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**NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15 (A)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1 ***

Botswana

* The present document was not edited before being sent to the United Nations translation services.

I. METHODOLOGY AND CONSULTATION PROCESS

1. The Ministry of Foreign Affairs and International Cooperation was responsible for coordinating an inter ministerial effort towards the preparation of the national report submitted for periodic review by the Human Rights Council of the United Nations¹. The report was prepared jointly with the Office of the President/Ministry of Justice, Defence and Security and the Attorney General's Office (which comprised the Drafting Committee). Once a draft had been prepared the draft was shared with stakeholder government departments and ministries.
2. A working draft was then prepared by the Drafting Committee and was shared with stakeholder Government Ministries and Departments with a view that they provide further contribution and feedback. A stakeholder workshop was then convened on 5-6 August 2008 that brought together all stakeholders including the civil society and non-government organizations (NGOs) to go through the initial draft and make comments, suggestions and recommendations to improve the document.

II. BACKGROUND: NORMATIVE AND INSTITUTIONAL FRAMEWORK

3. Adopted by Botswana at independence in 1966, the Constitution established a non racial democracy, maintaining freedom of speech, of the press and of association, and affording all citizens equal rights. The Constitution also provides for a republican form of Government headed by the President with three main administrative organs: the Executive, a unicameral Legislature and the Judiciary. Each of these organs is independent from other organs.
4. The Executive branch of government consists of the Cabinet headed by the President and is responsible for initiating and directing national policies through government ministries and departments. There are 16 Ministries each headed by a Cabinet Minister. Each ministry is divided into departments and divisions with different areas of responsibility.
5. The Legislative branch comprises of the National Assembly and the President. The National Assembly is the supreme law making authority in the country and it acts in consultation with the House of Chiefs on tribal matters. The House of Chiefs advises on matters affecting customs and tradition. This long lasting democratic "*Kgotla*" system, passed on from generation to generation has provided a strong base on which to build, with free political debate encouraged at all levels.
6. The Constitution provides that the National Assembly is made up of fifty-seven (57) directly elected members and four (4) Specially Elected members and a Speaker of the National Assembly.
7. Since independence Botswana has held peaceful, free and fair elections in 1965, 1969, 1974, 1979, 1984, 1989, 1994, 1999 and 2004. The next general election is in 2009. The ruling Botswana Democratic Party (BDP) has so far won every election, with four changes of President since independence in 1966. There is a "first past the post" system.
8. There are 11 Opposition Parties registered with the Independent Electoral Commission (IEC) in Botswana. In the 2004 general elections, there were 552,849 registered voters. Out of this number, 421,272 voted, representing 76.2 per cent of the people that voted. The Opposition got 23 per cent of parliamentary seats, which was an increase from 16 per cent obtained in the 1999 general elections, and equivalent to 40 per cent of the popular vote.

9. The third organ of government is the Judiciary which is presided over by the Chief Justice and consists of the Court of Appeal, the High Court and Magistrate Courts. Independent of the Executive and the Legislature organs, the Judiciary interprets and administers the law.
10. The power to appoint judges and magistrates vests in the President acting in accordance with the advice of the Judicial Service Commission.
11. There is also the Industrial Court whose judges are appointed by the President in terms of the Trade Dispute Act.
12. In addition to the above structures, there is also the Office of the Ombudsman and the Land Tribunal.
13. The Ombudsman is mandated in terms of the Ombudsman Act to investigate complaints of injustice or maladministration in the Public Service. The Ombudsman's jurisdiction extends to the investigation of alleged violations of constitutionally enshrined fundamental rights and freedoms. In the event of non-compliance with the recommendation the Ombudsman is obliged to make a special report to the National Assembly.
14. Disputes relating to land are referred to the Land Tribunal for settlement and all decisions of the Land Tribunal are appealable to the High Court and Court of Appeal.
15. There are other quasi judicial bodies such as the Tax Board and Licensing Board which deal with quasi judicial matters.

Legal system

16. Botswana has a dual legal system, comprising customary law and what is usually termed received law (or common law). Customary law is the law of any particular tribe or tribal community insofar as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice. Customary law is not written and has variations among different communities. The received law consists of English law and Roman Dutch law as it was in force at the Cape of Good Hope on 10 June 1891, and as amended by statutes from time to time and interpreted by the Courts. The two systems coexist although there are differences in the law and its application.
17. The highest court in Botswana is the Court of Appeal. It is the superior court of record to which appeals can be made from the High Court. The High Court has original jurisdiction to hear and determine civil and criminal proceedings. It acts as an appellate body for the Magistrate Courts and the Customary Court of Appeal.
18. The common law is made up of statute and precedents, which are cases upon which the High Court and Court of Appeal have ruled.
19. The Customary Courts derive their authority from the Customary Courts Act. The Customary Law Act also lays down rules which are meant to guide the courts in deciding whether customary or common law applies. The Customary Courts have jurisdiction to deal with a wide variety of matters of civil² and criminal³ law such as financial disputes, petty theft, marital disputes, divorce (where the couple is married under customary law), livestock theft, insults and defamation, among others. The jurisdiction of the Customary Court is limited by the potential penalties or fines to be imposed, or the particular types of crimes or disputes to be

adjudicated. When dealing with criminal matters the courts follow the Customary Court Procedure Rules.

20. Lawyers are not permitted to give legal representation at the Customary Courts. However, a person has the right to have a case transferred to another court (a common law court) where they have the right to legal representation if the permission to transfer is given by the Customary Courts of Appeal. If however an accused person instructs a lawyer to represent him, and the lawyer informs the courts that they wish to have the case transferred, then the court is obliged to transfer the case so that the accused can access his right to have legal representation.

21. Local police are officials of the Customary Courts and their work exists alongside the national police service. Both police services tend to prefer to use Customary Courts because they dispense swift and accessible justice. The High Court may refer matters to the Customary Court on issues involving divisions of the joint estate and married persons or where the Court finds that it will be equitable for such division of the joint estate to be dealt with by Customary Courts.

22. The Customary Court of Appeal deals with appeals from the Customary Courts. Decisions of the Customary Court of Appeal may be appealed to the High Court. On issues which refer to land claims, appeals can also be made to the Land Tribunal.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS-IMPLEMENTATION OF HUMAN RIGHTS TREATIES AND OBLIGATIONS

23. Botswana is party to the following main human rights instruments:

(a) African Charter

- (i) African Charter on Human and Peoples Rights, ratification 17 July 1986;
- (ii) Protocol to the African Charter on Human and Peoples Rights on the Establishment of an African Court on Human and Peoples' Rights, signed 9 June 1998.

(b) Children

- (i) Convention on the Rights of the Child, accession 14 March 1995;
- (ii) African Charter on the Rights and Welfare of the Child, ratification 10 July 2001;
- (iii) Amendment to the Convention on the Rights of the Child (Article 43, paragraph 2), acceptance 6 March 2002;
- (iv) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, accession 24 September 2003;
- (v) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratification 4 October 2004;

(c) Civil and political rights

International Covenant on Civil and Political Rights, ratification 8 September 2000.

(d) Racial discrimination

International Convention on the Elimination of all Forms of Racial
Discrimination, accession 20 February 1974.

(e) Torture

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or
Punishment, ratification, 8 September 2000.

(f) Trafficking in persons

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially
Women And Children, supplementing the United Nations Convention against
Transnational Organised Crime, ratification 29 August 2002.

24. Botswana has not acceded to the International Covenant on Economic, Social and
Cultural rights and the Convention on the Rights of Migrant workers and members of their
families.

25. Notwithstanding the fact that the ICESCR has not been acceded to Botswana has strived
to deliver on internationally accepted social and cultural norms and thus has made great strides in
its healthcare and education system.⁴

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

27. Nevertheless the courts in Botswana have in some cases given judicial notice to
international instruments which Botswana has ratified even though they have not been reduced to
domestic legislation. The judgement in the Unity Dow Case illustrates the point that international
instruments may be referred to as an aid to interpretation, notwithstanding that the provisions of
those international instruments do not confer enforceable rights and corresponding obligations on
individuals within Botswana until parliament has enacted them into the national laws.⁵ In the
case of *Good v The Attorney General*, the court explained the status of international instruments,
and noted that international treaties to which Botswana is a signatory do not have the force of
law until incorporated into domestic law.⁶ Section 24 (1) of the Interpretation Act.⁷

(g) Women's rights

28. Botswana's has made great strides as regards empowerment of women. The Government
has set up a Women's Affairs Department within the Ministry of Labour and Home Affairs. The
role of the Department is to deal with women's issues and to promote their development and
integration into economic, social, cultural and political activities. In 1996 Botswana acceded to
the Convention for the Elimination of All Forms of Discrimination against Women, and has
since then made a concerted effort to promote gender issues within its National Policy. The
Convention has since been translated into Setswana – the national language.

29. In 1996, Government adopted a National Policy on Women in Development. The goal of
the Policy is to achieve effective integration and empowerment of women in order to improve
their status, enhance participation in decision making and their role in the development process.
Specific measures undertaken include, gender main streaming in structures such as political
parties, civil society and tertiary institutions, gender sensitization and training programmes, as
part of a broad strategy of capacity building and advocacy. The Policy is been reviewed to bring

it in line with the Gender and Development Approach, the Vision 2016, the United Nations Millennium Development Goals and other international human rights instruments.

30. Botswana has also achieved gender equality and gender parity in the formal education system.⁸

(h) The abolition of Marital Power

31. Marital Power was abolished in 2004. Before 2004 the Common Law principle of marital power treated the husband as the head of the family with powers over his wife including legal representation and administration over her property. Since the abolition, women stand in an improved position. Persons married in community of property have equal powers to dispose of assets held in a joint estate. The Abolition of Marital Power Act does not apply to Customary and Religious marriages. Consultations are on-going to address the disparities and extent of the application of the Act to these marriages.

(i) Access to education

32. Botswana has made major progress towards achieving universal access to Primary education, which provides a strong base for achieving access to basic education. This is evident in the Net Enrolment Rates (NER) for children aged 7-13 and 6-12 which has consistently been above 85 per cent between 1994 and 2005. Over the same period, the Gross Enrolment Rates has always been above 100 per cent.

33. Deliberate efforts have been made to encourage girls into the fields of science, technology and vocational education and training through career fair and career guidance videos where female role models are used as resource persons. The Education Regulations were reviewed with the result that a policy was developed that facilitates the retention rate of girls, by allowing the return of the girl child to school after pregnancy thus addressing the issue of girls being kept out of school due to pregnancy.

34. Botswana provides inclusive education to all children of school going age regardless of the differences, in line with the Salamanca Statement and Framework for Action of 1994. Such inclusive education responds to the diverse needs of the learners, especially those with disabilities. The posts of "Senior Teachers Advisors - Learning Difficulties" has been created at both primary and secondary schools with the aim of assisting teachers to address the diverse needs of learners including those with various forms of disabilities.

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

36. In the past the provision of education was free until 2005 when Government introduced school fees on a cost sharing basis. The cost sharing was recently revised in 2008 to introduce an income threshold by which households in need of assistance will be exempted from paying school fees.

A. Children

37. At the last national census held in 2001, 44 per cent of the population was under the age of 18 years.

38. The largest portion of the Government of Botswana's operation expenditures are incurred by the Ministry of Local Government, which houses the Department of Social Services, which is responsible for dealing with the rights and welfare of children and the Ministry of Education. There is no specific institution tasked with overall responsibility for coordinating policies for children and ensuring their execution, as such it is difficult to obtain a reliable figure on funding for children's rights.

39. The National Plan of Action (NPA) for Children 2006-2016 has been adopted and seeks to promote Human Rights via the promotion of several key areas (education and training; health and nutrition; children and HIV/AIDS; sport and recreation; child protection; environment and safety; and policy and legislation). The NPA provides various mechanisms and structures for its coordination and monitoring to actualize it. The Plan aims to correct the short-comings of the previous National Plan of Action. Notwithstanding its adoption, the Government of Botswana has experienced challenges in its implementation.

40. Government is also in the process of domesticating the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and a draft Bill has been circulated, it is expected to be tabled before Parliament in November. The expectation is that the resulting law will be human rights based, catalysing the maximum realisation of child rights, performance of correlative duties, and compliance with human rights for the dignified living of every child.

B. Protection of economic and social rights

41. The Department of Social Services has some of the following social safety nets in place that address the social and economic rights of the most vulnerable groups within society:

(a) The revised national policy on destitute persons provides for the provision of a nutritionally balanced food basket, cash amounting to P81.00 monthly, as well as some rehabilitation for the eligible. The rehabilitation component aims at providing individuals with relevant skills, knowledge and the right attitude to engage in sustainable economic and social activities to the extent that they are able to obtain a livelihood without direct dependence on the state. The destitute policy benefits members within a household and does not only target individuals who may be registered. The policy further makes provision for the construction of shelter for the most deserving. Destitute persons are also exempted from payment of publicly provided services like medical fees, water charges, and service levy and electricity charges;

(b) The non contributory pension benefits all Botswana citizens aged 65 years and above;

(c) The World War II veterans or their widows also get cash allowance to help cushion them from economic hardship. The old age pensioners and the World War II veterans get P220.00 and P359.00, respectively;

(d) The Short Term Plan of Action for Orphans caters for children under the age of 18 years who are orphaned. They are also provided with a nutritionally balanced food basket as well as school requirements. These children are exempted from any fees required under the cost sharing exercise and any other publicly provided service;

(e) Patients on Home Based Care who cannot afford a diet that is sufficient to satisfy their nutritional needs are also entitled to a food basket;

(f) The Remote Area Development (RAD) Programme caters for people who live in remote areas where there is very little development or economic activity. The RAD settlements are provided with basic social services such as schools, health facilities, potable water, access roads etc. The programme focuses on ensuring that beneficiaries achieve sustainable social and economic development and that they benefit equally from rapid economic development of the country;

(g) The Economic Promotion Fund whose aim is to create employment opportunities for remote area dwellers. The scheme funds productive and business oriented activities including game ranching, harvesting and utilization of veld products and arable agriculture.

C. CIVIL AND POLITICAL RIGHTS

42. The Constitution has a bill of fundamental rights and freedoms (which guarantees civil and political rights) and especially provides that every person in Botswana is entitled to these fundamental rights and freedoms irrespective of race, sex etc.⁹

1. Right to participation in democratic governance

43. The Constitution provides for free and fair elections. The Independent Electoral Commission (IEC) monitors the holding of elections and educates the nation on democracy and the importance of voting. The Government's commitment to the participation in democratic governance is also reflected in the willingness of the Government to involve the populace in determining issues affecting them especially through commissions of inquiry and referenda for example, the Balopi Commission set up in 2000 by the President calling for the amendment of the Constitution to make it tribally neutral.

2. Right to life

44. The right to life is protected under the Constitution which confers the right to life on all individuals. However, Botswana retains the death penalty and the Constitution outlines circumstances considered reasonably justifiable where there can be deprivation of life. The Penal Code states that death may be inflicted as punishment by a court of law. The Penal Code further lists the offences that attract the death penalty. Safeguards have been put in place to protect those accused of offences that carry the death penalty. The Constitution provides that the accused shall be afforded a fair hearing within reasonable time by an independent and impartial court established by law. This has the effect of preventing arbitrary deprivation of life where one is charged with an offence that carries the death penalty. People charged with capital offences are provided with *pro deo* counsel to represent them at the state's expense.

45. The Prisons Act also provides Regulations concerning the treatment of prisoners on death row. The purpose of the Regulations is to protect the prisoners from any arbitrary treatment.

46. Capital punishment may not be imposed on any person under the age of 18 years or expectant woman.

3. Torture and other cruel, inhuman, or degrading treatment

47. The Constitution provides for the protection against torture and inhuman punishment. Other pieces of legislation augment the Constitution in this regard such as the Criminal Procedure and Evidence Act which provides that any confession obtained by use of torture is inadmissible and the Prisons Act which also protects prisoners from torture.

4. Corporal punishment

48. Corporal punishment in schools is allowed by the Education Act and the regulations to the Act govern its administration.

49. Customary Courts are empowered to administer corporal punishment within the limits of the Customary Courts Act. However women or any man over the age of 40 cannot be sentenced to corporal punishment. It is general practice that upon sentencing the Court will enquire from the offender as to whether he has any health impediment preventing him from receiving corporal punishment, if he says such impediment does exist, corporal punishment will only be administered after the offender has been examined by a medical practitioner at the state's expense and a certificate of fitness issued to certify that he is medically fit to undergo corporal punishment.

5. The rights of minority groups

50. In Botswana, there are minority groups and they enjoy all the rights under the laws of the country. They have the right to practice their own culture, to profess and practice their own languages.

51. In both government and private institutions employment opportunities are based on merit. Access to social services is also available to every person without discrimination.

52. Some minority groups were not represented in the *Ntlo Ya Dikgosi* and in some quarters this was viewed as being discriminatory. Hence, the Government of Botswana appointed a commission to look at the constitutional provisions that are alleged to be discriminative.

53. The commission's findings were that the Sections were indeed discriminatory and needed to be amended to make them tribally neutral. The Chieftainship Act (now referred to as the Bogosi Act) and the Constitution were amended to remove discriminatory provisions.

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

6. Access to justice

55. One of the ways in which Government seeks to ensure access to justice is through the provision of assistance to criminal defendants charged with capital offences who do not have the means to afford their own legal representation for Capital offences. The criteria for assigning *pro-deo* counsel is whether it is desirable in the interest of justice that the appellant should have legal aid.¹⁰ Section 56 of the Legal Practitioners Act, imposes a duty on every legal practitioner to do *pro-deo* work. It is pursuant to this section that the Registrar of the High Court assigns *pro-deo* work to individual legal practitioners. However, *pro-deo* fees paid by Government are nominal and this has implications on the legal representation that clients receive from lawyers. The low fees are a disincentive to experienced lawyers who are unwilling to take *pro-deo* matters on nominal fees. Where such instructions are taken, some lawyers do not put more effort in the preparations of the case because the fees are low”

56. To further address this, the Government is in the process of coming up with a legal aid system which will assist litigants considered to be paupers to access affordable legal services (see discussion at paragraph 104).

7. Freedom of expression

57. Transparency is ensured through press freedom, and information dissemination. Press freedom is respected and there is a small but independent media and press. There is freedom of speech, association and reasonable access to information.

58. The Government has set up a Media Consultative Council whose primary mission is to promote and preserve the media in public; it has representation from the private media and other stakeholders. The Media council provides an avenue to further promote the right to freedom of expression.

59. The National Broadcasting Board (NBB) was established in 1996 as a statutory agency with responsibility for among others; issuing broadcasting licenses; supervising broadcasting activities; monitoring and settling disputes among operators; allocation and managing optimal utilization of broadcasting spectrum.

8. Actions to eradicate discrimination

60. The Constitution of Botswana guarantees equality for all Batswana. This is further complemented by other legislative provisions, for example, the Penal Code which outlaws discrimination and the Societies Act which makes peremptory the refusal to register organizations which have expressly or implicitly, racism and racial discrimination as their objects.

61. Every individual in Botswana has the right to practice their own culture, to profess and practice their own religion and use their own language. This is guaranteed by the Constitution. There is no official religion in Botswana; however, the dominant religion is Christianity. There is also a sizeable number of Islam, Bahai and Hindu believers.

9. Human rights training in disciplined forces

62. The Botswana Police Service has mainstreamed human rights training for its personnel. Human rights forms part of Pre Service and In Service Training at the Botswana Police College. The training encompasses concepts of human rights; applicable international legal instruments on human rights; applicable local statutes and applicable cases touching on human rights abuse.

63. The Botswana Police Service Management in an effort to address issues of abuse of human rights came up with a hand book for Botswana Police Service Strategic Foundations and subscribes to the human rights ideal espoused in the Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct (of which the Botswana Police Service is a member).

64. The Botswana Defence Force has components of international humanitarian law and human rights law in its basic training for recruits.

IV. ACHIEVEMENTS AND BEST PRACTICES, CHALLENGES AND CONSTRAINTS

A. Achievements and best practices

65. There have been considerable developments in the recognition of Women's Rights. The Government has amended a number of legal instruments to eliminate all forms of discrimination against Women and create a gender balance:

(a) The Citizenship Act was amended in 2003 such that a citizen of Botswana who had acquired the citizenship of another country as a consequence of marriage shall; upon renouncing such citizenship and applying to resume citizenship of Botswana, be reinstated as a citizen of Botswana;

(b) The Government amended the Mines and Quarries Act in 1996 by removing restrictions placed on women to work underground in mines;

(c) The Criminal Procedure and Evidence Act was amended to provide for the mandatory hearing in camera of sexual offences such as rape;

(d) The Deeds Registry Act was amended in 1996 to:

- (i) Allow women whether married in community of property or not to execute deeds and other documents required or allowed them to be registered in the deeds registry without their husbands' consent;
- (ii) Allow for immovable property to be transferred or ceded to a woman married in community of property and to allow the woman to have her own separate estate, whereby a condition of the bequest or donating it is excluded from the community and marital power;
- (iii) Ensure that neither party in a marriage in community of property unilaterally deals with immovable property forming part of the joint estate, without the written consent of the other irregardless of in whose name the property is registered; unless such party has been so authorized by an order of the court.

66. The Government of Botswana also amended the Penal Code; the Affiliations Proceedings Act; the Public Service Act; the Marriage Act; the Abolition of Marital Power Act; and also enacted the Domestic Violence Act.¹¹

1. Attainment of health for all

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

68. Health Care delivery is anchored on the Primary Health Care strategy, in line with the Alma-Ata Declaration of 1978.¹²

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

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

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

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

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

(b) A good child welfare program is in place: implementation of an Expanded Program on immunization against preventable childhood disease has resulted in immunization coverage of over 90 per cent. The growth monitoring and infant feeding program of children under 5 years has resulted in a decline of malnutrition to 5 per cent while the prevalence of severe malnutrition has decreased to 1 per cent. As a result of these initiatives, infant mortality has decreased from 56/1 000 live births to 48/1 000 live births due to wide availability of the Prevention of Mother to Child Transmission (PMTCT) program;

(c) Maternal and Child Health Care including Family Planning: Through the safe motherhood initiative, maternal mortality rate at health facility has decreased from 175/100 000 in 2004 to 167/100 000 in 2006. A good family planning program has resulted in a decline in teenage pregnancies;

(d) Prevention and control of major communicable diseases such as malaria and TB has resulted in the reduction in the number of malaria cases from 72000 to below 34000 in 2007. In 1989 the TB notification rate was 202/100 000 population, increasing to 649/100 000 in 2002 due to emergence of HIV/AIDS epidemic and later declining 511/100 000 in 2006 due to wide availability of ARVs and Isoniazid Prevention Therapy (IPT). IPT was initiated for HIV positive patients to prevent them from developing active tuberculosis, which is the major cause of mortality especially among patients with depleted immune systems due to HIV.

(e) Other programmes that were introduced as a result of the HIV/AIDS epidemic are the Infant Feeding Programme;

(f) Prevention and Control of Non-communicable Diseases and Injuries: Botswana as a developing country has also been experiencing a steady increase of non-communicable diseases, namely: hypertension, cancers and diabetes (health statistics reports). Hypertension, which is a risk factor for cardiovascular disease, is the commonest cause of morbidity and mortality. Currently, the Ministry of Health in collaboration with the World Health Organization is undertaking a study on hypertension, diabetes and stroke among those aged 50 years and above. The results of this study will be useful in developing health policies regarding care of the elderly in respect of these diseases;

(g) Communicable Disease Surveillance: an integrated disease surveillance and disease programme has been started in the unit as a major regional initiative to strengthen disease surveillance and epidemic response.

2. Human rights Awareness training for traditional leaders

73. Pursuant to concerns raised by some treaty bodies (CERD and ICCPR) and Non Governmental Organisations (NGOs), about the capacity of traditional leaders to dispense justice in matters dealing with human rights, Government identified a need to build capacity in the area of human rights obligations and implementation. Workshops were conducted to strengthen the delivery of justice in customary courts. *Dikgosi* were trained on elements of fairness in administering justice. The Training was intended to address concerns raised regarding the application of Customary Law and procedures of the Customary Courts, and the limited levels of training of presiding officers.

74. In Botswana, Customary law is administered in Customary Courts by *Dikgosi* (chiefs, headmen or court presidents) with the assistance of elders in the community. Cases are generally dealt with at the *Kgotla* (a traditional public meeting place).

75. Criminal jurisdiction is limited and prevents them from dealing with cases such as treason, bigamy, corruption, abuse of office, rape, robbery and other serious offences. Further, they do not deal with matters such as dissolution of civil marriages, testate succession or insolvency.

3. Domestic violence

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

4. Domestication of the Convention on the Rights of Children

77. There has also been a reform to improve the position of children notably, the draft Children's Bill of 2008. The Ministry of Local Government has been conducting consultations on the draft Children's Bill of 2008.

5. Response by Government to HIV/AIDS

78. The Government response to the HIV and AIDS pandemic has been realised as evidenced by the declining HIV prevalence trends among the younger age group of pregnant women aged 15-19, where the prevalence rate has declined from 28.6 per cent in 1998 to 17.2 per cent in 2007. Reduction in new infections is also supported by the preliminary incidence studies from 2005-2007.

79. The PMTCT program increased in coverage whereby in 2007, 89 per cent of HIV positive pregnant women took prophylaxis to reduce transmission to the unborn child, compared to 37 per cent in 2003, resulting in an estimated reduction in mother to child transmission rate down to 4 per cent. Routine HIV testing (RHT) was introduced in 2004 to increase access to HIV testing. Comparatively the number of people tested through Voluntary Counselling and Testing (VCT) rose from 73 551 in 2004, to 109 403 in 2006, while those who tested through RHT rose from 60846 in 2004 to 178 176 in 2006.

80. There has been significant decrease in HIV prevalence in pre transfused blood and blood products from 9 per cent in 2001 to 3.8 per cent in 2005.

81. With the advent of public wide provision of ARV's and increased survival of patients on treatment, the life expectancy has increased from 56 years in 2001 to 58 years in 2006.

82. Routine HIV testing has been available in all public health facilities since 2004. There is also a national programme which aims at preventing Mother-to-Child Transmission of HIV (PMTCT) as well as a national antiretroviral treatment (ARV) programme. The PMTCT programme is operating nation-wide and is available as part of routine antenatal services at all public health facilities. While the National Anti Retroviral (ARV) programme has been expanded to cater for the public health needs of the society at large. Patients receive free ARV treatment from the public sector but treatment is also available privately. In addition, paediatric antiretroviral treatment is available.

83. Infants are tested at the Botswana- Harvard Partnership laboratory. Those found to be HIV positive may access paediatric drugs at any of the ARV sites country-wide. The Botswana-Baylor Children's Clinical Centre of Excellence (BCCCCE) also provides specialized treatment for HIV positive children under the age of twelve.

84. There has been an increase in the number of people taking advantage of PMTCT and ARV programs which indicates that the country has adopted an effective strategy for dealing with the problem.

6. The Independent Electoral Commission

85. In 1997, the Constitution (Amendment) Act No. 18 of 1997 established the Independent Electoral Commission (IEC). The Commission exists to facilitate the formation of a democratically elected government by delivering transparent, free and fair elections in accordance with established legal framework for Botswana. The mandate of the Commission is to manage the electoral process and disseminate voter awareness information; they are also responsible for ensuring that voters are informed about the electoral process, mobilizing the public to register and vote.

86. It is the responsibility of the Commission to conduct and supervise elections of members of the National Assembly and also of Local Authority, to conduct referenda and to ensure that the elections are conducted efficiently, properly, freely and fairly. The IEC has since its inception managed two elections that were declared free and fair by local, regional and international observers.

87. The IEC has strengthened its integrity by adhering to regional and international electoral principles and norms set in instruments such as the Principles for Election Management, Monitoring and Observation in the SADC region and the SADC Parliamentary Forum – Norms and Standards in SADC Region.

7. Establishment of trade unions

88. Initially only associations could be formed. The law has since been amended to allow for the establishment of trade unions. There are currently trade unions which have been registered with the Registrar of Trade Unions.

B. Challenges and constraints

1. Poverty in a “middle” income country

89. Having attained middle income status Botswana still faces economic diversification and unemployment challenges. Conditions of poverty still persist as evident from the high percentage of the population living below poverty datum line (approximately 30 per cent). Furthermore unemployment remains high particularly amongst the youth and in rural areas. Fluctuation of unemployment rates has been observed with high rates during periods of recession and lower rates when the economy is growing quickly. In addition, a high prevalence of HIV/AIDS has negatively impacted on human development gains. The persistence of these conditions of poverty are not commensurate with the country’s Vision 2016’s goal of poverty eradication.

90. The major challenge is to reduce poverty at speed and depth required to meet the Millennium Development Goal Targets by 2015 (especially the target on income poverty reduction) and the Vision 2016 target (eradication of absolute poverty).

91. It is against this background that in 2003, the Government of Botswana introduced the National Poverty Reduction Strategy, a scheme which has attempted to decrease poverty levels (see discussions at paragraphs 114 to 116).

2. Population growth and development

92. The population of Botswana has grown at an average annual rate of 2.4 per cent. The growth rate has been declining over the years. Annual growth rates between 1971 and 1981 as well as between 1981 and 1991 were 4.5 and 3.5 per cent, respectively. While the AIDS pandemic might have contributed somewhat to the decline in recent years, it must be noted that there was a decline during the pre-HIV/AIDS era. Indeed, factors such as declining fertility rates, increased women participation in economic activities, increased literacy rates, access to better health care, etc., may have a profound effect on population growth.

93. The main features of Botswana’s population are declining fertility rate and life expectancy, and increasing mortality rate. Crude death rate rose between 1981 and 1991 mainly due to the HIV/AIDS pandemic. Life expectancy at birth also decreased from 65.3 years in 1991 to 55.7 years in 2001. Regarding the fertility rate, there has been a notable decline in all fertility indicators.

3. Access to education

94. Although the Government has made significant strides in its endeavour to provide access to education it still faces several challenges:

- (a) There is no legislation that makes primary or basic education compulsory;
- (b) Drop outs in the early years continue to add to the already existing problem of illiteracy;
- (c) Preschool education is only provided by private individuals and nongovernmental organisations and as a result there is low access to preschool education;
- (d) There are cultural and language barriers which hamper the admission, progression and completion of primary schooling by children in remote areas.

4. Undocumented migrants

95. Undocumented migrants are usually rounded up by the police and other law-enforcement agents. Upon arrest these immigrants are put in safe custody before being transferred to the Centre for Illegal Immigrants for undocumented migrants or persons arrested for being in the country unlawfully. This is the only facility of this nature in the country and it is located in the northern part of the country and it has a holding capacity of 504 inmates. Migrants at the Centre are entitled to unlimited visits by friends and relatives. They also receive visits from diplomats including the International Committee of the Red Cross. The undocumented migrants are registered at the Centre, and their countries of origin are notified before the deportation is carried out.

96. Before the Centre was built, immigrants or persons arrested for unlawfully being in the country were held in prisons as immigration detainees and were entitled to essentially the same rights as now.

97. The bulk of the undocumented immigrants are from Zimbabwe. In the period April 2006 to March 2008 approximately 118 343 Zimbabweans were repatriated at a total cost of P11 000 000 (approximately US\$1 833 333). In the period April to July 2008, 9 554 Zimbabweans were repatriated at a cost of P259 516 (approximately US\$43 253) excluding police and prisons expenditure.

98. The large number of undocumented migrants, place a huge financial and human resource burden on the Government. Furthermore, they are a challenge in the area of law enforcement and security (there has been an increase in criminal activities involving undocumented migrants).

5. Refugees

99. There are about 3000 refugees in Botswana, from 15 African countries these are Algeria, Angola, Burundi, Democratic Republic of Congo, Eritrea, Ethiopia, Namibia, Rwanda, Somalia, Sudan, Uganda, and Zimbabwe. Although Botswana has a policy of “first country of asylum”, which discourages the granting of refugee status to asylum seekers who would have crossed safe countries not seeking asylum on their way to Botswana, Botswana has always considered such applications on humanitarian grounds.

100. An increase in the number of refugees compounds efforts to find durable solutions for their problems. Durable solutions includes among others: repatriation; resettlement; and reintegration. Countries which used to accept refugees for resettlement have since stopped doing so, in accordance with international law and Botswana does not repatriate refugees back to their countries.

101. Another difficulty encountered is the lengthy process in determining the status of asylum seekers. The Refugee Act provides that status should be determined within 28 days, however in practice the 28 days has not always been met.

102. Currently refugees are not covered under the ARV treatment because of the constraints of financial sustainability. Government has been offered donor funding for the sustainable provision of ARV treatment to refugees.

6. Congestion in prisons

103. The Prisons authorities are mandated to maintain safe custody and security, and to reform and rehabilitate prisoners in accordance with the Prisons Act¹³. The prisons authorities discharge their mandate in accordance within the scope of the Prisons Act, and international treaties. The Prisons authorities are presently experiencing congestion in prisons which hamper this effort at providing humane and dignified treatment whilst incarcerated. To this end the Government of Botswana is in the process of constructing additional prisons to address the problems caused by overcrowding.

V. NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS TO OVERCOME CHALLENGES

A. Judicial Case Management system

104. It was observed that the judicial system was experiencing excessive delays in the disposal of cases and that there was generally slow resolution of cases leading to a backlog. For this reason the Administration of Justice¹⁴ decided to adopt Judicial Case Management (JCM). Through JCM the Administration of Justice expects to achieve a just, efficient and speedy dispensation of justice by ensuring that new cases are settled expeditiously and addressing a backlog.

1. Provision of legal aid

105. There is no provision for legal aid in Botswana. However, Government assistance to defendants in criminal matters is offered to those charged with capital offences.

106. There have been a number of recommendations made by various stakeholders calling for the provision of free legal services to indigent persons.

107. A consultant was recently appointed to conduct a feasibility study on legal aid and Alternative Dispute Resolution mechanisms in Botswana largely as a result of the Government recognising the need for such an initiative. Ultimately this will help Government in its implementation of the right to legal representation for indigent persons. This will also be in line with Article 14 (3) (d) of the ICCPR which provides for the right of everyone charged with a criminal offence to have legal assistance.

108. The consultant is due to submit a final report in October 2008 and this will be followed by a stakeholder's workshop to assess the outcomes of the study.

2. HIV/AIDS

109. In combating HIV/AIDS over the past decade, a huge share of the national budget has been allocated to the National Aids Coordinating Agency (NACA) which is mandated with the overall response to the epidemic.

110. The Government has incorporated its entire strategy for combating the effects of HIV/AIDS, into a written framework, the Botswana National Strategic Framework (NSF) for HIV/AIDS (2003-2009) whose lifespan is nearing its end. Already work has begun on the development of the subsequent framework that will guide the national response to the epidemic beyond 2009 in the Botswana National Strategy Framework II (2009-2016) aligned to the

National Development Plan 10. It is expected that the framework will result in a further decline in the number of new infections.

3. Elimination of child labour

111. In order to address the International Labour Organisation (ILO) goal of eliminating child labour by 2015, Botswana has formulated an Action Programme on The Elimination of Child Labour (APEC). The APEC was finalised in May 2008.

4. Strengthening of the inter-ministerial committee on treaties protocols and conventions

112. An inter-ministerial committee was established in 2002, the mandate of the committee was to facilitate treaty implementation, particularly reporting as required by the various international treaties. Due to capacity constraints both financial and human, this Committee has not delivered on its mandate effectively. The Government has recently made a commitment to strengthening the capacity of the committee and to this end is being assisted by United Nations Development Programme (UNDP).

5. Access to education

113. In order to address some of the challenges described above, Government has put in place the following initiatives :

- (a) The establishment of multi grade school to increase access to education by children in remote areas;
- (b) Government is considering a legislation to make basic education compulsory;
- (c) Introduction of pre-primary education as an integral part of the formal education system;
- (d) Mainstreaming gender in educational policies, programmes and projects;
- (e) Establishment of centres for children with multiple disabilities;
- (f) Implementation of Adult Basic Education Programme (ABEP);
- (g) Implementation of the out of school children education programme; and
- (h) Introduction of the integrated early childhood education programme.

6. National Strategy for Poverty Reduction

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

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

- (a) Promotion of broad-based economic growth;
- (b) Enhancing access to basic quality education;
- (c) Health and nutrition for the poor;
- (d) Enhance effective response to HIV/AIDS (reducing the aggravating effects of the disease on employment and productivity);
- (e) Participation of the poor in the development process through a decentralised planning process with augmented capacity of Local Government institutions to provide for poverty reduction at the local level; and
- (f) Strengthening the national development management capacity for effective poverty reduction.

116. The Government through the rural development council, supported by the multi-sectoral committee on poverty reduction supervises the implementation of the NSPR including coordination, monitoring, and evaluation of different poverty alleviation policies and programmes.

7. Vision 2016

117. The development plans of Botswana have always been based upon the five national principles, which are Democracy, Development, Self-reliance Unity and Botho. These principles are still valid today, and have been re-focused to embrace change and relate to Botswana's current level of development.

118. In 1997 the country adopted the *Long Term Vision for Botswana* (Vision 2016) after extensive national consultation. It is a statement of long term goals that seeks to address challenges faced by Botswana and proposes a set of strategies that will meet them.

119. The Vision 2016 document is the principal guide for the governance of the country and seeks to make Botswana a better society by 2016, which would be 50 years after independence. Specifically, Vision 2016 has seven “pillars” or ideals that must be attained, which are: to build an educated and informed; a prosperous, productive and innovative; a compassionate, just and caring; a safe and secure; an open, democratic and accountable; a moral and tolerant; and a united and proud nation.

120. These pillars have issues of direct relevance to human rights, for example:

(a) By the year 2016, Botswana will be an educated and informed nation. All people will be able to have good quality education that is adapted to the needs of the country. Schooling will be universal and compulsory to the secondary level. Good quality vocational and technical training will be available at secondary level and beyond as an alternative to academic study. Entrepreneurship and business skills will be an integral part of all schooling. No student will be disadvantaged by ethnic origin, gender, language or remoteness of settlement;

(b) By the year 2016, Botswana will be an open, democratic and accountable nation. There will be a system of decentralised democracy and political tolerance. Civil society will play a full part in the development of the country, alongside government. The nation's leaders will be

open and accountable to the people. The role of traditional leaders will have been enhanced. Freedom of expression as well as press freedom will be fully protected;

(c) By the year 2016, Botswana will be a moral and tolerant nation. There will be high standards of personal morality, and tolerant social attitudes towards people of different cultures, ethnic traditions, religions or disabilities;

(d) By the year 2016, Botswana will be a united and proud nation, sharing common ideals, goals and symbols. Society will be under-pinned by resilient family values with a strong sense of tradition and pride in its history.

VI. EXPECTATION IN TERMS OF TECHNICAL ASSISTANCE

121. The Government of Botswana seeks the support in the following areas :

(a) Assistance with building national capacities on treaty body reporting, follow up on concluding observations and recommendations of special procedures and mechanisms of the United Nations including national monitoring of the implementation of international human rights instruments;

(b) Continued human rights and international humanitarian law education and training for the disciplined forces;

(c) Improvement of case management and tracking procedure throughout the criminal justice process;

(d) Support capacity strengthening across a range of components of the National Statistical System- (poverty, trade and investment, health, and education) to support evidence based pro-poor policy making; and

(e) Strengthen systems to monitor development (MDGs, Vision 2016).

Notes

¹ Botswana has an inter-ministerial committee on Treaties, Conventions and Protocols', which Committee was responsible for coordinating the preparation of this report.

² The civil jurisdiction of the Customary Court does not allow the courts to deal with matters such as the dissolution of civil marriages, testate succession or insolvency.

³ The criminal jurisdiction of the Customary Court is limited and prevents the court from dealing with cases such as treason, bigamy, corruption, abuse of office, robbery, rape and other serious offences.

⁴ See paragraphs 32 to 36, 41 and 67 to 72.

⁵ The land mark case of Attorney General v Dow (1992) B.L.R 119 also clarified the courts approach to international instruments, and held, "...the courts must interpret domestic statutory laws in a way as is compatible with the States responsibility not to be in breach of international law as laid down by law creating treaties, conventions agreements and protocols within the United Nations Organisation and the Organisation of the African Unity"(page 172).

⁶ Good v Attorney General (2205) 1 BLR 462.

⁷ Interpretation Act CAP (01:04) of the Laws of Botswana.

⁸ Although girls used to account for over half the net and gross enrolments at both primary and secondary level of education current statistics show that the percentage of boys and girls is almost the same at these levels. Even at

tertiary level where the access and participation of girls used to be low in the 1990s, their current share of total enrolment has increased substantially. However vocational education remains the only area where girls' participation lags behind mainly due to the socialization process from the family through the community and school as agents of socialization.

⁹ Dow; Kamanakao; Good; CKGR Several actions have been brought before the courts for the protection of such rights, *Unity Dow v Attorney General* is an example of such action where the Citizenship Act was successfully challenged because it was discriminatory.

¹⁰ Rule 48 of the Court of Appeal Rules (04:01).

¹¹ The Penal code was amended in 1998 to make the offence of rape gender sensitive and deny bail to persons accused of the offence. The amendment introduced a minimum sentence of ten years and mandatory HIV testing for persons convicted of rape; The Affiliations Proceedings Act was amended in 1998 to make it possible for a person other than a mother to institute legal proceedings under the Act for child support; The Public Service Act was amended in 2000 to recognise sexual harassment as misconduct in the workplace and introduced appropriate penalties ; The Marriage Act was amended to make it illegal for any person under the age of 18 years to marry; and the Abolition of Marital Power Act abolished the common law principle of marital power which recognised the husband as the head of the family; As a consequence of these various amendments, the Miscellaneous Amendments Act was passed to align with Abolition of Marital Power Act.

¹² The Declaration of Alma-Ata was adopted at the International Conference on Primary Health Care, at Alma-Ata, [Kazakhstan](#) (6 to 12 September 1978). It expressed the need for urgent action by all governments, all health and development workers, and the world community to protect and promote the health of all the people of the world. It was the first international declaration underlining the importance of [primary health care](#). The primary health care approach has since then been accepted by member countries of [WHO](#) as the key to achieving the goal of "Health for All". Primary Health Care is essential care made universally accessible to individuals and families in the community through their full participation.

¹³ Prison Act Cap (21:03).

¹⁴ The mission of the Department of the Administration of Justice is "... to maintain, sustain, and develop an efficient and effective judicial system that dispenses justice fairly, impartially and effective judicial system ... expeditiously ... in accordance with the Constitution of Botswana."
