



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

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**Responses to the list of issues and questions with regard to
the consideration of the combined initial, second and third
periodic reports**

Botswana*

* The present report is being issued without formal editing.

General comments

Articles 1 and 2

Comment 3

What is the status of the Convention in the national legal system?

The status of the Convention is that it does not confer enforceable rights on individuals within the State until Parliament has legislated its provisions into law of the land. The Court of Appeal, in the case of *Attorney General v Unity Dow BLR 1992*, noted that Botswana was a member of the community of civilized States, and could not, therefore, operate on laws and practices that violated the imperatives of the international community. The court further noted that international treaties and conventions could be referred to as an aid to construction of enactments, including the Constitution itself.

If there is a conflict between the provisions of the Convention and national law, which will prevail?

If there is a conflict between the laws of Botswana and the provisions of the Convention, the laws of Botswana will take precedence over those espoused in the Convention. This is because entries into treaties are an executive function done by the President. If such treaties were to automatically become law and were enforceable without the requisite act of Parliament, which makes it the law of the country, then this would amount to a usurpation (taking the authority) of legislative powers by the President without the sanction of the Constitution.

However, in the case of *Unity Dow*, the Court of Appeal noted that since Botswana is a member of the community of civilized States (which has undertaken to abide by certain standards of conduct), unless it is possible to do otherwise, it would be wrong for its courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken. This therefore means that although Botswana has not incorporated the Convention into the laws of Botswana, it is still bound internationally to adhere to the provisions espoused by the Convention. The Court in the above case went on to state that the courts within the Republic would interpret domestic statutory laws in a way that is compatible with the State's responsibility not to breach international laws.

Is the definition of discrimination against women (in the Constitution and national legislation) in line with Article 1 of the Convention (“discrimination against women” shall mean any distinction, or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other fields)?

Section 3 of the Constitution provides that “every person in Botswana is entitled to fundamental rights and freedoms of the individual...whatever his or her race, place of origin, political opinions, color, creed or sex”. This section therefore guarantees equal

treatment before the law to every person within Botswana. Section 3 is the key, or umbrella, provision conferring rights and freedoms under the Constitution and in relation to which the other sections in Chapter II of the Constitution merely expound on further, elaborate or limit those rights and freedoms.

Section 15 of the Constitution specifically forbids the making of discriminatory laws. The Court of Appeal, in the case of *Attorney General v Unity Dow*, interpreted Section 15 of the Constitution of Botswana to outlaw discrimination. At section 15 (3) the expression discriminatory is defined as “affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such descriptions are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”. The Court observed that the main thrust of section 15 (3) is that discrimination means affording different treatment to different persons that is wholly or mainly attributable to their respective characteristic groups.

Section 15 (4) is an exception to section 10, and provides for exceptions where differential treatment is acceptable under the Constitution. However, it should be noted that the courts have consequently pronounced that all sections in the Constitution should be interpreted alongside section 3, which specifically outlaws unequal treatment (for example, see *Student Representative Council of Molepolole College of Education v Attorney General [1995] BLR 178*). The observations in the *Unity Dow* case concerning discrimination apply to all manner and type of conduct and practices that invidiously discriminate against people on the basis of the immutable characteristics enumerated.

The Government of Botswana, by way of conclusion, maintains that section 15 (3) as read with section 3 of the Constitution of Botswana prohibits all forms of discrimination; therefore the definition in the Constitution is in line with that which is provided under Article 1 of the Convention.

Comment 4

Highlight those laws affecting the status of women that were recommended for amendment to align them with the Convention, but have not yet been revised and the reasons for not revising them.

Following the review in 1997 of all laws affecting the status of women, some laws were not amended in line with the Convention. The following laws were not reviewed:

- Deserted Wives and Children Protection Act
- Penal Code Amendment on Abortion
- Law of Delicts
- Customary Law

Comment 5

What steps are being made to review Section 15 of the Constitution which exempts adoption, marriage, divorce, burial and devolution of property on death and other matters of personal law from the constitutional provision of non-discrimination?

The Government of Botswana maintains that section 15 (3), as read with section 3 of the Constitution, sufficiently prohibits all forms of discrimination and, as such, does not need to be reviewed. Any rule of customary law or of the common law which is inconsistent with any of the provisions of the Constitution, but especially of the entrenched provisions (such as section 3, which provides the fundamental rights of equality), will and has consistently been invalidated and repealed by the Courts within the Republic of Botswana to the extent of such inconsistency.

Comment 6

Please indicate if a comprehensive action plan with clear time frames has been set up to accelerate harmonization of all laws and policies with the Convention.

There is no comprehensive action plan to accelerate harmonization of all laws and policies with the Convention. However, the national gender machinery monitors compliance with the Convention and provides advice. There is a plan to conduct gender mainstreaming exercise in all Ministries which would address harmonization of the laws with the Convention.

Comment 7

What mechanisms and remedies are available to women who allege gender-based discrimination?

Section 18 of the Constitution allows any person who alleges a contravention or a likelihood of a contravention of their rights as contained in sections 3 to 16 of the Constitution to make an application to the High Court for remedy. This means that women alleging gender-based discrimination can at any time petition the High Court of Botswana to seek redress.

The Government is in the process of piloting Legal Aid Botswana, the objective of which would be to provide access to justice to indigent Botswanese (including women).

Is there an independent national human rights institution available to deal with issues concerning gender-based discrimination?

The Government of Botswana has embarked on consultations towards the establishment of an independent national human rights institution in accordance with the Paris Principles, which have since been concluded. The recommendations of this consultative exercise are soon to be presented to the Cabinet.

Comment 8

Please indicate what measures have been taken to ensure smooth operation between customary law and constitutional law in terms of practicing the two.

The custodians of customary law are chiefs. The Ntlo ya Dikgosi (House of Chiefs) structure is a consultative body that debates on motions presented before Parliament pertaining to customary law.

There is also periodic public education between custodians of the two law regimes.

Comment 9

Please indicate if the draft national gender policy which was under discussion has been adopted by the Government.

The draft national gender policy has not been presented to Parliament yet, as further consultations and inputs had to be made on it.

Comment 10

Please provide further information about the level of authority of the Women's Affairs Department located within the Ministry of Labour and Home Affairs, including in relation to its capacity to support implementation of the Convention, its mandate as well as human and financial resources available to it.

The Women's Affairs Department's placement in the Ministry of Labour and Home Affairs poses problems of authority of coordination. It has limited capacity to coordinate implementation of the Convention. It operates with 33% of staff complement. The Department is allocated 2% of the total Ministry of Labour and Home Affairs budget.

Article 4

Comment 11

Has consideration been given to using temporary special measures, such as the establishment of quotas or incentives, to accelerate the achievement of equality in areas other than education and local government?

Yes, consideration has been given to using temporary special measures other than quotas. Women are provided with incentives in the form of grants to engage in income-generating projects for poverty alleviation.

Article 5

Comment 12

Please provide information about any comprehensive strategy that may exist to create a sociocultural environment that is conducive to gender equality, including through education and awareness-raising targeted at the general public and in collaboration with non-governmental organizations, and please include initiatives taken for rural areas.

The National Gender Programme Framework (NGPF) was developed in 1998 to operationalize the areas of concern which are:

- Women and poverty, including economic empowerment
- Women in power and decision-making
- Education and training
- Health
- Girl children
- Violence against women, including human rights

The NGPF defines strategies for eliminating gender inequalities in each of those areas of concern. The NGPF sets out strategic objectives and policy and programme initiatives that need to be taken to address gender imbalances and each of the areas of critical concern.

Efforts made to ensure an informed citizenry that owns the gender and Development process saw the development of the following:

- National gender programme, popular version
- Advocacy and social mobilization strategy for the National Gender Programme

The National Gender Programme, popular version, grounds national gender issues by clarifying areas that should receive attention. This greatly assists the reader in determining substance from trivia; thus promoting public consensus building.

The advocacy and social mobilization strategy for the National Gender Programme is basically a marketing tool. This strategy facilitates coalition and alliance building as well as networking. It also develops interest among stakeholders at different levels to ensure that gender perspective permeates all policies and programmes.

Violence against women

Comment 13

1.1 What steps are being taken to develop a comprehensive strategy to combat all forms of violence against women, including the prosecution of perpetrators, providing assistance to victims and introduction of capacity-building and awareness-raising programmes for various groups, such as the police, lawyers, health and social workers, the judiciary and the general public?

The Government of Botswana passed the Domestic Violence Act in 2008 as a way to protect women who are in a domestic relationship (as defined under the Act). This Act seeks to provide survivors of domestic violence with protection. The Act empowers courts, including customary courts, to pass orders (section 7 of the Act prescribes orders available to applicants, such as restraining and interim orders) that seek to provide immediate protection to applicants (victims); section 9 (2) (b) (i) states that the order shall direct a

member of the Botswana Police to prohibit the respondent (the offender) from committing an act of domestic violence.

Furthermore, women who allege violence against their person which is not defined in terms of the Domestic Violence Act can report such matters to the Police and seek redress by instituting criminal proceedings in terms of offences proscribed by the Penal Code such as assault, death threats, etc.

The Government of Botswana, since its ratification of the Convention, has undertaken various initiatives and activities geared at raising awareness and capacity-building as follows:

Botswana Police College (the training centre of the Botswana Police Service) has introduced human rights training as part of its college curriculum. This training provides officers with basic knowledge in human rights

In addition, the Botswana Police Service has recently developed a handbook that has been distributed to police officers throughout the country. The publication, entitled *Handbook for the Botswana Police Service Strategic Foundations*, subscribes to the ideals espoused in the Southern African Regional Police Chiefs Cooperation Organization Code of Conduct and highlights the importance of human rights and non-discrimination. Article 1 of the handbook stipulates that “In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.” Article 2 states that “Police officials shall treat all persons fairly and equally to avoid any form of discrimination.” The values of the Botswana Police Service also include respect for human rights.

As part of their pre-service training, prison officers receive training on issues and principles related to human rights (including nondiscrimination) at the Prison Staff College before they take up their duties. The training covers: the Universal Declaration of Human Rights; Standard Minimum Rules on the treatment of Offenders; the Constitution of Botswana, in particular Chapter II on protection of the fundamental rights and freedoms of the individual; and the Prisons Act.

Law enforcement officials, including members of the judiciary, lawyers, police officers and prison officers, attend periodic human rights workshops in order to be sensitized to issues of human rights. These workshops are given by regional organizations (e.g. the Human Rights Trust of Southern Africa); national non-governmental organizations (NGOs) (e.g. the Botswana Centre for Human Rights) and international organizations (e.g. United Nation Development Programme). The Botswana Network on Ethics, Law and HIV/AIDS organized a workshop (an intensive half-day orientation on the essentials of law applicable in cases of domestic violence in Botswana) aimed at creating and heightening awareness of the Domestic Violence Act for magistrates of all

ranks serving the justice system in various parts of Botswana on 4 April 2009. [Source: *Sunday Standard*, 03.04.09]

Comment 14

Provide more details on the Domestic Violence Bill which was under discussion. Has the bill been enacted and, if so, does it criminalize marital rape?

The Government of Botswana enacted the Domestic Violence Act in August 2008. The Penal Code criminalizes acts of violence irrespective of whether such an act occurred within or outside a domestic setting.

It is for the reason given above that the Domestic Violence Act neither creates new offences nor seeks to criminalize an act of domestic violence, as such acts of violence have already been criminalized under the Penal Code.

The Domestic Violence Act therefore seeks to complement the criminal law by providing civil remedies to enable survivors of violence to have greater protection under the law while they await the criminal justice system to take its course.

However, the Domestic Violence Act has created offences in so far as contravention of an order issued under the Act is concerned.

Marital rape is not criminalized.

Article 6

Comment 15

Clarify whether the law prohibits trafficking of persons. Please also provide data and discuss trends relating to cases brought under sections 144 and 145 of the Penal Code.

Sections 144 and 145 of the Penal Code protect Botswana nationals against cases of abduction of a person for immoral purposes and abduction of persons under the age of 16. The police reported that they have never come across cases relating to the above-mentioned offences.

Articles 7 and 8

Comment 16

Describe concrete measures envisaged to achieve women's full participation and representation at all levels, taking into account the Committee's general recommendations. What awareness-raising and capacity-building programmes or policies are envisaged to encourage and facilitate Botswana women's involvement in public and political life?

The Government of Botswana is committed to the principle of equality between men and women and has taken some initiatives, in particular awareness-raising and capacity-building programmes, to ensure women's full and equal participation and representation at all levels.

The Government allocates funds for the Women's Affairs Department for the implementation of the National Gender Programme Framework, which mainly targets initiatives for women's empowerment across the six critical areas of concern. The Department's allocation includes women's leadership training, women's exposition and gender development training which helps in capacity-building. There is also an allocation for seminars and workshops that address awareness-raising initiatives.

Article 9

Comment 17

Clarify whether Botswana women have the right to pass their nationality to their foreign husbands on the same basis as Botswanese men have the right to pass their nationality to their foreign wives.

The Citizenship Act provides that foreign spouses of Botswana citizens may acquire Botswana citizenship after a period of 2 years, compared with the normal requirement of 10 years. Botswana women have the right to pass their nationality to their foreign husbands on the same basis as Botswana men have the right to pass their nationality to their foreign wives.

1. The Minister may at any time grant a certificate of naturalization to a foreign spouse who is married to a citizen of Botswana and has not since remarried and who has satisfied the Minister that he or she is otherwise qualified under subsection (2) for naturalization in terms of this section, and that the spouse, on taking the oath of allegiance, shall be a citizen of Botswana by naturalization from the date on which the certificate is granted.
2. Subject to subsections (1) and (3), the qualification for naturalization in terms of this section for any foreign spouse shall be that:
 - a. The spouse is a resident of Botswana on the date of such application for a certificate of naturalization and has been a resident of Botswana for a continuous period of, or for periods amounting in the aggregate to, not less than five years;
 - b. The spouse has lodged with the Minister, no less than two and a half years immediately before the date of application for a certificate of naturalization, a written declaration of intention to make such an application;
 - c. The spouse is of good character;
 - d. The spouse has sufficient knowledge of the Setswana language or any language spoken by any tribal community in Botswana;
 - e. The spouse intends, in the event of a certificate of naturalization being granted, to reside in Botswana.
3. The Minister may, in the special circumstances of any particular case, waive or accept a shorter period of the residency requirements mentioned in subsection (2) (a) and (b).
 - (3A) Where special circumstances exist, the Minister may award citizenship to the foreign spouse of a citizen who does not satisfy the language requirement mentioned under subsection (2)(d).

4. Section 13 (3), (4) and (5) shall apply, with such modifications as may be considered necessary, in the case of an application for the grant of a certificate of naturalization under this section.

Article 10

Comment 18

Provide data on the literacy rate among women and girls as well as updated information on any programmes to combat illiteracy.

Table 1 on the enrolment of boys and girls in primary schools shows that the rate of enrolment of girls in primary school has been constant with very slight changes in the percentage enrolment of girls between 2005 and 2009.

Primary and secondary school enrolment

Table 1

Percentage of enrolment in primary schools by sex and year

<i>Gender</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Male	166 903	168 152	168 869	168 164	169 513
Female	162 288	162 265	161 773	160 961	161 262
Total	329 191	330 417	330 642	329 125	330 775
% female	49.3	49.1	48.9	48.9	48.8

(Source: Ministry of Education, 2009)

Table 2 shows that the total enrolment for girls for forms 1 to 6 represented 52.3% of the total students enrolled.

Table 2

Secondary school enrolment by sex and form in 2008

<i>Form</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>
1	19 741	20 673	40 414
2	19 831	21 224	41 055
3	18 486	20 054	38 540
4	10 759	12 784	23 543
5	10 779	12 365	23 144
Special education	64	68	132
Total	79 660	87 168	166 928
Percentage	47.7	52.3	100

(Source: Ministry of Education, 2009)

Distance education

Table 3

Number of students enrolled in distance education programme

<i>Programme</i>	<i>Gender</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Junior certificate of education	Male	523	276	526	395
	Female	944	556	662	557
	Total	1 467	832	1 188	952
Botswana Government certificate of secondary education	Male	1 264	1 235	1 038	1 354
	Female	2 693	2 348	1 892	2 815
	Total	3 957	3 583	2 930	4 169

(Source: BOCODOL, 2009)

Table 3 above shows the enrolment for Junior Certificate and Botswana Government certificate of secondary education for the years from 2005 to 2008. The data show that more women have benefited from the distance education programme compared with men. The same trend is observed in the enrolment in non-formal education, in which more women than men enrol on a yearly basis (see table 4).

Table 4

Enrolment by year and gender in non-formal education

<i>Gender</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Male	3 880	3 771	3 462	2 975
Female	6 814	7 268	7 297	5 445
Total	10 694	11 039	10 759	8 428

(Source: Ministry of Education, 2009)

Comment 19

Please provide data on the rate of teenage pregnancy in Botswana and the impact of teenage pregnancy on the education of girls.

Table 5

Total number of dropouts in secondary schools

<i>Gender</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	Total
Male	1 535	3	1 266	2 804
Female	2 628	1 049	2 248	5 925
Total	4 163	1 052	3 514	8 729
% female	63	99.7	64	

A large proportion of secondary school dropouts consists of females as observed in table 5. A possible factor could be that the girls dropped out of school as a result of pregnancy.

Indicate if the Diphilana Continuing Education Project, which was initiated as a pilot to assess the effectiveness and relevance of the readmission policy, has been renewed, and describe any other measures taken to strengthen the activities providing pregnant girls with ongoing access to education (before and after giving birth).

Recommendations from the Diphilana Continuing Education Project, which was initiated as a pilot to assess the relevance of readmission of girls into schools after pregnancy, were implemented, and policy guidelines were developed which are functional. The guidelines cover the following:

Primary education

- Pupils under 12 years of age will be withdrawn from school, and for those aged 12 and above, consideration will be made provided that there is written parental consent and a medical certificate
- Pupils will be allowed six months' maternity leave, and they will return to school the following academic year
- On her return, the pupil will be required to produce a fitness certificate from a medical doctor
- On her return from maternity leave, the availability of space (including the school from which the pupil dropped out) will determine where the pupil will be enrolled
- All externally placed pupils have to abide by the pregnancy policy stipulated in the sponsorship contract

Secondary education

- No student will be withdrawn from school on account of pregnancy unless there is written parental consent or they are medically unfit to attend school
- In the event a student is discovered to be pregnant in an examination year, special arrangements should be made to enable the candidate to sit for the examination
- A student who (impregnated another) will be allowed to continue with classes
- The student is obliged to adhere to the doctor's advice, and parents are required to monitor regular attendance of prenatal care
- After delivery, and on condition that the doctor has certified that the student is fit, the student will return to school only after a mandatory confinement period (4 weeks, except during examination time, where the certificate of fitness will suffice)
- The school should provide academic and counselling support for the student involved in the pregnancy. The schoolteacher, through guidance and counseling, ought to ensure that the pregnant student has received homework assignments for the days she will be on maternity leave, and parents should be responsible for collecting learning materials
- An externally placed student who becomes pregnant must immediately inform the office of the education attaché so that preparations for her return home (to Botswana) to deliver can be made, and such a student will go back to school to continue her studies only after a doctor has certified that she is fit to do so

All externally placed students have to abide by the pregnancy policy stipulated in the sponsorship agreement.

Article 11

Comment 20

Provide information on steps taken, including temporary special measures to enhance article 11 of the Convention, which stipulates that States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights.

In 1997, the Government commissioned a study on Laws Affecting the Status of Women in Botswana. This study aimed at providing the basis for law and policy reviews to ensure Botswana's compliance with Convention and the standards set therein. Several workshops were held after the submission of the report in September 1998 to disseminate the results to stakeholders. The report has informed the review of several statutes, including the Employment Act. The act ensures equality of men and women in the employment sector. The Act states that "There is no law stating categorically that there is to be no gender-based discrimination in the recruitment procedures of employers."

Before the amendment of the Act, the following sections discriminated against women:

- Section 115 prohibited the employment of females underground in a mine, but it has now been deleted
- Section 116 prohibited the employment of females in industrial or agricultural undertakings at night without their expressed consent, but the provision has now been deleted from the Act.

Comment 21

Please provide statistical information, disaggregated by sex and showing trends overtime, detailing women's overall participation in the public and private sectors. Please include information on the wage gap between men and women for work of equal value.

Between March 2007 and March 2008, all sectors of formal employment increased by 7.1% from 301,978 persons during March 2007 to 323,411 in March 2008. Private sector employment constituted 54.4% of total employment. Central government and local government employment contributed 32.9% and 8.4%, respectively. Parastatal employment constituted only 4.4% of the total employment during this period. Males and females are recruited on the basis of merit and are also promoted based on performance. Tables 6 and 7 show the average earnings of paid employees by industry, citizenship and sex in 2007 and 2008.

Table 6
Estimated monthly average earnings of paid employees by industry, citizenship and sex in March 2007

Industry	Citizens			Non-citizens			All employees		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Agriculture	770	734	756	1 462	2 441	1 651	890	858	879
Mining and quarrying	6 814	8 308	7 013	23 994	15 808	32 044	7 635	8 629	8 193
Manufacturing	1 756	969	1 350	6 025	4 215	5 654	2 201	1 058	1 634
Water and electricity	9 139	9 147	9 141	33 747	16 177	32 911	9 352	9 160	9 317
Construction	1 776	1 862	1 789	7 490	10 968	7 601	2 386	2 065	2 342
Wholesale and retail	1 970	1 517	1 744	6 322	4 750	6 065	2 499	1 603	2 075
Hotels and restaurants	1 712	1 189	1 384	4 396	4 238	4 335	1 928	1 285	1 532
Transport & communication	5 431	4 799	5 222	6 111	7 628	6 215	5 537	4 875	5 339
Financial intermediaries	8 073	6 668	7 196	44 059	20 184	39 532	9 884	6 768	7 972
Real estate	4 607	5 130	4 769	20 414	12 173	19 020	6 310	5 496	6 069
Education	5 909	4 115	4 873	10 505	6 460	8 551	7 359	4 702	5 901
Health and social work	3 752	3 169	3 299	9 245	8 248	8 815	5 879	3 787	4 399
Other community service	2 385	1 531	1 967	2 802	3 740	3 141	2 425	1 661	2 059
Private and parastatal	3 328	2 414	2 942	9 167	6 433	8 894	3 994	2 599	3 458
Private	2 863	2 038	2 512	8 639	6 152	8 426	3 554	2 237	3 049
Parastatal	8 204	6 968	7 722	22 774	16 337	21 686	8 969	7 130	8 267
Central government	3 760	4 104	3 928	5 175	6 177	5 479	3 795	4 127	3 956
Local government	3 455	3 105	3 294	9 730	6 581	8 364	3 549	3 152	3 366
All sectors	3 461	3 044	3 275	8 860	6 409	8 584	3 905	3 151	3 596

Table 7
Estimated monthly average earnings of paid employees by industry, citizenship and sex in March 2008

Industry	Citizens			Non-citizens			All Employees			Sep-07	Mar-07
	Male	Female	Total	Male	Female	Total	Male	Female	Total		
Agriculture	758	696	735	3 773	5 737	4 178	1 065	928	1 015	689	879
Mining and quarrying	6 957	8 208	7 113	30 690	16 929	29 339	7 948	8 489	8 015	7 944	8 193
Manufacturing	2 011	1 215	1 617	7 549	5 379	7 109	2 565	1 332	1 978	2 174	1 634
Water and electricity	7 263	10 482	7 943	37 148	-	37 148	7 412	10 482	8 057	7 769	9 137
Construction	1 428	1 680	1 456	4 071	3 105	3 945	1 776	1 896	1 790	1 808	2 342
Wholesale and retail	2 216	1 629	1 940	6 951	5 911	6 805	2 665	237	2 235	2 822	2 075
Hotels and restaurants	1 343	1 055	1 171	6 121	6 500	6 255	1 567	1 152	4 632	1 593	1 532
Transport & communication	4 805	5 413	4 973	10 028	4 037	9 311	5 185	3 111	1 322	6 045	5 339
Financial intermediaries	10 624	8 485	9 245	25 853	21 514	24 927	12 435	8 145	9 775	8 704	7 972
Real estate	4 775	6 614	5 368	17 666	8 199	16 444	5 680	6 650	5 982	4 896	6 069
Education	6 773	5 308	5 933	11 197	8 724	10 147	8 282	6 118	7 119	6 667	5 901
Health and social work	5 350	4 129	4 526	11 032	7 969	9 427	6 894	4 764	5 523	5 980	4 399
Other community service	2 870	1 706	2 144	6 751	4 678	5 689	3 205	1 874	2 385	1 953	2 059
Private and parastatal	3 358	2 867	3 158	9 355	7 238	8 882	3 956	2 532	3 553	3 659	3 458
Private	2 860	2 396	2 671	8 776	6 796	8 330	3 473	2 029	3 074	3 212	3 049
Parastatal	9 094	8 593	8 896	23 038	22 148	22 883	9 837	8 834	9 449	8 981	8 267
Central government	4 064	4 663	4 322	10 180	7 817	9 506	4 174	4 693	4 396	4 443	3 956
Local government	3 248	3 111	3 183	13 006	8 480	11 158	3 412	3 180	3 302	3 291	3 366
All sectors	3 587	3 518	3 558	9 493	7 352	8 993	3 985	3 333	3 809	3 858	3 596

Comment 22

Please provide information on women's participation in the informal sector, including the number of women in the informal economy, in comparison with men and compared with women employed in the formal economy, as well as the sectors of the informal economy that have the largest share of women.

The 2007 informal sector survey estimated the total number of informal businesses as 40,306, of which 67.6% were owned by females and 32.4% by males. The majority of the businesses were found in the wholesale and retail trade, followed by real estate with 39%, manufacturing, hotels and restaurants with 20.7%, 11.3% and 10.3%, respectively. Table 8 shows the participation of women and men in informal businesses.

Table 8

Business in the informal sector by industry and sex, in 2007

<i>Industry</i>	<i>Male</i>	<i>Female</i>	<i>Total</i>	<i>Percentage</i>
Agriculture	501	581	1 082	2.7
Manufacturing	1 223	3 320	4 543	11.3
Water and electricity	65	-	65	0.2
Construction	1 293	74	1 367	3.4
Wholesale and retail	3 388	12 583	15 971	39.6
Hotels and restaurants	678	3 460	4 138	10.3
Transport& communication	1 294	1 352	2 646	6.6
Financial intermediaries	37	100	137	0.3
Real estate	3 573	4 773	8 346	20.7
Education	10	67	77	0.2
Health and social work	306	135	441	1.1
Other community service	701	792	1 493	3.7
Total	13 069	27 237	40 306	100.0

Article 12

Comment 23

Please provide information on whether programmes to combat HIV/AIDS integrate a gender perspective, including the availability of antiretroviral medication to prevent mother-to-child transmission of HIV.

Women are more vulnerable than men to HIV/AIDS infection. Interventions to address the HIV/AIDS pandemic are spearheaded by the Government, which has declared war on and invested heavily in combating its prevalence at all levels. The war against HIV/AIDS covers prevention through condom use by both males and females and management programmes for sexually transmitted infections. The mother-to-child transmission prevention programme has been made available in all public health

facilities. Antiretroviral medication is also available free of charge to all through public health services. By the end of July 2009, 105,286 patients were in treatment in the public sector, of which 61.8% were females. About 6.8% of the patients were children.

The impact of the multiple interventions is reflected in improvements reported in the sentinel surveillance studies for 2005 and 2006. The prevalence among pregnant mothers between 15 and 49 years of age has declined from 37.4% in 2002 to 32.4% in 2006.

The male involvement component seeks to aim at increasing the involvement of males in sexual and reproductive health matters and to contribute to the reduction in the transmission of HIV/AIDS and the prevention of gender-based violence. The programme strategy is designed to respond to male/female vulnerability to sexual and reproductive health problems, particularly in the light of HIV/AIDS. The vulnerabilities are perceived in three dimensions; personal, programmatic and societal.

Comment 24

Please provide information on maternal mortality as well as on the laws in place in regard to abortion, on the extent to which women may be resorting to clandestine abortions and how many such women die as a result, and on the contraceptive prevalence rate and its availability. Please provide this information as well as information on the availability and accessibility of comprehensive sex education and family planning services in Botswana.

The causes of maternal mortality and morbidity include, among others, haemorrhage, eclampsia and abortion. Unsafe abortion also contributes to maternal mortality. In 2007, 14% of maternal deaths resulted from unsafe abortion.

According to the Penal Code Article 160:

1. Any person who, with intent to procure a miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.
2. Notwithstanding the provisions of subsection (1), it shall not be an offence under this section if a pregnancy is terminated or an abortion is caused within the first 16 weeks of pregnancy, in the following circumstances and under the following conditions:
 - a) Where the medical practitioner carrying out the operation is satisfied, by acceptable evidence, that the pregnancy is the result of rape, defilement or incest, and the termination of pregnancy or abortion is requested by the victim, or, where the victim lacks the capacity to make such request, by her next of kin or guardian or the person in *loco parentis*; or
 - b) Where the continuance of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, and such woman consents to the termination of pregnancy or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next kin or guardian or a person in *loco parentis*; or

- c) Where established evidence shows that there is substantial risk that, if the child were born, it would suffer from or later develop such serious physical or mental abnormality or disease as to be seriously handicapped, and the pregnant woman consents to the termination of pregnancy or abortion, or, if she lacks the capacity to give such consent, it is given on her behalf by her next of kin or guardian or a person in *loco parentis*:

Provided that –

- i. The termination of pregnancy or abortion is carried out by a registered medical practitioner in a Government hospital or a registered private hospital, or a clinic approved for the purpose by the Director of Health Services; and
- ii. Two medical practitioners have given their opinion, formed in good faith, in writing, in the case of paragraph (b) above, that continuation of the pregnancy would involve risk to the life of the pregnant woman or injury to her physical or mental health, or, in the case of paragraph (c) above, that there is substantial risk that if the child were allowed to be born, it would suffer such physical or mental abnormality or disease as to be seriously handicapped.

Woman with child procuring abortion

Any person who, being with child, with intent to procure her miscarriage, unlawfully administers to herself any poison or other noxious thing or uses any force of any kind, or uses any other means whatever, or permits any such thing, or means to be administered to or used on her, is guilty of an offence and is liable to imprisonment for a term not exceeding three years.

Family planning programme

The family planning services available and accessible in Botswana are as follows:

- Behaviour change communication and information, education and communication at the individual, family, group community and national levels
- Health assessment and provision of contraceptive methods
- Screening for sexually transmitted infections as per manual for health-care workers
- Screening for cancer of the cervix, breast, prostate and testes in accordance with the cancer screening protocol currently in use
- Post-natal care, including provision of contraceptives
- Infertility assessment, treatment of sexually transmitted infections, HIV testing and cancer screening will also be offered in an integrated approach
- Counselling as a component of family planning
- Post-abortion care and provision of family planning commodities

The family planning methods available in Botswana are as follows:

- Combined oral contraceptives (low and high dose)
- Progestogen only pill
- Intrauterine contraceptive device
- Condoms
- Lactational amenorrhoea

- Rhythm method
- Basal body temperature
- Vasectomy
- Tubal ligation

Article 13

Comment 25

Please describe what measures are in place to support and alleviate the plight of women in poverty, including rural women, as well as what is being done to facilitate their access to land and credit.

The Government of Botswana has identified poverty as one of the key issues that inhibit women from making a meaningful contribution to the socio-economic development of the country. In order to address this situation, the Women's Affairs Department started an economic empowerment programme that aims to empower women for their advancement in all spheres of development. The programme's objectives are to: alleviate poverty among women through economic empowerment; create employment for women through small enterprises; facilitate the participation of women's groups, NGOs, community-based organizations (CBOs) and women entrepreneurs in all activities that promote, expose and enhance their social and economic status as well as to promote collaboration and networking among women's groups, CBOs, NGOs and entrepreneurs with the view to strengthening market size.

The following national policies on economic opportunities have been put in place.

Citizen Entrepreneurship Development Agency: Unlike the Financial Assistance Programme and policies on small, medium-size and micro-enterprise, which had stated a commitment to women's empowerment by identifying women as a target group, the Agency has gone back to the economic strategy of being gender neutral. The requirement is that citizens should have business plans that are "viable, sustainable, should have the potential to add value to the national economy and should have a market for their products."

National Master Plan for Agricultural Development: This is the revised National Food Strategy established by the Government to offer credit for agricultural purposes. Given that most farm producers are women, this programme empowers them.

Livestock Infrastructure Management and Development Programme

The programme started in April 2007, and its objectives are to promote food security through improved productivity of cattle and small livestock; improve livestock management; improve utilization and conservation grazing land; eliminate destitution by providing resources to the poor; and to provide infrastructure for the safe and hygienic processing of poultry products.

Through this programme, poor farmers are assisted in the purchase of small livestock, and in raising tswana chickens and guinea fowl.

Integrated Support Programme for Arable Agriculture Development

The major components of the Integrated Support Programme for Arable Agriculture Development includes cluster fencing, provision of potable water, provision of seeds, provision of fertilizers, facilitation of access to credit and establishment of Agricultural Service Centres. The primary objectives of the programme are to increase grain production and to promote food security at the household and national levels.

Other Programmes: Some NGOs and CBOs have specific programmes that provide funds, technical skills and education for economic empowerment projects for women (e.g., the Global Fund, Women's Finance House). There are other Government ministries that work with women with a view to empowering them, and these include the Department of Non-formal Education, the Ministry of Agriculture and the Department of Social Services.

Women's Finance House Botswana was established with the vision of economically empowering disadvantaged women and developing their entrepreneurial skills. Its activities include savings mobilization schemes; micro-loans for working capital; and provision of basic training in management and accounting skills.

Young Women's Christian Association was established in 1962. The mission of this Association is to develop women and the youth holistically by providing a forum for them to share skills and experiences through local fund-raising to address their socio-economic and political challenges. Some of the activities are income-generating and employment-creating projects. The Association also runs an adolescent mothers project that aims at readmitting girl children who dropped out of school due to pregnancy so that they could continue with their education. The project also provides some day care services to babies whose mothers are enrolled into the programme.

Botswana Community-Based Organizations. Out of the 42 CBOs registered with BOCOBONET, only five organizations addressing poverty and economic empowerment project were owned by women, while the rest were community projects.

Women's cooperatives/groups:

There are the women's cooperatives that engage in income-generating products, such as marketing of Ilala baskets in Ngamiland; collecting, processing and marketing of various Veld products (for example, processing of Marula fruit, as evidenced by products such as marula jam and face products from marula oil; grapple plant or sengaparile (desert claw) in the Kweneng and Kgalagadi districts; thatching grass and craft marketing country wide; bee keeping; herbal tea production such as mosukojwane); pottery; and salt production. Some of the women's groups, such as the "Kgetsi ya Tsie", have not only increased membership, for example, from 9 people to 1,000, but have also initiated a micro-credit and saving scheme for members. Other groups all over the country are engaged in the growing of vegetables, bakery, pottery, etc.

Community income-generating activities: In addition to women's economic empowerment activities, Most CBOs have engaged in community-based economic projects that have the potential to benefit women, for example, eco-tourism activities, such as the wildlife management quota system in

the Ngamiland and Chobe districts, the Nata Sanctuary, community tourism, photographic tourism, agro-forestry, and commercial hunting through joint ventures.

The Deeds Registry Act 1996

The Act was amended in 1996 to:

- Allow women, whether married in community of property or not, to execute deeds and other documents required or allowed them to be registered in the deeds registry without their husbands' consent
- Allow for immovable property to be transferred or ceded to a woman married in community of property and to allow the woman to form her separate estate, whereby a condition of the bequest or donating it is excluded from the community and marital power.
- Ensure that where immovable property not excluded from the community is registered in the name of a spouse married in community of property, neither spouse may, irrespective of when that property was so registered, alone deal with such property unless he/she has the consent in writing of the other spouse or has been authorized by an order of court to deal therewith

The Abolition of Marital Power Act 2004

The Act was promulgated in 2004 and consequently abolished the common law principle of marital power, which positioned the husband as the head of the family with powers over his wife, including legal representation and administration of the wife's property. The abolition of the Act established equal powers of spouses married in community of property to dispose of assets held in joint estate.

The Act made the spouses married out of community of property jointly liable for household necessities, with provision for joint acquisition of other property. It has also abolished the common law principle of unity of matrimonial domicile and allowed married women to acquire a domicile of their choice and replaced the domicile of minor children with the "place to which the child is most closely connected". The act has equally abolished the common law position of the husband as the sole guardian of minor children and replaced it with joint guardianship by both parents.

Miscellaneous Amendments Bill, 2005

A Statute Law (Miscellaneous Amendments) Bill has been drafted to align a number of Acts with the Abolition of Marital Power Act. The bill amends:

- the Pensions Acts;
- the Married Persons Property Act;
- the Matrimonial Causes Act;
- the Administration of Estates Act;
- the Deeds Registry Act; and
- the Companies Act.

Article 14

Comment 26

Please indicate whether the Rural Development Policy contains a particular focus on rural women so as to enhance their access to education, health, economic opportunities, land ownership and participation in decision-making processes related to development planning, including at the local level.

Access to resources and services is more difficult in rural settings than urban areas. Equally, poverty is more prevalent in rural than urban environments. The Government has put in place programmes to address these problems which impact more negatively on women than men. In 1972, the Rural Development Policy was launched through White Paper Number 1, in 1972. The Rural Development Policy was revised in 2003 and has set out the basic principles guiding rural development in Botswana. Through the Policy, the Government has undertaken to improve services in rural areas and promote employment creation especially for women. In 1975, the Government embarked on the Accelerated Rural Development Programme to provide basic social and development infrastructure across all key sectors of the rural economy.

Comment 27

Please provide information on minority ethnic women, elderly women and women with disabilities on all areas covered by the Convention.

The number of persons with disabilities is rapidly increasing. The most common type of disability is that involving sight, whereby defects in seeing account for one quarter of total disabilities, and blindness covers one fifth of that total. The differentials in disability between males and females show that the two sexes have similar types of disabilities. The major problem for both is blindness, and the other common forms of disability for both sexes are deafness in one ear and inability to use both legs.

Articles 15 and 16

Comment 28

What is being done to address entrenched customary laws that impair gender equality and to publicize State legislation that protects the rights of women?

The Government of Botswana continues to undertake progressive legislative reforms to enhance the promotion and protection of women's rights; pursuant to this aim, the Domestic Violence Act No. 10 was passed in 2008. This Act seeks to provide survivors of domestic violence with protection. The Act empowers courts, including customary courts (which have so been empowered by Statutory Instrument) to hear matters under this Act. This Act is a milestone in itself, since it means that individuals (victims of domestic violence) who are subject to customary law can approach the courts to seek an order for their protection.

Furthermore, the Court of Appeal, in the case of *Attorney General v. Unity Dow*, noted that customs yield to the pre-eminence of the Constitution. As such, any person within Botswana can approach the courts to seek redress of any practice or custom that impairs the principle of equality.

Does Botswana intend to extend the provisions of the Abolition of Marital Power Act, Matrimonial Causes Act and Marriage Act to customary and religious marriages?

Education on the extension of the Abolition of Marital Power to customary and religious marriages has been made available in order to sensitize the public on its impact on their lives.
