefs in the governance of the country, the government of Botswana is committed to retaining the House. The then president of Botswana, Festus Mogae, unequivocally expressed his support for the House while officially opening the new chamber of the House of Chiefs in 2001. He observed that his government viewed the House of Chiefs as one of the cornerstones of the young democracy. He expressed the appreciation of the government for the contribution that traditional leadership has made towards political stability in the country. The president said, while his government was committed to the preservation of the institution of *bogosi*, it was imperative that the institution demonstrate resilience and dynamism in the face of mounting cultural globalization.

We know our prosperity over the years will be increasingly and irrevocably integrated in to the rest of the humanity. As the custodian of our culture, the chiefs have a role in ensuring that those positive aspects that have guided our destiny before can endure so that we too can pass a portion of our identity to humanity. (*Botswana Gazette*, 31 January 2001)



KGOSI KGARI SECHELE-BAKWENA – PARAMOUNT CHIEF AND DEPUTY CHAIRMAN NTLO YA DIKGOSI (HOUSE OF CHIEFS), PROFESSOR KESHAV C. SHARMA, KGOSI MODADI SEBOKO – PARAMOUNT CHIEF OF BALETE AND FORMER CHAIRPERSON NTLO YA DIKGOSI, AND KGOSI MOTHIBE LINCHWE – ACTING PARAMOUNT CHIEF OF BALGATLA, BOTSWANA. (PHOTO: PROFESSOR K.C. SHARMA.)



THE FIRST WOMAN TO BECOME PRESIDENT OF BOTSWANA'S NATIONAL HOUSE OF CHIEFS: KGOSI MOSADI SEBOKO, PARAMOUNT CHIEF OF BALETE. (PHOTO: DR. DON I. RAY.)

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