



**PERMANENT MISSION OF THE REPUBLIC OF BOTSWANA
TO THE UNITED NATIONS**

80, rue de Lausanne - 1202 Geneva - SWITZERLAND
Tel. +41 (0)22 906 10 60 - Fax + 41 (0)22 906 10 61
botgen@bluewin.ch

GEN/E/15 VI (47) PR

30 July 2013

Excellency,

I have the honour to refer to your Letter of 12 February 2013, regarding allegations on the situation of human rights of the Basarwa and the Bakgalagadi in the Central Kgalagadi Game Reserve (CKGR).

I wish to provide a response of the Government of Botswana to the allegations as follows:

1. From the outside we wish to state that the Government of Botswana has fully complied with the judgement in the Sesana case by allowing all those who had taken the government to court to return to the CKGR and took all the necessary measures to ensure that such return becomes a reality. However, since the judgement of the 13th December 2006 ruled that the termination on the 13th January 2002 by the Government of the provision of basic and essential services to the applicants in the CKGR was neither unlawful nor unconstitutional the Government is not obliged to restore the provision of such services to the applicants in the CKGR.

2. Following an appeal to the Court of Appeal on 27th January 2011, the Court on the 27th January 2011 ruled that the applicants in the CKGR have the right at their own expense to:

- a) Re-commission the borehole at Mothomelo in the CKGR formerly used to provide water to the residents of the Reserve, and to sink one more borehole at such site inside the Reserve;

**His Excellency Professor James Anaya
Special Rapporteur on the Rights of Indigenous Peoples
Office of the High Commissioner for Human Rights
Geneva, Switzerland**

OHCHR REGISTRY

30 JUL. 2013

Recipients :.....SPD.....
.....
.....
.....

- b) Service, repair and maintain in good working order any borehole to which this declaration applies ; and
- c) Use water abstracted from any such borehole for domestic purposes only in accordance with Section 6 of the Water Act.

3. The above ruling by the Court of Appeal confirmed the Government's position that it is not obliged to restore the provision of services to the applicants in the CKGR. However, in spite of the ruling by the Court of Appeal the Government offered its borehole in Mothomelo to the applicants, which the residents are refusing to use and they declined the Government's offer of equipping the borehole. Following the judgement, the residents of the CKGR drilled four (4) boreholes on their own. However, two (2) in Metsimanong were blank, while the borehole in Molapo had higher concentrates of Total Dissolved Solids (TDS), way over the World Health Organisation (WHO) recommended levels. There is one borehole in Mothomelo, which is operational and solar powered and the residents of CKGR are welcome to use it, as per the Court of Appeal decision of 27th January 2011.

4. Government provides services such as health services and social safety nets which the residents can source from settlements outside the CKGR such as New Xade, Xere and Kaudwane. There are food baskets and old age pension that are provided in these areas outside the CKGR. They will have to travel there to access these services as Government is not obliged to restore the provision of such services in the CKGR. It is also important to note that the Government provides transportation of children from the CKGR to attend schools in the villages outside the CKGR.

5. These children are also provided with uniform, private clothing, bedding and toiletries. There are sixty-five (65) students in all and thirty-seven (37) are at Primary School; twenty-five (25) at Junior Secondary School and three (3) at Senior Secondary School.

6. With regard to the hunting licences the Government continues, through the laid down procedures of the Wildlife Conservation and National Parks Act of 2002, to assess Basarwa for qualification for special game licences. Those found to be qualifying are issued with special game licences. The special game licence specifies the species to be hunted, the number to be hunted and the area in which the hunting must be conducted. CKGR remains a protected area and therefore in terms of the laws of the country no hunting is permitted in the Reserve. Gathering of veldt products on the other hand has never been prohibited and the residents continue to harvest veldt products in the reserves without restrictions.

7. Special Game licence is issued to qualifying citizens of Botswana who qualify in terms of the Wildlife Conservation and National Parks Act of 1992. Under the Act, Special Game Licence can only be issued to citizens of

Botswana who are principally dependent on hunting and gathering of veldt products for their food. Under the licence, the holder shall only be entitled to hunt on the land and during the period specified in the licence, animals of a specified species and of the number therein specified.

8. In order to ensure transparency and accountability in the process a Multi-Sectoral Committee comprising of the departments of Wildlife and National Parks; Social and Community Development; and Tribal Administration was established with the sole objective of carrying out the assessments of the prospective beneficiaries to determine those who qualify for special game licences.

9. Regarding the numerous allegations of harassment or torture of suspects, the Government of Botswana wishes to categorically deny such allegations and vehemently state that in all instances/cases mentioned, the accused persons were never intimidated, ill-treated or tortured. This is further buttressed by the fact that none of the suspects ever complained to the Police or other authorities of ill-treatment at any given time. These allegations are therefore false and have no basis in fact or law.

10. In terms of the statutes of Botswana, harassment or torture of suspects in any form is an offence and perpetrators of such acts, be it police officers or wildlife officials are investigated, prosecuted and if found guilty by our courts, appropriate sentences, including imprisonment are applied. This applies to all people residing in Botswana including the CKGR. Any harassment by Government officials or members of security agencies to residents of the CKGR must be reported to the Police for investigations and possible prosecution. To this end, previous allegations of abuse of residents of the CKGR were reported to the Police, and the latter carried out investigations but no evidence was found to substantiate the allegations.

11. In accordance with the above the Police handled the following matters in 2012 and 2013 with respect to residents of Gope settlement:

- i) Two adult males, aged 52 and 48 years respectively, were arrested on the 2nd November 2012 at Gope settlement for unlawful possession of Government trophy. The two were found in possession of Eland biltong and two (2) Eland skins. One of the accused persons has absconded and a warrant of his arrest has been issued. The matter has since been withdrawn with liberty to prosecute against both accused persons and the matter will be reinstated once he is arrested.
- ii) Two (2) adult males aged 35 and 41 respectively were arrested on 28th November 2012 at Gope settlement for unlawful possession of biltong and a complete head of an Eland. The matter was completed before Molepolole magistrate Court on the 5th December 2012 and they were

both found guilty and each was fined P1500.00 or six (6) months imprisonment in default of payment.

iii) On the 5th January 2013 three (3) juvenile males, aged 11, 14 and 15 were arrested for killing a Kudu which is a protected animal. The three were found in possession of fresh Kudu carcass. It must be noted that during their interviews by the police, the three were accompanied by their parents and at no point were they assaulted, ill-treated or detained. This has been confirmed by the parents of the suspects. Given their ages, the matter could not be progressed further and they were handed to their parents.

12. The above cited cases confirm the police's strict adherence to the laid down procedures regarding the handling of suspects and the conduct of investigations. It further buttresses the commitment of Botswana to the rule of law and the promotion of human rights in the country. As already stated before the allegations contained in the Special Rapporteurs report are unfounded and have no basis in fact and law.

13. Following the CKGR Court Case ruling of 13th December 2006, Government of Botswana undertook a commitment to negotiate with residents of CKGR in consultation with all relevant stakeholders.

14. On the 12th June 2008, a delegation of five Basarwa/San, led by Roy Sesana, met His Excellency the President, Lieutenant General Seretse Khama Ian Khama, to request that the matter of CKGR be dealt with by the Government. President Khama advised that the delegation return to their settlements and arrange for selection of representatives (of both former and current CKGR communities) so that consultations with adequate representations could begin between them and the Government. The meeting also agreed that local NGOs be enlisted to assist in the process.

15. A negotiating team consisting of Government representatives advised by Senior Technical Committee, and CKGR representatives facilitated by NGO Coalition was thereafter constituted with a view to finding an amicable solution to the CKGR matter.

16. As result a number of activities and processes have taken place with regard to finding an amicable solution through the consultation process. This includes a series of meetings between the two parties and familiarization tours by Government Representatives to the CKGR to fully appreciate the situation.

17. It should be noted that all the parties have committed to transparency, integrity and trust with regard to the process, and to holding all discussions without prejudice. The Government of Botswana values the presence and contributions of NGOs in the consultation process.

18. It is my hope that this response will adequately address your concerns. I wish to, once again, reassure you, on my behalf and that of my Government, of our commitment to continue to work with you and all the other relevant UN mechanisms, as well as the civil society, in our efforts to improve the livelihood and the human rights situation of the Basarwa and the Bakgalagadi, in particular, as well as all the people of Botswana, in general.

Please accept, Excellency, the assurances of my highest consideration.



Mothusi B. R. Palai

Ambassador and Permanent Representative