

## FOLLOW UP TO THE PREVIOUS REVIEW

1. At the previous review, Botswana supported 93 of the 207 recommendations made.<sup>1</sup>
2. Since then, Botswana has made progress with regards to implementation of some recommendations, including some noted, most especially with respect to the rights of the LGBTI people.<sup>2</sup> In November 2021, the Court of Appeal upheld a High Court judgment that declared a law criminalizing consensual same-sex sexual relations unconstitutional.<sup>3</sup>
3. Botswana supported a recommendation on the protection of children against exploitation<sup>4</sup> in the previous review. Despite this, the country continues to legalise the use of corporal punishment against children in school and home settings.
4. Botswana acceded to the Convention on the Rights of Persons with Disabilities in July 2021<sup>5</sup> but has not ratified any of the other remaining core human rights treaties.
5. Regrettably, Botswana noted two recommendations on the protection of refugee rights, including to lift its reservations to the 1951 Convention. Botswana maintains its reservations and the asylum space in Botswana is becoming increasingly precarious (see section in Human rights situation on the ground).
6. Botswana supported five recommendations relating to gender-based violence,<sup>6</sup> and yet the situation of women has continued to deteriorate in the country. The government has also taken no steps to address the recommendations to criminalize marital rape.<sup>7</sup>
7. Botswana supported two recommendations<sup>8</sup> relating to beginning public discussions<sup>8</sup> on the use of the death penalty. Those discussions are currently ongoing in the context of the review of the Constitution.
8. Botswana supported 15 recommendations in the previous review on the establishment of a National Human Rights Institution that complies with the Paris Principles, but does not yet have one functioning, though it is currently in the process of setting one up.<sup>9</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

9. The Republic of Botswana's domestic institutional human rights framework includes the Constitution, national legislation, policy and bodies such as the Independent Electoral Commission, the Office of the Ombudsman as well as Government Ministries and Departments. There is also an active civil society and civic organizations continue to make meaningful contributions to the promotion and protection of human rights in the country.
10. However, one of the greatest challenges Botswana faces with regards to its human rights framework is that although the Constitution sets out fundamental rights & freedoms of citizens it does not protect socio-economic rights, which has led to increased vulnerability and dependency of the poor.
11. With regards to international treaties, although Botswana has quite a high ratification rate, it does not incorporate many provisions of international law into domestic law & therefore they cannot be enforced. Regrettably, Botswana has not implemented the five recommendations at the previous review to take steps to do so.<sup>10</sup>

## HUMAN RIGHTS SITUATION ON THE GROUND

### Corporal punishment

12. In Botswana, corporal punishment (flogging) is routinely used as a form of punishment in traditional courts and is also lawful under section 27 and section 61 of the Children's Act.<sup>11</sup> According to the NGO Ditshwanelo (the Botswana Centre for Human Rights), a 16-year-old boy was flogged at a traditional court (*Kgotla*) in Mahetlwe village in Kweneng District by the village's Deputy Chief, and on instructions from the police, for not wearing a face mask as required by regulations put in place in response to the Covid-19 pandemic.<sup>12</sup>

### The death penalty

13. Botswana is the only state in Southern Africa still carrying out executions, contrary to the growing trend towards abolition.<sup>13</sup> The growing number of states prohibiting the death penalty or refraining from using it point to the increasing recognition of the death penalty as a cruel punishment in itself, inconsistent with the prohibition on torture and other cruel, inhuman or degrading treatment or punishment under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amnesty International opposes the death penalty unconditionally as the ultimate cruel, inhuman and degrading punishment.
14. Botswana imposes a mandatory death penalty for various crimes under the Penal Code,<sup>14</sup> and the Botswana Defence Force Act, 1997.<sup>15</sup> The imposition of the mandatory death penalty is prohibited under international human rights law and standards. The UN Human Rights Committee has stated that "mandatory death sentences that leave domestic courts with no discretion as to whether to designate the offence as a crime warranting the death penalty, and whether to issue the death sentence in the particular circumstances of the offender, are arbitrary in nature."<sup>16</sup> On 28 November 2019, the African Court on Human and Peoples' Rights ruled in a landmark judgement that mandatory imposition of the death penalty was unfair, because it denied the convicted person the right to be heard and present mitigating circumstances; and constituted an arbitrary deprivation of life.<sup>17</sup>
15. Amnesty international recorded three executions in Botswana in 2021, six people were sentenced to death and one person's death sentence was commuted. At the end of 2021, six people were under sentence of death. All of the above are men, and all convicted of murder. The number of persons executed in 2021 was identical to the number of those executed in 2020.<sup>18</sup>
16. People on death row are subjected to cruel, inhuman or degrading treatment prior to executions. The date and time of the set execution is not communicated to them in advance. There is a separate place where people on death row are housed, called "Cell 10". The day before a person is executed, they are transported to the "death watch" cell at 6am in the morning, where they spend the last 24 hours of their life. They are executed by hanging at 6am the morning after that. As stated by the Human Rights Committee, "[f]ailure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the [International Covenant on Civil and Political Rights]".<sup>19</sup>

17. The authorities of Botswana also do not provide notice of any set executions to the family members and representatives of those at imminent risk, nor the forthcoming executions announced to the public. Furthermore, the bodies of those executed are usually not released to their family members for burial.

### Gender-based violence (GBV)

18. Violence against women in Botswana remains to be at endemic levels with most recent statistics showing that 67% of women have experienced some form of violence.<sup>20</sup> In April 2021, the Botswana GBV Prevention and Support Centre (a local NGO) reported an increase in violence against women and girls during the Covid-19 pandemic.<sup>21</sup>
19. According to the UNFPA, in the most recent Gender based violence indicator study, only 1.2% of Botswana women reported cases of GBV to the police, which indicates a lack of trust in the police and entire justice system as a whole.<sup>22</sup>
20. In July 2022 the Botswana Police Force reported that between 1 January and 31 March 2022 there were 349 reported murders, 38% of which were related to gender-based violence which makes it a major cause of murder in the country during this reported period.<sup>23</sup>
21. Marital rape is not a criminal offence in Botswana although other forms of rape are criminalized.

### Refugee and migrant rights

22. Botswana is a state party to the 1951 Convention (the 1951 Convention) relating to the Status of Refugees and its 1967 Protocol.<sup>24</sup> It is also state party to the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention).<sup>25</sup> However, Botswana acceded to the 1951 Convention with seven reservations.<sup>26</sup> Botswana also has national refugee legislation: The Refugees (Recognition and Control) Act of 1968<sup>27</sup>, which governs asylum seekers and refugees in the country.
23. One of the primary challenges for refugee protection in Botswana is the archaic national refugee legislation. The Refugee Act, which predated Botswana's accession to the 1951 Convention, provides insufficient protection in relation to the UN and OAU Conventions. The reservations made to the 1951 convention are also problematic, particularly the reservations Article 26 on freedom of movement, Article 17 on wage earning employment and Article 34 on naturalization. Consequently, refugee protection in Botswana takes place in a legislative and policy environment that prescribes encampment, thereby limiting freedom of movement, restrictions on employment, curtailing self-reliance and integration, and also limits options for durable solutions, in particular local integration.
24. Though there is unfettered access to territory by asylum seekers, the status determination process in Botswana is intractably slow and typified by high rejection rates owing to the 'policy' of first country of asylum. Asylum seekers awaiting status determination are arbitrarily detained in cruel and punishing facilities for no reason other than their immigration status,<sup>28</sup> with no access to legal representation as the country is yet to have functional short term reception centres.
25. As such, the right to seek and enjoy asylum continues to be severely limited. Botswana continues to host fewer refugees and asylum seekers than most countries in Africa (674 refugees and 58 asylum seekers as of September 2021).<sup>29</sup> In April 2021, UNHCR raised concerns after the authorities deported 57 Zimbabwean refugees who had lived in Botswana since 2008.<sup>30</sup> The refugees failed to register for voluntary repatriation, which led to their forced removal in March 2021, which amounted to refoulement.

26. The policy and practice for asylum seekers in Botswana is to be detained pending status determination. People are arbitrary detained for long periods of time at the “Centre for Illegal immigrants” where asylum seekers share the same space as ‘illegal immigrants’<sup>31</sup>, within facilities which are not up to facilities which are not intended to house and protect asylum seekers whilst awaiting status determination, but rather, are more akin to prison facilities complete with cells and punishing environments. In most cases, asylum seekers perceive these facilities as akin to prisons, with the environment conjuring feelings of awaiting trial, while what in essence the what asylum seekers will be waiting on is protection. This process is particularly harrowing for children, who are routinely detained with their parents and denied social services such as access to education, in contravention of the Children’s Act.<sup>32</sup>
27. In July 2022, the UN Working Group on Arbitrary Detention visited Botswana and found several instances where detentions fell short of international standards, including the arbitrary detention of asylum seekers and their children who had no access to education while detained.<sup>33</sup>
28. Undocumented migrants (defined as ‘illegal immigrants’ under Botswana’s law) are also subject to extended detentions when they are found to be in the country irregularly.<sup>34</sup>

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

### Amnesty International calls on the government of Botswana to:

#### Corporal punishment

29. As recommended in the previous review, abolish all forms of judicial corporal punishment in law, including by traditional courts and within school and home settings.

#### The death penalty

30. As recommended in previous reviews, urgently abolish the death penalty for all crimes.

Pending abolition:

31. Immediately introduce an official moratorium on executions and, as Botswana committed to do in the previous review, continue an informed national public debate aimed at promoting full abolition of the death penalty;
32. Remove from national legislation provisions that violate international human rights law and standards, including by removing the mandatory death penalty for all offences;
33. Ensure that those facing execution, their family members and legal representative are promptly informed of the set time of the execution, and that bodies are returned to family members should they wish to receive them;
34. Ensure that all persons facing the death penalty – including those from disadvantaged or marginalized socio-economic backgrounds – are provided access to competent legal assistance, from the moment of arrest or when they first face criminal charges, all the way through to appeals and other recourse procedures, and ensure that Legal Aid is provided sufficient resources to appoint competent pro bono lawyers in all regions of the country; and

35. Support international initiatives in favour of ending the death penalty.

### **Gender-Based Violence**

36. Prioritise appropriate, mandatory, initial and continuous training for all relevant professionals, including police and investigating officers, detectives, and other law enforcement officials who work with victims and survivors of gender-based violence on fulfilling their legal obligations.
37. Appropriately resource police officers and stations, including ensuring each station has a victim-friendly room.
38. Ensure regular, independent monitoring and evaluation of the handling of rape cases by the police, including monitoring the quality and timeliness of investigations, and link performance related targets to these.
39. Promote changes in the social and cultural patterns of behaviour of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence, for instance through informed awareness-raising campaigns owned by and directed at everyone in Botswana society, as well as specialized training on these issues for officials working within the justice system.
40. Criminalize marital rape.

### **Refugee and Migrant Rights**

41. Finalise the review of the Refugee Act to ensure it is in line with international standards.
42. Implement fair asylum procedures at the RAC which should apply international principles and refrain from the use of 'first country of asylum' policy.
43. Refrain from detaining asylum seekers solely due to their immigration status and implement alternatives to detention. Ensure reception facilities are equipped to provide medical care and assessments of needs before releasing people to await status determination".
44. Remove Botswana's seven reservations to the 1951 Convention relating to the Status of Refugees.
45. Remove the encampment system.
46. Allow refugees unfettered access to employment as well as the possibility to naturalize.

## ANNEX 1

# KEY AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

Botswana: Submission to the UN Committee against Torture, (Index: AFR 15/5762/2022), 30 June 2022  
<https://www.amnesty.org/en/documents/afr15/5762/2022/en/>

Botswana: Executions of two people show contempt for right to life under President Masisi's government (Press release) 9 February 2021, <https://www.amnesty.org/en/latest/press-release/2021/02/botswana-executions-of-two-people-show-contempt-for-right-to-life-under-president-masisis-government/>

Botswana: President Masisi's first year in office marred by executions (Press release), October 30 2020, <https://www.amnesty.org/en/latest/news/2020/10/botswana-president-masisi-first-year-in-office-marred-by-executions-2/>

Botswana: President-elect Masisi must make death penalty abolition his top priority (Press release), October 31 2019, <https://www.amnesty.org/en/latest/news/2019/10/botswana-president-elect-masisi-must-make-death-penalty-abolition-his-top-priority-2/>

Botswana: Amnesty International calls on Botswana to step up action to promote human rights (Index: AFR 15/8689/2018), 28 June 2018, <https://www.amnesty.org/en/documents/afr15/8689/2018/en/>

Botswana: Execution of prisoner is an appalling step backwards (Press release), February 19 2018, <https://www.amnesty.org/en/latest/news/2018/02/botswana-execution-of-prisoner-is-an-appalling-step-backwards/>

---

<sup>1</sup> Report of the Human Rights Council on its thirty-eighth session, UN Doc. A/HRC/38/2, para. 492

<sup>2</sup> Botswana noted 13 recommendations at the previous review on ending discrimination against LGBTI persons including by decriminalizing same-sex sexual relations: recommendations 128.46 (Philippines), 129.9 (Netherlands), 129.11-14 (Australia, Brazil, Germany, Uruguay) and 129.45-51 (Sweden, Iceland, Canada, Spain, Argentina, France, United States of America), UN Doc. A/HRC/38/8 and its appendix A/HRC/38/8/Add.1

<sup>3</sup> *The Attorney-General v Letsweletse Motshidiemang* (LEGABIBO as amicus curiae) CACGB-157-19

<sup>4</sup> Recommendation 128.68 (Myanmar)

<sup>5</sup> Despite having noted the recommendations to ratify the Convention on the Rights of Persons with Disabilities, Botswana indicated at the outcome adoption that it had decided to ratify this treaty and expected to do so by 2018. UN Doc. A.HRC/38/2 para. 495

<sup>6</sup> A/HRC/38/8 and its appendix A/HRC/38/8/Add.1, recommendations 127.31-32 (Australia, Belgium); ();127.60 (Ethiopia), 127.73 (Mexico), 128.48 (Indonesia),

<sup>7</sup> A/HRC/38/8, recommendation 129.38 (Canada)

<sup>8</sup> Recommendations 127.28 (Rwanda) and 127.29 (Ukraine)

<sup>9</sup> 127.6 -20 (Portugal, Sierra Leone, Ukraine, South Africa, Togo, Afghanistan, Liechtenstein, Morocco, Greece, Thailand, Timor-Leste, Canada, Namibia, Germany));

<sup>10</sup> 127.1 (Madagascar), 127.3 (Sudan), 127.5 (Namibia), 128.23 (Armenia) 128.24 (Rwanda)

<sup>11</sup> Children's Act, 2009, No. 8 of 2009

<sup>12</sup> Amnesty International Report 2020/21: The state of the world's human rights, April 7, 2021, Index Number: POL 10/3202/2021

<sup>13</sup> At the time of writing, the majority of the world's countries (110) have abolished the death penalty for all crimes and more than two-thirds are considered by Amnesty International to be abolitionist in law or practice.

<sup>14</sup> Penal Code (Amendment) Act, Cap. 08:01 2018

<sup>15</sup> Botswana Defence Force Act, No.3 of 2018

---

<sup>16</sup> UN Human Rights Committee, General comment No. 36, Article 6: right to life, UN Doc.CCPR/C/GC/36, 3 September 2019,

---

para.37.

<sup>17</sup> African Court on Human and Peoples' Rights, *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015, 28 November 2019, para.114,

<https://www.africancourt.org/cpmt/storage/app/uploads/public/5f5/63d/f99/5f563df99fbc7507699184.pdf>

<sup>18</sup> Amnesty International, *Death sentences and executions in 2021* (Index ACT 50/5418/2022), May 2022.

<sup>19</sup> Human Rights Committee, General comment No. 36, Article 6: right to life, UN Doc.CCPR/C/GC/36, 3 September 2019, para.40, and Concluding observations of the Human Rights Committee, Japan, UN Doc. CCPR/C/JPN/CO/5. See also Concluding observations on the second periodic report of Japan, adopted by the Committee at its fiftieth session (6-31 May 2013), UN Doc.CAT/C/JPN/CP/2; and interim report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/67/279, para. 50.

<sup>20</sup> Genderlinks Gender Based Violence Indicators Study © Copyright 2012 GL and WAD ISBN: 978-0-9869880-3-5

<sup>21</sup> Xinhua, 'Roundup: Gender based violence cases rise in Botswana, 15 April 2021,

[http://www.xinhuanet.com/english/africa/2021-04/15/c\\_139880835.htm](http://www.xinhuanet.com/english/africa/2021-04/15/c_139880835.htm)

<sup>22</sup> Genderlinks Gender Based Violence Indicators Study © Copyright 2012 GL and WAD ISBN: 978-0-9869880-3-5

<sup>23</sup> The Botswana Gazette, 300 murders in three months, 27 July 2022, <https://www.thegazette.news/news/300-murders-in-three-months/>

<sup>24</sup> UN General Assembly, *Convention Relating to the Status of Refugees*,

[https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en#EndDec)

<sup>25</sup> The 1969 OAU Refugee Convention and the Protection of People fleeing Armed Conflict and Other Situations of Violence in the Context of Individual Refugee Status Determination, January 2013, <https://au.int/sites/default/files/treaties/36400-sl-OAU%20Convention%20Governing%20the%20Specific%20Aspects%20of%20Refugee%20Problems%20in%20Africa.pdf> ]

<sup>26</sup> Article 7 – Exemption from reciprocity, Article 12(1) – Personal Status, Article 17 – Employment, Article 26 – Freedom of movement, Article 31 – Refugees unlawfully in country of refuge, Article 32 – Expulsion and Article 34 on Naturalization.

<sup>27</sup> Botswana: Refugees (Recognition and Control) Act of 1968 [], Cap. 25:03, 5 April 1968, available at:

<https://www.refworld.org/docid/3ae6b4d60.html> [accessed 27 February 2021]

<sup>28</sup> Daily Maverick, *Botswana: Asylum-seekers accuse prison officials of ill-treatment and sexual assault*, 08 January 2018, <https://www.dailymaverick.co.za/article/2018-01-08-botswana-asylum-seekers-accuse-prison-officials-of-ill-treatment-and-sexual-assault/>

<sup>29</sup> Email from officer in charge at UNHCR Botswana Office, 13 September 2021.

<sup>30</sup> VOA, *UNHCR Voices Concern After Botswana Deports Zimbabwean Refugees*, 18 April 2021

[https://www.voanews.com/a/africa\\_unhcr-voices-concern-after-botswana-deports-zimbabwean-refugees/6204751.html#:~:text=High%20Commissioner%20for%20Refugees%20\(UNHCR,forced%20removal%20late%20last%20week.](https://www.voanews.com/a/africa_unhcr-voices-concern-after-botswana-deports-zimbabwean-refugees/6204751.html#:~:text=High%20Commissioner%20for%20Refugees%20(UNHCR,forced%20removal%20late%20last%20week.)

<sup>31</sup> Broad term which includes undocumented migrants, irregular migrants, failed asylum seekers, refugees who have had their refugee status stripped, people who have been declared 'undesirable'.

<sup>32</sup> Section 18 of the Children's Act, 2009 (No. 8 of 2009)

Also see E Macharia Mokobi (2020) *Child asylum seekers in Botswana: a critique of the Ngezi and Iragi Decisions Safeguarding Children's Rights in Immigration law*, 217 - 233

<sup>33</sup> United Nations *Botswana must urgently embrace further safeguards against arbitrary detention for all – UN experts*,

15 July 2022, <https://www.ohchr.org/en/press-releases/2022/07/botswana-must-urgently-embrace-further-safeguards-against-arbitrary#:~:text=The%20Working%20Group%20on%20Arbitrary,of%20asylum%2Dseekers%20and%20immigrants.>

<sup>34</sup> United Nations *Botswana must urgently embrace further safeguards against arbitrary detention for all – UN experts*,

15 July 2022, <https://www.ohchr.org/en/press-releases/2022/07/botswana-must-urgently-embrace-further-safeguards-against-arbitrary#:~:text=The%20Working%20Group%20on%20Arbitrary,of%20asylum%2Dseekers%20and%20immigrants>