

# **REPUBLIC OF BOTSWANA**



## **FIRST PERIODIC REPORT TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

### **IMPLEMENTATION OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS**

<b>CONTENTS</b>	<b>PAGE NO</b>
<b>I. PART I.</b>	
a. History	5
b. Geography	8
c. Population	9
d. Economy	10
e. Constitutional structure	17
f. Administrative structure	20
<b>II. PART II.</b>	
<b>ARTICLE 1</b>	25
Recognition by States of rights duties and freedoms under the Charter; and ARTICLE 2- Entitlement to Rights and Freedoms under the Charter	
<b>ARTICLE 3</b>	28
(a) Equality before the law; and (b) equal protection of the law	
<b>ARTICLE 4</b>	34
Respect of one's life and integrity	
<b>ARTICLE 5</b>	37
Rights to respect of human dignity, prohibition of slavery; slave trade; torture cruel inhuman and degrading treatment	
<b>ARTICLE 6</b>	50
Right to Liberty and security	
<b>ARTICLE 7</b>	61
Right to a hearing; right to appeal; right to presumption of innocence; right to be defended by counsel of choice; right to be tried within a reasonable time	

<b>ARTICLE 8</b>	66
Freedom of religion and conscience	
<b>ARTICLE 9</b>	70
Right to receive information; right to express opinion	
<b>ARTICLE 10</b>	74
Right to free association	
<b>ARTICLE 11</b>	76
Right to freedom of assembly	
<b>ARTICLE 12</b>	77
Freedom of movement and right to seek and obtain asylum	
<b>ARTICLE 13</b>	81
Right to participate freely in government; right to equal access to the public service of ones country; right to access public property	
<b>ARTICLE 14</b>	83
Right to property	
<b>ARTICLE 15</b>	85
Right to work under equitable and satisfactory conditions and to receive equal pay for equal work	
<b>ARTICLE 16</b>	87
Right to health - physical and mental health	
<b>ARTICLE 17</b>	90
Right to education	
<b>ARTICLE 18</b>	94
Duty of the State to protect the family; duty to protect rights of women and children and eliminate discrimination	

<b>ARTICLE 19</b>	103
All people shall be equal	
<b>ARTICLE 20</b>	104
Right to self determination	
<b>ARTICLE 21</b>	106
Right to free disposal of wealth and natural resources	
<b>ARTICLE 22</b>	107
Right to economic, social and cultural development; duty to ensure exercise of right to development	
<b>ARTICLE 23</b>	109
Right to national and international peace	
<b>ARTICLE 24</b>	114
Right to satisfactory environment favourable to development	
<b>ARTICLE 25</b>	116
Duty to promote respect of rights under the charter	
<b>ARTICLE 26</b>	117
Duty to guarantee independence of courts	
Methodology and Consultation Process	122
Glossary/Abbreviations	123
Invited stakeholders ACHPR to the consultative meeting	127

# **PART I. GENERAL**

## **A. History**

1 The history of human settlement in Botswana dates back to the earliest evidence of mankind's existence. Today, archaeological evidence of early, middle and late Stone Age occupation can be found throughout Botswana.

1. By 20,000 BC, Late Stone Age peoples in the region were producing sophisticated rock paintings while surviving by hunting and foraging. It is commonly believed that many modern "Khoisan"-language peoples (locally known as Basarwa, the Basarwa are also sometimes referred to as the Bushmen or the San, however "Bushman" is widely considered to be a derogatory or demeaning term) are direct descendents of these Late Stone Age occupants. From 200 BC there is evidence of the spread of pastoralism among the Late Stone Age communities of northern Botswana.

2. Iron Age settlement dates from the fourth century. Many scholars have speculated that the spread of Iron Age throughout southern Africa may be linked to an influx of "Bantu"-language farmers. But this view has been challenged, while the past assertion of a more modern chronology of "Bantu migrations" from eastern into southern Africa has been discredited by advances in archaeology and historical methodology.

3. A variety of Bantu languages and dialects are spoken in Botswana today. The largest sub grouping of these languages is Sotho-Tswana, which includes the national language Setswana and such other closely related, mutually intelligible dialects as Shekgalagari, Setswapong and Sebirwa. Other prominent languages spoken in Botswana include Chiyeyi, Chikiuhane, Hambukushu, Ikalanga and Otjiherero.

4. When European traders and missionaries began arriving in Botswana in the early nineteenth century they found the lives of most Botswana communities being disrupted by Bakololo and Amandebele invaders. As a result a number of more powerful rulers emerged such as Sebege of the Bangwaketse, Sechele of the Bakwena, Sekgoma of the Bangwato and Letsholathebe of the Batawana who built up their emerging states by acquiring both knowledge and guns from the

European visitors. In return for guns they traded ivory and other game products, while inviting missionaries to establish schools in their territories. The Transvaal Boers invaded Botswana in 1852, but were driven away by a coalition of *merafe* (often translated as tribes) who temporarily united under the overall leadership of the Bakwena ruler, Sechele.

5. In the late nineteenth century a new threat emerged in the form of the British imperial expansion. The discovery of diamonds at Kimberly resulted in the occupation of Batswana lands south of the Molopo River, which thereafter became part of South Africa.
6. In 1884 the Germans, imperial rivals to the British, began occupying Namibia. To prevent the Germans from expanding eastwards to link up with the Boers, in January 1885 the British proclaimed a protectorate over the southern half of Botswana. This action was reluctantly accepted by local rulers as preferable to direct rule by either the Germans or Boers. In 1890 the protectorate was extended over northern Botswana. Thereafter the territory was formally known as the Bechuanaland Protectorate.
7. A British settler, Cecil Rhodes, however, wanted to bring Botswana under the political and economic control of his British South Africa Company, which between 1890 and 1893 had forcibly occupied Southern Rhodesia. To stop this in 1895 three of the leading Batswana rulers - Bathoen I, Khama III and Sebele I went to Britain to lobby in favour of Botswana remaining a protectorate. After being told that the decision to transfer them to Rhodes' company had already been made, the three launched a nationwide campaign to bring their case before the British people. With the assistance of London Missionary Society, they drew so much public support that the British Government changed its mind and agreed to continue to administer the territory as a protectorate.
8. In 1891, Britain had begun to set up a structure for colonial administration of the protectorate. This provided for a Resident Commissioner responsible to a High Commissioner in the Cape. The country was thereafter divided into 12 districts, each having a resident magistrate whose duties were primarily judicial and involved only foreigners and non-residents.
9. In 1921, a Native (later called African) Advisory Council was formed consisting of representatives from eight recognized Tribal Territories, namely the

Bangwato, Bangwaketse, Bakwena, Barolong, Balete, Bakgatla, Batlokwa and Batawana.

10. From 1959 a number of competing nationalist political parties emerged, namely: the Bechuanaland Protectorate Federal Party, Bechuanaland People's Party (BPP), Bechuanaland Democratic Party (BDP) and the Botswana Independence Party (BIP). The first general elections were held in March 1965, and the Botswana Democratic Party (BDP) won overwhelmingly, with Seretse Khama becoming the Prime Minister and later the first President of the Republic of Botswana in 1966. At present, there are thirteen (13) registered political parties, these include: Botswana Alliance Movement (BAM), Botswana Congress Party (BCP), BDP, Botswana Labour Party (BLP), Botswana National Front (BNF) (Exempted), BPP (Exempted), Botswana Progressive Union (BPU), Botswana Tlhoko Tiro Organization (BTTO), Botswana Workers Front (BWF), MELS Movement of Botswana (MELS), New Democratic Front (NDF), Social Democratic Party (SDP), People's Liberty Movement (PLM).<sup>1</sup>
11. Sir Seretse Khama served as President until his death in 1980 after which the party continued to command substantial political support. He was succeeded by his Vice-President Quett Ketumile Joni Masire (later Sir Ketumile Masire), who retired in March 1998 and was, in turn, succeeded by his Vice-President, Festus Mogae. The Botswana Democratic Party won the 1999 general elections under the leadership of President Festus Mogae. It was re-elected for a further five years in 2004 giving President Mogae a further term of five years. President Festus Mogae retired at the end of March 2008 and was succeeded by the Vice President. His Excellency Lieutenant General Seretse Khama Ian Khama was sworn in as the fourth President of the Republic of Botswana on the 1<sup>st</sup> of April 2008.
12. The next general elections will be held in 2009.

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<sup>1</sup> NB. Exempted Societies are those that existed before 1972 when Societies Act that regulates registration of societies was enacted.

## **B. GEOGRAPHY**

13. Botswana is a landlocked country situated in the heart of southern Africa. It shares borders with Namibia in the west and north, Zambia in the north, Zimbabwe in the north-east and South Africa in the east and south. It straddles the Tropic of Capricorn and has a land area of approximately 581,730 square kilometres, much of which is flat and covered with thick sand layers in the Kalahari Desert. It is 1,000 metres above sea level. In the north-west, the Okavango River flows from Angola through Namibia into Botswana and soaks into the sand forming the Okavango Delta. In the north-east, there are the salt deserts of the Makgadikgadi Pans.
14. Rainfall varies from 650 mm per year in the north-east to less than 250 mm in the south-west. Drought is a recurring problem although in early 2000 record rainfall brought serious flooding. Botswana experiences extremes of climate with winter temperatures below freezing being common in the Kalahari.
15. Botswana is rich in mineral deposits. Diamonds, coal, copper and nickel are mined in large quantities. Other minerals found in the country are gold, soda ash and salt.
16. The country has an arid landscape. Only approximately 5 per cent of the land area is cultivated. Cattle ranching are the most significant agricultural enterprise. Farming is mainly at subsistence level and relies primarily on cattle, sheep, goats, maize, sorghum, beans, peanuts, cottonseed and other dry land crops.



## C. POPULATION

17. The last census was in 2001. It yielded a population count of 1,680,863 (approximately 1.7 million) compared to 1,326,796 in 1991. This marked an increase of 354,067 over the 10-year period.
18. The population of Botswana grew at an average annual rate of 2.4 per cent during the inter-census period. The growth rate has been declining over the years. Annual growth rates between 1971 and 1981 as well as between 1981 and 1991 were 4.5 and 3.5 per cent, respectively. While the AIDS pandemic might have contributed somewhat to the decline in recent years, it must be noted that there was a decline during the pre-HIV/AIDS era. Indeed, factors such as declining fertility rates, increased women participation in economic activities, increased literacy rates, access to better health care, etc., may have a profound effect on population growth.
19. In summary of the demographic indicators taken from a comparison of the 1971, 1981, 1991 and 2001 censuses, the main features of Botswana's population show a declining fertility rate and life expectancy, and increasing mortality rate. Crude death rate rose between 1981 and 1991 mainly due to the HIV/AIDS pandemic. Life expectancy at birth also decreased from 65.3 years in 1991 to 55.7 years in 2001. Regarding the fertility rate, there has been a notable decline in all fertility indicators.
20. Overall, population density increased by one person per square kilometre between 1999 and 2001 from two to three persons per square kilometre. For Gaborone and Francistown, it rose to well over 1,000 persons per square kilometre between 1991 and 2001. Most district densities increased between the two censuses with the exception of sparsely inhabited districts.
21. Population trends point to increasing urbanization over the years. The growing concentration of the population around towns and cities reported during 1991 has somehow intensified. Some villages around Gaborone and Francistown have witnessed phenomenal growth over the period 1991 to 2001, with some recording annual rates of over 10 per cent.
22. Urbanization has been rapid with the number of people living in urban areas increasing from 9.5 per cent in 1971 to 15.9 per cent in 1981 and 45.7 per cent in 1991. In 1999 the Government estimated the urban population at 50 per cent

and the United Nations Population Division reported a 28 per cent urbanization rate in 1997. This growth is due, in part, to substantial population growth in traditional urban areas like Gaborone and Francistown and the reclassification of many large villages to urban areas. Some 50 per cent of the total population lives within 100 km of the capital city, Gaborone.

23. Citizens of Botswana are known as Batswana. The population is made up of various ethnic groups which include Babirwa, Bakalaka, Bakgalagadi, Bakgatla, Bakwena, Balete, Bangwaketse, Bangwato, Barolong, Basarwa, Basubia, Batawana, Batlokwa, Batswapong, Bayeyi, Hambukushu, Ovabenderu and OvaHerero.

24. In addition, there are significant minorities of people of European, Asian and people of mixed ancestry.

## **D. ECONOMY**

Prior to the emergence of the diamond industry the country's economy was dominated by agriculture, particularly cattle ranching. At industry level, mining was the major contributor to GDP, 35 per cent, followed by trade, hotels and restaurants (10.9 per cent) and banks, insurance and business came third at 10.8 per cent. Within trade, hotels and restaurant industry, trade accounted for 8.7 per cent and hotels and restaurants accounted for 2.2 per cent. The lowest contributor to GDP was agriculture, and water and electricity, both at 2.4 per cent.

Between the late 1960s and the early 1990s, Botswana recorded the highest sustained real GDP growth rates in the world, averaging 6.7 per cent over the last ten (10) years. Following a recession in 1992/93 growth resumed and has continued since. Generally strong growth in diamond revenue has ensured large Government reserves and budget surpluses.

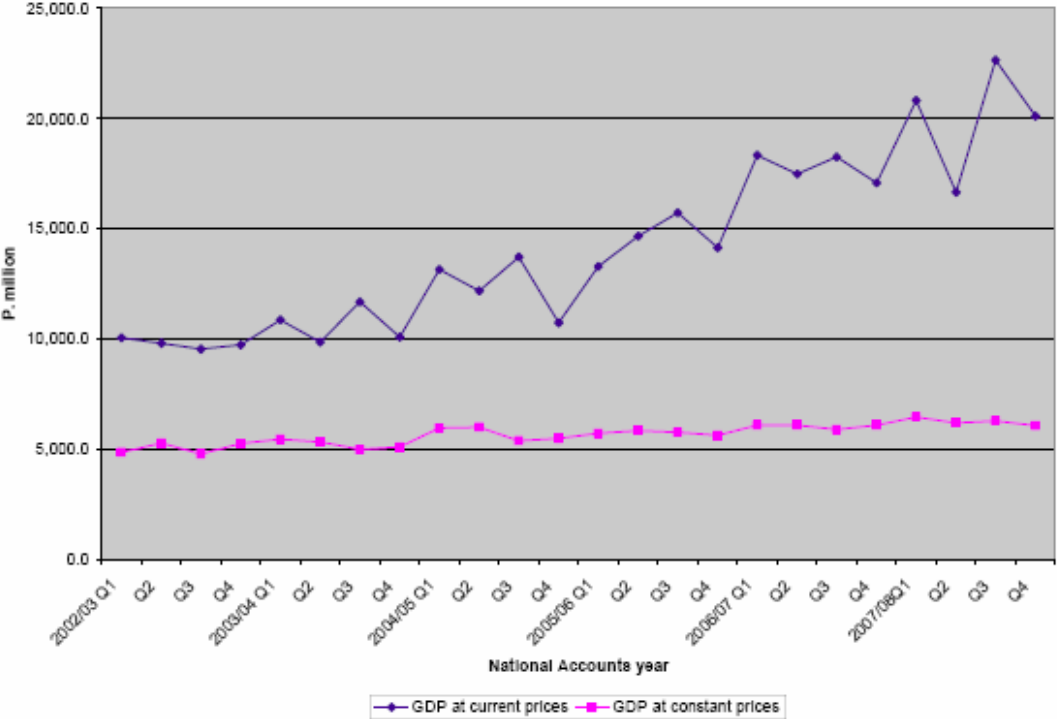
### **Gross Domestic Product**

The estimated GDP at current prices for the fourth quarter of 2007/08 was P20, 348.8 million or 18.8 percent higher than the level of P17, 125.5 million registered in the fourth quarter of 2006/07. The notable increase in the value of nominal GDP in the fourth quarter of 2007/08 stemmed from the following sectors; mining, trade, hotels & restaurants, financial and business services, general government and transport & communication.

At constant 1993/94 prices, total GDP increased from P6, 103.5 million in the fourth quarter of 2006/07 to P6, 181.2 million in the fourth quarter of 2007/08. This amounted to an annual rate of increase of 1.3 percent, which was substantially lower than the annual growth rate of 8.3 percent recorded in the fourth quarter of 2006/07. The increase, although at a slower pace, in real GDP in the fourth quarter of 2007/08 compared with the corresponding quarter in 2006/07, was broadly based and particularly evident in the services sectors; where the sub sectors transport and communications as well as financial and business services recorded strong growth in real value added. However, the real value added in the agricultural and mining sectors declined.

In addition, the growth in Botswana’s real gross domestic product for the 2007/08 year slowed down to 3.3 percent, compared with the revised growth rate of 5.3 percent registered in the 2006/07 year. This slowdown in real economic growth was due to the decline in real value added by the agriculture and mining industries in the 2007/08 year. However, the growth in real gross domestic product excluding mining accelerated from an annual increase of 5.7 percent in 2006/07 to 8.0 percent in 2007/08.<sup>2</sup>

Figure 1: Quarterly GDP at current and constant 1993/94 prices

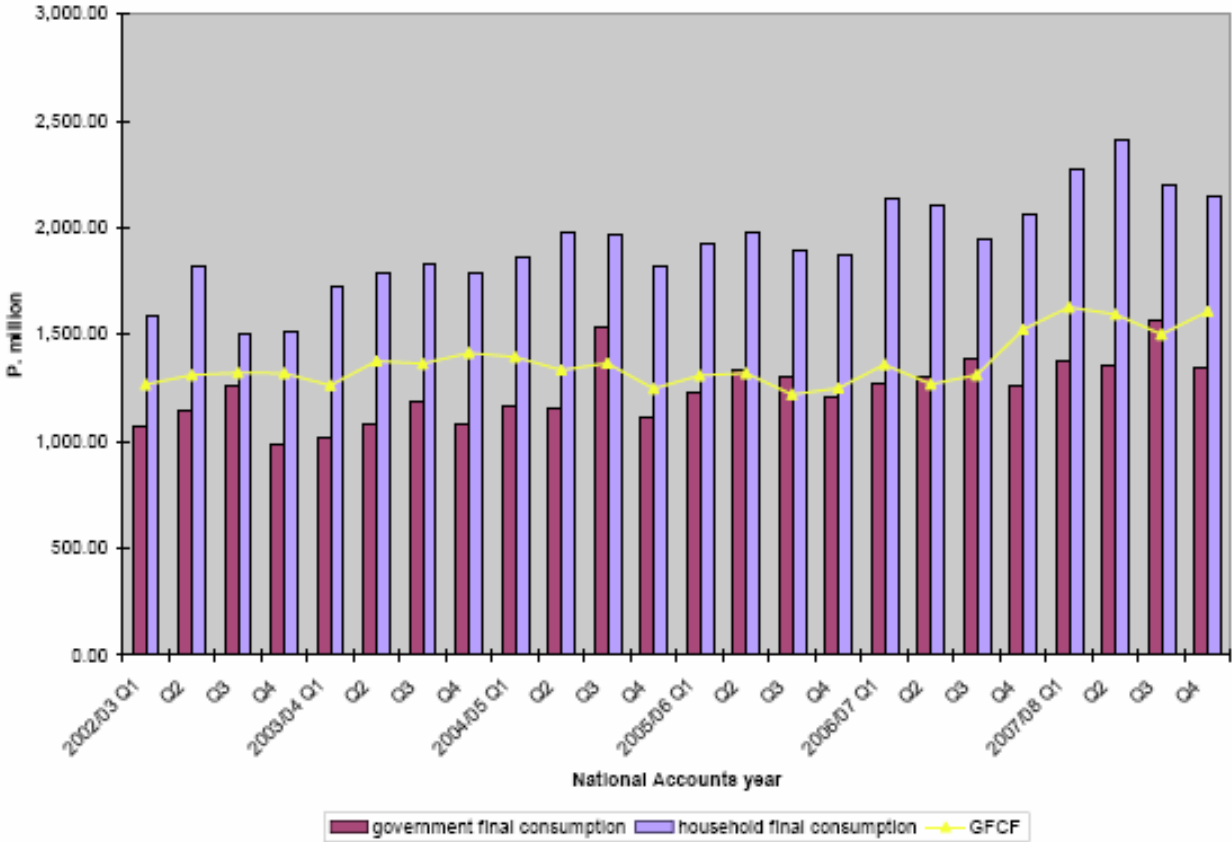


<sup>2</sup> See Central Statistics Office (2007/2008) *Stats Brief National Accounts – Quarterly Gross Domestic Product*, Republic of Botswana, p.3 for figure 1

### Gross Domestic Expenditure

Aggregate real gross domestic expenditure continued to increase at a relatively brisk pace in the fourth quarter of 2007/08 compared with the fourth quarter of 2006/07, reflecting strong growth in real inventory accumulation, supported by increases in real consumption demand i.e. final consumption expenditure by households and general government expenditure and the rise in real gross fixed capital formation. In addition, real exports of goods and services increased at a rate of 9.0 percent in the fourth quarter of 2007/08, compared with the fourth quarter of 2006/07 while real imports of goods and services grew by 12.0 percent in the corresponding period. Figure 2 presents components of real gross domestic expenditure from the first quarter of 2002/03 to fourth quarter of 2007/08.<sup>3</sup>

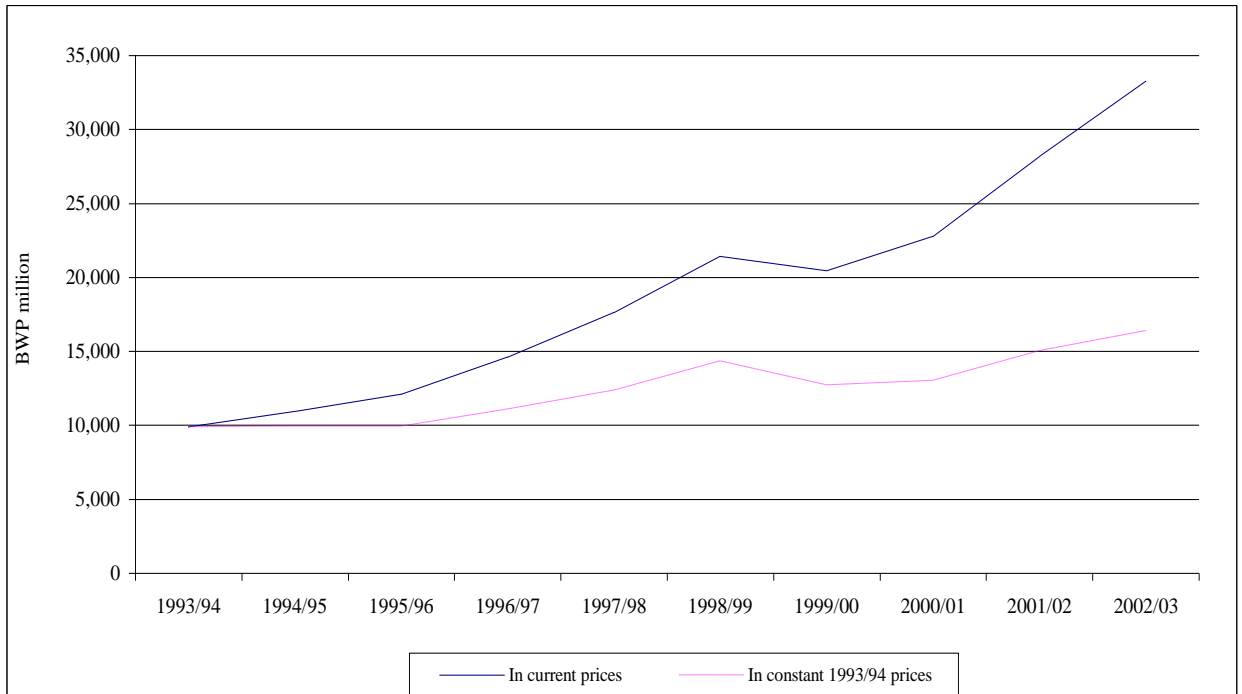
Figure 2: Components of Gross Domestic Expenditure at constant 1993/94 prices



<sup>3</sup> See Central Statistics Office, *op.cit.*, p. 4 for figure 2

## Gross domestic expenditure (1993/94-2002/03)

Figure 3.



### GDP by type of income

In aggregate terms, nominal factor cost/income increased from BWP 22,936 million in 1999/2000 to BWP 26,568 million in 2000/01. This growth was apparent in all the factor cost/income components. Compensation of employees increased from BWP 7,252 million in 1999/2000 to BWP 8,244 million in 2000/01. Nominal gross operating surplus increased from BWP 15,685 million in 1999/2000 to BWP 18,324 million in 2000/01.

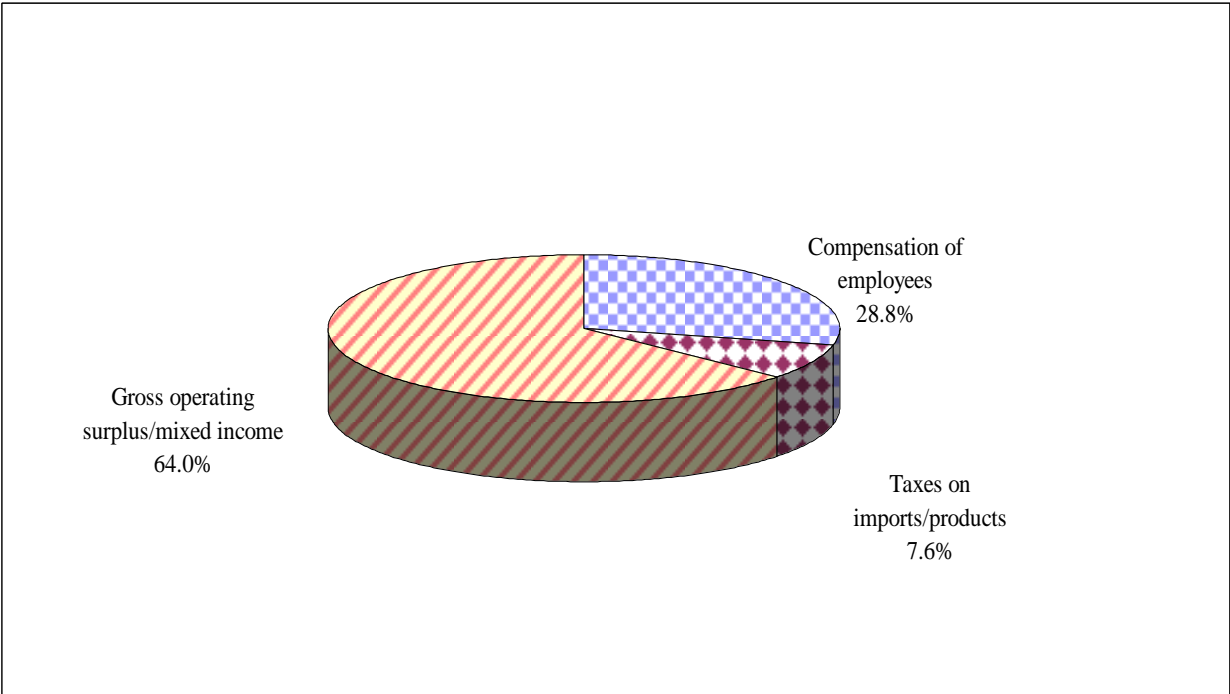
GDP by type of income (unadjusted for seasonal variations) on a quarterly basis is expressed in millions of pula and percentages of total GDP, respectively.

Figure 5 shows the average composition of GDP by type of income. The chart indicates that approximately one quarter to two thirds of total GDP was realized through remuneration of employees and gross return to capital/remuneration of the owners of capital, respectively.

The rest was realized through payments of net import taxes and other taxes on products.

Figure 5 Average composition of GDP by type of income 2000/01

Figure 4.

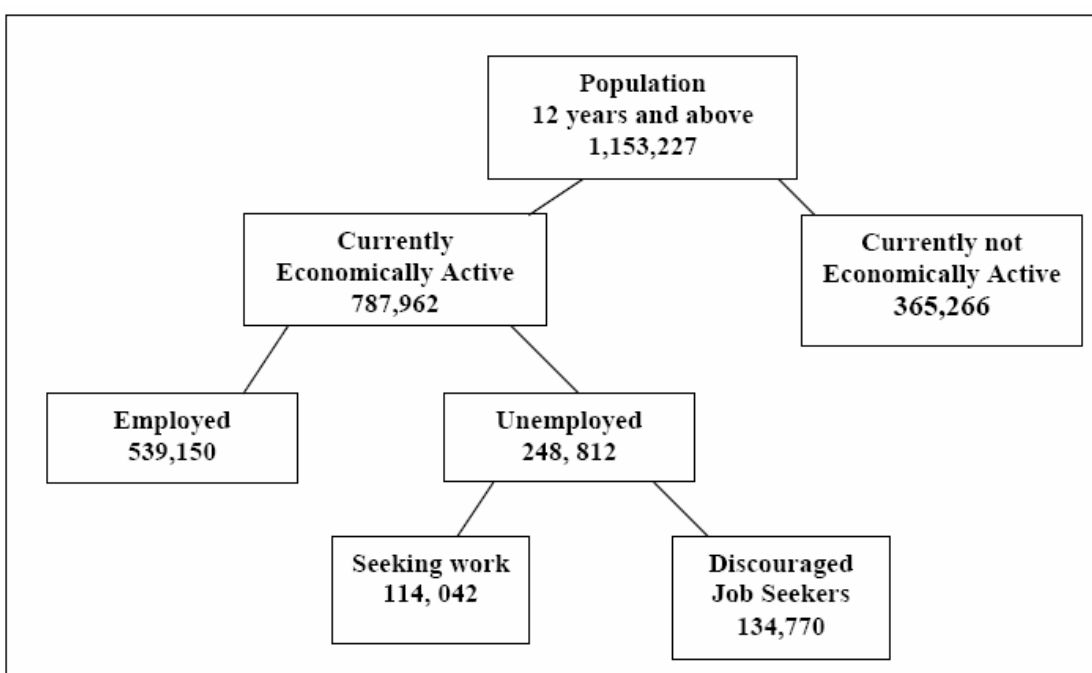


## Employment

### Population 12 years and above

The below diagram provides information on population 12 years and above, divided into currently economically active and currently not economically active. The currently economically active comprised of persons who during a specified reference period, prior to the interview were either employed or unemployed. This is also known as the Labour Force. Not economically active population comprises of all persons not classified as either employed or unemployed.

**Figure 5.**<sup>4</sup>



The number of persons aged 12 years and above estimated through the 2005/06 Labour Force Survey totalled 1,153,227, out of which 518,733 (45.0 percent) were males and 634,495 (55.0 percent) were females. The majority (50.9 percent) of these were aged between 12 and 29 years. The number of senior citizens who qualifies for the old age pension (65 years +) stood at 94,989 or 8.2 percent of all persons aged 12 years and above. Amongst these (i.e. the 65 years and above) 66.8 percent were found in rural areas and females accounted for 57.5 percent of the total (Table H8).

<sup>4</sup> See Central Statistics Office (2005/2006) *Labour Force Report*, Republic of Botswana, p.3

The enumerated population of persons aged 12 years and above consisted of 787,962 (68.3 percent) economically active (labour force as it is commonly called) and 365,266 (31.7 percent) not economically active population. The not economically active population is made up of students, retired persons, sick and housework, whilst the economically active consists of the unemployed and the employed. Amongst the labour force (economically active) 539,150 were employed. The unemployed consisted of 114,042 actively seeking work and 134,770 discouraged job seekers.<sup>5</sup>

### **Income disparities**

The 1993/94 and 2002/03<sup>6</sup> Household Income and Expenditure Surveys (HIES) show high incidences of income inequality that have been increasing between the two periods. The 2002/03 HIES indicate that the poorest 40 per cent of the population had only 5.8 per cent of the total income share, compared with 11.6 per cent in 1993/94. The income share of the middle 40 per cent of the population was 23.3 per cent in 2002/03, compared to 29.1 per cent in 1993/94, while the richest 20 per cent of the population got 70.9 per cent of total income, compared to 59.3 per cent in 1993/94.

At household level the income share has not changed much between the two surveys. In 1993/94 the poorest 40 per cent households had an income share of 9.4 per cent, compared with 9.2 per cent in 2002/03. The middle 40 per cent households get the income share of 29.9 per cent, compared to 29.4 per cent in 1993/94. The richest 20 per cent households get an income share of 60.9 per cent in 2002/03, compared to 61.1 per cent in 1993/94.

The 2002/03 HIES revealed disparity of disposable income between male- and female-headed households. In all the strata (cities/towns, urban villages and rural villages), male-headed households had higher incomes than female-headed households. Similarly, disposable income (cash income plus income in kind) shows great disparities between strata. The national monthly household median disposable income was BWP 1,344, compared to an average monthly household disposable income of BWP 2,424. In cities/towns, the monthly median disposable income was BWP 1,949, compared to an average of BWP 3,961. In urban villages, households had monthly median disposable income of BWP 1,334, compared to an average household income of BWP 2,445, whilst

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<sup>5</sup> Discouraged job seekers are people whom at the time of interview, had not attempted to look for a job in the past thirty (30) days.

<sup>6</sup> The 2002/2003 data is the last available data from the Central Statistics Office.



in rural areas the household monthly median disposable income was BWP 743, compared to an average of BWP 1,379.

## **E. CONSTITUTIONAL STRUCTURE**

25. Adopted by Botswana at independence in 1966, the Constitution established a non racial democracy, maintaining freedom of speech, of the press and of association, and affording all citizens equal rights. The Constitution also provides for a republican form of Government headed by the President with three main administrative organs: the Executive, a unicameral Legislature and the Judiciary. Each of these organs is independent from other organs.
26. The Executive branch of Government consists of the Cabinet headed by the President and is responsible for initiating and directing national policies through Government ministries and departments. There are 16 Ministries each headed by a Cabinet Minister. Each ministry is divided into departments and divisions with different areas of responsibility.
27. Since independence Botswana has held elections that were declared, free and fair in 1965, 1969, 1974, 1979, 1984, 1989, 1994, 1999 and 2004 .The next general election is in 2009. The ruling BDP has so far won every election, with four changes of President since independence in 1966. There is a "first past the post" system.
28. The legislature is established under Section 57 of the Constitution and it consists of the President and the National Assembly. The Constitution provides that the National Assembly is made up of fifty-seven directly elected members and four (4) Specially Elected members and a Speaker of the National Assembly. There is also the Attorney-General and the Speaker of the National Assembly and.
29. The National Assembly acts in consultation with the *Ntlo Ya Dikgosi*, which advises on matters affecting customs and tradition, and is the supreme law-making authority in the country. The long lasting democratic "*Kgotla*" system, passed on from generation to generation has provided a strong base on which to build, with free political debate encouraged at all levels.
30. Elections take place on the basis of universal adult suffrage and the main Opposition Party is the Botswana National Front (BNF). In the 1994 elections, the Opposition got 30 per cent of parliamentary seats, but dropped to 16 per cent in the 1999 general elections. In 1999, 77.1 per cent of those registered to

vote voted at the national elections. In the recent elections of 2004 there were 552,849 registered voters. Out of this number, 421,272 voted during the elections, representing 76.2 per cent of the people that voted. The opposition got 23% of parliamentary seats, which was an increase from 16% obtained in the 1999 General Elections, and equivalent to 40% of the popular vote.

31. The third organ of Government is the Judiciary which is presided over by the Chief Justice and consists of the Court of Appeal, the High Court and Magistrate Courts. The judiciary is independent of the Executive and the Legislative organs, it interprets and administers the law. (Discussed in detail at articles 26)
32. There is also the Industrial Court whose judges are appointed by the President in terms of the Trade Dispute Act. In appointing Industrial Court judges, the President shall designate one such judge to be the President of the Industrial Court, and any other judges shall rank according to their dates of appointment.
33. In addition to the above structures, there is also the Office of the Ombudsman and the Land Tribunal.
34. The Ombudsman is mandated in terms of the Ombudsman Act to investigate complaints of injustice or maladministration in the Public Service. The Ombudsman's jurisdiction extends to the investigation of alleged violations of constitutionally enshrined fundamental rights and freedoms. In the event of non-compliance with the recommendation the Ombudsman is obliged to make a special report to the National Assembly.
35. The Office of the Ombudsman's mandate with respect to human rights is limited to issues of maladministration in the Public Sector and hence is limited in scope. Human rights violations arising in the private sector are outside the scope of the Ombudsman's jurisdiction.
36. Human rights issues tend to be taken as an aspect of maladministration, and hence the lack of disaggregated statistics on the number of human rights cases received and dealt with. The following are a few examples of cases with human rights related issues that the Ombudsman's office has dealt with and continues to deal with:
  - a) In 2005, the Ombudsman received a complaint wherein one Molepolole resident who was a suspect was woken up from his house, taken to the police station by a combined team of police and army

officers. Upon arrival at the police station he was bleeding from the forehead having been hit with the butt of a rifle. The police rather than sending him for medical treatment took no further action.

Ombudsman's office investigated the matter and after a rather lengthy period of time the investigation was concluded with the result that P5000.00 (approx US\$ 1000.00) was paid to the complainant as compensation.

b) In 2003, a complaint was received, wherein a resident of Kanye Village was arrested and detained by the police for 5 days, only to be released without being charged. His complaint pertaining to his arrest and detention was not dealt with by the police for a long time. The matter was then brought to the Ombudsman's attention and an investigation commenced. At the end, it turned out that it was a matter of mistaken identity and we recommended compensation in the sum of P1500.00 (US \$ 350.00) to the detainee.

c) There was a complaint dealing with regulations denying public officials the right to be sent to school on training on the basis of pregnancy. This complaint was dealt with in a holistic manner where focus was given to the inherent unfairness and discriminatory nature of the regulation against female public officers vis-à-vis their male counterparts and pregnant women public officers in particular.

The end result was a review of the regulations to make them more accommodative of pregnant public servants to ensure that they are not disentitled from training due to their pregnant status.

d) In 2004, the Ombudsman's Office came across a newspaper article alleging excessive lashing of little school girls by their teacher. The Ombudsman immediately picked on the fact that the imposition of the corporal punishment was not just excessive but also unlawful as it was not in accordance with existing regulations. We instituted an own motion investigation with the department responsible for the educational region. At the end the teacher was formally reprimanded and demoted as punishment for her unlawful conduct.

e) The Ombudsman's office receives complaints of work conditions injurious to workers health, one such complaint that immediately stands out is that of Gaborone City Council sewage workers who for a long time were not provided with protective clothing despite the nature of their work. Their complaints were investigated and at the end the

City Council did not just make an undertaking but did provide appropriate protective clothing.

37. Disputes relating to land are referred to the Land Tribunal for settlement and all decisions of the Land Tribunal are appealable to the High Court and Court of Appeal.
38. There are other quasi judicial bodies such as the Tax Board and Licensing Board which deal with quasi judicial matters.

## **F. ADMINISTRATIVE STRUCTURE**

39. The country is divided into sixteen (16) administrative councils made up of ten district councils, two city councils and four town councils. These councils fall under the Ministry of Local Government (MLG) and are responsible for primary education facilities, health facilities (clinics, health posts, etc.), construction and maintenance of some rural roads, social and community development, village water supply and public health;
40. On the other hand, some central Government ministries have decentralized some of their functions by creating offices of their ministries in the administrative districts, for example, water affairs, immigration and citizenship, agriculture, civil registration, labour and social security. These administrative councils are divided into two authorities, one for central government departments headed by the District Commissioner and the other for Local Authority headed by the Council Secretary. The two offices are responsible for coordination of development projects at the local level.

### **Legal System**

41. Botswana has a dual legal system, comprising customary law and what is usually termed received law (or common law). Customary law is the law of any particular tribe or tribal community insofar as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice. Customary law is not written and has variations among different

communities. The received law consists of English law and Roman Dutch law as it was in force at the Cape on 10 June 1891 and as amended by statutes from time to time and interpreted by the Courts. The two systems coexist although there are differences in the law and its application.

42. The highest court in Botswana is the Court of Appeal. It is the superior court of record to which appeals can be made from the High Court. The High Court has original jurisdiction to hear and determine civil and criminal proceedings. It acts as an appellate body for the Magistrate Courts and the Customary Court of Appeal. The common law is made up of statute and precedents, which are cases upon which the High Court and Court of Appeal have ruled.
43. Since independence the Customary Courts have derived their authority from the Customary Courts Act No. 57 of 1968. The Customary Law Act of 1987 also lays down rules which are meant to guide the courts in deciding whether customary or common law applies.
44. The Customary Courts have jurisdiction to deal with a wide variety of matters of civil and criminal law ( such as financial disputes, petty theft, livestock theft, insults and defamation, marital disputes, divorce - where the couple is married under customary law), among others.
45. The civil jurisdiction of the Customary Court does not allow the courts to deal with matters such as the dissolution of civil marriages, testate succession or insolvency. Similarly, the criminal jurisdiction of the Customary Court is limited and prevents the court from dealing with cases such as treason, bigamy, corruption, abuse of office, robbery, rape and other serious offences
46. The jurisdiction of the Customary Court is limited by the potential penalties or fines to be imposed, or the particular types of crimes or disputes to be adjudicated.
47. With regard to the procedures of customary courts, Section 21 Cap 04:05 clearly provide that no punishment shall be imposed upon any person unless a criminal trial has been held in accordance with the provisions of the Customary Courts (Procedure) Rules. The rules referred to, are provided in the same Act.
48. At Section 16, the Minister is empowered to authorise customary courts to administer any written laws. The foregoing, clearly indicate that the jurisdiction of the customary court is guided by legislation and is not left to the arbitrary

decisions of Dikgosi. With this legislation in place, Human and People's rights are secured. This is further ensured by limitation in terms of orders or sentences that can be imposed by the courts.

49. In the hierarchy of customary courts, the highest is the Customary Court of Appeal which has two branches each servicing the South and North of the country. On appeal and review, cases move from lower to higher customary courts and finally to the Customary Court of Appeal. From the Customary Court of Appeal, one may appeal to the High Court.
50. Lawyers are not permitted to give legal representation at the Customary Courts (Customary Courts Act, chapter 16:01, Section 32). However, a person has the right to have a case transferred to another court (a common law court) where they have the right to legal representation if the permission to transfer is given by the Commissioner of Customary Courts.
51. Customary law is administered by the *Kgosi* (traditional leaders of a tribe- plural *dikgosi*); Headman; or Court President who consults with the elders of the community who are conversant with customary law and practice. Cases are generally dealt with at the *kgotla* (a public meeting place - plural, *dikgotla*).
52. *Dikgosi* will often become involved with dispute resolution outside the court system where there is room for discretion in the way they exercise their powers (legal or persuasive).
53. The application of the Acts regulating the jurisdiction and procedures of the Customary Courts is limited by the levels and training of *dikgosi*. The lack of awareness among the public at large and the fact that the Act is not translated into Setswana or other local languages also contributes to limited application of the Customary Courts Act.
54. Customary law is unwritten and practice can vary between different *dikgotla* (as customs vary according to different traditions). It is fluid and is a function of the patterns of behaviour within a particular community. This makes the integration of international conventions into the Customary Courts difficult.
55. The Customary Court of Appeal deals with appeals from the Customary Courts. Decisions of the Customary Court of Appeal may be appealed to the High Court. On issues which refer to land claims, appeals can also be made to the Land Tribunal.

56. Local police are officials of the Customary Courts and their work exists alongside the national police service. Both police forces tend to prefer to use Customary Courts because they dispense swift and accessible justice. The Customary Court of Appeal deals with appeals from the Customary Courts (*dikgotla*), which administer customary law.
57. In order to improve the delivery of justice in customary courts, the Department of Tribal Administration with funds from United Nation Development Programme (UNDP) – Governance Programme conducted workshops for customary courts' presiding officers. The workshops sensitised Dikgosi and Urban Court Presidents on the dual legal system, procedure and jurisdiction of courts. This training was crucial since as presiding officers, participants were never given any formal training before engaging in their work.

## **Law enforcement**

### *Botswana Police Service*

58. The Botswana Police Service is responsible for the enforcement of law. The Service is regulated by the Police Act, Chapter 21:03, Laws of Botswana.
59. The Commissioner is the Commander of the Police Service and is appointed in terms of Section 112 of the Constitution.
60. Section 6 of the Police Act provides that the force shall be employed throughout Botswana, to protect life and property, prevent and detect crime, repress internal disturbances, maintain security and public tranquillity, apprehend offenders, bring offenders to justice, duly enforce all written laws with which it is directly charged and generally maintain peace.
61. Section 6 (2) thereof allows members of the force to carry arms for the performance of their duties although, in practice, they do not. The President may in times of war or other emergency deploy the police in the defence of the country.
62. The police must operate within the parameters of the Constitution at all times. If they exceed their powers, they can be held liable.

### *Local Police Force*

63. The Local Police Force is another body tasked with law enforcement throughout the country. This is provided for under the Local Police Force Act. The force falls under the Ministry of Local Government. Section 6 provides that the chief of any area within which the local police officers are appointed shall administer the force, subject to the Minister's general or special directions.

### *The Directorate on Corruption and Economic Crime*

64. The Directorate on Corruption and Economic Crime (DCEC) was established on 5 September 1994 in terms of the Corruption and Economic Crime Act (Cap 08:05). The main function of the DCEC is to receive and investigate any complaints alleging corruption in any body or by any persons. The Act prescribes the powers and duties of the Director. It states the procedures to be followed in handling a suspect and specifies the offences involving public officers, employees of public bodies, agents and those in the private sector.
65. The Directorate is under the Office of the President and the Director is formally and directly responsible to the President. However, the DCEC is autonomous in carrying out its functions although the decision to institute prosecutions is reserved for the Attorney-General. Where evidence of an offence is obtained this is referred to the Attorney-General in a prosecution report. If the Attorney-General decides upon a prosecution, the matter is usually referred back to the Directorate to undertake the processes of court registration and mention before the courts. Actual prosecution is the responsibility of the Directorate for Public Prosecutions (DPP) but directorate officers, in their capacity as Public Prosecutors, assist the DPP in a considerable number of cases. Since its establishment the DCEC has prosecuted a number of economic crimes.



## PART II

### **Article 1 - Recognition by States of Rights Duties and Freedoms Under the Charter; and Article 2 - Entitlement to Rights and Freedoms Under the Charter**

66. Chapter II of the *Constitution of Botswana* entrenches a Bill of Rights. The Bill protects the fundamental rights and freedoms of the individual but does not entrench social, cultural and economic rights. (See discussion at Article 22).

67. Section 3 of the *Constitution* provides that every person in Botswana is entitled to the fundamental rights and freedoms of the individual that is to say, the right whatever his race, place of origin, political opinions, colour, creed or sex to life, liberty, security of the person and the protection of the law; freedom of conscience, of expression and assembly and association; and protection for the privacy of his home and other property and from deprivation of property without compensation.

68. The following rights and freedoms are recognised by the Constitution:

- the right to life in Section 4;
- the right to personal liberty in Section 5;
- freedom from slavery and forced labour in Section 6;
- freedom from inhuman treatment or degrading punishment or other treatment in Section 7;
- the right to privacy of home and other property in Section 9;
- the right to a fair trial within a reasonable time by an independent and impartial court in Section 10;
- freedom of conscience in Section 11;
- freedom of expression in Section 12;
- freedom of assembly and association in Section 13;
- freedom of movement in Section 14;

- freedom from discrimination in Section 15.

69. Botswana is party to the following main human rights instruments: African Charter on Human and Peoples Rights (ACHPR); Ratified on 17<sup>th</sup> July 1986. Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights; Signed on 9<sup>th</sup> June 1998. Convention on the Rights of the Child (CRC); Adopted Accession 14<sup>th</sup> March 1995. African Charter on the Rights and Welfare of the Child; Ratified 10<sup>th</sup> July 2001. Amendment to the Convention on the Rights of the Child, (Article 43 paragraph 2); Acceptance 6 March 2002. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; Accession 24 September 2003. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; Ratification 4 October 2004.

International Covenant on Civil and Political Rights; Ratified on 8<sup>th</sup> September 2000. International Convention on the Elimination of all Forms of Racial Discrimination (ICERD); Accession 20<sup>th</sup> February 1974. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Ratified on 8<sup>th</sup> September 2000. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women And Children, supplementing the United Nations Convention against Transnational Organised Crime; Ratified on 29<sup>th</sup> August 2002. International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) ,the African Charter on Human and Peoples Rights, African Charter on the Rights and Welfare of the Child. The State Party has ratified regional instruments for the protection and promotion of Human Rights and fundamental freedoms.

70. However these international instruments are not self-executing and require legislative implementation to be effective in Botswana as law. Thus an individual cannot complain in a domestic court about a breach of *Botswana's* international human rights obligation unless the right has been incorporated into domestic law.

71. Nevertheless the courts in Botswana have in some cases given judicial notice to international instruments which Botswana has ratified even though they have not been reduced to domestic legislation. The judgement in the case of *Unity Dow v Attorney General, 1992 BLR 112* illustrates the point that international

instruments may be referred to as an aid to interpretation, notwithstanding that the provisions of those international instruments do not confer enforceable rights and corresponding obligations on individuals within Botswana until parliament has enacted them into the national laws. In the case of *Good v The Attorney General (2) 2005 (2) BLR 337 (CA)*, the court explained the status of international instruments, and noted that international treaties to which Botswana is a signatory do not have the force of law until incorporated into domestic law. Section 24 (1) of the Interpretation Act provides that such international conventions and treaties as far as have not been incorporated into domestic law may be used as an aid to construction of the Constitution and of statutes. Where it is possible, without doing violence to the language used, an interpretation consonant with Botswana's international obligations subscribed to in the conventions with other states, should prevail.

72. The right to protection from deprivation of property is guaranteed in Section 8 of the Constitution.

73. There are certain circumstances under which the rights guaranteed in the Covenant may be derogated from or limited. This is where it is necessary to protect national security, public order, public health or morals or the rights and freedoms of others or where the restrictions are consistent with the other rights recognized under the Covenant. Also, restrictions that are provided by the law or which are reasonably necessary in a democratic society are permitted.

74. These limitations are also recognized in the national legal arena of Botswana. Most of the rights in the Bill of Rights of Botswana may be limited in the public interest, public health and safety, and where it is reasonably necessary in a democratic society.

75. Any person whose rights and freedoms as recognized in the Constitution are violated has an effective and speedy remedy by way of petition to the High Court of Botswana. This is provided for in Section 18. The effect of Section 18 of the Constitution is that it gives remedy to people who believe their rights have been infringed by any unconstitutional law, administrative action or steps taken against them which go against their rights as provided for in the Constitution.

76. The *Unity Dow v. Attorney-General* case is an example of an application for relief to the High Court under Section 18 of the Constitution. In this case, Unity Dow was a female Motswana married to an alien. In terms of the law their children were not Botswana citizens and therefore aliens in the land of their birth. By reason of her being female under the Citizenship Act, she was unable

to pass citizenship to her two children. Ms. Dow challenged the Citizenship Act as prejudicing her and being against the Constitution. The High Court agreed with her and granted her application declaring Sections 4 and 5 of the Citizenship Act unconstitutional. (The Attorney-General appealed to the Court of Appeal, but was unsuccessful. The Citizenship Act was subsequently amended in 1995.)

77. Botswana recognizes that her obligations under this article are not limited to legislative enactments. Effective mechanisms exist for the enforcement and assertion of such rights.
78. Moreover, an inter-ministerial committee on Treaties, Conventions and Protocols was established in 2002 with a view to ensuring implementation of such, including reporting obligations.
79. In 1997, the Constitution (Amendment) Act No. 18 of 1997 established the IEC. The Commission is made up of a chairperson, deputy chairperson and five other members. Day-to-day operations are carried out by the secretariat headed by the Secretary, who is appointed by the President.
80. The Ombudsman's Office, (discussed earlier at paras. 67-68 verify), and the IEC (discussed in more detail at discussion of Article) 13 are a measure for the domestic enforcement of rights.

### **ARTICLE 3-(a) Equality Before the Law; and (b) Equal Protection of the Law**

81. The Constitution prohibits all forms of discrimination. Section 3 provides that any person, whatever his race, place of origin, political opinions, colour, creed or sex, is entitled to fundamental rights and freedoms of the individual.
82. The Botswana Constitution prohibits discrimination in relation to discriminatory legislation in terms of Section 15 (1) and discriminatory treatment in terms of Sec. 15 (2). In 2004, Section 15 (3) was amended by adding the word 'sex' to the definition of the word discrimination.
83. The Government recognizes that Botswana women do not experience and enjoy equality with men and that they do not fully participate in all aspects of national, economic, social and cultural development. To this effect the

Government has made a commitment to address women and gender issues as a critical aspect of national development. As a member of the African Union (AU), Southern African Development Community (SADC), the Commonwealth and the United Nations, Botswana recognises that it has an obligation and responsibility to ensure that the goal of gender equality is realised through meaningful and realistic policies and programmes guided by international instruments which include the following:

- The Beijing Declaration and Platform for Action (1995)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – (Botswana acceded to this in 1996).
- The SADC Declaration on Gender and Development (1997)
- The Prevention and Eradication of Violence Against Women and Children: an Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State (1998).
- The African Union Solemn Declaration on Gender Equality in Africa (2004).
- The Commonwealth Plan of Action (2005 – 2015).
- The Optional Protocol to the CEDAW. (Botswana acceded to it in 2006).
- Millennium Development Goals (2000)

84. The Government has set up a Women's Affairs Department (WAD) within the Ministry of Labour and Home Affairs (MLHA). The role of the Department is to deal with women's issues and to promote their development and integration into economic, social, cultural and political activities. Its work is complemented by the activities of non-Governmental organizations which focus on women's issues.

85. In 1996, Botswana acceded to the Convention for the Elimination of All Forms of Discrimination against Women, and the Convention was translated into the national language, Setswana. Botswana has also ratified the Optional Protocol to the Convention in 2006.

86. The Government has adopted a National Policy on Women in Development. The goal in adopting the policy is to achieve effective integration and empowerment of women in order to improve their status, enhance participation in decision-making and their role in the development process.

87. Specific measures undertaken include, gender mainstreaming in structures such as political parties, civil society and some Government ministries, gender

sensitization and training programmes, as part of a broad strategy of capacity building and advocacy. The Policy is been reviewed to bring it in line with the Gender and Development Approach, the Vision 2016, the United Nations Millennium Development Goals and other international human rights instruments.

88. In 1997, the National Gender Programme Framework accompanied by an advocacy and mobilization strategy was launched. The National Gender Programme Framework outlines six critical areas of concern. For each of the areas the framework specifies strategies, objectives and specific actions to be taken to achieve social change; they are more fully described in a document entitled the Plan of Action for the National Gender Programme 1999-2003. The Plan of Action is a comprehensive set of strategies and activities designed to mainstream gender equity in each of the critical areas. Recognising the provisions of CEDAW, in 1998 the Women's Affairs Department commissioned a review of all legislation affecting the status of women in Botswana. This resulted in the amendment of some of the laws affecting the rights of women.

89. As indicated above, in 1995 the Citizenship Act was amended to implement the court decision in the *Unity Dow v. Attorney-General* case. This had the effect of removing gender discrimination in citizenship laws by allowing citizenship to be acquired from either parent.

90. The Deeds Registry Act was amended in 1996 to:

- Allow women whether married in community of property or not to execute deeds and other documents required or allowed them to be registered in the deeds registry without their husbands' consent;
- Allow for immovable property to be transferred or ceded to a woman married in community of property and to allow the woman to have her own separate estate, whereby a condition of the bequest or donating it is excluded from the community and marital power,
- Ensure that neither party in a marriage in community of property unilaterally deals with immovable property forming part of the joint estate, without the written consent of the other regardless of in whose name the

property is registered. Unless such a party has been so authorised by an order of the court.

91. There was a major development in December 2004 when Parliament passed a bill abolishing this structure of marital power under common law. The Abolition of Marital Power Act, as amended, provides for equality between men and women in marriage in community of property. It specifically excludes customary and religious marriages. Consultations are on-going to address the disparities and extent of the application of the Act to these marriages.

92. The Abolition of Marital Power Act, Section 5, states:

- (a) "The effect of the abolition of marital power is to remove the restrictions which the marital power places on the legal capacity of a wife and abolishes the common law position of the husband as head of the family."

93. In 1996, the Employment Act was amended to allow women to work in underground mines and to be employed in any industry or agricultural undertaking during the night.

94. The CPEA was amended to provide for the mandatory hearing of rape and related offences out of the public eye. Before the amendment, it was left to the discretion of the tribunal to decide whether to try such cases in camera.

95. Sections 141 and 142 of the Penal Code were amended to bring about major developments: introduction of gender neutrality in relation to rape; moving it away from being phallus-specific. Rape is now defined in Section 141 of the Penal Code to include penetration of a sexual organ or instrument into another person to derive sexual gratification. In a nutshell, women too can rape.

96. The Affiliations Proceedings Act was amended to make it possible:

- (a) To increase the number and ranks of courts before which an action may be brought; and
- (b) To increase the monthly payment which the parent should make towards the maintenance of the child, while making provisions for situations in which a parent is unable to meet the prescribed minimum payment to P100.00 (US \$20.00);

- (c) Gender neutral;
- (d) For a person other than a mother to institute legal proceedings under the Act for child support.

97. The Public Service Act was amended to recognize sexual harassment as misconduct. The General Orders governing the public service has also been amended to include the following:

- (a) Female local officers are entitled to 84 calendar days maternity leave on full pay for the first three confinements;
- (b) Following their return, officers are entitled to one hour recess per working day for a period of one year for the purpose of nursing the child.

98. In acknowledgement of the facts that the existing structures have been insufficient to deal with the phenomena of domestic violence the Government of Botswana has enacted a Domestic Violence Act in 2007. The Act provides for the protection of survivors of domestic violence and for matters connected therewith. However the issue of femicide is not specifically referred to but other provision of the laws such as the Penal Code do address this issue.

99. The Electoral Act allows women to vote in general elections and bye-elections, and to stand for elections. At the last parliamentary elections, more than half of Botswana who registered to vote in the 1999 general elections were female (54.7 per cent) while 44.3 per cent were male.

100. The amendments of these laws have significantly contributed to policy measures leading to empowerment of women, socially and politically.

101. Although the number of women in Parliament has steadily increased over the years, in the last elections (October 2004), a setback was experienced when the number dropped from eight to six compared to the 1999 elections. See table below:



**Table 1**  
**Number of women in Parliament**

Year of elections	Number of women in Parliament
1965-1969	0
1969-1974	0
1974-1979	2
1979-1984	2
1983-1989	2
1989-1994	2
1994-1999	4
1999-2004	8
2004-2009	6

Of the six women in Parliament, four have been appointed to Cabinet and amongst these four; one has been appointed Leader of the House.

102. Other areas in which women have been appointed to positions of power and decision making include:

- The Attorney General
- Governor of the Bank of Botswana
- Judges
- Permanent Secretaries and Deputy Permanent Secretaries
- Director Public Prosecutions
- Parastatals

103. Other measures undertaken by the Government include:

- (a) Gender mainstreaming in structures such as political parties, civil society and tertiary institutions; and
- (b) Gender sensitization and training programmes have also been initiated as part of a broad strategy of capacity-building advocacy.

104. In order to ensure that gender mainstreaming was implemented effectively, the Women's Affairs Department commissioned a study on "The Gender Disaggregated Data on Positions of Power and Decision Making within Public and Private Sectors".

#### **ARTICLE 4 - Respect of one's life and integrity**

105. Section 4 of the Constitution confers the right to life on all individuals. This clause also outlines circumstances considered reasonably justifiable where there can be deprivation of life.

106. Section 25 of the Penal Code states that death may be inflicted as punishment by a court of law. The Act further states under Section 26 that the death sentence shall not be pronounced against any person who is under the age of 18 or pregnant women under any circumstances.

107. Under the Penal Code offences that attract the death penalty are treason as per Section 34 and murder as per Section 203, for which offence the death sentence is mandatory though a lesser sentence may be imposed where there are extenuating circumstances.

108. The Criminal Procedure and Evidence Act at Section 298 further addresses the issue of the death penalty with regards to pregnant women. Where a woman is facing a death sentence and she alleges that she is pregnant, proof to the court should be shown that she is indeed pregnant. Where the court does find that she is pregnant then the sentence will be reduced to life imprisonment.

109. The Constitution provides in Section 53-55 for the President to exercise the prerogative of mercy. This allows a convicted person to appeal to the

President to commute the death sentence to a lesser sentence by exercising the prerogative of mercy with the advice of the Advisory Committee on the Prerogative of Mercy.

110. An example of this is the case of *Letlhohonolo Bernard Kobedi v. The State Court of Appeal Criminal Appeal No. 25 of 2001 (High Court Criminal Trial No. F.29 of 1997)* in which the appellant was convicted of the murder of a member of the Botswana police who was investigating a robbery that the appellant had committed. The Appeal Court dismissed his appeal and reaffirmed the death sentence that had been passed on him by the High Court. In their judgement, the justices ordered that the execution of the sentence of death be stayed pending the appellant's full exercise of his rights to petition the State President for clemency. The State President, however, turned down the petition.

111. It should be noted that the Committee on the prerogative of Mercy is provided for under Section 54 of the Constitution is advisory, and regulates its own procedures.

112. Section 55 provides clearly that the final decision whether or not to exercise his/her powers in this regard rests with the President. The Section provides that:

“(1) where any person has been sentenced to death for any offence, the President shall cause a written report of the case from the trial judge, together with such other information derived from the record of the case or elsewhere as he or she may require to be considered at a meeting of the Advisory Committee on the Prerogative of Mercy; and after obtaining the advice of the Committee he or she shall decide to exercise any of his or her powers under Section 53 of this Constitution;

(2) The President may consult with the Committee before deciding whether to exercise any of his or her powers under the said Section 53 in any case not falling within sub-section (1) of this Section”.

113. It should be further 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 finally determined by the highest court in the land.

114. From September 1966 to date, 42 executions were carried out. Of these 42, 3 were women. Eight (8) executions were carried out after 2000, the most

recent being in 2008. All the executions that have ever been carried out in Botswana have all been for the offence of murder. There are currently 4 condemned prisoners on death row.

115. Currently there are no initiatives or plans by the Government to totally abolish capital punishment. In 1997 the Parliamentary Law Reform Committee produced a report on public opinion on the death penalty, which was tabled before Parliament. The findings of the report show that the public was in favour of retaining the death penalty.

116. There are also safeguards in place to protect those accused of offences that carry the death penalty. Section 10 of the Constitution provides that where a person is accused of a criminal offence carrying the death penalty, the accused shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. This has the effect of preventing arbitrary deprivation of life where one is charged with an offence that carries the death penalty.

117. The Constitution also guarantees the right to legal representation in criminal cases at the accused's own expense (Section 10 (2) (d)). Government assistance to criminal defendants who do not have the means is limited to those charged with capital offences. In such cases, *pro deo* counsel is provided. (discussed in further detail in discussion of article 7)

118. There are also regulations concerning the treatment of persons on death row. The regulations have the effect of protecting the prisoners from any arbitrary treatment. These are provided for under the Prisons Act. Section 115 of the Act provides that:

“Every prisoner sentenced to death shall be confined in some safe place within a prison, kept apart from other prisoners and placed under constant supervision by a prison officer both by day and night.”

119. Section 59 (1) provides for visiting and medical examination of prisoners under sentence of death. It states that:

“The medical officer shall, on every day on which he visits the prison, visit every prisoner under sentence of death or charged with a capital offence or in solitary confinement and shall ensure that every such prisoner is medically examined at least once every week.”

120. Section 116 (1) provides that:

"No person other than the Minister, a prison officer, the medical officer or other medical practitioner in his place, a minister of religion or other person authorized by the Commissioner shall have access to a prisoner under sentence of death ..."

"...Provided that such prisoner may, subject to any reasonable conditions the Commissioner may impose, be visited by his legal advisors and such of his relatives and friends as he may express a wish to see."

#### **ARTICLE 5 - Right to Respect of Human Dignity, Prohibition of Slavery, Slave Trade, Torture, Cruel Inhuman and Degrading Treatment**

121. Botswana has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), subject to a reservation on Article 1, "to the extent that 'torture' means the torture and inhuman or degrading punishment or other treatment prohibited by Section 7 of the Constitution of the Republic of Botswana". A similar reservation was entered upon ratification of the International Covenant on Civil and Political Rights, "to the extent that torture, cruel, inhuman or degrading treatment' means torture, inhuman or degrading punishment or other treatment prohibited by Section 7 of the Constitution of the Republic of Botswana".

122. The Constitution provides for protection against torture and inhuman punishment. Section 7 (1) thereof states, "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment." However, the Constitution proceeds to make an exception in Section 7 (2) by stating that "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this Section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the country immediately before the coming into operation of this Constitution."

123. In Botswana, the statute books do not make torture *per se* an offence. What is outlawed as offences are the elements comprising and leading to the torture such as assault, attempted murder, and manslaughter. Hence the courts rely on case law.

124. Section 7(2) of the Constitution is part of what would ordinarily be called the Bill of Rights. Other than that, the Constitution merely establishes certain offices and powers falling thereunder. Offences and other misdemeanours constituting what would be termed torture fall under the Penal Code and related statutes. The Charter itself does not define torture. We can infer therefore that the ordinary meaning of torture would be applicable.

125. There are a number of cases in which torture has been discussed. For instance, in *Clover Petrus and Another v. State* 1984 BLR 14, the two accused persons were convicted by a magistrate of housebreaking and theft.

Each was sentenced to three years imprisonment and to corporal punishment, as provided for by Section 301 (3) of the Criminal Procedure and Evidence (Amendment) Act No. 21 of 1982. Under this provision, corporal punishment was to be meted out in four strokes each quarter in the first and last years of the term of imprisonment. On appeal to both the High Court and Court of Appeal, counsel for the accused raised the issue of whether corporal punishment was unconstitutional as being in conflict with Section 7 of the Constitution, which guarantees protection from torture or inhuman or degrading punishment or treatment. It was held that the repeated and delayed infliction of corporal punishment was inhuman and degrading and therefore in conflict with Section 7 (1) of the Constitution. The Court ordered the deletion of strokes from the sentence.

126. Apart from the Constitution, Section 23 (1) (ii), of the Police Act provides as follows:

“an offence against discipline is committed by any police officer who is guilty of unlawful or unnecessary exercise of authority, that is to say, if any police officer uses any unnecessary violence to or intimidates any prisoner or other person with whom he may be brought into contact in the execution of duty”.

127. If a police officer is found guilty of such conduct, he may, depending on the degree of violence or intimidation, be dismissed from the police service in terms of Sections 28 and 29 of the Act. Where a person alleges that the police have subjected him to torture, and the matter is brought to court, evidence will be adduced to show exactly what it is that the offender is alleged to have done.

128. The court will then decide on the basis of the evidence before it, whether that amounts to torture. As such, the court's hands are not tied and restricted to a particular definition of torture.
129. In *State v. Thebe and Others* 1993 BLR 484, the five accused persons were police officers who had participated in the interrogation of the deceased, a suspect in their custody. The deceased had been manacled on the orders of the first accused. The purpose of placing the manacles on the deceased was to get a confession out of him. The accused was assaulted and the force used was brutal and excessive. There had been no legal justification for the use of such excessive force on the deceased. Although it was not possible to ascertain who, of the police officers, had caused the actual death of the deceased, it was clear that the death resulted from injuries that had been unlawfully caused. Accordingly, the accused were all held criminally responsible for the death and convicted of manslaughter. They were also dismissed from the Police Service.
130. This clearly demonstrates that the courts are alive to the fact that torture exists. The courts are prepared to convict police officers, who engage in activities which border on torture, of offences such as manslaughter which carry maximum sentences of life imprisonment.
131. The Penal Code does not have specific sanctions on the commission of torture. However, sanctions will vary from one conduct to another.
132. A victim may sue the Government for damages where torture is alleged and such cases are tried like any other civil case. The victim has the burden to prove that he was tortured.
133. Between 2003 and 2007, there have been five civil suits involving allegations of torture by members of the Botswana Police Service. There have been no criminal charges involving members of the Botswana Police Service on allegations of torture.
134. In other instances, there is administrative discipline of the perpetrators as can be seen in the case cited above.
135. The law voids any declaration or confession obtained through torture. Section 228 of the Criminal Procedure and Evidence Act provides (CPEA):

“(i) Any confession of the commission of any offence shall, if such confession is proved by competent evidence to have been made by any person accused of such offence (whether before or after his apprehension and whether on a judicial examination or after commitment and whether reduced into writing or not), be admissible in evidence against such person;

“Provided that:

(a) “Such confession is proved to have been freely and voluntarily made by such person in his sound and sober senses and without having been unduly influenced thereto.”

136. A case illustrating that where confession was obtained by applying undue pressure on the accused person is inadmissible is *Twala v. The State* 1986 BLR 371. In this case, the appellant and four others were charged with unlawful possession of a substantial quantity of *methaqualone* (mandrax tablets) in contravention of the Habit-Forming Drugs Act. In passing judgement the trial Chief Magistrate found that it was not clear at all how or when the appellant came into possession of the tablets.

137. He, however, stated that if the appellant threw the tablets into the river either alone, or in company with, or with the assistance of others, then, at that moment he must be said to have been in possession of them. He therefore convicted the appellant. On appeal to the High Court, counsel for the State conceded that he could not support the conviction because of the Trial Magistrate’s admission of a confessional evidence of pointing out by the appellant. It was held that the confessional evidence relied on by the State was wrongly admitted by the Trial Magistrate as he had found as a fact that the police applied undue pressure to the appellant to make him confess. The appeal against conviction was therefore allowed.

138. Section 231 (4) of the CPEA lays down the law on admissibility of confessions. A statement recorded in accordance with this Section shall not be admissible in evidence against the maker thereof unless it had been freely and voluntarily made by him in his sound and sober senses and without having been unduly influenced thereto.



139. Further, the law recognizes that sometimes the police need to use reasonable force in the execution of their duties. Section 47 of the CPEA provides as follows:

“Where a peace officer or other person authorized to arrest a person endeavours to make such arrest, and the offender forcibly resists the endeavours to arrest him, or attempts to evade the arrest, such peace officer or other person may use all means necessary to effect the arrest.”

“Nothing contained in this Section shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was employed or was necessary for the apprehension of the offender.”

140. In *Makwati v. State* 1996 BLR 682, the appellant was a member of the Special Support Group (SSG) of the Botswana Police Service. Some police officers had been assaulted during the night, and the following day, the appellant and others went to look for persons who had assaulted their colleagues and the deceased was one of the suspects.

141. The appellant was in possession of an AK-47, and when he sought to arrest the deceased, the latter brushed aside the appellant’s firearm and ran away, and the appellant fired three shots from his AK-47 in automatic mode from behind the deceased, all of which struck him. There were no warning shots fired, and it was during daylight and there were many police officers surrounding the deceased’s yard.

142. The court held that the appellant had gone far beyond the limited protection afforded by Section 47 of the Criminal Procedure and Evidence Act in shooting the deceased with an AK-47 on automatic mode. The appellant was convicted of manslaughter.

143. In both *Thebe* and *Makwati* cases cited above, investigations were carried out by police officers. The accused persons were police officers. They were investigated by other police officers and in both cases the accused persons were convicted.

144. The treatment of detainees is governed by the Prisons Act, particularly Sections 64-82. These clauses provide, *inter alia*, that:

- (a) A female prison officer shall be in charge of any prison in which female prisoner's alone are detained;
- (b) Male and female prisoners shall be detained in separate prisons or in different parts of the same prison;
- (c) In the case of illness of a prisoner the officer in charge may order his removal to a hospital on the advice of a medical officer or at his own discretion in case of emergencies;
- (d) A prisoner may be confined by means of mechanical restraints e.g. handcuffs, if the prisoner has to be removed from one place to another and the officer in charge considers it necessary, for the safe removal of such prisoner.

145. In order to ensure that prison officers understand provisions relating to the treatment of prisoners, all newly recruited officers are sent for a six-month training programme at the Prisons Staff College where the treatment of prisoners is one of the core courses for such officers.

146. Section 111 of the Prisons Act states that:

*"(i) No prisoner shall suffer solitary confinement or a reduced diet unless the medical officer has after examination certified his opinion that the prisoner is physically and mentally fit to undergo solitary confinement or to receive a reduced diet for the period awarded.*

*(ii) No prisoner shall continue to suffer solitary confinement or a reduced diet where the medical officer has after examination certified his opinion that the prisoner is physically or mentally unfit to continue to undergo solitary confinement or to receive a reduced diet;*

*(iii) Where a prisoner is punished with solitary confinement together with a reduced diet the period of the reduced diet awarded shall in no case exceed the period of solitary confinement awarded;*

*iv) No prisoner punished with solitary confinement or a reduced diet shall be put to any form of manual labour during the period of solitary confinement or reduced diet."*

147. Section 116 of the said Act provides that:

*"Every prisoner sentenced to death shall be confined in some safe place within a prison, kept apart from other prisoners and placed under constant supervision by a prison officer both by day and night."*

148. Section 60 provides for visiting and medical examination of prisoners under sentence of death. It states that:

*"The medical officer shall, on every day on which he visits the prison, visit every prisoner under sentence of death or charged with a capital offence or in solitary confinement and shall ensure that every such prisoner is medically examined at least once every week."*

149. Section 117 provides that:

*"No person other than the Minister, a prison officer, the medical officer or other medical practitioner in his place, a minister of religion or other person authorized by the Commissioner shall have access to a prisoner under sentence of death ...*

*... provided that such prisoner may, subject to any reasonable conditions the Commissioner may impose, be visited by his legal advisors and such of his relatives and friends as he may express a wish to see."*

150. Prisoners sentenced to death are not employed on any prison labour. Although prisoners under death sentence do not take part in rehabilitation programmes such as education classes, learning trade skills, etc., they are offered counselling by prison social workers and chaplains.

151. Under Section 131 of the same Act, the judges, all magistrates and such other persons as the Minister may, by notice published in the *Gazette*, appoint for that purpose shall be official visitors to all prisons. These may also include civilian committees (appointed by the Minister) and members of the International Committee of the Red Cross.

152. Under Section 79 of the Act, provision is made for prisoners to maintain contacts with the outside world. Thus the Commissioner may order that any prisoner be temporarily released from prison, for such period as he shall specify,

in order to: (a) visit a dying relative; or (b) attend the funeral of a "relative". In sub section (1) "relative" means the father, mother, husband, wife, son, daughter, brother, sister or guardian of the prisoner or a person who would, in ordinary circumstances, be the immediate dependant of the prisoner.

153. Under the law, arrested persons are normally interviewed to get information relating to abuse or torture by the police investigating team. If it is found that detainees have been abused or subjected to ill-treatment, the perpetrators are prosecuted.

154. Officials who visit prisons regularly to inspect prison conditions also hear any complaints that the prisoners might have. This serves as a counter-check measure to ensure that any abuses or ill-treatment are identified and reported.

155. The Prisons Act permits the use of reasonable force by prison officers on prisoners. Section 33 (1) provides that:

*"Any prison officer may use such force against a prisoner as is reasonably necessary in order to make him obey lawful orders which he refuses to obey or in order to maintain discipline in a prison. The minimal force is allowed in preventing escapes, prison breaking, and riots and in saving lives."*

156. However that said, the Prison Act prohibits any form of ill treatment of prisoners. Section 46 (1) of the Act proscribes offences by officers and some offences directly address issue of ill treatment of prisoners e.g. 46 (1) (1) makes it an offence for unwarranted personal violence to or against any person in custody. Prisoners who are ill treated are allowed under the law to lodge their complaints with any prison officer, visiting judicial officer, visiting prison committee or to make a complaint in writing to the Minister or Ombudsman.

157. Officers accused of ill treatment of prisoners are required to appear before a Board of Enquiry whose purpose is to establish the facts of the allegations and recommend disciplinary action if any, to the Commissioner of Prisons and Rehabilitation, Permanent Secretary or Minister, depending on the rank of the accused officer. The Board of Enquiry has independence of operation to enable a fair enquiry.

158. In 2008, there were five cases of assault that the Botswana Prisons Service dealt with. Two were closed on account of lack of evidence, and three were reported to the Botswana Police Service and are awaiting trial.

159. Under the law, when a prisoner awaiting trial or a suspect complains that he was tortured or ill-treated by the police while in their custody, the normal procedure is that a case is opened and investigations are thoroughly carried out. If at the end of the investigations it is revealed that indeed the allegations are true, the implicated officer is subjected to criminal proceedings or administrative disciplinary proceedings depending on the gravity of the offence.
160. Corporal punishment in schools is allowed by the Education Act. It should be noted, however, that corporal punishment should be instituted as a last resort. Further, there are regulations in the Education Act that govern its administration. These include persons who may administer corporal punishment, the manner of administering it and record keeping. According to the Act, only the head of school has authority to administer corporal punishment. A teacher, boarding-school master, matron or parent can only administer it after being authorized by the head of school or the permanent secretary. It should also be administered in the presence of another member of the staff of the school at which the pupil is enrolled.
161. According to the regulations, corporal punishment must be moderate and reasonable in nature and shall be administered on the palm of the hands or across the buttocks with a light cane, not more than one metre long and not more than one centimetre in diameter and no punishment shall exceed five strokes. No male teacher except the head of school shall inflict corporal punishment on female learners. In addition, all schools should keep a register of corporal punishment in which the following details should be recorded: (a) name of the student; (b) date of the punishment; (c) ground for the punishment; (d) name of the person who administered the punishment.
162. The register should then be signed by the person who administered the punishment and the observer. This register should be made available to school inspectors on request. However, in reality these rules are not strictly adhered to.
163. The decision in *Clover Petrus and Another v State* 1984 BLR 14, outlawed the imposition of corporal punishment in instalments. In other words, the decision objected to the manner in which corporal punishment was administered, and did not have the effect of abolishing its imposition generally, therefore it remains lawful in Botswana.

164. The Constitution specifically provides for protection from slavery and forced labour. Section 6 thereof provides as follows: no person shall be held in slavery or servitude; no person shall be required to perform forced labour. For the purposes of this Section, the expression "forced labour" does not include:

- (a) Any labour required in consequence of the sentence or order of a court;
- (b) Labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained;
- (c) Any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) Any labour required during any period of public emergency or in the event of any other emergency or calamity that threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) Any labour reasonably required as part of reasonable and normal communal or other civic obligations.

165. Further, Section 256 of the Penal Code provides that:

*"Any person who kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous harm, or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, is guilty of an offence and is liable to imprisonment for a term not exceeding 10 years."*

166. Section 260 of the said Code states that:

*"Any person who detains any person as a slave against his will is guilty of an offence and is liable to imprisonment for a term not exceeding five years."*

167. Furthermore, Section 261 provides that: "Any person who buys, sells, or disposes of any person as a slave, or who traffics or deals in slaves, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years."

168. Section 262 states that:

*"Any person who unlawfully compels any person to labour against the will of that person is guilty of an offence."*

However, the provisions relating to slavery and forced labour are cast in general terms and not specific to children e.g. issues of child labour."

169. It is clear that the law, particularly Section 6 (2) of the Constitution, prohibits forced labour. However, there are exceptions under the Prisons Act as reflected in Section 91 (1) of the Prisons Act, which provides that:

*"Prison labour shall not be afflictive."*

- i. "Sufficient work of a useful nature shall be provided to keep every prisoner who is required to work actively employed for a normal working day";*
- ii. "So far as is reasonably practicable, the work provided shall be such as will maintain or increase the ability of the prisoner to earn an honest living after his release from prison";*
- iii. "Within the normal limits of discipline, the wishes of the prisoner shall be taken into account in deciding the type of work to which he is allocated";*
- iv. "In order to prepare a prisoner for the conditions of normal occupational employment, the organization and methods of work shall resemble, as nearly as is reasonable, those of similar work outside prison."*

v. *"Every convicted prisoner shall be given, within or without the precincts of the prison, such employment as the commissioner may direct. Provided that the medical officer may, after the examination of a prisoner, order on medical grounds that the prisoner shall be exempt from such employment for such period of time as the medical officer shall specify."*

170. Section 94 (1) of the Prisons Act provides for the employment of prisoners outside prison other than by public authorities. Sub-section 3 goes further to say that:

*"a prisoner employed under this Section shall be paid for his work in accordance with any prescribed earnings scheme instituted in the prison by the Commissioner". The legislation does not impose hard labour as a form of punishment.*

171. Section 96 of the Act states that:

*"Notwithstanding the other provisions of this Act or any other law, an offender who has been sentenced by any court to a term of imprisonment not exceeding six months (whether that term consists of a single punishment or punishments running concurrently or consecutively) or who has been committed by any court for non-payment of a fine not exceeding BWP 400 (\$80.00), may, by order of the court and with the consent of the offender, be employed under the immediate control and supervision of a public authority on public work or service carried on outside a prison."*

172. In terms of Section 97 of the Act, the order can also be given by the Commissioner of Prisons or an official visitor, still with the consent of the offender.

173. The conditions of extramural labour are set out under Section 99, which provides that:

The public authority under the immediate control and supervision of which an offender is employed under this part shall:

- (a) Determine the number of hours the offender shall work each day;



(b) Provided that no offender shall be required to work more than eight hours a day;

174. The interpretation clause of the Employment Act defines forced labour as:  
*"any labour exacted from a person under the threat of a penalty and which has not been voluntarily given".*

175. Forced labour is also specifically prohibited under the Employment Act. Section 71 thereof provides that:

*"Any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed for his benefit or for the benefit of any other person shall be guilty of an offence and liable to a fine not exceeding BWP 2,000 (US\$400.00) or to imprisonment for a term not exceeding 18 months or to both."*

176. Section 72 further provides that:

*"Any public officer who puts any constraint upon the population under his charge or upon any individual member of that population to work for private individual, company or association shall be guilty of an offence and liable to a fine not exceeding BWP 2,000 (US\$400.00) or to imprisonment for a term not exceeding 18 months or to both."*

177. The courts do not make any orders relating to work or service for persons under detention. The only work or service that persons under detention carry out is the normal day-to-day work that is carried out by prisoners and this includes sewing, carpentry, upholstery, etc. It is usually the kind of work that equips the prisoners with skill. Furthermore there is no work or service imposed on persons under conditional release.

178. Section 149 of the Penal Code, together with its 1998 amendment; prohibit the procurement of any person for purposes of prostitution either in Botswana or elsewhere. Sections 155 and 156 of the Penal Code also provide that any person who knowingly lives wholly or in part on earnings of prostitution or any woman who aids, abets or compels prostitution of another woman for gain is guilty of an offence.

179. Government is not aware of any cases of forced labour in the labour administration system.

## **ARTICLE 6 - Right to Liberty and Security**

180. The Constitution provides under Section 5 (1) that no person shall be deprived of his personal liberty, that is to say, he shall not be arrested or detained save as may be authorized by law in any of the following cases:

- (a) In execution of the sentence or order of a court, whether established for Botswana or some other country, in respect of a criminal offence of which he has been convicted;
- (b) In execution of the order of a court of record punishing him for contempt of that or another court;
- (c) In execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) For the purpose of bringing him before a court in execution of the order of a court;
- (e) Upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under the law in force in Botswana;
- (f) Under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of 18 years;
- (g) For the purpose of preventing the spread of an infectious or contagious disease;
- (h) In the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) For the purpose of preventing the unlawful entry of that person into Botswana, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Botswana, or for the purpose of restricting that person

while he is being conveyed through Botswana in the course of his extradition or removal as a convicted prisoner from one country to another;

- (j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Botswana or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Botswana in which, in consequence of any such order, his presence would otherwise be unlawful; or

- (k) For the purpose of ensuring the safety of aircraft in flight.

181. Any victim of unlawful arrest or detention has an enforceable right to compensation, which can be realized through legal action, i.e. the victim going to court to sue the Government. The court then decides on the unlawfulness of the arrest or detention and if it is proved, the court orders compensation.

182. Section 10(1) of the Constitution provides that:

*"If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognized by law."*

183. However, in practice this has not always been the case, particularly because of the serious backlog of cases. But courts are also strict on the notion of 'a trial within reasonable time', with some cases having been dismissed on the grounds that reasonable time has lapsed.

184. A case that illustrates the above point is *The State v. Merriweather Seboni* 1968-1970 BLR 158 (HC). The accused was arrested on 31 December 1967. Thereafter, due to various factors including administrative inefficiency on the part of organs of the State, his re-committal for trial took place only in February

1969. In recommitting him for trial, the Magistrate purporting to act in terms of Section 18 (3) of the Botswana Constitution referred the question of delay in bringing the accused to trial to the High Court for determination. It was held that there was undue delay in bringing the accused to trial and the administrative deficiencies which resulted in the delay could have been avoided. It was further held that the detention of the accused and the delay in the proceedings were in contravention of Section 10 of the Constitution.

185. The law makes provision for persons deprived of their liberty by arrest/detention to have the right to go to court so that the court decides without delay on the lawfulness of his detention and orders his release if the detention is unlawful.

186. When a person is charged with a criminal offence before a Magistrate Court, and he is detained, Section 111 (1) of the Criminal Procedure and Evidence Act provides that he can only be detained for 15 days; thereafter, the court may by *mero motu* admit him to bail, or extend his remand depending on the circumstances of that particular case. So in Botswana there are no laws which provide for prolonged detention without trial.

187. Section 36 of the Criminal Procedure and Evidence Act states that:

*"No person arrested without warrant shall be detained in custody for a longer period than in all the circumstances of the case is reasonable; and such period shall not (subject to the provisions of sub-section (2)) unless a warrant has been obtained for the further detention upon a charge of an offence, exceed 48 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court having jurisdiction in the matter."*

188. Unless such person is released by reason that no charge is to be brought against him, he shall, as soon as possible, be brought before a Court having jurisdiction upon a charge of an offence.

189. Section 36 (4) provides for the right of a person to be informed at time of arrest of reasons for his arrest by stating that where:

*"a person effects an arrest without warrant, he shall forthwith inform the arrested person of the cause of the arrest."*

190. Persons awaiting trial have a right to be granted bail; however, this provision has exceptions as can be seen in Section 104 that states that:

*"Every person committed for trial or sentence in respect of any offence except treason or murder may be admitted to bail in the discretion of the Magistrate:*

*Provided that:*

*(i) The refusal by the magistrate who has committed any person for trial, to grant such person bail shall be without prejudice to such person's rights under Section 113; and*

*(ii) The Magistrate may admit to bail a person under the age of 18 committed for trial on a charge of murder."*

191. Section 16 of the Constitution provides for a person deprived of his liberty to contact a lawyer. It states, inter alia, in sub section 2 that:

*" When a person is detained by virtue of such an authorization [i.e. on measures to limit personal liberty when the country is at war] as is referred to in sub section (1) of this Section the following provisions shall apply:*

*(d) He shall be afforded reasonable facilities to consult and instruct, at his own expense, a legal representative and he and any such legal representative shall be permitted to make written or oral representations or both to the tribunal appointed for the review of his case."*

192. Furthermore, Section 102 (1) provides that:

*"The friends and legal advisers of an accused person shall have access to him, subject to the provisions of any law or regulations relating to the management of the gaol."*

193. In such cases, proceedings before the courts are usually regulated by common law and the Criminal Procedure and Evidence Act.

194. In criminal matters, the Criminal Procedure and Evidence Act is used to govern how arrests, searches, application for bail are conducted. It also deals with indictments and summary trials.

195. In civil cases, rules of court for both the High Court and Magistrate Court generally regulate the proceedings.
196. The Botswana Prisons Regulations have been drawn up to ensure that the protection from inhuman and degrading treatment is extended to people who have been deprived of their liberty.
197. Formal structures are in place to ensure compliance with international standards on the treatment of prisoners. These include official visitors and visiting committees. Prisoners can lodge complaints to these bodies in respect of their treatment, prison conditions and other related matters. They may also lodge complaints with the Commissioner of Prisons and the responsible Minister. They are also allowed to make representations to the Ombudsman, and these letters are not to be censored.
198. Regulation 3 (c) of the Prisons Regulations specifically stipulates that one of the principles guiding prison officers is that, at all times, the treatment of convicted prisoners shall be as such to encourage their self-respect and sense of personal responsibility, so as to rebuild their morale, to inculcate in them the habit of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.
199. Punishments for offences under Section 46 are discretionary and they range from reprimand, loss of salary, withholding or deferment of any increment of salary, reduction in rank to dismissal from service. The punishments are prescribed in Sections 47 and 48 of the Prisons Act.
200. For example, one case in which prison officers had assaulted prisoners was dealt with under the internal disciplinary procedure. The officers involved were found guilty and were each fined one third of their salary for a month.
201. Two other cases were dealt with in the Magistrate Courts. However, officers involved were not found guilty, and were thus acquitted and discharged.
202. Generally, all prisoners are given equal treatment in line with the constitutional principle of equality before the law.
203. The separation of accused persons from convicted persons is provided for in regulations 4 and 5 of the Prisons Regulations. A remand prisoner may be provided with employment should he elect to perform it and shall be paid in

accordance with a scale to be fixed by the Commissioner of Prisons. A remand prisoner is allowed to see a registered medical practitioner of his/her own choice on any weekday during working hours in the prison (see Prisons Regulation 69), wear their own clothing and do hairstyles of their liking. Remand prisoners are not required to engage in prison labour. Visits to remand prisoners are unlimited.

204. However, there are different conditions for un convicted prisoners charged with capital offence. These prisoners are kept under special observations at all times; all their letters are examined by the officer in charge.

205. A facility in Francistown has been established for illegal immigrants or persons arrested for being in the country unlawfully. It is the only centre in the country, and it has the holding capacity of 504 persons. Immigrants at the centre are entitled to unlimited visits by friends and relatives. They also receive visits from diplomats representing their countries. Before the centre was built, immigrants or persons arrested for unlawfully being in the country were held in prisons as immigration detainees and were entitled to essentially the same rights as now.

206. As far as the separation of juvenile persons is concerned, the country is guided by the Children's Act of 1981 and Prisons Regulations. All prisoners under the age of 18 are treated as juveniles. They are held separately from adult prisoners.

207. Presently, there is only one boys' prison in the country and its holding capacity is 120 inmates. As the number of young offenders is on the increase, a second facility with a holding capacity of 252 inmates is nearing completion with staff houses ready for occupation. By the end of December 2008, the facility is anticipated to be fully completed and ready for operations. There is no designated prison for young (juvenile) female offenders due to low rate of crime committed by young females.

208. Upon admission of an offender into prison, a prison social worker conducts admission interviews in order to know the prisoners background and to unearth social problems the prisoner might be having, so as to help where possible, or recommended for appropriate rehabilitation program.

209. During admission interviews, the social worker also orients prisoners, educating them on all rehabilitation programmes available in prison, custodial rules, realities of prison life and when and how to communicate with family and others.
210. The prison social worker acts as a link between prisoners and the community and therefore, ensures that relatives are informed about prisoner's imprisonment. Upon admission, he or she encourages prisoners to write letters informing their relatives about their imprisonment. When the need arises, the prison social worker does contact, visit or even call relatives to prison for a meeting or counselling depending on the assessment of the case/ problem.
211. Young offenders are rarely committed to prisons to await trial. But, where they are admitted, prison social workers make sure relatives of such prisoners are informed of their detention.
212. There is a school of industries (Ikago Center) which provides rehabilitation to juvenile offenders on vocational skills that include carpentry, welding and fabrication, motor mechanics and brick laying. The rehabilitation programme also includes provision of psychosocial support for behaviour modification. The capacity for the school is 100 but currently there are 25 trainees admitted at the center.
213. Over the past three years young offenders have been assisted to seek placement at schools, and have been placed in various institutions, colleges and other training institutions on release from prison. But much depends on how far a prisoner has gone with programmes offered in prison. During training in prison, juveniles are exposed to citizen empowerment schemes and how they may benefit under the schemes.
214. Juveniles are assisted to locate their relatives by prison social workers immediately after admission into prison so that by the time they are released, there is already contact with their relatives. Where possible, no prisoner should lose ties with his or her family and community.
215. Section 90 of the Prisons Act provides for the training and rehabilitation of prisoners. This Section requires that the training and rehabilitation of convicted persons should be aimed at assisting them to lead good and useful lives. In this regard, educational and vocational facilities are provided, special attention is



given to illiterate prisoners and every prisoner is encouraged and assisted to maintain such relations with persons and agencies outside prison as may in the opinion of the officer in charge best promote the interest of the prisoner's family and his own social rehabilitation.

216. In an endeavour to accomplish rehabilitation of offenders, the department offers different programmes. Basic education is offered to inmates and special attention is given to illiterate ones, vocational skills and in the fields of agriculture and industries are offered to inmates and trade tested by relevant institutions. Social counselling and spiritual counselling are offered to improve the wellbeing of the inner person which is the soul and the spirit to enhance adaptability and acceptance to imprisonment. Counselling, church services and character moulding programmes are offered (anger management, assertiveness training, stress management, positive parenting, sex offender therapy, project management, respective relations and substance abuse management).

217. As of the 31 August 2008, prisoners were trained and examined as shown in table 3 below.

**Table 2 Training for prisoners**

Trade	Number of prisoners trained
Carpentry	224
Upholstery/leather	208
Welding	58
Tailoring	57
Pottery	16
Blacksmithing	12
Building	200
Bible studies	316
Bible study groups	331
Literacy classes	385
Primary-leaving classes	103
Secondary classes	152
Agriculture	465

218. Within the above period, some of those released have been successful and are contributing to the economy of the country. Three ex-prisoners are

leading churches, seven are running their own workshops in carpentry and upholstery, three are running their own welding workshops and two are running their own construction companies.

219. Regulation 57 of the Prisons Regulations stipulates that every convicted prisoner shall be engaged in useful work depending on their sex and physical fitness. No prison work is done, except for keeping the prison clean and preparing food on Sundays and public holidays. However, an officer in charge is permitted in regulation 62 (2) to make special arrangements for the observation by any class of prisoners of religious and national festivals peculiar to such class of prisoners.
220. Conjugal visits are not allowed. However, convicted prisoners are allowed visits by friends and relatives for 20 minutes each month. They may also write and receive one letter a month. They may also be granted special visits. Visits of priests and lawyers are almost unregulated. In fact, representatives of different churches are allowed to visit and to preach to prisoners, and prisoners are not forced to attend sessions conducted by such churches. They are allowed to practise religions of their choice.
221. Diplomats residing in Botswana and those accredited to the country are allowed to visit prisoners from their countries. Members of the International Committee of the Red Cross (ICRC) are allowed to visit prisoners and their last visit was in September 2008.
222. Recreational facilities are provided for prisoners at public expense. Some of the facilities given to prisoners are cards, balls, chess, draughts, Monopoly, etc. Regulation 37 of the Prisons Act allows all prisoners to engage in physical exercises.
223. All prisoners are allowed unfettered access to free medical care in accordance Section 56 of the Prisons Act and regulation 11 of the Prisons Regulations.
224. Despite the fact that HIV/AIDS is rampant in Botswana, condoms are not allowed in prisons. Segregation of prisoners means that there is no way in which males and females can interact intimately. Distribution of condoms in prison would therefore contradict the law against homosexuality.

225. In 2000, the Prisons Act was amended to allow prisoners who are seriously indisposed, especially those suffering from terminal illnesses, to be released from prison to the care of relatives at home. Between 2000 and April 2003, 85 prisoners were released under this provision.
226. Regulations 31, 32 and 33 of the Prisons Regulations stipulate that all prisoners should be provided with quality clothing and bedding. All people on remand are allowed to wear their own clothes.
227. All prisoners are provided with food of sufficient quality and quantity (see regulation 34 of the Prisons Regulations). Detainees are allowed to have food items from outside prison from relatives and friends.
228. The following are offences for which a prisoner may be disciplined: mutiny; escaping; assaulting a prison officer; taking hostage; and possession of a weapon or assault. These are considered major prison offences. Minor offences include disobeying orders, being idle, using abusive or threatening language, damaging prison property or possession of prohibited articles (Prisons Act, Sections 104-106). Every prisoner charged with an offence is entitled to defend himself against the charge.
229. The punishment meted on prisoners depends on the gravity of the offence and they can include solitary confinement, reduced diet, forfeiture of privileges or corporal punishment in extreme cases in accordance with the Prisons Act, Sections 108-109.
230. As provided for in Section 110 (3) and regulation 52 of the Prisons Regulations, a prisoner may undergo solitary confinement. Visits to a prisoner under solitary confinement are restricted to prison officers.
231. A condemned prisoner is kept apart from other prisoners. Only the responsible Minister, a prison officer, a medical officer, a minister of religion or other person authorized by the Commissioner of Prisons can visit. A visit by any person other than a minister of religion should take place in the sight and hearing of at least two prison officers.
232. Prisoners under this category are at liberty to appeal to the Minister should they feel aggrieved by any decision or conditions imposed on them (Prisons Act, 115 and 116).

233. Female prisoners are detained in separate facilities from male prisoners in such a manner as to ensure that there is absolutely no interaction. They are placed under the charge of a female prison officer.
234. The number of women prisoners who are mothers of young children is very negligible. Therefore, where this happens, children are allowed to stay with their mothers until they are weaned.
235. As a matter of policy, nursing mothers do not engage in hard labour. The Government buys the baby's milk and other necessities. Family welfare educators and social welfare officers assist in the upkeep and welfare of the child.
236. As already indicated conjugal visits are not permitted in the prisons. Further condoms are not provided because same sex activity is a criminal offence under Botswana law and such criminalisation is based on the repulsion with which the Government of Botswana views such sexual acts as being immoral. The yard stick by which the nation of Botswana measures "*contra bonos mores*" is what the nation traditionally holds as contrary to traditional and religious beliefs. As such by issuing condoms to inmates, the Government would be encouraging same sex intercourse between males which in itself is a criminal offence.

**ARTICLE 7- Right to a hearing; right to appeal; right to presumption of innocence; right to be defended by counsel of choice; right to be tried within a reasonable time**

237. Section 3 (a) of the Constitution accords every person in Botswana protection of the law. This protection has been interpreted in the *Unity Dow v. Attorney-General* case as meaning equality before the law.
238. Section 10 (1) guarantees any person who is charged with a criminal offence, that, unless the charge is withdrawn, his/her case will be given fair hearing within a reasonable time, by an independent and impartial court of law.
239. The assessment of what constitutes "a reasonable time" under s 10(1) of the Constitution was dealt with in *Silas v the Attorney General* 2006 1 B.L.R. 37. In this case, it was found that a definition of the expression, "reasonable time" was dependent on many factors, one of which was the period of time over which the prosecution took place. However, the respondent had unfettered discretion and power to stop criminal proceedings commenced in any court before the presiding officer delivered a judgment. His reasons or motives for doing so were irrelevant and may not be questioned.
240. This right is fiercely protected by the courts. In *Sejammitlwa and others v the Attorney General and others* 2002 2 B.L.R. 75, the applicants brought an application in the High Court alleging that their case had not been afforded a hearing within a reasonable time and that their constitutional rights under Sec. 10(1) of the Constitution had accordingly been contravened. In dismissing the application, the High Court held that, once the first indictment was withdrawn, time stopped running and a consideration of whether an unreasonable time had elapsed only involved the period from October 2000 until the appellants launched their application on 28 March, 2001. On appeal, it was found that there had been an inordinately long delay in bringing the appellants to trial for offences allegedly committed, more than eight years and that the delay was on the facts unreasonable and no adequate explanation had been given by the state for it. The appellants had not waived or forfeited their rights by conduct on their part or a failure to assert their rights and they had shown that they would be prejudiced by the delay and that accordingly they had established that their constitutional rights to a fair hearing within a reasonable time as contained in s 10(1) of the Botswana constitution had been violated.
241. In protecting the right to fair hearing, the courts adhere to the principle that 'justice must not only be done, it must be seen to be done'. This principle seeks to ensure that there is no likelihood of bias on the part of the judges.

242. In the case of *Ali Khan v. The State* 1968-70 BLR 4, the appellant was convicted of unauthorized entry into the Central Kalahari Game Reserve, contrary to Section 2 of the Central Kalahari Game Reserve (Control of Entry) Regulations of 1968. The District Commissioner was the person charged with the administrative responsibilities for the enforcement of the Fauna Proclamation. He was also the judicial officer who convicted the appellant. The appellant's ground of appeal was that the Magistrate was the District Commissioner in Ghanzi, who was charged with administration of the Act the appellant was alleged to have contravened. On appeal, it was held that the test was not whether there was actual proof of bias, but whether on the facts there might appear to be a likelihood of bias.

243. In practice, however, the hearing of cases has been hampered by problems such as shortage of Presiding Officers.

244. The Constitution provides in Section 10 (2)(a) that every person who is charged with a criminal offence shall be presumed innocent until proven or has pleaded guilty to the charges. It is for this reason the courts are willing to grant bail in most bailable offences (see Section 113 of the Criminal Procedure and Evidence Act).

245. The foundation of the principles governing bail application was laid down in the case of *The State v. Gopolang McKenzie* 1968-70 BLR 308. In this case, the court held that in deciding a bail application, the following considerations should be taken into account:

- (a) The nature of the accusation against the applicant and the severity of the punishment which may be imposed;
- (b) The nature of evidence in support of the charge;
- (c) The independence of sureties if bail were to be granted;
- (d) The prejudice to the accused if he is not admitted to bail;
- (e) The prejudice to the State if bail is granted.

246. The accused, Gopolang McKenzie, was a headman and an influential member of his village, facing a charge of murder. After taking into account the criteria referred to above, the bail application was refused.

247. The courts take the presumption of innocence and the provisions of Section 10 (2) (a) of the Constitution very seriously. "They do not like to deprive a man of his freedom while awaiting trial as he may be innocent" (see *Daniel Baiketsi and Another v. State H.Ct. Misc Application No. 4 of 1992*, per Mokama, then Chief Justice). In this case, the seven accused were arrested in February 1992 on a holding charge of being in possession of arms of war. The Public Prosecutor applied for their remand in custody, as investigations were ongoing. The accused applied for bail, and the Magistrate rejected their application. Their next mention date was March 1992. On that date the Public Prosecutor applied for their remand once again. They kept being remanded back into custody until November 1992 with the Public Prosecutor always arguing that investigations were ongoing. In November 1992, before a different Magistrate, the Magistrate indicated that the delay had been too long. The Attorney-General prepared a charge indicting the accused persons before the High Court.

The accused persons applied for bail, the judge granted the bail application. He held that: *"the cardinal rule is that all the accused are deemed innocent until they have been convicted. Even where he is subsequently proved guilty the courts try not to deprive him of his liberty until he has been proved guilty"*.

248. The Constitution guarantees the right to legal representations (Section 10 (2) (d)) in criminal cases at the defendant's own expense.

249. The Constitution provides in Section 10 (2) (b) and (f) that a person charged with a criminal offence shall be informed as soon as reasonably practicable, in a language that he/she understands, be given sufficient time and facilities for the preparation of his defence and be provided, free of charge, with the services of an interpreter if he/she does not understand the language of the charge at the trial.

250. It is provided that, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render continuance of the trial in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

251. The Magistrate Court Act, Section 5 (2), provides for interpretation from English, the court language, to the language understood by the parties

concerned. However, in civil proceedings the parties may be called upon by the presiding Magistrate to bear part of or the whole of the cost for interpretation where the language understood by the parties or witnesses is not one of the languages commonly spoken within the area of jurisdiction of the court.

252. Proceedings of the courts except with the consent of all parties involved, including the announcement of the verdict, are held in public. Exceptions as provided in the Magistrate Court Act, Section 6 (2), are in cases of national security or the welfare of the persons under the age of 18. In circumstances where publicity will prejudice the interests of justice, or the interests of defence, public safety, public order, public morality, the welfare of persons under the age of 18, or the protection of the private lives of persons concerned in the proceedings. Section 9 of the High Court Act makes a similar provision.

253. The records and proceedings of every court are in all cases accessible to the public under the supervision of an officer of the court, at convenient times and upon payment of a fee. Section 10 (e) of the Constitution provides that every person:

*"shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution".*

254. One of the ways in which Government seeks to ensure access to justice is through the provision of assistance to criminal defendants charged with capital offences who do not have the means to afford their own legal representation for Capital offences. The criteria for assigning *pro-deo* counsel is whether it is desirable in the interest of justice that the appellant should have legal aid. (Rule 48 of the Court of Appeal Rules (04:01)

255. Section 56 of the Legal Practitioners Act, imposes a duty on every legal practitioner to do *pro-deo* work. It is pursuant to this section that the Registrar of the High Court assigns *pro- deo* work to individual legal practitioners. However, *pro- deo* fees paid by Government are nominal and this has implications on the legal representation that clients receive from lawyers. The low fees are a disincentive to experienced lawyers who are unwilling to take *pro- deo* matters on nominal fees. Where such instructions are taken, some lawyers do not put more effort in the preparations of the case because the fees are low.



256. There is also no provision for legal aid in Botswana. Government assistance to defendants in criminal matters is only offered to those charged with capital offences. To address this, the Government is in the process of coming up with a legal aid system which will assist litigants considered to be paupers to access affordable legal services. There have been a number of recommendations made by various stakeholders calling for the provision of free legal services to indigent persons.
257. A consultant was recently appointed to conduct a feasibility study on legal aid and Alternative Dispute Resolution mechanisms in Botswana largely as a result of the Government recognising the need for such an initiative. Ultimately this will help Government in its implementation of the right to legal representation for indigent persons.
258. The consultant is due to submit a final report in October 2008 and this will be followed by a stakeholder's workshop to assess the outcomes of the study.
259. It was observed that the judicial system was experiencing excessive delays in the disposal of cases and that there was generally slow resolution of cases leading to a backlog. For this reason the Administration of Justice decided to adopt and implement a Judicial Case Management (JCM) system. Through JCM the Administration of Justice expects to achieve a just, efficient and speedy dispensation of justice by ensuring that new cases are settled expeditiously and addressing a backlog.
260. The University of Botswana runs an inadequately resourced legal clinic in an attempt to fill the void.
261. A number of Non Governmental organizations (NGOs) have some legal aid programmes for the needy. However, it is acknowledged that some of them have financial constraints.
262. The highest court in Botswana is the Court of Appeal, which is the superior court of record and to whom appeals can be taken from the High Court. The High Court has inherent original jurisdiction to hear and determine civil and criminal proceedings. It acts as an appellate body for the Magistrate Court and the Customary Court of Appeal.
263. Customary Courts are localized (tribal-based), but their decisions can be appealed to a national Customary Court of Appeal whose decisions can be appealed to the Magistrate Court or directly to the High Court.

264. There is no automatic compensation save for an official apology in a situation where a conviction has been reversed or person pardoned on the ground that a new or newly discovered fact shows that there has been a miscarriage of justice and one has wrongly suffered punishment.

265. Section 10 (5) of the Constitution and Section 19 of the Penal Code of Botswana provides that:

*"no person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal".*

Sub- section (6) states that:

*"no person shall be tried for a criminal offence if he shows that he has been pardoned for that offence".*

## **ARTICLE 8 -Freedom of Religion and Conscience**

266. Botswana is a multi-cultural and multi-religious nation that prides itself on recognising the importance and usefulness of all religious beliefs practiced by her citizens. Religious freedom or freedom of conscience is a constitutional right in our country.

267. Section 11 (1) of the Constitution of Botswana guarantees freedom of conscience. It states that:

*"except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this Section, the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone, in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance".*

268. The Constitution further provides in its Section 11 (2) that:

*"every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains; and no such community shall be prevented from providing religious instructions for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides".*

269. Section 11 (4) of the Constitution states that:

*"no person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief".*

270. Section 11 (5) outlines conditions under which the enjoyment of this right may be limited. These include: defence, public safety, public order, public morality or public health or for the protection of the rights and freedoms of other persons.

271. In Botswana, the registration of churches is provided for under the Societies Act (CAP 18:01). Section 3 of the Act defines a society as including any club, company, partnership or an association of 10 or more persons, whatever its nature or objectives.

272. In Botswana there is no official religion, the dominant religion is Christianity, which is constituted by a number of Catholic, Protestant, and African Independent Churches. There is also a number of the population that practices indigenous African beliefs, Islam, Baha'i and Hindu faiths. The following categories of religious denominations have registered with the Registrar of Societies: Christian (1082); Hindi (4); Islam organisations (5); (1); Baha'i (1); Sikh (1); and Buddhist (1).

273. A number of various faith based associations have also been registered and these include the Botswana Buddhist Association, the Botswana Hindu Society, Lobatse Hindu Society, Maun Hindu Society, Selibe-Phikwe Hindu Society, Botswana Muslim Association, Panjetani Muslim Association, The Gujarat Muslim Education Society, Botswana Translation Bureau of Islamic Literature, Ahle Sunnat Wa-Jamat of Botswana, Spiritual Assembly of Bahai's of

Botswana, Botswana Council of Churches, Evangelical Fellowship of Botswana and the Institute of Independent Churches.

274. Freedom of Religion and Conscience is extensively enjoyed to the extent that there is a proliferation of churches and religious organisations.

275. All registered societies are required to have a constitution and by-laws as well as rules and regulations consistent with the written laws of Botswana.

276. Registration of an organization may be refused when:

- (a) The organization applying for registration is affiliated or connected to an organization(s) outside Botswana, which is of a political nature;
- (b) The Registrar of Societies is not satisfied that the rules of the organization adequately define its membership and provide for the control and management of its affairs;
- (c) The rules of the organization are inconsistent with any written law;
- (d) It appears that any of the objectives of the organizations are likely to be used for unlawful purpose or for a purpose incompatible with peace, welfare and good order in Botswana;
- (e) The name under which an organization is to be registered is identical to or resembles the name of another registered organization so much that it is likely to deceive the public or members of either organization or is inconsistent with any written law.

277. Between 1999 and 2001 the following churches were denied the right to register: the Reconciliation International House of Prayer; the Heaven Assemblies of God (International); and the Jesus is alive Ministry. The Reconciliation International House of Prayer application was turned down on the basis of the fact that the applicant was a fraudster. The other two had furnished false information to the Registrar about membership.

278. Between 2004 and 2008, 422 Applications for Christian Faith Based Organisations were refused registration. The refusal was due to the organisations' failure to provide relevant information within the legally stipulated ninety (90) days.

279. Section 8 of the Societies Act provides that:

*"any society aggrieved by the refusal of the Registrar to register it may, within 28 days immediately after the date of such refusal, appeal against the refusal to the Minister and where a society has so appealed it shall not, notwithstanding Section 20, be deemed to be an illegal society pending the decision of the Minister on appeal".*

280. Section 20 of the Societies Act stipulates that:

*"Every local society, not being a registered society or an exempted society shall be deemed to be an illegal society".*

281. The Penal Code provides that an unlawful society is one formed for any of the following purposes:

- (a) Levying war on the Government or any part of Botswana;
- (b) Killing or injuring of any persons;
- (c) Destroying or injuring of any property;
- (d) Committing or inciting acts of violence or intimidation; or
- (e) If declared by the President to be a society dangerous to peace and order in Botswana.

282. All societies shall in the manner prescribed make application to the Registrar for registration or exemption from registration under this Act.

## **ARTICLE 9 – Right to Receive Information; Right To Express Opinion**

283. Freedom of expression is guaranteed in Section 12 (1) of the Constitution, wherein it is stated that no person shall be hindered in the enjoyment of their freedom of expression which is inclusive of:

- a) Freedom to hold opinions without interference;
- b) Freedom to receive ideas and information without interference;
- c) Freedom to communicate ideas and information without interference (whether such communication is to the public in general or to any person or class of persons);
- d) As well as freedom from interference with their correspondence.

284. Section 12(1), which guarantees freedom of expression covers, among others, both public and private media outlets operating in the country. These media houses operate within a wide latitude of media freedom provided of course in the process they do not violate the rights and freedoms of other people in which case the aggrieved would, like everyone else approach a court of law for a remedy; for example sue for defamation.

285. By way of illustration in *Media Publishing (PTY) Ltd v the Attorney General [2001] 2 B.L.R. 485* the Court recognised freedom of expression by the media as vital in a democratic society as they contribute to the formation of public opinion.

286. Private newspapers and radios are free to express their views and opinions notwithstanding that those views may not be palatable. This is illustrated by the above authority which held that withdrawing of advertisement patronage from the Applicants newspapers amounted to an infringement of their freedom of expression.

287. There are certain restrictions on freedom of expression as captured in Section 12 (2) of the Constitution. These extend to security in the interest of defence, public safety, public order, public morality or public health in cases where there is a need to protect the reputations, rights and freedoms of other

persons or preventing the disclosure of information received in confidence, maintaining the authority and independence of courts, regulating educational institutions in the interests of persons receiving instructions therein, regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television, for the purpose of imposing restrictions upon public officers, employees of local Government bodies or teachers.

288. Section 90 of the Penal Code provides that any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behaviour is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

289. Section 91 of the Penal Code provides that any person who does any act or utters any word or publishes any writing with intent to insult or to bring into contempt or ridicule: the Arms or Ensigns Armorial of Botswana Government; the National Flag of Botswana; the Standard of the President of Botswana; or the National Anthem of Botswana, is guilty of an offence and liable to a fine not exceeding BWP 500 (approximately US\$100).

290. Section 92 (1) of the Penal Code states that any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine not exceeding BWP 500.

291. Section 93 (1) of the Penal Code provides that any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offence and liable to a fine not exceeding BWP 400 (US\$80).

292. There is no legislative restriction on the importation and distribution of foreign newspapers in the country. In this regard, some Government ministries and departments subscribe to some foreign publications. However, the only restriction that may be imposed would be as per Section 178 of the Penal Code, which prohibits the distribution, public exhibition, production of obscene materials.

293. There is also no restriction on the distribution of print media, with at least 9 private newspapers now enjoying significant distribution across the country as well as the Government's Daily News. In terms of market penetration at least one independent study has shown that the Mmegi Newspaper actually outstrips the Daily news.
294. The leading weekly newspapers in terms of actual circulation are *the Voice; The Gazette; the Guardian; Midweek Sun; Mmegi Monitor* and *Sunday Standard*, which also enjoy substantial circulation around the country followed by *the Mirror, Ngamiland Times* and other smaller publications.
295. With respect to radio, the National Broadcasting Board has hitherto licensed three private radio stations alongside Government owned Radio Botswana (RB) and Radio Botswana Two (RB2) .
296. In terms of television, GBC TV is privately owned and was allowed to expand its coverage outside of Gaborone in the past but, 1) failed to honour its licensing condition including in particular broadcasting on its assigned frequency and, 2) ran into financial difficulties leading to its near liquidation. It has now been refinanced and is due to be re- launched.
297. On line news service is permitted to function without Governments interference.
298. In June 2008, Government tabled before Parliament the Media Practitioners Bill. The objective of the Bill is to establish a Press Council for Botswana for the purpose of preserving the maintenance of high professional standards within the media and to provide for matters related thereto.
299. The purpose of the Media Practitioners Bill is to establish a Press Council for Botswana, Clause 3 of the Bill provides that there shall be a Press Council, which shall be wholly independent and separate from the government, any political party, or any other body,
300. The objects of the Council include among other things:
- uphold standards of professional conduct;
  - promote observance of media ethics in accordance with Code of Ethics issued by the press Council



- Monitor activities of media practitioners
301. The Bill also establishes a Complaints Committee which is appointed by the Minister, which has the power of suspending registration of a practitioner or totally removing his or her name from the register.
302. The draft Media Practitioners Bill stipulates that no journalist resident in Botswana may work in the country unless he or she is registered and accredited by an Executive Committee, which is the governing body.
303. The first draft of the Bill was issued to representatives of the media at a media advisory council meeting which was chaired by the Minister. The Media Advisory Council (MAC) is a sub-committee of the high level consultative council, which is chaired by the President.
304. The Bill is currently being debated before Parliament. Media watchdogs have criticised the Bill.
305. There exists a forum called the MAC, a sub-structure of the High Level Consultative Council which has representation from the private media and other stakeholders. Members of the Media Advisory Council are appointed by the responsible Minister. Chaired by the Minister, the MAC recognises the media as a vital partner in the development of Botswana.
306. Other avenues which exist to safeguard media freedom in Botswana are the Press Council of Botswana and Media Institute of Southern Africa (MISA) – Botswana.
307. The Botswana Telecommunication Authority (BTA) was established in 1996 as a statutory agency with responsibility for licensing telecommunications and broadcasting operators, settling disputes among operators, approving tariffs, promoting and monitoring free and fair competition, allocating and managing the radio spectrum, type approving terminal equipment, and protecting consumers.

## **ARTICLE 10-Right to Free Association**

308. The protection of freedom of association is provided for under Section 13 (1) of the Constitution. (See a detailed discussion at Article 11 below).
309. There are presently 12 political parties in Botswana. Only three are represented in Parliament, namely, the ruling Botswana Democratic Party (45), Botswana Congress Party (1) and Botswana National Front (11). There exists a forum called the All Party Conference where political parties consult with each other. The forum is a legitimate institution comprising the 12 political parties registered in terms of the Societies Act. The institution affords all political parties the opportunity to discuss issues of national interest and formulate recommendations to Government.
310. There is legal provision allowing for the establishment of NGOs on human rights and other activities. NGO's are registered and regulated by the Societies Act which also regulates all other societies. The Act lays down the procedure for registration and further indicates the instances where registration will be granted or refused and when registration will be cancelled. It is a requirement that all societies submit annual returns to the Registrar of Societies. Societies that don't comply with this regulation may have their registration cancelled
311. The Trade Union and Employer's Organisations Act provides the legal framework for Governmental regulation, registration and development of trade unions. Section 2 (1) defines a "trade union" as "an organisation consisting wholly and in part of more than 30 employees the objects of which include the regulation of relations between employees and employers or employers' organisations or between employers and employees".
312. Initially only associations could be formed. The law has since been amended to allow for the establishment of trade unions. There are currently trade unions which have been registered with the Registrar of Trade Unions.
313. Section 5 of the Act provides for compulsory registration of trade unions. Section 6 requires every trade union formed in Botswana to apply to the Registrar of Trade Unions and Employer's Federations for registration within 28 days of its formation. Every officer of a trade union that fails to apply for registration within 28 days is guilty of an offence (Section 8). It is an offence for

the union, its offices and its members to operate without being properly registered.

314. Section 6 (1) provides that application for registration must be made on the prescribed form accompanied by:

- (a) Prescribed fees;
- (b) Three printed copies of its constitution;
- (c) A copy of the resolution forming the union;
- (d) Full names of all the members of the union;
- (e) Name, postal address and location of the union's principal office;
- (f) Date of its formation;
- (g) Titles, full names, ages, postal and residential addresses and occupations of signatories to the application;
- (h) Name of every employer or industry of which the union seeks legal recognition under Section 50. Particulars must also be given of every negotiating body or body or branch for which the union seeks the recognition of.

315. Section 10 provides the grounds on which the Registrar may refuse to register a trade union:

- (a) The name is identical to another registered union or similar enough to be likely to deceive or mislead;
- (b) The union has not complied with the provisions of the Act;
- (c) The union's constitution is unlawful;
- (d) The union is used for an unlawful purpose;
- (e) Union funds are being used unlawfully;
- (f) Union accounts are not kept in accordance with the Act;

- (g) Within five years immediately before the date of the application an officer of the union has been convicted of an offence under this Act or under the Trade Disputes Act or any offence involving fraud or dishonesty which led to a sentence of imprisonment;
- (h) Any of its officers is not a Motswana citizen;
- (i) Existing registered unions which the Registrar considers to be sufficiently representative of the interests of workers in the industry or trade which the new union is seeking to represent;
- (j) Principal objects are not in accordance with the Act.

316. According to Section 13, an appeal against the Registrar's decision to refuse registration can be made to the High Court.

317. It should be observed that Botswana is a member of the International Labour Organization (ILO).

### **ARTICLE 11- Right to Freedom of Assembly**

318. Section 13 (1) of the Constitution provides as follows:

*"Except with their own consent, no person shall be hindered in the enjoyment of their freedom of assembly and association, that is to say the right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of their interests."*

319. Section 13 (2) of the Constitution makes limitations to the freedoms contained in Section 13 (1) to the extent that, the law in question makes provision that:

- (a) Is reasonably required in the interests of defence, public safety, public order, public morality or public health;
- (b) Is reasonably required for the purpose of protecting the rights and freedoms of other persons;

- (c) Imposes restriction upon public officers, employees of local Government bodies or teachers.

320. The Penal Code defines an unlawful assembly as: three or more persons assembled with intent to commit an offence or to carry out some common purpose, conduct themselves in a manner to commit a breach of the peace or by such assembly provoke other persons to commit breach of the peace.

321. The Public Order Act regulates and controls public meetings and public processions. Section 4 (3) provides that any person who wishes to convene a public meeting or to form a public procession must make an application to the regulating officer of the area concerned unless such officer is satisfied that such meeting or procession is likely to cause or lead to a breach of peace, he shall issue a permit in writing authorizing such meeting. Any meeting or procession that takes place without a permit issued under Section 4 is an offence and persons that take part in such meeting or procession shall be guilty of an offence.

322. As a matter of practice, when permission is sought under Section 4 to convene a public meeting or public procession, persons organizing or taking part in the meeting or procession are afforded police escort and protection. This is true with amongst others, political rallies and sponsored walks.

323. With regards to the registration of societies, formation of religious organizations, associations and political parties, there exists a Societies Act governing registration of such entities.

## **ARTICLE 12-Freedom of Movement and Right to Seek and Obtain Asylum**

324. The Constitution provides in Section 14 (1) that every person shall be entitled to freedom of movement, and for purposes of this Section, the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana. Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this Section.

325. Botswana accords every citizen and every non-citizen who is legally within the borders freedom of movement.
326. With regards to the issue of prohibited immigrants. There have been several cases of such where Government established basis to expel certain individuals and did so in accordance with the laws of the country.
327. There are about 3000 refugees in Botswana, from 15 African countries these are Algeria, Angola, Burundi, Democratic Republic of Congo, Eretria, Ethiopia, Namibia, Rwanda, Somalia, Sudan, Uganda, and Zimbabwe.
328. Botswana has a good record of hosting asylum seekers. Although Botswana has a policy of "first country of asylum", which discourages the granting of refugee status to asylum seekers who would have crossed safe countries not seeking asylum on their way to Botswana, Botswana has always considered such applications on humanitarian grounds.
329. Asylum seekers are given refugee status after reason to accord them such status is established.
330. The Government of Botswana has carried out relocation of people from the Central Kalahari Game Reserve (CKGR), most of whom are of Basarwa origin.
331. The CKGR is a game reserve established in 1961, with the view to protect wildlife resources and provide sufficient land for traditional use by the hunter-gatherer communities. At the time there were about 3,000 people, the majority of them being Basarwa, who lived in the area. Residents of the game reserve, who subsisted mainly on hunting and gathering, were at the time allowed to settle in the game reserve. Their hunting and way of life were at the time consistent with the preservation of wildlife resources inside the game reserve.
332. Over time, the inhabitants of the CKGR were abandoning their traditional hunter-gatherer lifestyle in favour of permanent or semi-permanent settlement around or near water sources provided by the Government to mitigate the effects of recurring droughts. Thus, in 1985 the Government appointed a fact finding mission to investigate the situation in the CKGR with a view to providing information that would facilitate decision-making on environmental protection and wildlife conservation on the one hand and the socio-economic development of the communities on the other. The outcomes were as follows:

- (a) Locations in the CKGR were rapidly evolving into permanent, settled agricultural communities;
- (b) The residents of the CKGR had largely abandoned their traditional way of hunting on foot with bow and arrow in favour of guns, horses and four-wheel drive vehicles;
- (c) The residents were also grazing increasing numbers of livestock inside the game reserve;

333. As a result the Government took a decision in 1986 that:

- (a) The boundaries and the status of the CKGR should be maintained as they were at the time of the decision;
- (b) The social and economic development of Old Xade and other settlements in the reserve should be frozen as they had no prospect of becoming economically viable;
- (c) Viable sites for economic and social development should be identified outside the reserve and the residents of the reserve should be encouraged, but not forced, to relocate to those sites; and

334. The relocation was necessitated mainly by the following reasons:

- (a) Botswana's National Settlement Policy spells out guidelines through which settlements, both large and small, in the country are developed and provision of services to settlements are determined;
- (b) The primary purpose of the parks and game reserves is to conserve the wildlife heritage, but it had become clear that residents of the CKGR were engaging in hunting, arable, pastoral agriculture and other commercial activities which was inconsistent with the aimed purpose (i.e. wildlife preservation); and
- (c) Given the fact that the communities were sparsely populated, it was not economically sustainable for the Government to continue to provide essential services in the areas inside the CKGR.

335. Prior to each relocation, extensive consultations, which began as early as 1985, were carried out with all stakeholders including the inhabitants of all

settlements in the game reserve, NGOs and other interested parties, leading to a large number of the inhabitants agreeing to relocate.

336. The relocation began in 1997 when 1,739 people relocated to the new settlements of New Xade and Kaudwane. A total of 1,239 people relocated to New Xade and 500 to Kaudwane. Following further consultations, another group agreed to relocate in 2001. According to the last Population and Housing Census, there were 689 people who remained in the CKGR; 348 people relocated to G'Kgoisanekeni and 179 to Kaudwane in the Gantsi and Kweneng districts respectively between February and June 2002. Officially, 17 had remained after the relocation exercise which ended in June 2002.
337. The relocation caused discomfort in and outside the country and complainants arguing that the policy guiding the integration of Basarwa in the development plans of the country fell short of considering cultural dynamics of Basarwa. This caused criticism against the Government.
338. The Basarwa had their views about the relocation exercise. Human Rights groups such as Ditshwanelo held the view that the Government was ill-informed in relocating residents of the CKGR. In their view, the Government had maintained that one of the reasons for the removal of the residents of the game reserve is to allow them access to development.
339. First, Basarwa rejected the argument that they are causing depletion of the wildlife populations. They maintained that they had lived for thousands of years with the animals without any problems. They saw it possible that they could effectively and responsibly co-exist with the animals and manage the present wildlife areas. Secondly, they argued that their movement out of the CKGR was out of fear due to intimidation practices of the authorities.
340. Thirdly, they argued that they had not been consulted as to their relocation. Finally, they argued that any intended development by the Government could follow them in their ancestral land (CKGR).
341. Despite this criticism, the relocation of the Basarwa has resulted in expanded services to their communities. It should be noted that the Government of Botswana has provided basic social services such as education, health facilities, shelter and clean water, which were not previously available. The Basarwa also continue to enjoy special hunting rights and are encouraged to observe their unique cultural practices such as painting, traditional medicine, tracking, music and dance.



342. Some Basarwa of the CKGR took the Government of Botswana to court challenging the decision to relocate them as well as the termination of essential services in the game reserve. The court upheld the application.

343. Following this, Government issued a statement outlining the steps that it intended to take to implement the decision of the court as well as to guide its future operations and the management of the CKGR.

**ARTICLE 13 –Right to Participate Freely in Government; Right to Equal Access to the Public Service of Ones Country; Right to Access Public Property**

344. In 1997 the Constitution (Amendment Act No 18 of 1997) established the Independent Electoral Commission (IEC). The Commission exists to facilitate the formation of a democratically elected Government by delivering transparent, free and fair elections in accordance with established legal framework for Botswana. The mandate of the Commission is to:

- a. Manage the electoral process
- b. Disseminate voter awareness information
- c. Ensuring that voters are informed about the electoral process
- d. Mobilise the public to register and vote
- e. The conduct and supervision of elections of the elected members of the National Assembly giving instructions and directions to the Secretary of the Commission in regard to the exercise of his functions under the Electoral Act;
- f. Ensuring that elections are conducted efficiently, properly, freely and fairly
- g. Conduct and supervise elections of members of the National Assembly and of Local Authority,
- h. Conduct referenda.

345. The IEC has strengthened its integrity by adhering to regional and international electoral principles and norms set in instruments such as the Principles for Election Management, Monitoring and Observation in the SADC region and the SADC Parliamentary Forum – Norms and Standards in the SADC Region.
346. The IEC has since its inception managed two elections that were declared free and fair by local, regional and international observers.
347. The Electoral Act was enacted to consolidate laws relating to the elections and registration of voters and the conduct of such elections.
348. Section 6 (1) of the Act disqualifies any person who:
- By virtue of his own acts is under any acknowledgment of allegiance or obedience to a foreign power;
  - Is under a death sentence or imprisonment sentence;
  - Is insane or of unsound mind;
  - Is disqualified from voting at any election under any law for the time being in force.
349. Section 7 of the Act makes provision for the registration of voters. IEC is responsible for setting a general registration period.
350. Section 9 of the Act deals with the registration of non-resident citizens, whilst Section 10 deals with application for registration during the general registration period.
351. In Botswana, every person has the right to take part in the conduct of public affairs, directly or indirectly, through freely chosen representatives. In addition to this, every citizen has the right to take part in the elections except for those who have been proved insane, those who have been sentenced to imprisonment for more than six months as well as those who have allegiance to any foreign power. In terms of Section 91 (3) of the Constitution, general elections are held every five years.
352. Citizens are employed irrespective of political party affiliation and are not expected to declare such.

353. Since independence opposition parties have not been able to field candidates in all constituencies.
354. Government does not provide funding for political parties. As a developing country the use of meagre public resources is confined to certain high priority areas with direct value to the majority of citizens.
355. Political parties have access to media houses including print, radio and television. Coverage of political party activities during campaigns is done widely and is aired on radio and television as well as in public print media without prejudice.

#### **ARTICLE 14- Right to Property**

356. The Right to Property is protected under Section 8 of the Constitution. The Section further provides specific protection from being deprived of private property. However, the Constitution permits the acquisition of property, by Government, of any description. In furtherance of this right (the right to protection from deprivation of property), Parliament enacted the Acquisition of Property Act (Cap 32:01). The Act limits such acquisition to immovable property only. This right was in fact discussed and recognized in the case of the *President of the Republic of Botswana and Others v. Bruwer and Another 1998 BLR 86*.
357. In this case, Bruwer and another were negotiating with the Commonwealth Development Corporation to purchase their farm. On the day the sale was to be finalized, Government published a notice in terms of the Acquisition of Property Act to acquire "compulsorily a piece of land being the Farm called Molopo Ranch together with improvements thereon including livestock". The respondents challenged the acquisition by way of application to the High Court especially the validity of the notice and sought that it be set aside. They contended that the Acquisition of Property Act gave power to acquire immovable property only. Since the notice covered both immovable and moveable property it was *ultra vires* or void. On appeal it was held that the Acquisition of Property Act empowered the Government to acquire immovable property only, Government was incompetent to acquire moveable property.

358. Rights relating to immovable property are governed by the Land Tenure System. According to the Land Tenure System in Botswana there are three types of land, state land, tribal land and freehold land.
359. The relevant legislation pertaining thereto is:
- The State Land Act, CAP 32:01
  - The Tribal Land Act, Cap 32:02
  - The Tribal Territories Act, Cap 32:03
  - The Deeds Registry Act 33:02
360. Free hold land is held in perpetuity under a deed of transfer. The owner is free to sell, lease and mortgage the property to citizens and non citizens without any restriction. No time limit is set on this type of title. It is however no longer possible to obtain free hold title of land presently belonging to the State, as land held by the State is allocated in terms of Deeds of Fixed Period State Grant.
361. In terms of the State Land Act, Deeds of State Grants were issued in terms of which the holder of the deed for all intents and purposes became the full owner in perpetuity of the property. He or she is also entitled to sell, lease or mortgage their properties to citizens or non-citizens and there is no time limit to this kind of title. Deeds of this nature were discontinued in the 1970's.
362. This is the most common form of tenure of state land. Deeds of Fixed Period State Grant are issued in terms of which absolute rights 'ownership' over the relevant property are granted by the State, subject to compliance with the development covenant in the Deed, and for a limited period, usually 50 years or 99 years.
363. Until the development covenant is complied with, the holder of the deed may lease or mortgage the property but he is not permitted to transfer the land except to the State.
364. Deeds of this nature specify that upon expiry of the grant period, the property will revert back to the State without any compensation being paid, whether in respect of improvements there on or otherwise.

365. The Certificate of Rights was introduced in the 1970s to provide a secure tenure for low income earners in urban areas. The idea was to assist the poor with simplified affordable secure tenure which did not require costly title registration process. Under this title the plot holder has the usufruct rights while the state retains ownership of the plot. The plot is inheritable, maybe pledged, ceded, assigned and transferred with the consent of the local authority. It can be converted to 99 year FPSG.
366. In the villages land is allocated by the Land Boards under the Tribal land Act. In these areas the land is often referred to as communal land and it comprises of about 71% of the country's land. The residential land is allocated freely through a customary grant. Under this system land is allocated for residential, grazing and arable farming. The other form of allocation in these areas is common law lease grant. Under this grant residential plots are allocated for 99 years, commercial and industrial for 50 years. Land allocated under this system is also easily hypothecated.
367. Government has also introduced leasehold tenure for commercial farms. This is usually practised where temporary agreements are made between the lessor and the lessee. It can also be registered under the Deeds Registry Act and easily hypothecated.

### **ARTICLE 15 - Right to Work Under Equitable and Satisfactory Conditions and to Receive Equal Pay for Equal Work**

368. The Government is the largest employer...
369. The Government has put in place measures aimed at promoting the right to work, just and favourable conditions of work; right to form and belong to independent trade unions.
- The Employment Act provides...
  - The Labour Relations Act provides...
  - The Industrial
  - The Graduates Employment Program
  - The Internship Program
370. Children's work activities in Botswana are categorised into:

'Child Work'; 'Child Labour'; and 'the Worst Forms of Child Labour' (WFCL).

371. Child work is work that is not harmful and can be beneficial to the development of the child as well as benefiting their family and community.

372. Child labour is work that is exploitative or harmful because it is likely to be hazardous, to interfere with the child's education, or to be detrimental to the child's health or physical, mental, spiritual, moral or social development.

373. WFCL which includes commercial sexual exploitation of children such as children that have been prostituted, children being used by adults to commit crimes and children engaged in very hazardous work.)

374. In 2005/2006 the Central Statistics Office conducted a Labour Force Survey which incorporated a module on children. This produced information about children's work and child labour.

- The total number of children (aged 7-17 years) engaged in economic activity is estimated at 38 375, out of a total of 427,977 children of that age group.

375. The report used three different approaches to characterize child labour:

- Hours related (which identifies children working excessive hour at all forms of work)
- Schooling related (which identifies children whose work causes problems in their attendance or performance at school; and
- Hazard related (which identifies children exposed to any of range of hazards at work).

376. In relation to Child Labour the study revealed that:

- Overall 7.7% of children aged 7-17 year are in hours related child labour, with an overall rate of 8.7 %, for boys and 6.6% for girls.
- For boys, the rate is highest 10.9% among those aged 12-13 years, while for girls the rate peaks at 7.6% for those aged 15-17%years, with a very similar rate (7.5%) for those aged 12-13 years.

- The rate is lowest for the youngest age group (7.6%), while for girls it is lowest for the 14 year olds. For boys and girls combined, hours related child labour peaks in the age group 12-13 years (9.2%), and is lowest for the youngest children (6.8%).

## **ARTICLE 16 - Right to Health - Physical and Mental**

377. In order to promote the right to life, in the early 1970's Government adopted a primary healthcare strategy which it has managed to implement and improve upon.

378. Health Care delivery is anchored on the Primary Health Care strategy, in line with the Alma-Ata Declaration of 1978, adopted at the International Conference on Primary Health Care, and which expresses the need for urgent action to protect and promote the health of all the people of the world.

379. Between independence and 2002 the number of health centres has increased from 100 to 1426 while improvements and infrastructure saw life expectancy at birth rising from 46 years in 1966 to 65.3 years in 1991.

380. In an endeavour to provide accessible and affordable healthcare, health service provision in Botswana is currently at a nominal fee for citizens and more than 80% of the population is within a five kilometre radius from the nearest health facility.

381. Significant strides have been made in the prevention and control of communicable diseases such as Tuberculosis (TB), malaria, HIV/AIDS, childhood diseases such as polio, tetanus, and measles.

382. The healthcare strategy has seen the following measures being put in place to address emerging health needs and problems :

- Monitoring the quality of water supply in towns and rural areas thereby reducing the risk of diseases such as cholera, typhoid, etc. These diseases continue to claim lives in the region today, while in Botswana the country has not had outbreaks in recent years as a result of safe water supply;

- A good child welfare program is in place: implementation of an Expanded Program on immunization against preventable childhood disease has resulted in immunization coverage of over 90%. The growth monitoring and infant feeding program of children under 5 years has resulted in a decline of malnutrition to 5% while the prevalence of severe malnutrition has decreased to 1%. As a result of these initiatives, infant mortality has decreased from 56/1000 live births to 48/1000 live births due to wide availability of the Prevention of Mother to Child Transmission (PMTCT) program.
- weights of children under 5 years of age are monitored monthly and appropriate measures are taken in instances where the child is malnourished
- Maternal and Child Health Care including Family Planning: Through the safe motherhood initiative, maternal mortality rate at health facility has decreased from 175/100000 in 2004 to 167/100000 in 2006. A good family planning program has resulted in a decline in teenage pregnancies.
- Prevention and control of major communicable diseases such as malaria and TB has resulted in the reduction in the number of malaria cases from 72000 to below 34000 in 2007. In 1989 the TB notification rate was 202/100000 population, increasing to 649/100000 in 2002 due to emergence of HIV/AIDS epidemic and later declining 511/100000 in 2006 due to wide availability of Anti-Retroviral Therapy (ARV) and Isoniazid Prevention Therapy (IPT). IPT was initiated for HIV positive patients to prevent them from developing active tuberculosis, which is the major cause of mortality especially among patients with depleted immune systems due to HIV.
- Other programmes that were introduced as a result of the HIV/AIDS epidemic are the Infant Feeding Programme ;
- Botswana has also been experiencing a steady increase of non-communicable diseases, namely: hypertension, cancers and diabetes (health statistics reports). Hypertension, which is a risk factor for cardiovascular disease, is the commonest cause of morbidity and mortality. Currently, the Ministry of Health (MOH) in collaboration with the World Health Organization is undertaking a study on hypertension,



diabetes and stroke among those aged 50 years and above. The results of this study will be useful in developing health policies regarding care of the elderly in respect of these diseases;

383. The conditions and procedures for providing psychiatric care are outlined in the Mental Disorder Act (Cap 63:02 in Section 5), which states that: "in order for a patient to be admitted in a mental hospital an application must be made to the District Commissioner by the wife or husband or other relative of the patient, or any other person who has attained the age of 21 years".

384. Patients detained at a mental institution fall into two categories:

- (a) Those who are detained under the Mental Disorders Act for civil patients; and
- (b) Those detained under the Criminal Procedure and Evidence Act for mentally abnormal offenders.

385. Health workers detain patients under the Mental Disorders Act if they:

- (a) Are suicidal, homicidal or in any way dangerous to self or others;
- (b) Have committed or attempted to commit a crime of serious nature;
- (c) Are unable to guard self against common physical dangers or look after self;
- (d) Require skilled medical attention or need care.

386. No person is detained in the institution or elsewhere simply on the grounds of being mentally disordered or defective except by virtue of the provisions of these Acts.

387. A Mental Health Board constituted under the direction of the President exists as an external measure to prevent abuse of patients. The Board visits each institution every six months and on each visit, members give personal observation to every patient and inspect every ward, kitchen and the places where patients are ordinarily occupied which in this case is the Occupational Therapy Department. The Board reports the results of its visits and inspections

to the Director of Health Services. The Board may be called upon by the Minister to make suggestions and observations as well as recommendations to the Director regarding the welfare of the patients.

388. It is also required by law that the Medical Superintendent of the institution must report annually to the Director of Health Services about the mental and physical condition of the detained patients.
389. The Board investigates any complaint raised by patients. In this regard, the Lobatse Mental Hospital recorded 10 formal complaints in the last 10 years and those were resolved at hospital management level and the Ministry of Health level. One proceeded to the Office of the Ombudsman and was resolved at that level. It should be noted that the Botswana Centre for Human Rights (Ditshwanelo) also advocates for the patients.
390. Patients have the services of a *curator bonis*. This is a mechanism used for the protection of a patient's property. The District Commissioner upon the issuance of a reception order appoints a *curator bonis* to safeguard the property of the patient and prevent alienation of the patient's property.

### **ARTICLE 17-Right to Education**

391. There is no legislation that makes basic education compulsory; however, in line with the Salamanca Statement and Framework for Action of 1994, the Government provides inclusive education to all children of school going age regardless of their differences.
392. In order to improve access and integration for children with special needs the Ministry of Education and Skills Development is developing an Inclusive Education Policy Framework. Such policy framework will respond to the diverse needs of the learners, such as physically challenged; learning difficulties; orphan-hood; child labourers, children from marginalised communities and gifted learners.
393. The posts of "Senior Teachers Advisors - Learning Difficulties" have been created at both primary and secondary schools with the aim of assisting teachers to address the diverse needs of learners.
394. The Botswana Government strongly believes that every child should have access to education. In the late 1980s, the Government introduced free

education for all in which Government paid for education. Parents were only expected to buy school uniform for their children. The policy was aimed at ensuring that all children of school-going age access education and are not hindered from doing so by inability to pay school fees.

395. In 2005 / 2003 the Government introduced school fees on a cost sharing basis at secondary education level and technical colleges. The fee paid only amounts to 5% of the total cost of education per annum per student. The cost sharing was recently revised in 2008 to introduce an income threshold by which households in need of assistance will be exempted from paying school fees.

396. A means test system is conducted to determine the eligibility or non eligibility for purposes of cost sharing. The means test is an assessment procedure to ensure that children from economically disadvantaged backgrounds are not denied the right to education. In this way the introduction of cost sharing will not hinder children from accessing education.

397. Primary education is provided free up to the level of standard seven. However, parents have to buy uniform and other school requisites for their children, while children from indigent families and the orphans are catered for by Government.

398. Government has made initiative to improve access to primary education by introducing 1 or 2 teacher schools. These kinds of schools are built in settlements where there are only 10 or more school going children.

399. The Government has also made secondary education more accessible. Currently there are 234 Government and Government aided secondary schools with the following transition rate (see table 3 below):

**Table 3: Transition Rate from Form 3 to Form 4**

<b>YEAR</b>	<b>TRANSITION RATES IN %</b>
1994/1995	28
1995/1996	30
1996/1997	36.5
1997/1998	No Junior Certificate Exams in 1997
1998/1999	46.3
1999/2000	48.1
2000/2001	49.1
2001/2002	50.8
2002/2003	50.63
2003/2004	51.76
2004/2005	50.62
2005/2006	61.03
2006/2007	63.10
2007/2008	66.08

400. The Government has made progress towards achieving universal access to primary education, which provides a strong base for achieving access to basic education. The Net Enrolment for children aged 6-13 has consistently been above 85% between 1994 and 2005. Over the same period, the Gross Enrolment Rate has always been above 100% due to the flexibility of the country's admission policy for children in difficult circumstances in particular those from Remote Area Dweller Settlement (RADS).

**Table 4: Government Institutions & their Enrolment**

Level	Number of Institutions	Enrolment (2008)
Primary Education	732	314 876
Secondary Education	234	162 809
Colleges of Education	6	2 577
Technical Colleges	7	2 626

401. The Ministry of Education and Skills Development had come up with a number of initiatives in order to promote inclusive education. An example of such includes the School Pastoral Policy which seeks to create an enabling learning environment for all learners with special education needs. The

Education System also provides psycho – social support to learners through the implementation of the guidance and counselling programme.

402. The Ministry also contributed to the attainment of equality between male and female learners. Its contribution has been through the following:

- In an attempt to achieve the goals of “Education for All”, education and training in Botswana aims at achieving equal access to education for both male and female learners. The Government of Botswana considers education a fundamental human right;
- The Ministry of Education and Skills Development has also developed an equal opportunities policy that is to ensure the promotion of equal opportunity for all the learner students, staff and community in aspects of institutional or professional life, and to ensure that no one is discriminated against or disadvantaged on the grounds of race, ethnic origin, religion, sex, disability, age, etc. The policy aims at increasing access to education for both females and males;
- Deliberate efforts have been made to encourage girls into the fields of science, technology and vocational education and training through career fairs and career guidance videos where female role models are used as resource persons. This has been instrumental in dispelling the myth that science and technology is a field for males;
- Sensitization workshops and training are run for teachers, instructors and lecturers to deliberately combat gender-based discrimination. This has resulted in an increased female representation in the intake for technical colleges;
- In the development of educational material and schools curricula, a selection criterion ensures that the pictures and language in the teaching/learning materials are gender neutral. Gender issues are also infused and integrated strictly across the curricula to sensitize and create an awareness of gender issues;
- Currently regulations are being reviewed with the intention of coming up with a policy that will facilitate an increase in the retention rate for girls in order to address the issue of girls being kept out of school by pregnancy. The idea is to assist them to improve their quality of life by allowing them

to improve their education. The review is even looking at ways of supporting the girls such that their academic performance is not negatively affected;

- Guidance and counselling programme is part of the curriculum for primary education to secondary education level. The programme aims to break stereotypes prevalent in career decision-making for boys and girls.

403. Efforts have also been made to ensure that schools across all levels provide a conducive atmosphere for psycho-social support which is vital in children's effective learning. The provision of teacher counsellors in schools across all levels has gone a long way in the attainment of this goal.

#### **ARTICLE 18 - Duty of the State to Protect the Family; Duty to Protect Rights of Women and Children and Eliminate Discrimination**

404. There is no definition of "family" or "home" in the law of Botswana. The family, as a basic unit of society, has seen many changes in Botswana. In the past, Botswana lived in extended families where members of the same kin stayed together. Due to the evolving socio-economic situation, this family structure is changing, particularly in urban settings where the emphasis is increasingly on nuclear units. More children are born outside marriage. Desertions and divorce rates have increased the number of single parents, especially female-headed families.

405. It suffices to note that there is nothing in the legislation pertaining to the protection of the family. However, the traditional system of settling disputes within families is still active to ensure the stability of the family unit. It is Government policy to ensure that working married couples employed in the public service are not posted to different working places.

406. The Government through the Ministry of Local Government is in the process of developing a National Policy on the Family. The policy formulation will be in line with the African Union Plan of Action on the family, which has set out its priority areas to include among other things; strengthening family relations, rights to protection of the family, rights duties and responsibilities etc.

407. The objectives of the National Policy on the Family include:

- a. Developing a definition of Family, taking into consideration the dynamics and the cultural perspectives of the family structure in Botswana.
- b. To identify programmes for family survival and cohesion
- c. To have a policy which will guide programming in family matters in line with the AU Plan of Action on the Family
- d. To develop structures that will be responsible for the implementation of the Family Policy.

408. Section 14 of the Marriage Act stipulates that:

*"no insane person who is incapable of giving consent to a marriage and no person below the age of 18 years may marry".*

409. Section 15 provides that:

*"no minor or person below the age of 21 years not being a widower or widow may marry without the consent in writing of his or her parents or guardian".*

410. There are, however, remedies available in instances where consent was not granted. Section 15 (i) provides that where such consent is given by one parent but refused by the other parent, the minor may apply to a Magistrate Court or to the High Court for consent to the marriage and such matter shall not, for purposes of such application, require the legal assistance of his/her legal guardian.

411. Section 15 (iii) provides that where a minor has no parents or guardian, an administrative officer in the district in which such minor resides may give an order in writing authorizing the marriage of such minor.

412. There are two forms of marriage, that is, marriage executed under civil law and that under customary law. Although not legally recognized under the two systems as a form of marriage, cohabitation is also recognized under the two systems as a union that brings about rights and obligations akin to those of

married persons. This is more pronounced in cases of custody, maintenance and inheritance. See para below!!

413. The Marriage Act regulates the solemnization and registration of marriages, but does not apply to marriages contracted under customary law. Common law marriages can be contracted in or out of community of property, on the other hand; those contracted under customary law are automatically in community of property. Under customary law polygamy is not prohibited.

414. Nothing in the legislation and in practice prohibits marriage on account of nationality, religion, race or creed.

415. The Marriage Act also makes provision for customary, Muslim, Hindu and other religious marriages to be recognized. Section 22 provides that nothing contained in the Marriage Act shall be taken as in any manner affecting or casting doubts upon the validity of any customary, Muslim, Hindu or other religious marriages.

416. Section 23 (1) stipulates that:

*"Parties to a customary, Muslim, Hindu and other religious marriage shall ensure that their marriage is registered within two months of contracting such marriage."*

417. Failure to register such marriages is an offence under Section 23 (4) which provides that:

*"Any person who contravenes the provisions of Sub-section (1) shall be guilty of an offence and liable to a fine not exceeding BWP 800 (\$160) or to imprisonment for a term not exceeding one year, or to both."*

418. The right to marriage does not exist in the following situations: intermarriage of persons who are related; or a person has already contracted marriage under the country's Marriage Act unless the previous marriage is dissolved by death or court or annulled by sentence of a court.

419. The Marriage Act provides for certain requirements and procedures for entering into a valid marriage. Section 3 stipulates that:



*"no marriage shall be valid unless within a period of not more than 3 months previous to its solemnisation bans have been published or a special licence has been obtained".*

420. Section 7 (1) provides that:

*"no marriage shall be valid unless solemnised by a marriage officer".*

421. Section 7 (2) provides that the following shall be marriage officers:

- Administrative officers;
- Any minister of religion or person holding a responsible position in any religious denomination or community, whom the Minister has by notice published in the *Gazette* appointed a marriage officer.

422. Cohabitation of men and women without formal marriage exists in the country. This has caused problems especially when couples separate or one dies and a dispute arises concerning the division of property. The traditional attitude in most areas has always been that disputes between lovers who are not married cannot be heard in the *kgotla* (Customary Court). Where one of the parties dies, relatives often dispute over the property. It is generally assumed that most valuable property belonged to the man, and women are often told that since they were not wives they have no rights to inherit. Property disputes between cohabitants are increasingly coming before the Customary Courts. Some Customary Courts appear to have revised their earlier tendency to dismiss cohabitation cases.

423. In *Moswelakgomo v. Kekgaretswe (unreported)* the parties had been living together for 26 years when their relationship came to an end. Although they had never married, they had had a son and built a house together. The woman argued that despite the fact they had never married, she had performed certain duties within the household that indicate that the appellant took her as his wife. Among these duties was the fact that she had played major roles in burying his maternal uncle, paternal uncle and his parents, who had died during that time. She said that the reason for the break-up of their relationship was that the man had now found another woman with whom he wanted to spend his life. The man on the other hand stated that his elders had never liked the plaintiff and that he did not even know her parents. He further said that the

plaintiff had grown old while living with him and that he would not get back together with her, but would rather let her live in the house. The court then held that the plaintiff and her child would live in the house. The man then changed his mind and appealed to the Customary Court of Appeal against the decision, saying that it was shocking that the court actually gave his house to a concubine. The court dismissed the appeal on the basis that the relationship between the parties had not been one of concubinage but a closer one, and that the appellant had not built his house on his own so it had not really been his house. The court therefore decided that the way the property had been divided had been the most fair to parties.

424. The Matrimonial Causes Act regulates matters pertaining to the dissolution of marriage. It does not apply to marriages contracted under customary law. Any spouse to the marriage can bring an action for divorce on grounds specified by the Act. Matrimonial domicile, according to the laws of Botswana, is that of the husband at the time of marriage. Section 13 (1) of the Matrimonial Causes Act deals with property rights of spouses. It provides that:

*"Any court which tries an action for divorce or for judicial separation under this Act shall also have jurisdiction to make an order:*

- b) *Determining the mutual property rights of the husband and the wife;*
- c) *Concerning the custody, guardianship and maintenance of any minor children born to the marriage subsisting between the parties; and*
- d) *Varying an order made under paragraphs (a) and (b)."*

425. Section 28 (1) of the Act provides that:

*"In any proceedings for divorce, nullity or judicial separation, the court may from time to time, either before or at or after the decree or declaration, make such provision as appears just with respect to the custody, maintenance and education of the children, the marriage of whose parents is the subject of the proceedings."*

Sub-section (2) further makes provision that:

*"On any decree of divorce or declaration of nullity of marriage, the court shall have the power to order the husband, and, on a decree of divorce, where the decree is a decree of divorce and is made on the ground of the husband's insanity, shall also have power to order the wife to secure for the benefit of the children such gross sum of money, or annual sum of money as the court may deem reasonable, provided that the term for which any sum of money is secured for the benefit of a child shall not extend beyond the date when the child attains 21 years of age."*

426. Young persons are protected by the Children's Act. The Act defines a "child" as any person who is under the age of 14 years. The Citizenship Act defines a "child" as including a child born out of wedlock.
427. Botswana has never been involved in armed conflicts and therefore has never had to conscript in its army any person below the age of 18. Furthermore, the Botswana Defence Force Act, Section 17 (2), provides that "a recruiting officer shall not enlist a person under the apparent age of 18 years". As indicated earlier in this report, any person below the age of 18 years cannot legally enter into marriage.
428. Order 7, rule 2 (1), of the High Court rules stipulates that a person under the age of 21 years may not bring or make a claim in any proceedings except by his guardian and may not defend, make a counterclaim or intervene in any proceedings except by his guardian.
429. Section 13 (1) of the Penal Code provides that a person over the age of 8 years but before the age of 14 is not criminally liable unless it can be proved that at the time he had the capacity to know that he ought not to do the act or make the omission. Section 13 (3) provides that a male person under the age of 12 is incapable of having carnal knowledge.
430. There are certain rules that apply to the employment of children. Section 105 (1) states that "subject to the other provisions of this Section, no child shall be employed in any capacity whatsoever". In cases where children are employed, the following rules apply:
- a) Section 105 (2) allows a child who has attained the age of 14 years and is not attending school to be employed on light work

not harmful to his health and development. This employment can only be done by a member of the family of such child or if the work is of a character approved by the Commissioner. Such a child shall not be required or permitted to work more than 6 hours a day or 30 hours a week;

- b) Section 105 (3) provides that a child who has attained the age of 14 years who is attending school may, whilst on vacation from school, be employed on light work not harmful to his health and development of a character approved by the Commissioner for not more than five hours a day between 6 a.m. and 4 p.m.;
- c) Under Section 105 (4), no child shall be required or permitted, in the course of his employment, to lift, carry or move anything so heavy as to be likely to endanger his physical development.

Any violation of the above Sections shall be an offence under the Act, with various penalties.

431. Sections 106 and 107 prohibit the employment of children or young persons (defined under the Act as a person who has attained the age of 15 years but is under the age of 18 years) on underground work or any kind of work during the night. There are however exceptions to the prohibition of young persons working at night. Section 17 (1) and (2) a young person may be employed on work during the night in the case of an emergency which could not reasonably have been foreseen and prevented or where he is so employed under a contract of apprenticeship or indenture to learn. Section 108 (1) specifically prohibits the employment of young persons on any work which is harmful to his health and development, dangerous or immoral.

432. Section 14 of the Act defines a child in need of care as a child who:

- a) Has been abandoned or is without visible means of support;
- b) Has no parent or guardian who does not or is unfit to exercise proper control over the child;
- c) Engages in any form of street trading, unless he has been deputed by his parents to help in the distribution of merchandize of a family concern;

- d) Is in the custody of a person who has been convicted of committing upon or in connection with a child any offence referred to in part IV; or
- e) Frequents the company of an immoral violent person, or is otherwise living in circumstances calculated to cause or conduce to his seduction, corruption or prostitution.

433. Section 15 (1) outlines obligations of the society to a child in need. It provides that: "where any person observing any child has reasonable cause to believe that the child is in need of care, he shall immediately make a report therefore to the social welfare officer or a police officer in the district in which the child is resident".

434. There are however several statutes that protect the interests and welfare of the children and these include amongst others the Children's Act of 1981 which is currently under review to make it more elaborate in protecting children rights and the Adoption Act.

435. The Children's Act provides for fostering of children who are in need of care. These are children who;

- Have been abandoned
- Have lost one or both parents
- Without means of survival.

436. The Adoption Act is another piece of legislation that protects the rights of a child who is without means of survival, lost one or both parents or have been abandoned.

437. Section 6 (1) stipulates that "a prescribed notice of every child born alive or of any stillborn child born alive or of any stillborn child shall be made within sixty days of such birth or stillbirth to either a district registrar or a registration officer by:

438. The father or mother of the child or by the occupier of the dwelling in which the child is born in the case of a birth or still birth that occurs outside a health institution;

439. The medical practitioner or midwife in charge in the case of a birth or still birth that occurs in a health institution.
440. Section 6 (2) provides that "In case of a child born out of wedlock, no person shall be required to give information under this Act as the child's father."
441. The exploitation of children for any reason is a great concern for the Government of Botswana. To protect children from economic exploitation and to force compliance with the ILO Conventions, several legislative and administrative measures are applied.
442. Botswana has ratified the following ILO Conventions:
- Minimum Age Convention, 1973 (No. 138);
  - Worst Forms of Child Labour Convention, 1999.
  - The Employment Act is being amended to align it with the ILO Conventions ratified.
443. Section 146 of the Penal Code states that any person who indecently assaults a girl below the age of 16 years is guilty of an offence and is liable to imprisonment for a term not exceeding 7 years, with or without corporal punishment, even if consent was obtained from the victim. Any person who indecently assaults a boy under the age of 14 years is guilty of an offence and is liable for a prison term of a maximum of 7 years (Section 166 of the Penal Code).
444. As stated in Botswana's initial report to the Committee on the Rights of the Child, under Section 34, "professionals involved in child-related services such as teachers, social workers and the police have been sensitized to working with children who have been abused and reporting cases of which they become aware. The introduction of guidance and counselling in schools has further provided children with an avenue for reporting abuse and obtaining support at school".
445. NGO's have joined the drive to assist children in preventing abuse and exploitation. Concerted efforts of organizations such as Child Line Botswana have been crucial in service provision, advocacy and community mobilization.

446. The Government has the following social security programmes:
- The Old Age Pension Scheme is eligible to Batswana who are age 65 years and above, and there are 36,875 registered Old Age Pensioners, each receiving P220.00 per month. This is an entitlement to all Batswana who have attained the age of 65 years. It is not means tested; and
  - World War II Veteran Scheme is eligible to Batswana who fought in the second world, their surviving spouse or their children who are below the age of 21 years. There are 3,224 World War II Veterans each receiving P359.00 per month.

#### **ARTICLE 19- All people shall be equal**

447. In Botswana all peoples are guaranteed equal human rights. (see discussion at Article 3 for more detail)
448. Minority groups enjoy all the rights under the laws of the country. They have the right to practice their own culture, to profess and practice their own languages.
449. In both government and private institutions employment opportunities are based on merit. Access to social services is also available to every person without discrimination.
450. Certain minority groups were not represented in the *Ntlo Ya Dikgosi* and in some quarters this was viewed as being discriminatory. Hence, the Government of Botswana appointed a Commission of Inquiry to look at the constitutional provisions that were alleged to be discriminatory. The Commission's findings were that the Sections were indeed discriminatory and needed to be amended to make them tribally neutral. There was also a High Court decision in the case of *Kamanakao and Others v. The Attorney General 2002 BLR 110 (HC)* where the High Court held that the definitions of the words 'chiefs' and 'tribe' contained in the Chieftainship Act Cap 41:01 were too

restrictive and discriminatory, and as such offended against Section 3 (a) of the Constitution. The High Court recommended that the Chieftainship Act be amended by redefining those words in order to accord equal treatment to all tribes in the Country. The Chieftainship Act (now referred to as the Bogosi Act) and the Constitution were consequently amended to remove discriminatory provisions.

451. Currently there are four minority group associations registered with the Registrar of Societies and these are the Society for the Lentswe la Batswapong, Kamanakao Association and Reteng. The main objectives of these associations are to promote, maintain, protect and develop their languages and cultures.

#### **ARTICLE 20- Right to Self Determination**

452. Botswana maintains a democratic form of Government through a system of free elections held every five years. Section 67 (b) of the Constitution provides that the voting age is 18 years. The voting age used to be 21 and was changed through Constitution (Amendment) Act No. 18 of 1997.

453. Section 61 of the Constitution provides that a person shall be qualified to be elected as a member of the National Assembly if he:

- a) Is a citizen of Botswana;
- b) Has attained the age of 18 years;
- c) Is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered; and
- d) Is able to speak and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

454. The language requirement for election to the National Assembly exists because English is the official language of the country. In reality, both English and Setswana are accepted and spoken interchangeably in Parliament as one is the official language and the other is the national language.



455. According to Section 62 (1) of the Constitution, a person shall be disqualified to be elected as a member of the National Assembly if he has been certified insane or of unsound mind, has a death sentence imposed on him, or has been declared insolvent in any part of the Commonwealth, or being under a sentence of imprisonment exceeding six months.
456. In terms of Section 58 (2) (b), provision is made for four specially elected members of the National Assembly. They are nominated by the President and elected by the National Assembly. There has been no established pattern in the election of specially elected members. In the past the election of special elected Members of Parliament has been used to introduce special skills to the National Assembly.
457. The Government's commitment to the right of self-determination is also reflected in the willingness of the Government to involve the populace in determining issues affecting them especially through Commission of Inquiries and Referenda.
458. For instance, there was the Balopi Commission, which was set up in 2000 by the President in response to a motion passed by a Member of Parliament in 1995 calling for an amendment of Sections 77, 78 and 79 of the Constitution to make it tribally neutral. The Commission undertook an extensive tour of the country in order to consult with a broad spectrum of Botswana society. Wide coverage was given to the Commission through the media. Submissions, both written and oral, were received from people of varying backgrounds such as House of Chiefs, traditional leaders, elderly statesmen and politicians, academics, youth and cultural groups. The report was submitted to the President in November 2000. Its finding was that Sections 77, 78 and 79 of the Constitution should be amended to accommodate other tribes. Following a White Paper, a Bill was passed to enact the Bogosi Act.
459. The Government of Botswana has, through consultation with the general public and all stakeholders produced a national manifesto for the people of Botswana. It is commonly referred to as Vision 2016. This is a statement of long-term goals and a set of strategies that will meet these goals. Vision 2016 proposes a vision for Botswana. It is worth noting that one of these goals is that by 2016 Botswana will be an "Open, Democratic and Accountable Nation". "Botswana will be a community-oriented democracy, with strong decentralized

institutions.” This is an important indication of the Government’s commitment to the right of self-determination.

### **ARTICLE 21- right to free disposal of wealth and natural resources**

460. Botswana is rich in mineral deposits. Diamond, coal, copper and nickel are mined in large quantities. Other minerals found in the country are gold, soda ash and salt.
461. Botswana maintains a free market economy where any person with the right to property or resources is entitled to disposition thereof. At the same time, Botswana retains its prerogative to regulate the exploitation, export of natural resources and impose duties thereon.
462. Apart from its mineral resources Botswana’s major comparative advantage is its diverse and abundant wildlife and natural resources. These include amongst others; the Grass plains and Salt Pans of Makgadikgadi, Thamalakane River, Chobe River Plains, Game Reserves, National Parks, the Kgalagadi desert and the Okavango Delta. These resources attract tourists globally and strongly compliment the global tourism trend towards greater environmental awareness and the desire to experience nature in its original state.
463. This state of affairs has resulted in primary and secondary job creation as well as business establishment across the tourism sector such as transport, accommodation, tour operations, social and personal services such as safari lodges.
464. Just like revenue accrued from all other sources of government revenue, revenue made from all natural resources goes into a centralised government coffers and is re-distributed through the annual budget that allocates funds to all sectors of the economy.

## **ARTICLE 22 –Right to Economic, Social and Cultural Development; Duty to Ensure Exercise of Right to Development**

### *Right to cultural and social development*

465. Botswana has not acceded to the International Covenant of Economic, Social and Cultural Rights. Notwithstanding this, Botswana has strived to deliver on internationally accepted social and cultural norms. Botswana has put in place the following social safety nets;

- The Destitute Programme which entails assessment and registration of people who are needy. These people are assisted with a food basket that is meant to meet the nutritional food requirements for a human being per day for a month. In addition the beneficiaries are provided with a cash allowance of P81, 00 per month, clothing, and shelter and funeral logistics upon their passing on. There are 34,599 registered destitute persons, 28,487 Needy students and 713 needy children. The needy students are dependants of the destitute persons who are attending school while the needy children are those children who need care but not attending school.
- The Orphan Care programme which is implemented through the Short Term Plan of Action as an implementation strategy. The government is currently developing a policy on orphans and vulnerable Children which will be used as a long term strategy. The orphans are provided with a food basket on monthly basis. The basket is designed such that it determines the price. This is to ensure that beneficiaries receive all items in the basket irrespective of price. In addition the orphans are provided with shelter where there is need, school uniform and private clothing. There are 49, 429 registered orphans.
- Community Home Based Care is a programme meant to provide for people who suffer from terminal illnesses and cannot do anything for themselves as a result of their poor health status. It is a means tested programme, therefore only people who cannot afford to buy the food are assisted. The food basket is dependent on the condition of their ailment; it therefore differs from one patient to the other. The food basket also determines the price and ranges between P500.00 to P1500.00. There are 3,552 patients registered and covered under this programme.

- Remote Area Development Programme launched was 1978 and reviewed in 2003. The programme caters for people living in remote areas where there is very little development or economic development. The Remote Area Settlements are provided with social services such as schools, health facilities, portable water, access roads, student are supported by government with boarding facilities school uniform, and transport to and from school at the beginning and end of the term. The beneficiaries under this programme are also provided with livestock in addition to all the other benefits provided under the destitute programme. There are 179 registered beneficiaries under this programme who are supported with livestock. The programme focuses on ensuring that beneficiaries achieve sustainable social and economic development and that they benefit equally from rapid economic development of the country. The Remote Area Development Programme is implemented in 64 settlements covered in Southern, Kgatleng, Kweneng, North West, Ghanzi and Kgalagadi District council.
- Economic Promotion Fund whose aim is to create employment opportunities for Remote Area Dwellers. The scheme funds productive and business oriented activities including game ranching, harvesting and utilisation of veld products as well as arable agriculture.

466. The Government adopted the National Strategy for Poverty Reduction (NSPR) that sets poverty reduction as its overarching goal. It seeks to do this by fostering sustainable livelihoods, expanding employment opportunities and improving access to social investment. The country also has a number of policies and programmes to address vulnerable groups such as the unemployed, poor, destitute and marginalised, various social welfare and safety-net programmes.

467. The strategy provides the policy and implementation framework for the realisation of the Millennium Development Goals (MDGs) targets and the Vision 2016 ideals. The strategic pathways for poverty reduction chartered in the NSPR include:

- a) the promotion of broad-based economic growth;
- b) enhancing access to basic quality education,

- c) health and nutrition for the poor;
- d) enhance effective response to HIV/AIDS (reducing the aggravating effects of the disease on employment and productivity);
- e) participation of the poor in the development process through a decentralised planning process with augmented capacity of Local Government institutions to provide for poverty reduction at the local level; and
- f) Strengthening the national development management capacity for effective poverty reduction.

468. The Government through the Rural Development Council, supported by the multi-sectoral committee on poverty reduction supervises the implementation of the NSPR including coordination, monitoring, and evaluation of different poverty alleviation policies and programmes.

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#### *Right to economic development*

472. The Arable Land Development Programme (ALDEP) was first introduced in 1982. The programme was geared at increasing productivity on small scale farming by providing agricultural inputs such as draft power, fencing material and cultivators. The Accelerated Rain-fed Agricultural Programme (ARAP), was established to assist farmers with cash subsidy. They were to amongst others, spend the money on weeding, destumping and ploughing. The Services to Livestock Owners in Communal Areas (SLOCA) offers farmers borehole and drilling subsidies, free vaccines and drugs, free artificial insemination and price supported stock-feed.

473. Botswana Citizen Entrepreneurial Agency (CEDA) was set up to replace the collapsed Financial Assistance Policy (FAP), a Government initiative meant for providing financial assistance to local entrepreneurs. CEDA plays a critical role in the economy by providing entrepreneurship development, through funding, training and mentoring. Financial assistance is provided for starting, expanding and acquiring business.

474. Having realised that Botswana's population (67.6%)<sup>7</sup> is dominated by young people, who are most affected by a variety of challenges, the Government came up with the initiative of introducing CEDA Young Farmers Fund (CYFF). The fund targets exclusively young Botswana citizens aged between 18-35 years and wholly citizen owned companies by directors aged 18-35 years.

475. It was established to reverse some challenges facing Botswana such as poverty, unemployment, rural-urban migration, low participation of youth in agriculture, low contribution of agriculture to GDP. Young Botswana citizens are accorded improved access to finance and entrepreneurial training so as to enable them to engage in sustainable agricultural activities better equipped with the requisite skills for managing farming businesses.

476. The major objectives of CYFF are to:

- Foster youth enterprises in agriculture through effective pursuit of opportunities in the agricultural sector.
- Encourage the development of competitive and sustainable youth enterprises by rewarding competitiveness and discouraging inefficiency.
- Create sustainable employment opportunities for young people through the development of sustainable agricultural projects.
- Promote the development of vertical integration and horizontal linkages between enterprises and primary industries in agriculture.
- Minimize migration of young people to urban centres through creation of job opportunities in rural areas.<sup>8</sup>

477. Financial assistance provided by the Young Farmers Fund is in the form of loans at subsidized interest rates. The loan may be used for infrastructure development required for the project or to cover working capital or both. With regards to training, a project specific training is considered critical for the success of the project. In this respect, requisite training is provided prior to the disbursements of the loan.

478. The Botswana Development Corporation (BDC) provides financial assistance to investors with commercially viable projects. The Corporation also supports projects that generate sustainable employment for Botswana and add to the skills of the local workforce and encourages citizen participation in

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<sup>7</sup> [www.ceda.co.bw](http://www.ceda.co.bw)

<sup>8</sup> *Ibid.*

business ventures. Furthermore, BDC supports the development of viable businesses which perform one or more of the following functions:

- Use locally available resources.
- Produce products for export or to substitute imports.
- Foster linkages with the local industry.
- Contribute to the development of Botswana's resources and overall economy.<sup>9</sup>

479. BDC also provides loans to projects that promote economic development to Botswana. It finances agricultural, property (commercial, industrial and residential), industrial and tourism projects.

## **ARTICLE 23 –Right to National and International Peace**

### *National peace*

480. Botswana is a multi-party democracy, in which there is equality of franchise; freedom of speech and assembly; secret ballot, and rule by elected representatives.<sup>10</sup> The country's ability to hold successive elections<sup>11</sup> and maintain stable political environment has guaranteed peace through out the years.

481. Government of Botswana accords the citizens the right to international peace by having security and law enforcement agencies, and also through implementation of international and regional agreements that Botswana is party to.

482. It should also be noted that whereas previously human rights law was taught as part of a constitutional law course at the University of Botswana, human rights law has now been introduced to the bachelor of law degree programme as a separate course. It is also taught at diploma level. The Botswana Police College has also introduced a human rights programme.

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<sup>9</sup> See [www.bdc.bw](http://www.bdc.bw)

<sup>10</sup> See Siphambe et. al (2006) *Economic Development of Botswana - Facets, Policies and Prospects*, Bay Publishing, p20.

<sup>11</sup> See paragraph 52 in part I of this report.



483. There are armed forces in Botswana and these include; Botswana Police Service (BPS), Botswana Defence Force (BDF) and the Prisons department. These were established to maintain peace and, law and order as well as to safeguard the security of the country. Department of Intelligence Services (DIS)<sup>12</sup> was recently established to enhance state security.
484. The Police service has created Special Constables posts to augment its manpower in its effort to combat crime and maintain peace and security.
485. The Prisons department has a rehabilitation programme aimed at transforming prisoners into responsible citizens. Upon their release are re-integrated into the society and with the expectation that they will cease to be a threat to national peace and security.

### *International peace*

486. Botswana maintains friendly diplomatic relations with most African nations, as well as with many Asia pacific, Arab, European and American nations. Further to that Botswana is also member to various international organisations.
487. Botswana's foreign policy towards Southern Africa has been that of promoting political and economic integration. Botswana has participated in regional peace mission such as
488. United States-Botswana relations have been warm since independence, with the United States viewing Botswana as a force for stability in Africa. The United States has had a significant presence in the country, providing development aid since the 1960s. In December 1997, after 30 years, the U.S. Peace Corps ended its mission in Botswana, leaving behind a legacy of assistance in education, business, health, agriculture, and the environment. The United States Agency for International Development (USAID) also closed out its programs in 1996, although as of 2000 Botswana continues to benefit from USAID's initiative for southern Africa as a whole.<sup>13</sup>

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<sup>12</sup> See part I of this report on DIS

<sup>13</sup> <http://www.nationsencyclopedia.com/World-Leaders-2003/Botswana-FOREIGN-POLICY.html>

489. The country is a member of the UN, where it established a reputation for consensual, constructive participation during its term on the Security Council. Botswana tends to exhibit solidarity with the African consensus on most international matters and was a member of the so-called "front-line states" that gave crucial support to the independence movements in Zimbabwe and Namibia, as well as in the opposition to apartheid in South Africa.
490. The strengthening of peace and solidarity is implemented through the Refugee Recognition and Control Act. Botswana continues to host refugees from across the African continent. (See article 12)
491. Botswana is an active international player, evidenced by its growing representation around the world. Botswana is party to the main human rights instruments:

#### **ARTICLE 24 –Right to Satisfactory Environment Favourable to Development**

492. Botswana began her economic development by adopting a private sector led model. Even though the country chose a private sector led economic development model, during the early years of its economic development, it created many public enterprises that were meant to drive the process while the private sector remained at a nascent stage.<sup>14</sup>
493. Botswana is committed to creating an environment which is favourable to development. It is relatively peaceful and has practiced fiscal discipline and sound management. As such, throughout the years, it has endeavoured to promote a sustainable and diverse economy. Development activities in Botswana are carried out through five (5) year National Development Plans (NDP) first introduced in 1966. The development strategy based on the notion of free enterprise saw the state being a facilitator rather than direct participant.
494. The Government has managed the country's resources prudently through sound macroeconomic policies. It has kept its recurrent expenditure within its revenue, allowing for investment in human and physical capital. Economic growth can be ascribed to mineral and beef exports, tourism and donor aid.

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<sup>14</sup> Siphambe *op.cit.*, p20

495. The Government's revenue from diamonds, as well as profits from large foreign exchange reserves of the Bank of Botswana, have largely cushioned Botswana from the recessions that have buffeted most countries in the region. Foreign exchange reserves are, in per capita terms, one of the highest in the world.
496. The Botswana Export Development and Investment Authority (BEDIA) is an autonomous private sector led organisation mandated by an Act of Parliament (1997) to encourage, promote and facilitate the establishment of export-oriented enterprises and selected services which will result in economic diversification, rapid economic growth and creation of sustained employment opportunities. The Authority is also entrusted with the task of identifying market outlets for locally manufactured products and construct factory building for setting up of manufacturing enterprises. BEDIA also works closely with the Government of Botswana to ensure that the country has a conducive climate for investment.<sup>15</sup>
497. Botswana Agricultural Marketing Board (BAMB) is a Government Public Enterprise which was established by an act of Parliament, No. 2 of 1974. Its mandate is to buy all scheduled produce from local producers operating either as a wholesaler or retailer, whilst ensuring that adequate supplies exist for sale to customers at affordable prices. It acts as a one stop agricultural service to the farming community and customers alike: buying, packaging, processing and marketing locally produced grains, pulses; selling a wide range of animal feeds, agricultural inputs such as fertilizers, seeds, pesticides and packaging materials. Its mandate encompasses the following:
- (a) to secure, for producers and consumers alike, a stable market for scheduled produce and ensure efficient and fair distribution thereof throughout Botswana at prices that are, in all circumstances, equitable, avoiding any undue preference or advantage;
  - (b) BAMB is allowed to import and export scheduled produce, as well as to arrange for the processing and sale of processed products.
  - (c) BAMB owns 20 branches across the country, but currently operates 11 branches and one milling plant in Pitsane. The Board has a total storage capacity in excess of 120,000 metric tons in the form of silos and warehouses. The Government of Botswana has contracted BAMB to manage the Strategic Grain Reserve (SGR) for national food security purposes.

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<sup>15</sup> <http://www.bedia.co.bw/>

498. The Government also set the Local Entrepreneur Authority (LEA) whose mandate is to promote and facilitate entrepreneurship and Small Medium Micro Enterprises (SMME's) development in pursuit of economic diversification. LEA provides a number of entrepreneurial and SMME development interventions to entrepreneurs and enterprises which enrol for its services. Among those interventions that LEA provides to its clients are:

- Provide business development services e.g. screening, business Local Entrepreneur Authority (LEA planning facilitation, training and mentoring.
- Identify business opportunities for existing & future SMMEs
- Promote domestic and international linkages, especially between SMMEs and Government, large business entities and other SMMEs
- Encourage exploitation of Government & large firm procurement opportunities
- Facilitate access to finance, standards, infrastructure, and changes in regulations
- Facilitate technology adoption & diffusion
- Promote general entrepreneurship and SMME awareness.<sup>16</sup>

499. Though Botswana has experienced extremely high rates of growth, it has also experienced high HIV/AIDS rates which hampered economic progress. In combating HIV/AIDS scourge over the past decade, a huge share of the national budget has been allocated to various programmes which money would have otherwise been used for other development initiatives.

500. However, Botswana saw a decline in new cases of HIV/AIDS since the introduction of ARV, PMTCT programmes and HIV/AIDS awareness campaigns. Although Botswana is considered a middle-income country, it is still faced with the challenge of sustaining the Anti-Retroviral treatment programme.

## **ARTICLE 25- Duty to Promote Respect of Rights under the Charter**

Botswana's duty to promote the respect of rights under the charter is entrenched in institutions set up to protect Human Rights such as courts of law, Parliament, the Police Service, the Office of Ombudsman to mention but a few. These institutions have not only been set up but they are given the respect and autonomy they deserve so that they can function effectively and efficiently. The country is also tolerant to Non-Governmental associations and other civic organisations such as Human Rights organisations and Trade Unions that serve to guard against abuse of Human Rights

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<sup>16</sup> [www.lea.bw](http://www.lea.bw)

either by the state, its citizens or any other persons who violates or attempts to violate rights of its citizens and other persons residing within the Botswana.

## **ARTICLE 26 - Duty to Guarantee Independence of Courts**

501. The judiciary consists of the Court of Appeal, High Court and Magistrate Courts. Section 95 of the Constitution provides that there shall be a High Court with unlimited original jurisdiction.
502. In terms of Section 95 (2) of the Constitution, judges of the High Court shall consist of the Chief Justice and such number of other judges as may be prescribed by Parliament.
503. According to Section 96 (1), the Chief Justice shall be appointed by the President and under Section 96 (2) other judges of the High Court are appointed by the President acting in accordance with the advice of the Judicial Service Commission. The President cannot appoint as judge anyone not so recommended by the Judiciary Service Commission.
504. According to Section 99 (2), judges of the Court of Appeal shall consist of the President of the Court of Appeal, and such number, if any, of Justices of Appeal as may be prescribed by Parliament and the Chief Justice and other judges of the High Court. In terms of Section 100 (1), the President appoints the President of the Court of Appeal and under Section 100 (2) other Judges of Appeal are appointed by the President on the advice of the Judicial Service Commission.
505. In terms of Section 104 of the Constitution, the power to appoint persons to the offices of magistrates shall vest in the President acting in accordance with the advice of the Judicial Service Commission.
506. The composition of the Judicial Service Commission is regulated by the Section 103 of the Constitution as amended by the Constitution (Amendment) Act No. 2 of 2001. The Commission consists of:
- (a) The Chief Justice who shall be the Chairman;
  - (b) The President of the Court of Appeal;

- (c) The Attorney-General;
- (d) The Chairman of the Public Service Commission;
- (e) A member of the Law Society nominated by the Law Society;  
and
- (f) A person of integrity and experience not being a legal practitioner appointed by the President.

507. There is also the Industrial Court whose judges are appointed by the President in terms of the Trade Dispute Act. In appointing Industrial Court judges, the President shall designate one such judge to be the President of the Industrial Court, and any other judges shall rank according to their dates of appointment.

508. The Commission is composed of independent individuals who are not members of the executive except for the Attorney-General. Members of the Commission are the Judge President of the Court of Appeal, the Chief Justice, a nominee of the Law Society, a member of the community and the Attorney-General.

509. Judges have complete security of tenure. Their tenure of office is guaranteed and protected by the Constitution. They are appointed to hold office permanently but subject to the mandatory retirement age of 70 years, (Sec. 97). A judge's position cannot be abolished while there is a substantive holder of the post. (Sec 95 (2). Section 97 (2) provides that a judge of the High Court can only be removed from office for serious misconduct and inability to perform duties of the court.

510. Remunerations of judges are protected by the Constitution. Judges salaries and allowances are paid from the consolidated fund and are prescribed directly by Parliament. (sec. 97 (2) and Sec. 101 (2). The salaries and terms of office of judges shall not be altered to their disadvantage during their service. (sec. 122 (3).

511. A judge can only be removed from office for inability to perform the functions of his office (Whether arising from infirmity of body or mind or from any other cause) or for misbehaviour (Sec. 97 (2). Judges can only be removed from office after the procedure prescribed in the Constitution has been complied

with. Section 97 (3) provides that if the President considers that the question of removing a judge of the High Court under this Section ought to be investigated then he shall appoint a tribunal consisting of at least three people to inquire into the matter, report on the facts thereof and advise the President whether the judge ought to be removed. Where the tribunal advises he President that a judge ought to be removed from office for inability performs the President shall remove such judge from office.

512. Judicial independence is enhanced by providing judicial officers with immunity from lawsuits brought by persons who are involved in cases decided by judges. A judge is not liable to be sued in any court for any act done or ordered to be done by him in the discharge of his judicial duty. (Sec 25 of the High Court Act CAP 04:02).

513. Judges are provided with resources which makes the office of the judge attractive e.g. Good Pension Scheme which covers their spouses and minor children, adequate physical accommodation (residences) which are fully furnished, cars, equipment and law books, and clerical assistants.

514. In our jurisdiction there is only one structure. The only higher position available is that of Chief Justice. Judges of the High Court are equal. Judges of the High Court are ex officio members of the Court of Appeal and from time to time when the need arises they are called upon to serve in that court.

515. Section 99 of the Constitution establishes a Court of Appeal which is a superior court of record. It is composed of the President of the Court of Appeal, a number of Judges of Appeal, the Chief Justice and other judges of the High Court.

516. Appointment of judges of the Court of Appeal is similar to that of the High Court and so is the tenure of the office for the judges.

517. There exist Magistrate Courts, which are subordinate to the High Court and are presided over by Magistrates. The jurisdiction of these courts includes civil claims on amount which depends on the seniority of the presiding Magistrate (see part IV of the Magistrate Court Act).

518. The appointment of Magistrates and qualifications for appointment grades is done by the President on the advice of the Judicial Commission.

519. Each tribal area is serviced by a Customary Court. Such courts derive their authority from the Customary Court Act 57 of 1968. The Common Law and Customary Law Act lays down rules which guide the courts in deciding whether customary or common law applies. The courts deal with a wide variety of civil and criminal law. (See part 1)

520. The Bogosi at gives the minister the following powers to ensure that the institution of Bogosi (chieftainship) is not abused;

a) the Minister has reasonable cause to believe that the Kgosi of any tribe: or

b) any tribe or section of a tribe lodges with Minister a complaint that the Kgosi of that tribe

is incapable of exercising his or powers, has abused his or her powers, is being insubordinate or is refusing or has refused to carry out lawful orders, or is of any reason not fit and proper person to be a Kgosi, the Minister shall make such enquiry or cause such enquiry to be made as he or she may consider appropriate and shall afford the Kgosi an opportunity to be heard.

2) if after holding an enquiry under subsection (1), the allegations made against the Kgosi are proved, the minister may:

a) caution or reprimand the Kgosi

b) order the stoppage of increment of the salary of the Kgosi

c) suspend the Kgosi

d) if he or she considers it to e expedient and in the interest of peace, good order and good governance, depose such Kgosi or extend the suspension for a period not exceeding 2 years.

3) Where the allegations made against a Kgosi have not been substantiated at the enquiry, the Kgosi shall be reinstated (Bogosi Act Sec 3).



521. The case of *Chief Seepapitso Gaseitsewe v. The Attorney-General and Leema Gaseitsewe*, Civil Appeal No. 5 of 1995, is an example of a situation where a minister exercised powers to suspend a chief. In this case, the Minister of Local Government and Lands suspended Chief Seepapitso from being Chief of the Bangwaketse on the ground of his unsatisfactory behaviour. The Chief's son, Gaseitsewe, was appointed Acting Chief during the period of his father's suspension. The Chief challenged his suspension and the matter went to the Court of Appeal. The Court of Appeal upheld the suspension.

## **METHODOLOGY AND CONSULTATION PROCESS**

552. The Office of the President is responsible for coordinating an inter-ministerial effort towards the preparation of Botswana's Initial Report to be submitted to the African Commission on Human and Peoples Rights. The report was prepared by an inter-ministerial draft committee comprising of representation from the Office of the President, Ministry of Foreign Affairs and International Cooperation, the Attorney General's Office, Ministry of Local Government, and Ministry of Education.<sup>17</sup> The draft had been brought before the stakeholder consultative meeting on the 9<sup>th</sup> and 10<sup>th</sup> of October 2008. The meeting attracted delegates from a wide spectrum of the Civic Society, Non Governmental Organisations and Institutions, Government departments and ministries.

553. The purpose of the meeting was for the stakeholders to make meaningful contribution. All stakeholders went through the initial draft and provided further contribution by way of comments, new information, suggestions and recommendations to improve the document.

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<sup>17</sup> Botswana has an inter-ministerial committee on Treaties, Conventions and Protocols that was responsible for coordinating the preparation of this report. The committee comprised of members from the above mentioned ministries and divisions.

## **GLOSARY/ABBREVIATIONS**

ARAP	Accelerated Rain-fed Agricultural Programme
AIDS	Acquired Immune Deficiency Syndrome
ACRWC	African Charter on the Rights and Welfare of the Child;
ACHPR	African Charter on Human and Peoples Rights
AU	African Union
ASWJB	Ahle Sunnat Wa-Jamat of Botswana
ARV	Anti-Retroviral Therapy
ALDEP	Arable Land Development Programme
BFPF	Bechuanaland Protectorate Federal Party
BPP	Bechuanaland People's Party
BDP	Bechuanaland Democratic Party
BTBIL	Botswana Translation Bureau of Islamic Literature
BMA	Botswana Muslim Association
BIP	Botswana Independence Party
BNF	Botswana National Front
BTA	Botswana Telecommunication Authority
BAM	Botswana Alliance Movement
BCP	Botswana Congress Party
BDP	Botswana Democratic Party
BLP	Botswana Labour Party
BNF	Botswana National Front

BPP	Botswana People's Party
BPU	Botswana Progressive Union
BTTO	Botswana Tlhoko Tiro Organization
BWF	Botswana Workers Front
BBA	Botswana Buddhist Association, the Botswana Hindu Society
BPS	Botswana Police Service
BDF	Botswana Defence Force
BCC	Botswana Council of Churches
BAMB	Botswana Agricultural Marketing Board
BEDIA	Botswana Export Development and Investment Authority
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	International Convention on the Elimination of all forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CYFF	CEDA Young Farmers Fund
CKGR	Central Kalahari Game Reserve
CEDA	Citizen Entrepreneurial Agency
DIS	Department of Intelligence Services
DCEC	Directorate on Corruption and Economic Crime
DPP	Directorate for Public Prosecutions
EFB	Evangelical Fellowship of Botswana
FAP	Financial Assistance Policy
GMES	Gujarat Muslim Education Society
GDP	Gross Domestic Product

HIES	Household Income and Expenditure Surveys
HIV	Human Immuno Virus
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
IEC	Independent Electoral Commission
IDC	Institute of Independent Churches
ICRC	Members of the International Committee of the Red Cross
ICRC	International Committee of the Red Cross
IPT	Isoniazid Prevention Therapy
ILO	International Labour Organization
JCM	Judicial Case Management
LEA	Local Entrepreneur Authority
LHS	Lobatse Hindu Society
MLG	Ministry of Local Government
MLHA	Ministry of Labour and Home Affairs
MOH	Ministry of Health
MOE	Ministry of Education
MFAIC	Ministry of Foreign Affairs and International Cooperation
MMS	Maun Hindu Society
MDGs	Millennium Development Goals
MISA	Media Institute of Southern Africa
MELS	MELS Movement of Botswana
NSPR	National Strategy for Poverty Reduction

NGO	Non Governmental organizations
NDP	National Development Plans
PCB	Press Council of Botswana
PLM	People's Liberty Movement
PMA	Panjetani Muslim Association
PMTCT	Prevention of Mother to Child Transmission
UNDP	United Nation Development Programme
USAID	United States Agency for International Development
SPHS	Selibe-Phikwe Hindu Society
SABB	Spiritual Assembly of Bahai's of Botswana
MAC	Media Advisory Council
NDF	New Democratic Front
SDP	Social Democratic Party
SMME	Small Medium Micro Enterprises
SGR	Strategic Grain Reserve
SLOCA	Services to Livestock Owners in Communal Areas
SPIL	Promotion of the Ikalanga Language
SADC	Southern African Development Community
TB	Tuberculosis
UNAID	United States Agency for International Development
WAD	Women's Affairs Department
WFCL	Worst Forms of Child Labour

## **INVITED STAKEHOLDERS ACHPR TO THE CONSULTATIVE MEETING**

### **NON ORGANISATION/INSTITUTION**

### **DELEGATE**

- |     |  |                    |
|-----|--|--------------------|
| 1.  | Botswana Council of Churches                         | Rev. M.P.T. Basele |
| 2.  | Botswana National Front                              | Hon. O. Gaborone   |
| 3.  | MELS Movement of Botswana                            | Mr. T. Joina       |
| 4.  | Botswana Congress Party                              | Dr. K. Gobotswang  |
| 5.  | University of Botswana, Political And Administration | Dr. D. Mpabanga    |
| 6.  | University of Botswana, Social Work Department       | Mrs. G. Jacques    |
| 7.  | Botswana Teachers Union                              | Mr. K. Kgasa       |
| 8.  | Botswana Federation of Trade Unions                  | Dr. N. Tshabang    |
| 9.  | Botswana Secondary Teachers Unions                   | Ms. O. Modise      |
| 10. | University of Botswana, Law Department               | Dr. O. B. Tshosa   |

### **BOTSWANA GOVERNMENT**

### **DELEGATE**

- |    |  |                 |
|----|--|-----------------|
| 1. | Botswana Police Service                  | Mr. J. Mpundisi |
| 2. | Women's Affairs Division                 | Ms T. Menyatso  |
| 3. | Prisons Department                       | Ms. B. Nfila    |
| 4. | Tribal Administration                    | M. Mmalane      |
| 5. | Commissioner of Labour & Social Security | Ms L. Pule      |
| 6. | Ministry of Lands and Housing            | Mr. R. Chepete  |
| 7. | Department of Information Services       | Mr. R. Molosiwa |

- |     |  |                      |
|-----|--|----------------------|
| 8.  | Ministry of Communications, Science and Technology | Mr. S. Seisa         |
| 9.  | Ministry of Education                              | Ms D. B. Modimakwane |
| 10. | National Assembly                                  | Ms N, Kefilwe        |
| 11. | Ntlo Ya Dikgosi                                    | Ms E. Moseki         |
| 12. | Department of Civil and National Registration      | Mr. L. Mpofu         |
| 13. | Ombudsman  | Mr. O. Gaselatsone   |
| 14. |  | O. Mokabathebe       |
| 15. |  | P. Bautule           |

### **COMMITTEE MEMBERS**

- |    |   |                  |
|----|---|------------------|
| 1. | Office of the President                                   | Mr. R. Sanoto    |
| 2. | Office of the President                                   | Mr. T. Molokwane |
| 3. | Ministry Of Local Government                              | Mr. H. Mogatusi  |
| 4. | Ministry of Foreign Affairs and international Cooperation | Ms D. Mogami     |
| 5. | Attorney General's Chambers                               | Ms M. Kupe       |
| 6. | Attorney General's Chambers                               | Ms N. Majuta     |
| 7. | Ministry of Foreign Affairs and international Cooperation | Mr. M. Mfolwe    |
| 8. | Ministry of Education                                     | Ms K. Lekoba     |