

Universal Periodic Review (Third Cycle)  
Botswana Stakeholder Report to the Human Rights Council  
29<sup>th</sup> Session of the Universal Periodic Review  
Submitted June 2017

## **Introduction**

1. This Stakeholder Report has been submitted by the Universal Periodic Review (UPR) NGO Working Group comprising DITSHWANELO – The Botswana Centre for Human Rights, The Botswana Council of Non-Governmental Organisations (BOCONGO), Kuru Family of Organisations (Kuru), Lesbians, Gays and Bisexuals of Botswana (LeGaBiBo), Media Institute of Southern Africa (MISA) Botswana and Rainbow Identity Association (RIA). DITSHWANELO as the Secretariat of the UPR NGO Working Group is coordinating this joint civil society submission.
2. The UPR NGO Working Group made a submission during the second (UPR) in 2013. The Working Group has produced a Civil Society Mid-term Review Report,<sup>1</sup> lobbied the Government in 2013-2017 and facilitated the civil society consultations for the 2018 Third Cycle UPR State and Stakeholder Reports.

## **Background and Legal Framework**

### **A) Treaty Ratification and Domestication**

3. Botswana has not ratified some international human rights treaties, although it is making notable efforts to attend to the rights of people living in Botswana.
  - Social, Economic and Cultural rights are not entrenched in the Constitution, however the government provides basic services such as access to water, food, education and health. These services nevertheless remain privileges and not enforceable rights.
  - The International Covenant on Economic, Social and Cultural Rights (ICESCR) has not been ratified. Its ratification and domestication would allow for all prisoners to fully enjoy and legally access basic services (food, health and water). The government is already providing some of these services<sup>2</sup>, but due to non-ratification and non-domestication of the ICSECR these services also remain privileges and not enforceable rights. This is evident in the case<sup>3</sup>

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<sup>1</sup>. Available on [www.ditshwanelo.org.bw](http://www.ditshwanelo.org.bw)

<sup>2</sup> Formal education (obtaining of formal degrees) is not provided in prisons in Botswana.

<sup>3</sup> *Tapela and Another v Attorney General and Others* 2014 BLR. 26 August 2015 the Court of Appeal held that the policy was contrary to the Prisons Act and unlawful. It ordered the government immediately to provide free testing, assessment and ARV treatment to all foreign prisoners to the same extent as citizen prisoners.

where the courts held that the government should provide ARV treatment to non-citizen prisoners. If the government had ratified and domesticated the ICESCR, there would be legislation obliging it to provide these health services to prisoners regardless of whether they are citizens of Botswana or not.

- The Government of Botswana, through its Office of People With Disabilities and civil society organisations, implements non-legally binding policies relating to people with disabilities. There is no legislation for the specific protection of people with disabilities. Ratification and Domestication of the International Convention on the Rights of People With Disabilities (ICRPWD) would ensure recognition and protection of these rights.
  - Botswana has not ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) and the Optional Protocol to the Convention Against Torture (CAT).
  - Although Botswana has ratified the ICCPR, it has not been domesticated. This makes it difficult to enforce. The ICCPR provides for political rights for all, including prisoners. In Botswana, prisoners convicted and sentenced to less than six (6) months' imprisonment, may register to vote, but no prisoner voted during the 2014 general elections<sup>4</sup>.
  - There are certain International Labour Organisation (ILO) Conventions<sup>5</sup> which have not been ratified by Botswana. These affect the rights of workers, including domestic workers and rights of indigenous peoples
  - Botswana signed and acceded to the Revised SADC Protocol on Gender and Development on 10 May 2017.<sup>6</sup> However, due to the dualist nature of the legal system, an international instrument is not legally binding until it is domesticated into national law. The provisions of the SADC Gender Protocol are not legally binding on the state or the public.
4. CAT<sup>7</sup>, CERD<sup>8</sup>, CEDAW<sup>9</sup> and ICCPR, though ratified have not been domesticated. There is national legislation which allows for some of the legal remedies therein. The Convention on the Rights of the Child (CRC)<sup>10</sup> was domesticated in the Children's Act 2009<sup>11</sup>. However, this Act permits corporal punishment in both schools and the home, contrary to the CRC.
5. **We recommend that the Government of Botswana should:**
- Finalise ratification and domestication of the International Convention on the Rights of People With Disabilities (ICRPWD) to ensure the implementation, within a rights framework, of already existent policies for people with disabilities, by December 2018.

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<sup>4</sup> Section 6(1)(b) of the Electoral Act.

<sup>5</sup> ILO Conventions 169 and 189

<sup>6</sup> <https://www.sadc.int/news-events/news/botswana-signs-revised-sadc-protocol-gender-and-development/>

<sup>7</sup> UN Convention Against Torture (CAT),

<sup>8</sup> UN Convention on the Elimination of Racial Discrimination (CERD)

<sup>9</sup> UN Convention on the Elimination of Discrimination Against Women (CEDAW)

<sup>10</sup> UN Convention on the Rights of the Child (CRC)

<sup>11</sup> Children's Act of 2009

- Develop, in consultation with parliament and civil society, a policy framework to guide practices and procedures concerning international treaty processes, which create rights and obligations in international law.
- Undertake to conduct research to determine compliance between domesticated international treaties, national laws and international human rights standards.
- Provide information about how many prisoners, both citizen and non-citizen have received ARV treatment since 26 August 2015 in accordance with the 2015 Court of Appeal ruling.
- Undertake to create and put into effect a mechanism to enable all prisoners convicted and sentenced to less than six (6) months' imprisonment to vote in the 2019 general elections.

## **B) Environment**

6. Botswana has legislation and is party to regional and international climate change and conservation treaties.

- Parliamentary consultation is important before the government signs, ratifies and domesticates regional and international treaties addressing climate change.
- Human and wildlife conflict exists due to implementation of some treaties<sup>12</sup>, especially in northern Botswana
- Hunting ban review recommended as it has affected the livelihoods of the indigenous persons (Basarwa/San) living in Botswana, as well as the vegetation in areas where there is an over-abundance of wildlife<sup>13</sup>
- Public education necessary about climate change to create innovative ways to conserve and protect the environment.

7. **We recommend that the Government of Botswana should:**

- Produce and make public its implementation plan of its Nationally Determined Contribution (NDC) of 15% reduction in CO2 emissions by 2030.
- Develop, together with civil society, public-awareness material on climate change and laws pertaining to the environment in Botswana
- Undertake consultations with affected communities before Botswana signs, ratifies and domesticates regional and international treaties relating to the environment, including wildlife.

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<sup>12</sup> Botswana is party to a number of multilateral and regional environmental agreements these being the Convention on Wetlands of International Importance (Ramsar Convention 1971); the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES, 1973); the Convention on Biological Diversity (1992); the Climate Change Convention (1992); Kyoto Protocol to UN Framework on Climate Change; Vienna Convention for the Protection of the Ozone Layer (1985); Montreal Protocol of Substances that deplete the Ozone Layer (1987) the UN Convention to Combat Desertification (1994); the Basel Convention on the Trans-boundary Movements of Hazardous Wastes and their Disposal (1989) the Permanent Okavango River Basin Agreement (1994); the SADC Protocol on Wildlife Conservation and Law Enforcement (1999)

<sup>13</sup> Due to overpopulation of some wildlife, they tend to live outside of demarcated areas on conservation.

- Make compulsory, the conducting of social impact assessments and consultations with affected communities before any laws are made relating to the environment to ensure that no community is arbitrarily deprived of its natural resources and land<sup>14</sup>
- Conduct mass information campaigns, including through proactively engaging with communities, to explain the legal framework in place regarding land allocation, their rights, procedures to be followed and available options, including when communities have settled on self-allocated land for years.<sup>15</sup>
- Undertake a participatory study and implementation plan with affected communities addressing human and wildlife conflict (including destruction of vegetation by wildlife)
- Produce a Compensation Policy Document, including a time-specific Implementation Plan and Budget for the compensation of property damage by wildlife.
- Develop a comprehensive Strategy for providing uninterrupted access to safe drinking water and sanitation through sustainable water management, in the foreseen increasing water stress in Botswana.<sup>16</sup>

## Education

8. Access to schools has proven to be difficult for orphans and vulnerable children as they tend to live far from institutions of learning.
  - The Children's Act<sup>17</sup> guarantees the Right to Education, but does not guarantee the Right to Access to Education. This means that the government does not have to ensure that schools and education are accessible to all children (including those with disabilities)
9. There is no National Anti-Bullying Policy for schools in Botswana and many schools do not have anti-bullying policies
  - Bullying occurs in schools. With no policy, students, teachers, parents and government officials lack guidelines to deal with it.
10. Corporal punishment is used in schools despite the CRC stating that children should not be subjected to degrading and painful forms of punishment<sup>18</sup>
  - In spite of the official guidelines for administration of corporal punishment, there have been reported cases where children have been seriously injured by their teachers

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<sup>14</sup> Section 8 of the Constitution states that no one should be deprived of property arbitrarily

<sup>15</sup> Report of the UN Special Rapporteur in the field of cultural rights, 2016. A/HRC/31/59/Add.1

<sup>16</sup> Report of the UN Special Rapporteur on Water and Sanitation, 2015.A/HRC/33/49/Add.3. 13 July 2016.

<sup>17</sup> Section 18 of the Children's Act provides for the right to education

<sup>18</sup> Article 19; 28, para. 2; and 37, inter alia of the Convention on the Rights of the Child (CRC)

11. There is a need for mother-tongue education in schools as children are only taught in Setswana (national language) or English (official language). This makes learning difficult for those children whose mother-tongue is neither of the two languages.

- Children in areas where the mother-tongue is not Setswana often drop out of school at a young age because they are unable to learn effectively

12. **We recommend that the Government of Botswana should:**

- Make right to and by extension, access to education, fundamental rights entrenched in the Constitution
- Produce a National Anti-Bullying Policy for schools to combat all forms of bullying in schools
- Produce a Mother-Tongue Policy to enable recognition of multiculturalism. Produce an implementation plan to introduce mother-tongue education in schools in a phased manner. It should include training for teachers to enable them to teach in the different languages
- Conduct a study to collate statistics about children with disabilities and their access to education to ensure that their right to access to education is protected and enforced
- Conduct a study about alternative forms of discipline with the aim of abolishing corporal punishment in schools
- Review the Children's Act with the aim of abolishing corporal punishment in schools

### **C) Citizenship**

13. Botswana does not allow for dual citizenship<sup>19</sup> after the age of 21 years, and this has resulted in situations where people, particularly children, become stateless.

- The Constitution of Botswana does not expressly provide for the right to Nationality. The Botswana Children's Act of 2009, however, does provide for this right by stating in section 12 that 'every child has a right to a nationality from birth'.

14. The acquisition of citizenship in Botswana is regulated by the Botswana Citizenship Act of 1998 which confers citizenship on persons as follows:

- By birth, if the person is born in Botswana and one of his or her parents is a citizen of Botswana.
- By descent, if born outside of Botswana and at the time of birth, either of his or her parents is a citizen of Botswana.

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<sup>19</sup> The Botswana Citizenship Act of 1998

- By settlement, if born to a person who has acquired Botswana citizenship due to having lived as a member of a tribe or community or having been customarily accepted as such.
- By adoption, when a child younger than three years is adopted by a Botswana citizen.
- By registration, when the person is a naturalised Botswana citizen or is granted citizenship in recognition of exceptional circumstances.
- By naturalisation, when the person has been resident in Botswana for not less than ten years.
- Dual citizenship is allowed until the age of 21, when the person ceases to be a Botswana citizen.

**15. We recommend that the Government of Botswana should:**

- Sign and ratify the 1961 Convention on to Reduction of Statelessness to ensure:
  - Development of legislation and regulations which ensure every child's right to a nationality and that no child is born stateless in Botswana;
  - Universal birth registration for all children born in Botswana, particularly foundlings, those born to migrants and undocumented persons.
- Implement a provision in the law which protects children who are born stateless in the territory, pursuant to Botswana's obligations under article 6 of the Convention on the Rights of the Child and Article 7 of the African Charter on the Rights and Welfare of the Child.
- Domestic law should provide that a child found in the territory of the state shall, in the absence of proof to the contrary, be considered to have been born within that territory to parents of that country's nationality.
- Amend laws restricting acquisition of nationality through adoption to children below three years of age to include all children (under 18 years of age) adopted by Botswana citizens.
- Take all necessary steps to ensure that children are immediately registered at birth.
- Ensure equal access to documents used to prove nationality, e.g birth certificates, and provide for alternative systems to prove identity when these forms of proof are not available or cannot be reasonably obtained.
- Where a refugee acquires the nationality of the state of refuge, he or she should not be required to renounce his or her previous nationality if they are unable to. The nationality of his state of refuge should be considered as the predominant nationality for purposes of diplomatic protection.

**D) Children's Rights**

16. Botswana ratified the Convention on the Rights of the Child (CRC). It was domesticated in the The Children's Act of 2009. There are however provisions in the Act which are not in line with the CRC

- Corporal Punishment in schools and in homes is not abolished under the Children's Act

- There are reported cases of child labour in certain areas of Botswana,<sup>20</sup> particularly amongst minority ethnic groups of the Baswarwa/San and the Bazezuru
- There are cases of sexual abuse of minors which is contrary to both the CRC and the Children's Act
- There have been cases of reported child marriages, which are also contrary to the Children's Act.<sup>21</sup>

17. The Trafficking of Persons Act in Botswana is aimed at combatting the trafficking of children in Botswana

- To ensure that child trafficking is dealt with effectively there needs to be training of service providers and stakeholders who work in the area of children

18. **We recommend that the Government of Botswana should:**

- Review the Children's Act to ensure that all of its provisions are in line with the CRC and the African Charter on the Rights and Welfare of the Child
- Train social workers, police, school teachers, the medical profession and caretakers of children, in collaboration with civil society, to capacitate them to effectively implement the Reviewed Children's Act
- Ensure that there is training for service providers and stakeholders on how to address reported cases of child sexual abuse
- Undertake to develop, with civil society, a National Anti-bullying Policy for Schools

#### **E) Combatting HIV and AIDS**

19. Botswana has taken various measures towards combatting HIV and AIDS. This includes the production of a National Strategy to combat HIV/AIDS.

- Despite the production of the National Strategy, its implementation needs to be inclusive of all, particularly of key populations including those living with HIV and AIDS, Men who have Sex with Men (MSM), the LGBTIQ community and sex workers
- There is a need to train service providers on how to assist members of key populations who are vulnerable to contracting HIV/AIDS or those who have contracted HIV/AIDS

20. **We recommend that the Government of Botswana should:**

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<sup>20</sup> There have been reported cases of child labour in the Gantsi and Kweneng Districts. These cases have been reported to organisations such as Humana People to People.

<sup>21</sup> Although the Botswana Marriage Act of 2001, indicate 18 years as the legal age for marriage; BONELA has so far recorded 3 cases of Botswana girls aged between 10-18 years who have been married off by their parents. All the 3 cases are from the Bazezuru tribe. Child marriages cases are deeply rooted in the religious and cultural norms and practices that do not recognize children's rights. Child Marriages a Problem in Botswana. BONELA Press Statement. 16 June 2015.

- Train service providers on how to assist key populations using a human rights-based approach
- Ensure the effective implementation of the National HIV/AIDS Strategy, especially for key populations as they are the most affected by HIV and AIDS
  - Seek assistance from other stakeholders, including civil society, on the implementation of the national HIV/AIDS strategy as this will ensure that a wider range of the population is reached

## **F) Gender**

21. Botswana signed and acceded to the Revised SADC Protocol on Gender and Development on 10 May 2017.<sup>22</sup>

- Botswana encourages the promotion and protection of women's rights in Botswana, however over the years there has been an increase in gender-based violence in Botswana<sup>23</sup>
- Marital rape is not illegal in Botswana. This probably leads to other forms of domestic violence not being reported.
- Service providers, such as the police, are not trained how to assist women who report cases of gender-based violence. This discourages reporting of cases.
- There are not enough women's shelters in Botswana where survivors of gender-based violence can go for assistance
- Despite having the Domestic Violence Act<sup>24</sup>, there is not enough awareness-raising about the Act and the steps survivors of gender-based violence can take to seek justice
- Despite the opportunities women have for political participation, there are not enough women who are actively involved in the political landscape of the country<sup>25</sup>

22. **We recommend that the Government of Botswana should:**

- Encourage and promote the political participation of women through consultative dialogue about electoral reform
- Ensure the training of police officers and other stakeholders of how to handle reported cases of gender-based violence
- Build shelters of refuge for survivors of gender-based violence
- Criminalise marital rape
- Develop, in consultation with civil society, public awareness about the Domestic Violence Act

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<sup>22</sup> <https://www.sadc.int/news-events/news/botswana-signs-revised-sadc-protocol-gender-and-development/>

<sup>23</sup> In 2015 Gender Based Violence stood at 67% in Botswana. <http://www.dailynews.gov.bw/news-details.php?nid=2781>.

<sup>24</sup> Domestic Violence Act of 2008

<sup>25</sup> Botswana fared badly on women empowerment especially in political leadership. SADC Programme Officer for Research, Gender Unit Monitoring and Evaluation Elizabeth Kakukuru. August 2015. <http://www.thepatriot.co.bw/news/item/1320-botswana-trailing-behind-on-women-in-politics.html>



- Domesticate the Revised SADC Protocol on Gender and Development to ensure that the provisions in the Protocol are legally binding and are implemented

### **G) Poverty Alleviation**

23. Botswana has various programmes, including a national strategy<sup>26</sup>, intended to alleviate poverty<sup>27</sup>, but they do not provide sustainable solutions to poverty alleviation

- There is little public awareness about the National Poverty Strategy.
- Civil society is not included in the implementation of the National Strategy as well as in the implementation of existent programmes

24. **We recommend that the Government of Botswana should:**

- Increase awareness, through engagement with civil society and other sectors, about the National Poverty Strategy and the programmes being implemented
- Review, in consultation with civil society and the private sector, the current National Poverty Strategy with a view to amend it to include long-term solutions to poverty alleviation
- Include civil society in all programmes and efforts dedicated to poverty alleviation, including the implementation of the Sustainable Development Goals (SGDs)<sup>28</sup>

### **H) National Human Rights Institution**

25. During the 2013 Second Cycle of the UPR, Botswana accepted the recommendation to establish a National Human Rights Institution (NHRI). Botswana decided to establish a hybrid NHRI by broadening the current mandate of the Office of the Ombudsman, to include human rights. The requisite process of amending the Ombudsman Act<sup>29</sup>, has been ongoing since October 2014<sup>30</sup>.

- The Office of the Ombudsman is currently located under Office of the President. Its mandate is limited to issues of administration of justice. It is not clear if it will be possible for full compliance with the Paris Principles, once it becomes a hybrid NHRI, under the Office of the President.

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<sup>26</sup> Botswana National Poverty Strategy

<sup>27</sup> These programmes include Ipelegeng, the provision of blankets and food baskets

<sup>28</sup> United Nations Sustainable Development Goals

<sup>29</sup> Ombudsman Act 5 of 1995

<sup>30</sup> Amendment of the Ombudsman Act has been ongoing since 2014 and to this day not much has been done by the Office of the Ombudsman on issues related to human rights. The human rights mandate currently sits under Office of the President (at the Human Rights Unit). This has caused numerous problems as one does not know which institution to approach on human rights related issues.

- The Office of the Ombudsman has previously been slow at resolving cases; its mandate and work are not well understood by the public; and its independence is questioned due to it being located under the Office of the President. Consequently, there are concerns about its capacity and ability to effectively handle both issues of administration of justice and human rights
- There is a need for human rights education and awareness-raising in Botswana. The NHRI should focus on educating the public about human rights and remedial action to protect rights

**26. We recommend that the Government of Botswana should:**

- Ensure that the Office of the Ombudsman, as a National Human Rights Institution (NHRI) is independent and adheres to the Paris Principles
- Ensure that the Office of the Ombudsman is equipped with the necessary resources to effectively conduct its human rights mandate. This includes adequate resources for public education about its new mandate
- Consider the development, through consultation with parliamentarians, civil society and the private sector, of a national budget allocation for effective promotion and protection of human rights (including access to health, children's rights, disability rights, education, employment, poverty eradication).
- Ensure that the amendment of the Ombudsman Act proceeds swiftly so that the office can operate with its expanded mandate to enable the public to be assisted through protection of their human rights
- Provide a timeframe and budget for the completion of the production of the Comprehensive Human Rights Strategy linked to national development priorities (CHRSNAP) which was accepted at the 2013 Second Cycle UPR and Government's commitment stated by President Khama in November 2014. The Strategy will assist the Office of the Ombudsman to ensure that it focuses on a bottom-up, participatory, consultative and people-centred approach to human rights<sup>31</sup>. The Strategy will also ensure that the Office of the Ombudsman prioritises human rights issues based on the lived experiences of the people.
- Promote human rights education and awareness-raising for the public, including schools, through government ministries and other bodies.

**1) Indigenous Peoples**

27. The CKGR NGO Coalition (the Secretariat of which is DITSHWANELO) has been engaged in facilitating constructive engagement between the selected representatives of former and current residents of the Central Kalahari Game Reserve (CKGR) since 2006. In 2010, the Coalition

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<sup>31</sup> Comprehensive Human Rights Strategy is a bottom-up approach to human rights and is linked to national development priorities such as NDP10, NDP11, Vision 2016, Vision 2036, national policies and strategies i.e. poverty eradication and HIV/AIDS.

facilitated the beginning of a mapping exercise process of different areas inside the CKGR, aimed at the production of a community-based land use management plans, in active consultation with the communities, based on their indigenous knowledge systems. The communities actively participate in the process. It recognises the potential of this process for land use and for the creation of sustainable income generation and equitable participation in developmental processes. The plan will be required to address Government policies for the conservation of the CKGR biodiversity and wildlife resources as part of a formally protected area and wise management as well as development of the CKGR, as a pristine ecosystem and internationally renowned wilderness and tourism resource. The Government of Botswana has enabled the CKGR NGO Coalition to facilitate this process by providing the requisite entry permits to the CKGR, whenever they are required. The Government has also expressed its commitment to finding an amicable solution to the CKGR issue, through working with local stakeholders. The outcome document will be a basis of the continued constructive talks between the Government and the current and former residents of the CKGR.

28. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr James Anaya recommended that the Basarwa and Bakgalgadi communities from the Central Kalahari Game Reserve ... be allowed „to engage in subsistence hunting and gathering in accordance with traditional practices ...“<sup>32</sup>.

**29. We recommend that the Government of Botswana should:**

- Recognise the indigenous knowledge systems of the Basarwa/San which support the sustainable use of the environment, including traditional hunting and gathering practices
- Adopt the Natural Resources Management Plans based on consultative and participatory engagement with the CKGR communities who are working constructively with civil society
- Strengthen constructive dialogue with the CKGR NGO Coalition, comprising local civil society organization working with the CKGR communities, and with the CKGR communities
- Review the hunting ban with a view to its removal as hunting is important for the livelihood of the Basarwa/San community

**J) Governance**

30. Botswana has been labelled an exemplary country in terms of good governance on the African continent. There are several institutions established to ensure transparency and good governance.

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<sup>32</sup> A/HRC/15/37/Add.2 para 97.

- There is a need to ensure that the governance of the country is inclusive of the citizens and allows for their participation in all spheres. This includes decision-making in the democratic processes of the country<sup>33</sup>.
- Civil Society should be involved in the policy and legislation-making processes of the government
- The public should have access to services provided by government and this includes information on how to access these services by the public
- The environment in Botswana should be one where there is transparency from the government, Parliament and parastatals

**31. We recommend that the Government of Botswana should:**

- Adopt access to information legislation
- Create a legal framework for the transparent management of public resources with adequate monitoring mechanisms to assess compliance with the UN Convention Against Corruption.
- Simplify the procedures for access to services, such as applications for birth certificates, for the public and provide accessible information
- Include civil society in the formation and implementation of policies and legislation
- Allow for a review of the Constitution of Botswana to include social, economic and cultural rights

**K) Civil Society Space**

32. There is shrinking space for civil society participation in democratic governance due to factors including lack of resources (both financial and human resources), of effective coordination, and constructive collaboration with the government

It must be noted that for the first time in preparation for the UPR, the Government requested the UPR NGO Working Group to facilitate the three civil society consultations held in December 2016 and May 2017, in preparation for the Third Cycle UPR 2018.<sup>34</sup>

**33. We recommend that the Government of Botswana should:**

- Commit a budget allocation for all civil society sectors in order to strengthen civil society and to enhance its role in working with the government.
- Financially enable civil society participation in public consultations concerning formation and implementation of policies, legislation and programmes

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<sup>33</sup> Electoral Voting Machines in Botswana <http://www.mmegi.bw/index.php?aid=61899&dir=2016/july/29>.

<sup>34</sup> List of NGOs in consultations are listed in Annex 2

- Include civil society in all fora related to the protection and promotion of human rights

#### **L) Freedom of Information and Access to Information**

- There is currently no law regulating access to information . The Freedom of Information Bill was presented to Parliament (2010) by then leader of opposition, Dumelang Saleshando.<sup>35</sup> Neither the Freedom of Information Bill nor Declaration of Assets and Liabilities Bill were passed as parliament was told that the government was already working on them.<sup>36</sup> Lack of legislated access to information limits ability to hold elected leaders and Government accountable.
- **We recommend that the Government of Botswana should:**
  - Provide an update about the production process of the Freedom of Information Act and the Declaration of Assets and Liabilities Act.
  - Create an environment where freedom of information and access to information are valued as a fundamental human right

#### **M) Access to justice**

34. Botswana has a a Legal Aid Botswana Programme<sup>37</sup> which aims to promote access to justice in Botswana.

- Legal Aid Botswana has offices in Gaborone, Tsabong, Muan and Francistown, but not in other areas in Botswana
- The Legal Aid Botswana Offices are understaffed and often take time to assist clients
- Legal Aid Botswana only works on civil and not criminal matters
- Some Botswana are not aware of Legal Aid Botswana, the locations of the various offices and how Legal Aid Botswana is meant to assist them

35. **We recommend that the Government of Botswana should:**

- Raise awareness about Legal Aid Botswana, its mandate, the locations and how Botswana can benefit from it
- Increase the number of staff members working for Legal Aid Botswana
- Increase the number and spread of Legal Aid offices to facilitate access to justice for those who cannot afford to pay for legal assistance

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<sup>35</sup> The Bill was turned down by the ruling party. <http://allafrica.com/stories/201505190847.html>.

<sup>36</sup> MP for Selebi Phikwe West, Mr Dithapelo Keorapetse. Botswana Daily News, 12 February 2017. <http://www.dailynews.gov.bw/news-details.php?nid=33951>

<sup>37</sup> Legal Aid Botswana is a permanent independent public entity to be known as Legal Aid Botswana to provide state funded legal aid to indigents in Botswana

- Expand its mandate to include criminal matters

#### **N) “Botho” and Social Cohesion**

36. Botswana is a country built on the value of “botho”<sup>38</sup> and social cohesion. During its fifty (50) years of independence, Botswana has always encouraged social cohesion and “botho” as being fundamental to human rights<sup>39</sup>

- There has been an emergence of religious churches which are not tolerant about certain rights, such as Sexual Orientation and Gender Identity rights. These churches promote the discrimination and sometimes the persecution of sexual minorities
- There is the emergence of non-tolerance for the elderly, with caregivers abusing the elderly and often stealing the benefits which are due to them i.e. their pension money
- There has been an increase in youth unemployment<sup>40</sup> over the past few years, despite most Botswana having access to funding for tertiary education

37. **We recommend that the government of Botswana:**

- Increase the amount of the old age pension to P300 (27 Euros) a month as the cost of living continues to increase
- Take steps, including involving the private sector, to decrease youth unemployment and include the youth in activities related to social cohesion and governance
- Review legislation for the registration of societies and churches to ensure strict adherence to human rights standards of non-discrimination

#### **O) Sexual Orientation and Gender Identity**

38. Botswana has not decriminalised same sex relations in the country. LeGaBiBo<sup>41</sup> was registered after a lengthy court case.<sup>42</sup> The Employment Act<sup>43</sup> was amended to include non-discrimination based on sexual orientation in the work place

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<sup>38</sup> Botho is an example of a social contract of mutual respect, responsibility and accountability that members of society have toward each other and defines a process for earning respect by first giving it, and to gain empowerment by empowering others.”. UBotho. University of Botswana, School of Graduate Studies. <http://www.ub.bw/home/ac/1/fac/14/school-of-graduate-studies/>

<sup>39</sup> These are also found in Vision 2016

<sup>40</sup> Youth Unemployment in Botswana is at 33.9%. <https://tradingeconomics.com/botswana/unemployment-youth-total-percent-of-total-labor-force-ages-15-24-wb-data.html>.

<sup>41</sup> Lesbians, Gays and Bisexuals of Botswana is a member of the UPR NGO Working Group

<sup>42</sup> [Universal Periodic Review \(UPR\) NGO Working Group Congratulates LeGaBiBo on landmark win. 18 March 2016.](#)

<sup>43</sup> Employment Act 10 of 2010

- There are no mechanisms in place to ensure that transgender people are able to change their documentation once they have transitioned
- There is no training for service providers on how to assist people who wish to transition, who are in the process of transitioning and those who have transitioned.
- There needs to be more awareness-raising on issues related to Sexual Orientation and Gender Identity (SOGI) to help to eradicate discrimination and stigma
- There needs to be assistance to intersex children and their parents to ensure respect of human rights when deciding on gender identity choices

**39. We recommend that the Government of Botswana should:**

- Enact anti-discrimination laws to ensure that the rights of sexual minorities are protected and promoted
- Provide training for service providers on issues related to transitioning
- Create mechanisms which can be used by the transgender community to be able to change their documentation once they have transitioned.
- Decriminalise same-sex relations and allow for same-sex marriages in the law
- Raise awareness about issues relating to sexual orientation and gender identity

**P) The Death Penalty**

40. Botswana is the only country in the SADC region which retains the death penalty in law and in practice. The most recent execution in Botswana was in 2016<sup>44</sup>

- In the 2013 UPR Cycle, Botswana accepted the recommendations to inform the families of death row inmate prior to the execution being carried out and to hold a public debate on the death penalty. Neither of these accepted recommendations has been implemented.<sup>45</sup>
- Botswana is one of the few countries on the African continent which is against the African Commission Protocol<sup>46</sup> which calls for the abolition of the death penalty by African states

**41. We recommend that the Government of Botswana should:**

- Hold public consultations, in a participatory manner together with civil society, about the desirability and long-term effectiveness of the use of the death penalty as a deterrent.
- Be further encouraged to seriously consider implementing a moratorium
- Refrain from lobbying against the Protocol on the death penalty on the continent in order to not prevent its adoption by those States which support it.

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<sup>44</sup> Patrick Gabaakanye case. <http://www.mmegi.bw/index.php?aid=60216&dir=2016/may/25>.

<sup>45</sup> Patrick Gabaakanye's family was not informed before his execution in 2016 and the public debate is yet to be held

<sup>46</sup> draft Protocol to the African Charter on Human and peoples' rights on the Abolition of the death Penalty in Africa was adopted by the African Commission in May 2015.

