

Submission by the United Nations Country Team Botswana



For the UN Compilation Report

Universal Periodic Review: 4th Cycle

Introduction

1. Botswana's democracy is anchored in its 1966 Constitution, which is currently undergoing a comprehensive review after appointment of a 2021 Presidential Commission of Enquiry. Botswana continues to make progress toward protection of fundamental Rights and Freedoms including the recent decriminalization of same sex activity between consenting adults, provision of Antiretroviral Treatment (ART) of HIV to include non-citizens and ratification of the CRPD. However, the country continues to face critical challenges such as high unemployment and extreme inequalities.
2. The Government of Botswana and the United Nations in Botswana have signed the United Nations Sustainable Development Cooperation Framework (UNSDCF) for the years 2022-2026. The UNSDCF responds to the gaps identified in the 2021 Common Country Analysis (CCA) and is aligned with national priorities outlined in the National Development Plan (NDP 11), National Vision 2036 and the 2030 Agenda. The UNSDCF has identifies inequalities as a priority with focus on marginalised groups and those left furthest behind.

Methodology

3. This is a Botswana United Nations Country Team (UNCT) report. The Heads of UN agencies through the UNCT, nominated focal points at the technical level to draft this submission. The entity focal points received an orientation from the Office of the High Commission on Human Rights (OHCHR). OHCHR also developed the template, provided supporting documents, and developed the Road Map for the UPR report in collaboration with the Resident Coordinator's Office (RCO). The draft text was reviewed and endorsed by the UNCT and the RC prior to its submission.

I. Thematic areas: Observations and recommendations

Acceptance of international norms and cooperation with international human rights mechanismsⁱ

4. Botswana is a State party to six of the nine Core Human Rights Treaties. The Government continues to make strides towards ratification following the most recent accession to the Convention on the Rights of Persons with Disabilities (CRPD) on 21st July 2021. On 30th June 2022, the Government deposited an instrument of withdrawal to the UN Secretary General on article 1 of the Convention on the Rights of the Child (CRC).ⁱⁱ
5. Botswana is not a State party to the International Covenant of Economic, Social and Cultural Rights (ICESCR), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and the Convention for the Protection of All Persons from Enforced Disappearance (CED). In terms of individual communication procedure to treaty bodies, Botswana has only acceded to the Individual communication procedure under the International Convention on the Elimination of All Forms of Racial Discrimination (CEDAW). Botswana has also accepted the inquiry procedure under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and the (CEDAW).
6. Botswana has an Inter-Ministerial Committee on Treaties, Conventions and Protocols (IMC) that serves as a national mechanism for reporting and follow-up (NMRF) with a secretariat hosted by the Ministry of Foreign Affairs (MFA) . The IMC is responsible for coordinating reporting to human rights mechanisms including implementing recommendations. The IMC continues to need technical support to strengthen the capacity of its members.
7. Recently, with technical support from the OHCHR Regional Office for Southern Africa in collaboration with the UNCT, the Government of Botswana has made steady progress

with the submission of overdue reports to treaty bodiesⁱⁱⁱ and has gone through constructive dialogues on the CRC and CAT. Although, Botswana receives technical support from OHCHR on the use of the national recommendations, the ability and capacity to facilitate the implementation of recommendations^{iv} is weak.

8. Botswana is still to submit two overdue reports under the optional protocol to the CRC on the involvement of children in armed conflict and on the Rights of the Child on the sale of children child prostitution and child pornography, respectively.
9. Botswana has successfully been reviewed under the three cycles of the Universal Periodic Review (UPR) with the State report for the UPR 4th cycle due for submission in February 2023 and is to be reviewed in the 43rd session of the Human Rights Council in April/May 2023. On the May 2nd, 2018, Botswana extended an invitation to the Special Procedures. From 2009 to date, special procedure mandate holders on indigenous peoples, cultural rights, water, and sanitation, minority and arbitrary detention have undertaken country visits to Botswana. There are currently 9 pending visit requests and reminders from special procedure mandate holders.^v

Recommendations

- Consider ratifying pending international human rights treaties particularly the International Covenant on Economic, Social and Cultural Rights.
- The Government of Botswana should take concrete steps to strengthen the capacity of the Interministerial Committee on Treaties, Conventions and Protocols to function effectively including implementation of recommendations from all human rights mechanisms and the use of the national recommendations tracking database.
- Continue to accept visits from special procedure mandate holders.

Constitutional and legislative framework^{vi}

10. Botswana embarked on a constitutional review process. The Terms of Reference for the review include for the Commission to ascertain from the public, their views on the operation of the Constitution and, in particular, the strengths and weaknesses of the Constitution.^{vii}
11. Botswana has a dualist system of law, which requires that international human rights be domesticated.^{viii} Botswana has made positive efforts to harmonize statutory and customary legislation with the ICCPR. However, provisions remain in domestic legislation, particularly customary laws, that are inconsistent with the ICCPR^{ix} and CEDAW.^x
12. Section 15 of the Constitution prohibits discrimination on the grounds of “race, tribe, place of origin, political opinions, colour, creed or sex” and makes exceptions for non-citizens and in personal law matters. Section 15 is therefore not in line with Botswana’s international human rights treaty obligations.^{xi}
13. Botswana practices capital punishment. Section 4 of the Constitution guarantees the right to life “save in execution of the sentence of a court in respect of an offence under the law in force in Botswana of which he or she has been convicted”, whereas section 25 and 26 of the Penal Code regulates the sentence of death. The death penalty is mandatory for the crimes of murder and treason. To domesticate its international human rights treaty obligations, a political and legislative process aimed at the abolition of the death penalty is required.^{xii}
14. Corporal punishment is lawful in Botswana. Section 25 of the Penal Code expressly provides for corporal punishment as a competent form of punishment, section 90 of the Children’s Act provides for corporal punishment as a non-custodial sentence, and sections 114 and 115 of the Prison Act establish corporal punishment as a disciplinary

measure in prisons.^{xiii}

15. The Emergency Powers Act (2020) introduced offences with heavy punishment, including imprisonment, for anyone publishing information with “the intention to deceive” the public about COVID-19. It also prohibits journalists from using sources other than the country’s director of health services or the World Health Organization when reporting on COVID-19. This law curtails debate and transmission of information and ideas with respect to COVID-19.

Recommendations

- Assess and amend its constitutional and legislative framework to ensure full harmonisation with international human rights commitments;
- Amend section 15 of the Constitution to bring the definition of discrimination in line with international human rights commitments;
- Revise constitutional and legislative framework to prohibit corporal punishment and with the aim of abolishing the death penalty.

IV. Structure of the National Human Rights Machinery

The National Human Rights Institution^{xiv}

17. Botswana has amended the Ombudsman Act 2021 to extend the mandate of the office to include a human rights mandate and establish that office as a national human rights institution. However, this is not yet operational. The amended Ombudsman Act 2021 does not sufficiently ensure the participation of civil society in the appointment of the officials of the NHRI and does not fully meet the principles relating to the status of national institutions for the promotion and protection of human rights (i.e. the Paris Principles).^{xv}

Recommendations

- Operationalize the expanded mandates and capacities of the NHRI’s office, including through the provision of necessary funding and the utilization of regional offices. Additionally, explicitly provide for a separate budget line to ensure financial autonomy of the NHRI.

Non-Discrimination and Equality

Discrimination and violence against women^{xvi}

18. Botswana has progressed toward protecting and promoting women’s rights. In 2017, Botswana ratified the Southern African Development Community Protocol on Gender and Development.
19. Botswana has moved the national gender machinery to the Ministry of Youth, Gender, Sports and Culture. Botswana’s National Gender Commission has been established with a mandate to monitor the implementation of gender policies.
20. Botswana has increased funding for the national administration for the advancement of women. However, there remains a lack of adequate gender-responsive budgeting and technical capacity in the government for the advancement of women, especially at the local level. In 2015 Botswana adopted a national policy on gender and development, and a national operational plan in 2018. The Government set up ten gender committees across the country to assist with implementation and to spark desired changes in norms and behaviours. Even so, harmful practices, including child marriage, and deep-rooted

stereotypes regarding the roles and responsibilities of men and women in the family and the community continue to persist. Mechanisms to monitor and evaluate the implementation of policy on gender, with a view to changing such stereotypes and harmful practices, are lacking.

21. In 2016, Botswana recognised gender equality as a key element of social development in its national vision 2036. Legislation is yet to include a definition of discrimination against women which covers prohibited grounds of discrimination and encompasses both direct and indirect discrimination in line with CEDAW article 1. Section 15(4) (b)-(d) of the Constitution still provides exceptions to the right not to be discriminated against.
22. Certain legal provisions require review and amendment to ensure compliance with the CEDAW and its recommendations. These include review and amendment of the Domestic Violence Act and review of the Penal Code (2005), and to explicitly criminalise marital rape. Elements of customary law and practices that discriminate against women persist, particularly in relation to marriage and family relations, inheritance, property rights, and legal guardianship by men of unmarried women.
23. Botswana has not ratified the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (i.e. the Maputo Protocol).
24. Botswana adopted a national strategy to end gender-based violence (GBV) for the period 2014-2020. However, GBV rates remain high with no legislation specifically criminalising sexual violence. Shelters for victims are insufficient and medical and psychological rehabilitation services are lacking. Data on protection orders issued and compliance is also missing.
25. Women, particularly those living in poverty or those with disabilities continue to face barriers in accessing justice and legal aid.
26. Women remain at a disadvantage in terms of participation in political and public life, in access to education, and in provision of health care and housing.^[xix] Women are under-represented in Parliament, the House of Chiefs and local government, as well as in decision-making positions.
27. Botswana has made efforts to enhance the economic empowerment of women, especially toward their participation in trade; to organize income-generating projects and to provide short-term loans. Even so, women remain disproportionately affected by poverty, with limited access to land and housing, are concentrated in the informal sector, and are excluded from labour and social security protections such as pension benefits.
28. Abortion remains criminalised, except in cases of rape, incest, threats to the life or health of the pregnant woman or severe foetal impairment (section 160 of the Penal Code). Abortion services are limited.
29. Botswana acknowledged the importance of ensuring women and girls have access to facilities for menstrual hygiene management, particularly in schools. The Government has also made efforts to appoint a gender focal point for gender mainstreaming in the water and sanitation sector. Even so, with limited access to water and sanitation in schools and health centres in the country, women and girls have few accommodations and facilities to manage their menstrual cycle safely and hygienically.
30. Indigenous women face marginalisation with respect to their political rights and risk losing their cultural and tribal identities. Among others, indigenous women, women prisoners, women with disabilities, lesbian, bisexual and transgender women, intersex persons, and migrant women, lack equal access to free antiretroviral treatment. Additionally, migrant women and girls detained in transit centres are often separated from their male family members.

Recommendations:

- Ratify the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.
- Fully domesticate the CEDAW; review and amend legislation to ensure compliance.
- Implement recommendations from human rights mechanisms on equality, non-discrimination, and the rights of women and girls.

Rights of specific groups

Rights of children^{xvii}

31. Progress has been made in the development and implementation of policies/ programmes that affect the realization of children’s rights and their protection in Botswana. These include, inter alia, enactment of the Children’s Act of 2009, development of Child Protection Regulations 2015, and the development of Child Protection Protocol. Botswana adopted a National Prosecution Authority (NPA) on Children for the period 1993-2003, which was not fully implemented, and a successor NPA for the period 2004-2013 was drafted but not adopted. However, Botswana did develop the Botswana NPA for Orphans and Vulnerable Children (OVC) 2010-2016, but lacked an M&E mechanism.

Recommendation:

- Develop a new NPA that is costed and accompanied by a M&E Framework.
- Expedite the amendment to the Education Act to prohibit corporal punishment in the family, schools, and other institutions and to conduct public awareness-raising campaigns to ensure that positive, non-violent forms of discipline are applied.

Rights of migrants and asylum seekers^{xviii}

32. Botswana is a party to the 1951 UN Convention Relating to the Status of Refugees, and its 1967 Protocol. However, it has reservations with respect of Articles 7, 17, 26, 31, 32, 34 and paragraph 12. The reservations with respect of Article 7 and 26 relate to freedom of movement as well as the ability of asylum seekers and refugees to access employment.

33. Botswana is not a party to the 1961 UN Convention on the Reduction of Statelessness. Botswana is not a party to the Convention on the Rights of All Migrant Workers and Members of their Families. Refugee status determination (RSD) is undertaken by the Refugee Advisory Committee (RAC) which prepares recommendations for approval by the Justice Minister. This decision-making model remains a concern; many of the RAC members represent their Ministries’ or security agencies’ views and thus tend to adjudicate refugee claims considering factors which do not support impartial RSD decisions.

34. Botswana’s Refugees (Recognition and Control) Act of 1968 is the domestic legislation pertaining to asylum seekers and refugees in Botswana. An amended Refugees (Recognition and Management) Act was expected in 2017 but has yet to be enacted. As such, the expanded OAU definition of a refugee is not included in the current Refugees Act in Botswana. In addition, the Refugees Act does not recognise socio-economic rights for refugees and asylum seekers.

35. All refugee and asylum matters are managed by the Ministry of Justice. Botswana has an encampment-based policy for refugees and asylum seekers, as well as provisions permitting the state to hold asylum seekers in prisons and prison-like conditions, including at the Francistown Centre for Illegal Immigrants. Poor conditions include lack of adequate access to healthcare infringe on the rights of the detainees.

36. The key place of residence for refugees and asylum seekers in Botswana is the Dukwi Refugee Camp. UNHCR reported that Dukwi Refugee Camp had 760 refugees and asylum seekers (2021). In addition to this, there is a small caseload of refugee and asylum seekers resident in urban areas in Gaborone and Francistown, for them to access higher education, healthcare and livelihood needs, subject to the permission of the regulating Ministry.^{xix}
37. Legislation does not adequately cater for the registration of birth of asylum seeker and refugee children.
38. The asylum system and refugee legislation still lacks an RSD appeal mechanism to an independent authority, court or tribunal.^{xx} Although the Minister of Justice can exercise a discretionary review of first instance decisions^{xxi}, there are no procedure rules or timeframes governing the review. Furthermore, the refugee legislation makes no provision for gender and child-sensitive procedures. There is neither access to professional interpreters nor access to legal representation during the asylum procedure.

Recommendations:

- Introduce mechanisms to make decision-making efficient while fair, for example, by using differentiated case processing modalities such as ‘simplified’ or ‘accelerated’ RSD;
- Provide legal/procedural safeguards for asylum-seekers during RSD procedures, including access to legal representation and professional interpreters, and introduce child and gender sensitive asylum procedures.
- Amend the Refugee Act to ensure a right to appeal, to shift the responsibility for examining appeals concerning asylum cases to a judicial body which is fully independent and impartial, and to provide for oral hearings at the appeals level.

V. Other Civil and political rights

Rights related to name, identity, nationality^{xxii}

39. Botswana continues to make efforts to ensure that the population has access to free birth registration for new-borns. 83.2 per cent of births were registered (Statistics Botswana 2014).
40. The Birth and Death Registration Act makes birth registration compulsory. However, the Committee on the Rights of the Child has expressed concern about the significant number of children who are not registered, particularly those in remote/rural areas, as well as refugee and asylum seeker children, and foundlings. The legislation does not provide safeguards to prevent the risk of statelessness for refugee and asylum-seeking children specifically.^{xxiii}
41. Children of parents living in remote/rural areas, children of migrants, refugees, and asylum seekers, as well as unaccompanied or separated migrant children, are often at risk of not being able to fully realise their right to a name, identity, and nationality. Also, at risk are those born in Botswana who would otherwise be stateless, as there is no pathway to nationality in the legislation.
42. The nationality law to refugees is applied in a restrictive manner, making it difficult for refugees to locally integrate. Botswana’s Citizenship Act (Act No. 8 of 1998) does however grant foreigners who are married to citizens a path to citizenship. For those who are not married to Botswana, the Act contains provisions for applying for naturalization under certain conditions, including having been “resident in Botswana for a period of at least 10 years.” However, section 13 of the Refugee Act states that “any period during which an immigrant has resided in Botswana as a recognized refugee shall not, unless a Minister in writing otherwise directs, be regarded as a period during which he has been ordinarily resident in Botswana.” This makes it difficult for refugees to accumulate the number of years of residency required.

43. The Citizenship Act also does not provide legal safeguards against child statelessness. It provides for purely *jus sanguinis* situations. Consequently, children born in Botswana are not granted nationality, even in situations where foreign parents are unable to pass on their nationality to them. This falls short of the obligations of Botswana under the Convention on the Rights of the Child and the African Charter on the Welfare and the Rights of the Child. Finally, while Botswana is party to the 1954 Convention on the Status of Stateless Persons, it has not established any mechanism to determine the status of stateless person.

Recommendations:

- Domesticating the 1954 Convention on the Status of Stateless Persons.
- Reform the nationality Law with a view to introducing legal safeguards against childhood statelessness, in compliance with the African Charter on the Rights and Welfare of the Child and the Convention on the Rights of the Child.
- Accede to the 1961 Convention on the Reduction of Statelessness and withdraw reservation to Article 34 of the 1951 Convention.

Administration of justice, fair trial including the death penalty^{xxiv}

44. Botswana retains the death penalty in law and regularly carries out executions. Two people were executed in 2020, one in 2019 and two in 2018. Prisoners are not given advance notice of execution dates, and family members of those convicted are only notified after execution. Furthermore, the six-week timeline to prepare a clemency petition is not sufficient, and Botswana has conducted executions while clemency procedures were ongoing. In a 2016 ruling about clemency procedures (*Gabaakanye v. the State*), the Court of Appeals established that there is a constitutional right to petition the President for clemency, and that it is obligatory for a committee to meet to consider every clemency petition. The Court also insisted on certain additional guarantees, such as the need to consider any material provided by the petitioners, the provision of pro-deo counsel to advise on and prepare the clemency petition, and the provision to petitioners of sufficient time and information to adequately prepare their applications.
45. The Constitution contains limited rights to a fair trial, but no publicly funded legal aid or assistance is available for criminal matters. While pro-deo support is available to accused facing trial for capital offences, representation is provided at appeal stage rather than upon arrest, and the effect of this support may be limited when junior or inexperienced counsel is appointed.
46. Botswana has been recommended to urgently abolish the use of corporal punishment as a sentence and abolish offences such as “common nuisance” and “idle and disorderly” which lead to children being deprived of liberty. In general, the use of non-custodial measures should be prioritized, but in cases where detention is unavoidable, it is important to ensure that detention conditions for girls and boys are compliant with international standards. There have been cases where girls have been detained with adult women and boys with adult men.
47. In 2013, the government introduced a “shoot-to-kill” policy targeted at suspected poachers to reduce wildlife crime. This was done without the adoption of a document outlining the policy. Several people have lost their lives as a result.

Recommendations

- Take measures to provide legal aid services
- Take steps to place a moratorium on the death penalty
- Abolish corporal punishment and repeal the shoot to kill policy

VI. Economic, social and cultural rights

Human rights and poverty^{xxv}

48. Botswana has high social spending but continues to achieve less than commensurate results.^{xxvi} Government poverty eradication initiatives are included in its long-term strategy, Vision 2036 and other National Development Plans.^{xxvii} Botswana also adopted an affirmative action policy for communities in remote areas, which provides alternative approaches to poverty eradication.^{xxviii}
49. Poverty has declined significantly with the share of the population living on less than \$1.90/day declining steadily from 29.8% to 16.1% in 2015/16. The growth rate of consumption per capita between 2009/10 and 2015/16 for the bottom 40 percentile of the population was 0.42% annually, higher than the growth rate of the top 60 percentile. Between 2010 and 2015, the Gini index, fell from 60.5% to 53.3% - nevertheless, Botswana remains one of the most unequal countries in the world.^{xxix} In 2020, the unemployment rate stood at over 20%, and was higher amongst women and youth.^{xxx} Poverty intersects with other forms of disadvantage to hamper access to various human rights^{xxxi}.
50. Strategies aimed at creating jobs for youth and women as well as diversifying farming enterprises in rural areas are at different levels of completion. There is a Community Based Organizations (CBOs) bill which is at its completion stage. This is a regulatory framework that provides clarity on the standards and accountability of CBOs on the use of natural resources on income generation activities.

Recommendations:

- Continue investing in and implementing the poverty eradication framework and ratify the ICESCR to ensure the full realisation of economic and social rights.
- Allocate sufficient resources to the Integrated Reproductive Maternal, Neonatal, Child, Adolescent and Nutrition Strategy 2018–2022 with a view to accelerating progress in addressing the issues of poverty, social security and health and ensuring the full exercise by women and children of the right to life, survival and development.^[vii]
- Continue investing in and implementing the poverty eradication framework.
- Extend and allocate sufficient resources to the Integrated Reproductive Maternal, Neonatal, Child, Adolescent and Nutrition Strategy 2018–2022.

Right to health^{xxxii}

51. Botswana has made progress in combatting HIV/AIDS. In 2021, Botswana became the first high-burden HIV country to be certified for achieving an important milestone on the path to eliminating mother-to-child transmission of HIV. Botswana has achieved the “silver tier” status, which moves it closer to eliminating mother-to-child HIV transmission. WHO awards this certification to countries which have brought the mother-to-child HIV transmission rate to under 5%. Botswana provided antenatal care and antiretroviral treatment to more than 90 % of pregnant women; and achieved an HIV case rate of fewer than 500 per 100,000 live births^{xxxiii} Despite this commendable progress, adolescent girls remain vulnerable to HIV infection, with one in four new infections occurring in girls and women aged 15 to 24 (2018). Access to treatment is also lower in paediatric patients (69%) and adolescent girls (84% for girls aged 15 to 19), as compared to access rate among adults (98% in 2021).
52. Botswana is on the path to achieving 95-95-95 testing and treatment targets before the 2030 deadline with an achievement of 94-98-98 in 2021; that is 94% of people living HIV know their status, 98% of PLHIV who known their status are on ART and 98% of those on ART are virally suppressed. However, this is not the case for children; only 69% of children are on life saving treatment.

53. Data shows gender disparities in access to HIV services, which underscores the need for access essential services for men, young women, key populations, children to prevent new HIV infections.
54. In a milestone case of the court of appeal, November 2021, Botswana became the second country in Africa to decriminalize same sex relations.
55. Shortage of essential health care commodities continue to hinder equitable access to life saving medicines.
56. Children, especially those in remote areas or those who do not have identity documents struggle to access basic healthcare. Prevalence of stunting is high and is coupled with rising rates of overweight and obesity among children. The community-based health system is very weak. There is also a lack of information on breastfeeding and the implementation of the Baby-friendly Hospital Initiative.^{xxxiv}
57. Despite commendable efforts to improve access to health care – including awareness-raising campaigns and platforms on adolescent health issues, serious challenges remain. There is a high turnover rate among health professionals and women lack access to post-partum care, which contributes to the high rate of maternal and child mortality. Abortion remains criminalized. There is limited awareness among health professionals and midwives of gender-sensitive procedures for victims of GBV and the referral of such victims to other services. Similarly, there is lack of knowledge among women and girls about contraceptive methods and the limited access for them for sexual and reproductive health services.^{xxxv}
58. There are currently only 3 psychiatrists and 1 psychiatric hospital in Botswana. The Mental Disorder Act of 1971 sets out the legal framework for deprivation of liberty in the context of psychosocial disabilities. Plans to adopt new legislation are expected to take place in 2022. Currently, admissions are possible at the S'brana Psychiatric Hospital. Several individuals are kept in the hospital despite having been discharged since their family members have not come to collect them, and the hospital is thus unable release them.^{xxxvi}

Recommendations:

- Intensify measures to reduce the disproportionately high prevalence of HIV/AIDS among women, including migrant women in prostitution, ensure access for women in prostitution to health services and combat their stigmatization.
- Prioritize measures to improve children's access to HIV treatment as well as quality healthcare and nutrition services, including by allocating sufficient financial resources.
- Raise awareness among women and girls of available contraceptive methods and accessible sexual and reproductive health services.

Right to education including human rights education ^{xxxvii}

59. Botswana has made progress vis-à-vis children's access to quality education, including through the Education and Training Sector Strategic Plan 2015–2020, the Inclusive Education Policy and the out-of-school education for children programme. Primary education is free and compulsory under the Children's Act.^{xxxviii} Botswana spends approximately 8.5% of GDP on education.^{xxxix}
60. Primary school enrolments rates are comparatively high (93% for primary school and 64% for secondary school), however, pass rates are as low as 35% for the junior secondary certificate. 20,000 children are not in school. Children in marginalized communities have less access to education than their more affluent urban peers. Poor and rural youth are more susceptible to dropping out or not registering for school. Distance from school is a factor limiting access to education.^{xl}
61. Furthermore, primary education is not free for children of foreign nationality and dropout rates remain high among girls due to pregnancy. Further challenges include low completion rates. A large number of children are out of school due to the 2006 introduction of fees for

secondary schooling.^{xli}

62. Public education is not always of sufficient quality, negatively impacting outcomes.
63. Statelessness is another challenge for children in accessing the education system since it makes it harder to register for school.^{xlii}
64. The education of learners was disrupted by the April–May 2020 national lockdown during the pandemic: 595,707 learners were out of school due to school closures and learners lost 33 teaching days during the lockdown.^{xliii}
65. The Botswana Education Act of 1967 is currently under review and is expected to be debated by the current parliamentary session with proposed amendments relating to the removal of corporal punishment and the provision for re-enrolment for girls after giving birth.

Recommendations:

- Guarantee the right to free quality education for all girls and boys, including of foreign nationality, and effectively reduce regional disparities in access to education.
- Enhance efforts to improve the quality of education at all levels, including by reducing the pupil-teacher ratio, providing continuous training to teachers, improving school equipment and infrastructure.
- Develop and promote quality vocational training to enhance the skills of children, especially for dropouts, with a particular emphasis on those living in remote areas.

Endnotes

ⁱ **115.44.** Continue to implement agreed recommendations and other domestic and international obligations such as treaty body reporting (Zimbabwe); **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) **116.1.** ;Ratify the International Covenant on Economic, Social and Cultural Rights, and its Optional Protocol (Timor-Leste); **116.2.** Ratify the International Covenant on Economic, Social and Cultural Rights (Congo); **116.3.** Consider ratifying the International Covenant on Economic, Social and Cultural Rights to strengthen the rights of the citizens of Botswana to economic development (Namibia); **116.4.** Consider acceding to the International Covenant on Economic, Social and Cultural Rights (Kenya); **116.5.** Consider the ratification of the International Covenant on Economic, Social and Cultural Right, as well as the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Cyprus); **Comments:** A/HRC/23/7/Add.1 state at para 5: Recommendation **116.5:** Botswana partially accepts the recommendation. The Government will consider ratification of the International Covenant on Economic, Social and Cultural Rights when it is in a position to effectively implement the provisions of the Convention. However, on the Second Optional Protocol to the International Covenant on Civil and Political Rights, Botswana does not accept this part of the recommendation. Public consultations have so far confirmed that Botswana still prefer the retention of capital punishment. The Government is committed to undertake educational awareness campaigns before it can consider abolition of the death penalty. **116.6.** Ratify the International Covenant on Economic, Social and Cultural Rights and its optional protocol (Australia); **116.7.** Consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, as well as the ILO Conventions 169 and 189 (Costa Rica); **116.8.** Ratify the Convention on the Rights of Persons with Disabilities (Togo); **116.9.** Accede to the Convention on the Rights of Persons with Disabilities, especially because this country [Botswana] already applies the provisions of this Convention in practice, as demonstrated by its commitment to submit a voluntary report (Morocco); **116.10.** Sign and ratify the International Covenant on Economic, Social and Cultural Rights as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Turkey); **116.11.** Explore the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Argentina); **116.12.** Consider the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide (Armenia); **116.14.** Ratify, at the earliest possible date, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish preventive mechanism accordingly (Czech Republic); **116.17.** Ratify the International Convention on the Protection of all Persons from Enforced Disappearances, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities (France); **116.19.** Consider signing the SADC Protocol on Gender and Development (Norway); **116.20.** Consider ratifying the International Convention on the Protection of the Rights of Migrant Workers and Their Families and the ILO Convention 189 (Philippines); **Comments:** A/HRC/23/7/Add.1 states at para 20: Recommendation **116.20:** Botswana partially accepts the recommendation. Botswana supports the spirit and intent of the International Convention on the Protection of the Rights of Migrant Workers and Their

Families, but does not consider ratification to this convention an immediate priority. Regarding the ILO Convention 169 and 189 the Government will consider accession after it has completed thorough consultations with other stakeholders such as workers, employers and trade unions. **116.23.** Consider the ratification of the new third Optional Protocol to the Convention on the Rights of the Child on a communication procedure (Slovakia); **116.31.** Issue a standing invitation to the Special Procedures of the Human Rights Council (Czech Republic);

ⁱⁱ In 1995 when Botswana ratified the Convention on the Right of the Child, it stipulated that “The Government of the Republic of Botswana enters a reservation with regard to the provisions of article 1 of the Convention and does not consider itself bound by the same in so far as such may conflict with the Laws and Statutes of Botswana”. At that time, a child was defined according to the national laws of Botswana as anybody below the age of 16. This was contrary to article 1 of the CRC that defines a child as anybody below the age of 18 and limited that application of internationally accepted human rights norms at the national level. On 30th June, the Government of Botswana deposited an instrument of withdraw to the UN Secretary General withdrawing the country’s reservation to article 1 of the CRC

ⁱⁱⁱ Botswana has submitted State reports on CAT, CRC, CEDAW, CERD and ICCPR.

^{iv} The database is an electronic system that facilitates the recording, tracking and reporting on the implementation of human rights recommendations emanating from international, regional and national human rights mechanisms at the national level

^v Pending visit request and reminders from SR on racism, indigenous peoples, sale of children, arbitrary detention, disability, food, development, Independent Expert on International Solidarity and Working Group on Discrimination against women and girls.

^{vi} **115.1.** Incorporate into domestic law the provisions of the treaties that Botswana has freely acceded (Chad); **115.2** Ensure that the provisions contained in the international human rights instruments which Botswana has ratified are transposed into national law (France); **115.3.** Complete the process of fully implementing its obligations under the Rome Statute into domestic law, in particular by adopting provisions that allow for full cooperation with the International Criminal Court (Liechtenstein); **115.4.** Ensure full alignment of its national legislation with all obligations under the Rome Statute of the International Criminal Court (Slovakia); **115.5.** Continue to implement national laws in accordance with its treaty obligations (Lesotho); **115.92.** Intensify its efforts to create awareness regarding the primacy of constitutional law with respect to customary laws and practices (Uruguay); **116.13.** Complete the harmonization of domestic legislation with the provisions of the Rome Statute, and consider the possibility of ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Tunisia); **116.38.** Engage in a dialogue to repeal laws which criminalize consensual adult same sex relations (Canada);

^{vii} Visit to Botswana: Report of the Special Rapporteur on minority issues A/HRC/40/64/Add.2 para 23.

^{viii} Committee against Torture, *Concluding observations on the initial report of Botswana (Advanced unedited version)* (2022) paras 7-8

^{ix} Human Rights Committee, *Concluding observations on the second periodic report of Botswana CCPR/C/BWA/CO/2* (2021) paras 5-6.

^x Committee on the Elimination of Discrimination against Women, *Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4* para 12.

^{xi} Human Rights Committee, *Concluding observations on the second periodic report of Botswana CCPR/C/BWA/CO/2* (2021) para 12; Committee on the Elimination of Discrimination against Women, *Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4* paras 13-14. The definition of discrimination in Article 1 of CEDAW states: For the purposes of the present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field

^{xii} Human Rights Committee, *Concluding observations on the second periodic report of Botswana CCPR/C/BWA/CO/2* (2021) para s 15-16; Working Group on Arbitrary Detention, *Preliminary Findings from its visit to Botswana (4 to 15 July 2022)* p.7.

^{xiii} Human Rights Committee, *Concluding observations on the second periodic report of Botswana CCPR/C/BWA/CO/2* (2021) paras 19-20; Committee on the Rights of the Child, *Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3* (2019) para 35; Working Group on Arbitrary Detention, *Preliminary Findings from its visit to Botswana (4 to 15 July 2022)* p.7; Committee against Torture, *Concluding observations on the initial report of Botswana (Advanced unedited version)* (2022) paras 25-26.

^{xiv} **115.6.** Envisage increasing the budget allocation to the Office of the Ombudsman in order to enable it to efficiently investigate human rights matters, and create a National Human Rights Institution in line with the Paris Principles (Morocco); **115.7.** Prioritise the establishment of a national human rights institution, in line with the Paris Principles and ensure the allocation of necessary human and financial resources to this institution (South Africa); **115.8.** Accelerate its efforts with a view to creating an independent national human rights institution in line with the Paris Principles (Togo); **115.9.** Accelerate its efforts to effectively set up a national human rights institution in line with the Paris Principles (Tunisia); **115.10.** Accelerate actions to establish a national human rights institution (Chile); **115.11.** Continue working towards the establishment of a national human rights institution in accordance with the Paris Principles (New Zealand); **115.12.** Accelerate the process towards establishing a national human rights institution in accordance with relevant international standards (Kenya); **115.13.** Form a national human rights institution in compliance with the Paris Principles

(Turkey); **115.14.** Put in place an independent national human rights institution, in accordance with the Paris Principles (Burundi); **115.15.** Intensify its efforts to make effective the work to establish a national human rights commission in compliance with the Paris Principles (Burkina Faso); **115.16.** Intensify efforts to establish a national human rights commission conforming to the Paris Principles (Djibouti); **115.17.** Accelerate the creation of an independent national human rights institution conforming to the Paris Principles, or extend the mandate of the mediator to human rights (France); **115.18.** Expedite efforts to establish a national human rights institution and a national human rights strategy (Australia);

^{xv} Committee against Torture, *Concluding observations on the initial report of Botswana (Advanced unedited version)* (2022) paras 21-22

^{xvi} **115.41.** Continue reviewing and reforming Government programs, as needed, to ensure that they do not discriminate against particular groups (State of Palestine); **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); **115.53.** Consider continuing to strengthen the rights of women, particularly in the family setting (Namibia); **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); **115.61.** Intensify efforts to combat violence against women (Congo); **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); **115.65.** Actively combat all forms of gender-based discrimination and violence, in particular domestic and sexual violence (France); **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); **115.72.** 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); **116.35.** Take steps to implement comprehensive anti-discrimination laws, particularly to eliminate discrimination on the basis of sexual orientation (Australia);

^{xvii} **115.34.** Accelerate the implementation of the National Action Plan for Children for 2006-2016 (Romania); **115.39.** Accelerate the implementation of the Action Plan to enable targeted programming and interventions for the welfare and protection of the most vulnerable children in Botswana (Indonesia); **116.25.** Raise the minimum age of criminal responsibility (Togo); **115.78.** Implement specific and concrete measures with a view to increasing women's participation in political and corporate life in the country (Brazil); **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); **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); **117.22.** Apply strict measures to stamp out corporal punishment in school and home settings (Timor-Leste); **117.23.** Take measures to eliminate corporal punishment that could lead to torture and cruel, inhuman or degrading treatment for victims, mainly children (Costa Rica); **117.24.** Continue to combat corporal punishment of children in all circumstances (Djibouti) **117.25.** Prohibit corporal punishment of children (Slovenia);

^{xviii} 115.91. Consider the possibility to seek further international cooperation in order to find sustainable solutions in the area of refugees law (Paraguay); **116.41.** Continue its engagement with improving the rights of refugees (Uganda); **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); **116.43.** Maintain the positive efforts aiming to find durable solutions by way of repatriation, reintegration and resettlement of refugees (Egypt); **117.1.** Consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Costa Rica); **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);

^{xix} <https://www.unhcr.org/botswana.html#:~:text=In%20Botswana%2C%2076%20refugees%20and,by%20three%20UNHCR%20protection%20staff>

^{xx} UN High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, para. 192 (vi), January 1992, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

^{xxi} Section 8 of the Refugees Act provides that the Minister may direct RAC to “reopen the inquiry or to make further report in the matter”.

^{xxii} **115.77.** Continue to take the necessary measures to make sure that all the population has easy access to free birth registration for new-borns (Mexico);

^{xxiii} **CRC/C/BWA/CO/2-3 (26 June 2019), para 29 and 30), see:** https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fBWA%2fCO%2f2-3&Lang=en

^{xxiv} **115.19.** Continue efforts to further promote human rights, democracy and rule of law (Turkey); **115.59.** Hold a public debate on the death penalty, in which all aspects of the issue should be highlighted in a holistic manner (Uruguay); **115.60.** Meanwhile, provide information to concerned families, so that they can know in advance the date of execution of their relatives (Uruguay); **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); **115.93.** Ensure that the decisions of the customary courts may be challenged before common law courts (Uruguay); **117.4.** Take steps to abolish the death penalty (Norway); **117.7.** Establish a moratorium on the death penalty (Togo);

^{xxv} **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); **115.26.** Carry out efforts in the area of poverty eradication (Senegal); **115.27.** Continue to implement its National Strategy for Poverty Eradication and ensure access to quality education for all (Singapore); **115.28.** Continue its efforts to promote social and economic development and prioritize poverty reduction in its national development, to enable its people to enjoy human rights on a solid economic foundation (China); **115.30.** Continue to implement the National Strategy to enable further poverty reduction in Botswana (Indonesia); **115.31.** In assistance with its Development Partners, continue its fight against poverty (Bangladesh); **115.32.** Continue implementing its national youth development programme as one of the means to alleviate poverty in the country (Malaysia);

^{xxvi} See, for example, Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) para 11.

^{xxvii} See, for example, Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) para 11

^{xxviii} Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4 para 5(j).

^{xxix} The World Bank, Data (June 2022) <<https://data.worldbank.org/indicator/SL.UEM.TOTL.FE.ZS?locations=BW>>

^{xxx} The World Bank, The World Bank in Botswana: Overview (7 April 2022) <<https://www.worldbank.org/en/country/botswana/overview>>

^{xxxi} Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4 paras 15-16; Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) paras 25-26.

^{xxxii} **115.24.** Continue implementation of the National Monitoring and Evaluation Plan for the National Operational Plan for HIV and AIDS (2012-2016) (Algeria); **115.33.** Continue implementation of the National Operational Framework for HIV and

AIDS for the period 2012-2016 and the National Strategic Operational Plan for HIV/AIDS 2011-2016 (Angola); **115.35**. Include a gender perspective into its policies and programmes to combat HIV/AIDS, taking into account what has been pointed out by CEDAW (Chile); **115.80**. Continue addressing the HIV/AIDS impact on women and children as a priority, in particular, the mother-to-child transmission (Thailand); 115.81. Further develop measures to combat HIV/AIDS, with special focus on reducing infant and child mortality (Sri Lanka); **115.82**. Continue to implement its HIV/AIDS prevention, care and treatment programmes to further reduce the prevalence (Singapore);

^{xxxiii} In general, HIV/AIDS prevalence is disproportionately high amongst women. There are barriers to access for children (particularly children of foreign nationality) to antiretroviral treatment, and limited access of children to basic HIV services, antiretroviral treatment and sexual and reproductive health services and education, including access to condoms. Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) paras 48-4

^{xxxiv} Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) paras 48-49.

^{xxxv} Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4 para 37..

^{xxxvi} Working Group on Arbitrary Detention, Preliminary Findings from its visit to Botswana (4 to 15 July 2022) p. 10

^{xxxvii} **115.84**. Continue efforts to provide comprehensive primary education (Kuwait); **115.85** .Continue to ensure full access to education for children (Egypt); 115.86. Continue its efforts to ensure full access to education (Bangladesh); **115.87**. Redouble efforts to increase women's participation in education, including tertiary education (Timor-Leste); **117.37**. Take all appropriate measures, including adequate resource allocation, to strengthen indigenous children's equal access to education, including, when possible, education in their own language (Finland); 115.36. Continue to promote human rights education (Armenia); 115.37. Continue to raise awareness on harmful cultural norms and traditional practices as well as human rights education in primary school system (Ethiopia);

^{xxxviii} Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) para 52.

^{xxxix} United Nations Botswana, Botswana: Common Country Analysis (CCA) 2020 (2020) p.2.

^{xl} United Nations Botswana, Botswana: Common Country Analysis (CCA) 2020 (2020) pp. 49-50.

^{xli} Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) para 52.

^{xlii} United Nations Botswana, Botswana: Common Country Analysis (CCA) 2020 (2020) pp. 49-50.

^{xliii} United Nations Botswana, Botswana: Common Country Analysis (CCA) 2020 (2020) pp. 49-50