



**International Covenant on
Civil and Political Rights**

Distr.: General
17 November 2020

Original: English
English, French and Spanish only

Human Rights Committee

**Second periodic report submitted by Botswana
under article 40 of the Covenant pursuant to the
optional reporting procedure, due in 2019***

[Date received: 26 May 2020]

* The present document is being issued without formal editing.



General information

Response to Question 1

1. Botswana continues to take measures to implement recommendations contained in the Committee's previous concluding observations. The Inter-Ministerial Committee on Treaties, Conventions and Protocols which was established in 2002 continues to assist in the implementation of international obligations. In August 2019, the Government further established the Human Rights Unit in the Ministry for Presidential Affairs, Governance and Public Administration. The mandate of this Unit includes among other things, the coordination of all human rights issues including reporting and follow-ups and the amendment of the Ombudsman Act to confer the human rights protection mandate to the Office of the Ombudsman. In addition to this, in November 2019 Botswana began the process of developing a human rights recommendation database which, when implemented, will allow the allocation of recommendations to relevant line Ministries and the systematic monitoring of implementation of human rights recommendations.

Response to Question 2

2. Botswana has since the adoption of previous concluding observations, done well in respect of the developments of legal and institutional framework within which human rights are promoted and protected. Following Botswana's ratification of the Rome Statute of the International Criminal Court on the 8th of September 2000, she has domesticated the statute after it was passed in parliament on the 13th of July 2017. The statute is called the Rome Statute of the International Criminal Court Act of 2017.

3. With regard to institutional development, in 2014, Cabinet approved the amendment of the Ombudsman Act. The amendment will establish the Office of the Ombudsman as a National Human Rights Institution. A national human rights symposium was held in November 2018, in partnership with the United Nations Development Programme. The symposium was geared towards sharing regional experiences and expertise with a view to refine the Ombudsman Amendment Bill. The symposium came up with recommendations which were shared with Cabinet. The Ombudsman Amendment Bill will be tabled before Parliament in 2020. The conferment of the human rights mandate on the Ombudsman will facilitate the intensification of the promotion and protection of human rights and human rights education.

4. In addition, in 2019, the Government of Botswana established a Human Rights Unit under the office of President, which will amongst others enhance the promotion of human rights and coordinate the development of the National Human Rights Strategy and Action Plan.

5. A Law Reform Unit is in the process of being established at the Attorney General's Chambers. Its purpose will be to review the laws of Botswana and where it is deemed appropriate, to harmonise national laws with this Covenant and all other human rights Treaties, Protocols and Conventions which Botswana is party to.

6. The courts of Botswana have always sought to protect the human rights of women whenever the opportunity presented itself. In the case of *Mmusi and Others v. Ramantele and Others (Citation)* the High Court of Botswana declared the Ngwaketse rule of customary law, which provides that only the last-born son may inherit his parents' dwelling house, as unconstitutional. The rule excluded women from inheriting their parents' dwelling house regardless of their rank in the birth order. It is noted with commendation that the decision constitutes a critical step towards gender equality in the country. The Court is lauded for its extensive use of comparative human rights jurisprudence and international human rights law in the determination of the claim.

7. Botswana continues to implement court decisions giving beneficiaries their rights which are covered by this Convention in the case of *Attorney General of Botswana v. Rammoge and 19 Others CACGB-128-14*. This was a case involving the Organisation of Lesbians, Gays and Bisexuals of Botswana (LEGABIBO). The matter was brought to court

following the Government of Botswana's refusal to register LEGABIBO as a society. The Applicants argued that the Government's refusal to register LEGABIBO denied them their right to freely assemble and associate.

8. In November 2014, the High Court ruled in favour of LEGABIBO – finding that there had been a violation of the Applicants' rights to freedom of assembly and association, freedom of expression, and equal protection before the law. In March 2016, the Court of Appeal upheld the High Court's decision, in particular that the refusal to register LEGABIBO was not only unlawful, but also a violation of the right of the LGBTIQ community to freely associate. The Botswana Court of Appeal ordered the Registrar of Societies to register LEGABIBO.

9. The Court stated that, "... A principal tenet of international human rights law is that all human beings are born free and equal in dignity and rights, and are entitled to all rights with no distinction given to their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

10. The Botswana High Court as recently as June 2019, in the case of *Letsweletse Motshediemang v. Attorney General MAHGB – 000591 – 16*, held that same sex relations are lawful and that Section 164 of the Penal Code which criminalised such acts should be repealed. The matter is currently awaiting final determination by the Court of Appeal.

A. Specific information on the implementation of articles 1–27 of the Covenant

Response to Question 3

11. Work towards the conferment of a Human Rights mandate on the Office of the Ombudsman in compliance with the Paris Principles is on-going. Botswana made a decision to adopt the hybrid model by conferring the human rights mandate on the Office of the Ombudsman. Botswana has undertaken benchmarking missions to the commission of Human Rights and Administrative Justice (CHRAJ) of Ghana in 2015 and the commission for Human Rights and Good Governance (CHRAGG) of Tanzania and the Office of the Ombudsman of Namibia in 2016. Following the benchmarking missions, a report which entailed recommendations on the model of the National Human Rights Institution to establish, was submitted to the Government.

12. In 2017, the United Nations Development Programme (UNDP) recruited a Human Rights Consultant whose mandate is to (among other things), assist with the transformation of the Office of the Ombudsman into a National Human Rights Institution through the review of Ombudsman's Act.

13. A National Human Rights Symposium was held from the 20th to 21st November 2018 in partnership with the United Nations Development Programme. The symposium was broadcast live on National Television for all citizens to be informed. In addition, the symposium was attended by both state and non state actors including the media, the academia and civil society organisations (CSOs). The symposium was geared towards sharing regional experiences and expertise with a view to refine the Ombudsman Amendment Bill. The symposium came up with recommendations which were shared with Cabinet.

14. The recommendations were incorporated into the revised Bill. The revised Bill was circulated to key stakeholders at a consultative meeting which was held in October 2019. Present at the meeting were: The Office of the Ombudsman, the Attorney General's Chambers-Drafting Division, the Office of the President, the United Nations Development Programme, the Office of the High Commissioner for Human Rights (OHCHR) and the Global Alliance of National Human Rights Institutions (GANRI). Stakeholders' comments were incorporated and the Bill was sent to the Attorney General's Chambers in November 2019 with further drafting instructions. The Ombudsman Amendment Bill is expected to be tabled in Parliament in 2020. Prior to that, the CSOs will be consulted and their comments on the draft Ombudsman Bill sought.

Response to Question 4

15. Customary law plays an important role in Botswana. However, the Constitution takes precedence over the Bogosi Act, which is an Act of Parliament governing the administration of customary law in Botswana. This is demonstrated in the definition of “customary law” in the Bogosi Act, Section 2 of which defines customary law as,

“... in relation to any tribe or tribal community, the general law or custom of such tribe or community except in so far as such law or custom is repugnant to morality, humanity or natural justice, or injurious to the welfare of members thereof or repugnant to the Constitution or any other enactment.”

16. Any customary practice that is unconstitutional, is repealed by the Courts as it has been demonstrated in the *Ramantele* case. In this case, the Court of Appeal of Botswana upheld and strengthened the High Court’s decision that “Constitutional values of equality before the law, and the increased leveling of the power structures with more and more women heading households and participating with men as equals in the public sphere and increasingly in the private sphere, demonstrate that there is no rational and justifiable basis for sticking to the narrow norms of days gone by when such norms go against current value systems.”

17. In his concurrence, Chief Justice Kirby noted, “Any customary law or rule which discriminates in any case against a woman unfairly solely on the basis of her gender would not be in accordance with humanity, morality or natural justice. Nor would it be in accordance with the principles of justice, equity and good conscience.”

18. Positive steps continue to be taken to harmonize customary law practices with international law, including the provisions of this covenant. Section 15(4) of the Constitution ferments a fundamental contradiction to the Covenant with regards to deterring discrimination. However, there has been enactment of laws such as the Domestic Violence Act and the Abolition of Marital Power’s Act (among others) which are aimed at eradicating discrimination against women. The Law Reform Unit is also expected to spearhead the amendment of laws (including the Constitution) which are not consistent with the provisions of the Covenant, including those that are detrimental to women’s rights.

19. The Government continues to heighten awareness against some customary laws and practices, which continue to affect gender equality especially in areas related to personal law and family law. Public education and training targeted to the public, Dikgosi, judges, prosecutors and lawyers has been conducted. With regard to the public, awareness is raised by cascading new policies and laws to the public through *Kgotla* meetings, radio and television programs addressed by Members of Parliament and various Government Officials.

20. In order to better equip prosecutors, judges and lawyers, various training sessions have been conducted on migrant smuggling, trafficking in persons and related offences, child law and sexual offences, cybercrime, forensic medicine, admissibility of evidential material, child pornography and related offences, as well as trial advocacy.

21. In collaboration with UNDP and the Department of Gender Affairs, the Department of Tribal Administration embarked on a training programme to train all Dikgosi on GBV across the country. So far, a total of 115 Dikgosi have been trained, 36 being from Chobe, 45 from Kgalagadi North while 34 are from Kgalagadi South. The next phase will cater for North East, Central, Southern and North West parts of the country. The aim is to train all the 670 Dikgosi before the end of 2020.

Non-discrimination (arts. 2–3 and 25–26)**Response to Question 5**

22. Botswana ratified CEDAW in 1996 demonstrating her commitment to prohibit all forms of discrimination against women and to provide for the practical realisation of the principle of equality of women and men. Botswana commenced the process of fully domesticating the Convention in 2012. The relevant CEDAW domestication structures

were established followed by a benchmarking exercise in 2013 in Ghana which also practices a dual legal system. Furthermore, the Government of Botswana conducted nationwide consultations to solicit input on the different CEDAW Articles and the domestication process. The results of the consultations have been compiled and the recommendations that will inform legislation and policy reform have been drafted.

23. Efforts have been expended to develop an operationalisation framework for implementing the CEDAW. The Constitution of Botswana generally recognises the equality of women and men before the law, and section 15(1) thereto provides that no law shall make any provision that is discriminatory either of itself or in its effect. In this regard gender equality is a key principle that is embraced in national laws, policies and planning frameworks. However, Section 15 (4) of the Constitution provides a deliberate derogation from the latter in order accommodate customary law, which is part of the dual legal system in which customary law exists alongside the Common Law. Most Botswana conduct their marriage and family affairs in accordance with customary law, with a few using the common law.

24. It is in light of the aforementioned that Botswana has not as yet repealed the provisions of section 15(4) of the Constitution as recommended by the Committee. However, there have been legislative developments to promote and uphold gender equality. Laws which have been legislated to uphold gender equality include: the Married Persons Property Act (2014) which allows married couples to review their property regime, the Domestic Violence Act (2008) which recognizes violence occurring within the home as an offence, Domestic Violence Regulations (2013) which facilitate effective implementation of the Domestic Violence Act, the Penal Code which criminalises sexual activity with any person below 18, the Abolition of Marital Power Act (2004) which gives married couples equal power to administer the joint estate and the Deeds & Registry Act which was amended in 2008 thus attaining equality in the administration of the joint estate by both spouses.

25. Although inheritance issues exist within Botswana, efforts are made to educate the public against inheritance practices that deprive women and children of their inheritance rights. The Courts (both Customary and Civil) continue to deliver judgments that protect the inheritance rights of women and children against patriarchal based efforts to take the same away. The civil society organisations support Government in educating the public that both men and women have equal inheritance rights. Worth mentioning in this regard is *Re A Nyalana Society* which was registered in 2012 with objectives to, among others, support amendments of discriminatory customary practices and protection of inheritance rights of women and children. *Re A Nyalana* has helped many couples to legally register their marriages, including those of elderly couples who had undergone traditional marriage rites of *Bogadi* and lived together as common law husband and wife over many years. Civil registration of such traditional marriages has helped to secure the property and inheritance rights of women and children, who often times were deprived of the same during separation or death of the male spouse. The *Ramantele* case mentioned above is also worth of noting in so far as it established equality of male and female children in inheriting their parents' property.

26. Public awareness on the need to align customary laws and practices with the provisions of this Covenant continues to be raised. In this regard, since 2012, the Government has been engaging Dikgosi in ensuring that there is no discrimination on matters of marriage, divorce, equality of property and other legal rights of spouses. In November 2015, Dikgosi developed a National Action Plan on Mainstreaming Gender into the Customary Justice System. The Plan was reviewed in 2018 and Dikgosi continue to implement this revised plan to address gender issues within their communities. Government has also developed public education materials specifically on the concept of gender equality and translated these into the local language.

27. Botswana recognises that to attain gender parity, there is need to engage men and boys as strategic partners. To this end, the Men Sector continues to undertake various activities including community dialogues across the country. To strengthen this initiative, Botswana has been commemorating International Men's Day since 2013, and in the following year, launched the 'HeforShe' Campaign. The International Men's Day is aimed

at celebrating men's positive contribution to society, community, family, marriage, and child care, and to improve gender relations and promote gender equality.

28. Botswana continues to implement court decisions giving beneficiaries their rights and consultations are ongoing with a view to review and reform national laws to address discrimination of all people, including refugees, lesbians, gays, bisexuals, trans-gender and/or intersex (LGBTI) persons, domestic workers, sex workers, asylum seekers and foreign inmates.

Response to Question 6

29. The rights of individuals are guaranteed in the legal framework, particularly the Constitution of the Republic of Botswana. In the political set up of the country, such liberties in the Constitution include citizens' franchise and the right to vote and to be elected into a political leadership position.

30. The participation of women in politics and in general public life is still lagging behind and Botswana has not attained the international target of 50 percent women in decision making positions. The responsibility to ensure equal participation in open primary elections has been left to different political parties. Generally political parties hold their primary elections to determine candidates to compete in the national elections. Most of the political parties advocate for women representation through the quota system in their policies. See Annexure 1 for disaggregated data on political and public life women representation in Botswana.

31. Special measures to accelerate political participation are not yet in place. However, recognizing the critical importance of equal inclusion of women and men, the National Policy on Gender and Development prioritizes adoption and application of affirmative measures by sectors as necessary to address identified gender gaps in line with their mandates.

32. In order to enhance the participation of women in politics and economic development, the UNDP is providing financial support of USD 10,000.00 to the Gender Affairs Department to support the capacity of the National Gender Commission for policy oversight as well as financing NGOs to the tune of USD 50,000.00 to support women candidates to effectively compete in the 2019 General Elections.

33. The Gender Affairs Department plays an advocacy role through CSOs to encourage women participation in political parties. Women in Politics workshops were held to empower aspiring women candidates to compete effectively with their male counterparts.

Response to Question 7

34. The Government of Botswana is not tolerant of discrimination and violence against any of its citizens, including the LGBTI Community. In 2016, the Government of Botswana declared a certain Pastor Steven Anderson a prohibited immigrant and deported him to his country of origin for preaching violence and discrimination against LGBTI persons on one of the local radio stations. This was a measure taken by Government to curb incitement to discrimination and violence against LGBTI by religious organisations.

35. Botswana continues to make progress in the recognition of the rights of the LGBTI. In 2017, in the case of *Kgositau v. Attorney General and Registrar of National Registration*, the High Court ordered the Director of National Registration to issue a transgender woman with a new identity card identifying her as female. Kgositau had made an application to court arguing that she had since an early age, identified as a woman and that the male gender on her identity document was causing her emotional distress and increasing her vulnerability to abuse and violence.

36. The President of the Republic of Botswana, His Excellency Dr. M.E.K Masisi, during his commemorative speech at the 16 days of Activism against violence on women and children in November 2018, emphasized the need to protect the rights of LGBTI people. He made it clear that LGBTI people have the same rights as every other citizen. He said that, "*there are also many people of same sex relationships in this country who have been violated and suffered in silence for fear of being discriminated. Just like other citizens they*

deserve to have their rights protected.” He also called on the society to remember all those victims and communities that are vulnerable to violence and abuse.

37. The President’s speech was a demonstration of political will which if leveraged upon, could influence legislative reforms, public policy and awareness raising initiatives on the part of Government to protect persons from discrimination and violence based on sexual orientation and gender identity. During the State of the Nation Address in 2019, the President further said that Government intended to conduct a comprehensive review of the Constitution of Botswana to remove any provisions that may be deemed discriminatory.

38. In June 2019, the High Court of Botswana, in the case of *Letsweletse Motshediemang v. Attorney General MAHGB – 000591 – 16*, held that same sex relations are lawful and that Section 164 of the Penal Code which criminalised such acts should be repealed. The matter is currently awaiting final determination by the Court of Appeal. Government will take into account the outcome of the appeal in deciding whether or not to repeal Section 164 of the Penal Code. No persons have ever convicted under this provision ever since the Penal Code was enacted.

Violence against women, including sexual and domestic violence (arts. 2–3, 6–7 and 26)

Response to Question 8

39. The enactment of the Domestic Violence Act, the objective of which is to provide for the protection of survivors of domestic violence has proven to be an effective measure towards combating physical and sexual violence against women in Botswana. The Act provides for civil remedies such as an interim order; a restraining order; a tenancy order; or an occupancy order accessed through the Courts.

40. In 2012, gaps and challenges that hinder effective implementation of the Domestic Violence Act, 2008 were documented and they informed the development of the regulations that facilitate effective implementation of this Act.

41. The 2013 Baseline Study on Gender revealed that 61.6% of study respondents were aware of laws that address gender equality and intimate partner violence. The Gender Based Violence Indicators Study of 2012 indicated that 46.2% of women and 42.5% of men noted that they have heard about the Domestic Violence Act. Approximately a third of women and men in sample, were aware of protection orders.

42. In 2015, the Government adopted the National Policy on Gender and Development. In light of that the National Gender Commission was established in 2016 to monitor the implementation of the Policy. In addition, gender was made prominent in the Ministry of Nationality, Immigration and Gender Affairs (MNIG). The National Policy on Gender has prioritized the following national development areas for gender mainstreaming:

- (a) Economic development prosperity and poverty reduction to achieve sustainable development;
- (b) Social protection and social services with prioritized social protection programs and services including health, adequate sanitation and improved wellbeing;
- (c) Access to quality education, training and information;
- (d) Safe housing and consideration of issues of climate change for a sustainable environment;
- (e) Political power, democratic governance and decision-making;
- (f) Access to justice, protection of human rights, freedom from violence; and
- (g) Special and cross-cutting measures targeting vulnerable groups of men, women, girls and boys.

43. To facilitate implementation of the Policy, there is the National Gender Commission (NGC) which is multi sectoral. There is also an Advisory Committee on Men’s/Boy’s and

Women's/Girl's issues which has also been established to provide technical advice to the NGC. In addition, there are District Development Committees whose mandate is to facilitate implementation of the Policy at District Level.

44. Additionally, the National Strategy For Gender and Development (2016) adopted by the Gender Affairs Department has prioritized national development areas for gender mainstreaming, including access to justice, protection of human rights and freedom from violence. Special measures targeting vulnerable groups of men, women, girls and boys across were put in place. District Gender Committees comprising all stakeholders were established to implement the National Policy on Gender and Development at district levels.

45. The National Strategy Towards Ending Gender Based Violence in Botswana (2016–2020) highlights key interventions targeting negative cultural practices that impact on gender equality. One of the interventions is the Gender Based Violence Online Referral System. In terms of this system, referrals are to be made online, reducing the ordeal of victims having to repeat their ordeal to every service provider. The system was piloted in Maun, Shorobe, Mochudi and Artesia. The Pilot reached 2,700 community members with GBV messaging. 20 institutions were sensitised on GBV.

46. To effectively implement the Online Referral System, GBV service providers were trained on the Standard Operating Procedures (SOPs). The SOPs are laid down by the National Strategy Towards Ending Gender Based Violence and they guide service providers on how to handle GBV survivors, promote confidentiality and reduce re-victimisation. Over 200 service providers were trained i.e., social workers, educators, police and health providers. The Government is working with the UNDP to roll out the system in two (2) more Districts.

47. The National Vision 2036: Pillar 2 on Human and Social Development recognizes gender equality on Socio-economic, Political and Cultural Development. The National Development Plan 11 also provides for gender mainstreaming and prevention and elimination of Gender Based Violence under the Governance, Safety and Security Thematic Area as aligned to Sustainable Development Goals.

48. Over time, there had developed a trend of victims of physical and sexual violence withdrawing reported cases. The Botswana Police Service then developed internal measures to prohibit withdrawal of such cases. Stiffer measures have been put in place to prohibit withdrawal of domestic violence cases at Police Stations. Withdrawal of such cases can only be done at the Magistrate Courts. This has resulted in an increase in registration and prosecution of such cases in the Courts.

49. The Legal Aid Act was passed by Parliament in 2013 and the legal aid programme is being rolled-out nationally to, among other things, provide free legal representation for indigent Gender Based Violence victims.

50. The Government provides financial and technical support to Civil Society Organisations to offer counselling services to GBV survivors and their families. Representatives of all district Social Workers received training on gender mainstreaming and gender based violence using the developed National Gender Mainstreaming Curriculum. The training enhanced general knowledge on gender and the skills to provide psychosocial support to gender based violence survivors and their families.

51. Public education on laws that promote gender equality is ongoing through the radio and other communication modes, with a specific target on women. The initiatives include among others, community conversations and dialogue sessions with focus on elimination of the negative cultural practices that contribute to the disparities between women and men; awareness on gender based violence and its effect, gender concepts, gender and HIV/AIDS and laws that were amended and/or enacted to address components that were discriminatory against women.

52. Media engagement on gender-sensitive reporting also continues to be promoted. Trainings are conducted on gender, GBV and related issues throughout the year. The Botswana chapter of the Media Institute of Southern Africa has developed a gender policy

and action plan to mobilize media houses on gender issues, including non-stereotypical reporting.

53. The Domestic Violence Act, 2008 abolishes spousal exclusion in rape cases. The Act provides a wide range of remedies for abuse and abusive behaviour including “sexual abuse or threat thereof” in a “domestic relationship”. Domestic relationship in terms of Section 2 of the Act includes a relationship where people “are or were married to each other”. The Domestic Violence Act is a clear legislative statement of public policy which advances the construction of Section 141 of the Penal Code to include marital rape. It is a clear intent to criminalise abusive conduct even within the marriage. Moreover, it eliminated the common law spousal exclusion.

54. The High Court in 2008 addressed the matter of marital rape, holding that “to suggest that it should be permitted if the perpetrator is a spouse is ... totally unacceptable and a historic aberration.” (*Letsholathebe v. The State 2008, [3] BLR 1 HC (Kirby J)*). Whereas the case did not involve allegations of rape within marriage and thus the Court’s pronouncement was not determinative on the facts it indicates, contrary to public opinion, that marital rape is prohibited.

55. Botswana provides human rights training for the disciplined forces. The Botswana Defense Force (BDF) provides human rights training under the law of armed conflict at the Junior Command and staff levels and in-depth at the Defense Command and Staff College, while the Botswana Prisons Service provides training through human rights modules infused in the initial Prisons Officers’ Course Syllabus. The Botswana Police Service (BPS) also provides human rights training. The training regularly provided to law enforcement officers at the Botswana Police College in the field of Human Rights are as follows: Introduction to Human Rights; Human rights myths; Human rights and policing; Definition and concepts; History of the notion of Human Rights; Botswana Constitutional Framework; Characteristics of Human Rights; Sources of Human Rights; Specific Rights and Examples of Human Rights. In addition, the International Law Enforcement Academy (ILEA) provides training on Gender Based violence in their training curriculum.

56. Annexure 2 displays statistical information on the number of complaints received and investigations carried out by the Botswana Police Service with regard to violence against women, including domestic violence.

57. Although there are no State owned shelters for women gender based violence survivors, there are two (2) Shelters which are operated by NGOs – Women Against Rape (in Maun), Botswana Gender Based Violence Prevention and Support Center (Gaborone). These two shelters run by CSOs receive financial and technical support from the Government and from development partners. There are plans to expand provision of shelter to other areas of the country through public funding (subventions from Gender Affairs). Safe Havens consultancy is currently ongoing to address issues of insufficient shelters in the country.

58. With regard to the allegations that a large number of school girls are subjected to sexual harassment on their way to school, it is worth noting that the Government of Botswana has put in place measures for the protection of citizens, including school going children. There are Crime Prevention Programmes, Police deployment at hot crime spots and at public transport pick and drop areas. Where school children have experienced sexual harassment and violence, measures are in place to encourage them to report at schools and at home. There are Guidance and Counselling Teachers in schools where students can report sexual harassment and violence which happened either at home or on their way to school. The teachers work in collaboration with Social workers in helping school children to report such incidents to the Police. At home, parents are encouraged to openly discuss sexuality matters with their children. This encourages children to confide in their parents hence they are able to report sexual harassment and violence which happened at school or on their way from school.

59. In 2019, a national campaign dubbed “*Eseng Mo Ngwaneng*” loosely translated “touch not the child” was carried out. The campaign was led by UNICEF and other key stakeholders and aimed to protect the girl child from child abuse.

60. With regard to the status report of the case which involved the defilement of a school girl by the then Sebina Counsellor, it is worth noting that the Botswana Police Service received the case in January 2016. Investigations were carried out and the docket was referred to the Directorate of Public Prosecutions in May 2016. As at the time of writing this report, the Directorate had not concluded its assessment of the case.

Response to Question 9

61. Botswana ensures equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant and in the Constitution. Men in Botswana do not have the right to treat their wives like minors.

62. Botswana does not regard widowhood rites (*go roula*) and dowry (*bogadi*) as harmful cultural practices. Those who practice Bogadi states that its purpose is to demonstrate gratitude towards the bride's family, stating that it should never be construed to be a transactional exercise. On the other hand, those who practice widowhood rites state that these are meant to cleanse the widow (and sometimes the widower) of perceived defilement related to the death of a spouse. There are, of course, concerns that these rites oppress people, mostly women. It must, however, be noted that *Bogadi* and widowhood are customs and not laws. People are therefore not compelled to follow or practice any of these customs, so there are no repercussions for not following any of these practices.

63. Measures which the Government continues to take is to sensitise citizens and Dikgosi on the importance of abolishing practices which are against national laws and human rights. The reality on the ground is that the practice of widowhood rites has declined. It is no longer common to see a woman wearing a black dress to signify the loss of a husband, or to find other components of the rite being performed at funerals.

Right to life (art. 6)

Response to Question 10

64. The Government of Botswana is not only committed to the protection of human rights but also to its obligations under international law. The Constitution of Botswana guarantees the right to life (Section). Section 4 of the Constitution of Botswana which is the supreme law of the land, confers the right to life on all individuals except "*in execution of the sentence of a court of law in respect of an offence under the law in force in Botswana of which he or she has been convicted.*"

65. In the spirit of complying with this Covenant, the death penalty is not imposed arbitrarily in Botswana. Article 6 of this Covenant supports the imposition of the death penalty as an exception to the right to life, while at the same time listing detailed safeguards and restrictions on its implementation. Similarly, Botswana's national legislation sets clear and limited circumstances under which the death penalty may be imposed.

66. The Penal Code provides under Section 25 that death may be inflicted as punishment by a Court of Law. Under the Penal Code, offences that attract death penalty are Treason under Section 34 and Murder as per Section 203. The High Court is the only Court of first instance which has the jurisdiction to adjudicate Murder and Treason. In that regard, the High Court hands down death penalty while the Court of Appeal determines appeals on the death penalty.

67. Furthermore, the strict limitations imposed on the death penalty under Article 6 of this Covenant are also provided for in Botswana's legislation, including those that serve to protect vulnerable people facing the death penalty. Section 26 of the Penal Code provides that the death sentence shall not be pronounced against any person who is under the age of eighteen (18) or pregnant women under any circumstances. Section 11 of the Penal Code further provides that the death sentence shall not be pronounced on persons with diseases that affect their mental capacity. This is in conformity with international standards which require that vulnerable groups facing the death penalty must be protected.

68. It is maintained that the method of carrying out the death penalty is done with extreme care so that the dignity of the prisoner is preserved and is not undermined. Capital punishment by hanging has also not been proved to be brutal compared with other methods of execution.

69. Although the death sentence is mandatory for each of the offences of Murder and Treason, a lesser sentence may be imposed where there are extenuating circumstances. Section 298 of the Criminal Procedure and Evidence Act further addresses the issue of the death penalty with regard to pregnant women. Where a woman is facing death sentence and she alleges that she is pregnant, proof to the Court should be shown that she is indeed pregnant. Where the Court finds that she is indeed pregnant, then the sentence will be reduced to life imprisonment.

70. In addition to the protection afforded to minors, pregnant women and persons with mental illness, the Constitution provides under Section 53 to 55 for the President to exercise the prerogative of mercy. This also satisfies Article 6 (4) of this Covenant which states that *“anyone sentenced to death shall have the right to seek pardon or commutation of sentence.”*

71. The prerogative of mercy allows a convicted person to appeal to the President to commute a death sentence to a lesser sentence by exercising the prerogative of mercy with the advice of the Advisory Committee on the Prerogative of Mercy. It should be noted that the Committee on the Prerogative of Mercy provided for under Section 54 of the Constitution is advisory and it regulates its own procedures. Section 55 of the Constitution provides clearly that the final decision whether or not to exercise his/her own powers in this regard rests with the President. It should further be noted that the procedure followed by the Committee is not a judicial one, and thus does not re-examine the legal issues, as these would have been determined by the highest court in the land being the Court of Appeal.

72. Information on the clemency applications received from 2015 to date is contained in Annexure 3 hereto attached.

73. Between 2007 and September 2019 seventeen (17) male prisoners were sentenced to death, while ten (12) male prisoners were executed. There are 5 male prisoners currently on death row.

74. No measures have been adopted to ensure that the bodies of executed persons are returned to their families for private burial. Section 120 (4) of the Prisons Act provides that the body of the executed prisoner shall be buried in the grounds of the prison in such manner as the Minister may require. Regulation 79 of the Prisons Regulations provides that:

(1) For the burial of the body of an executed prisoner, the Government shall provide without a charge a coffin and such linen material as is necessary to ensure a decent burial.

(2) No relative or friend outside the Prison Service or any other member of the public shall attend the burial of the body of an executed prisoner.

(3) A minister of religion may be permitted to conduct such brief religious rites at the burial of the body of an executed prisoner as the deceased may have requested; but no further or other ceremony shall take place at the burial.

75. The procedure of not returning the bodies of executed persons to their families for private burial is therefore done in compliance with the Botswana laws. In conclusion, the Government of Botswana has no plans at present to either abolish the death penalty or impose a moratorium on its application. In 1997, the Parliamentary Law Reform Committee produced a report on public opinion on the death penalty, which was in favour of retaining the death penalty. The Government of Botswana is committed to upholding the democracy and the will of its people. The Government is thus not in a position to commit itself on a moratorium of the death penalty. The notion that fundamental rights are subject to limitations is well accepted in human rights law. Generally, such limits exist as a counterbalance to individual rights and express the collective rights of the community as a whole.

76. The Government acknowledges however, that another public opinion survey on the death penalty is due, looking at the fact that the last one was done in 1997. During the

Universal Periodic Review in 2018, Botswana accepted a recommendation to carry out public debates on the death penalty. The recently established Human Rights Unit is expected to draft and implement a plan to hold the public debates. The outcome of the public debates will inform the State's decisions on death penalty, including ratification of the Optional Protocol on the abolition of the death penalty.

77. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment; liberty and security of person and treatment of persons deprived of their liberty (arts. 7 and 9–10)

Response to Question 11

78. In terms of Section 7 of the Constitution, subjecting any person to torture or to inhuman or degrading punishment or other treatment is prohibited. Botswana still maintains her reservation to Article 7 of the Covenant.

Response to Question 12

79. Botswana continues to implement measures to ease congestion in her prisons. These include the use of conditional and early release measures such as Extra Mural Labour, Presidential Remission and Parole. Furthermore, some Prison facilities have been refurbished to ease congestion.

80. In order to improve conditions in prisons, the Botswana Prison Service (BPS) continues to maintain and refurbish facilities countrywide. The BPS is also drafting the Prisoner Rehabilitation Policy which provides for more structured and effective offender rehabilitation programmes. In addition, the development of an Offender Case Management System is underway and will provide for more focused offender treatment and rehabilitation. The Prisons Act was amended in 2018 to conform to the modern correctional environment.

81. Regulations 38 (2) (a) and (b) of the Prisons Act provide that short and long term prisoners are entitled to receive one visit of 20 minutes duration every four weeks. Rule 58 (1) (b) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) provides that prisoners are entitled to communicate with their family and friends at regular intervals, including by receiving regular visits. Botswana is therefore of the view that 20 minutes duration every four weeks qualifies as regular intervals hence compliant with the international minimum standards on prisoners' visitation rights.

82. Corporal punishment is lawful as a disciplinary measure for commission of major prison offences in penal institutions under the Section 114 and 115 of the Prisons Act. In cases where a prisoner is aggrieved by the use of what he considers to be excessive punishment, the Ombudsman mechanism and the courts are available as alternative means of recourse. The Office of the Ombudsman also investigates Prisoners' complaints of delayed case hearing and delayed transmission of appeals from the convicting courts to the appellate courts. In cases where injustice is found to exist, Prisoners often get their cases enrolled for hearing which in a way contributes to the shortening of pre-trial detention. Annexure 4 indicates statistics of cases reported by Prisoners to the Office of the Ombudsman since the last reporting period.

83. Botswana Prison Services operates nine (9) clinics, eleven (11) health posts and two (2) Infectious Disease Control Centers (IDCC) in order to cater for health needs of prisoners. All prisoners have access to free medical treatment irrespective of their race, gender or origin. All HIV positive prisoners are given free Anti-Retroviral Treatment (ART).

84. Measures taken by the Administration of Justice (AOJ) to shorten pre-trial detention include the introduction of a Case Management System (CMS) in 2010, establishment of specialized courts and the increase of the number of High Courts from three (3) to four (4). These measures ensure the speedy resolution of cases, in effect, reducing the turnaround of cases, thus reducing pre-trial detention.

85. The CMS is intended to deal with backlog of cases. Statistics reflect that the disposal rate of cases stand at 75–80% on average on yearly basis. Plans are currently under way to introduce the CMS to lower courts with the Magistrate Court being the first. The CMS enables litigants who appear in court to access justice faster hence contributing to the shortening of pre-trial detention.

86. Over and above the CMS, the AOJ has introduced Mobile Courts. Mobile Courts are intended to take justice to the people, particularly in areas where there are no courts. The AOJ has also set up specialized courts with staff dedicated specifically to the said courts' business. There are Maintenance Courts which speedily adjudicate over child maintenance and custody claims, Road Traffic Courts which adjudicate over offences against the Road Traffic Act, Small Claims Courts which handle civil claims of amounts not exceeding P20 000, Stock Theft Courts which hear cases against stock theft offenders and Corruption Courts aimed at fighting corruption and expediting the disposal of corruption cases. The Government is in the process of establishing Commercial Courts to adjudicate upon commercial transactions.

Response to Question 13

87. Prisoners' complaints on torture and ill treatment are reported to the Officers in Charge of various prison centers and as such complaints are documented, investigated and followed up until resolved. Disciplinary action is taken against perpetrators, both prisoners and officers. In instances where the actions are classified as major or criminal, they are reported to the Police for criminal investigation and appropriate legal action taken. The Visiting Committee established under Section 134 of Prison's Act and its mandate as per Section 135 includes among others, dealing with matters relating to the treatment of prisoners.

88. To ensure compliance and as a check and balance measure, the office of the Ombudsman periodically sensitizes prisoners about the mandate of the office, particularly the complaints procedure. In cases where complaints are lodged with the Ombudsman, all efforts are made to resolve them timeously and effectively. To ensure confidentiality and candour, Section 5 (2) of the Ombudsman Act exempts all written complaints addressed to the Ombudsman from censorship. Statistics of Prisoners' complaints on torture reported to the Office of the Ombudsman can be found in Annexure 4.

89. The formation of the Independent Police Complaints Commission is still under consideration. However, there is an Internal Affairs Division that currently considers complaints against Police Officers.

Response to Question 14

90. In an endeavor to uphold the imperatives of this Covenant, Botswana provides continuous human rights training for the disciplined forces. The Botswana Defence Force (BDF) provides human rights training under the Law of Armed Conflict at the Junior Command and staff levels and in-depth at the Defence Command and Staff College, while the Botswana Prisons Service provides training through human rights modules infused in the initial Prisons Officers' Course Syllabus. The Botswana Police Service (BPS) also provides human rights training in their training curriculum.

91. In addition, Botswana hosts the International Law Enforcement Academy (ILEA). It offers training on human rights and other law enforcement courses. The Academy is supported by the US Government and provides courses for law enforcement officers from Botswana, Southern African Development Community (SADC) region and the African continent.

92. Law enforcement training in Botswana emphasizes the non-use of force and firearms. Officers of the Botswana Police Service do not carry firearms in their day to day operations. Firearms are only carried in exceptional circumstances where the culprits are suspected or known to be carrying firearms.

Elimination of trafficking in persons (art. 8)

Response to Question 15

93. The Anti-Human Trafficking Act was enacted in 2014. Following an aggressive campaign to raise the level of consciousness amongst all stakeholders, Government established the Human Trafficking (Prohibition) Committee in 2015 with a view to develop a comprehensive National Action Plan (NAP) (2017–2020). The NAP is indicative of the Nation's transformational agenda of achieving prosperity for all as pronounced through Vision 2036, including national objectives outlined under Governance, Safety and Security chapter of the NDP 11. 4.

94. The Anti-Human Trafficking Unit with the support from the United Nations Office on Drugs and Crime (UNODC) also held a multi-stakeholder workshop to develop implementing regulations of the Human Trafficking Act of 2014 from the 18th-19th June 2019. The workshop identified and agreed on areas necessary for regulation from the respective implementing Ministries/Departments. It is envisioned that an inter-ministerial team will develop the zero draft of the regulations before the end of 2020 with technical assistance from UNODC

95. The Directorate of Public Prosecutions has also established a unit specializing in combating trafficking. Measures have been put in place by the Department of Immigration to ensure the safety of children when crossing borders i.e. requirement of child's original birth certificate and, in cases where a child is travelling with one parent, the requirement of the other parent's affidavit signifying consent for the child to travel out of the country. The Ministry of Local Government and Rural Development has put measures in place to protect victims of human trafficking. These include provision of basic necessities, psycho-social support and repatriation of victims to countries of origin.

Investigations, prosecutions and reparations

96. Since the enactment of the Anti-Human Trafficking Act of 2014, thirty three (33) cases have been detected and all were fully investigated. There have been four (4) completed cases and the accused were convicted and fined P10 000.00 (USD 1 000.00) each. One (1) was sentenced to imprisonment for a maximum term of twenty two (22) months.

97. There are currently two (2) cases being tried; six (6) cases being investigated; ten (10) cases pending trial; Botswana is currently providing assistance to thirty-one (31) victims of human trafficking.

98. Since the implementation of the Act, no reparations have been awarded to victims. The Anti-Human Trafficking Act of 2014 does make provision for restitution under Section 22 as follows:

Where a person is convicted of an offence under this Act, the court may, in addition to any other punishment prescribed under this Act, order the person to make restitution or compensate the victim for –

- (a) The costs of any medical or psychological treatment;
- (b) The costs of necessary transportation, accommodation and other living expenses; or
- (c) Any other relief that the court may consider just.

99. In order to ensure that sufficiently stringent sentences are handed down to traffickers in accordance with the Act, and to further strengthen the level of understanding of issues of Trafficking In Persons (TIPs), the Government facilitated three colloquia for Honourable Judges and Magistrates of the bench on the 9th-11th April 2017, 20th-22nd April 2017 and 9th -11th July 2019, respectively. These colloquia generated sixteen (16) resolutions which will be considered for implementation by the Human Trafficking (Prohibition) Committee.

Victim assistance

100. In accordance with the Act, the Ministry responsible for social welfare (Ministry of Local Government and Rural Development) provides comprehensive assistance to victims of human trafficking. This includes the provision of shelter, psycho-social support, access to health facilities, school and play for children and provision for recreation for adult victims. During the Financial Year 2018/19, Government spent Three Hundred and Sixty Eight Thousand U.S. Dollars (USD 368 000.00) on all human trafficking victim welfare assistance.

101. The Government has since provided twenty-eight (28) capacity building workshops in the financial year 2017/18 and a further twelve (12) workshops in the year 2018/19. These workshops targeted frontline officers (i.e. police, immigration, investigators, civil society organisations, traditional leaders, social welfare, *etc.*) It is expected that these efforts will not only heighten awareness by law agents of the crime but also increase public knowledge.

102. In recognition of the critical role played by the media in raising awareness and reporting responsibly on issues of human trafficking, the Anti-Human Unit held a training for media practitioners from the 16th–17th April 2019. This training was attended by both private and public media practitioners on radio, television and print media in an endeavour to educate media practitioners so that they are able to continue raising awareness on of human trafficking as a crime. Furthermore, the Anti-Human Trafficking Unit continues to deliver presentations to various schools, child protection committees and religious organisations across the country and also discuss issues of human trafficking on radio and television.

103. The Ministry of Defence, Justice and Security facilitated training of Trainers for Civil Society Organisations (CSOs) based in the north of the country from the 7th–8th October 2019. The purpose of the training was to educate CSOs on human trafficking so that they are better able to raise awareness through dissemination of information about the crime and the law in the communities in which they operate. The Training of Trainers for CSOs operating in the south was scheduled to be held before March 2020. All these efforts are expected to result in increased human trafficking prevention and awareness throughout the country.

Implementation of the Anti-Human Trafficking National Action Plan and resource allocation

104. The Human Trafficking (Prohibition) Committee was established in 2015, in accordance with the Act. The Committee is under the general supervision of the Minister of Defence, Justice and Security and serves the following functions:

- (a) Determine policies for giving effect to the objects and purposes of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and this Act;
- (b) Make recommendations to the Minister concerning the policy on prevention and suppression of trafficking persons;
- (c) Make recommendations to the Minister on the effective implementation of this Act;
- (d) Lay down strategies and measures for the prevention and suppression of trafficking in persons;
- (e) Monitor the implementation of international obligations, including cooperating and coordinating with foreign bodies in relation to the prevention and suppression of trafficking in persons;
- (f) Direct and supervise the arrangements of study or research projects and the development of an integrated data base system for the benefit of prevention and suppression of trafficking in persons;
- (g) Issue rules relating to the assistance to non-governmental organisations to carry out activities with a view to prevention and suppression of trafficking in persons;

(h) Manage, in consultation with the Permanent Secretary in the ministry responsible for finance, the receipt, payment, keeping, fund raising and the management of the Fund; and

(i) Perform any other acts as directed by the Minister.

105. During the reporting period, the Human Trafficking (Prohibition) Committee facilitated a desktop review of the Anti-Human Trafficking National Action Plan. This resulted in effective policy decisions such as ensuring that issues of TIPs are taken into account during the development of new Government policies and legislation. For instance, the Anti-Human Trafficking Unit actively participated in the on-going amendment of Botswana's Adoption of Children Act of 1952, which is spearheaded by the Ministry of Local Government & Rural Development (MLGRD).

106. In 2018 Government also disbursed One Million Pula (P1 000 000.00) or the equivalent of One Hundred Thousand U.S. Dollars (USD 100 000.00) to the Anti-Human Trafficking Unit to implement part of the Anti-Human Trafficking National Action Plan geared towards prevention activities (i.e. workshops and information campaigns).

Refugees and asylum seekers (arts. 7, 9–10 and 13)

Response to Question 16

107. All persons applying for International protection in Botswana are given access to fair and efficient asylum procedures, protection against refoulement by the Refugee Advisory Committee. The Committee sits regularly to hear applications for asylum and make recommendations to the Minister. Applicants are allowed to give evidence on oath. They are afforded free interpretation services so that they can freely express themselves. The proceedings of the council are held in camera thus affording the applicants privacy and confidentiality.

108. At its sitting in November 2019 many applicants from DRC Congo, Somalia were granted refugee status. These were genuine applications of people fleeing xenophobic attacks in South Africa. The evidence was credible and easy to independently verify. The Minister agreed with the recommendations of the committee and granted close to 50% refugee status. It is therefore not true that the rejection rate for asylum applications is 99%. It is worth emphasizing that consideration of asylum applications is based on credibility of the evidence and not on "first country of asylum" or "safe third country".

109. As regards the Namibian refugees, following the July 2019 Court of Appeal Judgment which confirmed that they are no longer refugees, they were repatriated to Namibia. The process was very successful and it was done with dignity. Only six former Namibian refugees remain at the Francistown Centre for Illegal Immigrants awaiting bilateral talks between Namibia and Botswana, because they were not cleared by the Namibian government to be repatriated.

110. Botswana does not have a policy of arresting and indefinitely detaining refugees and asylum seekers. It is worth clarifying that asylum seekers are received and kept at the Francistown Centre for Illegal Immigrants (FCII) to ensure their maximum protection. It will be recalled that asylum seekers always flee persecution, war or other factors which potentially put their lives at risk. While their asylum applications are being considered, it is of paramount importance to ensure that they are protected from possible harm or deprivation of life by the agents of the Governments from which they are fleeing. If one's application for asylum succeeds, he/she is given refugee status and transferred to Dukwi village. Those whose applications for asylum are rejected, remain at the FCII awaiting their repatriation.

111. Dukwi village is used solely for refugees' residence and, like all the villages in Botswana, it is not enclosed. Other segments of the Botswana populace reside in Dukwi village as well. Botswana does classify her villages into "remote" and "remotest" areas. The deciding factor for such classification is the lack of proper infrastructure in the village in question and the remoteness of the said village from other villages or towns with amenities

such as accessible roads, hospitals, accommodation of choice, shops etc. Dukwi village is not classified as a geographically remote area in the standards of Botswana. It is accessible through good roads, it has schools, a clinic, a police stations, a customary court and shops, among other things. Dukwi is therefore not a place for indefinitely detaining arrested refugees and asylum seekers.

112. With regards to allegations of the mistreatment of asylum seekers at the FCII, the Government has not received any formal complaint from those aggrieved. It is worthy to note that the Botswana Constitution guarantees everyone without exception the right to protection of the law. Any person who is aggrieved either by another individual or the state or any of its organs such as the Police, has the right to seek legal recourse in the Courts or specialized institutions such as the Office of the Ombudsman. Over and above these institutions, refugees have elected Welfare Committees that periodically engages government officials and civil society on matters that affect them.

113. With regard to employment of refugees, Botswana entered a reservation of Article 17 of the Refugees Convention on employment. Accordingly, refugees are not allowed to work outside Dukwi village unless they are in possession of permits which have to be renewed regularly.

Response to Question 17

114. In relation to the current status of draft legislation relating to asylum, the Attorney-General's Chambers is currently drafting the Refugee (Recognition and Control) Bill. In order to ensure that the draft legislation is in line with international standards, the Bill will be shared with UNHCR and CSOs before being passed as law in Parliament.

Response to Question 18

115. Botswana is a party to the 1954 UN Convention on the status of stateless persons. There is no statistical data on stateless persons and internally displaced persons in Botswana. However, following the High Level Segment Meeting on Stateless Persons organised by the United Nations High Commissioner for Refugees (UNHCR) on the 7th October 2019, Government is considering undertaking the following measures:

- (i) A qualitative study and research by 2021 to better understand the situation of groups and individuals who are stateless or at risk of being stateless in Botswana with a view to find a solution to their situation;
- (ii) Reviewing the Immigration Act and Citizenship Act by 2024 to enable a conducive platform to address statelessness. This is done in line with the 10-year Global Action Plan to end Statelessness (2014–2024).

116. The Botswana Births and Deaths Registration Act provides for registration of Births and Deaths that have occurred in Botswana. Therefore all children born in Botswana whether citizens, non-citizens, stateless and foundlings, are registered and issued with Birth Certificates. It should be noted however that the Birth Certificate does not confer citizenship on children who are not citizens of Botswana in terms of the citizenship Act.

Right to a fair trial and independence of the judiciary (art. 14)

Response to Question 19

117. It must be emphasized that contrary to the commonly held view, the Customary Courts Act, particularly Section 32, does not contain any prohibition whatsoever for lawyers to appear before Customary Courts. This Section merely limits the right to legal representation subject to leave of court. Section 32 reads “notwithstanding anything contained in any other law, no advocate or attorney shall have a right of audience –

- (a) In any customary court; or

(b) In any magistrates court in any criminal proceedings or in any civil proceedings which fall to be determined by customary law taken under the provisions of Sections 37, 39 and 42 except with the special permission of such courts.

118. The cases for the accused persons who wish to be represented by a lawyer are usually referred to the Courts, whereat Legal Aid Botswana (LAB) can be involved to provide free legal services. LAB was established as a parastatal under the Legal Aid Botswana Act No 18 of 2013 (hereinafter referred to as “the Act”). The mandate of LAB is to provide legal services for free to indigent citizens of Botswana and to refugees. Provision of legal services is done through three (3) major ways, being: legal education, legal advice and legal representation.

119. The LAB Act does not expressly exclude LAB from offering legal aid in criminal matters. The Regulations of the Act stipulate that legal aid in criminal matters shall be availed:

- (a) To children who find themselves in conflict with the law;
 - (b) In criminal appeals from magistrate courts and customary court of appeal;
- and
- (c) In criminal appeals from the high court to court of appeal.

120. The need to ensure the upholding of the rule of law, fair trial and equal access to justice calls for a rethink on the current position of the law of Botswana on the provision of legal aid in criminal matters. Hence the initiation of a LAB project supported by the United Development Programme (UNDP), to persuade the Government of Botswana to extend legal aid to all persons facing criminal charges at all stages of the trial process.

121. LAB determined that the first step to work towards would be to benchmark on the provision of legal aid in criminal matters in the Republic of South Africa. The benchmarking trip was undertaken from the 15th to the 18th September 2019. The net for the group of persons who were included in this was cast as far and as wide as possible with an intention to employ vital stakeholder involvement.

122. The report produced from the benchmarking trip will be considered to inform decisions on Government policy in the offering of free legal services to the indigent segment of Botswana citizens.

123. Legal Aid Botswana has a staff compliment of 78 broken down as follows: 33 Attorneys, 10 Legal Aid Officers (paralegals) and 35 Support staff. A sum of P 39,211,910.04 was allocated to Legal Aid Botswana for 2018/2019 financial year and the funds were spent as follows:

- Operational costs P 15 454 336.00; Staff costs P 21 562 924.00.

Response to Question 20

124. Equality before the courts and the right to a fair trial are long standing constitutional imperatives in Botswana. To this end, customary courts without exception are duty bound to adhere to these imperatives. Section 15 of the Customary Courts Act provides that “subject to the provisions of this Act and any other written law, a customary court shall administer:

- (a) Customary law;
- (b) The provisions of any written law which the court may be authorized to administer by any written law (including an order under Section 16), and in so doing shall give effect to the provisions of Section 10 of the Constitution of Botswana read with Section 32 of this Act.”

125. As stated above, contrary to the commonly held view, the Customary Courts Act, particularly Section 32, does not contain any prohibition whatsoever for lawyers to appear before Customary Courts. This Section merely limits the right to legal representation subject to leave of court.

126. There is no specific training that is conducted on Penal Code for Dikgosi. However, since 2017, every kgosi who joins the Bogosi institution is inducted on procedures of presiding over court cases and court procedures by Attorney General's Chambers. To date, the Traditional Leaders have been capacitated in the following areas: International, Regional and National Gender Frameworks for Gender Equality and Women's Empowerment; Basic Gender Concepts, Lobbying and Advocacy; Human Rights; Gender Based Violence as a Human Rights Issue; Governance and Gender Parity; Gender Mainstreaming and Gender Analysis. The outcome of capacity building is that: Traditional Leaders are now responsive to gender issues and able to: Identify key areas of concern on gender; Identify strategies that address gender inequality and discrimination, as well as Identify key advocacy issues.

127. Within the staff compliment of Dikgosi, eight (8) of them are former Police Officers and some have Law qualifications. 10 Court Presidents and 2 Dikgosi have Law qualifications.

128. In terms of Rules 23 and 26 of the Customary Courts (Procedure) Rules all customary courts are enjoined to immediately upon pronouncing judgment inform the parties of their right to appeal the decision to the next tribunal in the hierarchy of the courts of justice in Botswana.

Response to Question 21

129. The appointment of judges is based on meritocracy. Their appointment is based on a selection process by the Judicial Service Commission (JSC), with a recommendation to the President. The President is bound by the recommendation of the Judicial Service Commission. The independence in the appointment of judges was tested in the Court of Appeal case of "*Law Society of Botswana and Motumise v. The President of Botswana and Two others CACGB-031-16*", a case in which the President had declined the JSC's recommendation to endorse Motumise whom it had recommended for appointment in accordance with Section 96 (2) of the Constitution.

130. The Section provides that "the other judges of the high court shall be appointed by the President, acting in accordance with the advice of the Judicial Service Commission." The Court held that the President was not entitled to turn down the recommendation of the Judicial Service Commission as his role other than as set out above was to act in accordance with the Judicial Service Commission". The President's refusal to appoint Mr. Motumise as a judge of the High Court was accordingly set aside.

131. Section 97 (2) (3) (4) of the Constitution provides that a judge of the high court may be removed from office only for inability to perform the functions of his or her office or for misbehavior. Removal of judges is by the President based on a recommendation by a tribunal comprising a chairperson and 2 other judges.

132. Judges in Botswana enjoy security of tenure. Regarding the suspension of the four (4) judges it was based on the internal audit report on judges housing allowance which had found that the judges erroneously benefited from the Government housing allowance incentive. It was an administrative issue which the judges conceded to and subsequently the parties agreed to settle and the tribunal set up to investigate the matter dissolved.

133. Provision of recusal of a judge and right to appeal against that judge's decision are some of the mechanisms in place to ensure impartiality.

134. Judicial staffing shortages have gradually been overcome. The Court of Appeal currently has a compliment of 9 Justices comprising of 6 Resident Justices and 3 Non Resident Justices. The High Court Divisions of Lobatse, Gaborone and Francistown have a compliment of 28 Judges and 15 Registrars while the Magistrates' Court, on the other hand, has a compliment of eighty (80) Magistrates.

Freedom of expression and assembly (arts. 19–21)

Response to Question 22

135. There is no special provision guaranteeing media freedom of expression, however, the right to freedom of expression under Section 12 of the Constitution extends to journalists and human rights defenders.

136. In terms of the Constitution of Botswana everyone is guaranteed the right to protection of the law, including journalists and human rights defenders. Any person who is of the view that his/her fundamental rights have been violated, has the right to seek legal recourse through the Courts of Botswana or specialized institutions such as the Office of the Ombudsman.

137. Botswana has not taken any steps to decriminalize defamation. Botswana takes cognizance of the purpose of defamation laws, which is to protect people's reputation. Acknowledgement is however made that a balance needs to be struck between the protection of people's reputation and the protection of the fundamental freedom of expression. Note is taken that there is a particular need to ensure that journalism is not hampered by laws which prevent legitimate exposure of wrong-doing and critique of decisions and actions, especially by those in public life.

138. An independent judiciary is critical as a balance and checks forum for establishing whether the existing laws strike that balance, hence the need for those alleging undue pressure arising from being critical to the Government, to report their cases to the Police. Reporting would enable investigations to be conducted and in order to enable the Courts to determine if there is violation of the freedom of speech under the pretext of protection of people's reputation.

139. In his interview on a South African Television, Mr. Edgar Tsimane alleges that he fled to South Africa upon receiving a tip off that his life was in danger, owing to a newspaper article that he had written. No charges have however been laid against Edgar Tsimane, neither was he ever arrested for writing the newspaper article which he alludes to be the cause of his fear for reprisal from the Government. On the basis that his allegation never got to be confirmed in a Court of law in Botswana, the Government is not in a position to confirm reports that Mr. Mokone was subjected to undue pressure for being critical of the Government.

140. The 2015 cyber-attack on Mmegi newspaper was also not reported to the Botswana Police hence investigations nor prosecutions could not be commenced on the matter.

141. It has to be noted that the Government of Botswana encourages reporting of Government Departments or officers whose conduct borders on impropriety. Anonymous reporting and whistleblowing is allowed in many state organisations as per the Whistleblowers Act of 2016.

142. Section 8 of the Act authorizes ten (10) organisations to appoint persons who are to receive reports of impropriety made in terms of the Act. The Constitution also guarantees safety of all persons and state organisations have been put in place to ensure the safety of all people in Botswana.

143. The Outsa Mokone case involved allegations of seditious acts, which in terms of Section 50 and 51 of the Penal Code constitutes an offence punishable by a term of prison not exceeding three (3) years. These are the provisions that the Court, in a case in which Outsa Mokone and Sonny Serite were challenging their legality, held that they were not unconstitutional. Currently there are no criminal proceedings against Sonny Serite and Outsa Mokone as charges were withdrawn.

Response to Question 23

144. Section 13 of the Constitution guarantees the right to freedom of assembly and association. However, the Constitution has given Parliament the power to enact a law on limitation of the exercise of that right, for example, in cases where that law makes provision

that is reasonably required in the interest of defence, public safety, public order, public morality or public health or for purposes of protecting the rights and freedoms of others.

145. In terms of the Public Order Act, where a group of people require to assemble to send a message regarding their situation or to picket, they are required to apply to the nearest Police for a permit to assemble. In the Tlamelo Tsurupe case, the Botswana Police Service received a report in August 2016 that a group of youth called “Unemployed Population” had assembled at Parliament premises without a permit to assemble. They disobeyed the peaceful order by Botswana Police to voluntarily disperse and as such they were compelled to disperse as their gathering was unlawful. There were no assaults nor use of unreasonable or excessive force by the Police. In addition, no one was prosecuted.

Right to privacy (art. 17)

Response to Question 24

146. Ordinarily any increase in crime or change in crime patterns would require putting measures in place to curb crime. Such measures could include increased police visibility, deployment of other law enforcement officers and the use of electronic surveillance equipment. Botswana has put in place a legal framework on the use of electronic surveillance. Some of the key legal safeguards are as follows:

- Section 28 of the Cybercrime and Computer Related Crimes Act, 2008 provides for the legal safeguards or legal framework governing the use of electronic surveillance by the Police as it states as follows, “A police officer or any person authorized by the Commissioner or by the Director General, in writing, may apply to a judicial officer, ex-parte, for an order –

(a) For the collection or recording of content or traffic data, in real time, associated with specific communications transmitted by means of a computer or computer system; or

(b) Compelling a service provider, within its technical capabilities, to –

(i) Effect such collection and recording referred to in paragraph (a), or

(ii) Assist the person making the application to effect such collection and recording.

147. Further, the Police Act also regulates the conduct of the Police officers when discharging their duties and Section 23 thereto prohibits communication of any material, document, item or anything in possession of the Service.

148. There is also a control measure provided for under Section 17 of the Police (Amendment) Act no 20 of 2018 which makes restriction on release, communication and use of any information acquired by virtue of their employment.

149. Data Protection Act of 2018 also provides for the protection of personal data and ensure the privacy of individuals in relation to their data.

150. The use of electronic gadgets by Botswana Police Service is intended for delivery of effective policing, through monitoring incidents in strategic areas, which will result in the deterrence, detection and ultimately reduction in crime.

Rights of the child (arts. 7–8 and 24)

Response to Question 25

151. The Children’s Act of 2009 provides that any employment of a child shall be for the purposes of apprenticeship, with the written consent of the child’s parent/guardian, has extended protective conditions for children engaged in work. The Act further provides that employers have a duty to provide a safe and healthy environment for their child employees.

152. Children may also not be employed under these conditions: underground; at night – period between 10 p.m. and 6 a.m.; more than 3 consecutive hours in an industrial undertaking without a period of rest which shall not be less than 30 minutes; and more than 6 hours a day or 30 hours a week. The Employment Act permits the employment of a child who has attained 14 years in light work not harmful to his or her health and development.

153. Poverty and household income insecurity have also been identified as the main contributors towards child vulnerability to child labour. In that regard, free universal access to primary education is being promoted. This intervention has facilitated a consistent pattern of high enrolment and retention rates in primary school.

154. Vulnerable families are also identified and provided with basic services and monthly food packages along with economic empowerment skills and projects. The broad goal of the economic empowerment programme is to facilitate such families to have sustainable livelihoods and reduce household vulnerability as well as dependence on the state while at the same time, protecting their children from child labour.

155. The national programme on orphans and other vulnerable children continues to be implemented. Through this programme, children are provided with monthly food rations, educational support which includes school uniform supplies, transport to and from school as well as exemption from any cost recovery/sharing measures that may be in place. All eligible orphaned children are enrolled and are not subjected to any means test.

156. The other major component of the programme is the provision of psycho-social support which aims at building life skills among Orphans and Vulnerable Children (OVC) to facilitate a successful graduation from the programme. For OVC who have graduated from the programme, the special dispensation for facilitating access to tertiary and vocational education also continues to be implemented.

Measures to eradicate the sexual exploitation of children, and steps taken to amend the 2009 Children's Act

157. The 2014 Anti-Human Trafficking Act prohibits all forms of trafficking, and the law's definition of trafficking also links trafficking to ancillary crimes such as rape, pornography, and child labour. The Act prescribes penalties for sex and labour trafficking of up to 30 years' imprisonment or a fine of one million pula (\$111,000). Sections 57 and 114 of the 2009 Children's Act prohibit child prostitution and child trafficking, respectively. Section 57 prescribes penalties of two to five years' imprisonment for facilitation or coercion of children into prostitution, while section 114 prescribes penalties of five to 15 years' imprisonment for child trafficking. The Children's Act does not define child trafficking; however, the 2014 Anti-Human Trafficking Act specifically links its definition of child trafficking to the Children's Act. The 1998 Penal Code prohibits most forms of trafficking in sections 150-158 (forced prostitution), section 256 (kidnapping for slavery), and sections 260-262 (slavery and forced labour).

Response to Question 26

Corporal Punishment within the Education System

158. Corporal punishment is provided for in the Education Act. Botswana is however exploring reformatory measures which incorporate cultural values such as parental participation in discipline, while abandoning acts that degrade and dehumanize the child. It is worth noting that the Education Act is under review. The Education and Training Amendment Bill, 2014, seeks among other principal objectives, to prohibit physical punishment and mental harassment. Consultations on the Bill are ongoing. The envisaged amendment aims at upholding the rights of the child.

Corporal Punishment within the Criminal Justice System

159. Botswana has retained corporal punishment in its Children's Act (2009) as one possible criminal punitive measure in case of child offenders. The State Party is well aware that it must, ultimately, adopt measures that reform and rehabilitate children who have offended against the society, but it is currently faced with a situation where the majority of

its population, including children, have not been persuaded that detention of children in places of safety (the current popular method) is necessarily humane and non-degrading. The criminal justice system generally loathes to send young offenders, especially those in schools, to prison.

160. The following general arguments for the retention of corporal punishment are prevalent in Botswana:

(a) The pain inflicted a maximum of six strokes with a cane whose size is regulated by law does not meet the torture standard. The resultant injury is less than the type that could result from a rough game of football, body piercing, tattoos, boxing match etc. It is argued that it cannot be the injury to the child that is found objectionable;

(b) The humiliation that results, which appears to be the main objection to corporal punishment, is less than the humiliation a Motswana child would feel if he were sent to a juvenile centre or prison. Humiliation, it is argued, occurs in cultural context;

(c) Juveniles sent to places of safety/detention centres are removed from the positive influence of their parents and family members and afterwards consider themselves 'government children' and reject guidance from family members;

(d) Life in Botswana revolves around family and family events and if it is lived primarily outside – incarceration, of whatever nature is a harsh and humiliating treatment;

(e) Children who have been to detention centres can expect to be stigmatized as 'criminals' whilst children who have been lashed for exactly the same crimes are generally not considered as criminals;

(f) For punishment to be potentially reformative, the person receiving the punishment must see it as such. Juveniles accept corporal punishment as intended to reform them and incarceration as punishment intended to take them away from their families;

(g) Corporal punishment is quick and over in a few minutes and allows the juvenile to go on with his life; and

(h) Juvenile offenders would choose corporal punishment over any other form of punishment any day. As the central piece of the ACRWC is that children's views must be taken into account when decisions about their welfare are made, their views on corporal punishment are to be taken into consideration as well.

Corporal Punishment within the Home Environment

161. It is appreciated that allowing corporal punishment of children within homes can allow for a situation where serious abuse occurs and since and indeed Child Line, an NGO offering counselling for abused children reports that corporal punishment of the nature that qualifies as physical abuse is a common complaint by children. Public debates on the issue of corporal punishment are ongoing with the support of UNICEF Botswana Country Office to engage influential persons i.e. former Minister of Local Government and Speaker of the National Assembly to discuss with the traditional leaders and communities the importance of other alternative uses of disciplines for children with antisocial behaviours and through the media and kgotla meetings.

Rights of minorities (arts. 12 and 25–27)

Response to Question 27

162. Regarding the implementation of the ruling by the High Court in *Roy Sesana V The Attorney General*, the Government has complied with the Court decision in that the people that it had said were dispossessed of the CKGR have been allowed to return to the Reserve to settle there and currently they reside inside the CKGR. People affected by the High Court case are not required to produce permits to enter the CKGR. Permits are required from any other Motswana, including the San who were not affected by the judgment.

163. Further, the Government has taken note of the preliminary recommendations made relating to measures that ought to be taken with regard to the CKGR, namely: the statement made by Government detailing her position as to who may enter the CKGR and the conditions of entry; that measures be taken to consult with communities; and access to water in the CKGR be facilitated.

164. Government has restored services for those residing within CKGR like water, mobile health services, destitute food rations, transporting children to schools outside the CKGR, returning them to their parents during school holidays and transporting parents to get cash allowances and to buy essentials etc. This is despite the Court's decision that Government was not obliged to restore service to the settlements inside the Reserve.

165. For the record, the Basarwa's traditional settlements of Molapo, Metsiamanong, Gope, Mothomelo and Gugamma remain inhabited within the CKGR. Therefore, Botswana can categorically state that there is no dispossession of the lands whatsoever. As indicated, Government, through the Ghanzi District Council, continues to provide social services and social safety nets to these settlements. Government has drilled and equipped boreholes in Molapo and Mothomelo. By the 20th September 2019, Government had made thirty eight (38) trips to provide water, food rations and social safety nets to the settlements.

166. Mining activities do take place alongside the occupation of the san in the CKGR. The san have not been relocated to pave way for mining. The reason for the relocation for the san was related to their incompatible agricultural land usage of which they had adopted over a period of time, thus changing from their hunter-gatherer way of life which was compatible with the original land use.

167. Regarding reports indicating that in August 2016, nine members of the Basarwa people were shot at by an aerial anti-poaching unit while hunting antelope, and that they were arrested, stripped naked and beaten while in detention, Botswana confirms the arrest of people in the Central Kalahari Game Reserve (CKGR) for unlawfully killing three (3) gemsbok and two (2) Elands. The detainees were transported to Ghanzi State Prison awaiting further investigations. Investigations were conducted in relation to allegations that they were shot at, stripped naked and beaten whilst in detention and subsequently disciplinary process was conducted against the relevant officers. Of the four (4) officers charged, three (3) were acquitted and discharged and the other one was convicted for unlawful use of unnecessary force and fined five hundred pula (P500.00), around fifty dollars (\$50). Although the evidence gathered did not rule out the allegations of assault, there was nothing suggesting that they had been shot at by the officers.

168. With regard to measures adopted to guarantee the rights of indigenous groups, in particular the Basarwa, to their traditional land, the Acquisition of Property Act (*Cap 32:01*), read together with *Sections 3, 8 and 9 of the Constitution* guarantee the privacy and the protection of a person's home and other property. It also prohibits deprivation of property without compensation. Therefore, where any Motswana, including Basarwa, holds title to land, such title is guaranteed the protection of the law and cannot be divested without due process of the law. Institutions such as Land Tribunals, Land Boards, and Courts have been established to govern land allocations and adjudicate over land claim disputes.

169. Measures adopted to guarantee Basarwa of the natural resources in their communities, include the development of a Community Based Resource Management Policy by Government, whose objective is to ensure that communities, including Basarwa, benefit from the natural resources in their localities.

170. Concerning ensuring respect for the right of Basarwa to engage in free, fair and informed participation in work relating to policies that affect them, it is worth noting that all Citizens, including Basarwa, have the right to participate in elections-to vote and to stand for elections on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service. To participate as a candidate in Elections, *Section 62 of the Constitution* states that one must be a citizen of Botswana. For Local Government elections, one is also required to be a citizen of Botswana. All citizens are allowed to participate in public affairs of the country through kgotla meetings. The mode of communication at every kgotla

meeting is the language which is spoken by the people in the locality. Translation services are voluntarily offered for those who do not understand English or Setswana, in the event that the person who is addressing the meeting is not conversant with the local language.

Response to Question 28

171. It is not correct to state that any tribe in Botswana is unfamiliar with the *kgotla*. All tribes in Botswana have a custom and practice of assembling to discuss matters that affect them. Such assembling has, from time immemorial, in all tribes, been led by the elected head of the tribe or community. History shows that even though Basarwa had no permanent *Kgosi* and they were nomadic, they assembled from time to time to select their leader, to settle disputes and to discuss matters that affect them. The same applies to all tribes which settled in Botswana. History tells that they always had nominated leaders who headed them and that the tribes gathered from time to time at the behest of their leaders, to discuss matters that affect them. That is the concept of a *Kgotla*. A *Kgotla* is not in any way a concept that should be attributable to any tribe in Botswana, so as to infer that it has been imposed on other tribes who originally did not have it.

172. In Botswana the *Kgotla* is a public consultation forum which contributes to the Parliamentary business and national development planning in the sense that it is where elected representatives at Council and Parliamentary level, *Dikgosi* as well as Government officials engage with the citizens about envisaged laws, national development plans and projects. All citizens of Botswana, including Basarwa, are allowed to participate in the public affairs of the country through *Kgotla* meetings. The mode of communication at every *Kgotla* meeting is the language which is spoken by the people in the locality. Translation services are voluntarily offered for those who do not understand English or Setswana, in the event that the person who is addressing the meeting is not conversant with the local language. Basarwa and all other tribes in Botswana are therefore able to participate and contribute to the laws, national development plans and projects which are discussed at the *Kgotla*.

173. Parliament is obliged to refer laws to *Ntlo ya Dikgosi* (House of Chiefs), which is an advisory body of Parliament. The *Dikgosi* (Chiefs) who are members of the *Ntlo ya Dikgosi* consult their tribes on matters that affect them through the *Kgotla*. Basarwa are represented at the *Ntlo ya Dikgosi*. Reference is made to the case of *Kamanakao and Another v. Attorney General* 2002 (1) BLR 110 (HC) in which the Applicants challenged the legality of a) Sections 77 to 79, 15 (4) (d), 15 (9) of the Constitution; and b) Section 2 of the Chieftainship Act that were considered discriminatory against minority tribes. These provisions created the *Ntlo ya Dikgosi* (House of Chiefs) with only eight (8) tribes represented, to the exclusion of other tribes in Botswana, Basarwa included in those tribes which had no representation at the *Ntlo ya Dikgosi*. The Court held that the Chieftainship Act was discriminatory and called for its amendment. The Chieftainship Act was subsequently repealed by the Bogosi Act in 2008 which allows for the representation of other tribes which were originally not represented in the *Ntlo ya Dikgosi*, including Basarwa.

174. The Government of Botswana did not only amend the Chieftainship Act, but it amended the Constitution as well. As a result, the current Sections 77, 78 and 79 of the Constitution reflect a representation of all tribes and regions in the *Ntlo ya Dikgosi*.

175. The Constitution stipulates the composition of *Ntlo ya Dikgosi* to ensure representation of all tribes. In particular, *Ntlo ya Dikgosi* comprises additional members from 12 Districts, five (5) appointed at the President's discretion and twenty (20) elected by Regional Electoral Colleges, to afford representation of other tribes residing in all the eight (8) districts of the country in the *Ntlo ya Dikgosi*.

176. Over and above the *Kgotla* system, there are other structures which facilitate equal political participation and representation of all Batswana at all levels of the country's development process. There are Ward and Village Development Committees at community level, District Development Committees at local level and Ministries that coordinate at national level. Basarwa are found within these committees especially at community and

district levels, with liberty to being included at national level to coordinate development strategies and programmes through employment in Government Ministries/ Departments.

Response to Question 29

177. Section 62 (d) of the Constitution provides that for one to be eligible to be elected to the National Assembly, he/she should be able to speak English. However, there is no strict enforcement of this Section to the extent that there are no proficiency tests conducted for eligibility to stand for elections.

Dissemination of information relating to the Covenant (art. 2)

Response to Question 30

178. The database on Botswana's international agreements which was launched in 2017 is one of the ways in which Botswana disseminates this Covenant. A text of this Covenant and related reports is uploaded on the database. The database is open hence accessible to the public, including judicial officers, Dikgosi and CSOs. It also includes reports submitted to all treaty bodies as well progress updates. This database is accessible at www.agreements.gov.bw.

179. In terms of institutional framework, the Government has established a Human Rights Unit within the Ministry for Presidential Affairs, Governance and Public Administration. The mandate of the Human Rights Unit, among others, is to create awareness on International and Regional Treaties, Protocols and Conventions, including this Covenant.

Annexures

Annexure 1

Women Representation in Political and Public Life

Women representation in Botswana Parliament and Cabinet

Women participation in political life continues to show a stagnated and slow growth and in other instances a decline. As depicted in the table below, women are under-represented in Parliament and Cabinet.

Table 1
Women in Botswana Parliament and Cabinet

	2004			2009			2014			2019		
	Male	Female	% Female	Male	Female	% Female	Male	Female	% Female	Male	Female	% Female
	Parliament	55	7	11	57	4	6.6	56	5	8.2	56	7
Cabinet	15	5	25	19	4	17.4	20	4	17.	21	6	22.2

Source: Botswana Parliament.

Women representation at Local Government

Local Councils, very much like Parliament, continue to be dominated by men as indicated in the table below.

Table 2
Representation at Local Government

	2014			2019		
	Female	Male	% Female	Female	Male	% Female
Local Councils	116	473	24.5	111	498	18

Source: BIDPA, 2014 and MLGRD 2019.

Women representation in NGO and Union Leadership and participation in Central Committees of Political Parties

Table 3
Women in NGO and Union Leadership and in Central Committees of Political Parties, 2013

Sector	% Female
Parties' Central Committees	31
Heads of NGOs	45
Heads of Trade Unions	20

The Executive or Central Committees of Political Parties are also male dominated with the majority of them having only one female representative at this level of their structure. Trade Unions show a similar trend of male predominance with females accounting for only 20%. Women in the management of NGOs are at 45%. However, this is not surprising given the voluntary nature of such organizations and their social development mandates. Governing bodies of Parastatal Organizations also show huge gender gaps and a closer examination of the composition of these showed that some institutions had no women at all on their Governance Structures.

Women in the Administration of Justice

Higher courts are male dominated. At the level of Magistrates, however, the number of women is slightly higher. Court Presidents and Deputy Court Presidents for customary courts are male dominated and show a similar pattern to Traditional Leadership at *Ntlo Ya Dikgosi* which has historically been a male preserve. The tables below show the numbers within the judiciary disaggregated by sex and positions within the Administration of Justice.

Table 4

Participation of women in the Court of Appeal and High Court, 2015

<i>Positions</i>	<i>% Female</i>	<i>% Male</i>
Chief Justice	0	100
President	0	100

Table 6

Participation of women in the Magistrate Courts, 2012

<i>Position</i>	<i>% Male</i>	<i>% Female</i>
Magistrates	44	56

Source: SADC Gender Monitor, 2013.

Table 7

Women judges

<i>Position</i>	<i>Female</i>	<i>Male</i>	<i>% Female</i>
Judges	8	34	19

Source: AoJ, February 2020.

Table 8

Women in Traditional Leadership positions

	<i>Female</i>	<i>Male</i>	<i>% Female</i>
Court Presidents	1	18	10.0
Deputy Court Presidents	1	22	4.3
Ntlo ya Dikgosi (House of Chiefs)	4	31	12.9

Source: The African Gender and Development Index, Botswana Report, 2012.

As for the six hundred and seventy (670) Dikgosi, twenty-three (23) are women. From the two thousand six hundred and eighty five (2685) Headman of Arbitrations across the country, 113 are women.

Women in the Public Service

The participation of women in decision making positions in the Public sector and within the NGO sector continue to be at higher levels as compared to other sectors. In 2013 women in the Public sector accounted for 42% of all persons holding positions of Deputy Director to Permanent Secretary level making Botswana second in Southern Africa with a record of 35% women Permanent Secretaries and 45% Directors.

Representation

Representation of Women in Diplomatic Missions

There has been a significant decline in women representation as Heads of Missions from 38% in 2013 to 23.8% in 2020.

Table 9
Heads of Missions by Sex

	2013			2019			2020		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Heads of Missions	13	8	21	16	6	22	16	5	21
Percentage (%)	62	38	100	72.7	27.3	100	76.2	23.8	100

Source: MOFAIC, 2013 & MIAC 2018 & 2019.

Table 10
Women in leadership, Public Sector and Parastatals

Sector	Total	Female	Male	% Female	Source
Public Sector (including councils & Landboards)	1 128	430	630	38.1	DPSM December, 2019 & MLGRD, February, 2020
Public Sector only	1 046	416	630	39.8	DPSM – December, 2019
Parastatals	119	38	81	31.9	August, 2018
Boards – Parastatals	83	29	54	34.9	August, 2018

Annexure 2

Statistical Information on the GBV complaints received and investigations carried out by the Botswana Police Service

<i>Year</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
Rape	1 875	1 754	1 865	1 800	2 073	2 060	2 034	2 163	2 052	2 074	2 064	21 814
Defilement	428	487	518	529	534	530	531	543	617	572	769	6 058
Total	2 303	2 241	2 383	2 329	2 607	2 590	2 565	2 706	2 669	2 646	2 833	27 872

Annexure 3

Statistics on clemency applications

<i>Name</i>	<i>Offence</i>	<i>Application date</i>	<i>Outcome</i>
Patrick Gabaakanye	Murder	18 August 2015	Unsuccessful
Thatayaone Maano	Murder, Robbery, Theft of Motor Vehicle.	07 November 2016	Unsuccessful
Uyapo Poloko	3 counts of Murder, Attempted Murder, Robbery.	07 February 2018	Unsuccessful
Mooketsi Kgosibodiba	Murder	07 September 2018	Unsuccessful
Mmika Mpe	Abduction, Robbery, Murder, Theft of Motor Vehicle, Malicious Damage to Property.	25 March 2019	Unsuccessful
Tshiamo Kgalalelo	Murder	26 March 2019	Unsuccessful
Moabi Seabelo Mabiletsa	Murder	11 February 2020	Unsuccessful
Matshidiso Tshidi Boikanyo	Murder	17 February 2020	Unsuccessful

From now henceforth, the applicants need not submit individual petitions for clemency. The Advisory Committee on the Prerogative of Mercy considers and gives the advice to His Excellency the President irrespective of whether or not an individual has submitted a petition for clemency. A special warrant obtainable under Section 299 of the Criminal Procedure and Evidence Act (Cap 08:02), will not issue, unless the clemency process has been completed (See Mooketsi Kgosibodiba and the Attorney General & Others CACGB-203/19 (Unreported)).

Annexure 4

Statistics of cases reported by Prisoners to the Office of the Ombudsman since the last reporting period

Year	Police assault & torture	Assault on prisoners by prison officials	Living conditions of prisoners	Delayed case record		Total
				Customary Courts	AOJ	
2009/10	0	1	1	0	0	2
2010/11	0	2	3	0	0	5
2011/12	1	0	1	1	7	10
2012/13	2	2	8	0	10	22
2013/14	9	6	4	1	46	66
2014/15	6	1	13	3	6	29
2015/16	4	5	9	10	26	54
2016/17	4	0	2	2	11	19
2017/18	2	1	0	5	13	21
2018/19	0	0	0	1	1	2
2019/20	0	0	0	0	0	0
Total	28	18	41	23	120	230