



REPUBLIC OF BOTSWANA

MID-TERM PROGRESS REPORT

ON THE

IMPLEMENTATION OF AGREED RECOMMENDATIONS

FROM BOTSWANA'S 2ND CYCLE REVIEW

UNDER THE UNIVERSAL PERIODIC REVIEW (UPR)

MECHANISM OF THE

UNITED NATIONS HUMAN RIGHTS COUNCIL

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Part I.

ABBREVIATIONS

ABEP	Adult Basic Education Programme
OSEC	Out of School Children Education Programme
BPES	Botswana Poverty Eradication Strategy
BOCONGO	Botswana Council of Non-Governmental Organization
BONELA	Botswana Network on Ethics, Law and Aids
BQA	Botswana Qualifications Authority
CAT	Convention Against Torture
CHRSNAP	Comprehensive Human Rights Strategy and National Action Plan
DFID	Department for International Development
HIV	Human Immunodeficiency Virus
ICSR	International Covenant on Economic, Social and Cultural Rights
JCMS	Judicial Case Management System
MDGS	Millennium Development Goals
MMEWR	Ministry of Minerals, Energy and Water Resources
MOESD	Ministry of Education and Skills Development
NGOs	Non-Governmental Organization
PMTCT	Prevention from Mother to Child Transmission
PWDs	People Living with Disabilities
RADS	Remote Area Dweller Settlements
RNPE	Revised National Policy on Education
WHO	World Health Organization
UNCBD	United Nations Convention on Biodiversity
UNCCD	United Nations Convention to Combat Desertification
UNDP	United Nations Development Programme
UPR	Universal Periodic Review
UNHCR	United Nations Human Rights Council
ICC	International Criminal Court
UPR	Universal Periodic Review
CSOs	Civil Society Organizations
ICCPR	International Covenant on Civil and Political Rights
CEDAW	Convention on the Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CRC	Convention on the Right of the Child

ACHPR	African Charter on Human and Peoples' Rights
EU-ACP	European Union –African, Caribbean and the Pacific
EPAs	Economic Partnership Agreement,
SADC	Southern African Development Community
DPP	Director of Public Prosecutions
AGOA	African Growth Opportunity Act
CBOs	Community Based Organisations
FBOs	Faith Based Organisations
UNFPA	
UNICEF	
UN Women	
UNAIDS	
UNECA	
USAID	
DFID	
ACHAP	African Comprehensive HIV/AIDS Partnership.
WHO	World Health Organisation
GeAD	Department to Gender Affairs Department

PART 2

1.0 INTRODUCTION

- 1.1 Botswana attaches utmost importance to the mandate and role of the United Nations Human Rights Council (UNHCR) as the primary international institution in the field of the protection and promotion of human rights and fundamental freedoms. In this regard, Botswana's membership to the UNHCR is a clear demonstration of her long standing commitment to the fundamental principles and international cooperation in the field of human rights.
- 1.2 Botswana views the Universal Periodic Review (UPR) mechanism as key for protecting and promoting human rights, both nationally and internationally. At the national level, the UPR process has become a vital component of the systematic work for human rights that contributes to a permanent focus on promoting and protecting human rights at the national level. At the international level the UPR is an effective tool used to review the human rights record of United Nations (UN) Members States.
- 1.3 During the second UPR of Botswana in January 2013, Botswana received 175 recommendations and accepted 93 of them guided by the view that the ultimate goal of the UPR is to improve the human rights situation in the UN Member State; ultimately following consultations with stakeholders, the Government

accepted a total of 111 recommendations which were reported to the Human Rights Council in 2013.

- 1.4 The Mid-term review covers the period 2013-2015 and presents a status update on actions taken by Botswana in the implementation of the recommendations accepted during the second UPR with the third Cycle on the horizon.
- 1.5 Botswana's long-term objective is to secure full respect for human rights in Botswana.

2.0 METHODOLOGY AND CONSULTATION PROCESS

- 2.1 This report was prepared by the Inter-Ministerial Drafting Committee comprising of representation from the Ministry of Foreign Affairs and International Cooperation and the Attorney General's Chambers. Botswana benefited from the financial support of the United Nations Development Programme (UNDP), towards the compilation of this Report.
- 2.2 The draft Mid-Term Report was prepared and then shared with Government stakeholders as well as civil society with a view that they make their contribution and provide feedback.
- 2.3 Initial multi-stakeholder consultations were held on the 23rd and 25th September 2014. While workshops dedicated to the consideration of the draft report were convened on the 20th, 21st, 25th and 26th August 2015 and brought together all stakeholders including Civil Society Organizations (CSOs) who made their inputs towards the consolidated text.
- 2.4 This collaboration enables the monitoring of the internal human rights situation from governmental and civil society point of view and facilitates inclusive exchange on what needs to be done by 2017. Botswana's ultimate intention in the implementation process continues to be the enhancing of the national capacity for the promotion and protection of human rights to the benefit of all persons living in Botswana.
- 2.5 The Mid-term review is organized in nineteen thematic chapters that correspond to the groups in which the recommendations have been classified on the basis of their subject matter

3.0 PROTECTION FOR HUMAN RIGHTS IN BOTSWANA

- 3.1 The Government prioritises efforts to secure full respect for Botswana's international commitment to human rights. In that regard, Botswana will do its

utmost to ensure that national legislation conforms to the international human rights conventions that Botswana has ratified.

4.0 INTERNATIONAL HUMAN RIGHTS CONVENTIONS

- 4.1 Botswana has ratified the following conventions on human rights and continues to engage internally on promoting the systematic work on human rights in Botswana. These are the Convention Against Torture (CAT); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Discrimination Against Women (CEDAW); the Convention on the Elimination of all forms of Racial Discrimination (CERD); the Convention on the Right of the Child (CRC); the Convention relating to the Status of Refugees, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime; and the African Charter on Human and Peoples' Rights (ACHPR).

- 4.2 Before Botswana ratifies a convention, a review of national law is performed to investigate whether any amendments to the legislation is required to bring it in line with the provisions of the convention. When new statutes are drafted, these too must be worded in such a way as to avoid conflict with the conventions.

- 4.3 Botswana has a dualistic approach to international conventions; upon ratification, conventions do not automatically become part of Botswana national law. To become directly applicable by courts and administrative authorities, international law commitments must be integrated into Botswana law, which takes place through domestication or incorporation.

PART III

DEVELOPMENT SINCE THE PREVIOUS REVIEW: RESULTS AND CHALLENGES

5.0 ADOPTION OF NEW ACTS (LAWS, POLICIES AND MECHANISMS FOR HUMAN RIGHTS)

5.1 Botswana has over the years achieved significant progress in the realisation of the rights and liberties enshrined in the different conventions that it is party to. The global economic and financial crises have not had major impacts on the development gains made. However these negative trends have adversely affected strategic areas of social development that could further advance human rights in Botswana.

5.2 The legal and policy environment has been strengthened to promote realisation of rights and liberties enshrined in the conventions.

5.3 A number of important legislations were passed by Parliament. Some of the amendments to the current laws were intended to be aligned to the diverse treaties that protect human rights.

- **The Public Health Act, 2013**, which consolidate and amend the law relating to public health;
- **The Electronic Records (Evidence) Act, 2014**, which provides for the admissibility of electronic records as evidence in legal proceedings and authentication of electronic records and for the admissibility in evidence of electronic records as original records and for matters incidental and connected thereto;
- **The Electronic Communication and transactions Act, 2014**, which provides for the facilitation and regulation of electronic communications and transactions, and specifically for electronic commerce and electronic signatures and for matters incidental and connected thereto;
- **The Chemical Weapons (Prohibition) Act, 2014**, which prohibits the development, production, acquisition, stockpiling, retention, transfer and use of chemical weapons and other matters incidental thereto;

- **The Retirement Funds Act, 2014**, which organises the licensing, regulation and administration of all retirements funds, including pension and provident funds, and for matters incidental to or connected therewith;
- **The Judicial Service Act, 2014**, which consolidates the provisions relating to the Judicature in respect of the offices and salaries and allowances of the President of the Court of Appeal and Justices of Appeal Judges, the Chief justice and High Court Judged, the condition of appointment and tenure of office of judges and the remuneration and condition of service of Registrars and magistrates;
- **The Married Persons Property Act, 2014** which makes provision for persons married under customary law to opt for their property to be administered under civil law. The new dispensation will allow persons getting married under customary law to opt either in or out of community of property. Furthermore, the new law will allow those persons whose joint property is administered under civil law to be able to approach the High Court to change their marriage regime where their initial property regime seems to be of an advantage to them. These new developments ensure equal rights for married persons whether such marriages were contracted under civil law or customary law.
- **The Anti-Human Trafficking Act, 2014**, which provides for the prohibition, prevention and combating of human trafficking and measures to protect and assist victims of trafficking in person and other matters incidental thereto.
- **The Counter-Terrorism Act, 2014**, which provides for the combating of all acts of terrorism and suppression of terrorist acts, and the punishment of those who participate in acts of terrorism. It also establishes the Counter-Terrorism Analysis and Fusion Agency.

5.4 Few Regulations were also adopted to operationalise implementation of the Domestic Violence Act (2013) and the Interpretation (Amendment) Act (2013).

5.5 The promotion and protection of human rights are further guided by several frameworks:

- **The National Vision 2016** which seeks to promote prosperity for all by 2016 and expressly promotes equal opportunities for men and women, girls and boys;

- **The National Development Plan 10** (2010-2016);
- **The Botswana National Plan of Action for Orphans and Vulnerable Children (NPA) (2010-2016):**
- **The Draft National Response to Gender Based Violence;**
- **The Botswana Land Policy** (2013), which overall goal is to protect and promote land rights of all land holders and promote sustainable human settlements. The object is to use land, conserve and protect it for future generations.
- **The Framework for the Botswana National Action Plan towards ending Gender Based Violence** (2014 – 2020);
- **The Botswana Anti-Corruption Policy** (2014), which purpose is to establish minimum standards governing anti-corruption and ethical responsibilities of civil servants and stakeholders doing business with the Government and to clearly delineate the responsibilities of the administration in the fight against corruption as well as procedures to be followed should any act of corruption occur. The State party commits to zero tolerance towards bribery, theft, fraud and corruption in conducting business with its stakeholders;
- **The National Policy on Gender and Development (2015)**, which seeks to reduce inequalities in the opportunities and outcomes of social, economic, cultural; and legal development for both men and women;
- **The Botswana National Policy on Disability (2015)** which is aimed at promoting and protecting the dignity of people with disabilities and creating a barrier free society by: providing guidance to all stakeholders on the government strategy to mainstream disability issues and guaranteeing their social inclusion in all aspects of life; mobilizing resources for full implementation of disability specific services by respective stakeholders; ensuring strengthened family and community structures for the enhanced participation of care givers and other family members of people with disabilities in their livelihoods; ensuring inclusion and accessibility of people with disabilities to all types of services, information as well as infrastructure; and developing monitoring and evaluation systems for effective coordination.

5.6 Furthermore, new institutions have been set up to implement these policies or strengthen the existing ones:

- The **Child maintenance Courts** set up by the Administration of Justice in major centre areas to enable women to access payment of maintenance. Implementation of the Affiliation Proceedings Act has been intensified by ensuring the enforcement of maintenance orders by the police;
- The **Case Management System** introduced in 2010 by the Administration of Justice to deal with backlog of cases. This enables litigants who appear in court to access justice faster. Over and above these, the Administration of Justice has also introduced Mobile Courts. Mobile Courts are intended to take justice to the people, particularly in areas where there are no courts.

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

5.8 Through all these policies, Botswana has made tremendous progress towards attainment of the Millennium Development Goals (MDGs):

5.9 Botswana has developed a number of relations with development partners and has benefited from several regional and multilateral economic cooperation agreements, such as the European Union –African, Caribbean and the Pacific (EU-ACP) Economic Partnership Agreement, the Southern African Development Community (SADC) Free Trade Area, and the African Growth Opportunity Act (AGOA). It has also made efforts to develop ICT facilities for use by citizens including women.

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

5.11 Cooperation and partnership with donors were very strong during the period covered by the present report and the following have provided technical and/or financial support to Botswana in the area of human rights in general:

UNDP; UNFPA; UNICEF; UN Women; UNAIDS; UNECA; USAID; DFID; The European Union; and the African Comprehensive HIV/AIDS Partnership.

6.0 DOMESTICATION OF TREATIES

- 115.1. Incorporate into domestic law the provisions of the treaties that Botswana has freely acceded (Chad);
- 115.2 Ensure that the provisions contained in the international human rights instruments which Botswana has ratified are transposed into national law (France);
- 115.5. Continue to implement national laws in accordance with its treaty obligations (Lesotho);

- 6.1 Botswana notes that the majority of the international commitments that she is party to are yet to be domesticated. The presiding chapter however demonstrates the commitment of the Government to promote and protect human rights.
- 6.2 Botswana through adoption of the Children’s Act (2009) effectively domesticated the Convention on the Right of the Child (CRC) and granted children born in Botswana, irrespective of the nationality of their parents, a detailed and comprehensive set of human rights.
- 6.3 The Anti-Human Trafficking Act that was passed in 2014, domesticated the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
- 6.4 Though there is no specific law that domesticates the Convention on the Discrimination against Women (CEDAW), Botswana through various pieces of legislation ensures that some of the provisions espoused by the CEDAW are given effect to such as the Abolition of Marital Power Act 34 of 2004. The Act provides for the abolition of the common law principle of marital power, according to which the husband was the sole administrator of the family estate, and replaced it with the principle of equality of the spouses with respect to the joint matrimonial assets. The Act also abolished the common law principle of unity of matrimonial residence and allows women to choose their place of residence. Furthermore, Botswana enacted the Domestic Violence Act No. 10 of 2008 which criminalises many acts of gender based violence and provides protection for survivors of domestic violence.

7.0 DOMESTICATION OF THE ROME STATUTE

115.3. Complete the process of fully implementing its obligations under the Rome Statute into domestic law, in particular by adopting provisions that allow for full cooperation with the International Criminal Court (Liechtenstein);

115.4. Ensure full alignment of its national legislation with all obligations under the Rome Statute of the International Criminal Court (Slovakia);

- 7.1 In acknowledging that national legislation domesticating the Rome Statute is an important tool in ensuring that Botswana performs her obligations under the Rome Statute, the National Assembly on the 16th July 2014, published the Rome Statute of the International Criminal Court Bill, 2014- Bill No. 22 of 2014. Currently the Bill's technical details are being refined with a view of taking it to Parliament in November 2015 or February 2016.
- 7.2 The Bill sets out international crimes in the jurisdiction of the International Criminal Court (ICC) such as genocide, crimes against humanity and war crimes. Further to this, the Bill acknowledges the importance of cooperation and complementarity in the implementation of international criminal law
- 7.3 Clause 13 of the Bill sets out instances where national courts will have jurisdiction to try offences performed outside Botswana. This is where: the person is a citizen or permanent resident of Botswana; the person has committed the offense against a citizen or permanent resident of Botswana; or the person is, after the commission of the offense, present in Botswana.
- 7.4 The Director of Public Prosecutions (DPP) is vested with the powers to prosecute offences set out in the Bill. The DPP is independent and is not subject to executive control.
- 7.5 In giving effect to the principle of complementarity in the Rome Statute, clause 14(4) provides that, '**A decision by the Director of Public Prosecutions not to prosecute a person under this section does not preclude the prosecution of the person by the ICC**'. Botswana therefore makes the ICC a court of last resort, only acquiring a complementary role where the DPP declines to prosecute.
- 7.6 Part III of the Bill deals with cooperation and assistance which Botswana can provide to the ICC with regard to the investigation and prosecution of persons alleged to have committed crimes under the Rome Statute. **This Part also includes a provision to the effect that the immunity of diplomats or senior government officials is not a bar to proceedings under the ICC.**

- 7.7 Part IV of the Bill deals with the arrest and surrender, by Botswana, of persons alleged to have committed crimes under the Rome Statute. It includes provisions dealing with surrender by consent as well as rights of an arrested person.
- 7.8 Part VI of the Bill deals with the enforcement of sentences or orders of the ICC in Botswana, and includes provisions dealing with the transfer of a prisoner to the ICC for review of sentence, the transfer of a prisoner to another state to complete sentence and the enforcement of forfeiture orders.
- 7.9 Part VII deals with investigations by the ICC and the sitting of the ICC in Botswana. This Part also includes provisions such as the power of the ICC to administer oaths in Botswana and the power to hold ICC prisoners in custody of Botswana (clause 84).
- 7.10 It may appear that domesticating the Rome Statute is the first attempt to punish international crimes in the laws of Botswana. On the contrary, Botswana courts have since 1970 had jurisdiction to try war crimes under the Geneva Conventions Act of 1970 which domesticated the Geneva Conventions of 1949. The Rome Statute of the International Criminal Court Bill defines war crimes as 'grave breaches of the Geneva Conventions'. Therefore although the Geneva Conventions Act did not provide for issues such as command responsibility and superior orders, now such issues can be dealt with regarding war crimes under the Geneva Conventions as they have been provided for under clauses 11 and 12 of the Rome Statute of the International Criminal Court Bill;
- 7.11 The judicial system of Botswana is independent and has been hailed as proficient and robust. There are therefore no shortcomings in the judiciary that would prevent it from exercising jurisdiction in crimes covered under the Rome Statute of the International Criminal Court Bill once it is passed into law.

8.0 ESTABLISHMENT OF A NATIONAL HUMAN RIGHTS INSTITUTION

115.6. Envisage increasing the budget allocation to the Office of the Ombudsman in order to enable it to efficiently investigate human rights matters, and create a National Human Rights Institution in line with the Paris Principles (Morocco);

115.7. Prioritise the establishment of a national human rights institution, in line with the Paris Principles and ensure the allocation of necessary human and financial resources to this institution (South Africa);

115.8. Accelerate its efforts with a view to creating an independent national human rights institution in line with the Paris Principles (Togo);

115.9. Accelerate its efforts to effectively set up a national human rights institution in line with the Paris Principles (Tunisia);

115.10. Accelerate actions to establish a national human rights institution (Chile);

115.11. Continue working towards the establishment of a national human rights institution in accordance with the Paris Principles (New Zealand);

115.12. Accelerate the process towards establishing a national human rights institution in accordance with relevant international standards (Kenya);

115.13. Form a national human rights institution in compliance with the Paris Principles (Turkey);

115.14. Put in place an independent national human rights institution, in accordance with the Paris Principles (Burundi);

115.15. Intensify its efforts to make effective the work to establish a national human rights commission in compliance with the Paris Principles (Burkina Faso);

115.16. Intensify efforts to establish a national human rights commission conforming to the Paris Principles (Djibouti);

115.17. Accelerate the creation of an independent national human rights institution conforming to the Paris Principles, or extend the mandate of the mediator to human rights (France);

115.18. Expedite efforts to establish a national human rights institution and a national human rights strategy (Australia);

115.20. Adopt a national human rights action plan (Mexico);

115.21. Consider prioritizing the stated objective of developing a comprehensive national action plan for human rights (South Africa);

115.22. Formulate a national plan of action for the implementation of accepted recommendations (Turkey);

8.1 The issue of a national human rights institute was dealt with previously and Government has approved the amendment of the Ombudsman Act No.5 of 1995 to make provision for an expressed conferment of the Human Rights mandate to the Office of the Ombudsman.

8.2 Botswana further has systems in place that ensure that violators of Human Rights are subject to national penal laws and that there are organs such as the Police, Customary Courts, Civil Courts and Directorate of Public Prosecutions that deal with such offenders.

- 8.3 In addition, efforts are under way to establish a Human Rights Commission. A draft Cabinet Memorandum has been submitted for consideration by Cabinet on the subject. Once up and running the Human Rights Commission will perform the following functions: ensure compliance with ratified human rights instruments; prepare Botswana’s state reports to specific human rights instruments as part of obligations; address issues relating to domestication of ratified instruments; stepping up public education on human rights issues; and attend to and dealing with complaints from members of the public who feel that their fundamental human rights have been violated in one way or the other.
- 8.4 The Government, together with CSOs, are in the process of establishing a Comprehensive Human Rights Strategy and National Action Plan (CHRSNAP) which is based on a people-centred, consultative process. The aim of the CHRSNAP is to ensure that the Government continues to take a people-centered approach to human rights issues.

9.0 HUMAN RIGHTS PROMOTION

115.19. Continue efforts to further promote human rights, democracy and rule of law (Turkey);

- 9.1 The Government has taken a decision to confer the human rights mandate to the Office of the Ombudsman. In this regard, once the Office of the Ombudsman has been reconstituted it will effectively be tasked with human rights promotion around the country.
- 9.2 The Government has at the primary and secondary school level implemented a Social Values Programme to inculcate Botho (respect, dignity, honesty etc). This programme has initiatives such as behavior modification and social responsibility activities.
- 9.3 The adoption of the National Mainstreaming Strategy for Botswana in 2012 marked a turning point in the way the country addressed inter-linked barriers that undermined the nation's progress Towards Prosperity for All. The Strategy represents a fundamentally different approach, as it is not linked to any specific issue; instead it can be applied to a range of cross-cutting issues, such as poverty, gender, human rights, HIV and AIDS, disability, children and youth, climate change, the environment, corruption, crime prevention and so on.

10.0 POVERTY ERADICATION

115.23. Enhance capacity-building in its pro-poor and results-based development planning policy and programmes (Zimbabwe);

15.25. Continue implementation of the National Strategy for Poverty Eradication (Algeria);

115.26. Carry out efforts in the area of poverty eradication (Senegal);

115.27. Continue to implement its National Strategy for Poverty Eradication and ensure access to quality education for all (Singapore);

115.28. Continue its efforts to promote social and economic development and prioritize poverty reduction in its national development, to enable its people to enjoy human rights on a solid economic foundation (China);

115.29. Continue implementing the National Strategy to Eradicate Poverty and continue with its actions aimed at improving the health care coverage (Cuba);

115.30. Continue to implement the National Strategy to enable further poverty reduction in Botswana (Indonesia);

115.31. In assistance with its Development Partners, continue its fight against poverty (Bangladesh);

115.32. Continue implementing its national youth development programme as one of the means to alleviate poverty in the country (Malaysia);

- 10.1 Poverty eradication is addressed in the National Strategic Vision (2016) with the medium-term goal of reducing the incidence of absolute poverty by 2016. One of the pillars of the Vision calls for a “more equitable income distribution and the eradication of absolute poverty in Botswana.”
- 10.2 Broadly defined as “deprivation related to insufficiency in resources required to maintain an acceptable standard or quality of life”, poverty is a violation of the right to respect of human dignity simply because it means “lack of physical, human and social capital to meet the basic (human) needs”
- 10.3 The government continues to address poverty in all its dimensions, through the implementation of policies and strategies, including the National Development Plan 10 (NDP 10), which is aligned to the National Vision 2016 goals. The NDP 10 has prioritized economic development prosperity and eradication of abject poverty for programme focus to achieve sustainable development. The government has registered significant progress in reducing poverty in the country.
- 10.4 The population living below the poverty datum line (PDL) was estimated at 19.3% in 2013 with 8% in cities/towns, 19.9% in urban villages and 24.3% in rural areas. In 2002/03 the above percentages were 30.6% national average and 10.6%, 25.4% and 44.8% respectively for the above residential strata.

- 10.5 The government also continues to implement Poverty Eradication programmes adopted following the accession by His Excellency the President of the Republic of Botswana, Lt. Gen. Seretse Khama Ian Khama to the high Office in 2008, where he identified poverty eradication as one of the priority (Flagship) programmes of the current Government.
- 10.6 The Ministry of State President, through the Poverty Eradication Unit, provides overall coordination of the programme while a National Multi Task Team was established to oversee the programme operations, provide strategic direction by crafting operational guidelines.
- 10.7 Work on preparation of the Botswana Poverty Eradication Strategy (BPES) is progressing well with Part 1 which comprises of the situational analysis already complete while Part 2 which comprises of the Framework and the complete Botswana Poverty Eradication strategy is scheduled to be complete by September 2015.
- 10.8 For effective implementation, some Ministries have been assigned to play a leading role in carrying out projects as follows:-

Ministry of Environment, Wildlife and Tourism (MEWT) – Backyard tree nurseries, Landscaping, mopane worm, Fishers, Fire Beaters and harvesting of natural products;

Ministry of Agriculture (MOA) – Small stock, Bee keeping, Backyard gardens, Poultry and Leather products;

Ministry of Local Government & Rural Development (MLG&RD) and Ministry of Labour and Home Affairs (MLHA) – Bakery, sewing, food catering, hair saloon, laundromat, leather products, jam and pickle products, Packaging of grains, tent hire, upholstery, Handy crafts, pottery, Indigenous knowledge and beneficiary assessment (MLG&RD)

Ministry of Trade and Industry (MTI) – business advisory services, registration, financing and quality control.

Ministry of Education and Skills Development (MOESD) – literacy skills and Business management training.

- 10.9 Since the programme took off in 2011/12 financial year it has managed to secure a cumulative budget of P520 Million used on recurrent needs and projects. Since Botswana's review P160 million was used in the 2013/14 financial year and a further P160million was used in the 2014/15 financial year.

10.10 The implementation of such projects is never without challenges; in this instance challenges such as water shortages; limited number and capacity of training institutions; transport shortage; and human resource shortages. The Government will appreciate assistance from the International Community in tackling poverty related issues.

11.0 COMBATING HIV/AIDS

115.24. Continue implementation of the National Monitoring and Evaluation Plan for the National Operational Plan for HIV and AIDS (2012-2016) (Algeria);

115.33. Continue implementation of the National Operational Framework for HIV and AIDS for the period 2012-2016 and the National Strategic Operational Plan for HIV/AIDS 2011-2016 (Angola);

115.35. Include a gender perspective into its policies and programmes to combat HIV/AIDS, taking into account what has been pointed out by CEDAW (Chile);

115.80. Continue addressing the HIV/AIDS impact on women and children as a priority, in particular, the mother-to-child transmission (Thailand);

115.81. Further develop measures to combat HIV/AIDS, with special focus on reducing infant and child mortality (Sri Lanka);

115.82. Continue to implement its HIV/AIDS prevention, care and treatment programmes to further reduce the prevalence (Singapore);

- 11.1 Botswana has the second largest HIV and AIDS prevalence rate in the world with about 350.000 people living with the disease despite numerous efforts to bring the rate down. The Botswana AIDS Impact Survey IV (BAIS IV) shows that the national HIV prevalence for 2013 stands at 18.5% for population aged 18 months to 64 years compared to 17.6% in 2008. Females continue to record high rates of HIV prevalence at 20.8% compared to their male counterparts who are at 15.6%. Although gender is considered an important variable in HIV and AIDS programming, more needs to be done to ensure that the gender specific vulnerabilities are taken into full cognizance and that the rights of women and girls that are infected and affected by the disease are protected.
- 11.2 The Revised National Population Policy, 2010 has as its goal to "improved quality of life and standard of living of all people in Botswana". HIV and AIDS, as a key national challenge, receives due attention in this Policy. One of the policy objectives is to "*control the spread of HIV, reduce AIDS deaths and manage the impact of HIV and AIDS on the economy and its repercussions on the society*".
- 11.3 Botswana has, through World Health Organisation (WHO) support, adapted the WHO Medical Eligibility Criteria Wheel (MEC) which provides guidance to health care workers in ensuring safety while initiating contraceptives as well as increasing access to family planning services. In order to improve access to contraception Family Planning IEC Toolkit was designed, printed and dissemination is on-going which focuses on strengthening SRH and HIV linkages within various facility units especially IDCC, maternity and gynaecology. Various strategies are used to disseminate family planning information to eligible women. This has contributed to the increase in the contraceptive prevalence rates from 52% in 2007 to 76.1% in 2008.

- 11.4 Cervical cancer is a major concern especially among the HIV positive women in Botswana. In an effort to address this problem the Country is implementing a five Year Comprehensive Cervical Cancer Prevention and Control Strategy (2012-2016). This strategy introduces screening and outpatient treatment of cervical pre-cancer in one single visit, commonly referred to as "See and Treat". The Government of Botswana is collaborating with WHO, Centre for Disease Control and Prevention (CDC) Botswana, Pink Ribbon Red Ribbon (PRRR) and World Bank through National AIDS Coordinating Agency (NACA) to build capacity in this regard.
- 11.5 A trend emerging in efforts to combat violence against women is the involvement of men in campaigns and programmes. In Botswana, the Strategy and Programme of Action for Male Involvement in Sexual Reproductive Health and Rights (2007 – 2012) was developed to support institutions and programmes in initiatives aimed at reducing the spread of sexual transmitted diseases – particularly HIV/AIDS – and combating gender based violence. With these programmes, the country can better respond to the gender dynamics of the HIV/AIDS epidemic, sexual and reproductive health issues, and gender violence.
- 11.6 The State Party has developed the Botswana National Strategic Framework (NSF) for HIV/AIDS 2003-2009 and for 2010-2016 with the central aim of ensuring and driving a multi-sectorial and multi-level national response to the spread of HIV/AIDS. The NSF articulates, disseminates and educates the public at large on the agreed national priorities and strategies as well as providing guidance for all stakeholders involved in the fight against HIV/AIDS. The NSF clarifies the roles and responsibilities of districts, ministries and sectors in terms of planning and implementation and is in use.
- 11.7 The review of the Second Medium term Plan for HIV/AIDS and the National HIV/AIDS Assessment helped the government in identifying the five priority areas of the Botswana's National Response, namely: Prevention of HIV infection; Provision of Care and Support; Strengthened Management of the National Response to HIV and AIDS; Psycho-social and economic Impact Mitigation; and Provision of a Strengthened Legal and Ethical Environment. Botswana has identified *prevention as the first priority of the national response*.
- 11.8 Following the national Botswana AIDS Impact Survey (BAIS IV) undertaken in 2012/13, the findings of which informed Botswana on progress made in terms of the various parameters that were tracked, quarterly monitoring reports are compiled by different implementers in the national response. The results of the report are used to further inform programming and take stock of where the

country is in terms of the set key result areas and targets that ultimately contribute to the national targets in the Monitoring & Evaluation plan.

- 11.9 The results of BAIS IV were further used during the midterm review of the NSF and informed programming for the remaining part of the NSF which identified areas where attention needs to be focused.
- 11.10 The National Operational Plan (NOP) for HIV and AIDS and the NSF has defined resources that are needed to support the national response, and each year, funding is availed in accordance with the recommended expenditure levels. These expenditure levels reflect the entire national response landscape and include funding for projects to be implemented under the CSO collaboration. Furthermore, Botswana has been complying with the minimum threshold level of 15% of the national budget being allocated to the health sector, including HIV and AIDS, as set by the African Union (AU) – the ABUJA Declaration.
- 11.11 Violence and the threat of violence can increase women and girls’ vulnerability to HIV infection by making it difficult or impossible to set the terms of an equal relationship. It is more difficult for women to refuse sex when in a relationship, to get their partners to be faithful, or to use a condom. Violence can also be a barrier in accessing HIV prevention, care, and treatment services. In Botswana, intimate partner violence was not originally recognized as a social problem, and issues surrounding gender based violence were kept as a secret in families.
- 11.12 Given the direct and indirect effects of violence on HIV risk, it is critical that HIV prevention services integrate responses to violence into HIV programming. In the case of Botswana, and in order to include a gender perspective into national policies and programmes to combat HIV/AIDS, a Gender Assessment was undertaken in the 2014/15 financial year to understand the progress made in addressing gender dimensions and in particular equality, equity and the response to gender sensitive human rights within the context of the HIV and AIDS response. This report provided strategic information and data that inform programming for the NSF II implementation for remaining period up to 2017, and will also contribute to the development of NSF III. The report will also complement sectoral gender strategic and operational plans, and policies. This is important especially in ensuring the goal of equitable access and utilization of health care services including prevention of new HIV infections, treatment, care and support.
- 11.13 Botswana continues to enrol HIV positive HIV pregnant women in the Prevention of Mother to Child Transmission (PMTCT) programme. In some instances, upto 94%, and 96% of the children born to these mothers were HIV negative. This shows progress made in respect of prevention of HIV to the children; hence

Botswana is now focusing on elimination of vertical HIV transmission. The high success rate of the PMTCT (96%) points out to the successful outcomes of the PMTCT interventions and with focus on elimination of mother to child transmission for the remaining 4%, child mortality as a result of HIV and AIDS will indeed be contained.

11.14 The number of home based clients has also greatly reduced as a result of a successful Anti-Retroviral Therapy (ART) programme. Comparison of HIV prevalence between 2004 (BAIS II) and 2013 (BAIS IV) shows that prevalence in the ages between 5 and 34 has been declining over the period. The decline amongst the younger age group points out to the successes of the prevention efforts whilst stagnation and increase in the older age groups is attributable to the cohort effect as well as the successes of the ART programme as more people live longer lives.

11.15 The ART treatment programme is also successful, with around 93% of eligible HIV positive people on treatment. The revised NSF II maintains continued attention on treatment, care and support, with the focus being to achieve 100% coverage.

12.0 RIGHTS OF THE CHILD

115.34. Accelerate the implementation of the National Action Plan for Children for 2006-2016 (Romania);
115.39. Accelerate the implementation of the Action Plan to enable targeted programming and interventions for the welfare and protection of the most vulnerable children in Botswana (Indonesia);
115.77. Continue to take the necessary measures to make sure that all the population has easy access to free birth registration for newborns (Mexico);
115.79. Pursue on-going efforts to ensure the adoption, in the near future, of a list identifying types of hazardous work prohibited to persons under the age of 18 years (Egypt);
116.30. Review the inconsistencies between the Children's Act of 2009 and international obligations under the Convention on the Rights of the Child, such as the prohibition of corporal punishment of children in all settings (Liechtenstein);
116.25. Raise the minimum age of criminal responsibility (Togo);
116.26. Raise the age of criminality (Turkey);
116.27. Raise the age of criminal responsibility, which is currently set at 8 years (France);
116.28. Raise the minimum age of criminal responsibility to an internationally accepted level, and in line with the Convention on the Rights of the Child, the Beijing rules and Riyadh guidelines (Uruguay);
116.29. Raise the minimum age of criminal responsibility in accordance with international standards, which should allow Botswana to withdraw its reservation to article 1 of the Convention on the Rights of the Child (Hungary);

- 12.1 The National Plan of Action (NPA) for Children for 2006 – 2016 is being implemented through various programmes under the seven identified priorities in the Plan being: Policy and Legislation, Education and Training, Health and Nutrition, HIV and AIDS, Sport and Recreation.
- 12.2 In addition, a number of crosscutting issues have been mainstreamed in each chapter: gender, poverty children's rights as well as HIV/AIDS. The Frameworks that were used to guide the development and implementation of the NPA include National Development Plan 9 and 10, Vision 2016, the National Strategic Framework for HIV/AIDS, the Millennium Development Goals, A World Fit for Children, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child (ACRWC) to ensure that it aligns with other national and regional priorities
- 12.3 A National Plan of Action for Orphans and Vulnerable Children has been developed to facilitate evidence based national multi-sectoral and multi-level response to the challenges faced by OVC within the National Strategic Framework (Vision 2016, NDP 10, NSF II) as well as facilitate decentralized operational planning by districts, villages and sectoral actors. The NPA for Orphans and Vulnerable Children will further serve as a tool for communicating among the key players in the response to orphans and vulnerable children at all levels, including on key issues that require consensus for an efficient and effective response to orphans and vulnerable children.

- 12.4 In recognition of the challenges that the most vulnerable children face with regards to their educational outcomes, a special dispensation programme has been initiated to facilitate access to tertiary education by learners with special needs as well as others with different vulnerabilities. Through the programme, orphans and other vulnerable children, including those with special needs can access tertiary education with five points less than other children.
- 12.5 Births and deaths registration form the oldest part of the registration system in Botswana. Botswana has ensured that every child has an inherent right of registration. In this regard, a national birth registration campaign aimed at increasing the rate of registration countrywide has been mounted. A routine birth registration system among various key stakeholders such as Ministry of Education and Skills Development and the Ministry of Health has also been created as a way of facilitating access to vital registration. Furthermore, birth registration can be done in hospitals, some of which have been equipped to print birth certificates on site.
- 12.6 The Violence against Children Survey will also be conducted between January and February 2016 to facilitate the generation of national estimates on the extent of violence against children and inform programmes and policies.
- 12.7 Botswana has reformed its legislation to ensure that a child under the age of fourteen (14) years is presumed to be incapable of committing a criminal act as provided for under Section 82 of the Children’s Act. If a child is convicted of a criminal act, he can expect one or a combination of the following possible sentences: corporal punishment; being sent to a school of industry; being assigned to perform community service; and on very rare cases, being sent to boys prison.
- 12.8 A child is by law protected from the death penalty and life imprisonment.
- 12.9 Botswana is aware of the need to adopt measures that are appropriate to reform and rehabilitate young offenders. However, detention as an alternative is widely viewed as detaching children from the positive influence of their parents and generally stigmatises the children placed under it. Furthermore, the criminal justice system is generally reluctant to commit children to institutions, especially those attending school as such detention may compromise other socio economic opportunities.
- 12.10 Having enacted the Children’s Act in 2009 that brings the definition of a child in line with that of the Convention, Botswana is now working towards lifting her reservation to Article 1 of the Convention by end of October 2015.

13.0 HUMAN RIGHTS EDUCATION

115.36. Continue to promote human rights education (Armenia);

115.37. Continue to raise awareness on harmful cultural norms and traditional practices as well as human rights education in primary school system (Ethiopia);

13.1 Botswana has no specific curriculum on human rights but promotes issues and respect of human rights in educational institutions from Primary School, Secondary School and Tertiary level. At primary and secondary level human rights issues are incorporated in the Social and Cultural Studies, Moral Education, Guidance and Counselling, Development Studies, History, Geography curriculum. At Tertiary level, human rights issues are covered in Environmental Science, legal and administrative courses. Further, the curriculum for disciplined forces in Botswana such as Botswana Police Service, Botswana Defence Force and Botswana Prisons Service all include human rights.

13.3 CSOs such as DITSHWANELO- The Botswana Centre for Human Rights, Women Against Rape (WAR) and Botswana Network on Ethics, Law and AIDS (BONELA) are also proactive in sensitising the public about human rights issues.

13.4 The conferment of the human rights mandate on the Ombudsman will go towards intensification of the promotion, protection and awareness of human rights.

15.0 HUMAN RIGHTS TRAINING

115.42. Provide human rights training on an on-going basis for the disciplined forces (South Africa);

15.1 The Botswana Police Service has regularised inclusion of gender and gender based violence in their pre-service and in-service trainings. Further, the curriculum for disciplined forces in Botswana such as Botswana Police Service, Botswana Defence Force and Botswana Prisons Service include human rights perspective.

16.0 GENDER EQUALITY

115.43. Strengthen the Women's Affairs Department located within the Ministry of Labour and Home Affairs by providing it with authority, decision-making power, and human and financial resources (Slovenia);

115.46. Take the necessary measures to combat discrimination against women, strengthen its domestic legislation on the rights of women and adequately enforce CEDAW provisions (Italy);

115.47. Continue strengthening the necessary policies to promote gender equality, with a focus on education, on adopting awareness campaigns for the population against gender violence, and on putting in place specific legislation that criminalizes violence against women (Spain);

115.48. Use temporary special measures in accordance with article 4 paragraph 1 of the CEDAW to achieve substantive equality of women (State of Palestine);

115.49. Continue its efforts in order to reduce stereotypical approaches to the roles and responsibilities of women (Armenia);

115.50. Continue repealing discriminatory laws and to allocate adequate budget for the implementation of its National Gender Programme to ensure non-discrimination against women (Thailand);

115.51. Intensify its efforts aimed at modifying or eliminating the negative cultural practices and stereotypes which are the source of certain forms of discrimination against women (Tunisia);

115.52. Further consolidate on important fields of rules of law, gender equality, and social welfare to better overall conditions for vulnerable groups such as women, children and youth (Viet Nam);

115.53. Consider continuing to strengthen the rights of women, particularly in the family setting (Namibia);

115.54. Aligning traditional laws and procedures with principles that protect particularly the balance of socio-economic rights of men and women both in the family and in the society, as well as the rights of the child (Cape Verde);

115.55. Continue to pay special attention to the needs of rural women ensuring that they participate in decision-making processes and have full access to justice, education, health services and financial facilities (Egypt);

115.56. Pay special attention to the needs of rural women and women heads of households, ensuring that they participate in decision-making processes and have full access to justice, education, health services and credit facilities; and eliminate all forms of discrimination against women with respect to ownership and inheritance of land (Liechtenstein);

115.57. Continue focusing efforts to improve the situation of women, especially in rural areas where many head families, with regard to access to educational services, justice and credit mechanisms (Paraguay);

115.58. Disseminate information to the population of Botswana on ways and means to avail themselves of available judicial remedies relating to discrimination against women (Guatemala);

115.87. Redouble efforts to increase women's participation in education, including tertiary education (Timor-Leste);

16.1 The Constitution of Botswana recognises the equality of women and men before the law. Gender equality is a key principle that is embraced in national policies and planning frameworks. Over the years gender equality has been increasingly accepted as an important development variable by various sectors of the economy. The Government committed, under the objectives of the Millennium Development Goals (MDGs) No. 3 to promote gender equality, and using gender mainstreaming as a means to achieving other goals related to health, education, poverty reduction, and environment and sustainable.

16.2 Section 15 of the Constitution specifically forbids the making of discriminatory laws. The *Unity Dow* case found that the outlawing of discrimination was simply based on affording different treatment to different persons wholly or mainly attributable to their respective characteristic groups without any rational basis.

16.3 In the *Mmusi v Ramantele* case, the presiding judge was being called upon to employ interpretation techniques that will enable section 3(a) (*guaranteeing applicants' rights to equality and protection of the law*) to co-exist within a single unitary constitutional scheme with section 15(4) (c), of the Constitution which permits discrimination on matters of inheritance and personal law. The judge stressed that Courts of law, as the conscience and voice of contemporary society, must do their part to ensure that the ideal of gender parity is achieved. In this regard, the learned judge, Dingake J remarked;

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

16.4 More critically, the judge concluded his judgment by calling upon the Government of Botswana to repeal all discriminatory laws which may in themselves or by their effect undermine the rights of women. In this connection, the Court assertively delivered itself thus:

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

16.5 As the *Mmusi* case bears testimony, one area where the rights of women are often trampled is that of the law of inheritance. Inheritance is an important issue touching on the question of the distribution of resources in society. It also partly accounts for relational power differences between men and women because of the exclusion of women from inheriting property which mostly define the social status of a person in an African community.

16.6 Whereas statutes guarantee equal rights and opportunities between men and women, discrimination against women is still endemic in the villages, fields, cattle posts and other obscure corners of African countries. *Mmusi* has not

abolished the oppression of women in Botswana, but most certainly it is a critical step in that direction .

- 16.7 The Customary Law Act also attempts to reconcile possible conflicts between customary law and common law. It does this through its definition of customary law, specifying that customary law to be applied by the customary courts includes only that tribal law which, "is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice." It follows that where a custom or tribal rule does not comply with written common law, for example legislation, it is not part of customary law and is not applicable by the customary courts.
- 16.8 The Court of Appeal has reiterated this principle and has simultaneously held that customary law is also subject to, and must be applied and interpreted in accordance with, the Constitution: "*Custom and tradition have never been static. Even then, they have always yielded to express legislation. Custom and tradition must a fortiori ... yield to the Constitution*" (per Amisah JA in *Attorney General v Dow*).
- 16.9 The key challenge is that a significant number of Botswana women are subjected to customary law even though Constitutional law takes precedence over it. The lack of knowledge and information on the part of women themselves regarding Marriage laws and their implications have perpetuated discriminatory practices in the area of marriage under Customary law.
- 16.10 Women's lack of information and resources to enable access to Civil Courts and exercising their rights to transferring cases to the same represents a major challenge.
- 16.11 Key policy measures adopted include:
- the Gender Strategy which currently informs national gender programming; the Draft National Policy on Gender and Development and the National Operational Plan; the Married Persons Property Act (2013); the Regulations for the Domestic Violence Act (2013); The Interpretation (Amendment) Act (2013); The Land Policy to promote equal access to land; the Affirmative action policy on Remote Area communities (2012); The Poverty Eradication Guidelines (2011); the Child Sexual Abuse Strategy (2010); Draft National Response to Gender Based Violence; and The framework for the Botswana National Action Plan towards Ending GBV (2014 – 2020).
- 16.12 Consistent with the shift from an almost exclusive focus on women towards a broad national gender and development framework and strategy, the National

Gender Machinery has been renamed from Women's Affairs Department to Gender Affairs Department (GeAD). This has facilitated inclusive programmes resulting in increased numbers of male clients and is currently allocated 2% of the total Ministry of Labour and Home Affairs (MLHA) budget. In the years 2012/2013 and 2013/2014, the Government committed and allocated 5% of the Alcohol Levy fund as additional support for women's economic empowerment. This allocation was increased to 10% of this fund in 2014/2015.

- 16.13 In addition, the Children's Act (2009) uniquely introduces a Bill of Children's Rights for all children in Botswana and the thread that runs through the whole Act is the promotion of equal rights between, and the elimination of all forms of discrimination against, any class of children. In particular, Section 7(a) of the Children's Act provides lucidly that:

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

- 16.14 Since the Children's Act was enacted in 2009 Courts have elaborated the import of the non-discrimination clause in the Bill of Children's Rights. For instance, in *GK v AG & Others* the High Court of Botswana, while determining the constitutionality of Section 4(2)(d)(i) of the Adoption Act that did not require a biological father of child born out of wedlock to give consent in adoption proceedings concerning such child, held that:

[...] no decision or action shall be taken that would result in the discrimination against any child on any status, including family; and, the parents of a child have the primary responsibility of safeguarding and promoting the child's well-being.

- 16.15 The Government, in collaboration with CSOs and with support by development partners, continues to implement initiatives aimed at addressing stereotypes and negative cultural practices that reinforce discrimination against women within religious and community settings.

- 16.16 In addition, the Gender National Strategy has prioritized the following national development areas for gender mainstreaming as they differently inform programme implementation for women empowerment: Economic diversification, prosperity and poverty eradication to achieve sustainable development; Social Protection and social services (health, adequate sanitation and improved well-being, access to quality education, training and information, safe housing and consideration for addressing issues of energy and climate change for a sustainable environment); Political power, democratic governance and decision

making; Access to justice, protection of human rights and freedom from violence; Special measures targeting vulnerable groups of men, women, girls and boys across all the four areas.

- 16.17 Efforts to increase awareness of gender issues among the tribal chiefs and other community leaders, as custodians of customary law, continue to be implemented by the Government together with CSOs.
- 16.18 Furthermore, the country continues to intensify public education particularly women focused education on laws that affect their rights to enhance women's access to justice and enjoyment of their human rights. The initiatives include among others community conversations and dialogue sessions with focus on elimination of the negative cultural practices that contribute to the disparities between women and men; awareness on gender based violence and its effect, gender concepts, gender and HIV/AIDS and laws that were amended and/or enacted to address components that were discriminatory against women.
- 16.19 Media engagement on gender-sensitive reporting continues to be promoted. Government and civil society organisations conduct media briefs, workshops and trainings on gender, GBV and related issues throughout the year. The Botswana chapter of the Media Institute of Southern Africa has developed a gender policy and action plan to mobilize media houses on gender issues, including non-stereotypical reporting.
- 16.20 Botswana has demonstrated political commitment to eliminate all forms of discrimination by creating national frameworks and machineries to ensure the "Guarantee of basic human rights and fundamental freedoms".

17.0 COOPERATION WITH TREATY BODIES

115.44. Continue to implement agreed recommendations and other domestic and international obligations such as treaty body reporting (Zimbabwe);

115.45. Continue to cooperate with the Human Rights Council and its mechanisms (Guatemala);

116.31. Issue a standing invitation to the Special Procedures of the Human Rights Council (Czech Republic);

116.32. Extend an open invitation to Special Procedures (Guatemala);

116.33. Extend a standing invitation to all mandate holders of the Council (Hungary);

116.34. Consider extending a standing invitation to all the special procedures mandate holders of the Human Rights Council (Latvia);

- 17.1 Botswana pursues a policy of cooperation with the UN human rights system, including its various mechanisms and Special Procedures, for example, receiving and answering urgent appeals relating to human rights. Botswana's starting point is that all questionnaires regarding specific areas where Botswana has relevant information or assessments to share should be answered.
- 17.2 The Special Rapporteur in the field of Cultural Rights visited Botswana from the 14-26 November 2014. Botswana has accepted most of the recommendations raised by the Special Rapporteur and is due to appear at the Human Rights Council to present her response to the report of the Special Rapporteur during the March 2016 Session .
- 17.3 Botswana has further accepted requests for country visits by the Special Rapporteur in the field of Safe Drinking Water and Sanitation, tentatively scheduled for October 2015 and that of the Special Rapporteur on Minority Rights in October 2016 respectively.

18.0 DEATH PENALTY

115.59. Hold a public debate on the death penalty, in which all aspects of the issue should be highlighted in a holistic manner (Uruguay);

115.60. Meanwhile, provide information to concerned families, so that they can know in advance the date of execution of their relatives (Uruguay);

116.36. Ensure that the executed persons' bodies are handed over for private burial (Uruguay);

116.37. Ensure the respect of international standards on the rights of prisoners sentenced to death (Italy);

18.1 The Government has accepted to undertake dialogue on the issue in the country even if the death penalty seems to be very popular in the country. In 1997, for example, the Parliamentary Law Reform Committee produced a Report on public opinion on the death penalty, which was tabled before Parliament. The report indicated that the public was in favour of retaining the death penalty.

18.2 The Government is now in the process of commissioning a study on the issue, which will inform the debate it wants to open on the moratorium on death penalty in Botswana. The UPR will be informed of the outcomes of the debate and the steps the government will be taking to deal with the death penalty issue.

19.0 GENDER BASED VIOLENCE

- 115.61. Intensify efforts to combat violence against women (Congo);
- 115.62. Fight efficiently against rape and domestic violence (Togo);
- 115.63. Continue to fight against sexual violence (Djibouti);
- 115.64. Urgent implementation of measures to improve the reporting rate of gender based violence, where the NGO Genderlinks estimates only 1 in 24 incidents were currently reported; and to increase the prosecution of perpetrators (United Kingdom of Great Britain and Northern Ireland);
- 115.65. Actively combat all forms of gender-based discrimination and violence, in particular domestic and sexual violence (France);
- 115.66. Draft implementation instructions and provide police and the public training on the Domestic Violence Act (United States of America);
- 115.67. Continue to take steps towards eliminating gender-based violence, including through strengthening domestic laws and policies to protect women (Australia);
- 115.68. Consider enacting specific legislation on domestic violence to hold perpetrators accountable for their behaviour (Brazil);
- 115.69. Take the necessary measures to ensure sexual assault perpetrated by a spouse is explicitly covered by the criminal code and educate chiefs and other customary law practitioners so that their decisions are in line with constitutional law, particularly with respect to marriage and property rights (Canada);
- 115.70. Enact specific legislation on marital rape (Ireland);
- 115.71. Take concrete measures to ensure a safer environment for both women and girls (Netherlands);
- 115.72. Take efficient steps to secure the protection of women, also when abuse happens within the family (Norway);
- 115.73. Strengthen national frameworks and mechanisms to effectively address and combat violence against women and girls (Sri Lanka);

- 19.1 Section 4 of the Constitution confers on every individual in Botswana the right to life and the instances under which this right may be deprived. Ranked among the top African countries in governance and transparency indices, Botswana is also a country where Gender Based Violence (GBV) seems “the most flagrant violation of human rights.”
- 19.2 Botswana has a strong patriarchal root and in that context GBV occurs as a result of unequal power relations between men and women. Men continue to dominate political decision-making within traditional political forums in the country, such as the “Kgotle”, Ntloya Dikgosi (House of Chiefs) and Parliament.
- 19.3 GBV is common in many Botswana households and women across all distinctions by class, tribe, education, religion and age fall victim to abuse in their relationship. Recent figures show a decrease in the number of violent acts but the situation is still alarming.

- Number of violent acts committed during the past 3 years

Year	2012	2013	2014
Rape and attempts (victims are female)	2073	2060	2034
Murders and attempts	273	261	274
Grievous harm	267	283	244
Unlawful wounding	1934	2032	1787
Assault occasioning actual bodily harm	8080	8539	8145
Assault common	16022	16669	16847
Robbery and attempts	2551	1825	1698

19.4 The most shocking aspect of the GBV is the small number of cases reported to the police, which complicates the State’s efforts to end the violations.

Years 2010-2014	Rape	Murder	Grievous harm	Unlawful wounding	Assaults occasioning actual body harm	Assault common	Robbery
Total crimes	9832	1358	1348	9626	41654	83093	10939
Total persons arrested	4635	988	772	4914	23842	54198	1307
	47%	73%	52%	51%	57%	65%	12%

19.5 The Domestic Violence Act is an attempt of the State to comply with its human rights obligations. It reinforces the need for providers of social services and law enforcement agents to be more vigilant in matters related to domestic violence in line with the Penal Code and to be more proactive in responding to such problem.

19.6 Because violence, by its nature, puts the safety or health of the individual exposed to it at risk of physical, emotional and psychological harm and can even be fatal, the Act defines domestic violence and provides a wide range of remedies for abuse and abusive behaviour in a “domestic relationship”. Domestic relationship in terms of Section 2 of the Act includes a relationship where people “are or were married to each other”.

19.7 The Domestic Violence Act is a clear legislative statement of public policy which advances the construction of Section 141 of the Penal Code to include marital rape. It is a clear intent to criminalise abusive conduct even within the marriage. Moreover, it eliminated the common law spousal exclusion.

19.8 The High Court in 2008 addressed the matter of marital rape, holding that “to suggest that it should be permitted if the perpetrator is a spouse is ... totally unacceptable and a historic aberration.” (Letsholathebe vThe State 2008, [3] BLR 1 HC (Kirby J)). Whereas the case did not involve allegations of rape within

marriage and thus the Court's pronouncement was not determinative on the facts it indicates, contrary to public opinion, that marital rape is prohibited.

- 19.9 In 2012, gaps and challenges that hinder effective implementation of the Domestic Violence Act 2008 were documented and they informed the development of the regulations that facilitate effective implementation of this Act and increase access to immediate means of redress.
- 19.10 Stiffer measures have been put in place to prohibit withdrawal of domestic violence cases at Police but only at the Magistrate Courts and to strengthen prosecution of perpetrators. This was due to the high incidence of withdrawal of domestic violence cases by victims.
- 19.11 Furthermore, Botswana is currently piloting a gender based violence referral system in an effort to provide comprehensive service delivery to survivors of gender based violence. Botswana has made effort to address sexual abuse. However there are fragmented pieces of legislation to address it. There is therefore need for development of comprehensive legislation to effectively address sexual abuse.
- 19.12 The Government continues to collaborate with different stakeholders and partners in efforts to address gender based violence and raise public awareness on the issue. There have been national consultative fora for Dikgosi/Chiefs (2012) and for leaders of faith based organisations (2011) as an effort to mobilise these structures in responding to GBV. The health sector engages communities in the prevention and management of GBV through the District Male Action Group community mobilization strategy. CSOs mobilize community participation in the prevention of gender based violence through house-to-house campaigns. This contributes to early detection, identification and timely referral of gender based violence cases.
- 19.13 Training of health care providers on the clinical management of GBV including forensic evidence preservation, collection and reporting was enhanced since 2011 following the development of the Gender Based Violence Health Sector Policy Framework and Health Care Service Providers' Protocols and Service Standards. These Protocols and Service Standards provide for counselling by health care providers and training for hospital based social workers on GBV. The clinicians are also trained in screening skills to identify survivors of GBV.
- 19.14 Government provides financial and technical support to CSOs to offer counselling services to GBV survivors and their families. Representatives of all district Social Workers received training on gender mainstreaming and gender based violence using the developed National Gender Mainstreaming Curriculum. The training

enhanced general knowledge on gender and the skills to provide psychosocial support to gender based violence survivors and their families.

19.15 The Botswana Police Service has regularised inclusion of gender and gender based violence in their pre-service and in-service trainings. Tools to facilitate capturing of gender disaggregated data at service points have also been developed by the police.

19.16 Although there are no State owned shelters for women gender based violence survivors, the two shelters run by civil society organisations receive financial and technical support from the Government and development partners. Government runs one shelter for vulnerable children and also provides financial support to four others run by civil society organisations.

19.17 Public awareness raising activities on violence against women and girls are done through cultural and community dialogues, television and radio discussions, seminars and campaigns including international commemorations. The development of the national action plan towards ending GBV is underway, targeting inclusion of all efforts by the different stakeholders and training of the service providers. The plan will facilitate monitoring of interventions to gauge progress and impact.

20.0 RIGHT TO EDUCATION

115.38. Seek support and assistance from international institutions in dealing with the challenges that constrain the effective realization of certain rights, particularly the right to education and the protection of refugees (Burkina Faso);

115.84. Continue efforts to provide comprehensive primary education (Kuwait);

115.85. Continue to ensure full access to education for children (Egypt);

115.86. Continue its efforts to ensure full access to education (Bangladesh);

115.87. Redouble efforts to increase women's participation in education, including tertiary education (Timor-Leste);

20.1 Even though Section 3 of the Botswana Constitution does not specifically mention the right to education, it however guarantees every person in Botswana the *fundamental rights and freedoms of the individual irrespective of their race, place of origin, political opinion, color, religion or gender*.

20.2 Although the right to education is not specifically mentioned, it is not specifically excluded by the Constitution. The Government of Botswana, recognizing its importance, has put in place measures to ensure that the right to education is enjoyed by all citizens.

20.3 Similarly, Botswana has put in place, different statutory documents to ensure that all children, despite their economic, cultural, mental, physical, social and religious background have access to education. These include:

- The **Education Act**, which provides a legal framework for the promotion and development of education in Botswana;
- The **Children's Act of 2009**, which accords children some fundamental rights, among others, the right to free basic education;
- The **Revised National Policy on Education (RNPE) 1994**, which also recognises education as a fundamental human right. Among others, the policy advocates for universal access to basic education for children of school going age and adults.
- In an effort to make Botswana's education more inclusive, an Inclusive Education policy was developed in 2013 to close all gaps that were inherent in the education system hence the mainstreaming of OVCs and children with special education needs into regular schools with the view to prepare them for social integration. The admission age is flexible for children of the RADs.

Pregnant girls are re-admitted six (6) months after delivery. This is done once the students have been medically confirmed fit to go back to school.

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

- Friendly Schools' Programme, which aims at ensuring that schools are conducive for teaching and learning;
- Mainstreaming of human rights education into the curriculum for the purpose of building a universal culture of human rights;
- Maintaining flexibility in the admission policy to enable children from Remote Area Dweller Settlements (RADS) to start school at an age not later than the official entry age of 6 years;
- Provision of boarding facilities and transportation to and from boarding schools for children from **RADS** to increase their access to education;
- Provision of transport to children with special needs to and from school to ensure increased participation in education;
- Provision of sponsorship for children with special needs to access programmes that are currently not offered in the country;
- Provision of psycho-social and basic needs (food basket, school uniforms and stationery) to orphans and vulnerable children including those from poor socio-economic backgrounds.
- Implementation of a school feeding programme to cater for all children including those from poor economic backgrounds with the aim to make schools friendly and to increase access to education;
- Implementation of the pregnancy policy to ensure that children who drop out of school due to pregnancy are able to continue with their education following confinement;
- Mainstreaming gender into educational policies, programmes and projects to ensure provision of gender sensitive education programmes;
- Establishment of Centres for children with severe multiple disabilities;

- Implementation of Adult Basic Education Programme (ABEP) and Out of School Children Education Programme (OSEC) to cater for those who cannot access education through the formal setting;
- Implementation of Back to School Initiative to ensure increased participation at Secondary and Tertiary Education.

- 20.5 In addition, plans are underway to introduce pre-primary education as an integral part of the formal education system. In the interim, the MOESD has introduced a standard one (1) orientation programme in all public primary schools to improve school readiness. A one (1) year reception programme has also been introduced in schools with surplus classrooms to increase access to pre-primary education and improve children's retention in school.
- 20.6 Training of teachers on Early Childhood Care and Education has already started in Serowe College of Education with sixty eight (68) registered for Diploma in Early Childhood Education and twenty six (26) pursuing a Bachelor of Education in Early Childhood Education. Twenty (20) others are registered with Ba Isago for a Diploma in Early Childhood Education.
- 20.7 Primary Education in Botswana is free for public Primary Schools. However, Private Primary Schools charge a certain fee for provision of primary education and these schools are accessed by children whose parents have the means to pay.
- 20.8 The Government offers sponsorships to students in Local Public Tertiary Institutions, Local Private Tertiary Institutions registered by the Botswana Qualifications Authority (BQA) and also accredited external institutions (regional and overseas). The sponsorship is in the form of a grant or loan. It is wholly funded by the Botswana Government and caters for both tuition and maintenance costs; the sponsorship is initially given as a loan and upon successful completion of the programme of study the loan may either retain its status as a loan or convert to a full or partial grant depending on the type of the skills obtained during the programme of study.
- 20.9 The Government has a special dispensation program for access to tertiary education by orphans and vulnerable children and remote area community children which started in the 2013/14 financial year. As at September 2014, Five Thousand Three Hundred and Thirty-One (5331) have benefited from this programme.

- 20.10 Gross Enrolment Rate at Tertiary Education level has increased significantly from 42,366 (or 15.1%) in 2009/10 to 60,583 (or 21.2%) in 2014/15. For the 2014/15 academic year, about 34 831 students were females showing a higher enrollment percentage (57.5%) compared to males. It should however be noted that women’s participation in science related field is still low.
- 20.11 In 2012/13 the Female Student Enrolment in the Certificate, Diploma, Bachelor’s degree and Master’s degree are in the 53% to 56.5% range. The largest group of Female Student Enrolment is in the Post Graduate Diploma at 73.7%. Female Student Enrolment in MPhil stood low at 32.5% and in PhD at 28.8%. Female Student Enrolment in professional courses is at 60.2%.
- 20.12 **The Education and Training Bill, 2014** is being examined and will probably be adopted before the end of the year. It decentralizes some of the functions to the running of education in the country, provides for the system and structure of education and training, right of the child to free education and training and prohibition of inhuman and degrading treatment and the governance and management of basic education and training
- 20.13 Furthermore the Bill proposes that the Minister shall implement the right of every child to free and compulsory basic education; Section 18(1) of the **Children’s Act** provides that every child has a right to free basic education. Section 18 (2) stipulates that a parent, other relative or guardian who, without reasonable excuse, denies a child the opportunity of going to school shall be guilty of an offence and shall be sentenced to a fine of not less than Five Thousand Pula (P5000) but not more than Ten Thousand Pula (P10 000).
- 20.13 In this regard, it can be concluded that Botswana has put in place different statutory documents to ensure that all children, despite their economic, cultural, mental, physical, social and religious backgrounds have access to education.

21.0 ACCESS TO JUSTICE

115.74. Take measures to improve the conditions in prisons (Norway);

115.75. Increase its efforts to raise awareness of a woman's entitlement to request the transfer of a case from a customary court to a common law court, as recommended by CEDAW in 2010 (New Zealand);

115.76. Strengthening the efficiency of the judicial system, while making sure the rights of everyone to a fair trial is not compromised (Norway);

115.91. Consider the possibility to seek further international cooperation in order to find sustainable solutions in the area of refugees law (Paraguay);

115.92. Intensify its efforts to create awareness regarding the primacy of constitutional law with respect to customary laws and practices (Uruguay);

115.93. Ensure that the decisions of the customary courts may be challenged before common law courts (Uruguay);

- 21.1 Section 3 of the Constitution accords every person in Botswana the protection of his fundamental rights and freedoms.
- 21.2 Section 10 (1) guarantees any person who is charged with a criminal offence to be given a fair hearing within a reasonable time, by an independent and impartial court of law. And in protecting his/her right to a fair trial, the Courts adhere to the principle that "Justice must not only be done, it must also seem to be done."
- 21.3 Section 10(2) (a) provides that anybody charged with a criminal offence is presumed innocent until proven or has pleaded guilty to the charges. A person charged with a criminal offence shall also be, according to Section 10(2)(b) and (f), informed as soon as possible, in a language that he/she understands, be given sufficient time and facilities for the preparation of his/her defense and be provided, free of charge, with the service of an interpreter if he/she doesn't understand the language of the charge at the trial. Finally, the records and proceedings of every Court are in all cases accessible to the public under the supervision of an officer of the Court, at convenience and upon payment of a fee.
- 21.4 Section 10(2) (d) of the Constitution accords every person in Botswana the right to legal representation. However, the right to legal representation does not necessarily translate to access to justice. For this reason, Botswana deemed it fit to establish Legal Aid to provide legal services to indigent persons in Botswana.
- 21.5 The Legal Aid Pilot project commenced in 2011 and ended in 2013 having been partly funded by the UNDP and the Government. In 2014, the Legal Aid Act was passed to facilitate the provision of legal services and public education on legal

matters to indigent persons. It is a service that is accessible by citizens of Botswana and refugees. Legal Aid is provided for the following matter: family law, land rights, labour, damages, contracts, wills and estates, other special matters, including matters in terms of the Children's Act. Criminal matters are only undertaken if pro Deo Legal Aid is not available.

- 21.6 Since Legal Aid Botswana is a benefit extended to only the indigent, a Means Test is utilised to determine eligibility. The Means Test considers an applicant's income and assets against responsibilities such as mortgage, rent, maintenance of children, medical insurance.
- 21.7 The Government is in the process of renewing cooperation agreements it had with NGOs for the delivery of legal aid during the pilot phase. The NGOs that were cooperating partners during the legal aid pilot were DITSHWANELO- The Botswana Centre for Human Rights, Emang Basadi, Women Against Rape, and Botswana Network on Ethics, Law and HIV/AIDS (BONELA). The service delivery model also includes salaried legal practitioners, *pro bono* and judicare services by private practitioners as well as in-house legal counsel of Legal Aid Botswana.
- 21.8 Judicial independence is commonly referred to as the extent to which the Courts influence of rulers or powerful groups and individuals. The Judiciary is established under Section 95 of the Constitution as an independent arm of the State with the responsibility to administer justice in accordance with the Constitution, treaties ratified, and other laws of the country.
- 21.9 The Judiciary operates independently of other arms of the State and this has earned its reputation and confidence from the public. The respect accorded by the other arms of the State and their willingness to enforce court rulings has created a healthy and conducive environment for the performance of the judicial function. This has strengthened the rule of law and democracy and earned Botswana respect and goodwill from the international community.
- 21.10 The ability of the Judiciary to discharge its functions efficiently also depends on the support it receives from other institutions linked to the administration of justice as the Attorney General's Chambers, Botswana Police Service, Botswana Prisons and the Directorate on Corruption and Economic Crimes (DCEC).
- 21.11 The judgments of the Courts continue to be respected and fully implemented by the Government because it's only through compliance with courts decisions that democracy and the rule of law can continue to flourish and the independence of the Judiciary maintained.

- 21.12 The Judiciary is composed of: **A Court of Appeal**, operating as the Court of last instance and its decisions are final; **A High Court**, functioning as a Court of first instance with inherent jurisdiction, and a review Court as well as an appellate Court for decisions made by the Magistrate Courts; **Magistrate Court** stations; **A Land Tribunal**, which addresses land disputes. The appeals of the tribunal, which also serves as a review structures for decisions of the Land Boards lie with the High Court; and **An Industrial Court** operating as a Court of equity and deals with trade disputes
- 21.13 There are also special Courts such as: the Small Claims Courts; the Traffic Courts; Stock Theft Courts; Child maintenance Courts, to enable women to access payment of maintenance and Corruption Courts.
- 21.14 The Right to liberty is guaranteed under Section 5 (1) of the Constitution which provides that no person shall be deprived of his personal liberty except by operation of the law.
- 21.15 Any victim of unlawful arrest or detention has an enforceable right to compensation, which can be realised through legal action. In the case of *Nkunga v. Attorney General* 2010 (1) BLR 342 (HC), the plaintiff was awarded damages after successfully suing the Government for unlawful arrest and detention for less than twenty-four (24) hours.
- 21.16 Prison visitations are also done in accordance with international standards. In the case of *DITSHWANELO v Attorney General* MISCRA Case No. 2 of 1999 (21 April 1999), Regulation 75(1) of the Prisons Act which provided for all visits to condemned prisoners to be within sight and hearing of Prison Officials was successfully challenged and it was held that the regulation violated the prisoners' right to consult in private. It was ordered that all future consultations be in sight but out of hearing of Prison Officials.
- 21.17 A Boys' Prison was built in Moshupa. Further, holding cells separating young offenders from hardened criminals were built in Maun and Selebi Phikwe prisons.
- 21.18 The Government recognises the importance of alternative imprisonment for some convicts. There is a draft policy on alternatives to imprisonment which proposes alternatives such as community service for minor offences and proposals which will better promote the rehabilitation of the offender and re-integration into the society. To this end, there is a centre called Ikago School of Industry where convicted juveniles are sent depending on the type of the offence committed and the age of the juvenile instead of being imprisoned.

22.0 RATIFICATION OF TREATIES

116.1. Ratify the International Covenant on Economic, Social and Cultural Rights, and its Optional Protocol (Timor-Leste);

116.2. Ratify the International Covenant on Economic, Social and Cultural Rights (Congo);

116.3. Consider ratifying the International Covenant on Economic, Social and Cultural Rights to strengthen the rights of the citizens of Botswana to economic development (Namibia);

116.4. Consider acceding to the International Covenant on Economic, Social and Cultural Rights (Kenya);

116.5. Consider the ratification of the International Covenant on Economic, Social and Cultural Right, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Cyprus);

116.6. Ratify the International Covenant on Economic, Social and Cultural Rights and its optional protocol (Australia);

116.7. Consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, as well as the ILO Conventions 169 and 189 (Costa Rica);

116.8. Ratify the Convention on the Rights of Persons with Disabilities (Togo);

116.9. Accede to the Convention on the Rights of Persons with Disabilities, especially because this country [Botswana] already applies the provisions of this Convention in practice, as demonstrated by its commitment to submit a voluntary report (Morocco);

116.10. Sign and ratify the International Covenant on Economic, Social and Cultural Rights as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Turkey);

116.11. Explore the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Argentina);

116.12. Consider the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide (Armenia);

116.13. Complete the harmonization of domestic legislation with the provisions of the Rome Statute, and consider the possibility of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Tunisia);

116.14. Ratify, at the earliest possible date, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish preventive mechanism accordingly (Czech Republic);

116.15. Ratify the Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Togo);

116.16. Consider the possibility of ratifying the International Covenant on Economic, Social and Cultural Rights, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Convention on the Rights of Persons with Disabilities (Ecuador);

116.17. Ratify the International Convention on the Protection of all Persons from Enforced Disappearances, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities (France);

116.18. Ratify the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol, and opt-in to the enquiry and inter-state mechanisms (Germany);

116.19. Consider signing the SADC Protocol on Gender and Development (Norway); 116.20. Consider ratifying the International Convention on the Protection of the Rights of Migrant Workers and Their Families and the ILO Convention 189 (Philippines);

116.21. Ratify the International Convention on the Protection of the Rights of all Migrant Workers and members of

their families (Rwanda);
116.22. Speed up the process towards ratification of the Convention on the Rights of Persons with Disabilities (Rwanda);

116.23. Consider the ratification of the new third Optional Protocol to the Convention on the Rights of the Child on a communication procedure (Slovakia);

116.24. Reform customary law to eliminate restrictions on women's access to property (United States of America);

22.1 Botswana is not oblivious to the importance to the treaties it has not yet ratified. It progressively works on the realisation on issues of concern there under especially where they are considered paramount by the global village. In this regard, Botswana which has a dual legal system, holds traditional/cultural rights in high esteem and has social safety nets in place which seek to provide citizens with a dignified existence. Firstly Vision 2016 summarises the tenets of the covenant and paves ways for realization of these tenants on a project basis.

22.2 Botswana is not a State Party the International Covenant on Economic, Social and Cultural Rights (ICESCR). Chapter 2 of the Constitution which is dedicated to the protection of fundamental rights and freedoms of the individual in Botswana does not explicitly mention economic, social, cultural and environmental rights, however, various provisions of the Constitution and other pieces of legislation implicitly recognise them, among others, as follows:

- **Economic rights:**

- (1) Sections 3, 8 and 9 of the Constitution, read together with the Acquisition of Property Act (Cap 32:01) provide for the privacy and the protection of a person's home and other property as well as deprivation of property without compensation which can be classified as forming part of an individual's economic rights.
- (2) Botswana maintains a free market economy where any person with the right to property or resources is entitled to disposition thereof. At the same time, Botswana retains its prerogative to regulate the export of natural resources and to impose duties thereon.

- **Social rights:**

- (1) Section 3 of the Constitution provides for the fundamental rights and freedoms of the individual, and among others, it makes provision for the security of the person and the protection of the law, freedom of conscience, of expression and assembly and association; which are social rights.

- **Cultural rights:**

- (1) The list provided in Section 3 of the Constitution is in-exhaustive. The fact that culture is not explicitly provided for does not mean that it is thereby excluded. The Government does not hinder in any way, the exercise of cultural rights by various tribal groupings. If anything, the Government of Botswana promotes cultural expression as evidenced by cultural dance competitions, regiments, radio and TV broadcasts, and newspapers. Traditional dance is one of the cultural activities that are promoted in primary schools through extra-curricular activities.

- **Environmental rights:**

- (1) Although Botswana's Constitution does not have specific provisions guaranteeing environmental rights, there are several pieces of legislation, such as the Environmental Impact Assessment Act Cap 65:07 which make it mandatory to assess the potential effects of planned developmental activities.
- (2) Botswana is in the process of completing internal consultation on acceding to the Convention on the Rights of Persons with Disabilities. The country is however providing for the welfare of people with Disabilities through the National Policy on Care for People with Disabilities of 1996, which has roles for different Ministries in terms of provision of services to People with Disabilities these include:
 - i. Health where free consultation is done at all Government health facilities and the provision of prosthetic and orthotics services at subsidized rate of 5% of the total price for some People with Disabilities and free fitting for those registered as Destitute persons.
 - ii. Education where assessment of children with learning disabilities for appropriate placement in special education schools is done; provision of annual subventions to Organizations providing special education and skills training; Special cut off points for admission of students with learning disabilities at tertiary education; Sponsorship of students with learning difficulties in institutions of high learning.
 - iii. Economic Empowerment where employment of Graduates with Disabilities on Affirmative action basis in government ministries/departments is done; employment by the private sector of People with disabilities as part of their corporate social responsibility; and the provision of SMME projects to People With disabilities in the poverty eradication programme.

- iv. Social Protection: People with Disabilities found to be destitute are registered under destitution programme and are offered monthly food basket and an allowance; and People with Disabilities aged 65 years and above are given a monthly old age pension allowance.

22.3 Botswana also adopted the National Policy on Disability (2015) which is aimed at promoting and protecting the dignity of people with disabilities and creating a barrier free society by:

- providing guidance to all stakeholders on the government strategy to mainstream disability issues and guaranteeing their social inclusion in all aspects of life;
- mobilizing resources for full implementation of disability specific services by respective stakeholders;
- ensuring strengthened family and community structures for the enhanced participation of care givers and other family members of people with disabilities in their livelihoods;
- ensuring inclusion and accessibility of people with disabilities to all types of services, information as well as infrastructure;
- and developing monitoring and evaluation systems for effective coordination.

22.4 The ratification by Botswana of the recommended treaties will always be undertaken when the country is in a position to implement the provisions of the different conventions.

23.0 PARTICIPATION IN POLITICS

115.78. Implement specific and concrete measures with a view to increasing women's participation in political and corporate life in the country (Brazil);

23.1 Botswana is a multi-party democracy which holds free and fair elections every five (5) years the last of which were held in 2014. The branches of government comprise the National Assembly, the Executive, the Judiciary and the House of Chiefs (Ntlo ya Dikgosi). Local government comprises 16 Administrative Districts and 16 Districts Councils in which District, Town and City Councilors are regularly elected.

23.2 According to Section 58 of the Constitution, Parliament is composed of 57 elected members and 4 special elected members. The President of the Republic is Ex-Officio member of the Parliament and the Speaker can also come from among persons who are not members of the Parliament. There are currently 490 Council Wards in Botswana.

23.3 Women participation in political life continues to show a stagnated and slow growth and in other instances a decline. As depicted in the table below, women are under-represented in Parliament and Cabinet. Local Councils very much like Parliament are also dominated by men.

- *Women in Botswana Parliament and Cabinet*

	2004			2009			2014		
	Male	Female	% Female	Male	Female	% Female	Male	Female	% Female
Parliament	55	7	11	58	4	6.6	56	6	8.2
Cabinet	15	5	25	19	4	17.4	19	4	17.4

23.4 There are six (6) women in the current Parliament including the Speaker of the National Assembly. Four of the women are Ministers. There are also two female Chiefs.

23.5 Local Councils, very much like Parliament, continue to be dominated by men. There are currently 609 Councillors in Botswana out of which 490 are elected and 119 nominated.

- 87% (427) of the elected Councillors are male and only 13% (63) are female
- 61% (73) of the specially nominated Councillors are male and 39%(46) are female.

23.6 Trade Unions show a similar trend of male predominance with females accounting for only 20%. Women in the management of NGOs are at 45%. This is not also surprising given the voluntary nature of such organizations and their social development mandates.

- *Women in NGO and Union Leadership and in Central Committees of Political parties*

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

23.7 The participation of women in decision making positions in the Public sector continues to be at higher levels as compared to other sectors. In 2013 women in the Public sector accounted for 42% of all persons holding positions of Deputy Director to Permanent Secretary Level, making Botswana second in Southern Africa with a record of 35% women Permanent Secretaries and 45% Directors. Botswana has also been able to get over one thirds of women representation in its Heads of Missions across the globe.

23.8 Special temporary measures to accelerate political participation of women are not yet in place. However, recognising the critical importance of equal inclusion of women and men in politics and decision making, the National Policy on Gender and Development prioritises adoption and application of affirmative measures by sectors as necessary try to address identified gender gaps in line with their mandates. This Policy and its Draft National Operational Plan have a 5-year timeframe. Given the strategic importance of gender mainstreaming in all aspects of development, private and parastatal institutions continue to be enrolled and encouraged to consider equal participation of women and men in governance structures.

24.0 RIGHTS OF THE ELDERLY

115.83. Strengthen the promotion and protection of the rights of the elderly (Senegal);

- 24.1 The Country does not have a policy for the Elderly that can guide on issues of elderly persons. A situational analysis that will guide the drafting of a policy on the Elderly has been planned.
- 24.2 In Botswana, an Elderly person refers to a person who is 65 years and above and is in possession of a National Identity Card. The country provides old age pension for the elderly; World War Veterans allowance and Destitute Persons allowances for those who qualify. Recently cash transfer allowance for disability was introduced and some elderly people who are disabled due to age also benefit.
- 24.3 Destitution is for the needy and vulnerable people who are mostly the elderly persons. Shelter is provided for the elderly needy people who are found to need such upon assessment. Destitute persons are also provided with a food basket that ranges from P500.00 to P650.00 depending on the locality.
- 24.4 It is worth noting that older person have access to adequate food, water, shelter, clothing and health care. They do not pay for consultation at government hospitals and clinics. Older person who are still able-bodied have access to other income generating opportunities e.g. Poverty Eradication Projects.
- 24.5 Botswana commemorates the International Day of the Elderly every first Saturday of November as part of the Madrid Plan of Action of 2002.

PART IV

25.0 CONCLUSION

- 25.1 Botswana is deemed by some international assessors to have very strong protection for human rights. The Government is aware of this, but also aware that substantial challenges remain and that protecting human rights is a constant task. The Botswana Government will learn from the UPR process, the dialogue with other States and the recommendations made to Botswana in deciding, while considering national priorities, on the focus of forthcoming work to strengthen protection for human rights in Botswana.
