

**Совет по правам человека****Сороковая сессия**

25 февраля – 22 марта 2019 года

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие****Посещение Ботсваны****Доклад Специального докладчика по вопросам меньшинств\****Резюме*

Специальный докладчик по вопросам меньшинств Фернан де Варен посетил 12–24 августа 2018 года Ботсвану для изучения существующего законодательства, политики и практики защиты и поощрения прав лиц, принадлежащих к национальным, этническим, религиозным или языковым меньшинствам, в частности в отношении доступа к качественному образованию, здравоохранению и другим государственным услугам, использования языков меньшинств, доступа к землевладению и ресурсам, участия меньшинств в политической жизни и усилий по борьбе с разжиганием ненависти. В своем докладе о поездке он особо отмечает позитивные шаги, предпринятые правительством Ботсваны для защиты прав национальных этнических, религиозных и языковых меньшинств. Специальный докладчик выносит ряд рекомендаций с целью оказания помощи правительству и другим соответствующим субъектам в их усилиях по решению проблем в области осуществления прав человека меньшинств в Ботсване.

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен.



## Annex

### Report of the Special Rapporteur on minority issues on his visit to Botswana

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## I. Introduction

1. The Special Rapporteur on minority issues conducted an official visit to Botswana from 12 to 24 August 2018, at the invitation of the Government. He visited the capital, Gaborone, and localities with minority populations in the North-East, Central, Ghanzi, Chobe and Ngamiland Districts. He consulted widely with hundreds of government representatives and stakeholders, both national and local, including ministers and senior government officials of the ministry of foreign affairs; the ministry for presidential affairs, governance and public administration; the police commissioner's office; the ministry of defence; the ministry of local government and rural development; the ministry of land management, water and sanitation services; the ministry of health; the ministry for youth empowerment, sport and culture development; Statistics Botswana; the ministry of nationality, immigration and gender affairs; the Attorney General's office; the ministry of education; the Chief Justice's office; the ministry of employment; the office of the Ombudsman; and the Government Implementation Coordination Office. He also consulted with the United Nations country team and met with local administration representatives in Ghanzi and Maun.

2. In addition, the Special Rapporteur consulted with a wide spectrum of civil society organizations working on issues affecting minorities. He also met with minority communities themselves and their representatives, the Baherero, Basarwa (including the San and Naro), Kalanga, Ovambanderu, Subiya and Wayeyi communities, among others, in and around Gaborone, Francistown, Letlhakane, Maun, Ghanzi, Kasane and Kavimba. As deaf and hard-of-hearing persons who use sign language are considered to be members of a linguistic minority, he met with their representatives, as well as minority rights defenders, women, youth and community workers.

3. The Special Rapporteur thanks the Government of Botswana for the constructive spirit and cooperation shown during the visit and its readiness to engage in an open dialogue to better understand and assess the human rights situation of minorities in the country. He also expresses his gratitude to the United Nations country team for its support and assistance and to the numerous national and international non-governmental organizations that provided information and met with him.

## II. Visit objectives

4. The overall aim of the visit was to examine existing legislation, policies and practices for the protection and promotion of the rights of persons belonging to national, ethnic, religious or linguistic minorities. The Special Rapporteur wanted to explore issues pertaining to various minorities, such as access to quality education, health and other public services, the use of minority languages, access to landownership and resources, the political participation of minorities and efforts to fight hate speech. He also wanted to get a precise understanding of the normative framework regulating human rights in general, and those of most relevance for minorities in particular, including the latest amendments to legislation and other mechanisms that have been established in that regard. As often explained in his meetings during the visit, the Special Rapporteur understands minorities to refer to a numerical category defined as a linguistic, religious or ethnic group that makes up less than half the population of the country. The term has no negative connotation, does not depend on official recognition and does not involve any issue of domination, subservience or socioeconomic status.

## III. General context

5. Located in Southern Africa, Botswana has a large territory and a small population of approximately 2.2 million people, making it one of the most sparsely populated countries in the world. After independence, it was considered among the poorest countries but is currently one of the world's fastest-growing economies, dominated by the mining, cattle and tourism industries. Botswana has experienced an average rise in gross domestic product of about 5 per cent per year in recent years, though much of that rise is linked to being the world's largest

producer of diamonds. It has a relatively high standard of living and is considered an upper-middle-income country, despite significant poverty levels in some regions, and has the highest human development index of continental sub-Saharan Africa.

6. One of Africa's most politically stable countries, it is also the continent's longest continuous multiparty democracy, with reported low levels of corruption and a relatively good human rights record.

7. Botswana has, however, been deeply scarred by the HIV/AIDS epidemic. The country has the world's third highest prevalence rate of HIV/AIDS, with an estimate from 2017 indicating that 22.8 per cent of the adult population was infected.

#### IV. Ethnic, linguistic and religious minority communities

8. Although it is sometimes viewed, and even portrayed, as largely mono-ethnic – Botswana literally means “land of the Tswana”, referring to the country's ethnic majority – the country is very diverse in ethnic and linguistic terms, though perhaps less so in relation to its religious make-up and in comparison with some of its neighbours.

9. In terms of religious diversity, according to the most recent population and housing census, held in 2011, 79 per cent of the population aged 12 and over are members of Christian groups, with most identifying as Anglicans, Methodists and members of the United Congregational Church of Southern Africa; 15 per cent claim no religion; 4 per cent belong to the Badimo traditional indigenous religious minority; and all other religious minorities comprise less than 1 per cent of the population. Approximately 11,000 persons are Muslims, according to the same census, and there are smaller Hindu, Baha'i, Buddhist, Sikh and Jewish minorities.

10. While this information provides some insights into the religious diversity of Botswana, precise disaggregated data on the country's national and linguistic minorities is regrettably unavailable. In the 2011 census, questions on individual identity were largely omitted. Most of the information available on the country's minority populations therefore consists of rough estimates drawn from a variety of studies, particularly in relation to ethnic or linguistic identification.

11. Ethnolinguistic communities can be divided into five broad groups: the Tswana, the Basarwa, the Bakgalagadi, the Wayeyi and the Hambukushu (A/HRC/15/37/Add.2, para. 6). Officially, 28 languages are acknowledged in Botswana.<sup>1</sup> The Tswana are comprised of eight subgroups or tribes – the Bakgatla, the Bakwena, the Balete, the Bangwaketse, the Bangwato, the Barolong, the Batawana and the Batlokwa – which use mutually intelligible language varieties collectively known as Setswana. Together they are considered to constitute a demographic majority, though this is sometimes contested.<sup>2</sup> Some stress the perceived unreliability of the disaggregated data in the 2011 population census, which asked respondents to indicate the language spoken by all family members at home rather than the mother tongue of individuals to determine ethnicity and for language identification. The figures in that census indicated that, with regard to languages spoken at home, 77.3 per cent of the population spoke Setswana, 7.4 per cent used Kalanga, 3.4 per cent Kgalagadi, 2 per cent Shona, 1.7 per cent Tshwa, 1.6 per cent Mbukushu and 1 per cent Ndebele.

12. The political dominance of the Tswana, reflected in the name of the country, dates at least to the colonial period, when British authorities negotiated primarily with the dominant Tswana groups. The preferential treatment of Tswana interests over those of other ethnic groups continues to permeate many of the State's institutions and symbols and its social and political dynamics (A/HRC/15/37/Add.2, para. 6), causing some minorities to feel excluded, ignored or disadvantaged.

<sup>1</sup> Botswana, Statistics Botswana, *Population and Housing Census 2011: Analytical Report* (Gaborone, 2014), p. 266.

<sup>2</sup> Lydia Nyati-Ramahobo, “Minority tribes in Botswana: the politics of recognition” (Minority Rights Group International, December 2008). Available from [www.refworld.org/docid/496dc0c82.html](http://www.refworld.org/docid/496dc0c82.html).

13. The Basarwa, also known as the San people, include several groups and are conservatively estimated to number 60,000 people. They are usually considered to be the indigenous peoples of Southern Africa. Botswana voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples, but considers that all African ethnic groups in Botswana are indigenous.

## **V. Legal and institutional framework**

### **A. International framework**

14. Botswana is a party to a number of human rights treaties that are of particular relevance to the protection of minorities, such as the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The Special Rapporteur also notes that during its 2018 universal periodic review Botswana extended a standing invitation to the special procedure mandate holders (see A/HRC/38/8/Add.1) and that Botswana has received visits from several mandate holders in recent years.

### **B. Constitutional and legislative framework**

15. A large number of fundamental rights and freedoms, such as the right to freedoms of conscience, expression, assembly and association, are enshrined in chapter II of the Constitution. While none of the fundamental rights and freedoms spelled out in that chapter refer specifically to minorities, section 11 (2) deals with, inter alia, the rights of religious communities to establish, and maintain at their own expense, places of education and to manage such places. Section 15 (3) restricts the prohibition of discrimination to a limited number of grounds, such as race, tribe, place of origin, political opinions, colour, creed or sex. While this is an important anti-discrimination clause, it omits well-established prohibited grounds of discrimination, including those particularly important for minorities, such as religion and language.

16. At the time of the Special Rapporteur's visit, efforts were being made to include a human rights mandate in the Office of the Ombudsman, and the possibility of creating a national human rights institute was being studied. He notes, however, that similar discussions have been ongoing for a number of years and that the current discussions may not necessarily result in any immediate action. He also notes the importance that any institution eventually created should comply with the internationally agreed principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), which should frame and guide the work of national human rights institutions.

## **VI. Positive steps and developments**

17. The Special Rapporteur acknowledges the efforts and commitment of the Government of Botswana to provide all citizens with access to development programmes. In particular, he notes efforts taken to address the disadvantages faced by populations in remote areas and marginalized groups, who are often persons who belong to minorities, such as the Basarwa, including a five-year informal affirmative action plan to recruit persons belonging to minorities in the army, the police and the prison system.

18. One important policy initiative to alleviate poverty and promote development with a direct impact on many minorities concentrated in the peripheral districts of the country is the Remote Area Development Programme. The programme has been revised to adopt a community-led development approach, which aims to promote participatory processes and community participation in issues affecting their own development and affirmative measures for the benefit of communities, including minority communities that have faced intractable disadvantages either for logistical reasons or because of long-standing historical prejudice

and subjugation by the dominant groups. These measures cover matters such as improved access to education; health; employment; and economic development opportunities.

19. With regard to education, the Government's efforts have resulted in an adult literacy rate of 88.5 per cent in 2015 – one of the highest in Africa – according to the United Nations Educational, Scientific and Cultural Organization (UNESCO), and this rate seems to be increasing. Educational initiatives are in place to make education as accessible as possible to all, including for inhabitants of remote areas, who are often minorities. Religious minorities do not seem to face any major obstacles or discrimination in terms of accessing education, and it is noteworthy that reports of hate speech or incitement targeting such communities or other minorities appear to be practically non-existent.

20. On the human rights front, the Government's "Vision 2036: Achieving Prosperity for All" initiative aims at building a united and proud nation based on the five national principles of democracy, development, self-reliance, unity and *botho*.<sup>3</sup> The Special Rapporteur was pleased to see in Vision 2036 a statement that all ethnic groups will have equal recognition and representation at the Ntlo ya Dikgosi (House of Chiefs). In a section dealing with what is described as the "fourth pillar", involving the Constitution and human rights, the Government aims for Botswana to be "among the top countries in the protection of human rights". In another section of the Vision the Government recognizes the particular cultural heritage and identity that Botswana must maintain and promote in order to achieve an inclusive and equal opportunity nation, as well as to enable all its communities to "freely live, practise and celebrate their diverse cultures", including their languages. The Special Rapporteur notes that, during the 2012 universal periodic review of Botswana, the Government indicated that it appreciated the importance of using mother tongues for education and that it would explore strategies for that purpose, including by introducing teacher aides at the primary school level. It has also been brought to the attention of the Special Rapporteur that the Government has committed to ratifying the Convention on the Rights of Persons with Disabilities soon. In addition, there are currently discussions within the Government to strengthen the human rights mandate of the Office of the Ombudsman and for it to incorporate the activities of a possible national human rights institute. These, and other initiatives to improve access to justice, health care, water and other public services for all persons, particularly in more remote regions where minorities are concentrated, must be commended.

## VII. Challenges and implementation

21. Despite these and other positive measures and developments, the good policies and intentions that the Special Rapporteur often heard during his discussions around the country were not always translated into practice and implemented.

22. There remain issues of concern that Botswana must tackle in a more comprehensive manner as a matter of priority in order for it to effectively respect and protect the human rights of minorities – and others – and its international obligations. The desiderata of Vision 2036 of communities freely living, practising and celebrating their diverse cultures, including their languages, does not seem consistent with the refusal described in the present report to allow the licensing of community radio stations that could broadcast in minority languages (see para. 62) or the prohibition of the teaching of a minority language in private schools (see paras. 32–34). This is a general observation, since in some areas of the country, such as Ghanzi, the Special Rapporteur sensed that the local administration acknowledged the importance of local languages and attempted to respond to the needs of local minority communities by taking into account their different languages and cultures.

<sup>3</sup> Botho has been described as a philosophy that promotes the common good of society and includes humanness as an essential element of human growth.

## **A. More comprehensive human rights architecture**

23. The Special Rapporteur welcomed the Government's commitment in Vision 2036 for Botswana to be among the leading countries in terms of protecting human rights. This will require steps towards a more comprehensive human rights framework, including a review of the Constitution to align it further with the obligations enshrined in the core international human rights treaties. In particular, the prohibited grounds of discrimination should be increased to better mirror the country's international commitments. In addition, while chapter 2 of the Constitution and some laws cover a number of human rights obligations, Botswana as a whole does not have a Bill of Rights or a comprehensive human rights legislative framework. There are therefore gaps, uncertainties and even contradictions in the protection and promotion of human rights in general that could best be addressed through a dedicated Bill of Rights.

24. Vulnerable or marginalized individuals and communities, including in particular vulnerable or marginalized minorities, are those most likely to be affected by the absence of a more comprehensive approach to human rights. The Special Rapporteur therefore urges the Government to ensure that the future human rights mandate of the Office of the Ombudsman, currently being considered, complies with the Paris Principles and that it continues its positive engagement and efforts in this regard, including by seeking technical assistance from the United Nations and through consultations with national human rights institutions from other countries.

## **B. Education and minorities**

25. Botswana has made great strides to increase access to education and the quality of its education system, including for minority children and others living in remote areas. Data shows, however, that low academic performance and dropout rates are still significantly higher among these groups.

26. It became clear to the Special Rapporteur during the visit that minorities living in remote areas face significant difficulties in accessing education. The system of hostel accommodation put in place by the Government to bring children from these communities to live far from their families in areas closer to schools initially appears to be a positive initiative to ensure that no child falls outside of the educational system. However, many stakeholders brought to his attention the negative consequences for many of these children. In practice, these children can be sent to live far from their families, who may not have the means to visit them during most of the school year. They may be put under the care of someone they are unable to communicate with in their own language and removed from their own culture. Moreover, such children do not always have access to the supplies that are supposed to be provided, or even the books they are supposed to be using in classes. He was informed of hostels that were unsafe, sometimes lacking access to water or without electricity, even in those where children as young as 6 years old were staying. He heard vivid descriptions of children being thrown into an alien world. Away from their families and feeling abandoned by their own mothers and fathers, many of these children became despondent and ran away or did very poorly in school. He was also told the stories of some who eventually benefited and were able to pursue secondary and even tertiary studies. Nevertheless, he was advised that, overall, minorities appeared to be disproportionately represented among those who were sent to hostels in different regions of the country.

27. The Special Rapporteur is of the opinion that the practice of what amounts to institutionalization in hostels of children from remote areas, particularly Basarwa children, should be reviewed and alternative approaches studied so as to minimize the separation of very young children from their parents, at least at the primary levels, and the devastating effects that this can have on them. Increasing the number of two-teacher classrooms, reducing the period spent away from their homes and the introducing the use of radio or other forms of remote teaching should be considered in a national strategy to ensure equal access to quality education for all – and particularly for minority children, who appear to be disproportionately affected by the present system.

28. As the Special Rapporteur has noted on other occasions, evidence from UNESCO and from global research institutes indicates that the quality and value of education increases when a child's mother tongue is used as the medium of instruction at least in the initial six years of learning, where this is practical. Children who first learn in their own language acquire literacy and numeracy skills faster and more easily and also are able to learn additional languages more easily. Such children achieve better school results in school, stay in school longer and are less likely to drop out of school early. Minority children also develop higher self-esteem, as their language and culture are valued in the classroom, at the same time allowing their parents to be able to contribute to their children's formative years by helping them with their learning in their own language when their child is at home. If mother tongue education is not possible, then teaching minority languages as part of the curriculum is usually considered an appropriate approach. This is also a human rights issue, as the obvious disadvantages for minority children who cannot use their mother tongue may constitute a discriminatory practice regarding the right to education when such instruction is practicable and reasonable.

29. From the comments made to him when visiting different regions, those the Special Rapporteur met recognized the benefits of learning English and Setswana in schools. No one expressed any opposition to the desirability of a unifying language. However, acquiring fluency in an official or national language does not need to exclude the use of one's mother tongue in public – and even private – schools. Research in fact confirms that, by starting with the mother tongue, fluency in the official or national language will be more easily mastered. Moreover, contrary to widely held views, it is also more cost-effective.

30. Many individuals from minority communities mentioned their hope that their languages would be included and taught in public schools, a wish consistent with the Government's own statement in its Vision 2036.

31. The Special Rapporteur was also informed that the Government had initiated a programme through which retired teachers who could speak minority languages were hired as teacher's aides for grades one to three in primary school. However, it has appeared obvious that in practice this has not been implemented in most areas of the country, since there does not seem to be any consistent approach to the use of these teacher's aides for communicating with students in their own languages.

32. Additionally, the Special Rapporteur was made aware that in the past in some areas of the country there had been public schools using minority languages for instruction during the first three grades of primary school. The example provided was that of the Kalanga minority and some schools in the North-East and Central Districts, which until 1972 had been using the Kalanga language as a medium of instruction. A 1972 Presidential Decree reversed that practice by replacing minority languages with the Tswana language. Even in private schools, the medium of instruction is only Tswana and English. In 2017, the John McKenzie private school's proposal to introduce a pilot literacy project in the Kalanga language was rejected, apparently on the grounds of that practice being inconsistent with "national unity". However, the Special Rapporteur was also informed that languages other than English or Setswana, such as French or Chinese, could be offered in the country's public schools but apparently this was not allowed for any of the country's minority languages.

33. Finally, in his 2009 report on the situation of indigenous peoples in Botswana (A/HRC/15/37/Add.2), the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people stated that the Government had acknowledged the need to train teachers to deliver mother tongue education and had said that it had begun working towards the implementation of mother tongue education programmes. That commitment appears to have been discarded.

34. The Special Rapporteur invites the ministries of education and of local government and rural development to review these policies of excluding the teaching of and instruction in minority languages in both public and private schools. These policies appear to be contrary to the goals expressed in Vision 2036 for the country to recognize the cultural heritage and identity that it must maintain and promote in order to achieve an inclusive and equal opportunity nation, as well as to enable all its communities to freely live, practise and celebrate their diverse cultures, including their languages. It is also contrary to the

Government's own stated agreement during its 2012 universal periodic review of the importance of using mother tongues in education. Finally, there is the potential of not fully respecting the country's human rights obligations by not allowing minority languages in private schools and allowing discriminatory practices in the exercise of the right of education in some situations where only English, Setswana, French or even Chinese are taught in public schools in areas where the exclusion of other languages, such as Kalanga, is unreasonable and unjustified.

### C. Political and public participation and the *kgotla* and chieftaincy system

35. Central and unique features of Botswana constitutionally and politically are its *kgotla* and chieftaincy system, which includes *kgosi* (chiefs) and *kgotla* (community councils), and the position and authority of the Ntlo ya Dikgosi (House of Chiefs). Both are to a large degree a historical legacy of the British colonial period.

36. The Ntlo ya Dikgosi is currently a three-tier system. At the top are the *kgosi* of the eight areas belonging to the Tswana tribes. Five persons are appointed by the President. The 22 other "specially elected members" are selected by regional electoral colleges for five-year terms. The recognized chiefs of the eight Tswana tribes rule over other tribes whose chiefs are not recognized, and they recommend to the Government the appointment of sub-chiefs, senior chiefs' representatives and headmen.

37. The Bogosi Act, adopted following litigation brought by members of the Wawayi community and the resulting 2001 High Court judgment that found section 2 of the Chieftainship Act to be discriminatory and unconstitutional, led to a number of changes, including the formal recognition of the Wayeyi as a tribe in 2016 and of their chief in 2017. However, in its 2001 judgment, the High Court ordered that the equal protection and treatment be accorded to all tribes under the Act. In the current three-tiered arrangement the chiefs of the eight Tswana tribes retain a permanent and automatic quota. Many other tribes are unrecognized, unrepresented or need to have their chiefs be elected periodically – if they can – as members of the Ntlo ya Dikgosi. A number of minority representatives have expressed that they feel excluded and disadvantaged politically and that they are not able to enjoy the same advantages and benefits as tribes who are automatically represented, including in terms of recognition and respect for their identity. This system continues to create social tensions, in particular the more prominent role, rights and privileges accorded to the chiefs of the eight Tswana tribes, which could still be considered discriminatory, as other parts of the Chieftainship Act were held to be by the 2001 High Court judgment.

38. It was also repeated on a number of occasions that many tribes remained completely unrecognized under the current legislation, and that even those *kgosi* who had been recognized since the adoption of the Bogosi Act were not automatically treated the same as the paramount chiefs of the eight Tswana tribes. Some received no salary, as the chiefs of the eight Tswana tribes did, and in practice might not be able to impose their authority on neighbouring sub-chiefs, thus meaning in concrete terms that their recognition as *kgosi* was in some cases more theoretical than real.

39. While a few government officials expressed the view that constitutional amendments and the Bogosi Act meant that all tribes were treated equally and had equitable representation, that was not the impression the Special Rapporteur was given in view of the numerous expressions of frustration at the current situation that were conveyed to him.

40. Other laws still only recognize Tswana tribes and tribal structures and not those of minority tribes. For example, the Tribal Territories Act of 1968, which deals with tribal land rights, names tribal territories after the major Tswana tribes only and designates their chiefs as the custodians of those territories.

41. The Special Rapporteur has, however, been informed that further changes are being considered in this area, and the Government of Botswana must be commended for its acknowledgement in the Vision 2036 document that all ethnic groups will have equal recognition and representation in the Ntlo ya Dikgosi. Such changes should be made as openly and expeditiously as possible, following national public consultations. Doing so

would ensure that the objective set forth in Vision 2036 could be achieved and practices already deemed discriminatory by the High Court of Botswana, and which are potentially contrary to the prohibition of discrimination contained in treaties to which Botswana is a party, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, would come to an end.

42. It was brought to the attention of the Special Rapporteur that there were tensions surrounding the perceived predominance of the eight Tswana tribes in the current *kgotla* and chieftaincy system, in which the *kgotla* and the *kgosi* serve not only as the custodians of the culture of the people but also, importantly, address some 80 per cent of criminal and other matters in their communities. The formal, common law system covers only 20 per cent of the country's criminal and civil legal matters. Records in the matters adjudicated by the *kgotla* and chieftaincy system are not kept, and most *kgosi* have no legal training regarding the civil or criminal matters being adjudicated. While the *kgotla* provides for direct public participation and consultation at the local level, it seems that the adjudication system based on the *kgosi* may also result, at least in some cases, in the dominant tribe imposing its customary law on minority tribes in its tribal territory in civil matters.

43. There are also gender issues that arise from the *kgotla* and chieftaincy system, since women in minority communities – and also in Tswana communities – do not seem to occupy many positions as *kgosi*. The principle of non-discrimination, which Botswana has accepted, including by ratifying the Convention on the Elimination of All Forms of Discrimination against Women, suggests that the future review of the whole *kgotla* and chieftaincy system must necessarily consider how best to ensure the rights of political participation of women, including minority women, in a non-discriminatory way.

44. Moreover, the requirement that individuals must be fluent in English to be elected as a specially elected member of the Ntlo ya Dikgosi or a member of the National Assembly was identified as a questionable criterion, since it has the potential to disproportionately exclude minorities and others who may instead be fluent in Setswana and their own language and may set up barriers to their political participation due to language preferences.

#### **D. Access to public health care and other public services**

45. According to information provided by the ministry of health, approximately 85 per cent of the total population lives within 15 kilometres of a medical centre, ranging in size from a district hospital to a health post, and mobile units reach out to those communities living in remote areas. The ministry also tries to engage with local communities to resolve language issues with regard to both the provision of medical services and the implementation of awareness-raising programmes. All these efforts are to be commended.

46. To date, however, awareness-raising campaigns designed and implemented by the Government have only been in Tswana and English and not in minority languages, including sign language.

47. Additionally, it was reported during meetings in different regions of the country that minorities often felt left out of the system and even that they were denied access to proper public health care. The Special Rapporteur was told, for example, that in a recognized settlement in Central District the medical clinic was only scheduled to have medical workers on location once a month. Even then, the medical staff might not show up for “transportation” or other reasons. While this can be viewed as one of the challenges the ministry of health faces generally, some minority community members expressed the view that they were treated in a cavalier way at least partially because they were not Tswana. It was not possible to corroborate whether this occurred often in minority communities or whether it occurred more often than it did in recognized Tswana settlements.

48. Similar occurrences were signalled to the Special Rapporteur in relation to access to public services more generally outside of Gaborone and especially in remote settlements. He often heard minority community members express sentiments of exclusion and discrimination in relation to obstacles encountered in accessing public services because of

their non-Tswana identities. It was difficult to establish whether those situations were simply the result of failures in the implementation of service delivery outside of the capital or a more problematic disregard towards minority communities or those living in more remote locations. Nevertheless, the Special Rapporteur urges the Government to continue efforts to improve service delivery and implementation of its health and other public services. He also urges the Government to review its efforts in the light of apparent persistent patterns that should be tackled as a matter of urgency, in order to avoid growing discontent among populations in some parts of the country that feel left out, and especially in regions inhabited by persons who belong to minorities.

## **E. Landownership, development and access to and use of resources**

49. Current land laws still largely reflect the British colonial land tenure system, which specifically recognized Tswana interests in land over those of minority tribes in the country. These laws and the land boards created in 1968 to administer and hold in trust all tribal area lands connected to them are still in place today.

50. Tribal land available for communal use is divided into eight tribal territories named after the dominant Tswana tribes. On numerous occasions, it was made clear to the Special Rapporteur that members of minority tribes perceived they were being discriminated against because they did not receive the same recognition as the Tswana.

51. Some of the frustration expressed by those he spoke with seemed to be connected to the absence of a clear mechanism for demarking and recognizing traditional or historical land use or to address long-standing grievances. The current system is one where land boards hold tribal land in trust and issue leases on an individual or collective basis. Not everyone is convinced that this system is ethnically neutral and unsusceptible to favouritism. Tswana customary law tends to dominate in these matters, according to some of the individuals who shared information with the Special Rapporteur during the visit.

52. Though he was not able to visit members of the Basarwa and Bakgalagadi living in the Central Kalahari Game Reserve or those resettled in Kaudwane and New Xade, previous reports of the Special Rapporteur in the field of cultural rights (A/HRC/31/59/Add.1) and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples (A/HRC/15/37/Add.2) suggest that there is a continuing restrictive – and inaccurate – interpretation of the 2006 High Court decision in *Roy Sesana and Others v. The Attorney General*<sup>4</sup> by mainly limiting the right of return to the Reserve to the applicants in the case and some of their family members, while requiring temporary entry permits for other community members and imposing certain requirements on those wishing to remain after the age of 18. Access to water and State services are still contentious issues. Also contentious are Government prohibitions in the name of wildlife conservation on traditional hunting, grazing or foraging, while at the same time the Government allows the continuation of mining and tourism activities, for example by the Gem Diamonds/Gope Exploration Company (Pty) Ltd. operating in the Reserve.

53. These issues and others raise serious human rights concerns for these minorities, and the Special Rapporteur encourages the Government and the affected communities to engage in consultations to attempt to find win-win solutions rather than to continue in a stand-off that may lead to further litigation.

54. On a more positive note, the Special Rapporteur had the impression that the Government was committed to putting in place additional tools for developing community-based initiatives to ensure that local minorities in areas such as Ghanzi, Maun and the Okavango Delta participated in the management of local natural and cultural resources. He notes, for example, that the Eleventh National Development Plan 2017–2023, which aims at the diversification of sources of economic growth, human resources development, social development, development of sustainable resources, good governance and development of

<sup>4</sup> High Court of Botswana, Misc. No. 52/2002, judgment of 13 December 2006.

effective policy monitoring and evaluation systems, makes reference to targeting “vulnerable members of society” and “vulnerable and disadvantaged groups”.

55. The Special Rapporteur appreciates the work and commitment of civil society in this area and welcomes the development of partnerships between civil society, the Government and the private sector in taking this forward. He encourages the Government to continue and expand its community-based approach and to further develop capacity in the tourism industry, particularly focusing on those minorities who are among the country’s most vulnerable and disadvantaged.

56. At the same time however, the Special Rapporteur learned of minority communities in Kasane, as well as communities located within the Chobe National Park and forest reserves, who felt poorly served in terms of the implementation of policies and programmes that should normally ensure their equal access to State services, such as education and health care. Chobe is the country’s only district without a senior secondary school. Some children from Chobe therefore are sent to live 300 kilometres away in Nata to attend school or are even sent to live in hostels as far away as Francistown or Maun, 500 and even 600 kilometres away, almost completely isolated from their families, cultures and homes for most of the year. With regard to land tenure, minority communities such as the Basubiya have limited access to the lease of very small plots of land, since their traditional lands are considered to be State land. While damage done to their crops, homes, property and even to themselves means in theory that they are entitled to some compensation, the amounts involved are often either insignificant or at times not paid when the budget for compensation has been exhausted. The inhabitants of Kavimba, Mabele and neighbouring Basubiya villages even face the challenge of being locked in after 6.30 or 7.30 p.m. every evening, when the road leading from their communities to Kasane, which is outside the national park and where most government and other services are located, is closed except for emergency medical evacuations. These issues also give rise to the feeling often expressed among the non-Tswana minorities who live in these communities that they are not fairly treated by the State.

57. While inadequate access to water occurred in urban poor areas as well as rural poor areas, it was pointed out to the Special Rapporteur that such difficulties seemed to disproportionately affect settlements where certain nomadic and minority communities lived, including in particular San and other Basarwa communities. The Special Rapporteur was told of settlements with more than the 250 persons required to become a recognized settlement for the provision of basic services that still had no water connection. He was also informed that even in a major town such as Maun, with a concentration of Wayeyi and other minorities, provision of water in the municipality was not always guaranteed, sometimes for many days. People did not always know why the Water Utilities Corporation was sometimes unable to supply water through its pipelines. In more remote settlements, where water tanks were to be supplied on a regular basis, the Special Rapporteur was told that the provision of water was not always systematic and that public water tanks could occasionally be empty for four to five consecutive days. He was also informed, for example, that water in Gaborone was provided by the North-East District where rainfall rates were among the highest in the country, and yet localities in the same District close to a water dam did not have access to that water because there was no infrastructure available to pump and distribute the water to those localities.

58. In most of the meetings outside of Gaborone, the issue of land or resource use, including water use, was a recurring theme. At times this was due to frustrations at the complexity of the existing legal framework and procedures to be followed or because of the lack of available information, including in the languages of minority communities. On other occasions it seemed that existing policies and programmes were simply not implemented as expected or announced. At the very least information campaigns are needed to more fully educate the general public, particularly minority communities outside the Gaborone region who feel left out and suspicious of State actions, which are too often assumed to privilege the Tswana.

## F. Information and communications

59. The Communications Regulatory Authority Act of 2012 regulates broadcasting services in the country and currently only provides for public service broadcasting and commercial broadcasting. It includes no provision for local community-based broadcasting, an issue often brought to the attention of the Special Rapporteur, despite numerous applications that apparently continue to be made for such broadcasting. Some of the observations made to him, such as in Francistown, emphasize that community radio stations would provide “a voice for the voiceless”, and a democratizing tool that would enable communities, including minorities, to express themselves in terms of their culture and way of life.

60. In the 2017 publication *Language Rights of Linguistic Minorities: A Practical Guide for Implementation* the then Special Rapporteur on minority issues indicates that Governments should serve the needs and interests of the whole population, including minorities, to access the media and impart and receive information, including in their own language, in line with the principles of pluralism, tolerance and broadmindedness. In relation to private sector media, and in accordance with fundamental human rights such as freedom of expression, this means minorities must be free to communicate among themselves in private media without obstacles to the use of their own language. To ensure equality and non-discrimination the private sector media must apply the principle of proportionality in ways that are flexible and appropriate and it must be ensured that any financial or other support provided to private sector media is allocated in a non-discriminatory manner, including in relation to those using minority languages. The role of public sector broadcasting in minority languages is particularly significant in terms of promoting not only tolerance but also acceptance and in creating a sense of integration among minorities such that they feel their own needs and interests are fairly reflected and communicated.

61. Unfortunately, it appears that Botswana has a long way to go in applying these human rights principles. Generally speaking, the use of languages other than English or Setswana is not provided for in the information or communications activities in the country. Even HIV/AIDS awareness-raising campaigns use only Tswana and English, although the Special Rapporteur was advised that the Government tries to liaise with local organizations for the effective dissemination of the information. In terms of broadcasting on public television, the only exception appears to be the 30 minutes a day out of the 24 hours of programming when interpretation is offered in sign language.

62. While private printed media exist in Botswana, these only appear, and apparently are only allowed, in English and Setswana. Here, the Special Rapporteur recalls that any prohibition of the use of other languages in private media, including minority languages, would be contrary to fundamental human rights such as freedom of expression. It was brought to the attention of the Special Rapporteur that although private radio stations exist, they are all based in Gaborone despite in some cases being retransmitted to other parts of the country. Apparently, no private radio station is allowed to broadcast any programme in any of the country’s minority languages. Broadcasting licences for locally based community radio stations have until now always been rejected, and in some cases this may have been partially motivated by the proposed use of minority languages in some of the programming. It was explained to the Special Rapporteur that community broadcasting might be considered to be divisive along tribal lines and be open to abuse by “subversive elements”.

## G. Disaggregated data for better and more effective policies

63. The current absence of clear demographic information on the situation of minorities and data concerning ethnicity, religion or language is frustrating for many and hampers the work of authorities and policymakers, as they do not have information that could provide a clearer view of the characteristics of the population and thus assist them to better tailor policies and practices to the reality on the ground. The Government of Botswana should therefore review its national census approach and, as is the case in many other countries, collect and analyse data disaggregated by ethnicity, religion and language while being sensitive to and respecting privacy concerns.

## H. Deaf minority and sign language

64. The revised education policy of 1994 introduced the use of sign language. There are currently two primary schools, two junior high schools and one senior high school that use sign language as a medium of instruction. According to the information received, courts in Botswana offer sign language interpretation and such a service is also facilitated by the Botswana Association of the Deaf and the Botswana Society for the Deaf. The police force includes in its training programmes courses on sign language.

65. However, many challenges remain. While in 2007 the ministry of education launched a project to prepare a sign language dictionary, the dictionary is reportedly not adapted to the needs of the persons with hearing impairments in Botswana. One of the reasons may have been the absence of wide consultations with the community itself. It was brought to the attention of the Special Rapporteur that there was a serious lack of qualified and professional sign language interpreters, with some of them introducing personal views or lacking accuracy during interpretation. It was reported to him that the Botswana Qualifications Authority often proceeded with the accreditation of such interpreters without consulting organizations working with the deaf community.

66. The Special Rapporteur was told that most of the teachers in schools are not trained in sign language or in teaching methods adapted to the educational needs of deaf persons. Some stakeholders indicated that the Government response to the issue of hiring assistant teachers with training in sign language seems to be insufficient, as these assistant teachers do not always receive training in pedagogical methods. Furthermore, school examinations are in writing. This poses a significant challenge to deaf persons as they often possess writing skills different from those of hearing persons and therefore run the risk of receiving lower grades or being disqualified if examiners strictly evaluate syntax or grammatical errors and do not give enough weight to the content of the paper examined.

67. The Special Rapporteur was also informed of problems in the early identification of some persons as having hearing impairments, as they could speak. In such cases, they were often only identified as persons with a hearing impairment at a late stage, which had a significant impact on their school performance due to their initial enrolment in schools that did not provide them with an appropriate learning environment.

68. There is also an absence of interpreters in the health-care sector and of outreach and health education programmes in sign language, which negatively affects the effective dissemination of information with regard to health prevention, particularly for a country with a high prevalence of HIV/AIDS.

69. Among some of the other concerns expressed during the Special Rapporteur's visit were the absence of awareness-raising programmes for parents, medical personnel, law enforcement officials, teachers, school staff, judges and lawyers regarding issues facing deaf persons; that sign language was not used during important local level decision-making processes, such as the sessions of *kgotla*; and the absence of sign language interpretation for television programmes. Out of 24 hours of programming, it was reported that only 30 minutes were dedicated to programmes with sign language interpretation on national television. That meant that key television information programmes for deaf persons, in particular those living in rural and remote areas, such as agricultural programmes and awareness programmes on HIV/AIDS, did not include sign language interpretation. During meetings with officials of the ministry of health, it was acknowledged that further efforts to introduce sign language in the health sector were needed.

## VIII. Conclusions and recommendations

70. Botswana must be commended for its efforts and achievements in the areas of development and poverty reduction and for maintaining a stable democracy that has, in general, successfully resisted the disruptive effects of corruption. Commendable policies have been developed with a view to building a nation that recognizes the human diversity of the country.

71. However, many of the country's inhabitants still feel excluded and do not share in its relative economic wealth. This is particularly noteworthy in relation to remote communities and non-Tswana minorities.

72. Peace, stability and prosperity are best ensured when all segments of society feel accepted and included. The nation-building efforts of Botswana need to more fully reflect the diversity of its population, including its non-Tswana population. These challenges can be addressed in part by relying on the country's fundamental national principles of democracy, development, self-reliance, unity and *botho*. In Vision 2036, the Government has already taken steps in this direction by committing to achieve an inclusive and equal opportunity nation, one which enables all its communities to freely live, practise and celebrate their diverse cultures, and by proclaiming the goal for Botswana to be among the "top countries in the protection of human rights".

73. On many occasions the Special Rapporteur encountered expressions of frustration and anger from persons belonging to non-Tswana minorities who felt they were generally ignored or disadvantaged in terms of access to public services and opportunities because of their ethnicity.

74. While he was unable to establish whether all of the sources identified for the expressions of frustration and anger he encountered qualified as human rights violations, the Special Rapporteur formed the opinion that the Government should address such generalized feelings of exclusion, which, at least in part, were connected to the sense that "Botswana, the Land of the Tswana", was also too much the "Government of the Tswana". The Government should therefore engage in genuine and comprehensive consultations with non-Tswana communities and develop a strategy for the implementation of Vision 2036 that takes into account the wishes and interests of these minorities, provides a road map on how to become one of the "top" countries in protecting human rights and enables non-Tswana communities to be truly reflected in an inclusive and equal opportunity nation.

### A. Legal and institutional framework

75. Botswana is invited to ratify all the outstanding core human rights treaties, including with most urgency the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights, and should extend a standing invitation to the special procedure mandate holders.

76. Section 15 of the Constitution of Botswana should be reviewed and modified in order to comply with the principle of non-discrimination as expressed generally in international human rights treaties.

### B. More comprehensive human rights architecture

77. The Special Rapporteur welcomes the commitment of Botswana to be among the top countries protecting human rights. This will require steps towards a more comprehensive human rights framework, including a review of the Constitution with a view to aligning it more generally with the obligations enshrined in the core international human rights treaties, including by expanding the prohibited grounds of discrimination to better reflect the country's international obligations.

78. While chapter 2 of the Constitution and some laws cover a number of human rights obligations, Botswana does not have a Bill of Rights or a comprehensive human

rights legislative framework. There are therefore gaps, uncertainties and even contradictions in the protection and promotion of human rights in general that could best be addressed through a dedicated Bill of Rights.

79. In addition, the Special Rapporteur urges the Government to ensure that any future human rights mandate of the Office of the Ombudsman or national human rights institute complies with the Paris Principles, and invites the Government of Botswana to continue its positive engagement and efforts in that regard, including by seeking technical assistance from the United Nations and through consultations with national human rights institutions from other countries.

### C. Education and minorities

80. The Special Rapporteur recommends that the practice that amounts to the institutionalization of children from remote areas, and particularly children of the Basarwa, in hostels to receive an education be reviewed and alternative approaches studied so as to minimize the separation of young children from their parents, at least at the primary levels. He suggests exploring measures such as increasing the number of two-teacher classrooms, reducing the period spent by children away from their homes and introducing the use of radio or other forms of remote teaching, all of which should be considered in a national strategy to ensure equal access to quality education for all, and particularly for minority children who are disproportionately affected.

81. The Special Rapporteur invites the ministries of education and of local government and rural development to review their educational and other policies that operate to exclude the teaching of minority languages and their use as a medium of instruction in both public and private schools, in order to achieve a truly inclusive and equal opportunity nation. He particularly urges the Government to adopt new educational policies to allow the teaching of minority languages and their use as a medium of instruction in private schools.

82. He further recommends the development of policies for public schools to teach and use minority languages as the medium of instruction where this is reasonably possible and where numbers warrant, to the degree appropriate and applying the principle of proportionality. This will require the development of pedagogical tools, teacher training and other measures. The Government is encouraged to refer to the practical guidelines issued under the mandate of the Special Rapporteur on minority issues in this regard.

### D. Political and public participation and the *kgotla* and chieftaincy system

83. The Special Rapporteur commends the Government for constitutional and legislative reforms that increase the participation of underrepresented, non-Tswana minorities in the Ntlo ya Dikgosi and for its acknowledgement in its Vision 2036 that all ethnic groups will have equal recognition and representation in the Ntlo ya Dikgosi. He urges the Government to make such changes as openly and expeditiously as possible, following national public consultations, to ensure that practices and procedures that have already been deemed discriminatory by the High Court of Botswana come to an end.

84. The Special Rapporteur recommends a further review of the *kgotla* and chieftaincy system, with direct public participation and consultation at the local level, focusing on the adjudication system based on the *kgosi*, to consider changes to address and redress grievances related to the imposition of Tswana customary law on minority tribes in civil matters. The review should also consider the *kgotla* and chieftaincy system in order to determine how to achieve equal recognition and representation of all ethnic groups and women in the Ntlo ya Dikgosi as a matter of priority.

85. Furthermore, he urges the Government to directly address complaints made by non-Tswana minorities about their subordination to other tribes and not being able to

participate equally in decision-making processes at the local and national levels. This includes addressing the implementation of the Bogosi Act of 2008 in a transparent manner and ensuring the equal recognition of communities as tribes under that Act, without any discrimination against certain minorities.

86. The Government is encouraged to withdraw the requirement of fluency in English as a qualification for election as a specially elected member of the Ntlo ya Dikgosi or a member of the National Assembly, since it has the potential to disproportionately exclude minorities and others who may instead be fluent in Setswana and their own language, and therefore to set up barriers to their political participation.

#### **E. Access to public health care and other public services**

87. The Special Rapporteur recommends that public health and other public awareness-raising campaigns be designed and implemented by the Government in minority languages, including sign language, to the degree and in the areas appropriate and in line with the principle of proportionality.

88. In relation to access to public health care and other public services, he urges the Government to continue its efforts to improve service delivery and the implementation of its health and other public services and to review these in the light of persistent claims that non-Tswana minority communities, especially in more remote localities, are disproportionately denied access to such services or have lesser access to them.

#### **F. Landownership, development and access to and use of resources**

89. Questions and grievances concerning land and resource ownership, access and use were frequently heard during the Special Rapporteur's visit. He invites the Government to conduct information campaigns, including in the country's main minority languages outside the Gaborone region, to explain the legal framework, policies and procedures regarding land and resource allocation, access and use, and the corresponding rights and procedures.

90. He further recommends that the eight tribal territories be renamed to reflect a more inclusive or non-ethnically based identity.

91. Botswana is to be commended for its approach to conservation and development, which recognizes the rights of local communities to manage and benefit from the management and use of natural resources through community-based initiatives. The Special Rapporteur invites the Government to further develop capacity in the tourism industry, focusing more on particularly vulnerable and disadvantaged minority communities.

92. While Botswana can be proud of its conservation policies, there remains the need to continuously review these policies and consider the delicate issue of communities located within by national parks and forest reserves such as in Chobe. The Special Rapporteur recommends that a national review be held on the implementation of such policies and programmes to ensure that minority communities are not isolated because roads are closed during certain periods and that they have equal access to State services, such as education, health care and water.

93. The listing of the Okavango Delta as a UNESCO World Heritage Site is an important event for which Botswana must be congratulated. However, some minority communities appear to have been affected in terms of traditional seasonal access to land and resources despite assurances to the contrary. The Special Rapporteur invites the Government to initiate discussions and negotiations with affected minority communities to address these challenges and seek agreements accommodating traditional practices without significantly affecting the mandate of the World Heritage Site.

94. The Special Rapporteur urges the Government of and members of the San communities from the Central Kalahari Game Reserve to engage in consultations to allow the San communities to continue traditional hunting, grazing or foraging activities consistent with wildlife conservation. These consultations should include future agreements on community-based natural resource management and tourism. In order to avoid further litigation, the Special Rapporteur encourages the Government to adopt a less restrictive interpretation of the High Court decision in the *Sesana* case and to facilitate the return of all those who were removed from the Central Kalahari Game Reserve who wish to return, along with their descendants regardless of age.

## **G. Information and communications**

95. Information and communication activities in the country, particularly awareness-raising campaigns regarding important health issues such as HIV/AIDS, should not be exclusively in Setswana or English. Since communities are most effectively reached in their own languages, local minority languages should be used as much as is practicably possible.

96. The Special Rapporteur recommends the lifting of any restriction or prohibition against the use of languages other than English or Setswana in private print, broadcasting and any other media. He urges the Government to allocate broadcasting licences for locally based community radio stations so that these can reach minorities in their own languages in the parts of the country where they live. In relation to public broadcasting and print media, the development of a national policy, based on a proportional approach to the use of minority languages in the country, including sign language, should be studied.

## **H. Disaggregated data for better and more effective policies**

97. The Government of Botswana is invited to review its national census approach and, as is the case in many other countries, collect and analyse data disaggregated by ethnicity, religion and language, in full compliance with standards of personal data protection and privacy.

## **I. Deaf minority and sign language**

98. The Special Rapporteur recommends that the Government initiate a national consultation process to revise and improve the effectiveness of the country's approach to the use of sign language in education and other areas, such as the judiciary and public health, to address numerous concerns, including in relation to awareness-raising programmes and important decision-making processes.

99. It is also recommended that sign language interpretation be increased on national television to include key television information programmes, such as those on HIV/AIDS.

100. The Special Rapporteur urges the Botswana Qualifications Authority to review its accreditation procedures for sign language interpreters in consultation with organizations working with the deaf community.