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**Human Rights Council**  
**Working Group on the Universal Periodic Review**  
**Forty-third session**  
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## **Botswana**

### **Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights**

#### **I. Background**

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the outcome of the previous review.<sup>1</sup> It is a compilation of information contained in relevant United Nations documents, presented in a summarized manner owing to word limit constraints.

#### **II. Scope of international obligations and cooperation with human rights mechanisms**

2. In 2021, the Human Rights Committee stated that Botswana should consider withdrawing its reservations to articles 7 and 12 of the International Covenant on Civil and Political Rights and consider ratifying the Optional Protocol thereto and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>2</sup>

3. The same Committee stated that Botswana should also consider ratifying the Convention on the Reduction of Statelessness and withdrawing the reservation to the Convention relating to the Status of Refugees.<sup>3</sup>

4. In 2019, the Special Rapporteur on the human rights to safe drinking water and sanitation recommended that Botswana ratify the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol thereto.<sup>4</sup>

5. In 2019, the Committee on the Elimination of Discrimination against Women encouraged Botswana to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities.<sup>5</sup>

6. The same Committee recommended that Botswana consider ratifying the Workers with Family Responsibilities Convention, 1981 (No. 156), of the International Labour Organization.<sup>6</sup>

7. The United Nations Educational, Scientific and Cultural Organization (UNESCO) encouraged Botswana to ratify the Convention against Discrimination in Education.<sup>7</sup>



### **III. National human rights framework**

#### **1. Constitutional and legislative framework**

8. In 2019, the Special Rapporteur on minority issues noted that a more comprehensive human rights framework was required, which included a review of the Constitution. While chapter 2 of the Constitution and some laws covered a number of human rights obligations, Botswana did not have a bill of rights or a comprehensive human rights legislative framework.<sup>8</sup> UNESCO encouraged Botswana to explicitly enshrine in the Constitution the right to education for all without discrimination.<sup>9</sup> The United Nations country team noted that Botswana had embarked on a constitutional review process.<sup>10</sup>

9. The Human Rights Committee noted that the International Covenant on Civil and Political Rights was not directly applicable in domestic law and expressed concern that there remained provisions in domestic law, in particular customary law, that were inconsistent with the Covenant. It stated that Botswana should continue to revise statutory legislation and customary law to ensure harmonization with the rights guaranteed in the Covenant.<sup>11</sup>

10. Expressing concern about the lack of comprehensive anti-discrimination legislation and about the fact that the Constitution continued to provide for exceptions to the right not to be discriminated against, the same Committee stated that Botswana should adopt comprehensive legislation prohibiting discrimination and amend section 15 of the Constitution in line with articles 2, 3 and 26 of the International Covenant on Civil and Political Rights.<sup>12</sup>

11. In 2019, the Committee on the Rights of the Child recommended that Botswana fully harmonize its legislation with the principles and provisions of the Convention on the Rights of the Child, in close consultation with children and civil society organizations.<sup>13</sup>

12. The Human Rights Committee welcomed the drafting of the refugee (recognition and control) bill and stated that Botswana should ensure that the bill was in conformity with relevant international standards.<sup>14</sup>

#### **2. Institutional infrastructure and policy measures**

13. The United Nations country team noted that Botswana had amended the Ombudsman Act to extend the mandate of the Office of the Ombudsman to include a human rights mandate and establish the Office as a national human rights institution. However, it was not yet operational.<sup>15</sup>

14. The Committee on the Elimination of Discrimination against Women recommended that Botswana strengthen the mandate, budgetary allocations and technical capacity of gender committees at the district level to support gender mainstreaming at the local level.<sup>16</sup>

15. The same Committee called for the realization of de jure and de facto gender equality throughout the process of implementing the 2030 Agenda for Sustainable Development and urged Botswana to recognize women as the driving force of the sustainable development of the country.<sup>17</sup>

### **IV. Promotion and protection of human rights**

#### **A. Implementation of international human rights obligations, taking into account applicable international humanitarian law**

##### **1. Equality and non-discrimination**

16. The Human Rights Committee expressed concern about the persistence of customary laws and practices that were discriminatory against women, in particular in relation to marriage and family relations, inheritance, property rights and legal guardianship by men of unmarried women. It stated that Botswana should develop and implement strategies to combat patriarchal attitudes and stereotypes on the roles and responsibilities of women and men in the family and in society.<sup>18</sup>

17. The Committee on the Elimination of Discrimination against Women recommended that Botswana ensure the effective implementation of the national policy on gender and development through a comprehensive strategy to eliminate discriminatory stereotypes concerning the roles and responsibilities of women and men in the family and in society.<sup>19</sup>

18. The Human Rights Committee stated that Botswana should take concrete steps to address stigma and discriminatory attitudes and promote sensitivity and respect for diversity among the general public.<sup>20</sup>

19. The Committee on the Rights of the Child recommended that Botswana, inter alia, conduct comprehensive public education and awareness-raising programmes to combat discrimination against children with disabilities, children in street situations, children born to unmarried parents, orphans and children in foster care, children affected by HIV/AIDS and children of foreign nationality.<sup>21</sup>

## 2. Right to life, liberty and security of person, and freedom from torture

20. The Human Rights Committee noted that Botswana had no plans to abolish the death penalty or to impose a moratorium, and that death sentences continued to be imposed and carried out. It stated that Botswana should commute all death sentences to life imprisonment and consider embarking on a political and legislative process aimed at the abolition of the death penalty.<sup>22</sup>

21. Expressing relevant concerns, the same Committee stated that Botswana should adopt a regulatory framework on torture that was in compliance with relevant international standards, investigate all allegations of torture and ill-treatment, ensure that all persons deprived of their liberty had access to an independent and effective complaint mechanism to investigate allegations of torture and ill-treatment, establish an independent institution mandated with conducting visits and monitoring places of deprivation of liberty and ensure that all such places were subject to independent, effective and regular monitoring and inspection without prior notice and on an unsupervised basis.<sup>23</sup>

22. The same Committee expressed concern about the persistence of harmful traditional practices against women and children, including child marriage, polygamy, widowhood rites and the payment of *bogadi*. It stated that Botswana should take concrete steps to eradicate harmful traditional practices.<sup>24</sup>

23. The Committee on the Rights of the Child expressed concern that the prohibition of child marriage in the Marriage Act did not apply to customary and religious marriages. It recommended that Botswana amend the Act to prohibit all marriage, including customary and religious marriage, for persons under the age of 18 years.<sup>25</sup>

## 3. Administration of justice, including impunity, and the rule of law

24. The Human Rights Committee remained concerned about the number of judicial and prosecutorial personnel being insufficient to guarantee access to justice in all parts of the country, among other concerns.<sup>26</sup> It stated that Botswana should strengthen measures to ensure access to justice throughout its territory, including by recruiting the necessary judicial, prosecutorial and administrative personnel and increasing the use of mobile justice systems, increase its efforts to further reduce the backlog of pending cases and improve judicial and prosecutorial efficiency and ensure that the procedures for the selection, appointment, promotion, disciplining and removal of judges and prosecutors were in compliance with relevant international standards.<sup>27</sup>

25. The same Committee stated that Botswana should provide regular training to judges, prosecutors, lawyers, security officers and law enforcement officials in the field of human rights, in particular in the documentation and investigation of torture and ill-treatment.<sup>28</sup>

26. Noting the adjudication of criminal matters by the customary courts, the same Committee stated that training on the Penal Code and international human rights standards should be provided to all traditional chiefs and the tribal administration, in particular customary court judges.<sup>29</sup> Botswana should also raise awareness among the population of the entitlement to request the transfer of a case from customary courts to civil and criminal courts and of the right to appeal against the decisions of customary courts.<sup>30</sup> The Committee on the

Elimination of Discrimination against Women recommended that Botswana amend the Customary Courts Act to introduce a defined system of transfers of civil or criminal proceedings from customary courts to civil courts for cases in which women had been discriminated against or their rights had been violated.<sup>31</sup>

27. The Human Rights Committee remained concerned that free legal assistance was not available in all criminal cases and stated that Botswana should expand the mandate of Legal Aid Botswana to guarantee legal representation in all criminal cases for those who did not have sufficient means to pay for such representation.<sup>32</sup>

28. The same Committee was concerned that article 133 of the Criminal Procedure and Evidence Act provided for pretrial detention of excessive duration and about reports of persons that had been held in pretrial detention for very long periods of time and for longer than any possible sentence upon conviction. It was also concerned about reports that detainees who were declared unfit to plead at trial were subjected to indefinite detention.<sup>33</sup> It stated that Botswana should increase the use of non-custodial alternative measures, including bail, ensure that pretrial detention was an exceptional, reasonable and necessary measure based on individual circumstances, that it was as short as possible and that it was reviewed on a regular basis; and review the legal and administrative processes for detainees who were declared unfit to plead at trial to ensure that they were not subjected to indefinite detention.<sup>34</sup>

29. The Committee on the Rights of the Child expressed concern about reports that child victims continued to testify in open court, were subjected to interrogation by alleged perpetrators and were sometimes named in public documents, thereby revealing their identities and leading to their revictimization. It was also concerned about reports that child witnesses were sometimes detained for refusing to testify in court. The Committee recommended that Botswana, inter alia, prevent the revictimization of children, including by ensuring safe and child-friendly criminal proceedings and applying the special procedures for closed criminal proceedings involving children, with particular emphasis on their protection and confidentiality.<sup>35</sup>

30. The same Committee expressed concern that the right of the child to have his or her interests taken as a primary consideration was not fully implemented in decisions affecting children, in particular in the lower courts. It recommended that Botswana strengthen its efforts to, inter alia, ensure that that right was appropriately integrated and consistently interpreted and applied in administrative and judicial proceedings.<sup>36</sup>

31. The Human Rights Committee expressed concern about the establishment of corporal punishment as a non-custodial sentence and as a disciplinary measure in prisons. It stated that Botswana should take the legislative measures necessary to explicitly prohibit corporal punishment in the administration of justice.<sup>37</sup>

#### **4. Fundamental freedoms and the right to participate in public and political life**

32. Expressing relevant concerns, the Human Rights Committee stated that Botswana should, inter alia, revise national legislation that might unduly restrict the right to freedom of expression, consider the decriminalization of defamation, protect journalists and human rights defenders and investigate all cases of harassment and of arbitrary arrest and detention against them.<sup>38</sup>

33. While noting that the Children's Act guaranteed freedom of expression, the Committee on the Rights of the Child expressed concern that prevailing traditional cultural and societal attitudes made it difficult for children to freely express their views on public matters.<sup>39</sup>

34. The Special Rapporteur on minority issues noted that information and communication activities, in particular awareness-raising campaigns regarding important health issues, such as HIV/AIDS, should not be exclusively in Setswana or English. Since communities were most effectively reached in their own languages, local minority languages should be used as much as was practicably possible.<sup>40</sup> The Special Rapporteur recommended the lifting of any restriction or prohibition against the use of languages other than English or Setswana in private print, broadcasting or any other media. He urged the Government to allocate

broadcasting licences to locally based community radio stations so that they could reach minorities in their own languages.<sup>41</sup>

35. The United Nations country team indicated that the Emergency Powers Act prohibited journalists from using sources other than the country's director of health services or the World Health Organization when reporting on the coronavirus disease (COVID-19) pandemic.<sup>42</sup>

36. The Human Rights Committee expressed concern that the Public Order Act required a police permit to hold an assembly and that it was being used to deny authorization for peaceful assemblies. It was also concerned about reports of excessive use of force by law enforcement officials during peaceful assemblies and stated that use of such force should be in line with the United Nations Human Rights Guidance on Less-Lethal Weapons in Law Enforcement and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.<sup>43</sup>

37. Expressing relevant concerns, including about the low level of representation of women in the Parliament, the House of Chiefs and local government, as well as in decision-making positions, the Committee on the Elimination of Discrimination against Women recommended that Botswana, inter alia, introduce temporary special measures, including quotas and reserved seats, and provide incentives for political parties to nominate women candidates.<sup>44</sup>

38. The Special Rapporteur on minority issues encouraged Botswana to withdraw the requirement of fluency in English as a qualification for election as a specially elected member of the Ntlo ya Dikgosi or a member of the National Assembly, because it had the potential to disproportionately exclude minorities and others who might instead be fluent in Setswana and their own language.<sup>45</sup>

## **5. Right to privacy**

39. The Human Rights Committee expressed concern about, inter alia, the intrusive use of intelligence methods by State security and intelligence agencies and stated that Botswana should, inter alia, ensure that surveillance and interception activities were subject to judicial authorization and to effective and independent oversight mechanisms and that affected persons had proper access to effective remedies in cases of abuse.<sup>46</sup>

40. The Committee on the Rights of the Child was concerned that cultural attitudes and practices did not recognize children's right to privacy and that children's increased access to online media had not been accompanied by appropriate awareness-raising activities on online safety.<sup>47</sup>

## **6. Right to family life**

41. Expressing relevant concerns, including about the number of children deprived of a family environment, the Committee on the Rights of the Child recommended that Botswana, inter alia, ensure sufficient alternative family-based and community-based care options for such children, including by allocating sufficient financial resources for the foster care programme.<sup>48</sup>

42. The Special Rapporteur on minority issues recommended that the practice that amounted to the institutionalization of children from remote areas, and in particular children of the Basarwa, in hostels to receive an education be reviewed and alternative approaches studied so as to minimize the separation of young children from their parents.<sup>49</sup>

## **7. Prohibition of all forms of slavery, including trafficking in persons**

43. The Human Rights Committee remained concerned about: (a) the prevalence of trafficking, notably in women and children, for the purposes of economic and commercial sexual exploitation; (b) the weak implementation of the Anti-Human Trafficking Act; (c) the very low rate of investigations, prosecutions and convictions for the crime of trafficking; (d) the lenient penalties given to traffickers; and (e) the low rate of identification of victims. It was also concerned about reports of forced and child labour in cattle herding, in particular affecting children of the San community.<sup>50</sup> The Committee stated that Botswana should: (a)

intensify its efforts to combat trafficking in persons, including through the enforcement and full implementation of the Anti-Human Trafficking Act; (b) ensure that all cases of trafficking in persons were thoroughly investigated, that alleged perpetrators were prosecuted and that victims were provided with full reparation; (c) redouble its efforts to identify victims of trafficking and ensure that they were provided with protection and assistance, including access to shelters and to adequate legal, medical and psychological services; (d) provide adequate training, including on standards and procedures for the identification and referral of victims of trafficking, to all relevant State officials, including judges, prosecutors, law enforcement officials, immigration officers and staff working in all reception facilities, and to lawyers; and (e) increase its efforts to eliminate forced labour and all forms of child labour, in particular in the farming sector, including by increasing labour inspections.<sup>51</sup>

44. The Committee on the Elimination of Discrimination against Women recommended that Botswana provide assistance, rehabilitation and reintegration programmes for women and girls who were exploited in prostitution.<sup>52</sup>

## **8. Right to work and to just and favourable conditions of work**

45. The United Nations country team noted that strategies aimed at creating jobs for young people and women and at diversifying farming enterprises in rural areas were at different levels of completion.<sup>53</sup>

46. Expressing relevant concerns, the Committee on the Elimination of Discrimination against Women recommended that Botswana, inter alia, establish mechanisms for the monitoring, evaluation and impact analysis of employment policies and programmes, including the enforcement of the provision of maternity leave in the private sector under the Employment (Amendment) Act, increase the number of affordable and accessible childcare facilities and review the pension and social benefit schemes in order to ensure equal access for women and men and extend their coverage to women working in the informal economy.<sup>54</sup>

## **9. Right to social security**

47. The United Nations country team indicated that, although Botswana had high social spending, it had continued to achieve less than commensurate results.<sup>55</sup>

48. Expressing relevant concerns, including that children living in poverty did not have sufficient access to social assistance programmes, the Committee on the Rights of the Child recommended that Botswana, inter alia, urgently evaluate its social protection programmes and consider the extension of current measures for social assistance.<sup>56</sup>

## **10. Right to an adequate standard of living**

49. The Committee on the Rights of the Child recommended that Botswana, inter alia, take all measures necessary to improve access to, and ensure the sustainability, availability, sufficiency and affordability of, adequate housing, safe drinking water and adequate sanitation facilities for all children.<sup>57</sup>

50. The Special Rapporteur on the human rights to safe drinking water and sanitation called upon Botswana to ensure the availability of acceptable levels of resources to ensure the enjoyment of the human right to sanitation, to strengthen its efforts towards the achievement of water security and to put contingency plans into place to respond to situations where water rationing was required, prioritizing the protection of the poor and people living in vulnerable situations.<sup>58</sup>

## **11. Right to health**

51. Expressing relevant concerns, the Committee on the Elimination of Discrimination against Women recommended that Botswana, inter alia, increase efforts to reduce the incidence of maternal and child mortality, amend section 160 of the Penal Code to decriminalize abortion in all cases, ensure women's access to high-quality abortion and post-abortion care, provide training for health professionals and midwives on gender-sensitive approaches to treating victims of gender-based violence and on the referral of victims to other

services and continue its efforts to raise awareness of available contraceptive methods and accessible sexual and reproductive health services.<sup>59</sup>

52. The Committee on the Rights of the Child expressed concern about the persistently high mortality rate among children under 5 years of age and about the high rates of neonatal and child mortality due to preventable diseases. It urged Botswana, *inter alia*, to allocate sufficient resources to the integrated reproductive, maternal, neonatal, child, adolescent and nutrition strategy and to strengthen measures to eliminate preventable mortality among infants and children under 5.<sup>60</sup>

53. The same Committee recommended that Botswana, *inter alia*, prioritize measures to improve access to quality health-care and nutrition services, including by waiving fees for children of foreign nationality who could not afford basic health services, continue targeted interventions to prevent the stunting and undernourishment of children and to combat obesity, invest in measures to ensure that health-care services were child-friendly and develop a national programme to raise awareness of the importance of breastfeeding among families and the general public.<sup>61</sup>

54. The same Committee recommended that Botswana, *inter alia*, provide free, confidential and adolescent-responsive sexual and reproductive health services, information and education, ensure that sexual and reproductive health education was part of the mandatory school curriculum, establish a mental health programme dedicated to children that included community-based mental health services and preventive work in schools, homes and care centres, provide life-skills education on preventing substance abuse and develop accessible, youth-friendly and non-punitive drug dependence treatment and harm reduction services.<sup>62</sup>

55. Expressing relevant concerns, including the persistently high prevalence of HIV/AIDS and tuberculosis, the same Committee recommended that Botswana, *inter alia*, improve coverage of antiretroviral treatment for children, improve access to quality, age-appropriate HIV/AIDS, sexual and reproductive education and strengthen measures to prevent and treat tuberculosis.<sup>63</sup>

## 12. Right to education

56. The Committee on the Rights of the Child recommended that Botswana, *inter alia*, enhance efforts to improve the quality of education at all levels, including by reducing the pupil-teacher ratio, providing continuous training to teachers, improving school equipment and infrastructure and reviewing the curriculum to make education relevant to children's social, cultural, environmental and economic context and to equip all children with essential life skills.<sup>64</sup>

57. The same Committee expressed concern about the insufficient incorporation of human rights into the training of teachers. It recommended that Botswana, *inter alia*, ensure that human rights education was a mandatory component of all training for teachers.<sup>65</sup>

58. Expressing relevant concerns, including about reports of sexual abuse by teachers, the Committee on the Elimination of Discrimination against Women recommended that Botswana, *inter alia*, establish a hotline for children to report such abuse, develop a national anti-bullying policy to provide safe and inclusive educational environments free from discrimination, harassment and violence, revise the Education Act, the Education (Corporal Punishment) Regulations and the Children's Act to prohibit corporal punishment in all settings, intensify efforts to reduce the number of girls dropping out of school by facilitating re-entry, including through the back-to-school programme, ensure mandatory, age-appropriate and evidence-based sexual and reproductive health education in school curricula for girls and boys, review the readmission policy and remove discriminatory provisions against pregnant girls and young mothers to enable them to continue their education, continue with efforts to encourage girls and young women to choose non-traditional fields of study and professions, ensure access to teacher aid for children, including Indigenous girls whose mother tongue was not English or Setswana, allocate sufficient resources to implement the policy on inclusive education and conduct early intervention, assessment and school placement with regard to girls with disabilities.<sup>66</sup>

59. The Committee on the Rights of the Child recommended that Botswana, inter alia, develop and promote quality vocational training to enhance the skills of children, especially for those who dropped out of school.<sup>67</sup>

60. The same Committee recommended that Botswana allocate sufficient financial resources to early childhood education, with a view to ensuring access for all children to early childhood education.<sup>68</sup>

61. The Special Rapporteur on the human rights to safe drinking water and sanitation urged Botswana to ensure that all schools were provided with appropriate menstrual hygiene facilities and that students and staff had access to adequate sanitation at all times.<sup>69</sup>

62. The Special Rapporteur on minority issues recommended the development of policies for public schools to teach and use minority languages as the medium of instruction where it was reasonably possible.<sup>70</sup>

63. UNESCO noted the conclusion of an agreement on the joint annual work plan for 2022–2023, between the Ministry of Basic Education and the United Nations Children’s Fund, in terms of which assistance would be provided to Botswana for projects, including the development of guidelines to support inclusive education, service-level standards for the provision of care and education for learners with special education needs, learning materials for the 13 identified languages and information and communications technology integration into teaching and learning, as well as interactive e-content for 10 subjects in senior secondary schools.<sup>71</sup>

### **13. Cultural rights**

64. UNESCO encouraged Botswana to fully implement the provisions of the relevant conventions to which it was a party that promoted access to and participation in cultural heritage and creative expression, namely, the Convention for the Protection of the World Cultural and Natural Heritage, the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.<sup>72</sup>

### **14. Development, the environment, and business and human rights**

65. The Committee on the Rights of the Child recommended that Botswana strengthen long-standing measures to combat corruption in government procurement and illicit financial flows and strengthen existing institutional capacities to effectively detect, investigate and prosecute related cases.<sup>73</sup>

66. The Committee on the Elimination of Discrimination against Women recommended that Botswana, inter alia, ensure that a gender perspective was integrated into national policies and programmes on disaster risk reduction and climate change.<sup>74</sup>

## **B. Rights of specific persons or groups**

### **1. Women**

67. The Human Rights Committee expressed concern about the high level of violence, including sexual and domestic violence, against women and children, which had significantly increased during the COVID-19 pandemic. It was also concerned about the fact that marital rape and sexual violence were not recognized as criminal offences in domestic legislation and about the insufficient protection and support afforded to victims of domestic violence and their families. It stated that Botswana should strengthen the legal and institutional frameworks to protect women and children against violence, including by explicitly criminalizing marital rape and sexual violence and ensuring the full and effective implementation of the Domestic Violence Act, and ensure that victims had access to the means of protection and assistance, including to shelters and to adequate medical, psychological and rehabilitation support services.<sup>75</sup>

68. The Committee on the Elimination of Discrimination against Women recommended that Botswana, inter alia, amend the Domestic Violence Act to bring it into line with the

Convention on the Elimination of All Forms of Discrimination against Women and the Committee's general recommendations, develop a law on gender-based violence, establish State-owned shelters for victims and strengthen existing shelters run by non-governmental organizations.<sup>76</sup>

69. Expressing concerns about the disproportionate levels of poverty among women and the limited access for women to land and housing, among other concerns, the same Committee called upon Botswana, *inter alia*, to increase awareness among women of their rights concerning access to land and housing, promote the participation of women in the development and implementation of economic development policies, programmes and initiatives and remove the obstacles limiting women's access to decision-making positions.<sup>77</sup>

70. Noting with concern the marginalization of Indigenous women in relation to their political rights and the loss of their cultural and tribal identities, the same Committee recommended that Botswana develop a strategy to address the specific needs of Indigenous women and to protect their cultural and tribal identities.<sup>78</sup>

## **2. Children**

71. The Committee on the Rights of the Child expressed concern about the high incidence of sexual exploitation and abuse of children and recommended that Botswana, *inter alia*, establish effective mechanisms for the mandatory reporting of cases of sexual exploitation and abuse, ensure accessible, confidential, child-friendly and effective reporting channels for such violations and provide child victims with child-friendly and multisectoral remedies and comprehensive support.<sup>79</sup>

72. While welcoming the establishment of the Children's Consultative Forum and village child protection committees, the same Committee expressed concern that such mechanisms did not facilitate the meaningful and empowered participation of children in matters that concerned them. It recommended that Botswana ensure that children's views were given due consideration in courts, schools and relevant administrative and other processes concerning children and in the family.<sup>80</sup>

73. Expressing relevant concerns, the same Committee recommended that Botswana, *inter alia*, develop a national policy and plan of action to support children in street situations and strengthen measures to ensure that children in street situations were provided with educational opportunities and family reintegration services.<sup>81</sup>

## **3. Persons with disabilities**

74. The Committee on the Rights of the Child urged Botswana to adopt a human rights-based approach to disability, set up a comprehensive strategy for the inclusion of children with disabilities, guarantee all children with disabilities the right to inclusive education in mainstream schools, prevent the separation of children with disabilities from their families, by providing support and services to enable families to care for their children, and continue strengthening its awareness-raising campaigns to combat the stigmatization of and prejudice against children with disabilities.<sup>82</sup>

75. The Special Rapporteur on minority issues recommended that Botswana initiate a national consultation process to improve the effectiveness of the country's approach to the use of sign language in education and other areas and increase the use of sign language interpretation on national television to include key television information programmes.<sup>83</sup>

## **4. Indigenous Peoples and minorities**

76. Noting the difficulties faced by minorities and Indigenous communities, the Human Rights Committee stated that Botswana should ensure that the rights of minorities and Indigenous communities, in particular in relation to their traditional lands, natural resources and linguistic rights, were promoted, protected and recognized in law and in practice, including through the development and enactment of dedicated legislation, ensure the consistent and effective application of the principle of free, prior and informed consent before any developmental or other activities took place on lands traditionally used, occupied or owned by minorities and Indigenous communities, ensure that no restrictions were imposed

on current and former residents of the Central Kalahari Game Reserve and ensure that Indigenous communities were able to express themselves in their own languages and promote their cultures.<sup>84</sup>

77. The Special Rapporteur on the human rights to safe drinking water and sanitation recommended that Botswana continue to engage in dialogue with communities transitioning from nomadic to sedentary lives and translate that dialogue into appropriate policy and action that prioritized access to water and sanitation for such people.<sup>85</sup>

78. In 2019, the Special Rapporteur on minority issues stated that Botswana engage in genuine and comprehensive consultations with non-Tswana communities and develop a strategy for the implementation of Vision 2036 that took into account the wishes and interests of those minorities.<sup>86</sup>

79. The Special Rapporteur on minority issues recommended that Botswana undertake a further review of the *kgotla* and chieftaincy system, with direct public participation and consultation at the local level, focusing on the adjudication system based on the *kgosi*, to consider changes to address and redress grievances related to the imposition of Tswana customary law on minority tribes in civil matters. The review should also consider the *kgotla* and chieftaincy system in order to determine how to achieve equal recognition and representation of all ethnic groups and of women in the Ntlo ya Dikgosi, as a matter of priority.<sup>87</sup>

80. The Special Rapporteur on minority issues urged the Government and members of the San communities from the Central Kalahari Game Reserve to engage in consultations to allow the San communities to continue traditional hunting, grazing or foraging activities consistent with wildlife conservation. The consultations should include future agreements on community-based natural resource management and tourism.<sup>88</sup>

## 5. Lesbian, gay, bisexual, transgender and intersex persons

81. Expressing relevant concerns, the Human Rights Committee stated that Botswana should repeal section 164 of the Penal Code, which criminalized same-sex relationships.<sup>89</sup>

## 6. Migrants, refugees and asylum-seekers

82. Noting that the refugee status determination was undertaken by the Refugee Advisory Committee, which prepared recommendations for the Minister of Justice, the Office of the United Nations High Commissioner for Refugees (UNHCR) expressed concern at the decision-making model, inter alia, observing limitations in the Committee members' knowledge of refugee law, many of whom represented the views of their ministries or security agencies and thereby tended to adjudicate refugee claims taking into account factors that did not support neutral and impartial decisions that were based on the facts of the case. There was also a lack of a mechanism for lodging appeals to an independent authority, court or tribunal.<sup>90</sup>

83. UNHCR noted that Botswana had a strict encampment policy in the Dukwi refugee camp, which, together with the restrictions on the right to work, had a significant effect on refugees' self-sufficiency.<sup>91</sup>

84. UNHCR indicated that the restrictive application of the nationality law made it difficult for refugees to accumulate the number of required years of residency to be eligible for naturalization.<sup>92</sup>

85. The Human Rights Committee expressed concern about, inter alia, reports of the expulsion of migrants and asylum-seekers, including those in need of international protection, without carrying out the necessary individual assessments. It stated that Botswana should establish fair and effective asylum procedures that were in conformity with international standards, that included an independent appeal mechanism with suspensive effect against negative decisions on asylum and that provided for adequate safeguards against arbitrary detention, deportation and refoulement, ensure that asylum-seekers were detained only as a measure of last resort, establish alternatives to the detention of children and families with children and issue and renew identification documents for asylum-seekers in a timely manner in order to prevent their arbitrary detention and deportation.<sup>93</sup>

86. The Committee on the Rights of the Child expressed concern that asylum-seeking and refugee children and families, as well as unaccompanied children, were being subjected to mandatory and prolonged detention. It recommended that Botswana, inter alia, prohibit such detention and adopt alternatives to detention.<sup>94</sup>

## 7. Stateless persons

87. The Committee on the Rights of the Child expressed concern about the significant number of children who were not registered, in particular children in remote areas, refugee and asylum-seeking children and abandoned children, the persistence of barriers to birth registration and the lack of safeguards to prevent refugee and asylum-seeking children from statelessness. It recommended that Botswana, inter alia, strengthen efforts to achieve universal birth registration.<sup>95</sup>

88. The Human Rights Committee stated that Botswana should ensure that legislation on citizenship provided adequate safeguards for the prevention of statelessness, in compliance with international standards.<sup>96</sup>

## Notes

- <sup>1</sup> See [A/HRC/38/8](#), [A/HRC/38/8/Add.1](#) and [A/HRC/38/2](#).
- <sup>2</sup> [CCPR/C/BWA/CO/2](#), paras. 6 (c), 8 and 18 (f).
- <sup>3</sup> *Ibid.*, para. 30 (f). See also United Nations country team submission for the universal periodic review of Botswana, para. 33.
- <sup>4</sup> [A/HRC/42/47/Add.5](#), para. 13. See also [CEDAW/C/BWA/CO/4](#), para. 55; [A/HRC/40/64/Add.2](#), para. 75; and the United Nations country team submission, pp. 2–3.
- <sup>5</sup> [CEDAW/C/BWA/CO/4](#), para. 55.
- <sup>6</sup> *Ibid.*, para. 36 (c).
- <sup>7</sup> UNESCO submission for the universal periodic review of Botswana, paras. 13 and 27.
- <sup>8</sup> [A/HRC/40/64/Add.2](#), paras. 77–78.
- <sup>9</sup> UNESCO submission, para. 27.
- <sup>10</sup> United Nations country team submission, para. 10.
- <sup>11</sup> [CCPR/C/BWA/CO/2](#), paras. 5 and 6 (a).
- <sup>12</sup> *Ibid.*, paras. 11 and 12 (a)–(b). See also [CEDAW/C/BWA/CO/4](#), para. 14; and [A/HRC/40/64/Add.2](#), para. 76.
- <sup>13</sup> [CRC/C/BWA/CO/2-3](#), para. 7.
- <sup>14</sup> [CCPR/C/BWA/CO/2](#), paras. 29 and 30 (a).
- <sup>15</sup> United Nations country team submission, para. 17. See also [CCPR/C/BWA/CO/2](#), para. 10; [CEDAW/C/BWA/CO/4](#), paras. 19–20; and [A/HRC/40/64/Add.2](#), para. 79.
- <sup>16</sup> [CEDAW/C/BWA/CO/4](#), para. 18 (b). See also United Nations country team submission, para. 20.
- <sup>17</sup> [CEDAW/C/BWA/CO/4](#), para. 7.
- <sup>18</sup> [CCPR/C/BWA/CO/2](#), paras. 11 and 12 (e). See also [CEDAW/C/BWA/CO/4](#), para. 23.
- <sup>19</sup> [CEDAW/C/BWA/CO/4](#), para. 24 (a).
- <sup>20</sup> [CCPR/C/BWA/CO/2](#), para. 12 (f).
- <sup>21</sup> [CRC/C/BWA/CO/2-3](#), para. 22 (b).
- <sup>22</sup> [CCPR/C/BWA/CO/2](#), paras. 15 and 16 (b) and (d). See also United Nations country team submission, paras. 13 and 44.
- <sup>23</sup> [CCPR/C/BWA/CO/2](#), paras. 17 and 18 (a)–(d).
- <sup>24</sup> *Ibid.*, paras. 13 and 14 (b). See also [CRC/C/BWA/CO/2-3](#), para. 38.
- <sup>25</sup> [CRC/C/BWA/CO/2-3](#), paras. 19–20.
- <sup>26</sup> [CCPR/C/BWA/CO/2](#), para. 23.
- <sup>27</sup> *Ibid.*, para. 24 (a)–(c).
- <sup>28</sup> *Ibid.*, para. 18 (e).
- <sup>29</sup> *Ibid.*, paras. 27 and 28 (c).
- <sup>30</sup> *Ibid.*, para. 28 (d).
- <sup>31</sup> [CEDAW/C/BWA/CO/4](#), para. 16 (a).
- <sup>32</sup> [CCPR/C/BWA/CO/2](#), paras. 27 and 28 (a). See also United Nations country team submission, para. 45.
- <sup>33</sup> [CCPR/C/BWA/CO/2](#), para. 21.
- <sup>34</sup> *Ibid.*, para. 22 (b)–(c).
- <sup>35</sup> [CRC/C/BWA/CO/2-3](#), paras. 68 and 69 (b).
- <sup>36</sup> *Ibid.*, paras. 23 and 24 (a).
- <sup>37</sup> [CCPR/C/BWA/CO/2](#), paras. 19–20. See also United Nations country team submission, para. 14.

- <sup>38</sup> Ibid., paras. 33–34.
- <sup>39</sup> [CRC/C/BWA/CO/2-3](#), para. 31.
- <sup>40</sup> [A/HRC/40/64/Add.2](#), para. 95.
- <sup>41</sup> Ibid., para. 96.
- <sup>42</sup> United Nations country team submission, para. 15.
- <sup>43</sup> [CCPR/C/BWA/CO/2](#), paras. 35–36.
- <sup>44</sup> [CEDAW/C/BWA/CO/4](#), paras. 31–32 (a).
- <sup>45</sup> [A/HRC/40/64/Add.2](#), para. 86.
- <sup>46</sup> [CCPR/C/BWA/CO/2](#), paras. 31–32.
- <sup>47</sup> [CRC/C/BWA/CO/2-3](#), para. 33.
- <sup>48</sup> Ibid., paras. 41 and 42 (a).
- <sup>49</sup> [A/HRC/40/64/Add.2](#), para. 80. See also [CCPR/C/BWA/CO/2](#), para. 38 (d).
- <sup>50</sup> [CCPR/C/BWA/CO/2](#), para. 25.
- <sup>51</sup> Ibid., para. 26.
- <sup>52</sup> [CEDAW/C/BWA/CO/4](#), para. 30 (b).
- <sup>53</sup> United Nations country team submission, para. 50.
- <sup>54</sup> [CEDAW/C/BWA/CO/4](#), paras. 35 and 36 (a) and (d)–(e).
- <sup>55</sup> United Nations country team submission, para. 48.
- <sup>56</sup> [CRC/C/BWA/CO/2-3](#), paras. 50 and 51 (b). See also [CRC/C/BWA/CO/2-3](#), paras. 11 and 12 (a)–(b).
- <sup>57</sup> [CRC/C/BWA/CO/2-3](#), para. 51 (c).
- <sup>58</sup> [A/HRC/42/47/Add.5](#), paras. 25 and 30.
- <sup>59</sup> [CEDAW/C/BWA/CO/4](#), paras. 37–38. See also United Nations country team submission, paras. 28 and 57.
- <sup>60</sup> [CRC/C/BWA/CO/2-3](#), paras. 25 and 26 (a)–(b).
- <sup>61</sup> Ibid., para. 46.
- <sup>62</sup> Ibid., para. 47.
- <sup>63</sup> Ibid., paras. 48–49.
- <sup>64</sup> Ibid., para. 53 (b).
- <sup>65</sup> Ibid., paras. 56–57.
- <sup>66</sup> [CEDAW/C/BWA/CO/4](#), paras. 33–34.
- <sup>67</sup> [CRC/C/BWA/CO/2-3](#), para. 53 (d).
- <sup>68</sup> Ibid., paras. 55.
- <sup>69</sup> [A/HRC/42/47/Add.5](#), para. 50.
- <sup>70</sup> [A/HRC/40/64/Add.2](#), para. 82.
- <sup>71</sup> UNESCO submission, paras. 16, 18, 20 and 23.
- <sup>72</sup> Ibid., para. 32.
- <sup>73</sup> [CRC/C/BWA/CO/2-3](#), para. 12 (c).
- <sup>74</sup> [CEDAW/C/BWA/CO/4](#), para. 46 (a).
- <sup>75</sup> [CCPR/C/BWA/CO/2](#), paras. 13 and 14 (a) and (c). See also [CEDAW/C/BWA/CO/4](#), paras. 25–26; and United Nations country team submission, para. 22.
- <sup>76</sup> [CEDAW/C/BWA/CO/4](#), para. 26 (b) and (e).
- <sup>77</sup> Ibid., paras. 39 and 40 (a)–(b).
- <sup>78</sup> Ibid., paras. 43 and 44 (a). See also United Nations country team submission, para. 30.
- <sup>79</sup> [CRC/C/BWA/CO/2-3](#), paras. 36 (a) and 37 (a) and (c).
- <sup>80</sup> Ibid., paras. 27 and 28 (a).
- <sup>81</sup> Ibid., paras. 63 and 64 (a)–(b).
- <sup>82</sup> Ibid., paras. 43 and 44 (c)–(e).
- <sup>83</sup> [A/HRC/40/64/Add.2](#), paras. 98–99.
- <sup>84</sup> [CCPR/C/BWA/CO/2](#), paras. 37 and 38 (a)–(c) and (e).
- <sup>85</sup> [A/HRC/42/47/Add.5](#), para. 68.
- <sup>86</sup> [A/HRC/40/64/Add.2](#), para. 74.
- <sup>87</sup> Ibid., para. 84.
- <sup>88</sup> Ibid., para. 94.
- <sup>89</sup> [CCPR/C/BWA/CO/2](#), paras. 11 and 12 (c).
- <sup>90</sup> UNHCR submission for the universal periodic review of Botswana, p. 2.
- <sup>91</sup> Ibid., p. 5.
- <sup>92</sup> Ibid., p. 6.
- <sup>93</sup> [CCPR/C/BWA/CO/2](#), paras. 29 and 30 (b)–(e).
- <sup>94</sup> [CRC/C/BWA/CO/2-3](#), paras. 60 and 61 (a).
- <sup>95</sup> Ibid., paras. 29 and 30 (a).
- <sup>96</sup> [CCPR/C/BWA/CO/2](#), para. 30 (e).