



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION**

**Sixteenth periodic reports of States parties due in 2005**

**Addendum**

**BOTSWANA\* \*\* \*\*\***

[23 March 2005]

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\* This document contains the fifteenth and sixteenth periodic reports of Botswana, due on 22 March 2003 and 2005 respectively, submitted in one document. For the sixth to the fourteenth periodic reports submitted in one document, and the summary records of the meetings at which the Committee considered those reports, see document CERD/C/407/Add.1 and CERD/C/SR.1544, 1545, 1551.

\*\* Annexes to the report may be consulted in the secretariat's files.

\*\*\* This report has not been edited before being submitted for translation.

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## Preface

1. In August 2002, partly in response to the CERD Committee's concerns regarding the quality of its last periodic report, the Government of Botswana established an Inter Ministerial Committee on Treaties, Conventions and Protocols. The Committee was established for the purposes of ensuring that the country abides by, implements and reports on its international obligations. The Committee is chaired by the Ministry of Foreign Affairs and International Cooperation and also comprises senior officials of the Office of the State President (lead Ministry on Human Rights Issues) and Attorney General's Chambers. Within the Inter Ministerial Committee, there exists a sub committee which is responsible for, inter alia, report writing.

2. The initial report was presented before the CERD Committee in 1975. In 1978 the country submitted its second periodic report. The third, fourth and fifth periodic reports were submitted in 1983 and considered by the CERD Committee in 1984, followed by a review in 1992. The last report, which covered the sixth to the fourteenth periodic reports, was submitted in 2001 and was considered by the CERD Committee in 2002. The current report covers the 15th and 16th periodic reports, and is due on 22 March 2005.

3. The process of producing the report took a period of 14 months. It was a participatory and interactive exercise which involved stakeholders in Government, media; Non Governmental Organisations and the Civil Society.

### Technical assistance

4. Following advice proffered by the CERD Committee and in recognition of capacity constraints faced by the State Party, the latter successfully sought technical assistance through the United Nations Development Programme (UNDP)/Botswana Country Programme. The UNDP Office secured the services of a consultant to facilitate two stakeholders' workshops. Additionally the consultant conducted training sessions for senior government officials and members of the inter Ministerial Committee. The purpose of the training was to sensitize participants on human rights issues with particular emphasis on CERD and to guide the sub committee of the Inter Ministerial Committee in the process of report writing, including incorporating submissions from stakeholders.

### Stages of preparing the report

5. A zero draft was initiated by the sub committee of the Inter Ministerial Committee. A copy of the zero draft, along with the following documents, was distributed to stakeholders:

- (i) The CERD Text;
- (ii) The Concluding Observations of the CERD Committee; and
- (iii) The CERD Committee Guidelines on Report Writing.

The documents were to serve as the basis of discussions with the stakeholders.

### **First workshop**

6. The first stakeholders' workshop was held from 28-29 November 2004. Stakeholders' from Government; Media; NGOs and Civil Society attended the Workshop. Written and oral submissions received from the Workshop were incorporated into the zero draft to produce the first draft report.

### **Second workshop**

7. The second workshop was held on 27 January 2005. Like the first one, stakeholders were from Government; NGOs; Media and the Civil Society. The first draft report had also been distributed to stakeholders before the workshop.<sup>1</sup> Additional submissions were received from the participants and were incorporated to come up with the second draft. The second workshop afforded stakeholders the opportunity to make final oral and written submissions to the report.

### **Post workshop processes**

8. Submissions from stakeholders were received and incorporated to the second draft to produce the final draft. The final draft was submitted to the Inter Ministerial Committee on Treaties, Conventions and Protocols for submission to the UN Committee on Racial Discrimination. It was also forwarded to stakeholders.

### **A. History**

9. The history of human settlement in Botswana dates back to the earliest evidence of mankind's existence. Today, archaeological evidence of early, middle and late Stone Age occupation can be found throughout Botswana.

10. By 20,000 BC Late Stone Age peoples in the region were producing sophisticated rock paintings while surviving by hunting and foraging. It is commonly believed that many modern "Khoisan" language peoples (locally known as Basarwa) are direct descendents of these Late Stone Age occupants. From 200BC there is evidence of the spread of pastoralism among the Late Stone Age communities of northern Botswana.

11. Iron Age settlement dates from the fourth century. Many scholars have speculated that the spread of Iron Age throughout southern Africa may be linked to an influx of "Bantu" language farmers. But this view has been challenged, while the past assertion of a more modern chronology of "Bantu migrations" from eastern into southern Africa has been discredited by advances in archaeology and historical methodology.

12. A variety of Bantu languages and dialects are spoken in Botswana today. The largest sub-grouping of these languages is Sotho-Tswana, which includes the national language Setswana and such other closely related, mutually intelligible, dialects as Shekgalagari, Setswapong and Sebirwa. Other prominent Bantu languages spoken in Botswana include Chiyeyi, Chikiuhane, Ikalanga and Otjiherero.

13. When European traders and missionaries began arriving in Botswana in the early nineteenth century they found the lives of most Botswana communities being disrupted by Bakololo and Amandebele invaders. As a result a number of more powerful rulers emerged such as Sebege of the Bangwaketse, Sechele of the Bakwena, Sekgoma of the Bangwato and Letsholathebe of the Batawana who built up their emerging states by acquiring both knowledge and guns from the European visitors. In return for guns they traded ivory and other game products, while inviting missionaries to establish schools in their territories. The Transvaal Boers invaded Botswana in 1852, but were driven away by a coalition of *merafe* (often translated as tribes) who temporarily united under the overall leadership of the Bakwena ruler, Sechele.

14. In the late nineteenth century a new threat emerged in the form of the British imperial expansion. The discovery of diamonds at Kimberly resulted in the occupation of Batswana lands south of the Molopo River, which thereafter became part of South Africa.

15. In 1884 the Germans, imperial rivals to the British, began occupying Namibia. To prevent the Germans from expanding eastwards to link up with the Boers, in January 1885 the British proclaimed a Protectorate over the southern half of Botswana. This action was reluctantly accepted by local rulers as preferable to direct rule by either the Germans or Boers. In 1890 the protectorate was extended over northern Botswana. Thereafter the territory was formally known as the Bechuanaland Protectorate.

16. A British settler, Cecil Rhodes, however, wanted to bring Botswana under the political and economic control of his British South Africa Company, which between 1890-93 had brutally occupied Zimbabwe. To stop this, in 1895, three of the leading Batswana rulers, Bathoen I, Khama III and Sebele I, went to Britain to lobby in favour of Botswana remaining a Protectorate. After being told that the decision to transfer them to Rhode's Company had already been made, the three launched a nationwide campaign to bring their case before the British people. With the assistance of London Missionary Church, they drew so much public support that the British Government changed its mind and agreed to continue to administer the territory as a Protectorate.

17. In 1891, Britain had begun to set up a structure for colonial administration of the Protectorate. This provided for a Resident Commissioner responsible to a High Commissioner in the Cape. The Country was thereafter divided into 12 districts, each having a Resident Magistrate whose duties were primarily judicial and involved only foreigners and non-residents.

18. In 1921, a Native (later African) Advisory Council was formed consisting of representatives from eight recognised Tribal Territories, namely: the Bangwato, Bangwaketse, Bakwena, Barolong, Balete, Bakgatla, Batlokwa and Batawana.

19. From 1959 a number of competing nationalist political parties emerged, namely: the Bechuanaland Protectorate Federal Party, Bechuanaland People's Party (BPP), Bechuanaland Democratic Party (BDP) and the Bechuanaland Independence Party (BIP). The first general elections were held in March 1965, and the Bechuanaland Democratic Party (BDP) won overwhelmingly, with Seretse Khama becoming the Prime Minister and later the first President of the Republic of Botswana.

20. Sir Seretse Khama served as President until his death in 1980 after which the party continued to command substantial political support. He was succeeded by his Vice President, Quett Ketumile Joni Masire (later Sir Ketumile Masire), who retired in March 1998 and was, in turn, succeeded by his Vice President, Festus Gontebanye Mogae who will complete his constitutional tenure of office on the 31st March 2008.

21. The Botswana government has promoted policies to develop a unified integrationist, non-racial society. This partially derived from Botswana's proximity to racist regimes in apartheid-era South Africa and Rhodesia (now Zimbabwe), and Southwest Africa (now Namibia). Botswana did not want to be seen to engage in the practices of its neighbors and aimed to promote a society which was based on democracy, development, self-reliance and unity. These ideals were brought together in the National Principles which underlie the policies, practices and direction of the government.

### **B. Geography**

22. Botswana is a landlocked country situated in the heart of Southern Africa. It shares borders with Namibia in the west and north, Zambia in the north, Zimbabwe in the north-east and South Africa in the east and south. It straddles the Tropic of Capricorn and has a land area of approximately 581,730 square kilometres, much of which is flat and covered with the thick sand layers of the Kalahari Desert. It is 1,000 metres above sea level. In the north-west the Okavango River flows from Angola through Namibia and ends in Botswana, soaking into the sand forming the Okavango Delta. In the north-east there are the salt deserts of the Makgadikgadi Pans.

23. Rainfall varies from 650mm per year in the north-east to less than 250 mm in the south-west. Drought is a recurring problem although in early 2000 record rainfall brought serious flooding. Botswana experiences extremes of climate with winter temperatures below freezing being common in the Kalahari.

24. Botswana has some several mineral deposits. Diamonds, coal, copper and nickel are mined in large quantities. Other minerals found in the country are gold, soda ash and salt.

25. The country has an arid landscape. Approximately 5% of the land area is cultivated. Cattle ranching is the most significant agricultural enterprises. Farming is mainly at subsistence level and relies primarily on cattle, sheep, goats, maize, sorghum, beans, peanuts, cottonseed and other dry land crops.

### **C. Population**

26. The 2001 Population and Housing Census yielded a population count of 1,680,863 (approximately 1.7 million) compared to 1,326,796 in 1991. This marked an increase of 354,067 over the ten-year period.

27. The population of Botswana grew at an average annual rate of 2.4 percent during the inter-census period. The growth rate has been declining over the years. Annual growth rates between 1971 and 1981 as well as between 1981 and 1991 were 4.5 and 3.5 percent

respectively. While the AIDS pandemic might have contributed somewhat to the decline in recent years, it must be noted that there was a decline during the pre-HIV/AIDS era. Indeed, factors such as declining fertility rates, increased women participation in economic activities, increased literacy rates, access to better health care, etc, may have a profound effect on population growth.

28. A summary of the demographic indicators that emerge from comparison of the 1971, 1981, 1991 and 2001 census is presented as Annex 4. The main features of Botswana population are declining fertility rate and life expectancy, and increasing mortality rate. Crude death rate rose between 1981 and 1991 mainly due to the HIV/AIDS pandemic. Life expectancy at birth also decreased from 65.3 years in 1991 to 55.7 years in 2001. Regarding fertility rate, there has been a notable decline in all fertility indicators.

29. Overall, population density increased from 2 to 3 persons per square kilometer between 1991 and 2001. For Gaborone and Francistown, it rose to well over 1, 000 persons per square kilometre between 1991 and 2001. Most district densities increased between the two censuses with the exception of sparsely inhabited districts.

30. Population trends point to increasing urbanisation over the years. The growing concentration of the population around towns and cities reported during the 1991 has somehow intensified. Some villages around Gaborone and Francistown have witnessed phenomenal growth over the period 1991 to 2001, with some recording annual rates of over 10 percent.

31. Urbanisation has been rapid with the number of people living in urban areas increasing from 9 percent in 1971 to 17.7 in 1981 and 45.7% in 1991. In 1999 the government estimated the urban population at 50% and the UN Population Division reported a 28% urbanisation rate in 1997. This growth is due, in part, to substantial population growth in traditional urban areas like Gaborone and Francistown and the re-classification of many large villages to urban areas. Some 50% of the total population lives within 100 km of the capital city, Gaborone.

32. Citizens of Botswana are known as Batswana. The Tswana-speaking population is made up of various ethnic groups including Bakgatla, Bakwena, Balete, Bangwato, Barolong, Batawana, Batlokwa and Bangwaketse. These tribes are loosely referred to as principal tribes.<sup>2</sup> There are other ethnic groups such as Babirwa, Bakalaka, Bakgalagadi, Basarwa, Basubiya, Batswapong, Wayeyi, Hambukushu, Ovabenderu, OvaHerero. These, and other tribes, are sometimes referred to as 'minority' tribes. For the purpose of this report, the word 'minority' will be used to refer to tribes other than the eight Principal Tribes which are named in the Constitution.<sup>3</sup>

33. In terms of numbers, some of the tribes which are referred to as 'minority' may actually have a larger population than the 'majority' or Principal tribes. Due to the lack of disaggregated statistics, however, it is impossible to know exactly how many people belong to which tribes. It should be noted that Government policy has been focused on promoting national unity rather than accentuating tribal differences.

34. In addition there are significant minorities of people of European, Asian and people of mixed ancestry.

35. Statistics are not officially compiled on the basis of race, ethnicity or tribal affiliation. There is, however, limited data available on language usage. In the 2001 Population and Housing Census, figures were compiled on the basis of language spoken among people who are two years old and over. The figures showed that Setswana is spoken by 78.2% people followed by Ikalanga which is spoken by 7.9% people. The third and fourth most spoken languages are Sekgalagadi and Sesarwa, respectively.

36. Population Aged 2 Years and Over by District and Language Spoken (from Central Statistics Office Population and Housing Census 2001, is presented as Annex 5).

37. In addition, it is assumed that many people speak more than one language (e.g., Setswana and Ikalanga) and this may not be captured by the data in the Census. Many people also speak dialects or sub-dialects which are not reflected in the language choices of the Census. Indeed, only 19 language categories are reflected in the Census. Various scholars, NGOs and others have estimated the number of languages spoken in Botswana to be over 30.

38. **Immigrants:** The Department of Immigration reports that there are 136,519 non-citizens living in Botswana. 118,112 come from Commonwealth countries. 18,407 are from non-Commonwealth countries. In recent years, there has been an influx of immigrants from neighbouring countries and beyond. This has led to incidences of increasing tensions between Batswana and some immigrant communities.

39. **Refugees:** Botswana hosts 3,200 refugees, mostly from Angola, Namibia, Somalia, and Sudan. There exists only one Refugee Camp being the Dukwi Refugee Camp where refugees are housed. Refugees at Dukwi are provided with free health services and free education. Some of facilities provided are a Pre-School, a Primary School and a Junior and Senior Secondary School (Education Resource Centre) and a Clinic which has a Maternity wing.

The table below, obtained from the Office of the President in 2005, shows refugees of different nationalities in the country:

Nationality	Number
Namibia	1 100
Angola	950
Somalia	800
Other nationalities	350

*Source:* Dukwi Refugee Camp, 2005 Statistics.

#### 40. **Impact of HIV/AIDS**

In addition, Botswana has one of the highest per capita HIV/AIDS rates in the world. There are areas of highest prevalence rate in particular areas (such as villages surrounding mines) but as government does not compile statistics disaggregated on the basis of race or ethnicity, it is not possible to link prevalence rates to specific ethnicities. The government has instituted programs to help promote HIV/AIDS awareness and treatment throughout all sectors



of Botswana society and has gone to great lengths to ensure free access to anti-retroviral therapy (ARV) and prevention of mother-to-child transmission program (PMTCT) throughout the country, regardless of ethnic, racial or tribal affiliation. The HIV/AIDS crisis continues to put a great strain on the government.

#### 41. **Impact of poverty**

Studies have indicated that rural areas are the most affected with the most widespread and severe poverty found in the Western districts of Ghanzi and Kgalagadi. Those areas are mainly inhabited by Remote Area Dwellers, many of whom are Basarwa.

### **D. Economy**

42. Prior to the emergence of the diamond industry the country's economy was dominated by agriculture, particularly cattle ranching. At industry level, mining was the major contributor to GDP (35%) followed by trade, hotels and restaurants (10.9%) and banks, insurance and business came third at 10.8%. Within trade, hotels and restaurant industry, trade accounted for 8.7% and hotels and restaurants accounted for 2.2%. The lowest contributor to GDP was agriculture, water and electricity, both at 2.4%.

43. Between the late 1960's and the early 1990's Botswana recorded the highest sustained real Gross Domestic Product (GDP) growth rates in the world, averaging 6.1% between 1966 and 1991. Following a recession in 1992/93 growth resumed and has continued since. Generally strong growth in diamond revenue has ensured large government reserves and budget surpluses. GDP in current prices increased from P36.7 billion in 2002/03 to P39.9 billion in 2003/04, an increase of 8.6 per cent compared to 15% in the previous year.

44. GDP per capita grew from P10 297 thousand during 2002/2003 to P10, 629 thousand in 2003/04, an increase of 3.2% in real terms. During 2003/04 most the sectors except for manufacturing which contracted by 0.5% recorded positive growth rates. The social and personal services registered 6.2% growth rate, banks and insurance grew at 5%, construction at 4.9%, while General Government increased by 4.6%. On the other hand, Water and Electricity, Trade, Hotels and Restaurant recorded lower than 4%. The lowest contributor was Agriculture with 1.1%.

45. Total formal employment increased from 285 382 in September 2003 to 296 387 in September 2004 resulting in additional 11 005 jobs. This was a growth rate of 4%. Some of the major sectors which contributed to the employment growth include, agriculture at 16%, manufacturing at 8%, while the construction contracted by 15%. According to the 2003/04 Household Income and Expenditure Survey (HIES), 462 367 people or 76% of the labour force of 606 827 people were employed. Unemployment stood at 23.8% in 2002/03.

46. Income inequality is high especially in comparison with other SADC countries in the region although since 1985/6 it has marginally declined. The poorest 20% of the population has only 12% of income share compared with the middle 40% having 29% and the wealthiest 20% having 59% of the national income. There is also disparity between income levels of male and female-headed households. This is more pronounced in urban areas where both mean and

median incomes of female-headed households is less than half of their male counterparts. Similarly, disposable income (cash income plus income in kind) shows great disparities between urban and rural areas.

47. The median income was P809 (approximately \$175) in towns compared to an average of P1 710 (approximately \$350) whilst in rural areas the median was P417 (approximately \$85) compared to an average of P641 (approximately \$125). (Household Income and Expenditure Survey 1993/1994). Most of the increase was realized in the fourth and first quarters (10.3 and 8.3 respectively). While the second and third quarter experienced a slight decline of 0.2 and 1.0 respectively.

48. **Table 2: Public expenditure\***

Public expenditure	2001/02	2002/03	2003/04
Public expenditure as % of GDP	42.8	42.8	40.8
Growth rate in public expenditure	18.5	14.8	3.7
Overall budget balance (Pm)	(961.96)	(1 391.78)	(78.32)
	5.9	7.0	
Health share of expenditure	24.9	22.6	9.8
Education share of expenditure	9.6	9.2	23.6
Defence share of expenditure			9.0

\*Source: Ministry of Finance and Development Planning.

49. Estimated Gross Domestic Product (GDP) in current prices went up to P36,338 million from P31,922 million in 2001/02. This is an increase of 13.8 percent compared with 11.5 percent in the previous year. Most of the increase was realized in the fourth and second quarters.

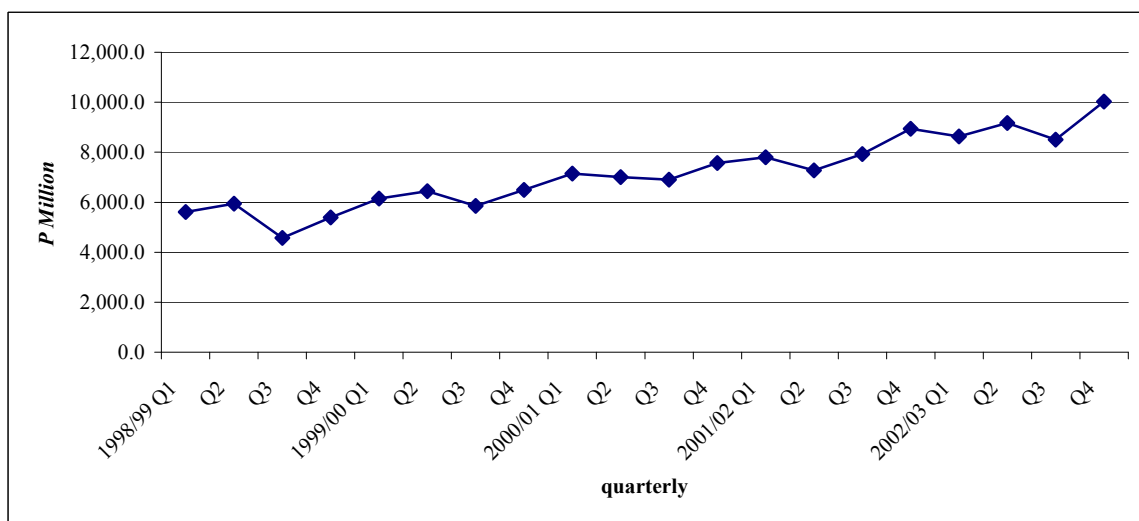
50. At sector level, Mining remained the major contributor to GDP (34.8 percent) followed by General Government at (16.0 percent); Trade, Hotels and Restaurants (11.5 percent) and Banks, Insurance and Business Services at 11.3 percent. Within Trade, Hotels and Restaurants industry, Trade accounted for 8.9 percent, Hotels and restaurants accounted for 2.6 percent. The lowest contributor to GDP was Agriculture at 2.4 percent followed by Water and Electricity at 2.6 percent (Table 0.1.1).

51. At constant 1993/94 prices GDP was estimated at P18,038 million, an increase of 6.7 from the previous year. High annual change was recorded for Water and Electricity at 9.5 percent and the rest were below 5 percent the lowest change observed on Transport and Communication (0.9 percent) followed by Construction at 0.6 percent. GDP excluding Mining increased by 4.8 percent compared with 5.5 percent in the previous year (Table 0.1.2).

52. Chart 1 shows the quarterly Value Added at current prices for all sectors from 1998/99 to 2002/03 in million Pula.

**Chart 1**

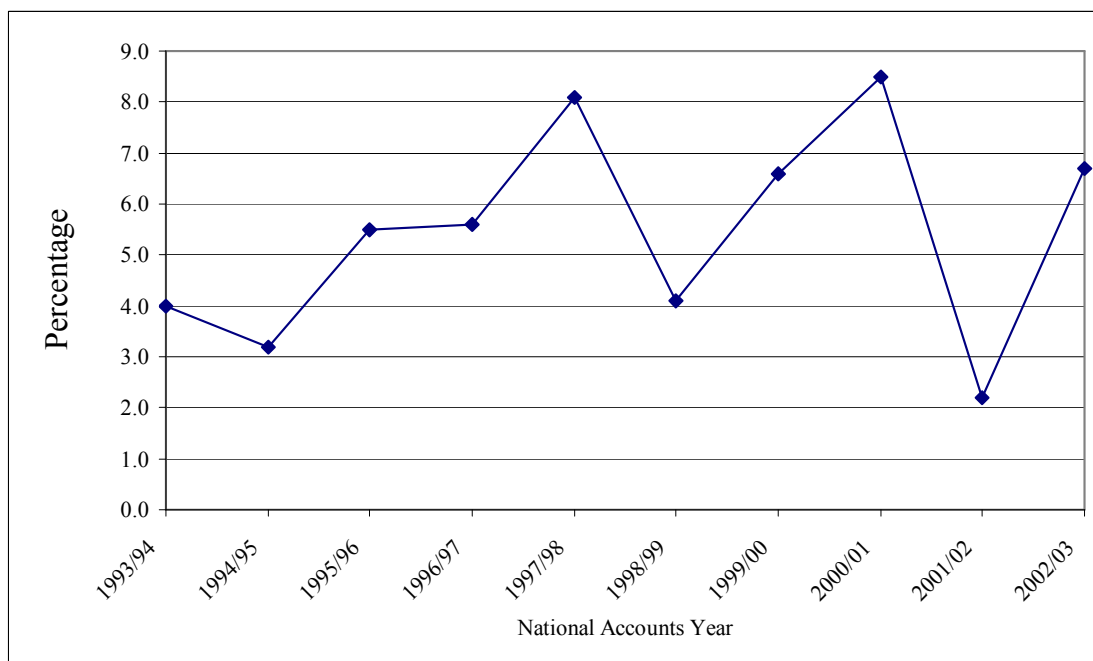
**Quarterly value added at current prices from 1998/99-2002/03 (Pmillion)**



The graph below shows the trend of rate of increase in GDP in real terms since 1993/94.

**Chart 2**

**Annual percentage in real GDP (1993/94-2002/03)**



GDP per capita real terms increased by 4.2 percent in 2002/03 from a revised estimate of P9,785 in 2001/02 to P10,195 in 2002/03.

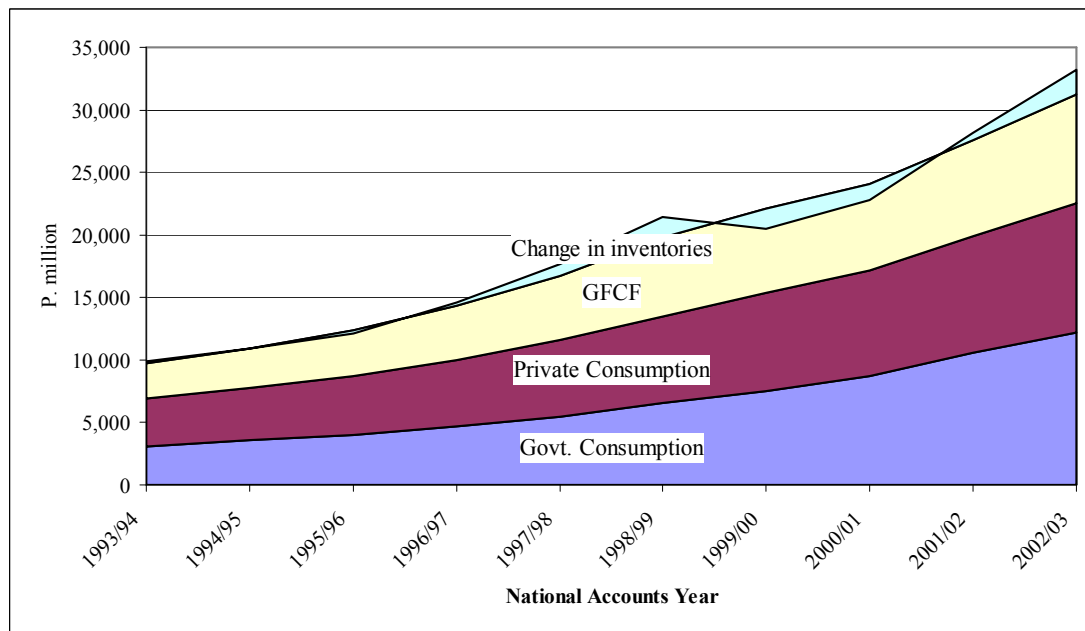
53. **Gross domestic product by type of expenditure**

In nominal prices, GDP by total expenditure was mainly from Government Final Consumption, followed by Household final Consumption with P12, 168 and P10, 336 respectively (table 0.2.1). In real terms, GDP by expenditure grew as follows; Government Final Consumption +5.9 percent; Private Final Consumption +0.9 percent; Gross Fixed Capital Formation +1.5 percent; Total exports and imports declined by 5.2 & 1.7 percent respectively.

54. Chart 3 shows GDP by type of expenditure. In 2002/03 Gross Domestic expenditure as percentage of total GDP was 91.5% compared with 88.4% of 2001/02.

**Chart 3**

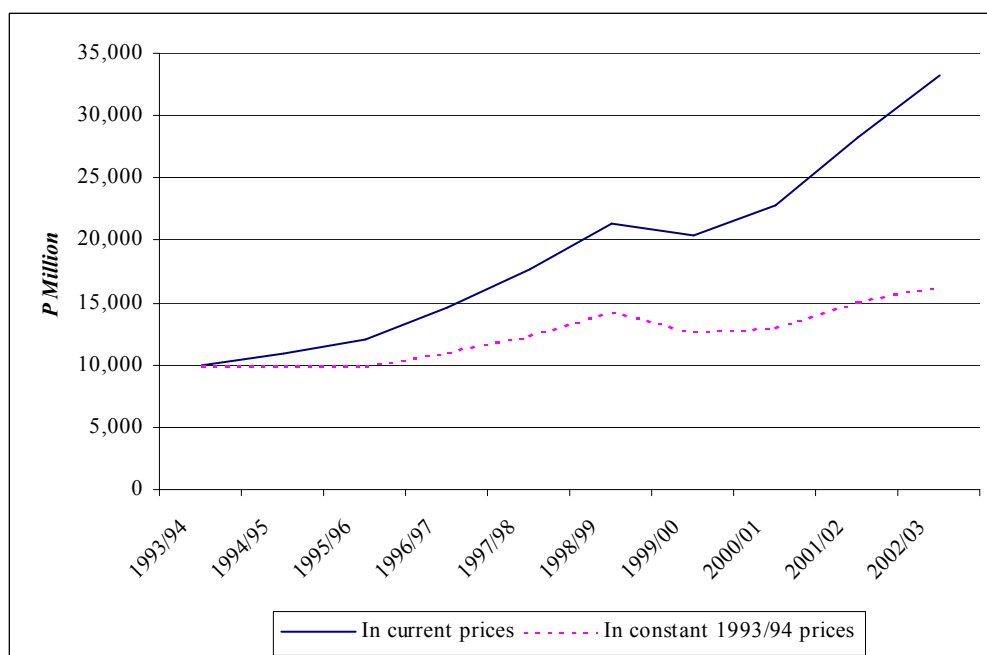
**Gross domestic product by expenditure at current prices 1993/94 to 2002/03**



In real terms, GDE in 2002/03 increased by 8.9 percent, compared with an increase of 15.3 percent in 2001/02.

55. Chart 4 shows a trend of GDP by expenditure at current prices since 1993/94. The trend shows that it has steadily been rising, except for the period 1998/99 and 1999/00.

**Chart 4**  
**Gross domestic expenditure 1993/94-2002/03**



**56. GDP by type of income**

In aggregate terms nominal factor cost/income increased from P22, 936 million in 1999/00 to P26, 568 million (Table 0.3.1) in 2000/01. This growth was apparent in all the factor cost/income components. Compensation of employees increased from P7, 252 million in 1999/00 to P8, 244 million in 2000/01. Nominal Gross operating surplus increased from P15, 685 million in 1999/00 to P18,324 million in 2000/01.

57. GDP by type of income (unadjusted for seasonal variations) on a quarterly basis is as in Tables 4.1 and 4.2 expressed in Million of Pula and percentages of total GDP respectively.

58. Chart 5 shows the average composition of GDP by type of income. The chart indicates that approximately a quarter and two thirds of the total GDP was realized through remuneration of employees and gross return to capital/remuneration of the owners of capital respectively. The rest was realized through payments of net import taxes and other taxes on products.

**Chart 5**

**Average composition of GDP by type of income 2000/01**

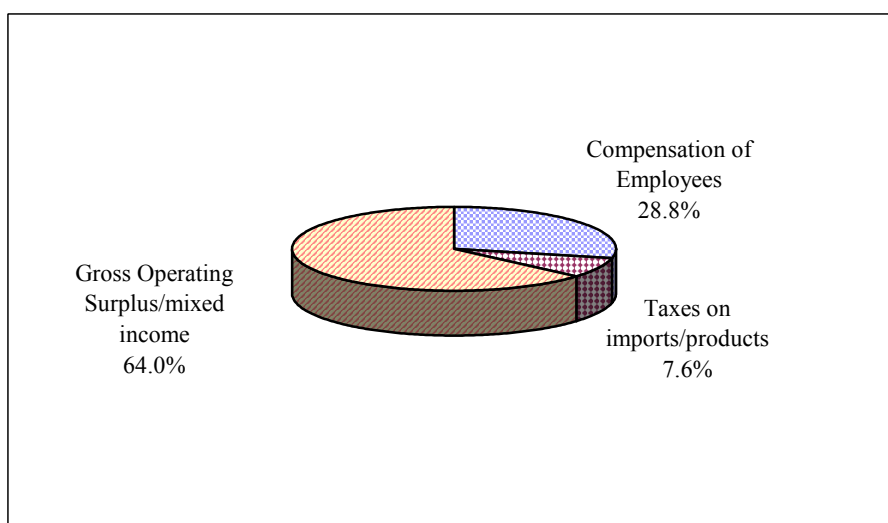


Table 0.7.1 shows the relations among Product, Income, Savings and Net Lending/ Borrowing in nominal prices.

The relations among Product, Terms of trade and Gross National Income in real terms is shown in table 0.7.2.

### **Employment**

59. Total formal employment increased from 279,700 in September 2002 to 285,400 in September 2003 resulting in an additional 5,700 jobs. This was a growth rate of 2.0 percent. The majority of the jobs were concentrated in the private sector, which created 5,000 jobs, followed by central government with 1,100 jobs. Formal sector employment in central government increased by 1.3 percent. The latest results of the 2002/03 Household Income and Expenditure Survey (HIES) indicate that there were 606,826 economically active persons, of which 462,366 persons were employed in both formal and informal sectors and 144,460 persons were unemployed. This gives overall unemployment rate of 23.8 percent as compared to 19.6 percent obtained from the 2001 Population and Housing Census results.

### **Income disparities**

60. The 1993/94 and 2002/03 Household Income and Expenditure Surveys (HIES) show high incidences of income inequality that has been increasing between the two periods. The 2002/03 HIES indicate that the poorest 40 percent of the population had only 5.8 percent of the total income share, compared with 11.6 percent in 1993/94. The income share of the

middle 40 percent of the population was 23.3 percent in 2002/03 compared to 29.1 percent in 93/94, while the richest 20 percent of the population got 70.9 percent of total income, compared to 59.3 percent in 1993/94.

61. At household level the income share has not changed much between the two surveys. In 93/94 the poorest 40 percent households had an income share of 9.4 percent compared with 9.2 percent in 2002/03. The middle 40 percent households get the income share of 29.9 percent compared to 29.4 percent in 1993/94. The richest 20 percent households get an income share of 60.9 percent in 2002/03, compared to 61.1 percent in 1993/94.

62. The 2002/03 HIES revealed disparity of disposable income between male and female-headed households. In all the strata (cities/towns, urban villages and rural villages), male-headed households had higher incomes than female-headed households. Similarly, disposable income (cash income plus income in-kind) shows great disparities between strata. The national monthly household median disposable income was P1344 compared to an average monthly household disposable income of P2424, in Cities/towns, the monthly median disposable income was P1949 compared to an average of P3961. In urban villages, households had monthly median disposable income of P1334 compared to an average household income of P2445, whilst in rural areas the household monthly median disposable income was P743 compared to an average of P1379.

### **E. Constitutional structure**

63. The Constitution of Botswana was adopted at independence. It provides for a Republican form of government headed by the President with three main administrative organs: the executive, legislature and the judiciary. Each of these organs is independent from other organs.

64. The executive branch consists of the cabinet headed by the President and is responsible for initiating and directing national policies. There are fifteen (15) ministries each headed by a cabinet minister which, together with the Attorney General's Chambers, Auditor General's office and Independent Electoral Commission (IEC) constitute central Government. Each ministry is sub-divided into offices (generally "Departments" or "Divisions") with different areas of responsibility.

65. The country is divided into nine (9) administrative districts. In each of these districts, there are 9 district councils. In urban areas there are two (2) city councils and four (4) town councils. These councils fall under the Ministry of Local Government and are responsible for primary education facilities, health facilities (clinics, health posts etc), construction and maintenance of some rural roads, social and community development, village water supply and public health.

66. On the other hand, some central government ministries have decentralized some of their functions by creating offices of their Ministries in the Administrative Districts, for example, Water Affairs, Immigration and Citizenship, Agriculture, Civil Registration, Labour and Social Security. In these Administrative Districts, there is an office of the District Commissioner whose main role is to coordinate all district development activities.

67. The legislature is established under Section 57 of the Constitution and it consists of the President and the National Assembly. A notable development in the country's political landscape was made when Parliament took a major decision to increase the number of seats of elected members of the National Assembly by seventeen (17). The distribution of the seats was done subsequently by the Delimitation Commission which, in terms of the Constitution, is empowered to do so independently of the executive, the Legislature and the Judiciary. Consequently, the Tenth Parliament has a total number of fifty-seven (57) elected members against the previous forty (40).

68. In addition there are four specially elected members, the Attorney General (non-voting) and the Speaker of the National Assembly (non-voting). The National Assembly acts in consultation with the 15-member House of Chiefs on tribal matters, and is the supreme law making authority in the country. Elections take place on the basis of universal adult suffrage and the main Opposition Party is the Botswana National Front (BNF). Since the 2004 elections, the Opposition currently holds 14 seats in the parliament.

69. Parliamentarians are elected on the basis of their individual political affiliations and not their tribal affiliation. In Botswana, there is no affirmative action or quotas on the basis of race, ethnicity or tribal affiliation.

70. In addition to the National Assembly, there is a House of Chiefs. The House of Chiefs is a body of traditional leaders which advises Parliament on any matter of national concern. They are particularly consulted on issues that are likely to impact on the culture and tradition of Botswana.

71. There are currently 15 members in the House of Chiefs. Eight members are ex officio representatives of the loosely referred to as 'Principal Tribes' (Bakgatla, Bakwena, Bamalete, Bamangwato, Bangwaketse, Barolong, Batawana and Batlokwa). Four members are elected from tribal territories that were Crown Lands and three are specially elected by the other twelve members of the House of Chiefs. These specially elected members are persons who are not and have not been actively involved in politics in the preceding five years.

72. The ex officio members of the House of Chiefs serve so long as they retain their status as a Paramount Chief within their own tribal territory giving them potentially permanent status within the House of Chiefs. The elected members from areas that were Crown Lands serve so long as they retain their position as Sub-Chief within the Crown Lands or until the Parliament dissolves, whichever comes first. The term of specially elected members is also tied into the life of Parliament (which usually lasts for approximately five years).

73. Although elected and specially elected members have a different term of office than the permanent status of the Paramount Chiefs, they all enjoy equal status within the House of Chiefs. Elected and specially elected members have attained important leadership positions within the House of Chiefs. Despite their limited terms of office, elected and specially elected members can be continuously re-elected.

74. A Bill is pending in Parliament to revise the structure and expand representation in the House of Chiefs. This will be discussed further below in discussion of Article 2.



## **F. Structure of the judiciary**

75. The Judiciary consists of the Court of Appeal, the High Court and the Magistrates Courts. Judges are appointed by the President acting on the advice of the Judicial Service Commission. The Judicial Service Commission consists of the Chief Justice (as Chair); the President of the Court of Appeal; the Attorney General; the Chair of the Public Service Commission; a member of the Law Society nominated by the Law Society; and a person of integrity and experience not being a legal practitioner appointed by the President.

76. In addition to appointing judges, the Judicial Service Commission also appoints the members of the Independent Electoral Commission.

77. There is also the Industrial Court whose judges are appointed by the President in terms of the Trade Dispute Act.

## **G. Administrative structure**

78. In addition to the above constitutional structures, there exist the Office of the Ombudsman and the Land Tribunal.

79. The Ombudsman is mandated in terms of the Ombudsman Act to investigate complaints of injustice or maladministration in the Public Service, received from the public (including bodies corporate) and if such complaints are valid to make recommendations to the appropriate authority for compliance therewith. In the event of non-compliance the Ombudsman is obliged to make a Special Report to the National Assembly. The Ombudsman also has jurisdiction over human rights violations, as well as complaints from persons in both legal custody and those in hospitals.

80. The following matters are precluded from the Ombudsman's jurisdiction:

(a) Matters certified by the President or a Minister to affect relations or dealings between the Government of Botswana and any other government or any international organization;

(b) Action taken for the purpose of protecting the security of the State or investigating crime, including action taken with respect to passports for either of those purposes;

(c) The commencement or conduct of civil or criminal proceedings in any court;

(d) Action taken in respect of appointments to offices or other employment in the service of the Government of Botswana or appointments made by or with the approval of the President or any Minister, and action taken in relation to any person as the holder or former holder of such office, employment or appointment;

(e) Action taken with respect to orders or directions to the disciplined forces;

(f) The grant of honours, awards or privileges within the remit of the President;

(g) Action taken in matters relating to contractual or other commercial dealings with members of the public other than action by an authority mentioned in Section 3 (6); Action taken in any country outside Botswana by or on behalf of any officer representing the Government of Botswana or any officer of that Government.

81. The Land Tribunal investigates and adjudicates cases regarding land disputes brought to it from lower administrative bodies.

#### **H. The legal system**

82. Botswana has a dual legal system, comprising customary law and what is usually termed received law (or common law). Customary law is the law of any particular tribe or tribal community in so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice. Customary law is not written and has variations among different communities. The received law consists of English law and Roman Dutch law as it was in force at the Cape on 10th June 1891 and as amended by statutes from time to time and interpreted by the Courts. The two systems co-exist although there are differences in the law and its application.

83. The highest court in Botswana is the Court of Appeal. It is the superior court of record to which appeals can be made from the High Court. The High Court has original jurisdiction to hear and determine civil and criminal proceedings. It acts as an appellate body for the Magistrates Courts and the Customary Court of Appeal. The Common Law is made up of statute and precedents, which are cases upon which the High Court and Court of Appeal have ruled.

84. Since independence the Customary Courts have derived their authority from the Customary Courts Act no. 57 of 1968. The Customary Law Act of 1987 also lays down rules which are meant to guide the courts in deciding whether customary or common law applies. The customary courts have jurisdiction to deal with a wide variety of matters of civil<sup>4</sup> and criminal<sup>5</sup> law such as financial disputes, petty theft, marital disputes, divorce (where the couple is married under customary law), livestock theft, insults and defamation, among others. The jurisdiction of the customary court is limited by the potential penalties or fines to be imposed, or the particular types of crimes or disputes to be adjudicated. When dealing with criminal matters the courts follow the Customary Court Procedure Rules.

85. Lawyers are not permitted to give legal representation at the customary courts (Customary Courts Act Chapter 16:01 Section 32). However, a person has the right to have a case transferred to another court (a common law court) where they have the right to legal representation if the permission to transfer is given by the Commissioner of Customary Courts.

86. Customary law is administered by the *Kgosi*, plural *dikgosi* (traditional leader of a tribe), Headman or Court President who confers with the elders of the community who are conversant with customary law and practice. Cases are generally dealt with at the *kgotla* (a public meeting place – plural *dikgotla*). *Dikgosi* will often become involved with dispute resolution outside the court system where there is room for discretion in the way they exercise their powers (legal or persuasive).

87. The application of the Acts regulating the jurisdiction and procedures of the Customary Courts is limited by the levels and training of *dikgosi*. The lack of awareness among the public at large and the fact that the Act is not translated into Setswana or other local languages also contributes to limited application of the Customary Courts Act.
88. Customary law is unwritten and practice can vary between different *dikgotla* (as customs vary according to different traditions). It is fluid and is a function of the patterns of behaviour within a particular community. This could make the integration of international conventions into the customary courts difficult.
89. Local police are officials of the customary courts and their work exists alongside the national police service. Both police services tend to prefer to use customary courts because they dispense swift and accessible justice.
90. The Customary Court of Appeal deals with appeals from the customary courts. Decisions of the Customary Court of Appeal may be appealed to the High Court. On issues which refer to land claims, appeals can also be made to the Land Tribunal.
91. The effectiveness of the two systems and the rules that guide them and the interplay of the system both at the cultural and legal levels have an impact on the way rights are protected and promoted in Botswana.
92. In addition to the Convention for the Elimination of all forms of Racial Discrimination, Botswana has ratified the following agreements and instruments which commit it to eliminate racial discrimination: the International Covenant on Civil and Political Rights; the Convention for the Elimination of all forms of Discrimination Against Women; the Convention on the Rights on the Child; and the African Charter on Human and Peoples' Rights.

### **Law enforcement**

93. Botswana has a variety of agencies and institutions which work in law enforcement. These include the Botswana Police Service, Botswana Local Police, the Botswana Defence Force, and the Botswana Wildlife Services.
94. The Botswana Police Service is a national institution which concentrates on crime prevention and deterrence. They serve under the central government. The Botswana Local Police are community-based and serve in local and remote areas. They serve under the Ministry of Local Government. The Botswana Local Police work under the supervision of the Chiefs and local government administration in the regions and assist them in maintaining order. While the Botswana Police Service maintains jurisdiction in the remote areas, the Botswana Local Police offer first-line law enforcement in the most remote areas.
95. The primary role of the Botswana Defence Force is to ensure national security and protection of the country's borders. They also support other law enforcement agencies, in particular the Botswana Wildlife Services with respect to coordinated anti-poaching campaigns. They also support the Botswana Police Service with respect to crime prevention campaigns. The Botswana Wildlife Service exists to secure national parks and game reserves.

## **The Directorate on Corruption and Economic Crime**

96. The Directorate on Corruption and Economic Crime (DCEC) was established on 5 September 1994 in terms of the Corruption and Economic Crime Act (Cap 08:05). The main function of the DCEC is to receive and investigate any complaints alleging corruption in any body or by any persons. The Act prescribes the powers and duties of the Director. It states the procedures to be followed in handling a suspect and specifies the offences involving public officers, employees of public bodies, agents and those in the private sector.

97. The Directorate is under the Office of the President and the Director is formally and directly responsible to the President. However, the DCEC is autonomous in carrying out its functions although the decision to institute prosecutions is reserved for the Attorney General. Where evidence of an offence is obtained this is referred to the Attorney General in a Prosecution Report. If the Attorney General decides upon a prosecution, the matter is usually referred back to the Directorate to undertake the processes of court registration and mention before the courts. Actual prosecution is the responsibility of the Attorney General's Chambers, but Directorate officers, in their capacity as Public Prosecutors, assist the Attorney General in a considerable number of cases. Since its establishment the DCEC has prosecuted a number of economic crimes.

### **I. Vision 2016**

98. After thirty years of independence, Botswana decided to take stock of its past aspirations and formulate new dreams for the future. Vision 2016 was developed to envision the kind of society the country would have in the year 2016 when it will celebrate its fiftieth year of independence.

99. There was a participatory and consultative process sanctioned by His Excellency the President which resulted in the development of the goals. Input was solicited from local communities, individuals and societies throughout the country – both in urban centers and remote areas.

100. Among the seven Vision 2016 goals which have been agreed upon, there are several which are directly relevant to the implementation of CERD, and these are:

- (i) A Moral and Tolerant Nation;
- (ii) An Open, Democratic and Accountable Nation;
- (iii) A United and Proud Nation;
- (iv) An Educated and Informed Nation.

101. These goals will be explained further below in the discussion of Article 2.

102. The Vision 2016 goals have been mainstreamed into Botswana's development plans and substantial resources have been devoted to ensuring their attainment. There is a Vision Council with a fully-fledged Secretariat which is overseeing the implementation of the Vision Goals.

103. Vision 2016 is meant to build a stable society in which all nationals are free, involved and can contribute meaningfully to development.

## Article 2

104. As a commitment to the eradication of all incitement to, or acts of racial discrimination, Botswana has undertaken legislative, judicial and administrative measures to give effect to the provisions of the Convention. Botswana is a State Party to the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Racial Discrimination, as it is to most regional and international treaties on human rights. Its Constitution entrenches a Bill of Rights.

### (a) Legislative, judicial, administrative or other measures giving effect to article 2 (1)

105. A variety of measures have been taken to give effect to the undertaking of eliminating discrimination in all its forms and to promote understanding among all races.

106. The Constitution of Botswana guarantees equality of all Batswana.

107. Sections 3 and 15 of the Botswana Constitution outlaw racial discrimination.

108. Section 3 of the Constitution provides:

“Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the public interest, to each and all of the following, namely:

- (i) Life, liberty, security of the person and the protection of the law;
- (ii) Freedom of conscience, of expression and of assembly and association; and
- (iii) Protection for the privacy of his home and other property and from deprivation of property without compensation.”

109. The provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

110. Section 15 (1) of the Constitution further provides that “No law shall make any provision that is discriminatory either of itself or in its effect.”

111. Section 15 (2) stipulates that no person shall be treated in a discriminating manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

112. Section 15 (3) of the Botswana Constitution describes the expression “Discriminatory” 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 restriction to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”.

113. In case of violation of the Constitutional provisions above, Section 18 provides that persons alleging violations of Sections 3 and 15 may apply directly to the High Court for redress.

114. The *Unity Dow v. the Attorney General*<sup>6</sup> case is an example of an application for relief to the High Court under Section 18 of the Constitution. In this case, Unity Dow was a female Motswana married to a non-citizen. By reason of her being female, under the Citizenship Act Ms. Dow was unable to pass citizenship to her two children. Although the children were born and grew up in Botswana, in terms of the law, they were aliens in the land of their birth. Ms. Dow challenged the Citizenship Act as prejudicing her and being against the Constitution. The High Court agreed with her and granted her application, declaring Sections 4 and 5 of the Citizenship Act unconstitutional.<sup>7</sup>

115. In reviewing the *Unity Dow* case, the Court of Appeal of Botswana held that Section 15 (non-discrimination) of the Constitution must be read together with Section 3 (bill of rights). This “encapsulates the sum total of the individual’s rights and freedoms under the Constitution.” *Unity Dow v. Attorney General* 1992 BLR”.

116. The *Unity Dow* case was a landmark case which gave concrete relief to the petitioner, nullified portions of an Act on the basis of its discriminatory character, and reinforced the Constitutional commitment to non-discrimination.

117. In addition to the proscriptions in the Constitution, Sections 92 and 94 of the Penal Code also outlaw discrimination, incitement and violence on the basis of race. Section 94 (1) makes it an offence to discriminate against another person and 94 (2) then goes on to define discrimination as being where a person is treated less favourably or in a manner different to that in which he treats or would treat any other person.

118. Section 92 stipulates that “Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine not exceeding P500.”

119. Section 94 further maintains, “Any person who discriminates against any other person shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or both.”

120. Section 94(2) stipulates “A person discriminates against another if on the grounds of colour, race, nationality or creed he treats such person less favourably or in a manner different to that in which he treats or would treat any other person”.

**(b) Measures taken to review government policies and laws and to amend rescind or nullify any laws or policies which have the effect of creating or perpetuating racial discrimination**

121. A number of laws and government policies have been under review in recent years and changes have been proposed to eliminate any discriminatory effect and to ensure equality, particularly concerning ‘minority’ tribes.

122. As already indicated, the Constitution, the Penal Code and some Acts prohibit all forms of discrimination and provide protection to any person whatever his race, place of origin, political opinions, colour, creed or sex.

123. The laws of Botswana do not provide specific protection to any particular race or tribe. Everyone participates in different sectors of the economy and government and employment is based on merit.

124. There has, however, been some dissatisfaction from ‘minority’ tribes that some sections of laws were to a certain extent discriminatory of or marginalizing their tribes.

***The Tribal Territories Act***

125. One area of dissatisfaction identified by ‘minority’ groups in Botswana is the Tribal Territories Act. The history of the boundaries of the current tribal territories derives from when the country was proclaimed a protectorate of the British government in 1899. The British government formalized in a statute the boundaries of the tribal territories each of which they described by the name of the historically dominant tribe in that territory. That statute is the Tribal Territories Act which was re-enacted in 1933.

126. The Act defines the tribal territories in terms of the dominant tribes occupying them, which tribes themselves are made up of small tribal groupings each. The Bakgatla Tribal Territory was, for example, occupied by the original Bakgatla, the Batlokwa at Oodi, the Matebele at Matebeleng, the Baherero at Pilane, the Bakaa of Bokaa, the Bapedi of Leshibitse and more, all of whom were known by the generic name “Bakgatla” and to all of whom the Bakgatla Tribal Territory belonged. This kind of picture also prevails throughout the seven other major tribal territories.

127. In addition to these Tribal Territories, there existed some areas that were known as “Crown Lands.” These are located in Ghanzi, Kgalagadi, Chobe, and the North East. Each of these lands was occupied by a number of independent tribes each with its own hierarchy of chiefs. The Crown Lands were and are considered to be territorial equivalents to the Tribal Territories.

128. This distribution of land according to tribal territory has resulted in criticism from some ‘minority’ groups that the land is named for the dominant tribe only and that the other groups who make up the inhabitants of the area do not have the same rights.

### ***House of Chiefs***

129. Another area of dissatisfaction is with representation within the House of Chiefs. Representation within the House of Chiefs mirrors, in some ways, the territorial demarcation of the Tribal Territories Act and derives from the same understandings of tribal affiliation and representation. 'Minority' tribes argue that their Chiefs should be represented in the House of Chiefs so that they can be consulted on matters affecting the tribe's life.

130. The Government's view is that the Paramount Chiefs represent all of the tribes within their Tribal Territory. The intention in creating the House of Chiefs was that all people who lived within Botswana should be represented therein. The representation was not to be of tribes but of all peoples; the country was to be a unitary republic and tribal distinctions were to be given not too much attention. Representation was to be territorial rather than ethnic.

131. At the time of the drafting of the Botswana Constitution (in 1965), the concern throughout Africa was for unity and efforts were made to play down tribal affiliations. Today, forty years later, after conducting consultations through the Balopi Commission with Botswana throughout the country, the Government has acknowledged that the realities which prevailed at the time of independence have changed.

132. In the 2000, following a motion in Parliament, His Excellency the President appointed a Commission of Enquiry, known as the Balopi Commission to review laws, including Sections 77, 78 and 79 of the Constitution that were considered by some as discriminatory of 'minority' tribes. The Commission recommended that the wording of the provisions be reviewed and improved.

133. A Bill amending these sections was submitted to Parliament after extensive countrywide consultations, which were led by His Excellency the President. The Bill was referred to the House of Chiefs, which deliberated at length on each provision of the Bill at a meeting, which took place in February 2004. The House submitted its resolutions to Government and they were presented to Parliament where the Bill was tabled and read a second time. Unfortunately, before the Bill could pass its third reading and be adopted, elections were held and a new Parliament took office. The Bill represents an important first step to address the concerns of 'minority' groups and it has recently been re-introduced in the new Parliament.

134. In addition, there are several other pieces of legislation which are to be brought before Parliament to address issues relating to Sections 77, 78 and 79 of the Constitution.

### ***Language and culture***

135. A third area of dissatisfaction by 'minority' tribes is the topic of language and culture. English is the official language of Botswana while Setswana is the national language. As stated above, however, there are dozens of additional languages and dialects spoken in Botswana. Some groups do not understand why national media does not broadcast in 'minority' languages or why those languages are not taught in schools, especially in the early stages of primary



school. Initially, the underlying motive for the predominant use of English and Setswana was meant to promote national unity. Government has recently acknowledged that there is merit in requests for the use of the mother tongue in the education sector. A more thorough discussion of this matter is below in Article 7.

### ***Change of vehicle registration numbers***

136. Until 1995, plate numbers were allocated on the basis of the village or district of origin of the owner of the car. The system was set up so that registration of cars would identify, by the use of identifying prefixes, the village or district of origin of the owner (for example, BA for Francistown, BB for Serowe, BC for the Tuli Block area, BG for Southern District, BR for the Southeast District, or BP for Palapye). People would sometimes drive home to their villages (even if they lived in the city) in order to register their cars so that they would be identified with their tribal territory.

137. Individuals (including the police and other law enforcement authorities) could, potentially, determine from the registration numbers the village/district of origin of the driver. As many villages were predominantly inhabited by members of the same ethnic group or tribe, there was the potential for racial profiling and discrimination against the unsuspecting driver.

138. In March 1995, the registration system was changed to a centralized system which only has a national registration number. All plate numbers now start with B (for Botswana).

139. Although the change was made for administrative reasons, the result was that a potential for discrimination based on the origin of the vehicle as reflected in its registration number was eliminated.

### **(c) Special and concrete measures taken to ensure adequate development and protection of racial groups**

#### ***Vision 2016***

140. As mentioned earlier in the report, Vision 2016 was developed to envision the kind of society the country aspires to be by its fiftieth anniversary. The plans are concrete and refocus the country's efforts towards breaking down barriers and creating a unified, proud, tolerant multiracial society.

141. Vision 2016 is informed by the five National Principles: Democracy, Unity, Self-Reliance, Development and *Botho*. *Botho* refers to one of the tenets of African culture - the concept of a person who has a well-rounded character, who is well-mannered, courteous and disciplined, and realizes his or her full potential both as an individual and as a part of the community to which he or she belongs.

142. Among the seven 'Pillars' of Vision 2016 there are four which have direct relevance to the elimination of racial discrimination.

### **A moral and tolerant nation**

143. This Pillar contemplates a future where no Motswana is disadvantaged as a result of gender, age, religion, or creed, colour, national or ethnic origin, location, language or political opinion. Botswana will have eradicated negative social attitudes toward women, youth, the elderly and the disabled and will be free of all forms of sexual harassment.

### **An open, democratic and accountable nation**

144. The Botswana of 2016 will emphasize the accountability of all citizens from the State President down to community leaders for their actions and decisions. The Botswana of the future will be a community-oriented democracy with decentralized institutions building on its democratic history.

### **A united and proud nation**

145. By the year 2016, Botswana will be a united and proud nation sharing common goals based on a common heritage, national pride and a desire for stability. The country will still possess a diverse mix of cultures, languages, traditions and peoples sharing a common destiny. We will harness all of that diversity and will have achieved ethnic integration and full partnership to create a nation in harmony with itself.

### **An educated and informed nation**

146. By 2016, Botswana will have improved the quality and accessibility of its educational system and will gear it to the needs of the country and the job market. We must launch a major campaign of teacher training for all levels of school. All schools, regardless of the medium of instruction, must be properly equipped, in all parts of the country. The nation's languages must be taught to a high standard at all levels.

### **Efforts to break down stigmas against HIV-positive people**

147. While not racially based, discrimination against people with HIV/AIDS is of major national concern. Testing has always been encouraged and various efforts have been made to break down stigmas. Initiatives have been launched at football matches, concerts, beauty pageants and other social activities to encourage people to get tested. Parliamentarians and visible community leaders are also being encouraged to be tested to encourage others to follow their lead.

148. In addition, there are a variety of events held which are specifically aimed at breaking down stereotypes and ending stigmas against people who test HIV-positive. Botswana holds a "stigma-free beauty contest" for HIV-positive contestants. The pageant crowns Miss HIV-positive and is publicized throughout the country on television and in the media.

149. These kinds of efforts may help to promote tolerance of people who are different. In this case, the 'difference' is HIV status. With a growing awareness and understanding of tolerance, however, such efforts could also extend to issues of racial, national, ethnic or tribal differences.

### Article 3

150. There is no specific piece of legislation which deals with racial segregation and apartheid. However, as discussed under Article 2 in this report, the Constitution, which is the supreme law of the land, prohibits all forms of racial discrimination of any written law or in performance of the functions of any public office or any public authority. Sections 92 and 94 of the Penal Code also, as already indicated, outlaw discrimination. As evidenced by the procedures and practices in public institutions such as hospitals, schools, prisons etc, where there is no distinct form of racial segregation.

151. If in any case an individual has reason to believe that he/she has been afforded different treatment on the basis of their race, tribe, place of origin, political opinion, colour or creed, she/he has a legal right to seek justice as outlined in Article 2 and 6.

152. There are specific areas, particularly in Gaborone, where specific ethnic groups congregate and live together. This is not officially sanctioned but may be a result of certain socio-economic conditions.

153. The official position is that groups should integrate throughout the country. Indeed, in 1997 when a group of Angolan refugees opted to permanently reside in Botswana, they applied for residential plots of land at Dukwi from the government as part of their integration process. Because they were applying en masse, the normal policy of the Land Board would have been to allocate their plots on a first come, first served basis. This would have resulted in creating a de facto segregated Angolan residential area. The Land Board decided that rather than allowing that to happen, they took a deliberate decision to allocate the plots so that the former Angolan refugees would be mixed together with local Batswana already living in the area.

154. In 1993, the Tribal Land Act was amended to remove the word “tribe” and “tribesman” wherever it appeared and replaced it with “citizen”.

155. Before the reforms, Batswana could only be allocated land in the tribal areas from which they originated. Allocations in areas outside an individual’s tribal territory required the approval of the Minister of Lands. Today, citizens can apply for land in any tribal area and expect to be allocated a piece of land. While non-citizens can be allocated tribal lands with the consent of the Minister of Lands, the Minister has temporarily suspended the allocation of such lands to non-citizens pending review.

156. In 2003, Botswana started the process of reforming its policy relating to allocation of tribal land. Botswana has three forms of land tenure: state, freehold, and tribal lands. State land is held by the State. Tribal land is held in trust for the tribes (and administered and allocated by the Land Board for each tribal territory). Freehold land is land owned by private entities.

### Article 4

#### (a) Measures taken to eradicate all incitement to or acts of racial discrimination

157. In compliance with the requirements of ICERD and other treaties on human rights, the Botswana Government has enacted laws which proscribe racial discrimination in any form and

makes racially motivated propaganda and incitement to violence punishable by law. Persons and groups also enjoy civil remedies at their option and in addition to protection by criminal sanction.

158. As referenced above, Sections 3 and 15 of the Constitution provide the general constitutional basis for non-discrimination and promotion of equality.

159. Any advocacy of national or racial hatred constitutes incitement to discrimination. The Penal Code specifically outlaws incitement to discrimination and violence on the basis of race. Section 92(1) of the Penal Code reads thus:

160. “Any person who utters any words or publishes any writing expressing or showing hatred, ridicule, or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence ...”

161. There are certain commonly used expressions or words which are considered out-rightly racist or serve the purpose of demeaning groups or individuals from those groups. For example: *Makula* referring to Indians. *Makula* comes from ‘collies’ which is a derogatory term popularized by the former racist regime in South Africa during the Apartheid era. *Makwerekwere* referring to people of African descent from countries North of Botswana. *Makutwane* is used in reference to off-springs of mixed parentage (black/white parents).

162. Some members of the so-called Principal tribes often refer to ‘Minority’ tribes using derogatory prefixes before their collective names, for example, *Makalaka* instead of *Bakalaka* (*Kalanga* people), *Lekgalagadi* instead of *Mokgalagadi*. The prefixes *Le-* (singular) and *Ma-* (plural) are generally used to refer to objects and the prefixes *Mo-* and *Ba-* (plural) to people.

163. Generally, victims of such discriminatory utterances do not submit formal complaints to courts against the perpetrators. Over time people have, perhaps, internalized the discriminatory practices. However, as indicated in Articles 4 of this report, Sections 92 Section (1) and 94 of the Penal Code outlaw discrimination of any form and prescribe penalties.

164. There are a number of instances where people have used racial slurs towards either ‘minority’ groups or individuals. However, the ones which usually reach the courts are of discrimination along the colour bar. What follows are examples of recent cases prosecuted under Botswana laws in which hatred based on racial lines were expressed.

165. In the case of *State v. Vivienne Jane Munnik*, two Government statisticians with their driver went to the accused person’s house during the population census to collect data. The accused person showed no interest in helping them but instead referred to them as “Kaffirs working for a Kaffir Government.”<sup>8</sup> The accused then let loose vicious dogs on the enumerators. Investigations were conducted by the Police and the accused person was charged accordingly. She was convicted and fined P500 (approximately USD100) or six months imprisonment in default of payment.<sup>9</sup>

166. In another case, *State v. Emile Muller*, the accused, a white South African was charged with three counts of expression of hatred. The accused person was an Operations Manager for a tourist resort in Kasane (Chobe Safari Lodge). On the first count, the accused had said to two employees, “you are really monkeys you bloody bastards, you have to go to school again.” On the second count, the accused uttered the following words to the two employees: “Batswana are monkeys and they are not supposed to sit on my chairs.” On the third count, the accused uttered the following words to an employee: “Call all the monkeys working with you.” The accused person was tried at the Magistrate Courts and found guilty on the first count but was not punished under Section 32 of the Penal Code. However, on counts 2 and 3, the accused was discharged and acquitted.

167. The accused person was tried at the Magistrate Court which dismissed the charge in respect of the first count in terms of Section 32 (1) of the Penal Code, which reads as follows:

“Where, in any trial before a magistrate court, the court thinks that the charge is proved but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may, without proceeding to conviction, make an order dismissing the charge”.

168. There are additional cases of racial slurs leveled against ‘minority’ groups or individuals. For example, a Paramount Chief of Bangwaketse, Kgosi Seepapitso IV, was accused of using racially demeaning language against a local District Officer who is of a different tribe (*Khumo Keeng v. the Attorney General of Botswana and Kgosi Seepapitso IV*). The case is pending before the courts.

169. With the advent of the Internet, there have been a number of emails which are circulated as humour but which have demeaning racial overtones. Currently, there are no complaints at the police regarding offensive emails.

170. Other than Penal Code Section 92, there is currently no legislative or investigative framework to deal with cyber-racism or any other cyber-related crime. The Government is currently working on a National Internet Communications Technology Policy. The Policy will, among other things, address issues related to formulating an appropriate legislative framework.

171. Along with creating a legislative framework, it is hoped that the Policy will include public education efforts which will raise awareness among Internet users about the fact that racially demeaning emails are not only unacceptable and contrary to National Principles and Vision 2016, but they may even be illegal.

172. The Penal Code also protects against incitement or violence targeting members of religious groups who may constitute a specific ethnic or racial group. There is currently a situation in Botswana involving a dispute in which the Indian community is being targeted as a result of a business dispute involving the halaal slaughtering of chickens. Some local chicken farmers in Botswana argue that they are subjected to unfair trade practice because in order to sell

their chickens, they must slaughter their chickens according to the halaal tradition. This increases the cost of slaughtering chickens as only a select group of Muslim slaughterers certified by the Muslim Association can be used at a fee.<sup>10</sup>

173. The major outlets insist on being supplied with halaal products which means that unless the farmers incur the additional cost they will be unable to sell their chickens. This has resulted in a variety of anti- Indian sentiments being expressed by the concerned public on radio, via graffiti and articles in print media. At present the police are investigating an incident of racially motivated graffiti in Moshupa. The Police have since reported that the investigations have been closed for lack of information and evidence.

174. Section 136 of the Penal Code, stipulates that, “any person who destroys, damages or defiles any place of worship or object which is held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any person is likely to consider such destruction, damage or defilement as an insult to their religion is guilty of an offence.

175. Further, Section 137 stipulates that, “any person who voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremony is guilty of an offence.”

176. Additionally, Section 140 of the Penal Code makes it an offence to write or utter words with intent to wound religious feelings.

**(b) State sponsorship or sanction of racist societies/companies/authorities**

177. Section 7(2) of the Societies Act, read with Section 45 of the Interpretations Act (cap. 01:04) makes peremptory the refusal to register organizations which have, expressly or implicitly, racism and racial discrimination as their objects. Furthermore, the Penal Code provides that a society is unlawful if it is formed for, inter alia, disturbing or inciting to the disturbance of peace and order in any part of Botswana.

178. *Chelwa ya Shekgalagari*, a group which promotes the language and culture of Bakgalagadi people, was advised by the Registrar of Societies to revise its Constitution after its initial application. Registration of this group is currently pending. The Registrar of Societies has indicated that there are no cases of associations which have been rejected on the basis of racial discrimination or racist purposes.

179. In addition to restricting societies with racist purposes, businesses and companies with illegal purposes are also not permitted to register and operate (see Section 7 of the Companies Act and Section 4 of the Business Names Act). As racial discrimination is outlawed under Section 94 of the Penal Code, no business or company with a racist purpose can operate. This also holds true for religious organizations.

180. The State, local authorities or other public authorities cannot legally practice racial discrimination by reason of the Constitutional prohibitions aforementioned.

## Article 5

In Botswana all persons within the state's jurisdiction enjoy rights listed in ICERD Article 5.

**(a) Right to equal treatment before the tribunals and all other organs administering justice**

181. All individuals have equal treatment before the law. This is secured by Section 3(a) of the Constitution which accords every person in Botswana protection of the law. As noted previously in this report, this protection was interpreted in the case of *Unity Dow v. Attorney-General* as meaning equality before the law.

182. Access to justice is not absolute. While Section 3(a) of the Constitution provides that every individual shall be equal before the law, there are certain barriers to access such as poverty and culture.

183. Poverty has militated against people seeking remedies from the court. Where an individual's rights may be violated, he or she may not have the means to pay for a lawyer or to pay court fees. Although a lawyer is not required in the court, it is highly advisable for one to have legal representation. There are also situations where cases are suspended because the litigants run out of funds.

184. The court system in Botswana is western and can be culturally alienating to ordinary Botswana, particularly semi-literate or culturally isolated people from remote areas. This may also have a disproportionate impact on specific racial groups and on women but no statistics are available.

185. The Constitution goes on further to guarantee the right to a fair trial. Section 10(1) of the Constitution guarantees that any person who is charged with a criminal offence, unless the charge is withdrawn, will be given fair hearing within a reasonable time, by an independent and impartial court of law. However, the country is facing a backlog of cases due to manpower constraints in the administration of justice and this has negatively impacted on the efficient dispensation of justice. This has affected all cases and has not had any disparate impact on specific racial groups.

186. In protecting the right to a fair hearing, the courts adhere to the principle "justice must not only be done, it must be seen to be done". This principle seeks to ensure that there is no likelihood of bias on the part of the judges.

187. In a further attempt to ensure that all individuals have equal treatment before the courts, the law provides for the presumption of innocence. The Constitution provides in Section 10(2)(a) that every person who is charged with a criminal offence shall be presumed innocent until proven or has pleaded guilty to the charges.

188. The Constitution guarantees the right to legal representation in criminal cases at the accused's own expense (Section 10(2)(d)). Government assistance to criminal defendants who do not have the means is limited to those charged with capital offences. In such cases, *Pro-Deo* Counsel is provided. However the amount paid by government is not attractive compared to private sector fees. The Registrar of the High Court has tried to address the problem by decreeing that every law firm should take up one such case a year but this has not resolved the problem of the quality of representation for the needy. The University of Botswana runs a poorly resourced legal clinic staffed by law students and supervised by a law lecturer in an attempt to fill the void. In addition, a number of NGOs have some legal aid programmes for the needy. However, it is acknowledged that some of them have financial constraints.

189. Ditshwanelo, the Botswana Center for Human Rights, held a workshop on Legal Aid in 2002 and a workshop on Pro Deo representation in November 2004 to discuss the need for better representation in court.

190. While these rights are provided to ensure equal treatment under the law, given the high rate of unemployment and varying socio-economic conditions within Botswana and the high cost of accessing legal counsel or paying bail, some of these rights may not be realized in fact. There is no indication, however, that this differentially impacts specific racial groups.

191. The Constitution provides in Section 10(2)(b) and (f) that a person charged with criminal offence shall be informed as soon as reasonably practicable, in a language that he/she understands, be given sufficient time and facilities for the preparation of his defense and be provided; free of charge with the services of an interpreter; if he/she does not understand the language of the charge at the trial.

192. In recognition of the fact that not all individuals speaks the official languages, the Magistrate Court Act, Section 5(2) provides for interpretation from English, the court language, to the language understood by the parties concerned. However, in civil proceedings the parties may be called upon by the presiding Magistrate to bear part of or the whole of the cost for interpretation where the language understood by the parties or witnesses is not one of the languages commonly spoken within the area of jurisdiction of the court.

193. Certain protections are provided in the administration of justice to help ensure transparency in court proceedings. Such transparency also helps to prevent incidents of racial discrimination in the judicial system. Proceedings of the courts, including the announcement of the verdict, are held in public except with the consent of all parties involved or subject to specific exceptions (including national security or the case of minors). In addition, the records and proceedings of every court are, in all cases, accessible to the public under the supervision of an officer of the court at convenient times and upon payment of a fee. Law reports are also available at the library of the University of Botswana.

### ***Gender-based dimensions of discrimination***

194. In General Recommendation XXV, the CERD Committee recognized that there are gender-related dimensions to racial discrimination. The Botswana Constitution secures to every person in the country protection under the law. This has been interpreted to mean that women and men are equally entitled to the rights and freedoms contained in the Bill of Rights. It should



be noted, however, that Section 3 of the Botswana Constitution does not state as unequivocally as the African Charter on Human and Peoples Rights (ACHPR) that everyone is entitled to equality before the law nor does it use the terminology of equal protection. However, the Botswana Court of Appeal has, in the Unity Dow case interpreted the provision to guarantee to all, the equal protection of the law.

195. The Botswana Constitution's definition of discrimination is not in compliance with the definition of discrimination in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). It excludes specific references to sex in its definition of discrimination as well as laws regarding adoption, marriage, divorce, burial, and devolution of property on death and other matters of personal law, among others. These are some of the areas in which most discrimination against women is to be found. It would appear that the Constitution seeks to protect customary laws and other cultural practices which operate side by side with common law. This does not enhance the legal status of women. The Botswana Court of Appeal has read the word sex into Section 15 (3) of the Botswana Constitution.

196. The principle of equality before the law between both women and men under customary law reflects gaps particularly regarding their legal capacity, property rights, inheritance rights and customary and guardianship rights to their children. In most instances, women are treated as minors and this subjects them to a subordinate position. A few examples help to illustrate this point:

197. Under traditional customary law, women are subjected to male guardianship all their lives, while men are released from guardianship when they marry. Although the principle is changing to allow women who are unmarried to be independent, this is uneven around the country. These openings, however, do not general enhance their status nor enjoy quality access to the kgotla.<sup>11</sup> There are also other socio-cultural practices which still discriminate against unmarried women.

198. Customary law does not provide equality between the spouses in that it makes the husband the head of the household, with the final decision-making power on family matters. The husband has the marital power in personal matters, which means that a married woman has no capacity to bring or answer legal proceedings without the assistance of her husband. The marital power also means that upon marriage, the wife loses the capacity to acquire a domicile of her own choice (the matrimonial domicile being that of the husband). Under customary practice, the wife is supposed to stay in the husband's village or ward. This practice, however, is gradually changing.

199. There was a major development in December 2004 when Parliament passed a Bill abolishing this structure of marital power under common law. The Marital Power Act, as amended, provides for equality between men and women in marriage in community of property. It specifically excludes customary and religious marriages.

200. The Marital Power Act Section 5 states:

“The effect of the abolition of marital power is to remove the restrictions which the marital power places on the legal capacity of a wife and abolishes the common law position of the husband as head of the family.”

***Training of law enforcement officials***

201. 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.

202. In addition, the Botswana Police Service has recently developed a handbook with core principles which has been distributed to the police officers throughout the country. This handbook, the Handbook for the Botswana Police Service Strategic Foundations and the Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct, 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”. Values of the Botswana Police Service also include respect for human rights.

203. Since November 2003, the Botswana Police Service has conducted human rights training with 148 junior officers (constables and inspectors) from each district or region across the country. The training included an emphasis on human rights conventions including the African Charter on Human and Peoples Rights, the Convention on the Elimination of the All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC), and the Convention Against Torture, Inhuman and Degrading Treatment and Punishment (CAT). The training started by targeting junior officers because they are the ones who interact with people most directly, they arrest people and keep them in detention.

204. In 2004, the Botswana Police Service also conducted a training of trainers among senior police officials on human rights. The focus was on the code of conduct, particularly in relation to human rights. 300 senior officers from throughout the country were trained with the idea that they would train other officers.

205. As part of their pre-service training, Prisons Officers are taught human rights issues and principles (including non-discrimination) at the Prisons Staff College before they take up their duties at prisons. The training covers the Universal Declaration of Human Rights, Standard Minimum Rules on the Treatment of Offenders, Constitution of Botswana in particular Chapter II, Protection of Fundamental Rights and Freedoms of the Individual, and the Prisons Act as well as its Regulations. The lessons are taught in six hours, and trainees are given reading material to aid them.

206. Law Enforcement Officials including members of the judiciary, officers from the Attorney General’s Chambers, police officers and prison officers attend periodic human rights workshops in order to be sensitized on issues of human rights. These workshops are given by regional organizations (e.g., the Human Rights Trust of Southern Africa (SAHRIT)); national NGOs (e.g., Ditshwanelo, the Botswana Centre for Human Rights) and inter-governmental organizations (e.g., UNDP).

***Complaints of discrimination and measures taken for the investigation of complaints***

207. The government of Botswana does receive complaints through its various administrative structures of cases alleging racial discrimination. The cases are duly investigated by relevant authorities. The following is one example of a complaint which was brought to the attention of the Government:

The Office of the Ombudsman received a complaint alleging racial discrimination perpetrated by a Chinese-owned Company. The essence of the allegation was that black labourers, unlike their Chinese counterparts, were not given appropriate protective clothing, safe and healthy work conditions (such as toilet facilities or clean drinking water). The matter was brought to the attention of the Commissioner of Labour and Social Security who then investigated the concern from the perspective of safety and welfare and found merit in the issues raised. The Office of the Commissioner then instructed the Company to correct all the anomalies raised which were detrimental to the black labourers. The Company complied with the instructions of the Commissioner and the matter was resolved.

208. The Office of the Ombudsman does not have on record, any cases related to discrimination on the basis of ethnicity and tribal affiliation. Usually, complaints of discrimination are in the workplace and therefore they are referred to the Ministry of Labour and Home Affairs and the Industrial Court.

209. As discussed in examples under Article 4 above, the Police also receive various complaints of racial discrimination from time to time.

**(b) Right to security of person**

210. The Constitution provides for protection against torture and inhuman punishment in Section 7. This applies to all individuals without regard to race, ethnicity or tribal affiliation.

211. There are very few incidences of racially motivated criminal offences. An example of one that made news headlines recently was that of a fight at the Francistown Prison between a Motswana inmate and a Zimbabwean inmate that escalated into a fight where most prisoners became involved and took sides on the basis of their nationality. Two prisoners were seriously injured and subsequently died. An investigation was conducted to determine the cause of the fight. The findings were that the incident was not racially motivated.

212. There have been allegations of extreme ill-treatment by wildlife officials of Basarwa and others in the context of alleged poaching.

213. According to media reports, there have been complaints from some dark-skinned Botswana of being rounded up and interrogated by law enforcement officials on suspicion of being illegal immigrants. There are allegations of abuse by the police during "Clean Up Operations" which they conduct periodically with immigration officers and the Botswana Defence Force.

**(c) Political rights**

***Right to participate in the affairs of one's country***

214. Botswana maintains a democratic form of government through a system of free elections held every five years. Section 67(b) of the Constitution provides that the voting age is 18 years. The voting age was 21 and was changed through Constitution (amendment) Act No. 18 of 1997.

215. In Botswana, every person has the right to take part in the conduct of public affairs, directly or indirectly through freely chosen representatives. In addition to this, every citizen has the right to vote or stand for elections (subject to the requirements of Section 61), regardless of racial, national ethnic or other origin.

216. While people who are incarcerated for less than six months have the right to vote, in the last election the Independent Election Commission said it could not set up polling stations in prisons due to "logistical difficulties".

217. Section 61 of the Constitution provides that a person shall be qualified to be elected as a member of the National Assembly if:

- (i) He is a citizen of Botswana;<sup>12</sup>
- (ii) He has attained the age of 18 years;
- (iii) He is qualified for registration as a voter for the purposes of the election of the Elected Members of the National Assembly and is so registered; and
- (iv) Is able to speak, and, unless incapacitated by blindness or other physical cause, to read English well enough to take an active part in the proceedings of the Assembly.

218. Notwithstanding Section 61 of the Constitution, the House of Chiefs has been exempted from the requirement to speak and read English.

219. The language requirement for election to the National Assembly exists because English is the official language of the country. In reality, both English and Setswana are accepted and spoken interchangeably in the Parliament as one is the official language and the other is the national language.

220. Section 6(1) of the Electoral Act disqualifies any person who is:

- (i) By virtue of his own act, under any acknowledgment of allegiance, or obedience to a foreign power;
- (ii) Under a death sentence or imprisonment sentence;
- (iii) Insane or of unsound mind;
- (iv) Disqualified from voting at any election under any law for the time being in force.

221. In Section 58(2)(b) of the Constitution provision is made for four specially elected members of the National Assembly. They are nominated by the President and elected by the National Assembly. In the past the election of specially elected Members of Parliament has been used to introduce special skills to the National Assembly. It has also helped to expand the number of women in Parliament. This is also a mechanism through which affirmative action could support broader representation of 'minority' groups.

222. The Electoral Act was enacted to consolidate laws relating to the conduct of elections for National Assembly, local councils and to certify qualifications and registration of voters for the conduct of such elections. The Electoral Act makes no reference to race as a criteria for voting. In addition, the new Section 65(a) of the Constitution establishes the Independent Electoral Commission (IEC) which is responsible to ensure voter enfranchisement of all eligible voters regardless of their race.

223. The Government's commitment to civic participation is also reflected in the Government's efforts to involve the populace in determining issues affecting them especially through Commission of Enquiries and Referenda.

224. For instance, there was the Balopi Commission, which has been mentioned above, was set up in 2000 by the President in response to a motion passed by a Member of Parliament in 1995 calling for an amendment of Sections 77, 78 and 79 of the Constitution to make it tribally neutral. The Commission undertook an extensive tour of the country in order to consult with a broad spectrum of Botswana society. Wide coverage was given to the Commission through the media. Submissions, both written and oral, were received from people of varying backgrounds such as traditional leaders, elderly statesmen and politicians, academics, youth and cultural groups. The report was submitted to the President in November 2000. Its finding was that Sections 77, 78 and 79 of the Constitution should be amended to eliminate perceptions of exclusion. The amendments are currently pending before Parliament.

225. In addition, the Government of Botswana has, through consultation with the general public and all stakeholders, produced a national manifesto for the people of Botswana. It is commonly referred to as Vision 2016. This is a statement of long-term goals and a set of strategies that will meet these goals. Vision 2016 proposes a vision for Botswana. It is worth noting that one of these goals is that by 2016, Botswana will be an "Open, Democratic and Accountable Nation." "Botswana will be a community oriented democracy, with strong decentralized institutions." This is an important indication of the Government's commitment to the civic participation.

**(d) Other civil rights**

***Freedom of movement***

226. There are no legal requirements for registration in places of residence. However, culturally, a citizen or a non-citizen is expected to announce his or her presence to a Chief of the area where he/she intends to reside, for ease of interaction in the community. This practice is increasingly becoming less common.

227. Freedom of movement is provided for in Section 14 of the Constitution. Section 14 (1) provides that every person shall be entitled to freedom of movement, and for purposes of this section, the said freedom means the right to move freely throughout Botswana, the right to reside in any part of Botswana, the right to enter Botswana and immunity from expulsion from Botswana. Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section. Section 14(3) provides for various exceptions on the freedom of movement.

*Relocation of residents of the Central Kalahari Game Reserve (CKGR)*

228. Recently, the Government has relocated some people from the Central Kalahari Game Reserve (CKGR), most of whom are of Basarwa origin.<sup>13</sup>

229. CKGR was established as a game reserve in 1961 through the High Commissioner's Notice which was superseded by the current Wildlife Conservation and National Parks Act of 1992. At the time there were about 3,000 people, majority of them being Basarwa, who lived in the area. Their settlements comprised of small multi-lingual and multi- ethnic communities. Residents of the game reserve, who subsisted mainly on hunting and gathering, were at the time allowed to settle in the game reserve. Their hunting and way of life were at the time consistent with the preservation of wildlife resources inside the game reserve.

230. The CKGR was established with the view to protect wildlife resources and provide sufficient land for traditional use by the hunter-gatherer communities.

231. Over time, the settlers of CKGR were abandoning their traditional hunter-gatherer lifestyle in favour of permanent or semi-permanent settlement around or near water sources provided by Government to mitigate the effects of recurring droughts. Thus, in 1985 the Government appointed a Fact Finding Mission to investigate the situation in the CKGR with a view to providing information that would facilitate decision-making on environmental protection and wildlife conservation on the one hand and the socio-economic development of the communities on the other. The outcomes were as follows:

232. Locations in the CKGR were rapidly evolving into permanent, settled agricultural communities;

233. The residents of CKGR had largely abandoned their traditional way of hunting on foot with bow and arrow in favour of guns, horses and four-wheel drive vehicles;

234. The residents were also grazing increasing numbers of livestock inside the game reserve;

235. As a result the Government took a decision in 1986 that:

1. The boundaries and the status of the CKGR should be maintained as they were at the time of the decision;
2. The social and economic development of old Xade and other settlements in the reserve, should be frozen as they had no prospect of becoming economically viable;

3. Viable sites for economic and social development should be identified outside the reserve and the residents of the reserve should be encouraged, but not forced, to relocate to those sites; and
  4. That the Ministry of Local Government and Lands should advise the Government on the incentives required to encourage residents in the reserve to relocate.
236. The relocation was necessitated mainly by the following reasons:
1. Botswana's National Settlement Policy spells out guidelines through which settlements both large and small in the country are developed and provision of services to settlements are determined;
  2. The primary purpose of the Parks and Game Reserves is to conserve the wildlife heritage, but it had become clear that residents of CKGR were engaging in hunting, arable, pastoral agriculture and other commercial activities which was inconsistent with the aimed purpose. (i.e., wildlife preservation); and
  3. Given the fact that the communities were sparsely populated, it was not economically sustainable for government to continue to provide essential services in the areas inside the CKGR.
237. Prior to each relocation, extensive consultations, which began as early as 1985, were carried out with all stakeholders including the inhabitants of all settlements in the game reserve, NGOs and other interested parties, leading to a large number of the inhabitants agreeing to relocate. Due compensation has been paid to families that moved out and the Government assisted them in moving their properties.
238. The relocation began in 1997 when 1,739 people relocated to the new settlements of New Xade and Kaudwane. One thousand two hundred and thirty-nine (1,239) people relocated to New Xade and 500 to Kaudwane. Following further consultations, another group agreed to relocate in 2001. According to the Population and Housing Census, there were 689 people who remained in the CKGR. Three hundred and forty-eight (348) people relocated to G'Kgoisanekeni and 179 to Kaudwane in the Gantsi and Kweneng districts respectively between February and June 2002. Officially, seventeen had remained after the relocation exercise which ended in June 2002.
239. The relocation has ushered in discomfort in and outside the country and complainants maintain that the policy guiding the integration of Basarwa in the development plans of the country falls short of considering cultural dynamics of Basarwa. This has often caused criticism against the Government.
240. The Basarwa have their own views about the relocation exercise. First, Basarwa reject the argument that they are causing depletion of the wildlife populations. They maintain that they have lived for thousands of years with the animals without any problems. They find it

appropriate that they can effectively and responsibly co-exist with the animals and manage the present wildlife areas. Secondly, they argue that their movement out of CKGR was out of fear due to intimidation practices of the authorities. Thirdly, they argue that they have not been consulted as to their relocation. Lastly, they argue that any intended development by Government could follow them in their ancestral land (CKGR).

241. Some Basarwa of CKGR have since taken the government of Botswana to court challenging the decision to relocate them as well as termination of essential services in the game reserve. The case is on going.

242. Human rights groups such as Ditshwanelo hold the view that the Government was ill-informed in relocating residents of the CKGR. In their view, the Government has always maintained that one of the reasons for the removal of the residents of the game reserve is to allow them access to development.

243. In laying out their position on the CKGR issue, Ditshwanelo has said that the termination of services at the CKGR by the Government on 31 January 2002 was unlawful. The Centre expressed its view in the following words:

“Ditshwanelo believes that the decision of the Government to terminate basic and essential services to the residents inside the Game Reserve is wrongful and unlawful. We believe that it was a deliberate attempt by the Government to force the residents out of the Reserve. It occurred at a time when the Negotiating Team and the Government of Botswana were engaged in discussions, in good faith, concerning sustainable environmental use of the CKGR by communities in the Game Reserve”.

The Negotiating Team was formed by the residents and the following NGOs: First People of the Kalahari (FPK), the Working Group for Indigenous Minorities in Southern Africa (WIMSA), the Botswana Council of Churches (BCC), and Ditshwanelo.

244. Ditshwanelo continues to call upon the Government to actively engage in a constructive process of negotiations with the Negotiating Team. Ditshwanelo has called for a return to negotiations, in May 2002 in its statement to the 31st Session of the African Commission on Human and Peoples Rights (ACHPR); in August 2002 in its alternative report to the Committee on CERD; in December 2003 in its statement to the 34th Session of the ACHPR; in March 2004 during the BOCONGO-sponsored on Basarwa; in May 2004 during its presentation at the CIVICUS World Assembly and in all press statements. This is because Ditshwanelo believes that for development to be effective, it must be people-centered. This entails locating people at the center of processes which recognize civil, political, economic, social and cultural aspects of their lives. This is an alternative to the current development approach used by the Government. Development should be more than the provision of roads, clinics and schools.



245. Despite this criticism, the relocation of the Basarwa has resulted in expanded services to their communities. It should be noted that the Government of Botswana has provided basic social services such as education, health facilities, shelter and clean water which were not previously available. The Basarwa also continue to enjoy special hunting rights and are encouraged to observe their unique cultural practices such as painting, traditional medicine, tracking, music and dance.

246. Some Basarwa have made an application to court in which they are seeking to return to re-inhabit the CKGR, they challenge the government's decision to relocate them. The case is ongoing.

*Non-citizens*

247. For non-citizens to be admitted in Botswana, they are required to have valid travel documents. The admission requirements are as follows:

1. Every person entering or leaving Botswana should be in possession of a valid passport. Citizens of certain countries are expected to produce their passports and visas, upon entry into Botswana;
2. On arrival or departure from Botswana should present himself to the immigration officials and should use the point of entry/departure specified by the Minister;
3. The immigration officials will then check the validity of the traveling document/passport and satisfy himself that the document identifies the descriptions of the holder and the country of origin.

248. The Botswana Constitution guarantees all individuals irrespective of origin, residing in the country basic civil and political rights. There are, however, provisions for expulsion of non-citizens for various reasons such as conviction of an offence punishable by imprisonment or where the security of the nation is at stake.

249. The power to expel non-citizens from Botswana is vested upon immigration officials in accordance with Immigration Act Section 25. However, there is room for appeal to the nearest Magistrates Court. Expelled non-citizens may also, if they so wish, apply for clemency to the Minister of Labour and Home Affairs or the President.

250. Failure by a non-citizen to leave the territory within the stipulated time shall lead to removal by an immigration officer or a police officer.

251. The President may also declare someone *persona non grata* in terms of Section 7 (F) and does not need to give a reason to justify. So far, the President's decision cannot be contested in a court of law.

*Illegal immigrants*

252. In recent years, Botswana has had an influx of illegal immigrants, predominantly from neighbouring countries. Illegal immigrants are usually rounded up by law enforcement agents. Upon arrest, they are put in safe custody before being transferred to the recently constructed Centre for Illegal Immigrants. This is the only facility of this nature in the country and it is located in the Northern part of the country. Illegal immigrants are registered at the Centre, and their countries of origin are notified before the deportation is carried out.

*Refugees*

253. As requested by CERD, the situation of refugees in Botswana is outlined below. Botswana ratified the 1951 UN Convention on Status of Refugees with certain reservations.<sup>14</sup> The country has also ratified the 1969 OAU Protocol on the Specific Aspects of African Refugees.

254. Botswana hosts approximately 3,200 refugees, mostly from Angola, Namibia and Somali. Other refugees are from Sudan, Eritrea, Ethiopia, Sudan, Uganda, and the DRC.

255. Refugees in Botswana are managed and monitored under the Recognition and Control of Refugees Act which specifically makes provision for the recognition and control of certain political refugees to prevent, in certain circumstances, their removal from Botswana under the Immigration Act.

256. Under the Refugee Act, a Political Refugee is “a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it”.

257. A Refugee Advisory Committee established under Section 2 of the Refugee Act has the responsibility to handle all matters related to any person who presents him or herself as a political refugee and has thus, the power to make recommendation regarding the admissibility of a political refugee and submit its recommendations to the Minister for Presidential Affairs and Public Administration. On the basis of the outcomes of enquiries by the Committee, the Minister as provided for under Section 8 of the Refugee Act may decide on whether or not the person concerned should be recognized as a political refugee.

258. In a case where the Minister does not recognize the person in concern as a political refugee, Subsection 2 provides that that person “shall if liable to be removed from Botswana under the Immigration Act, be so removed and shall, whether so liable or not’ be subjected to the provisions of the Immigration Act.

259. In August and October 2002, a total number of 1,101 Namibian refugees were voluntarily repatriated back home. The voluntary repatriation was conducted following the Tripartite Agreement signed by the Government of Botswana, the Government of Namibia and the United Nations High Commissioner for Refugees.

260. In December 2003, eight Namibians who were seeking political asylum were deported under the Immigration Act. The eight were deported for violating both the conditions of their stay in Botswana as well as the United Nations Convention governing the status of Refugees.

261. In terms of Article 1 of the 1951 United Nations Convention on the Status of Refugees, under which the eight individuals were originally granted refugee status in Botswana, the Convention shall cease to apply if an individual “has voluntarily re-availed himself of the protection of the country of origin.” With reference to the above, the eight had admitted to crossing into Namibia during their stay in Botswana.

262. The Dukwi Refugee Camp is the only refugee camp in the country. Refugees living in the camp are provided with free health services and free education. There is, for example, a preschool, primary and a secondary school. There is also a medical clinic which has a maternity wing.

263. Botswana has initiated programmes with an aim to raise HIV awareness among refugees. At the Dukwi camp there is an AIDS awareness campaign going on through which condoms are freely distributed. There is also a Home-Based Care programme in the Camp. A Total Community Mobilisation (TCM), which is meant to encourage refugees to test for HIV/AIDS, has also been introduced.

### ***The right to nationality***

264. As referenced above, the *Unity Dow* case enabled both mothers and fathers, on the basis of basic constitutional principles of equality and non-discrimination, to pass Botswana citizenship to their children.

265. There are no restrictions on issuance of passports for citizens of Botswana. In particular, there are no restrictions on the basis of race, national origin, descent or tribal affiliation. Any person aged sixteen (16) and above can acquire a passport with the production of Botswana national identity card and a fee of P10 (approximately USD\$2). For citizens below the age of 16, the parent's, guardian's or foster parent's identity along with a birth certificate of the child or declaration of birth of the child, shall be used for issuance of passport.

266. A certain John Modise has been overtime contesting Botswana government's refusal to grant him citizenship of Botswana. Botswana government maintained that Mr Modise qualified for Botswana citizenship through registration. South Africa would not accept him either, so he was in 'no man's land' in terms of nationality. Mr. Modise chose to take up a case with Botswana government demanding citizenship through descent. On the other hand, the Government of Botswana had always offered him citizenship by naturalization.

267. Mr. Modise took the case to the African Commission for Human Rights, in which he alleged denial of citizenship and claimed monetary compensation for his suffering. The African Commission ruled in his favour and recommended that he be granted citizenship through descent. However, the Government held its previous position, that it could only offer Mr. Modise citizenship through naturalisation. He has since applied for citizenship through naturalization, which was granted. Mr. Modise is now a naturalized citizen of Botswana and is in possession of the country's identity documents. These include a passport and Omang (national identity card).

268. There is no specific provision that deals with withdrawing a citizen's passport. In terms of the Common Law, however, Botswana passport holders are entitled to a fair hearing prior to such withdrawal, allowing them to make representations, written or oral.

### ***The right to marriage and choice of spouse***

269. The Marriage Act regulates the solemnisation and registration of marriages. Nothing in the legislation and in practice officially prohibits marriage on account of nationality, religion, race or creed. The Marriage Act also makes provision for Customary, Muslim, Hindu and other religious marriages to be recognised. Section 22 provides that nothing contained in the Marriage Act shall be taken as in any manner affecting or casting doubts upon the validity of any customary, Muslim, Hindu or other religious marriages contracted before the coming into operation of the Act. However, some communities refrain from intermarrying or exert pressure on their members not to marry across racial lines.

270. While there is an option for the recognition of religious and customary marriages, there is an option for marriage under the Roman Dutch (common law) system.

271. The right to marriage does not exist in the following situations:

- (i) Intermarriage of persons who are related;
- (ii) A person has already contracted marriage under the country's Marriage Act unless the previous marriage is dissolved by death or court or annulled by sentence of a court;
- (iii) The Marriage Act provides for certain requirements and procedures for entering into a valid marriage. Section 3 stipulates that, "no marriage shall be valid unless within a period of not more than 3 months previous to its solemnisation banns have been published or a special license has been obtained".

### ***Right to own property alone as well as in association with others***

272. The right to protection from deprivation of property is guaranteed in Section 8. The section further provides specific protection from being deprived of private property.

273. However, the Constitution permits the acquisition of property by Government of any description. In furtherance of this right (the right to protection from deprivation of property), Parliament enacted the Acquisition of Property Act (Cap 32:01). The Act limits such acquisition

to immovable property only. This right was in fact discussed and recognized in the case of the *President of the Republic of Botswana and others v. Bruwer and Another* (1998 B.L.R. 86). In this case, *Bruwer and another* were negotiating with the Commonwealth Development Corporation to purchase their farm.

274. On the day the sale was to be finalized, Government published a notice in terms of the Acquisition of Property Act to acquire “compulsorily a piece of land being the Farm called Molopo Ranch together with improvements thereon including livestock”. The Respondents challenged the acquisition by way of application to the High Court especially the validity of the notice and sought that it be set aside. They contended that the Acquisition of Property Act gave power to acquire immovable property only. Since the notice covered both immovable and moveable property it was ultra vires or void. On appeal it was held that the Acquisition of Property Act empowered the Government to acquire immovable property only. Government was incompetent to acquire moveable property.

275. The right to freedom of privacy of home and other property is guaranteed in Section 9 of the Constitution.

### ***The right to inherit***

276. Inheritance is governed by both common law and customary law. In the event of a written will or survival of a spouse married under common law, common law principles govern inheritance. Where there is no written will or a customary marriage, inheritance is generally governed by traditional customary law and it varies from tribe to tribe.

277. Research has established that valuable resources such as land and cattle are often allocated to families, lineages and households through males heads of those units. The eldest male child is regarded as the principal heir of a deceased man’s estate. Although traditionally, the principal heir only took over the management and not sole ownership, this has now changed. In some cases, it is females who are denied access to these resources at the end.

### ***The right to freedom of thought, conscience and religion***

278. Everyone in Botswana has the right to practice their own culture, to profess and practice their own religion and use their own languages.

279. Section 11 (1) of the Constitution of Botswana guarantees freedom of conscience. It states that:

“except with his consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this Section, the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone, in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance”.

280. The Constitution further provides in subsection (2) that:

“every religious community shall be entitled at its own expense to establish and maintain places of education and to manage any place of education which wholly maintain; and no such community shall be prevented from providing religious instructions for persons of that community in the course of any education provided at any place of education which it wholly maintains or in the course of any education which it otherwise provides”.

281. Section 11 (4) of the Constitution, states that:

“no person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief”.

282. Section 11 (5) outlines conditions under which the enjoyment of this right may be limited. These include; defense, public safety, public order, public morality or public health or for the protection of the rights and freedoms of other persons.

283. In Botswana there is no official religion, however, the dominant religion is Christianity, which is constituted by a number of denominations such as the Methodist, Roman Catholic, Lutheran Church, and Churches of Zion. It is estimated that at least 50% of the population practices indigenous beliefs. There is also a sizable number of Islam, Baha'i and Hindu believers.

### ***The right to freedom of opinion and expression***

284. Freedom of expression is guaranteed in Section 12(1) of the Constitution, wherein it is stated that no person shall be hindered in the enjoyment of their freedom of expression which is inclusive of:

- (i) Freedom to hold opinions without interference;
- (ii) Freedom to receive ideas and information without interference;
- (iii) Freedom to communicate ideas and information without interference (whether such communication is to the public in general or to any person or class of persons);
- (iv) Freedom from interference with their correspondences.

285. There are certain restrictions on freedom of expression as captured in Section 12 (2) of the constitution. These extend to security in the interest of defense, public safety, public order, public morality or public health in cases where there is need to protect the reputations, rights and freedoms of other persons or preventing the disclosure of information received in confidence, maintaining the authority and independence of courts, regulating educational institutions in the interests of persons receiving instructions therein, regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless, broadcasting or television, for the purpose of imposing restrictions upon public officers, employees of local government bodies or teachers.

286. Section 90 of the Penal Code provides that any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behavior is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

287. Section 92 (1) of the Penal Code states that, any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his or their race, tribe, place of origin, colour or creed is guilty of an offence and liable to a fine not exceeding P500.

288. There is currently a case pending before the courts in which a Paramount Chief is being sued for using racially demeaning and defamatory words against a District Officer. The Paramount Chief is from a main tribe and the District Officer is from a 'minority' tribe.

289. In addition, freedom of expression is protected in the media. There is no legislation prohibiting the media from publishing and broadcasting news and events, subject to respect for the rights and freedoms of others and for public interest. A Mass Media Communications Bill has been drafted to regulate print media in order to complement the Broadcasting Act. The Broadcasting Act provides for regulation to prescribe a code of practice to be observed by broadcast licensees. The Mass Media Communications Bill has, however, met with resistance, especially from the private media outlets, arguing that the Bill is meant to stifle freedom of the press.

290. The Botswana Telecommunication Authority (BTA) was established in 1996 as a statutory agency with responsibility for licensing telecommunications and broadcasting operators, settling disputes among operators, approving tariffs, promoting and monitoring free and fair competition, allocating and managing the radio spectrum, type approving terminal equipment, and protecting consumers. Application for license and broadcast operating status is open to anyone regardless of race.

291. Journalists working in the country have a responsibility to practise ethical journalism. Media organizations like the Botswana Press Agency (BOPA) have stylebooks that guide their reporters/broadcasters on a daily basis. They have provisions on ethics and professional standards. In addition, in 2004 journalists came up with a Code of Conduct that also prohibits ethnic or racial slurs in the profession. Media houses were represented during the drafting of the document thus committing themselves to comply with it.

292. To prevent racist utterances, especially over radio and television, which are sometimes made during radio phone-in programmes, the programme hosts either make the callers aware of the danger of such incitement or cut off the line if they insist on continuing.

293. Another body, the Media Complaints and Appeals Committee has since its inception adjudicated four complaints. One of them, dated July 2, 2003, was from Professor Lydia Nyathi-Ramahobo of Wayeyi's Kamanakao Association, who complained of the quality of reporting titled, "Reporters Misrepresent Kamanakao Issues." It was regarding news reporting on the Wayeyi 'minority' tribe.

294. She cited four cases of misrepresentation of the facts by the media regarding the court case surrounding the burial of Shikati Kamanakao in 2003, which was brought to court by the Tawana Land Board (TLB). Ramahobo noted that the first case was broadcast on the national radio station, *Radio Botswana*, on June 17, 2003 and subsequently carried by the Botswana *Daily News* of June 18, 2003 under the headline, “Kamanakao Burial Unlawful”.

295. The third complaint appeared on *Mmegi Monitor* of June 17-23, with the headline “TLB to Press for Kamanakao Exhumation” while the last was in the *Botswana Guardian* of June 20, 2003 entitled, “Kamanakao’s Exhumation, Land Board gets Cold Feet.” Ramahobo complained that the reports were not accurate in each case and that the information was communicated in order to maintain tribal discrimination. However, the Media Committee dismissed the complaint ordering that it had been overtaken by events. Complaints of this nature would be duly dealt with by the Media Complaints and Appeals Committee.

296. Any race/tribe has the right to write and communicate freely in their language. Some tribes such as Bakalaka and Bakgalagadi often publish in the media using their languages or even teach those languages through media. Batswapong ethnic ‘minority’ has had their own newspaper (Tswapong News Paper) written in Setswapong language.

### ***The right to freedom of peaceful assembly and association***

297. Section 13 (1) of the Constitution provides as follows:

“Except with their own consent no person shall be hindered in the enjoyment of their freedom of assembly and association, that is to say the right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of their interests.”

298. Section 13 (2) of the Constitution makes limitations to the freedoms contained in 13 (1) to the extent that, the law in question makes provision:

1. That is reasonably required in the interests of defense, public safety, public order, public morality or public health;
2. That is reasonably required for the purpose of protecting the rights of freedoms of other persons;
3. That imposes restriction upon public officers, employees of local government bodies, or teachers.

### ***Political organisation***

299. There are presently 11 political parties in Botswana. Only 3 are represented in Parliament namely, the ruling Botswana Democratic Party (43 representatives), Botswana Congress Party (one representative) and Botswana National Front (13 representatives) in the 57 member Parliament. There exists a consultative forum called



the All Party Conference which affords all 11 political parties the opportunity to actively participate in matters of national interest and to discuss and formulate recommendations to Government.

300. There is legal provision allowing for the establishment of NGOs on human rights and other activities. Their activities are duly regulated under the Societies Act as described above in the discussion of Article 4.

*Trade unions*

301. It should be observed that Botswana is a member of the International Labour Organisation (ILO). As a member of the ILO, Botswana adheres to the standards of non-discrimination.

302. The Trade Union and Employer's Organisations Act provides the legal framework for governmental regulation, registration and development of trade unions. Section 2 (1) defines a 'trade union' as, "an organisation consisting wholly and in part of more than 30 employees the objects of which include the regulation of relations between employees and employers or employers' organisations or between employees and employees".

303. Section 5 of the Act provides for compulsory registration of trade unions. Section 6 requires every trade union formed in Botswana to apply to the Registrar of Trade Unions and Employer's Federations for registration within 28 days of its formation. Every officer of a trade union that fails to apply for registration within 28 days is guilty of an offence (Section 8). It is an offence for the union, its offices and its members to operate without being properly registered.

*Public meetings and processions*

304. The Public Order Act (Chapter 22:02) regulates and controls public meetings and public processions. Section 4 (3) provides that any person who wishes to convene a public meeting or to form a public procession must make an application to the regulating officer of the area concerned. Unless such officer is satisfied that such meeting or procession is likely to cause or lead to a breach of peace, he shall issue a permit in writing authorising such meeting. Any meeting or procession that takes place without a permit issued under Section 4 is an offence and persons that take part in such meeting or procession shall be guilty of an offence.

305. As a matter of practice, when permission is sought under Section 4 to convene a public meeting or public procession, persons organizing or taking part in the meeting or procession are afforded police escort and protection.

306. With regards to the registration of societies, formation of Religious Organisations, Associations and Political Parties, the Societies Act governs registration of such entities as mentioned above.

**(d) Economic, social and cultural rights**

307. As of March 2005, Botswana had not signed or ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR). In spite of this, there are many government policies which are in line with the goals of the Convention. Botswana is also a State-Party to various other Conventions (such as ICERD) which also include reference to economic, social and cultural rights.

***Right to work***

308. In both government and private institutions employment opportunities are based on merit.

309. The Employment Act (amended) Section 23 (d) outlaws dismissal of employees by the employer from work on the basis of the employee's race, tribe, place of origin, national extraction, social origin, marital status, political opinions, sex, colour or creed.

***Women***

310. The Constitution guarantees equal rights regardless of gender. It could be argued, however, that recruitment of soldiers into the Botswana Defence Force is gender biased in favour of male citizens only, as women are excluded.

***Non-citizens***

311. According to figures provided by the Department of Immigration and Citizenship, there are 136,519 non-citizens living in Botswana. One hundred and eighteen thousand, one hundred and twelve (118,112) are from Commonwealth countries and 18,407 are from non-Commonwealth countries.

312. Expatriates from different nations regardless of their race and/or place of origin are employed in Botswana and their employment is regulated by the Employment of Non-Citizen Act. According to this Act, a non-citizen refers to a person who is not a citizen of Botswana or a person or a member of class of persons declared by regulations under the Act as non-citizen. Non-citizens must acquire work and residence permits from the government in order to work lawfully.

313. Non-Citizens with work permits enjoy the same rights and protections in the workplace as citizens. Indeed, perks are sometimes offered to non-citizens to fill in gaps in specific skills (such as medical doctors) or gaps in manpower within certain sectors (such as lawyers or nurses in the public service).

314. Section 14 (1) and (2) of the Employment Act of Non-Citizens provide authorities with the power to request work permits from non-citizens at any time. Section 15 further gives the Commissioner of Labour or any authorized officer to examine persons in possession of work permits or certificates of exemption as to their identity. Failure to produce the documents may result in a fine or imprisonment.

315. Although expatriates of different nationalities are employed in the country on the basis of merit, it is important to note that the government has taken a deliberate decision to localize some sensitive posts in the country. The 1993 Revised National policy on Incomes, Employment, Price and Profits, which was approved by the National Assembly in the same year, emphasizes the importance of localisation. Before this policy was made, most senior posts in the private sector, civil service and parastatals were occupied by non-citizens.

316. The chart below, which was created by the Central Statistics Office, shows the number of both citizens and non-citizens employed in the country in different sectors be it Government, Private and Parastatals:

**Estimated number of paid employees by sex,  
citizenship and industry, March 2001**

Industry	Citizens			Non-Citizens			All Employees		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Agriculture	4 235	1 651	5 886	283	110	393	4 518	1 761	6 279
Mining and Quarrying	6 108	389	6 497	308	7	315	6 416	396	6 812
Manufacturing	12 397	14 206	26 603	1 128	220	1 348	13 525	14 426	27 951
Water and Electricity	2 261	428	2 689	60	14	74	2 321	442	2 763
Construction	22 738	3 483	26 221	2 053	143	2 196	24 791	3 626	28 417
Wholesale and Retail	19 202	17 025	36 227	1 836	513	2 349	21 038	17 538	38 576
Hotels and Restaurants	4 577	5 909	10 486	233	124	357	4 810	6 033	10 843
Transport and Communication	6 976	2 578	9 554	574	91	665	7 550	2 669	10 219
Financial Intermediaries	1 665	3 013	4 678	218	43	261	1 883	3 056	4 939
Real Estate	8 664	3 445	12 109	891	232	1 123	9 555	3 677	13 232
Education	2 381	2 513	4 894	946	611	1 557	3 327	3 124	6 451
Health and Social work	378	1 301	1 679	153	264	417	531	1 565	2 096
Other Community Service	1 237	1 026	2 263	140	77	217	1 377	1 103	2 480
	92 819	56 967	149 786	8 823	2 449	11 272	101 642	59 416	161 058
Private and Parastatal	92 819	56 968	149 786	8 824	2 450	11 275	101 643	59 418	161 061
Private	84 260	52 834	137 094	8 219	2 348	10 568	92 479	55 182	147 662
Parastatal	8 559	4 134	12 692	605	102	707	9 164	4 236	13 399
Central Government	42 594	39 358	81 952	1 849	852	2 701	44 443	40 210	84 653
Education	9 825	20 000	29 825	1 092	475	1 567	10 917	20 475	31 392
Other	32 769	19 358	52 127	757	377	1 134	33 526	19 735	53 261
Local Government	12 356	8 387	20 743	132	90	222	12 488	8 477	20 965
All Sectors	147 769	104 713	252 481	10 805	3 392	14 198	158 574	108 105	266 679

***Right to housing***

317. As there is no specific right to housing protected in the Constitution or law, there is, therefore, no discrimination. Housing can be accessed from government, para-statal organizations, and private market. In the case of government institutional housing, privileges which can be extended to some public officers and expatriates in the public service. For some para-statal organisations, housing is mainly available to the employees of those organizations, whilst private housing, including from the Botswana Housing Corporation, may be accessed from owners at market rate. In all these cases, access to housing is not based on any form of discrimination.

318. Whilst the right to housing is not protected, the government has a housing scheme for citizens, which helps low-income individuals to acquire land and affordable loans to build residential houses. The scheme is implemented by the Self Help Housing Agency (SHHA) in the urban areas, where shortage of housing is most acute. Though the scheme is reserved for citizens only, it is not considered discriminatory as it is a proactive way of providing, under serious resource constraints, shelter to the disadvantaged members of society.

319. Under the Destitute Policy of 1980, Botswana Government is providing shelter for the needy, quite apart from the SHHA programme. There is no discrimination on who can benefit from the policy.

***Right to public health, medical care, social security and social services***

320. Botswana offers primary health care services to the population through a network of health facilities well-distributed throughout the country in accordance with the population. Access to the facilities has been made possible by ensuring that over 90% of the population lives within 15 kilometers of a health facility. Where stationary health facilities are not available, mobile health services are provided. The services are made available to all eligible persons in the form of information, education, and counseling to enable them to make informed decisions concerning their health and the means by which to effect their decisions. These services are provided to the entire population regardless of their ethnic/racial/tribal groups.

321. There are no impediments that prevent specific groups from utilization of services except that utilization of health services differ by age groups and in some cases by level of education as is the case in all societies of the world.

322. According to the HIV/AIDS sentinel surveillance, HIV has affected the population of Botswana without regard to racial or ethnic group. The surveillance shows the geographical impact of the disease with Selibe Phikwe and Bobirwa being the hardest hit by the scourge. Other areas have not been spared by the disease though the levels of impact differ.

323. It should be noted that health services are available to all persons in Botswana regardless of their citizenship. However, citizens are required to pay P2 for curative services while they receive preventive health services free of charge. Non-citizens, on the other hand, are required

to pay a fee for the health services they receive. For this, an identity card is required for accessing of services for all clients in order to determine who pays and how much they have to pay. The same applies to anti-retrovirals (ARVs). While they are given free to Batswana, non-citizens are expected to pay. This is because pharmaceuticals and other medical supplies are very expensive and thus cost recovery measures are being put in place. It is, however, the intention of the government to implement cost recovery measures for most medical supplies and services from all clients including Batswana in the future in view of the cost of medical supplies.

324. The pilot distribution of ARVs was started in four sites, namely: Princes Marina Hospital in Gaborone, Nyangabwe Hospital in Francistown, Sekgoma Memorial Hospital in the Central District, and Maun General Hospital in the Ngami District. Among the reasons for choosing these sites are:

- (i) Capacity and preparedness of the facility to support such a major undertaking especially that ARV provision is a new program with the country having had no prior experience in implementation;
- (ii) The size of the population that these facilities serve is large especially since they also serve the surrounding villages (about 200,000 or more population each);
- (iii) The facilities have laboratories, pharmacies, specialist, physicians, etc. that provide the necessary support to the program.

325. Geographical distribution was also taken into consideration. Francistown, being in the north, Gaborone in the south, Serowe being central and Maun in the north West.

326. The impact and the burden of disease in these areas and those surrounding them were considered.

327. Francistown and Gaborone were also selected as referral hospitals where, under normal circumstances, complicated cases are referred, and these were to provide the referral support to other facilities.

328. Serowe and Maun were to provide implementation lessons and used, among other things, to help determine the capacity to handle the program where staff compliment did not include specialist physicians.

329. As the program is being rolled out, geographical and equitable distribution is being addressed among other things. Currently, every district has a site that provides ARVs. Like the provision of all services, it is the intention of the Government of Botswana to provide access to health services to all its citizens.

***Right to education and training***

330. The right to education is awarded to all without any distinction. The Botswana Education Act is not explicit on the issue of racial discrimination. However, given that the Constitution outlaws all forms of discrimination as already indicated in this report, there does not exist any school in Botswana that was established for any particular race.

331. A cost-recovery programme for school fees began for non-citizen learners in January 2001. It is scheduled to be applied to all citizens of Botswana in 2006.

**Amounts paid by non-citizens are as follows:**

Primary school	P600 per annum
Junior secondary school	P3 000 per annum
Senior secondary school	P6 000 per annum
Boarding school	P700 per annum for secondary schools
Tertiary colleges (including brigades) <sup>15</sup>	P10 000
Boarding college	P600 per annum at tertiary institution

332. There are also private schools in Botswana. Education Act Section 2 interprets a private school as that which “is not a Government or local government school”. Both citizens and non-citizens have access to such schools.

333. Schools do not provide for any form of segregation amongst races. Thus, there are nationals from different countries and of various races who attend public, private and/or multiracial schools.

334. The medium of instruction in public schools: Primary, Junior Secondary and Senior Secondary are Setswana and/or English. These languages are also among the core subjects for citizens in the country as indicated in the Curriculum Blueprints for Primary and Secondary Education and the 1994 Revised National Policy on Education.

335. Although both the Revised National Policy on Education and the Blue Prints on Education stipulate that Setswana and English shall be among the core subjects, there is no law or policy that prohibits the teaching of other languages in schools. For example, one of the English medium schools teaches the Afrikaans language as a subject. The subject is, however, not forced on students.

336. The use of Setswana and English only at schools has often been viewed as a contributory factor to marginalisation of ‘minority’ languages as well contributing to inferiority and the dying out of those languages.

337. The Revised National Policy on Education has recommended the teaching of a local language or French as a subject at the secondary school level. The local language to be taught has not been identified.

338. Advantages of teaching pupils their vernacular tongue at schools cannot be disputed. However, there are constraints in so doing, among them, availability of qualified teachers, the level of development of the language and availability of reference material and books associated with such an undertaking. There are some over 25 local languages, including dialects, in a population of 1.7 million and introduction of these languages in schools would be costly for the Government.

339. Children who live in remote areas have their access to and participation in education inhibited by reason of their distance from educational facilities. These children are often faced with the problems of walking long distances to school. Such children are also sometimes confronted by the difficulty of being unable to speak the languages of instruction used in schools (which are Setswana and English). This is because many children in these groups speak a different language at home. This is also true for children who live in other areas.

340. The Government, through the Remote Area Dwellers Programme,<sup>16</sup> has some schools with hostels in which even the youngest child can stay. These are overseen by a matron. These hostels are not always seen as child-friendly environments, particularly for young children. It is difficult for children to see their families on weekends as they are often poor and some distance away. This can result in high desertion rates (81.5% of dropouts from primary education are deserters and drop out rates are higher in remote areas). The Government is piloting 1:2 teacher schools to assist with this issue.

341. Some NGOs such as Tirisanyo Catholic Council have established preschool programmes in these areas staffed by people from the local communities in order to enable these youngsters to learn Setswana and English and to be able to become familiar with the school environment and routine. They are, however, seriously under-funded and under-resourced.

342. Another problem faced by these schools is the problem of keeping teaching staff who often do not want to live in such remote and uncomfortable environments. They do not receive special training for these schools and there is, as a result, a high turnover of staff in these areas and low staff morale which impacts negatively on children's education.

343. Much as Government has aimed to make sure that there are schools in every district to provide primary and secondary school education, it is fully aware that not all children have access to these schools for a variety of social, economic and educational reasons. For these children, therefore, there is provision in the Education Policy that parallel, out-of-school primary education should be provided through non-formal education. NGOs will be supported by the Government to run pilot out-of-school centers. At the elementary level, a nationwide distance education center is being established.

#### ***Right to equal participation in cultural activities***

344. 'Minority' groups acting within their rights under the Constitution have formed cultural associations. Currently there are four registered 'minority' group associations: Society for the Promotion of the Ikalanga Language (SPIL), Lentswe la Batswapong, Kamanakao Association and Reteng. Reteng is a coalition of multi cultural organizations. The main objectives of these associations are to promote, maintain, protect and develop their language and culture. See the discussion on this matter below in Article 7.

***Right of access to places of service***

345. There is free access to everyone, regardless of race, to all places of service. The only barriers to access may be financial.

**Article 6**

346. Any person whose rights and freedoms as recognized in the Constitution are violated has an effective and speedy remedy by way of petition to the High Court of Botswana. This is provided for in Section 18. The effect of Section 18 of the Constitution is that it gives remedy to the people who think their rights have been infringed by any unconstitutional law, administrative action or steps taken against them which go against their rights as provided for in the Constitution.

347. Section 18 of the Constitution provides, in part, that:

Subject to the provisions of subsection (5) of this section, if any person alleges that any of the provisions of Sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

348. In addition to the High Court, there is also the office of the Ombudsman (where victims of racial discrimination could also seek protection and remedies) that deals with complaints from the public. The Ombudsman Act established the office of the Ombudsman. Section 9 of the said Act provides that in the discharge of his functions, the Ombudsman shall not be under the control or direction of any other person or authority and the Ombudsman's proceedings shall not be questioned in any court of law.

349. The Ombudsman is mandated in terms of the Act to investigate complaints of injustice or maladministration in the Public Service, received from the public (including bodies corporate) and if such complaints are valid, to make recommendations to the appropriate authority for compliance therewith. In the event of non-compliance the Ombudsman is obliged to make a Special Report to the National Assembly. The Ombudsman also has jurisdiction over human rights violations, as well as complaints from persons in both legal custody and those in hospitals.

350. Most cases of racial discrimination are handled by the Industrial Court.

351. All people in Botswana have access to courts. Even the most sensitive topics have been considered by the courts - issues of gender equality (e.g., Unity Dow) and issues of 'minority' tribal rights (as demonstrated below).

352. In June 1999, Kamanakao Association, a Wayeyi grouping concerned with the promotion of Shiyeyi language and culture, acting on the basis of the Constitution launched a case at the High Court challenging the constitutionality of Sections 77, 78 and 79 of the Constitution, the Chieftainship Act and the Tribal Territories Act. The Wayeyi argued that Government of Botswana had turned down their demand to install their chosen Chief, Chief Calvin Diile Kamanakao and that only the Batawana Chief was vested with the responsibility of installing all Chiefs in the Batawana Territory.



353. It is important to note that Tribal Territories Act (CAP 32:02) demarcates the country into territories as belonging to the 8 tribes. This therefore gives the Chiefs of the 8 tribes legal authority to install sub-chiefs within their territories. The Wayeyi happen to be residing in a territory designated to Batawana. Hence only the Batawana Chief is vested with the powers to install sub-chiefs in his territory.

354. The Kamanakao Association therefore, focused their case on Sections 77, 78 and 79 and the Chieftainship Act. The Association was concerned that the Government's decision was making the Wayeyi the subjects of the Batawana.

355. In 2001, the High Court ruled in favour of the Kamanakao Association, declaring a section of the Chieftainship Act as unconstitutional and discriminatory. The High Court further ordered the Government to amend Section 2 of the Chieftainship Act to eliminate discrimination on the basis of tribe. In its ruling, the Court declared the Wayeyi tribe as separate from Batawana. The Government is currently working on the amendment in compliance with the judgment.

## Article 7

### (a) Right to education

356. The Social Studies curriculum programmes in Botswana's primary and secondary schools, cover contents such as Rights and Responsibilities, Nation Building, Culture, Governance and Citizenship, and International Relations, which address issues pertaining to racial discrimination, tolerance and human rights. These subject areas cover contemporary socio-economic, political and cultural issues that make learners aware of their environment and also impart knowledge, skills and attitudes necessary for good citizenship. Among others, the programmes aim at enabling learners, at all levels, to:

- (i) Acquire knowledge, attitudes and practices that will enable them to appreciate and respect equality of human kind irrespective of colour, race, origin, ethnic group, gender, class or creed;
- (ii) Develop knowledge, skills and attitudes that will create in them the spirit of tolerance, respect for others and the willingness to accept change;
- (iii) Develop awareness on human rights and responsibilities related to health, gender, law, violence, identity, civic and other social and moral issues;
- (iv) Develop appreciation of the contribution of all classes, age, groups, gender and ethnic groups;
- (v) Gain the necessary knowledge and ability to interact with the family, community and the nation.

357. **Rights and Responsibility:** This area includes topics that seek to create awareness and to promote respect for human rights. As already indicated in Article 2 of this report, Botswana's Constitution (Sections 3 and 15) guarantees equality before the law.

358. **Culture:** This course introduces learners to different cultures, both nationally and internationally, with the view to promoting the fellowship of man, tolerance, intercultural understanding and peaceful coexistence between people of different cultures. Vision 2016 espouses, *A Moral and Tolerant Nation*, see Introduction of this report.
359. **Nation Building:** This area traces the historical developments leading to the birth of Botswana and also views nation building as an on-going process aimed at improving the quality of life of citizens.
360. **Governance and Citizenship:** The area focuses on the government's administrative structures, Botswana's multiparty democracy and issues of good governance. Other topics covered include peaceful co-existence.
361. **International Relations:** This area deals with issues pertaining to the conduct of states in the global system to help learners grasp an international perspective of human and international relations. Among the topics discussed here, are multilateral organizations such as the United Nations Organisation, its premise, structure and activities.
362. The Botswana education system, through its primary and secondary school programmes, addresses issues that combat prejudice which is the root cause of racial discrimination by inculcating in the learners, the spirit of equality and the fellowship of mankind. The purposes and principles of the UN Charter, the Universal Declaration of Human Rights, International Convention on the Elimination of Discrimination, have found a place in the schools' Social Studies Curriculum. The mixed school system greatly enhances racial understanding and harmony among the youth in the country.
363. The University of Botswana offers a course on human rights and international law which is compulsory for all law students but other students from other programmes can also take the course.
364. UNICEF has approached the University of Botswana with the following initiatives:
- Mainstreaming of human rights issues into all the different programmes studied at the University;
  - Creation of a Center for Human Rights in the Department of Social Work to run a seminar series and other programmes for human rights in Botswana;
  - Setting up of a Regional Center for Peace, Culture and Security Studies in 2006 and making human rights a major part of the center.
365. In educating the public about its mandate, the Office of Ombudsman takes the opportunity to sensitise the public about human rights. This is usually conducted at *kgotla* meetings, prison facilities, public servant meetings).

366. The Department of Prisons and Rehabilitation has produced a handbook, *A Prisoner's Handbook* (2003), which aims at educating prisoners about their rights. This handbook is available in English (the official language) and Setswana (the national language). There is recognition, however, that there may be inmates who do not speak or read either language. The handbook also clarifies the prison regulations and procedures, such as how to lodge a complaint.

367. Prison Officers are also trained on prisoner rights and there is a forum for prisoner-officer interaction, through the Officer-Prisoner Committees which meet periodically. It was necessary to come up with these developments in order to address the number of complaints from inmates received through the Ombudsman's Office, International Committee of the Red Cross, Visiting Committees, and human rights NGO's.

368. Ditshwanelo (Botswana Centre for Human Rights) held local workshops with members of media, law lecturers, diplomatic corps, NGO members, government representatives in 2001 to prepare for the 2001 Durban Conference on Racism both before and after the Durban Conference to address, among other issues, lesbians, gays and bisexuals, and issues of ethnicity.

369. Ditshwanelo has developed an 8-part curriculum for junior secondary schools called *Tsa Bana* ("For the Children"). One section focuses on discrimination. Curriculum is on the prescribed reading list of the Ministry of Education and is available for use in all schools.

#### **(b) Culture**

370. The statutes of Botswana do not make reference to reservation of culture of a particular race or tribe. In recognition of diversity of cultures in the country, the National Policy on Culture maintains that acceptance and respect of other cultures are integral part of the national stream. The Botswana Vision 2016 further recognizes the fact that Botswana has a diverse culture and in the same breadth holds that rapid urbanization should be reconciled with culture. It says that, it is important for that culture to absorb and filter the influx of new ideas.

371. Whilst there are no laws which give protection to specific cultures, there are local efforts by government and NGO's to promote local cultures. For instance: The Department of Youth and Culture has a responsibility to promote and preserve Botswana's rich and diverse cultural heritage. It also promotes sports and the performing arts, through organizing national performing arts festivals in different districts. The Department also provides financial support to non-governmental projects for cultural activities and the arts.

372. The Department of National Museums, Monuments and Art Galleries in the Ministry of Labour and Home Affairs conducts educational tours for children involving different activities designed to enhance children's skills in writing, research and critical thinking. The Museum has a Mobile Museum Extension Project for schools and local communities. The aim of this programme is to educate school children about the people of Botswana and their environment thus promoting not only an understanding of Botswana's cultural heritage but also an understanding of the cultural patterns and diverse ethnicities which make up Botswana.

373. The Museum also holds an annual National Children's Arts Festival which is open to children aged 18 and under and is designed to complement the school curriculum. It is targeted at all children throughout Botswana including schools in remote areas. It is a three-day mini-festival of performing arts including traditional dance, drama and music.

374. There are some Non-Governmental Organisations (NGOs), which are specifically devoted to assisting Basarwa in preserving their culture. The Kuru Development Trust established in 1989 assists Basarwa to develop their culture and values and economic empowerment. The Organisation has also established a Training Centre and a Cultural Programme for Basarwa. Training includes an art programme, which gives them an opportunity to do cultural paintings. At the training Centre there is also a San Cultural Centre that operates a museum. The museum specifically reflects Basarwa culture.

375. As already stated in this report, discussions regarding the issue of discrimination on the basis of tribes have often prevailed in the country. 'Minority' tribes, in particular, often complain of marginalisation of their culture and languages. This has therefore ushered in proliferation of 'minority' tribal associations that attempt to promote and preserve the culture and languages of their tribes. The Botswana statutes do not prohibit any race from promoting its culture, beliefs, norms and traditions.

376. As already indicated in this report (Article 5), there are at least four registered tribal groupings namely: the Society for the Promotion of Ikalanga Language (SPIL), Kamanakao Association, Lentswe la Batswapong and Pitso ya Batswana. There is also an umbrella association for the 'minority' groups known as RETENG.

377. Registration of such associations like any other association or society was guided by Sections 12 and 13 of the Constitution that protect the right to freedom of expression and freedom of assembly and association respectively. The associations are further registered in accordance with Society's Act.

378. ***Society for the Promotion of Ikalanga Language (SPIL)***: The organization was formed to promote the language and culture of the Bakalanga people.

379. ***Kamanakao Association***: The Association is the brainchild of the Wayeyi tribe. Its aim is to develop and maintain Shiyeyi language and culture as well as carry out Shiyeyi traditions, customs and life styles, norms and beliefs.

380. ***Lentswe-la-Batswapong***: The Association was formed by the Batswapong 'minority' tribe. Among other things, the aim of the association is to empower Batswapong people to promote and protect their cultural, spiritual and ethnic fabric. Furthermore, the association aims to actively defend fundamental rights stipulated in both the Constitution and relevant international instruments

### (c) Information

381. The Media Institute of Southern Africa (MISA), Botswana Chapter, has entered into a collective effort with the Botswana Police to discuss human rights and media as well as training of senior management. MISA has a policy on discrimination on gender, challenging itself and

society. It provided input about media's role and human rights. It went further to conduct workshops on gender-based discrimination for media managers and expanded the training to stakeholders, in line with its strategic plan. A Gender and Media Study (by Department of Women's Affairs, NGO Coalition, and Women in Law in Southern Africa) found that media reports on men and women were 72% and 18%, respectively, suggesting a media bias against women issues.

382. To address possible gender discrimination against women, MISA has come up with a media policy, which commits the Association to the achievement, in line with the Southern African Development Community Declaration on Gender and Development, of a thirty per cent (30%) representation of women at all its levels, in its activities. MISA also commits itself to gender-mainstreaming in all its programmes and allocation of requisite financial and human resources to achieve the goal. It has also committed itself to forming partnerships with women's media associations and other civil society organizations that promote the fair representation of women in the media.

383. The Botswana TeleVision (Btv) has a weekly cultural programme (Sedibeng) which focuses on different local customs and activities, aimed promoting different cultures. In this way, different people get to know and appreciate Botswana's cultural diversity.

### **Conclusion**

384. This is in short, Botswana's report to the CERD Committee. The State party remains open to any advice the Committee may proffer and wish to assure the Committee of its full cooperation throughout the process of considering this report.

### **Notes**

<sup>1</sup> The List of Participants at the stakeholders' workshops is attached as Annex 3.

<sup>2</sup> The history and status of the Principal Tribes will be discussed further in the discussion of Article 2 below.

<sup>3</sup> The word "minority" will be used in quotation marks throughout the report to denote the fact that these tribes may not, actually, constitute a demographic minority.

<sup>4</sup> The civil jurisdiction of the customary court does not allow the courts to deal with matters such as the dissolution of civil marriages, testate succession or insolvency.

<sup>5</sup> The criminal jurisdiction of the customary court is limited and prevents the court from dealing with cases such as treason, bigamy, corruption, abuse of office, robbery, rape and other serious offences.

<sup>6</sup> 1992 B.L.R. 112.

<sup>7</sup> The Attorney General appealed to the Court of Appeal, but was unsuccessful. The Citizenship Act was subsequently amended in 1995.

<sup>8</sup> “Kaffir” is a derogatory word used during the apartheid era to demean black people.

<sup>9</sup> This constitutes the maximum fine for this kind of offence. While P500 is a large sum to some people, there are some who doubt whether it is a meaningful penalty to people in the higher socio-economic sectors of society. In addition, an injured person may not feel that a maximum penalty of P500 would warrant reporting a matter to the police. This may explain why many cases in Botswana are not reported.

<sup>10</sup> The Muslim Association of Botswana states that no fee is supposed to be charged for halaal slaughtering.

<sup>11</sup> A Kgotla is a traditional meeting place. It also serves as the customary court where cases are tried.

<sup>12</sup> Although the Constitution says “he”, these rights are also afforded to women.

<sup>13</sup> The Basarwa are also sometimes referred to as the Bushmen or the San however “Bushman” is widely considered to be a derogatory or demeaning term.

<sup>14</sup> Reservations were made on the following articles: 1, 12 (paragraph 1), 17, 26, 31 and 34.

<sup>15</sup> “Brigades” are vocational schools.

<sup>16</sup> “Remote Area Dwellers” generally refers to Basarwa although there are also non-Basarwa who are Remote Area Dwellers.

### **Abbreviations**

<b>BCP:</b>	Botswana Congress Party
<b>BDP:</b>	Botswana/Bechuanaland Democratic Party
<b>BNF:</b>	Botswana National Front
<b>BOCONGO:</b>	Botswana Coalition of Non Governmental Organisations
<b>BOPA:</b>	Botswana Press Agency
<b>BPP:</b>	Botswana/Bechuanaland Peoples Party
<b>BTA:</b>	Botswana Telecommunication Authority
<b>CKGR:</b>	Central Kalahari Game Reserve
<b>DCEC:</b>	Directorate of Corruption and Economic Crime
<b>IEC:</b>	Independent Electoral Commission
<b>NGOs:</b>	Non-Governmental Organisations
<b>SADC:</b>	Southern African Development Community
<b>SHHA:</b>	Self Help Housing Agency

### **Annexures**

<b>Annex</b>	<b>Document</b>
1.	Constitution
2.	Vision 2016
3.	List of Participants
4.	Table on Population by Age, Sex and Citizenship, 1971, 1981, 1991 and 2001 Census
5.	Table on Population Aged 2 Years and Over by Language Spoken and Educational Attendance
6.	3rd National Anti Crime Clean Up Operation Composite Report (24th-25th November 2004)
7.	Reviewed Policy on Education

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