



**THE REPUBLIC OF BOTSWANA**

**SECOND AND THIRD REPORT TO THE  
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (ACHPR)**

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

**2015**



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## **PART I**

### **A. ABBREVIATIONS**

|                 |   |
|-----------------|---|
| <b>ABEP</b>     | Adult Basic Education Programme   |
| <b>ACPHR</b>    |   |
| <b>AMCEN</b>    | African Ministerial Conference on Environment                             |
| <b>BDF</b>      | Botswana Defence Force  |
| <b>BOCONGO</b>  | Botswana Council of Non-Governmental Organization                         |
| <b>BONELA</b>   | Botswana Network on Ethics, Law and Aids                                  |
| <b>BSAP</b>     | Biodiversity, Strategy and Action Plan                                    |
| <b>BQA</b>      | Botswana Qualifications Authority   |
| <b>CAT</b>      | Convention against Torture  |
| <b>CBNRM</b>    | Community Based Natural Resources Management                              |
| <b>CCF</b>      | Community Conservation Fund   |
| <b>CITES</b>    | Convention on International Trade in Endangered Species                   |
| <b>CHRSNAP</b>  | Comprehensive Human Rights Strategy and National<br>Action Plan           |
| <b>CKGR</b>     | Central Kalahari Game Reserve   |
| <b>CTF</b>      | Conservation Trust Fund   |
| <b>DFID</b>     | Department for International Development                                  |
| <b>EIA</b>      | Enactment of the Environmental Impact Assessment                          |
| <b>EIS</b>      | Environmental Information Management System                               |
| <b>GDP</b>      | Gross Domestic Product  |
| <b>GDSA</b>     | Gaborone Declaration on Sustainability for Africa                         |
| <b>GER</b>      | Gross Enrolment Rates   |
| <b>GHG</b>      | Green House Gas   |
| <b>HIV</b>      | Human Immunodeficiency Virus  |
| <b>HRDP</b>     | Human Resource Development Plan   |
| <b>ICSRC</b>    | International Covenant on Economic, Social and Cultural<br>Rights         |
| <b>IEC</b>      | Independent Electoral Commission  |
| <b>IPCC</b>     | Independent Police Complaints Commission                                  |
| <b>JCMS</b>     | Judicial Case Management System   |
| <b>JPCS</b>     | Joint Permanent Commission of Defence and Security                        |
| <b>LAPCAS</b>   | Land Administration Procedures and Processes Capacity<br>Building Systems |
| <b>LEGABIBO</b> | Lesbian Gay Bisexual of Botswana  |
| <b>MDGs</b>     | Millennium Development Goals  |

|               |   |
|---------------|---|
| <b>MEAs</b>   | Multilateral Environmental Agreements                           |
| <b>MMEWR</b>  | Ministry of Minerals, Energy and Water Resources                |
| <b>MOESD</b>  | Ministry of Education and Skills Development                    |
| <b>NAP</b>    | National Action Plan  |
| <b>NBSAP</b>  | National Biodiversity Strategy and Action Plan                  |
| <b>NCC</b>    | National Children's Council                                     |
| <b>NCS</b>    | National Conservation Strategy                                  |
| <b>NCSAP</b>  | National Conservation Strategy Action Plan                      |
| <b>NEESAP</b> | National Environmental Education Strategy and Action Plan       |
| <b>NEF</b>    | National Environmental Fund                                     |
| <b>NER</b>    | Net Enrolment Rates   |
| <b>NGOs</b>   | Non-Governmental Organization                                   |
| <b>NIP</b>    | National Implementation Plan                                    |
| <b>NSSD</b>   | National Strategy for Sustainable Development                   |
| <b>NSPR</b>   | National Strategy for Poverty Reduction                         |
| <b>NWMP</b>   | National Water Master Plan                                      |
| <b>OKACOM</b> | Okavango River Basin Water Commission                           |
| <b>OSEC</b>   | Out of School Children Education Programme                      |
| <b>PAHP</b>   | Poverty Alleviation and Housing Program                         |
| <b>PFSPC</b>  | Poverty and Food Security Policy Coordination                   |
| <b>PMTCT</b>  | Prevention from Mother to Child Transmission                    |
| <b>POPs</b>   | Persistent Organic Pollutants                                   |
| <b>PWDs</b>   | People Living with Disabilities                                 |
| <b>RADS</b>   | Remote Area Dweller Settlements                                 |
| <b>RNPE</b>   | Revised National Policy on Education                            |
| <b>SHHA</b>   | Self Help Housing Agency  |
| <b>TDS</b>    | Total Dissolved Solids  |
| <b>WAVES</b>  | Wealth Accounting and Valuation of Ecosystem Services           |
| <b>WHO</b>    | World Health Organization                                       |
| <b>UNCBD</b>  | United Nations Convention on Biodiversity                       |
| <b>UNCCD</b>  | United Nations Convention to Combat Desertification             |
| <b>UNDP</b>   | United Nations Development Programme                            |
| <b>UNESCO</b> | United Nations Educational Scientific and Cultural Organization |
| <b>UNEP</b>   | United Nations Environmental Programme                          |
| <b>UNFCCC</b> | United Nations Framework Convention for Climate Change          |
| <b>UNHCR</b>  | United Nations High Commission for Refugees                     |
| <b>UNIDO</b>  | United Nations Development Organization                         |
| <b>UPR</b>    | Universal Periodic Review                                       |
| <b>UNFPA</b>  | United Nations Population Fund                                  |
| <b>UNECA</b>  | United Nations Economic Commission for Africa                   |
| <b>UNICEF</b> | United Nations Children Education Fund                          |

|                 |  |
|-----------------|--|
| <b>CBOs</b>     | Community Based Organisations              |
| <b>FBOs</b>     | Faith Based Organisations                  |
| <b>EU</b>       | European Union                             |
| <b>ACHAP</b>    | African Comprehensive HIV/AIDS Partnership |
| <b>UN-Women</b> | United Nations Women                       |
| <b>AGOA</b>     | African Growth Opportunity Act             |

## **B. FOREWORD**

As a country that upholds the universal values of democracy, the rule of law and the respect for human rights, Botswana became a State Party to the African Commission on Human and Peoples' Rights on 17<sup>th</sup> July 1986. In line with her reporting obligations, Botswana submitted the Initial Periodic Report in 2010. However, due to capacity constraints, Botswana failed to submit the Second and Third Reports. Accordingly, we found it fitting to combine the Second and Third Reports in this Report to highlight progress made during the period 2011- 2015.

This Report, thus, highlights significant progress made during the stated period, especially in areas such as education, health, economic empowerment, democracy, good governance and the rule of law. Botswana's readiness to improve the human rights situation in the country has been demonstrated by implementing the recommendations from the Initial Report.

I wish to emphasise the fact that Botswana remains committed to honour her human rights obligations under the African Charter and other related human rights instruments. Although the country aims to be compliant in its reporting obligations, especially at international level, competing priorities and capacity constraints continue to inhibit our ability to complete reports on time. This critical challenge occasionally results in combined Reports, like the present case. That notwithstanding, we will henceforth, ensure timely submission of our periodic reports.

I wish to take this opportunity to express my gratitude to the Drafting Team of the Inter-Ministerial Committee on Treaties, Conventions and Protocols, for their tireless effort and dedication in compiling this Report. I also wish to extend special thanks to the various stakeholders, both within Government as well as the Non-Governmental Organisations who made invaluable contribution towards the completion of this Report.

**Pelonomi Venson-Moitoi**  
**Minister of International Affairs and Cooperation**

## **C. STRUCTURE**

This report has three parts:

**Part I:** Introduction, Methodology and Consultation Process;

**Part II:** General Information; Follow-up to the 2010 Concluding Observations and Recommendations on the Initial Periodic Report; Laws, Policies and Mechanisms for human rights, and Challenges and constraints that the Government faces in its efforts to ensure the promotion and protection of human rights; and

**Part III:** Information on the implementation of the provisions of the African Charter.

## **D. INTRODUCTION**

This report is submitted pursuant to Article 62 of the African Charter on Human and People's Rights (hereinafter referred to as the Charter) which requires each State Party to submit a report every two (2) years on legislative or other measures taken with a view of giving effect to the rights and freedoms recognised and guaranteed by the Charter.

This report is a combination of Botswana's second and third periodic reports and provides updates on the implementation of the Charter since the last report up to 2015. It indicates areas of success as well as challenges faced. The report further addresses the critical issues that were raised by the African Commission on Human and Peoples' Rights (hereafter referred to as the African Commission) on the last report.

The Government of Botswana acknowledges and regrets the late submission of the report. In this regard, the Government of Botswana wishes to assure the African Commission that steps have been taken to deal with the delay and that the next report will be submitted on time to ensure a continuous interaction between Botswana and the African Commission. Botswana is committed to advancing human rights in the country and will continue to work towards the implementation of the Charter.

## **E. METHODOLOGY AND CONSULTATION PROCESS**

This report was prepared by the Drafting Team of the Inter-Ministerial Committee on Treaties, Conventions and Protocols with input from Government Ministries and Members of the Civil Society. Botswana received financial support from the United Nations Development Programme (UNDP) towards the production of this Report.

A Draft Report was prepared and shared with Government Stakeholders as well as Non-Governmental Organisations (NGO's) for their contribution. (See Annex 1)

The Government held its stakeholder consultations on the 23<sup>rd</sup> and 25<sup>th</sup> September, 2014. On the 19<sup>th</sup> May 2015, a workshop dedicated to the consideration of the draft report was convened, bringing together Government stakeholders, civil society and NGO's who made their inputs towards the consolidated text.

## PART II

### A. GENERAL INFORMATION

The Republic of Botswana is a landlocked country situated at the centre of the Southern African region with a surface area of 581,730 square kilometres. It is bordered by Zambia to the north, Namibia to the west and north, South Africa to the south and south-east, and Zimbabwe to the north-east. **Botswana** was formerly known as the Bechuanaland Protectorate until it attained its independence in 1966. Gaborone is the capital-city. Setswana and English are the official languages. The Pula (BWP) is the national currency of the country.

Botswana is a multi-party democracy which, since its independence, holds free and fair elections every five (5) years. The latest elections were held in 2014. Policy, accountability and governance institutions are fully fledged and functioning. The branches of government in Botswana comprise the National Assembly, the Executive, the Judiciary and the House of Chiefs (*Ntlo ya Dikgosi*). Local Government comprises 16 Administrative Districts and 16 District Councils in which district, town and city councillors are regularly elected. Election to political office is generally determined through the ballot system at all levels, except for Specially Elected Members of Parliament.

According to the Population and Housing Census of 2011, Botswana's population was 2,038,228 with an annual population growth of 1.9% between 2001 and 2011. Females comprise 52% while males comprise 48% of the population. Botswana is still predominantly rural at 78% and the remaining 22% of the population resides in urban areas.<sup>1</sup>

Over the past 40 years, Botswana has been amongst the fastest growing economies in the world, characterised by prudent macroeconomic policies and good governance. This economic growth has seen Botswana graduate from a category of Least Developed Countries (LDCs) to an Upper Middle Income country. According to data from Statistics Botswana, GDP growth in the economy has been positive over the past few years, averaging 4.3 percent between 2012 and 2015. The economy recorded a growth rate of 4.3 per cent in 2012, 3.9% in 2013, and by 3.2 per cent in

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<sup>1</sup> See Central Statistics Office, 2011.

2014 and decreased to -0.3 per cent in 2015<sup>2</sup> However, a projection expects GDP growth to decline and is expected to decrease to 4.8% by 2017<sup>3</sup>.

The revenues from the mining sector, beef and tourism have enabled the country to invest in improving the citizenry's quality of life, thereby contributing to reduction of absolute poverty, especially amongst women and girls.

## **B. MEASURES OF IMPLEMENTATION**

In the period under review, Botswana has commendable progress in the realisation of the rights and liberties enshrined in the African Charter on Human and Peoples' Rights. Like any other country, the global economic and financial crisis has adversely affected strategic areas of social development that could have further advanced human rights in Botswana.

Since the last reporting period, the following legislation was passed and other enabling measures were put in place in support of human rights as espoused in the African Charter:

### **LEGISLATIVE MEASURES**

**The Companies and Intellectual Property Authority Act, 2011**, which establishes the Companies and Intellectual Property Authority in Botswana.

**The Copyright and Neighbouring Rights Amendment Act, 2012**, which establishes the Copyright Office and its functions;

**The Public Health Act, 2013**, which consolidated and amend the law relating to public health;

**The Legal Aid Act 2013**, which provides for the establishment of the body mandated with providing access to justice by indigent persons in Botswana. Legal Aid Botswana renders legal advice, legal representation and conducts public awareness campaigns to clients. The Act came into operation in 2015.

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<sup>2</sup> See 2015 Budget Speech

<sup>3</sup> See International Monetary Fund (IMF), 2014 Botswana Article IV Surveillance Report (July 2014) and "Stats Brief –June 2014", Statistics Botswana.

**The Electronic Records (Evidence) Act, 2014**, which provides for the admissibility of electronic records as evidence in legal proceedings and authentication of electronic records and for the admissibility in evidence of electronic records as original records and for matters incidental and connected thereto;

**The Electronic Communication and Transactions Act, 2014**, which provides for the facilitation and regulation of electronic communications and transactions, and specifically for electronic commerce and electronic signatures and for matters incidental and connected thereto;

**The Chemical Weapons (Prohibition) Act, 2014**, which prohibits the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons and other matters incidental thereto;

**The Retirement Funds Act, 2014**, which organises the licensing, regulation and administration of all retirement funds, including pension and provident funds, and for matters incidental to or connected therewith;

**The Married Persons Property Act 2014** makes provision for persons married under customary law to opt for their property to be administered under civil law while persons getting married under customary law are enabled to opt either in or out of community of property. Furthermore, persons whose joint property is administered under civil law are empowered to approach the High Court and change their marriage regime where their initial property regime seems to be of an advantage to them. These new developments ensure equal rights for married persons whether such marriages were contracted under civil law or customary law.

**The Anti-Human Trafficking Act, 2014**, provides for the prohibition, prevention and combating of human trafficking and measures to protect and assist victims of trafficking in person and other matters incidental thereto.

**The Counter-Terrorism Act, 2014**, provides for the combating of all acts of terrorism and suppression of terrorist acts, and the punishment of those who participate in acts of terrorism. It also establishes the Counter-Terrorism Analysis and Fusion Agency (which is currently not yet operational).

**The Education and Training Bill, 2014** is being examined. It decentralizes some of the functions of the running of education in the country, provides for the system and structure of education and training, right of the child to free education and training and prohibition of inhuman and degrading treatment and the governance and management of basic education and training.

Regulations were also adopted for the **Domestic Violence Act (2013)** and the **Interpretation (Amendment) Act (2013)**.

## **POLICIES**

The promotion and protection of human rights in Botswana is also guided by Policies:

**Vision 2016** which seeks to promote prosperity for all by 2016 has the following pillars; an educated and informed nation; a prosperous, productive and innovative nation; a compassionate, just and caring nation; a safe and secure nation; an open, democratic and accountable nation; a moral and tolerant nation and united and proud nation. Vision 2016 provided the nation with a roadmap to move forward in its development path. Botswana has made progress in attaining the Vision 2016 pillars though challenges like the world recession and climate change prevented a higher achievement rate.

The sectors where Botswana has made progress are in education, health and the eradication of poverty. For example: education is compulsory up to secondary level, vocational and technical colleges are under the control of Government to ensure good quality that will enable students to compete in the national, regional international job market. Botswana continues to try different ways to diversify the economy from sectors such as Mining and agricultural industries in order to maintain sustainability, hence ensuring a prosperous, productive and innovative nation.

There are also efforts to eradicate abject poverty and empower the poor and illiterate. There is evidence to show that the poverty datum line has reduced since the implementation of the long term vision. The health sector has improved and is offering better services with the fight against HIV-Aids at the forefront as people eligible for Anti- retroviral treatment able to access the drugs on a large scale. Botswana still has a functioning democracy and maintains the rule of law and is ranked highly in governance indicators.

Challenges faced in the implementation of the Vision include those of security, increased rate of youth unemployment and growing gap of inequalities between the rich and the poor. The Country is in the process of developing vision 2036 which will succeed the vision 2016. The vision 2036 framework is aimed at improving the quality of life of the people, maintain peace and security and to provide opportunities for all through the spirit of consultation and unity.

**The National Development Plan 10 (2010-2016)** Since Independence in 1966, Botswana adopted an approach of development planning. Government has since then, produced a series of National Development Plans (NDPs) starting with Botswana's Transitional Plan for Social and Economic Development prepared in 1965. National Development Plan 10, or NDP 10, is the tenth in the series of NDPs. National Development Plans guide the overall development of the country. NDPs contain Government strategies planned to be undertaken over the Plan period. Programmes and projects to be implemented to achieve such strategies are also included in the Plan. The Plan contains estimates of revenue expected over the entire period as well as expenditure and manpower growth projections.

**The National Population Policy (2010);** The Revised National Population Policy aims at improving the quality of life and standard of living in the country. Its cardinal elements are low morbidity and mortality, managed urbanisation, population distribution and migration, improved housing and sanitation, increased access to services and resources, full employment, reduced poverty, diversified economy, sustained and more equality distributed growth. The Revised Policy proposes a number of strategies, which are divided into demographic and population health, population groups, population distribution and migration, social services and poverty, resources, development and environmental conservation, research, information and communication, gender, culture, law and trade and international relations.

**The Revised National Youth Policy, (2010),** whose overall goal is to ensure a systematic integration of youth mainstreaming as a key component for programme development processes within government, the private sector and civil society. It sets out a number of actions aimed at influencing and accelerating the course of change and combining existing measures and new ideas;

**The Revised National Policy on Rural Development (2002)**

**The National Policy on Gender and Development (2015) and The National Operational Plan,** The Government developed the National Policy on Gender and Development (NPGAD, 2015), to guide and inform the development and implementation of gender sensitive and responsive initiatives by all development sectors with the aim of reducing inequalities in the opportunities and outcomes of social, economic, cultural and legal development for both men and women.

The Government has further developed a National Operational Plan (NOP,2015) to operationalize the NPGAD policy. These developments reflect the government's commitment to promote gender equality and equity as means of achieving the goals of sustainable human development.

**The Poverty Eradication Guidelines (2011);**

The Guidelines for Implementing Poverty Eradication Packages were developed to provide all-embracing guidance in the implementation of empowerment projects in support of the overall Poverty Eradication Programme. The objectives of the implementation guidelines are to: Provide an environment for smooth and transparent implementation and coordination of sustainable poverty eradication projects; Harmonize procedures for implementation of poverty eradication projects with a view to ensuring efficient utilization of resources; Provide a coordinated platform for all stakeholders in the implementation of poverty eradication projects.

The expected outcomes of the programme are to economically empowered individuals and families, Enhanced self-esteem amongst beneficiaries, prosperous, productive and innovative individuals

**The Botswana Land Policy (2013)** protects and promotes land rights of all land holders as well as sustainable human settlements. The object is to use land, conserve and protect it for future generations.

**The Botswana Anti-Corruption Policy (2014)** establishes minimum standards governing anti-corruption and ethical responsibilities of civil servants as well as stakeholders doing business with the Government. It clearly outlines the responsibilities of the administration in the fight against corruption as well as procedures to be followed should any act of corruption occur.

**The Botswana National Policy on Disability (2015)** aims at promoting and protecting the dignity of people with disabilities and creating a barrier free society.

**The Botswana National Plan of Action for Orphans and Vulnerable Children (NPA) (2010-2016).**

**The Policy Guidelines for Financial Support to Non-Governmental Organizations** seeks to reduce NGOs perpetual dependency on government financial support. This policy institutes appraisal procedures that ensure that, as much as possible, only projects that are sustainable in the long term and benefit the target groups are supported.

**INSTITUTIONAL MEASURES**

New institutions were set up to implement these policies or strengthen the existing ones:

The **Child Maintenance Courts** set up by the Administration of Justice in major centre areas to enable women to access payment of maintenance. Implementation of the Affiliation Proceedings Act has been intensified by ensuring the enforcement of maintenance orders by the police.

The **Judicial Case Management System** introduced in 2010 by the Administration of Justice to deal with backlog of cases. Statistics reflect that the disposal rate of cases stands at an average of 75% – 80% annually. Plans are currently underway to introduce judicial case management to lower courts with the Magistrate Court being the first, thereby enabling litigants who appear in court to access justice faster.

### **Mobile Courts**

The Administration of Justice has also introduced Mobile Courts. These are intended to take justice to the people, particularly in areas where long distance constrains access to the courts.

### **Engagement with Dikgosi**

The Government continuously engages with Dikgosi (Chiefs) in efforts to achieve gender justice through promotion of equal opportunities and rights for women and men with a particular focus on mainstreaming gender within the customary justice system.

The **National Disability Coordination Office (NDCO)** established by the Office of the President in 2010 with the mandate to develop and coordinate the implementation of policies, programmes and strategies aimed at empowering people with disabilities. The Office also serves as the Secretariat for the **National Council on Disability**, the **National Coordinating Committee on Disability** and **Sir Seretse Khama Memorial Fund for the handicapped**.

### **ASSISTANCE FROM DEVELOPMENT PARTNERS AND CIVIL SOCIETY**

Botswana has developed a number of relations with development partners and has benefitted through technical and/or financial support from several regional and multilateral economic cooperation partnerships, such as the African Growth Opportunity Act (AGOA). UNDP, UNFPA, UNICEF, UN Women, UNAIDS, UNECA, USAID, DFID, The European Union, The African Comprehensive HIV/AIDS Partnership, The Bill and Melinda Gates Foundation, among others.

Civil society organisations, including Non-Governmental Organisations (NGOs), Community Based Organisations (CBOs), and Faith Based Organisations (FBOs) have been key actors in the implementation of all these initiatives. They have also developed their own mechanisms and tools for promoting and protecting human rights in the country and assessing the impact of their contribution to the protection of human life and dignity in Botswana.

#### **D. THE GOVERNMENT'S RESPONSES TO THE RECOMMENDATIONS MADE BY THE AFRICAN COMMISSION IN ITS 2010 CONCLUDING OBSERVATIONS ON THE INITIAL REPORT OF BOTSWANA:**

##### **1. *Participation of Non-Governmental Organisations (NGOs) working in the field of human rights like Botswana Centre for Human Rights (Ditshwanelo) in the preparation of the periodic report:***

In the preparation of the present report, the Government engaged Non-Governmental Organisations (NGOs) working in the field of Human Rights, including DITSHWANELO, Men and Boys, BOCONGO (Botswana Council of Non-Governmental Organisation), and Botswana Network on Ethics, Law and AIDS (BONELA), Media Institute for Southern Africa (MISA).

A workshop was held during which the draft Periodic Report was considered and the NGOs made their constructive input.

##### **2. *Information on the environmental issues and concerns in Botswana.***

In the present report, environmental issues and concerns are addressed in Article 24.

##### **3. *Information about the measures taken by Botswana to fulfil its obligations laid out in Articles 27 to 29 of the African Charter.***

See Articles 27-29.

##### **4. *Information on the measures taken by Botswana to end corporal punishment in schools and prisons.***

As soon as the Concluding Observations were officially received, the government took two initiatives with regard to corporal punishment in the education system/home environment, namely:

(a) Exploring the possibility of adopting reformative measures to incorporate parental participation in the discipline and punishment of the child while abandoning acts that degrade and dehumanize the child. Public debates on corporal punishment were initiated with the support of UNICEF-Botswana Country Office through the media and the Kgotla system. Influential persons, such as the former Minister of Local Government and Speaker of the National Assembly engaged traditional leaders and communities on the importance of other alternative ways of disciplining children with antisocial behaviours.

(b) Drafted the Education and Training Bill, 2014, which is a re-enactment of the Education Act (Cap. 58:01) with amendments. The Bill, among others, is as a result of the Children's Act, which compels the Education Act to be amended to ensure that the rights of the child are adequately catered for. Section 14 of the Bill prohibits administration of corporal punishment in school in the following terms, "a learner shall not be subjected to torture and cruel, inhuman or degrading treatment or punishment, in any manner, whether physical, emotional or psychological".

We regard to corporal punishment in prisons, consultations are ongoing within the Ministry of Defence, Justice and Security (MDJS) on a possible revision of the legislation regarding the functioning of the Prisons in Botswana.

**5. *There is no organ that is mandated to look into human rights violations.***

Steps are being taken to confer the human rights mandate to the Office of the Ombudsman. To this end, the Government of Botswana has embarked on benchmarking missions to the Commission on Human Rights and Administrative Justice (CHRAJ) of Ghana from 24 September to 2 October 2015 and to the Commission for Human Rights and Good Governance (CHRAGG) of Tanzania from 7 - 11 March 2016.

**6. *Information on the recognition of economic, social cultural and environmental rights in the Constitution of Botswana.***

Socio-economic rights in Botswana are not judicially enforceable to the extent that they are not provided for in the Constitution. Those rights are not granted by the Botswana in its present form.. That said, other pieces of legislation take cognisance of these rights and among others, seek to protect them as follows:

**Economic Rights:**

Even though economic rights are not explicitly provided for in the Constitution, the Acquisition of Property Act (Cap 32:01), read together with the Sections 3, 8

and 9 of the Constitution provide for the privacy and the protection of a person's home and other property. It also prohibits deprivation of property without compensation. These rights can be classified as forming part of an individual's economic rights.

**Social Rights:**

Section 3 of the Constitution provides for the fundamental rights and freedoms of the individual. Among others, it makes provision for the security of the person and the person's entitlement to the protection of the law, freedom of conscience, of expression and assembly and association. These rights can be classified as forming part of an individual's social rights.

**Cultural rights:**

Even though culture is not explicitly provided for in the Constitution, the Government does not hinder in any way, the exercise of cultural rights by various tribal groupings. The Government has, over the years consistently promoted and continues to promote cultural expression through various means, such as, cultural dance competitions, regiments, radio, TV broadcasts, and newspapers. Among others, traditional dance is promoted in primary schools as an extra-curricular activity.

**Environmental rights:**

In the absence of specific constitutional provisions guaranteeing environmental rights, the Government has passed legislation, such as the Environmental Impact Assessment Act Cap 65:07 which make it mandatory to assess the potential effects of planned developmental activities.

During the period under review, Botswana has been cognisant of the universality, interdependence and indivisibility of the rights and liberties espoused in the African Charter, and has ensured that they are enjoyed as such by the citizens, even though they are not specifically provided for in the Constitution.

**7. Information on the ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) by Botswana.**

The Government takes very seriously its commitment under any human rights treaty it is party to. In this regard, before Botswana ratifies / accedes to any treaty, a thorough review of its legislation is undertaken to ensure that it is in a position to implement the provisions of the treaty. Botswana will therefore give due consideration to this recommendation.

**8. Information on the criminalization of torture in Botswana.**

Botswana's reservation on the Convention against Torture (CAT), is based on the fact that our national laws do not recognise corporal punishment in schools and prisons as torture, cruel and inhumane treatment or punishment. At present, corporal punishment is treated as a non-custodial sentence.

However, despite the current position of the law, it is worth mentioning that there is currently a 2014 draft Bill on Education and Training which prohibits corporal punishment and makes it a criminal offense liable to a fine not exceeding P2 000 or to imprisonment for a term not exceeding one year or both.

**9. Undertake a declaration accepting the competence of the African Court on the establishment of the African Court on Human and Peoples' Rights Court under Article 34 (6) of the Protocol to the African Charter**

The Government takes note of this recommendation and will therefore give it due consideration.

**10. Moratorium on the death penalty (question of the death penalty). Information on the actions taken by Botswana to abolish death penalty.**

Botswana is yet to make a determination as to whether it retains, places a moratorium or abolishes the death penalty. During the Second Cycle of the UPR in 2013, the Government of Botswana accepted to undertake dialogue on the Question of the Death Penalty. Once the formalities of this dialogue are finalised, the Government may enlist the input of the Commission's Working Group on the death penalty.

During the period under review, Botswana carried out 5 executions as shown in the table below.

| Year   | 2010 | 2011 | 2012 | 2013 | 2014 |
|--------|------|------|------|------|------|
| Number | 1    | Nil  | 2    | 1    | Nil  |

**10. Information on action taken to balance the President's Powers in relation to some human rights issues.**

At the moment Botswana has no plans to subject Presidential Powers as derived from section 47(2) of the Constitution to judicial control.

**11. Information on mechanisms that have been put in place to encourage and promote women's participation in the social, economic and political affairs of the State. C.O 38**

The Gender National Strategy of 2015 has prioritized women empowerment, not only with regard to political power, decision making and democratic governance but also in various national development areas such as economic diversification, prosperity, poverty eradication, social protection, social services, access to justice, protection of human rights, and freedom from violence, among others.

Further, special measures targeting vulnerable groups of men, women, girls and boys have been taken to empower them. In 2012, as a special measure, the Government allocated 5% from the alcohol levy fund to women empowerment programmes in an effort to improve their participation in the economic development of the country.

In the Public Service, women account for more than 40% of those at Deputy Director Level and above. According to the 2014 elections, women representation at Local Government level, Cabinet and Parliament was 19,4%; 17,4% and 8,2% respectively.

**12. Information on making necessary arrangements to build a separate prison for female prisoners.**

Botswana already has a female prison in Gaborone with a capacity of 30 inmates. There is also a female wing at Mahalapye with a capacity of 60 inmates while the female wings at Kasane, Maun and Ghanzi each have a capacity of 10.

As at 12<sup>th</sup> August 2015, female prisoners in Botswana accounted for 5.14%. Out of the 225 female prisoners, 67 were convicted prisoners, 31 remanded, 127 were immigration detainees<sup>4</sup>.

**13. Information on the rights of convicted prisoners.**

The Prisons Act is currently being reviewed and provisions relating to visitation rights are among the provisions to be considered.

**14. Information on the extension of free legal assistance to all crimes was the accused person cannot afford to pay legal representation fees.**

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<sup>4</sup> Report on prisons population as at 12<sup>th</sup> August, 2015.

The Government provides legal assistance to accused persons in capital offences [and has not extended free legal assistance to all crimes where the accused cannot afford to pay]. It has, however, extended “means tested” legal assistance in civil cases through the Legal Aid Act of 2014.

**15. Information on the implementation of the 2006 decision of the High Court in relation with the Basarwa people of the Kalahari with a particular focus on the cultural rights and socio-economic needs of the Basarwa people.**

The Government is giving attention to the rights and concerns of the Basarwa people by giving them access to water and allowing visitation by family members. The Government continues to engage Basarwa through established structures with a view to ensuring a sustainable solution to the matter. Several programmes that promote the rights and concerns of Basarwa such as poverty eradication, affirmative action, education for all, community based natural resource management planning, and effective utilization of wildlife management areas are being implemented.

Botswana pursues a policy of co-operation with the UN human rights system, including its various mechanisms and Special Procedures. The Special Rapporteur on the rights and fundamental freedoms of Indigenous peoples visited Botswana in April 2009 and consulted with various stakeholders during the country visit. He produced a Report recommending that measures be taken to ensure that residents of the CKGR have adequate access to basic social, medical, food and other services in the reserve.

In response to the recommendation, the Government would like to refer the esteemed Commission to the Judgement delivered by the Court of Appeal of Botswana on the 27<sup>th</sup> January, 2011 to the effect that the CKGR residents have the right, at their own expense, to:

- a. recommission the borehole at Mothomelo in the CKGR formerly used to provide water to the residents of the Reserve, and to sink one or more boreholes at such site inside the reserve.
- b. service, repair and maintain in good working order any borehole to which this declaration applies.
- c. use water abstracted from any such borehole for domestic purposes only in accordance with Section 6 of the Water Act.

Following the Court Order, the residents of CKGR drilled four (4) boreholes on their own; two (2) boreholes in METSIAMANONG were blank. The borehole in

MOLAPO had higher concentrates of Total Dissolved Solids (TDS), higher than the World Health Organisation (WHO) recommended levels. There is another borehole in MOTHOMELO, which is operational and solar powered as well as another in MOTHOMELA which the residents are not using.

There is one Government borehole in MOTHOMELO which the residents are not using. They declined Government's offer of equipping the borehole.

The other service provided by the Government to CKGR residents is transporting children to and from school. They are also provided with uniform, private clothing, bedding and toiletries. There are sixty-five (65) students, thirty-seven (37) at Primary School, and twenty-five (25) at Junior Secondary School and three (3) at Senior Secondary. Furthermore, residents get health services and social safety nets from New XADE, XERE and KAUDWANE i.e. food baskets and Old Age Pension.

The Government has taken note of the preliminary recommendations made relating to measures that ought to be taken with regard to the Central Game Reserve namely that:

- (1) A statement be made by Government detailing her position on who may enter the Game Reserve and the conditions of entry;
- (2) That measures be taken to consult with all the communities; and
- (3) Access to water in the CKGR is facilitated.

**17. Information on the need to promote civil societies and NGOs that provide free legal aid and the need to also enact laws that regulate them. Refer to C.O 44**

During the piloting of the legal aid scheme in 2011-2013, Government entered into cooperation agreements with Civil Society and NGO's, namely DITSHWANELO, Emang Basadi, Women against Rape, and Botswana Network on Ethics, Law and HIV/AIDS (BONELA). Upon enactment of the Legal Aid Act of 2014, which became operational in January, 2015, Legal Aid Botswana, as a new public mechanism for legal aid started its operations, thereby promoting greater access to justice to indigent citizens.

See information on Article 7.

**18. There is undue delay in the disposal of cases, especially pre-trial detention, leading to a backlog of cases and ultimately overcrowding in prisons and detention centres. [Refer to C.O 52]**

See information on Articles 5, 6 and 7.

19. Measures taken by the government to make basic education free and compulsory.

Section 18 of the **Children's Act, 2009** confers a right to free basic education to every child. Any parent, relative or guardian, who denies a child the opportunity of going to school, without any reasonable excuse, shall be guilty of an offence and shall be sentenced to a fine of not less than Five Thousand Pula (BWP5000) but not more than Ten Thousand Pula (BWP10 000).

Section 6 of The Education and Training Bill, 2014 goes even further and proposes that the "Minister shall implement the right of every child to free and compulsory basic education.

These are notable developments towards the introduction and implementation of free and basic compulsory education.

20. The fact that minors are required to be accompanied by their parents for HIV testing may discourage voluntary diagnosis of HIV/AIDS and may be contributing to the spreading of this pandemic.

The Public Health Act provides that persons under the age of sixteen require consent of their parents to be tested. The Act does not require the parent to be physically present when the test is conducted. However, parents provide social support to minors when they go for HIV/AIDS testing.

### **PART III**

#### **A. AREAS WHERE BOTSWANA HAS MADE PROGRESS TOWARDS THE REALISATION OF THE RIGHTS AND FREEDOMS ENSHRINED IN THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

#### **EQUALITY BEFORE THE LAW AND EQUAL PROTECTION OF THE LAW:**

##### **ARTICLE 1**

The Government of Botswana continues to recognise the rights, duties and freedoms enshrined in the African Charter and are cognisant of the corresponding obligation on Government to continuously implement the Charter by adopting legislative or other measures to give effect to the Charter. The Government

reaffirms that its judiciary is obliged to interpret laws in line with the provisions of the Charter.

Section 24 of the Interpretation Act specifically provides that, *“as an aid to the construction of the enactment a court may have regard to any relevant international treaty, agreement or convention...”* Thus the Charter, as an international treaty, is a part of the body of jurisprudence that the judiciary turns to, in case of ambiguity in relation to the interpretation of domestic legislation.

### **ARTICLE 2 / ARTICLE 3**

Section 15 of the Constitution specifically forbids the making of discriminatory laws, either in themselves or in their effect.

#### **Equality before the law between men and women**

In the *Mmusi v Ramantele* case<sup>5</sup>, the constitutionality of a Ngwaketse Customary law which condoned the eviction of female heirs from their parents' home by the male heir, upon the death of their parents, was being questioned.

The Presiding Judge was being called upon to interpret the co-existence of Section 3(a) of the Constitution that guarantees applicants' rights to equality and protection of the law with section 15(4) (c), of the Constitution which permits discrimination on matters of inheritance and personal law.

Upholding the constitutional right of equal protection before the law pursuant to Section 3 of the Constitution, the court held that, “this gross and unjustifiable discrimination cannot be justified on the basis of culture because it communicates the unacceptable and chilling message that men and women are not equal before the law”.

The judge further stressed that, Courts of law, as the conscience and voice of contemporary society, must do their part to ensure that the ideal of gender parity is achieved. In this regard, the learned judge, Dingake J remarked;

*“It seems to me that the time has now arisen for the justices of this court to assume the role of the judicial midwives and assist in the birth of a new world struggling to be born, a world of equality between men and women as envisioned by the framers of the Constitution”.*

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<sup>5</sup> Case No CACGB-104-12

More critically, the Judge concluded his judgment by calling upon the Government of Botswana to repeal all discriminatory laws which may in themselves or by their effect undermine the rights of women. In this connection, the Court held that:

*“In conclusion, I wish to point out that there is an urgent need for parliament to abolish all laws that are inconsistent with section 3(a) so that the right to equality ceases to be an illusion or a mirage, but where parliament is slow to effect the promise of the Constitution, this Court, being the fountain of justice and the guardian of the Constitution, would not hesitate to perform its constitutional duty when called upon to do so.”*

*Mmusi* is most certainly a critical step towards the promotion of the Charter in so far as equality before the law between men and women is concerned.

As a strategy to eliminate discrimination and promote gender parity, the Government has also adopted the following key policies:

**The Gender Strategy** which currently informs national gender programming;  
**The National Policy on Gender and Development** and the **National Operational Plan**;

The Government developed the National Policy on Gender and Development (NPGAD, 2015), to guide and inform the development and implementation of gender sensitive and responsive initiatives by all development sectors with the aim of reducing inequalities in the opportunities and outcomes of social, economic, cultural and legal development for both men and women.

The Government has further developed a National Operational Plan (NOP, 2015) to operationalize the NPGAD policy. These developments reflect the government’s commitment to promote gender equality and equity as means of achieving the goals of sustainable human development.

In addition Government has developed a Gender and Development Strategy in 2015 that articulates the political, policy and legal foundations of the NPGAD policy by linking it to the provisions of the Bills of Rights, Vision 2016, the National Development Plan (NDP) 10 and the Millennium Development Goals (MDG) among other national, regional and international policy frameworks. The Gender and Development Strategy is also intended to bridge the gap between policy (i.e. the NPGAD policy) and the practice (i.e. the NPGAD-NOP) by defining in more detail operational strategies and policy interpretations that will guide stakeholders in gender mainstreaming in all corporate functions from decision making, policy,

planning, finance to human resource development, monitoring and evaluation of sector's performance and development effectiveness.

Botswana, like other countries globally, has committed to addressing and eliminating Gender Based Violence (GBV). In 2015 Botswana developed a **National Strategy towards Ending Gender Based Violence in Botswana by 2020**. The national GBV multisectoral response takes cognisance of the urgent need to protect, ensure respect and fulfilment of human rights especially for women and girls, and other vulnerable groups such as people with disability.

**The Married Persons Property Act (2013)**; which makes provision for persons married under customary law to opt for their property to be administered under civil law. The new dispensation will allow persons getting married under customary law to opt either in or out of community of property. Furthermore, the new law will allow those persons whose joint property is administered under civil law to be able to approach the High Court to change their marriage regime where their initial property regime seems to be of an advantage to them. These new developments ensure equal rights for married persons whether such marriages were contracted under civil law or customary law.

**The Interpretation (Amendment) Act (2013)**;

The Interpretation (Amendment) Act 2010, amending the definitions of 'age of majority' and 'minor' respectively to mean a person who has attained the age of eighteen years or has not attained the age of eighteen.

**The Affirmative Action Policy on Remote Area Communities (2012)**

The purpose of the affirmative action, which will be implemented over a period of ten years, is an attempt to promote equal opportunities for remote area communities. It has been instituted by Government to ensure that the remote area communities are included in all national programmes by addressing all identified imbalances and improving their livelihoods.

### **Equality before the law with regard to children**

In dealing with issues of discrimination, Government has not only focused on equality before the law between men and women, but has also taken legislative measures to protect and promote the equality of the child before the law. In that regard, the Children's Act (2009) introduces a Bill of Rights for all children in Botswana. Section 7(a) thereof prohibits discrimination in the following terms:

*[...] no decision or action shall be taken whose result or likelihood is to discriminate against any child on the basis of sex, family, colour, race, ethnicity, place of origin, language, religion, economic status, parents, physical or mental status, or any other status[...].*

The Act therefore challenges the notion that children as minors have no say in decisions affecting their welfare. The Act insists on children being allowed to participate in matters concerning their well-being. Those born out of wedlock have access to their fathers. Conversely, unmarried men, who are fathers, can therefore have custody and access to their children. Further, the law requires that the father's name, whether or not the child is born in or out of wedlock, should appear on the child's birth certificate.

In *GK v AG & Others*<sup>6</sup> the High Court of Botswana held that Section 4(2)(d)(i) of the Adoption Act which allowed the adoption of a child born out of wedlock without the consent of the biological father was discriminatory (against the biological father) and therefore unconstitutional.

### **Addressing stereotypes and negative cultural practices**

Despite government's effort to promote equality before the law, especially gender equality, certain roles continue to be performed along gender lines. There are still challenges towards the absolute elimination of role stereotypes and negative cultural practices. However, considerable strides have been made to protect and promote equality before the law through the provisions of various legislations such as the Domestic Violence Act and the Regulations thereto; the Children's Act, Abolition of Marital Power Act, among others.

Furthermore, the Government, in collaboration with civil society organisations and with support from development partners, continues to implement initiatives aimed at addressing stereotypes and negative cultural practices that reinforce discrimination against women within religious and community settings. Such initiatives include the "TAMAR Campaign" aimed at addressing violence against women within religious settings; the "I Stories" written by survivors of gender based violence; a fatherhood programme aimed at encouraging men and boys to be partners with women in parenting and upbringing of children, as well as cultural dialogues with different community groups across the country.

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<sup>6</sup> MAHGB-000291-14.

Data collection and analysis remains a challenge for the Government. However steps continue to be taken to strengthen evidence based planning and programme implementation for improved impact.

### Data collection on male and female representation in various sectors

The Draft National Policy on Gender and Development has a dedicated monitoring and evaluation component. The Gender Study of 2013 establishes baseline information on various components of gender and development, necessarily indicating the relative positioning of women.

As depicted in the table below, women are under-represented in Parliament and Cabinet.

#### *Women in Botswana Parliament and Cabinet<sup>7</sup>*

|                   | 2004 |        |          | 2009 |        |          | 2014 |        |          |
|-------------------|------|--------|----------|------|--------|----------|------|--------|----------|
|                   | Male | Female | % Female | Male | Female | % Female | Male | Female | % Female |
| <b>Parliament</b> | 55   | 7      | 11       | 58   | 4      | 6.6      | 56   | 6      | 8.2      |
| <b>Cabinet</b>    | 15   | 5      | 25       | 19   | 4      | 17.4     | 19   | 4      | 17.4     |

There are six (6) women in the current Parliament including the Speaker of the National Assembly. Four of the women are Ministers. There are also two female Chiefs. Since our last review, there has been an increase in the representation of women in political decision making; with women making up about 8% in the current Parliament.

Local Councils, very much like Parliament, continue to be dominated by men. There are currently 609 Councillors in Botswana out of which 490 are elected and 119 nominated. 87% (427) of the elected Councillors are male and only 13% (63) are female. 61% (73) of the specially nominated Councillors are male and 39% (46) are female<sup>8</sup>.

Trade Unions show a similar trend of male predominance with females accounting for only 20%. Women in the management of NGOs are at 45%.

#### *Women Representation in Central Committees of Political Parties, NGOs and Trade Unions*

<sup>7</sup> See, National Assembly, February 2014.

<sup>8</sup> See the **List of elected and nominated Councillors (2014-2019 TERM)**, Ministry of Local Government, February 2015, preamble.

| Sector                      | % female, 2013 |
|-----------------------------|----------------|
| Heads of NGOs               | 45             |
| Parties' Central Committees | 31             |
| Heads of Trade Unions       | 20             |

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

*Participation of women in the Court of Appeal and High Court, 2012<sup>9</sup>*

| Positions     | % Female | % Male |
|---------------|----------|--------|
| Chief Justice | 0        | 100    |
| President     | 0        | 100    |
| Judges        | 5.6      | 94.4   |

*Participation of women in the Magistrate Courts, 2012<sup>10</sup>*

| Position    | % Male | % Female |
|-------------|--------|----------|
| Magistrates | 44     | 56       |

*Women in Traditional Leadership positions<sup>11</sup>*

|                                   | Female | Male | % Female |
|-----------------------------------|--------|------|----------|
| Court Presidents                  | 2      | 18   | 10.0     |
| Deputy Court Presidents           | 1      | 22   | 4.3      |
| Ntlo ya Dikgosi (House of Chiefs) | 3      | 32   | 8.6      |

The participation of women in decision making positions in the Public sector continues to be at higher levels as compared to other sectors. In 2013 women in the Public sector accounted for 42% of all persons holding positions of Deputy Director to Permanent Secretary Level. With regard to the participation of women in

<sup>9</sup> See SADC Gender Monitor 2013.

<sup>10</sup> See SADC Gender Monitor 2013

<sup>11</sup> See the African Gender and Development Index, Botswana Report, 2012.

decision making positions in the Public sector, Botswana is ranked second, in Southern Africa, with a record of 35% women Permanent Secretaries and 45% Directors.

Botswana has also been able to get over one third of women representation in its Heads of Missions across the globe.

*Heads of Missions by Sex<sup>12</sup>*

|                   | <b>Male</b> | <b>Female</b> | <b>Total</b> |
|-------------------|-------------|---------------|--------------|
| Heads of Missions | 13          | 8             | 21           |
| Percentage (%)    | 62          | 38            | 100          |

Despite the constitutional guarantees of equality, in comparison to male participation, except in the public sector, women participation in political and public life continues to show a stagnated and slow growth and in other instances a decline. In response thereto, the Gender National Strategy has, among others, prioritized women empowerment with regard to political power, decision making as well as democratic governance.

#### **ARTICLE 4**

#### **RESPECT OF ONE'S LIFE AND INTEGRITY**

Section 4 of the Constitution of Botswana confers on every individual in Botswana the right to life and further outlines the instances under which this right may be deprived.

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

Under the Penal Code, two offences attract the death penalty. Treason attracts the death penalty in terms of Section 34 thereof and murder, in terms of Section 203 of the same Act. In case of the offence of murder, a death sentence is mandatory, though a lesser sentence may be imposed where there are extenuating circumstances.

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<sup>12</sup> See Ministry of Foreign affairs and International Cooperation, 2013.

The Children's Act, 2009, in addition to the Constitution, provides additional protection to the child's right to life. It provides, *inter alia*, that a child shall not be sentenced to death in terms of the following provisions:

**Section 10 (1)** provides that, "every child has an inherent right to life and that in order to ensure the enjoyment of this right, no person shall take any action or make any decision the effect of which will be to deprive the child of survival and development to the child's full potential";

**Section 89 (2)** provides that, "A child convicted of murder shall not be sentenced to death"; and

**Section 89 (3)** provides that, "A child charged with a capital offence other than murder shall, subject to the provisions of the Penal Code, be sentenced to imprisonment for such term as the court considers appropriate.

## ARTICLE 5

### RIGHT TO RESPECT OF HUMAN DIGNITY, PROHIBITION OF SLAVERY; SLAVE TRADE; TORTURE CRUEL INHUMAN AND DEGRADING TREATMENT

Botswana has legislative measures that protect the dignity of the person from childhood and prohibits slavery, slave trade, torture, cruel inhuman and degrading treatment:

#### 1. RIGHT TO RESPECT OF HUMAN DIGNITY

##### *(a) CHILDREN:*

Section 11 of the Children's Act protects the dignity of the child. It provides that every child has a right to a name, from birth, which neither stigmatises nor demeans the dignity of that child. This was the first time Government sought to regulate child-naming, thereby promoting the dignity of the child especially in instances where parents name children after their bad experiences.

Sections 12(4) and 12(5) of the Children's Act upholds the dignity of the child by making it mandatory for every child to know the identity of both parents thereby placing them at the same level with children born in wedlock.

Upholding these provisions, in *GK v AG & Others*<sup>13</sup> the High Court held that the Children's Act 'acknowledges that there is a relationship between him (biological father) and his offspring – with the exception of those children sired through rape or incest'<sup>14</sup> with the biological mother.

Section 12 of the Children's Act provides that: '*Every child has a right to a nationality from birth.*' This therefore means that nationality is an inherent right to every child.

The identity of the child is also preserved in Section 16 of the Citizenship Act. Where one of the parents is a citizen, that child is considered a citizen of Botswana. However, if the other parent is not a citizen, that child enjoys dual citizenship before attaining 21 years. At 21, the law requires the "child" to denounce one and retain their preferred citizenship. Dual Citizenship is not yet recognised. The only exception: Children who acquire the citizenship of a foreign country may maintain their dual citizenship until the age of 21. Upon reaching the age of majority, the person must renounce the foreign citizenship, take an oath of allegiance, and make declarations concerning future residency.

Similarly, the Pensions and Provident Fund Act empowers the pension administrators to distribute pension benefits upon the death of the member to all biological children including those born out of wedlock.

Section 16 of the Cybercrime and Computer Related Crimes Act (2007) criminalised electronic traffic by using children in pornographic or obscene material.

### ***(b) ERADICATION OF POVERTY:***

Broadly defined, poverty is "deprivation related to insufficiency in resources required to maintain an acceptable standard or quality of life". It is "lack of physical, human and social capital to meet the basic (human) needs"<sup>15</sup>.

In an effort to restore human dignity, the Government is implementing Poverty Eradication programmes, targeting mainly vulnerable populations, such as, small

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<sup>13</sup> MAHGB-000291-14.

<sup>14</sup> Ibid, para 94.

<sup>15</sup> See K. OSEI-HWEDIE "Poverty eradication in Botswana: towards the realization of National Strategic Vision" in **Botswana Journal of African Studies**, Vol. 18 (2004) 1, page 8.

stock, bee-keeping, backyard gardening, literacy skills and business management training; upholstery, jam and pickle products, leather works, among others. Since inception, the government allocated a cumulative budget of BWP520 million (approx USD52million) to the Poverty Eradication Projects to date.

The population living below the poverty datum line (PDL) has been declining over the years. In 1983/84, the estimated population living below the PDL was 59% to 30.6% in<sup>16</sup> to 19.4% while in 2013 it was at 19.3%.

The Government's determination to end extreme poverty by 2016 has taken Botswana closer to eradicating abject poverty. According to the UN, the hunger target is achievable because the basic needs are met in Botswana. The country is projected to halve the proportion of people whose income is less than US\$ 1.00/day and to reduce, by 50%, the proportion of people who suffer from hunger and malnutrition by 2016<sup>17</sup>.

The country's expansive social safety net regime (Old Age Pension; Destitute Cash Allowance; and Orphans and destitute food packages) ensures that the food needs of those with heightened vulnerability to hunger and malnutrition (destitute persons, orphans, and persons with HIV and AIDS) are met.

Women continue to represent a high proportion of the nation's poor, representing 10.7% of the population living below the PDL compared to 8.6% of males. In order to address poverty among women, the Government through the National Gender Machinery continues to support women and women's groups by providing grants to promote their economic empowerment.

In 2012, as a special measure, the Government allocated 5% from the alcohol levy fund to women empowerment programmes in an effort to address poverty among women and consequently improve their participation in the economic development of the country. During 2014/2015 financial year, Government increased its allocation from the alcohol levy fund to 10%. As at September 2015, P1, 867, 586, 562.00 had been accumulated into the alcohol levy.<sup>18</sup>

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<sup>16</sup> See Policy Brief "*Natural resources and poverty in Botswana: development linkages and economic valuation*", UNDP-UNEP Poverty-environment initiative, PEI 2013, page 1.

<sup>17</sup> See <http://www.bw.undp.org/content/botswana/en/home/mdgoverview/overview/mdg1/> (visited on August 23, 2015)

<sup>18</sup> State of the Nation Address 2015

## **2. PROHIBITION OF SLAVERY AND SLAVE TRADE**

[Section 6 (1) of the Constitution protects all persons living in Botswana from slavery or servitude. Furthermore in August 2002, the Government ratified the Protocol on the Suppression and Punishment of Trafficking in Persons especially Women and Children and the Optional Protocol to the Convention on the Rights of the Child on Sale of Children and Children Prostitution in September 2003.]

In 2014, Botswana enacted the Anti-Human Trafficking Act which forbids all forms of human trafficking in and through Botswana. The objective of the Act is to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. The Act provides for the prohibition, prevention and combating of human trafficking<sup>19</sup> and exploitation<sup>20</sup> as well as measures to protect and assist victims of trafficking in persons and other matters incidental thereto.

Under the Act, the Minister has an obligation to establish and operate Centres for victims of human trafficking, composed of Centres for child<sup>21</sup> and adult<sup>22</sup> victims. The expenses arising out of assistance to the victims of trafficking in person should

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<sup>19</sup> Human trafficking is widely defined in Section 9 of the Act as the recruitment, transport, transfer, harbouring or reception of another person “by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of that person.” It also includes the removal of an organ from a person’s body, forcing a woman to fall pregnant and take the child away, subjecting a person to slavery or forced labour, instigating person to commit an act of prostitution, instigating person to take part in an obscene publication or obscene display or committing a sexual offence against a person.[Section 9(2)]

<sup>20</sup> According to Section 2 of the Act, the term “exploitation” includes but is not limited to “keeping a person in a state of slavery, subjecting a person to practices similar to slavery, involuntary servitude, forcible or fraudulent use of any human being for removal of organs or body parts, forcible or fraudulent use of any human being to take part in armed conflict, force labour, child labour, sexual exploitation, child marriage, or force marriage.”

<sup>21</sup> The role of the Centre for Child victims is, according to section 18 of the Act, to secure physical safety of the child, provide him/her with temporary basic material support, offer a programme for education, counselling and rehabilitation services to the child

<sup>22</sup> A Centre for Adult secures the safety to adults at risk of retaliation, offers services aimed at educating, counselling, rehabilitating, re-integrating an adult into his/her family, provides accommodation to an adult who has a child in his/her care. (Section 19)

be financed through the Victims of trafficking Fund<sup>23</sup>. The Centres and the Fund are yet to be established.

### **3. PROHIBITION OF TORTURE, CRUEL, INHUMAN AND DEGRADING TREATMENTS**

Section 7 of the Constitution of Botswana provides that “no person shall be subjected to torture or to inhuman and degrading punishment or other treatment.” In its endeavour to ensure that there is no torture or inhuman or degrading punishment in schools, the Ministry of Education and Skills Development has come up with a draft Education and Training Bill (2014). Section 14(1) thereof provides that “a learner shall not be subjected to torture and cruel, inhuman and degrading treatment or punishment, in any manner, whether physical, emotional and psychological.”

#### **(a) ELIMINATION OF ALL FORMS OF HARMFUL TRADITIONAL PRACTICES**

Botswana has undertaken legislative measures to prohibit and eliminate all forms of harmful social, cultural, religious and traditional practices. In particular, Section 62, (subject to Section 61(3)), and Section 90 which allow corporal punishment as prescribed by the law) of the Children’s Act, 2009 prohibits harmful social, cultural and religious practices which are detrimental to a child’s well-being.

In terms of Section 62(2), a child shall not be subjected, by any person, to a forced marriage; a child betrothal; genital mutilation or female circumcision; or any other cultural rite, custom or tradition which may inflict physical, emotional or psychological pain or harm to the child, or otherwise violate or endanger his or her bodily integrity, life, health, dignity, education or general well-being.

Section 62(3) further provides that, “unless it is in the interest of the child, no person shall circumcise a male child except where:

- (a) The circumcision does not expose the child to any harm and does not conflict with any regulations made under this or any other Act;

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<sup>23</sup> See Chapter VII of the Act (Articles 27, 28 and 29). The sources of funding are clear and they include the State, through the Parliament and proceeds from crimes confiscated or forfeited proceeds of crimes.

- (b) The circumcision is performed for medical reasons on the recommendation of a medical practitioner; and
- (c) Proper counseling of the child is obtained, subject to the child's age, maturity and level of understanding.

In terms of Section 62(4), a child above the age of 16 “may be circumcised only if he consents thereto, has received proper counseling, and it has been certified by a medical practitioner that the procedure is unlikely to cause him any harm, taking into consideration his maturity and state of health.”

According to Section 62(5), any person “who coerces, pressures or deludes a child into participating in any of the practices referred to in this section shall be guilty of an offence and liable to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than 12 months but not more than three years or both.”

In addition, Section 63 of the Children’s Act 2009 provides that: “A person who contravenes the provisions of Sections 59 to 63 shall be guilty of an offence and liable to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than seven years but not more than 10 years, or both.”

Although there are no official reports on arranged marriages in Botswana, it is still believed that there are some cases of arranged marriages that are taking place in some parts of the country, especially North West. The magnitude of the problem is not known because these issues are considered culturally sensitive hence low reporting.

## ARTICLE 6

### RIGHT TO LIBERTY AND SECURITY

The Right to liberty is guaranteed under Section 5 (1) of the Constitution which provides that no person shall be deprived of his personal liberty except by operation of the law.

The security and liberty of persons in the country is primarily safeguarded by Botswana Police Service (BPS) whose mandate among others is to duly enforce all the written laws, protect life and property, prevent and detect crime, repress

internal disturbances, apprehend offenders, bring offenders to justice, and generally maintain public tranquillity, peace and security.<sup>24</sup>

While the Police are responsible for law enforcement, they are not above the law. Any victim of unlawful arrest or detention has an enforceable right to compensation, which can be realised through legal action. In the case of *Nkunga v. Attorney General 2010 (1) BLR 342 (HC)*, the plaintiff was awarded damages after successfully suing the Government for unlawful arrest and detention.

### **ARTICLE 7&26**

#### **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 AND DUTY TO GUARANTEE THE INDEPENDENCE OF THE JUDICIARY**

Section 3 of the Constitution accords every person in Botswana the protection of his fundamental rights and freedoms.

#### **Right to a Hearing**

Section 10 (1) of the Constitution guarantees any person who is charged with a criminal offence to be given a fair hearing within a reasonable time, by an independent and impartial court of law. And in protecting his/her right to a fair trial, the Courts are cognizant of the fact that, "Justice must not only be done, it must also be seen to be done."

#### **Right to Appeal**

The individual's fundamental rights and freedoms are also promoted and protected through the right to appeal. Prior to 2012, the Court of Appeal used to have two sessions in a year. However, to facilitate access to the courts and the exercise of the right to appeal, the Court now sits on a full time basis. It has eight (8) Justices and is headquartered in Gaborone.

Not only is the right of appeal exercised through the Court of Appeal but also through the High Court, the Magistrate Court, the Industrial Court and the Customary Court of Appeal.

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<sup>24</sup> Botswana Police Act, Cap 21:01, Section 6).

There has been an increase of High Courts from two to three. In 2012, Gaborone High Court was added to the already existing courts in Lobatse and Francistown. There is a total of twenty-three 23 Judges. Nine (9) are based in Gaborone, seven (7) in Lobatse and seven (7) in Francistown.

There are twenty-eight (28) Magistrate Courts in the country. Trade disputes are heard at the Industrial Court which is in Gaborone and Francistown. It is a Court of Equity. There is also the Land Tribunal which addresses land disputes. A right to appeal the decisions of the Land Tribunal / Land Boards lies with the High Court and this also serves as a review mechanism within the justice system

Specialized courts have also been introduced to dispense justice expeditiously. These are the Small Claims Courts, the Traffic Courts, Stock Theft Courts, Corruption Courts and Child Maintenance Courts (to enable women to access payment of maintenance). A right of Appeal from these courts lies with the higher courts.

### **Right to Presumption of Innocence**

Section 10(2) (a) of the Constitution provides that anybody charged with a criminal offence is presumed innocent until proven or has pleaded guilty to the charges.

### **Right to be defended by Counsel of Choice**

The Constitution also guarantees in Section 10(2) (d) the right to legal representation in criminal cases at the defendant's own expenses.

A person charged with a criminal offence shall also, according to Section 10(2)(b) and 10(2)(f), be informed as soon as possible, in a language that he/she understands, be given sufficient time and facilities for the preparation of his/her defense and be provided, free of charge, with the service of an interpreter if he/she doesn't understand the language of the charge at the trial.

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 convenience and upon payment of a fee.

### **Right to be Tried within a Reasonable Time**

In order to promote the right to be tried within a reasonable time, the government embarked on the following initiatives:

1. In 2010, the Government introduced, through the Administration of Justice, the Judicial Case Management System, at the level of the High Court and the Court of Appeal. This was intended to deal with backlog of cases. Statistics before 2010 reflected that the disposal rate of cases stood at an average of 75% – 80% annually. It is worth noting that the Judicial Case Management System has also been introduced at the Magistrate Courts.

2. The Administration of Justice has also introduced Mobile Courts. Mobile Courts are intended to take justice to the people, particularly in areas where there are no courts.

3. The judiciary continues to reform its internal processes and plans to introduce Court Annexed Mediation which is a form of alternative dispute resolution in order to accelerate the disposal of cases and reduce litigation costs.

4. A Legal aid project was piloted by the government in collaboration with four civil society organisations<sup>25</sup> from 2011 to 2013. It is now a fully fledged institution operating under the name, Legal Aid Botswana, and provides legal assistance to indigent persons in Botswana.

The Government of Botswana is aware of the principles of legal aid laid down by the African Commission on Human and Peoples’ Rights in its Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, which urge States parties to provide for legal assistance in “any case where the interest of justice so require<sup>26</sup>.”

The demand for legal aid in the country since its inception has been as follows:

| Year | Legal Aid Botswana through its offices | NGOs | TOTAL       |
|------|--|------|-------------|
| 2011 | 132                                    | 88   | <b>220</b>  |
| 2012 | 963                                    | 652  | <b>1645</b> |

<sup>25</sup> The following organizations were selected and approved by a Ministerial Tender Committee: Botswana Network on Ethics, Law and HIV (BONELA), Women Against Rape (WAR), DITSWANELO and EMANG BASADI.

<sup>26</sup> According to the Guidelines, the “interest of justice” is determined by considering (1) in criminal matters, the seriousness of the offence and the severity of the sentence (2) in civil matters, the complexity of the case and the ability of the party to adequately represent himself or herself, the right that is affected and the likely impact of the outcome of the case on the wider community. See **Guidelines and Principles on the Right to a fair trial and legal assistance in Africa**, Chapter H (b).

|       |      |      |       |
|-------|------|------|-------|
| 2013  | 2031 | 1004 | 3035  |
| 2014  | 5440 | 266  | 5706  |
| 2015  | 1080 | 0    | 1080  |
| TOTAL | 9574 | 2010 | 11584 |

Statistics of the type of cases received from inception of the Pilot Project up to 30<sup>th</sup> September 2014 by NGOs.

| Type of case         | EMANG BASADI | DITSHWANELO | BONELA | WAR | TOTAL |
|----------------------|--------------|-------------|--------|-----|-------|
| Family law           | 674          | 320         | 90     | 83  | 1167  |
| Land                 | 27           | 72          | 7      | 4   | 110   |
| Industrial/Labour    | 0            | 148         | 34     | 8   | 190   |
| Contractual disputes | 20           | 54          | 15     | 7   | 96    |
| Delictual damages    | 7            | 39          | 118    | 4   | 168   |
| Wills and Estates    | 1            | 0           | 15     | 8   | 24    |
| Criminal             | 0            | 21          | 4      | 5   | 30    |
| Other                | 0            | 120         | 98     | 7   | 225   |
| TOTAL                | 729          | 774         | 381    | 126 | 2010  |
| Finalized            | 67           | 233         | 23     | 35  | 358   |
| Handed over to LAB   | 24           | 105         | 25     | 120 | 274   |

As reflected above, Cooperation agreements with NGOs promote access to justice since they are a cost effective way of providing legal services to the indigent. For an expenditure of 2,850,000 million Pula (US\$310,000), the NGOs finalized 358 matters and did some work on 781 pending matters.

5. Section 56 of the Legal practitioners Act requires every legal practitioner to do *pro deo* work, thereby promoting the right to be tried within a reasonable time. However, *pro deo* fees paid by the government are nominal and this may impact on the quality of legal representation that clients receive from lawyers.

The difficulty with section 56 of the Legal Practitioners Act is:

1. Many senior lawyers in private practice do not wish to do *pro Deo* work. The fees are too low. Some public spirited legal practitioners in private practice take on *pro Deo* work – but not enough. Between the Registrar and the Law Society the result is that most of the *pro Deo* work is distributed to junior legal practitioners who are willing to accept such instructions and at least earn something. The result is that murder cases are often defended by junior legal practitioners who, ideally, should be honing their forensic skills in less serious matters in the magistrates' courts. The *pro Deo* system helps to train junior legal practitioners, but is less suitable for the defence of the most

serious criminal cases where the accused face the prospect of the death penalty.

In the short term the situation could be improved by enforcement of Section 56 in a way that enables junior practitioners to be led by senior practitioners in *pro Deo* cases. This would avoid the potential prejudice to murder accused being defended by inexperienced practitioners while maintaining the training function of the *pro Deo* system. The obvious downside of this proposal is the additional cost to government coupled with the reluctance of many senior private practitioners to provide community service.

### **Duty to Guarantee the Independence of the Judiciary**

The Judiciary is established under Chapter VI of the Constitution as an independent arm of the State with the responsibility to administer justice.

The Independence of the Judiciary is succinctly demonstrated in the case of Mmusi and others Vs Ramantele where the High Court firmly asserted its Independence from the Legislative Arm of Government in the following terms “...Where Parliament is slow to effect the promise of the Constitution, the High Court being the fountain of justice and the guardian of the Constitution will not hesitate to perform its constitutional duty when called upon to do so”

The ability of the Judiciary to discharge its functions efficiently also depends on the support it receives from other institutions linked to the administration of justice as the Attorney General’s Chambers, Botswana Police Service, Botswana Prisons and the Directorate on Corruption and Economic Crimes (DCEC).

### **Cases Brought Before The Courts During The Period Under Review.**

[The table below provides the number of cases heard in the period reflected (including legal aid matters).

| <b>Year</b> | <b>Number of cases heard</b> |
|-------------|------------------------------|
| 2010        | 50980                        |
| 2011        | 48258                        |
| 2012        | 61745                        |
| 2013        | 52368                        |
| 2014        | 55207                        |
| 2015        | 45483 needs to be updated    |

## ARTICLE 8

### FREEDOM OF RELIGION AND CONSCIENCE

Section 11(1) of the Constitution provides for the right to freedom of religion and conscience in the following terms:

*“Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for purposes of this section, the said freedom includes, freedom of thought and of religion”.*

Section 3(b) of the Constitution, among others, provides for the individual’s freedom of conscience, of expression and of assembly and association subject to the respect for the rights and freedoms of others and for the public interest.

Section 21 of the Children’s Act further prohibits parents, relatives or guardians from forcing the child to adopt any particular religion, philosophy or doctrine.

One Thousand Eight Hundred and Sixty-Four (1864) religious organisations have been registered since 1972 to 2014. Thirty-one (31) churches were denied registration, between 2013-2014, because of their failure to comply with the registration procedure.

Below is an illustration of the number of Christian, Animist, Muslim, Sikh and Buddhist denominations or institutions from 2002 to 2013.

| <b>Denominations or Religious Associations</b> | <b>From 2002 to 2013</b> | <b>Before 2002</b> |
|--|--------------------------|--------------------|
| Christian                                      | 1074                     | 546                |
| Muslim   | 4                        | 1                  |
| Sikh   | 1                        | 1                  |
| Buddhist                                       | 1                        | 1                  |
| <b>Total Registration</b>                      | <b>1080</b>              | <b>549</b>         |

## ARTICLE 9

### RIGHT TO RECEIVE INFORMATION; RIGHT TO EXPRESS OPINION

Section 3 (b) of the Constitution provides as follows:

*Whereas 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, but subject to respect for the rights*

*and freedoms of others and for the public interest to each and all of the following, namely:- Freedom of conscience, of expression and of assembly and association....*

It is the Government of Botswana's policy to have an open and democratic Government, with the public able to access information. In its National Strategic Vision document, the Government recognised "the importance of information and of developing efficient information systems and networks for the support of research, education, development and communication with the rest of the world" and stressed the challenge "to ensure access of all families to information technology, television, audio and print media, and to further develop an environment conducive to free flow of information among all the communities of Botswana."<sup>27</sup>

The Botswana National E-Government Strategy (2011-2016) was launched in 2010. Its main objective is to move all appropriate government services online with the view of improving the convenience, quality and efficiency of public service sector delivery in Botswana.

The National Broadband Strategy was drafted in 2013. It explicitly recognised the need for greater access to and affordability of broadband services. The KITSONG Centres are Community Access Centres (CACs) initiated to serve as a gateway to access Internet and other ICT services in rural areas. The centres provide government information and services, such as school registration, birth certificates, passports and livestock-tracking. In addition, ICT access was also provided to Botswana's network of public libraries, which now serves as e-government access points.

## **ARTICLES 10 &11**

### **RIGHT TO FREE ASSOCIATION AND ASSEMBLY**

Section 13 of the Constitution guarantees the right to assembly and association. This right is enjoyed by individuals, groups and communities alike.

As of August 2015, 7,628 organizations were registered in Botswana. 1 952 of them are religious groups, 1,738 are sports groups, 1,608 are burial groups, 80 are women's groups and 15 are political parties.

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<sup>27</sup> See **National Strategic Vision: a long-term vision for Botswana**, page 17-18.

Where persons are of the opinion that their right to enjoy freedom of association is being infringed upon, they can take the matter to the courts. The Lesbians Gays Bisexuals of Botswana Association (LEGABIBO) recently sued the Government for refusing to register it as an association of homosexuals.

Judgment on this matter was delivered on the 14<sup>th</sup> of November, 2014 wherein the High Court held that, “denying people whose sexual orientation is not a crime in Botswana.....the right to register a society for the purposes of lawfully carrying out advocacy for, inter alia, decriminalization of homosexuality is a clear violation of their constitutional rights to freedom of...association contrary to Section 3 of the Constitution”...“In a democratic society such as ours, freedom of association, assembly and expression are important values duly protected by our Constitution...The enjoyment of such rights can only be limited where such limitation is reasonable and justifiable in a democracy<sup>28</sup>.” This matter went on appeal and the High Court decision was upheld.

The Employment Act [CAP 47:01], the Trade Unions and Employers’ Organisations Act [CAP 48:01], the Trade Disputes Act [CAP 48:02], and recently the Public Service Act [CAP 26:01], promote the right to free association.

Matters that fall under section 13 of the Constitution have been subjected to interpretation and decision by the judiciary. One such matter is that of Botswana Land boards Local Authorities Workers Union and Others V Director, Public Service Management and Another 2010 (3) BLR 351 HC, where the High Court, upholding the right to freedom of association held that, “This freedom (of association), like all other freedoms should be jealously protected not least by the judicial arm of the State. Without the freedom of association, the workers are bereft of protection. Any threat to this freedom has the effects of adversely affecting the very existence of the workers”.

In the interest of defence, public safety, public order, public health and public morality, essential services such as Botswana Defence Force (BDF) and Botswana Police Service (BPS) are not allowed to form trade unions because they are the custodians of law and order.

## **ARTICLE 12**

### **FREEDOM OF MOVEMENT AND RIGHT TO SEEK AND OBTAIN ASYLUM**

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<sup>28</sup>See case Thuto RAMMOGE and others vs The Attorney General of Botswana, MAHGB-00175-13 of November 14, 2014. Paragraph 57.

Section 14 (1) of the Constitution provides that every person shall be entitled to freedom of movement and for purposes of this Section, the said freedom includes amongst others, the right to move freely throughout Botswana the right to reside in any part of Botswana and the right to enter Botswana.

Botswana continues to receive persons seeking asylum which can be granted based on whether or not they meet the requisite criteria. Botswana is host to asylum seekers and refugees from, among others, Somalia, Eritrea, Democratic Republic of Congo, Angola, Namibia and Zimbabwe. Where the political situation has normalised in their countries, the refugees are free to return to their countries of origin.

### **ARTICLE 13**

#### **RIGHT TO PARTICIPATE FREELY IN GOVERNMENT; RIGHT TO EQUAL ACCESS TO THE PUBLIC SERVICE OF ONE'S COUNTRY; RIGHT TO ACCESS PUBLIC PROPERTY**

##### **A. Right To Participate Freely In Government:**

Botswana is a multi-party democracy which holds free and fair elections every five (5) years. The last elections were held in 2014. Governance institutions are fully fledged and functioning. The branches of government comprise the Executive, Legislature, and the Judiciary. The National Assembly acts in consultation with the Ntlo ya Dikgosi (House of Chiefs), which advises on matters affecting customs and tradition. Local government comprises 16 Administrative Districts and 16 Districts Councils in which District, Town and City Councilors are regularly elected.

According to the Section 58 of the Constitution, the Parliament is composed of 57 elected members and 4 specially elected members. The President of the Republic is an Ex-Officio Member of the Parliament. The Speaker of the National Assembly can also be elected from among persons who are not members of the Parliament.

There are currently 57 constituencies and 490 Council wards. In this regard, all citizens can stand for these political offices provided that they satisfy the criteria set out in the Constitution.

Citizens are also at liberty to elect candidates of their choice. Elections are organized by an Independent Electoral Commission (IEC), as established in 1997

by Section 65 A of the Constitution. The IEC is mandated to ensure that elections are conducted efficiently, properly, freely and fairly.

1. During the period under review, the Electoral Act was amended to make provision for the names of voters on the roll to be arranged alphabetically. Furthermore, the IEC adopted several administrative initiatives, such as the creation of Democratic Youth Clubs (DYC) in secondary schools; the implementation of the Youth Ambassadors (YA) programme with focus on youth out of schools; development of braille instructions for the braille literate to read for themselves so as to enhance the privacy of vote casting; introduction of Helpdesk at each polling station to assist voters with reporting to the rightful polling station as well as the validity and authenticity of the National Identification Cards; use of tally sheets to facilitate speedy counting of ballots cast. Such initiatives led to an increase of the number of registered young voters for the 2014 General elections from 31% to 47%. The IEC continues to use various fora, such as dikgotla, workshops, fairs, and school visits etc, for stakeholder consultations and electoral information dissemination.

The Population and Housing Census of 2011 estimated the population at 2,024,904 persons. The boundaries of the existing constituencies were revised in accordance with Sections 63, 64 and 65 of the Constitution. Although the total number of constituencies didn't increase, the boundaries changed significantly due to the growth and other dynamics in the population. The exercise also led to some constituencies being renamed<sup>29</sup>. Following the delimitation exercise, the IEC embarked on the establishment of polling districts (within constituencies) for purposes of Local Government elections. Although the number of polling districts remained unchanged at 490, some polling district boundaries and names changed. As a result, the number of polling stations increased from 2288 to 2606 locally and 26 to 38 externally. The increase was aimed at enhancing accessibility of electoral services to the electorate and other stakeholders.

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<sup>29</sup> On the work of the IEC, see the **Report the Minister for Presidential and public administration on the General Elections**, October 2014.

In October 2014, Botswana organized its 11<sup>th</sup> General Elections (Presidential<sup>30</sup>, Parliamentary<sup>31</sup> and local<sup>32</sup>) and only four (4) out of the fifteen (15) recognized political parties participated. A large number of independent candidates also participated in the Parliamentary<sup>33</sup> and Local Government elections<sup>34</sup> In line of the

Out of the 825,582 registered voters for the 2014 General Elections, 698,409 voters cast their vote. This represents a voter turnout of 84.6%. The results of the three (3) political parties and the twenty-nine independent candidates who contested the National Assembly elections were as appear in the table below:

| Party                          | Seats won | Votes received   |
|--------------------------------|-----------|------------------|
| Botswana Congress Party        | 3         | 140.998 (20.43%) |
| Botswana Democratic Party      | 37        | 320.647 (46.45%) |
| Umbrella for Democratic Change | 17        | 207.113 (30.01%) |
| Independent candidates         | 0         | 21.484 (3.11%)   |
| <b>TOTAL</b>                   | <b>57</b> | <b>690.242</b>   |

For the local government elections, four political parties and 254 independent candidates contested and their results were as shown in the tables below: “Three Polling Districts went for fresh elections as a result of equality of votes among the leading candidates”

| Party                          | Seats won  | Votes received |
|--------------------------------|------------|----------------|
| Botswana Congress Party        | 57         | 148.201        |
| Botswana Democratic party      | 310        | 312.550        |
| Umbrella for democratic Change | 116        | 184.852        |
| MELS Movement of Botswana      | 0          | 39             |
| Independent candidates         | 4          | 36.004         |
| <b>TOTAL</b>                   | <b>487</b> | <b>681.487</b> |

Party performance by administrative District

| District Council | BCP | BDP | UDC | MELS | Ind. | TOTAL |
|------------------|-----|-----|-----|------|------|-------|
|                  |     |     |     |      |      |       |

<sup>30</sup> Three parties, the Botswana Congress Party, the Botswana Democratic Party and the Umbrella for Democratic Change nominated candidates for the presidential election.

<sup>31</sup> The Botswana Congress Party, the Botswana Democratic Party and the Umbrella for Democratic Change also represented the political parties to the parliamentary nominations.

<sup>32</sup> The Botswana Congress Party, the Botswana Democratic Party, the MELS Movement of Botswana and the Umbrella for Democratic Change participated to the nominations.

<sup>33</sup> Twenty-nine (29) candidates.

<sup>34</sup> Two hundred and fifty-four candidates.

|                        |       |       |       |      |      |        |
|------------------------|-------|-------|-------|------|------|--------|
| Central District       | 12    | 117   | 7     |      | 4    | 140    |
| Chobe District         | 1     | 6     | 0     |      | 0    | 7      |
| Francistown City       | 3     | 13    | 3     | 0    | 0    | 19     |
| Gaborone City          | 5     | 4     | 21    |      | 0    | 30     |
| Ghanzi District        | 1     | 14    | 5     |      | 0    | 20     |
| Jwaneng Town           | 0     | 1     | 6     |      | 0    | 7      |
| Kgalagadi District     | 0     | 16    | 6     |      | 0    | 22     |
| Kgatleng District      | 3     | 8     | 12    |      | 0    | 23     |
| Kweneng District       | 2     | 42    | 21    |      | 0    | 65     |
| Lobatse Town           | 0     | 7     | 5     |      | 0    | 12     |
| North-East District    | 2     | 16    | 1     |      | 0    | 19     |
| North-West District    | 14    | 22    | 3     |      | 0    | 39     |
| Selibe Phikwe District | 6     | 8     | 0     |      | 0    | 14     |
| South-East District    | 7     | 4     | 9     |      | 0    | 20     |
| Southern               | 0     | 33    | 17    |      | 0    | 50     |
| TOTAL                  | 56    | 311   | 116   | 0    | 4    | 487    |
| Percentage             | 11.50 | 63.86 | 23.82 | 0.00 | 0.82 | 100.00 |

In its endeavour to ensure that the IEC fulfils its mandate, the Government warranted to the IEC an amount of 278,917,123 Pula (US\$31,000,000) to organize free, fair and transparent elections during the 2014 elections.

## **B. Right to Equal Access to the Public Services and Properties**

Through the National Strategic Vision, the Public Service Charter and the Public Service Act, public officers in Botswana are mandated to render services to the public by adhering to non discriminatory principles. In particular, the Public Service Charter sets out the basic principles of the public service such as public interest, due diligence, the duty to be informed, neutrality and impartiality by which employees are guided in dealing with the public they serve.

In order to ensure that the public enjoys the right to access public service and property, the Government has put in place certain measures such as:

- a) Toll free telephone numbers;
- b) Suggestion boxes;

- c) Mechanisms for redress against any improper or unreasonable administrative decisions;
- d) Customer satisfaction surveys; and
- e) Engagement of the public by government officials through the print and electronic media. In addition, there are engagements by the President, the cabinet and members of parliament as well as area councillors through annual public service day and Pitso (National Consultative Forum) where feedback from the public is solicited.
- f) Publishing in the newspapers, the direct office numbers for all cabinet members (ministers) in order for the public to be able to engage directly with them.

## **ARTICLE 14**

### **RIGHT TO PROPERTY**

The Right to Property is protected under Section 8 of the Constitution. During the period under review, the Government adopted measures aimed at implementing the provisions of Article 14 of the African Charter.

#### **A. The Married Persons Act (2014)**

The Abolition of Marital Power Act removed the restrictions / marital power that was placed on the legal capacity of a wife and enabled wives to acquire property and have meaningful participation on joint property which was otherwise administered by their spouses without their consent.

The Married Persons Property Act completes that legal framework in that it allows parties to a marriage to change their marital proprietary regime. In terms of this Act, the parties can freely elect whether to continue being married in or out of community or change their proprietary regime as they deem appropriate for their circumstances, in so far as they operate within the precincts of the Act.

#### **B. The New Botswana Land Policy**

Botswana adopted a New Land Policy in 2013 whose overall objectives are to:

- a) Protect and promote the land rights of all land holders;
- b) Ensure that all eligible citizens have the opportunity to access and use the land;
- c) Encourage citizens' retention of rights to land;
- d) Promote equity in access to land and natural resources;
- e) Improve land management system and ensure that it is predictable, transparent, reliable, consistent and timeous;

- f) Establish an up-to-date, efficient and accessible land information centre; and
- g) Promote compatible and best use of land, and other land resources.<sup>35</sup>

The Policy also introduces affirmative action measures for vulnerable categories of the society, such as remote areas communities, widows, orphans, youth, and people with disabilities.

Furthermore, the Government introduced the Land Administration Procedures and Processes Capacity Building Systems (LAPCAS). The intention of this project is to register all real property in the country. In this regard, both Government and individuals are able to assert citizens' right to property. This also helps Government to identify people without land.

Government also has the following programmes in place which enhance the right to property ownership:

- a. Self Help Housing Agency (SHHA) scheme is meant for low income earners within the range of P395 -P3, 000 per month across the country. These individuals receive interest free loans to improve their residences or receive complete residential units.
- b. The Poverty Alleviation and Housing Programme (PAHP) was introduced during National Development Plan 8 to cater for income groups that cannot access loans from financial institutions and fall below SHHA income threshold. So far, this programme has produced One Hundred and Forty – Eight (148) housing units across the country.
- c. Under the Destitute Housing Programme, Government has constructed One Thousand Seven Hundred and Thirty-Two (1732) decent shelters for the poor since 2008/9.
- d. The Presidential Housing Appeal has provided Four Hundred and Twenty (420) houses for the needy since its inception in 2009/10.
- e. All citizens are given equal opportunities to acquire land. The Government also allows all Botswana citizens to apply, wherever they deem suitable, for land, either for residential or commercial purposes.

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<sup>35</sup> See **Botswana Land Policy**, 2013, Ministry of Lands and Housing, paragraph 49.

## **ARTICLE 16:**

### **THE RIGHT TO ENJOY THE BEST ATTAINABLE STATE OF PHYSICAL AND MENTAL HEALTH.**

The Government has continued to improve the health sector so as to ensure that citizens enjoy the best state of physical and mental health as guaranteed in the African Charter.

The national health care delivery system has six structural levels, namely National referral hospitals, District hospitals, Primary hospitals, Clinics, Health posts and Mobile stops. The growth of the health infrastructures has been extensive from a small and narrow hospital based service serving a minority at independence to a broad decentralized primary health care system where most of the population is now within 8km radius of the nearest health facility

The Ministry of Health runs all health facilities in the country clustered in 27 health districts. There are 3 national referral hospitals, 12 district hospitals, 17 primary hospitals, 108 clinics with beds, and 181 without beds, 337 health posts with a nurse, 13 without a nurse, 674 Health facilities and 900 Mobile stops<sup>36</sup>. To make medical services more effective and efficient, administration of clinics has now been transferred from the Ministry of Local Government and Rural Development to the Ministry of Health for better management in line with the 2011 National Health Policy.

Medical Centres of Excellence are also being established to improve health care, while achieving long-term cost savings, through the provision of specialist services. Achievements include the establishment of the Cardio-thoracic Surgery Centre at the Princess Marina Hospital in partnership with the Government of Mauritius.

Botswana continues to devote significant resources to the health sector. In this regard, Government health facilities offer citizens free health care for children, destitute persons, and women seeking ante-natal care. The consultation fee is only P5.00 (less than US\$0.50) and medication is free.

Specialised health care may be received at Princess Marina Hospital, Gaborone Private Hospital, and Bokamoso Private Hospital or, at the expense of government, may be received in South Africa where the treating physician recommends same.

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<sup>36</sup> See **Master Health Facility List 2012**, Ministry of Health, page iv.

Private health care is also accessible for those who can afford it or are covered by medical insurance schemes.

Botswana has done well towards achieving Millennium Development Goals (MDGs) targets on health<sup>37</sup>:

- a. 95% of the population of cities and 89% of rural population live within 15 kilometres of a health facility.
- b. Malaria incidence has declined to less than 1% (from 10 per 1000) persons in 2007 to 0.56 per 1000 in 2011.
- c. Tuberculosis (TB) notification rate has been reduced from 511 per 100.000 persons in 2006 to 330 per 100.000 in 2011.
- d. More than 99% of women deliver in health care facilities, while 95% attend ante-natal care.
- e. New HIV/AIDS infections have been reduced from 1.45 per cent 1.35 per cent in 2008 to in 2011.
- f. There has been a reduction of HIV/AIDS prevalence among 15-24 years old from 8% in 2008 to 7.9 per cent in 2013.
- g. More than 95% of those in need of Anti-Retroviral Therapy (ARVs) are on treatment.
- h. Transmission of HIV/AIDS from mother to Child is less than 3%.
- i. New prevention strategies, such as safe male circumcision and an increase of the cell viral load for treatment initiation, have been introduced,
- j. In 2015, life-long ART treatment for pregnant women who test HIV + was also introduced.

Despite the afore mentioned successes, the Government is still working on reducing by two thirds the under-five mortality (MDG 4) and maternal mortality ratios (MDG 5).

### **The Fight against HIV and AIDS**

Botswana continues to take measures to combat the scourge of HIV/AIDS. The Botswana AIDS Impact Survey IV (BAIS IV) showed that the 2013 national HIV prevalence stood at 18.5% for the population aged 18 months to 64 years compared to the 2008 HIV prevalence which stood at 17.6%. Females continue to record high rates of HIV prevalence at 20.8% compared to their male counterparts who are at 15.6%.

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<sup>37</sup> 4: Reduce Child Mortality; 5: Improve Maternal Health; 6: Combat HIV and AIDS and other diseases.

In an effort to address the issue of cervical cancer among the HIV positive women, the Government is implementing a five Year Comprehensive Cervical Cancer Prevention and Control Strategy (2012-2016). This strategy introduces screening and outpatient treatment of cervical pre-cancer in one single visit, commonly referred to as “See and Treat”.

The Strategy and Programme of Action for Male Involvement in Sexual Reproductive Health and Rights (2007 – 2012) was developed to support institutions and programmes in initiatives aimed at reducing the spread of sexually transmitted diseases – particularly HIV and AIDS – and combating gender based violence. With these programmes, the country can better respond to the gender dynamics of the HIV and AIDS epidemic, sexual and reproductive health issues, and gender violence.

HIV and AIDS prevalence amongst children in the country is high. Fifty eight percent (58%) of deaths among the under-fives is attributable to HIV and AIDS and the remaining 42% percent are attributable to preventable causes such as, pneumonia (26.2%), ill-defined conditions (18%), and other conditions (12%), AIDS (9%).

One of the important treatment interventions Botswana has undertaken, includes the Prevention of Mother to Child Transmission (PMTCT) and the provision of anti-retroviral therapy (ART) to all citizens who need it, through the public health system. PMTCT services are integrated into routine maternal-child health care in all public facilities, and citizen women identified as HIV-positive during pregnancy are referred to the national ART programme for ARV evaluation and treatment.

Botswana has, through World Health Organisation (WHO) support, adapted the WHO Medical Eligibility Criteria Wheel (MEC) which provides guidance to health care workers in ensuring safety while initiating contraceptives as well as increasing access to family planning services. In order to improve access to contraception, Family Planning IEC Toolkit was designed, printed and dissemination is on-going which focuses on strengthening SRH and HIV linkages within various facility units especially IDCC, maternity and gynaecology.

#### HIV and AIDS Policies And Programmes

The Botswana National Strategic Framework (NSF) for HIV and AIDS 2003-2009 and for 2010-2016 was developed, with the central aim of ensuring and driving a multi-sectoral and multi-level national response to the spread of HIV/AIDS. The NSF articulates, disseminates and educates the public at large on the agreed

national priorities and strategies as well as providing guidance for all stakeholders involved in the fight against HIV and AIDS. The NSF clarifies the roles and responsibilities of districts, ministries and sectors in terms of planning and implementation.

The review of the Second Medium Term Plan for HIV and AIDS and the National HIV and AIDS Assessment helped the government in identifying the five priority areas of the Botswana's National Response, namely,

- (a) Prevention of HIV infection;
- (b) Provision of Care and Support;
- (c) Strengthened Management of the National Response to HIV and AIDS;
- (d) Psycho-social and economic Impact Mitigation; and
- (e) Provision of a Strengthened Legal and Ethical Environment.

Botswana has identified *prevention as the first priority of the national response*. The NSF 2010-2016 was reviewed in 2014 to align the national response priority with the latest developments in HIV and AIDS.

The Revised National Population Policy, 2010 has as its goal the "improved quality of life and standard of living of all people in Botswana". HIV and AIDS, as a key national challenge, receives due attention in this Policy. One of the policy objectives is to "*control the spread of HIV, reduce AIDS deaths and manage the impact of HIV and AIDS on the economy and its repercussions on the society*".

Botswana has carried out a lot of sensitisation about the dangers of teenage pregnancies and HIV and AIDS. The Government has integrated Family Life/Sexual Health Education into the new primary and secondary school syllabi.

In 2006, the Short Term Plan of Action on Care of Orphans (STPA) was reviewed. Among the key recommendations, was the need to develop a national Policy for Orphans and vulnerable children, and a long term plan of action for the implementation of the policy. In response thereto, The Botswana National Plan of Action for Orphans and Vulnerable Children (NPA) (2010-2016) was developed and is being implemented.

The review of the STPA made it clear that there are four key issues that should be given particular attention during the implementation of a NPA and these are:

- a. The need to remove duplications and overlaps, developing standards of service and role clarifications across the social service delivery sector to ensure improved *efficiency* and *effectiveness*.

- b. The need to ensure *long term financial sustainability* of the National Plan of Action on Orphans and Vulnerable Children by facilitating strategic thinking and management among all service providers, perform expenditure pattern review of existing programmes so as to develop a resource allocation formula while at the same time encouraging value for money audits.
- c. The need to *empower families* through transformative approaches which will include mindset change and very clear strategies to be undertaken through the social welfare programmes.
- d. The need to be constantly on the lookout for negative consequences arising from programming actions with the view of developing and implementing mitigation actions.

### **Challenges Facing the Implementation of Child Health Services**

A significant portion of the population is on HIV and AIDS treatment and that has implication for resources available to the rest of the health sector. The tendency of young girls to submit to risky sexual relationships has been and continues to be addressed by policy and legislative reforms as well as educational campaigns.

Teenage pregnancy, with the obvious health and other consequences remains unacceptably high – while a Western teenager who engages in unprotected sex and becomes pregnant has the morning-after-pill, abortion and adoption as possible responses to her problem, the Botswana teenager almost invariably has the child. With a nationwide HIV prevalence of 18.5 % and an adult prevalence (15-49 year-olds) of 24.3% <sup>38</sup>, a large number of Botswana are either infected or affected by HIV and AIDS. Treatment, care and support of these people, to make sure they stay healthy, productive and able to care for their families is crucial. For children too, the issue of treatment and care is key, with an estimated 25,000 children HIV positive by end 2003<sup>39</sup>.

There is acute shortage of professional social workers to conduct thorough assessment and registration of destitute persons and needy students. On average, one social worker covers at least five villages. Furthermore, social workers employed in the field use a large percentage of their time doing clerical duties such

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<sup>38</sup> *BAS IV*, 2013.

<sup>39</sup> *2004 Report on the Global AIDS Epidemic*, UNAIDS.

as preparing tenders for food rations and clothing, ensuring that suppliers provide the necessary commodities, and supervising food rations. Consequently, social workers fail to concentrate on the core business of the profession. The introduction of the food coupon system may be a step in the right direction as this would also give beneficiaries the choice they need in purchasing the food they want.

Children under the age of 18 also benefit from the destitute programme. These are children who are in need of care and may not be catered for under the orphan care programme. In addition to food rations, these children get assistance in the form of school uniforms, toiletries, transport, protective clothing, boarding requisites, tuition in private and vocational schools, street clothes, payment of additional fees required by the schools such as touring fees, sports fees, development fees and other incidental expenses.

### **Child and Maternal Mortalities**

The 2006 Demographic Health Survey reflects that under five (5) Mortality rate (per 1000 live births) for boys is 70 and for girls is 85. The 2011 Population and Housing Census has revealed a decline in national infant mortality rate at 17 deaths per 1, 000 live births. This is a drop from the 56 deaths per 1, 000 live births recorded in 2001. Male infants are more likely to die under the age of one (1), ie, 18 deaths per 1, 000 live births, compared to female infants whose incidences were recorded at 17 deaths per 1, 000 live births.

Botswana has adopted the Accelerated Child Survival and Development strategy (2009/10 – 2015/16) to address child survival in Botswana. The strategy entails introducing high impact interventions, new vaccines, vitamin A supplements, strengthening the coverage and quality of services and monitoring systems. The high impact interventions are being implemented nationally while new vaccines are being introduced in a phased manner.

Botswana has undertaken several measures to address persistent issues such as:

- (a) Inadequate health services coverage in 'Hard to Reach Populations' (groups that are difficult to access due to geographical, cultural and social factors) and the non-acceptance of interventions like immunisations by some individuals and some sectors; and
- (b) Delayed care seeking practices and resistance to behavioural change.

Studies reveal that there has been a decrease of maternal deaths. In 2008, a total number of 88 cases of maternal deaths were recorded as compared to 85 cases in 2011. The 2010 Maternal Mortality Ratio was lower at 163.0 per 100, 000 live births

compared to 2008 at 195.7 per 100, 000 live births. This ratio decreased from 188.7 per 100, 000 live births in 2011 to 147.9 per 100, 000 live births in 2012. Botswana Maternal Mortality Ratio for the period 2008 to 2012 is given in Table 15.

*Botswana Maternal Mortality Ratio, 2008-2012<sup>40</sup>*

|   | 2008   | 2009   | 2010   | 2011   | 2012   |
|---|--------|--------|--------|--------|--------|
| Institutional live births                         | 44,212 | 45,145 | 49,853 | 44,904 | 49,957 |
| Non-Institutional live-births                     | 749    | 220    | 475    | 104    | 91     |
| <b>Total live-births</b>                          | 44,961 | 45,365 | 50,328 | 45,008 | 50,048 |
| Maternal Deaths                                   | 88     | 86     | 82     | 85     | 74     |
| Maternal Morality Ratio (per 100,000 live-births) | 195.73 | 189.57 | 163.0  | 188.86 | 147.9  |

The Maternal and Neonatal Health Programme has accelerated the reduction of maternal and infant mortality rate. Particular attention is being given to unsafe abortions as they also contribute to the country's high maternal mortality. In that regard, a Comprehensive Emergency Obstetric and neonatal care is being employed to reduce the impact of clandestine and unsafe abortion on maternal mortality.

According to the 2001 Population and Housing Census, life expectancy in Botswana stood at 55.6 years. However, an increase was registered in the 2011 Population and Housing Census wherein life expectancy stood at 68 years. Females continue to register a higher life expectancy of 70 years while their male counterparts have a lower life expectancy of 66 years.

### **The Right to Health for Foreigners**

In 2009, Botswana introduced the provision of Anti-Retroviral drugs to refugees with the support of the Red Cross and PEPFAR. This was possible with the support of the United States of America and United Nations High Commission for Refugees (UNHCR). In addition, Botswana has developed and implemented robust awareness campaigns for the refugee community, with a view to help advance HIV prevention and promotes abstinence. In 2010, a resident doctor was posted to the Dukwi Refugee Camp to deal first hand with the health needs of the refugee community.

Due to financial constraints, Government has been unable to provide ARVs to foreign inmates. In the case of Tapela & Others Vs AG; BONELA instituted an action against the Government, seeking those foreign inmates be provided with free ARV therapy. Judgment was granted in favour of the foreign inmates. Upon appeal by Government against the decision of the High Court, the Court of Appeal upheld

<sup>40</sup> See Central Statistics Office, 2012.

the decision of the High Court, and emphasised that, “it is the responsibility of Government to budget for the fulfilment of its legal obligations. If the law [Prisons Act and Regulations] requires a service to be provided, then funds must be found to provide that service, or Parliament must be engaged to amend that law. Lack of funds will not in the normal course justify disobedience of the law.”

Accordingly, the Ministry of Health has issued an internal directive ordering the provision of ARV treatment to non-citizen prisoners. BONELA has reported that since the judgement was delivered it has not received any complaints from non-citizen prisoners regarding denial of ARVs.

While Botswana has scored a human rights success with regard to the provision of ARV treatment to non-citizen prisoners, due to financial constraints, the Prevention from Mother to Child Transmission (PMTCT) programme is not available to foreign pregnant women.

### **Health Related Surveys and Studies**

- a. The National Strategic Framework on HIV and AIDS (2010-2016) and the HIV and AIDS Women Sector Strategy (2012-2016) have a monitoring and evaluation framework.
- b. Government continues to conduct periodic surveys and studies such as: annual education, health and labour statistics; sentinel surveillance surveys every two years to monitor HIV prevalence amongst pregnant women.
- c. Botswana HIV & AIDS Impact Surveys (BAIS) (2001; 2004; 2008; 2013) are carried out every four years to monitor prevalence and impact among the general population; Informal Sector Survey; Botswana Literacy Survey for Education: Vision 2016 Survey; Agricultural Statistics Survey; Botswana Core Welfare Indicator Survey and Labour Force Survey.
- d. Government also conducted a national study on GBV (GBV Indicators Study, 2012) to establish the prevalence of violence against women.
- e. Botswana HIV AND AIDS stigma index study of 2013

These surveys and studies have generated useful information/data on attitudes, behaviours and practices and as such inform gender programming and critical interventions that address health issues as well as gender inequality.

### **General Observations**

The Government, through the Ministry of Health gives grants / resources to CBOs/CSOs who in turn reach most of the rural areas for purposes of raising awareness on health and the well-being of the people.

Finally, Botswana is going through a health transition, which indicates a decline in childhood immunisable diseases and an increase in non-communicable diseases. However, infectious diseases still remain the most important cause of illness and death. Non-communicable diseases, associated with changes in lifestyle from an agricultural economy to a cash economy, are related mainly to a change in diet, to more sedentary life and to a longer life expectancy.

## **ARTICLE 17**

### **RIGHT TO EDUCATION**

Every child is guaranteed the constitutional right to free basic education<sup>41</sup> through Section 9 of the Children's Act which provides that the rights set out in Part III (Bill of Child's Rights) supplement the rights set out in Chapter II (Bill of Rights) of the Constitution.

Botswana recognises the achievement of Education for All (EFA) goals as one of the fundamental steps in the development and provision of education in the country. As a result, measures are in place to ensure increased access to education by all. These include:

- a. Implementation of Adult Basic Education Programme (ABEP) and Out of School Children Education Programme (OSEC) to cater for those who cannot access education through the formal setting.
- b. Implementation of Back to School Initiative: Back to School is open to all Botswana citizens who are 35 and below who have, for variety of reasons, failed to complete their basic education or training. The learners are absorbed back to school from primary, junior, senior secondary and tertiary levels.
- c. Friendly Schools' Programme, which aims at ensuring that schools are conducive for teaching and learning.
- d. Maintaining flexibility in the admission policy to enable children from Remote Area Dweller Settlements (RADS) to start school at an age not later than the official entry age of 6 years.

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<sup>41</sup> See Section 18 of the Children's Act.

- e. Provision of boarding facilities and transportation to and from boarding schools for children from **RADS** to increase their access to education.
- f. Provision of transport to children with special needs to and from school to ensure increased participation in education.
- g. Provision of sponsorship for children with special needs to access programmes that are currently not offered in the country;
- h. Provision of psycho-social and basic needs (food basket, school uniforms and stationery) to orphans and vulnerable children including those from poor socio-economic backgrounds.
- i. Implementation of a school feeding programme, to cater for all children, including those from poor economic backgrounds, with the aim of increasing access to education and creating a friendly school environment.
- j. Implementation of the pregnancy policy to ensure that children who drop out of school due to pregnancy are able to continue with their education following confinement.
- k. Mainstreaming gender into educational policies, programmes and projects to ensure provision of gender sensitive education programmes.
- l. Establishment of Centres for children with severe multiple disabilities.
- m. In 2011, the Botswana Educational Television was officially launched to enrich secondary school curriculum. Currently, programmes being broadcast focus on secondary school level. The long-term plan is to establish a dedicated educational channel.
- n. Early Childhood Learning has been introduced as an integral part of the formal education system.

### **Access to Tertiary Education/Tertiary Education Funding**

The Government of Botswana offers sponsorships<sup>42</sup> covering tuition and subsistence allowance to students in Local Public Tertiary Institutions, Local Private Tertiary Institutions registered by the Botswana Qualifications Authority (BQA) and also accredited external institutions (regional and international).

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<sup>42</sup> These are in the form of loans, full or partial grants depending on the course of study.

### Sponsorship Figure over the Past Six (6) Years

| INSTITUTION               | 2008 /2009   | 2009 /2010   | 2010 /2011   | 2011 /2012   | 2012 /2013   | 2013 /2014   |
|---------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| <b>LOCAL</b>              | <b>18122</b> | <b>23500</b> | <b>25000</b> | <b>32830</b> | <b>46296</b> | <b>46490</b> |
| South Africa              | 7226         | 3 863        | 3 033        | 896          | <b>612</b>   | 568          |
| Namibia                   | 139          | 161          | 165          | 96           | <b>67</b>    | 66           |
| <b>INTERNATIONAL</b>      |              |              |              |              |              |              |
| Malaysia                  | 2376         | 2 269        | 2 233        | 1080         | <b>952</b>   | 290          |
| Australia                 | 357          | 343          | 236          | 109          | <b>81</b>    | 79           |
| UK                        | 346          | 422          | 280          | 393          | <b>320</b>   | 400          |
| USA                       | 51           | 64           | 28           | 37           | <b>69</b>    | 80           |
| IRELAND                   | 55           | 68           | 60           | 25           | <b>22</b>    | 11           |
| CZECH REPUBLIC            | 53           | 91           | 58           | 109          | <b>93</b>    | 92           |
| CANADA                    | 251          | 306          | 224          | 225          | <b>191</b>   | 188          |
| ISLANDS                   |              |              |              |              |              | 152          |
| <b>Total External</b>     | <b>10854</b> | <b>7587</b>  | <b>6317</b>  | <b>2970</b>  | <b>2407</b>  | <b>1926</b>  |
|                           |              |              |              |              |              |              |
| <b>TOTAL IN LOAN BOOK</b> | <b>28976</b> | <b>31087</b> | <b>31317</b> | <b>35800</b> | <b>48703</b> | <b>48416</b> |

### Government Investment In Education

A significant portion of the budget is allocated to Education sector which accounts for about 25% of public expenditure. During the reporting period, investment in education has been increasing at an average annual rate of 4%.

Cooperating partners also provide funding for education. The European Union provided a total of 71.359 million Euros between 2009/10 and 2013/14. Out of this

amount, 68.665 million was for the budget support. For 2014/15 to 2016/17, it is expected that a total of 47.207 million will be disbursed for education, of which 45.360 million will be budget support.

Other partners whose support could not be quantified include Australia, the Commonwealth, China, Japan, Germany, UNICEF, India, which provided training opportunities, technical support and some infrastructures<sup>43</sup>.

The total number of primary schools in the country was 817 in 2013, of which 754 (92.3%) were public schools and 62 (7.7%) were privately owned.<sup>44</sup> In 2012, the total number of primary school students was 337,206 (172,347 boys and 164,859 girls). This was an increase of 1.3% on enrolment between 2011 and 2012 from 332,971<sup>45</sup>.

The number of secondary schools increased from 276 in 2008 to 283 in 2012 which reflects a rate of 2.5%. Out of the 283 schools, public schools constituted 84% of all secondary schools in the country. Secondary schools enrolment has increased by 0.4% over 3 years from 172,669 in 2009 to 172,986 in 2012 with female enrolment at 51.7% and 48.3% for males.

There are 45 public institutions providing Technical and Vocational Education and Training (TVET): 8 Technical colleges and 37 Vocational Centres, offering certificate up to diploma level qualifications. The enrolment in TVET sector has increased from 6,096 in 2009 to 9,262 in 2013 and 10,622 in 2014<sup>46</sup>. The department of TVET has an equal opportunities policy that reserves a 15% quota for admission of students from disadvantaged backgrounds.

The number of institutions in the Tertiary Education Sector has been growing and as of August 2013, the private colleges and universities constituted 38.5% of all Tertiary education institutions that were registered (44). The remaining 61.5% were public institutions. The 2013/14 intake shows that 34.9% students are absorbed in private tertiary institutions while 57.7% of those are in public institutions. There has been an increase in student enrolment across the sector. During the 2011/12

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<sup>43</sup> See **Education and Training Sector Strategic Plan (ETSSP 2015-2020)**, page 159.

<sup>44</sup> See **Ministry of Education and Skills Development, Ministerial Briefing Report**, February 2014.

<sup>45</sup> See **Statistics Botswana 2012 Stats Brief: Primary Education**.

<sup>46</sup>See **Education and Training Sector Strategic Plan (ETSSP 2015-2020)**, page 25.

academic year there were 46,614 students enrolled compared to 20,011 during the 2003/04 academic year. The change is of 57.1% in student enrolment<sup>47</sup>.

The Government is also providing inclusive and special education to those in need. There are 35 government Special Education Units, 11 NGOs providing Special Education and one (1) private Centre. These centres serve 1,183 students. The number of institutions providing education for students with special education needs has increased from 12 places in 2012 to 64 places in 2014.

The country has 25,000 teachers in the primary and secondary schools. Professional development of teachers has been identified as critical area for improvement of educational quality. Progress has been made in upgrading Primary Teacher Certificate (PTC) holders to Diploma in Primary Teaching (PTC). A total of 987 teachers were enrolled between 2010/11 and 2012/13<sup>48</sup>. Another 76 PTC holders are being trained on school management.<sup>49</sup>

Botswana has a National Policy on Culture, 2001 which provides a platform for the participation of all Batswana in the development, promotion and preservation of their culture. The policy advocates for the free flourishing of all cultures of the different ethnic groups in presenting their rich and diverse cultural heritage.

Botswana further has varied national programmes that are geared towards recognition and promotion of the diverse cultures of Botswana as well as to encourage all Batswana to take pride in the value of their culture, and enhance creative talents and capacities. These include the Annual Presidents' Day Competitions, Constituency Art Competitions, National Culture Day, Constituency Sports Tournament, National Languages Day, Art and Craft Market Days and Fairs.

The School curriculum has a component of Moral and Religious education to promote and protect moral, traditional and societal values of the different ethnic groupings.

## **ARTICLE 15**

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<sup>47</sup> See **Education and Training Sector Strategic Plan (ETSSP 2015-2020)**, page 26.

<sup>48</sup> 374 in 2010/11, 358 in 2011/12 and 255 in 2012/13

<sup>49</sup> See **Mid-Term Review of NDP 10**, op.cit. Page 51.

## **THE RIGHT TO WORK UNDER EQUITABLE AND SATISFACTORY CONDITIONS AND TO RECEIVE EQUAL PAY FOR EQUAL WORK**

Botswana has ratified some international conventions and passed legislation that ensures equitable and satisfactory work conditions and equal pay for equal work. The laws of Botswana do not discriminate between men and women nor do they provide affirmative action in favour of any gender or a group of people when it comes to pay.

Among others, the following legislation addresses equitable and satisfactory work conditions:

- a. The Employment Act;
- b. The Workers Compensation Act;
- c. Trade Unions and Employers Organisation Act
- d. The Employment of Non-Citizen Act
- e. The Trade Disputes Act.

In line with these laws, there are also labour-market regulations that are well-designed and effectively enforced. Trade Unions which are recognised under the Trade Unions and Employers Organisation Act of 2003 also have the responsibility to be the voice of workers where inequitable and unsatisfactory working conditions seem or are perceived to exist. In the event that such conditions exist, the right of the workers to strike is recognised under the Trade Disputes Act.

### **ARTICLE 18 (4)**

#### **THE DUTY OF THE STATE TO PROTECT THE FAMILY, DUTY TO PROTECT RIGHTS OF WOMEN AND CHILDREN AND ELIMINATE DISCRIMINATION**

##### **a. The Duty of the State to Protect The Family And Eliminate Discrimination**

The family unit in Botswana is considered as the key institution for the transmission of traditional values. It is therefore encouraged, supported and assisted to transmit to its members, particularly the younger members, cultural values that will promote nationhood, and assist Botswana to adapt beneficial external cultural values.

As stated in the National Strategic Vision document, “the strength of the family is threatened by the pace of change, particularly by the rapid urbanisation that has taken place, accompanied by the high degree of migrant labour and government

transfers<sup>50</sup>.” Therefore, measures should be taken “to encourage and strengthen the family unit”.

The Domestic Violence Act of 2008 offers protection to victims of domestic violence thereby deterring individuals from harming their families.

#### **b. The Duty to Protect Rights of Women and Eliminate Discrimination**

The Married Persons Property Act, 2014 makes provision for persons married under customary law to opt for their property to be administered under civil law. The new dispensation allows persons getting married under customary law to opt either in or out of community of property.

Furthermore, the new law allows spouses whose joint property is administered under civil law to be able to approach the High Court to change their marital proprietary regime where their initial property regime ceases to be beneficial to them. These new developments ensure equal rights for married persons whether such marriages were contracted under civil law or customary law.

#### **c. The Duty to Protect Rights of Children and Eliminate Discrimination**

The Children’s Act of 2009 has ensured that parents have common responsibilities towards their children. In particular, Section 27 on parental duties provides that the primary duty to care for and maintain a child shall rest upon the biological parents of the Child.

#### **e. State Policy towards the Aged and People living with Disabilities**

The State has put special measures for the protection of the aged and the disabled in order to satisfy their physical and moral needs. According to the 2011 Population and Housing Census, about 2.9% of Botswana population (59,103 persons) live with disabilities. Out of this number, 28,721 are visually impaired, 11,981 are hearing impaired and 172 with physical impairment. Half of that population is composed of children and the most common disabilities within that group are physical (22.7%), mental (22.1%) and hearing impairment (19.8%).

The National Policy for People Living with Disabilities is currently being reviewed and Government has taken the liberty to align the policy to the provisions of the Convention on the Rights of Persons with Disabilities.

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<sup>50</sup> See National Strategic Vision, A long term Vision for Botswana, page 48

Services provided to People Living with Disabilities include the following:

- a) Free consultation at all Government Health Facilities
- b) Provision of prosthetic and orthotic services at subsidised rate of 5% of the total price and free fitting for those registered as destitute persons.
- c) Provision of annual subventions to organisations providing special education and skills training.
- d) Special cut off points for admissions of students with learning disabilities at Tertiary Education.
- e) Sponsorship of students with learning difficulties in Institutions of Higher Learning.

The economic development programmes initiated by the Government specifically target women and girls with disabilities. Furthermore, caregivers of people with multiple disabilities (i.e. people with disabilities who need a care-giver round the clock) are allowed to get economic empowerment support on behalf of those living with disability under their care, including their children.

A disabled child is likely to attend a school run by an NGO but financially supported by the Government. If the nature of the disability is related to sight, hearing and ambulatory impairment, the child can expect good support systems and can expect progression to tertiary institutions.

Despite Government's efforts towards the disabled, a child with a disability is likely to have to move to a different town or village to receive specialized education and this may be a challenge them.

## **ARTICLE 20**

### **RIGHT TO SELF DETERMINATION**

Botswana supports the right to self determination as per the initial report.

## **ARTICLE 21**

### **FREE DISPOSAL OF WEALTH AND NATURAL RESOURCES**

Section 3 of the Mines and Mineral's Act, 1999 provides that "...all rights of ownership in minerals are vested in the Republic and the Minister shall ensure, in the public interest, that the mineral resources of the Republic are investigated and exploited in the most efficient, beneficial and timely manner"

All mineral rights in Botswana are vested in the state and the Minister of Minerals, Energy and Water Resources (MMEWR) is mandated with ensuring that the country's mineral resources are disposed of in a fair manner and in the public interest. The Government charges mining companies for the exploitation of mineral resources and the revenue it collects is used to provide public services, enhance human capital and boost economic growth in line with the objectives of the National Development Plan.

The following table shows the contribution made by various sectors to the country's Gross Domestic Product by sector (percentages)<sup>51</sup>

| Sector  | 2008       | 2012       | 2013       |
|---|------------|------------|------------|
| Agriculture, hunting, forestry and fishing  | 2.8        | 2.9        | 2.3        |
| Mining  | 29.2       | 21.9       | 22.4       |
| Manufacturing   | 6.3        | 6.4        | 5.2        |
| Electricity, gas and water  | 1          | -0.5       | -0.2       |
| Construction  | 5.5        | 7.4        | 6.3        |
| Wholesale and retail trade, and hotels and restaurants  | 14.8       | 16.2       | 14.9       |
| Transport, Storage and communication  | 4.9        | 6.2        | 5.5        |
| Finance, real estate and business services  | 13.8       | 15.9       | 13.9       |
| Public administration, education, health and social work, and community, social and personal services | 16.1       | 16.4       | 20.9       |
| Other services  | 5.7        | 6.8        | 8.2        |
| <b>Gross domestic product at basic prices</b>   | <b>100</b> | <b>100</b> | <b>100</b> |

Revenues from mineral exports, especially diamonds<sup>52</sup>, have significantly contributed to the country's economic development.

#### **ARTICLE 24 RIGHT TO SATISFACTORY ENVIRONMENT FAVOURABLE TO SUSTAINABLE DEVELOPMENT**

Botswana's commitment to the sustainable management of natural resources is supported by various legislations and policies such as:

- a. National Policy on National Resources Conservation and Development
- b. Community Based Natural Resource Management Policy
- c. Wildlife Conservation Policy
- d. Game Ranching Policy

<sup>51</sup> Sources: Bank of Botswana Annual report 2014, African Economic Outlook 2014 (Botswana)

<sup>52</sup> Diamonds have within the last decade contributed well over 80% to the total export value followed by copper/nickel, soda ash/ salt, coal and gold.

- e. National Water Policy
- f. Forest Policy
- g. Tourism Policy
- h. Environmental Impact Assessment Act
- i. National Meteorological Act; and
- j. Mine and Minerals Act

Botswana is also a Party to a number of multilateral agreements such as Convention on Biological Diversity, Ramsar Convention on Wetlands, United Nations Convention on Combating Desertification, United Nations Convention on Sustainable Development, United Nations Framework on Climate Change, among others.

Botswana has developed policies, strategies and plans that support the conservation and protection of finite natural resources; promote use of renewable energy as alternatives; adopting and mainstreaming global multilateral environmental agreements and protocols in national legislative framework and policies.

As a developing country, Botswana is experiencing increasing levels of economic activity, resulting in an increase in discharge and emissions of pollution of varied complexity and the resultant negative impact on the environment. Botswana initiated a programme aimed at integrating pollution mitigation strategies and abatement approaches into the planning process across all sectors.

Botswana has abundant biological resources which are under increased threat from a variety of land use practices. As a result, several initiatives have been taken which include: land rehabilitation; restocking of species at risk of extinction; anti-poaching; implementation of natural resources management plans for specific key areas; national tree planting programme and manufacturing sand from sandstones to alleviate impact of sand mining.

## **ARTICLE 22**

### **RIGHT TO ECONOMIC, SOCIAL AND CULTURAL DEVELOPMENT; DUTY TO ENSURE EXERCISE OF RIGHT TO DEVELOPMENT**

The Government continues to promote and support cultural events such as DOMBOSHABA Cultural Festival, KHAWA Dune Festival, D'kar Festival and a special President's Day Festival celebrating Botswana's diverse culture. These include the Annual Presidents' Day Competitions, Constituency Art Competitions, National Culture Day, Constituency Sports Tournament, National Languages Day,

Art and Craft Market Days and Fairs. This is in line with the National Policy on Culture of 2001.

Botswana strives to deliver on its economic, social and cultural development mandate and has put in place the following:

- a. **The Destitute Programme** which entails the assessment and registration of people who are needy. These people are assisted with food, cash, and clothing, shelter and funeral expenses upon their passing on. As at July 2014 the country had Thirty Two Thousand One Hundred and Twenty-Eighty (32,128) registered destitute persons. There are Thirty Thousand Nine Hundred and Twelve (30, 912) needy students and One Thousand Five Hundred and Ten (1,510) needy children. The needy students are dependents of destitute persons who are attending school, while the needy children are those who are not of school going age. The decline is attributed to the introduction of income generating projects under the poverty eradication programme.
- b. **The Orphan Care Programme** entails the provision of food to orphans on a monthly basis, shelter where there is need, as well as school uniform and private clothing. As at July 2014, Botswana had Thirty Five Thousand and Seventy-Six (35,076) registered orphans.
- c. **Community Home Based Care** is a programme meant to provide basic amenities for people who suffer from terminal illnesses such as cancer, HIV/AIDS, sugar diabetes and physical traumas and cannot do anything for themselves due to poor health. As at July 2014, the country had One Thousand Two Hundred and Twenty-One (1,221) registered Community Home Based patients.
- d. Botswana ratified the Convention on Intangible Cultural Heritage in 2010, and became a member of the United Nations Educational Scientific and Cultural Organisation (UNESCO) Harare Cluster. To implement the provisions of this Convention, Botswana established an Intangible Cultural Heritage Committee whose mandate is to ensure that cultural aspects are listed as heritage sites and communities benefit from such listings

Since 2009, Botswana introduced youth development programmes aimed at improving the livelihoods of young people. These programmes include the following economic and social initiatives:

a. **Youth Development Fund:** an economic empowerment programme that provides technical and financial assistance in the form of grants loans and capacity building. Since inception, Two Thousand Eight Hundred and Seventy-Five (2,875) applications have been approved, Two Thousand Two Hundred and Seventy-Six (2,276) funded and Three Thousand Six Hundred and Four (3,604) employment created.

b. **Youth Empowerment Scheme:** a life skills development programme aimed at curbing unacceptable social behaviours by youth associated with conditions such as unemployment, poverty, idleness, excessive consumption of alcohol, crime, dysfunctional families, HIV/AIDS and other health related issues. Approximately One Thousand (1000) have attended the initial two boot camps.

c. **Constituency Sport Tournament:** This is a talent identification and sport development programme where various sporting codes competitions such as football, netball and volleyball were introduced at constituency level to curb youth from indulgence in substance abuse and criminal activities. Sixty Five Thousand Two Hundred and Twenty-Three (65,223) youths have so far participated in the tournaments.

d. **President's Day and Constituency Art Competitions:** This is an initiative aimed at encouraging the youth and artists to unearth and develop their talent through different activities such as music, dance and virtual arts to showcase culture and heritage. One Hundred and Forty-Four Thousand and One (144, 001) youth have participated in the competition since 2010.

The Industrial Property Act of 2010 repealed the Industrial Property Act of 1996. The repealed law made no mention of the right to ownership of traditional knowledge. The new Act, more specifically, Part XII has introduced the right to ownership of traditional knowledge. In this regard, ownership of traditional knowledge belongs to the owner of the traditional knowledge who has the right to register it either as a local traditional practitioner, an individual or a local community.

Traditional knowledge is defined as an idea, knowledge, practice, use or invention, written or unwritten which, may be associated with biological diversity; is a cultural, traditional or spiritual belief or value of a group of people. In 2013, the Centre for Scientific Research, Indigenous Knowledge and Innovation in the University of Botswana conducted a consultancy in order to formulate the Natural Indigenous Knowledge Systems which resulted in the Indigenous Knowledge Systems Policy.

By recognising the value of traditional knowledge, Botswana is affording individuals and communities their right to social and cultural development. As long as the knowledge has not been disclosed to the public through any means or it has been disclosed, but such disclosure has not led to any commercial or industrial exploitation in Botswana, such knowledge is eligible for registration as traditional knowledge.

The registration affords the community or individual, the following exclusive right:

- a. where the subject matter of protection is a product, the right to prevent third parties without consent from making, using stocking, offering for sale, commercializing, importing and exporting the product;
- b. where the subject matter of protection is a design or an object of a functional or aesthetic nature including any element of handicrafts, the right to prevent third parties without consent from making; or
- c. reproducing any object with a similar configuration as regards shape, colour, material, technique and the overall style or visual impression of the handicrafts that are characteristic to it;
- d. where the subject matter of protection is a name, a symbol, an emblem or any distinctive sign of a religious, spiritual, cultural or economic nature, the right to prevent third parties without consent from any kind of use both in maternal language or any other language that consist of an identical or similar sign on a product or on a product associated with services, making of labels, packages or other material that reproduce or contain the signs for a commercial or any other purpose.

In the event of infringement of the right to the traditional knowledge or any other rights, any proceedings concerning the protection or infringement of rights over traditional knowledge shall be initiated either by the local community or any other owner of that knowledge. Furthermore, the Court may order the infringing party to pay to the local community an amount to be prescribed.

Local communities as the rights holders may grant licensing agreements to exploit traditional knowledge or any element of it to third parties subject to the following conditions:

- a. payment by the third party, at the discretion of the community, including payment of either a lump sum, royalty fee or participation in the benefits directly or indirectly derived from the exploitation of the knowledge;
- b. conferment by the third party of benefits such as educational grants, medical assistance or any other benefits;
- c. the exploitation does not lead to distortion of any kind; and
- d. registration of the licensing agreement with the Registrar.

Evidently, the new Industrial Property Act recognises the right of local communities to own their traditional knowledge and prohibits unlawful use and commercialisation of the knowledge unless the local community has granted a licence in return for payment or royalty fees. By recognising such a right, Botswana is honouring its duty to ensure the exercise of the right to development, be it, economic, social and cultural.

### **ARTICLE 23**

**ALL PEOPLES SHOULD HAVE THE RIGHT TO NATIONAL AND INTERNATIONAL PEACE AND SECURITY. THE PRINCIPLES OF SOLIDARITY AND FRIENDLY RELATIONS IMPLICITLY AFFIRMED BY THE CHARTER OF THE UNITED NATIONS AND REAFFIRMED BY THAT OF THE ORGANISATION OF AFRICAN UNITY SHALL GOVERN RELATIONS BETWEEN STATES.**

Botswana is party to various international instruments at multilateral, bilateral and sub-regional level on matters pertaining to defence and security. She enjoys friendly and cordial relations with countries in the continent and has established Joint Permanent Commissions on Defence and Security (JPCDS) with all its neighbouring countries. These Commissions meet as scheduled on an annual basis. Through the JPCDS, the country benefits through the exchange of information on intelligence, defence, security as well as issues of mutual interest. Some comparative studies such as the Global Peace and Positive indices indicate that Botswana is one of the world's safest and stable countries.

### **ARTICLE 25**

**DUTY TO PROMOTE AND ENSURE THROUGH TEACHING, EDUCATION AND PUBLICATION, THE RESPECT OF THE RIGHTS AND FREEDOMS**

**AND TO SEE TO IT THAT THESE FREEDOMS AND RIGHTS AS WELL AS CORRESPONDING OBLIGATIONS AND DUTIES ARE UNDERSTOOD.**

Botswana promotes respect of rights under the Charter in educational institutions from Primary School, Secondary School and Tertiary level. At primary and secondary level, human rights issues are incorporated in the Social and Cultural Studies, Moral Education, Guidance and Counselling, Development Studies, History, Geography and Environmental Science curriculum.

At Tertiary level, human rights issues are covered in legal and administrative courses. Further, the curriculum for disciplined forces in Botswana such as Botswana Police Service, Botswana Defence Force and Botswana Prisons Service all include human rights.

Civil Society Organisations such as DITSHWANELO, Women against Rape and Botswana Network on Ethics, Law and AIDS (BONELA) are also proactive in sensitising the public about human rights under the Charter.

The conferment of the human rights mandate on the Ombudsman goes towards intensification of the promotion and protection of human rights.

**ARTICLES 27, 28 AND 29**

**EVERY INDIVIDUAL SHALL HAVE DUTIES TOWARDS FAMILY AND SOCIETY, THE STATE AND OTHER LEGALLY RECOGNISED COMMUNITIES AND INTERNATIONAL COMMUNITY.**

**THE RIGHTS AND FREEDOMS OF EACH INDIVIDUAL SHALL BE EXERCISED WITH DUE REGARD TO THE RIGHTS OF OTHERS, COLLECTIVE SECURITY, MORALITY AND COMMON INTEREST.**

**EVERY INDIVIDUAL SHALL HAVE THE DUTY TO RESPECT AND CONSIDER HIS FELLOW BEINGS WITHOUT DISCRIMINATION, AND TO MAINTAIN RELATIONS AIMED AT PROMOTING, SAFEGUARDING AND REINFORCING MUTUAL RESPECT AND TOLERANCE. THE INDIVIDUAL SHALL ALSO HAVE THE DUTY TO PRESERVE THE HARMONIOUS DEVELOPMENT OF THE FAMILY AND TO WORK FOR THE COHESION AND RESPECT OF THE FAMILY; TO RESPECT HIS PARENTS AT ALL TIMES, TO MAINTAIN THEM IN CASE OF NEED**

As a State party to the African Charter, Botswana has always articulated the rights of its citizens with a number of duties, including those enabling youth participation and engagement in the development of their communities and promoting their patriotism.

Section 3 of the Constitution provides for the rights and freedoms of the individual subject to the respect for the rights and freedoms of others, and for the public interest in the following terms:

*“Whereas every person in Botswana is entitled to the rights and freedoms of individuals, that is to say, the right, whatever his or her race, place of origin, political opinions, colour, creed or sex but subject to respect for the rights and freedoms of others and for the public interest.”*

### **Individual Duties:**

As far as duties are concerned, the **Revised National Youth Policy of 2010** has highlighted the duties of the youth at the national, community and family levels. These include<sup>53</sup>:

- a. The obligation to embrace positive value systems of respect for authority and BOTHO towards parents, extended family and the community as enshrined in the Constitution and the National Strategic Vision 2016.
- b. The responsibility to demonstrate, accommodate and respect the process of open communication and shared dialogue for parents and child relationship building.
- c. The responsibility to demonstrate assertiveness and self-worth in line with positive value systems and attributes of role modeling.
- d. The responsibility to promote the socio-economic independence of youth, attach more value on positive attitudes and self-motivation.
- e. The responsibility to cultivate leadership values and deliberate participation in - policy development and decision-making.
- f. The obligation to protect and account for the country’s physical, financial and natural resources demonstrating a high level of ownership for the benefit of themselves and future generations.

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<sup>53</sup> See the **Revised National Youth Policy 2010**, pages 12 and 13.

- g. The obligation to display good qualities and expertise in the management of both physical and financial resources.
- h. The obligation to use information and media to further the development of youth in the country.
- i. The obligation to embrace the positive customs, traditions, cultures, values and norms and participate in the emergence of new cultures that respond to character building.
- j. An obligation to demonstrate leadership capabilities in partnership with the critical partners in the development process; and
- k. The obligation to utilize the services wisely and effectively, and to lead healthy and responsible lives.

These duties are partly implemented through the **Botswana National Service Programme (BNSP)**, a volunteer programme and community services initiative, which seeks to engage young people to get involved with their communities in a tangible way and to reverse the challenges they're facing, through tapping on their ingenuity and promote their "can do" spirit.

BNSP provides a voluntary service experience that is organized and contributes to the local communities, recognized and valued by society, with minimal monetary compensation to participants<sup>54</sup>.

Through BNSP, young people learn valuable work skills and develop an appreciation for citizenship as well as serve, and make the impact that changes lives and communities.

The BNSP takes a multi sectorial and integrated approach to creating opportunities for unengaged youth to gain skills and experience, while simultaneously contributing to the development of their communities. The programme places youth volunteers aged between 20 and 30 years in different Government Departments, NGOs, CBOs and parastatal institutions<sup>55</sup>.

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<sup>54</sup> See **Botswana National Service Programme (BNSP) Guidelines**, March 2014, page 2.

<sup>55</sup> The following fields are concerned: agriculture extension, health education, community policing, youth programmes, community development, Remote area development, Poverty eradication, Cooperatives, Out of school education, Civil and national registration, ICT training,

Participants who have been selected into the programme enter into a written contract with the Ministry of Youth, Sports and Culture for a specific period. Usually, they serve in the programme until such time that they have attained the age of thirty (30) years or they have formally indicated their intention to exit the programme.

Participants are supervised by the relevant authorities and are required to submit a bi-annual written report of their learning outcomes and experience. BNSP officers in the Districts are responsible for monitoring the welfare of participants and visit them in their host organisations once a year to do follow up on issues of compliance with rules, procedures and regulations and give feedback on the progress of the programme.

Participants receive service attachment allowance of BWP500 per month and BWP200 will be saved per month for each of them and the savings will only be accessible upon exit from service.

Parents and Families Duties:

Parents and families have also the responsibility to look after the youth and provide a caring environment. They have the duty to:

- a. Be positive role models.
- b. Provide a favorable physical emotional, mental, moral, cultural spiritual and economic environment for youth development and well-being.
- c. Support and encourage young people to participate and perform according to their abilities in education, training and employment.
- d. Understand and accept the youth and recognize their potential contribution to society and,
- e. Allow the youth to fully participate in development programs and cooperate with them in this endeavor.

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facility maintenance, voter education, environment education campaign, disaster management and any other field that may be identified such as in NGOs, VBOs and CBOs.

## CONCLUSION

As a State party to the African Charter, Botswana has made a lot of effort to comply with its obligations. The country has embarked on a transformation strategy by focusing on the diversification of its economy, under which it has increased its savings, built infrastructures and improved on its investment in education and health. For example, the relocation of diamond sale and sorting activities from London to Gaborone in 2013 has deepened the sector's local linkages and generated economic multipliers. The Diamond Hub employed 3,500 people<sup>56</sup> in 2014.

## CHALLENGES

Despite all these notable achievements, Botswana faces challenges, which include inequality, social vulnerability, extreme poverty in rural areas, a high HIV and AIDS prevalence rate and desertification.

The Government has already initiated new policies to tackle the wealth gap and to avoid creating a social time bomb, especially among young people.

The Government also understands that efforts need to be made, as far as human rights are concerned, in signing and acceding to a number of important African instruments, such as the Protocol to the African Charter on Rights of Women, the African Charter on Democracy, Elections and Governance, the Convention for the Protection and Assistance to Internally Displaced Persons in African, the African Charter on Values and Principles of Public Service and Administration, the African Charter on Values of Decentralization, Local Governance and Local Development. This will give more visibility to the work already done in the country to protect human life and dignity.

Despite the aforementioned successes, the country continues to face challenges such as high unemployment (20% in 2013), income inequality and a relatively undiversified economy. The country's heavy reliance on diamond exports coupled with drops in revenue from non-mineral sectors, are expected to adversely impact on the level of the real GDP. With 76% of total merchandize exports and 33% of total central revenues, the mining sector provides the country with the largest share of its export earnings and fiscal revenues. Recognising this economic outlook, Botswana continues to carry out the requisite reforms which include introducing

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<sup>56</sup> See Ministry of Minerals, Energy and Water Resources report in 2014.

measures to strengthen the economy and even more importantly, diversifying it away from its dependency on diamonds.

Without accelerated economic growth, it will remain difficult for Botswana to create jobs, especially those that contribute to increased productivity, poverty reduction and the attainment of equitable social development. The government's policy and planning frameworks clearly consider economic diversification as a crucial step towards promoting employment and economic development. It is important to recognize, however, that diamond mining, although the main contributor to national wealth, accounts for only 3% of total employment in the formal sector. Manufacturing, on the other hand, accounts for approximately 4.2% of the GDP but employs about 10% of the labour force in the formal sector.

A critical analysis indicates that a major impediment to achieving national development goals is the shortage of skilled labour at all levels and across sectors. Many of the unemployed are relatively young with low levels of education, work experience and have limited skills. The youth unemployment rate in 2010 was about 40% for the 15-19 age cohort and 34% for the 20-24 age cohort compared with the national average of 17.8%<sup>57</sup>. A mismatch between job opportunities and skills of graduates contributes significantly to these high rates of youth unemployment.

Poverty eradication is addressed in the National Strategic Vision (2016) with the medium-term goal of reducing the incidence of absolute poverty by 2016. One of the pillars of the Vision calls for a "more equitable income distribution and the eradication of absolute poverty in Botswana."

The country's outstanding achievements and gains in socio-economic development have, however, over the last three decades, suffered a major setback due to the devastating human and social impact of HIV and AIDS pandemic. The direct costs of HIV and AIDS prevention, treatment, care and support are accompanied by an indirect loss to the economy especially in terms of professional, skilled and experienced human resources, thereby significantly reducing productivity and the rate of economic growth. There was an estimated 300,000 adults living with HIV in 2011 out of an estimated population of 2.1 million.

In 1999, the then President of Botswana led the national response to the epidemic with the setting up of the National AIDS Coordinating Agency (NACA) and the implementation of the National Strategic frameworks (NSF) for HIV and AIDS. This development yielded positive results. Life expectancy rose from 49 years to 53

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<sup>57</sup> See Statistics Botswana 2011.

years in 2000; annual HIV infections declined by 71% between 2001 and 2011 whilst 95% gained access to free anti-retro viral treatment<sup>58</sup>. (Move to relevant articles and recast)

## **PROGRESS**

### **BOTSWANA'S RANKING AS PER THE MO IBRAHIM INDEX**

Finally, the 2012 Mo Ibrahim Index indicated that Botswana was ranked 3<sup>rd</sup> at 77% after Cape Verde at 78% and Mauritius at 83% in governance. On the Rule of Law and Safety combined, Botswana scored 89%. On the Rule of Law alone, Botswana was rated first, with an exceptionally high score of 97%. On Participation and Human Rights, which included gender, Botswana was ranked 4<sup>th</sup> with an overall score of 71%<sup>59</sup>.

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<sup>58</sup> See **Botswana 2012 Global AIDS Response Report: Progress report of the national 2011 declaration of commitments on HIV and AIDS**.

<sup>59</sup> See **Mid-Term Review of NDP 10**, June 2013, Ministry of Finance and Development Planning, page 83.

## **ANNEX 1**

### **Non- Government Organisations that contributed to the Report**

- 1. Ditshwanelo**
- 2. Rainbow identity Association**
- 3. Botswana Federation of Disabled People (BOFOD)**
- 4. Men and Boys for Gender Equality (MBGE)**
- 5. Kagisano Society**
- 6. Women Shelter**
- 7. Marang Child Care Network Trust**
- 8. Kitso keMaatla**
- 9. Mbanderu Youth Association**
- 10. Botswana Christian AIDS Intervention Programme (BOCAIP)**
- 11. Emang Basadi**
- 12. Botswana Substance Abuse Support Network (BOSASNeT)**