

UPDATE 2024



COMMON COUNTRY ANALYSIS

Botswana 2024 CCA Update 2

HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT IN BOTSWANA

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1. Introduction

This document supplements the 2020 Botswana Common Country Analysis (CCA). It therefore serves as an update to the 2020 CCA. It is the second in a series of short papers that shed light on Botswana's development context, with a focus on significant human rights developments since 2020. Botswana's critical and longstanding development challenges still stand, including social and economic inequality, high unemployment and poverty, food insecurity, as well as the slow progress on the environment and climate change front. New challenges have also emerged, such as high inflation and the socio-economic impact of the Russia-Ukraine conflict as well as the crisis in Gaza which has impacted trade routes. These emerging issues coupled with the lack of overall development progress have reinforced existing development deficits. Botswana is planning to hold General Elections, which are set to be contested, in 2024.

The 2030 Agenda for Sustainable Development, with its 17 Sustainable Development Goals (SDGs), is unequivocally anchored in human rights. It is grounded in the UN Charter, the Universal Declaration of Human Rights (UDHR) and international human rights treaties and states that the SDGs aim to "realize the human rights of all". Moreover, the 2030 Agenda recognizes the responsibilities of all States to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

In 2023, the world celebrated the 75th anniversary of the Universal Declaration of Human Rights (Human Rights 75). As a "common standard of achievement for all peoples and all nations", the Universal Declaration of Human Rights is a global blueprint for international, national, and local laws and policies and a bedrock of the 2030 Agenda for sustainable development. Recognizing the outcomes of the SDG Summit held in 2023, which reaffirm the importance of human rights to the sustainable development agenda,¹ this CCA update focuses on human rights developments in Botswana at the national and international levels since 2020.

2. National human rights framework

Since 2020, there have been several some noteworthy human rights-related developments in Botswana's national human rights framework. Although most developments are directly relevant to SDG 16 on Peace, Justice and Strong Institutions, progressive measures will positively impact various other SDGs and

¹ Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly A/HLPF/2023/L.1 https://hlpf.un.org/sites/default/files/2023-09/A%20HLPF%202023%20L1.pdf?_gl=1*1fz5bow*_ga*MjgzNzg4MzYzLjE2ODU3MDU5ODE.*_ga_TK9BQL5X7Z*MTY5Njg2MzI0NC4xNC4xLjE2OTY4NjMzMiYuMC4wLjA.

aim to ensure that no one is left behind in Botswana's development trajectory. Key human rights developments at the national level include the constitutional review process; the launch of human rights mandate of the Ombudsman; legislative, judicial and policy developments that may impact the rights of marginalised groups at risk of being left behind; and Botswana's launch of its national Human Rights 75 campaign.

Constitutional review

In December 2021, the President of Botswana appointed a Commission of Inquiry into the review of the country's Constitution. The Commission was granted approximately nine months to discharge its mandate and completed its report by September 2022. According to Freedom House, "President Masisi stood accused of employing a top-down, non-participatory, and non-transparent approach to constitutional reform".² On 31 October 2023, the Botswana Law Society issued a position paper on the constitutional review process, noting that the process was "deeply flawed" and that the Law Society had accordingly decided not to participate in the process. According to the Law Society, flaws include the use of a commission of inquiry accountable to the President, instead of a dedicated Act of Parliament; the non-consultative appointment of Commissioners, and the lack of public education prior to the review. Civil society has also noted that the constitutional process was not inclusive of LGBTQI+ persons, even though LGBTQI+ persons are marginalised and in a situation of vulnerability.³

Substantive recommendations of the Law Society include abolition of the death penalty, and the inclusion of justiciable economic and social rights in the Bill of Rights,⁴ whereas the Commission of Inquiry in contrast recommended the extension of the death penalty for additional offences, and piecemeal incorporation of labour rights and the rights to education, health and land in the Bill of Rights. In this regard, the Law Society notes that such debates "should not simply be informed by what the majority of the people gathered at a Kgotla meeting for a solicitation of their views said but must be anchored on the various international human rights instruments that Botswana has signed up to.... the constitution should not seek to entrench majoritarian tyranny but should instil values which will stand the test of time".⁵

Other recommendations by the Commission of Inquiry that may be contrary to Botswana's international human rights obligations include: denial of bail to repeat accused as well as those accused of rape, murder, robbery and stock theft; to

² Freedom House, *Freedom in the World 2023: Botswana*
<https://freedomhouse.org/country/botswana/freedom-world/2023>.

³ Southern Africa Litigation Centre, *LGBTQ rights and inclusion amid Botswana's constitutional review process* (April 2023) <https://www.southernafricalitigationcentre.org/2023/04/06/lgbtq-rights-and-inclusion-amid-botswanas-constitutional-review-process/>.

⁴ Council of the Law Society of Botswana, *Position Paper on the Constitutional Review Process* (2023).

⁵ Council of the Law Society of Botswana, *Position Paper on the Constitutional Review Process* (2023).

extend the death penalty for additional offenses including drug offences; to maintain corporal punishment at schools, to introduce corporal punishment at Dikgotla, and to administer corporal punishment to both women and men up to the age of 50 years; that corporal punishment and emasculation should be included in the Penal Code for repeat rape offenders (despite the mandate of the Commission being in respect of constitutional and not legislative reform); and that Botswana should withdraw from the Convention on International Trade of Endangered Species (CITES).

The constitutional review process presented an opportunity to bring the constitutional prohibition of discrimination in section 15 of the Botswana Constitution in line with international human rights standards and SDG 5 Target 5.1,⁶ as well as implementing related recommendations by the Human Rights Committee,⁷ the Committee on the Elimination of Discrimination against Women⁸ and the Committee on the Elimination of all forms of Racial Discrimination (CERD).⁹ Currently, section 15 prohibits discrimination on the grounds of race, tribe, place of origin, political opinions, colour, creed or sex, and contains exceptions including for non-citizens. Instead of proposing a comprehensive revision of section 15, the Commissions of Inquiry recommended discrete changes, including adding disability and intersex as prohibited grounds for discrimination.

Other progressive recommendations that may promote human rights despite possibly going beyond the mandate of constitutional reform, include: to pass legislation to provide for teaching in languages other than Setswana and English; to promote other languages on national media; to include labour rights and the rights to health, education, and land in the Constitution; to legalise termination of

⁶ Target 5.1: “End all forms of discrimination against all women and girls everywhere”; Indicator 5.1.1: “Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex”.

⁷ In 2021, the Human Rights Committee (which monitors implementation of the International Covenant on Civil and Political Rights) recommended that Botswana:

“(a) Adopt comprehensive legislation prohibiting discrimination, including multiple, direct and indirect discrimination, in all spheres, in both the public and the private sectors, on all the grounds prohibited under the Covenant, including sex, sexual orientation, gender identity, religion, disability, socioeconomic status, HIV/AIDS status, ethnic and political affiliation or other status;

(b) Amend section 15 of the Constitution in order to bring it into line with articles 2–3 and 26 of the Covenant...”

⁸ With reference to SDG 5 Target 5.1, the Committee recommended “that the State party adopt in the Constitution and other national laws, without delay, a comprehensive definition of discrimination against women, covering all prohibited grounds of discrimination, encompassing direct and indirect discrimination in the public and private spheres, in line with article 1 of the [CEDAW]”. Committee on the Elimination of Discrimination against Women, Concluding observations on the fourth periodic report of Botswana CEDAW/C/BWA/CO/4 paras 13-14.

⁹ See Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to twenty-second reports of Botswana CERD/C/BWA/CO/17-22 (2022) paras 6-7, where the Committee expresses concern about the lack of a harmonized and comprehensive definition of racial discrimination in Botswana’s legislation that is fully in line with article 1 of the Convention. The Committee particularly notes that the prohibited grounds of discrimination stipulated in section 3 of the Constitution, sections 92 and 94 (2) of the Penal Code and the Cybercrime and Computer Related Crimes Act differ among them and recommends for review of the relevant sections to be in line with the Convention.

pregnancy; to include the rights of persons with disabilities in the Constitution; to revise the pensionable age from 65 years to 60 years; to introduce unemployment grants; to enact legislation to protect and regulate indigenous knowledge; and to recognise dual citizenship.¹⁰

Following the publication of the Constitution (Amendment) Bill, 2024 (Bill No.4 of 2024) in 2024, certain civil society organisations have called for withdrawal of the amendment bill and for restarting of the constitutional review process.¹¹

Launch of human rights mandate of the Ombudsman

SDG 16 Target 16.a aims to strengthen relevant national institutions, with its related indicator measuring the “existence of independent national human rights institutions in compliance with the Paris Principles”. A National Human Rights Institution (NHRI) in compliance with the Paris Principles,¹² is thus a key means of implementation of SDG 16 on peace, justice, and strong institutions.

In July 2023, the Ombudsman Act of 2021 entered into force, thereby marking the conferral of a human rights mandate to the Ombudsman. The Ombudsman now has a dual mandate in respect of maladministration and human rights, and is empowered to provide remedies to complainants for violations. The Ombudsman enjoys jurisdiction over private entities in respect of human rights and has assumed an advisory role to government in respect of the ratification and implementation of treaties and conventions. Whereas the Paris Principles encourage a broad mandate in respect of all human rights, the Ombudsman’s human rights mandate is limited to the rights enshrined in the Constitution of Botswana.

Prior to the commencement of the Ombudsman Act of 2021, the United Nations Committee Against Torture (CAT) in 2022 noted with concern reports that the amended Ombudsman Act does not sufficiently ensure the participation of civil society in the appointment of the officials of the NHRI and does not fully meet the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).¹³ The CERD similarly invited the State party to consider including issues relating to the prohibition of racial

¹⁰ Report of the Presidential Commission of Inquiry into the Review of Constitution of Botswana (September 2022) pp. 204-221.

¹¹ BOCONGO, Draft CSO Policy Brief: Constitution (Amendment) Bill, 2024 Endorsement <https://docs.google.com/forms/d/e/1FAIpQLSeEe_XFE-qt9zmNyHTHYkA9AtRagtIEpStdD1Olh5kDVD2I3g/viewform>.

¹² The Paris Principles (“Principles Relating to the Status of National Human Rights Institutions”) set out the minimum standards that NHRIs must meet in order to be considered credible and to operate effectively. The key pillars of the Paris Principles are pluralism, independence and effectiveness. See further <https://ganhri.org/paris-principles/>.

¹³ Committee against Torture, Concluding observations on the initial report of Botswana CAT/C/BWA/CO/1 (2022) para 21.

discrimination and the promotion of tolerance among ethnic groups in the mandate of the Ombudsman.¹⁴

Legislative, judicial and policy developments

On 29 November 2021, the Botswana Court of Appeals delivered a landmark judgment, holding that the criminalisation of consensual sex between same-sex partners is unconstitutional.¹⁵ With reference to comparative and international law, specifically the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), the apex court held that sections 164(a) and (c) of the Penal Code violate the constitutional rights to privacy; liberty, security of person and equal protection under the law; and non-discrimination on the basis that the provisions discriminated on the ground of sexual orientation, which the court interpreted as falling within the prohibited ground of “sex” in section 15 of the Constitution. In 2023, the Penal Code Amendment Bill 29 of 2022 was deferred for parliamentary debate following protests against the decriminalisation of homosexuality. Civil society actors expressed concern at the move in Parliament, noting that the apex court had already decided the law in this matter, and that further debate may raise constitutional separation of powers concerns.¹⁶

In 2023, the Court of Appeal delivered another notable judgment, holding that the Bamalete Tribe were the rightful owners of Forest Hill Farm and that the High Court was correct in finding that the land registration scheme that allowed for the compulsory acquisition by the statutory Land Board of the Tribe’s Farm violated the right to property enshrined in section 8 of the Constitution.¹⁷

In respect of legislative developments, in January 2022 the Criminal Procedures and Evidence (Controlled Investigations) Bill was tabled in Parliament through an urgent motion. The Bill dealt with the interception of communications, and in its original form allowed for warrantless interceptions. However, advocacy by a variety of actors including civil society, buttressed by recommendations from the third cycle Universal Periodic Review¹⁸ over the implications of the proposed law on the work of journalists, media, human rights defenders, and fundamental human

¹⁴ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to twenty-second reports of Botswana CERD/C/BWA/CO/17-22 (2022) para 13.

¹⁵ *Attorney General v Letsweletse Motshidiemang and LEGABIBO (as amicus)* (Civil Appeal no CACGB 157-19, unreported).

¹⁶ Botswana Parliament Defers Debate on Controversial Homosexuality Bill (1 August 2023) <https://www.voanews.com/a/botswana-parliament-defers-debate-on-controversial-homosexuality-bill/7207181.html>.

¹⁷ *Attorney General of Botswana & Registrar of Deeds for Botswana v Kgosi Mosadi Seboko N.O. & Gamalete Development Trust* (Civil Appeal no CACGB 153-21, unreported).

¹⁸ Botswana’s third cycle Universal Periodic Review was considered by the UPR Working Group at its 29th session in January 2018 and the final outcome report was adopted by the Human Rights Council at its 38th session in 2018.

rights, led to amendments to the Bill.¹⁹ They were subsequently published under a Notice of Amendments to be Moved at Committee Stage (“Notice of Amendments”) and the Bill was passed into law, with the provision regarding warrantless interception excised. According to the Association for Progressive Communications the contentious Bill was introduced against a background of reports of government spying on citizens including journalists, allegedly dating back to 2015.²⁰ In July 2022, Parliament passed the Media Practitioners’ Association Bill. The Bill is viewed by some stakeholders as a significant improvement over the 2008 Media Practitioners Act, but journalists have expressed concerns over the creation of a formal register for journalists and media enterprises.²¹

In December 2023, the Persons with Disabilities Bill was passed by Parliament. The law seeks to officially establish government structures to serve the interests of persons with disabilities, to eliminate discrimination against persons with disabilities, and to provide equal opportunities for persons with disabilities including in the economic sector. The adoption of the law constitutes an important milestone in the quest to guarantee the enjoyment of fundamental human rights for persons with disabilities in Botswana,²² and follows Botswana’s accession to the United Nations Convention on the Rights of Persons with Disabilities in 2021.

Launch of national Human Rights 75 campaign

In 2023, the world celebrated the 75th anniversary of the Universal Declaration of Human Rights (Human Rights 75). As a “common standard of achievement for all peoples and all nations”, the Universal Declaration of Human Rights is a global blueprint for international, national, and local laws and policies and a bedrock of the 2030 Agenda for sustainable development. Botswana joined the global Human Rights 75 initiative by launching its own campaign²³ to celebrate the anniversary of the Universal Declaration of Human Rights. The launch of the national campaign complements the finalisation of the Comprehensive Human Rights Strategy and National Action Plan in 2023. Botswana simultaneously launched the e-learning course on Human Rights and the Sustainable Development Goals in Botswana, which was developed by the United Nations in consultation with various

¹⁹ Association for Progressive Communications, *Botswana civil society organisations rebuff criminal procedures bill* (23 August 2022) <https://www.apc.org/en/news/botswana-civil-society-organisations-rebuff-criminal-procedures-bill>.

²⁰ Association for Progressive Communications, *Botswana civil society organisations rebuff criminal procedures bill* (23 August 2022) <https://www.apc.org/en/news/botswana-civil-society-organisations-rebuff-criminal-procedures-bill>.

²¹ Freedom House, *Freedom in the World 2023: Botswana* <https://freedomhouse.org/country/botswana/freedom-world/2023>.

²² Although it should be noted that the Office of the High Commissioner for Human Rights have not reviewed the Bill against the human rights standards contained in the Convention on the Rights of Persons with Disabilities.

²³ The Ministry of Justice launched Botswana’s Human Rights 75 campaign on 27 October 2023.

stakeholders including government and civil society.²⁴ The purpose of the e-learning course is to increase knowledge and awareness of human rights and the SDGs in Botswana, the role of key stakeholders, the institutional arrangements and key issues. The intention is that by increasing knowledge and awareness and identifying synergies between human rights and the SDGs and implementation roles and responsibilities, achievement of human rights and SDG targets will increase, and institutional arrangements and processes may be strengthened.

Botswana also participated in the high-level Human Rights 75 event that took place in Geneva on 11 and 12 December 2023, and took part in the global pledging process. The President of Botswana²⁵ presented several pledges that are expected to be realised by 31 December 2024, namely that Botswana will strengthen her collaboration with civil society in the promotion and protection of human rights and create a conducive environment for civil society participation; that Botswana will continue to adopt measures to address and combat gender-based violence; that Botswana will continuously strengthen the national human rights Institution to ensure full alignment with the Paris Principles; and that Botswana will enhance opportunities for the economic empowerment of citizens by 2024, particularly youth, women, and people living with disabilities through increased public investment programmes including agricultural development, water reticulation, land ownership, and bridging the digital divide.²⁶

3. International and regional human rights framework

Despite global setbacks caused by the Covid-19 pandemic since 2020, Botswana has continued to make good progress under the international and regional human rights framework in terms of ratification, reporting and engaging with the various human rights mechanisms.

Accessions and reservations

Botswana's human rights reporting to the United Nations human rights mechanisms has been bolstered by the establishment of the National Coordinating Committee on Human Rights, which is co-chaired by the Ministry of Justice and civil society.²⁷ The Committee is further supported by Botswana's Inter-ministerial Committee on Treaties, Conventions and Protocols (IMCTCP), which serves as Botswana's National Mechanism for Reporting and Follow-Up with representatives from various government ministries and parliament. In the future, the Office of the

²⁴ The e-course was developed by the Office of the High Commissioner for Human Rights and the United Nations Development Programme, with the support of the Resident Coordinator's Office and assistance from the Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

²⁵ President, H.E. Dr. Mokgweetsi Eric Keabetswe Masisi, Presentation of Human Rights 75 Pledges <https://www.youtube.com/watch?v=91eciBaw0Sc>.

²⁶ https://www.ohchr.org/sites/default/files/udhr/publishingimages/75udhr/Botswana_EN.pdf

²⁷ Ditshwanelo co-chairs the National Coordinating Committee. In 2022, the Human Rights Unit moved from the Office of the President to the new, dedicated Ministry of Justice.

Ombudsman will also play an important role in respect of advising government on potential further treaty ratifications.

In 2021, Botswana acceded to the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD aims to address the long history of discrimination, exclusion, and dehumanization of persons with disabilities. It covers the many areas where persons with disabilities have been discriminated against including access to justice; participation in political and public life; education; health; employment; adequate standard of living and social protection; freedom from torture, exploitation and violence, as well as freedom of movement. Implementation of the CRPD promotes the achievement of all SDGs, since people with disabilities should actively participate in the implementation of Botswana's sustainable development agenda. Specific goals covered by the CRPD include SDGs 1 (no poverty), 2 (zero hunger), 3 (good health and well-being), 4 (quality education), 5 (gender equality), 6 (clean water and sanitation), 8 (decent work and economic growth), 10 (reduced inequalities), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships). As affirmed in article 4 of the Convention, a government that ratifies the CRPD agrees to promote and ensure the full realization of all human rights, without discrimination of any kind. Moreover, state parties are encouraged to domesticate the Convention once ratified. Botswana is already in the process of domesticating the CRPD, having adopted the Disability Bill in 2023. In November 2023, the Government of Botswana, the Office of the High Commissioner for Human Rights (OHCHR), and Organisations of Persons with Disabilities co-organized a workshop focused primarily on raising awareness about the CRPD and promoting its domestication and implementation in Botswana. The workshop brought together key stakeholders including government, civil society and a member of the UN Committee of Experts on the Rights of Persons with Disability.

In 2022, Botswana lifted its reservation to article 1 of the Convention on the Rights of the Child (CRC), thereby marking further progress in respect of guaranteeing children's rights. In 1995 when Botswana ratified the Convention, it stipulated that "[t]he Government of the Republic of Botswana enters a reservation with regard to the provisions of article 1 of the Convention and does not consider itself bound by the same in so far as such may conflict with the Laws and Statutes of Botswana". At that time, a child was defined according to the national laws of Botswana as anybody below the age of 16 years. However, article 1 of the CRC defines a child as anybody below the age of 18 years, and thus the reservation limited that application of internationally accepted human rights norms at the national level. The lifting of the reservation is in alignment with the Children's Act, and follows advocacy and capacity building initiatives by the United Nations.²⁸

²⁸ The Office of the High Commissioner for Human Rights and UNICEF have worked with the Government of Botswana since 2016 to advocate for the lifting of the reservation.

In July 2023, Botswana appointed Dr. Poloko Nuggert Ntshwarang to serve for five years with the African Committee of Experts on the Rights and Welfare of the Child.²⁹

In 2023, Botswana acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The Maputo Protocol is a comprehensive regional women's rights instrument that complements the UN Convention on the Elimination of All Forms of Discrimination Against Women, and aims to protect, promote and affirm women's human rights including civil and political rights, socio-economic rights and cultural rights. The Maputo Protocol also includes provisions on the elimination of discrimination against women, protection from violence, harmful traditional practices, reproductive health and rights, roles in political processes as well as promotion of socio-economic rights.³⁰ Implementation of the protocol will help Botswana advance in respect of SDG 5 on gender equality, and will moreover have a positive impact on the attainment of all other applicable SDGs.

The CRPD, CRC and Maputo Protocol all guarantee economic, social and cultural rights to specific populations that are at risk of being left behind: children, persons with disabilities, and women and girls. It is noteworthy, however, that Botswana remains one of the few states in Southern Africa that is yet to ratify the International Covenant on Economic, Social and Cultural Rights. Botswana has also not accepted the competence of the Committee against Torture, the Committee on the Rights of the child, the Human Rights Committee (which monitors implementation of the International Covenant on Civil and Political Rights), the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of Persons with Disabilities to receive individual communications. In addition, Botswana has not accepted the inquiry procedure of the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Treaty body reviews

Botswana underwent three United Nations treaty body review sessions since 2020, despite delays caused by the Covid-19 pandemic.

In 2021, the Human Rights Committee, which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), issued recommendations for Botswana. The Human Rights Committee made recommendations pertaining to the domestication of international human rights

²⁹ <https://www.acerwc.africa/en/experts/expert/hon-poloko-nuggert-ntshwarang>.

³⁰ The Botswana Network on Ethics, Law and HIV/AIDS (BONELA), BONELA Applauds the President's Accession to the Maputo Protocol (23 November 2023) <https://bonela.org/23-11-2023-bonela-applauds-the-presidents-accession-to-the-maputo-protocol/>.

treaties; the withdrawal of reservations to the ICCPR; the National Human Rights Institution;³¹ the death penalty; corporal punishment; and treatment of migrants, refugees and asylum seekers. The Committee specifically noted the absence of dedicated anti-discrimination laws with reference to women and LGBTQI persons; and also noted with concern the high prevalence of violence against women.³² Whereas most of the committee's recommendations pertain to SDG 16, its observations regarding non-discrimination are also relevant to other SDGs including SDG 5 (gender equality); SDG 10 (reduced inequalities), and SDG 1 (no poverty).

In 2022, the Committee on the Elimination of Racial Discrimination (CERD), which monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), issued recommendations for Botswana. CERD made several recommendations including regarding the need for statistics collected in line with the principles of self-identification and anonymity (implicating SDG 17 on partnerships); the constitutional definition of discrimination (implicating SDG 10 on reduced inequalities); implementation of the ICERD domestically (implicating SDG 16 on governance); measures to address inequalities (implicating SDG 10 on reduced inequalities); the independence of the Ombudsman as National Human Rights Institution (implicating SDG 10 and SDG 16); racist hate speech; access to justice (implicating SDG 16); land, territories and national resources (implicating various SDGs including SDG 1 on poverty and SDG 2 on hunger); language of ethnic minorities (additionally implicating SDG 4 on quality education); and refugees, asylum-seekers and migrants (again implicating both SDG 10 and SDG 16).³³

In 2022, Botswana also received recommendations from the Committee Against Torture (CAT), which monitoring implementation of the Convention Against Torture. CAT recommended that Botswana withdraws its reservations to the Convention,³⁴ and further reiterated various recommendations consistently made

³¹ The Ombudsman had not yet assumed a human rights mandate at the time of the review in 2021.

³² Human Rights Committee, Concluding observations on the second periodic report of Botswana CCPR/C/BWA/CO/2 (2021).

³³ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to twenty-second reports of Botswana CERD/C/BWA/CO/17-22 (2022).

³⁴ Committee against Torture, Concluding observations on the initial report of Botswana CAT/C/BWA/CO/1 (2022) paras 15-16:

"The Committee is seriously concerned with the State party's reservation to the Convention, with regard to which the State party stated that it considered itself bound by the definition contained in article 1 of the Convention only insofar as it reflected conduct that was prohibited under section 7 of the Constitution of the State party. Section 7 of the Constitution is comprised of two paragraphs. Insofar as the reservation applies to the first paragraph of section 7, it appears to purport to limit the international legal obligation of the State party to conduct that is prohibited under its interpretation of the word "torture" under its own national law, rather than to torture as defined in the Convention. Insofar as the reservation applies to the second paragraph of article 7, it appears to purport to enable the State party to engage in acts defined as torture under the Convention, or even torture as that word is interpreted under the State party's own national law, if such conduct was lawful as punishment in the State party at the time its Constitution was adopted in 1966. The Committee also views as problematic the State party's explanation indicating that it needs to maintain its reservation as necessary to

by other human rights mechanisms pertaining to the independence of the Ombudsman as Botswana's National Human Rights Institution; the death penalty; corporal punishment; treatment of migrants, refugees and asylum seekers and conditions of detention. Whereas the majority of recommendations implicate SDG 16, those pertaining to the use of corporal punishment additionally implicates SDG 4 on quality education; whereas the recommendations regarding conditions of detention additionally implicate SDG 3 on good health and well-being as well as SDG 5 on gender equality. The recommendations pertaining to migrants, refugees and asylum seekers also implicate SDG 10 on reduced inequalities.³⁵

Universal Periodic Review

The Universal Periodic Review is a unique process which involves a periodic review of the human rights records of all 193 UN Member States, providing an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The Human Rights Council Working Group of the Universal Periodic Review (UPR) considered the report of Botswana and its addendum on 29 September 2023. In its 4th cycle UPR, Botswana received 296 recommendations, of which 206 enjoyed Botswana's support, and 5 were partly supported, while 85 recommendations had been noted.³⁶ This constitutes a marked improvement since 2018, when during its 3rd cycle UPR, Botswana had received 207 recommendations of which 93 recommendations enjoyed Botswana's support.

Botswana's UPR outcome was adopted by the Human Rights Council at its 54th session. A number of positive developments in respect of Botswana's support for recommendations included the rights of LGBTQI+ persons, in the light of the fact that similar recommendations had previously not enjoyed the support of Botswana during its 3rd cycle UPR. Botswana was encouraged to enact legislation to prohibit all forms of discrimination; and to reconsider its position on abolition of the death penalty, placing a moratorium on the death penalty, and ratification Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Other recommendations included ensuring that the Office of the Ombudsman functions effectively in line with the Paris Principles; to adopt, validate and implement the comprehensive Human Rights Strategy and National Action Plan; and to ensure that the National Mechanism for Reporting and Follow-Up fulfils its mandate.

accommodate the second paragraph of section 7 of the Constitution, yet its reservation applies to both the first and second paragraphs. The Committee further views as particularly problematic the view expressed by the State party that the language contained in its reservation limits the State party's obligation to prohibit torture not only under the Convention, but also under customary international law (art. 1)."

³⁵ Committee against Torture, Concluding observations on the initial report of Botswana CAT/C/BWA/CO/1 (2022).

³⁶ States under review can either "support" (i.e. accept) or "note" the recommendations that they receive. State parties sometimes also implement "noted" recommendations.

In respect of ratification of outstanding human rights treaties, Botswana “noted” most recommendations, but “supported” recommendations to “consider” ratifying the International Covenant on Economic, Social and Cultural Rights and the Convention against Discrimination in Education. The recommendations that received Botswana’s support include themes related to harmonizing legislation with the Convention on the Rights of the Child; to adopt comprehensive anti-discrimination legislation; to fully operationalise the Ombudsman as a national human rights institution in line with the Paris Principles; to strengthen the protection and promotion of economic, social and cultural rights; to strengthen legal protection for the most vulnerable groups; to continue and accelerate efforts in respect of achieving gender equality and combatting discrimination; to strengthen the legal system including to ensure child-friendly justice; to strengthen media freedom, freedom of expression and accountability; to take steps including special measures to increase women’s participation; to intensify efforts to combat trafficking, including in respect of women and children; to strengthen social services and poverty alleviation efforts including in respect of children, social protection, water, health care, education and rural dwellers; to step up efforts in respect of accessible Sexual and Reproductive Health Rights; to continue to strengthen sustainable development programmes and economic policies and empower vulnerable groups including women, youth and persons with disabilities; to continue to take measures to prevent and punish violence against women and girls (other than corporal punishment); to continue to domesticate the Convention on the Rights of Persons with Disabilities including in respect of children with disabilities; to strengthen protection of indigenous peoples; and to adopt appropriate measures and implement laws to protect LGBTIQ+ persons from discrimination.

Recommendations that were “noted” by Botswana and not accepted included themes in relation to abolition of the death penalty; ratification of outstanding human rights instruments;³⁷ constitutional amendments pertaining to discrimination; the prohibition of corporal punishment; to “create a human rights institution independent of existing governmental ministries, reporting directly to the President to enhance the safeguarding of human rights”;³⁸ to enact a comprehensive freedom of information law; to repeal section 167 of the Penal Law;³⁹ to step up efforts to prevent torture by domesticating international instruments; to repeal legal provisions that may restrict access to information and freedom of assembly and association; to adopt quotas to advance women’s representation; to allocate greater resources to poverty eradication programmes;

³⁷ Such as the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

³⁸ Human Rights Council, Report of the Working Group on the Universal Periodic Review A/HRC/54/9, para 137.66.

³⁹ Section 167 of the Penal Code criminalises acts of gross indecency, whether performed in public or in private, and whether consensual or not.

to decriminalize and ensure safe termination of pregnancy up to 28 weeks; to strengthen the legal frameworks to protect women and children against violence, sexual exploitation and abuse, including by criminalizing marital rape and reviewing and amending the Domestic Violence Act to bring it into line with international human rights law; and various recommendations regarding the protection of indigenous peoples including indigenous women.⁴⁰

During the adoption, Botswana noted various human rights developments in the country including the commencement of the Ombudsman Act of 2021, and the launch of the Office of the Ombudsman's human rights mandate in July 2023; the hosting of Botswana's first multi-sectoral symposium on child-friendly justice held from 2 to 3 August 2023 in collaboration with the United Nations Children's Fund; the finalisation of the Comprehensive Human Rights Strategy and National Action Plan process; the launch of the Human Rights and Sustainable Development Goals e-learning course;⁴¹ the decision to conduct a Universal Declaration of Human Rights seventy-fifth anniversary campaign; and the on-going drafting of Botswana's initial reports to the United Nations Committee on the Rights of Persons with Disabilities, and to the Committee on the Rights of the Child. The Ambassador also noted the on-going review of the Refugees Recognition and Control Act to further strengthen the protection of the rights of refugees and asylum seekers in Botswana and align it to international best practices, and the amendment of the Anti-Human Trafficking Act in line with the United Nations Convention on Transnational Organised Crime. The Botswana delegation recognized challenges encountered around the promotion and protection of human rights, and noted that technical support from development partners mitigated these challenges.

Special Procedures

In May 2018, Botswana issued a standing invitation to the UN special procedures. The Working Group on Arbitrary Detention (WGAD) visited Botswana from 4-15 July 2022. The WGAD has issued its final report,⁴² in which it notes positive aspects pertaining to cooperation with the special procedures; ratification of international treaties; legislative progress on the National Human Rights Institution; the draft National Human Rights Strategy (an initiative of the National Human Rights Coordinating Committee which is co-chaired by the Permanent Secretary in the Ministry of Justice and Ditshwanelo); the decriminalization of homosexuality through the courts; the constitutional review process; and the policy of remission of sentences.

⁴⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review A/HRC/54/9, paras 137.284, 137.285, 137.286, 137.287, 137.288, 137.289.

⁴¹ The e-learning course was jointly developed by UNDP and OHCHR, with support from the Resident Coordinator's Office, and input from key stakeholders, especially members of the National Coordinating Committee on Human Rights.

⁴² Human Rights Council, Report of the Working Group on Arbitrary Detention on its mission to Botswana A/HRC/54/51/Add.1 (2023).

Areas of concern include detention under traditional justice, where *Dikgosi* are not trained legal professionals and legal representation is not allowed despite wide jurisdiction and sentencing powers. According to the WGAD, this constitutes a *prima facie* breach of article 14 of the International Covenant on Civil and Political Rights. The WGAD also raised concerns regarding pre-trial detention and alternatives to remand; forced confessions and excessive use of force; the right to legal assistance (State-appointed attorneys are only available in capital cases and Legal Aid only applies to civil matters); undue delay; and imprisonment for debt, noting that Article 11 of the International Covenant on Civil and Political Rights, which is non-derogable and reflects customary international law, prohibits detention due to the inability to pay a debt. The WGAD further noted concerns about vague offences, for which children can be found guilty and serve prison sentences, and disproportionate and mandatory sentencing. Corporal punishment remains legal, including in terms of the Children's Act, despite the fact that corporal punishment violates the absolute prohibition of torture, ill-treatment and inhuman or degrading treatment or punishment as codified in article 7 of the International Covenant on Civil and Political Rights and article 39 of the Convention on the Rights of the Child. In respect of the death penalty, the WGAD recommends that a moratorium be placed on any further executions. The WGAD also noted widespread inadequate conditions of detention.

In respect of child justice, the WGAD noted confusion regarding discrepancies in the minimum age of criminal responsibility (set at either 8 years or 14 years) and urged Government to eliminate the confusion and set the age at 14 years in line with recommendations of the Committee on the Rights of the Child. The WGAD also noted that there is no diversion system for children. Despite positive steps taken by Government to enhance "child friendly justice", the WGAD recommended that Government expedites these efforts.

The WGAD also dealt with instances of detention in the context of national security, observing that warrantless detention appears to be the norm. The Working Group expressed "very serious concerns about the current policy of detention in the migration context in Botswana", labelling Botswana's approach to migration as punitive. The WGAD visited Dukwi Refugee Camp, during which time there were approximately 800 asylum seekers residing in the camp, of whom half were children. Residents' freedom of movement and right to work are severely curtailed, with testimonies describing "eternal refugees". Only recognized refugees are provided with basic subsistence support from Government. According to the WGAD, "While some whose applications for refugee status have been rejected are still in the Dukwi Refugee Camp, the majority are held in the Francistown Centre for Illegal Immigrants, which is a completely closed facility akin to a prison. The applicable regime is the same as that of prisons and all guards are prison officers. At the time of the visit, 227 adults and 307 children were being held at the

Francistown Centre.”⁴³.The Working Group observed “appalling” conditions of detention at the Centre, and further observed various practices that are incompatible with the best interests of the child, including the practice of separating boys over 9 years from their mothers and detaining them with adult men. The WGAD concluded that “detaining children because of their parents’ migration status always violates the principle of the best interests of the child and the rights of the child. While children must not be separated from their parents or legal guardians, maintaining the family unit cannot justify detaining children whose parents are detained. Non-custodial alternatives must be applied to the entire family instead”.⁴⁴

Finally, the WGAD expressed concerns about detention in the context of health care with a focus on persons with psychosocial disabilities and drug users, noting that detention on the basis of disability contravenes article 14 of the Convention on the Rights of Persons with Disabilities. The Working Group accordingly made several recommendations to the Government of Botswana based on the above concerns.

Most recently, the Special Rapporteur on human rights and the environment visited Botswana from 3-12 October 2023, upon government’s invitation. The Special Rapporteur noted that there are barriers in realizing economic, social and cultural rights for marginalized groups, and that some people are being left behind when it comes to access to safe and sufficient water, adequate sanitation, clean air, and a fair share of benefits from mining, tourism and wildlife. According to the Special Rapporteur, vulnerable groups such as children, women, indigenous peoples and rural communities, are being disproportionately affected by environmental inequalities. Despite its leading role in conservation, the Special Rapporteur further noted that Botswana faces multiple human rights and environmental challenges, including lack of access to safe and sufficient water and adequate sanitation, the global climate crisis, human-wildlife conflict, pollution and inadequate waste management. In addition, extreme economic inequality contributes to environmental inequality that jeopardizes the full enjoyment of human rights, especially for the most marginalized and vulnerable groups. In his recommendations, the Special Rapporteur encourages Botswana to recognize the right to a healthy environment in law at the national level, to prioritize the fulfilment of the rights to water and sanitation for all, to accelerate the transition to renewable energy by becoming a solar superpower and to address challenges regarding the procedural elements of the right to a healthy environment.⁴⁵

⁴³ Human Rights Council, Report of the Working Group on Arbitrary Detention on its mission to Botswana A/HRC/54/51/Add.1 (2023) para 72.

⁴⁴ Human Rights Council, Report of the Working Group on Arbitrary Detention on its mission to Botswana A/HRC/54/51/Add.1 (2023) para 75.

⁴⁵ Human Rights Council, Visit to Botswana - Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, A/HRC/55/43/Add.2 (2023).

4. Assessment: Impact of developments on people at risk of being left behind

Since 2020, Botswana has made progress in advancing the rights of children, who constitute a vulnerable group at risk of being left behind in Botswana's development trajectory, although corporal punishment remains lawful in contrast to the recommendations of the United Nations human rights mechanisms. In 2019, the Committee on the Rights of the Child recommended that Botswana "guarantee adequate human, technical and financial resources for the appointment of specialized professionals and their continuous education and training".⁴⁶ The rollout of child-friendly police stations under the Gender and Child Protection Branch of the Police, with the support of UNICEF, responds to this recommendation. The lifting of the reservation to the Convention on the Rights of the Child, with the technical support of OHCHR, also marks progress in ensuring that children in Botswana are not left behind. Botswana, in partnership with UNICEF, convened its inaugural National Child-friendly Justice Symposium in August 2023, in line with its national commitment to address violence against children and international obligations to advance access to justice for children. During the proceedings, the Minister of Justice noted that government had prioritised justice sector reforms in the National Development Plan 12 and the two-year Transitional National Development Plan, in accordance with Children's Act and Botswana's international obligations on the promotion and protection of children's rights as well as key international children's rights instruments.

As noted above, Botswana has also made good progress in respect of the promotion, protection and fulfilment of the rights of persons with disabilities. Following accession to the Convention on the Rights of Persons with Disabilities (CRPD) in 2021, Botswana, in partnership with Organisations of Persons with Disabilities and OHCHR, convened a workshop on the implementation of the CRPD, in 2023. Subsequently, Parliament adopted the Persons with Disabilities Bill, which aims to domesticate the CRPD, including in respect of abolishing laws and policies that discriminate against persons with disabilities, as well as developing laws, policies and administrative measures to guarantee the rights of persons with disabilities.

During its UPR, Botswana supported a recommendation to guarantee the equal participation of indigenous women in decision-making processes. However, Botswana "noted" the majority of recommendations pertaining to indigenous peoples. In 2022, the Committee on the Elimination of Racial Discrimination recommended that Botswana "protect the areas of cultural significance of the communities affected by projects carried out by extractive and manufacturing

⁴⁶ Committee on the Rights of the Child, Concluding observations on the combined second and third reports of Botswana CRC/C/BWA/CO/2-3 (2019) para 67(c).

industries”, “take appropriate measures to prevent the adverse effects of economic activities on the rights and ways of life of minority groups and indigenous peoples”, and adopt and implement a planned law on community-based national resources management.⁴⁷ In addition to various direct references to indigenous peoples in Agenda 2030, including specific targets under SDG 2 on Zero Hunger and SDG 4 on Quality Education, many of the SDGs and associated target are of relevance to Indigenous Peoples. This includes Agenda 2030’s overarching focus on reducing inequalities, since indigenous peoples constitute a marginalised and vulnerable group at risk of being left furthest behind. There is therefore scope for the enhanced promotion, protection and fulfilment of the rights of indigenous peoples in Botswana, in order to ensure their equal participation in, and benefit from, Botswana’s sustainable development outcomes.

Despite progressive national judgments seeking to decriminalize same-sex relationships in Botswana, LGBTQI+ persons remain at risk of discrimination, the denial of their human rights, and being left behind in Botswana’s development. Protests following the appellate judgment, as well as the parliamentary referral of the judicially mandated amendment Bill, demonstrate that more needs to be done to raise awareness, provide human rights education, root out discrimination, and ensure that LGBTQI+ persons enjoy equitable access to justice in Botswana.

Women, especially women facing intersecting forms of discrimination such as indigenous women, migrant women and lesbian women, also remain vulnerable in Botswana. In addition to high levels of gender-based violence (and a trend of underreporting), the high levels of inequality⁴⁸ in Botswana demonstrate that women are at risk of being left furthest behind in Botswana’s socio-economic development. 55% of women-headed households live in poverty (compared to 45% of male-headed households), whereas women (22.8%) are also more susceptible to unemployment than men (18.8%). Botswana has no legislation in place protecting women from sexual harassment in employment. Attaining the vision of Agenda 2030 will require expedited efforts to achieve SDG 5 on gender equality and thereby guarantee women’s equal enjoyment of their fundamental human rights.

The narrowing of civic space in Botswana, including through restrictive laws and practices, implies that human rights defenders including journalists are at risk of being left behind. More focus on achieving SDG 16 on Peace, Justice and Strong Institutions is thus required to ensure that this group can exercise their civil and political rights without fear of reprisals.

⁴⁷ Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to twenty-second reports of Botswana CERD/C/BWA/CO/17-22 (2022) para 27.

⁴⁸ Botswana is the 9th most unequal country in the world, with a Gini coefficient of 53.3 (2015) and a Palma ratio of 3.81 (2018). See further World Bank data <https://data.worldbank.org/indicator/SI.POV.GINI?locations=BW>.

5. Conclusion

Human rights are at the heart of Agenda 2030. The realisation of human rights for all, without discrimination, will therefore catalyse transformation and expedite the achievement of the SDGs. As recognised during the global Human Rights 75 initiative, which marked the 75th anniversary of the UDHR, there is an urgent need to strengthen national and international human rights architecture and thereby address the persistent development challenges of poverty, inequality and violence. Botswana has taken many progressive steps to strengthen its national human rights architecture since 2020. As is the case globally, more effort is nevertheless required to ensure that those at risk of being left furthest behind are able to claim and exercise their fundamental human rights on an equal basis as others. The United Nations and the Office of the High Commissioner for Human Rights will continue to support Botswana in its human rights and development pathways.



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