

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP ON INDIGENOUS POPULATIONS/COMMUNITIES

MISSION TO THE REPUBLIC OF BOTSWANA 15 – 23 June 2005

The African Commission on Human and Peoples' Rights adopted this report
at its 38th Ordinary Session, 21 November – 5 December 2005



AFRICAN COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS

2008



INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

REPORT OF THE AFRICAN COMMISSION'S WORKING GROUP
ON INDIGENOUS POPULATIONS/COMMUNITIES:
MISSION TO THE REPUBLIC OF BOTSWANA,
15 – 23 JUNE 2005

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Typesetting: Uldahl Graphix, Copenhagen, Denmark

Prepress and Print: Litotryk, Copenhagen, Denmark

ISBN: 9788791563294



Distribution in North America:
Transaction Publishers
390 Campus Drive / Somerset, New Jersey 08873
www.transactionpub.com



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This report has been produced with financial support from
the Danish Ministry of Foreign Affairs

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ABBREVIATIONS

ACHPR - African Commission on Human and Peoples' Rights

ACRWC - African Charter on the Rights and Welfare of the Child

African Charter - African Charter on Human and Peoples' Rights

AG - Attorney General

AIDS - Acquired Immune Deficiency Syndrome

AU - African Union

BCC - Botswana Council of Churches

BDP - Basarwa Development Programme

BDP - Botswana Democratic Party

BOCONGO - Botswana Council of Non-Governmental Organisations

CA - Court of Appeal

CAT - Convention Against Torture

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CERD - Convention on the Elimination of All Forms of Racial Discrimination

CGSARPA - Convention Governing the Specific Aspects of Refugee Problems in Africa

CJ - Chief Justice

CKGR - Central Kalahari Game Reserve

CRC - Convention on the Rights of the Child

DITSHWANELO - Botswana Centre for Human Rights

FPK - First People of the Kalahari

HIV - Human Immunodeficiency Virus

ICCPR - International Covenant on Civil and Political Rights

ILO - International Labour Organisation

KFO - Kuru Family of Organizations

MFAIC - Ministry of Foreign Affairs and International Cooperation

MISA - Media Institute of Southern Africa

MLG - Ministry of Local Government

MP - Member of Parliament

NGO - Non – Governmental Organization

OP- ICCPR - Optional Protocol to the International Covenant on Civil and Political Rights

OAU - Organisation of African Unity

PS - Permanent Secretary

RAD - Remote Area Dwellers

RADP - Remote Area Development Programme

SADC - Southern African Development Community

SGL - Special Game Licenses

TGLP - Tribal Grazing Land Policy

UB/SBRP - University of Botswana San /Basarwa Research Project

UN - United Nations

WGIP - Working Group on Indigenous Populations /Communities

WIMSA - Working Group on Indigenous Minorities in Southern Africa

WMA - Wildlife Management Area

ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights (ACHPR or African Commission) wishes to express its appreciation to the Government of the Republic of Botswana for inviting its Working Group on Indigenous Populations/Communities (WGIP or Working Group) to visit the country.

The Commission is grateful to the authorities for their hospitality and support during the period of the mission. A special note of appreciation is extended to the Government officials who found time to meet with the delegation of the Working Group of the African Commission in spite of their busy schedule.

The Commission would also like to extend its appreciation to the civil society organisations that assisted it to organise the mission and would in particular like to thank Ms Alice Mogwe of Botswana Centre for Human Rights (DITSHWANELO), Mr. Molefe Rantsudu of the University of Botswana – San/Basarwa Research Project (UB/SBRP) and Mr. Mathambo Ngakaeaja of the Working Group on Indigenous Minorities in Southern Africa (WIMSA) – Botswana Chapter.

PREFACE

The African Commission on Human and Peoples' Rights (ACHPR or African Commission), which is the human rights body of the African Union, has been debating the human rights situation of indigenous peoples since 1999. Indigenous peoples are some of the most vulnerable and marginalized groups on the African continent, and their representatives have since the 29th Ordinary Session of the African Commission in 2001 participated in the ACHPR's sessions. The indigenous representatives have given strong testimonies about their situation and the human rights violations they suffer from. Their message is a strong request for recognition and respect as well as a call for improved protection of their civil, political, economic, social and cultural rights. It is also a request for the right to live as peoples and to have a say in their own future, based on their own culture, identity, hopes and visions. Indigenous peoples, moreover, wish to exercise these rights within the institutional framework of the nation-state they belong to. The African Commission has responded to this call. The African Commission recognizes that the protection and promotion of the human rights of the most disadvantaged, marginalized and excluded groups on the continent is a major concern, and that the African Charter on Human and Peoples' Rights must form the framework for this.

In order to achieve a better basis on which to advance discussions and formulate recommendations, the African Commission set up a Working Group on Indigenous Populations/Communities (Working Group) in 2001. The Working Group then comprised three ACHPR Commissioners, three experts from indigenous communities in Africa and one international expert on indigenous issues. The Working Group implemented its initial mandate by producing the comprehensive document "Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities" on the human rights situation of indigenous peoples and communities in Africa (the full report can be downloaded from <http://www.achpr.org>). The report was adopted by the African

Commission in November 2003, and published in a book format in 2005. The report is the African Commission's official conceptualisation of indigenous peoples' human rights in Africa.

In 2003, the Working Group was given the mandate to:

- Raise funds for the Working Group's activities, with the support and cooperation of interested donors, institutions and NGOs;
- Gather information from all relevant sources (including governments, civil society and indigenous communities) on violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Undertake country visits to study the human rights situation of indigenous populations/communities;
- Formulate recommendations and proposals on appropriate measures and activities to prevent and remedy violations of the human rights and fundamental freedoms of indigenous populations/communities;
- Submit an activity report at every ordinary session of the African Commission;
- Co-operate when relevant and feasible with other international and regional human rights mechanisms, institutions and organisations.

On the basis of this mandate, the Working Group has developed a comprehensive activity programme. This programme includes undertaking country visits, organising sensitisation seminars, cooperating with relevant stakeholders and publishing reports, all with a view to protect and promote indigenous peoples' rights in Africa.

This report is part of a series of country-specific reports produced by the Working Group, and adopted by the African Commission on Human and Peoples' Rights. These country-specific reports emanate from the various country visits undertaken by the Working Group, all of which have sought to engage with important stakeholders such as Governments, national human rights institutions, NGOs, intergovernmental agencies and representatives from indigenous communities. The visits have sought to involve all relevant actors in dialogue on indigenous peoples' human rights, and to inform about the African Commission's position.

The reports not only document the Working Group's visits, but are also intended to facilitate constructive dialogue between the African Commission, the various African Union member states, as well as other interested parties.

To date, the Working Group has undertaken country visits to Botswana, Burundi, Central African Republic, Gabon, Namibia, Niger, Libya, Republic of Congo and Uganda. These country visits have been undertaken during the years 2005-2007, and it is planned that the reports will be published once adopted by the African Commission. Hopefully, the reports will contribute to raising awareness of indigenous peoples' situation in Africa, and prove useful for establishing dialogue and identifying appropriate ways forward for improving indigenous peoples' situation in Africa.

It is hoped that, via our common efforts, the critical human rights situation of indigenous peoples will become widely recognized, and that all stakeholders will work to promote and protect indigenous peoples' human rights in their respective areas.

Andrew R. Chigovera
Former Commissioner
Former Chairman of the African Commission's
Working Group on Indigenous Populations/Communities

EXECUTIVE SUMMARY

The African Commission's Working Group on Indigenous Populations/Communities (Working Group) undertook a mission to the Republic of Botswana from 15 – 23 June 2005. The delegation of the Working Group comprised:

- Commissioner Andrew Ranganayi Chigovera – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations/Communities; and
- Dr. Naomi Kipuri – Member of the Working Group.

The Mission was supported by Mr. Robert Eno, Legal Officer of the Secretariat of the African Commission on Human and Peoples' Rights.

Objectives of the Mission

The general aim of the Mission was therefore to execute the mandate of the Working Group and of the African Commission. The specific objectives of the Mission were inter alia, to:

- Verify allegations of maltreatment and violation of the human rights of the Basarwa community;
- Gather information on the situation of indigenous populations in Botswana;
- Engage the Government of the Republic of Botswana in dialogue on the situation of indigenous populations in particular and its relationship with the African Commission as a whole;
- Engage civil society on its role in the promotion and protection of the rights of indigenous populations in Botswana; and
- Visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

The Republic of Botswana: A Brief History

Botswana was a poor and peripheral British Protectorate known as Bechuanaland. In 1885, the British government declared Bechuanaland a Protectorate, at the request of local rulers who wished to deter encroachment by Boers from the Transvaal in South Africa. The administrative capital of Bechuanaland remained at Mafeking (Mafikeng), outside the Protectorate's borders in South Africa, from 1895 until 1964. After long resistance to constitutional progress, the British began to push political change in 1964. A new administrative capital was rapidly built at Gaborone. Bechuanaland became self-governing in 1965, under an elected Botswana Democratic Party (BDP) government with Seretse Khama as Prime Minister. In 1966, it attained full independence and became a republic with Sir Seretse Khama as its first President.

The People of Botswana

With a total population of about 1.6 million people (July 2004), Botswana is composed of the following ethnic groups - Tswana (or Batswana) 79%, Kalanga 11%, Basarwa 3%, others, including Bakgalagadi and white, 7%. The Basarwa, also known as San or Bushmen, are believed to be among the first recognised people to inhabit the country. The 17th century brought the Tswana from the south, a Bantu people related to the Sotho of Transvaal and Lesotho. The Tswana now make up over 70% of Botswana's population and the remaining peoples have been heavily absorbed into the Tswana culture.

Apart from the San, other minority tribes include the 25,000 Mbanderu, cousins of the Namibian Herero tribe who fled Namibia following the German conquest in the 1890s and early 1900s. The largest minority is the Kalanga tribe, related to the Karanga-Rozwi from Zimbabwe, thought to be the constructors of the Great Zimbabwe ruins.

International Human Rights Obligations

The Republic of Botswana is a State Party to several human rights treaties, including the African Charter on Human and Peoples' Rights, the

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the African Charter on the Rights and Welfare of the Child (ACRWC), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Racial Discrimination (CERD). However, the country has yet to ratify the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.

Previous Missions

From 2–7 April 2001 and 15–18 February 2005, Commissioners Barney Pitanya and Tom Nyanduga, respectively, undertook promotional missions to Botswana.

Indigenous Populations in Botswana

History has it that the San people, commonly referred to as Bushmen or Basarwa, are the original inhabitants of Botswana. They originated in the north and gradually migrated southwards. Approximately 2,000 years later, the Hottentots followed the Bush people who were then followed by Bantu speakers. The first Tswana settled in the south-east of Botswana in approximately the 15th century, possibly having migrated from the south.

However, the San remain the single largest indigenous community in the country. They consist of many different small tribes and speak a variety of languages, all of which incorporate “click” sounds. The small Bushmen communities had their customs and folklore and were fond of games and their traditional music as a vital part of their lives. They also made their own musical instruments and enjoyed dancing.

The Basarwa remain economically and politically marginalized, have lost access to their traditional land in fertile regions of the country, and remain vulnerable to exploitation by their non-Basarwa neighbours. Their isolation, lack of education, ignorance of civil rights and lack of political representation have stymied their progress. In 1961, the colonial government of Botswana established the more than 52,800 km² Central Kalahari Game

Reserve (CKGR) to protect the food supply of some Basarwa groups still pursuing a subsistence hunter-gatherer livelihood. However, in 1997, the Government began to relocate the Basarwa to two settlements just outside the CKGR – Kaudwane and New !Xade.

The Basarwa and the Relocation from the CKGR

A major debate relating to San rights has been over the Central Kalahari Game Reserve (CKGR), one of Africa's largest conservation areas. The Central Kalahari Game Reserve covers a vast area of 52,800 km² (the approximate size of Holland and Belgium combined) and was originally established in order to provide protection for the San Bushmen who lived in increasingly small and remote communities within the reserve. The landscape is predominantly sandy with dry fossil valleys, dune fields and grassy plains. Between 1997 and 2002, the Government of Botswana decided to resettle residents of the Central Kalahari Game Reserve to newly established settlements outside the reserve.

In response to this exercise, a coalition of local organizations was formed to dialogue with the Government. This coalition included local NGOs such as the First People of the Kalahari (Kgeikani Kweni), Kuru Development Trust, the Working Group of Indigenous Minorities in Southern Africa, and several other Botswana-based non-Governmental organizations e.g. DITSHWANELO, the Botswana Council of Non-Governmental Organizations (BOCONGO) and the Botswana Christian Council (BCC). These NGOs established a consultative group, called the Negotiating Team, to carry out discussions with the Government of Botswana on the future of the people of the Central Kalahari Game Reserve. Negotiations with the Government proved futile.

Meetings Held during the Mission

During the Mission, the delegation met with a cross-section of individuals, government officials and civil society organizations capable of enlightening it on the situation of indigenous populations in the country. The delegation also met with a cross-section of indigenous communities in four regions of the country.

Analysis and Observations by the Delegation

The Government of the Republic of Botswana has adopted a rather dangerous attitude towards the question of indigenous populations in the country. There is no recognition of the fact that the Basarwa are an indigenous community. According to the Government, all Batswana are indigenous and deserve equal treatment. The Basarwa remain the least educated group in the country and have the highest school dropout and failure rates. Most Basarwa learners hardly complete junior secondary school and even fewer proceed into tertiary education. The Basarwa remain the least represented at all levels of Government. The Basarwa constitute the single largest most marginalised indigenous group in Botswana. They face discrimination through laws and Government policies and such discrimination is manifested even by high-ranking public officials.

Conclusions

It is the view of the African Commission that the mission succeeded in establishing dialogue between the African Commission, the Government of the Republic of Botswana, the local civil society organizations and the indigenous communities themselves. It is the view of the African Commission that the question of indigenous populations and the relocation of the Basarwa from the CKGR in particular is a developmental rather than a legal issue and a question that needs a political rather than a court decision.

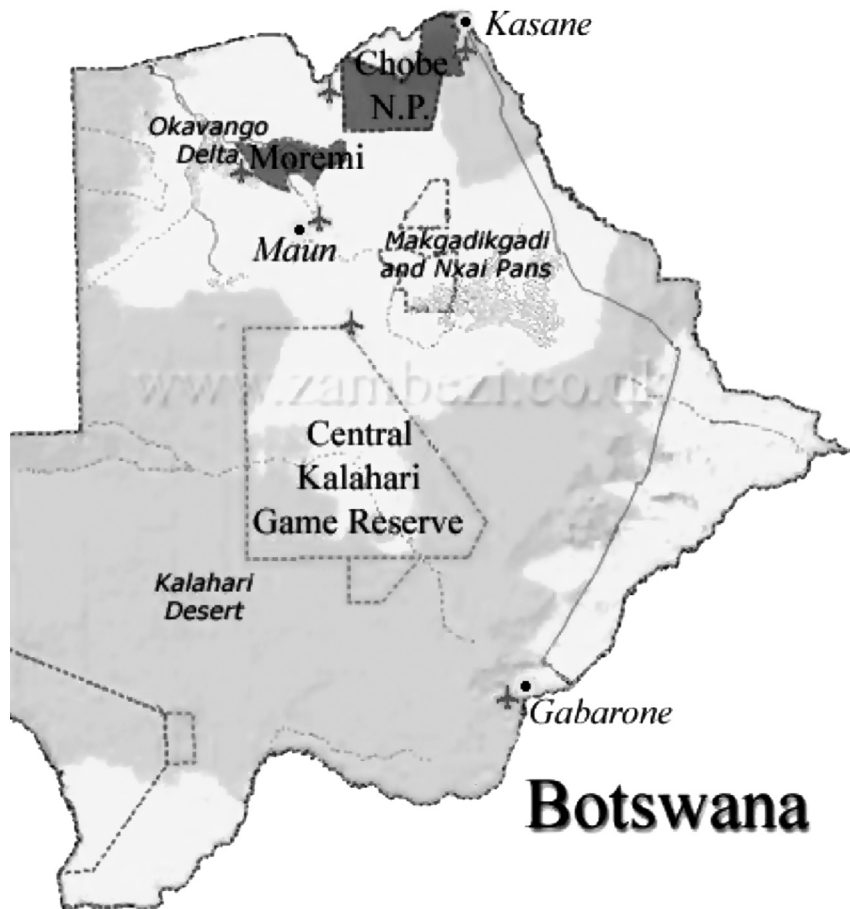
The African Commission makes the following recommendations, which it hopes will be implemented by the Government, as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard to the socio-economic and political situation in the country and on the understanding that the African Commission would be available at all times to support the Government in their implementation. The recommendations also keep the gateway of dialogue between the African Commission and the Government of the Republic of Botswana open.

Recommendations

1. The Government should take urgent steps to introduce appropriate measures, including mother tongue education for Basarwa for at least the first five years of primary education. Village schools should be established in each village that will provide mother tongue education up to grade five. The Government should train teachers, preferably persons from the Basarwa community, to teach the pupils. Free education up to grade 12 should be instituted for Basarwa learners. Those who dropout of school should be trained in appropriate vocational activities such as carpentry, bricklaying and other professions such as nursing and tourist guides.
2. The Government should not only criminalize acts of racial discrimination but should take steps to ensure that all racial manifestations are dealt with in accordance with internationally recognized prescriptions, including Article 2 of the African Charter and Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination.
3. Considering the fact that the relocation exercise has already taken place, the Government should continue consultations with the Basarwa, NGOs and other stakeholders. Negotiations should include inter alia, capacity building, including appropriate training for the Basarwa, the type of development model they would prefer and providing them with either individual or communal rights to land. The Government should engage those still in the reserve in more consultation and reinstall services for them.
4. The Government should adopt affirmative action policies to assist the Basarwa develop political representation and provide quota representation for them at various levels of the political ladder.
5. The Government should explore the possibility of establishing community zones/conservancies in areas that are predominantly Basarwa and train the Basarwa in wildlife management and conservation.

6. The Government should reassess its policy of denying the existence of indigenous populations in Botswana and instead take steps to comply with its international obligations regarding the treatment of indigenous peoples. To this end, the Government should also ratify the ILO Convention 169 on Indigenous and Tribal Peoples.
7. The African Commission urges the Government to take the necessary steps to ensure the incorporation of international instruments into its domestic legislation in conformity with the African Commission's Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights into National Laws of States adopted at its 5th Ordinary Session held in Benghazi, Libya from 3 – 14 April 1989.
8. The Government should adopt a participatory approach when developing policies with a bearing on the Basarwa people, such as policies on land, natural resources, relocation and poverty alleviation. The Basarwa must be properly consulted in order for them to have a say on policies that will affect their future.
9. The Government should institute affirmative action legislation or policies that favour the Basarwa in all sectors of the economy, including political representation, education, health care, etc.
10. The African Commission urges Botswana to submit its State Reports to the African Commission in conformity with Article 62 of the African Charter. The African Commission recommends that Botswana indicates in its report to it the measures it has taken to implement the above recommendations and any difficulties it might be facing in implementing them.

MAP OF BOTSWANA



1. Introduction

- 1.1 The African Commission on Human and People's Rights (ACHPR or African Commission) was established in 1987 in accordance with Article 30 of the African Charter on Human and Peoples' Rights (African Charter). It is a human rights treaty body charged with the promotion and protection of human and peoples' rights in Africa.
- 1.2 The African Charter was adopted by the 18th Assembly of Heads of State and Government of the Organisation of African Unity (OAU), now the African Union (AU) in Nairobi, Kenya on 26 June, 1981. Upon the deposit of the requisite instruments of ratification, the Charter came into force on 21 October, 1986 and the first members of the African Commission were elected at the 23rd Assembly of Heads of State and Government of the OAU in June 1987. The inaugural meeting of the African Commission was held in Addis Ababa, Ethiopia in November 1987.
- 1.3 Article 45 of the African Charter provides for the mandate of the African Commission and this includes the promotion and protection of human and peoples' rights, interpretation of the African Charter and undertaking any other task assigned to it by the Assembly of Heads of State and Government.
- 1.4 In terms of Article 45 (1) of the Charter, the promotional mandate of the Commission shall include *inter alia*, to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organise seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views and make recommendations to Governments; formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation; cooperate with other African and international institu-

tions concerned with the promotion and protection of human and peoples' rights.

- 1.5 To execute the mandate in Article 45 (1), the African Commission has initiated a number of measures, including the establishment of Special Mechanisms/Working Groups.¹ These mechanisms undertake promotional as well as fact-finding missions to Member States of the African Union during the intersession period of the African Commission and submit their reports to the African Commission during its ordinary sessions for consideration and adoption.
- 1.6 It is in this light that the Working Group on Indigenous Populations/Communities (WGIP or the Working Group) undertook a mission to the Republic of Botswana from 15 – 23 June 2005. This was the first such mission to be undertaken by the Working Group since its establishment in 2003.

2. Preparation of the Mission

- 2.1 The Secretariat of the African Commission began exchanging Notes Verbales with the Ministry of Foreign Affairs and International Cooperation of Botswana regarding the Mission in November 2004. In May 2005, the Government of the Republic of Botswana officially agreed to the African Commission's request for its Working Group on Indigenous Populations/Communities to visit the country.
- 2.2 In consultation with the Secretariat of the African Commission, a draft programme for the Mission was prepared by the Office of the President of the Republic of Botswana. The programme was finalised with contributions from local NGOs on the arrival of the delegation in Botswana.
- 2.3 The delegation of the Working Group comprised:

1) The Commission currently has five Special Rapporteurs and two Working Groups, namely: the Special Rapporteur on the Rights of Women in Africa; the Special Rapporteur on Prisons and Conditions of Detention in Africa; the Special Rapporteur on Human Rights Defenders in Africa; the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa and the Special Rapporteur on Freedom of Expression in Africa. The Working Groups include Working Group on Indigenous Populations/Communities and Working Group/Follow up Committee on the Implementation of the Robben Island Guidelines.

- Commissioner Andrew Ranganayi Chigovera – Member of the African Commission and Chairperson of the Working Group on Indigenous Populations/Communities; and
 - Dr. Naomi Kipuri – Member of the Working Group.
- 2.4 The Mission was supported by Mr. Robert Eno, Legal Officer of the Secretariat of the African Commission on Human and Peoples' Rights.

3. Terms of Reference of the Mission

- 3.1 One of the tasks of the terms of reference of the WGIP is to gather information on the situation of indigenous populations/communities in the respective states of the African Union, and to examine the legislative, constitutional and other provisions and mechanisms put in place to promote and protect the rights of indigenous populations. To this end, the African Commission has mandated the WGIP to undertake research, studies and country visits within Member States of the AU.
- 3.2 The general aim of the Mission was therefore to execute the mandate of the WGIP and of the African Commission. The specific objectives of the mission were *inter alia*, to:
- Verify allegations of maltreatment and violation of the human rights of the Basarwa community;
 - Gather information on the situation of indigenous populations in Botswana;
 - Engage the Government of the Republic of Botswana in dialogue on the situation of indigenous populations, in particular, and its relationship with the African Commission, as a whole;
 - Engage civil society on its role in the promotion and protection of the rights of indigenous populations in Botswana; and
 - Visit and discuss with indigenous communities to understand the problems, if any, affecting the effective enjoyment of their human rights.

4. The Republic of Botswana: A Brief History

- 4.1 Between the 1880s and its independence in the 1960s, Botswana was a poor and peripheral British Protectorate known as Bechuanaland. In 1885, the British Government declared Bechuanaland a protectorate, at the request of local rulers who wished to deter encroachment by Boers from the Transvaal in South Africa.
- 4.2 The British Government continued to regard the protectorate as a temporary expedient, until it could be handed over to Rhodesia or, after 1910, to the new Union of South Africa. Hence, the administrative capital of Bechuanaland remained at Mafeking (Mafikeng), outside the protectorate's borders in South Africa, from 1895 until 1964.
- 4.3 From the latter part of the 1950s, it became clear that Bechuanaland could no longer be handed over to South Africa and must be developed towards political and economic self-rule. A legislative council was set up in 1961 after limited national elections.
- 4.4 After long resistance to constitutional progress, the British began to push political change in 1964. A new administrative capital was rapidly built at Gaborone. Bechuanaland became self-governing in 1965, under an elected Botswana Democratic Party (BDP) government with Seretse Khama as Prime Minister. In 1966 it attained full independence and became a Republic with Sir Seretse Khama as its first President.

5. The People of Botswana

- 5.1 With a total population of about 1.6 million people (July 2004), Botswana is composed of the following ethnic groups - Tswana (or Batswana) 79%, Kalanga 11%, Basarwa 3%, others, including Bakgalagadi and white, 7%.
- 5.2 No accurate records exist of the first ever inhabitants of Botswana, although tool fragments and other evidence of human activity have been uncovered which are thought to be around 27,000 years old.

The Basarwa, also known as San or Bushmen, are believed to be among the first recognised people to inhabit the country.

- 5.3 The 17th century brought the Tswana from the south, a Bantu people related to the Sotho of Transvaal and Lesotho. The Tswana now make up over 70% of Botswana's population and the remaining peoples have been heavily absorbed into the Tswana culture.
- 5.4 Apart from the San, other minority tribes include the 25,000 Mbanderu, cousins of the Namibian Herero tribe who fled Namibia following the German conquest in the 1890s and early 1900s. The largest minority is the Kalanga tribe, related to the Karanga-Rozwi from Zimbabwe, thought to be the constructors of the Great Zimbabwe ruins.
- 5.5 The Bayei and the Hambukushu were the original inhabitants of the Okavango Delta. Both tribes moved south in the 18th century to escape Lozi tribal oppression in Zambia. Traditional fishermen, they are responsible for introducing the wooden *mekoro*, or canoe, which is still seen in some areas of the Delta today. They fished mainly in the shallow water areas and poled their *mekoro* with long sticks called *ngashis*. They also hunted in large groups for hippo using spears. The Hambukushu moved south a little later and fished mainly in the deeper waters using paddles to maneuver their *mekoro*. They relied more on the soil for sustenance than the Bayei.

6. The Rise of Tswana Domination

- 6.1 During the 1200-1400 period, a number of powerful dynasties began to emerge among the Sotho in the Western Transvaal, spreading their power in all directions. Fokeng chiefdoms spread southwards over Southern Sotho peoples, while Rolong chiefdoms spread westwards over Khalagari (Khalagadi) peoples. Khalagari chiefdoms either accepted Rolong rulers or moved westwards across the Kalahari, in search of better hunting and the desirable large cattle of the west.

-
- 6.2 By the 17th century, Rolong-Khalagari power stretched as far as Mbandu country across the Central Namibia/Botswana frontier. In the 1660s the military and trading power of the main Rolong kingdom at Taung (south of Botswana), in conflict with Kora groups of southern Khoi over copper trade, was known as far away as the new Dutch settlers at the Cape of Good Hope.
- 6.3 The main Tswana (Central Sotho) dynasties of the Hurutshe, Kwena and Kgatla were derived from the Phofu dynasty, which broke up in its western Transvaal home in the 1500-1600 period. Oral traditions usually explain these migrations as responses to drought, with junior brothers breaking away to become independent chiefs. The archaeology of the Transvaal shows that the farming population was expanding and spreading in small homesteads, each clustered round its cattle corral, across open countryside - with a few larger settlements as evidence of petty chiefdoms. But after about 1700 the settlement pattern changed, with stone-walled villages and some large towns developing on hills - evidence of the growth of states often hostile to each other.

7. Geography

- 7.1 Botswana is a land-locked country in south-central Africa, bounded by Namibia, Zambia, Zimbabwe and South Africa. Most of the country is desert, with the Kalahari Desert occupying the west region. The east is hilly, with salt lakes in the north-east. In the north-west lays the huge Okavango Delta, an immense oasis containing abundant wildlife.²

8. Administration

- 8.1 Botswana is divided into 9 administrative districts with 4 town councils. The districts include - Central, Ghanzi, Kgalagadi, Kgatleng, Kweneng, Northwest, Northeast, Southeast, Southern, and the town councils include - Francistown, Gaborone, Lobatse and Selebi-Pikwe.

2) Botswana – Our Work Index-Caritas Australia 2003

9. International Human Rights Obligations

- 9.1 The Republic of Botswana is a State Party to the African Charter on Human and Peoples' Rights. It ratified the African Charter on 17 July 1986. Botswana is also a party to several international human rights instruments, including:
- The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (CGSARPA);
 - The African Charter on the Rights and Welfare of the Child (ACRWC);
 - The International Covenant on Civil and Political Rights (ICCPR);
 - The First Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR);
 - The Convention on the Elimination of all Forms of Racial Discrimination (CERD);
 - The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW);
 - The Convention Against Torture (CAT); and
 - The Convention on the Rights of the Child (CRC).
- 9.2 The country has yet to ratify the Protocol to the African Charter on Human and Peoples' Rights relating to the Establishment of an African Court on Human and Peoples' Rights, and the Protocol to the African Charter on Human and Peoples' Rights relating to the Rights of Women in Africa. It has also not ratified the International Labour Organisation (ILO) Convention 169 on Indigenous and Tribal Peoples.
- 9.3 It is a Member of the United Nations (UN), the Non-aligned Movement, the Commonwealth, the African Union (AU) and the Southern African Development Community (SADC). The Secretariat of the latter is based in the capital, Gaborone.

10. Previous Missions

- 10.1 From 2 – 7 April 2001 and 15 – 18 February 2005, Commissioners Barney Pityana and Tom Nyanduga, respectively, undertook promotional missions to Botswana.

11. Indigenous Populations in Botswana

- 11.1 History has it that the San people, commonly referred to as Bushmen or Basarwa, are the original inhabitants of Botswana. They originated in the north and gradually migrated southwards. Approximately 2,000 years later, the Hottentots followed the Bush people who were then followed by Bantu speakers. The three groups co-existed happily and there was a flourishing trade among them. Shona speakers settled in the north-east of Botswana around 10th century AD.
- 11.2 The first Tswana settled in the south-east of Botswana in approximately the 15th century, possibly having migrated from the south. By the 18th century the Tswana were very well established in the area.
- 11.3 However, the San remain the single largest indigenous community in the country. They consist of many different small tribes and speak a variety of languages, all of which incorporate “click” sounds. The small Bushmen communities had their customs and folklore and were fond of games and their traditional music as a vital part of their lives. They also made their own musical instruments and enjoyed dancing.
- 11.4 The Basarwa, who chiefly inhabited the Kalahari Desert, are linguistically, culturally, and often morphologically distinct from the rest of the population; however, they are not a homogenous group. They remain economically and politically marginalized, have lost access to their traditional land in fertile regions of the country, and remain vulnerable to exploitation by their non-Basarwa neighbours. Their isolation, lack of education, ignorance of civil rights, and lack

of political representation have stymied their progress. Although the Basarwa were traditionally hunter-gatherers, most employed Basarwa worked as agricultural labourers on cattle ranches that belonged to other ethnic groups.

- 11.5 In 1961, the colonial Government of Botswana established the more than 52,800 km² Central Kalahari Game Reserve (CKGR) to protect the food supply of some Basarwa groups still pursuing a subsistence hunter-gatherer livelihood. However, in 1997, the Government began to relocate the Basarwa to two settlements just outside the CKGR – Kaudwane and New !Xade.

12. The Basarwa and the Relocation from the CKGR

- 12.1 A major debate relating to San rights has been over the Central Kalahari Game Reserve (CKGR), one of Africa's largest conservation areas. The Central Kalahari Game Reserve covers a vast area of 52,800 km² (the approximate size of Holland and Belgium combined) and was originally established in order to provide protection for the San Bushmen who lived in increasingly small and remote communities within the reserve. The landscape is predominantly sandy with dry fossil valleys, dune fields and grassy plains. Between 1997 and 2002, the Government of Botswana decided to resettle residents of the Central Kalahari Game Reserve to newly established settlements outside the reserve.
- 12.2 In response to this exercise, a coalition of local organizations was formed to dialogue with the Government. This coalition included local NGOs such as the First People of the Kalahari (Kgeikani Kweni), Kuru Development Trust, the Working Group of Indigenous Minorities in Southern Africa, and several other Botswana-based non-Governmental organizations (e.g. DITSHWANELO, the Botswana Council of Non-Governmental Organizations (BOCONGO) and the Botswana Christian Council (BCC)). These NGOs established a consultative group, called the Negotiating Team, to carry out discussions with the Government of Botswana on the future of the people of the Central Kalahari Game Reserve. This Negotiating Team

held its first meeting in a small town called D'Kar, in the Ghanzi District of Botswana on June 16-17, 1997. The Negotiating Team sought to establish a coordinated strategy concerning land and resource rights of San peoples. This consultation included a meeting with the former Botswana President, Sir Ketumile Masire in March 1998.

- 12.3 Negotiations with the Government proved futile. In January 2002, the Government terminated its services to the CKGR and in April 2002 the Basarwa decided to take the Government to court to assert their rights to reside in the CKGR.

13. Meetings Held during the Mission

- 13.1 During the Mission, the delegation met with a cross-section of individuals, Government officials and civil society organizations capable of enlightening it on the situation of indigenous populations in the country.

i. Meeting with Gaborone-based NGOs

- 13.2 On 15 June 2005, the delegation met at the premises of the Botswana Center for Human Rights (DITSHWANELO) with Gaborone-based NGOs working on indigenous issues. The meeting was attended by the following NGOs:

- The Botswana Council of Churches (BCC);
- Botswana Council of Non-Governmental Organisations (BOCONGO);
- Media Institute of Southern Africa (MISA); and
- Botswana Centre for Human Rights (DITSHWANELO).

- 13.3 After introducing the delegation, Commissioner Chigovera (Head of Delegation) explained the purpose of the visit and urged the NGOs to be open and frank, to provide the delegation with information that would assist it to engage the Government meaningfully and make informed recommendations where necessary.

- 13.4 After more than two hours of discussion, the NGOs summarized their views as follows:
- a) That there was a general contempt of the Basarwa by other ethnic groups in the country, and this contempt found expression even in top political leadership. They believed other Batswana do not regard the San as equal citizens. That they were regarded as marginalised, uncivilized, uneducated and unable to make decisions for themselves. The NGOs indicated that Government regarded what ever action it was taking as geared towards empowering the Basarwa or uplifting their standard of living.
 - b) That there was a general belief that the Basarwa do not have a concept of leadership and, as such, matters regarding their welfare had to be decided for them.
 - c) That unlike other ethnic communities in the country, the Basarwa had no particular area of land that they could call theirs. That they had been moved from their original land first by the colonial masters and later by the post-independence regimes.
 - d) That after almost 40 years of independence, the Basarwa remained the poorest, least educated and most marginalised ethnic group in the country. This despite the Government's attempt to empower them through its own perceived development policies. The NGOs observed that, the fact that the Basarwa have remained marginalised all this while, meant there was a problem with the Government development model, which they characterized as 'lacking a rights-based approach and consultation'.
 - e) They expressed concern over the Government's continuous denial of the question of indigenuity and lack of recognition for cultural diversity. The delegation was informed that the Basarwa are treated as a minority group within Botswana and not as an indigenous population, and that it is a Government position that all Batswana are indigenous and have one culture. This lack of recognition of cultural

diversity, they argued, was manifested in the denial of the use of Basarwa mother tongue for education and for Setswana to be used as the only local language in schools.

- f) Civil society organisations set up a Negotiating Team to discuss with the Government the CKGR's residents' rights to remain in the reserve. Discussions with Government collapsed when the latter thought the local NGOs in the Negotiating Team were being influenced by what the Government considered were "outsiders". They noted further that when the relocation started Government engaged neither the indigenous communities nor civil society organizations to determine the kind of activities that would help them settle in the new settlements. Due to lack of consultation, the NGOs argued that proper measures were not put in place to help those relocated adjust to the new lifestyle. They concluded that there was effectively a forced relocation of the Basarwa from the CKGR.

- g) The delegation was also informed of a Constitutional Amendment Bill that sought to remove the provision in the Constitution that favoured the Basarwa in terms of their access to the game reserve. Section 14 (1) of the Constitution provides that "No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana". Section 14 (3) (c) provides further that "[N]othing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision 'for the imposition of restrictions on the entry into or residence within defined areas of Botswana of persons who are not Bushmen to the extent that such restrictions are reasonably required for the protection or wellbeing of Bushmen'".

During his Independence Day Message to the Nation on 30 September 2003, His Excellency President Festus Mogae announced that

amendments to sections 77³, 78⁴, and 79⁵, of the Constitution of Botswana would be submitted to Parliament, to make the Constitution tribally neutral. He added that there was no place in a functioning democracy for discriminatory legislation, policies and/or practices.

The NGOs noted that it was, however, necessary that any reform of law should be comprehensive within a human rights framework adding that legislation, which should be reviewed, includes The Chieftainship Act, the Tribal Territories Act and the Tribal Land Act.

ii. Observation of the Court Case

- 13.5 After initial apprehension on the part of the Government over the delegation's desire to observe the case, the delegation was finally given the green light by the Office of the President to proceed with the observation.
- 13.6 On 16 June 2005, the delegation observed the case brought by the Basarwa (former residents of the CKGR) against the Government of the Republic of Botswana in the High Court of Botswana in Lobatse.
- 13.7 The case, formerly known as "Roy Sesana Keiwa Setlhobogwa & 241 others (applicants) v. the Attorney General, in his capacity as recognized agent of the Government of the Republic of Botswana (respondent)" started in July 2004.
- 13.8 The former residents of the CKGR argued that the termination of services to the CKGR by the Government in January 2002 was unlawful and unconstitutional. They further asserted that those who

3) Section 77 provides that there shall be a House of Chiefs for Botswana consisting of a) 8 ex-officio members; b) 4 elected members; and c) 3 specially elected members.

4) Section 78 provides that the ex-officio members shall be such persons as are for the time being performing the functions of the office of Chief in respect of the Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa tribes, respectively.

5) Section 79 provides for the election of elected and specially elected members of the House of Chiefs. 79 (1) provides that the elected members shall be elected from among their own number by the persons for the time being performing the functions of the office of sub-chief in the Chobe, North East, Ghanzi and Kgalagadi districts, respectively. Section 79 (2) provides that specially elected members shall be elected by the ex-officio and elected members of the House of Chiefs in accordance with the constitution from among persons who are not and have not been within the preceding five years actively engaged in politics. The rest of the section provides for qualification to be elected as a specially elected member of the House of Chiefs.

had been effectively forced to move from the CKGR due to the termination of services should be able to return to their homes in the reserve as they had been unlawfully dispossessed of their land.

13.9 In April 2002 an application was first brought to the High Court. The State Counsel raised a number of technical objections and the application was dismissed. Negotiations with the High Court led to the case being readmitted and it started up in July 2004. The High Court is called upon to make a decision on the following issues:

- Whether it was lawful for the Government to terminate basic and essential services to the residents of the CKGR in January 2002;
- Whether the Government has an obligation to restore services to the residents; and
- Whether the residents were in possession of their land and were deprived of such possession forcibly, wrongly and without their consent.

13.10 The position of the applicants is that the residents in question have “traditionally owned or otherwise occupied or used” the territory in question, uninterrupted since time immemorial. They argued that according to the criteria set out in the ILO Convention 169, the UN Draft Declaration on Indigenous Rights and numerous other international human rights documents, they have a right to occupation of the CKGR.

13.11 The position of the Government of Botswana is that the Government is not bound by those Declarations. Even if it was, the problem is that the CKGR is a national reserve for wildlife and not for people, and that the reserve cannot carry both people and wildlife. The Government argued further that the residents in the CKGR had adopted a new form of living (sedentarism) and modern means of hunting and this new lifestyle was not compatible with the promotion of wildlife conservation.

- 13.12 While in Lobatse, the delegation also met with the Registrar of the High Court of Botswana and briefed him about the Mission and sought audience with the Chief Justice (CJ) of Botswana. In the afternoon of 16 June 2005, the delegation paid a courtesy call on the Chief Justice.
- 13.13 The Head of the Delegation, Commissioner Chigovera briefed the CJ on the purpose of the Mission. He informed the CJ that, as the guardian of justice in the country, it was necessary for any delegation of the African Commission to visit the Head of the Judiciary whenever on a mission to the country. He called on the CJ to ensure that the judiciary in Botswana takes into account the provisions of the African Charter, the decisions of the African Commission and other international instruments when making decisions.
- 13.14 The CJ pointed out that, in spite of resource and other constraints, such as the dualist nature of the Botswana legal system, the judiciary in Botswana was trying its best. He said judges had been encouraged and assisted to attend seminars and workshops on human rights so as to keep abreast of international developments on human rights. He said the judiciary was aware of some of the cases it had considered that had been brought to the African Commission against the Republic of Botswana and was eagerly waiting to see the Commission's decision on them.

iii. Meeting with the University of Botswana San/Basarwa Research Project

- 13.15 On 16 June 2005, the delegation met with the University of Botswana San/Basarwa Research Project (UB/SBRP). The UB/SBRP was established in 1996 to undertake research on and with Basarwa in Botswana. The vision of the Project is to ensure that the programme becomes a leading San research project in Southern Africa. The overall objective of the Project is to promote research focusing on the linguistic, cultural, historic, economic and legal aspects of the Basarwa or San people. The specific objectives include, inter alia:

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- To pursue innovative strategies for promoting San access to higher education and capacity building;
 - To identify ways in which research can make a positive contribution to San development;
 - To promote and further develop research capacity and competence among the University staff and students; and
 - To establish a network for San research in the region.
- 13.16. Commissioner Chigovera introduced the delegation and explained the purpose of the mission and informed those present at the meeting that the delegation would like to learn from the Project about the situation of the Basarwa in the country and the activities of the Project in enhancing the promotion and protection of the rights of the Basarwa. He also requested the Project identify the major issues of concern regarding the Basarwa that the delegation should raise with the Government.
- 13.17. After introducing the members of the Project, Dr. K. Mthomang, Coordinator of the Project gave an overview of the Project. Dr. K. Mthomang highlighted the major areas of concern for the Basarwa that needed urgent attention. They include inter alia: the human rights situation of the Basarwa, the relocation from the CKGR and Government development aspirations for the Basarwa.
- 13.18. According to Dr. K. Mthomang, the problems of the Basarwa stem from Government policy – which he termed “the policy of denial”. He said the Government does not recognize the Basarwa as an indigenous group but rather as a marginalized minority group in the country. The UB/SBRP was of the view that all other problems regarding the Basarwa stem from this policy of denial.
- a). *Human rights of the Basarwa*
- 13.19 Regarding the human rights situation of the Basarwa, the UB/SBRP noted that the rights of the Basarwa are not effectively protected. It noted for example that the way in which the relocation

from the CKGR was conducted reveals the manner in which the Government regards the Basarwa. The UB/SBRP described the situation of the Basarwa as that of the majority Tswana marginalizing the minority Basarwa. It claimed that the majority dictates what form of education, development and lifestyle the minority should adopt.

- 13.20 The UB/SBRP noted further that there was no provision in the Constitution to address the historically disadvantaged position of the Basarwa, adding that the Government was considering amending the Constitution to remove the provision that afforded the Basarwa access to the game reserve.

b). Government policies/programmes

- 13.21 Regarding Government development policies/programmes, the UB/SBRP wondered why for over 40 years the Government has been crafting development projects for the Basarwa and yet the latter remain the poorest and most backward ethnic group in the country. According to the UB/SBRP, there must be something fundamentally wrong with the Government policies/programmes and until the Government addresses that which is wrong, it will continue to fail the Basarwa.
- 13.22 The UB/SBRP was of the view that Government policy towards the Basarwa is paternalistic in nature. It claimed the development programmes were based on the perception that the Basarwa were ignorant, lazy, incapable of deciding for themselves and, as such, needed outsiders to develop them.
- 13.23 The Project described the Government development policy towards the Basarwa as that of subject and object, whereby the former imposes on the latter. The UB/SBRP noted that development was carried out by mainstream (dominant) Tswana development groups that have negative notions about the Basarwa. As a result, the Basarwa are never consulted on the type of development model

they want. The Government determined and defined the type of development it believed would be suitable for the Basarwa.

- 13.24 The development model, according to the UB/SBRP, was therefore insensitive to the special needs of the Basarwa as it was imposed from outside. According to the UB/SBRP, to the Government, development means being able to speak Setswana and live like the mainstream Motswana. That is why most development projects have been infrastructural and assimilation oriented. The Project added that Tswana have been made chiefs to rule over the Basarwa, so as to develop them.

c). Education

- 13.25 The UB/SBRP noted with regard to the education of the San that there was a high failure and dropout rate; that the San were reluctant to participate in the educational system. According to the Project, schools were becoming instruments of social control and assimilation whereby the school curricula were fashioned in a manner that sought to ensure that the Basarwa graduate to become a Tswana and abandon their San culture and identity.
- 13.26 The Project noted that any Basarwa that has gone through the Botswana education system always hid their identity and that the very few that have succeeded in life had to deny their identity either at places of employment or in other public/social places. The UB/SBRP claimed that the Basarwa were further disadvantaged because they were not allowed to use their mother tongue for education. Setswana is the only national/local language used in schools. As a result, according to the UB/SBRP, performance of the Basarwa in school is very poor, leading to a high dropout rate.

d). Development aspirations

- 13.27 According to the UB/SBRP, the Basarwa aspire to do better in consultation with the Government. The UB/SBRP believes that the Basarwa do not want things imposed on them, that the aspirations of the Basarwa may be different but they would all want the Government to give them the opportunity to make their own choices on development, adding that their main weakness had been the lack of an organization to represent them.
- 13.28 The delegation also heard a testimony from a San student from the university who claimed that the lack of choice and participation in decisions affecting them had been the major problem in their relationship with the Government. He conceded that the lack of a clear leadership structure had been a major handicap, but noted that measures were being put in place to define a San leadership structure and establish organizations. He also conceded that the San language had not been adequately developed for use in schools, but noted that if Government had the political will this could easily be done as there were some organizations that were already working to develop the San languages. He also informed the delegation that the San language had been developed in neighbouring countries such as South Africa and Namibia, and if the Government was serious about using the San mother tongue for education, it could learn from these countries.

iv. Meeting with the Attorney General

- 13.29 The delegation met with the Attorney General (AG) of the Republic of Botswana, Mr. Justice Ian Kirby on 17 June 2005. Also attending the meeting were the Deputy Attorney General, Civil Affairs and Deputy Attorney General, International Relations and the Under-Secretary at the Office of the President.
- 13.30 Commissioner Chigovera introduced the delegation and explained the purpose of the Mission of the Working Group to the country. He indicated that the delegation would like to know the constitu-

tional, legal and other relevant texts available for the protection of the political, social, economic and cultural rights of the indigenous populations in the country.

- 13.31 The Attorney General informed the delegation that while for decades Botswana had undertaken programmes and implemented policies geared towards the development of marginalized communities such as the Basarwa, the Government policies had always been ethnically neutral. He said it was precisely for that reason that the Basarwa Development Programme (BDP), established in 1974, was changed to the Remote Area Development Programme (RADP). The RADP, he said, was the Government's programme aimed at empowering Remote Area Dwellers (RAD) and marginalized minorities, not only the Basarwa. The AG informed the delegation that Government policies did not target any specific ethnic group but were of general application. He noted further that, consistent with the Government policy of having an ethnic neutral policy, the Government was amending the Constitution to remove any mention of ethnic or tribal groups. There was therefore emphasis on individual rather than group or ethnic rights. According to the AG, inequalities that could not be addressed by law were addressed by Government policies.
- 13.32 With regard to the use of San language in school, the AG noted that there were several San languages, numbering more than 13, and that the languages differed from each other. He said that it would be difficult to harmonise all these languages for use in schools as a medium of instruction.
- 13.33 The AG also noted that the Botswana Government has complied with both the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the African Charter and to this end had criminalized discrimination in Section 92 of its Criminal Code.

v. Meeting with the Special Adviser to the President

- 13.34 The delegation met with the Special Adviser to the President, Mr. Sidney Tshepiso Pilane on 17 June 2005. Before the delegation could introduce the purpose of the Mission, Mr. Pilane asked the delegation whether any African country had ratified the ILO Convention 169 on Indigenous and Tribal Peoples.
- 13.35 The delegation responded in the negative and indicated that South Africa was considering ratifying the Convention. Mr. Pilane then went further to say that the Commission had to make itself relevant to Africa by understanding African societies and African thinking on human rights. He said that the UN institutions for the most part were controlled by the West and warned that if the African Commission were to allow itself to be led by the UN bodies, it would make itself irrelevant to the plight of the African people.
- 13.36 Mr. Pilane stated that, like all societies, Botswana society included people who were marginalized. He indicated that the people were marginalized simply because they lived in remote areas and, to address their marginalization, the Government had initiated the RADP to integrate them into mainstream society.
- 13.37 He emphasized that Botswana was a country of one people irrespective of their origin, ethnicity and history and added that the word indigenous was separatist, as all in Botswana were one.
- 13.38 He said that ILO Convention 169 was separatist and created division, noting that a Motswana does not believe in land rights – that there are no land rights for anyone but land rights for everyone as any Motswana could apply and obtain land anywhere in the country irrespective of their ethnic background.
- 13.39 He concluded by urging the African Commission to prioritise its activities and noted that in some parts of the continent women were still lagging behind. He advised that greater and quicker attention should be given to such urgent priorities and lesser attention to less urgent matters.

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- 13.40 Commissioner Chigovera thanked Mr. Pilane for his comments and indicated that while the Commission shared the principles enunciated in the ILO Convention 169 and encourages African countries to ratify it, the delegation was not in Botswana to promote the Convention. Commissioner Chigovera explained the purpose of the Mission to Mr. Pilane.
- 13.41 Regarding the relevance of the African Commission, Commissioner Chigovera informed Mr. Pilane that the relevance of the Commission depends on the extent to which African states use it and listen to its advice. On the question of the Basarwa, Commissioner Chigovera said the Commission was not saying that the Basarwa should be treated differently from other ethnic groups in the country but rather, because of their marginalized status, the Government had an obligation to put in place such programmes as were necessary to uplift their lives to a level where they could access their rights on an equal basis with other citizens in the country.

vi. Meeting with the Ombudsman of Botswana

- 13.42 The delegation met with the Ombudsman of Botswana, Mr. Lethebe A. Maine, on 17 June 2005. After introducing the delegation, Commissioner Chigovera briefed the Ombudsman on the purpose of the Mission and informed him that the delegation would like to know the extent, if at all, to which his office dealt with indigenous issues in the country.
- 13.43 Mr. Maine informed the delegation that the Ombudsman was a public institution, constituting what he referred to as an Extra-Ministerial Department. He said in terms of the Ombudsman Act of 1995, the Ombudsman investigates complaints of maladministration in public institutions. After investigation, he makes recommendations to Government for remedial action. The Ombudsman has no executive powers and as such makes only recommendations to Government where he finds infractions of the law.

- 13.44 He said the Ombudsman did not have any express mandate to deal with the protection of human rights. It has a specific mandate to deal with conditions in prisons and in hospitals, especially mental hospitals. He noted, however, that in terms of Section 3 (3) (b) of the Ombudsman Act, the Ombudsman *“shall not in any case be precluded from conducting an investigation in respect of any matter by reason only that it is open to the aggrieved person to apply to the High Court for redress under Section 18 of the Constitution (which relates to redress for contravention of the provisions for the protection of fundamental rights and freedoms)”*.
- 13.45 Mr. Maine informed the delegation that he had interpreted Section 3 (3) (b) to mean that the Ombudsman of Botswana has the mandate to deal with all human rights issues. As such he has been receiving complaints of human rights violations. He said although not specifically stated in the Act, the Ombudsman adopts measures such as arbitration, conciliation and reconciliation in dealing with complaints.
- 13.46 With regard to his mandate vis-à-vis indigenous issues, the Ombudsman noted that there had been two complaints submitted to his office relating to indigenous issues. The first case had to do with the chieftainship of the Bayei community, which claimed they were entitled to have a representative in the House of Chiefs and not be represented by another ethnic group, a Motswana tribe. He said that while his office was about to start considering the matter, the Bayei community had taken the matter to the High Court and, in terms of the Ombudsman Act, he could not entertain a matter which was being dealt with in Court. He also noted that the Bayei case was also dealt with by the Balopi Commission.
- 13.47 The second case related to the relocation of the Basarwa from the CKGR. The Ombudsman informed the delegation that he had planned to carry out an independent investigation into the matter but decided otherwise when the matter was taken to court.

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- 13.48 Regarding the Basarwa community in Botswana, the Ombudsman noted that they were not a homogenous community and that they spoke different languages. He also noted that the lack of proper leadership among the Basarwa had contributed to their non-representation in local and even national governance structures.
- 13.49 On development, the Ombudsman noted that for a long time, the Basarwa had been marginalized. He however, added that Government was working towards addressing this through various activities, including the RADP.
- 13.50 On education for the Basarwa and, in particular, the use of mother tongue for education, the Ombudsman noted that the Basarwa are a nomadic people who move from place to place, and to educate a child it was important for the parents to have a fixed place of abode. He noted with regard to mother tongue that the San language had not been put into writing, and vocabularies had not been properly developed.
- 13.51 He admitted that there was a high dropout rate among the Basarwa but said it was not clear whether this could be attributed to the language problem. He concluded by affirming that if the Basarwa had not been taught in their own language it was not done in bad faith on the part of the Government.
- 13.52 The Ombudsman recommended that the low literacy rate among the Basarwa could be addressed through the introduction of compulsory education at basic level, with the use of mother tongue for education, the introduction of mobile schools, where the teachers move with the pupils and parents, the development of a San literature and building trust and confidence in teacher/pupil relationships.
- 13.53 He however noted that to achieve this, Government had to overcome the challenge whereby most Basarwa parents refuse to send their children to school, which he said could be overcome through education and sensitization.

vii. Combined Meeting with the Ministry of Foreign Affairs and International Cooperation and the Ministry of Local Government

- 13.54 On 17 June 2005, the delegation met with authorities from the Ministry of Foreign Affairs and International Cooperation (MFAIC) and the Ministry of Local Government (MLG), in particular the Public Relations Department and the Department of the Remote Area Development Programme of the respective ministries.
- 13.55 The two ministries made a joint PowerPoint presentation to the delegation on the theme "the relocation of the former residents of the Central Kalahari Game Reserve (CKGR)".
- 13.56 In this presentation, the Ministries started by acknowledging that Botswana was inhabited by different ethnic groups that inhabited the country at different times in history but that historical developments had led to Botswana developing as one united country, and that the Government considered all Botswana indigenous to the country.
- 13.57 The presentation then went on to explain the history of the Basarwa, the CKGR, the reasons for the relocation of the Basarwa from the CKGR and how the relocation exercise was implemented. The two Ministries also briefed the delegation about the development of settlements in Botswana, the land tenure and access to land regime and measures to deal with rural development and poverty alleviation.
- 13.58 Finally, the two Ministries responded to allegations made by some sections of civil society that the relocation of the Basarwa from the CKGR was to make way for mining and mineral prospecting, allegations of torture and cultural genocide.
- 13.59 The Government noted in the presentation that Botswana had the protection of fundamental rights and freedoms of individuals enshrined in its Constitution, that every Botswana, irrespective of

race, colour, religion, gender, political opinion or place of origin, was protected by the Constitution and guaranteed these rights and freedoms. The Constitution further guarantees the enjoyment of these rights and freedoms by any individual, provided she/he does not prejudice the rights and freedoms of others and the public interest.

- 13.60 With regard to land rights, the Government claimed that every citizen of Botswana had a right to apply for, and be allocated a piece of land anywhere in Botswana irrespective of their ethnicity. Everyone is further entitled to utilise the land in accordance with the provisions of the tenure system within which the piece of land falls. Where conflict of land use arises, the concerned individual or community is advised to seek another place where there will be no such conflict.

a). Basarwa

- 13.61 The presentation noted that speakers of Khoisan languages in Botswana were collectively known to themselves and others as “Basarwa”, though many of their dialects were quite distinct from one another; that Botswana had an estimated population of about 60,000 Basarwa, most of whom live in small, multi-lingual remote area communities spread across seven districts in the country namely, the Southern, Kweneng, Kgatleng, Ghanzi, Kgalagadi, Central and North West districts.

b). Basarwa of the Kgalagadi

- 13.62 The Government observed that it has usually been the Basarwa, more particularly those living in the western Kgalagadi sandveld, who have continued to be the targets of old fashioned racial stereotyping as “Bushmen” by outsiders who seek to project an image of the so-called “Bushmen” as some sort of exotic race living in splendid isolation from other peoples, as subsistence hunter-gath-

erers. They are portrayed as isolated hunter-gatherers, who have somehow been cut off from the rest of Botswana. Unfortunately, images such as those contained in apartheid era books like the "Lost World of the Kalahari" and films like "The Gods Must Be Crazy" seem to have become entrenched in the popular culture of some parts of the world, particularly, in the developed countries of Europe and North America.

c). The Central Kalahari Game Reserve (CKGR)

13.63 Regarding the Central Kalahari Game Reserve, located in the eastern part of Ghanzi District, the Government noted that it was established as a game reserve under the Game Proclamation through the High Commissioner's Notice on February 14, 1961. That the Proclamation was superseded by the current Wildlife Conservation and National Parks Act No. 28 of 1992 which maintained the CKGR as a game reserve. The Government noted further that the Game Reserve was established to protect wildlife resources and provide sufficient land for traditional use by hunter-gatherer communities of the Central Kgalagadi.

13.64 The presentation went on to say that about 3,000 people, the majority being Basarwa, were found to reside inside the Central Kalahari Game Reserve when it was gazetted as a game reserve in 1961. Their settlements comprised small multi-ethnic-lingual communities.

d). Reasons for the relocation

13.65 According to the Government, the relocation of the Basarwa from the CKGR was motivated by the change in the traditional way of life and land use by the Basarwa in the Reserve. The Government noted that while the dual objectives of protecting wildlife resources and providing sufficient land for traditional use by hunter-gatherer communities had to some extent been maintained, over time it was

realised that a conflict of land use had developed between wildlife conservation and emerging human settlements inside the Game Reserve. The Government claimed the lifestyle of the residents of the Game Reserve had changed, they were no longer either able or willing to live by what had been considered their traditional means. They were instead using horses, dogs, traps, spears and guns for hunting. They also depended on boreholes, trucked water supplies and food rations supplied by Government.

13.66 According to the Government, all these lifestyle shifts were already having an adverse impact on the environment and a study commissioned by Government in 1985 to investigate the situation inside the CKGR found that:

- Locations in the Game Reserve were rapidly evolving into permanent settled agricultural communities, especially in Old !Xade and Gugama.
- The people residing inside the Game Reserve had largely abandoned their traditional nomadic hunter-gatherer way of life, i.e. hunting on foot with bows and arrows in favour of a sedentary lifestyle and hunting with horses, dogs, traps, spears and occasionally guns and vehicles brought from outside the Game Reserve. Hunting on horseback was the most common as horses could outrun all the animals except the hartebeest. Often all animals in the herd were killed after being chased on horseback and maimed with spears. The meat was then cut and dried (biltong) and sold to a fledgling market of non-residents who frequently visited the reserve.
- The residents were also grazing increasing numbers of livestock inside the Game Reserve.
- In the area around Old !Xade, it was found that wildlife and veld foods had been virtually eliminated within a radius of 40 km or an area of 500 square km.

13.67 The Government indicated that the above findings of the 1985 Fact Finding Commission were confirmed by independent research conducted by anthropologists Masakazu Osaki in his study entit-

led, *"The Social Influence of Change in Hunting Technique Among Central Kalahari San"* and James Suzman in his 2003 overview entitled *"Kalahari Conundrums: Relocation, Resistance and International Support in the Central Kalahari Botswana"*.

- 13.68 Earlier attempts by both Government and independent investigators to identify residents who were strictly traditional hunter-gatherers proved difficult as people had aggregated into mixed groups, a clear indication that Basarwa (G|!ana and G|ui) were not only unafraid of change or transformation but were willing to embrace it. The conclusion was that the development of permanent settlements coupled with the new hunting and herding activities of the residents was inconsistent with wildlife conservation in the CKGR.

e). Decision to relocate

- 13.69 The Government argued that, guided by the findings of the 1985 Fact Finding Commission and the new challenges Government had to contend with (presented by the lifestyle changes) in its obligation to provide social amenities to all citizens of Botswana, the Government decided in 1986 that:

- The boundaries and the status of the CKGR should be maintained as at present;
- The social and economic development of Old !Xade and other settlements in the reserve should be frozen as they had no prospect of becoming economically viable;
- Viable sites for economic and social developments should be identified outside the reserve and the residents of the reserve should be encouraged, but not forced, to relocate to those sites; and
- The Ministry of Local Government and Lands should advise Government on the incentives required to encourage residents in the reserve to relocate.

f). Implementation of the relocation exercise

- 13.70 The Government noted that in accordance with the democratic beliefs, policies and practices of the Republic of Botswana, extensive consultations to implement the relocation exercise began in 1985 and were carried out with all stakeholders, i.e. the inhabitants of all the settlements in the Game Reserve, NGOs and other interested parties. It noted further that it was only in 1997, 12 years later, that the actual relocation started, after 1,739 people were relocated to the new settlements of New !Xade and Kaudwane, which the residents themselves freely selected, based on amongst others the terrain and surrounding vegetation, which are similar to that found inside the Game Reserve.
- 13.71 The Government informed the delegation that, according to the 2001 Population and Housing Census Report, there were 689 people who resided in the CKGR. Of this number, only 17 people, who were members of two related families, did not agree to relocate and therefore continue to reside in the Game Reserve. A small number of those who had earlier relocated had moved in and out of the reserve on a frequent basis, leading to fluctuations in the number of people found in the Reserve. These numbers fluctuated between 50 and 70.
- 13.72 The Government noted that although the return of these individuals was clearly in breach of the agreement they voluntarily entered into with the Government to relocate outside the Game Reserve, Government had thus far chosen to try to persuade them to appreciate that living inside the Game Reserve offered hardly any prospects for them and their future generations.
- 13.73 According to the Government, *“at no stage during the relocation exercise did Government nor its public officers involved in the relocation use force, coerce people residing in the Game Reserve or threaten anyone of them in anyway. The emphasis has always been persuasion and voluntary relocation. And in fact, the mood of the people to the relocation exercise at all places, that is, Molapo,*

Metsiamanong, Mothomelo, Gope and Gugama was generally very positive”.

13.74 The population distribution of settlements within and outside the CKGR between 1991 and 2001 was as reflected in the table below:

Village/ Locality	1991 Population			2001 Population		
	Total	Male	Female	Total	Male	Female
Old !Xade	528	254	274	5	3	2
Manwatse	-	-	-	-	-	-
Kikao	98	48	50	31	10	21
Mothomelo	149	60	89	245	118	127
Bape	41	27	14	-	-	-
Metsiamanong	71	30	41	141	83	58
Molapo	61	26	35	152	81	71
Kaka	3	3	0	-	-	-
Gope	43	24	19	63	29	34
Totals	994	472	522	689	352	337
New Settlements outside the Game Reserve						
New !Xade	-	-	-	1049	522	527
Kaudwane	-	-	-	551	267	284
Total	-	-	-	1645	789	811

Source: 1991 and 2001 Population and Housing Census Reports, CSO.

g). Decision to terminate services

13.75 The Government argued that the decision to terminate services inside the CKGR was taken after it became apparent that with the small number of people remaining inside the Game Reserve, that is, 17 people from two related families, the continued provision of services was uneconomical and unsustainable. The Government drew the attention of the delegation to the fact that Botswana is a

vast and sparsely populated country, making the cost of providing infrastructure and social services expensive, that Botswana has a population of 1,680,863 over a land area of 581,730 square kilometres, which means the average population density is about 3 persons per square kilometre.

- 13.76 The Government however, indicated that those in the reserve would not be forced but were free to find ways on their own to access services at areas nearest to them. They collect food rations, pensions and otherwise go and access services from the settlements adjacent to the Game Reserve. For its part, the Government had been proactive in ensuring that their children were not denied education. The children benefit from boarding facilities and are transported to and from the Game Reserve at Government expense during school holidays.

h). Other relocated communities

- 13.77 The Government argued that the former residents of the CKGR were not the first people to be asked to relocate in Botswana. Individuals and communities had in the past been asked to relocate to make way for development or the establishment of Game Reserves. These included people who previously resided in the Gemsbok, Makgadikgadi, Chobe and Moremi Game Parks and Reserves. These relocated communities, including the former residents of the CKGR, now lived in rural settlements which, in accordance with Government policy, were targeted for accelerated provision of amenities.

i). Development of settlements in Botswana

- 13.78 According to the Government, the development of settlements in Botswana, both large and small, is guided by the National Settlement Policy, which was developed and designed to, amongst others, promote the optimal use of the limited resources at Government's

disposal. By necessity, population size, location and economic viability were among the practical criteria used in determining the development and provision of services to settlements. To qualify for infrastructural facilities and other services, a remote area dweller settlement must have a minimum of 250 people and must be located at least 15 km (9.32 miles) away from a recognized settlement/village. The Government noted further that people residing in settlements of less than 250 people, as applies to the 17 people who remain inside the CKGR, are persuaded to relocate or come together with others to form bigger settlements where they can be provided with services.

j). *Special game licences*

13.79 The former residents of the CKGR are issued with special game hunting licences. According to the Botswana Wildlife Conservation and National Parks Act No. 28 of 1992 Section 30 (1), for an individual to be issued a special game licence, he/she should principally be dependent on hunting and gathering veld produce for their food. This is no longer the case with the former residents of the CKGR but the Government decided to make a special dispensation to enable them to have access to game and veld products which they can obtain from the Wildlife Management Areas (WMAs) adjacent to the Game Reserve. As the Reserve is not fenced, there is free movement of wildlife between the Game Reserve and the WMAs. The Government emphasised the fact that Basarwa can hunt inside the Game Reserve provided they hunt by traditional means, i.e., hunting on foot using bows and arrows.

k). *Allegations of mining prospecting and torture*

13.80 Regarding allegations that the relocation was linked to mining prospecting, the Government said the allegations were false and added that there had been no decision to proceed with any mining project anywhere in the CKGR, as the only known mineral discov-

ery in the CKGR, the Gope deposit, had not proved commercially viable to develop into a mine. On allegations of torture, the Government noted that such allegations had never been substantiated or brought to the attention of Government. The Government said it was aware that in every society people do commit crimes which may include ill-treatment of others but in Botswana, such incidences were promptly investigated and appropriate action taken against the culprits.

- 13.81 The Government concluded by justifying the relocation in the following words: "Government recognizes that some of its citizens are socio-economically worse off than others and require special assistance. It was therefore found necessary to assist in a comprehensive and organized way, the target group which was defined as Remote Area Dwellers (RAD). This group is generally found outside established villages that have social services and other developments. Dominant among this group of people is the Basarwa".

viii. Meeting with Residents of Kaudwane

- 13.82 Kaudwane is located in the Kweneng District, some 600 km from the capital Gaborone. It is one of two settlements to which former residents of the CKGR were relocated. The settlement was first established in 1995 to resettle some residents of the nearby Kutse Game Reserve. Between 1995 and 1997, over 500 Basarwa, former residents of the CKGR, were relocated to Kaudwane. The settlement is inhabited mostly by the Basarwa and the Bakgalagadi ethnic groups.
- 13.83 The delegation met with residents of the settlement on 18 June 2005. During the meeting, many of the residents volunteered to speak to the delegation about their conditions in the settlement. Issues raised by the residents included failed promises by Government, inadequate facilities, police assault, alcoholism and teenage pregnancy, lack of social amenities, employment and other gainful activity, and the manner in which the relocation process was effected.

a). *Relocation from the CKGR*

- 13.84 Regarding their relocation from the CKGR, the residents claimed they were forced to move. During discussions, they informed the delegation that the Government's tactics included inducement and termination of services. They claimed that the Government physically destroyed their houses by removing structures. Those who had gone into the bush to hunt or to gather wild fruits had their families taken away in their absence. They argued that, that was why families were separated – some staying in the settlements while others are still in the CKGR. They noted that the Government poured out all the water that was in the drums in a bid to punish those who were still hesitating to move.
- 13.85 The residents unanimously concluded that there was no consultation by the Government on the necessity of the relocation and on the type of development model that would be suitable for them if they relocated.
- 13.86 The relocation according to them had destroyed the fabric of the Basarwa family unit as their children had become uncontrollable in the settlement, drunkenness and prostitution were rife and alcoholism and HIV/AIDS were on the increase. They claimed the relocation had demonstrated that Government did not regard the Basarwa as human beings, that they had been reduced to beggars and thieves and were now entirely dependent on Government for living, unlike when they were in the CKGR.
- 13.87 They noted that in view of these experiences, they had not seen any improvements in their lifestyle compared to when they were in the CKGR and urged the Government *"to prepare itself to take us back because it did not fulfil its promises"*.

b). *Failed promises*

- 13.88 Regarding the services at the settlement, the residents noted that when they were relocated to Kaudwane, they were promised a range of benefits, including the installation of water in the settlement, and that they would be given 5 heads of cattle or 15 goats each. That they were also promised other facilities including a clinic, a school and disability grants for those who qualified. Furthermore, they were promised a sewing and agricultural project and that they were going to be issued with Special Game Licences (SGL).
- 13.89 Those who spoke to the delegation indicated that only about 16 households were given cattle or goats, that food rations and some projects were indeed developed. However, they added that most of the cattle and goats had been killed by wild animals, since the area is infested with wild beasts including lions. Some of the residents indicated that they did not know how to take care of live stock or to till the soil. They added that they were receiving monthly food rations of 12.5 kg flour, 10 kg maize flour, 1 kg sorghum, 1 kg cooking oil, 1 kg of dried meat and 2 cabbages. However, over the years, the food rations had been reduced in quantity and some residents had been disqualified from receiving the rations as they were told the rations were for the elderly only. A leather factory established in the settlement had since folded due to lack of support from the Government.
- 13.90 They complained that, in spite of the issuance of the SGLs, they were still being harassed by Park Management Officials when they went out to hunt. They also complained that they were being unjustifiably assaulted by Wildlife Officials. They indicated that they had been reporting cases of torture and assault to local police authorities but no action had been taken.
- 13.91 The delegation met and held discussions in camera with two persons who alleged they had been tortured by Park Management Officials. They gave a detailed account of how they were treated and one of them showed scars on his legs allegedly as a result of the

torture. The alleged victims claim they were tied to a tree and whipped all over their bodies. They complained of chest pains, and had wounds on their heads.

c). Education

13.92 The residents confirmed that the Government had built a school in the settlement for learners up to grade 7. However, they claimed that the curriculum in the school was aimed at destroying the Basarwa culture. They claimed the learners were not taught in the San language but in Setswana and English. Some of the residents indicated that their children had become uncontrollable as a result of what is taught to them in school. They indicated that teenage pregnancy and the use of condoms, hitherto unheard of within their community, had become common phenomena in the settlement.

d). Employment

13.93 The residents indicated that, due to drought and the poor agricultural know-how of the Basarwa community, food was scarce in the settlement and people were struggling for survival, some residents going for days without food. They admitted that due to the lack of food, some residents had resorted to killing some of the cattle and goats they were given by Government. The residents had become completely dependent on Government handouts for survival.

13.94 They said the settlement provided no employment activities and, as a result, there was a high rate of unemployment. Since they do not know how to cultivate and have either eaten their livestock or had it eaten by wild animals, and since there are restrictions on hunting, they spend most of the time around the settlement. This has resulted in most of them taking to alcohol abuse.

e). *Representation*

13.95 They complained about the lack of representation of the Basarwa in the Management Committee of the settlement, arguing that although the majority of the residents in the settlement were Basarwa there was no Basarwa on the Management Committee to oversee the running of the Settlement. They said that, as a result of the lack of representation, grievances from the Basarwa community were never treated with the seriousness and urgency they deserved.

ix. Meeting with Residents of Gugama

13.96 On 19 June 2005, the delegation travelled to Gugama in the CKGR to meet the residents who had either refused to be relocated from, or had returned to, the CKGR after having been relocated.

13.97 Contrary to the Government's assertion that there were only 17 residents in the area, the delegation met a total 37 residents – 12 adults and 25 children. The delegation was informed that some residents had gone to fetch food and water in nearby settlements and that the total number of residents was in the region of 70 to 100. The delegation was informed that many of those who had been relocated were returning to the reserve after realising they had been tricked by Government.

13.98 At first the residents were suspicious of the intention of the delegation and wanted to know how the delegation was different from the many other organisations that had been interviewing them over the years but doing nothing about their plight.

13.99 Commissioner Chigovera introduced the delegation and informed the residents about the African Commission and its mandate. He explained the purpose of the mission and noted that the delegation was simply gathering information from all relevant parties and would then compile a report based on the information gathered. The delegation would then make its recommendations to the Afri-

can Commission which will then engage the Botswana Government on how to deal with the situation of indigenous communities in the country.

- 13.100 After this explanation, the residents said they were happy the delegation was not from Government, but an African body and that they hoped the delegation would be able to find a lasting solution to their problems.
- 13.101 They stated that they had been terrorised in several ways by the Government, to force them to move. One old lady informed the delegation that the Government took away all her children and she had not seen them for over three years. The children were not allowed to go into the CKRG without a special permit from the authorities and the procedure to obtain the permit was so cumbersome that they do not even bother to attempt it. One old man also claimed that his wife was taken away and given a job in Kaudwane just to keep her from returning to the CKGR. He had been trying over the years for his wife to return, to no avail. The residents claimed they were under persistent fear of Government harassment.
- 13.102 They informed the delegation that they had virtually been abandoned by the Government. That the water tanks installed by the Government had been destroyed and the remaining water that was there poured out of the drum in a bid to force them to leave. They said they relied on wild roots and desert melons for water. They also complained that, because of the severe drought, even the roots and the melon they were relying on were getting scarce and growing smaller – making it more difficult for them to get water. They complained that, to further frustrate them, the Government had driven most of the animals from the area where they used to hunt by using low-flying airplanes.
- 13.103 The residents also informed the delegation that when the process of relocation had started, Government held a meeting with them to discuss the matter. They agreed on a Management Plan which

entailed the establishment of Community Zones (conservancies) whereby residents would reside within the reserve and would be trained in wildlife management or as tourist guides. They collectively agreed that when the Community Zones were established, they would discipline themselves to ensure that nobody hunted outside the designated hunting areas. To their surprise, Government unilaterally abandoned the idea without giving them any explanation and simply forced them to relocate. They claimed that for several decades they had practiced sustainable hunting and that was why the animal population in the CKGR was on the increase.

- 13.104 Some of the residents considered the CKGR as their ancestral land, a place where they had buried their loved ones, and believed that the spirits of their forefathers would haunt them should they leave the area. One man complained of losing his wife and two children after moving to Kaudwane and believed that, had they not moved, they would not have died.
- 13.105 Some of the residents, who had been relocated and returned, informed the delegation that conditions in the settlements were unbearable for them. That the Government never fulfilled the promises made to them when they were being relocated and they became frustrated.

x. Meeting with NGOs at Ghanzi

- 13.106 Due to lack of time, the delegation could not travel to all the nine districts of the country. It therefore made arrangements for NGOs working on indigenous issues from the other districts to meet with it in Ghanzi, the capital of Ghanzi District. It is worth noting here that Ghanzi District has the highest concentration of the Basarwa community. It is estimated that about 45 – 50% of the population in the district is Basarwa.
- 13.107 The NGOs at the meeting came from Ghanzi, Kgalagadi, Ngami-land and Kweneng districts and included:

- D'Kar Trust;
- Komku Trust;
- First People of the Kalahari (FPK);
- Kuru Family of Organizations (KFO);
- Working Group on Indigenous Minorities in Southern Africa (WIMSA), Botswana; and
- Ghanzi Craft.

13.108 After introducing the delegation, Commissioner Chigovera briefed the NGOs on the purpose of the Mission and apologised for the delegation not being able to meet them in their respective Districts. He said as organisations working in the field with the indigenous communities, the delegation would like to know the major concerns regarding the protection of indigenous populations in the country.

13.109 The NGOs began by informing the delegation that there was no collective term for the people being referred to as 'Basarwa' or 'San' or 'Bushmen'. They said the term 'Basarwa' was a Setswana term meaning 'those without cattle', that 'San' was used by European anthropologists as an umbrella name for all the San communities and 'Bushmen' was a term coined by European anthropologists. They noted that they had come to accept all the terminologies but added that the Basarwa/San/Bushmen consisted of different ethnic groups, speaking different languages.

13.110 The NGOs also said that Ghanzi District used to be almost exclusively San but respective Governments had been selling the land to white farmers, pushing the San to the reserves. After having settled in the reserves, the Government was now relocating them into some other area. They wanted to know when the relocation of the Basarwa would stop so that they could settle in a place they could call theirs. They claimed that they could not consider the plots in the settlements as theirs because they had no legal titles to them.

13.111 The issues raised by the NGOs during the meeting revolved around the following areas – leadership, education, culture, discrimination and land rights, development model and relocation.

a). Leadership

13.112 Regarding leadership, the NGOs stated that the Basarwa do not have any leaders at either local or national level to articulate their grievances. They said that whatever leadership they selected, the Government would turn the leaders against their own people. They said it was a misconception that the Basarwa do not have a leadership structure. According to the NGOs, there was a clear leadership structure defined in accordance with the Basarwa culture. They claimed the political leadership in Botswana had refused to recognise the Basarwa leadership structure because they were using Tswana benchmarks to define what leadership should be. They also claimed that San leaders had in the past been killed by Bantus and later Boers in a bid to eliminate any San leadership. They claimed this was intended to instil fear among the San community and suppress their leadership aspirations.

b). Education

13.113 On education, the NGOs alleged that the Education Policy of the Government did not provide for a conducive environment for promoting the education of the Basarwa community. According to the NGOs, the fact that it was Government policy that education be in English and Setswana only put the San at a disadvantaged position since they cannot compete favourably with their Botswana counterparts. They also said no teaching nor reading material had been developed in the San language as the Government had done nothing in that direction since independence. They added that if the Government was serious, it could still introduce and implement affirmative action policies which would quickly develop the requisite curriculum for mother tongue education for the San.

13.114 The NGOs claimed that the performance of the Basarwa pupils in school had continually been dropping because the children had been taken away from their parents. They claimed some children were taken away without the consent of their parents. Because of this separation, they claimed the children do not concentrate in school as the new environment is strange to them. They noted that there were schools nearby where the children could have been taken, but that the Government had deliberately decided to take the children far away knowing fully well that this action would affect their performance in school.

c). Culture

13.115 The NGOs complained of the disregard for San culture by the authorities. They said that recognising them as indigenous peoples as stipulated under international instruments brought with it a range of socio-economic and cultural rights that accrue to indigenous communities around the world. They argued that the fact of denying their indigeneity was an indication that the Government did not recognise them and their indigenous culture and did not want them to benefit from the rights that accrue to indigenous populations.

13.116 They claimed that because they were not accepted as an indigenous community, their culture was gradually dying, noting that Basarwa had to deny or hide their identity in order to survive in society.

13.117 They complained that they do not benefit from their cultural activities, that they are exploited by both the Government and outsiders, such as tourists. They added that their artwork, displayed in various public places, and their medicinal plants, their cultural dances, etc., were being misused.

13.118 The NGOs also alleged that Basarwa customary marriages were not recognised while the customary marriages of other tribes were. They said that because of this arrangement, many Basarwa

women had left their marriages with Basarwa men and had children with Tswana men in the mistaken belief that they would be legally married to the latter, but the Tswana men abandon them along with the children produced following the short term affairs and the Tswana men, in most cases, never end up marrying the Basarwa women. The Basarwa claimed this had resulted in a decline in the number of 'real' Basarwa children born over the years and had placed a constraint on the Basarwa men to reproduce themselves.

d). Discrimination

- 13.119 Apart from discrimination in terms of customary marriages, the NGOs also noted that the allocation of land was discriminatory. They said that, unlike other communities, the Basarwa do not have any piece of land they can refer to as theirs. That they had been subjected to relocation by all regimes in Botswana.
- 13.120 The NGOs argued that the Basarwa had been marginalised for a very long time and that to think there was a uniform culture and lifestyle among the Batswana was misleading because it gave the wrong impression that they were all equal. They claimed that the Basarwa did not have the same status with the other ethnic communities, such as the Tswana. They said, for example, that if a Basarwa and a Tswana were to apply for a piece of land, the latter would be given the land because he/she meets the criteria set by the Government. They noted that the basic requirements for one to be given land included, *inter alia*, the possession of 300,000 Botswana Pula (that is, about US\$ 55,000), which they claimed was impossible for a Basarwa to raise. One participant complained that he had applied for land four times but had never been given any. As a result, his herd of cattle had strayed in D'Kar (a town in Ghanzi District) and was grazing in other people's fields. They said that, because of the marginalised position of the Basarwa over the years, they had remained poor and it was believed that they did not have the ability or sufficient resources to develop land.

e). Development models

13.121 The NGOs complained that the development model the Government had initiated for the Basarwa was not the right one. They claimed that the Basarwa were relocated and given cattle to rear. Most of them had not reared cattle in their life and if they were not taught and supported in how to do it, they were bound to fail. That, according to the NGOs, is exactly what happened. The Basarwa considered cattle rearing as Government's way of developing them and they saw it as imposing the Tswana concept of development (where cattle is wealth) on them. They also complained that they were not trained on how to cultivate and, as such, the agricultural land meant for cultivation had been abandoned.

f). Relocation

13.122 On relocation, they claimed that they had been the subject of relocation throughout the history of the country and wondered why it was only the Basarwa who had been subjected to these relocations. They noted that the Basarwa would not, however, be averse to relocation done in good faith and for the public good, provided such relocation was not to an area where their daily livelihood would be compromised. They also noted that had Government consulted the people and explained to them, giving them an opportunity to input on the relocation programme, there would not have been any problem. They said the people were angry at the manner in which the relocation was conducted, the trickery used by the Government, the false promises and the psychological game played on them by taking away family members and destroying services. They said all these things made the Basarwa feel degraded and humiliated.

13.123 The NGOs concluded by making the following recommendations:

- That the Government should accept the concept of indigenous peoples and the Basarwa as an indigenous community in Botswana;
- That the Government should participate at all platforms where issues dealing with indigenous peoples are discussed;
- That the Government should streamline issues of indigenous peoples in both policy and law;
- That the Government should incorporate the land rights of the Basarwa into the Constitution;
- That the Government should adopt the use of mother tongue education for the Basarwa as an affirmative action measure;
- That the Government should accept to promote and gazette Basarwa leadership as traditional leadership; and
- That the Government should observe the culture of relevance and tolerance in its Vision 2016.

xi. Meeting with Residents of West and East Hanahai

13.124 West Hanahai is predominantly inhabited by the Basarwa ethnic group. A change in the land tenure system by the Government allowed the Boers in Ghanzi to privatise large tracts of lands which originally belonged to and were inhabited by the Basarwa. As a result, the latter were arbitrarily driven away from their ancestral lands, which were later fenced into ranches.

13.125 To address the problem of landless Basarwa, the settlements of East and West Hanahai were established in 1978 by the Government to resettle them. According to a 2001 census, the number of people in West Hanahai was 560. There were 100 households with an average of 5 persons per household.

13.126 The delegation met with residents of West Hanahai on 21 June 2005. After introducing the delegation, Commissioner Chigovera informed the more than 30 residents who attended the meeting of the purpose of the Mission. He also informed them that the delegation had been meeting and discussing with other communities across the country.

- 13.127 Most of the people who spoke blamed the backward situation of the Basarwa on the Tswana. They claimed the violation of the human rights of the Basarwa started when they came into contact with the Tswana community, adding that during that encounter their leadership was eliminated by the Tswana and that this was the beginning of the loss of identity, citizenship and human dignity of the Basarwa in Botswana. They added that very few Basarwa aspire to leadership through fear of being eliminated. This has resulted in the Basarwa not having any representation in any local, regional or national governance structure.
- 13.128 They claimed that the lack of representation has resulted in the Government treating the Basarwa as sub-human, claiming that whenever their wellbeing conflicted with that of animals, they were usually the victims since the Government preferred animals to the Basarwa. They also added that as a result of the way Government regarded and treated them, they were never consulted on anything, including relocation, where they would be relocated to and the kind of development model that would suit them.
- 13.129 They indicated that since 1978 when they were relocated, the Government had not met any of its promises – noting that Government had promised income generating projects, jobs, social services, yet what they had was unemployment, poverty, misery and total dependency. They added that their cattle had been stolen by the Tswana and when they reported this to the police, nothing was done. They added that they did not have enough grazing land for their cattle and when the cattle strayed out of the little area allocated to them, they were impounded by Council Officials. Since they usually do not have money to pay for the animals, they abandon them to the Council Officials, who sell them to others.
- 13.130 The residents noted that while they were in the farms, they were self-sustaining as they had everything from the forest but after almost thirty years in the settlement, there had been no improvement in their lives; rather they continued to depend on Government for handouts.

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- 13.131 They concluded by stating that the reason the Basarwa from the CKGR were resisting relocation was because of the experiences of people like them who had been relocated earlier, noting that relocation had done more harm than good to the Basarwa community in Botswana. They said the Basarwa were the only ethnic community that had undergone constant humiliation in the form of relocation. This has resulted in them not having a home of their own and disrupting the social fabric of the Basarwa community.
- 13.132 After meeting with residents of West Hanahai, the delegation travelled to East Hanahai, another settlement established in 1978 to resettle the Basarwa community from the Ghanzi Farms. The delegation could not hold a meeting in East Hanahai as it turned out that the Chief of the Settlement and most of the adult population had travelled to Ghanzi to collect their pension. The settlement was virtually empty save for children and a few women. The delegation decided to make a tour around the settlement and observed that it was very similar to West Hanahai both in terms of size and infrastructure.

xii. Meeting with Residents of New !Xade

- 13.133 New !Xade is one of two settlements established by the Government of Botswana to resettle former residents of the Central Kalahari Game Reserve. Most of the residents in the settlement came from Old !Xade, situated in the CKGR.
- 13.134 New !Xade was established in 1997 and has a population of more than 3,000 inhabitants, over 95% of whom are Basarwa. The settlement has a mixture of modern and local infrastructure, the latter being the huts in which the residents live and the former the Government structures including a clinic, a school and a poultry factory.
- 13.135 The delegation visited New !Xade on 21 June 2005 but could not meet with the residents because the Chief of the Settlement, who had been informed of the arrival of the delegation four days in advance, had decided to leave the village without informing his

subordinates about the delegation. When the delegation arrived at the settlement, both the local police, the traditional leaders and some special branch policemen were adamant that the meeting with the residents could not proceed as the Chief was not present and had left no instructions about the meeting. The delegation spent more than three hours trying to convince the local officials that the mission had been approved by the Government of Botswana and was being coordinated from the Office of the President but they would not budge. The delegation suggested that the special branch policemen should communicate with the Ghanzi office to confirm the meeting but they were not willing to do so. After trying for hours, the local police commander on the settlement tried to radio her colleagues in Ghanzi but reported that she could not reach them as they were out for lunch. As the delegation was already running late for its appointment in West Hanahai, it decided to leave New !Xade without having a meeting with the residents.

- 13.136 It is worth noting that there was no telephone communication in New !Xade and the only way to reach the outside world was through the radio communication, owned and used only by the police. The delegation could therefore not communicate with Gaborone on 21 June to explain what had happened. In the morning of 22 June 2005, the delegation got in touch with the Office of the President in Gaborone, which promised to inform the District Officer of Ghanzi about the meeting. When the delegation met the District Officer, he claimed he had not been informed about the meeting. He however agreed to send his Deputy to accompany the delegation to New !Xade for the meeting. The delegation then travelled to New !Xade in the latter part of the morning of 22 June and held a fruitful meeting with residents of the settlement. Unlike in other settlements where the participants were mostly old people, the meeting in New !Xade was dominated by young adults. During the meeting, the residents discussed a range of issues affecting their lives, including in particular their thinking on the relocation exercise.

a). *Relocation*

- 13.137 They claimed that they were better off in Old !Xade in the CKGR than they were in New !Xade, adding that they had schools, water, food rations and saw no improvement in their lives in the new settlement. They said the relocation was not necessary as they were happier in Old !Xade than they were in New !Xade.
- 13.138 They said the relocation, which was carried out in two phases, was a “carrot and stick” exercise whereby the Government provided incentives but at the same time decided to use force against anyone who refused to relocate.
- 13.139 The first phase started in 1997 and, during that phase, the Government promised that it would relocate only those who volunteered to move. It promised those who wanted to relocate many services including water, hospitals, employment and the provision of herds of cattle and goats. The residents claimed that because of these promises some people were enticed to move. However, some who were still sceptical decided not to relocate. This notwithstanding, they claimed the Government promised it would continue to provide services even to those who did not relocate.
- 13.140 On 1 February 2002, the second phase began. During that phase, they claimed the Government brought trucks and forced those who had not relocated and threatened to stop services in the reserve. They claimed that the siblings of those who were not around were taken away, and those who were in the bush had their huts physically removed and taken away, explaining why families were separated - children were taken away from their parents and spouses were also separated. This notwithstanding, some residents still decided not to relocate. They claimed the Government then decided to recruit thugs to destroy the water pumps, pouring out water that was in the drums and terminating other Government services in the reserve.

- 13.141 The residents argued that the Government's action was well calculated. That they had lived without Government services (such as water, schools, clinics, etc.) for decades but when Government introduced those services they abandoned their natural sources of livelihood and became dependent on Government services. Realising that they were dependent on Government for livelihood, the same Government then decided to withdraw those services, thus making living conditions in the reserve unbearable. They concluded that these unbearable conditions were what forced many people to leave, not because they actually wanted to relocate.
- 13.142 They claimed the Government never bothered to consult them on the necessity of the relocation, the place to be relocated to or the type of activities they would like to be engaged in, in the new settlement. They noted that the Government had decided to think for them since the Government believed they could not think for themselves.
- 13.143 They claimed conditions in the settlement had resulted in vices such as prostitution, alcoholism, drunkenness and teenage pregnancy that were not part of their lifestyle in Old !Xade, that parents had completely lost control over their children.

b). Education

- 13.144 On education, the residents noted that the Government had built a school to teach learners up to grade 7. However, they were concerned that most of the teachers were Tswana and there was not a single Basarwa teacher. They also said the learners were taught in either English or Setswana and not in their mother tongue. The residents, especially the parents, were concerned about the school curriculum, noting that they were concerned about the content of what the learners were being taught. They said their children always tell them that they are being told in school that they should study in order to go home and educate their parents to come out of their primitive ways. They said that, because of the kind of edu-

cation their children were receiving, they had lost control over them and the family integration associated with the Basarwa tradition had been seriously jeopardised. Children had become engaged in alcohol and drug abuse and early and teenage pregnancy had become a common phenomenon.

c). Services

- 13.145 The residents informed the delegation that they had become destitute and beggars as they could no longer provide for their families. That they depended entirely on Government handouts, which had become irregular. They said there was no income generating activities in the settlements and they had been prohibited from hunting. Lack of activities had resulted in boredom, pushing most of the residents to engage in drinking, and children in sexual activities. They also complained about the high rate of unemployment, which had resulted in poverty and misery.
- 13.146 The residents also complained that they were restricted from leaving the settlement. Entry into the CKGR was restricted to three categories of people only – tourists, those going in for religious rituals (who need a special permit from the District Commissioner) and those residents who did not relocate.
- 13.147 They said they needed a special permit to leave the settlement, especially if they wanted to visit relatives who were still in the CKGR. They have to write to the Ministry of Environment in Gaborone for the special permit and it is very difficult, if not, impossible to get the permit. One young man said he had not seen his mother in Metsiemanong, in the CKGR, since he was forcefully relocated in 2002. The same youth also informed the delegation that his father had died at the CKGR and that he was worried the same might happen to his mother. And the reason they could not visit each other was not only because of the permit restrictions, but also because there was no transportation.

xiii. Meeting with the Law Society of Botswana

- 13.148 The delegation met with the Law Society of Botswana on 23 June 2005. Commissioner Chigovera briefed those present at the meeting on the purpose of the Mission and said the delegation would like to know whether the Law Society dealt with indigenous issues in general and Basarwa issues in particular.
- 13.149 The representatives of the Law Society informed the delegation that there was no specific programme within the Society dedicated to indigenous issues. However, the Society had a Human Rights Committee that handles human rights cases pro bono. They noted that the Law Society was a small organisation and had financial constraints. They added that the Society would have wanted to take a position on the Basarwa issue but had not yet done so.
- 13.150 On education of the Basarwa, the representatives of the Law Society noted that a very insignificant number of Basarwa go through the education system and this could be attributed to the fact that they were not taught in their mother tongue.
- 13.151 The Law Society also pointed out that regarding legal protection of the rights of the Basarwa, there was no legal protection for the Basarwa, that the Government was considering amending Section 14 (3) (c) of the Constitution that provided some protection to the Basarwa community.
- 13.152 They concluded by noting that the problem of the Basarwa arises from them being Basarwa in the first place. That because of being Basarwa, they have been marginalised and down trodden by other members of the Botswana community.

xiv. Combined Meeting with Government Officials

- 13.153 Subsequent to its meeting with the indigenous communities, the delegation sought another meeting with the Government to clarify

fy certain issues raised by the residents including – torture by Park Management officials, forceful relocation, the distribution of food rations, the distribution of cattle and goats, etc. The Government representatives at the meeting, from the Ministries of Foreign Affairs, Office of the President and Local Government, repeated the position of the Government as stated during the first meeting with the delegation. They maintained that allegations of torture and the theft of cattle had never been brought to the Government’s attention.

14. Analysis and Observations by the Delegation

14.1 For nine days, the delegation met and held discussions with a wide range of stakeholders working on indigenous issues in Botswana, including relevant Government officials, civil society organizations and indigenous communities themselves. During each meeting, the delegation briefed participants about the African Commission, the establishment of the Working Group and the purpose of the Mission. The delegation posed questions, made observations and exchanged views with different stakeholders on the situation of indigenous communities in Botswana.

14.2 This section provides an analysis of the major findings and/or observations made by the delegation during the Mission. These findings can be grouped under the following categories: relocation - diamond claim, destruction of pumps, termination of services, consultation - education, representation, human rights, discrimination and marginalization, and Government attitude.

a). Relocation and land rights

14.3 The Basarwa complained that they had been subjected to relocation throughout history and that the recent relocation from the CKGR was demonstrative of the fact that they continued to be subjected to humiliation. They said the relocation from the CKGR in particular revealed the Government’s determination to keep them

perpetually marginalized, arguing that they were never consulted and that essential services were terminated to force them to leave.

- 14.4 After meeting with major stakeholders, it was the view of the delegation that the Basarwa community had been subjected to relocation across the country by every subsequent regime since colonialism. They were moved in 1961 from Ghanzi Farms into the CKGR, some were relocated from the Ghanzi Farms in 1978 to settlements in West and East Hanahai and between 1997 to 2002 those relocated to the CKGR were further relocated to New !Xade and Kaudwane. There was a justifiable fear among the Basarwa that this relocation was targeting only them and they believed it was going to continue. While there was nothing to suggest that the relocation was targeting the Basarwa and was going to continue, the fact that they had been hardest hit through the process avails sufficient reason to them to believe the relocations would continue.
- 14.5 The fact that they have no legal titles to the land they are currently occupying provides enough reason for concern. Unlike other tribes or ethnic groups in the country, the Basarwa are the only ones that do not have any communal land to call their own. Although they form the single largest ethnic group in the Ghanzi District, constituting more than 45% of the population, they remain scattered in small settlements working as farm labourers and, when their services are terminated, they are usually kicked out of the farms and left with nowhere to go. They believe the Government can put an end to this destitute situation of theirs by allocating the Basarwa land they would consider theirs.
- 14.6 The Government argues that in terms of Botswana law, every Botswana can apply for land and, should they meet the requirements, be given land anywhere in the country. The Government claims that there is no community or ethnic group that can claim ownership of a particular area of land. According to the Government, it is true that one can find a concentration of a particular ethnic group in a particular area, but this does not mean they own that land nor does it exclude other groups from applying to settle there.

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- 14.7 However, both the local NGO community and the Basarwa community confirm that all other ethnic groups in the country except the Basarwa have pieces of land in the country they can identify with. They argued that even though the law indicates that any Motswana can apply and be given land anywhere in the country, it was not always the case and priority was always given to persons from that particular area, an indication that the different ethnic groups identify with particular areas which they consider their villages. This does not apply to the Basarwa. The latter cannot claim any particular piece of land as theirs.
- 14.8 Regarding the relocation of residents from the CKGR, the delegation is of the view that the Government's approach was not properly coordinated. There seemed to have been inadequate and inconclusive consultation. To use the words of the residents of New !Xade, the Government adopted the carrot and stick approach and those who refused the carrot were penalized with the stick by either being forcibly removed or having services terminated with immediate effect.
- 14.9 According to the Constitution of Botswana, all citizens of the country have land rights. In addition to the Constitutional guarantees, Botswana Government white papers, such as the Tribal Grazing Land Policy (TGLP) of 1975, state specifically that all Botswana have the right to sufficient land to meet their needs. The San's land rights, however, have never been recognized fully. Living traditionally as hunters and gatherers, they were seen as having no land of their own and, since the late 19th century, they have gradually lost their customary land areas to settlers, cattle farmers, natural parks, game reserves and other Government programs. For the San, this process has entailed loss of land tracts that had economic as well as cultural significance and a long series of relocations into Government established settlements. Although it is being stated that the Government provides the resettled San with land, only few have legal titles over their arable plots as the adjudication process is long, complicated and expensive. Few, if any, San have been granted rights over grazing or water rights, which means that

they have little control of sufficient land to sustain their livelihoods.

- 14.10 Many of the former residents confirmed that they were tricked by Government, that they were promised several benefits including employment, facilities such as water, health care, education for their children and food rations etc. They claimed most of them left on the basis of these promises and, had they known that the Government would not fulfil its promises, they would not have left. They claimed some decided to stay behind just to see what would happen and, after realizing that there was no improvement in the lives of those who relocated and that some were even returning to the CKGR, they claimed they were vindicated.
- 14.11 The Government claims it used the weapon of persuasion to remove the residents from the CKGR. However, there was sufficient evidence to suggest that physical force was used. The fact that they were not consulted, that children and/or spouses were separated to force the parents to relocate, that people's belongings including their huts were dismantled and taken away to the new settlements in their absence, and that water pumps and other services were destroyed, illustrates that not only was physical force used but that the Government also adopted a tactic of coercion and intimidation.
- 14.12 A question that was of concern to the delegation was whether the residents of the CKGR were consulted regarding the relocation and also regarding the development model they would have liked to pursue when relocated. The Government claims it consulted the people, that as a matter of fact, consultations started as far back as 1985 after the Government Fact Finding Commission on the CKGR.
- 14.13 The residents and NGOs spoken to did not refuse Government's assertion that some consultation did take place but noted that the consultation was not to discuss with the residents how they could be relocated. It was rather a meeting to inform the residents about

Government's decision to relocate them and where. When the residents made suggestions on how they could be useful in the management of the Game Reserve through the establishment of Community Zones or Conservancies, the Government indicated that it would consider the idea. Rather than returning to the residents to brief them on whether their suggestion was helpful, the Government simply went and asked them to get ready to be relocated.

- 14.14 When the relocation exercise started, and having realized the vulnerable situation of the Basarwa, the local NGO community established the Negotiating Team to try and discuss with Government the best way of implementing the relocation exercise. Over several years (1997-2001), the Negotiating Team attempted to establish dialogue with the Government of Botswana, but for a long time the Government did not respond to their approach, and meetings with Government officials in the years 1999-2001 never bore fruit, and the Government finally pulled out citing foreign interference in the process.
- 14.15 It must be noted that both in terms of its Constitution and its international human rights obligations, Botswana has not only the obligation to promote and protect the rights of the Basarwa as indigenous persons but also to ensure that they take part in determining their own destiny. In terms of the African Commission's decision on *Communication 155/96 – Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*,⁶ the Government of Botswana has the duty to respect, promote and fulfil the rights of the Basarwa people. In this communication, the African Commission held that "Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties. This duty calls for

6) Adopted at the African Commission's 30th Ordinary Session held in Banjul, The Gambia from 13-27 October 2001. The Communication alleges that the Federal Republic of Nigeria has been directly involved in oil production through the State oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC), and that these operations have caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people. The Communication alleges further that the oil consortium has exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing of toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The consortium also neglected and/or failed to maintain its facilities causing

positive action on part of Governments in fulfilling their obligation under human rights instruments.”⁷ Within the context of the relocation from the CKGR, this does not seem to have been the case.

- 14.16 The Government development model for the Basarwa was also conceived without their participation. The Government never consulted the residents on the kind of activities they would like to pursue. The Government simply conceived the development programme single-handedly and imposed it on the residents. At the new settlements, what is clearly visible are the monumental Government structures widely regarded by most NGOs as white elephants. In both Kaudwane and New !Xade, the Government houses, clinics, schools and agricultural projects represent modern Botswana. However, there are very few teachers in the schools, the clinic in Kaudwane has one non-resident nurse, the agricultural project in New !Xade and the leather making factory in Kaudwane have been shut down due to lack of support from the Government. The residential structures of the occupants look like squatter shacks and completely out of place with Government structures.
- 14.17 The residents were also given cattle, goats and provided with a field for cultivation. There was no proper training on how to rear the cattle and goats and no training on how to cultivate and when. As

... 6) numerous avoidable spills in the proximity of villages. The resulting contamination of water, soil and air has had serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems, that the Nigerian Government has condoned and facilitated these violations by placing the legal and military powers of the State at the disposal of the oil companies. The Communication alleges that the Government has neither monitored operations of the oil companies nor required safety measures that are standard procedure within the industry. The Government has withheld from Ogoni communities information on the dangers created by oil activities. Ogoni communities have not been involved in the decisions affecting the development of Ogoniland. The Government has not required oil companies or its own agencies to produce basic health and environmental impact studies regarding hazardous operations and materials relating to oil production, despite the obvious health and environmental crisis in Ogoniland. The Government has even refused to allow scientists and environmental organisations to enter Ogoniland to undertake such studies. The Government has also ignored the concerns of Ogoni communities regarding oil development, and has responded to protests with massive violence and executions of Ogoni leaders. The Communication alleges that the Nigerian Government has destroyed and threatened Ogoni food sources through a variety of means. The Government has participated in irresponsible oil development that has poisoned much of the soil and water upon which Ogoni farming and fishing depended. In their raids on villages, Nigerian security forces have destroyed crops and killed farm animals. The security forces have created a state of terror and insecurity that has made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmlands, rivers, crops and animals has created malnutrition and starvation among certain Ogoni communities.

7) Communication 155/96, para 57

a result, the residents were unable to produce food to feed themselves. They continuously depended on Government for handouts which declined in quantity over the years. Hunger and boredom have crept into the communities resulting in alcohol abuse, prostitution and other social vices. Due to lack of training on how to keep cattle and the persistent hunger, most of the residents have either eaten or sold the cattle and goats that were given to them. Due to inadequate knowledge of cultivation, they abandoned the fields. The Basarwa regard the Government development model as Government's strategy to impose Tswana culture on them for, as they put it, "the Government thinks development means having cattle like the Tswana".

- 14.18 In terms of the lifestyle in the settlements - New !Xade, Kaudwane, East Hanahai and West Hanahai - the delegation noted that Government had built a school and a clinic in each settlement, there was an abandoned leather factory in Kaudwane and a poultry factory in New !Xade. In Kaudwane, most of the residents were old men in their early 40s on and they were just loitering around with little or nothing to do. The delegation was informed that they had been allocated land for cultivation but that no-one seemed interested in it as they were not used to cultivation. They added that the Government had not shown them what, when or how to cultivate.
- 14.19 The situation was no different in New !Xade. Even though most of the residents spoken to were young, the delegation was informed that the majority of the residents were aged people and the settlement was looking deserted because the old people had gone to Ghanzi, the headquarters of the District, to collect their pension. The two settlements looked like abandoned mine camps with little or no economic activity. At both camps, alcohol abuse was visible from the many people (old and young) seen drunk, and who disrupted the meetings of the delegation, especially at Kaudwane. Apart from the imposing and monumental Government structures, the settlements do not provide any visitor with a sense of hope and future for the residents. Situated hundreds of kilometres away from major cities, the settlements are inhabited by mostly

old and poor people entirely dependent on Government for daily subsistence. This provides them with hardly any income with which to initiate economic activities and provide jobs for the youth.

- 14.20 Regarding Government's explanation as to why services were terminated for residents in the CKGR, the delegation found it hard to appreciate the explanation. The delegation found the Government's argument that providing services to 17 of its own nationals was uneconomical and unsustainable to be incompatible with the tenets of the free, open and democratic society which Botswana purports to be. It is the responsibility of any Government to bring services closer to its people wherever they choose to live, especially if they have been living in an area for many years, as is the case with the residents of the CKGR. There was also the claim by NGOs that the Government was preventing them from providing such services as water to the CKGR people.
- 14.21 The Government itself indicated that those who refused to be relocated would not be forced but were free to find ways on their own to access services at areas nearest to them. This is a manifestation that the Government admits its obligation to provide services to all of its nationals. However, to require old people and very young children to travel several kilometres to fetch water or attend clinic simply because they refuse to be relocated is negating from this internationally recognised obligation. Besides, when the delegation visited the CKGR, the number of residents had increased and there was indication that many people were determined to return. It is therefore not possible to accept Government's explanation regarding the termination of services to residents of the CKGR. Almost all the residents indicated that the services were terminated to force them to leave the area. Some noted that the Government recruited thugs and brought them to the CKGR, gathered them for a meeting and instructed the thugs to destroy the water pumps, pouring out the remaining water that was in the drums.

14.22 The claim that the residents were relocated to make way for diamond prospecting was not substantiated. Very few of the residents alluded to this and the NGOs categorically rejected the claim. The delegation could not be shown any evidence to make it believe that the relocation was motivated by the mining of diamonds. The Government's position is that there was no intention to proceed with any mining project anywhere in the CKGR, as the only known mineral discovery in the CKGR, the Gope deposit, had not proved commercially viable to develop into a mine. As far as could be understood, this position could therefore be regarded as the correct one.

b). Government policy and attitude

14.23 The Government of the Republic of Botswana has adopted a rather dangerous attitude towards the question of indigenous populations in the country. In terms of Government policy, there is no recognition of the fact that the Basarwa form an indigenous community. According to Government, all Batswana are indigenous and deserve equal treatment. The Government considers the Basarwa as a minority marginalized group that became marginalised simply because of their lifestyle and their remoteness to development activities. The Government does not think the Basarwa deserve any special treatment different from other marginalised groups.

14.24 This policy of non-recognition, which local NGOs call a policy of denial, is manifested at the highest levels of the political spectrum. This denial is so strong that the Government has decided to amend a constitutional provision that hitherto afforded some rights to the Basarwa to access services in the game reserve. Some Government officials claim the Basarwa are ungrateful, arguing that they should be grateful to the Government for all the initiatives it has taken to improve their primitive lifestyle. They claim no ethnic group in the country has received the same level of Government attention as the Basarwa, yet the latter continue to complain. The Government attitude towards the question of indigenuity is so strong that persons deemed to be sympathetic to the Basarwa cause are regarded as traitors or unpatriotic.

14.25 Many local NGOs that used to work with Survival International were forced to withdraw their support and denounce the Survival International due to pressure from Government and the public as a whole. The general public, composed mostly of the Setswana speaking ethnic group is also very hostile towards Survival International and regards any national who supports the organization as unpatriotic. The Government attitude has led to an entrenched culture of suspicion and hatred between the Tswana and Basarwa communities as the latter regard the former as domineering and suppressing them while the former regards the latter as ungrateful, primitive, lazy and unpatriotic. By refusing to recognize the Basarwa as an indigenous community, the Botswana Government is refusing to accord the rights that accrue to them as an indigenous community.

c). Education

14.26 Even the Government does not deny that there is a problem with the education of the Basarwa. The latter remain the least educated group in the country and have the highest school dropout and failure rates. Most Basarwa learners hardly complete junior secondary school and even fewer proceed into tertiary education.

14.27 The poor literacy level of the Basarwa has to some extent been attributed to their culture and lifestyle. Their nomadic lifestyle of hunting and gathering means that children do not have a fixed abode as they have to move with their parents. Most Basarwa also do not encourage their children to go to school and prefer them to stay close to them.

14.28 However, it was also observed that the poor literacy and high school dropout rates were the direct result of the educational policy in Botswana. The languages of instruction at all levels of education are Setswana and English. The delegation observed that most Basarwa would prefer to be educated in their own language, at least at the basic level of education.

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- 14.29 The delegation also noted that the decision to take Basarwa learners far away from their parents was also contributing to the poor performance of the learners. It was observed that the Basarwa community is a close community with children having very close affection for their parents in particular and the community as a whole. They always want to live together. Taking them kilometres away from their community for several months impacts negatively on them. Some of the youths spoken to at New !Xade complained that they fail to concentrate in class if they do not see their family members for a long time. Others just stop going to school and decide to return home.
- 14.30 Apart from the separation, it was observed that the Basarwa learners have very low self-esteem. They are subjected to insults from other learners and in some cases by teachers. The Government has constructed hostels for the learners but they find it difficult to integrate with learners from other communities, who mock them due to their poverty, which results in their inability to afford decent clothes and/or school uniforms.
- 14.31 Most Basarwa parents were strongly against the idea of separating them from their children in the name of education. Most parents also believed the school curriculum in Botswana had been developed to destroy the Basarwa culture, lifestyle and disintegrate their families. They regarded the education policy as aiming at inculcating the Tswana culture and lifestyle into the Basarwa, that education was aimed at making the Basarwa learners understand that their parents were primitive and needed to be changed and that this had resulted in the Basarwa parents losing control over their children. This negative perception by the Basarwa parents about the Botswana education system has not been helpful to the Basarwa learners as parents make no efforts to encourage their children to go to school.
- 14.32 The Government has no specific education policy targeting the Basarwa to enhance or improve their level of education. In spite of the above complaints from the parents, the Government has not

indicated an alternative approach to addressing the low enrolment, poor performance and high dropout rate of the Basarwa learners.

- 14.33 The Government was very hesitant when the delegation proposed the use of mother tongue for the Basarwa in elementary education. The Government's argument was that the Basarwa community has several different languages, most of them distinct from each other. The Government argues that the languages have not been developed for use as a medium of instruction and it would be discriminatory to pick one of them to develop at the expense of the others. In New !Xade, the delegation saw a number of learners in school and was informed that none of the teachers was Basarwa. They were all Tswana. Incredibly, 40 years have gone by since independence and yet no attempt has been made to respect the cultural rights of the Basarwa, especially the development of Basarwa literature.

d). Representation

- 14.34 The Basarwa remain the least represented at all levels of the Government structure. As a matter of fact, there are no Basarwa in local and national Government structures. None of the Members of the House of Chiefs nor of Parliament are Basarwa. There is not a single Basarwa in Cabinet or other senior management position in the country. Although Government is trying to amend the Constitution to make it ethnically neutral, there is no indication that measures will be put in place to ensure equal access for the Basarwa to governance structures in the country.
- 14.35 With a population representing 3% of the Batswana, it is grossly unfair that this population is neither represented in Government nor involved in the economic development of the country. The lack of representation means that their grievances cannot be adequately articulated and addressed.

14.36 The Basarwa ethnic group is the only group in Botswana that is ruled by a non-Basarwa chief. All other ethnic groups are ruled by persons from the group. Having to rule a people that one knows nothing about in terms of their culture, lifestyle and needs poses a serious developmental problem and this may explain why the Basarwa have remained lagging behind in terms of development.

e). Human rights, discrimination and marginalisation

14.37 The Basarwa constitute the single largest most marginalised indigenous group in Botswana. They face discrimination through laws and Government policies and such discrimination is manifested even by high ranking public officials. The discrimination has seriously affected the enjoyment of their civil, political and socio-economic rights, leading to a complete exclusion of the Basarwa from the economic and political governance structure in Botswana.

14.38 There is also a noticeable lack of respect for the cultural as well as linguistic rights of the Basarwa, especially in the education system and, unlike other ethnic groups, the Basarwa do not enjoy group rights to land.

15. Conclusions

15.1 This report presents a narrative account of discussions between the delegation of the African Commission's Working Group on Indigenous Populations/Communities and major stakeholders working on indigenous issues in Botswana. The Mission was undertaken at a time when the country was divided over Government's approach to the treatment of the Basarwa, especially their relocation from the CKGR. It also came at a time when the Government had been taken to court over the relocation of the Basarwa from the CKGR, a territory they had traditionally considered as their ancestral home.

- 15.2 The Government argued that the relocation did not target any particular ethnic group and maintained that all Batswana, irrespective of their ethnic origin, residing in areas designated as game parks or national reserves, that is, protected areas, would be moved if their activities became incompatible with the preservation of wildlife.
- 15.3 It is the African Commission's view that the question of indigenous populations and the relocation of the Basarwa from the CKGR in particular is a developmental rather than a legal issue and a question that needs a political rather than a court decision. The court is likely to approach the question from a legal rather than a developmental viewpoint. The issues raised require a rights-based approach to the development problems. An approach that can only be adopted through consultation with all stakeholders – Government, the communities and civil society.
- 15.4 It is the view of the African Commission that the mission succeeded in establishing dialogue between the African Commission, the Government of the Republic of Botswana, the local civil society organizations and the indigenous communities themselves. The main aim of the mission was to work with all stakeholders to enhance the human rights situation of indigenous communities in the country. Approaches to achieving this might be different but through dialogue, the African Commission believes a common ground could be found.
- 15.5 The African Commission makes the following recommendations, which it hopes will be implemented by the Government as a first step towards advancing the rights of indigenous communities in the country. The recommendations are made with due regard to the socio-economic and political situation in the country, and with the understanding that the African Commission would be available at all times to support the Government in their implementation. The recommendations also keep the gateway of dialogue between the African Commission and the Government of the Republic of Botswana open.

16. Recommendations

- 16.1 The African Commission is seriously concerned at the poor literacy and high dropout rate of the Basarwa learners and is worried that this might retard the development of the Basarwa community for generations to come. The Government should therefore take urgent steps to introduce appropriate measures, including mother tongue education for Basarwa for at least the first five years of primary education. As there are several languages, the Government might introduce village schools for Basarwa pupils of each village and train teachers to teach in their languages. It would be necessary for the Government to employ positive discrimination in favour of the Basarwa and adopt policies that would encourage and facilitate the education of the Basarwa.
- 16.2 Village schools should be established in each village, which will provide mother tongue education up to grade five. The Government should train teachers, preferably persons from the Basarwa community, to teach the pupils. Free education up to grade 12 should be instituted for Basarwa learners. Those who dropout of school should be trained in appropriate vocational activities such as carpentry, bricklaying and other professions such as nursing and tourist guides.
- 16.3 The African Commission is also concerned about the stereotyped public attitude and prejudice against the Basarwa, some of it from high-ranking officials. The Government should not only criminalize acts of racial discrimination but should take steps to ensure that all racial manifestations are dealt with in accordance with internationally recognized prescriptions, including Article 2 of the African Charter and Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- 16.4 The Commission notes that the relocation exercise was hasty, uncoordinated and failed to meet minimum international standards, especially General Recommendation XXIII of the UN Committee on the Elimination of Racial Discrimination which recommended

that “no decisions directly relating to the rights and interests of members of indigenous peoples be taken without their informed consent”. Considering the fact that the relocation exercise has already taken place, the Government should continue consultations with the Basarwa, NGOs and other stakeholders. Negotiations should include inter alia, capacity building, including appropriate training for the Basarwa, the type of development model they would prefer and providing them with either individual or communal rights to land. The Government should engage those still in the reserve in more consultation and reinstall services for them. The Government should open up the possibility of allowing people that wish to go back to the CKGR to do so. The Commission recommends that the Government take steps to facilitate the acquisition of land by the Basarwa, such that the Basarwa will in practice be able to acquire land, especially on a communal basis, as this is crucial for them to sustain their livelihood. If needed, the Commission also recommends that the Government employs affirmative action measures in this respect.

- 16.5 The lack of representation at all levels of the political structure is probably one of the reasons why the Basarwa grievances have not been adequately articulated within Government circles. The Government should adopt affirmative action policies to assist the Basarwa develop political representation and provide quota representation for them at various levels of the political ladder.
- 16.6 The Government should explore the possibility of establishing community zones/conservancies in areas that are predominantly Basarwa and train the Basarwa in wildlife management and conservation. They can also be trained as tourist guides and in other activities that would enable them to regard the forest and its resources as theirs. The Government of the Republic of Botswana should consider the experiences of conservancies being practiced in neighbouring Namibia.
- 16.7 The Government should reassess its policy of denying the existence of indigenous populations in Botswana and instead take steps

to comply with its international obligations regarding the treatment of indigenous peoples. To this end, the Government should also ratify the ILO Convention 169 on Indigenous and Tribal Peoples.

- 16.8 The African Commission also notes that Botswana operates under the dualist legal system whereby international treaties and conventions ratified do not form part of the domestic law unless incorporated by an Act of Parliament. To date, however, none of the international human rights instruments Botswana has ratified have been incorporated into domestic law. The African Commission urges the Government to take the necessary steps to ensure the incorporation of international instruments into its domestic legislation in conformity with the African Commission's Resolution on the Integration of the Provisions of the African Charter on Human and Peoples' Rights into National Laws of States adopted at its 5th Ordinary Session held in Benghazi, Libya from 3 – 14 April 1989.
- 16.9 The Government should adopt a participatory approach when developing policies with a bearing on the Basarwa people, such as policies on land, natural resources, relocation and poverty alleviation. The Basarwa must be properly consulted in order for them to have a say on policies that will affect their future.
- 16.10 The Botswana Constitution makes no explicit reference to indigenous peoples or minorities and the protection of fundamental rights in the Constitution is subject to numerous qualifications such as mental health, legal findings, suspicion of wrongdoing, underage, national security, state of emergency, for greater benefit, etc. This broad range of restrictions makes it difficult for individuals, especially indigenous communities, which are generally illiterate. While the Commission recognizes the Government's desire to establish an equitable society through the adoption of an ethnically neutral constitution, it is of the view that such a society can only be attained if all members of the society are raised to a level where they are able to access their rights on an equal footing. At the moment, the Basarwa are largely disadvantaged. The Government

should institute affirmative action legislation or policies that favour the Basarwa in all sectors of the economy, including political representation, education, health care, etc.

- 16.11 The African Commission notes with concern that in spite of the fact that Botswana ratified the African Charter in 1986, it has not submitted a single report to the African Commission. The African Commission therefore urges Botswana to submit its State Reports to the African Commission in conformity with Article 62 of the African Charter. The African Commission recommends that Botswana indicate in its report to it the measures it has taken to implement the above recommendations and any difficulties it might be facing in implementing them.

ANNEX 1

Responses to the Working Group on Indigenous Populations/ Communities of the ACHPR

1.0 Introduction

The Government of Botswana appreciates opinions of others including those of international civil servants of organizations of which she is a member. It does however value such opinions if those who make them are sincere and objective. It expects that assessment of its performance should take into account the following:

- (a) Efforts made by the country to uplift the lot of the general populace over the years;
- (b) On-going efforts by Government to address problems marginalized groups might be facing;
- (c) Political sensitivities informing Government policies and practices.

This therefore means that those who prepare such reports must thoroughly familiarize themselves with situations in the countries they target.

To the disappointment of the Botswana Government the Report by the Special Rapporteur on Indigenous populations deliberately downplays the bigger picture about Botswana and instead chooses to use the information largely gathered from non Governmental organizations as the basis on which to judge Botswana. The unfortunate thing about such a report is that it is not helpful to Botswana or to the people it purports to speak for.

As it will be observed below, a lot of opinions by the Special Rapporteur are based on inaccurate information and probably the attitude towards Botswana the Special Rapporteur had from the onset.

2.0 International Human Rights Obligations

2.1 Paragraph 9.1

Botswana is not a party to the International Covenant on Economic, Social and Cultural Rights nor to the 1st Optional Protocol to the International Covenant on Civil and Political Rights.

2.2 Paragraph 11.4

The suggestion that Basarwa are either chiefly inhabitants of the Kalahari Desert is misleading. Basarwa are spread throughout the country. While it is true that Basarwa form a large proportion of the marginalized groups, they are not the only group in that position. It is also wrong to suggest that they do not have political representation. Like any other groups in Botswana, Basarwa participate in the electoral process to vote for members of Parliament, Councillors, Land Boards and village development committees. In villages where they are dominant, they have been able to elect representatives of their own ethnic group. As a matter of principle Botswana does not encourage elections on ethnic basis but on merit which is why despite the almost total absence of people of European origin in rural areas, some have white members of Parliament.

2.3 Paragraph 11.5

2.3.1 The paragraph seems to imply that the CKGR was established only to protect the food supply of some Basarwa groups whereas the major objective was to create a Game Reserve to protect wild life. In 1985 Government commissioned a Fact Finding Mission to investigate equitable measures that would facilitate environmental protection and wildlife conservation while promoting the so-

cio-economic development of residents of CKGR. Government decided in 1986 to persuade CKGR residents to relocate to places of their choice outside the reserve. Thereafter Government held continuous consultations with the residents until 1997 when most volunteered to relocate to settlements now known as Kaudwane and Kgoisakeni (New Xade). The relocates were not only Basarwa but also Bakgalagadi who constituted 40% of the residents of the Central Kalahari Game Reserve.

- 2.3.2 As indicated above consultations were held with the CKGR residents. It was difficult to appreciate the Negotiating Teams demand that Government could only consult the residents through them. In the meantime, people continued to voluntarily relocate and had formed structures through which consultations were continued. Therefore, the conclusion by NGOs that the relocation was forced, has no basis. If there was any forceful relocation, there would not be any people remaining in the reserve. Those who did not want to relocate were left alone and to-date they are still there.

3.0 Observation of the Court Case

3.1 Paragraph 13.7

- 3.1.1 Delete the words “in his capacity as recognize agent”.
Replace with the words “in his capacity as legal advisor”.

3.2 Paragraph 13.8 – 13.12

- 3.2.1 These are issues still under consideration of the Court and it is deemed wise to leave them for the Court to decide without prejudice.

3.3 Paragraph 13.21 – 13.24

- 3.3.1 We do not know which Basarwa Development Policies/Programmes the UB/SBRP referred to. Realising that the Basarwa commu-

nities were under threat of being marginalized, in 1974 Government introduced with donor assistance, the Bushmen Development Programme. This programme was replaced by the Remote Area Development Programme in 1978 also with Donor assistance especially from Norway. The Government took this decision because the word "Bushmen" was found to be politically unacceptable and also because the Remote Area Dwellers included non Basarwa communities. It will be appreciated that Botswana affords its citizens equal treatment in general, but however, does have programmes meant to address special challenges facing the most disadvantaged regardless of ethnicity. For all programmes, efforts are always made to involve the people concerned right from the beginning of projects or programmes to be implemented. It has to be appreciated however, that the outcome of any consultations does not necessarily please everyone. It is unfair to treat the information of the few who choose to differ with the majority as if they represent the whole community.

3.4 Paragraph 13.84 – 13.88

- 3.4.1 It is not clear what mode of discussions is referred to in the report, how they were conducted and who participated in the discussions. To suggest that residents unanimously concluded that there were no consultations is misleading. Several meetings were held in the reserve by Government officials and ministers on the issue of relocation.

3.5 Paragraph 13.86

- 3.5.1 It would have been helpful if the report provided comparative data on the situation while at CKGR and while outside. It does not help to make sweeping statements on such serious matters. At least we know that more than 50% the former residents of CKGR were registered as destitute depending on Government relief. The services which were provided in the reserve cannot be compared with those provided at the new villages. As promised basic social services were provided at the settlements, such as schools, health

facilities, kgotla offices, extension offices and officers and portable water. Compensation was paid as promised and the Remote Area Development Programme is available for residents. Government is not aware of any other promises it made, which were not met.

3.6 Paragraph 13.97

3.6.1 The Government assertion that 17 residents remained in the CKGR during relocation is correct. Since the controversy over the relocation arose, there are groups which normally mobilize people outside the CKGR to be inside the Reserve, whenever there are foreign visitors to the area in order to give the impression that there are many people still remaining in the Reserve. This explains why the delegation could have found a higher number than is usually the case.

3.7 Paragraph 13.137

3.7.1 It is strange that people could claim that they had better facilities in Old Xade, yet what is available in New Xade is by far more and of better quality e.g. at Old Xade they had a health post while in New Xade they have clinic with a maternity ward. The services in the reserve were occasionally provided while at the new settlements they are available on a regular basis.

3.8 Paragraph 13.144

3.8.1 The success rate of primary school leavers at examinations for New Xade has always been good despite these criticisms. In fact in 1999 New Xade had the best standard seven results in Ghanzi district. In 2005 New Xade had 100% pass and were the best compared to other RADs settlements. Therefore the use of non-Basarwa teachers at such school does not seem to have any negative impact on the performance of children. Government has in place a policy to teach some children in their mother tongue for the first five (5) years., unless if we only want to promote tribalism.

3.9 Paragraph 15.3

3.9.1 The decision to take the matter to Court rests with a group of Basarwa who did so with the advice of some NGOs. The Government on its part had a right and a duty to answer the charges. It is unfortunate that some of the non-Governmental organizations which claim to represent Basarwa treat them as if they are incapable of taking decisions on their own. Leadership such as the chiefs or councilors Basarwa have chosen for themselves are therefore treated with contempt or ignored by such NGOs.

4.0 Meeting with University of Botswana

4.1 Paragraph 13.17 - 13.8

4.1.1 The name of the Project coordinator should be "Dr K. Nthomang" not Mthomang. Meeting with Education

4.2 Paragraph 13.25

4.2.1 UB/San /Basarwa Research Project (UB/SBRP) gives the impression that it is a deliberate Government Policy to use schools as instruments of social control and assimilation of Basarwa. This is untrue and misleading. It is not the intention of the curriculum to alienate Basarwa from their culture.

4.3 Paragraph 13.26

4.3.1 The new curricula from Standard 1 to Form 5 recognize Botswana as a multi cultural society and provides for celebrations of the different cultures. Annual Schools traditional Song and Dance Competitions promote the different styles of song and dance. Sesarwa song and dance are actually very popular and are often used by non Basarwa dance troupes. The curriculum are meant to promote pride in cultures Botswana has including those associated with.

4.3.2 The Minister of Education announced in his International Mother Language commemorative address that a Botswana Languages Policy would be developed this year. This Policy will among other things give direction on language that is on the development and preservation of the twenty six languages or so spoken in Botswana.

5.0 Meeting with Attorney General

5.1 Paragraph 13.29

5.1.1 The Attorney General was accompanied by the Deputy Attorney General (Civil Litigation Division), not Civil Affairs; and Deputy Attorney General (International and Commercial Division), not International Relations.

5.2 Paragraph 13.33

5.2.1 Reference to the “Criminal Code” should be to the “Penal Code”.

6.0 Meeting With MOFAIC and MLG

6.1 Paragraph 13.60

6.1.1 The Government wishes to point out as a matter of fact that in Botswana, every individual can apply and be allocated land any where it is available. It is not correct to use the word “claimed” as it gives the impression that this is not in fact true.

6.2 Paragraph 13.69

6.2.1 At the last Bullet, it should read Ministry of Local Government and not “Ministry of Local Government and Lands”

6.3 Paragraph 13.71

6.3.1 The word population is incorrectly spelt. Please correct.

6.4 Paragraph 13.82

6.4.1 The correct spelling is "Khutse", and it is not a town but a settlement. The word "Ghalagadi" should be corrected to read Kgala-gadi, which is the correct spelling.

6.5 Paragraph 13.84 - 13.97

6.5.1 The Basarwa were relocated after more than ten years of negotiations with them. They moved out voluntarily and were duly compensated by Government. Those who refused to do so were left alone. It is not correct therefore to say that Government tactics included inducement and termination of services. As it has already been explained the services in the CKGR were only discontinued after the residents had moved from the CKGR and it was no longer viable to continue them.

6.5.2 It is not clear what modes of discussions are referred to in the report, how they were conducted and who participated in the discussions. To suggest that residents unanimously concluded that there were no consultations is misleading. Several meetings were held in the Reserve by Government officials and ministers on the issue of relocation.

6.5.3 Government does not find it helpful to make such sweeping statements on such serious matters. We know that more than 50% of the former residents of CKGR were registered as destitute depending on Government relief. The services which were provided in the reserve cannot be compared with those provided at the new villages. As promised basic social services were provided at the settlements, such as schools, health facilities, kgotla offices, extension offices and officers and potable water. Compensation was paid as promised and the Remote Area Development Programme is available for residents. Government is not aware of any other promises it made, which were not met.

6.6 Paragraph 13.90

6.6.1 In accordance with Government policy, all cases of torture, assault and harassment that are reported or come to the attention of the authorities, are investigated prosecuted. From the information provided in this paragraph it is not possible for Government to know which cases are being referred to.

6.7 Paragraph 13.97

6.7.1 The correct spelling of the settlement is Gugamma and not Kagumma.

6.7.2 Some of the comments contained in the report are unsubstantiated allegations which can not be responded to (for example at paras-13.92 to 13.103). The fact that we are not responding to them item by item should not be taken as acceptance of their veracity.

6.8 Paragraph 13.110

6.8.1 It is factually incorrect to say that they had no legal title to the plots. A matter of fact on all tribal land in Botswana, when land is allocated one is given a Certificate of Customary Land Grant or a Tribal Lease in the case of commercial plots, these have the effect of giving them title in the land.

6.9 Paragraph 13.112

6.9.1 All Batswana including Basarwa are free to assume positions of leadership at all levels of society including for example Parent Teacher Associations, Village Development Committees, Chiefs, Local Councils and Parliament. The electoral system at all levels is not ethnic based. There are indeed Basarwa Chiefs in East Hanahai, Malatswai, New Xade (Khoesakene), Damchojena.

6.10 Paragraph 13.113 - 13.114

- 6.10.1 Presently the only languages used in education, are Setswana and English. That is why the development of a national language policy has begun.
- 6.10.2 It is true that other than Setswana and English, no other local language is presently being used as a medium of instruction in schools. As indicated above, Government has a policy to teach up to standard five in the languages of several tribes. Government intends on developing this language policy this year which will among other things give direction on the medium of instruction in schools.
- 6.10.3 As regards the allegation that children are taken away from their parents without consent, this is not true. Government uses hostels because for as long as people live in small scattered settlements, there is no viable alternative. The alternative would be to leave them in small scattered settlements with their parents without access to education Government. It is the duty of the elected Government to ensure that every child has access to education.

6.11 Paragraph 13.116

- 6.11.1 As previously stated the position of Government is that all Baswana are indigenous. If there is a perception that the Basarwa culture is dying it is through no fault of Government. Basarwa like any other ethnic group in Botswana are free to mix, socialise and promote their own culture in whatever way they see fit.

6.12 Paragraph 13.119

- 6.12.1 As previously indicated, that there is no group right to land in Botswana. Every individual may apply for and be allocated land anywhere it is available. This development came about as a result of amendment of the Tribal Land Act which was amended to deal with allegations that land allocation was discriminatory.

6.12.2 Customary land allocation has no discriminatory criteria because all that is required for one to be allocated land is that one should be a citizen of the Republic of Botswana. It is therefore wrong to say that there are other considerations for one to qualify for allocation of land.

6.13 Paragraph 13.127 / 13.128

6.13.1 Allegations to the effect that there was, and still is, systematic exclusion of Basarwa, through the use of force are of concern more so that they are not accompanied by concrete facts. It is not very clear which Tswana tribes were involved and when in history the alleged elimination of Basarwa took place. The fact that Botswana has the largest group of Basarwa in the region is indicative of peaceful co-existence other groups have over centuries enjoyed with Basarwa.

6.14 Paragraph 13.131

6.14.1 The Basarwa of the CKGR are not the only community in Botswana to have been relocated. Many other groups including groups which made way for the developments of our cities and other economic developments of national interest.

6.14.2 There is nothing peculiar about the absence of telephone communication in New Xade. There are still many settlements and villages in Botswana which face similar problems. It is in Government's plans to develop telecommunications infrastructure throughout the country within available resources.

6.15 Paragraph 13.137

6.15.1 There were no schools in Old Xade. Only a Health Post existed compared to the new settlements, such as New Xade, where facilities such as schools, a clinic with a maternity ward and other services are provided.

7.1 Paragraph 13.143 – 144

- 7.1.1 The social ills mentioned such as alcohol abuse, prostitution, teenage pregnancy, are common problems affecting other communities in Botswana. There is no documented evidence to show that the Basarwa communities experienced these social problems only after relocating to the CKGR.
- 7.1.2 The Primary School Leavers Examinations for New Xade have always been good despite these criticisms. In fact in 1999 New Xade had the best standard seven results in Ghanzi District. In 2005 New Xade had 100% pass and were best compared to other RAD's settlements. Therefore the use of non-Basarwa Teachers does not seem to have any negative impact on children's performance.

8.0 Meeting with the Law Society of Botswana

8.1 Paragraph 13.150

- 8.1.1 The Government of Botswana disagrees with the views of the Law Society of Botswana.

8.2 Paragraph 13.151

- 8.2.1 It is not true that there was no legal protection for Basarwa as all Batswana enjoy the same rights and freedoms under the Constitution.

9.0 Analysis and Observations of the Delegation

- 9.1 It is noted that the Special Rapporteur uses words or phrases such as "the fact that", "monumental Government structures", "incredibly", "the Government argues that", "hasty and uncoordinated", which is an indication that the delegation was more than ready to accommodate the views of the Basarwa communities as opposed to those of the Government and without trying to verify some of the information provided to them. From this premise, the Govern-

ment can only conclude that the analysis and observations of the Special Rapporteur are not fully informed to allow him to make the recommendations made.

- 9.2 Given the brevity of the time spent by the delegation in Botswana, it was not sufficient to allow for a full study of the situation on the ground. The delegation was only interested in the people who had been relocated from the CKGR, who constitute only a small fraction of the entire Basarwa population in Botswana. There are many Basarwa settlements in Botswana which the delegation did not visit.

10.0 Relocation Issues

- 10.1.1 In the absence of any comparative statistics, the life style in Old Xade and New Xade, it is hard to agree with the claim. Old Xade was also a settlement which had fewer opportunities and facilities compared to New Xade. It is perplexing therefore that one could suggest that life at Old Xade was better. This is a typical example of assertions the Special Rapporteur chose to hype without determining their authenticity.

10.1 Paragraph 13.144

- 10.2.1. Despite the allegations that Basarwa children do not do well in school because their teachers are not from their own ethnic group, facts are that New Xade had 100% pass for the 2005 standard 7 school leavers examinations while at Kaudwane had 98% pass rate putting it the highest amongst the schools in its region. The use of teachers from backgrounds other than that of the children is common everywhere. It has never been seen as disadvantaging children. One wonders why Basarwa children should be different.

10.2 Paragraph 14.13

- 10.2.1.1 Extensive consultations were made with residents of CKGR. Both Government Ministers and officials held several consulta-

tion meetings on the issue of relocation. In fact the sites for new settlements were identified and designated by the residents themselves. To suggest that they were merely informed to relocate is wrong. Government has nothing to gain from misrepresenting the facts. It is those who use this issue to raise funds who want to perpetuate it.

10.3 Paragraph 14.29

10.3.1.1 In fact when the residents were still at CKGR, learners were taken to schools far away outside the Reserve. Most learners now stay with their parents in the new settlements, except for children of those who have not relocated. It is not possible to provide a Secondary School to each settlement and therefore students go to where Secondary Schools are available outside the settlements. This applies to all other students including those of non Basarwa ethnic groups.

10.3.1.2 Ordinarily, the National Settlement Policy allows for the provision of services to settlements with populations of over 500 people and 250 people for the RADs settlements as especial dispensation. Due to limited resources it is impractical for any Government to take services to each citizen where ever they are.

10.5 Paragraph 16.5

10.5.1 The Remote Area Development Programme was designed to provide special support to remote area dwellers, the majority of whom are Basarwa. Over and above the programme, all other Government assistance is provided to the remote area dwellers. Regarding the issue of representation, Basarwa are represented at all levels and in some cases by the elected representatives of their own ethnic group.

10.6 Paragraph 16.9

10.6.1.1 In Botswana development proposals start at local level often in villages or wards and then move up to the District level where they are processed before being passed on to the National level. As part of the nation Basarwa participate in the planning process of projects affecting them as well.

10.6.1.2 It is not clear which Basarwa programme is referred to in the Report. Regarding the Remote Area Development Programme, information on its origin has already been provided elsewhere. The Remote Area Dwellers choose projects they want to implement and are provided with the assistance through the Economic Promotion Fund. The settlements of former CKGR residents, have adequate extension officers both quantitatively and qualitatively compared to other settlements of their size.

10.7 Paragraph 14.20

10.7.1 Services were terminated partly because of land use conflicts and indeed resources which had hitherto been used in the CKGR had to be used in the new settlements.

10.8 Paragraph 14.26

10.8.1 The Government does not compile educational statistics along ethnic lines. It is perplexing therefore how it was possible for the delegation to reach its conclusions.

10.9 Paragraph 14.34

10.9.1 Representation in Botswana governance structures is based on constituencies as opposed to tribal and ethnic considerations.

10.10 Paragraph 14.36

10.10.1 It is not true that Basarwa are the only ones who can be ruled by a chief from another tribe. The chief of New Xade, where the delegation went, is a Mosarwa called Lobatse Beslag. He is not the only one, many other Basarwa dominated settlements have the same.

10.11 Paragraph 14.37

10.11.1 There are no laws that discriminate against Basarwa. In light of these allegations, it would be very helpful for the Delegation to cite the specific laws and policies they are referring to.

11. Conclusions and Recommendations

11.1 Paragraph 15.1

11.1.1 It should be clarified that the CKGR issue involves a very small percent of the Basarwa community in Botswana. By far the majority of Basarwa have never lived in CKGR. It is therefore unreasonable to purport their case as representative of all Basarwa throughout the country.

11.2 Paragraph 15.3

11.2.1 It was not Government which took the matter to court. A group of Basarwa, exercising their constitutional right and with the advice of NGO's decided to take the matter to court.

11.3 Paragraphs 16.1 and 16.2

11.3.1 The Government of Botswana welcomes the report of the UN Special Rapporteur on the Right to Education since the document affords the former to reflect closely on its national policies and programmes and their effect on the delivery of education in the country. It is the understanding of the Government

that the mission of the Special Rapporteur was to reflect, as objectively as possible, what Botswana is doing or is attempting to do for its citizens, within the limits of its resources, socio-economic development, and other challenges.

- 11.3.2 By and large, the report acknowledges the good strides Botswana has made in the field of education since independence in 1966. It could not have been practicable, within the duration of the mission, for the Rapporteur to have a full appreciation of all the national policies, programmes and other efforts which impact on the right to education, hence the apparent inaccuracies in some parts of the report.

The multi-cultural and multi-lingual nature of the country

Culture

- 11.3.3 The national policy in this area states that cultural identity is one of the critical ingredients for nation building and attainment of national sovereignty. The policy does not presume any cultural homogeneity but, on the contrary, recognizes and respects all cultures as parts of the national heritage.
- 11.3.4 To actualize the policy, a Botswana National Cultural Council has been formed, comprising 30 members from across all sectors of the society. Two facilities, a Cultural Village and a State Theatre, are currently under development to promote and preserve culture in the country. In particular, the Village will reflect the culture of different regions of the country.

Language

- 11.3.5 Botswana education policy provides that the curriculum of the education system must be based on the Botswana culture. Botswana culture is used here in the generic sense, and refers to all cultural practices by various ethnic groups in Botswana.

11.3.6 It goes without saying that local languages are recognised as key components of the cultural diversity the country seeks to promote.

11.4 Paragraph 16.3

11.4.1 Sections 3 and 15 of the Constitution provide for protection of fundamental Rights and Freedoms of the individual and as well as protect individuals from all forms of discrimination, including race or ethnicity.

11.4.2 Any advocacy of national or racial hatred constitutes incitement to discrimination. The Penal Code specifically outlaws incitement to discrimination and violence on the basis of race. Section 92(1) of the Penal Code reads thus:

“Any person who utters any words or publishes any writing expressing or showing hatred, ridicule, or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence...”

11.4.3 Section 15 (1) of the Constitution further provides that “No law shall make any provision that is discriminatory either of itself or in its effect.

11.4.4 Section 15(2) stipulates that no person shall be treated in a discriminating manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

11.4.5 Section 15(3) of the Botswana Constitution describes the expression “Discriminatory” as “affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, col-

our or creed whereby persons of one such description are subjected to disabilities or restriction to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

- 11.4.6 Section 18 provides that persons alleging violations of Sections 3 and 15 may apply directly to the High Court for redress.

11.5 Paragraph 16.4

- 11.5.1 It has already been stated that the relocation of communities in the CKGR was a subject to extensive consultations over a period of eleven years. The Commission’s assertion that the relocation was “hasty, uncoordinated and failed to meet the minimum standards...” gives the impression that the Commission was only prepared to listen to Government detractors.

11.6 Paragraph 16.5

- 11.6.1 In Botswana political affiliation and representation is not ethnic based. Every Motswana of whatever ethnic group is free to campaign and be elected into any political office.

11.7 Paragraph 16.6

- 11.7.1.1 As stated earlier, despite the existence of tribal land, the current dispensation on land administration has contributed greatly to the smooth and harmonious integration of the nation as it exists today.
- 11.7.1.2 The Basarwa communities do play a significant role in the wild-life and tourism industry. In the majority of instances they have used their culture for gain and also benefit from tourism related economic activities through employment and trade.

11.8 Paragraph 16.7 and 16.8

- 11.8.1 Botswana's position regarding 'indigenous' persons has been articulated above.
- 11.8.2 It is true that Botswana operates under a dualist legal system, comprising customary law and common law. It is also true that any international instruments the country signs and ratifies do not automatically become domestic law. A certain process that details out the domestication of international instruments is there and has served the country well

11.9 Paragraph 16.9

- 11.9.1 It is in the nature of Government to consult widely with key stakeholders on any project. Even on the issue under discussion it has been demonstrated that consultations took place over a period of eleven years. Granted, communication lines can always be improved as and when necessary, but there is nothing to suggest that Basarwa were or are left out on issues that affect them.

11.10 Paragraph 16.10 and 16.11

- 11.10.1 Botswana acknowledges the fact that no report has been submitted to the Africa Commission on Human and People's ever since it was signed and ratified. This is largely due to lack of capacity. Botswana will henceforth endeavour to produce reports regularly in conformity with Article 62 of the African Charter.

