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Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya

Addendum

The situation of indigenous peoples in Botswana*

Summary

In the present report, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, presents his observations and recommendations on the situation of indigenous peoples in Botswana, focusing on those groups that have been historically marginalized and that remain non-dominant parts of society. The report arises out of an exchange of information with the Government, indigenous peoples and other interested parties and follows the Special Rapporteur's visit to Botswana (19–27 March 2009).

The Special Rapporteur acknowledges the initiatives undertaken by the Government of Botswana to address the conditions of disadvantaged indigenous peoples. He highlights, in particular, efforts aimed at addressing long-standing problems such as marginalization in political spheres and a history of underdevelopment. Nonetheless, the Special Rapporteur notes that, while important, these initiatives still suffer from a variety of shortcomings and need to be designed and implemented in a manner that recognizes and respects cultural diversity and distinct indigenous or tribal identities.

The Special Rapporteur notes that the Government of Botswana has developed a number of programmes aimed at preserving and celebrating the unique cultural attributes of the country's many indigenous tribes. However, Government programmes should not be

* The summary of the present report is being circulated in all official languages. The report itself, contained in the annex to the summary, is being circulated in the language of submission only.

limited to the recognition of ceremonial and artistic expression, but rather should be expanded to include a real respect for and promotion of cultural diversity as it is manifested in its many forms, including in political and social structures, land-use patterns and approaches to development. Too often, the practices of the dominant Tswana tribes have been incorporated in the design and implementation of Government initiatives to the exclusion of the practices of culturally distinct minority tribes.

Marginalized indigenous peoples of Botswana continue to confront serious issues arising out of the historical loss of vast amounts of land and natural resources. A significant amount of tribal land, particularly of non-dominant peoples, such as the Basarwa, was lost during colonization, and this pattern of land loss and denial of access to natural resources continued post-independence. The Special Rapporteur finds that the failure to provide adequate redress for these historical grievances has profoundly affected Botswana's indigenous peoples in the present, and land loss remains a significant contributing factor to many of the issues of these peoples. The depth of these issues is exemplified by the removal of indigenous peoples from the Central Kalahari Game Reserve.

The Special Rapporteur offers a number of observations and recommendations with the hope that they will help guide the Government of Botswana, indigenous peoples within the country and other interested parties to develop and implement laws, policies and programmes that conform to the international human rights standards related to indigenous peoples.

Annex

Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, on the situation of indigenous peoples in Botswana

Contents

I. Introduction

1. In the present report, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, addresses issues and makes a series of recommendations concerning culturally distinct peoples who are indigenous to Botswana and who have characteristics of non-dominance and marginalization similar to those of indigenous peoples in other parts of the world. It is based on information gathered by the Special Rapporteur during a visit to Botswana from 19 to 27 March 2009, carried out with the cooperation of the Government, and on subsequent exchanges of information and independent research.

2. During the course of his visit, the Special Rapporteur met with Government representatives, indigenous communities and their leaders and a variety of civil society organizations. He held meetings in Gaborone with representatives of the Ministry of Presidential Affairs and Public Administration and the Inter-Ministerial Committee, consisting of the Ministry of Foreign Affairs and International Cooperation, the Ministry of Local Government, the Ministry of Minerals, Energy and Water Resources, the Ministry of Environment, Wildlife and Tourism, the Ministry of Defence, Justice and Security, the Ministry of Lands and Housing and the Ministry of Education and Skills Development. The Special Rapporteur also met with members of the United Nations country team.

3. The Special Rapporteur conducted field visits to the settlements of Kaudwane in Kweneng District; Gugamma and Metsiamanong in the Central Kalahari Game Reserve and New !Xade, West Hanahai and D'kar in Ghanzi District; and Tsodilo Hills, Shaikarawe and Mababe in North West District. He consulted local authorities, indigenous leaders and community members at these locations. The Special Rapporteur met with representatives of a variety of non-governmental organizations, including the Botswana Centre for Human Rights (Ditshwanelo), the Botswana Council of Churches, the Botswana Council of Non-Governmental Organisations, the First People of the Kalahari, and the Kuru Family of Organizations (Letloa, D'Kar Trust, Gantsi Craft, Komku Trust, Bokamoso, TOKADI and Sand Arts & Crafts), the Working Group of Indigenous Minorities in Southern Africa, the Central Kalahari Game Reserve Coalition and Temasi. Lastly, he met with representatives of the University of Botswana's San/Basarwa Research Project and Gem Diamonds/Gope Exploration Company (Pty) Ltd.[1]

4. The Special Rapporteur expresses his appreciation to the Government of Botswana and to local indigenous communities and a number of non-governmental organizations of Botswana for the support they provided for the visit. He would like to thank the Office of the United Nations Resident Coordinator in Gaborone for its support and instrumental role in the preparation and execution of the visit.

5. Through a letter dated 17 April 2009, the Special Rapporteur submitted to the Government preliminary observations relating to issues discussed during the visit and presented a number of questions, to which the Government responded in a note received by the Special Rapporteur on 12 June 2009. Subsequently, on 24 August the Special Rapporteur transmitted to the Government a preliminary version of the present report and then met with representatives of the Government to discuss the report on 28 September 2009 in Geneva, during the twelfth session of the Human Rights Council. At the meeting it was agreed that the Government would provide written comments on the preliminary version of the report, which were received by the Special Rapporteur on 4 January 2010.

[1] Mention of firm names and commercial products does not imply the endorsement of the United Nations.

The Special Rapporteur is grateful to the Government for its detailed responses, which have been taken into account in the preparation of this final version of the report.

II. Background and context

A. The indigenous and tribal peoples of Botswana

6. Numerous ethnically distinct groups that are indigenous to the African continent live in Botswana, speaking approximately 28 different languages or dialects. They fall primarily into five linguistic-tribal groups: the Tswana, the Basarwa, the Bakgalagadi, the Wayeyi and the Hambukushu. The Tswana, comprised of eight subgroups, are politically and numerically dominant throughout Botswana. Tswana-speaking groups began to migrate into the area no later than A.D. 1200. During the past few centuries, the presence of Tswana groups increased, and over time the Tswana established effective control over the territory, in some cases displacing other groups, primarily Basarwa, from their land. During colonization, the British colonial powers negotiated primarily with the dominant Tswana tribes. The legacy of this prioritization of Tswana interests and culture over non-dominant tribes in Botswana persists in the social and political dynamics of present-day Botswana.

7. Botswana is considered by historians and anthropologists to have been first inhabited by the ancestors of the hunter-gatherer Basarwa, or San, people. This historical presence is particularly evident in the Tsodilo Hills region of northern Botswana, where archaeological findings include stone tools and rock art paintings dating back thousands of years. The Basarwa population is now about 50,000–60,000, and encompasses a number of subgroups, including Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, G/wi, G//ana, Kua, Tshwa, Deti, ǂKhomani, ǂHoa, =Kao//'aesi, Shua, Danisi and /Xaisa. Basarwa communities reside in seven districts: the Southern, Kweneng, Kgatleng, Ghanzi, Kgalagadi, Central, and North West districts. Traditionally, the Basarwa were a semi-nomadic people who practised a hunter-gatherer and agro-pastoralist lifestyle, moving within designated areas based on the seasons and availability of resources, such as water, game and edible plants.

8. Other non-dominant tribes in Botswana include the Bakgalagadi people, comprised of several subgroups including the Bangologa and Bakgwathen, who number approximately 272,000. Traditionally, the Bakgalagadi were agro-pastoralists who occasionally moved depending on the water supply. Still other groups include the Kalanga, who live in the Central and North East districts; the Wayeyi, numbering approximately 60,000 and living primarily in the North West District; and the Hambukushu, who number around 49,000, and live, among other areas, near the Tsodilo Hills in the North West District. Much smaller tribal groups within Botswana include the Nama, a Khoesan-speaking people, numbering approximately 1,500 and the Balala, numbering approximately 2,200.

B. The legal and policy framework

9. Botswana gained its independence from the United Kingdom of Great Britain and Northern Ireland in 1966. Alongside the formal institutions of governance that succeeded the colonial regime, tribal structures of authority and customary law have remained part of the country's legal and political framework. Historically and in many ways still, however, the legal and political accommodation to tribal interests has privileged the dominant Tswana tribes.

10. The Constitution of Botswana provides for a House of Chiefs, a body that advises the National Assembly and executive authorities on issues related to Botswana's tribes.

Under sections 77–79 of the Constitution of 1966, eight chiefs from each of the eight major Tswana tribes — the Bamangwato, Batawana, Bakgatla, Bakwena, Bangwaketse, Bamalete, Barolong and Batlokwa — were guaranteed a seat on the House of Chiefs, while representatives of the numerous other, non-dominant tribes competed for the remaining seven seats in elections for the then 15-member body. Further, the Chieftainship Act of 1933 defined "chief" and "tribe" by reference to the eight dominant Tswana tribes only.

11. The Constitution was amended in 2007 to revise the composition of the House of Chiefs, now known as the Ntlo ya Dikgosi. Additionally, after the Botswana High Court declared the Chieftainship Act unconstitutional for its discriminatory characteristics,[2] that act was repealed and replaced by the Bogosi Act of 2008, which established a more tribally neutral framework for recognition of tribes, tribal areas and their respective chiefs. While the Government has expressed to the Special Rapporteur its position that the constitutional amendments, together with the Bogosi Act, now afford equal treatment to all tribes and ensure equitable representation, the Special Rapporteur remains concerned with some aspects of these reforms, a matter which is addressed in section IV (B) below.

12. Other laws still recognize Tswana tribes and tribal structures, without similar recognition of the smaller tribes and their respective political and social structures. For example, the Tribal Territories Act of 1968, which still provides part of the legal framework for indigenous land rights in Botswana (see paragraphs 40–44 below), names tribal territories after the major Tswana tribes. This legislation also named the Tswana chiefs as the custodians of these territories, though it did not confer ownership rights.

13. Tribal customary law, primarily based on oral tradition, has been incorporated into the legal framework of Botswana since independence. Under the Customary Law Act, tribal customary law is valid to the extent that it "is not incompatible with provisions of any written law or contrary to morality, humanity or natural justice". Customary law is administered by all courts of Botswana, when applicable, in cases involving tribal members, including by customary courts operating under the authority of chiefs or headmen. These customary courts derive their authority from oral tradition as well as from the Customary Courts Act. Customary courts have been developed in connection with the *kgotla* system, which is a system for handling matters of concern to the tribe through community meetings, and which is based on Tswana custom.

14. Botswana is party to a number of United Nations treaties and to the African Charter on Human and Peoples' Rights. Furthermore, it voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples. Botswana is not a party to the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169), although the Government expressed to the Special Rapporteur that it supports the general principles and objectives of the Convention.

C. The application of the United Nations Declaration on the Rights of Indigenous Peoples

15. In voting in favour of the Declaration, the Government of Botswana has manifested its support for the Declaration's call for affirmative and concerted measures to address the disadvantaged conditions of indigenous peoples in accordance with the human rights principles elaborated upon in that instrument. At the same time, the Government takes the position, as reiterated to the Special Rapporteur, that all people of Botswana — with the exception of some naturalized citizens — are indigenous to the country. However, the

[2] See *Kamanakao I and Others v. The Attorney General & Another* [2001] 2 B.L.R. 654.

specific relevance of the Declaration, as evident by its terms, and of the various United Nations programmes and mechanisms concerning indigenous peoples, including the mandate of the Special Rapporteur, applies to those indigenous groups that are in non-dominant positions and that have suffered and continue to suffer threats to their distinct identities and basic human rights in ways not felt by dominant sectors of society. Hence, in the present report the Special Rapporteur focuses, in the light of the standards articulated in the Declaration, on the concerns of non-dominant indigenous groups of Botswana that share in these characteristics.

III. Positive developments

A. The domestic legal framework

16. The Special Rapporteur considers that the incorporation of tribal institutions and custom into the national legal system of Botswana provides a foundation for strengthening distinct indigenous identities and cultural patterns, in line with the Declaration. In particular, recognition of tribal authorities and customary law, within a framework of respect for fundamental human rights and gender equality, constitutes a good practice if that recognition is extended equally to all indigenous or tribal groups. Additionally, the House of Chiefs, or Ntlo ya Dikgosi, serves the important role of ensuring that tribal interests are considered at the highest levels of Government. While legal obstacles have impeded non-dominant tribes from achieving the same level of participation and representation in political life as dominant Tswana tribes, the Special Rapporteur notes the recent efforts of the State to address this complex issue through constitutional and legislative reform (see part II (B) above), although it appears that certain problems remain in this regard (see part IV (B) below).

17. The Special Rapporteur also notes and commends the Government of Botswana for its broader policies and initiatives oriented towards eliminating discrimination based on ethnic or tribal identity and towards building a society that is genuinely inclusive of all.

B. The Remote Area Development Programme

18. The Special Rapporteur acknowledges the efforts and commitment of the Government to provide all citizens with access to development programmes and to address the economic disadvantages faced by particular groups, such as the Basarwa. He also recognizes the challenges that exist in providing such services to indigenous communities, many of them nomadic or semi-nomadic, located in remote areas throughout the country.

19. The primary policy initiative currently in place to alleviate poverty and promote development is the Remote Area Development Programme. In 1975, the Government initiated the Basarwa Development Project, aimed at helping the Basarwa in particular "adapt to the fast evolving economy of Botswana".[3] In 1978, the project was decentralized and its focus expanded beyond the Basarwa to address the socio-economic conditions of other marginalized communities in the seven geographic districts: Central, Ghanzi, Kgalagadi, Kweneng, Kgatleng, North West, and Southern. At that time, the project became known as the Remote Area Development Programme.

[3] Botswana, "Report of the Review of the Remote Area Development Programme" (Ministry of Local Government, 19 December 2003), p. 7.

20. Initially, the programme worked to combat poverty and promote development through the creation of "remote area settlements" and the relocation of remote area dwellers into these settlements in order to provide basic social services. The Special Rapporteur visited several of these settlements during his time in Botswana and addresses some of the issues associated with this initial development strategy in part IV (A) of the present report.

21. Over the past several years, the Government has evaluated and revised the Remote Area Development Programme, most recently in February 2009. According to the Government, the emphasis of the programme has shifted from the original resettlement and infrastructure development strategy to land distribution, employment opportunities, institution-building and leadership training.

22. The Special Rapporteur is pleased to find, among the goals of the revised programme, that the Government "shall adopt a community-led development approach which aims to promote participatory processes and community participation in issues affecting their own development".[4] Also noteworthy is that the new policy acknowledges the need for affirmative measures for the benefit of communities that have faced "intractable disadvantages, either for logistical reasons, or because of long standing historical prejudice and subjugation by the dominant groups".[5] Such measures will be adopted across a variety of sectors to improve access to education, health, employment and economic development opportunities, and to socio-political institutions.

23. To some extent, the Government appears to be addressing concerns regarding access to land. Specifically, the 2003 review of the Remote Area Development Programme acknowledged the lack of sufficient access to land in the remote area settlements, attributing this problem to the allocation of surrounding land for cattle posts, ranches and wildlife management areas. The review also pointed to a lack of understanding of the procedures for obtaining land through the land boards, which were created in 1968 to administer and hold in trust all tribal land in Botswana.

24. In its 2009 revision of the programme, the Government proposed important measures to address this problem, stating that remote area communities would be given priority by land boards for land near their settlements and that consideration should be given to buying back tracts of land near the settlements. The revised Remote Area Development Programme policy further suggests that the Tribal Land Act be amended to include affirmative action measures that allow preferential allocation of nearby land to poorer people living in remote settlements, and that the Act should reserve a quota of positions on land boards for people from remote settlements.

25. The revised policy also states that programme officers should be trained to assist people from remote areas in submitting land applications. The Government has highlighted a number of important steps already in place to promote understanding of the land distribution system and related application processes. These initiatives include the introduction of help desks at the various land boards; clearly posted policies, procedures, and standards for land grant applications; and a number of outreach measures to explain operations and address questions and concerns.

IV. Areas of concern

26. Despite the noted positive developments, the Special Rapporteur heard persistent and consistent accounts of discontent from the Basarwa and Bakgalagadi communities he

[4] Botswana, 2009 Revised Remote Area Development Programme, para. 2.3.1 (b).

[5] Ibid., para. 2.3.1 (d).

visited. Several community members with whom he spoke, both in open meetings with government presence and in more private settings, acknowledged some positive aspects of government development initiatives. But, overwhelmingly, community members expressed sentiments of exclusion from government decision-making processes on matters directly affecting their lives, including in relation to development initiatives, and many alleged they were discriminated against because of their ethnic identities.

27. Community members complained that development programmes were not in fact bringing markedly improved living conditions for the great majority of the people in their communities and that in many cases they saw their living conditions deteriorating. Many expressed frustration over a lack of respect for their cultures and languages in the design and implementation of development programmes, including in areas of health, education and income generation. Concern was also expressed about lack of access to traditional lands and impediments to, or outright prohibition of, traditional hunter-gatherer activities for basic subsistence.

28. The Special Rapporteur understands that members of local communities may be prone to highlighting the continuing challenges they face and criticizing the Government for its shortcomings rather than reflecting on its successes, and that he was able to visit but a small fraction of the many communities of Basarwa and other non-dominant tribes in Botswana. Nonetheless, he was struck by the apparent sincerity and consistency of the accounts he heard, and by the fact that these accounts are reinforced by information and analysis provided by respected non-governmental actors in Botswana and other credible sources, including those associated with international institutions such as the African Commission on Human and Peoples' Rights.

29. The Special Rapporteur perceives the expressions of discontent by the local community members with whom he visited to be associated with three underlying, interrelated issues: respect for cultural diversity/identity, political participation and consultation, and redress for historical wrongs.

A. Respect for cultural diversity

30. Botswana is a culturally diverse country with several distinct tribes or ethnic groups that are indigenous to the African continent, and the National Policy on Culture (2001) articulates objectives for the preservation and development of the diverse cultures of Botswana. There is significant Government support, through a number of programmes, for preserving aesthetic and folkloric aspects, such as song, dance and crafts, of the distinctive cultures of non-dominant indigenous groups. However, the cultural practices of these non-dominant groups that are related to leadership and decision-making structures, development and land-use patterns remain in significant respects unrecognized or undervalued. Indeed, Government officials repeatedly stated to the Special Rapporteur that the Government places a high priority on "nation-building", which includes consolidating a single national identity over the identities of diverse groups, and they appeared sceptical of any suggestion of robust recognition of distinct indigenous identities.

1. Development programmes

31. Government development programmes, including those specifically for the benefit of non-dominant indigenous communities, require greater accommodation to diverse cultural identities. As already noted, a primary poverty reduction strategy of the Remote Area Development Programme was the resettlement of remote dwellers into "remote area settlements" in order to facilitate the provision of social services. This practice failed to recognize the distinct cultural and land-use patterns of many of the indigenous communities it was intended to aid. This strategy of relocation remains a source of concern, and residents

of the settlements visited by the Special Rapporteur expressed deep discontent over having to move from their traditional lands. As one informed source has observed, the relocation was not a "simple geographical movement of people", but rather "a whole social transformation of a community that has depended on a certain environment from time immemorial".[6]

32. The Basarwa have been particularly affected by a uniform approach to development that lacks sensitivity to diverse cultural patterns. They have traditionally maintained a hunter-gatherer subsistence way of life, which is in tension with Remote Area Development Programme initiatives to relocate them into settled communities in favour of a sedentary, agro-pastoralist lifestyle. As a result, many residents of remote area settlements remain dependent on Government handouts, which creates a feeling of despair and difficulty in maintaining a culturally appropriate and sustainable livelihood. Furthermore, it is evident that the lack of cultural adaptation of development programmes is impeding their ultimate success.

33. Many residents of remote area settlements have insufficient land to carry out basic subsistence activities, like gathering or grazing the cattle given to them under the Remote Area Development Programme. In Kaudwane, for example, residents stated that they have access only to small plots, and that there is insufficient land for hunting and gathering purposes or for raising livestock. Likewise, Mababe residents complained of insufficient land for cultivation and gathering of wild fruits, and stated that the restrictions that Government has imposed on their use of land prevent them from hunting or raising livestock.

2. Social services

34. Beyond the poverty reduction development initiatives, the design and delivery of social services, including in the areas of health and education, likewise require greater accommodation to diverse cultural practices and values.

35. The Special Rapporteur acknowledges the concerns expressed by the Government over the difficulties posed in offering a health-care system that incorporates and respects both Western and traditional medicinal practices. Nonetheless, he highlights the need to enhance the understanding of and respect for traditional medicine, which continues to be practised among indigenous communities but remains largely excluded from the Government health system. In this regard, the Special Rapporteur notes the Government initiative to draft a traditional health practice bill in consultation with traditional health practitioners associations and international bodies such as the World Health Organization. As that initiative progresses, the Special Rapporteur stresses the importance of additionally consulting with community members themselves to address their respective needs and concerns.

36. Regarding education, the Special Rapporteur commends the Government for its commitment to ensuring universal access to education and notes the aspects of the national school curriculum and educational planning that call for an awareness of diverse cultures. However, interviews with parents and educators at the community level, as well as with officials of the Ministry of Education in the capital, indicate insufficient funding for education programmes targeted at marginalized indigenous groups and a lack of genuine cultural sensitivity in the development, design and implementation of education

[6] A.M. Chebanne, "The San and relocation: why the promised land is not attractive", *Botswana Journal of African Studies*, vol. 20, No. 2 (2006).

programmes. Government officials were unable to articulate to the Special Rapporteur precisely how culturally adapted educational programming is being implemented.

37. Apparent, instead, is an unavailability of mother-tongue education; insufficient and inadequate incorporation of the history, culture and current conditions of minority indigenous groups in schooling for the children of those groups; and a lack of trained teachers and school officials from non-dominant indigenous groups. In fact, in its 1994 Revised National Policy on Education, the National Commission on Education recommended mother-tongue instruction for children in pre-primary schools, but the Ministry of Education did not accept this recommendation, noting that the proposed policy was contrary to the national language policy.[7]

38. The Government of Botswana has communicated to the Special Rapporteur that it acknowledges the need to train teachers to deliver mother-tongue education, and that it has now begun working towards the implementation of mother-tongue education programmes. While this represents an important initiative, the Special Rapporteur takes note that the Government still remains in the earliest stages of designing this programme.

39. Another concern is the hostelling system used to provide education in remote areas where teacher retention has been poor, which has resulted in the alienation of children from their culture and families. The Government has indicated that it is exploring various options aimed at attracting and retaining teachers in remote areas, which would minimize the need for the hostelling system. For example, in its revised Remote Area Development Programme, the Government expressed plans to encourage the construction and operation of two-teacher, multigrade schools in remote areas, a process already under way with regard to primary school education. Nevertheless, delivery of a culturally appropriate education system remains a challenge in Botswana.

3 Land distribution

40. Land laws that were passed in the early years of the independence of Botswana continued to reflect the colonial land tenure system instituted by the British that specifically recognized Tswana interests in land over those of non-dominant groups. These laws, including the Tribal Territories Act of 1933 and the Tribal Land Act of 1968, are still in force today, as are the land boards that, as noted above, were created in 1968 to administer and hold in trust all tribal area lands in Botswana.

41. The Tribal Territories Act divides the tribal land in Botswana that is available for communal use into eight tribal territories named after the dominant Tswana tribes. While the Act does not confer ownership rights on the named tribes, members of minority tribes and civil society organizations highlighted the perception of the non-Tswana indigenous groups that they were being discriminated against because they were not receiving the same recognition as the dominant tribes.

42. Botswana does not have in place a clear or effective mechanism through which indigenous peoples can collectively seek the demarcation and titling of their lands on the basis of traditional patterns of land use and occupancy, nor is there a procedure for addressing historical grievances for lands lost in the past (see paragraphs 57–63 below). Instead, the land boards hold all tribal land in trust and issue leases on an individual or collective basis, presumably in a tribally neutral fashion. However, Tswana customary law has continued to dominate the land board processes, and as a result, the administration of

[7] Botswana, "The Revised National Policy on Education, April 1994", as approved by the National Assembly on 7 March 1994, Government Paper No. 2 (1994), Deferred Recommendation 12.

tribal land rights by the land boards raises concerns over the recognition of traditional land uses by non-dominant groups.

43. Specifically, it is reported that only land-use patterns consistent with agro-pastoralism, and not with hunter-gatherer systems, are recognized in the system of granting leases. While many traditionally hunter-gatherer communities currently live more sedentary ways of life, members of these communities stated that they wished to continue hunting certain animals and gathering traditional fruits and other plants, subsistence activities that they would combine with raising goats and other small livestock. The Government asserts that such activities are permitted. But in fact they are severely restricted by licensing and wildlife management schemes, a concern that was expressed to the Special Rapporteur during his visit to the Mababe Wildlife Management Area.

44. Further, recent Government policy on State lands has focused on conservation and tourism efforts, and most State land is now categorized as national parks, wildlife management areas or game reserves. However, many indigenous groups, such as the Basarwa, Bakgalagadi and Hambukushu, were in fact living within the conservation areas, and were forced to leave their traditional lands once those were declared protected areas. This scenario is exemplified by the removal of Basarwa and Bakgalagadi communities from the Central Kalahari Game Reserve, as discussed in part V below.

4. Need for affirmative measures to promote cultural diversity

45. It is clear that the Government has taken strides to ensure that equality is extended to all citizens of Botswana. Yet Government practice has mostly adhered to a now highly questioned model of equality that stresses the formal equality of the individual at the expense of effective equality, which in a multicultural society requires close consideration of diverse group identities and, in the case of indigenous peoples, affirmation of their collective rights, including rights over lands in accordance with traditional patterns.

46. As recognized by the Committee on the Elimination of Racial Discrimination, to achieve equality in fact and compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, to which Botswana is a party, there must be due regard for cultural difference and special consideration for culturally distinctive minority and indigenous groups. Hence, in 2006 in its latest observations on Botswana, the Committee expressed concern that Botswana's "objective to build a nation based on the principle of equality for all has been implemented in a way detrimental to the protection of ethnic and cultural diversity" (CERD/C/BWA/CO/16, para. 9). Thus the Committee, "recalling that the principle of non-discrimination requires that the cultural characteristics of ethnic groups be taken into consideration", urged Botswana "to respect and protect the existence and cultural identity of all ethnic groups within its territory" and "to review its policy regarding indigenous peoples" (idem).

47. Respect for ethnic and cultural diversity is a core principle of the United Nations Declaration on the Rights of Indigenous Peoples. Upon the basis of this core principle, the Declaration addresses the concerns of indigenous peoples that are in some way marginalized or vulnerable in relation to other population sectors within a country. The Declaration calls upon States to take special measures, within the framework of respect for the political unity and territorial integrity of each State, to secure the collective and individual rights of these peoples in multiple areas touching upon all aspects of their cultural identities, including in development programmes, health and education, and access to lands and natural resources.

B. Participation and consultation

48. The Government has expressed a commitment to a system of political participation that is equally accessible to all and to ensure consultation with local communities in relation to decisions affecting them. However, there are a number of indications that existing mechanisms are in fact inadequate with regard to minority or non-dominant indigenous groups.

1. Participation in governance

49. The Constitution of Botswana recognizes the right of all citizens, regardless of tribal affiliation, to vote and participate in national political processes. However, it is apparent that, despite the formal status of equality enjoyed by all citizens in relation to the means of political participation, those citizens who are members of minority indigenous groups are themselves disproportionately absent from national and district-level representative bodies and government agencies. The Special Rapporteur heard reports, confirmed by Government officials, that due to various socio-economic factors and histories of marginalization, non-dominant indigenous groups face particular challenges in participating in district-level governance processes, even in districts where their communities are numerically sizeable.

50. Governance at the level of local tribal and indigenous communities is through the system of *kgosi* (traditional chiefs) and *kgotla* meetings, a system with origins in Tswana custom that is recognized and regulated by the Bogosi Act. The *kgotla* is the meeting place for dispute resolution, as well as for discussions regarding matters of concern to the community, including development initiatives. While such institutions of local governance are appropriate to many communities, and to that extent are to be encouraged, the Special Rapporteur notes that they may fail to adequately accommodate to the cultural patterns and traditional leadership structures of non-Tswana peoples, such as the Basarwa, which are traditionally organized around a system of clans and elders.

51. Additionally, the Special Rapporteur remains concerned over the process of selecting members of the Ntlo ya Dikgosi (House of Chiefs). Notably, the Special Rapporteur heard concerns that despite the amendments to the Constitution, discussed in section II (B) above, the process for determining membership in the Ntlo ya Dikgosi still disadvantages non-dominant tribes and favours Tswana leadership. The constitutional amendments of 2007 increase the number of members of the Ntlo ya Dikgosi but do not provide for each tribe to be represented by its own chief. Members are selected by geographic region and presidential appointment, through a complex system in which demographic factors and the distribution of chiefs at the tribal level ensure representation by a number of Tswana chiefs. Non-dominant indigenous groups are not likewise ensured that their chiefs are included in the Ntlo ya Dikgosi.

2. Consultation

52. The Special Rapporteur also remains concerned about the participation of community members in decision-making related to development initiatives that have specific local effects on their lives and communities. The Government stresses that "*therisanyo*", or consultation, is one of its key planning principles, with consultations taking place at the settlement or village level mainly through *kgotla*, or community, meetings. A complementary institution to the *kgotla* is the village development committee, which the Government describes as a vehicle for coordinating development activities at the village level. Additionally, the Government notes that consultations occur with and through a myriad of other relevant bodies, including land boards and district councils whose constituencies cover more than just particular communities or tribes.

53. However, at all the villages and settlements visited, the Special Rapporteur heard accounts of inadequate participation in development planning. The sentiment repeatedly expressed was that decisions are made by the Government at the national or district levels and that *kgotla* or other local community processes are usually at best opportunities to comment on development planning with little real influence in outcomes of that planning. In Basarwa communities, concerns were also raised that the consultation processes, like the *kgotla* system, do not always reflect their own traditional decision-making institutions.

54. Exemplifying the shortcomings of the current system, residents of Mababe stated that they were simply informed of the decision to place their traditional lands within the restrictive regime of a wildlife management area, and were not allowed to take part in that decision. Residents of West Hanahai complained that the village development committee did not, in fact, function as an effective vehicle for consultation, stating that in practice they were excluded from the dialogue between the committee and the Government, and that the committee failed to consult with community members on such issues as partitioning land and funding priorities.

55. The Government, in its 2003 review of the Remote Area Development Programme and its 2009 Revised Remote Area Development Programme, states that community organizations and leadership structures in remote communities are generally weak and lacking in capacity, with participation in development planning remaining low.[8] The Special Rapporteur observed that, at least to some extent, such perception of a lack of skills at the local level contributes to a tendency for the Government to take control of project development with the intention that communities be persuaded to accept the initiatives. Yet, the Special Rapporteur is encouraged by the Government's apparent willingness to address these issues, as discussed in part III (B) above, and stresses the need to strengthen local capacity and institutions and ensure that mechanisms of consultation are appropriate to the relevant cultural patterns.

56. It is evident that particular indigenous groups remain underrepresented in the decision-making bodies in Botswana, and that development and other decisions affect these groups in ways that are unique to them or not felt by the general population. Hence, the normal avenues of political participation and consultation that are devised to apply to the general population are inadequate for these groups. In accordance with the United Nations Declaration on the Rights of Indigenous People (arts. 19 and 32, inter alia), it is important that such underrepresented indigenous communities be consulted directly, through special procedures that accommodate to their own cultural patterns and institutions, in the making of decisions affecting them, with the objective of obtaining their free, prior and informed consent.

C. Historical grievances, in particular with regard to land

57. In the courses of history that accompany the development of many countries, especially those that have experienced European colonization and waves of migration, it is common for indigenous groups that are in the minority to have suffered injustices that leave them disadvantaged in the present. Botswana is such a country. In its 2009 Revised Remote Area Development Programme, the Government acknowledges that certain communities "find particular and intractable disadvantages, either for logistical reasons, or because of long standing historical prejudice and subjugation by the dominant groups". Thus, the Government commits to "adopt affirmative action across a variety of sectors to improve their access to education, health, employment and economic development opportunities,

[8] Botswana, "2009 Revised Remote Area Development Programme", para. 12.1.1.

and socio-political institutions, among others".[9] As already noted, the Remote Area Development Programme, an important initiative in this regard, has the potential to achieve positive results if it is adapted to embrace and conform to the cultural patterns of the groups it is intended to benefit. That programme, and other initiatives to address the disadvantages faced by particular groups, should extend to addressing a major cause of that disadvantage, which is associated with the historical prejudice and subjugation acknowledged by the Government: the historical dispossession of land.

58. By many accounts, the Basarwa have been especially affected over time by the expansion of majority tribes and non-indigenous farmers into the areas traditionally used and occupied by them, particularly in western Botswana. Dispossession in favour of white settlers and dominant tribes engaging in agro-pastoralism from colonial times continued, according to numerous sources, with the implementation of the Tribal Grazing Land Policy of 1975, as large tracts of land were allocated to cattle ranchers at the expense of the Basarwa. Under that policy, the Government re-zoned approximately 12 per cent of the tribal land identified in the Tribal Territories Act and allocated it to individual cattle ranchers, who received the exclusive lease rights to the grazing land.

59. Under the final version of the policy, no alternative lands were set aside for the people who had been living on the land. The World Bank has estimated that 28,000 people living in poor, rural areas of Botswana were displaced from the ranching areas created by the Tribal Grazing Land Policy. A settlement scheme was eventually established to move the Basarwa of the Ghanzi farms, who numbered over 4,000, to four settlements, including East and West Hanahai. Others continued to live and work as field hands or squatters at the cattle posts. Without recognized land rights, those dispossessed, such as the Basarwa people, were not compensated for the land taken.

60. While the Tribal Grazing Land Policy was aimed at better managing the country's land resources and preventing land degradation resulting from the overgrazing of tribal lands, it failed to consider the hunter-gatherer subsistence way of life practised by those displaced. Thus, a residual effect of the policy was the loss of adequate access to the area's natural resources needed for survival. The cattle farming resulted in the reduction of plant food in the area; the interference with game migration routes, reducing the number of large game available for hunting; and the depletion of water resources.

61. These historical injustices have put minority indigenous peoples, such as the Basarwa, at a significant disadvantage vis-à-vis other tribes. While the Remote Area Development Programme seems to be aimed at addressing these disadvantages, the initiative in itself has had some profound negative impacts on the rights of indigenous peoples to their traditional lands in Botswana, given the Government's strategy of relocating communities from remote areas, as discussed earlier (paras. 31–33 above). In this regard, the Special Rapporteur notes the Government's initiative to now require the land boards to prioritize the lease applications of remote area settlers, an initiative that could potentially provide a measure of redress for the historical dispossession of land.

62. Highlighting international concern about the effects of historical dispossession of traditional lands, territories and resources of indigenous peoples, the United Nations Declaration on the Rights of Indigenous People calls on States to recognize and protect the land rights of indigenous peoples on the basis of their customary or traditional tenure (art. 26). The Declaration further affirms that indigenous peoples have the right to redress, by means that can include restitution or, when that is not possible, just, fair and equitable compensation, for the lands, territories and resources unjustly taken from them (art. 28).

[9] Ibid., para. 2.3.1.

63. These provisions flow from the Declaration's fundamental purpose of addressing historical injustices and ongoing disadvantages suffered by indigenous peoples, and of promoting positive measures to ensure that the rights of vulnerable indigenous peoples are protected. In line with the Government's acknowledgment of the need to address historical injustices and prejudice, the Government should take effective steps to provide redress for marginalized indigenous peoples, including with regard to the dispossession of lands and natural resources.

V. An emblematic case: the Central Kalahari Game Reserve

64. Representative of the difficulties faced by non-dominant indigenous peoples confronted by historical and ongoing patterns of marginalization, including with regard to Government development strategies, is the situation of those groups whose lives were drastically changed by the establishment of the Central Kalahari Game Reserve. The game reserve was established in 1961 to protect wildlife resources and to provide Basarwa living in the area with land on which to continue their hunter-gatherer way of life. At that time, there were approximately 3,000–4,000 people living in the game reserve, the majority who were Basarwa, and the rest Bakgalagadi. While hunting and gathering was generally not permitted in the game reserve, an exemption was made for people whose primary subsistence was derived from wild plants and animals. The lifestyle of the residents was viewed as consistent with the preservation of wildlife inside the game reserve.

65. Over time, the lifestyles of the Basarwa and Bakgalagadi residents of the game reserve changed with the drilling of boreholes to provide access to water and the Government's establishment of a school and health post at !Xade under the Remote Area Development Programme, which encouraged an agro-pastoralist lifestyle and led to the keeping of some livestock within the reserve.

66. In 1985 the Government investigated the situation in the reserve and found that the communities were depleting the wildlife and natural resources, that the communities' lifestyles were no longer consistent with the objectives of the reserve, and that it was cost-prohibitive to provide services within the reserve. On those grounds, the Government decided to relocate all people residing within the reserve to outside settlements. The Government maintains that the relocations were voluntary and only occurred after a series of consultations and public meetings that took place between 1986 and 1996. While it is clear that some residents consented to the relocation, it is equally clear that the consultation process was inadequate and that many of the residents were simply unwilling to relocate.

67. There are serious concerns about whether consent to relocation, when it was given, was in fact freely given. The Special Rapporteur received information that measures such as the termination of services inside the reserve, the dismantling of existing infrastructure, the confiscation of livestock, harassment and ill-treatment of some residents by police and wildlife officers, and hunting prohibitions were used as inducements to relocate. Some former inhabitants of the game reserve interviewed by the Special Rapporteur spoke of the Government's termination of services to their communities in 2001 as one of the main factors in their decision to relocate. According to several sources, the Government prohibited hunting during the relocations and confiscated goats and other livestock, and then cut off the residents' water supply, terminated food rations, and told residents that they would be able to benefit from these services at the new settlements.

68. With the exception of small groups of people, almost all inhabitants of the game reserve relocated between 1997 and 2001.[10] On 31 January 2002, the Government ceased provision of basic and essential services to the Basarwa and Bakgalagadi people who remained in the game reserve. Additionally, the Government removed the pipe and capped the borehole that brought water to inhabitants of the reserve.

69. In February 2002, 243 Basarwa individuals who had lived in the reserve filed an urgent application with the High Court of Botswana, seeking an order declaring the termination of basic and essential services by the Government unlawful and unconstitutional, and declaring the Government's obligation to restore these services and their access to the lands and resources within the reserve. They further sought an order declaring unlawful and unconstitutional the Government's refusal to issue special game licences and its refusal to allow them to enter the game reserve unless they possess such a permit.

70. In December 2006, the High Court of Botswana in the case of *Roy Sesana and Others v. The Attorney General*[11] held that the "Applicants were deprived of [possession of the land, which they lawfully occupied] by the Government forcibly or wrongly and without their consent".[12] Two of the three justices on the panel that decided the case highlighted conflicting and confusing statements and actions by the Government, in particular regarding the provision of services, which would indicate that the residents did not freely consent to the relocation.

71. Justice Dow highlighted the Government's failure to take into consideration the social and political structures of the Basarwa, and to some extent the Bakgalagadi, which are in fact different from the social and political structures of Tswana groups, in the design of programmes and projects at the new settlements. Additionally, both Justice Dow and Justice Phumaphi referred to the reserve inhabitants' relative position of powerlessness, resulting from historical processes and general discrimination that has resulted in a number of Basarwa having low literacy levels and little to no political or economic clout. Finally, the justices concluded that even if residents had decided to relocate voluntarily, their consent could not be considered informed, based on evidence that the Government failed to adequately inform them about compensation or their right to return to the reserve after relocation.

72. The Government has stated that the decision of the High Court is being faithfully implemented and that all applicants in the *Sesana* case and some of their family members have been allowed to return without having to fulfil the requirement of obtaining entry permits. In the view of the Government, all others, including those who lived in the reserve at the time of the relocation but who were not applicants to the Court case, must obtain temporary entry permits. While allowing inhabitants of the reserve to make their own provisions for water, the Government has stated that it is not obligated to provide access to water in the reserve and that it will not permit the inhabitants to gain access to water through the use of the Government's borehole. The Government also has affirmed that the prohibition of livestock in the reserve continues, and that the ordinary restrictions on hunting in the reserve still apply.[13] Further, Government representatives explained to the Special Rapporteur that allowing even relatively small communities to live within the game

[10] Initial report submitted by Botswana to the Human Rights Committee (CCPR/C/BWA/1), para. 286.

[11] High Court of Botswana, Misca. No. 52 of 2002, judgement of 13 December 2006.

[12] Order of Court announced in Judgment of Hon. Mr. Justice M. Dibotelo, para. 55 (4).

[13] See "Summary of Botswana Government position regarding implementation of the Decision of the High Court in *Roy Sesana and Others vs. The Attorney General*", 19 February 2007 (transmitted to the Special Rapporteur, June 2009).

reserve is incompatible with the conservation and wildlife management objectives of the reserve.

73. While the Government may or may not be following the order of the Court in the *Sesana* case in a technical sense, its position on who should be permitted to re-enter the reserve without obtaining entry permits, its restrictions on hunting and livestock possession and its denial of services to those currently living in the reserve do not appear to be in keeping with the spirit and underlying logic of the decision, nor with the relevant international human rights standards. The *Sesana* decision would seem to suggest that all former residents of the game reserve who were relocated should be permitted to return without having to obtain entry permits and should be able to subsist and maintain a dignified life within the reserve. In addition, the Government's position that habitation of the reserve by the Basarwa and Bakgalagadi communities is incompatible with the conservation objectives and status of the reserve appears to be inconsistent with its decision to permit Gem Diamonds/Gope Exploration Company (Pty) Ltd. to conduct mining activities within the reserve, an operation that is planned to last several decades and could involve an influx of 500–1,200 people to the site, according to the mining company.

74. Some former inhabitants chose not to return to the reserve because of the lack of services. Those people currently in the reserve are struggling due to lack of water and social services and have asked to receive services at their communities within the reserve; even just the provision of water would significantly improve their current living conditions, and hence a number of them have commenced a new legal action to reactivate a water borehole in the reserve. Moreover, those living in the reserve stated that they want to be able to hunt and gather, and explained that these activities are important aspects of their culture. They also explained their deep sense of connection to the land in the reserve, based in significant part on their belief that their ancestors are present in those lands, and that they view the land as their own. This connection to the reserve lands was also evident among Basarwa and Bakgalagadi people that have been resettled at Kaudwane and New !Xade, who expressed a desire to return to the reserve despite the significant challenges that they had previously faced while living there.

75. The Government reports that it commenced in 2008 an initiative for a consultation process with residents of the affected communities, with a view towards resolving the issues that persist within and around the reserve, and that initial consultations have taken place in the settlements in and around the game reserve, paving the way towards more in-depth discussion scheduled for early 2010. Close observers outside the Government, however, complain about the slow pace of the process and that meaningful talks have not yet taken place, due in large part to a lack of funding by the Government for the process.

VI. Conclusions and recommendations

A. Respect for cultural diversity

1. Affirmative measures

76. **Botswana is a country rich with diverse indigenous cultural and tribal identities, including those of the non-Tswana indigenous groups that are a numerical minority and that have suffered marginalization in various aspects of life. The Government has already made significant efforts to celebrate and promote this cultural diversity through a number of important programmes, many articulated in its National Policy on Culture. Every effort should be made — by the Government, civil society, the media and the private sector — to continue and strengthen these efforts.**

77. **The Government should strengthen and adopt new affirmative measures, consistent with universal human rights standards, to protect the rights of non-dominant indigenous groups to retain and develop the various attributes of their distinctive cultural identities, particularly those related to land rights, approaches to development, and political and decision-making structures. All laws and Government programmes should be reviewed and reformed as needed to ensure that they do not discriminate against particular groups, but rather accommodate to and strengthen cultural diversity and adhere to the United Nations Declaration on the Rights of Indigenous Peoples.**

2. Development programmes

78. **The 2009 Revised Remote Area Development Programme represents an important and positive policy shift in the approach to addressing economic and social disadvantage suffered by many non-dominant tribes in Botswana. In particular, stated Government intentions to enhance community participation in the development and implementation of the programme, to address land rights issues, and to engage in capacity-building at the local level are all significant and encouraging steps that represent a clear departure from the past policies of a uniform approach to development that in fact disadvantaged the intended beneficiaries of the programme.**

79. **In addition to promoting development focused around an agro-pastoralist way of life, development programmes such as the Remote Area Development Programme should promote, in consultation with the affected communities, economic and other development activities that align with the culture of the targeted communities, including hunting and gathering activities.**

80. **In the design and execution of development programmes, the special needs of indigenous women and children should be identified and given priority, and practices that discriminate against indigenous women should be targeted and eliminated.**

3. Social services

81. **The Government should incorporate, in consultation with the indigenous peoples, traditional medicinal practices in the provision of health-care services, through, inter alia, the education of health-care workers in traditional practices and beliefs as well as the recruitment and training of members of non-dominant tribes to serve in remote communities.**

82. **In the elaboration of the traditional health practice bill, the Government should expand its consultation process to include community members in order to incorporate into the legislation their respective needs and concerns.**

83. **The Government has begun taking important steps to comply with the recommendation of the National Commission on Education to incorporate instruction in mother-tongue language into the education system. This effort should be further promoted and strengthened, including through the allocation of resources to recruit and train native language speakers to serve in remote communities.**

84. **The Government should modify, in consultation with the affected indigenous peoples, its educational curriculum to better reflect the cultural diversity of Botswana, including the history, culture, identity and current situation of non-dominant tribes throughout the country.**

85. **While the hostel system has provided educational opportunities to residents of many underserved communities, the Government should pursue methods that do not require students to leave their homes and risk losing their cultural ties to their**

communities, such as establishing two-teacher schools in remote areas and providing transportation to and from schools.

4. Land distribution

86. **Even though it does not specifically confer ownership rights, the Tribal Territories Act of 1933 should be reformed to eliminate references to dominant Tswana tribes.**

87. **The Government has adopted important measures to enhance community understanding of land board processes and standards. The respective land boards of each tribal area should seek to further clarify and make publicly available, including through the utilization of community education programmes, the process for submitting an application for a lease, including the basis upon which a land board will or will not issue such a lease.**

88. **Certain indigenous groups continue to suffer from a lack of secure land tenure, including access to and use of their ancestral lands and resources, in part due to the non-recognition of these groups' customary land-use practices. In consultation with the affected indigenous peoples, the Government should seek to identify the lands traditionally used and occupied by these indigenous groups and incorporate into the land-board system a respect for and recognition of those groups' particular interests in such lands. In particular, a provision should be made for securing collective landholdings by communities in accordance with traditional land-use patterns.**

89. **Legislation and policy related to natural resource use and management, particularly that related to hunting and gathering rights and access to conservation areas, should be reviewed and reformed, in accordance with international human rights norms, to accommodate the traditional cultural patterns of non-dominant indigenous peoples, many of whom were displaced during the creation of conservation areas and continue to face exclusion from those areas.**

B. Participation and consultation

90. **Indigenous peoples or tribes that are ethnically distinct from the majority Tswana tribes are underrepresented in legislative and administrative institutions at both the national and district levels. Affirmative measures should be further developed and implemented, in consultation with the affected peoples, to enhance representation by minority indigenous groups at all levels and in all institutions of government, including in administrative and legislative bodies at both the national and district levels.**

91. **While recent constitutional and legislative reforms provide for greater participation by historically underrepresented groups in the Ntlo ya Dikgosi, the Government should continue working to ensure that these groups are in fact effectively represented in both that institution and in the National Assembly, with due regard to the traditional leadership structures and practices of all tribes in Botswana.**

92. **Local indigenous communities that are underrepresented in the political processes and government institutions have not been adequately consulted, in accordance with relevant international standards, in significant decisions that affect their lives and communities. The Government should work, in consultation with the indigenous peoples of Botswana, to develop and implement a comprehensive policy and corresponding procedure directed specifically at facilitating consultations with local communities on all issues that affect their particular rights and interests. This policy and procedure should be incorporated into law, and should, inter alia:**

(a) Recognize and respect the traditional decision-making structures and patterns of the distinct indigenous groups in Botswana, including those that differ from the *kgotla* system currently in place;

(b) Ensure that local indigenous communities are genuine participants in all decisions affecting them, especially those decisions affecting the integrity of their cultures and the lands on which they survive;

(c) Ensure that indigenous communities have adequate and full information about proposed decisions affecting them;

(d) Ensure that important decisions about development priorities and projects that affect the lives, cultures or territories of indigenous communities that are underrepresented in the dominant political system are not taken without genuine, good faith efforts to obtain the free, prior and informed consent of those communities.

C. Historical grievances

93. **Particular indigenous groups have uniquely suffered historical injustices, including the dispossession of traditional lands, which has contributed to conditions of marginalization and a range of social ills.**

94. **The Government has acknowledged many of these historical injustices and, notably, in its 2009 Revised Remote Area Development Programme, identified a number of measures to address these issues. The Government should further pursue the development of specific policies and programmes to provide redress for these historical injustices, including those recommended in the 2003 review of the Remote Area Development Programme, which aims to reorient that programme to address the underlying poverty issues and, in particular, land rights issues.**

95. **In addition to measures already in place, the Government should develop and implement a mechanism, in consultation with the affected indigenous groups, to thoroughly examine and provide redress for instances of land dispossession, in accordance with international standards for reparations and restitution of land.**

96. **The Government should reorient its policies and laws regarding land use, conservation and wildlife management to accommodate the subsistence needs and cultural practices of communities that have been dispossessed of access to lands or resources by policies and measures such as the Tribal Grazing Land Policy and the creation of conservation and wildlife management areas.**

D. Central Kalahari Game Reserve

97. **The decision by the High Court of Botswana in the case of *Roy Sesana and Others v. The Attorney General*, concerning the removal of Basarwa and Bakgalagadi communities from the Central Kalahari Game Reserve, highlights the failure of the Government to adequately consult with indigenous peoples in significant decisions affecting them and to respect their rights to traditional lands and resources. The Government should fully and faithfully implement the *Sesana* judgement and take additional remedial action in accordance with international standards relating to the removal of indigenous peoples from their traditional lands. Such remedial action should include, at a minimum, facilitating the return of all those removed from the reserve who wish to do so, allowing them to engage in subsistence hunting and gathering in accordance with traditional practices, and providing them the same**

government services available to people of Botswana elsewhere, including, most immediately, access to water.

98. **Indigenous people who have remained or returned to the reserve face harsh and dangerous conditions due to a lack of access to water, a situation that could be easily remedied by reactivating the boreholes in the reserve. The Government should reactivate the boreholes or otherwise secure access to water for inhabitants of the reserve as a matter of urgent priority.**

99. **The Government has taken steps to negotiate with relevant stakeholders to resolve the situation of the people removed from or still living in the Central Kalahari Game Reserve. However, further efforts in this regard are required. The Government should work to ensure the effective, direct participation in the negotiations of all affected indigenous communities and allow them to be assisted in the negotiations by legal counsel or to receive other technical support available to them if they so choose. Additionally, the Government should provide adequate financial and logistical support to ensure the effective participation of the stakeholder indigenous communities.**

E. United Nations system in Botswana

100. **All United Nations programmes and agencies with projects in Botswana should incorporate into their project planning and execution full consideration, as applicable, of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples and the recommendations in the present report.**