

Botswana

Civil Society Universal Periodic
Review (UPR) Mid-Term Review
Stakeholder Report

Second UPR Cycle

June 2015

Introduction

In January 2013, the Government of Botswana appeared before the UN Human Rights Council for its second cycle of Botswana's Universal Periodic Review (UPR) process. The Government of Botswana accepted 93 of the 175 recommendations made by other member states. The Mid-Term Review Report for Botswana is due in 2015. Both the State and Stakeholders submit reports. This Stakeholder Report covers the period 2013-2015. This report is submitted by DITSHWANELO – The Botswana Centre for Human Rights, on behalf of the UPR NGO Working Group comprising: DITSHWANELO – The Botswana Centre for Human Rights, The Botswana Council of Non-Governmental Organisations (BOCONGO), MISA Botswana Chapter, Lesbians, Gays and Bisexuals of Botswana, Rainbow Identity Association, and the Kuru Family of Organisations. The UPR NGO Working Group submitted its Stakeholder Report in July 2012, for the January 2013 examination of Botswana by the Human Rights Council.

Stakeholder Consultation Process

On 15 July 2015, the UPR NGO Working Group held a civil society workshop to discuss the recommendations which the Government of Botswana had accepted during 2013 and to produce a Civil Society Mid-Term Review Stakeholder Report 2015 for the UN Human Rights Council. The workshop participants examined and provided information about the implementation status of all the recommendations

The workshop was held on 15 July 2015 in Gaborone, Botswana and attended by the following civil society organisations: **Kagisano Society Women's Shelter, Stepping Stones International, Botswana Substance Abuse and Support Network (BoSASNet), Botswana Labour Migrants Association (BoLaMa), Botswana Council of Churches (BCC), DITSHWANELO – The Botswana Centre for Human Rights, Emang Basadi, Media Institute of Southern Africa (MISA) Botswana, Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo), Thusano Lefatseng, Botswana Federation of the Disabled (BOFOD) and Rainbow Identity Association (RIA).**

A) Description of the methodology and the broad consultation process followed for the preparation of information provided under the UPR

This Civil Society Mid-Term Stakeholder Review Report has been prepared by DITSHWANELO – The Botswana Centre for Human Rights, in its capacity as the Facilitator of the UPR NGO Working Group, comprising The Botswana Council of Non-Governmental Organisations (BOCONGO), DITSHWANELO – The Botswana Centre for Human Rights, Kuru Family of Organisations, Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo), Media Institute of Southern Africa (MISA Botswana Chapter), and Rainbow Identity Association (RIA), Some NGOs were invited to a constructive consultation meeting by the Ministry of Foreign Affairs and International Cooperation (MoFAIC) to discuss the zero draft and to make recommendations. A number of civil society organisations participated in the meeting. The Final Report was not shared with those organisations prior to its submission to the Human Rights Council. Most of the comments submitted in this report had been made during the MoFAIC consultation meeting.

For ease of comparison, the Stakeholder Report is organised in a manner similar to the State Report. There are 20 thematic chapters.

B) Developments since January and framework, (normative and institutional) for the promotion and protection of human rights. Constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations

Following the statement in October 2014, by HE President Khama, that Botswana is committed to the Comprehensive Human Rights Strategy and National Action Plan (CHRSNAP), the ability of civil society to engage meaningfully in the implementation and monitoring of the accepted UPR 2013 recommendations, has largely been hampered by lack of funding from the donors, including the UN.

Botswana has committed itself to seven (7) of the thirteen (13) Core International Human Rights Treaties. These are: ICERD (1974); CRC (1995); CEDAW (1996); ICCPR (2000), CAT (2000); OP-CRC-AC (2004); and OP-CRC-SC (2003). Those to which Botswana has not yet committed

itself are: IESCR; OP-ICCPR; 2nd OP-ICCPR; OP CEDAW; OP-CAT; International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

There is no public consultation prior to the ratification of any international instrument. Ratification of an international instrument leads to automatic commitment to international human rights obligations. However, a national court ruled that due to the dualist nature of the legal system, prior to domestication, commitment to international instruments are of 'mere persuasive value'. Ken Good case They are not considered to be binding.

Following the relocation of the human rights mandate from the Ministry of Defence, Justice and Security (MDJS) in 2014, to the Office of the President/MoFAIC, the laudable momentum of the CHRSNAP process which had led to the establishment of the National Coordinating Committee, chaired by MDJS, has stalled. Civil Society has continued with its work, with very limited funding. It is recommended that the collaborative work with the Government, which is an essential hallmark of the UPR process, be re-commenced as soon as possible, together with the necessary funding.

C. Follow-up on Accepted Recommendations of 2008 and 2013

Accepted Recommendations and Civil Society input

1.1 Domestication of Treaties (recommendations 115.1 – 115.5)

115.1. Incorporate into domestic law the provisions of the treaties that Botswana has freely acceded (Chad); **Partially Implemented**

115.2. Ensure that the provisions contained in the international **human rights** instruments which Botswana has ratified are transposed into national law (France); **No action taken**

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); **Not implemented**

115.4. Ensure full alignment of its national legislation with all obligations under the Rome Statute of the International Criminal Court (Slovakia); **Not implemented**

115.5. Continue to implement national laws in accordance with its treaty obligations (Lesotho); **Partially Implemented**

- Botswana has not yet domesticated all of the seven treaties to which it has committed itself. There is a need to domesticate ICERD, ICCPR, CEDAW, and CAT, into national law. It has not domesticated the Additional Geneva Conventions. However, the Anti-Human Trafficking Act (2014) domesticates the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, which Botswana ratified on 10 April 2002. The Protocol is a supplement to the UN Convention Against Transnational Organised Crime (2000).
- The ratification and domestication of these treaties will further lead to the protection, promotion and enjoyment of human rights by those living in Botswana
- There is a call by civil society for ratified international treaties to not only constitute ‘mere persuasive value’ in national courts until domesticated into national law.
- There is a need to encourage the domestication process in Botswana to be effected at a greater pace (this includes both the public consultation phase and the parliamentary phase).

- The Rome Statute of the International Criminal Court Bill No. 22 of 2014 has not yet been passed.

1.2 Increase the budget allocation for the Office of the Ombudsman (recommendation 115.6)

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); **Not implemented**

- Botswana has opted for a hybrid national human rights institution, with human rights as part of the expanded mandate of the existing Office of the Ombudsman. There is a concern that the existing budgetary challenges faced by the Office of the Ombudsman, will be increased with its increased mandate. Human Rights therefore risks not being prioritised as it ought to be. Botswana risks failing to achieve its long-term objective of securing full respect for human rights in Botswana. There is a need to increase the budget allocation for the Office of the Ombudsman in order to enable the office to carry out its mandate to deal with issues of human rights and not only issues of administration.
- It is necessary for the Ombudsman Act to be amended as a matter of urgency in order to enable the office to begin operating as a national human rights institution. Until then, the main CHRSNAP process remains in general abeyance until the amendment to the Ombudsman Act No. 5 of 1995, to empower the Office to act on human rights issues. Consultations have been on-going since 2013. A 2015 NHRI benchmarking mission to Ghana facilitated by the UN for the Government and UN officials, did not include civil society organisations.

1.3 Establish a National Human Rights Institution (recommendations 115.7 – 115.18)

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); **partially implemented**

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

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

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

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

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

115.13. Form a national human rights institution in compliance with the Paris Principles (Turkey); **not implemented**

115.14. Put in place an independent national human rights institution, in accordance with the Paris Principles (Burundi); **not implemented**

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); **partially implemented**

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

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); **partially implemented**

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

- There is a need for the National Human Rights Institution to be independent in keeping with the Paris Principles.
- Due to the decision of the Government to transform the Office of the Ombudsman into a hybrid National Human Rights Institution, there is a need to ensure that the Office of the Ombudsman is independent in order to adhere to the Paris Principles
- There were no consultations with civil society before the decision was made to transform the Office of the Ombudsman into a hybrid Human Rights Institution. A 2015 benchmarking visit to Ghana for the UNDP and Government of Botswana representatives, did not include any civil society organisation engaged in the UPR and CHRSNAP processes. This in spite of civil society's continued work in human rights in Botswana
- Based on the experience of civil society, of the manner in which The Office of the Ombudsman was introduced, with similar lack of public consultation, the Office is perceived to be unaccountable to the public. Many remain unclear about its mandate. There is a need to educate civil society and the public about what a National Human Rights Institution is and how it will ensure the improvement of the human rights situation in Botswana
- The actual creation of the National Human Rights Institution needs to be a consultative and participatory process which will include all stakeholders, including the people. This will lead to the NHRI being 'owned' by various stakeholders and not viewed as an institution belonging to the government.

1.4 Adoption of a Comprehensive Human Rights Strategy and National Action Plan (recommendations 115.20 – 115.22)

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

115.20. Adopt a national human rights action plan (Mexico); **not implemented**

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

115.22. Formulate a national plan of action for the implementation of accepted recommendations (Turkey); **not implemented**

- Government commitment to the Comprehensive Human Rights Strategy and National Action Plan was clearly indicated the October 2014 State of the Nation Address of H.E, President Khama. He stated that the Government had committed itself to the production of the Comprehensive Human Rights Strategy and National Action Plan (CHRSNAP).
- The development of (CHRSNAP) is a consultative process which is aimed as enabling civil society, the private sector and the Government to work together to promote, protect and fulfil the human rights needs of people living in Botswana
- Civil Society remains committed to ensuring that Human Rights Institutions are accountable to the people of Botswana. Through a consultative and participatory process, The Comprehensive Human Rights Strategy and National Action Plan (CHRSNAP) process is intended to assist Botswana to craft an appropriate and relevant National Human Rights Institution, which speaks to the context and the needs of the people. The Implementation Strategy accepted by both the Government (through MDJS) and Civil Society (through the UPR NGO Working Group and various civil society organisations) was to be effected through the creation of National Coordinating Committee (consisting of stakeholders from government ministries, civil society and the private sector and established in 2013), civil society and government meetings and workshops and public consultations around the country

- The Strategy and National Action Plan needs to be linked to national development priorities such as National Development Plan 10, National Development Plan 11, Vision 2016 and Vision 2036.
- The Strategy and National Action Plan is aimed at promotion, protection and respect for human rights in Botswana
- The Strategy and National Action Plan is aimed at ensuring that there is a people-centred approach to human rights in Botswana.

1.5 National HIV/AIDS Plan and Operational Framework (recommendation 115.24, 115.33, 115.35)

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);

- Goal six (6) of the National Operational Framework deals with human rights, but is the least funded goal of the Framework.
- The sector on Ethics, Law and HIV/AIDS is no longer funded in relation to helping with the implementation of the Framework.
- There is very little funding available for civil society organisations dealing with issues of HIV/AIDS even though it is a cross-cutting issue

- There is a need to recognise key populations, such as sex workers and the LGBTIQ community, when implementing the National Operational Framework as well as the National Strategic Operational Framework
- The link between gender-based violence and HIV/AIDS needs to be addressed during implementation of the Operational Framework and the Operational Plan

1.6 Implementation of the National Poverty Strategy (recommendations 115.23, 115.25 – 115.31)

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

115.25. Continue implementation of the National Strategy for Poverty Eradication (Algeria); **not implemented**

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

115.27. Continue to implement its National Strategy for Poverty Eradication and ensure access to quality education for all (Singapore); **not implemented**

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); **implemented**

115.29. Continue implementing the National Strategy to Eradicate Poverty and continue with its actions aimed at improving the health care coverage (Cuba); **not implemented**

115.30. Continue to implement the National Strategy to enable further poverty reduction in Botswana (Indonesia); **not implemented**

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

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

- The Poverty Eradication Programmes proceed from a conceptual framework which is not aimed at giving the poor an effective voice to contribute meaningfully to the crafting of appropriate policies to sustainably eradicate poverty. Poverty tends to be closely linked to social inequality and insecure livelihoods. Botswana is in the global top five countries of skewed income distribution. Social insecurity is intensified by the HIV and AIDS situation in Botswana.
- The UPR State Mid-Term Review provides no indication of how the most vulnerable amongst the poor are constructively benefitting from the Poverty Eradication programmes which have been adopted since the 2008 identification, by His Excellency Lt. Gen. Seretse Khama Ian Khama, of poverty eradication as a flagship programme of the current Government. These include rural women and the urban unemployed youth. There is a lack of information about any investment in improved participatory, governance systems.
- The Government of Botswana is in the process of preparing a Poverty Eradication Strategy. It began in 2013 and was due to be completed in September 2015.
- There are Poverty Eradication Programmes in place, but there is a need for an all encompassing, people-centred Poverty Eradication Strategy. There is disaggregated data about those which have failed and the reasons for failing. It is not clear whether there is an alternative plan for the backyard gardens due to the water shortages experienced in Botswana.
- Civil Society and other stakeholders working in the field of human rights, were not consulted before work on the strategy began. This is important as they work with the poor and have knowledge relating to poverty, how it affects their constituencies and viable ways of addressing poverty.
- There is a need to train journalists about how to report on issues such as poverty, gender etc., using a people-centred approach

1.7 Children and Youth Rights – including education (recommendations 115.34., 115.38., 115.39., 115.77., 115.79., 116.30., 115.84 -115.86., 116.25 to 116.29)

115.34. Accelerate the implementation of the National Action Plan for Children for 2006-2016 (Romania);

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);

115.39. 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);

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);

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);

- The Botswana National Youth Council (BNYC), which was engaged in work related to youth development, has been dissolved, leaving a gap in terms of government and youth relations.
- Moral Education classes, which are meant to be used for human rights training and education curriculum, are only allocated thirty (30) minutes per week in government schools.
- Moral Education is slowly being phased out in government schools. This poses a problem because the Moral Education classes were where the human rights curriculum was placed. There is no specific curriculum for human rights
- There are very few government schools which provide for after school activities such as peer education, book clubs etc
- There is an increasing focus on technology and the arts in government schools which is an innovative development
- There is need to tackle the issue of child marriages in certain tribes in Botswana i.e the Basezuru tribe. There is a tendency amongst common law courts to use cultural practices as reasons for issuing certain judgments. This is a problem because those cultural practices allow for abusive cultural norms like child marriages to take place
- There is an urgent need to address the issue of child labour because it leads to situations of children dropping out of school at early stages and other forms of abuse against children
- There is a need to improve the way in which issues of child sexual abuse are addressed in Botswana. A study was conducted by an NGO, Stepping Stones International Botswana, on the readiness of certain stakeholders such as health-care workers, psychologists, counsellors and magistrates, to deal with reported cases of child sexual abuse. The study indicated that stakeholders are not well-equipped and trained to deal with such cases with the necessary “best interest of the child” at the core.
- The Children’s Act of 2009 is silent on the issue of defilement. This has led to cases not serving the “best interest” of the child because the law is silent on the issue.
- Birth registration measures are readily available to those children born in hospitals and not those who are born at home or elsewhere

- The age of majority is twenty-one (21). The minimum age of criminality is fourteen (14). There are no Probation Officers for children below the age of eighteen (18) who have committed crimes.
- Botswana has not withdrawn its reservation to article 1 of the Convention on the Rights of the Child.

1.8 Vision 2016 (recommendation 115.40)

115.40. Continue to seek the necessary assistance from civil society to reach the goals of the Vision 2016 (Kuwait); **implemented**

- There have been consultations with civil society organisations regarding Vision 2016 and the production of Vision 2036. However, there is no established method of reporting-back to civil society concerning the outcome of the consultations.
- Vision 2016 is coming to an end in 2016 and government has had consultations with civil society regarding what still needs to be done in order to reach the goals of Vision 2036

1.9 Non-Discrimination (recommendations 115.41., 115.88 – 115.90., 116.35., 116.38 – 116.43)

115.41. Continue reviewing and reforming Government programs, as needed, to ensure that they do not discriminate against particular groups (State of Palestine); **not implemented**

115.88. Continue efforts aimed at enhancing the welfare of peoples with disabilities, including taking the appropriate steps to ratify the Convention on the Rights of Persons with Disabilities (Malaysia); **partially implemented**

115.89. That the Government has a continued focus on the situation of the San people and their rights in Botswana (Norway); **partially implemented**

115.90. Take appropriate measures to protect and promote the rights of disadvantaged groups (Congo); **partially implemented**

116.35. Take steps to implement comprehensive anti-discrimination laws, particularly to eliminate discrimination on the basis of sexual orientation (Australia); **not implemented**

116.38. Engage in a dialogue to repeal laws which criminalize consensual adult same sex relations (Canada); **not implemented**

116.39. Support at national, regional and international level the promotion and universal realization of the human right to safe drinking water and sanitation, pursuant the recommendation made by the Council in its different resolutions on the matter (Spain); **partially implemented**

116.40. Speed up the process to explore possible solutions for mother-tongue schooling, and develop an adequate strategy to lower the failure rate before the next UPR cycle (Hungary); **not implemented**

116.41. Continue its engagement with improving the rights of refugees (Uganda); **partially implemented**

116.42. Improve the reception conditions, health care, access to water and sanitation, adequate housing and food, for refugees; Make sure that refugees are not repatriated in case that their lives are in danger in their country of origin, and promote, through public policies, their total integration into the society out of the refugees camps (Ecuador); **partially implemented**

116.43. Maintain the positive efforts aiming to find durable solutions by way of repatriation, reintegration and resettlement of refugees (Egypt); **partially implemented**

- The Refugee Act is currently in the process of being amended. The initial consultations between government and civil society on the Act have been held. Civil society called for a review of the *encampment policy* which the Botswana currently uses in relation to refugees
- Botswana has not ratified the Optional Protocol on the Convention and Protocol Relating to the Status of Refugees. Amongst other aspects, the Optional Protocol encourages free movement and employment of refugees
- During 2015, a “Go and See, Come and Tell” trip was carried out to Namibia in order to establish whether it is now safe for Namibian refugees from the Caprivi area to be repatriated back to Namibia. In 2015, following a tripartite meeting comprising the UNHCR, and the Government of Botswana and Namibia, Botswana announced that by 31 December 2015, the status of all Namibian refugees would be revoked. There is concern that despite the Namibian government stating that it is safe for the Caprivians to be repatriated, there have been reports that those who have returned are subject to harassment and indefinite imprisonment. There have also been reports of a heavy security presence in the Caprivi area (now called Zambezi). On 9 December 2015, some of the earlier returnees were subsequently tried for treason in Namibia and convicted. In a case launched in December 2015, Felix Kakula and 732 others vs the Attorney General, Minister of Defence, Justice and Security, Chairperson of the Refugee Advisory Committee and the Dukwi Refugee Camp Commandant, the Caprivian refugees have approached the High Court to prevent the implementation of the cessation clause concerning their refugee status and their repatriation. High Court Justice Dube ordered that the Namibian refugees should not be repatriated pending the case.
- There is concern that refugees in Botswana are not afforded the chance to work in Botswana (one of the reservations made by the government, in relation to the UN convention on refugees, was on employment of refugees)
- There is a need to address xenophobia in Botswana, as there is concern about the reported development of intolerance in Botswana

- The draft Revised Policy on the Rights of People with Disabilities has been under review by parliament since 2010. Delay in the process has prevented progress of ensuring that the rights of people with disabilities are respected, promoted and protected
- There is a call for the ratification of the Convention on the Rights of People with Disabilities (CRPD) and its subsequent domestication to ensure that the rights of people with disabilities are protected and promoted in accordance with international standards
- There is a need to engage on the rights of minority groups such as the LGBTIQ community, on issues of sexual orientation and gender identity, as well as the rights of indigenous peoples.
- There is a need to ensure that the public is educated about sexual orientation and gender identity issues in order to prevent discrimination towards gay, lesbian, bisexual, transgender, intersex persons.

1.10 Human Rights Training for the disciplined forces (recommendation 115.42)

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

- Human rights training has been planned for the Botswana Defence Force in 2016 by the Ministry of Defence, Justice and Security (MDJS)
- There does not seem to be any human rights training planned for the police force. This is of major concern as the police force also needs to be trained about human rights

1.11 Issues affecting the rights of women (recommendations 115.43., 115.46 – 115.58., 115.87., 115.61 – 115.73)

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);

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);

- Due to the dualistic legal system in Botswana, which requires domestication of international instruments into national legislation, the government is in the process of domesticating the Convention on the Elimination of all Discrimination Against Women (CEDAW). This process has been on-going since 2012.
- There is no legislation criminalising marital rape in Botswana
- A draft National Policy on Gender and Development was recently brought before parliament and was accepted. However it appears that there is a need to address a few issues before the policy is finalised and can be implemented
- Civil Society was only consulted once during the process of drafting the National Policy on Gender and Development
- Recommendations from Civil Society
- Botswana to ratify the SADC Gender Protocol
- The government should stop the use of the binary (male and female) definition of gender in order for inclusion of every human being, regardless of sexual orientation or gender identity, in programmes and policies
- Gender-based violence should be addressed more holistically (include more stakeholders) in order to ensure that all members of the public see a need to get involved in the fight against gender-based violence
- Marital rape should be criminalised

1.12 The death penalty (recommendations 115. 59 -115.60., 116.36 – 116.37)

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); **not implemented**

115.60. Meanwhile, provide information to concerned families, so that they can know in advance the date of execution of their relatives (Uruguay); **no action**

116.37. Ensure the respect of international standards on the rights of prisoners sentenced to death (Italy); **not implemented**

- DITSHWANELO – The Botswana Centre for Human Rights, is the only NGO in Botswana which has, since 1999, dealt with and addresses the death penalty. Since 2013, it has been holding “Couch Conversations” on The death penalty and related issues. These “couch conversations” have included one relating to families of victims of murder, in 2013 and another one on issues surrounding faith in 2014. DITSHWANELO is consultation with families of the executed to establish a support network
- There have been no executions since 2013. It is therefore not clear whether or not the government has changed the policy to enable concerned families to be informed in advance about the date of execution of their relatives
- There is a need for more civil society organisations to get involved in the discussions surrounding the death penalty
- The Government of Botswana has not done anything in relation to recommendation to hold a public debate around the issue of the death penalty
- There is a call by civil society for a public survey/referendum on the death penalty, as no survey/referendum has been conducted since 1997. Without this, it is not possible to definitely state that the majority of Botswana still want the death penalty in Botswana

- The rules governing the Clemency Procedures have not been revised. In Section 53 of the Constitution of Botswana permits the President to grant pardons and commutations for criminal offences. Sections 54 and 55 of the Constitution provide for an Advisory Committee on the Prerogative of Mercy. It must meet in death penalty cases, to advise the President on whether or not to exercise his/her power to commute a death sentence to another form of punishment or to grant a pardon.

Challenges with the administration of the prerogative of mercy

1. Membership by the Attorney-General of the Committee. The relationship between the offices of the Attorney-General and the Director of Public Prosecutions (DPP) does not clearly exclude a potential conflict of interest in the judicial system process. This may preclude the former from being in a position to objectively exercise his/her mind concerning the case of one who has been prosecuted by the DPP.
2. Lack of information about procedures regulating the Committee. Section 54 states that the "Committee may regulate its own procedures". It shall be summoned by the President, who shall, as far as is practicable, attend and preside over its meetings. Section 55 states that a meeting of the Committee is mandatory in death penalty cases. The President "shall cause a written report of the trial judge, and any other information from the record of the case or elsewhere as he may require, to be considered" at a meeting of the Committee.

The information used to make decisions is critical. What the information is and its sources are currently not known as there is a lack of transparency about the procedures and access to general information about the workings of the Committee.

There is no clear procedure for informing the convicted persons and/or their legal representatives of the outcome of the clemency process. There is no report submitted to the parties directly involved in the case. Lawyers and families of the convicted persons discover that clemency has been denied, once the official public announcement is made about their execution.

DITSHWANELO, an abolitionist advocacy human rights NGO in Botswana, has, on more than one occasion, requested information about the decision-making process of the Clemency Committee. It has never received a response from the Office of the President.

3. Lack of information about procedures governing the decision-making process of the President. The President makes his decision after obtaining the advice of the Committee. There is no transparency concerning the documentation presented to the President for him/her to use as a basis of his/her decision. Two key elements about the

information are **factors which support clemency (clemency standards – criteria) and reasons for the decision made** concerning the clemency request.

4. Potential for arbitrariness and lack of accountability in decision-making process.
5. No clear role for lawyers in the clemency process. Lawyers have reported being excluded from the process. There is no established procedure enabling lawyers to make submissions before the Committee.
6. No access for convicted person has no right of hearing.

1.13 Access to Justice (recommendations 115.74 – 115.76., 115.91 – 115.93)

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);

- There is a need to ensure that the rights of prisoners are respected. This includes the government of Botswana amending the law which allows for prisoners who are serving a sentence of six (6) months and less to vote in elections. This did not happen in the 2014

elections. DITSHWANELO, as the Secretariat of the UPR NGO Working Group, wrote a letter to the Ministry of Defence, Security and Justice (MDJS) concerning this matter.

- There is currently an on-going consultative process by the Government of Botswana to discuss alternatives to imprisonment
- There is a call by civil society organisations to have Magistrates who specialise in Children's cases attend to cases relating to children in prison e.g. the Boys' Prison
- There is also a call by civil society organisations for alternatives to imprisonment to be explored and implemented. These alternatives include community service.
- There is concern over the number of child abuse cases which tend not to be pursued by the justice system. This renders children vulnerable to abuse and abusers to impunity
- There are court orders not being implemented, such as the court order from the Gaborone High Court urging the Government of Botswana to provide Anti Retroviral drugs (ARVs) to foreign inmates
- Magistrate Court cases are usually not accessible online and this constrains access to information
- Attorneys tend to be discouraged from applying for Magistrates' posts due to the limited remuneration. This leads to the more experienced Attorneys not becoming Magistrates.
- The State-Funded Legal Aid Project was suspended in 2014. Pending finalization of administrative processes, the Project was not implemented with NGOs during 2015. NGOs nevertheless continued providing legal assistance to the indigent.

1.14 Issues relating to the elderly (recommendation 115.83)

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

- There is a need to examine how to ensure that the elderly are comprehensively adequately sheltered and cared for. This could include the introduction of 'old age' or retirement

- There is a need for legislation which promotes care for the elderly (in addition to the President's pronouncements that the elderly should be taken care of)
- There is concern over the number of children who, unreasonably take over the housing provided to their elderly parents, through the Presidents Housing Scheme
- There is need to acknowledge that extended families appear to be less willing to take good care of the health needs of their elderly family members. It is impossible for the poor to do so.
- The amount of pension received by the elderly is needs to be reviewed
- There is a need for clear policies which speak to the needs for the elderly, pregnant women and school children.

Conclusion

Botswana is Deputy Chairperson of the United Nations (UN) Human Rights Council and as such should be an example to other UN member states when it comes to promoting, protecting and respecting the human rights of people living in Botswana. Botswana is a country which believes in the notion of "botho" ('I am human because you are human'). This concept should always be at the centre of all the work which the Government of Botswana, Civil Society Organisations and other stakeholders partake in when dealing with human rights. This Shadow Report is a way for civil society organisations to encourage the Government of Botswana to uphold this concept and to ensure that the rights of people in Botswana are promoted, protected and respected.