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Viste au Botswana

Rapport du Rapporteur spécial sur les droits des peuples autochtones sur sa visite au Botswana*

Résumé

Dans le présent rapport, le Rapporteur spécial sur les droits des peuples autochtones, Albert K. Barume, examine la situation des peuples autochtones au Botswana en se fondant sur les informations qu'il a reçues avant et pendant sa visite, effectuée du 1er au 12 septembre 2025.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.

Merci de recycler

Annexe

Rapport du Rapporteur spécial sur les droits des peuples autochtone, Albert K. Barume, sur sa visite au Botswana

I. Introduction

1. The Special Rapporteur on the rights of Indigenous Peoples, Albert K. Barume, conducted a visit to Botswana from 1 to 12 September 2025. During this period, he met with the President of Botswana, as well as with ministers and senior government representatives across all sectors, including the Minister of International Relations, the Minister of Justice and Correctional Services, the Minister of Local Government and Traditional Affairs, officials from the Interministerial Committee to Advise Government on Sustainable Solutions Regarding Human Rights of Basarwa (hereinafter referred to as the Interministerial Committee), as well as officials from the Ministry of Child Welfare and Basic Education. He also had the opportunity to interact with the Office of the Ombudsperson, and with researchers from the University of Botswana.

2. In Lokgwabe, Zutshwa, Ghanzi, Grootlagte, D'Kar, Shaikarawe, Tsodilo, Nata and Molapo in the Central Kalahari Game Reserve, the Special Rapporteur held meetings with Indigenous communities. The Special Rapporteur expresses appreciation to the Indigenous traditional leaders, women, young people, elders and persons with disabilities who shared their experiences, concerns and aspirations.

3. The Special Rapporteur also thanks the United Nations country team and other partners who supported the organization of the visit. The visit took place at an important moment, marked by the Government's engagement and recognition of the need to address historical inequalities affecting Indigenous Peoples.

4. The Special Rapporteur recognizes the notable political commitment demonstrated by the new Government of Botswana to addressing historical injustices suffered by Indigenous Peoples. This is exemplified, among other things, by the establishment of the Interministerial Committee and the President's initiative to return the remains of a San elder to ancestral lands in the Central Kalahari Game Reserve for burial. The Special Rapporteur commends also the Government's commitment to ratify the Indigenous and Tribal Peoples Convention, 1989 (No. 169) as part of a comprehensive reform process to respect, protect and fulfil Indigenous Peoples' rights. This represents an important step towards reconciliation and inclusive nation-building and is an example that can inspire and inform Indigenous Peoples and States in the African region and beyond.

5. The Special Rapporteur underlines, however, that Indigenous Peoples in Botswana continue to face structural discrimination, lack of legal recognition, insecure land tenure rights, limited access to justice, and barriers to equal participation in public life. These challenges are rooted in historical dispossession, marginalization, and persistent misunderstandings regarding the concept of Indigenous Peoples under international human rights law. The Special Rapporteur also notes that many Indigenous communities continue to experience poverty, social exclusion and dependence on government assistance, often linked to loss of traditional livelihoods and lack of employment opportunities.

6. The Special Rapporteur offers several recommendations designed to support the Government of Botswana and relevant stakeholders in ensuring that Indigenous Peoples fully and equally exercise all rights and freedoms within the country.

II. Terminology and concepts

A. Relevance of "Indigenous Peoples" as a human rights concept in Botswana

7. The Special Rapporteur observed that for many years, misunderstandings about the concept of "Indigenous Peoples" had hindered the ability of successive Governments of Botswana to deliver on Indigenous Peoples' rights. Some considered "Indigenous Peoples" as a divisive concept, while others believed that all native pre-colonial Africans in Botswana were indigenous. While the current Government has embraced the concept, there is still in the broader society a noticeable confusion between the dictionary meaning of "indigenous" and the human rights concept of "Indigenous Peoples" established under international law.

8. The Special Rapporteur found that there are, in Botswana, groups that self-identify as "Indigenous Peoples", as understood in international law. These Peoples do not seek a privileged status; nor do they claim to be the only natives of Botswana. They self-identify as Indigenous Peoples, to seek redress for the particular historical injustices they have suffered. The meaning of the term "Indigenous Peoples" was indeed crystallized as a human rights concept with the adoption in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples, for which Botswana voted in favour. The contemporary human rights understanding of the term not only refers to being native to a specific area but also represents a demand for redress of historical injustices. When a group self-identifies as an "Indigenous People", it is not only affirming its ethnicity or origin; it is primarily seeking recognition and remedies for unique historical injustices experienced in the past and ongoing today.

9. The particular injustices that lead certain Peoples to self-identify as "Indigenous Peoples" amount to high-grade racial discrimination that dehumanizes and demeans the victims as racially or culturally inferior and backward, and therefore unable to govern themselves and to own lands or territories. These unique injustices damage the victims' self-esteem and make them feel worthless. In many cases, the victims are disproportionately affected by mental illness, addiction, suicide, school dropout and homelessness. Women in these communities have endured, and still endure, specific violations of their sexual and reproductive health and rights and ongoing gender-based violence.[1]

10. The African Commission on Human and Peoples' Rights confirms the relevance and applicability of the human rights concept of "Indigenous Peoples" in Africa, affirming that:[2]

(a) The dictionary or literal definition of "indigenous" – meaning "originating from" – should not be confused with the contemporary human rights meaning of "Indigenous Peoples".

(b) Indigenous Peoples "is a term through which groups that experience particular forms of systematic discrimination, subordination and marginalization because of their particular cultures and ways of life and mode of production … call attention to their situation … It is a term through which they can voice the human rights abuses they suffer from – not only as individuals but also as groups or peoples."[3]

(c) In Africa, the concept of "Indigenous Peoples" refers to a limited number of groups, whose cultural identities face extinction because of prejudiced views about their livelihoods and ancestral ways of using lands. They are mostly hunter-gatherers and pastoralists,[4] whose mobile lifestyle was, and continues to be, stereotyped as backward, outdated, unfriendly to national development and destined to disappear.

11. Past Governments in Botswana incorrectly argued that recognizing Indigenous Peoples could lead to division in the country or grant special privileges to certain groups. The

[1] See A/HRC/60/29.

[2] African Commission on Human and Peoples' Rights, *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities* (Banjul, African Commission on Human and Peoples' Rights; Copenhagen, International Work Group for Indigenous Affairs, 2005).

[3] Ibid., p. 102.

[4] Ibid., p. 87

African Commission on Human and Peoples' Rights has addressed such fears of division, tribalism, instability or ethnic conflict by clarifying that the Indigenous Peoples human rights regime fosters equality and inclusive societies, and that "conflicts do not arise because people demand their rights but because their rights are violated".[5]

B. Indigenous Peoples in Botswana face unique challenges and many refuse to be called "Basarwa"

12. In Botswana, certain ethnic groups have experienced and continue to experience unique historical injustices, which has led them to self-identify as Indigenous Peoples in pursuit of recognition and redress.

13. The Special Rapporteur encountered numerous members of these Indigenous Peoples who described their daily experiences shaped by unique marginalization and discrimination. They carry a heavy burden of societal judgment that seeps into every facet of life. Many described how they felt invisible, voiceless and looked down upon. Parents recounted, with palpable pain, how their children felt compelled to hide who they were from their classmates and teachers. The schoolyard, ideally a space of growth and acceptance, becomes a stage for ridicule. Children reported being mocked for their accents, their clothing, and mostly, for speaking their languages. The weight of this humiliation leads to a profound sense of shame and intergenerational trauma.

14. The Special Rapporteur underlines that the right of Indigenous Peoples to self-identify or to decide on how to be called seeks to redress, among other things, the historical injustice of being given derogatory names by colonizers or dominant groups, with a view to demeaning their histories, identities, cultures and dignity.

15. The Special Rapporteur noted further that in Botswana, the majority of those who self-identify as Indigenous Peoples are interchangeably called "San", "Bushmen" or "Basarwa". These umbrella and derogatory terms cover various culturally distinct groups of hunter-gatherers and agropastoralists, some known to be the most ancient inhabitants of Southern Africa, including the Ju/'hoansi, Bugakhwe, //Anikhwe, Tsexakhwe, !Xoo, Naro, Nama, G/wi, G//ana, Kua, Tshwa, Deti, ǂKhomani, ǂHoa, =Kao//'aesi, Shua, Danisi and /Xaisa.[6]

16. Many Indigenous Peoples informed the Special Rapporteur that they had consistently objected to being referred to as "Basarwa" or by other collective designations imposed by dominant groups: "It is not a self-chosen name … being called "Basarwa" is a testament to our position in society because oppressed people are always being given derogatory names by those who lord over them … We are not Basarwa … We have different tribes, just like Batswana, and we want to be referred to by the name of our tribes."

C. Cross-border Indigenous Peoples in Botswana

17. The Special Rapporteur notes that Botswana is home to Indigenous Peoples who are part of broader communities that extend across the borders of several Southern African countries. These include a segment of the Nama, who are predominantly located in Namibia. These Indigenous Peoples face specific challenges, including at times not being recognized as genuine Batswana.[7] One community member stated that they were sometimes viewed as foreigners, and that there were no measures to help them maintain cultural connections with their communities in neighbouring countries.

18. Both the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention, 1989 (No. 169) include protections for Indigenous Peoples separated by borders, granting them the right to maintain and develop

[5] Ibid., p. 88.
[6] A/HRC/15/37/Add.2, para. 7.
[7] Citizens of Botswana are referred to as Batswana.

contact and cooperation with their members across those borders, and require States to provide particular protection, including through international agreements.[8]

III. Recognition

19. The Special Rapporteur notes that Botswana is yet to recognize Indigenous Peoples as distinct rights holders under international law. Additionally, although Botswana has built its modern public institutions on African traditions, it does not treat all local cultures equally. Prejudice has caused Indigenous Peoples' cultures and livelihoods to be undervalued and unfairly driven towards extinction.

20. Several major legal and policy frameworks and institutions illustrate this unequal treatment. These include the constitutional amendment of 2005 that removed particular attention afforded to San Indigenous Peoples; the Ntlo Ya Dikgosi (House of Chiefs) which does not guarantee equal participation of Indigenous Peoples; and the Tribal Land Act, which does not consider the lands and livelihoods of Indigenous Peoples. As noted by an Indigenous person: "It feels as though we don't exist, matter, or have anything to offer our country."

21. States have an obligation to recognize Indigenous Peoples and their rights.[9] Recognition is foundational, since a State cannot discharge its human rights obligations without first identifying the legitimate rights holders to whom those obligations apply.

22. Indigenous Peoples in Botswana informed the Special Rapporteur that constitutional and legal recognition was an overarching need and their top priority for the Government to address. Several senior government officials shared the view that, without legal and constitutional recognition, Indigenous Peoples would still face significant obstacles to fully enjoying human rights on an equal basis.

23. To fully recognize Indigenous Peoples in compliance with international law, the Special Rapporteur recommends that the Government of Botswana continue and consolidate the comprehensive policy and legislative reforms that are under way through three cumulative actions, as follows.

24. Firstly, the Government formally acknowledges the distinct historical injustices faced by those who self-identify as Indigenous Peoples in the country. This enables the State to adopt – and to justify to the wider public – the special measures aimed at addressing the structural causes that prevent Indigenous Peoples from accessing and enjoying their rights on an equal footing. In some cases, this first step towards recognition has included public apologies for historical wrongs – an option that the Government of Botswana could consider, given the circumstances.

25. Secondly, the State should enact constitutional or legal provisions that explicitly recognize Indigenous Peoples as distinct rights holders and incorporate relevant international standards into its domestic legal system, including through the ratification of relevant international instruments such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Special Rapporteur welcomes the announcement made by the Government in early 2026 that it will ratify this Convention.

26. Thirdly, the State of Botswana should identify those self-identifying as Indigenous Peoples on its territory. This enables the State to take further measures with a view to fulfilling its "duty to prevent cultural assimilation of Indigenous Peoples or any action that has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities".[10] The identification process also allows a State to develop

[8] United Nations Declaration on the Rights of Indigenous Peoples, art. 36; and Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 32.

[9] United Nations Declaration on the Rights of Indigenous Peoples, preamble and arts. 26, 27, 31, 43 and 44.

[10] Ibid., art. 8 (2) (a).

appropriate measures, such as the delivery of public services to Indigenous Peoples in an effective manner, while safeguarding their identity from pretenders or fraudsters."[11]

27. The State's obligation to preserve and protect the cultural integrity of Indigenous Peoples includes managing the risks of cultural assimilation of Indigenous Peoples and their potential misidentification with other social groups, notably minorities,[12] tribal peoples,[13] marginalized or poor people,[14] peasants[15] and local communities.[16] The State's obligation also includes ensuring data disaggregation in order to gain an accurate representation of the distinct conditions experienced by Indigenous Peoples. The Government has since pledged its commitment to Indigenous Peoples' right to self-identification.

IV. Lands, territories and resources

28. In Botswana, Indigenous Peoples were historically dispossessed of their ancestral lands during both colonial and post-colonial periods, as their cultures and ways of life were unjustly regarded as primitive, uncivilized and destined for extinction. Indigenous Peoples in Botswana were historically mostly hunter-gatherers and nomadic pastoralists, whose traditional utilization of lands is often intermittent and leaves minimal physical evidence of occupation. Contrary to the recognition of customary land rights for dominant communities such as the Tswana, the ancestral lands of Indigenous Peoples were viewed as unoccupied and belonging to no one. As a result, the colonial Government of Botswana reclassified Indigenous Peoples' ancestral territories as public lands, on which protected areas and national parks were created, while remaining lands were acquired by influential neighbouring groups. This is the historical land injustice that has never been rectified by numerous post-colonial Governments of Botswana; and it is the reason why the communities affected now self-identify as Indigenous Peoples to seek redress.

29. The Special Rapporteur notes that Indigenous Peoples' tribal lands have never been recognized and protected. The Tribal Grazing Land Policy of 1975 enabled large areas of Indigenous Peoples' traditional land to be granted to cattle ranchers, mostly white settlers and members of dominant tribes. The Land Act of 2018 similarly assigns the management of tribal lands – accounting for more than 70% of the land of Botswana – to Land Boards composed of members from dominant tribes, without representation of Indigenous Peoples. Indigenous Peoples were never recognized as autonomous tribes or equal customary landowners and therefore did not have equal representation in decision-making bodies like Land Boards.

[11] A/HRC/60/29, para. 49.

[12] Minorities can be linguistic, religious or ethnic, and minorities' rights are generally individual, whereas Indigenous Peoples' rights are collective. Additionally, not all minorities have experienced the distinct historical injustices as Indigenous Peoples, and some minorities may even be dominant in certain contexts. Previous administrations in Botswana considered Indigenous Peoples to be minorities; an approach that did not adequately address their specific challenges.

[13] The term "tribal peoples" is used alongside "Indigenous Peoples" in the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

[14] Indigenous Peoples are not merely marginalized or poor people. Their marginalization and poverty are consequences – and not root causes – of their particular situations. Considering Indigenous Peoples as merely poor has misled States' interventions, putting the focus on effects rather than on the historical root causes.

[15] A peasant is anyone engaged in small-scale agriculture for subsistence or for the market, as reflected in art. 1 of the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.

[16] Local communities remain undefined in international human rights law. In his recent report to the Human Rights Council, the Special Rapporteur recommended that States and all stakeholders "should refrain from conflating Indigenous Peoples with local communities. When both terms are used in documents, a footnote should be included to clarify that the use of the term 'Indigenous Peoples' next to the term 'local communities' does not imply that the two groups enjoy the same rights under international law" – see A/HRC/60/29, paras. 70 and 113.

30. In the view of the Special Rapporteur, the historical land injustices suffered by Indigenous Peoples in Botswana have created four main groups of victims, each with specific characteristics that should guide the Government's approach to providing effective remedies.

31. Firstly, there are Indigenous Peoples that inhabit settlements due to displacement from their ancestral lands and subsequent relocation to new areas, which are often culturally unrelated to them. This group has lost access to their traditional livelihoods and cultural practices and depend entirely on government handouts. The Special Rapporteur learned that they experience cultural dislocation; relocation disrupts their lives, erodes their sense of community and threatens their culture. They are moved to unknown areas, leaving them feeling isolated, hopeless and lost.

32. The Special Rapporteur urges the Government to reconsider the settlement schemes in accordance with international law which explicitly prohibits the removal of Indigenous Peoples from their lands, except in exceptional circumstances, in which free, prior and informed consent is required.[17] Most Indigenous Peoples in Botswana can return to their traditional lands, which should be the Government's primary goal. Land is available, and many Indigenous Peoples continue to advocate for returning to their ancestral territories.

33. Secondly, the Special Rapporteur met Indigenous Peoples in Botswana who live on large lands owned privately by individuals, farmers or entities such as churches. These Indigenous Peoples are literally squatters depending on the goodwill of the landowners. One community representative told the Special Rapporteur: "Here, on this land belonging to the church, we own nothing." Unlike Indigenous Peoples residing in government-supported settlements with access to certain public services, those living on privately owned lands often lack such amenities. This is often due to governmental reluctance to invest in infrastructure or services on private property.

34. The Special Rapporteur learned that many Indigenous families are trapped on these privately owned farms by long-standing exploitative labour practices, including bonded work, child labour,[18] poor working conditions and avoidance of labour inspections.

35. The Special Rapporteur learned that many Indigenous Peoples stranded on private farms are native to those areas. In its comments on the present report, the Government indicated that it was working to restore Indigenous Peoples' land rights by negotiating with private landowners to acquire property for restitution to Indigenous Peoples. The Special Rapporteur urges the Government of Botswana to pursue this opportunity to restore Indigenous Peoples' right to their ancestral lands, including through the acquisition of privately owned lands and the return of these lands to their ancestral owners.[19]

36. Thirdly, the Special Rapporteur observed that there is a group of Indigenous Peoples in Botswana who are at the initial stages of exercising their right to return to their ancestral lands following removal, eviction or relocation to settlements. These Indigenous Peoples were expelled from the Central Kalahari Game Reserve, but after a successful court petition in 2006 (the *Sesana* case), the High Court of Botswana ordered their return to ancestral lands. Despite the ruling, however, these Indigenous Peoples continue to face challenges due to non-implementation of the ruling by previous Governments of Botswana.

37. The Special Rapporteur welcomes the commitment of the current Government of Botswana to address historical land injustices and ensure full implementation of the High Court ruling of 2006, which includes allowing Indigenous Peoples to return to their ancestral lands. In alignment with this commitment, in December 2024, the President, Duma Boko, authorized the burial of a San leader on the latter's ancestral land in the Central Kalahari Game Reserve, following more than two years in a mortuary due to previous Governments' non-compliance with the court ruling.

[17] United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, arts. 10 and 28.

[18] United States Department of State, "2021 trafficking in persons report: Botswana", available at https://www.state.gov/reports/2021-trafficking-in-persons-report/botswana.

[19] See A/HRC/45/38, in which States are advised to consider buying back from private owners lands that Indigenous Peoples still claim.

38. The duty of the State of Botswana to realize Indigenous Peoples' right to return to the Central Kalahari Game Reserve comprises the following elements:

Demarcation and titling of Indigenous Peoples' lands

39. The State of Botswana has an obligation to "give legal recognition and protection" to Indigenous "lands, territories and resources".[20] This duty to demarcate and title Indigenous Peoples' lands derives from the State's obligation to make reparations for past injustices. As reaffirmed in a ruling of the African Court on Human and Peoples' Rights, it is necessary to take all measures, be they legislative or administrative, to identify, in consultation with the Indigenous Peoples concerned and/or their representatives, to delimit, to demarcate and to title their ancestral land and to grant de jure collective title to such land in order to ensure the permanent use, occupation and enjoyment thereof.[21]

Enable the restoration of livelihoods for the returning Indigenous Peoples

40. The State should ensure that returning Indigenous Peoples are enabled to rebuild their lives and thrive culturally, politically, socially and economically. The State should restore the livelihoods of Indigenous Peoples in the Central Kalahari Game Reserve so thoroughly that it feels as though the displacement never occurred.[22] This includes restoring and supporting local livelihoods and formally recognizing traditional institutions, which are essential for maintaining and revitalizing cultural integrity. To fulfil this obligation, the State should implement legal and policy reforms to revive livelihoods and should ensure effective basic public services for returning Indigenous Peoples.

41. Besides hunting, Indigenous Peoples of the Central Kalahari Game Reserve have also raised livestock, including donkeys for transport, goats for milk, and horses for travel and hunting. These livelihood activities were mostly prohibited under the National Parks and Game Reserve Regulations, of 2000, which must be reviewed to allow them to be reinstated.

42. The importance of offering adequate support to returning Indigenous Peoples to address decades of marginalization was confirmed during the Special Rapporteur's visit to the Central Kalahari Game Reserve. There, he observed that basic services for returnees remained insufficient and ineffective. A female returnee informed him that the medical team, which visited periodically, had not attended to them for several months. Another Indigenous leader said that they had been allowed back to the Central Kalahari Game Reserve, but that they lived alone without their wives, who had to accompany their children to schools in settlements. They stated that the Government should supply all essential services, such as education, that would allow them to live with their families in the Central Kalahari Game Reserve.

Uphold the collective nature of the right to return to ancestral lands

43. The right to return to ancestral lands and territories is enshrined in international standards,[23] and is a collective right accorded to Indigenous Peoples as collective entities possessing the right to self-determination, which encompasses the attribute of defining their own membership criteria. Thus, the State does not have the authority to decide who belongs to an Indigenous nation or who should not be recognized as part of the Central Kalahari Game Reserve Indigenous community with the right to return, as outlined by the High Court of Botswana in its decision in the Sesana case.[24]

[20] United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (3).

[21] Ibid., para. 116.

[22] The concept of redressive justice requires full reparation. Andrew S. Gold, "Introduction to the right of redress", in Andrew S. Gold, *The Right of Redress* (Oxford, Oxford University Press, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720188.

[23] United Nations Declaration on the Rights of Indigenous Peoples, art. 10; and Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16.

[24] High Court of Botswana, *Sesana and Others v. The Attorney General*, Misca. No. 52 of 2002, judgment, 13 December 2006.

44. The Special Rapporteur thus restates the recommendation made by various previous United Nations bodies that all ancestral residents of the Central Kalahari Game Reserve should be permitted to return to their homes, regardless of their status as applicants in the *Sesana* case.[25] All those with a substantial cultural connection to the Central Kalahari Game Reserve, including their family members, should be considered as holders of this right to return home. The African Commission on Human and Peoples' Rights has also called upon the Government of Botswana to abandon its "policy of keeping" San Indigenous Peoples "from returning home".[26]

45. Fourthly, the Special Rapporteur observed that some Indigenous Peoples in Botswana are landless due to their attachment to African master families from dominant tribes. This group of Indigenous Peoples is a remnant of a historical caste system, which positioned their communities at the lowest levels of the social hierarchy,[27] often referred to as *malata* (serfs) or *batlhanka*. They were required to render free service and provide goods as tribute to the dominant tribes.

46. The Special Rapporteur learned that the members of this invisible and hidden group of Indigenous Peoples in Botswana perform work for their master families, to whom they remain loyal across generations. These Indigenous Peoples do not own lands, they often reside in separate homes apart from dominant families, and their children often do not have educational opportunities. Women and children within these groups are especially susceptible to abuses and experience intergenerational trauma as a result.

47. The Special Rapporteur was told that the precise number of Indigenous individuals living with master families remains unknown, mostly because this practice is largely concealed and the families benefiting from it often deny its existence.

48. States have an obligation to ensure dignity and respect for Indigenous Peoples' cultural identity, including by educating the public with a view to promoting tolerance, understanding and good relations between Indigenous Peoples and other segments of society.[28]

Right to resources and to community-based natural resource management

49. Indigenous Peoples have the right to the resources on their lands and territories. Botswana has recently passed the Community-Based Natural Resource Management Act, of 2025, with the aim of ensuring that communities manage and benefit from natural resources. The Act does not mention Indigenous Peoples or specifically address their circumstances, including the need to protect their traditional knowledge effectively and to ensure adequate participation in decision-making processes, and free, prior and informed consent. The Special Rapporteur urges the Government to address these shortcomings through future enabling legislation and regulations.

V. Rights to participation in decision-making and self-governance

50. The Special Rapporteur observed that Indigenous Peoples in Botswana are not fully or equally able to exercise their rights to self-governance and to participate in decision-making, as protected by international human rights standards. This is attributable to a range of structural barriers, such as the lack of recognition of Indigenous Peoples'

[25] The previous Special Rapporteur on the rights of Indigenous Peoples, James Anaya, and more recently the Special Rapporteur on minority issues, have made similar recommendations. See A/HRC/15/37/Add.2, para. 97; and A/HRC/40/64/Add.2, para. 94.

[26] See https://achpr.au.int/sw/node/1398.

[27] Andy Chebanne, "The social history of the Khoisan in Botswana: an experience in development of marginalised ethnic communities", *Botswana Notes and Records*, vol. 53 (2021), pp. 27–43, available at https://www.jstor.org/stable/10.2307/27255634.

[28] United Nations Declaration on the Rights of Indigenous Peoples, art. 15 (2).

representative institutions, and the lack of mechanisms for consultation, participation and consent, including with the extractive sector.

A. Indigenous Peoples' right to their own decision-making institutions

51. Indigenous Peoples' right to self-governance is a manifestation or enabling right of their overarching right to self-determination guaranteed by article 3 of the United Nations Declaration on the Rights of Indigenous Peoples. Article 4, on self-government and autonomy of Indigenous Peoples, grants them the right to establish and maintain independent decision-making institutions, allowing them to preserve and enhance their political, legal, economic, social and cultural systems.[29] The right to self-government also enables Indigenous Peoples to fully exercise their right "to take part in public affairs", as guaranteed to everyone under article 25 of the International Covenant on Civil and Political Rights.

52. States have the obligation to recognize, protect and promote the diverse decision-making institutions of Indigenous Peoples. These include not only organizational structures but also Indigenous legal systems, laws, beliefs and judicial norms.

53. The Special Rapporteur notes that Indigenous Peoples' own decision-making structures or institutions in Botswana lack legal recognition, protection and support. Many Indigenous Peoples reported being unable to elect their own representatives, even at the community level. Even where Indigenous Peoples held the majority, they often had chiefs from other areas imposed by dominant groups. In situations where they had their own leaders, those representatives were not afforded the same consideration by the Government. Indigenous Peoples wish to elect their own leaders and have them officially acknowledged and supported by the Government.

B. Indigenous Peoples' participation in public governance and other decision-making processes

54. Indigenous Peoples' right to participate in decision-making includes external aspects, encompassing involvement in decisions made by States and non-State entities. Indigenous Peoples are entitled to participate fully and without discrimination in decision-making processes, including elections and parliamentary procedures, and to have direct involvement with government at all levels as well as engagement with intergovernmental organizations and activities. In some countries, Indigenous Parliaments have been established. Other countries feature national organizations that represent Indigenous Peoples in public affairs, and there are also countries where traditional Indigenous institutions are integrated into government structures. Additionally, some countries have instituted consultative councils composed of Indigenous elders and other social groups. There are also countries, including some in Africa, that reserve parliamentary seats specifically for Indigenous Peoples.

55. At the time of the visit, the Special Rapporteur observed that the State of Botswana had not adopted or implemented specific measures to enable effective and equitable participation of Indigenous Peoples in the Government, Parliament or the judiciary.

56. Indigenous Peoples do not have quotas in Parliament or public services, and there is no national institution representing them in the various processes and the decision-making that affects them. The Bogosi Act, which regulates traditional leadership and customary governance, does not have special measures for Indigenous Peoples.

57. The country's Constitution determines the membership of the Ntlo Ya Dikgosi (House of Chiefs), which plays an advisory role to Parliament and helps shape legislation. The Ntlo Ya Dikgosi could have enabled some degree of participation of Indigenous Peoples in public affairs, but only the eight major tribes have guaranteed seats. All other tribes compete for the remaining seats, either through elections or through appointments via the President. Because Indigenous Peoples have small populations and limited political influence, it is very unlikely for them to be elected to the Ntlo Ya Dikgosi or be appointed by the President. The omission

[29] Ibid., art. 5.

of specific provisions reflects the systemic and structural discrimination against Indigenous Peoples, and without reform, they will continue to lack representation in the country's decision-making processes.

58. The Special Rapporteur observed that this shortcoming of the Ntlo Ya Dikgosi system has been consistently highlighted in previous reports, including those of the African Commission on Human and Peoples' Rights. In 2010, a previous Special Rapporteur on the rights of Indigenous Peoples expressed his concern "over the process of selecting members of the Ntlo Ya Dikgosi (House of Chiefs)", stating that "despite the amendments to the Constitution … the process for determining membership in the Ntlo Ya Dikgosi still disadvantages non-dominant tribes and favours Tswana leadership. The constitutional amendments of 2007 increase the number of members of the Ntlo Ya Dikgosi but do not provide for each tribe to be represented by its own chief."[30] The present Special Rapporteur fully concurs with these conclusions, which continue to be valid and pertinent today.

C. Consultation and free, prior and informed consent

59. The Special Rapporteur notes that Botswana has yet to adopt a national legal or policy framework for consulting Indigenous Peoples. This absence results in their exclusion from decisions, programmes and actions that impact them, including those initiated by the private sector.

60. Indigenous Peoples informed the Special Rapporteur that they were often excluded from decision-making processes that affected them, that most businesses did not respect their right to free, prior and informed consent, and that they felt invisible, since no one asked for their opinion.

61. Consultation is the path towards free, prior and informed consent and the core right to participation in decision-making. Moreover, consultation and free, prior and informed consent are indispensable for ensuring that business operations comply with international standards regarding the rights of Indigenous Peoples, as provided for by the Guiding Principles on Business and Human Rights regarding businesses' responsibility to respect human rights.

62. States have the duty to consult Indigenous Peoples in good faith with the objective of obtaining consent. The right of Indigenous Peoples to consultation is outlined in more than 10 articles of the United Nations Declaration on the Rights of Indigenous Peoples[31] and is well established in international jurisprudence, including that of the African Commission on Human and Peoples' Rights.[32] Consulting Indigenous Peoples goes beyond simply informing them about decisions that have been – or will be – made. Consultation should consist of a qualitative process of dialogue and negotiation, with consent or agreement as the objective. It also requires mutual trust among participants. In instances where there is a history of mistrust, proactive measures to foster trust should be undertaken prior to initiating the consultation process.

63. Free, prior and informed consent enables Indigenous Peoples to give or withhold consent as part of their right to self-determination, by ensuring they are fully informed and are able to "freely refuse or accept offers, plans, projects, programmes and proposals" affecting them or their resources.[33] The Committee on the Elimination of Racial Discrimination has pointed specifically at consent as "a human rights norm seeking to negate false doctrine and dismantle conceptual structures that dispossessed and disempowered Indigenous Peoples".[34]

[30] A/HRC/15/37/Add.2, para. 51.

[31] United Nations Declaration on the Rights of Indigenous Peoples, arts. 10, 11, 15, 17, 19, 28, 29, 30, 32, 36, and 38.

[32] African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya,* decision No. 276/2003*,* 4 February 2010.

[33] A/HRC/39/62, para. 6.

[34] Ibid., para. 10.

64. Free, prior and informed consent is a safeguard designed to protect substantive rights. It services mostly three "interrelated and cumulative rights of Indigenous Peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources".[35] In essence, free, prior and informed consent cannot genuinely be achieved in a vacuum of rights where the substantive rights that it is supposed to safeguard are not recognized and protected. Otherwise, it risks becoming a tool to promote interests other than those of Indigenous Peoples. It is therefore recommended that the rights to lands, territories and resources are recognized in order for free, prior and informed consent to be effective.

65. The Special Rapporteur welcomes the creation by Botswana of an Interministerial Committee to consult Indigenous Peoples on policy reforms, but stresses the need for a permanent legal, policy and institutional framework for consultation, participation and free, prior and informed consent, based on the recognition of Indigenous Peoples' own representative institutions.

D. Businesses and human rights

66. The Special Rapporteur learned about the efforts by Botswana to diversify its economy amid rising global demand for transition minerals, many of which are found in the country. While such developments are likely to create important economic opportunities, the Special Rapporteur notes that extractive industries, large-scale infrastructure projects and energy development have historically been associated with adverse impacts on Indigenous Peoples' rights worldwide, particularly where adequate human rights safeguards are not in place.

67. In this regard, the Special Rapporteur emphasizes the critical importance of safeguarding Indigenous Peoples' collective land rights, undertaking culturally appropriate and effective consultation and free, prior and informed consent processes, including benefit-sharing arrangements. He also emphasizes the responsibility of businesses to act with due diligence to ensure respect for human rights, under the Guiding Principles on Business and Human Rights.[36]

VI. Access to justice

68. The Special Rapporteur observed a systemic lack of access to justice for Indigenous Peoples in Botswana. "Access to justice requires the ability to seek and obtain remedies for wrongs through institutions of justice, formal or informal."[37] But often, Indigenous Peoples face disproportionately high incarceration rates because of discrimination within criminal justice systems.[38]

69. The right of Indigenous Peoples to access to justice includes:

(a) The right to effective remedy;

(b) The right to procedural fairness;

(c) The duty of States to take positive measures to enable access to justice;

(d) The right to retain and maintain their own justice or legal systems.[39]

70. The Special Rapporteur noted the near invisibility of Indigenous Peoples within the justice system in Botswana. The Government indicated that it did not collect disaggregated data based on ethnicity, resulting in a lack of precise information on incarceration rates, recidivism rates and conviction rates affecting Indigenous Peoples.

[35] Ibid., para. 14.
[36] Available at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.
[37] A/HRC/EMRIP/2014/3/Rev.1, para. 5.
[38] Ibid., para. 34.
[39] A/HRC/24/50, paras. 11–13.

Nevertheless, some officials acknowledged that Indigenous Peoples appeared to be overrepresented in the criminal justice system in certain regions.

71. The Special Rapporteur received credible information about persistent prejudices against Indigenous Peoples, including unfair stereotypes portraying them as prone to violence or criminal behaviour or associating their cultures with harmful practices such as child marriage and domestic violence. Indigenous representatives reported that this discrimination led to unjust arrests, widespread reliance on pretrial detentions, and insufficient safeguards for due process. Those negative societal views also affected how criminal cases were handled, particularly those involving offences against Indigenous Peoples.

72. The Special Rapporteur heard from Indigenous Peoples that the justice system had been used against their traditional livelihoods, including by criminalizing activities such as hunting. He was told that many Indigenous individuals were in jail for simply practising their traditional occupation of hunting. Indigenous Peoples also reported significant practical barriers to accessing justice, including long distances to courts, high transportation costs, weak infrastructure, and limited availability of legal aid, particularly in rural areas. While the Legal Aid Act provides for free legal services for persons of limited means, coverage in remote areas remains constrained by limited resources.

73. Language barriers further restrict access to justice. Indigenous languages are generally not recognized or accommodated in formal court proceedings, and the absence of interpreters can prevent Indigenous defendants from understanding charges, participating effectively in their defence, or following proceedings, raising serious fair trial concerns and reinforcing systemic exclusion.

74. Furthermore, within the dual legal system of Botswana, local chiefs administer customary law through kgotla (customary courts). However, the Special Rapporteur heard from Indigenous communities that often their cases were dismissed or inadequately addressed by non-Indigenous chiefs unfamiliar with their customs or influenced by prejudice. This situation contributed to a lack of confidence in customary justice mechanisms. Community-based Indigenous arbitrators also lack formal recognition and institutional support.

VII. Rights to cultural integrity and language

75. The Special Rapporteur observed that, in Botswana, the cultures and languages of Indigenous Peoples are not given the same level of protection and promotion as those of dominant ethnic groups. The protection of these rights by the Government of Botswana does therefore not meet its international obligations.

76. States are under the international obligation to preserve and protect Indigenous Peoples' cultural integrity. As asserted by the Expert Mechanism on the Rights of Indigenous Peoples, "cultural and language rights are indivisible and central to all the other rights".[40]

77. The Special Rapporteur emphasizes that Indigenous Peoples' culture and language are deeply linked to their lands and territories, and together they form the foundation of the right to self-determination. Indigenous cultures and languages can also benefit States, as noted by the Committee on the Elimination of Racial Discrimination, which urges States to recognize and respect Indigenous culture, history, language and way of life as enrichment of national identity.[41]

78. Indigenous Peoples in Botswana have diverse cultures that, if recognized and supported, could foster national pride and generate economic advantage. The Special Rapporteur learned that while Nama traditional music and dance (Nama-stap) is listed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as Intangible Cultural Heritage in Need of Urgent Safeguarding and generates tourism revenues for other countries, it does not enjoy the same recognition and promotion in Botswana. Similarly,

[40] A/HRC/21/53, para. 8.

[41] Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of Indigenous Peoples.

traditional practices such as processing nuts for oil and medicinal massage could benefit local and national economies, yet they remain unsupported.

79. The Special Rapporteur notes that Indigenous Peoples' cultural integrity and languages are undermined by the loss of ancestral lands, colonial history, relocations, forced assimilation, prejudiced views, and systemic barriers such as those found in education. Furthermore, Indigenous Peoples' history is not fairly represented in educational materials.

80. At Tsodilo Hills, a World Heritage Site, Indigenous Peoples reported having been relocated without their free, prior and informed consent, being excluded from the site's nomination and its management, lacking meaningful involvement in decision-making, not receiving tourism benefits, having only limited access to ancestral burial grounds, facing appropriation or misrepresentation of their cultural history, and experiencing removal and retention of human remains and artefacts by researchers and museums.

81. The international obligation of the State of Botswana to protect and promote Indigenous Peoples' languages includes:

(a) The duty to enable Indigenous Peoples to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.[42]

(b) Ensuring that Indigenous Peoples can understand and be understood in political, legal and administrative proceedings.[43]

(c) Ensuring that Indigenous Peoples can freely establish institutions providing education in their own languages.[44]

(d) Ensuring that Indigenous Peoples can establish their own media in their own languages.

(e) Ensuring that State-owned media duly reflect Indigenous cultural diversity.[45]

(f) Encouraging privately owned media to adequately reflect Indigenous cultural diversity.[46]

(g) Furthermore, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides that Indigenous children are to be taught to read and write in their own Indigenous language.

82. During the country visit, Indigenous Peoples expressed concern regarding the endangerment of their languages, noting that few young individuals were learning them and that most proficient speakers were elders. Many Indigenous languages are, in fact, at risk of extinction; accordingly, the United Nations has designated 2022–2032 as the International Decade of Indigenous Languages to raise awareness and support efforts towards their preservation, revitalization and promotion.[47]

83. The Special Rapporteur was told that in Botswana, Indigenous children are often discouraged or punished for speaking their mother tongues in schools, where instruction is limited to English and Setswana. Indigenous Peoples' languages are at real risk of extinction in Botswana.

VIII. Right to education

84. The Special Rapporteur found that the education of Indigenous Peoples was not in line with international standards regarding Indigenous Peoples' rights. Indigenous children

[42] United Nations Declaration on the Rights of Indigenous Peoples, art. 13.
[43] Ibid., art. 13 (2).
[44] Ibid., art. 14.
[45] Ibid., art. 16.
[46] Ibid., art. 16.
[47] See https://www.unesco.org/en/decades/indigenous-languages.

are experiencing high dropout rates due to the necessity to leave their lands, such as the Central Kalahari Game Reserve, to attend schools. They often receive instruction from unfamiliar teachers or must reside with strangers, which can lead to increased stress. There is a desire among Indigenous Peoples for the Government to establish educational institutions directly on Indigenous lands.

85. "Education is recognized as both a human right in itself and an indispensable means of realizing other human rights and fundamental freedoms".[48] A State is under an obligation to make education accessible and with a content in the best interest of the child. For Indigenous children, "curricula must be based on, or sufficiently reflect, Indigenous Peoples' cultural values and beliefs".[49] States must also collect disaggregated data and identify legal, political, administrative or financial barriers to equal access to education for Indigenous individuals. Education should be safely accessible, and States should support Indigenous Peoples in establishing and managing their own education systems.[50]

86. The Special Rapporteur notes positive steps by the Government of Botswana, including satellite schools for Indigenous children, the hiring of teacher aides, and testing translations of educational materials into Indigenous languages.

87. The Special Rapporteur found, however, that despite constitutional guarantees and recent government efforts, Indigenous children still face high dropout rates and low achievement – challenges that are especially pronounced for Indigenous girls. Disparities, de facto discrimination and structural barriers continue to hinder the education of Indigenous children across Botswana. One of those obstacles is the lack of education facilities in Indigenous communities, particularly in remote and sparsely populated areas. The population-based development model applied in Botswana excludes many Indigenous settlements from eligibility for schools, compelling children to relocate at a young age to hostels located in larger villages, far from their families. This separation disrupts family life, undermines cultural and linguistic transmission, and contributes to emotional distress, disengagement from school and high dropout rates.

88. The Special Rapporteur observes that the education policies of Botswana based on population thresholds disadvantage Indigenous Peoples, and that many Indigenous children lack mother-tongue instruction due to insufficient trained Indigenous staff, leaving their education culturally and linguistically inadequate.

89. The Special Rapporteur was particularly concerned by the hostel system, especially at the primary and junior secondary levels. Indigenous children are reportedly affected by bullying, theft, inadequate food, lack of supervision and long distances from schools. In particular, Indigenous girls are exposed to sexual exploitation and gender-based violence. Several testimonies described early pregnancies, school abandonment, health risks, including HIV infection, and long-term social harm. Indigenous children face challenges due to their parents' lack of resources, leaving them – especially girls – vulnerable to exploitation by strangers, child pregnancies, and exposure to drugs.

90. The Special Rapporteur considers that the current hostel system, as applied to Indigenous children, raises serious concerns under international law, as it contributes to forced assimilation. Moreover, it exposes children to risks to their dignity, security, health and well-being.

IX. Socioeconomic rights and labour rights

91. The Special Rapporteur notes that Indigenous Peoples in Botswana do not equally enjoy many socioeconomic rights, including the right to employment. Despite long-standing government efforts through the Remote Area Development Programme, chronic poverty, food insecurity and social exclusion persist across generations among Indigenous Peoples.

[48] A/HRC/EMRIP/2009/2, para. 5.
[49] Ibid., para. 21.
[50] United Nations Declaration on the Rights of Indigenous Peoples, art. 14.

92. Indigenous Peoples in Botswana were of the view that government development policies and programmes were formulated without their involvement, resulting in their exclusion. They told the Special Rapporteur that limited literacy made it harder for them to access most public services.

93. In many Indigenous communities visited by the Special Rapporteur, basic needs such as water, food and shelter remain insufficiently met, and services are irregularly delivered. In several settlements, including in the Central Kalahari Game Reserve, water is transported by trucks over long distances, and mechanical breakdowns frequently interrupt supplies. This contributes to malnutrition, poor hygiene and health risks, particularly for children, women, elders and persons with disabilities. Limited access to electricity, sanitation and adequate housing further exacerbates hardship and undermines dignity.

94. The Special Rapporteur notes that equal access to social and other services remains challenging for many Indigenous Peoples. In particular, he notes that:

(a) Elderly community members often spend hours travelling in crowded trucks to collect pensions or access services;

(b) Language barriers and illiteracy hinder Indigenous persons' ability to navigate administrative procedures and claim social benefits;

(c) Indigenous individuals residing on private farms or within larger non-Indigenous communities frequently become overlooked in service delivery and are excluded from development initiatives;

(d) Persons with disabilities in Indigenous communities face significant hardship, resulting in extreme poverty and reliance on begging.

95. At the time of the country visit, the Remote Area Development Programme did not differentiate Indigenous Peoples from ethnic groups living in remote areas. As a result, Indigenous Peoples miss out on benefits when other groups control settlements or community trusts. Additionally, those living in larger villages, in towns or on private lands are often unreachable or unable to access Remote Area Development Programme support.

96. The Special Rapporteur further observed that Indigenous Peoples face significant barriers to accessing credit, markets and vocational training, and are largely excluded from skilled employment. Even in regions where Indigenous Peoples reside near lucrative tourism concessions or protected areas, they derive minimal or no particular advantage from them. Unemployment and limited economic opportunities are prevalent, particularly among Indigenous women and youth. Many Indigenous Peoples depend on short-term public works or temporary social programmes that provide limited income for brief durations, thereby reinforcing patterns of dependency and financial insecurity.

97. The Special Rapporteur received information regarding some affirmative action measures, such as reserving a portion of positions in public institutions for individuals residing in remote areas. However, these practices are sporadic, limited in scope, and not anchored in legal or policy frameworks.

98. The Special Rapporteur underscores the significant role that traditional occupations – such as hunting, fishing, gathering, and other knowledge-based livelihood practices – play in generating employment opportunities for Indigenous Peoples. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on the elimination of discrimination in occupation and employment, ratified by Botswana, requires States to:

(a) Eliminate discrimination affecting Indigenous Peoples' traditional occupations and ensure that these occupations, such as hunting, gathering and the sustainable use of natural resources, receive the same level of protection as all other forms of employment or economic activity;

(b) Ensure that Indigenous Peoples enjoy labour rights on an equal footing with others, including equal access to employment opportunities and full protection under labour laws.

99. Attention should be given to Indigenous women, who often face multiple and intersecting forms of discrimination and are often more active in traditional occupations. This

includes ensuring effective protection against exploitative labour practices, forced labour, child labour and sexual harassment, as well as improving the outreach and accessibility of labour inspection mechanisms in remote and marginalized areas.

100. The Special Rapporteur was particularly concerned by the situation affecting Indigenous Peoples living for generations on private farms, especially in Ghanzi and surrounding districts. They told the Special Rapporteur about being subjected to exploitative labour practices.

101. Reports described unsafe working conditions, low pay, payment in alcohol, and child and bonded labour. When workers become ill, injured or unable to work, they are reportedly evicted from farms without compensation or support, leading to homelessness and further marginalization. There are also Indigenous children participating in domestic labour and hazardous tasks on farms, such as applying chemicals to cattle and herding livestock over extended distances, often resulting in compromised access to education. These practices perpetuate intergenerational deprivation and are significantly associated with the rise in the number of Indigenous children in street situations in urban areas. Efforts by the Government to address child labour and working conditions on private farms remain limited.

102. The Special Rapporteur noted the Government's commitment to profoundly reform the Remote Area Development Programme through a human rights-based approach that would recognize Indigenous Peoples as a specific group of rights holders, targeted for affirmative action.

X. Right to health

103. The Special Rapporteur notes that Indigenous Peoples in Botswana continue to encounter significant barriers to enjoying the highest attainable standard of physical and mental health on an equal footing with the broader population of Botswana.

104. The obligation of States with regard to the right to health of Indigenous Peoples has a wide scope. It includes:

(a) The right of Indigenous Peoples to traditional medicines;

(b) The right to maintain their health practices;

(c) The right to access social and health services without discrimination.[51] States are also obliged to ensure that no storage or disposal of hazardous materials or substances takes place on Indigenous Peoples' land and territories without their free, prior and informed consent.[52]

105. For Indigenous Peoples to enjoy the highest attainable standard of health, States must provide culturally appropriate health services and provide the necessary resources for Indigenous Peoples to design, deliver and manage their own healthcare systems. Additionally, health services for Indigenous Peoples must meet their collective needs, be accessible and respect Indigenous practices.

106. The Special Rapporteur notes that access to healthcare in Indigenous communities, particularly in remote areas, remains irregular and insufficient. Mobile health clinics are infrequent, unpredictable or limited in scope, leaving many Indigenous persons – especially those with chronic conditions such as HIV/AIDS, hypertension or diabetes – without consistent access to diagnosis, treatment or medication. In several communities visited, patients had to travel long distances on foot or in overcrowded trucks, sometimes in unsafe conditions, to reach health facilities. Delays in emergency care and the absence of ambulances were also reported as having resulted in preventable deaths, including of children.

107. The Special Rapporteur heard that Indigenous persons experienced discrimination and mistreatment when accessing health services, including long waiting times, lack of

[51] United Nations Declaration on the Rights of Indigenous Peoples, art. 24.
[52] Ibid., art. 29.

interpretation to and from Indigenous languages and culturally inappropriate care. These barriers were compounded for Indigenous elders, women, persons with disabilities and those with limited literacy. Mental health concerns, including stress, anxiety, alcohol abuse and trauma linked to displacement, poverty and loss of livelihoods, were also widely reported, remaining largely unaddressed.

108. Furthermore, Indigenous Peoples expressed concerns about the erosion of their traditional health systems. Restrictions on access to lands, forests and natural resources had undermined the use and transmission of traditional medicines and health practices, including prenatal and postnatal care. In some areas, Indigenous Peoples reported being required to obtain permits or pay fees to collect medicinal plants, effectively criminalizing traditional healing practices. The lack of recognition and integration of traditional medicine within the public health system contributed to cultural alienation and loss of Indigenous knowledge.

109. Underlying determinants of health – including food insecurity, and lack of access to clean water, electricity, adequate housing and sanitation – remain pervasive in many Indigenous communities and directly affect physical and mental well-being. Long-term dependence on food rations, often nutritionally inadequate, and the disruption of traditional food systems, were repeatedly linked to malnutrition, chronic illness and declining health outcomes.

XI. Conclusions and recommendations

Terminology and recognition of Indigenous Peoples

110. **The Government of Botswana should be commended for acknowledging the critical importance of legal recognition for Indigenous Peoples. It also recognizes that the term "Basarwa" carries negative stigma and that the term "Indigenous Peoples" must be understood as a human rights term. Nevertheless, Indigenous Peoples in Botswana still face significant social exclusion and do not enjoy fundamental rights equally. To reverse this trend, the Government should:**

(a) **Consider publicly apologizing for historical wrongs against Indigenous Peoples in Botswana;**

(b) **Consult with Indigenous Peoples to agree on the appropriate terms and traditional names for these peoples;**

(c) **Formally recognize Indigenous Peoples, including cross-border Nama peoples, as distinct rights holders through constitutional, legislative or policy measures consistent with international human rights standards;**

(d) **Ratify key international human rights instruments, in particular the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the International Covenant on Economic, Social and Cultural Rights;**

(e) **Develop a national action plan on Indigenous Peoples' rights, in order to coordinate reforms across land, development, education, health and participation.**

Lands, territories and resources

111. **The Government's Interministerial Committee has highlighted how central land, territories and resources are to addressing the historical injustices endured by Indigenous Peoples in Botswana. It is critical to note, however, that these injustices have led to four separate groups of victims, each with its own distinct characteristics. Additionally, the Community-Based Natural Resource Management Act of 2025 does not pay particular attention to the situation of Indigenous Peoples. The Government should therefore adopt and implement tailored redress measures for each victim category, inter alia:**

(a) **Reviewing the settlement schemes and enabling those Indigenous Peoples to return to their ancestral lands;**

(b) **Creating a specific national agency or authority to handle Indigenous Peoples' land claims, including matters of restitution, compensation, and the recognition of collective land rights;**

(c) **Fully implementing the 2006 *Sesana* case ruling and enabling the return of all Indigenous Peoples with cultural ties to the Central Kalahari Game Reserve, and ensuring adequate living conditions for returnees;**

(d) **Recognizing and protecting Indigenous Peoples' collective land tenure systems, including through demarcation and titling of ancestral lands and, where relevant, through the acquisition of privately owned land to be returned to the Indigenous Peoples who were its traditional owners;**

(e) **Develop dedicated national redress and restitution programmes for Indigenous Peoples living in bondage-like relationships and on private farms and support their social reintegration into Botswana society;**

(f) **Ensure that the enabling legislation or regulations of the Community-Based Natural Resource Management Act consider the unique circumstances of Indigenous Peoples, guaranteeing their meaningful and effective participation in decision-making processes.**

Self-governance and participation in decision-making

112. The current Government of Botswana has adopted a new approach, demonstrated by **efforts to include Indigenous Peoples in policy formulation. Nonetheless, challenges persist regarding self-governance, as institutions established by Indigenous Peoples often lack equal recognition, protection and support from the Government. Additionally, mechanisms to guarantee fair and equal representation of Indigenous Peoples in government and legislative and judicial bodies remain absent.**

113. **The Government should also continue to strengthen its legal, regulatory and policy frameworks to ensure that companies operating in the extractive, energy and infrastructure sectors respect Indigenous Peoples' rights.**

114. **To those ends, the Government should work in consultation with Indigenous Peoples to, inter alia:**

(a) **Continue to strengthen its legal, regulatory and policy frameworks to ensure that companies operating in the extractive, energy and infrastructure sectors respect Indigenous Peoples' rights, including through mandatory human rights and environmental due diligence requirements where appropriate;**

(b) **Adopt national legal and policy frameworks for consultation with – and free, prior and informed consent of – Indigenous Peoples, in the public and the private sectors;**

(c) **Ensure effective representation and meaningful participation of Indigenous Peoples in all national and local decision-making bodies and institutions;**

(d) **Reform the Ntlo ya Dikgosi with a view to ensuring equitable representation of Indigenous Peoples.**

Access to justice

115. **The Government recognizes the need to empower Indigenous Peoples' traditional leaders and to recognize Indigenous customary laws and justice systems. However, the persistent disparities in access to justice for Indigenous Peoples continues to represent a significant issue that warrants the Government's attention, including by taking measures to:**

(a) **Strengthen equal access to justice for Indigenous Peoples by expanding legal aid, interpretation in Indigenous languages, and legal awareness programmes in remote areas;**

(b) **Provide mandatory human rights and cultural sensitivity training for judges, magistrates, customary court officials and law enforcement personnel in order to combat discrimination against Indigenous Peoples;**

(c) **Ensure the effective participation and representation of Indigenous Peoples in customary courts and the Bogosi system, including through equal recognition and support for Indigenous traditional leaders;**

(d) **Strengthen recognition of Indigenous customary law and traditional justice systems, in accordance with international human rights standards;**

(e) **Strengthen the institution of the Ombudsman, including through support for "A" status accreditation in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and through expanded outreach to Indigenous Peoples.**

Cultural integrity and languages

116. **The Government has recently taken initial steps to promote linguistic inclusion, including the introduction of additional Indigenous languages in national broadcasting and the announcement in March 2026 of the development of a National Language Policy. To address resilient challenges, the Government should:**

(a) **Adopt a national legal and policy framework recognizing Indigenous languages as core to cultural rights – supporting their revitalization, teaching in Indigenous languages, and the use of Indigenous languages in public institutions and their inclusion in media;**

(b) **Protect and co-manage Indigenous cultural heritage sites, including sacred sites, graves and landscapes, ensuring that free, prior and informed consent is obtained for decisions affecting them;**

(c) **Review the governance of World Heritage Sites, including Tsodilo Hills and the Okavango Delta, to ensure Indigenous Peoples' participation in the nomination, management, interpretation and benefit-sharing, and address past relocations or unresolved heritage concerns;**

(d) **Safeguard Indigenous traditional knowledge and cultural expressions, ensuring fair benefit-sharing and supporting Indigenous-led initiatives in cultural tourism, crafts, performances and conservation.**

Education

117. **The Government acknowledges the urgent need for a new education model for Indigenous children and is open to adopting practices from other States. The Government further notes that the hostel system has harmed Indigenous children, especially girls, who have faced sexual violence, abuse and exploitation. To prioritize the education of Indigenous children, the Government, among other things, is recommended to:**

(a) **Urgently review and reform the hostel system to phase out the placement of young Indigenous children, ensuring immediate protections for those currently in hostels, including safe living conditions, culturally competent staff, and zero tolerance for sexual and gender-based violence and abuse;**

(b) **Ensure equal access to education by revising population-based criteria that prevent Indigenous communities from setting up schools – expanding satellite, mobile and community-based schools, and strengthening incentives and support for teachers working in remote areas;**

(c) **Implement mother tongue-based education with trained Indigenous teachers and teacher aides, culturally appropriate curricula and learning materials, and Indigenous language instruction;**

(d) **Integrate Indigenous histories, cultures, values and knowledge systems into the national curriculum in consultation with Indigenous Peoples;**

(e) **Establish pathways for Indigenous youth to secondary, vocational and tertiary education, including scholarships, bridging programmes and psychosocial support, with attention to girls and remote-area students.**

Socioeconomic development and labour rights

118. **The Government has taken positive steps on socioeconomic and labour issues affecting Indigenous Peoples, including through National Development Plan 12. However, meaningful change will require a fundamental shift from population-based and assimilationist models towards rights-based, participatory and Indigenous-led development models. For that purpose, the Government should:**

(a) **Transform the Remote Area Development Programme into a rights-based framework that recognizes Indigenous Peoples as specific rights holders and supports Indigenous-led development priorities based on traditional knowledge, skills and cultural practices;**

(b) **Delink access to public services from population thresholds and settlement classifications, and ensure equal and non-discriminatory access to water, food, healthcare, housing, electricity, transport, communication infrastructure and social protection for Indigenous Peoples, regardless of their location;**

(c) **Adopt targeted special measures to address structural poverty, unemployment and exclusion affecting Indigenous communities, particularly women, youth and persons with disabilities;**

(d) **Ensure equitable benefit-sharing from tourism, conservation and natural resource development affecting Indigenous territories;**

(e) **Strengthen protection against exploitative labour practices, particularly on private farms, including through strengthened labour inspections and enforcement of labour and child protection laws, ensuring compliance by private employers with relevant International Labour Organization Conventions and with the Guiding Principles on Business and Human Rights;**

(f) **Protect Indigenous Peoples' traditional occupations, including hunting, gathering and other cultural economic activities, in accordance with international labour standards.**

Health

119. **Equal access to health services remains a critical and central demand of Indigenous Peoples in Botswana. To that end, the Government should:**

(a) **Ensure equal, non-discriminatory and effective access to healthcare for Indigenous Peoples, including by strengthening and regularizing mobile and community-based health services, and ensuring access to chronic and emergency healthcare, medication, ambulances and referral systems;**

(b) **Make health services culturally appropriate and inclusive of Indigenous knowledge systems, by integrating Indigenous languages and practices into healthcare delivery, recruiting and training Indigenous health workers and interpreters, and recognizing, protecting and respectfully integrating Indigenous traditional medicines, medicinal plants and healing practices into the public health system;**

(c) **Address the structural and psychosocial determinants of Indigenous health, including mental health, by improving access to nutritious food, clean water, electricity, housing and sanitation, and by providing culturally appropriate mental health and psychosocial support to address stress, trauma, alcohol abuse and gender-based violence.**

Cross-cutting measures

120. **Botswana should:**

(a) **Develop disaggregated data collection systems based on self-identification to better understand and address inequalities affecting Indigenous Peoples;**

(b) **Support public education and awareness-raising programmes to eliminate prejudices and negative stereotypes, combat discrimination and promote understanding of Indigenous Peoples' histories and contributions to Botswana.**