

# Universal Periodic Review (Second Cycle)

## Botswana Stakeholder Report Submitted 9 July 2012

### INTRODUCTION

1. This Stakeholder Report has been submitted by the following civil society organisations: DITSHWANELO – The Botswana Centre for Human Rights, The Botswana Council of Non-Governmental Organisations, Lesbians, Gays and Bisexuals of Botswana (LEGABIBO) and Rainbow Identity. DITSHWANELO is coordinating this joint civil society submission. DITSHWANELO was established in 1993 and is the only broad-based human rights organisation in Botswana ([www.ditshwanelo.org.bw](http://www.ditshwanelo.org.bw)).
2. Botswana's first Universal Periodic Review (UPR) in 2008 enabled the opening of a broad conversation on human rights issues. It demonstrated the government's intentions to improve the manner in which it protects human rights, but it also revealed some situations of concern which have a negative effect on the promotion and protection of human rights in the country. This report, submitted by a coalition of cross-sector human rights organisations of Botswana identifies some of the key challenges and makes recommendations for consideration by the Working Group, during the second cycle of the UPR.

## II. BACKGROUND AND FRAMEWORK

### A. Constitutional and Legislative Framework

#### Treaty Ratification, Domestication and Reporting

##### a) Ratification

3. Botswana has not ratified some international human rights treaties. Although Botswana is making notable efforts to attend to the rights of its people, commitment, adherence and implementation of the following treaties should have a positive impact on human rights practices:
  - the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires progressive realisation. Although the Government of Botswana provides basic services such as access to water, food, education and health services, these are neither recognised as rights in the Constitution nor entrenched as state obligations. In 2010, President Khama committed the Government to the eradication of poverty and to a people-centred approach to development<sup>1</sup>. The Committee on Economic, Social and Cultural Rights has stated that “Anti-poverty policies are more likely to be effective, sustainable, inclusive, equitable and meaningful to those living in poverty if they are based upon international human rights.”<sup>2</sup>

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<sup>1</sup> ‘...Government has shifted its strategic focus beyond alleviation measures and achieving the Millennium Development Goal of halving poverty, to a renewed moral commitment to eradicate absolute poverty, with an emphasis on people centred development through local enterprise’. President Khama State of the Nation Address, 8 November 2010 para 4.

<sup>2</sup> Poverty and the International Covenant on Economic, Social and Cultural Rights: statement adopted on 4 May 2001 by the Committee on Economic, Social and Cultural Rights (E/C.12/2001/10), para. 13. Both the Special Rapporteur on the Right to Education (E/CN.4/2006/45/Add 1. Para 76(a) and the Working Group of the first cycle of the Botswana UPR 2008 recommended ratification of ICESCR.

- the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) protocol which will indicate a commitment of the Government of Botswana to respect article 6, paragraph 2 of the ICCPR, which Covenant it ratified in 2000.

**b) Domestication**

4. For domestic application of Botswana's international legal obligations which are a consequence of her express commitment to international human rights instruments through ratification, accession or succession, domestication has to be effected through enactment of national legislation. Not all rights provided in the Covenants and Conventions are addressed in the Constitution and legislation<sup>3</sup>. There has been no domestication of CAT, CERD, CEDAW and ICCPR. The CRC and the African Charter on the Rights and Welfare of the Child were domesticated through the Children's Act 2009<sup>4</sup>. It recognises the need to respect the child's dignity and to refrain from administering discipline which violates such dignity (art. 27(3)(h)). However this 2009 Act does not prohibit corporal punishment (which is permitted by the Education Act 1967 (article 21) and regulations<sup>5</sup>) and makes reference '... to the Penal Code or any other law' (art. 27(5)). This is contrary to the concluding observations of the Committee on the Rights of the Child; of the Human Rights Committee and of CEDAW<sup>6</sup>. Contrary to the recommendation of the Committee on the Rights of the Child, customary law has not been brought into conformity with the Convention<sup>7</sup>.

**c) Reporting**

5. The Government of Botswana has not regularly and timeously submitted reports to the Special Mechanisms of the UN. Despite Botswana's commitment to 'continue to cooperate fully with all treaty bodies, including through meeting its reporting obligations to such bodies', when standing for election to the Human Rights Council (2011-2014) in December 2010<sup>8</sup>, Botswana has failed to adhere to several reporting deadlines, namely: its first, second and third periodic reports to the Committee Against Torture (due in October 2001, 2005 and 2009); its second periodic report to the Human Rights Committee (due in March 2012); its seventeen and eighteenth periodic report to the Committee on the Elimination of Racial Discrimination (due in March 2009); its second and third periodic report to the Committee on the Rights of the Child (due in April 2007); its first report on Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (due in November 2006) and its first report on the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (due in October 2005).

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<sup>3</sup> CCPR/C/BWA/CO/1. Para 6

<sup>4</sup> Statement by Mr Augustine Makgonatsotlhe – Secretary for Defence, Justice and Security in the Office of the President during the adoption of the Botswana UP Report by the HRC. 18 March 2009 para 8. A similar statement This was repeated before the CEDAW/C/BOT/3/Q/Add1 page 4 before the Committee on the Elimination of Discrimination Against Women. 10 November 2009

<sup>5</sup> Education (Corporal Punishment) Regulations (1968), Education (Primary Schools) Regulations (1980), Education (Private Primary Schools) Regulations (1991).

<sup>6</sup> CRC/C/15/Add. 242 on 3 November 2004 on abolition of corporal punishment in the family, school and other institutions; CCPR/C/BWA/CO/1 on 24 April 2008 on the abolition of penal corporal punishment and CEDAW/C/BOT/CP/3 on 24 March 2010 on the abolitions of violence against children, including the girl-child.

<sup>7</sup> CRC/C/15/Add. 242 paragraph 9

<sup>8</sup> A/65/732 paragraph 20.

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

- consider its existing resolve ‘to a renewed moral commitment to eradicate absolute poverty<sup>9</sup> and confirm its on-going policy commitments to the realisation of economic, social and cultural rights by **ratifying** the ICESCR to ensure long-term poverty eradication. A timetable for ratification with milestones should be provided.
- Botswana should consider inviting the **Special Rapporteur on the Eradication of Extreme Poverty and Human Rights**, Ms Magdalena Sepulveda, for a **country visit**. This would enable constructive dialogue with the Government, civil society and other relevant actors to identify ways to remove obstacles, including institutional, to full enjoyment of human rights for people living in extreme poverty<sup>10</sup>. This could include recommendations on the further realisation of the MDGs, to which Botswana has committed herself.
- Botswana should also **ratify** the Second OP to the ICCPR and the OP to CAT<sup>11</sup>. A timetable for ratification with milestones should be provided.
- **Domesticate** the CAT, the CERD, the CEDAW and the ICCPR. Though Botswana has a dualist legal system and its international instruments are not self-executing and require domestication to be used before a court of law, it is commonly accepted that according to the law of treaties, by ratifying human rights treaties, States commit themselves to respecting those rights and ensuring that their domestic law is compatible with international legislation.
- Provide without delay: its first, second and third periodic **reports** to the CAT; its second periodic report to the HRC; its seventeen and eighteenth periodic **report** to the CERD; its second and third periodic report to the CRC; its first **report** on Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and its first **report** on the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography

**B. Institutional and Human Rights infrastructure**

- 7.. Botswana confirmed its intention to establish a national human rights institution during the first cycle of UPR in 2008. It also stated that consultations to initiate the process are on-going and it was expected that it would be established by the next review.<sup>12</sup> No national human rights institution has been established since the UPR process in 2008. The Government has recognised the need for a dedicated human rights institution which would perform the following options: ensure compliance with ratified human rights instruments; prepare Botswana’s state reports to specific human rights instruments as part of obligations; address issues relating to domestication of ratified instruments; stepping up public education on human rights issues and attend to and deal with complaints from members of the public who feel that their human rights have been violated in one way or the other.<sup>13</sup>
8. The work of the Office of the Ombudsman is being seriously undermined by slow responses by government departments and resultant low case resolution rate. Annual reports 2008/2009, 2009/2010 and 2010/2011, due to be presented to the National Assembly had not been presented by May 2012<sup>14</sup>. The computerised case management system broke down in 2005. It

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<sup>9</sup> President Khama State of the Nation Address, 8 November 2010 para 4.

<sup>10</sup> <http://www/Issues/Poverty/Pages/SRExtremePoverty/Index.aspx>

<sup>11</sup> The Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty and the Optional Protocol to the Convention Against Torture of the Sub Committee on the Prevention of Torture.

<sup>12</sup> Report of the Working Group on the Universal Periodic Review BOTSWANA A/HRC/10/69 paragraph 9, Page 4

<sup>13</sup> Office of the President of Botswana: <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Divisions/Human-Rights-Commissions1/>

<sup>14</sup> Bame Piet, PAC struggles to form quorum , 15 May 2012, <http://www.mmegi.bw/index.php?sid=1&aid=272&dir=2012/May/Tuesday15> (last accessed 22/06/2012)

has not been attended to as the Government is implementing the e-gov system, consequently work has to be done manually. This situation has had serious implications for the promotion and protection of human rights.

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

- commit to produce a **national human rights strategy** linked to national development principles and priorities, including but not limited to the above-stated recommendations on ratification, domestication and reporting, after the acceptance of the UPR outcome document from the second cycle. The overall goal of the strategy should be the realisation of human rights in Botswana in all sectors, including education, health, environment, youth, etc. The strategy would include the relevant capacity-building of government officials, civil society and the private sector. The creation of an independent national human rights institution in accordance with the Paris Principles, in partnership with civil society and the Office of the High Commissioner for Human Rights, would then be part of the comprehensive strategy<sup>15</sup>.
- commit to produce a **mid-term report on follow-up** of accepted recommendations of the HRC under the UPR mechanism.

### III PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

#### A. Cooperation with human rights mechanisms

##### 1. Cooperation with treaty bodies

*Please see II A. (c) on Reporting.*

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

- Implement all recommendations of the CEDAW 45<sup>th</sup> committee of 18 January-5 February 2010<sup>16</sup>

*Please see section on Treaty Ratification, Domestication and Reporting for other relevant information.*

##### 2. Cooperation with special procedures

11. Following its election to the Human Rights Council in 2011 for the term 2011-2014, Botswana has contributed to many debates and has respected the guiding principles of transparency, dialogue and cooperation. It can continue its cooperation through issuing standing open invitations to all the Special Rapporteurs.

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<sup>15</sup> The intention to establish a Human Rights Institution was stated by Mr Augustine Makgonatsotlhe, Secretary for Defence, Justice and Security in the Office of the President during the adoption of the Botswana UPR Report by the Human Rights Council. As at 18 March 2009, the consultation concerning its establishment had been concluded. The recommendations were 'soon to be submitted to Cabinet for consideration'. This commitment was reiterated by the Government before the Committee on the Elimination of Discrimination Against Women. CEDAW/C/BOT/3/Q/Add1 page 4. 10 November 2009. 'The Committee notes that, although Botswana accepted the recommendation to establish an independent national human rights institution made during the universal periodic review of Botswana (see A/HRC/10/69/Add.1), it has yet to establish such an institution' at para 17.

<sup>16</sup> C/BOT/CO/3 26 March 2010

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

- Invite the Special Rapporteur on Extreme Poverty and Human Rights for a country visit. The resultant constructive dialogue between the SR, the Government, civil society and other relevant actors, may contribute significantly to the development of a comprehensive, national human rights strategy, linked to national principles and priorities.
- Issue a standing invitation to all the Special Rapporteurs

**B. Implementation of international human rights obligations**

**1. Equality and non-discrimination**

a) Discriminatory regimes relative to the coexistence of the constitutional and customary law

13. **Gender inequality and inheritance.** In the 2008 UPR, it was recommended that Botswana adopt necessary measures for the harmonising of customary laws with international instruments<sup>17</sup>. Botswana did not consider that there is any conflict between customary law and international instruments. In the case of *Mmusi and Others v Ramantele and Another* MAHLB-000836, before the High Court there is a challenge to the Ngwaketse customary law rule which provides for male-only inheritance of the family home (male primogeniture). At issue is whether this customary law rule violates the daughters' right to equality as guaranteed by section 3 of the Constitution. At the Lower, Higher and Appeal levels of the customary law system, the courts ruled in favour of the application of the customary law rule as it currently exists. The matter is now on appeal before the High Court (as at July 2012).
14. Article 26 of the ICCPR provides for equal protection of the law<sup>18</sup>. The Human Rights Committee has interpreted the right to equal protection as providing for equality before the law and equal protection but also a guarantee "*to all persons equal and effective protection against discrimination on any of the enumerated grounds,*" including sex<sup>19</sup>. Art. 3 of the African Charter on Human and Peoples' Rights<sup>20</sup>, recognises equal treatment under law and equal protection. Botswana acceded to CEDAW in 1996.
15. In its Concluding Observations in February 2010, the UN Committee on the Elimination of All Forms of Discrimination Against Women<sup>21</sup> noted with concern that the Abolition of Marital Power Act 34 of 2004 which gives both partners in common law marriage equal powers in the family and the amendment to the Deeds Registry Act which enables women to register immovable property in their own names, do not apply to customary and religious marriage. The Committee expressed the same concern that the Matrimonial Causes Act Cap 29:6 regulating matters pertaining to divorce, judicial separation and other incidental matters and the Marriage Act Cap 29:01 regulating the registration of marriage and setting 18 years as the minimum age for both boys and girls to marry do not apply to customary and religious marriages. The Constitution of Botswana further entrenches discrimination against women in excluding the application of non-discrimination clauses of section 15(4) (c) to "adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law".

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<sup>17</sup> Recommendation by Mexico.

<sup>18</sup> Botswana ratified ICCPR in September 2000.

<sup>19</sup> Human Rights Comm., General Comment No. 18: Non-discrimination, 37th session (1989), para 12.

<sup>20</sup> Botswana ratified it in 1986

<sup>21</sup> CEDAW/C/BOT/CO/3

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

- Reform the customary law to eliminate discrimination against women concerning access to property

b) Domestic violence

17. The dual legal system, comprising both customary and common law, makes it difficult to ensure adequate protection of women against domestic violence. Cultural perceptions of women as perpetual minors under the care of their father, husband, uncle or brother, reinforce an environment susceptible to assertion of authority through violence. Since the enactment of the Domestic Violence Act of 2008, despite the public awareness efforts of the government of Botswana to promote the Act, domestic violence remains a major concern. A legal gap exists as the Domestic Violence Act does not "specifically prohibit" domestic violence.<sup>22</sup> The Botswana Council of NGOs (BOCONGO) also indicates that the effort to address violence against women has been "largely ineffective" partly because of the "poor dissemination of information on laws and programs meant to benefit victims of gender violence"<sup>23</sup>. Additionally lack of financial resources hampers access of women, especially poor women, to legal assistance. The Botswana government, reporting to the Committee on the Elimination Discrimination Against Women on its implementation of CEDAW in 2010, also indicates that the cost of legal proceedings was the "main" obstacle for women wanting to access justice and that although there is no legal aid system in place, its planning document for 2016 recognises the need to put one in place.<sup>24</sup> A State-sponsored Pilot Legal Aid Project was established in August 2011. It was extended from 31 March 2012 to 31 March 2013. Emang Basadi, DITSHWANELO, BONELA and Women Against Rape participate in providing free legal assistance to the indigent. It has focused on providing quality professional legal services and ensuring equal and effective access to justice for the indigent. In the first phase it had processed 389 cases.

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

- Strengthen laws and policies to protect women from violence and support survivors and victims of violence and facilitate additional safe spaces for victims of domestic violence. The Domestic Violence Act does not call for the creation of shelters for those fleeing domestic violence. To date there are only two shelters in Botswana, one in Gaborone and another one in Maun, both provided by NGOs.
- criminalise rape in marriage. Neither the Penal Code nor the Domestic Violence Act deal specifically with the issue of rape in marriage. Research shows a direct link between gender-based violence and HIV infection, particularly in young women.

c) Lesbian, gay, bisexual and transgender rights

19. Section 64 of The Penal Code criminalises 'carnal knowledge ... against the order of nature'. The law is interpreted to criminalise **same sex sexual activities**. Sections 3-19 of the Constitution of Botswana protect the 'fundamental rights and freedoms of the individual' in Botswana. Section 3 recognises that '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. The Penal Code violates a fundamental

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<sup>22</sup> Cailleba, Patrice, and Rekha A. Kumar. December 2010. "When Customary Laws Face Civil Society Organisations: Gender Issues in Botswana." *African Journal of Political Science and International Relations*. Vol? 4, No. 9. , 331; US 11 Mar. 2010, Sec. 6

<sup>23</sup> Botswana Council of Non-governmental Organizations (BOCONGO). 2010. "Oral Statement to the CEDAW Committee - CEDAW, 2010, 3

<sup>24</sup> Botswana 22 Apr. 2010, 6

principle of the Constitution, which provides a non-discriminatory regime. Article 26 of the ICCPR not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>25</sup>.

20. Lesbians, Gays and Bisexuals of Botswana (LEGABIBO), an organisation which has, since 1998, been advocating for the rights of lesbians, gays and bisexuals, has been denied registration by the Department of Civil and National Registration (DCNR). The department has made reference to the Penal Code which criminalises same-sex sexual activity.
21. It is apparent that there is a lack of clarity about the Government of Botswana's interpretation of constitutional provisions protecting its citizens against any type of discriminations, including discrimination based on sex. Government actions, notably the refusal of granting registration to LEGABIBO equally contravenes Section 13 of the Constitution. Therefore, the penal code and the actions of the DCNR could be unconstitutional.
22. Through its work, Rainbow Identity notes that a major challenge facing **transgendered persons** is the difficulty which they experience to obtaining documents reflecting their changed gender identity following transition from one gender to another. The current procedure for change of gender is unsystematic and unclear. There is no specific legislation regarding a change of identity for transgendered persons. Name changes are permissible under the law, however, due to ignorance by civil servant and the judiciary, about transgendered persons, use of the law can lead to an unnecessarily prolonged process. Transsexual applicants are required to submit to the court, a medical report concerning the sexual identity of the individual. Cooperation with the Ministry of Health is required, to enable approval of the medical report.
23. **We recommend that the Government of Botswana should:**
  - Ensure that the Penal Code is brought into conformity with the Constitution. The 'carnal knowledge ... against the order of nature' concept is premised on the notion that only the heterosexual gender identity is one with which one is born. Research has shown that there are different sexual and gender identities in the world. Criminalising the existence of the ability of lesbian, gay, bisexual and transsexual persons to live their lives with dignity, is a violation of the human right of the individual.
  - Register LEGABIBO. LEGABIBO seeks to promote a non-discriminatory legal framework for the LBGTI community in Botswana and to create a community which is informed about LBGTI issues.
  - Review legislation to ensure that it is in conformity with the international legal obligations which Botswana accepted when it committed itself to international instruments which it has ratified.

## 2. Right to life, liberty and security of the person

### a) Death penalty.

24. The Government of Botswana remains committed to the retention of the death penalty<sup>26</sup>. It also stated that it was not considering a moratorium on the application of the death penalty as

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<sup>25</sup> General Comment No. 18: Non-discrimination : . 11/10/1989. CCPR General Comment No. 18.

<sup>26</sup> A/HRC/WG.6/3/BWA/2 para 14 – Compilation by OHCHR in accordance with para 15(b) of the Annex to Human Rights Council Resolution 5/1

resolutions per the recommendation of the United General Assembly in December 2007, 2008 and 2010.<sup>27</sup>

25. Despite the existence of a Parliamentary Law Reform Committee of 1997 and the support of the Government for the death penalty, there are indications that the national debate on the death penalty has made strides. The issue has received encouraging coverage in both audio-visual and print media. DITSHWANELO – The Botswana Centre for Human Rights, a human rights NGO, has been at the forefront of campaigning for a progressive debate on the death penalty since 1994.

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

- hold public consultations, in a participatory manner together with civil society, about the desirability and long-term effectiveness of the use of the death penalty as a deterrent.
- be further encouraged to seriously consider implementing a moratorium and should take steps to humanise the application of the death penalty.

b) **Corporal punishment**

27. The Government of Botswana holds an ambiguous position on the issue of corporal punishment of children. On the one hand, it amended the Children's Act with the intention of domesticating the provisions of the CRC, especially article 19(1). On the other hand it permits corporal punishment of children, as is allowed for in the Education Act.

28. In Botswana, corporal punishment and other cruel or degrading forms of punishment are permitted not only in schools, but also in alternative care facilities, in the justice system, and in the community. Corporal punishment is also applied in both the statutory and the customary law systems, as a form of corrective punishment. Related provisions exist in both the Penal Code and the Customary Courts Act. Despite the fact that certain requirements apply to the administration of corporal punishment, such as section 10 of the Constitution, section 28 of the Penal Code, section 305 of the Criminal Procedure and Evidence Act, and section 3 of the Corporal Punishment Regulations (under the Customary Courts Act), the punishment is torture, cruel, inhuman and degrading treatment and is an offence to the dignity of the person receiving it.

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

- review the inconsistencies between the Children's Act 2009 and the international legal commitments to the core principles of the CRC which it made when it acceded to the CRC in 2005.
- implement its commitment to mainstreaming human rights in the education system and develop a national strategy for human rights education in the school system at all levels to be developed in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education<sup>28</sup>.
- ensure that education is provided in a way in which it respects the inherent dignity of the child. It should also enable the child to express his or her views freely and to participate in school life in a manner which promotes non-violence in school

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<sup>27</sup> United Nations General Assembly, Resolutions 62/149 of 18 December 2007, 63/168 of 18 December 2008 and 65/206 of 21 December 2010 calling on member states that maintain the death penalty to establish a moratorium on the use of the death penalty with a view to abolition, and in the meantime, to restrict the number of offences which it punishes and to respect the rights of those on death row. It also calls on States that have abolished the death penalty not to reintroduce it

<sup>28</sup> A/HRC/10/69/Add.1, Report of the Working Group

- criminalise all forms of assault in specific legislation or within the Penal Code by prohibiting corporal punishment of a child or an adult
- address the cultural acceptance of violence against children, and to promote positive, non-violent and participatory forms of child-rearing.

### 3. Administration of justice and the rule of law

30. A State-sponsored Pilot **Legal Aid** Project and in which Emang Basadi, DITSHWANELO, BONELA and Women Against Rape (WAR) participate by providing free legal assistance to the indigent, began in August 2011 and ended on 31 March 2012. It has focused on providing quality professional legal services and ensuring equal and effective access to justice for the indigent. It has marshalled attention and assistance to 389 cases. The project has been extended till 31 March 2013

#### Prisons.

31. Non-citizen prisoners who are HIV positive are not provided with ARV treatment. Prisoners convicted and sentenced to less than six (6) months may vote. Solitary confinement is permitted by the Prisons Act section 111(1). This is not permissible unless a medical officer has certified that a prisoner is physically and mentally fit to undergo such confinement. Rehabilitation activities include carpentry, building, agriculture and upholstery. Counselling is necessary to enable successful reintegration into society upon release from prison. Seeking employment upon release is difficult due to having a prison record. It is possible for the record to be cleared by a Presidential Pardon.

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

- Review the policy of not providing ARV treatment to non-citizen prisoners
- inform the Working Group how many prisoners voted during the last general elections in 2009.
- inform the Working Group about how many prisoners have been kept in solitary confinement and for how long. Were they all examined by a medical officer and declared physically and mentally fit to undergo the confinement.
- inform the Working Group how many of the prison population participate in rehabilitation activities
- inform the Working Group of the prison:counsellor ratio
- which guidelines are used for the granting of a Presidential Pardon for the purpose of clearing a prison record

### 4. Economic, Social and Cultural rights

33. **Human rights education.**In the 2008 UPR, it was recommended that human rights should be mainstreamed in the education system and that a national strategy for human rights education in the school system at all levels be developed in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education. Although these recommendations were accepted by Botswana, there does not seem to have been any implementation of these.

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

- Provide without delay, working together with Human Rights organisations, especially those who have been working in the field of human rights education, a national strategy for human rights education and a plan for the mainstreaming of human rights into the school system. These should include milestones as indicators of progress. The national strategy for human

rights education would form part of the proposed national human rights strategy. (*Please see recommendation under **B Institutional and Human Rights infrastructure***).

- Provide a national plan of action for implementation of accepted recommendations, voluntary pledges and commitments to be developed within twelve (12) months of adoption of the UPR outcome document. This should include a clear timeframe and key milestones for implementation.
- Produce a mid-term implementation report on the status of the implementation of the accepted recommendations and commitments.

## 5. Indigenous Peoples

35. The CKGR NGO Coalition (the Secretariat of which is DITSHWANELO) has been engaged in facilitating constructive engagement between the selected representatives of former and current residents of the CKGR since 2006. In 2010, the Coalition facilitated the beginning of a mapping exercise process, which is still underway until July 2012, aimed at the production of a community-based land use management plan for the proposed Molapo community use zone, Molapo being one of the settlements inside the CKGR. The community is actively participating in the process. It recognizes the potential of this process for land use and for the creation of sustainable income generation and equitable participation in developmental processes. The plan will be required to address Government policies for the conservation of the CKGR biodiversity and wildlife resources as part of a formally protected area and wise management as well as development of the CKGR, as a pristine ecosystem and internationally renowned wilderness and tourism resource. The Government of Botswana has enabled the CKGR NGO Coalition to facilitate this process by providing the requisite entry permits to the CKGR, whenever they are required. The Government has also expressed its commitment to finding an amicable solution to the CKGR issue, through working with local stakeholders. The outcome document will be a basis of the continued constructive talks between the Government and the current and former residents of the CKGR.
36. The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr James Anaya recommended that the Basarwa and Bakgalgadi communities from the Central Kalahari Game Reserve ... be allowed ‘to engage in subsistence hunting and gathering in accordance with traditional practices ...’<sup>29</sup>.
37. **We recommend that the Government of Botswana should:**
- inform the Working Group how many special licences have been issued to Basarwa/San since the first UPR cycle in 2008; in which settlements and in districts in the country
  - inform the Working Group how many Basarwa/San have been arrested for poaching, tried in a court of law and sentenced, since the first cycle UPR in 2008?
  - inform the Working Group how many of the cases involve repeat offenders?
  - explore, together with the Basarwa/San, the continuation of traditional hunting and gathering cultural practices, based on indigenous (traditional) knowledge systems

Gaborone, Botswana  
9 July 2012

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<sup>29</sup> A/HRC/15/37/Add.2 para 97.