

<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b> <b>African Commission on Human &amp; Peoples' Rights</b>		<b>UNIÃO AFRICANA</b> <b>Commission Africaine des Droits de l'Homme &amp; des Peuples</b>
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## **Consideration of Reports Submitted by States Parties under Article 62 of the African Charter on Human and Peoples' Rights**

### **Concluding Observations and Recommendations on the 2<sup>nd</sup> and 3<sup>rd</sup> Combined Periodic Report of the Republic of Botswana on the Implementation of the African Charter on Human and Peoples' Rights**

#### **I. INTRODUCTION**

1. The Republic of Botswana (Botswana) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified it on 17 July 1986.
2. Botswana presented its Initial Periodic Report at the 46<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (the Commission), which was held from 11 to 25 November 2009, in Banjul, The Gambia.
3. The present Report, submitted to the Commission on 18 October 2017, is the 2<sup>nd</sup> and 3<sup>rd</sup> Combined Periodic Report, encompassing the period between 2011 and 2015.
4. The Report was considered by the Commission during the 63<sup>rd</sup> Ordinary Session, held in Banjul, The Gambia, from 24 October to 13 November 2018.
5. The Report was presented to the Commission by Hon. Nonofu Molefhi, Minister of Presidential Affairs, Governance and Public Administration and Head of Delegation, who was accompanied by the following members of the Delegation:
  - Ms. Matshidiso Dorcas Bokole, Ministry of Defence, Justice and Security;
  - Ms. Kamogediso Kebuang Mokongwa, Ministry of Defence, Justice and Security;
  - Mr. Thomas Motingwa, Office of the President;
  - Ms. Mogogi Nursey Kojane, Office of the President;
  - Mr. Shimane Kelaotswe, Ministry of International Affairs and Cooperation;
  - Ms. Benetia Chingapane, Ministry of International Affairs and Cooperation;
  - Ms. Gwiso Dube, Ministry of International Affairs and Cooperation;
  - Ms. Thapelo Phuthego, Ministry of Nationality, Immigration and Gender Affairs;
  - Ms. Helen Chedza Chilisa, Ministry of Basic Education;

- Ms. Ookame Mokabathebe, Ministry of Local Government and Rural Development;
  - Mr. Lentikile Matswagothata, Ministry of Basic Education;
  - Mr. Joseph Kefas, Ministry of Health and Wellness, NACA;
  - Mr. Anthony Mokento, Botswana Prison Services; and
  - Ms. Sibongile Edna Balang, Botswana Prisons.
6. The Report highlights developments which have taken place in the area of the promotion and protection of human and peoples' rights, in addition to the legislative and administrative measures put in place to comply with the country's obligations under the African Charter.
  7. The present Concluding Observations give an account of the positive aspects, the factors restricting the enjoyment of human rights and the areas of concern based on the content of the Report and information provided during consideration of the Report. Finally, the Commission makes recommendations on the measures needed to strengthen the enjoyment of human rights as guaranteed by the African Charter as well as other relevant regional and international human rights instruments.

## **II. POSITIVE ASPECTS**

8. The Commission takes note of a number of positive aspects in Botswana's efforts to fulfil its obligations under the African Charter.

### **Reporting obligations with the Commission**

9. The Commission:
  - i. Commends the effort made by Botswana in preparing and presenting its combined periodic report in accordance with the provisions of Article 62 of the African Charter in addition to the written responses provided prior to consideration of the Report;
  - ii. Commends the participation of civil society organizations in a workshop dedicated to consideration of the draft report on 19 May 2015, and welcomes the information on the specific civil society organizations who participated in the preparation of the Report;
  - iii. Commends the inclusion of information in the Present Report on the implementation of the Concluding Observations and Recommendations on the Initial Periodic Report, which were issued by the Commission in 2010; and
  - iv. Applauds the inclusion of information on the challenges and constraints faced by the Government in its efforts to ensure the promotion and protection of human rights.

### **Ratification of regional and international human rights instruments**

10. The Commission commends Botswana for ratifying the African Union Convention on Preventing and Combating Corruption (14 May 2014).

**Adoption of legislative, policy or other measures to give effect to human rights**

11. The Commission commends the adoption of the following laws to promote and protect human rights:

- i. The Public Health Act, 2013;
- ii. The Legal Aid Act, 2013;
- iii. The Electronic Records (Evidence) Act, 2014;
- iv. The Chemical Weapons (Prohibition) Act, 2014;
- v. The Retirement Funds Act, 2014;
- vi. The Married Persons Property Act, 2014;
- vii. The Anti-Human Trafficking Act, 2014;
- viii. The Counter-Terrorism Act, 2014; and
- ix. The Whistle-blowing Act, 2016.

12. The Commission commends the adoption of the following policy measures to give effect to the promotion and protection of human rights:

- i. The Revised National Youth Policy (2010) whose overall goal is to ensure systematic integration of youth mainstreaming as a key component for program development processes within Government, the private sector and civil society;
- ii. The Poverty Eradication Guidelines (2011) developed to provide guidance in the implementation of empowerment projects in support of the overall Poverty Eradication Programme;
- iii. The Forest Policy (2011) adopted to promote protection, conservation, development and sustainable use of forests and woodlands;
- iv. The Revised National Health Policy (2011) adopted in view of the major changes in the organization of the health sector in the country;
- v. The Affirmative Action Policy on Remote Area Communities (2012) to promote equal opportunities for remote area communities;
- vi. The Revised Botswana National Policy on HIV/AIDs (2013), to ensure provision of free Antiretroviral drugs (ARVs) to every client accessing health facilities;
- vii. The Botswana Land Policy (2013) which protects and promotes land rights of all land holders as well as sustainable human settlements;
- viii. The Botswana Anti-Corruption Policy (2014) which establishes minimum standards governing anti-corruption and ethical responsibilities of civil servants as well as stakeholders doing business with the Government, and the establishment of anti-corruption units in all the Ministries to ensure the promotion and protection of human rights;
- ix. The National Policy on Gender and Development (NPGAD) (2015) to guide and inform the development and implementation of gender sensitive and responsive

- initiatives with the aim of reducing inequalities in the opportunities and outcomes of social, economic, cultural and legal development for both men and women;
- x. The National Operational Plan (2015) to operationalize the NPGAD Policy;
  - xi. The Botswana National Policy on Disability (2015) which aims at promoting and protecting the dignity of people with disabilities and creating a barrier free society; and
  - xii. The Botswana National E-Government Strategy launched in 2010 with the view of improving the convenience, quality and efficiency of public service sector delivery in Botswana.

## **CIVIL AND POLITICAL RIGHTS**

### **Access to and administration of justice**

#### 13. The Commission:

- i. Takes note of the introduction of the Judicial Case Management System in 2010 to deal with the backlog of cases;
- ii. Welcomes the establishment of Legal Aid Botswana, following enactment of the Legal Aid Act in 2013, which provides legal assistance to indigent persons in civil cases, and to accused persons in capital offence cases;
- iii. Commends the following measures taken to increase access to the courts:
  - (i) Introduction of Mobile Courts, particularly in areas where long distance limits access to the courts; and
  - (ii) Introduction of Specialized Courts to dispense justice expeditiously, including the Small Claims Courts, Traffic Courts, Stock Theft Courts, Corruption Courts and Child Maintenance Courts.

### **The right to participate in the conduct of public affairs**

#### 14. The Commission commends the following initiatives adopted by the Independent Electoral Commission:

- i. The creation of Democratic Youth Clubs (DYC) in secondary schools;
- ii. Transcription of instructions into braille to enable voters with visual impairments to read for themselves, in order to enhance the secrecy of the ballot; and
- iii. Introduction of a 'help-desk' at each polling station to assist voters.

### **Refugees, IDPs and Migrants**

#### 15. The Commission commends the measure taken in 2010 of posting a resident doctor to the Dukwi Refugee Camp, to deal with the health needs of the refugee community.

### **Economic, Social and Cultural Rights**

## **The right to property**

16. The Commission takes note of the following measures put in place to ensure the right to property:

- i. The Self Help Housing Agency (SHHA) scheme through which low income earners, within the range of Pula 395 to Pula 3000, receive interest free loans to improve their residences or receive complete residential units;
- ii. The Destitute Housing Programme, through which the Government has constructed one thousand, seven hundred and thirty-two (1732) shelters for the poor since 2008/9; and
- iii. The Presidential Housing Appeal which has provided four hundred and twenty (420) houses for the needy since its inception in 2009/10.

## **The right to Health**

17. The Commission:

- i. Commends the provision of free health care and medication to children, destitute persons and women seeking ante-natal care, in Government health facilities;
- ii. Takes note of the information provided stating that 95% of the population of cities and 89% of rural population live within 15 kilometres of a health facility;
- iii. Further takes note that there are over 800 mobile health services for populations in remote areas, or those outside the 8km radius of a health facility; and
- iv. Commends the adoption of the Accelerated Child Survival and Development Strategy (2009/2010 - 2015/2016) to address child survival, which introduces high impact interventions, including new vaccines, vitamin A supplements and strengthening the coverage and quality of services and monitoring systems.

## **Protection of the rights of persons living with HIV/AIDS**

18. The Commission takes note of the following measures:

- i. Provision of anti-retroviral treatment (ART) to every client accessing health facilities;
- ii. Launch of the "Treat All" strategy in June 2016, which provides treatment for all persons who test HIV-positive regardless of viral load and CD4 count;
- iii. Development of a standard package of interventions targeting key populations in the community who are at high risk of contracting HIV, TB and other STIs, with the focus of the interventions on issues such as human rights, gender based violence, stigma and discrimination reduction initiatives;
- iv. Introduction of new prevention strategies, such as safe male circumcision;
- v. Integration of Prevention of Mother to Child Transmission (PMTCT) interventions into routine maternal-child health care in all public facilities, and referral of HIV

- positive women to the National ART programme for ARV evaluation and treatment;
- vi. Introduction in 2015, of life-long ART treatment for pregnant women who test HIV positive;
  - vii. The establishment of the Infectious Disease Control Centres (IDCC) by the Botswana Prison Service, to ensure provision of medical services to prisoners;
  - viii. The provision of free Anti-Retroviral Treatment (ARVs) to all prisoners living with HIV/AIDS including foreign inmates, in compliance with the Court of Appeal ruling in *Attorney General and Others v. Tapela and Others* (2014) in which the Court ordered that foreign prisoners should receive medical treatment for HIV and AIDS;
  - ix. The provision of free ARVs to refugees, with the support of the Red Cross and PEPFAR, in addition to implementation of robust awareness campaigns for the refugee community, to advance the prevention of HIV; and
  - x. The information that women in refugee camps have access to Prevention of Mother to Child Transmission (PMTCT) intervention.

19. The Commission commends the following achievements:

- i. Decline of annual HIV infections by 71% between 2001 and 2011, while 95% gained access to free ARVs; and
- ii. Reduction of HIV/AIDS prevalence among 15 to 24 year old persons, from 8% in 2008 to 7.9 per cent in 2013.

### **The right to Education**

20. The Commission commends the following initiatives:

- i. The Government's investment in education, which has been increasing at an average annual rate of 4%;
- ii. The allocation of a significant portion of the budget to the education sector, which accounts for about 25% of Government expenditure;
- iii. The flexibility in the admission policy to enable children from Remote Area Dweller Settlements (RADS) to start school at an age later than the official entry age of 6 years;
- iv. Provision of transport to children with special needs to and from school, to ensure increased participation in education;
- v. Provision of psycho-social support and basic needs, such as food baskets, school uniforms and stationery, to orphans and vulnerable children including those from poor economic backgrounds;
- vi. Implementation of a school feeding program to cater for all children, including those from poor economic backgrounds;
- vii. Implementation of the Pregnancy Policy, to ensure that children who drop out of school due to pregnancy are able to continue with their education following confinement;

- viii. Mainstreaming gender into educational policies, programs and projects to ensure gender sensitive education programs;
- ix. The Equal Opportunities Policy in the Technical and Vocational Education and Training institutions, which reserves a 15% quota for admission of students from disadvantaged backgrounds; and
- x. An increase in the number of institutions providing education for students with special education needs, from 12 in 2012 to 64 in 2014, in addition to special cut off points for admissions of students with learning disabilities in tertiary education institutions.

### **Protection of the rights of women**

21. The Commission welcomes the following measures to address gender based violence (GBV):

- i. Adoption of Regulations for the Domestic Violence Act in 2013 to facilitate effective implementation of the Act;
- ii. Development of the National Strategy Towards Ending Gender Based Violence by 2020; and
- iii. Piloting the Gender Based Violence Referral System to provide comprehensive service and enhance linkages amongst GBV service providers, as well as improve management of GBV cases.

22. The Commission also welcomes the following:

- i. The dialogue initiated by the Government in 2012 with *Dikgosi* (chiefs) on mainstreaming gender in the customary justice system;
- ii. The adoption of the Gender and Development Strategy (2015);
- iii. The Gender National Strategy (2015) which prioritizes women's empowerment with regard to political power, decision making and democratic governance, in addition to various national development areas such as economic diversification, social protection and social services;
- iv. The initiative of the Government, during the 2014/2015 financial year, of allocating 10% from the Alcohol Levy Fund to women empowerment programs in an effort to improve their participation in the economic development of the country;
- v. The Maternal and Neonatal Health Program which has accelerated the reduction of maternal and infant mortality rate;
- vi. The measures put in place to address the country's high maternal mortality rate, including through the Comprehensive Emergency Obstetric and Neonatal Care program which is being employed to reduce the impact of clandestine and unsafe abortions on maternal mortality;
- vii. The slight decrease in the maternal mortality ratios (MMR) between 2012 and 2016, which have been fluctuating between 127 and 182.6, which is an improvement when compared to the 2008/2011 ranges of 163 to 195.7; and

- viii. Implementation of the Comprehensive Cervical Cancer Prevention and Control Strategy (2012-2016), which introduces screening and outpatient treatment of cervical cancer in one single visit, commonly referred to as “See and Treat.”

### **Protection of the rights of children**

23. The Commission commends the following measures for ensuring promotion and protection of the rights of children:
  - i. Introduction of a Bill of Rights for all children in Botswana in the Children’s Act (2009);
  - ii. The provisions of the Children’s Act which prohibit harmful social, cultural and religious practices detrimental to a child’s well-being, including forced marriage, child betrothal and female genital mutilation;
  - iii. Establishment of the National Children’s Consultative Forum, under the Children’s Act, to empower children to influence actions, processes and decisions that affect them; and
  - iv. Adoption of the Botswana National Plan of Action for Orphans and Vulnerable Children (NPA) (2010-2016).

### **Protection of the rights of persons with disabilities**

24. The Commission takes note of the following measures to ensure promotion and protection of the rights of persons with disabilities:
  - i. Establishment of the National Disability Coordination Office by the Office of the President in 2010, with the mandate to develop and coordinate the implementation of policies, programs and strategies aimed at empowering persons with disabilities;
  - ii. Establishment of centres for children with severe disabilities;
  - iii. The provision of prosthetic and orthotic services at a subsidised rate of 5% of the total price and free fitting services;
  - iv. Provision of annual subventions to organisations providing special education and skills training to persons with disabilities;
  - v. Sponsorship of students with learning difficulties in institutions of higher learning;
  - vi. Economic development programs initiated by the Government which specifically target women and girls with disabilities; and
  - vii. Provision of economic empowerment support to caregivers of persons with multiple disabilities who need a full-time care-giver.

### **Protection of the rights of older persons**

25. The Commission commends:

- i. The provision of a non-contributory pension, which every person over 65 years is eligible to receive; and
- ii. The provision of a cash allowance on a monthly basis, which widows of World War II military veterans receive.

### **Extractive industries**

26. The Commission welcomes the information provided that the Government charges mining companies for the exploitation of mineral resources and that the collected revenue is used to provide public services, enhance human capital and boost economic growth in line with the objectives of the National Development Plan.

### **Protection of the Environment**

27. The Commission commends the initiatives which have been taken to conserve biological resources which are under increased threat from a variety of land use practices, including: land rehabilitation, restocking of species at risk of extinction, anti-poaching measures, implementation of natural resources management plans for specific key areas, national tree planting programs and manufacturing sand from sandstone to alleviate the impact of sand mining.

### **Protection of the rights of indigenous populations/communities**

28. The Commission takes note of the following measures:

- i. Introduction of the Remote Area Development Programme (RADP), the Affirmative Action Framework for Remote Area Communities (RACs) and the 10-Year Implementation Plan in 2014, as the flagship programs which involve regular consultations with RACs and monitor implementation of identified projects for the benefit of the RACs; and
- ii. Provision of services to residents of Central Kalahari Game Reserve including transporting children to and from school, and provision of uniforms, clothing, bedding and toiletries.

### **Right to economic, social and cultural development**

29. The Commission takes note of the following:

- i. The Destitute Programme which entails the assessment and registration of people who are needy, in addition to providing provisions including food, cash, clothing, shelter and funeral expenses;
- ii. The Orphan Care Program which provides food to orphans on a monthly basis, shelter where there is need, as well as school uniform and clothing; and
- iii. The Community Home Based Care which provides basic amenities for people who suffer from terminal illnesses such as cancer, HIV/ AIDS.

30. The Commission commends introduction of the following youth development programs:

- i. The Youth Development Fund which provides technical and financial assistance in the form of grants, loans and capacity building;
- ii. The Youth Empowerment Scheme which is a life skills development program aimed at curbing unacceptable social behaviours by youth associated with conditions such as unemployment, poverty, idleness, excessive consumption of alcohol, crime, dysfunctional families, HIV/AIDS and other health related issues;
- iii. The Constituency Sport Tournament through which various sporting competitions such as football, netball and volleyball were introduced at constituency level to curb youth from indulgence in substance abuse and criminal activities.

### **Right to peace and security**

31. The Commission commends establishment of the Joint Permanent Commissions on Defence and Security (JPCDS) with all its neighbouring countries, through which Botswana benefits through the exchange of information on intelligence, defence, security, as well as issues of mutual interest.

### **Duties**

32. The Commission commends inclusion of duties of the Individual towards the family, society and the State, in the Report.

## **III. FACTORS RESTRICTING THE ENJOYMENT OF THE RIGHTS GUARANTEED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

33. Despite its notable achievements, Botswana faces a number of challenges which are impacting the enjoyment of human rights, including the growing inequality between the rich and the poor, high unemployment, extreme poverty in rural areas, desertification and a high HIV/AIDS prevalence rate.

34. Additionally, the country continues to face the challenge of a relatively undiversified economy given the country's heavy reliance on diamond exports, coupled with the drop in revenue from the mineral sector which impacted the country's Gross Domestic Product (GDP).

## **IV. AREAS OF CONCERN**

35. While acknowledging the significant efforts made by the Government to promote and protect human rights, the Commission is however concerned about a number of areas.

## **Reporting obligations with the Commission**

36. The 2<sup>nd</sup> and 3<sup>rd</sup> Combined Periodic Report, which was submitted in accordance with Article 62 of the African Charter, was overdue by eight (8) years.
37. The Commission is concerned about the lack of responses on the following issues, which were deferred at the request of the Delegation which presented the Report:
- i. Information on extra-judicial killings, use of force, death in prisons and enforced disappearances;
  - ii. The measures in place to ratify the Convention on Enforced Disappearances and the Convention against Torture;
  - iii. The number of clemency applications which have been positively and negatively decided;
  - iv. The procedure of providing prior information to family members of accused persons before executions are carried out;
  - v. Implementation of Guidelines on Freedom of Association;
  - vi. Judicial and political representation of the Basarwa communities; and
  - vii. Audit of laws undermining right to access information.

## **Ratification of regional and international instruments**

38. The Commission is concerned by the non-ratification of the following regional and international human rights instruments:
- i. The Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa;
  - ii. The Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights;
  - iii. The African Youth Charter;
  - iv. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
  - v. The African Charter on Democracy, Elections and Governance;
  - vi. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa;
  - vii. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
  - viii. The Convention for the Protection of All Persons from Enforced Disappearance;
  - ix. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
  - x. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
  - xi. The Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming for the Abolition of the Death Penalty;

- xii. The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; and
- xiii. The Convention on the Rights of Persons with Disabilities and its Optional Protocol.

### **Adoption of legislative or other measures to give effect to the African Charter**

39. The Commission is concerned about the delay in:

- i. Review of the Ombudsman Act to confer a human rights mandate on the Office of Ombudsman;
- ii. Review of the Prisons Act relating to visitation rights;
- iii. Enactment of a law a on the rights of persons with disability;
- iv. Enactment of the Bill on Declaration of Assets; and
- v. Enactment of the Education and Training Bill.

## **CIVIL AND POLITICAL RIGHTS**

### **Equality**

40. The Commission is concerned that despite the constitutional guarantees of equality, participation of women in the public sector has not significantly improved.

### **Death Penalty**

41. The Commission is concerned:

- i. That the death penalty is retained in Section 25 of the Penal Code;
- ii. That during the period under review, Botswana carried out five (5) executions;
- iii. That the clemency procedure is opaque, and that clemency decisions are not provided to the prisoners in time for them to notify their lawyers or family, nor provided to lawyers and family members.

### **Prohibition of torture, cruel, inhuman and degrading treatment**

42. The Commission is concerned about:

- i. The lack of a regulatory framework on torture which specifically criminalizes torture, prohibits the admission of evidence obtained through torture, ensures that victims of torture and other ill-treatment, their families, witnesses and those conducting investigations are protected, and guarantees the right of victims of torture and other ill-treatment to redress;
- ii. The retention of corporal punishment as a non-custodial sentence, as provided in Section 25 of the Penal Code;

- iii. The absence of an independent, effective and accessible complaints mechanism with powers to receive, investigate and take appropriate action on allegations of torture or ill-treatment; and
- iv. The non-establishment of the centres for victims of human trafficking, stipulated under the Anti-Human Trafficking Act.

### **Police, prisons and conditions of detention**

43. The Commission is concerned about:

- i. The lack of an independent institution mandated to conduct unannounced visits to prisons and other places of detention;
- ii. The absence of an independent police oversight mechanism; and
- iii. The lack of facilities to cater for prisoners with disabilities.

### **Access to and administration of justice**

44. The Commission is concerned about the absence of institutionalized training conducted for judges and judicial officers.

### **Freedom of expression and access to information**

45. The Commission is concerned about:

- i. The provisions of the Cybercrime and Related Crimes Act, which may impose restrictions on freedom of expression;
- ii. The provisions in Sections 90, 91, 93 and 192 to 199 of the Penal Code covering 'insult' laws and criminal defamation, which can have the effect of curtailing the right of freedom of expression;
- iii. The absence of provisions on Community broadcasting in the Botswana Communication Regulatory Authority Act;
- iv. The absence of provisions regulating the State broadcaster in the Botswana Communication Regulatory Authority Act; and
- v. The delay in enacting legislation on the right of access to information.

### **Freedom of association and assembly**

46. The Commission is concerned about the absence of specific legislation or policy to ensure promotion and protection of the rights of Human Rights Defenders.

### **The right to participate in the conduct of public affairs**

47. The Commission is concerned about the absence of legislation or policy aimed at encouraging the political participation of women, persons with disabilities and ethnic minorities.

## **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

48. The Commission is concerned about the non-justiciability of economic, social and cultural rights, given that these rights are not provided in the Constitution.

### **The right to work**

49. The Commission is concerned about the information provided in the Report which states that many of the unemployed are relatively young with low levels of education, work experience and have limited skills.

### **Protection of the rights of persons living with HIV/AIDS**

50. The Commission is concerned about:

- i. The fact that with a nationwide HIV prevalence of 18.5% and an adult prevalence of 24.3%, a large number of Batswana are either infected or affected by HIV and AIDS;
- ii. The higher prevalence of women to HIV, with women continuing to record high rates of HIV prevalence at 20.8% compared to their male counterparts who are at 15.6%; and
- iii. The high HIV and AIDS prevalence amongst children, with 58% of deaths among the under-fives attributable to HIV and AIDS.

### **The right to culture**

51. The Commission is concerned about the lack of recognition of minority languages in sectors including education and public services.

### **Protection of the rights of women**

52. The Commission is concerned with the following issues:

- i. The prevalence of gender based violence (GBV) in the country; and
- ii. The Marriage Act does not govern marriages contracted under customary and religious marriages.

### **Protection of the rights of children**

53. The Commission is concerned about:

- i. The continued use of corporal punishment in schools; and
- ii. The lack of official statistics on child marriage.

## **Extractive Industries**

54. The Commission is concerned by the dearth of information provided in the Periodic Report on key human rights aspects of extractive industries such as the extent of guarantees of land and natural resource ownership for people living in territories affected by extractive activities, tax implications, as well as transparency obligations in relation to joint ventures, standards that guarantee reasonable revenue sharing arrangements between national government and local authorities and the smooth transition of communities affected by mine closure to reliance on other livelihoods.

## **Protection of the rights of indigenous populations/communities**

55. The Commission is concerned by the absence of specific data related to the Basarwa people on critical issues such as rates of unemployment, cases of gender based violence, maternal mortality, TB prevalence, and the HIV prevalence rates.

## **Protection of the rights of LGBTI persons**

56. The Commission is concerned by the absence of a regulatory framework to ensure protection of individuals from discrimination and violence as a result of their actual or imputed sexual orientation or gender identity.

## **V. RECOMMENDATIONS**

57. In view of the foregoing, the Commission makes a number of recommendations to the Government of Botswana.

## **Reporting obligations and cooperation with the Commission**

58. Botswana should:

- i. Ensure that Periodic Reports to the Commission are submitted every two years in terms of Article 62 of the African Charter;
- ii. In the next Report, provide information on the specific issues which were deferred during consideration of the Periodic Report.

## **Ratification of regional and international instruments**

59. Botswana should consider ratifying the regional and international human rights instruments which it is yet to ratify, including:

- i. The Protocol to the African Charter on Human and Peoples' Rights on the rights of women in Africa;
- ii. The Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights;

- iii. The African Youth Charter;
- iv. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
- v. The African Charter on Democracy, Elections and Governance;
- vi. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa;
- vii. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa;
- viii. The Convention for the Protection of All Persons from Enforced Disappearance;
- ix. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- x. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- xi. The Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming for the Abolition of the Death Penalty;
- xii. The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; and
- xiii. The Convention on the Rights of Persons with Disabilities and its Optional Protocol.

### **Adoption of legislative or other measures to give effect to the African Charter**

60. Botswana should:

- i. Expedite the revision and enactment of the following laws and policies to enhance enjoyment of human rights:
  - The Ombudsman Act, to confer a human rights mandate on the Office of Ombudsman;
  - The Prisons Act, relating to visitation rights;
  - A law on the rights of persons with disability;
  - Enact the Bill on Declaration of Assets; and
  - Enact the Education and Training Bill.
- ii. Finalize the process of turning the Ombudsman's Office into a hybrid institution with functions specifically dedicated to the promotion and protection of human rights, in compliance with the Principles relating to the Status of National Institutions (the Paris Principles).

## **CIVIL AND POLITICAL RIGHTS**

### **Equality**

61. Botswana should take all appropriate legislative and other measures to ensure equal representation of women in decision making positions at all levels including the Government and Parliament.

### **Death Penalty**

62. Botswana should:

- i. Consider a moratorium on the use of the death penalty with a view to abolishing it, in conformity with the Commission's Resolutions ACHPR/Res.416(LXIV)2019, ACHPR/Res.42(XXVI)99 and ACHPR/Res.136(XXXIV)08;
- ii. Urgently consider commuting the verdicts of all prisoners sentenced to capital punishment to life imprisonment;
- iii. Ensure compliance with minimum standards of fairness in the clemency procedure, as provided in the Commission's **General Comment on the African Charter on Human and People's Rights: The Right to Life**.

### **Prohibition of torture, cruel, inhuman and degrading treatment**

63. Botswana should:

- i. Enact specific legislation that criminalises torture in accordance with the provisions of the Robben Island Guidelines;
- ii. Repeal Section 25 of the Penal Code to end the practice of judicial corporal punishment;
- iii. Prioritize the establishment of an accessible and fully independent mechanism to which all persons can report allegations of torture;
- iv. Establish the Victims of Trafficking Fund as well as Centres for Victims of Human Trafficking as outlined in the Anti Human Trafficking Act of 2014.

### **Police, prisons and conditions of detention**

64. Botswana should:

- i. Appoint an independent institution with the mandate to conduct unannounced visits to all places of detention;
- ii. Establish an independent police oversight body to investigate allegations of violations committed by the Police;
- iii. Ensure that the prisons and detention centres are equipped with facilities to cater for prisoners with disabilities.

### **Access to and administration of justice**

65. Botswana should appoint an institution responsible for ensuring provision of training to all judges and judicial officers, in accordance with the Commission's **Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa**.

### **Freedom of expression and access to information**

66. Botswana should:

- i. Revise the Cybercrime and Related Crimes Act to ensure that the law is in line with the Declaration of Principles on Freedom of Expression in Africa and does not impose restrictions on the freedom of expression;
- ii. Repeal criminal defamation laws which impede freedom of speech in accordance with the Commission's **Resolution ACHPR/Res.169 (XLVIII)10 on Repealing Criminal Defamation Laws in Africa**;
- iii. Amend the Botswana Communication Regulatory Authority Act to explicitly allow the licensing and regulation of community broadcasters and produce policies to that effect as well as initiate public awareness of community broadcasting and its benefits;
- iv. Amend the Botswana Communication Regulatory Authority (BOCRA) Act to provide for the regulation of the state broadcaster and consider transforming the state broadcaster into a public service broadcaster;
- v. Enact a Freedom of Information Act which reflects international best practice.

### **Freedom of association and assembly**

67. Botswana should initiate legislative and other measures to promote and protect the rights of Human Rights Defenders, in conformity with the African Charter, the **UN Declaration on Human Rights Defenders**, the **Kigali and Grand Bay Declarations**, in addition to other regional and international human rights instruments which guarantee the right to freedom of association and assembly.

### **The right to participate in the conduct of public affairs**

68. Botswana should enact equality legislation or policy and affirmative action programmes aimed at encouraging the political participation of women, persons with disabilities and ethnic minorities in efforts to increase their representation in various organs of government, especially political bodies such as parliament.

## **ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

69. Botswana should enact enabling legislation for the promotion and protection of socio-economic rights, in order to ensure justiciability in accordance with the African Charter.

### **The right to work**

70. Botswana should intensify efforts to combat youth unemployment, and include information in the next Report on the institutional measures developed to address the increased rate of youth unemployment.

### **Protection of the rights of persons living with HIV/AIDs**

71. Botswana should:

- i. Intensify efforts to address the existing HIV prevalence rate of 18.5%;
- ii. Take urgent measures to address the gender disparity in HIV infections, with the view to increasing HIV prevention strategies for women;
- iii. Urgently initiate measures to address the high prevalence rate of HIV among children, with the view to eradicating the deaths which occur as a result of paediatric HIV;
- iv. Take the necessary measures to extend the provision of the PMTCT program to foreign pregnant women.

### **The right to culture**

72. Botswana should:

- i. Develop and implement strategies for preserving minority languages, including through ensuring access to minority languages in the education and public services sector;
- ii. Expedite development of the Botswana Languages Council and ensure that it is as inclusive as possible.

### **Protection of the rights of women**

73. Botswana should:

- i. intensify efforts to address gender based violence (GBV), including through increased advocacy programs to educate the public on GBV and its serious effects on women, in addition to expanding services to provide assistance to GBV victims, such as access to legal services and rehabilitation programs;
- ii. Ensure that the Marriage Act is amended to govern marriages contracted under customary and religious marriages, to ensure the protection of women in these marriages.

### **Protection of the rights of children**

74. Botswana should:

- i. Prohibit corporal punishment in schools, in advance of the adoption of the Education and Training Bill;
- ii. Prioritize conducting a study on child marriage, with the view to addressing the lack of reporting as a result of cultural sensitivity.

### **Extractive industries**

75. Botswana should:

- i. Make reference to the State Reporting Guidelines of the Commission on Extractive Industries to structure the sections in relation to Articles 21 and 24 of the Charter for the next reporting cycle, in particular in the areas identified under the concerns above;
- ii. Provide more information in the next report on the implementation of the various laws and policies that have been adopted.

### **Protection of the rights of indigenous populations/communities**

76. Botswana should:

- i. Prioritize the collection of data specific to the Basarwa people, in order to strengthen the provision of essential public services to this minority group;
- ii. Establish a legislative and regulatory framework for the promotion and protection of the rights of all indigenous populations/communities, including the Basarwa people, in addition to appointing a Government institution to monitor implementation of programs targeted for these minority groups;
- iii. Take concrete measures to ensure the political representation of all indigenous populations/communities, including the Basarwa communities.

### **Protection of the rights of LGBTI persons**

77. Botswana should enact legislation and policies that will ensure the implementation of the Commission's **Resolution ACHPR/Res.275 (LV) 2014 on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity.**

**Adopted at the 26<sup>th</sup> Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, held from 16 to 30 July 2019, in Banjul, The Gambia**