



**Convention on the  
Rights of the Child**

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**COMMITTEE ON THE RIGHTS OF THE CHILD**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 44 OF THE CONVENTION**

**Initial reports of States parties due in 1997**

**BOTSWANA**

[10 January 2003]

**List of abbreviations**

BNYC	The Botswana National Youth Council
BOCONGO	Botswana Council of NGOs
BOFWA	Botswana Family Welfare Association
DMSACs	District Multi-Sectoral AIDS Committees
DSW	Division of Social Welfare
EWTC	National Early Warning Technical Committee
FHD	Family Health Division (in the Ministry of Health)
MFDP	Ministry of Finance and Development Planning
MLG	Ministry of Local Government
MTP II	Second Medium Term Plan
NCPD	National Council on Population and Development
NDP	National Development Plan
NPA	National Programme of Action for the Children
NPP	National Population Policy
PMTCT	Prevention of mother-to-child transmission (of HIV)
RNPE	Revised National Policy on Education
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
WHO	World Health Organization

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## **Introduction**

1. In 1995 Botswana acceded to the Convention on the Rights of the Child. The Convention is an international treaty which contains detailed provisions in relation to all aspects of children's rights and obliges the Government to respect and implement them.

2. The Government of Botswana is obliged to prepare a report to the Committee on the Rights of the Child, which monitors the compliance of all States bound by the Convention. A delegation of the Government of Botswana will attend a session of the Committee of the Rights of the Child at the United Nations in Geneva where constructive dialogue takes place about how best to fully realize children's rights in Botswana. The Committee will then publish their "Concluding Observations" on the situation in Botswana which will make recommendations for action and highlight areas of government policy which deserve commendation.

3. The purpose of this report is to provide a picture of how national law and policy along with institutional mechanisms and structures have been used to implement the rights of the child. It aims to provide an accurate analysis of the situation of children's rights including some reflections on areas which require improvement.

4. The obligations contained in the Convention are diverse and cover fundamental principles such as non-discrimination, respect of the views of the child, the best interests of the child, and the right to life, survival and development. In addition there are groups of rights specific to education, family life, health and welfare as well as civil rights and protective measures for children in especially difficult circumstances. Some of the obligations are direct for example, the provision of education and juvenile justice systems which meet international standards, and some are indirect, for example, enabling parents, guardians and families to carry out their roles as caretakers and protectors. All of these rights are discussed in this report and set in the context of Botswana.

5. The Ministry of Local Government (MLG) is the custodian of the Convention on the Rights of the Child in Botswana. With the active leadership and support of Minister M.N. Nasha, the Division of Social Welfare, in consultation with key partners, has finalized this report. The United Nations Children's Fund (UNICEF) has provided technical assistance and financial support in this process.

## **History**

6. The Republic of Botswana became an independent country on 30 September 1966 following a pre-election poll in which Seretse Khama (later Sir Seretse Khama), leader of the Bechuanaland (Botswana) Democratic Party, was elected to become the country's first President. The area which is now recognized as Botswana had originally been inhabited by the Nomadic Basarwa (also known as San peoples or Bushmen) until the fourteenth century when the area began to be settled by Tswana-speaking peoples. In the early nineteenth century Europeans began to invade the area and three chiefs emerged as prominent leaders. After expansionary pressure from the Afrikaners they sought protection from the British and in 1885 a protectorate was declared to the north of the Molopo River. To the south of the river the Tswana-inhabited land was annexed to the Cape Colony and became the British Crown Colony of Bechuanaland.

This Colony, which was made up of mineral- and water-rich lands, was later ceded to the Boers prior to the formation of the South African Union in 1910. At the same time the Protectorate was expanded to its current borders.

7. Sir Seretse Khama served as President until his death in 1980 after which his party continued to enjoy substantial support. He was succeeded by his Vice-President, Quett Ketumile Masire, who retired in March 1998 and who was in turn succeeded by his Vice-President, Festus Mogae. President Festus Mogae chose as his Vice-President Ian Khama, Sir Seretse Khama's son and the former head of the army, and they were re-elected most recently in 1999.

### **Geography**

8. Botswana is a landlocked country in the heart of southern Africa sharing 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 it flat and covered with the thick sand layers of the Kalahari desert. Its altitude averages 1,000 metres above sea level. In the north-west the Okavango River flows in from Namibia and soaks into the sand forming the Okavango Delta and in the north-east there are the salt deserts of the Makgadikgadi Pans.

9. Rainfall varies from 650 millimetres (mm) 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.

10. Botswana is mineral rich and diamonds, copper and nickel are mined in large quantities. Gold is still mined near Francistown and there is a soda ash and salt extraction plant in the Sua Pan.

11. By reason of the arid landscape only about 5 per cent of the land area is cultivable and cattle ranching is the most significant agricultural enterprise. Subsistence farmers rely on cattle, sheep, goats, maize, sorghum, beans, peanuts, cotton seed and other dryland crops.

### **Population and demography**

12. According to the Statistical Bulletin of June 2001, the population of Botswana was 1,326,796 at the census in August 1991. This was 41 per cent higher than the 1981 census, giving an annual population growth rate between 1981 and 1991 of 3.5 per cent. Based on the 1991 population and housing census, the population of Botswana was projected to increase to 1,693,970 by the 2001 census, an increase of 27.7 per cent. The population was estimated to have grown at an average annual rate of 2.5 per cent during the period 1991-2001. The sex ratio was expected to improve from 91.6 males per 100 females in 1991 to 93.9 males to 100 females in 2001.

13. Urbanization has been rapid with the number of people living in urban areas increasing from 9.5 per cent in 1971 to 15.9 per cent in 1981 and 45.7 per cent in 1991. In 1999 the Government estimated the urban population at 50 per cent and the United Nations Population Fund reported a 28 per cent urbanization rate in 1997. This growth is due in part to substantial

population growth in traditional urban areas like Gaborone and Francistown and the reclassification of many large villages to urban areas. Some 50 per cent of the total population live within 100 kilometres of the capital, Gaborone.

14. Citizens of Botswana are known as Batswana. A large proportion are Setswana-speaking with a substantial minority being Kalanga. The Tswana-speaking population is made up of various ethnic groups including Bakgatla, Bakwena, Balete, Bangwaketse, Bangwato, Barolong, Batawana and Batlokwa. There are also smaller ethnic groups such as Baherero, Bahurutshe, Bakalanga, Bakgalagadi, Bakgothu (khoikhoi or Hottentots), Balala, Bambukushu, Banoka (River San), Basarwa (San or Khoisan), Basubiya and Bayei. In addition, there are significant minorities of people of European, Asian and mixed ancestry.

15. English is the official language whilst Setswana is the national language. However, there are numerous other languages and dialects spoken which have not as yet been enumerated. A significant proportion of the population speaks either English or Setswana but the exact number will not be known until after computation of the 2001 census.

16. At the 1991 census over half of the population were children with a significant proportion of the population being under the age of 5 (see table 1 below). In 1991 average life expectancy was 63.3 years for men and 67.1 for women (average 65.2), increasing from 52.3 and 59.7 (average 56.2) in 1981. The 1997-1998 demographic survey estimated that the life expectancy was 66.2. However the Joint United Nations Programme on HIV/AIDS (UNAIDS) using its method of accounting for the impact of the HIV/AIDS epidemic, estimated that life expectancy would drop to 46.2 by the year 2000.

**Table 1**

**De facto population under 19 by age and sex, 1991 census<sup>a</sup>**

Age	Male	Female	Total	Percentage of total population
0-4	96 676	96 989	193 665	14.6
5-9	97 563	99 051	196 614	14.8
10-14	89 887	93 596	183 483	13.8
15-19	73 112	79 413	152 525	11.5
Total	357 238	369 049	726 287	54.7

<sup>a</sup> *Source:* Statistical Bulletin, June 2000.

### **Economy**

17. Between the late 1960s and the early 1990s Botswana recorded the highest sustained real GDP growth rates in the world, averaging 6.1 per cent between 1966 and 1991. Following a recession in 1992-1993 growth resumed and has continued since. Generally strong growth in diamond revenue has ensured large government reserves and budget surpluses. In 1998-1999 GDP was P23,258.9<sup>1</sup> million or P14,494.5 per head (\$1 was roughly equivalent to 5 pula).



18. Prior to the emergence of the diamond industry the economy of Botswana was dominated by agriculture, particularly cattle ranching. By 1998-1999 the mining sector accounted for 35 per cent of GDP but this reflects an overall decline due to growth in other sectors. The prominent sectors in 1998-1999 are manufacturing, which contributed 4.7 per cent of GDP; construction, 5.9 per cent; banking, insurance and business, 10.5 per cent; and trade, hotels and restaurants, 11.8 per cent. Agriculture represented only 2.8 per cent of GDP, while Government accounted for 16 per cent.

19. The Government is the main employer. Including local government and parastatals, it accounts for 47 per cent of people in formal employment. Other employers include commerce (17.5 per cent), manufacturing (10 per cent) and financial and business services (6.5 per cent). Despite its economic prominence the mining industry accounts for only about 3.5 per cent of the labour force while agricultural employment has declined to 2 per cent from 17 at independence. Informal and self-employment accounts for 35 per cent of employment.

20. Employment of Botswana in South African mines has decreased significantly in recent years. There was a 15.4 per cent drop between 1998 and 1999 from 11,981 people in the first quarter of 1998 to 10,378 for the same quarter in 1999.

21. The rate of unemployment is defined as "those persons seeking work as a percentage of all those who are economically active". For the whole of Botswana the unemployment rate was thus estimated at 21.5 per cent in the 1995-1996 Botswana Labour Force Survey. Distribution of the unemployed by age group shows that unemployment was highest for the 20-24 year group, with 38.9 per cent looking for work, followed by 35.4 per cent for the 15-19 age group. The rate of unemployment was higher in urban areas (22.6 per cent) than in rural areas (20.0 per cent)

22. Income inequality is high especially in comparison with other countries although it has declined marginally since 1985-1986. The poorest 20 per cent of the population had only 12 per cent of income share, compared with the middle 40 per cent having 29 per cent and the wealthiest 20 per cent having 59 per cent 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 the mean and median incomes of female-headed households is less than half that of their male counterparts. Similarly disposable income (cash income plus income in kind) shows great disparities between urban and rural areas. The median income was P809 in towns compared to an average of P1,710 whilst in rural areas the median was P417 compared to an average of P641. Public expenditure is reflected in table 2 below.

**Table 2**

**Public expenditure<sup>a</sup>**

	1996	1997	1998
Public expenditure as percentage of GDP	35.9	35.5	39.6
Annual growth in real public expenditure	11.5	5.5	..
Overall budget surplus	21.4	11.8	15.0
Health share of expenditure	6.0	5.4	5.1

**Table 2 (continued)**

	1996	1997	1998
Education share of expenditure	25.2	23.4	24.7
Defence share of expenditure	7.8	8.2	8.8
Ratio of defence to health/education expenditure	25.8	28.5	29.6

<sup>a</sup> *Source:* Ministry of Finance and Development Planning.

### **Constitutional and administrative structure**

23. 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. The executive branch consists of the Cabinet headed by the President and is responsible for initiating and directing national policies.

24. The legislative organ is the National Assembly. It has 46 members made up of the Attorney-General, the Speaker and 40 members elected at general multiparty democratic elections every five years. The remaining four are specially elected by Parliament itself. 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 Republic. Elections take place on the basis of universal adult suffrage and the main opposition party is the Botswana National Front. The opposition have held 16 per cent of seats since the 1999 elections compared with 30 per cent following the 1994 elections. In 1999, 77.1 per cent of citizens registered voted at the national elections. However only 37.7 per cent of those eligible are actually registered to vote.

25. There are 11 ministries which, together with the Attorney-General's Chambers, Auditor General's office, Independent Electoral Commission, and the Ombudsman constitute central government. Each ministry is subdivided into offices (generally "departments" or "divisions") with different areas of responsibility. Those relevant to the implementation of children's rights will be discussed in the relevant sections of this report.

26. The country has 25 administrative districts comprising 15 district councils, 2 city councils and 4 town councils. Some services such as health clinic infrastructure and staff and school infrastructure are provided at the local level (coordinated centrally by the Ministry of Local Government) while others are provided from central government - for example teachers, hospitals, social workers, and youth officers (provided by their respective ministries). In each district there is also a district commissioner whose role is to coordinate the provisions of services which emanate directly from central government. In addition there are Village Committees and Tribal Administrations dealing with customary matters at the local level. In the first half of 2001 an inquiry into the structure of local government was commenced.

27. The Chief Justice (and President of the Court of Appeal) is appointed by the President. Magistrates and the judiciary who make up the High Court and Court of Appeal are appointed by the President acting in accordance with the advice of the Judicial Service Commission (sections 96 (2), 100 (2) and 104, Constitution of Botswana). The Judicial Service Commission is made up of the Chief Justice, the Chairman of the Public Service Commission and one other member who is appointed by these two acting together.

## The legal system

28. The Botswana legal system is plural, comprising Roman-Dutch law and statutory enactments (common law), and the customary law. The Roman-Dutch law was imported from the Cape Colony into Botswana in 1891 primarily to apply to non-Batswana, but subsequently it was applied to all persons in Botswana. The two systems coexist although there are differences in the law and its application.

29. The highest court in Botswana is the Court of Appeal which is the superior court of record and to which appeals from the High Court can be taken. 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. The Constitution guarantees the right to legal representation (para. 10 (2) (d)) in criminal cases at the defendant's own expense.

30. Since independence the customary courts have derived their authority from the Customary Courts Act No. 57 of 1968. The Common Law and Customary Law Act 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 cases where the matter arises wholly within their jurisdiction. They deal with a wide variety of matters of civil and criminal law which affect children. Their criminal jurisdiction is limited and prevents them from dealing with cases such as treason, bigamy, corruption, abuse of office, robbery, rape and other serious offences. When dealing with criminal matters they follow the Customary Court Procedure Rules. Their jurisdiction does not allow them to deal with matters such as the dissolution of civil marriages, testate succession or insolvency. Legal representation at the customary courts is not permitted (s31 Customary Courts Act). However a person has the right to have a case transferred to another court where she/he has the right to legal representation (s36 Customary Courts Act) if permission to transfer is given by the Commissioner of Customary Courts.

31. Customary law is administered by the chief (*kgosi*, plural *dikgosi*), headman or Court President who will confer with the elders of the community. Chiefs will also confer with each other on matters of significance at the House of Chiefs. The cases are generally dealt with at the *kgotla* (a public meeting and also the name of the public location where it takes place, plural *dikgotla*).

32. The application of the Acts regulating the jurisdiction and procedures of the customary courts is limited by the levels of and training of the *dikgosi*, and the lack of dissemination, training and awareness-raising which is done amongst the public at large. In addition the Acts are not translated into *Setswana*. *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). The difficulties in overseeing their activities stems from the fact that the bulk of 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.

33. The local police are officials of the customary courts and they work alongside the national police force. Both police forces tend to prefer to use customary courts because they dispense swift and accessible justice. The Customary Court of Appeal deals with appeals from the customary courts (*dikgotla*) who administer Customary Law.

34. The magistrates' court may also use customary law norms in decision-making and the higher courts have the power to review customary law decisions on appeal although this has rarely occurred.

35. The effectiveness of the two systems, the rules that guide them and the interplay of the systems at both the cultural and legal levels all have an impact on the way children's rights are protected and promoted in Botswana. These issues will be raised again in the relevant sections below.

## I. GENERAL MEASURES OF IMPLEMENTATION

36. Botswana signed the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for Implementing the World Declaration on 29 May 1992, thus taking the first step towards the preparation and development of a National Programme of Action for the Children of Botswana (NPA).

37. In March 1995 Botswana acceded to the Convention on the Rights of the Child and entered a reservation to article 1. The reservation was entered as it was felt that the various statutes pertaining to the definition of a child in Botswana were in conflict with the Convention definition (see section II below). There are currently no plans to withdraw that reservation.

38. Before Botswana acceded to the Convention, consultations were held with stakeholders including government departments, districts, non-governmental organizations (NGOs), community-based organizations and the private sector. The culmination of the consultation process was a national conference held in Gaborone in June 1993, which attracted participants from all sectors of the society.

39. The former Minister of Labour and Home Affairs, Mr. B.K. Temane officially launched the Convention in July 1995. Children were invited to the gathering. Pointing out that the purpose of the launch was to create necessary awareness among policy makers, parents, caregivers and the entire community about the rights and special needs of children, the Minister also said that the launch was an occasion to educate children in particular about their individual and collective rights as well as their duties and responsibilities to themselves and the society.

40. There is no single body with overall responsibility for the coordination of policies relating to children, or for monitoring the implementation of the Convention. There are, however, administrative and institutional structures formulated by Government to facilitate the achievement and implementation of national child welfare policies and legislation. These are generally within the remit of the Division of Social Welfare at the Ministry of Local Government which has therefore become the custodian of the Convention within Botswana.

### **Incorporation of the Convention**

41. In the legal system of Botswana treaties are not self-executing. For such treaties to be enforceable and applicable they must generally be incorporated by legislative enactment into the domestic law. The incorporation can either be of the whole text of the treaty or specific provisions, or the integration of treaty rules by defining terms used in the statute by reference to their meaning in a particular treaty. The Convention has not been incorporated into the domestic laws in this way. However, the Botswana courts have pronounced that: “Botswana is a member of the community of civilized states which has undertaken to abide by certain standards of conduct and, unless it is impossible to do otherwise, it would be wrong for its Courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken.”<sup>2</sup> This case was taken by a mother who was asserting her right to pass her citizenship on to her children. It follows therefore that, notwithstanding the non-incorporation of the Convention into Botswana domestic laws, where domestic law is challenged it should be interpreted by the courts in light of the provisions of the Convention and other international human rights obligations. This does not, however, mean that the State could be challenged in court for failure to implement a provision of the Convention outside a constitutional claim.

42. The Government of the Republic of Botswana is committed to upholding the rule of law and affording to its citizenry and all peoples in Botswana the protection and the enjoyment of the fundamental freedoms and rights of the human race, without any distinction whatsoever, as provided for by the Constitution of Botswana. In this regard any person can allege through the High Court and ultimately the Court of Appeal of Botswana that any of these rights are being violated or infringed. There have been cases where the State has been found in violation of these rights and the Government has also, on the basis of such decisions, amended its laws accordingly. However, as mentioned above there is no system of legal assistance to take such cases. This limits the utility and practical application of the constitutional rights, except in criminal cases which attract the death penalty, and where counsel is provided pro deo. There are a small number of NGOs such as Ditshwanelo and Metlhaetsile Women’s Information Centre which provide legal assistance.

### **The ombudsman/mosireletsi**

43. The Ombudsman Act of 1995 created the position of Ombudsman. The incumbent may investigate any action taken by or on behalf of a government department or other authority in the exercise of their administrative functions. The office of the Ombudsman may investigate following a complaint by the person affected, or on its own initiative where considered necessary. The Ombudsman has been in post since the latter part of 1997 and has investigated matters such as prison conditions and prisoner’s rights, corruption in the granting of scholarships to students pursuing higher studies and complaints of harassment by government employees. In 1999 he received 390 complaints. Unfortunately the breakdown of cases is not disaggregated by age of complainant but the Ombudsman remains competent to deal with complaints made by or on behalf of children, even though the general public is unlikely to be aware of this power. There is one investigative officer within the office with responsibility for issues relating to children, women and youth. It is felt that more could be done to extend the capacity of the Ombudsman’s office in this area.

**Vision 2016**

44. In 1997 the Presidential Task Group on a Long-Term Vision for Botswana produced Vision 2016 “Towards Prosperity for All” after a period of consultation. This document details the country’s long-term goals and the principles on which they are built. It is aimed at guiding strategic thinking and policy-making and unifying all Botswana. All subsequent National Development Plans should reflect its aims. Among its basic objectives are sustained development and social justice, and it proposes action across a broad spectrum such as “building a compassionate, just and caring nation” and “building a safe and secure nation”. Part of this Vision is to “address the conflict between some aspects of traditional culture and the ‘emerging rights of the child’ as expressed by resolutions of the United Nations” (p. 33). The implementation of the Vision is done by the Vision Council which consists of members of Government and civil society.

**The National Programme of Action**

45. The National Programme of Action for the Children of Botswana covers the 10-year period 1993-2003. These dates were chosen to coincide with the National Development Plan 8 (NDP 8) to ensure that children’s rights were placed at the centre of the development agenda. NPA is wide-ranging and covers a brief macroeconomic overview of the country; an analysis of the evolving situation of children and women; and most importantly an identification of vulnerable groups of children and formulation of strategies and actions to address their needs. It identifies seven such groups: street children; working children; children with disabilities; orphans; girls; abused children; and children who are socially and culturally disadvantaged.

46. The 10 goals of NPA (showing the social indicators) are:

- Reducing non-HIV-related infant mortality rates by one third to 30 per 1,000 and under-five mortality rates by one third to 38 per 1,000;
- Reducing maternal mortality rates by half from 300 to 150 per 100,000 live births;
- Reducing malnutrition levels in children under 5 to half of the 1990 levels (for moderate malnutrition) from 15 to 7 per cent, and the virtual elimination of severe malnutrition;
- Increasing access to safe water supply from 68 per cent of rural households to 95 per cent;
- Increasing access to sanitary means for excreta disposal from 41 to 70 per cent of rural households;
- Securing universal access to, and improvement of, the quality and relevance of basic education;

- Significantly reducing adult illiteracy;
- Promoting early childhood development with the emphasis on family and community involvement;
- Improving protection of children in especially difficult circumstances and tackling the root causes leading to such situations;
- Promoting widespread understanding and observance of the CRC.

47. NPA provides various mechanisms and structures for its coordination and monitoring. At the national level, the National Council on Population and Development (NCPD) is the main coordinating body for monitoring and implementing NPA and is also the highest body advising Cabinet on all population and development issues. The NCPD was created by presidential directive in 1992 (a year before NPA was adopted) and consists of government officials, representatives of the private sector and independent experts whose appointment is approved by Cabinet. It reports to Cabinet through the Ministry of Finance and Development Planning.

48. NCPD formulated a National Population Policy (NPP). It was intended that this policy would provide a framework for the coordination of NPA but it was approved only in August 1997 (four years into NPA) while the implementation plan for this policy was not finalized until the end of 1999. As a result the development of the planned District Programmes of Action and the conduct of the Mid-Decade Review of NPA in 1995 did not materialize. Despite these failures, coordination of NPA still remains one of the key responsibilities of NCPD for the remainder of NPA period.

49. The delay in establishing NPP does not mean that NPA has been completely ignored as many of its goals were incorporated into the National Development Plan 8 (NDP 8) which covers the period 1998 to 2003, and which is coordinated by the Ministry of Finance and Development Planning. A midterm review of NDP 8 has already taken place and was the subject of Parliamentary debate. However, there was no budget specifically delineated for the implementation of NPA within NDP 8, although provision was made indirectly for child-related programming.

50. For the United Nations Special session of the General Assembly on children in 2001 the Ministry of Finance and Development Planning undertook a review of the implementation of NPA. As part of this, a multiple indicator survey was carried out by the Central Statistics Office in October 2000. These exercises were undertaken with the assistance of UNICEF. Unfortunately the review and the complete survey results had not been published at the time of drafting this report. In the meanwhile the impact of NPA can be measured through census databases (conducted every 10 years, with the last one conducted in 2001), annual statistical reports and literacy, family health and education surveys conducted by the Central Statistics Office. In addition the Government of Botswana, in collaboration with United Nations Development Programme (UNDP), produced a Human Development Report in 2000.

51. At district and community levels NPA should be used as the basis for development of district and village plans of action, which would be periodically reviewed through the respective Councils. However NPA was only published after the completion of District Development Plan 5 and Urban Development Plan 2, and therefore was not incorporated into these documents. The aim instead is to build the goals of NPA into annual plans, as well as into the next District and Urban Development Plans.

### **Ministry of Local Government**

52. The Ministry of Local Government (MLG) has the portfolio responsibility for child welfare and responsibility for the preparation of this report within its Division of Social Welfare (DSW). DSW is primarily responsible for assisting Government to formulate social welfare policy and improve the economic, social, cultural, physical and spiritual conditions of the people in accordance with NDP 8. Social workers who implement these policies are employed to work at the local level by a separate department of MLG, the Department of Local Government Service Management, which can sometimes create conflicting demands on them. DSW was moved to the Ministry of Labour and Home Affairs in an effort to coordinate policy and planning however, following a review, was moved back again. These moves, together with lack of human and institutional capacity, have adversely affected the ability of the division to develop and coordinate the law and policy relating to children. There are problems of poor delivery of service particularly in the remote and rural areas. DSW's status has been under review by Cabinet and was upgraded to departmental status.

53. DSW established a National Child Welfare Committee, a multidisciplinary committee comprising representatives of various government departments, various NGOs, UNICEF and the University of Botswana, with DSW serving as the Secretariat. The Committee is tasked with overseeing activities for children; publicizing the Convention and monitoring its implementation; and overseeing the commemoration of the Day of the African Child throughout the country. Despite some successful work particularly relating to the amendment of the Affiliation Proceedings Act, the National Child Welfare Committee has become increasingly inactive and attendance at its meetings has been poor. However, measures are being taken to revitalize the Committee, or to replace it with a more effective body.

54. DSW is in the process of implementing a Short-Term Plan of Action for Orphans. An orphan is defined as "a child below 18 years who has lost one (single parents) or two (married couples) biological or adoptive parents". The plan was developed in line with a recommendation made during a conference on the Implications of Orphanhood in Botswana in September 1998, and implemented during 1999. The Plan seeks to register all orphans in Botswana and to provide material and psychosocial support to those who are in need. It also established posts for Orphan Desk Officers in all districts, and a monthly "food basket" of basic necessities which is supplied to the caregivers of orphans in need. Provision is also made for clothing, shelter and other costs. By the end of 2000 approximately 25,000 orphans had been registered, although official projections were that approximately 65,000 children were likely to have been orphaned as a result of the HIV/AIDS epidemic by that time. Implementation of this ambitious plan has been somewhat slower than hoped owing to a range of factors including human resource shortages, a lack of public awareness and logistical and technical constraints, in particular lack of transport. The Plan is due to be replaced with a five-year plan, and an evaluation is currently being planned by DSW in partnership with UNICEF.



### **District and Urban Councils**

55. District and Urban Councils throughout the country have a responsibility to provide services to children through social workers. These services include: assessment of individual children in need of care; preparation of social enquiry reports to the Juvenile Court to assist the Commissioner of Child Welfare to address cases; assessment of prospective adoptive parents prior to court hearings; monitoring the implementation of the Children's Act with regard to cases of neglect; assessment and registration of orphans who are assisted under the Short-Term Plan of Action for Orphans; public education and/or awareness on children's rights; facilitating formation of District Child Welfare Committees; and supervision of juveniles/children who come into conflict with the law when they are placed on probation. However social workers are hindered by the fact that they are employed centrally.

56. In addition the District Child Welfare Committees do not exist in all districts and where they do there is no effective communication between them, the National Child Welfare Committee and DSW. It is felt there are no well-organized agencies at community level to deal with the rights of children or welfare particularly in the rural areas and that there is a need for the improvement of services at district and village levels.

### **Ministry of Labour and Home Affairs**

57. The Ministry of Labour and Home Affairs houses the Department of Culture and Youth and the Women's Affairs Department. The Department of Culture and Youth has, among other roles, responsibility for developing and reviewing policy in all matters relating to youth (aged 12-29) affairs and implementing and monitoring youth programmes and initiatives. This responsibility was created following the adoption of the National Youth Policy in 1996. The Department is currently developing a National Action Plan for Youth in close collaboration with the Botswana National Youth Council (BNYC). Youth workers are employed at district and subdistrict level working with youth, mainly on project-based initiatives such as economic empowerment, skills training, environmental matters and exchange programmes. District Youth Councils have been established and the Department aims to establish multi-purpose youth centres providing training, recreation and counselling in each district.

58. The Department of Culture and Youth also has responsibility for the promotion of culture and the performing arts. It has developed a National Cultural Policy to promote Botswana's rich cultural heritage in a manner which respects and promotes the rights of children and women. This policy, which proposes a multisectoral approach has recently been adopted by Cabinet and is about to be tabled in Parliament.

59. The Women's Affairs Unit was set up in 1981 to facilitate the full involvement of women in the development process. In 1996 it was upgraded to departmental status and coordinates women's activities at the local, national and international level, disseminates information and facilitates the implementation of the National Gender Programme Framework. Following the Fourth World Conference on Women in 1995 the Government collaborated with women's NGOs to identify 6 out of 10 areas of the Beijing Declaration as priority issues for Botswana. These are women and poverty including economic empowerment; women in power and decision-making;

education and training of women; women and health; violence against women including human rights; and the girl child. These issues formed the basis of the National Gender Programme Framework, which was compiled with the assistance of UNDP, and its Short-Term Plan of Action 1999-2003 which treats the issues relating to girls as cross-cutting. The Plan of Action is implemented by committees that focus on each issue and includes representatives of governmental and non-governmental interest groups and experts.

60. There is a National Council on Women which is appointed by the Minister and serves as an Advisory Board, with the Department of Culture and Youth serving as the Secretariat. The department has organized a Gender Focal Points Forum for coordination with other ministries and the first meeting was held in 2001. There are also strong links with the Women's NGO Coalition to promote the implementation of the Short-Term Plan of Action.

### **Other relevant central Government programmes**

61. There are other activities, agencies and programmes created or initiated by central government ministries which impact upon the implementation of children's rights in Botswana which will be detailed in the relevant sections below.

### **Non-governmental organizations (NGOs)**

62. Botswana has a significant number of NGOs which are concerned with children, children's rights, women's rights and human rights. These organizations supplement and complement government programmes on children and some advocate on children's rights issues. They actively contribute to policy-making and are represented on various governmental bodies on an ad hoc basis. There is no children's NGO network or coalition at the moment although several NGOs which are involved in children's issues are members of the Botswana Council of NGOs (BOCONGO).

63. The role of BOCONGO is to network, disseminate information and build capacity with NGOs. They produce a regular newsletter and are the coordinating point for various coalitions of NGOs on youth, women, and people with disabilities. They have recently developed an NGO policy to develop a partnership framework between Government and civil society groups, to regulate the registration and operation of NGOs and to streamline the financial support and the working relationships between Government and NGOs. The policy is currently being considered by the Ministry of Labour and Home Affairs. As part of this process BOCONGO has also developed a Code of Conduct to regulate internal and external relationships.

64. Some NGOs receive grants or subsidies from ministries either directly or through a coordinating body such as the Botswana Council for the Disabled or BNYC. BOCONGO receives funds (P600,000 in the current year) for salaries and other operating costs from the Department of Culture and Youth. While they are welcomed, these funding arrangements have been criticized for being random, irregular, short-term and inadequate, which inhibits the ability of NGOs to develop their services and strategies. It is hoped that this will be improved with the implementation of NGO Policy.

65. BNYC was established in 1974 and brings together NGOs and Government to plan, coordinate and implement programmes of significance to young people. The secretariat of BNYC is headed by an Executive Director who works with the guidance of a Board and the headquarters are in Gaborone. The Government partly funds BNYC which, nevertheless, operates as an autonomous body. The objectives of BNYC are to: advise Government on all matters pertaining to youth activities in the non-governmental sector; guide, encourage, and plan youth activities within the non-government sector; coordinate, by exchange of information and discussions, the voluntary organizations working with or for youth; promote a channel through which organizations are informed of government policy and programmes affecting the youth; and provide advice to the Department of Culture and Youth on the allocation of funds for youth services to the non-governmental sector. Funding is then provided through BNYC to affiliates made up of 32 District Youth Councils and NGOs dealing with a variety of matters affecting youth. These organizations work on issues including the following: HIV/AIDS and adolescent reproductive health; empowerment of young women; children in especially difficult circumstances; youth mobilization and empowerment for greater intervention and creation; life skills, moral training; and crime prevention.

66. The District Youth Councils also foster the development of Village Youth Councils. In the past they worked closely with youth officers who were employed by local government. However since these officers became directly employed by the central ministry these links have changed. The youth officers no longer have access to local resources and local government will not provide them. The Department of Culture and Youth is making efforts to improve the situation. Although the services provided by district youth councils and NGOs funded by BNYC are often aimed at and utilized by under-18s it is generally the case that the youth councils are made up of those who have completed the school system and are over 18.

### **Cooperation with international organizations**

67. The Botswana Government has also received extensive support from international organizations such as UNICEF, UNDP, UNFPA, United Nations High Commissioner for Refugees (UNHCR) and World Health Organization as well as the Swedish International Development Agency which sponsored the 1998 Conference on the implications of orphanhood in Botswana.

### **Dissemination of the report and the Convention**

68. In order to give effect to the provisions of article 44, paragraph 1, of the Convention a consultation process took place in the preparation of this report. Personal interviews were held with representatives of key ministries as well as with a range of NGOs. Drafts of this report were widely circulated to government ministries, district councils and various NGOs and comments were incorporated. The Government of Botswana is grateful to UNICEF which provided invaluable technical advice and assistance in the preparation of the report. Upon finalization of this report MLG will consider having it published in order that it may be made available to the general public. It is acknowledged that not enough has been done to publicize the Convention, and much remains to be done.

69. UNICEF has made some efforts to publicize the Convention on the Rights of the Child in newspapers but this has not been ongoing. With the support of UNICEF the Government has translated the Convention into Setswana and is awaiting publication.

70. As has been mentioned chiefs, judges, magistrates and the Court President will often deal with juvenile criminals or children directly or indirectly affected by family cases. However, they are generally unaware of the Convention and other relevant international instruments and have not been trained in such matters. In relation to the Children's Act their levels of familiarity vary. Youth officers have also not received training in the Convention.

71. It is apparent that, in practice, teachers are not familiar with the crucial instruments of law relating to children. In the course of teacher training all teachers study "Foundations of Education" which incorporates some training in guidance and counselling. Teachers are currently not trained or made aware of the Convention unless they train specifically to become teachers of moral education at junior secondary level. The training of teachers for moral education has only recently begun as it is a new introduction to the syllabus. There is no copy of the Convention available in the resource library based in the curriculum development department in Gaborone and there is no record of the Convention being distributed to schools.

72. A police college has recently been built and as part of their basic training all national police officers are studying basic human rights principles. The police are currently developing their curriculum in relation to this. At the moment the levels of awareness of the relevant international instruments in practice are poor although there is some familiarity with the Children's Act. This is expected to improve with the new training.

73. In general social workers (and social and community development officers) are aware of the main instruments of Botswana law relating to children's rights particularly the Children's Act. However training in relation to the Convention is lacking.

74. Prison Officers are not given specific training in dealing with juveniles or human rights although a social worker is usually employed by Botswana Prison and Rehabilitation Service at each prison (see section on "Children deprived of their liberty" below).

75. Some NGOs such as the Women and Law in Southern Africa, Emang Basadi, Metlhaetsile Women's Information Centre and Ditshwanelo - The Botswana Centre for Human Rights have undertaken awareness raising of issues relating to the international human rights obligations of Botswana, of the Convention and of children's rights in general. This has been done through conferences, workshops, casework, consultancy and advice to Government. This kind of activity tends to be focused around the main urban areas, Gaborone in particular. They are often invited to comment on human rights issues in the press and their concerns are publicized but in general this kind of publicity has not focused specifically on children's rights issues.

76. It is acknowledged that more needs to be done to disseminate the Convention. A joint effort is planned by Government in conjunction with UNICEF to publicize the Convention and its report.

## II. DEFINITION OF THE CHILD (art. 1)

77. There is lack of uniformity in the various statutes of Botswana which relate to children as each statute serves a specific purpose. Consequently, at the time of accession Botswana entered a reservation as follows:

“The Government of the Republic of Botswana enters a reservation with regard to the provisions of article 1 of the Convention and does not consider itself bound by the same insofar as such may conflict with the Laws and Statutes of Botswana.”

78. A brief synopsis of statutes relevant to the definition of a child follows. Generally courts should always ensure that they ascertain to their satisfaction the ages of any children involved in any dispute, civil or criminal, before them in order to extend the relevant protections provided for in the statutes.

79. According to section 49 of the Interpretation Act the legal age of majority in Botswana is 21 and it is at this age that a child acquires full legal capacity to act on his/her own officially and in legal matters. There is no stipulated minimum age at which a child becomes eligible to seek independent legal advice but a child below the age of majority is deemed not to have any *locus standi*, capacity to contract and to sue or be sued without parental consent or assistance.

80. The Constitutional Amendment Act of 1997 reduced the voting age from 21 years to 18.

81. The Children's Act (Cap 28:04) defines a child as any person below the age of 14 years (s2). This Act makes provision for the appointment of Commissioners of Child Welfare to deal with neglect, ill-treatment and abuse of children; for the custody of children in need of care; for the establishment of children's and juvenile courts and institutions for the reception of children; and for other matters incidental to the above.

82. For purposes of the Adoption Act (Cap 28:01) a child is a person under the age of 19 years (s2). This Act makes provision for the adoption of children in Botswana and for related matters.

83. The Affiliation Proceedings Amendment Act of 1999 defines a child as a person below 18 years of age. This Act provides for the making of orders for the maintenance of such children and other associated matters.

84. In terms of the Deserted Wives and Children's Protection Act (Cap 28:03), which regulates the making of orders for the maintenance of wives and children who have been deserted and are without adequate means of support, a child is a person under 16 years of age or who is under 21 years and is not earning his own living (s2). This means that, for purposes of this Act, any person who is between 16-21 years and is earning his/her own living is not a child.

85. Civil marriage is regulated by the Marriage Act (Cap 29:01), according to which a person below 21 years of age requires the consent of his/her parents or guardian (only the father's consent is required if the person's parents are married) unless she/he is a minor widow or widower. No male below 16 years of age or female below 14 may marry (s17). At common

law, a minor boy attains majority upon marriage while a minor girl who marries falls under the guardianship of her husband. This differential treatment of females and males is contrary to the non-discrimination principle in the Convention. An amendment to the Marriage Act to provide for a uniform minimum age for civil marriage of 18 years is currently being considered by Parliament.

86. Persons below the age of 8 years are not criminally responsible for any act or omission in terms of section 13 (1) of the Penal Code. Between the ages of 8 and 14 it is possible that they can be demonstrated to be criminally responsible if it is proved by the prosecution that the child had the capacity to know that she/he ought not perform the act or make the omission at the time. However a male child under 12 years of age is presumed to be incapable of having carnal knowledge (s13 (3)) and therefore cannot technically be responsible for rape.

87. Consent to sexual intercourse can only be given by a girl of 16 years and above. Furthermore any person who unlawfully has carnal knowledge of any girl below the age of 16 is guilty of defilement (s147 (3) Penal Code). It is a defence to this charge that the person had reasonable cause to believe that the female was above 16 or was his wife. There is also a crime of indecently assaulting a boy under 14 (s166 Penal Code).

88. The Evidence in Civil Proceedings Act (Cap 10:02) provides that no child shall be excluded from being sworn as a witness or be deemed incompetent to give evidence in respect of age, provided that such child understands the nature and recognizes the religious obligation of an oath (s5). The Criminal Procedure and Evidence Act (Cap 08:02) states that every person who is not excluded, by the same Act, from giving evidence shall be deemed to be competent and compellable to give evidence in criminal proceedings. Children are not excluded by the Act as witnesses, but a child who does not understand the implications of an oath may be admitted to give evidence without being sworn in or without affirmation (s221).

89. The Mental Disorders Act (Cap 63:02) which regulates the law relating to the treatment and placement in care of those suffering from mental disorders defines a child as a person below 16 years of age.

90. For purposes of the Education Act (Cap 58:01), a child is a person under the age of "maturity". Maturity has not been defined in Botswana law so possibly maturity may be interpreted to mean the age of majority of 21 years.

91. There is no conscription in Botswana. The Botswana Defence Force Act (Cap 21:05) provides that a person under the apparent age of 18 years shall not be enlisted in the armed force - section 17 (2).

92. The sale of liquor to persons below 18 years of age is proscribed by section 36 of the Trade and Liquor Act (Cap 43:02). No trader may sell liquor to any person below the apparent age of 18 years. The use of "apparent" however imports some ambiguity.

93. For purposes of the Employment Act (Cap 47:01), which deals with regulation of the employment of children, a distinction is made between a child and young person. A “child” is defined as a person under 15 years of age and as such the employment of children is prohibited. A “young person” is a person between 15 and 18.

94. In terms of the Trade Union and Employers Organisations Act (Cap 48:01) no individual under the age of 15 years shall be a member of a registered trade union. Moreover the constitution of a registered trade union or employees’ association may exclude young persons from membership of that union or organization.

95. The Public Health Act (Cap 63:01) defines a child as a person who is under or appears to be under the age of 16 years

96. In customary law, there are no specific rules that determine the cessation of childhood especially with regard to age limits. However, under the traditional practices of *bojale* and *bogwera* (initiation rites for females and males respectively) completion of these rites bestows the status of adulthood on the individual. There has been a marked decline in the practice of these rites so it is not clear how childhood and adulthood are currently determined under customary law. In customary law different rules may be applied in different geographical areas in relation to a broad range of matters affecting children where there are differing customs. These include marriage, adoption, affiliation, inheritance and maintenance. The provisions of the statutes detailed above will not generally apply although they may be respected in practice. Customary courts are bound by the applicable provisions of the Children’s Act in relation to acting as Commissioners for Child Welfare but it is not clear in practice whether they are always implementing it fully.

97. It is evident that there are inconsistencies with respect to the definition of a child. The Division of Social Welfare, Ministry of Local Government with support from UNICEF has commissioned a review of the Children’s Act with a view to harmonizing it with the provisions of the Convention and other national child protection laws, to propose strategies to effectively and efficiently reinforce the revised Act and for strengthening the coordinating structures for implementing the Convention. A children’s forum was held at the suggestion of the National Child Welfare Committee to enable children to participate in the review process. However the completion of Children’s Act review process is hindered by the fact that staff are overburdened and the general weakness of NCWC.

98. Commitment to the process of review and harmonization of laws has been shown by the amendment to the Affiliation Proceedings Act of 1999.

99. In addition a “Review of All Laws Affecting the Status of Women in Botswana” was commissioned by the Department of Women’s Affairs at the Ministry of Labour and Home Affairs and completed in September 1998. The report analyses both common law and customary law. It has been assigned to a working committee to consider how best to implement its recommendations which are extensive and relate to matters such as the legal status of women

under the constitution, citizenship law, in employment, in criminal law (as witnesses and suspects), and in private law: cohabitation, desertion, marriage, divorce, custody and maintenance of children, inheritance, land and property rights. As already mentioned the Marriage Act is in the process of being amended as a result. There is not currently any link between this review and that of the Children's Act.

### **III. GENERAL PRINCIPLES**

#### **A. Non-discrimination: article 2**

100. Section 3, chapter 2 of the Constitution of Botswana guarantees to every person in Botswana "the fundamental rights and freedoms of the individual; that is to say the right, whatever his race, place of origin, political opinion, colour creed or sex, ... to:

- (a) Life, liberty, security of the person and the protection of the law;
- (b) Freedom of conscience, of expression and of assembly and association;
- (c) Protection for the privacy of his home and other property and from the deprivation of property without compensation."

The Constitution goes on to outline the contents of these fundamental rights and freedoms. The right to the enjoyment of these fundamental rights without discrimination, is subject to "such limitations of that protection as are contained in those provisions being 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 in the public interest".

101. The clause dealing specifically with protection from discrimination in the making of laws (section 15 (1) of the Constitution) states that:

- "3. ... 'discriminatory' means 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 description are subject to disabilities or restrictions to which persons of another description are not ... or are accorded privileges or advantages which are not accorded to another person of another such description."

102. This section is subject to numerous exceptions amongst which are the following: non-citizens of Botswana are excluded (ss4 (b)); matters of adoption, marriage, divorce, burial, devolution of property on death and other matters of personal law (ss4 (c)) are excluded; the application of customary law is excluded (ss4 (d)) and there is a general limitation of measures "reasonably justifiable in a democratic society" (ss4 (e)).

103. Section 18 of the Constitution states that any person who alleges that any of these rights have been infringed as against him/her shall have recourse to the courts although, as has been mentioned previously there is no provision of free or subsidized legal assistance for the exercise of this right.



104. Notably the non-discrimination clause excludes “sex” but the case of *Unity Dow v. Attorney General* (Civil Appeal 4/1991) dealt with this point. It was held that s15 had to be read in the light of s3 which guarantees freedom from sexual discrimination. However, as has already been mentioned, s15 contains numerous significant exceptions although it is felt that the essence of the case of Dow is that even these exceptions should be read in the light of s3 and any laws dealing with the areas mentioned in them which failed to give women the same protection as men would be contrary to s3.<sup>3</sup> However the same source suggests that the Constitution should be altered to be less equivocal.<sup>4</sup>

105. The Constitution is therefore inconsistent with the non-discrimination provision of the Convention to the extent that it fails to unambiguously outlaw discrimination on the grounds of sex, language, religion, national, ethnic or social origin, property disability, birth or other status of the child, his/her parent or guardian. Non-citizens (and therefore refugees) are specifically excluded.

106. It is important to note that Vision 2016 states that “No citizen of the future Botswana, will be disadvantaged as a result of gender, age, religion or creed, colour, national or ethnic origin, location, language or political opinions.” Vision 2016 aims to eradicate negative social attitudes to promote freedom from sexual harassment. This expression of will, which exists to guide policy-making clearly goes further than the Constitution. The Public Service Act outlaws sexual harassment in the public sector workplace.

107. Customary laws in Botswana apply across the country but practices may differ from one tribe to another. This is a complex matter because the question of whether or not this difference of treatment amounts to discrimination has to be weighed against the right of tribespeople to enjoy their own culture which is reflected in the preservation of the customary law system. In addition, matters will be approached differently between common law and customary law courts even though constitutional guarantees are overarching.

108. There are some concerns in Botswana about specific legal, economic and social disparities experienced by specific groups of children. Such children include girls, street children, children with disabilities, children born out of wedlock, children of indigenous minority groups, refugees and rural children. The ways this discrimination is experienced is detailed in the relevant sections of this report and/or discussed below. In terms of measuring discrimination it is not always possible to establish whether policies or laws or services are being applied in a discriminatory manner as data is not always disaggregated for the relevant groups. In particular there are no statistics measuring the number of children in different ethnic or language groups as these were not counted in the census of 1991 and are rarely reflected in other analytical exercises. It is anticipated that the next census will ask which language families speak at home and ask about disabilities.

## Girls

109. The situation of girls is linked to the status of women in Botswana, which is compounded by the patriarchal nature of the Botswana society. Women, and consequently girls, encounter a number of constraints and marginalization, including gender stereotyping at family, school and community levels; limited participation in decision-making at all levels of society; and a general lack of gender sensitivity and responsiveness to their particular needs. As a result educational opportunities are compromised particularly in the case of pregnant girls as they are excluded from school (see section on education). Also girls are increasingly likely to suffer sexual violence and sexual abuse and as a result they are a group which is extremely vulnerable to HIV/AIDS.

110. Significantly the legal status of married women is equivalent to that of a minor who requires her husband's consent to take legal action, although some courts and institutions take a more enlightened approach by not requiring this consent. This compromises her ability to make decisions, resolve disputes and exercise her rights. In customary law unmarried women fall under the guardianship of the male head of the family. Some customary courts are relaxing this rule and allowing unmarried women to bring cases unaccompanied by their male relatives but some women report that they do not feel they are taken seriously at the *dikgotla* and are therefore discouraged from seeking redress there. They also feel excluded from other cultural practices such as the rituals and negotiations concerning the marriage of their own children.

111. Generally speaking unmarried, cohabiting, married, separated or divorced women do not enjoy full and equal rights to property, land, homestead or cattle upon separation from their partners or death of a partner or parent. This applies in both customary and common law and has been extensively analysed by the Department of Women's Affairs and many recommendations for review have been made.<sup>5</sup> This inequality with men clearly compromises girls' rights as wives, mothers, cohabitees and widows and also affects the rights of children particularly in cases where land and/or property is forcibly taken from a mother on the death of the father of the children leaving her homeless. This is reported to be a significant problem.

112. Botswana has, however, acceded to the Convention on the Elimination of All forms of Discrimination against Women in 1996 and as such is under an obligation to discard and eliminate all laws that are inconsonant with the provisions of this Convention. Botswana is in the process of drafting its report to the United Nations.

## Children living in remote areas

113. Concerted efforts are being made to bring all basic social amenities and developments to the rural population, with a special focus being made on children and the elderly through the Remote Area Dwellers Programme. This is because the provision of services to remote settlements is challenged by low density of population and the difficulties of securing staff to work in those areas. Education provision is made more difficult in remote areas because of the distances which children have to travel to school and the fact that many children in such areas do not speak Setswana or English at home and hence are limited when they start schooling.

114. In remote areas children are less likely to have access to social workers, police and magistrates so their care is less likely to be monitored and it would be more difficult to report cases of abuse outside the customary system. At least one case has been reported where parents were convinced to drop a case of sexual abuse of their child without the involvement of the national police where the local Chief had come to an agreement with the alleged perpetrator.

115. The difficulties facing remote communities often overlap with those of particular ethnic groups such as the Basarwa (Bushmen or San) or the Bakgalagadi who may face discrimination on the grounds of their ethnicity and who are being required to rapidly change their lifestyles to meet the demands of a changing domestic economy.

### **Children born outside marriage**

116. Children born outside of marriage also experience differential treatment under both common law and customary law especially in matters of maintenance, inheritance, guardianship, and marriage. Mothers have complained that they have not been supported appropriately by their extended families and the overlap of the customary law of seduction damages and the common law of maintenance can cause consternation and confusion to elders, unmarried fathers and mothers alike.

117. Under traditional customary law children born out of wedlock belong to their mother's family in terms of name and guardianship whereas those born within wedlock will fall under the name and guardianship of their father who will have the duty to maintain them. There is a link between the customary law of damages for seduction and maintenance of a child born out of wedlock. Generally the customary law system gives the father of an unmarried mother the right to sue the father of the child for compensation for seduction. Compensation is usually paid in cattle or their cash equivalent to the maternal grandfather. The extended family may make such living arrangements for the child as are appropriate depending on the specific circumstances of the family and its children.

118. Common law rules regarding guardianship and custody also treat children differently depending on whether they are born within or outside marriage. Guardianship vests in the father when the child is born within marriage and with the mother's family when the child is born outside marriage. This discrepancy is reflected in the law relating to registration of births. Upon birth of a child within marriage, a duty is imposed on both parents to give notice of the birth and enter their names on registration documents in accordance with the provisions of the Births and Deaths Registration Act (Cap 30:01). However, with regard to a child born out of wedlock provision is made in the Act that no one may be entered as the father of a non-marital child except with his written consent.

119. A child born within marriage also has a statutory right to guardianship by its father but in cases of unmarried parents the mother has to take legal action in order to determine paternity and obtain maintenance under the Affiliation Proceedings Act or under common law principles. A mother who failed to take action within the old Affiliation Proceedings Act time limits argued that she had a common law right to receive support (citing Botswana's obligations under the Convention to ensure non-discrimination). The High Court agreed with the mother and the statute was subsequently amended. A claim under this Act can be made in addition to the claim for seduction damages in customary law.

120. A child born within marriage is entitled to inherit from the parents who die intestate. A child born out of wedlock can only inherit from his/her father where the father has made a bequest to the child, or is voluntarily recognized by the father's family. However the testacy and intestacy rules are complex due to the overlap of individually owned property and customarily owned land and the latter may fall out of the law relating to testacy and fall to be administered according to customary law.

121. In addition, section 6 of the Children's Act provides for differences in the law relating to the protection of infants depending on whether they are born of married or unmarried parents in that only the maternal relatives of a protected child (under the age of 7) born outside of marriage are automatically permitted to take care of him/her without registration. For children of married parents both paternal and maternal relatives of a protected child can take care of the child automatically without registration.

### **B. Best interests of the child: article 3**

122. The concept of the best interests of the child is not constitutionally enshrined nor built into public or private institutional decision-making and policy-making; courts of law; administrative or legislative bodies. However the National Development Plan 8 and Vision 2016 emphasize the civic values of responsibility, duty, tolerance and respect which are incorporated into the education curriculum and policies which relate to children and young people. Vision 2016 has, as an aim, to put an end to "negative social attitudes towards the status and role of women, the youth, the disabled and the elderly."<sup>6</sup>

123. The application of the concept of the best interest of the child under customary law is negligible since customary law in the traditional sense does not treat the rights of children or of any other group separately from the rights of the family as a unit. This is reflected within the family unit where the head of the family determines what is in the best interests of the child according to the values of the family and their cultural and religious background.

124. However, section 6 of the Customary Law (Application and Ascertainment) Act of 1969 first introduced this concept into the laws of Botswana to specifically apply to custody cases. This Act makes provision that "in any case relating to the custody of children, the welfare of children shall be the paramount consideration irrespective of which law or principle is applied". It must be noted however that this Act makes reference to "welfare" and not "best interests" but the two terms have been interpreted to be synonymous by the courts. This Act applies to all custody cases whether of children born in or outside wedlock. A precise definition of the concept has not been elucidated although the principle has been consistently applied.

125. In its original jurisdiction the High Court is the upper guardian of minor children. Courts therefore consider the welfare or best interests of the child as being paramount and have affirmed this principle in various judicial pronouncements (see below). The concept as judicially interpreted is given an all-embracing approach that seeks to protect the general welfare of the child, such that all relevant circumstances are taken into account in determining what is best for the child.

126. In dealing with custody cases arising in relation to children born within marriage, judges have interpreted “best interests” by attaching importance to material welfare, living conditions and educational facilities<sup>7</sup> and the intention of the parent to live with the child themselves or hand them over to a relative.<sup>8</sup> The courts have tended to assume that it is in a young child’s best interests to be in the custody of their mother,<sup>9</sup> that adolescent boys should be with their fathers and girls with their mothers.<sup>10</sup> The courts have, on occasion, taken the views of the child into account and have tried not to disturb existing arrangements.

127. There have been only a few cases of custody disputes relating to the best interests of children born out of wedlock. In *Chiepe v. Sago*<sup>11</sup> the court awarded custody of a child born out of wedlock to the father, despite the fact that the mother was recognized by common law as the child’s legal guardian. The court was of the view that “the Common Law provides that the court, acting as upper guardian of all minor children within its jurisdiction, will only deprive the mother of an illegitimate child of its custody on special grounds being shown”. From the evidence adduced before the court, it was held that the father had made out a prima facie case and established his ability to care for the child and make arrangements suitable for the upbringing of the child. The court therefore held that “having considered all the evidence and the arguments advanced, I have reached the conclusion that it is in the best interest of this young boy to remain in the custody of his father. He is in my opinion, the more stable of the two parents and I can see no good reason to disturb the routine that the child has become accustomed to ...” Also in the case of *Langebacher v. Thipe*<sup>12</sup> the High Court held that in determining issues of access of an unmarried father to his children that “the welfare of the child is the first and paramount consideration”. This approach was also reflected in the case of *Phiri v. Dintsi and Dintsi*.<sup>13</sup>

128. The Children’s Act makes every magistrate a commissioner of child welfare and where there is no magistrate, the district commissioner, district officer of the administrative district or the Chief (part II s3). The Act is aimed broadly at the prevention of neglect and ill-treatment of children, protecting children at risk, providing for children in need of care and the establishment of juvenile courts and homes and institutions for the reception of children. Section 7 provides that where a Commissioner of Child Welfare has reasonable grounds to believe that a child is being kept in “surroundings or circumstances” which are not in their best interests (s7 (2)) she/he is authorized to call upon the parent or guardian to make suitable provision and if they fail then to remove the child from the family and place him/her with suitable foster parents.

### **C. Right to life, survival and development: article 6**

129. The overall development objectives of Botswana are encapsulated in National Development Plan 8 and incorporate many substantive programmes which impact on the child’s right to life, survival and development.

130. The Constitution of Botswana guarantees the protection of the right to life for every individual. Section 4 (1) provides that “no person shall be deprived of his life intentionally, save in the execution of a sentence for an offence committed under a law in force in Botswana”. The Constitution of Botswana permits the imposition of the death penalty as a form of punishment.

However, according to section 25 (4) of the Penal Code (Cap 08:01) a sentence of death cannot be pronounced on any person convicted of an offence if it appears that at the time such an offence was committed the person was below the age of 18 years, but such a person shall be detained at the President's pleasure.

131. On issues of survival of the child, Botswana is committed to health for all. Primary health care is recognized by the Government as the most appropriate method to achieve this goal. Although there is a decentralized approach to health care, the Ministry of Health (MOH) retains portfolio responsibility for health. The main objective of the MOH is to integrate preventive, promotive and rehabilitative and other appropriate health-care services at all levels of the national health-care system.

132. The National Programme of Action indicates that whilst AIDS will have a major impact on all population groups, the single most affected group will be children below age 5. The AIDS epidemic is viewed as the greatest challenge to child survival goals. Projections show that this group of children, who are infected mainly through vertical transmission from infected mothers in the womb during pregnancy, will comprise between 25 per cent and 35 per cent of all AIDS victims (see section on health below).

133. Botswana has limited arable land and is prone to drought, which affects both household incomes and national food security. The country is therefore obliged to import and distribute sufficient food to meet its needs. The Government monitors food security through the National Early Warning Technical Committee which provides monthly information and reports to the Inter-Ministerial Drought Committee which in turn reports to the Rural Development Coordinating Division of the Ministry of Finance and Development Planning for making policy decisions regarding food security.

134. The Department of District Administration and Food Relief Services in MLG coordinates a programme which ensures adequate food supplies for vulnerable population groups. These include children under 5 years of age, primary school children, certain pregnant and lactating women and tuberculosis patients. The programme has been shown to have a positive impact on the nutritional status of the under-5 population.

#### **D. Respect for the views of the child: article 12**

135. In the Constitution of Botswana the right to communicate ideas and information is enshrined in section 12. It is subject to limitations and children are not technically restricted from exercising this right although they would have some problems ensuring that it is respected given their status as minors. It must be stated that in terms of Setswana culture respect for the views of the child is not regarded as a right. Children do not generally attend or speak at the *kgotla* where issues of significance in a community have traditionally been and continue to be discussed. There is therefore a culture of believing that adults know what is best for children and that they are in a position to articulate the views of their children.

136. Children would particularly be affected by the influence of their parents over legal decision-making given the high age of majority. This is significant because, where there is a choice of law or legal system between customary and common law, this choice is not exercised by the child but by the parent or guardian.<sup>14</sup>

137. Vision 2016 mentions the need for youth organizations to be encouraged “to adopt a higher profile to promote the interests of young people” and in the consultation process which informed the Vision, 740 essays were received from schoolchildren and students through a national essay competition.

138. A review of the Children’s Act is under way within the Division of Social Welfare and NCWC. A children’s forum took place during April 2001 in which children from around the country, aged 11-18, were brought together to express their opinions about how the legislation should be changed.

139. In terms of the Adoption Act, a Court to which an application for an order of adoption is made shall not grant the order unless it is satisfied, amongst other matters, that the child, if over age 10, consents to the adoption.

140. In disputes relating to the custody of children on dissolution of marriage, courts do sometimes take the preference of the child into account in cases where such child is considered to be old enough to make up his mind. In the case of *Ramotshubi v. Ramotshubi*,<sup>15</sup> it was held that the court cannot be dictated to, but when dealing with children of 17 and 15 it would be wrong to completely ignore their expressed intentions and wishes. In *Makuku v. Makuku*<sup>16</sup> it was held that children aged 19, 16, 14 and 9 years be allowed to stay with their father after the court had sought their opinion and evidence adduced showed that they were happy with their father.

141. In schools discipline is emphasized and considered to be an important part of child development. It is said to be harsh and strict with little emphasis on the views of the child.

142. All secondary school institutions are encouraged to form school councils with a representation of a cross section of the school community including students. The intention is for students to be given effective channels of communication and to air their views. It has been found that where schools have such councils in place, schools have managed to avert crises, which could easily have erupted into riots or school disturbances. The Student’s Representative Councils are a link between the management and the students.

### **Day of the African Child**

143. In Botswana the Day of the African Child, 16 June, was inaugurated in 1992 by the then Vice-President Mr. Festus Mogae at the National Stadium where he addressed more than 10,000 children. Since then the day has been commemorated every year in every district and town. During these commemorations children get a chance to publicly declare their concerns through a memorandum presented to the Child Welfare Commissioner, who in turn informs all those concerned about the issues raised. Other activities that children use to relay messages include poetry, drama, music and dance.

144. There is no formalized way of commemorating this day, though there is a common theme for each district or town on the day. In some areas, these commemorations are organized by schools while in others they are organized by social workers in conjunction with teachers and are held at the *kgotla*.

## **NGOs**

145. The Young Women's Christian Association (YWCA) has introduced into certain schools a programme called Peer Approach Counselling by Teens which young people use as a vehicle to express their opinions on issues which affect their lives. The Ministry of Education has embraced this programme because it supports and augments the initiative of the Guidance and Counselling Programme by strengthening assertiveness, confidence and self-esteem by allowing students to express their views and concerns. Teachers have only recently been trained to work in this area and so it will be some time before it is fully effective. In addition, the Curriculum Development Department of the Education Ministry are organizing Youth Forums in conjunction with the police and other agencies so that issues of concern to young people can be discussed.

146. Young people are involved in decision-making in relation to the activities of some NGOs which are involved with children and/or children's rights. In addition a group of children (aged 14-17) were brought together to discuss attitudes to custody and guardianship in Botswana to inform a research project on the same issue and their ideas were summarized and published.<sup>17</sup>

## **Participation in radio**

147. Radio talk shows are held on national radio. For example, Youth Today and the Lovers Plus Spotlight Show give young people, especially teenagers, an opportunity to express their views on a wide range of issues affecting them such as teenage pregnancy, spread and prevention of HIV/AIDS infection, drug and substance abuse. Private radio stations also broadcast talk shows that discuss these issues.

148. The police organized a "Youth Knockout Quiz" on Radio Botswana in which young people had to answer questions on issues affecting them predominantly around crime prevention.

## **IV. CIVIL RIGHTS AND FREEDOMS**

### **A. Name, nationality, identity: article 7**

149. Every child born in Botswana must be registered in accordance with the Births and Deaths Registration Act (Cap 30:01). The child must be registered immediately after birth and given a name. For every child born in wedlock, it shall be the duty of the father and the mother of the child to give notice of such birth to the Registrar of Births within three months of such birth. In the case of a child born out of wedlock, the responsibility lies with the mother, and no person shall be entered in the registration documents as the father of the child without his express consent. Provision is however made for biological fathers of children born out of wedlock to be recognized in a document called "Father's Consent Form" - a document through which the biological father gives express consent to be recognized as such.

150. The Births and Deaths Registration Act was amended in 1998 to ensure that registration was compulsory throughout the country. Prior to the amendment, registration was only compulsory in towns and major villages. Although provision is further made for the appointment of district registrars for purposes of implementing this Act, there is already a problem relating to lack of capacity. Children also obtain a registration card when they are 16 years of age.



151. There are only 24 district offices, however expansion is going on. The events that are to be registered include births, deaths, marriages, adoption and still-births. Some of the problems that the department experiences are the lack of registration due to ignorance that such events have to be registered, or that information is not given accurately or in a timely manner. Some Batswana for instance do not register still-births because they feel it is insignificant to report such events, or that it is contrary to their cultural beliefs to do so.

152. The law regarding citizenship and nationality is contained in the Citizenship Act of 1982 (Cap 01:01) as amended in 1984 and in 1995. Prior to these amendments the position was such that a person would become a citizen by birth and descent if, at the time of birth, his/her father (or his/her mother where born out of wedlock) was a citizen of Botswana. Those born outside Botswana acquired citizenship by descent under the same circumstance. Adopted children under the age of 3 became citizens if at the time of adoption the adoptive parent was a citizen. Children under 21 could be registered as citizens where the father was a citizen in the case of children born in wedlock, or the mother was a citizen in the case of children born out of wedlock. Effectively these provisions discriminated against married Batswana women as compared to their male counterparts as it denied them the capacity to pass on their Botswana citizenship to their children irrespective of where they were born.

153. The constitutionality of this provision was successfully challenged in *Unity Dow v. Attorney General* (supra) and, as a result of the 1995 amendment, became gender-neutral. The present provisions allow for the acquisition of citizenship by birth or descent if the father or mother was a citizen of Botswana at the time of birth.

154. The Adoption Act provides that an order of Adoption shall terminate all the rights and legal responsibilities existing between the child and his/her natural parents and their relatives except the right to inherit from them when they die without making a will. The Act does not take into consideration that an adoptive child may for purposes of ascertaining his/her true identity need to know his/her natural parents. The Act therefore is being reviewed to address the issue (amongst others) of whether an adopted child should be given the right to access adoption documents so as to ascertain his/her own true identity, and if so at what stage of his/her development. The legislation is going through a consultative process.

155. Children born in Botswana obtain the citizenship of Botswana as well as that of their parents (dual citizenship) but at the age of 21 they are obliged to denounce one citizenship (s14 of the Citizenship Act).

#### **B. Freedom of expression and access to appropriate information: articles 13 and 17**

156. The Botswana Constitution stipulates that no person shall be hindered in the enjoyment of his freedom of expression except by his consent (s12). This right to freedom of expression includes the right to hold opinions and to receive and impart ideas and correspondence without any interference. Reasonable restrictions may be imposed by law on the exercise of such right, but only insofar as such restrictions are necessary for public defence, public health, public morality and to protect the reputation and freedoms of other persons. There are criminal sanctions for the violation of these rights. Remedies in terms of damages are available for defamation.

157. The Penal Code bestows on the President a right to declare a publication as prohibited if she/he is of the opinion that such a publication is contrary to public interest. The Penal Code gives an absolute discretion to the President to make such ruling (s47). It must be noted that “public interest” is not defined and the discretion is given to the President to determine what this entails. This assists in prohibiting any publication that contains information that is inappropriate such as child pornography.

158. Botswana encourages dissemination of information through the mass media. The Botswana Government through the Department of Information and Broadcasting operates two radio stations which between them provide services to the entire population. In 1996, the Government established a Botswana Telecommunications Authority to oversee the issuing of licences for private radio stations and television broadcasting corporations. This Authority has since issued licences to two commercial radio stations in 1999. The radio stations target the youth to enhance information dissemination on issues that affect the younger generation of Botswana.

159. The National Broadcasting Board was established under the Broadcasting Act of 1999 to oversee broadcasting services in Botswana. The main function of this Board is to ensure that information relayed via television and other media will be appropriate and not offensive to any part of society including children, for example, the censoring of pornographic material.

160. The Botswana Press Agency publishes the Botswana Daily News with a nationwide distribution, though not accessible to every part of the country as intended. This newspaper publishes stories from all parts of Botswana and outside in English and Setswana. This newspaper is freely available to the public including children but is not child-friendly. The Government print media also publishes a monthly magazine called *Kutlwano*, which prints stories written by children in both English and Setswana.

161. Botswana also has a number of privately run newspapers, which publish stories in English and Setswana. Two of these newspapers, *Mmegi/The Reporter* and *The Voice* publish stories written in “*Ikalanga*”, an indigenous language. However, in all these newspapers there are very few articles which address young children, although adolescents are increasingly catered for and articles are written by the youth themselves.

162. The national television station was launched in July 2000 to serve as an additional medium to inform and educate the children of Botswana, and to give them another forum where they can articulate their own views.

163. In addition a number of NGOs are providing appropriate information to the youth, in particular adolescent health information. Some NGOs have started establishing information centres due to the realization that inadequate and inaccurate information is reaching young people and these include (but are not limited to) Botswana Family Welfare Association (BOFWA), Metlhaetsile, Childline and YWCA.

164. In relation to contraception, HIV/AIDS and sexually transmitted disease prevention advice, NGOs and health clinics are not restricted in providing advice to children above the age of 12 who are sexually active (under the Family Planning Policy). Parental consent is not required.

### **C. Freedom of thought, conscience and religion: article 14**

165. Both the Constitution and the Penal Code protect freedom of thought, conscience and religion. The Constitution provides that no person, except with his/her consent, shall be hindered in the enjoyment of his freedom of conscience. Freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief and freedom either alone or in community with others, in public or private, to manifest or propagate his religion or belief (sect. 11). Further, the Penal Code of Botswana makes it an offence to insult any religion or to disturb any religious assembly (sects. 136 and 137).

166. As a result of the Revised National Education Policy of 1994 the Ministry of Education has revised the curriculum guidelines according to a 10-year Basic Education Programme which has amongst its aims the development of “critical thinking”. In the curriculum blueprint for primary education there is a clear emphasis on values deemed to be important to a Botswana such as being patriotic and “showing love and respect for the government of the day”. This curriculum blueprint has not yet been developed into a syllabus.

167. The 10-year Basic Education Programme incorporates guidance and counselling in junior and senior secondary schools which is geared towards problem solving, skills acquisition and self-knowledge and “complementing an individual’s natural processes and development and maturation”. Part of this programme is to consider matters of personal, social, family and vocational interest. This programme has so far only been implemented in Junior Secondary schools and historically there is a shortage of teachers due to lack of training in these subjects.

168. At junior secondary level a compulsory course of moral education has been introduced which aims to provide an education which is not affiliated to any particular religion and aims to provide children with tools of judgement in a value-neutral way. So far there are an insufficient number of teachers to successfully deliver this new subject although the Government has now made provision for training teachers coming into the profession. Evidently the success of this programme will depend on the quality of the training and personal values of teachers.

169. Children at secondary level will be taught religious education as an option, which is aimed at teaching different religious traditions. There is a Christian influence in government schools and morning prayers are held. However Muslim children are excused from school to pray on their religious days although there are no extra classes to make up for lost time. There are also a number of private Muslim schools.

### **D. Freedom of association and of peaceful assembly: article 15**

170. Section 13 of the Botswana Constitution protects the right of all persons to assemble freely and to associate with other persons, in particular to form or belong to trade unions or other associations for the protection of their interests. The Constitution ensures this right for all persons including children, subject to reasonable restrictions that may be imposed by law. Though children are free to assemble and associate they are not allowed to participate in any illegal gathering. The Penal Code makes it an offence for any person to take part in any illegal gatherings.

171. Children can join trade unions when they are 15 although an individual trade union can restrict membership in its own rules.

172. Children are allowed to participate in political activities from an early age, and are allowed to make their own choices about this. There are youth wings of various political parties, and young people including children participate in activism such as house-to-house campaigning. There is no law fixing the age at which they can become full members. This is a matter for each Party's discretion.

#### **E. Protection of privacy: article 16**

173. Section 9 of the Botswana Constitution makes provision for the protection of the privacy of all persons in Botswana. No person shall be subjected to the search of his person or his property or the entry by others into his premises unless the law makes provision for such an interference. Although no specific mention is made with respect to extending this right to children, it is submitted that they are covered under this provision.

174. This right has never been exercised to enforce the right of a child to privacy against his/her parents or family and begs the question of the extent to which parents can legally open a child's correspondence or enter into a child's room without his or her consent.

175. In traditional custom a child has no right to privacy in his/her relationship with parents where that child is deemed to be "immature". The presumption is that parents have a right to access everything relating to that child as they are given the responsibility of directing and guiding him/her. However under some Tswana tradition, once a child undergoes initiation rites that "child" is automatically regarded as an adult and is accorded the right to privacy in the context of the meaning given to this concept according to their family and cultural traditions.

176. In prisons all correspondence is opened including that from lawyers although private consultations are allowed. There are no rules regulating such matters in alternative care institutions.

#### **F. Torture and degrading treatment: article 37 (a)**

177. Section 7 of the Constitution of Botswana provides that no person shall be subjected to torture or to inhuman and degrading punishment or other treatment. It also states that nothing done under the authority of any law which authorizes the infliction of any kind of punishment that was lawful in the country immediately before the coming into operation of the Constitution shall be held to be inconsistent with or in contravention of this right (s7 (2)). The Government's commitment to combat torture is reflected in the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 8 September 2000. A reservation was entered regarding the definition of torture.

178. Torture by State officials would be prosecuted as assault as no specific provision for torture exists in the Penal Code. There have been incidents of maltreatment which sometimes amount to torture reported against the Local Police, National Police, the Department of Wildlife and National Parks and the Department of Prisons and Rehabilitation. Action has been taken in

the form of disciplinary and criminal sanctions. However these reports are not disaggregated by age so it is impossible to establish the extent to which children are victims. In particular during civil unrest in 1996, three cases of mistreatment were reported as were cases of detention of children beyond custody time limits.

179. The National Police have acknowledged responsibility for taking action against officers who engage in such illegal practices and have a policy of referring cases of violence to the prosecution for processing through the Magistrate's Courts. Since 1996 they have developed new policies aimed at improving police practice. They are attempting to mainstream a human rights approach to policing and to reorient policing to being community-based. New recruits are being trained in human rights. However if anyone wishes to complain about the behaviour of a police officer, she/he is obliged to approach the station in which the officer is based and see the Commander. If the matter cannot be resolved it is passed to the Commissioner of Police whose deputies will deal with the matter either via disciplinary measures under the Police Act or by referral to the Prosecution Service. The case of *Lesego Thebe and Four Others v. The State*<sup>18</sup> is illustrative of police efforts to address allegations of torture.

180. Prisoners are obliged to approach the officer in charge if they have a complaint about their treatment.

181. Capital punishment and life imprisonment are permissible under Botswana laws. However, as set out hereunder, they cannot legally be imposed on children under age 18. Corporal punishment has been held to be constitutional<sup>19</sup> and is therefore lawful in Botswana as a penal sanction, as a disciplinary measure by schools (regulated by the Education Act) and at home.

182. The cultural acceptability of corporal punishment means that adults in positions of authority (such as police, prison officers and teachers) are likely to use it when they feel it is appropriate to discipline a child even where the relevant authorities have taken measures to control this kind of behaviour. As a result of the lack of an independent complaints mechanism, children who wished to complain would have great difficulty doing so.

183. There is no specific regulation against corporal punishment in alternative care institutions but it is not used.

## **V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE**

### **A. Parental guidance and parental responsibilities: article 5 and 18, paragraphs 1 and 2**

184. The family, as a basic unit of society, has seen many changes in Botswana. In the past, Botswana lived in extended families where members of the same kin stayed together. Due to evolving socio-economic situations this family structure is changing, particularly in urban settings where the emphasis is increasingly on nuclear units. More children are born outside marriage and desertion/divorce rates have increased, giving rise to an increased number of single parents, especially female-headed families. With the advent of the scourge of HIV/AIDS many children have lost their parents and relatives, and some of them have become heads of families.

185. In Setswana culture very little consideration is given to the evolving capacities of the child so as to allow such a child to participate in decision-making. Adults, on behalf of their children, make decisions with little consideration of the views of the child. The culture is such that a child, whether staying with his/her parents, guardians, and relatives or alone, is always regarded as a minor and must have decisions made for him/her. It must be noted, though, that the situation is changing gradually with more and more parents and guardians recognizing the evolving capacities of the child and their right to freedom of expression. However it is submitted that the ongoing significance and respect for customary law within Batswana society is consistent with the obligation of the State to respect the responsibilities, rights and duties of parents in accordance with local custom.

186. At the moment there is no mechanism within government that caters for the needs of young mothers but the Government supports YWCA teen mothers programme through the Ministry of Labour and Home Affairs.

187. The concept of guardianship is very significant in both customary and common law in Botswana and is commonly linked to issues of general welfare of the children in the family unit. Historically, the guardianship system is based upon the traditional Tswana system of whether the father had delivered *bogadi* for the mother. On the other hand, guardianship of children of married couples is respected irrespective of whether *bogadi* is paid or not. *Bogadi* had the effect of transferring the mother's children from her lineage to that of the father. As *bogadi* was a requirement of a valid marriage then the right of a father to guardianship or the duty to maintain the child depended on whether they were born within or outside the marriage. The law continues to be applied in this way as if this system is still common, despite the fact that it is reported to be in decline. Generally, in both customary and common law, the guardianship will continue to rest with the father even after divorce where custody is vested in the mother. In the case of unmarried mothers customary law will vest guardianship in the maternal grandfather whilst at common law this will be the mother.

188. The concept and duties inherent in guardianship overlap significantly with those of custody which falls to be determined by what the courts perceive as being in "the best interests" of the child (at least this rule is generally observed in common law although it is unclear whether it has been internalized by the customary courts to whom it also applies). The question of guardianship has not generally been reviewed on the same basis even though in practice it can create difficulties for the mother in organizing the children's affairs, for example: obtaining a passport, or giving permission for a child to marry.

**B. Separation from parents: article 9; family reunification: article 10;  
and recovery of maintenance for the child: article 27, paragraph 4**

189. For children of divorcing or deserted married parents as well as those of unmarried parents the question of custody can be dealt with by the customary or common law courts. As has already been discussed the common law courts will tend to use the concept of best interests in order to make such decisions. Customary courts do not allow for representation by a lawyer. If the parent accesses the common law system, there is currently no free legal assistance.

190. In relation to maintenance, different laws apply depending on whether a child is born in or out of wedlock. Where the child is born in wedlock the common law position is that marriage creates a duty of support between wife and husband with each expected to contribute to the household. This common law rule is supplemented by the Deserted Wives and Children's Protection Act (Cap 28:03). Under this Act, the father must maintain the child at such an amount which a court will consider proper, having regard to the means of the father. The usefulness of this Act has been questioned due to several factors: the fact that the trials are deemed to be of a "social welfare" nature and therefore where the mother has means to employ an attorney she is not eligible to make a claim of maintenance;<sup>20</sup> the difficulties of interpretation of the word "desertion" which can often become a trial of the mother's character; lack of accessibility to Magistrate's Courts; hostility to such action by deserting fathers; and the inability of deserted fathers to claim. Serious concerns have therefore been expressed about the effectiveness of this Act and recommendations for reform have been made in the Women's Affairs Report.<sup>21</sup>

191. Upon divorce the laws relating to the division of property is either dealt with by the customary courts or by the common law courts under the Matrimonial Causes Act and the Married Women's Property Act of 1970. Both systems have been criticized as being arbitrary, leaving too much discretion in the hands of the courts, excessively complex and discriminatory towards women. It is often the case that where the High Court has become involved it will refer matters such as the division of traditional property (e.g. cattle) to the customary courts. Clearly the impact of such decisions is upon the children of the marriage as well as on young divorcees under the age of 18.

192. The Convention makes it a common responsibility for both parents to maintain and support the child according to their means. This is in accordance with the common law in terms of which both parents must support their child according to their means. This applies to married and unmarried parents. Although the father of a child born out of wedlock has a duty in common law to maintain the child, such duty is in most cases enforced by the mother by resorting to the courts. Consequently, where a child is born out of wedlock, the primary responsibility for the rearing of the child is placed on the mother. The common law was clarified in the case of *Moremi v. Mesotlho*<sup>22</sup> where the court held that the common law as applied in Botswana imposes a duty of support between spouses and it extends to the natural father of a child born outside wedlock. This means that the High Court has the jurisdiction to deal with such matters. However subsequently the Affiliation Proceedings Act was amended which reduces the need to resort to the High Court in such cases.

193. Prior to its amendment in 1999, the Affiliation Proceedings Act had the effect of discriminating against a child born out of wedlock. This Act has been amended to deal with such disparities in treatment between children born in or out of wedlock. For instance, complaints for a maintenance order or a paternity order may now be instituted by any woman with a child, a parent of a child or a person having the care custody of the child, whereas in the past it was restricted to "a single woman". The time within which the complaint can be made has also been raised to five years. Further provision is made that the court may make an order that the parent pay not less than P100 a month for maintenance and education for the child (s7 (b)). The proviso to this section seeks to address the complaint that the minimum that can be paid is insufficient to cover the needs of a child. It reads "... the court may order the parent to

such lesser or greater amount as it considers appropriate taking into account the financial circumstances and ability to pay of the parent". This goes a long way in assisting children, especially those born out of wedlock, to be maintained at the same level as those born in wedlock since the means of the parent is a major determining factor.

194. As has been discussed previously in most traditional systems of Setswana customary law a man who impregnates an unmarried woman and a woman who becomes pregnant and subsequently marries is expected to compensate the father of the woman for the damage by paying a certain number of cattle. The focus primarily is to seek compensation for seduction with the maintenance of the child then becoming the duty of the maternal extended family. Maintenance can then also be claimed through the common law system.

195. The Maintenance Orders Enforcement Act (Cap 29:04) provides that every order of maintenance made by a common law court shall be enforceable in the same manner as if the order were for the payment of a civil debt, and any subordinate court may issue a writ of execution or decree of civil imprisonment for the purpose of enforcing a maintenance order. This Act provides that where any person fails to comply with the terms of a maintenance order, notice must be served on such a person calling upon him to make all payments through the clerk of the court.

196. A person who fails to make periodic payments of maintenance as stipulated in an order may be held liable to imprisonment for a year. The court also has the power to attach the wages of any person who fails to pay maintenance under any order, by issuing a garnishee order. However, failure to make payments will not be punished if this failure is due to lack of employment. Maintenance for the child can therefore be recovered through the provisions of the above-cited acts. This also applies to orders made under the Affiliation Act and Deserted Wives and Children Act.

197. Nevertheless, maintenance orders are plagued by enforcement problems. Many women sometimes travel long distances to magistrate courts at their own expense only to find that maintenance instalments have not been paid.

198. Many single mothers in Botswana are unaware they can claim support so they often do not make any claims against the absconding fathers. This reluctance is supported by other factors such as the limited value of the grants made by courts, the lengthy queues for payouts, and a superstitious belief that discussing children can lead to their deaths. Even where the women may be aware of the availability of maintenance, the procedure of seeking a declaration from the High Court for maintenance is onerous as they seldom understand the procedures or can afford professional legal assistance. In order to address this problem an NGO, Metlhaetsile Women's Information Centre, initiated a legal assistance programme to help women with insufficient means to pursue issues of child maintenance and other family matters. There also are many women with children from foreign-born fathers who have difficulty accessing maintenance when the father leaves the country.



**C. Children deprived of a family environment: article 20  
and periodic review of placement: article 25**

199. Provision is made for children deprived of a family environment under the Children's Act of Botswana. Such children are termed for purposes of the Act "children in need of care". A child in need of care is a child who:

- has been abandoned or is without any visible means of support;
- has no parent or guardian or whose parent or guardian is unfit to exercise proper control over the child;
- engages in any form of street trading, (unless the child has been deputized by his parents to help in the distribution of merchandise of a family concern);
- is in the custody of a person who has been convicted of committing an offence on a child;
- frequents the company of an immoral or violent person; or
- is otherwise living in circumstances calculated to cause or to conduce his seduction, corruption, or prostitution.

200. In such cases a social welfare officer or police officer may remove the child to "a place of safety" (s15 (4) Children's Act) and soon thereafter the child should be brought before a children's court. Once the court is satisfied, after holding an inquiry in private, that a child is in need of care it may order that the child be placed in the custody of a suitable foster parent, or be sent to a children's home or a school of industries, or be returned to his/her parent or guardian under the supervision of a social welfare officer.

201. Botswana currently has only one institution used as a place of safety which is the SOS Children's Village. SOS runs two children's villages in Tlokweng and Francistown. In cognizance of the service being provided by SOS, the Government makes annual grants to the institution. For the year 2001-2002 the grant was about P1 million. Hospitals assist in providing temporary custody while a suitable place is being sought in the form of a family that is deemed suitable or may provide the necessary safety. The statutory place of safety, the School of Industries at Molepolole, has only recently been completed and will hopefully be in operation by the end of 2001. Also by the end of 2001 the Mpule Kwelagobe Children's Centre will be open for reception of children from around the country and it will be run by Roman Catholic nuns.

202. MLG is currently considering alternative care regulations which will be used to regulate, among other services, foster families, parents of children in need of care through screening, educating, and regularly addressing placements. These regulations have been circulated to all ministries twice and comments incorporated where viable. They have been approved by Cabinet and have been sent to the Attorney-General's Chambers to be developed into regulations.

203. The Children's Act makes no provision for periodic review of placement although where the child has been placed under the supervision of a social welfare officer or in the care of a foster parent the social welfare officer may prepare a report to the Commissioner for Child Welfare during the period the child is under supervision and must do so upon termination of the supervision. Thus review of placement mechanisms is weak especially as social welfare officers are few in number and overburdened.

204. Social welfare officers in the local authorities often liaise with the SOS Children's Villages on whether the child should continue at the Children's Village or be allowed to join his/her family. The aim of social services is to rehabilitate children with their families wherever this is practical and safe for the children.

205. Botswana prisons have a negligible number of women prisoners who are mothers of young children. Where this happens, however, the children are allowed to stay with their mothers until they are 2 years of age. The women's prisons in Botswana do not generally have special maternity facilities as the numbers are often too small to justify their provision. There is one prison which has a wing for nursing mothers. As a matter of policy, nursing mothers do not engage in hard labour. The Government buys baby milk and other necessities. Family welfare educators and social welfare officers assist in the upkeep and welfare of the child. When the child reaches the age of 2, its mother is free to request any member of her family to take the child and keep it outside the prison. By 17 June 1999 there were 38 toddlers in Botswana prisons throughout the country. Where relatives are not available children are provided with alternative care arrangements, although these are minimal.

#### **D. Adoption: article 21**

206. Adoption of children in Botswana is governed by the Adoption of Children Act (Cap 28:01) in the common law courts and is also possible under customary law.

207. Under Common Law a Magistrate's Court makes an order for adoption and it is the duty of the court to satisfy itself that the provisions of the Act are met which include "that the proposed adoption will serve the interests and conduce to the welfare of the child" (s (4) (2) (c)). A child, for these purposes, is anyone up to the age of 19.

208. An order of adoption has the effect of conferring on the adopted child the surname of the adoptive parent unless provided to the contrary and deeming the child to be the legitimate child of the adoptive parents. It does not have the effect of entitling the adoptive child to inherit from the relatives of the adoptive parents who die intestate. The child maintains the right to inherit from his/her natural parents who die testate or intestate. Under section 14 of the Act adoption does not have the effect of outlawing marriage of the adoptive child where the marriage would not have been illegal had the adoption not taken place, nor of outlawing carnal intercourse where it would otherwise have been legal. This means that an adoptive parent and child can legally marry where the child is over 21, and an adoptive father can have consensual sexual intercourse with a girl over 16 years of age.

209. There are various detailed rules on eligibility for adoption which relate to the status and age differences between proposed adopters and the child. Basically there is a restriction on adoption for those who are separated without a judicial decree but otherwise any person can adopt, and married couples can adopt jointly provided they are at least 25 years of age. An adoptive parent must be at least 25 years older than the child where the child is above the age of 16 (unless the child is the offspring of the prospective adopter's spouse). There are other complex restrictions relating to age which are aimed at preventing adoption being used to exploit children by placing them in the role of a wife or husband rather than that of a child of the family.

210. Consent to adopt in the case of a child born in wedlock must be given by both parents and in the case of a child born out of wedlock by the mother. Many fathers of children born out of wedlock regard this exclusion as being discriminatory. It is in this regard, in contravention of the provisions of the Convention, which makes it the responsibility of both parents to look after and care for the child. The proposed amendment to the Adoption Act makes provision for the biological father to consent to adoption in line with certain conditions which identify him as a responsible person.

211. Rescission of an adoption order will be made in the following circumstances: (a) where consent was not properly given by a parent or guardian; (b) where the adoptive parent was induced by fraud, misrepresentation or error or where the child suffers from a mental disorder or defect which existed at the time the order was made; or (c) where adoption is to the detriment of the child.

212. Regarding intercountry adoption, the Adoption Act makes provision that a child adopted in Botswana may not be taken out of the country until a period of 12 months has elapsed from the date of adoption unless the Minister gives consent in writing (s10). If a prospective adoptive parent or the parent or guardian of any child gives or receives any "consideration" in respect of the adoption of a child then they shall be guilty of an offence. These provisions seek to discourage illicit transfer of children and child abduction.

213. The complex restrictions and the costly judicial procedure required by the court sometimes prevent couples from legally adopting the natural children of either one of them, and often result in "informal adoptions" which prejudice these children in matters of inheritance and other benefits.

214. Adoption rules and procedures as operative under the Adoption Act do not apply in Setswana customary law; as a result many Batswana do not fully appreciate the legal consequences of an adoption order. The general belief is that an adopted child is free to return to his/her natural parents at any time, and that the natural parent(s) can claim back their child, at any time. Under customary law a child could be "given" to a relative to bring up. A child could also be "given" to a couple that cannot have its own children.

215. The Government has finalized consultations on the review of the Adoption Act. The review will seek to amend, inter alia, provisions relating to persons qualified to adopt; issues of consent to adopt; removal of adopted children from Botswana. The review of this Act is at an advanced stage. A Cabinet Memorandum has been written for consideration by the authorities. After the memo, the approved review will be passed to the Attorney-General's Chambers for final drafting of a bill.

### **E. Illicit transfer and non-return of children: article 11**

216. It is an offence under section 175 of the Penal Code of Botswana to “forcibly or fraudulently take or entice a child away, or detain such child, or ... keep such child knowing it to have been so taken or enticed away or detained”. This offence attracts an imprisonment term not exceeding seven years.

217. Only 1 case of kidnapping and 11 cases of abduction were dealt with in 1999 according to the 1999 Annual Report of the Commissioner of Botswana Police. However only one case reached trial and the accused was acquitted. Another two trials were pending. It is hoped the alternative care regulations will provide mechanisms for prevention of the illicit transfer of children.

### **F. Abuse and neglect of children: articles 19 and 39**

218. Any parent or guardian of a child or any person having custody of a child who neglects, mistreats or exploits a child or allows or causes him/her to be neglected, mistreated or exploited is guilty of an offence according to section 11 of the Children’s Act. Neglect includes the unreasonable failure to provide for adequate food, clothing, housing, health and care of the child and exposing a child to conditions or circumstances likely to cause him/her physical, mental or psychological distress or damage. Any parent/guardian who causes or conduces to the seduction, abduction or prostitution of the child or the commission by the child of an immoral act is also deemed to be guilty of an offence under section 12 of the Children’s Act.

219. There were 18 criminal cases, taken under the Children’s Act, being dealt with by the police. Of these 4 were convicted in 1999 and 16 in 2000. In all cases the convicts were women.

220. The Penal Code covers other forms of abuse against children namely abduction of females for immoral purposes, abduction of persons under 16 years, indecent assault of young children, defilement of persons under 16 years of age, and unlawful carnal knowledge of children. These will be fully addressed under the chapter on sexual exploitation. It is important to note that a defence to a charge of defilement exists if the perpetrator believed the victim to be over 16 or to be his wife. The perpetrators of such offences are often responsible for the material support of those they abuse. Also it must be borne in mind that corporal punishment is regarded as an acceptable form of discipline at home and school, so it is rare for action to be taken in such cases.

221. In criminal cases where the child is a victim of abuse, the proceedings are held in camera to protect the identity of the child. Only authorized officials and the parents are allowed inside the courtroom and proceedings cannot be published which disclose the identity of the child (s24 of the Children’s Act and s9 of the High Court Act). Police and social workers work with the chiefs to ensure that cases in customary courts are held in camera.

222. Family violence is also widespread in Botswana and is often reported, but cases are frequently withdrawn before they reach the courts. In view of this, the Women's Affairs Department commissioned a study in 1998 on the socio-economic implications of violence against women. The report indicates that of the 444 victims of violence against women interviewed, 19.4 per cent (86) were aged between 12 and 15 and 28.4 per cent (126) were aged between 16 and 30. A distinction of those who are between 16 and 18 was not made.

223. One of the causes of this violence is early forced marriage of the girl children. This is prevalent among a few groups. Girls aged between 12 and 18 years are forced into these marriages, which they regard as a vicious form of violence. The justification for the practice is that this is culturally accepted. Young girls are forced into marrying someone who is not of their own choice and may be much older than themselves, or even be sick and dying. They are coerced into accepting this marriage by male relatives. If they refuse, they are socially ostracized, and deprived of material provisions by members of family. In extreme cases, girls are even forced to leave the household. On marriage, the girls are forced to leave school. When the relationship sours or the husband dies, they are left destitute, surviving on drought relief and temporary jobs. Some even resort to prostitution.

224. The Department of Information and Broadcasting, and the Botswana Police have embarked on a project to empower children with knowledge relating to children's rights. In this programme the police are given 30 minutes on radio for a quiz intended to sensitize children on their rights relating to sexually related offences and other matters. In addition the police have a crime prevention strategy which has three main campaigns against rape, defilement and violence against women. For further details see section on sexual exploitation below.

225. The Kagisano Women's Shelter Project is a pilot project that offers temporary refuge to women and their children aged up to 12 years who are battered or abused, and also offers individual and group counselling to residents and non-residents. The shelter is situated in Gaborone and it has a capacity of 20. It caters for people referred from all parts of Botswana. The shelter is dependent on funding from donors and Government through the Women's Affairs Department, and individual sponsors. Its major financier however is the Kagisano Society through Kagisong Centre. During 1998-1999 a total of 22 women and 14 children were admitted from May to December.

226. Metlhaetsile Women's Information Centre serves as a mouthpiece for women and girl children who are subjected to violence. This organization is based in the village of Mochudi, approximately 30 kilometres from Gaborone. However, it attends to all cases referred to it from any part of the country.

227. Childline Botswana offers a hotline and drop-in counselling service to children who have been abused or are being abused. The organization also plays a proactive role in educating the nation on issues of child abuse. Their workers go to schools to train teachers, pupils and parents. Childline has reported that corporal punishment is a major problem at home and in school. Their research has shown the incidence of reported child abuse is on the increase. Since 1991 they have dealt with a steady increase in cases: in 1998, 300 abuse cases; in 1999, 344 cases and in 2000, 449 cases. In 2000 these consisted of: emotional abuse 83; physical abuse 58; sexual abuse 35; neglect 150; interactional 40; truancy 9 and other 74.

228. Notwithstanding the existence of the above provisions, the occurrence of child abuse, both physical and sexual, is on the increase in Botswana. The Government is however giving this problem much attention by conducting educational workshops to equip young people with essential knowledge since most of the abuse is propagated by members of their families, teachers and religious leaders. However insufficient attention is paid to training and sensitizing teachers, social welfare officers, chiefs, and other people in positions of responsibility. It is reported that in some cases children's complaints have not been taken seriously or have been settled outside the formal criminal legal system therefore perpetrators have escaped justice.

## **VI. BASIC HEALTH AND WELFARE**

### **A. Children with disabilities: article 23**

229. Children with disabilities have encountered some discrimination over the years in that provision is not made for their welfare or for the protection and promotion of their rights. Family members and society generally viewed such children as a source of embarrassment and they were usually kept at home. This attitude is progressively changing but support for children with disabilities and their families has rested primarily on NGOs and community-based organizations, with some financial assistance from Government. These organizations are financially limited in their capacity and are located in the more populated and urban parts of the country. As a result a large proportion of children who are disabled, especially in the rural areas, do not benefit. The Government promotes community-based rehabilitation and integration of disabled children into society but often faces a problem of lack of resources to support these objectives.

230. The Government has formulated a National Policy on the Care of People with Disabilities. This policy outlines the national response to the demand for a coordinated delivery of services and care for people with disabilities in Botswana. The policy objective is to combat the incidence of disability and to promote the quality of life for people with disabilities. The policy charges the State with the responsibility to ensure that a system of care for people with disabilities is maintained and that the welfare of people with disabilities is recognized in development programmes in education, health, social, physical, economic and employment sectors. The roles and responsibilities of the various stakeholders include the provision of political leadership by the Office of the President, and support by mobilizing policy makers in various ministries in the provision of services to people with disabilities. The Ministry of Education is tasked with ensuring that special education is an integral part of formal and non-formal education. The Ministry of Health must continue the existing disability prevention services under the Primary Health Care and Hospital Programmes and to channel assistance to NGOs that are providing health-related services to people with disabilities. MLG ensures that any development plans and policies designed by local authorities have adequate provisions for people with disabilities. The Ministry of Labour and Home Affairs ensures that all policies, programmes and laws relating to women, youth, sports, culture and prisons give emphasis to disability care.

231. The Botswana Council for the Disabled for NGOs is a network of NGOs which promotes, and obtains funding for, organizations and associations for people with disabilities; monitors their activities and coordinates the activities of all NGOs providing rehabilitation to disabled people. It advocates the rights of people with disabilities.

232. The Ministry of Health has set up a unit called the Rehabilitation Services Division to oversee the interests of people with disabilities. Botswana is divided into districts and each district has a rehabilitation office to see to the needs of disabled people within that district. The offices have been furnished with facilities for disabled persons. These facilities include equipment for physiotherapy, wheelchairs and audio-visual equipment. The rehabilitation officers, who are mostly social workers, are not sufficient in number to cover all villages in Botswana, hence their placement at district and subdistrict level. There is concern that access to health care for people with disabilities is a problem due to cultural beliefs that may mean that the parents are not comfortable with bringing the child to the health centre.

233. Apart from State-run facilities there are a number of privately run NGO funded facilities which cater for the needs of the disabled. These institutions get substantial annual subsidies from the Government. These institutions include the Cheshire Foundation of Botswana, which provides intensive physiotherapy, occupational therapy, and speech therapy to people aged 5 to 15. Thuso Rehabilitation Centre provides services in physiotherapy, speech therapy, vocational training, and supply of technical aids and counselling to people of all ages from birth through adulthood. The Botswana Red Cross Society runs two rehabilitation centres, namely Tlamelong Rehabilitation Centre and Tshimologo Stimulation Centre.

234. Motswedi Rehabilitation Centre provides the following services: gross motor training, strengthening of weak muscles, correction and prevention of contractures, referrals for corrective surgery and orthopaedic appliances. These are provided to people from birth through adulthood. Camphill School is an institution for mentally and physically disabled children whose clients range in age from 7 to 15. It provides a primary school curriculum and daily living skills, and gross motor training.

235. Francistown Centre for Deaf Education is an institution for children with impaired hearing. The age range of the children is 6 to 18. The centre provides a primary school curriculum with daily living skills and communication instruction, which includes reading and sign language. Ramotswa Centre for Deaf Education is another centre, which provides similar services. The ages of the children range from 3 to 18.

236. The Sir Seretse Khama Memorial Fund for the Handicapped was established in 1980 in recognition of the first President of Botswana, Sir Seretse Khama. The fund considers requests from and on behalf of institutions, organizations and groups, but not from or for individuals. It also considers requests from institutions/organizations for counterpart contributions to externally funded projects.

237. Ten government primary schools in Botswana have special resource units. These units, run by special education teachers, are for children who are mentally retarded, emotionally disturbed, or who have learning disabilities. In addition to the above special resource units the Central Resource Centre has multidisciplinary procedures for children suspected of having learning difficulties, motor, visual or hearing problems, communication disorders, emotional/behavioural difficulties and other developmental problems. The centre also provides parental guidance and counselling services, Braille services and makes referrals of children to other facilities.

238. The Government is encouraging planning authorities to provide structures and facilities that will provide people with disabilities access to buildings, as per the Development Control Code of 1995. This Code stipulates the minimum design specifications for entrances, doors, ramps, staircases, and lifts for the disabled in all building developments. Further provision is made that parking with special access and dimensions be provided for every 20 parking spaces. Although the Government has drawn up the Development Control Code, some buildings still do not comply with the specifications.

**B. Survival and development: article 6, paragraph 2, and  
health and health services: article 24**

239. Data indicate that Botswana has progressed in all major indicators of the well-being of children and women over the last 30 years. This was attributed to the Primary Health Care strategy. The commitment of the Government of Botswana to undertake measures that promote survival and development of the child is premised on the effective utilization of primary health care which specifically targets child health improvement. Emphasis is placed on preventive, promotive, rehabilitative and curative health care. The strategy had been particularly effective and most indicators showed significant improvement. Tragically, however, Botswana has one of the fastest growing HIV infection rates and one of the highest HIV prevalences in the world, which has had a massive negative impact on the health of all sectors of society but especially children and women.

240. One of the other major challenges facing health-care delivery in Botswana is an acute staffing shortage. The country has seen a tremendous outflow of skilled medical staff, in particular doctors and nurses, to places like South Africa and the United Kingdom of Great Britain and Northern Ireland where better remuneration, working conditions and career prospects are offered. This shortage has resulted in services being provided less frequently, less efficiently or in local services having to be provided centrally. In order to deal with this crisis the Ministry of Health has upgraded all health science institutes by improving infrastructure and by sending students to medical schools abroad. This has improved intakes of nurses but as they undertake a four-year training period the benefits are not yet apparent in service delivery.

241. The infant mortality rate had declined dramatically but has recently increased as a result of the HIV/AIDS epidemic. In 1996 a Family Health Survey suggested that infant and under-5 mortality rates are highest amongst children born to women under 20, and in rural areas.

**Table 3**

**Child mortality<sup>a</sup>**

Year	Infant mortality rate (deaths per 1,000 live births)	Under-5 mortality rate (deaths per 1,000 live births)
1971	100	151
1981	71	109
1991	31	38
1997	41	49

<sup>a</sup> Census statistics for 1971, 1981, 1991. For 1997 the figures are taken from NDP8.



**Table 4**  
**Major child health indicators**

Indicators	1981	1991	1997
Underweight births (percentage of births below 2.5 kg. Source: Health Stats)	8.9	9.9	14.0
Full immunization (percentage of under 2's. Source: MOH EPI Data)	36	67	..
Measles immunization (percentage of under 1's. Source: MOH EPI Data)	63	87	79
Malnutrition rate (percentage of under 5's. Source: NNSS)	25	14.3	18.5
Diarrhoea episodes (per 10,000 children. Source: BFH)	..	1 792	2 886
Houses with safe water supply (percentage with access. Source: 1991 census data, HDP 2000)	..	90	..
Houses with safe sanitation (percentage with access. Source: 1991 census data, HDP 2000)	..	55	..

242. Incidents of diarrhoea are still high (average 4.2 attacks per year for infants and 3.3 events per year for children under age 5). The major causes are inadequate sanitation, malnutrition and feeding practices. Children under 5 get an average of 8-10 attacks per year with about 5 per cent leading to severe disease.

243. The Primary Health Care system aims to ensure that health services are taken close to the people through sensitization and mobilization. It is a decentralized system whereby local authorities are responsible for the provisions of clinics and staffing. Health-care facilities are good, but may be compromised by a shortage of staff and increasing workload as a result of the HIV/AIDS epidemic. Family welfare educators are not qualified to provide treatment or dispense medication, but they are known to do so in some rural areas. The Ministry of Local Government is responsible for the clinic infrastructure and the staff are employed by the DLGSM. The Ministry of Health is responsible for hospitals (primary, district and referral) and health-care service delivery, policy, standards, protocol and staffing norms. Some 88 per cent of Botswana were within a 15-kilometre radius from the nearest health facility in 1995. The majority, especially along the eastern side of the country, were within an 8-kilometre radius.

244. The health system has a well-established referral chain structured as follows. The number of facilities is accurate as of 1998.

**Table 5**  
**Health referral system<sup>a</sup>**

Facility	No.	Location
Mobile stops (Nurses, midwives)	740	Settlements, small villages
Health Posts (Nurses, family welfare educators)	330	Villages
Clinic (Nurses, midwives, Family welfare educators)	222	Villages
Primary Hospital (Physicians, nurses, midwives, allied health officers)	14	Big villages
District Hospital (District medical officer, nurses, midwives and health-related professionals)	16	District headquarters
Referral Hospital (Specialized professionals, pharmacists, nurses, midwives; includes 1 psychiatric hospital and 1 private hospital)	4	Towns

<sup>a</sup> *Source:* CSO Statistical Bulletin June 2000.

245. The consultation fee to receive medical treatment in government health facilities is only P2.00 and free medication is given. People registered as destitute, including children, receive free medical attention from government-owned facilities. There is also a private health-care system which consists of private hospitals and doctors.

246. The Family Health Division is responsible for the provision of the extended programme of immunizations; health promotion and educational services; maternal, child health, and family planning services; and the food and nutrition service.

247. The extended programme of immunizations for the protection of children against the six preventable childhood diseases of diphtheria, whooping cough, tetanus, poliomyelitis, measles and tuberculosis. There is a current emphasis on measles as there has been a drop in the uptake of this vaccination. Since 1990 Botswana has reported zero cases of polio and is making a concerted effort to be declared polio-free through an active surveillance and diagnosis programme. An effective programme for the management and treatment of acute diarrhoeal diseases and acute respiratory infections in children has also been put in place recently. This is called Integrated Management of Childhood Illnesses and aims to provide a holistic approach to child health whereby the child is examined in relation to any matter and a proactive inquiry into his/her general health should be made. This programme should have a positive impact on HIV/AIDS monitoring. The Ministry of Health is actively engaged in dialogue with traditional healers to ensure that health-care strategies are complementary.

248. The Family Health Division runs a schools' health programme which advises educationists about the curriculum and provides vaccinations in school. There is however a shortage of staff in this area which restricts proactive health education in schools. Other health promotion activities include anti-smoking and safe water, which are done through radio programmes and the encouragement of local communities in the active participation in health planning. This work overlaps with the work of other Ministry of Health divisions including those of community health and environmental health. In relation to reproductive and family health guidelines the policy emphasizes non-judgemental counselling for all those seeking advice and services, regardless of their age. The favoured mode of contraception is the condom, alone or in combination with other methods of contraception, as it offers some protection from HIV infection. Contraception advice responds to the urgent need to prevent teenage pregnancies and promote adolescent sexual health particularly amongst girls.

249. In relation to pregnancy the Division has adopted a safe motherhood programme which incorporates a programme for the prevention of mother-to-child transmission of HIV. Provision is made under the health-care system for most health facilities to be staffed by personnel trained in midwifery. This affords pregnant women the chance of being attended by trained personnel in properly equipped facilities. This notwithstanding, 14.8 per cent of women still prefer to give birth at home with the assistance of a relative or a traditional birth attendant or doctor. According to the 1996 Botswana Family Health Survey this is more likely to be the case for the least educated women and rural women (groups which may overlap). Botswana's maternal mortality rate was very high at the 1991 census, 326 per 100,000 live births, and is currently estimated to be between 200-300.

250. Through the Food and Nutrition Unit of the Family Health Division the Government has a national nutritional surveillance system for monitoring faltering child growth and food security amongst under 5's. This has a positive impact on infant and child morbidity and mortality. They also advise on feeding programmes for under 5's, pregnant women and lactating mothers at the local clinics as well as school meals, food for orphans through the Orphan Care Programme and food provision for destitute people. It has been noted that food supplements provided to children through clinics for children are being used at home for sick adults (and it is assumed that this is increasing with the onslaught of HIV/AIDS) and the Ministry of Health is seeking to tackle this problem.

### **The National Policy on HIV and AIDS 1993 and the Botswana HIV/AIDS Second Medium-Term Plan**

251. The Sentinel Surveillance Report 1999 of the AIDS/Sexually Transmitted Diseases Unit estimated that at least 28 per cent of the sexually active population (15-49) and 17 per cent of the general population were HIV-positive. The figures suggested by the Joint United Nations Programme on HIV/AIDS for the same year were that 36 per cent of the sexually active population were HIV-positive. The prevalence had more than doubled since 1992. In order to produce estimates antenatal clinics in Gaborone and Francistown are surveyed annually together with other selected sites. The rates of HIV prevalence and mother-to-child transmission suggest that one in eight children is born HIV-positive.

252. The groups who have the highest prevalence are women in their twenties. The Government estimated there would be 65,000 orphans under 15 by 2000 (unfortunately actual registration is around half that number). In Botswana the major challenges facing the HIV/AIDS crisis are poverty, gender inequality, migration patterns, mother-to-child transmission, a lack of appropriate sexual education, inappropriate traditional practices and erroneous traditional beliefs, unhelpful male attitudes, the enhanced social status relating to childbearing and the stigma attached to being infected. Gender inequality and the low social and economic status of women mean that young girls are vulnerable, submissive and lacking in knowledge in their relationships with older men. Such relationships are reportedly common and manifest themselves in a high teenage pregnancy rate. In addition violence levels against women and children are high, a factor which contributes to, and is a result of, an imbalance of power between men and women. The power imbalance contributes to the fact that women are more likely to be infected than men.

253. The National Policy on HIV/AIDS demonstrates that the Government recognizes that the HIV/AIDS epidemic is of crisis proportions. It provides for a multisectoral response to which individual agencies in all sectors are expected to contribute. It is coordinated by the National AIDS Council, chaired by the President, with the National AIDS Coordinating Agency (established in 2000) serving as secretariat. There is also a Technical and Advisory Committee. Before this time, HIV/AIDS interventions were coordinated by the AIDS/STD Unit within the Ministry of Health.

254. The Second Medium Term Plan (MTP II) 1997-2002 is the strategic plan which builds on the National HIV/AIDS Policy. The Ministry of Health through the AIDS/STD Unit provides leadership in its implementation. MTP II envisages District Multi-Sectoral AIDS Committees (DMSACs) and Village AIDS Committees. MTP II approach is multisectoral and decentralized, with research, monitoring and evaluation as central components. Its goals are to reduce HIV transmission by tackling: socio-economic and cultural factors, sexual and reproductive behaviour leading to unprotected sex, and biological factors such as the prevention of mother-to-child transmission. It also aims to reduce the impact of AIDS at the macro-economic, social, household, community and personal levels. The effectiveness of the DMSACs varies widely between districts, depending on the commitment and skills of the people involved. The Ministry of Local Government is seeking assistance from international donors to restructure and strengthen the implementation of HIV/AIDS campaigns at grass-roots level.

255. There is a recognition that further research is needed on the impact of HIV and AIDS on dependent groups including distressed children. Amongst the strategies which particularly relate to children are the following:

- Review all poverty alleviation measures;
- Reduce illiteracy;
- Enforce the rights of girls to alleviate gender inequalities;
- Incorporate children's rights into school counselling;
- Take measures to prevent coercive and violent sexual activity;

- Improve education on safer sexual practices amongst adolescents;
- Enable women and girls to negotiate safe sex;
- Make provision for orphans;
- Make provision for children of parents infected with HIV and ill with AIDS;
- Promote an ethical environment conducive to living positively with HIV/AIDS.

### **Orphan care**

256. The Government has developed an orphan care programme through the MLG, which is being guided by a Short Term Plan of Action on Care of Orphans, which covers the period 1999-2003. Through this plan the Government aims to achieve the following objectives: (a) respond to the immediate needs of orphans, i.e. food, clothing, education, shelter, protection and care; (b) identify mechanisms for supporting community-based responses to the orphan problem; and (c) develop a framework for guiding the long-term programme development for orphans.

257. The shortage of social workers and logistical support at local level has been a limiting factor in the implementation of the Orphan Care Programme and the timely registration of orphans and delivery of services has been affected. Recently a number of vehicles have been provided to resolve one major constraint.

258. The Orphan Care Food Basket budget has P34 million devoted to it and there is another P4 million for other requirements. The total budget was therefore P38 million for 2000-2001 with a similar amount provided for 2001-2002.

259. As one of the measures to deal with children in Botswana in light of the AIDS epidemic, there was a pilot project on care of orphans in Bobonong implemented by the Bobirwa local authority in partnership with donor organizations. This is a major village situated about 175 kilometres from Francistown, and is one of the hardest hit areas in Botswana. The objectives of this project were to establish a prototype for a district-based registry for orphans and a parallel district-based registry for prospective parents, and to develop nurturing, cost effective, affordable and culturally acceptable community-based models of orphan care. UNICEF provided technical support, including the orphan registration form and monitoring and evaluation tools. It also developed and maintained the district-based database on orphans. Unfortunately, as a result of personnel changes, the project became dormant, but not before it had contributed significantly to the development of the Government's Short Term Plan of Action for Orphans.

### **Prevention of mother-to-child transmission (of HIV) programme**

260. The Prevention of mother-to-child transmission (of HIV) (PMTCT) programme is the responsibility of the Family Health Division. It has a technical advisory committee and a national reference group. It aims to prevent the transmission of HIV from HIV-positive mothers to their children through breast milk and at birth. The Government, in conjunction with

UNAIDS and UNICEF as the implementing agency, embarked on a pilot programme in Gaborone and Francistown which the Government is seeking to expand to 10 districts by the end of 2001. This onerous task has commenced by ensuring that there are trained personnel in all districts who can, in turn, train staff in their districts in terms of the provisions of formula milk and the requisite drugs.

261. Under this programme women receive antenatal counselling and undergo voluntary testing; if they test HIV-positive then they are provided with preventive drug treatment (AZT) if they have consented to participate in the programme. The drug is administered from 34 weeks of pregnancy until the birth of the child. Thereafter it is given to the child in the form of syrup. After giving birth, mothers are encouraged not to breastfeed their babies to avoid transmission to the child and are supplied with formula milk.

262. The Government released P16.2 million for the pilot project in 1999 and committed itself to continuing this allocation thereafter. UNICEF is assisting by providing the mother's dose of the drug, while the Government is buying the drugs to be administered to the women during labour and to babies as well as providing a backup supply and also providing milk formula.

263. Challenges faced within the programme include: lack of staffing and resources; low take-up rate of testing and of preventive therapy if the mother tests positive; the stigma attached to HIV infection (using formula feed may be interpreted as an indication that the mother is HIV-positive); the lack of wider support systems in the community particularly the exclusion of fathers from the programme; and failure to use formula milk consistently (by intermittent breastfeeding) which can increase the risk of infection for children. These issues are being constantly monitored by the programme.

264. A problem which has been highlighted is the lack of sustained ongoing care for the mother once her infant is outside the PMTCT programme. In the long term such care is crucial to prevent the child being orphaned later in life.

### **Adolescent sexual and reproductive health**

265. As has been mentioned previously sexual activity amongst children is a major cause for concern. Its consequences include teenage pregnancy, high levels of STDs and HIV infection. These result from the problems teenagers experience in accessing adolescent health services despite the positive policy environment. Intergenerational sex between older men and younger women is increasing. During the 1991 census the number of teenage girls becoming pregnant was 19 per cent. According to the Sentinel Surveillance Survey 1999, 21.5 per cent of girls aged 15-19 attending antenatal clinic were testing HIV-positive. The Botswana Human Development Report 2000 concludes that in the age group 0-14 girls are twice as likely as boys to be HIV-positive and three times as likely in the age group 15-29. Teenage pregnancy increases the school dropout rate for girls leading to lower educational achievement, which ultimately exacerbates poverty levels and is associated with increased maternal and child morbidity in Botswana.

266. In order to tackle this problem in 2000 the Government in conjunction with three United Nations agencies and BOFWA began piloting four models of adolescent-friendly sexual and reproductive health services. These were to be evaluated in 2001 to decide upon how to expand nationally. It is felt that implementation has been slow because of bureaucratic obstacles and lack of support for voluntary peer counsellors.

267. The Department of Culture and Youth is aiming to establish multipurpose youth centres to further assist in providing youth-friendly clinics and counselling centres. These will be modelled according to the outcome of the pilot programmes and hopefully these too will contribute to the fight against AIDS and teenage pregnancies by providing a conducive environment where youth can air their problems. The AIDS/STD Unit in collaboration with BNYC has already embarked on countrywide sensitization programmes on AIDS.

268. BOFWA provides integrated sexual and reproductive health and education and services. YWCA and Peer Approach to Counselling by Teenagers, seek to empower adolescents/teenagers to make informed decisions on sexual and reproductive health and HIV/AIDS. Population Services International promotes condom use amongst young people through social marketing approaches. The Dipalana Project educates young people in school to prevent teenage pregnancies, supports pregnant schoolgirls so they can continue their education while at home, and helps minimize confinement periods and to return to school by establishing day-care centres near schools so mothers can breastfeed their babies during recesses.

269. A lot of sensitization has taken place about the dangers of teenage pregnancies and HIV/AIDS. Parents, however, seem to prefer that somebody else talks to their children. To address this issue the Ministry of Education has integrated family life/sexual health education into the new primary and secondary school syllabuses. These syllabuses are not yet fully operational as they have not been introduced at levels of schooling and where they have, an insufficient number of teachers have been trained.

### **C. Social security: articles 26 and 18**

270. Government through local authorities has put in place a programme for the sustenance of destitute persons and their dependants. The National Policy on Destitutes defines a destitute person as: an individual without assets; a person who is physically or mentally incapable of working due to old age or a handicap; a minor child or children whose parent(s) have died or deserted the family or are not supporting his family; or an individual who is rendered helpless due to a natural disaster or temporary hardship. Of significance therefore is the inclusion of minor children in the classes of destitution.

271. The Social Welfare Division under MLG provides the destitute allowance and destitute persons are offered a monthly food basket to the value of P90.28 in rural areas and P67.78 in urban areas. Children are registered for this assistance if they are found to be needy.

272. Beneficiaries of the National Policy on Destitutes are provided with food, toiletries, medical care and shelter when the need arises. They are exempted from payment of service levies, taxes, water and street licences. Funeral expenses are also covered. Additionally, the Government makes provision for children whose parents are registered as destitute to attend school.

273. It is said to be relatively difficult to register as destitute and that only the very poorest will qualify. In addition the shortage of social welfare officers creates delays in registration and may discourage people from doing so altogether. Furthermore, elderly people who have limited pension provision are caring for an increasing number of orphans without necessarily getting the benefit of the destitute programme. Outreach work should be done to encourage registration.

## **VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES**

### **A. Education: article 28**

274. The Government of Botswana considers education a basic component of human development. NDP 8 lists amongst its objectives: (a) to increase access to education and training opportunities through both formal institutions and out-of-school means and (b) to place emphasis on vocational training. To these ends and to improve the skilled workforce of Botswana the Government developed a Revised National Policy on Education (RNPE) in 1994.

275. Basic education is free but not compulsory at primary and secondary school levels. The Government has, however, introduced fees for non-Batswana and is considering extending cost recovery measures to all citizens of Botswana (it is very likely that refugees will be excluded from the obligations to school fees). The RNPE provides for seven years of primary education (Standards 1-7) starting not earlier than age 6, three years of junior secondary (Forms 1-3) and two years of senior secondary (Forms 4-5) education. The first 10 years form the period of basic education which all children of school going age have a right to enjoy. The Constitution of Botswana allows for the deprivation of a child's liberty for the benefit of their education or welfare.

276. The RNPE provides that between ages 6-10 children may start primary school. Those who do not commence schooling until they are 10 may opt for non-formal education and can then rejoin the secondary school system. If the student is going to be older than 19 when they finish secondary schools then they should go to tertiary schools instead. In relation to Remote Area Dwellers there is exemption from this rule.

277. The aim of the Education Policy is to have a maximum class size of 22 pupils. In terms of education participation rates the Government of Botswana has always been concerned with the missing 10-15 per cent which is generally regarded as the proportion of children not attending school. Just under one third of students who begin school complete Form 6.

### **Girls' education**

278. There has been a reasonably well-developed system of education whereby both boys and girls have equal access to education although 1998 Education statistics show that girls tend to drop out due to pregnancy. This accounted for 3.1 per cent of dropouts of primary school (212 out of 6,942) and 39 per cent of those dropping out of secondary school (1,282 out of 3,287).



279. Education Policy previously did not allow a pregnant girl to continue with her schooling. The policy was that a girl child who dropped out of school due to pregnancy must stay away from school for one complete year and that if she were to return to school it ought to be other than the school she was attending prior to the pregnancy. This policy did not encourage the girl child to return to school. The new Education Policy now provides for the girl to go on leave for 84 days and return to the same school.

280. A pilot project funded by UNICEF for pregnant schoolgirls is currently being conducted at Pekenene Community Junior Secondary School in Mahalapye, where schoolgirls who have babies will attend school while their babies are taken care of in a nearby day-care centre. It is anticipated that the existence of guidance counsellors in school will particularly assist these girls.

**Table 6**  
**Education indicators<sup>a</sup>**

Indicator	1999 %	1997 %	1998 %
Pupil-teacher ratio	..	28	28
Illiteracy - adult	..	25.6	..
Net enrolment ratio - ages 6-12	88.5	89.2	90.3
Net enrolment ratio - ages 7-13	97.9	98.4	98.6
Progression rate (Standard 1 to Form 1 as a percentage of Standard 1 entrants)	78.0	82.1	..
Progression rate (Standard 1 to Form 4 as a percentage of Standard 1 entrants)	30.1	31.6	..

<sup>a</sup> *Source:* Ministry of Education. Except literacy, source: Literacy Survey.

### **Education for children in remote areas**

281. 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 problem of walking long distances to schools. Such children are also often confronted with the difficulty of being unable to speak the languages used in school, namely Setswana or English. This is because many children in these groups speak a different language at home. There is one group of citizens who do not allow their children to participate in education.

282. The Government, through the Remote Area Dweller Programme, 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 at weekends as they are often poor and some distance away. This can result in high desertion rates (81.5 per cent of dropouts from primary education are deserters and drop-out rates are higher in Remote Area Dweller areas). The Government is piloting schools with 1-2 teachers to assist with this problem.

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

284. 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 any special training for these posts. There is, as a result, a high turnover of staff in these areas and low staff morale which impacts negatively on the education of children.

### **Education for children with disabilities**

285. The development of special education in Botswana can be traced back to 1969 when the Dutch Reformed Church established the first resource centre in Mochudi at Linchwe Primary School for blind children. In the 1970s two more schools were established, namely Rankoromane Camphill Community Special School for children with mental and physical impairments in Otse and Ramotswa Centre for Deaf Education. Another centre for deaf education has been established in Francistown, in the Northern Part of Botswana. Credit must be given to the NGOs which started and are running centres for children who require special education. Government however makes annual subventions to these centres.

286. To date there are 11 units for the mentally and physically handicapped, 3 resource classes for the blind, and 2 units for the deaf. Ramotswa Community Junior Secondary School has a special education unit catering for 39 pupils who are hearing-impaired. Two hostels have been built to accommodate these pupils. Some children with other serious disabilities have been sent to institutions outside Botswana. Currently 17 children are receiving special training in South Africa.

287. The Ministry of Education further intends to absorb children with learning disabilities into the mainstream educational process. The Revised Policy on Education recognizes that the extent of some children's disabilities may be such that they cannot be properly catered for in mainstream education and therefore provides that these children must be educated outside Botswana at government expense. However there is need to adequately prepare teachers to enable them to provide appropriate and effective support for the students. The Ministry has thus come up with a training plan that includes training for special education. There are now four teachers who are undergoing training abroad, and six more are to be sent to the United Kingdom for training. The Ministry also provides in-service training on special education.

288. It is felt that education for children with disabilities needs to be strengthened to prevent discrimination. To this end Braille exams are provided and schools are being modernized to improve access for children with disabilities.

### **Pre-school education**

289. In its commitment to providing education the Government recognizes pre-primary education as an important component of basic education. Although the Government has not committed itself to universal provision of pre-primary education, it continues to provide an enabling environment to NGOs, churches and individuals that provide this level of education. There is a permanent coordinating capacity through the pre-school unit of the Ministry of Education, which recognizes the importance of affording education to children of the minority groups such as Remote Area Dwellers. The programmes are geared towards the improvement of early childhood programmes in remote areas.

290. Presently pre-school education is provided mainly by private individuals and organizations through the day-care programme. Access is limited to about 7 per cent of the population aged 3-6. The curriculum is not standardized and the training of teachers is done outside the formal teacher training programmes. Further, the National Policy on Day Care Centres which guides pre-school education is out of date in many respects and is under review. A report was completed in 1999 and is in the process of being prepared for adoption.

### **Corporal punishment**

291. In the Education Act (Corporal Punishment) Regulations, provision is made that corporal punishment on a pupil at any school can only be administered by the headmaster or another teacher in the presence of the headmaster. Furthermore, no instrument of punishment other than a light cane shall be used; and no punishment shall exceed 10 strokes with the cane; no male teacher may inflict corporal punishment upon any girl whom he has grounds for believing is under the age of 10 years. The situation with the secondary schools is that no male teacher except the headmaster may inflict punishment upon a girl, and no punishment shall exceed five strokes.

292. To ensure that the corporal punishment regulations are adhered to the Ministry of Education has introduced a "Punishment Book" at every school. All acts of punishment should be recorded in this book and it should reflect the type of offence committed by the pupil, type of punishment, date when administered, the teacher administering it, name of the child, the number of strokes and the way they were administered.

293. In essence, corporal punishment can only be administered by the headmaster or someone authorized by the headmaster. Although the Ministry has received few complaints relating to corporal punishment the reality is that a lot of the conditions stipulated above are flouted and that teachers will administer corporal punishment outside of these rules. This has led to numerous complaints by children to the NGO Childline, but it is not clear how often these are taken seriously.

### **B. Aims of education: article 29**

294. RNPE has, as its objectives:

- To raise educational standards at all levels;
- To emphasize science and technology;
- To make further education and training more relevant and more available;
- To improve partnership between school and community;
- To provide lifelong education to all sections of the population;
- To assume more effective control of the examination mechanism in order to ensure that the broad objectives of the curriculum are realized; and
- To achieve efficiency in educational development.

295. RNPE led to a reinterpretation of the goals and objectives of basic education into aims from which subject aims and curricula could be developed. These are based on the assumption that education is a fundamental human right which promotes the all-round development of the individual; fosters intellectual growth and creativity; enables citizens to reach their full potential; develops moral, ethical and social values, cultural identity; self-esteem and good citizenship, enables citizens to participate actively to develop the democracy of Botswana and prepare them for life in the twenty-first century. The basic education is aimed at providing a sound pre-vocational preparation and the ability to optimize career choices. It also provides for guidance and counselling for pupils throughout their schooling.

296. The Ministry of Education has a curriculum development and evaluation division which has developed curriculum blueprints for all levels of education. So far only the junior secondary element has been introduced in practice. Traditionally schools have been seen as places where discipline is strict and the teachers' authority is unquestioned and this is reflected in the prevalence of corporal punishment.

297. Teachers are currently being trained to enable them to teach the new curriculum which has introduced new subjects such as moral education and guidance and counselling to schools. In addition old syllabuses for subjects which remain in the curriculum have been revised. Botswana has employed a number of expatriate teacher trainers to work in teacher-training colleges to enhance the workforce and make up for deficits in skills and subject areas. Difficulties may be faced with the introduction of the new curricula as older teachers are not familiar with them and will need ongoing training.

298. With regard to this strategy, the Ministry of Education initiated a "job shadowing programme". Job shadowing is a form of work-based learning where students visit a workplace and shadow a person. They observe what the persons do and ask them questions about their job. On realizing its usefulness, UNICEF and Gaborone Rotary Club lent their support to the project. It is currently piloted in selected schools in Gaborone. The purpose is to provide students with

an opportunity to learn firsthand about the world of work. The job shadowing experience provides students with an opportunity to explore specific jobs, careers or industry sectors that might be of interest to them. It also exposes students to the realities and demands of the workplace and the expectations of the employer. It must be noted that job shadowing is part of the larger, ongoing career guidance programme that is run in secondary schools.

299. There is need for vocational schools to develop fully fledged guidance and counselling programmes to help ensure that students receive adequate career counselling to prepare them for challenges posed by the world of work.

300. Although Government has aimed to make sure that there are schools in every district to provide primary and secondary level education, it is fully aware that not all these 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 Government to run pilot out-of-school centres developed through action, research and evaluation. At elementary level a nationwide distance education study centre is being established.

### **C. Leisure, recreational and cultural activities: article 31**

301. Cultural practice is that children are given time to play with their siblings and friends, to rest and to participate in leisure activities such as sport and dance.

302. In the basic education programme physical education, art, music, a third language, religious education, home economics or business studies form part of the optional curriculum of which two or three must be chosen by the student.

303. Botswana has a rich and diverse cultural heritage which the Department of Youth and Culture has a responsibility for preserving and promoting. It also promotes sports and the performing arts which it does through organizing national performing arts festivals in different districts celebrating cultural diversity and providing financial support to independent, non-governmental projects for traditional dance, theatre and the arts. Costumes, musical instruments and sports equipment are provided. Many children and youth participate in these programmes although there is not a specific budget allocated to children's groups.

304. Botswana National Museum is the responsibility of the Department of National Museum, Monuments and Art Gallery in the Ministry of Labour and Home Affairs. It is based in Gaborone and conducts educational tours for children involving different activities designed to enhance children's skills in writing, research and critical thinking. It also has a variety of other activities aimed at and including children.

305. The Museum has a mobile museum extension programme for schools and local communities. The main aim of this programme is to educate schoolchildren about the people of Botswana and the 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. The programme is conducted in Setswana and English and consists of lectures, introductions to museum exhibits and traditional performances in the form of traditional dance by children and adult groups, poems and oral history of villages by elders. The Museum spends P60,000 annually on the mobile unit.

306. The Museum also stages 12-17 temporary exhibitions per year which are well attended by school parties. In 2001 a new museum will open in the Tsodilo area there will be an exhibition to celebrate International Museums Day. The art division of the Museum intends to link the two events working with children from SOS Children's Village to produce artwork in the form of wall hangings for the Tsodilo museum which will form part of the backdrop when the President makes his opening speech.

307. The Museum also holds an annual National Children's Arts Festival which is open to children aged 18 and under and designed to complement the school curriculum. It is targeted at all children throughout Botswana, including schools in remote areas, and aims to cultivate and develop talent. It is a three-day mini-festival of performing arts including traditional dance, drama and music. The art exhibition and prize-giving is a key part of the festival. The Museum regards this event as one of its most important events.

308. In July 2001 there was a Children's Art exhibition organized in partnership with DeBeers Diamond Company which was funding artists from the Kuru Development Trust to hold painting workshops in schools in the Ghanzi and D'Kar area. The work was displayed at the exhibition.

## **VIII. SPECIAL PROTECTION MEASURES**

### **A. Children in situations of emergency**

#### **1. Refugee children: article 22**

309. Botswana's stable political environment has over the years attracted many asylum-seekers. The result is that the majority of the asylum-seekers currently in Botswana are from neighbouring States, in particular Namibia and Angola.

310. However, in fulfilment of international obligations, specifically under the Convention relating to the Status of Refugees of 28 July 1951 and the OAU Convention of 10 September 1969 governing the specific aspects of refugee problems in Africa, Botswana has had to ensure that refugees within her borders are afforded the bare necessities. The Refugees (Recognition and Control) Act (Cap 25:01) governs matters relating to refugees. This Act provides for the recognition and control of certain political refugees, and prevents in certain circumstances their removal from Botswana. The country enforces the principle of first country of asylum, which means that asylum-seekers from further afield such as Ethiopia and Somalia tend to be refused refugee status. UNHCR has proposed amendments to the Act.

311. It must be pointed out however that the Act does not make any specific reference to children. It is apparent that in practice children's claims for refugee status is attached to that of a parent, guardian, older sibling or "foster parent" designated for the purpose by the authorities. There are no separate systems in place for unaccompanied children or for family tracing other than through the UNHCR system.

312. Botswana has set up a refugee settlement at Dukwi, which is approximately 170 kilometres from Francistown, the second largest city. Numbers in the settlement vary but were about 3,500-3,600 in April 2001, representing 16 nationalities. Some accommodation is provided in two-roomed houses but the majority live in tents provided by UNHCR. The settlement is run by a Commander who is employed by the Office of the President. The Botswana Council for Refugees employs other essential staff including a social worker.

313. Some of these refugees have been in the settlement for as long as five years. The people living at this settlement are those seeking refugee status, those who have been granted status and those who have been denied (about 500 as of April 2001). Once refugee status has been granted, refugees can live and work legally anywhere in Botswana. However few tend to do so because of difficulties obtaining employment due to lack of skills, language barriers and competition from Botswana citizens. To deal with this problem UNHCR is establishing income generation schemes to finance group enterprise through microcredit loans and provide professional advice and assistance on business planning.

314. There is a well-established food supply system which makes some attempt to cater for variation in diet. Refugees are also supplied with basic commodities such as cooking oil, paraffin, toiletries, and seeds for horticulture. They are not given money or clothing and some complain that the food ration is insufficient. Horticulture and poultry farming is hindered by lack of maintenance of the water supply and lack of electricity which result from the years when the settlement fell into disrepair when few refugees were in the country.

315. At the time the settlement was established the UNHCR established a primary school, which was later handed over to the local authority. The primary school also caters for the small local population and the children of the refugee settlement staff. The enrolment of the children at this school in 1998 was 80 pupils made up of mostly Angolans who were staying in Dukwi. By February 1999 the enrolment had shot up to 156, the majority of the children being Namibians and by April 2001 the number was 412. An existing pre-school has recently been reopened by UNHCR to cater for the influx of refugees.

316. There is a secondary school on the settlement which is run by the Botswana Council for Refugees. In April 2001 it had 140 pupils. Pupils who do well tend to be taken out of this school and sent to the government secondary school in the nearby settlement. UNHCR has recently commenced a scholarship scheme to enable students to further their education outside the settlement in vocational and academic subjects. Thirty-four students had benefited from this by April 2001.

317. Classes in school are made up of children who speak several different languages so teachers encounter challenges in delivering the curriculum. In an attempt to cater for this problem, teachers are sourced from among the refugees themselves although the fact that there are 16 nationalities represented makes this a difficult challenge. Poor attendance and high drop-out rates are also reported to be a problem in both schools. In order to address these problems refugees have been sourced from the settlement to assist with the teaching.

318. There is a health clinic on the settlement which also services the local community. The quality of its service delivery to the refugees is compromised by lack of adequate interpreters and understaffing. This is particularly problematic in relation to advice about the PMTCT

programme and other matters which depend upon strict confidentiality. The result is that maternal and child health services and HIV/AIDS prevention and awareness mechanisms are inadequate.

319. Other problems faced by the refugees include the failure to implement the home-based care programme which requires social workers to deliver extra food rations to bedridden patients, inadequate counselling facilities and leisure and recreational activities. The crime rate is not reported to be high although there have been arrests on the settlement due to protests by asylum-seekers who have been refused refugee status.

## **2. Children in armed conflict: article 38**

320. As already stated in the previous section, Botswana has enjoyed a peaceful atmosphere since its independence. There is no military conscription and the age at which a person can join the army or police is 18 years, which is in line with the provisions of the Convention on the Rights of the Child.

321. Botswana ratified the Rome Statute of the International Criminal Court on 8 September 2000 and acceded to the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field on 10 December 1976. It also acceded to Protocols I and II to the Geneva Convention on 23 May 1979. These have been incorporated into Botswana legislation (CAP 39:03).

## **3. The administration of juvenile justice: article 40**

322. A child in conflict with the law is entitled to the constitutional safeguards of secure protection by the law (section 10 of the Constitution). This provides that every person charged with a criminal offence shall be afforded a fair trial within a reasonable time by an independent and impartial court established by law. Furthermore, provision is made that every person charged with a criminal offence shall be presumed to be innocent until proven guilty, and shall be informed as soon as reasonably practicable of the charges against him/her in a language he understands. He/she must be given adequate facilities and time to prepare his defence, and a right to legal representation at his own expense and a right to examine witnesses. A person also has the right to be informed of his/her right of legal representation.<sup>23</sup> However there is no scheme for providing free legal representation or advice to children and it is reported that very few juveniles are assisted by a lawyer in practice.

323. The right to an interpreter was recently reinforced in the case of *Ditshwanelo, Maauwe and Motswetla v. Attorney General and Commissioner of Prisons and Rehabilitation*.<sup>24</sup>

324. The Children's Act, the Penal Code and the Criminal Procedure and Evidence Act are principal legal instruments that make specific provisions on how to deal with children in conflict with the law. Criminal liability starts at the age of 8. For children aged between 8 and 14, the State bears the burden of proving that a child charged with committing an offence did so knowingly.



325. The Children's Act establishes Juvenile Courts for children between 7 and 18 who are tried for criminal offences. A Juvenile Court is defined as a magistrates' court or a customary court sitting for the purpose of hearing a charge against a juvenile or exercising any other jurisdiction conferred on a Juvenile Court by the Act. The Juvenile Court sits in an informal setting, in a room other than that in which an ordinary court sits, and in camera. The privacy of the juvenile is further protected in that no person is allowed to be present in a Juvenile Court other than officers and members of the court, the juvenile concerned and his parents or guardian, the social welfare officer concerned, and any such other persons as the court may authorize to be present (section 22 and 24). Section 25 (1) of the Children's Act also protects the privacy of the juvenile by criminalizing the publication of the name and address of the juvenile, or the name or address of the school that a juvenile is attending or a photograph of the juvenile, without the permission of the court. The offence is punishable by a fine of P100 or a term of imprisonment. Generally both the official and the private media abide by this provision.

326. There is provision in the Act for cases against children under the age of 18 to be brought to the attention of the district commissioner of the district where the offence was committed who can initiate inquiries by a probation officer into their background if he/she is satisfied prima facie that an offence has been committed (s27). It is then open to the Commissioner to deal with the child under s17 of the Act which relates to children in need of care or to refer him/her to the juvenile court. This provision has several consequences: under section 17 a child can be determined to be "in need of care" and as a result sent to a school of industry or children's home or placed under the supervision of a social worker. If the child does not obey he/she can be guilty of an offence which can be punishable by a caution or by corporal punishment (s20).

327. Cases involving children under 18 can also be heard by the High Court which does not sit as a juvenile court and is therefore not bound by the provisions of the Act. S9 of the High Court Act gives discretion to the court to exclude people from a hearing, but it is not mandatory. The magistrates' courts Act lays down a list of matters which must be referred to the High Court. This is generally based on offences which attract long prison sentences.

328. A child or juvenile dissatisfied with any decision or order of a juvenile court may appeal or make an application for a review to the High Court, in terms of section 30 of the Children's Act.

**Sentencing: article 37 (a)**

329. There is a statutory requirement that the juvenile court takes into account the general conduct, home environment, school records and medical history of a child or juvenile when sentencing those found guilty. This would normally be reported on by someone performing the role of a probation officer who would make recommendations as to the appropriate sentence in a social enquiry report which is prepared in all cases. A juvenile court is given the power to dismiss the charges against the juvenile or to place the juvenile offender on probation for a period of not less than six months or more than three years. Alternatively the court may send the offender to a school of industry for a period not exceeding three years or until he/she attains the age of 21 years (s28).

330. Some magistrates have complained that some of the social enquiry reports are inadequate and social workers have complained that courts do not give much weight to their reports. There is thus a need for training and sensitization of both parties to ensure the spirit of the Act is maintained. In-service courses for social workers have been conducted to address this problem. Another constraint is that social workers' reports take longer to be prepared because of the acute shortage of resources in terms of qualified personnel and transport, which would facilitate the speedy preparation of the report. Not all villages in Botswana have a social worker due to the lack of qualified human resources.

331. Presently juvenile criminals placed on probation are put under the care of social welfare officers who engage them in rehabilitative projects such as carpentry, pottery, knitting and poultry farming. Resources are however not always available for such projects.

332. In passing sentence any court should, in terms of the law, take into account the age of the offender. For instance section 304 of the Criminal Procedure and Evidence Act provides that any court in which a person under the age of 18 has been convicted may instead of imposing a punishment of imprisonment order that he be placed in the custody of a suitable person. In terms of section 27 (1) of the Penal Code, a sentence of imprisonment cannot be passed on any person under the age of 14 years.

333. The High Court has powers to imprison. However all courts send children aged between 14-18 to prison, as reflected in the Annual Reports of the Prisons Commissioner, partly because of the lack of alternatives.

334. A boy (under 18) convicted of an offence punishable with imprisonment may be ordered to undergo corporal punishment in substitution for such imprisonment. The Penal Code provides that no corporal punishment shall be imposed on females. Infliction of corporal punishment must conform to the provisions of the Criminal Procedure and Evidence Act, and the parent/guardian of the child has a right to be present when such corporal punishment is administered, as per section 305 thereof. In *Clover Petrus and Ano v. S*,<sup>25</sup> the court pronounced that corporal punishment per se is not inhuman and degrading punishment, and that it is the administration of such punishment in instalments that is inhuman and degrading. It can be given in addition to or instead of a prison sentence.

335. The death penalty cannot be imposed on any person below the age of 18 years. However, a child may be detained at the President's pleasure at such a place and for such a period that the President may deem reasonable, in lieu of the death penalty (section 26 of the Penal Code).

**Table 7**

**Child offenders - Penal Code and non-Penal Code offences  
convicted in Magistrates' (Juvenile) and High Courts**

	Total offences committed by children (under 18)		
	Male	Female	Total
2000	854	129	983
1999	975	233	1 208
1998	723	76	799

**4. Children deprived of their liberty: article 37 and physical and psychological recovery and social reintegration of the child: article 39**

336. The Constitution provides that no person should be deprived of his/her liberty except in a number of circumstances listed in section 5. These include (but are not restricted to) serving a sentence imposed by a court; arrest on being suspected of committing or being about to commit a criminal offence; being of unsound mind or being a vagrant; and in the case of under-18-year-olds detention is allowed for their “education or welfare” (s5 (1) (f)).

337. When anyone is arrested they can be held in custody by the police for 48 hours before seeking a warrant for further detention from a magistrates’ court or a district commissioner (Criminal Procedure and Evidence Act). Special arrangements are made for children who are arrested, including being confined in separate cells from adults and being given access to their parents and legal counsel. These instructions are detailed in the Police Act, police circulars and standing orders.

338. In determining whether to grant bail in any particular case, age is a factor which should be taken into account to decide whether pre-trial detention is appropriate (Part IX Criminal Procedure and Evidence Act). As a result children tend to be treated more leniently than adults.

339. As detailed above the Children’s Act has a rehabilitative approach to sentencing in juvenile courts, which dictates that those under 18 should not be sent to prison. However in practice customary courts, magistrates’ courts and high courts do send children to prison. All courts clearly do so as is evident from the records of the total populations of girls and boys recorded as being incarcerated (see table below).

**Table 8**

**Penalties imposed on child offenders by magistrates’ and high courts**

	Imprisoned		Fined		Other	
	Male	Female	Male	Female	Male	Female
2000	33	9	547	115	274	5
1999	58	5	648	212	269	16
1998	78	7	369	55	276	14

340. The offences for which children (under 18) received a penalty of imprisonment in 2000 were: indecent assault on a female (one male), defilement (two males), rape and attempted rape (two males), common assault (two males, one female), assault causing actual bodily harm (two males, two females), concealing birth (one female), resisting arrest (one male), unlawful wounding (two males, one female), burglary (two males), breaking and entering (one male, two females), robbery (one female), store burglary (five males), theft (six males), arson (one female), malicious damage (one male), stock theft (two males), and motor vehicle theft (four males).

341. None of the prisons separate convicted prisoners from prisoners awaiting trial who have been denied bail.

342. Currently there is a prison for boys in Gaborone where conditions are poor and overcrowded. It is due to be replaced by a separate structure in 2002. The boys who are admitted to this prison are generally aged between 16 years and 21 years although boys as young as 14 or 15 are imprisoned there if sentenced. This prison was put in place to avoid a situation whereby young offenders mixed with adult, hard-core criminals. Girls are held in prisons for women.

**Table 9**

**Children in prison<sup>a</sup>**

	Boys		Girls	
	1998	1999	1998	1999
Under 16	232	11	5	-
16-20	815	449	58	68

<sup>a</sup> *Source:* Botswana Prisons and Rehabilitation Service Annual Reports, 1998, 1999.

343. In terms of rehabilitative activities in prisons there are no special arrangements for those under 18. Prisons employ social workers, health workers, church ministers and adult educators although these individuals are overstretched due to the overcrowded conditions of the prisons. The prison service offers extramural labour to all inmates who consent and whose behaviour is acceptable. They live in the community and are employed by government authorities. There is also a variety of vocational training courses offered at the boys' prison such as brick moulding, carpentry and joinery, blacksmithing and horticulture. There are other rehabilitative activities including literacy education, counselling and religious services which are available to all offenders. The numbers who can participate in such programmes are limited.

344. In relation to complaints about prison conditions or treatment the prisoners are obliged to approach the prison staff or the prison social worker. There is, in addition a prison visiting committee in each district which reports to the Minister for Labour and Home Affairs and the ombudsman, who has readily investigated cases relating to prison conditions. Prison officers do not receive any special training for dealing with those under 18 or in human rights.

345. It is open to juveniles court and children's courts to send children to the School of Industries (under s34 (d) Children's Act). There is currently no functioning school of industry in Botswana but one is due to be opened in late 2001. It will be the only such facility and will have a capacity of a hundred residents. It will only admit male offenders in the first phase although females will be catered for in the second phase. Logistical problems relating to acquisition of land and preparations of plans contributed to a delay in the construction of the school. Its purpose is to protect the public, rehabilitate young offenders and to equip them with skills.

**B. Children in situations of exploitation, including physical and psychological recovery and social reintegration**

**1. Economic exploitation: article 32**

346. Economic exploitation of children is a grave concern to the Government. As a result, and in furtherance of its international obligations under several International Labour Organization conventions that prohibit this practice, Botswana is committed to ensuring that all the children in Botswana are afforded protection through various legislative and administrative measures.

347. The Employment Act (Cap 47:01) protects children against exploitation and hazardous employment. The Act defines a child as a person under age 15, and a young person as a person who has attained the age of 15 years but is under age 18.

348. A child who has attained the age of 14 years and is not attending school may be employed doing light work not harmful to his health and development by a member of his/her family and if such work is of a character approved by the Commissioner of Labour. Where such employment is other than of a domestic character, where suitable accommodation is provided, the child must be readily able to return each night to the house of his parent or guardian or such other persons as may be approved by his parent or guardian. For children above age 14, the nature of the job that they can be employed to do should be "light and must not be harmful to his health and development, or dangerous or immoral". It is an offence to employ children and young persons on underground work. Subject to certain restrictions, children and young persons shall not be employed at night.

349. No child shall be permitted to work more than 6 hours a day or 30 hours a week. A child who has attained the age of 14 years and is still attending school may, whilst on vacation from school, be employed carrying out light work not harmful to his health and development for not more than five hours a day between 6 a.m. and 4 p.m. No child shall be required during the course of employment to lift, carry or move anything heavy and likely to endanger his physical development.

350. Further provision is made prohibiting the employment of a child on any kind of work during the night unless in an emergency which could not reasonably have been foreseen and prevented or if the young person is employed under a contract of apprenticeship or indenture to learn.

351. Despite having such provisions, in terms of the practical enforcement the Department of Labour has established that it was not possible for them to determine the extent of compliance with the laws. It is not possible currently to determine the actual statistics on child labour in terms of numbers and the type of employment. This is mainly because the labour inspection form which is currently being used does not require the employer to specify the ages of employees. Noting this deficiency, the Department of Labour is currently amending this form so that employers can state the number of children under age 15 employed, and those who have attained the age of 15 but are under 18.

352. The Children's Act provides that no child shall participate in the business of hawking unless he/she has been requested so to do as part of the family business, with the sustenance of the family in mind. Children who are sent by their parents to participate in business ventures like hawking usually do so during weekends, school holidays and/or after school. These children would in most cases be accompanied by their parents. Children go into this type of business venture so that they may assist their parents to raise money for augmenting whatever source of income they have. It must however be noted that there are a small number of children who have homes in the towns but spend their days on the street. These children have resorted to car washing as a source of income.

353. Although there are no statistics available there is an undetermined number of children who work. A sizeable number of children work as babysitters or as herd-boys, or assist their parents who have been employed as domestic servants or farm labourers. These children work long hours and carry out duties which may fall under the ambit of hazardous employment as defined by the Employment Act.

## **2. Drug abuse: article 33**

354. In urban areas there is increasing abuse of marijuana and prescription drugs (notably Flunitrazepam, sold under the trade name Rohypnol) secured illegally. Botswana has a National Drug Council with membership from the Police and Ministry of Health among others. The Council registers drugs and determines which drugs will be sold over-the-counter. It is an offence to have habit-forming drugs without a prescription and specific provisions exist outlawing the possession of drugs in the Penal Code and the Habit Forming Drug Act. There is a perception within government that more needs to be done to combat drugs, and to understand the extent of the problem.

355. Botswana has ratified the Protocol on Combating Illicit Drug Trafficking in the Southern Africa Development Community Region and acceded to the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

356. Street children are known to abuse glue by sniffing and methylated spirits by drinking. Alcohol cannot legally be sold to people under age 18, but is often available to children.

## **3. Sexual exploitation and sexual abuse: article 34**

357. Sexual exploitation and the abuse of children is rapidly increasing in Botswana, despite the existence of legal mechanisms proscribing this practice and the stiff penalties that have been introduced. With the advent of the HIV/AIDS epidemic young children, especially young girls, find themselves vulnerable to sexual abuse for a variety of reasons, such as that they are considered unlikely to be HIV-positive. Girls are attracted by the material inducements offered by older men who offer them money and gifts in exchange for sex. It is also the case that girls work as commercial sex workers. Also some cultural practices such as *Seantlo* exist whereby if a husband dies his elder or younger brother marries his wife, which put young widows in a vulnerable position.

358. The number of cases of sexual abuse and violence reported to the police is high and rising although it is understood that also many cases are not reported due to the powerlessness of children, and that the perpetrators are often the sole breadwinners in the household and to report them would undermine the family income. In many cases the abuse takes place within the family setting and therefore such cases are rarely reported due to coercion by the perpetrator and shame and fear on the part of the child. This is further complicated by the fact that there is no lower age limit on customary marriages and that the current minimum ages for civil marriage are 14 and 16, for girls and boys respectively.

359. There are a variety of provisions in the Botswana Penal Code which deal with sexual abuse and exploitation. Section 141 holds that any person who has unlawful carnal knowledge of another person or who causes the penetration of a sexual organ or instrument into the person of another without consent is guilty of rape. In law corroborative evidence is required by a court to convict an accused of rape. This means that conviction rates are very low particularly in comparison to other offences. It is felt that the corroboration rule undermines the value of the evidence of women and girls. Any person charged with rape is not entitled to bail and upon conviction is liable to life imprisonment with corporal punishment.

360. Any person convicted of the offence of rape shall be required to undergo an HIV test before sentencing. If the test is positive he will be liable to a minimum term of 15 years' imprisonment if it is proven that he was unaware of his HIV-positive status and for a minimum term of 20 years, if he was aware. This has been reviewed by the Court of Appeal after an application that the test was discriminatory under the Constitution. The court held that section 142 (4) as amended is not unconstitutional. The court was of the view that "... the legislation is reasonably necessary in a democratic society, as Botswana is, to abridge the freedom from discrimination provision of the Constitution, in order to combat the spread of HIV/AIDS pandemic which has afflicted the nation; and to deter the increasing incidence of rape. If an offender commits rape and it turns out that he is HIV-positive at the time of the offence, he is liable to the enhanced punishment. It matters not whether he is aware at the time he commits the offence or not. Sufficient notice has been given by Parliament of this result for every male within the jurisdiction to know that he is liable to this penalty if, having the virus, he violates a woman."<sup>26</sup>

361. Any person who indecently assaults a girl below the age of 16 is guilty of an offence even if consent was obtained from the victim. This also applies even where there was reasonable cause to believe that the victim was above age 16. Indecent assault is punishable by a term of imprisonment of maximum seven years (section 146 Penal Code).

362. Any person who indecently assaults a boy under 14 is guilty of an offence and is liable for a prison term of maximum seven years (s166 Penal Code).

363. The unlawful carnal knowledge of a girl below the age of 16 is an offence which is called defilement. It is a defence to this charge that the person charged believed, and had reasonable cause to believe, that the girl was above 16, or believed that she was his wife. The offence is punishable by a minimum term of 10 years' imprisonment.

364. Incest is outlawed in paragraphs 168 and 169 of the Penal Code. The maximum sentence is five years unless the victim is a girl under 13 in which case the maximum sentence is life. If the victim is a girl under 21 and the offender is male then the court has the power to strip the offender of his authority over or guardianship of the girl.

**Table 10**  
**Incidents of sexual violence in Botswana<sup>a</sup>**

		Reported	Arrested <sup>b</sup>	Found not guilty	Case withdrawn	Convicted (total)		Prison		Fine		Other penalty	
						Adult	Child	Adult	Child	Adult	Child	Adult	Child
Rape and attempted rape	1999	1 345	941	225	443	257	16	252	3	1	-	4	13
	2000	-	846	169	445	210	22	202	2	1	-	7	20
Indecent assault on a woman	1999	92	67	8	38	20	1	13	-	1	-	6	1
	2000	-	58	3	34	18	3	9	1	2	-	7	2
Incest	1999	10	9	1	6	2	-	2	-	-	-	-	-
	2000	-	7	1	5	1	-	1	-	-	-	-	-
Defilement of a girl under 16	1999	143	93	23	50	20	-	20	-	-	-	-	-
	2000	-	124	13	82	26	3	24	2	-	-	2	1
Child stealing	1999	1	1	-	-	1	-	-	-	1	-	-	-
	2000	-	1	-	1	-	-	-	-	-	-	-	-

<sup>a</sup> *Source:* Commissioner of Police Statistics, 1999, 2000.

<sup>b</sup> All offenders are men except for one woman who was found guilty of rape/attempted rape and imprisoned, 1999.

365. The Children's Act provides that any parent or guardian having custody of a child is guilty of an offence if he/she causes or conduces to the seduction, abduction or prostitution of the child.

366. In criminal cases where the child is a victim of abuse, the proceedings are held in camera to protect the identity of the child. Only authorized officials and the parents are allowed inside the courtroom and proceedings cannot be published disclosing the identity of the child (s172 Criminal Procedure and Evidence Act).



367. Such is the concern about levels of sexual violence that the Botswana Police Service commissioned a study on rape in Botswana. This was completed in December 1999 and was followed by a multisectoral conference where the outcomes were discussed and recommendations made. The Conference “Taking a Stand Together against Rape and Sexually Related Crime” took place in March 2001. The recommendations were wide-ranging and related to police facilities, training and practice, law reform, media sensitization, and general education and awareness raising. This was followed by rape and defilement taking a high profile place in the crime prevention campaign organized by the police in the forms of leaflet distribution and advertisements.

368. The police have also introduced the “Neighbourhood Watch Scheme” which is made up of neighbours in a particular location. The neighbours police each other so that when crimes are committed, they can be reported promptly to the police for immediate action. The neighbourhood watch committees have proved to be useful and effective. The Botswana Police are shifting emphasis to community policing and, as part of the programme, they aim to incorporate community safety into youth education curriculum. The police have introduced anti-crime clubs in schools to assist children to make reports of criminal activities. Trained officers go into schools to work with children who are in these clubs. In addition the police in urban areas have crime prevention teams working directly with street children to enable them to report abuse.

369. Professionals involved in child related services such as teachers, social workers and the police have been sensitized to working with children who have been abused and reporting cases of which they become aware. They are increasingly using child-friendly mechanisms in their work. The introduction of Guidance and Counselling in schools has provided children with an avenue for reporting abuse and obtaining support at school.

370. It is a crime in Botswana to have an abortion unless it is under the circumstances set out in the Penal Code which include termination within the first 16 weeks of pregnancy if the pregnancy results from rape. This must be subject to medical opinion and carried out by approved medical personnel. Given that the age of legal capacity is higher than the age of consent, girls and young women are in a position of requiring parental consent for an abortion even when it is legal for them to have sexual intercourse. This provision may inhibit their ability to seek a legal abortion. Illegal abortions particularly endanger the lives of girls and young women since the persons who carry out the abortions are not always qualified to do so, nor have the facilities to ensure the woman’s health is not put at risk.

371. NGOs have joined the drive to assist women in preventing sexual abuse and exploitation. The concerted efforts of organizations such as Childline Botswana, BOFWA and Women Against Rape have been crucial in service provision and advocacy. The Government is cognizant of the efforts made by this organization, and provides financial assistance in the form of grants. There are also other major international donors who support the work of these groups.

#### **4. Sale, trafficking and abduction: article 35**

372. The sale and trafficking of children is practically unknown in Botswana but the Penal Code and the Children's Act make the abduction of children criminal offences. There is a specific offence of abduction from Botswana (sect. 250) and of kidnapping from lawful guardianship of a boy under 14 or a girl under 16 (sect. 251). There are also provisions criminalizing abduction and kidnapping (sects. 252 and 253).

373. There have been isolated reports of practices of abduction of children for ritual murder and extraction of their organs. Despite concerted efforts by the police and community to arrest the perpetrators, the cases have not been resolved.

#### **5. Other forms of exploitation: article 36**

374. Another group of children of particular concern to the Botswana Government are street children. These generally constitute children who have dropped out of formal school and because of inadequacies in the system could not be reabsorbed. They come mostly from poor families and are largely found in the main urban areas. There are efforts by some NGOs to assist these children. The Botswana Christian Council is currently the only NGO that operates an active programme that aims at getting street children back to school, providing training to those over the primary school age of 10. The major constraint on NGOs is their lack of resources to provide services, or to expand their programme. MLG is undertaking a national needs assessment on street children during the NDP 8 period. The study is being undertaken by the Division of Social Welfare and will commence in November 2000 and should be complete by mid-2001.

#### **C. Children belonging to a minority or indigenous group: article 30**

375. In Botswana there are numerous ethnic groups whose existence is recognized in the Constitution and who are guaranteed representation in the House of Chiefs. Some of the smaller groups or tribes are not represented and recently the Botswana Government constituted a Commission of Inquiry into this matter. The conclusions of this Inquiry (Balopi Commission) were published in April 2001.

376. Children of minority or indigenous groups often live in remote districts. Some of these people are the Basarwa (San or Bushmen). There have been criticisms that the way of life of the Basarwa communities has been threatened. They were originally nomadic hunter-gatherers but other demands on the land which they have traditionally inhabited means they are unable to sustain this lifestyle. In the early years of their development they do not usually speak Setswana or English and have to make a difficult adjustment to another language and way of life, often facing negative attitudes towards their own culture. The Government of Botswana has initiated special efforts to assist this group to preserve their cultural heritage.

377. The Government also has an integrated programme for assisting all those who live in remote areas called the Remote Area Development Programme. This is coordinated from the MLG and began in 1974. It recognizes that some citizens of Botswana are socio-economically marginalized and require special attention. The overall goal of the programme is to promote the social, cultural and economic development of the remote area dwellers so they can benefit

equally from the rapid growth of the country. Specifically this involves intensified development of remote settlements, promotion of income-generating activities, enhancement of the remote area dwellers' access to land, encouragement of community leadership and active participation, provision of training and education and social, cultural and economic advancement as well as preservation of their unique culture and traditions.

378. The target group of this programme is defined by geographic remoteness and socio-economic marginalization. They live in small, scattered communities far from basic services; they are poor and lack livestock ownership; they rely heavily on hunting and gathering and are marginalized ecologically as their resource base is deteriorating; they are culturally and linguistically different; they have low levels of literacy and are underrepresented in public office. It would be fair to say that the majority of the people who fall under these definitions are Basarwa but not all remote area dwellers are Basarwa and not all Basarwa are Remote Area Dwellers.

379. The approach of the Remote Area Development Programme has been to encourage the development of permanent settlements to allow for the provision of basic social services. The main programme components are the provision of safe water, health facilities, primary schools and hostels for pupils, and an economic promotion fund. The objectives are to promote production-oriented activities, create employment opportunities, assess and exploit resources available in each community and diversify community involvement in development; challenge and promote community participation in alleviating unemployment; making communities self-reliant.

380. There are approximately 63 officially designated remote area dweller settlements. Settlement policy is decided by the Ministry of Lands, Housing and Environment. Remote area dwellers outside of these areas are included in the programme through the work of the extension officers.

### Notes

<sup>1</sup> In April 2001, 1 US dollar was roughly equal to 5 pula (P5.00).

<sup>2</sup> J. Amissah in *Attorney-General v. Unity Dow*, Court of Appeal, 1992 Botswana Law Reports 119.

<sup>3</sup> Report on a Review of All Laws Affecting the Status of Women in Botswana, Sept. 1998, p. 13.

<sup>4</sup> *Ibid.*, p 15.

<sup>5</sup> *Ibid.*, pp. 42-79.

<sup>6</sup> Vision 2016: A Long Term Vision for Botswana, p. 12.

<sup>7</sup> *Ovoya v. Ovoya* MC 7/76, *Masala* MC/1993, *Isaac* MC/1990 (all unreported High Court decisions, cited in A. Molokomme "Custody and Guardianship of Children in Botswana:

Customary Laws and Judicial Practice within the Framework of the Children's Convention" in Welshman Ncube, Law, Culture Tradition and Children's Rights in Eastern and Southern Africa, Dartmouth, 1998. Hereinafter "Molokomme". p. 191).

<sup>8</sup> *Keatile v. Keatile* MC 6/1989 cited in Molokomme, p. 191.

<sup>9</sup> *Malope v. Malope* MC 67/1986, *Ovaya v. Ovaya* C 7/1976 cited in Molokomme, p. 12.

<sup>10</sup> *Keatile v. Keatile, Tadubana v. Tadubana, Rangongo v. Rangongo* cited in Molokomme, p. 193.

<sup>11</sup> 1982 (1) BLR 25.

<sup>12</sup> Misca F58/1990, unreported High Court cited in Molokomme, p. 196.

<sup>13</sup> Misca F45/995, unreported High Court cited in Molokomme, p. 197.

<sup>14</sup> Molokomme, p. 183.

<sup>15</sup> MC 150/1982.

<sup>16</sup> MC F29/1990.

<sup>17</sup> Molokomme, pp. 197-201.

<sup>18</sup> Criminal Trial No. 40 of 1993.

<sup>19</sup> *Clover Petrus and Another v. The State*, Court of Appeal, 1984 BLR 14.

<sup>20</sup> *Linchwe v. Linchwe* Civil Appeal 8/1982, *Mosinyi v. Mosinyi* 1981 BLR 123.

<sup>21</sup> Page 86.

<sup>22</sup> Misca 13/96.

<sup>23</sup> *Agnes Bojang v. The State* Mis.Cr.App. No. 6 of 1993.

<sup>24</sup> MISCRA No. 2/99.

<sup>25</sup> Court of Appeal, 1984 BLR 14.

<sup>26</sup> Amissah, J.P. in *Dijaje Makuto v. The State*; Criminal Appeal No. 31 of 1999, p. 17.

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