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Report of the Special Rapporteur in the field of cultural rights on her mission to Botswana: comments by the State

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Report of the Special Rapporteur in the field of cultural rights on her mission to Botswana: comments by the State*

Contents

	<i>Page</i>
I. Introduction	3
II. General context and framework	3
A. International framework	3
B. Constitutional and legislative framework	3
C. General context	4
III. Realizing cultural rights in Botswana: Specific issues	5
A. System of governance, cultural rights and respect for cultural diversity	5
B. Linguistic rights and policies, and cultural diversity within the education system.....	7
C. Tourism, world heritage sites, wildlife protection and cultural rights	7
IV. Conclusions and recommendations	10

* Reproduced as received.

I. Introduction

1. The United Nations Special Rapporteur in the field of cultural rights, Ms. Farida Shaheed paid a thirteen-day official visit to Botswana from 14 – 26 November 2014. The purpose of the visit was to identify, in a spirit of co-operation and constructive dialogue, good practices in and possible obstacles to the promotion and protection of cultural rights in Botswana. The Special Rapporteur held discussions with different stakeholders regarding the Government of Botswana's policies, programmes and initiatives aimed at promoting and protecting cultural rights in the fields of culture, language, education, tourism and wildlife.

2. The Special Rapporteur visited Gaborone, Shixaxa, Maun, Ghanzi/D'kar, Old Xade, New Xade, Shakawe, Tsodilo Hills and villages in the Okavango Delta, and Ramotswa.

3. After the visit, the Special Rapporteur produced a Report regarding the rights of individuals and communities to participate in cultural life, that is, to access, take part in, and contribute to cultural life in all its facets, to enjoy and have their cultural heritage recognised, including through participating in the identification, interpretation, classification, and stewardship of cultural heritage, as well as to express their creativity in the arena of artistic expressions, sports and culture.

II. General Context and Framework

A. International framework

3. The Special Rapporteur noted that Botswana is a party to treaties that contain significant provisions for the protection of cultural rights such as the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on Biological Diversity, the UNESCO Conventions Concerning the Protection of the World Cultural and Natural Heritage and for the Safeguarding of the Intangible Cultural Heritage.

4. However, the Special Rapporteur observed that Botswana has not ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. In response, the Government would like to inform that consultations with various communities are underway regarding the signing/ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

5. The Special Rapporteur also noted that many of the country's reports to treaty bodies are long overdue.

6. Lastly, the Special Rapporteur observed that Botswana has not extended a standing invitation to special procedures mandate-holders, and encouraged the country as a member of the Human Rights Council to enhance its co-operation with United Nations human rights mechanisms.

B. Constitutional and legislative framework

7. The Special Rapporteur noted that the 1966 Constitution has an important chapter on the protection of fundamental rights and freedoms. Although fundamental freedoms related

to culture such as the right to freedom of conscience, expression, assembly and association are included; the Special Rapporteur observed that there is no provision in the Constitution that makes direct reference to cultural rights, particularly the right to take part in cultural life, to engage in creative and artistic activities, to enjoy the arts or share in scientific advancement and its benefits.

8. The Special Rapporteur also noted the regrets expressed by some members of civil society about the poor consultation leading up to the decision to establish a hybrid institution encompassing the functions of the Ombudsperson and those of a national human rights institution.

C. General context

9. The Special Rapporteur commended the Government of Botswana for its great efforts and achievements in the area of development and poverty reduction, particularly for providing social services such as health, education and water to all, and safety nets for vulnerable populations across the country. In addition, the Special Rapporteur applauded the State policy of providing essential services to villages or settlements with a minimum of 150 people.

10. However, the Special Rapporteur observed that a significant proportion of the population was dependent on welfare and that poor people were locked into increasing dependence on state support. In response, it should be noted that the position of the Botswana Government is that no Botswana should go hungry at any given time and has therefore put policies in place that allow for the identification and assistance of all needy Botswana based on a predetermined criteria. Most of these populations are in the remote parts of the country that, due to their geographic conditions, lack economic opportunities such as significant economic activity, job opportunities and a market for whatever scale of production in those areas. However, Government has over time introduced a number of initiatives that allow Botswana to empower themselves through their active involvement. Most of these programmes are agriculture related to enable Botswana to develop adequate household food security and sell any surplus they have to address other economic and social needs. Government has also introduced small grants under the Poverty Eradication Programme targeting mainly vulnerable populations. This was meant to empower Botswana to economically sustain themselves in the medium to long term and thus graduate from Government welfare programmes.

11. The Special Rapporteur commended Botswana for adopting good policies such as the 2001 National Policy on Culture. She noted with satisfaction that in some parts of the Ghanzi district there were some multi-language newsletters. Nevertheless, she expressed concern that the implementation of the National Policy on Culture was uneven and that several of its key provisions remain unimplemented such as those relating to the documentation and further development of languages, acceptance and respect of other cultures as integral parts of the national stream as cultural identity does not imply a homogeneous culture, and to the reorientation of cultural practices and values to achieve a society culturally supportive of the rights and status of women.

12. In response to the above, the Government of Botswana wishes to state that the National Policy on Culture provides a platform for the participation of all Botswana in the development, promotion and preservation of their culture. The Policy advocates free flourishing of all cultures of the different ethnic groups in presenting their rich and diverse cultural heritage.

13. The objectives of the policy have continuously been pursued since its adoption in 2001. The Ministry of Youth, Sport and Culture has varied national programmes that are

geared towards recognition and promotion of the diverse cultures of Botswana as well as to encourage all Batswana to take pride in the value of their culture, and enhance creative talents and capacities. These include the annual Presidents' Day Competitions, Constituency Art Competitions, National Culture Day, Constituency Sport Tournament, National Languages Day, Art and Craft Market Days and Fairs. In these programmes people are free to use their languages, practices and norms.

14. The Special Rapporteur noted with satisfaction that one of the pillars of Vision 2016 is to build a united and proud nation with a diverse mix of cultures, languages, traditions and peoples sharing a common destiny. The Special Rapporteur also commended policies geared towards nation-building. However, she noted that "While the use of Setswana as the national language has largely succeeded in enabling citizens to communicate with each other, it appears that time is right for a second phase of nation-building that reflects on, builds upon and celebrates the rich cultural diversity of the country. There is a need for a national dialogue, at various levels and with all stakeholders, on the way forward. From a cultural rights based perspective, this implies equal recognition and acknowledgement of the various communities in the country, and of the diverse ways in which people relate to their environment and natural resources, as well as their land, and their varied approaches to development."

15. In response, it is worth noting that Botswana recognises its multi –ethnic value systems, traditions and beliefs as reflected through the various languages, performing and visual arts as well as other forms of cultural expressions. In a bid to enhance and promote cultural diversity, national pride, unity and nationhood; all ethnic groups are encouraged to host annual community cultural festivals, exhibitions, fairs. These are run independently by the respective communities.

16. Botswana laws recognise the cultural diversity of the country and allow free expression and practice of the different cultures. Furthermore, Botswana is signatory to international instruments which allows communities to document, publicise and assert their cultural values, practices, beliefs and traditions and also popularise cultural products both nationally and internationally. One such key instrument is the 2003 United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention on the Safeguarding of Intangible Cultural Heritage which was ratified in 2009.

III. Realizing Cultural Rights in Botswana: Specific Issues

17. The Special Rapporteur considered the following key cultural rights issues: system of governance, cultural rights and respect for cultural diversity; linguistic rights and policies, and cultural diversity within the education system; and tourism, world heritage sites, wildlife protection and cultural rights.

A. System of governance, cultural rights and respect for cultural diversity

18. The Special Rapporteur noted that Botswana has a democratic tradition rooted in consultations through *kgotlas* (traditional community meetings) and district and village development committees. The Special Rapporteur stated that the *kgotla* system was an important institution for consultations at the local level which has enabled communities to remain the guardians of their own cultural heritages.

19. However, the Special Rapporteur expressed concern that the adjudication system used by *Dikgosi* fails to adequately accommodate the cultural patterns and traditional leadership structures of non-Tswana speaking peoples, such as the Basarwa, traditionally organised around a system of clans and elders. Additionally, the Special Rapporteur stated

that some members of the Herero, Hambukushu and San communities were not confident to address an assembly in the Setswana language and fear that they may not be understood or misunderstood. In response, the Government would like to state that the traditional leadership at the local level is drawn from the communities concerned and at assemblies interpreters are provided in cases where the concerned community does not speak Setswana.

20. The Special Rapporteur was also concerned that the adjudication system based on the *Dikgosi* leads to the dominant tribe imposing its customary law in civil matters on all groups within a given tribal territory.

21. In response, the Government of Botswana would like to state that the adjudication of cases is a judicial process that allows for reviews or appeals where one is aggrieved by the decisions of Customary Courts. In cases where the aggrieved is of the opinion that one tribe uses its dominance to impose decisions, then such should be stated as the grounds for appeal or review.

22. The Special Rapporteur noted with appreciation that adjudication by customary courts on criminal matters was based on the Penal code. However, the Special Rapporteur was concerned that the *Dikgosi* and tribal administration lacked the required training.

23. In response, it should be noted that the Ministry of Local Government and Rural Development and the Botswana Police Service College are currently developing a training programme for *Dikgosi*. In areas that the College does not have the requisite capacity, such training would be outsourced from other institutions in the public and private sectors.

24. The Special Rapporteur noted that though the system of arbitration by *Dikgosana* (Headmen) reportedly resolves about 80% of cases at the ward level, there were no records being maintained, thus precluding the possibility of review by the administration. The Special Rapporteur felt that the lack of records deprives authorities of a useful source of information about developments and issues arising at the community level.

25. In response, the Government of Botswana wishes to clarify that *Dikgosana* (Headmen of arbitration) are appointed by the Minister of Local Government and Rural Development to arbitrate on disputes at ward level in a customary manner that from time immemorial has not entailed recording. Decisions taken at that level are not enforced by law like those taken by Courts of Record. Where any of the parties is aggrieved by a decision at Court of Arbitration, such persons may request to be presented to the Court of Record by the *Kgosana* (Headman) handling their matter.

26. The Special Rapporteur welcomed plans by the Government of Botswana to introduce small claim courts to urban centres to bring justice closer to the people.

27. The Special Rapporteur noted that some groups which have requested to be recognised as tribes under the Bogosi Act of 2008 such as the Wayeyi, still await a decision.

28. In response, the Government of Botswana wishes to inform that the consultations on the recognition of the Wayei are ongoing. Guidelines on Recognition of Tribal Communities have been drafted and will assist in the event that other tribes apply for recognition. It is noteworthy that the issue of recognition of tribal communities requires extensive consultations between the Government and other critical stakeholders.

29. It also worth noting that in January 2007, the membership to *Ntlo Ya Dikgosi* was increased from 15 to the current 35 members to extend representation to other ethnic groups.

30. The Special Rapporteur welcomed the fact that some women are paramount chiefs. However, the Special Rapporteur noted that this was not sufficient to ensure the cultural rights of women on an equal basis with men.

31. The Gender Affairs Department of the Ministry of Labour and Home Affairs has identified the institution of *bogosi* as vital in gender and development. Therefore, equipping *Dikgosi* with relevant skills and information on gender and development is a critical way of mainstreaming gender in the Customary Justice System and ensuring women's access to justice. The Gender Affairs Department continues to engage with the highest institution of *bogosi* being *Ntlo ya Dikgosi* (House of Chiefs) to provide technical direction on matters of gender and development and Gender Based Violence. Specifically, it capacitates *Dikgosi*, Headmen of Records, Chief Representatives, Court Presidents, Deputy Chiefs and Community leaders, including Faith Based Organisations.

B. Linguistic rights and policies, and cultural diversity within the education system

32. The Special Rapporteur noted that "using mother tongues in the initial years of learning significantly increases the quality of education, as it allows children to learn and to develop life skills as well as self-esteem." In this regard, the Special Rapporteur applauded measures adopted by Botswana to ensure that language does not become an obstacle to learning such as the introduction of teachers' aides in Ghanzi and elsewhere.

33. In response, it should be noted that breakthrough to Setswana is one of the ways teachers are able to reach out to the learners, but other languages have not been introduced in the early schooling. There are no teachers trained to teach other languages other than Setswana and English, hence the engagement of teacher aides has been used as an option where learners are very much disadvantaged in their learning due to language barriers.

34. House mothers or caretakers are engaged in the hostels to assist disadvantaged children in remote areas who have no or minimal exposure to Setswana in their families and communities. One of the critical roles of the house mothers or caretakers is to translate Setswana to the children's mother tongue and vice versa. Teacher aides and house mothers are engaged through the Action Plan for Hotel Management and Improvement as well as the Education and Training Strategic Sector Plan (ETSSP) 2015 – 2020. There is an ongoing pilot project in Ghanzi region undertaken in collaboration with Thuto Isago Trust to provide teacher aides to assist learners to acquire Setswana language. This is piloted in three villages, namely D'kar, Kuke and Kanagas. The teacher aides translate Setswana to Sesarwa and vice versa.

C. Tourism, world heritage sites, wildlife protection and cultural rights

35. The Special Rapporteur noted that there are conflicts on land use, with various competing needs, uses and interests at stake. In response, the Government of Botswana wishes to state that Botswana largely practices open wildlife management systems where protected areas are not fenced off. Under this system, it is inevitable that there would be interface between wildlife and humans and their activities resulting in "human-wildlife conflict."

36. Over time, the Government of Botswana has adopted a number of human-wildlife mitigation measures and strategies to deal with the wildlife-human conflicts. Currently, the Government of Botswana in partnership with the World Bank's Global Environment Facility (GEF) is piloting a six year project known as the Northern Botswana Human Wildlife Co-existence Project which runs from 2010 - 2016. The Human Wildlife Co-

existence Project aims to reduce damage to crops and stock by wildlife, in particular lions and elephants, in thirteen villages in the Okavango Delta Panhandle, the Chobe-Linyanti wetlands and the Makgadikgadi wetlands. The Project comprises three components that are designed to improve the capacity of the Department of Wildlife and National Parks (DWNP) to manage human-wildlife conflict, to help subsistence farmers to reduce damage by wildlife, and to offer tourism training opportunities to villagers, so that they benefit from the presence of wildlife. The Project was formulated following extensive consultations with local communities from these areas.

37. This project shifts the emphasis from reactive interventions to proactive preventative strategies and skills development for nature-based tourism. It increases operational capacity of government staff and communities to deal with the human-wildlife conflict issues and bring more tourism partnerships to the selected villages. The project has a Social Action Plan (SAP), which has been developed in order to ensure that people who are affected, especially vulnerable and marginalised groups are fully informed, consulted and participate in the project to avoid potentially adverse effects on them and to ensure that they benefit from the project. The project's positive outcomes and lessons learnt will be extrapolated to other areas to deal with human-wildlife conflict.

38. The Special Rapporteur noted that the issue of land was a recurring theme in most of the meetings that she held. However, the Special Rapporteur noted that many people lacked understanding of the legal framework in place, their rights, as well as procedures to be followed, including when they have settled on self-allocated land for years. In this regard, the Special Rapporteur recommended that massive information campaigns should be conducted to explain the options available, including through proactive engagements with communities.

39. In response, the Government of Botswana agrees with the recommendation of the Special Rapporteur to conduct massive information campaigns to explain the legal framework in place, options available, rights and procedures to be followed. It is worth noting that all Land Boards have annual outreach activities such as roadshows, *kgotla* meetings and stakeholders' workshops with communities to disseminate information about Land Board operations, policies and procedures. In light of these recommendations, outreach activities with the concerned communities will be intensified. Modalities of intensifying outreach activities to accommodate the Special Rapporteur's recommendations are being worked out.

40. The Government has taken numerous measures to communicate with relevant communities. Nonetheless, some communities still have great difficulties in understanding the policies in place and future plans, giving rise to misunderstandings and suspicions.

41. The Special Rapporteur noted that during her visits to different places some people expressed frustration, anger and fears in relation to events that took place decades ago. The Special Rapporteur, however, could not establish whether those events qualify as human rights violations or not. Nevertheless, the Special Rapporteur recommended that the Government should acknowledge and address such legacies, clarifying the events that took place, and listening to the communities' various narratives of these same events. The Special Rapporteur further encouraged the Government of Botswana to facilitate memorialisation processes, understood as providing the necessary space for those affected to articulate their diverse narratives in culturally meaningful ways, so as to engage in genuine consultations with communities for the future.

42. In response, the Government of Botswana notes the concerns of the Special Rapporteur and undertakes to educate the public more on Government policies in place and future plans to do away with misunderstandings and suspicions. Furthermore, the Government of Botswana is not aware of any specific past human rights violations just as

the Special Rapporteur could not establish the veracity of the events narrated to her by some members of the community that could be qualified as human rights violations. The other difficulty is that the events referred to have not been clearly articulated.

43. However, in moving forward, it is noteworthy that in May 2014, the Government of Botswana issued a Directive approving, *inter alia*, the drafting of Bill amending the Ombudsman Act Number 5 of 1995 to confer a Human Rights mandate on the Office of the Ombudsman. Once this Act has been amended, the Ombudsman will be empowered to investigate alleged violations of human rights of all the people in Botswana and to offer redress where it is found that such violations have, in fact, occurred. The drafting of the Bill is still at infancy stage. As a National Human Rights Institution, the Ombudsman will also be expected to conduct public education, to sensitise members of the public about their rights, so that they may realise when they are being violated and claim them.

44. The Special Rapporteur congratulated Botswana for its success in having the Okavango Delta listed on the World Heritage List of UNESCO. Specifically, she welcomed the consultative process undertaken by the Government of Botswana before the listing as well as the recognition that the Delta has been inhabited for centuries by small numbers of people with minimal impact on the ecological integrity of the area. The Special Rapporteur was also pleased that the nomination dossier mentioned sites of specific cultural significance for local communities. The Special Rapporteur noted that the Government of Botswana gave assurances that there will be no fencing of the area, no eviction of local communities, and no disruption of local communities' rights of access to natural resources.

45. In this respect, the Special Rapporteur encouraged the Government of Botswana to continue implementing the UNESCO recommendations for the Okavango Delta, particularly to reinforce the recognition of the local inhabitants' cultural heritage, effectively and clearly communicate all matters concerning the implications of the listing to the affected indigenous peoples, to respect and integrate their views into management, planning and implementation, and to ensure they have access to benefits derived from tourism. The Special Rapporteur expressed hope that these steps will assist to establish good practices in this area, including for other parts of the country.

46. In response, the Government of Botswana wishes to state the following regarding the implementation of the UNESCO recommendations for Okavango Delta. The country will submit a State of Conservation Report by December 2015 which will be discussed during the 40th Session of the World Heritage Committee in June/July 2016. The issues are being addressed through the Okavango Wetlands Management Committee with the support of the Permanent Okavango River Basin Water Commission (OKACOM) and Okavango Research Institute (ORI). A draft Action Plan that includes issues from the Reviewed Okavango Delta Management Plan (ODMP) and SEA for Okavango Delta Ramsar Site has been done and will be completed by March 2015.

47. The Special Rapporteur noted that the Central Kalahari Game Reserve (CKGR) has been at the centre of considerable controversy since the Government's decision in 1985 to relocate all people residing in the Reserve to settlements outside the Reserve. Furthermore, the Special Rapporteur stated that the forced relocation of the remaining population in 2002 following the closure of all services by the Government resulted in a certain number of residents approaching the High Court to claim their right to continue to live on their land. According to the Special Rapporteur, in 2006, the Court ruled that the eviction was unlawful and unconstitutional, while not condemning the termination of basic services. The Special Rapporteur further noted that there were concerns regarding the restrictive interpretation of the right of off-spring to remain on the Reserve upon attaining majority at 18 years of age, which causes fear amongst affected people that once the elders have passed away, nobody will be entitled to live in the Reserve.

48. Moreover, the Special Rapporteur felt that insisting that people relocate outside the Reserve for Wildlife conservation purposes was at odds with allowing the continuation of mining and tourism activities within the Reserve. The Special Rapporteur encouraged the Government of Botswana and the affected communities to engage in meaningful consultations to end the deadlock.

49. In response, the Government of Botswana would like to state that the observations by the Special Rapporteur are inconsistent with the relocation and the ruling on the CKGR case. The Government did not forcefully relocate Basarwa from the CKGR. A series of consultative meetings involving CKGR residents, CKGR Non-Governmental Organisation Coalition and the Government were held prior to the relocation of Basarwa to settlements outside the CKGR. The consultations were held using the following structures:

- Government of Botswana, represented by an Inter-Ministerial Committee comprising the Ministry of Environment, Wildlife and Tourism; Ministry of Foreign Affairs and International Co-operation; Office of the President; Ministry of Defence, Justice and Security; Ministry of Minerals, Energy and Water Resources; and Attorney General Chambers. The Inter-Ministerial Committee was chaired by the Minister of Foreign Affairs and International Co-operation, while the Government Consultation delegation was led by the Minister of Environment, Wildlife and Tourism.
- The Residents Committee of the CKGR, comprised representatives from both the current and former residents of the CKGR from settlements of XERE, Molapo, Mothomelo, Kikao, Gope, Gugamma, New Xade and Kaudwane.
- The CKGR NGO Coalition, comprised Botswana Council of Churches; Botswana Council of Non-Governmental Organisations (BOCONGO); Ditshwanelo; the First People of Kalahari; the Kuru Family of Organisations; University of Botswana Research Centre for San Studies; and the Working Group of Indigenous Minorities in Southern Africa (Botswana Chapter).

50. It is worth noting that the right of offspring to remain in CKGR upon attaining the age of majority was not one of the issues which were before the court and as such the court did not make a determination on it.

51. The Government would also like to state that the decision to relocate people outside the Central Kalahari Game Reserve for wildlife conservation purposes is not at odds with allowing the continuing of mining and tourism activities because of the following reasons:

- Environmental impact assessments were conducted for the mining operations in the CKGR to ensure that their environmental impacts are localised and mitigation measures, including rehabilitation of the sites were put in place to safeguard the environment.
- Mining concessions are confined only to the mining activity to keep its footprint minimal.

IV. Conclusions and Recommendations

International, constitutional and organisational framework

52. **The Special Rapporteur recommended that Botswana should:**

- (a) Ratify the International Covenant on Economic, Social and Cultural Rights.
- (b) Review Section 15 of the Constitution, in particular its sub-sections 4(c) and (d) and 9(a), in order to eliminate exceptions to the principle of non-discrimination that are not in compliance with international human rights treaties.

The Government of Botswana will give due consideration to this recommendation

- (c) Establish the national human rights institution in compliance with the Paris Principles and engage in wide consultations, including with non-governmental organisations to ensure ownership of the institution by the people.

53. Plans are underway to establish the national human rights institution in compliance with the Paris Principles and to engage in country-wide consultations regarding the establishment of this institution. As already noted, in May 2014, the Government of Botswana issued a Directive approving, *inter alia*, the drafting of Bill amending the Ombudsman Act Number 5 of 1995 to confer a Human Rights mandate on the Office of the Ombudsman. Once this Act has been amended, the Ombudsman will be empowered to investigate alleged violations of human rights of all the people in Botswana and to offer redress where it is found that such violations have, in fact, occurred. The drafting of the Bill is still at infancy stage. As a National Human Rights Institution, the Ombudsman will also be expected to conduct public education, to sensitise members of the public about their rights, so that they may realise when they are being violated and claim them.

System of governance, cultural rights and respect for cultural diversity

- (d) Gather information on mother tongues in the next population census.

54. It is important to note that the questions included in the questionnaires for Botswana's censuses are derived from stakeholder consultations and requirements. For the 2021 census, stakeholders will, as is the normal practice, be consulted on their needs in relation to questions to be posted on language. Therefore, the inclusion or exclusion of a question on mother tongue will be an outcome of stakeholder consultation.

- (e) Enhance the capacity of the *kgotla* system to take on board marginalised groups and people, such as women and minorities.

55. The Gender Affairs Department of the Ministry of Labour and Home Affairs has identified the institution of *bogosi* as vital in gender and development. Therefore, equipping *Dikgosi* with relevant skills and information on gender and development is a critical way of mainstreaming gender in the Customary Justice System and ensuring women's access to justice. The Gender Affairs Department continues to engage with the highest institution of *bogosi* being *Ntlo ya Dikgosi* (House of Chiefs) to provide technical direction on matters of gender and development and Gender Based Violence. Specifically, it capacitates *Dikgosi*, Headmen of Records, Chief Representatives, Court Presidents, Deputy Chiefs and Community leaders, including Faith Based Organisations.

- (f) Recognise and respect the cultural patterns and traditional leadership structures of non-Tswana peoples to ensure their participation in decision-making.

56. It is important to note that all citizens of Botswana are called Batswana (plural) or Motswana (singular). Thus, the appropriate word to use is *non-Tswana speaking*

peoples. It also worth emphasising that in January 2007, the membership to *Ntlo Ya Dikgosi* was increased from 15 to the current 35 members to extend representation to other ethnic groups that are non-Tswana speaking.

- (g) Address the complaints made by minority groups such as the Wayeyi, regarding their subordination to other tribes and the obstacles they face in participating equally in decision-making processes at the local and national levels.

57. The response provided below also addresses this recommendation.

- (h) Ensure the implementation of the Bogosi Act of 2008 in a transparent manner. Communities applying for recognition as tribes should be kept dully informed of the procedure followed and the steps undertaken by the Ministry. The Government should also enquire as to why, almost eight years after the adoption of the Bogosi Act, which replaced the discriminatory Chieftainship Act, no community has been recognised as additional tribe under that Act, and what consequences this entails in terms of discrimination against minorities.

58. In response, the Government of Botswana wishes to inform that the consultations on the recognition of the Wayei are ongoing. Guidelines on Recognition of Tribal Communities have been drafted and will assist in the event that other tribes apply for recognition. It is noteworthy that the issue of recognition of tribal communities requires extensive consultations between the Government and other critical stakeholders. It also worth noting that in January 2007, the membership to *Ntlo Ya Dikgosi* was increased from 15 to the current 35 members to extend representation to other ethnic groups.

Linguistic rights and policies, cultural diversity within the education system

- (i) Cultural rights, including linguistic rights, should be respected and protected within the education system. Provisions should be made to enable minority groups to learn and be taught in their mother tongue as well as the official State languages. The Government can resort to a wide array of measures to this effect in practice, based on factors such as demand, and the number and location of minority students. Where student numbers are higher it may be appropriate to provide formal classes in minority languages, while in other cases more informal approaches may be appropriate, including additional classes and out-of-school teaching options.

59. The Government has introduced Teacher aides and house mothers or care takers to assist learners from minority groups. House mothers or caretakers are engaged in the hostels to assist disadvantaged children in remote areas who have no or minimal exposure to Setswana in their families and communities. One of the critical roles of the house mothers or caretakers is to translate Setswana to the children's mother tongue and vice versa. Teacher aides and house mothers are engaged through the Action Plan for Hotel Management and Improvement as well as the Education and Training Strategic Sector Plan (ETSSP) 2015 – 2020. There is an ongoing pilot project in Ghanzi region undertaken in collaboration with Thuto Isago Trust to provide teacher aides to assist learners to acquire Setswana language. This is piloted in three villages, namely D'kar, Kuke and Kanagas. The teacher aides translate Setswana to Sesarwa and vice versa.

- (j) The Government should also:
- Adopt measures in the field of education aimed at encouraging the knowledge of the history, culture and traditions of all tribes and communities in the country.
60. The Social Studies curriculum covers the history, culture and traditions of all tribes and communities in Botswana.
- Enhance the capacity of teachers to develop extra-curricular activities in the language of and according to the culture of minority groups.
61. This is covered under recommendation (I) above.
- Enable the establishment of community radio stations in minority languages in various parts of the country.
62. Consultations were undertaken with various communities regarding the establishment of community radio stations. During the consultations some challenges were encountered, however Government remains committed to continuing with the dialogue with an aim to resolution and implementation.

Tourism, world heritage sites, and wild life protection and cultural rights

- (k) Botswana must be commended for its approach to conservation and development that recognises the rights of local people to manage and benefit from the management and use of natural resources through CBNRM. The Special Rapporteur encourages the Government to increase efforts in this regard, to empower concerned communities and build their capacity, in particular in the tourism industry.
- (l) The Special Rapporteur understands the concerns expressed by the Government regarding the need to protect its rich biodiversity and its policy to ensure the economic transition of local communities through their participation in tourism activities. She recommends, however, that the Government fully abide by its obligation to respect and protect cultural rights when tailoring these policies. In particular, the strong cultural dimension of hunting and harvesting practices needs to be acknowledged and through consultations and discussions with concerned communities undertaken on these issues. In accordance with Article 29 of the Universal Declaration of Human Rights, limitations to cultural rights shall be determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Any limitation must be proportionate, meaning that the least restrictive measures must be taken when several types of limitations may be imposed.
- (m) The Government should launch mass information campaigns, including through proactively engaging with communities, to explain to people the legal framework in place regarding land allocation, their rights, procedures to be followed and available options, including when people and communities have settled on self-allocated land for years.
63. The Government of Botswana accepts the recommendation of the Special Rapporteur to conduct massive information campaigns to explain the legal framework in place, options available, rights and procedures to be followed. It is worth noting that all Land Boards have annual outreach activities such as roadshows, *kgotla*

meetings and stakeholders' workshops with communities to disseminate information about Land Board operations, policies and procedures. In light of these recommendations, outreach activities with the concerned communities will be intensified. Modalities of intensifying outreach activities to accommodate the Special Rapporteur's recommendations are being worked out.

- (n) Botswana must be congratulated for the steps undertaken to consult relevant communities in the process leading to the listing of the Okavango Delta as UNESCO World Heritage. The Special Rapporteur notes with satisfaction that the nomination process dossier presented by the Government included important information regarding the San indigenous peoples' cultural heritage and user access rights. The Special Rapporteur was also happy to receive the Government's assurances that there will be no fencing off of the area, no eviction of local communities, and no disruption of their rights of access to natural resources.

64. The Government of Botswana wishes to state the following regarding the implementation of the UNESCO recommendations for the Okavango Delta. The country will submit a State of Conservation Report by December 2015 which will be discussed during the 40th Session of the World Heritage Committee in June/July 2016. The issues are being addressed through the Okavango Wetlands management Committee with the support of the Permanent Okavango River Basin Water Commission (OKACOM) and Okavango Research Institute (ORI). A draft Action Plan that includes issues from the Reviewed Okavango Delta Management Plan (ODMP) and SEA for Okavango Delta Ramsar Site has been done and will be completed by March 2015.

- (o) The Special Rapporteur encourages the Government to continue implementing the UNESCO recommendations for the Okavango Delta, in particular, to reinforce the recognition of the local inhabitants' cultural heritage, effectively and clearly communicate all matters concerning the implications of the listing to affected peoples, to respect and integrate their views into management, planning and implementation, and to ensure they have access to benefits derived from tourism. The Special Rapporteur recommends in particular that:

- Measures be adopted to ensure that conservation of the site will not negatively impact on local communities. Local livelihood opportunities should be developed in alignment with conservation goals.

65. It is important to note that the Okavango Delta was listed as a natural site under criteria 7.9 and 10 since there was not enough cultural aspect to satisfy the outstanding universal value. Consultations were done in 36 villages across the Delta and workshops and seminars were held for Basarwa communities, NGOs, civil society and neighbouring countries of Angola and Namibia. These efforts were supported by USAID-SAREP programme. The Ministry of Environment, Wildlife and Tourism is working with communities to identify and document all Basarwa sites so that they will be recognised. An action plan has been developed to initiate sustainable livelihoods projects for communities. The Government is also working with the Okavango Delta Wetlands Committee to develop projects for improving community livelihoods. As riparian states, Angola, Botswana and Namibia are also developing initiatives to safeguard the Delta through OKACOM.

- Management plans be elaborated and implemented in co-operation with indigenous peoples and local communities, and be based on traditional knowledge and skills in site conservation.

- The knowledge, innovation and practices of indigenous and local communities in Okavango Delta be respected, preserved and maintained, in accordance with Articles 8j and 10c of the Convention on Biological Diversity.
 - Detailed information be communicated in timely manner to concerned communities, in a language they clearly understand, including on schedules, persons in charge, and long-term goals.
 - The United Nations Declaration on the Rights of Indigenous Peoples be fully taken into consideration and respected in this process.
- (p) The Special Rapporteur recommends that the Government engage with the San of the CKGR, in particular on CBRNM and tourism in the reserve. Agreements should fully include respect for the cultural rights of the San people. The Special Rapporteur also recommends that the Government:
- Adopt a less restrictive interpretation of the Roy Sesana decision, and facilitate the return of all those removed from the Reserve who wish to do so.
 - Recognise and implement the right of off-spring to remain on the Reserve upon attaining majority at 18 years of age.
- (q) There is a need for confidence-building measures to improve relationships between communities and the governmental departments responsible for protecting wildlife and the environment.
- (r) More widely, the Special Rapporteur recommends that the Government take into consideration the strong imbalances in power existing between the various tribes and communities in the country, as well as between communities and business enterprises, when engaging in consultations with concerned communities on projects and development programmes. Women should also be fully part of consultation process.
- (s) The Special Rapporteur encourages the Government to expand its support to non-traditional forms of cultural expressions and consider the establishment of a national arts council for the promotion and further development of artists and creative industries. This should be considered in the light of the potential role of culture in the needed diversification of the economy.

66. The Government of Botswana wishes to inform that the National Arts Council of Botswana Bill is being drafted. In this regard, stakeholder consultations were undertaken. Furthermore, there are Arts Associations for the different art forms as well as a forum for Chairpersons of the Arts Associations to promote consultations and implementation of arts/cultural programmes. There is also a Committee that runs arts and culture competitions and organise Independence Day cultural celebrations.

67. The Government of Botswana further informs that there are structures such as community halls in all major villages as well as other facilities such as halls in secondary schools which are accessible for use by various stakeholders, including children, youth and artists for leisure, entertainment, talent identification and any other recreational activities. In addition, the country has three major stadiums, seven sports complexes, and each school has sports facilities which are also accessible for community activities. Due to the economic recession, sports facilities that were to be built in places such as Ramotswa, Ghanzi and Kanye were deferred. People who are interested to use the aforementioned facilities make bookings with the authorities managing them.

68. Moreover, major villages and towns have recreational parks which are used for recreational purposes. There are also recreational centres that were established specifically for use by young people by the Botswana National Youth Council in major villages and towns. However, artists lack purpose-built facilities for the arts such as theatres, performance arenas and amphitheatres.
