



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

Distr.: General  
20 October 2008

Original: English

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

**Consideration of reports submitted by States parties under  
article 18 of the Convention on the Elimination of All Forms  
of Discrimination against Women**

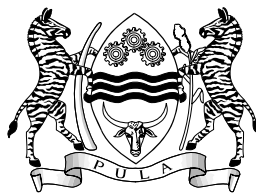
**Combined initial, second and third periodic reports of  
States parties**

**Botswana\***

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\* The present report is being issued without formal editing.





Republic of Botswana

**Botswana Report on the  
Implementation of the  
Convention of the Elimination of All Forms  
of Discrimination Against Women**

**Combined Initial, Second and Third  
Reports**

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## Acronyms

AIDS	Acquired Immuno-Deficiency Syndrome
ALDEP	Arable Land Development Programme
ARDP	Accelerated Rural Development programme
AU	Africa Union
BBCA	Botswana Business Coalition on AIDS
BCW	Botswana Council of Women
BDP	Botswana Democratic Party
BLR	Botswana Law Reports
BNCW	Botswana National Council of Women
BOCODOL	Botswana College of Distance and Open Learning
BOFWA	Botswana Family Welfare Association
BONASO	Botswana Network of AIDS Service Organisations
BONELA	Botswana Network on Ethics, Law and HIV/AIDS
BONEPWA	Botswana Network of People Living with HIV/AIDS
CBOs	Community Based Organisations
CEDA	Citizen Entrepreneurship Development Programme
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CIDA	Canadian International Development Agency
CSO	Central Statistics Office
DHT(s)	District Health Teams
DPSM	Directorate of Public Service Management
ECA	Economic Commission for Africa
EDS	Educational Development Services
FAP	Financial Assistance Programme
FEW	Family Welfare Education
FHH	Female Headed Households
GDP	Gross Domestic Product
GFP(s)	Gender Focal Points
GNP	Gross National Product
HIES	Household Income and Expenditure Survey
HIV	Human Immune Virus
IEC	Independent Electoral Commission
IEC	Information Education and Communication
IOM	International Organisation for Migration Office
JSE	Junior Secondary Education
MFDP	Ministry of Finance and Development Planning
MHH	Male Headed Households
MTCT	Mother To Child Transmission (of HIV)
MTP (II)	Medium Term Plan II
NAC	National AIDS Council
NACA	National AIDS Coordinating Agency

NACP	National AIDS Control Programme
NDB	National Development Bank
NDP	National Development Plan
NGO(s)	Non Governmental Organisation(s)
NGPF	National Gender Programme Framework
PMTCT	Prevention of Mother to Child Transmission
POA	Plan of Action
PTA	Parents Teachers Association
RADS	Remote Area Dwellers
RNPE	Revised National Policy on Education
RSA	Republic of South Africa
SACU	Southern Africa Customs Union
SADC	Southern African Development Community
SHHA	Self –Help Housing Agency
SMME	Small Medium, Micro Enterprises
STI(s)	Sexually Transmitted Infections
STP	Short Term Plan
UN	United Nations
UNCSW	United Nations Commission on the Status of Women
UNDP	United Nations Development Programme
UNICEF	United Nations Children’s Fund
VDC	Village Development Committee
VHC(s)	Village Health Committees
VLC	Village Literacy Committee
WAR	Women Against Rape
WAD	Women Affairs Department
WASBO	Women and Sports in Botswana
WIEM	Women in Educational Management Committee
WILSA	Women In Law in Southern Africa
YWCA	Young Women Christian Association

## **Preface**

The Convention on the Elimination of All Forms of Discrimination Against Women was formally adopted by United Nations General Assembly on 18 December 1979. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations had agreed to be bound by its provisions. Botswana acceded to the Convention on 13 August 1996.

Among the international human rights treaties, the Convention takes an important place in bringing the human rights of the female half of humanity into focus. The spirit of the Convention, which Botswana shares, is rooted in the goals of the United Nations which includes reaffirming faith in the fundamental human rights, dignity, and in the equal rights of men and women. The Convention has spelt out the meaning of equality and how it can be achieved. In essence the Convention has established not only an international bill of rights for women, but also an agenda for action that guarantees the enjoyment of those rights.

This report provides information on how Botswana translated its commitment to the implementation of the Convention, through reporting on specific actions taken since accession to the Convention. This report combines the initial, first, second and third periodical reports.

The report has summarised the actions taken by Botswana in collaboration with other stakeholders such as civil society organisations, development partners and the private sector institutions. It is presented in four sections covering 16 articles of the Convention. An Executive Summary of the report is also provided. The report has outlined the main achievements as well as areas that still need to be addressed to achieve gender equality. The activities geared towards the realization of the goals of the Convention are implemented within a national framework that promotes community consciousness, peace, security, social justice, democracy, accountability, ethical behaviour, national and community leadership.

The compilation of this report was coordinated by the Women's Affairs Department (WAD), Ministry of Labour and Home Affairs in collaboration with United Nations Development Programme (UNDP). A multi-sectoral Drafting Committee was constituted with representatives from WAD, The Attorney General's Office, the Office of the President, civil society organisations, and UNDP. Technical assistance was provided by Oakwood and Associates Consultants. During the drafting process a participatory and consultative approach was adopted to ensure direct involvement of all stakeholders. Extensive consultations were held with all the major key stakeholders drawn from Government, Civil Society, Development Partners, and the private sector. Additional information was obtained through literature review consisting mainly of stakeholder reports, legal statutes situation analysis, evaluation and assessment reports, and from the Department of Administration of Justice and the National Assembly.

The draft report was presented to a multi-sectoral stakeholders' workshop that reviewed it and made additional suggestions. The final draft was presented to the Inter-Ministerial Committee on Treaties, Conventions, and Protocols responsible for, among others; reviewing all draft reports to the United Nations. The Committee is coordinated by the Ministry of Foreign Affairs and International Cooperation.

## Executive Summary

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was formally adopted by United Nations General Assembly on 18 December 1979. It entered into force as an international treaty on 3 September 1981. Botswana acceded to the Convention on 13 August 1996 and has since deposited instruments of accession to the Optional Protocol.

This combines initial, first, second and third national periodical reports on the implementation of CEDAW. The report is presented in four parts, preceded by an Executive Summary and a general introduction. The introduction provides information on the people of Botswana, geographical features, climate, administrative structures, economy, social indicators and constitutional framework.

Article 1 provides Botswana's definition of discrimination as articulated by the Constitution before acceding to CEDAW and the subsequent amendments in 2004 based on court precedents and CEDAW provisions.

Recognising the provisions of CEDAW, Botswana commissioned a *Review of All the Laws Affecting the Status of Women in Botswana* in 1998. The report recommended amendments to several national laws to align them with CEDAW. In view of these recommendations some laws (*Box 1*) have since been amended. In addition the Constitution was amended in 2004. The "Abolition of Marital Power Act" was also enacted in 2004. The enactment of this law has necessitated review of other related laws to ensure consistency.

### Box 1: Laws that have been amended

- The Citizenship Act 1995
- Mines and Quarries Act, 1996
- Criminal procedures and Evidence Act 1997
- Deed Registry Act, 1996
- Penal Code 2004
- Affiliations Proceedings Act 1999
- Public Services Act 2000
- Marriage Act 2001
- Employment Act 1996

The amendments of these laws have significantly contributed to "Policy Measures" (Article 2) leading to women empowerment socially, economically and politically. They have also contributed to the balancing of power relations and equity in decision making under the jurisdiction of the Common Law.

Botswana has demonstrated strong political commitment to eliminate all forms of discrimination against women by creating national frameworks and machineries to ensure the "Guarantee of basic human rights and fundamental freedoms" (Article 3). These include a fully fledged Women's Affairs Department (WAD) in the Ministry of Labour and Home Affairs (MLHA). To ensure adherence to the provisions of the CEDAW in the entire Public Service, the Government continues to mainstream gender in all social and economic development activities. Gender Focal Point Persons have been appointed in Government Ministries.



Botswana has initiated “Special Measures” (Article 4) that facilitate the promotion of gender equality between women and men through social and economic empowerment targeting poverty alleviation. Economic empowerment programmes such as Arable Land Development Programme (ALDEP), and the small livestock initiatives have been introduced. While these programmes are intended to provide equal opportunities, women still face challenges in accessing resources. The Government in collaboration with other stakeholders and civil society organisations will continue to create an enabling environment for women’s participation in political institutions such as Parliament, Ntlo ya Dikgosi (House of Chiefs) and Local Authorities.

While Botswana society has been shaped by customs and traditions, the society is equally aware of some traditional practices that perpetuate sex roles stereotyping and prejudice (Article 5). While it is not the intention of the Government to undermine culture the Government is committed to protecting women from discriminatory practices. In collaboration with women NGOs and Civil Society Organisations, the Government is supporting advocacy campaigns and the implementation of educational and awareness creation programmes to mitigate the impacts of these negative customary practices. Awareness programmes have been developed and delivered to positively influence the socialisation of boys and girls, as well as to promote the elimination of gender stereotyping.

Botswana is aware of challenges posed by prostitution (Article 6). The Government in collaboration with civil society organisations is supporting community based alternative income generation and educational projects targeting commercial sex workers. Health services are also freely available to Botswana from health facilities. Commercial sex work is not legally recognised. Therefore involved persons are not protected from exploitation and other forms of abuse. With regard to human trafficking, the problem has not yet emerged as a major challenge. However, provisions have been made in the Penal Code to empower the Department of Administration of Justice and Botswana Police Service to take action to address this offence. The Botswana Police Service is also collaborating with neighbouring countries to monitor human trafficking.

The current social and political systems allow equal opportunities for women participation in political and public life (Article 7). Women are currently represented in political and public offices. They hold key decision making positions ranging from Ministers, Deputy Speaker of the National Assembly, Attorney General, Governor of the Central Bank, Judges, Councillors, to Chief Executive positions in Government Ministries such as Permanent Secretaries and Departmental Directors. Women are also represented in the Ntlo ya Dikgosi (House of Chiefs) and they serve as Presidents of the Customary Courts. Women are also increasingly employed in Diplomatic Service (Article 8) where they constitute 35.8% of diplomatic personnel.

Botswana has amended the Citizenship Act to provide the opportunity for Botswana women married to foreigners to pass on their citizenship to their children (Article 9). This Act also allows Botswana women married to foreigners to regain their citizenship in the event their marital status changes or in the event of relocating back to Botswana.

With regard to Education (Article 10) Botswana has achieved the universal access to 10 years of basic education, and eliminated gender disparity in education. With the revised National Policy on

Education (1994) the Government has provided equal opportunities for primary, secondary and tertiary education. Currently the Government is consolidating these efforts by developing the Equal Opportunities Policy. With regard to girls who drop out of school due to pregnancy, a re-admission policy has been developed to allow them to continue with education. Civil society organisations are also involved in assisting in such programmes. Similarly, Vocational Education and Training has developed a policy to allow women who fall pregnant to continue with technical training. Distance Education is available for those who cannot attend formal school. The Government offers scholarships to both women and men on a competitive basis.

With regard to employment (Article 11) the Employment Act makes it possible for women to apply for available jobs on the basis of qualification and competence. Legislative provisions that were found to discriminate against or disadvantage women in the workplace have been amended. Women have equal access to employment benefits and promotions by law. The Public Service Act has been amended to make sexual harassment in the workplace an offence (misconduct). Botswana has also improved conditions of work for women to take care of newly born babies by allowing women to take paid maternity leave and a one hour recess each day for twelve (12). Maternity leave pay in various organisations ranges from part payment to full pay.

With regard to health (Article 12), the implementation of the Primary Health Care Strategy has brought health facilities to a 15 km radius. This allows women to access and utilise health services more easily. Most clinics also provide maternity services. Other additional services include Prevention of Mother to Child Transmission (PMTCT) of HIV, provision of condoms and Sexual Reproductive Health (SRH) Services, counselling, and antiretroviral (ARV) treatment. These services benefit women and men equally.

In line with the country's vision at independence to: end hunger, alleviate poverty, ensure equal access to resource, education, health, and employment; the Government has initiated several programmes that increase economic opportunities and provide social benefits (Article 13). Women have equal access to such social benefits. Examples include access to tenant purchase scheme for housing, motor vehicle advance, and ALDEP. The Abolition of Marital Power Act has also created more opportunities for women as they can now make independent decisions and run businesses in their own right. The Act also safeguards women against unilateral decision making by men on family assets which before left women disadvantaged.

Botswana has also created more opportunities for women to participate in sports and recreation. Women hold decision making positions in some of the programmes. The Government through the National Sports Council is supporting the Botswana Women in Sport Association and other organised affiliation bodies.

In the case of rural women (Article 14), one of Botswana's priorities is poverty alleviation through employment creation programmes. Government is providing financial and technical support towards self-employment initiatives. This is within the context of the Rural Development Policy and the Policy on Women in Development. Some of the key components of the rural development initiatives that enhance the quality of life of women include increasing women access to energy, safe water and

sanitation, transportation and communication systems, as well as technology. Rural electrification and water supply are also being addressed.

With regard to matters related to law (Article 15), as mentioned earlier the Government is already reviewing and amending a number of statutes that have been found to discriminate against or disadvantage women.

Botswana has in particular looked at issues relating to marriage and family life (Article 16). The most significant developments relate to the empowerment of women for personal decision making. This is in the context of the minimum age and conditions for marriage, the right to marriage, the rights and responsibilities during marriage. The amendment of the Marriage Act in 2001 increased the marriage age to 21 and set conditions for marriage for people under the age of 18 years. The Abolition of Marital Power Act gave women equal powers to assume guardianship of minor children and in determining their domicile and that of their children.

### **Challenges**

The implementation of the CEDAW has encountered a number of challenges which are discussed in the relevant sections of the report. However, the following are key:

CEDAW has not been fully domesticated in Botswana. This means that the convention cannot be considered to constitute a legal instrument applicable in the national courts of law. While Botswana has taken the initiative to mainstream some of the CEDAW provisions in the existing statutes and hence providing opportunity for a legal effect, the process is not holistic enough to encompass all the issues addressed by the Convention. There is also need to accelerate the harmonisation of all laws and policies with CEDAW.

Botswana operates on the basis of Common Law and Customary Law. The amendments made in the Common Law in line with CEDAW, have no effect on the administration of justice under the Customary Law. It will be noted that while certain practices have been abolished under Common Law, their application continues under the Customary Law. The endorsement of this dual legal system, sometimes with sharp contrast in application; continues to disadvantage women even with the Common Law provisions.

Concerning development programmes, women still face challenges especially in accessing services and resources such as finance, land and technology. While economic and social empowerment programmes are in place for the facilitation of equal opportunities, there are still inadequacies in ensuring gender equity in the implementation of these programmes due to entrenched cultural practices and perceptions. More work still needs to be done to incorporate a gender perspective in all development processes at all levels. Development policies still require gender mainstreaming and gender-responsive budgeting, targeted skills development, service delivery. Efforts to determine criteria for service provision or access to resources should particularly take into account the socio-economic status of women; more especially in rural areas.

## **Introduction**

### **Background Information**

1. This section discusses Botswana's people, the patterns of settlements, physical features, administrative structures and constitutional framework. It is meant to provide background information to readers who are not familiar with Botswana.

### **Physical Features**

2. Botswana is located in Southern Africa and share borders with Namibia, South Africa, Zambia, and Zimbabwe. The country is landlocked with a surface area of 581,730 square kilometres and a mean altitude above sea level of 1000 metres. Much of the country is flat with gentle undulations and occasional rocky outcrops.
3. In the North-West, the Okavango River drains inland from Angola to form the Okavango Delta. In the North East is a large area of accrete plains bordering the Makgadikgadi Salt Pans. In the East adjacent to the Limpopo drainage system, the land rises above 1200 metres, and the Limpopo Valley gradually descends from 900 metres in the South to 500 metres at its confluence with the Shashe River. This Eastern region, which straddles the North-South railway line, has a somewhat less harsh climate and more fertile soils than elsewhere in the country.
4. The rest of Botswana is covered with thick sand layers of the Kalahari Desert, accounting for more than two-thirds of Botswana's land area. In some places the sand cover may be up to 120 metres deep. In the Kalahari there is an almost total absence of surface water and hence the vegetation is shrub and grasses.

### **Climate**

5. Botswana is situated close to the sub-tropical high-pressure belt of the Southern Hemisphere. As a result, the country is largely arid or semi-arid. Mean rainfall ranges from over 650mm in the extreme North-East to less than 250mm in the extreme South-West. A secondary maximum of over 550mm occurs in the South-East around Lobatse, and a secondary minimum of less than 350 mm occurs in the lowland between the Shashe and Limpopo rivers in the extreme East. Almost all the rainfall occurs during summer from October to April. The period from May to September is generally dry. Most of the rainfall occurs in localised showers and thunderstorms and its incidence is highly variable both in time and space. Even though the country at times experiences heavy rains, the water gets lost due to rapid run-off and drainage during the short, intense storms that account for the bulk of the rain fall.
6. An analysis of the historical rainfall data indicates that the rainfall pattern has an oscillatory nature and there is no evidence of any long-term climatic change. Instead, the data suggest the occurrence of weak, but nonetheless readily discernible, cycles of 16-20 years. It is uncertain, how long into the future this pattern will last given the global climate changes.

## Administrative structures

7. The President is the head of the executive arm of the Government, while the Permanent Secretary to the President is the Chief Executive in the public service. Individual line ministries are headed by a Cabinet Minister appointed by the President, and the Permanent Secretaries are responsible for their day to day management and coordination.
8. The country is divided into administrative districts and local authorities. The local authorities comprise city and district councils, towns and townships. There are 15 administrative districts, 9 district councils, 2 city councils, 3 town councils and 1 township. The Central Government is represented at district (administrative) level by the Department of District Administration, headed by District Commissioners and assisted by District Officers. The District Councils are headed by Council Secretaries assisted by Assistant Council Secretaries who are responsible for sub-district councils, while Town Clerks administer City and Town Councils. The overall coordination of these institutions is the mandate of the Ministry of Local Government.

## Population

9. The population of Botswana has increased from 1,326,796 in 1991 to 1,680,683 in 2001(CSO, 2001). The annual growth rate is estimated at 2.4% during the inter-census period and has been declining over the years. While HIV/AIDS might have contributed to the decline in recent years, it must be noted that there was a decline during the pre-HIV/AIDS era. Factors such as declining fertility rates, increased women participation in economic activities, increased literacy rates, access to better health and care, may have had a profound effect on population growth<sup>1</sup>.
10. The population has a young age structure with 37% of the total population below 15 years, while the population of people aged 65 and above is 5% (CSO 2001). The sex composition of the population is biased towards females with a ratio of 94 males per 100 females (CSO, 2001).

## The People

11. The people of Botswana are known as “Batswana”. They are made up of various ethnic groups including the Bakgatla, Bakwena, Balete, Bangwato, Barolong, Batawana, Batlokwa, Bangwaketse, Basarwa, Baherero, Babirwa, Bakalanga, Bakgalagadi, Basubiya, Batswapong, Bayeyi, Hambukushu, Ovabenderu and OvaHerero, in addition to a small number of people of Asian and European descent and people of mixed ancestry. While Setswana is the national language, English is the official business language. Over seventy per cent of the population speaks Setswana.

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<sup>1</sup> 15<sup>th</sup> and 16<sup>th</sup> Periodical Report to the United Nations Committee on the Elimination of Racial Discrimination, 2005.

12. At independence the population was largely rural and the majority of the people resided on the Eastern part of the country. Most people were mobile commuting between villages, cattle posts and the lands. With the rapid expansion of economic activities in the mid 1970s and 1980s, the pattern of settlement has changed rapidly. There is a growing concentration of the population around major cities and towns such as Gaborone, Francistown, Lobatse, Molepolole, Serowe, Palapye, Selebi-Phikwe and Maun.

### **Mortality and Fertility Trends**

13. Botswana has been experiencing declines in both mortality and fertility levels since the 1980s. This demographic change is associated with socio-economic changes and its occurrence underlies much of subsequent social change that the country is undergoing. Recent estimates indicate that the crude death rate has declined from 13.7 in 1971 to 11.5 in 1991 and to 12.4 in 2001 (CSO, 2001). While infant mortality rate dropped from 97.1 in 1971 to 48.0 per 1000 live births in 1991, it increased to 56 per 1000 live births in 2001. The probability that a one-year-old child will die before reaching age 5 has declined from 0.0358 in 1981 to 0.0160 in 1991. Consequently, life expectancy at birth increased from 55.5 in 1971 to 56.5 in 1981 and 65.3 years in 1991. Unfortunately, the gains in life expectancy did not sustain mostly due to the impacts of HIV/AIDS epidemic declining back to 55.7 years in 2001 (CSO, 2001).

### **The Economy**

14. At independence in 1966, Botswana was one of the poorest countries in Africa, with an overwhelming population that depended mainly on subsistence agriculture for livelihood. Beef production was the mainstay of the economy in terms of output and export earnings. Over the years, both arable and livestock agriculture have been ravaged by long and severe droughts reducing their productive potential and consequently affecting many people.
15. Since independence the country has recorded remarkable social and economic transformation with the discovery of minerals and in particular diamonds. However, while the mineral sector has dominated the economy, there are indications of economic diversification. The contribution of the mineral sector to Gross Domestic Product (GDP) dropped from 35.8% in 2000/01 to 34.5% in 2001/02 (Annual Economic Report 2003). Other sectors such as government, finance, business and trade have made significant contributions to the economy. While tourism is still underdeveloped accounting for only 5% of the GDP, it is showing signs of growth and development with more local people entering the industry. In real terms GDP grew significantly by 8.3% during the 2004/05 period compared to 3.4% during 2003/2004 (Annual Economic Report 2006, MFDP).
16. While most people are well off today than they were in 1966, high levels of income inequality still exists indicating un-equal distribution of wealth. In 1993/94 the poorest 40% of the population received 12% of the total income, the middle 40% received 29% and the richest 20% received 59% (HIES / CSO1995).

17. Formal sector employment has shown growth rates somewhat greater than the population growth of 2.4%. From March 2004 to March 2005, the sector grew by 2.8% slightly lower than the rate of 3.1% recorded in the previous year (2003). Similarly there has been some conspicuous growth of employment and self-employment in the informal Sector. The Government remains the largest employer accounting for over 50% followed by the private and informal sectors respectively. Employment in parastatal organisations has not shown significant increase.
18. The Multiple Indicators Survey (2000) showed that the total employment opportunities grew with an average annual rate of 8% from 345,400 in 1996 to 483,400 in 2000. The labour force also grew rapidly during the early part of NDP 8, increasing from 439,900 in 1996 to 574, 100 in 2000. This translates to an increase rate of 5.5% per annum.
19. The rate of un-employment has been estimated at 21.5%, (Labour Force Survey 1995/96) accounting for 95,000 people without jobs during that year. Hence employment has remained a great challenge, mostly affecting young people.

### **Social Indicators**

20. Botswana has seen remarkable social and economic change within the 40+ years of independence (1966), with particular reference to increased access to water, health, education and roads. Ninety percent (90%) of Botswana's population has access to safe drinking water with a hundred percent (100%) access in urban areas and eighty eight percent (88%) in rural areas.
21. By 2004 Botswana had attained universal access to 10 years of basic education and had successfully reduced gender disparity in school enrolments at this level. The most notable achievement in education has been the expansion of Junior Secondary Education (JSE) during the 8<sup>th</sup> National Development Plan & period (1999 – 2003). This has contributed to most primary school learners being able to secure a place in junior secondary schools<sup>2</sup>.
22. The Government has continued to implement the Primary Health Care Strategy. Over 85% of the population is within a 15 kilometre radius of a health facility. To date there are three major referral hospitals located in Gaborone, Francistown and Lobatse. The referral hospital in Lobatse deals with psycho-social conditions and disorders. In addition, there is a well equipped private hospital in Gaborone that has reduced the number of complicated cases that have to be referred outside the country for specialist attention. However, while the health system and quality of care has improved significantly, provision of services has been overwhelmed by HIV/AIDS pandemic. Botswana has a 17.1% prevalence rate among people aged above 18 months (BAIS II, NACA 2004).

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<sup>2</sup> First 3 years of secondary education and attaining 10 years of basic education.

## Constitutional Framework

23. Botswana attained self-government in 1965, after 80 years as a British Protectorate of Bechuanaland and became independent on September 30<sup>th</sup> 1966. The Constitution established a non-racial democracy, which maintains the fundamental freedoms of speech, press, association, movement and affords all citizens equal rights.
24. The Constitution provides for a unicameral legislature, the National Assembly. Members are directly elected by the community from 57 constituencies. The President nominates four additional members, referred to as “Specially Elected” members of Parliament. The National Assembly elects the Speaker and the Deputy Speaker of the National Assembly. The President of the political party with the majority of directly elected members of Parliament takes office as the President and selects his/her Ministers from among the members of the National Assembly.
25. The Parliament has a lifespan of five years after which the President must dissolve it and call for general elections. The President has the powers to call for general elections much earlier than the stipulated five years if he/she so desires. Botswana held general elections in 1965, 1969, 1974, 1979, 1984, 1989, 1994, 1999 and 2004. The Botswana Democratic Party (BDP) has been returned to power on each occasion. The next elections are scheduled for 2009.
26. Four 4 political parties contested the last general election in 2004. The ruling party BDP won 45 seats, while the Botswana National Front and the Botswana Congress Party won 11 and 1 seats respectively. Parliament has 61 members in total.
27. By June 2008, Ntlo ya Dikgosi (House of Chiefs) had 35 members of which four are women. Ntlo ya Dikgosi advises Parliament on matters affecting culture and tradition.
28. The President is the Head of the executive branch of Government and presides over the Cabinet. He is the Commander in Chief of the armed forces. He is also responsible for appointing senior government officers including, The Chief Justice, Judges, The Attorney General, Permanent Secretaries, Ambassadors and High Commissioners among others. Although the President is responsible for the appointment of judges, the Judicial System is independent and derives its powers from the Constitution.
29. The Councillors serving District, City and Town councils are elected by the communities in the respective electoral areas. The Minister of Local Government may nominate additional councillors to each Council. The Chief Executive Officers of Councils are responsible for the delivery of public services such as primary education, health, water supply, rural roads, rural development and drought relief projects at local level. The Tribal Administration is headed by the traditional leaders who administer a series of traditional and development responsibilities including matters related to Customary Courts and the Kgotla. There are twelve Statutory Tribal Land Boards that are responsible for the management of tribal land.



## International Links

30. Botswana is a member of several international organizations, including United Nations, the Non-Aligned Movement (NAM), the African Union, Group of 77 + China, The African Caribbean and Pacific (ACP) group, the Commonwealth, the World Bank, the International Monetary Fund (IMF), the African Development Bank (ADB), the Southern African Customs Union (SACU) and the Southern African Development Community (SADC). The SADC is headquartered in Gaborone, Botswana. Given the strategic considerations of gender issues, SADC Member States, right from the inception of SADC, decided to locate the Gender Secretariat at the headquarters.

## Legal, Political and Administrative Measures Adopted to Give Effect to CEDAW

31. Botswana has interpreted the Convention in ways most relevant and suitable to its social structure and culture, and has instituted a variety of administrative, legal and legislative measures to ensure domestication and comprehensive implementation of the convention.
32. The social, economic and political planning process has taken cognisance of the need to provide effective and efficient strategies that would accelerate the implementation of the convention by addressing critical issues such as poverty alleviation, investment in social and economic infrastructure, expansion of extension services, and the strengthening of social, economic and political institutions which all impact on the status of women.<sup>3</sup>

## PART 1

**Article 1:** Discrimination

**Article 2:** Policy Measures

**Article 3:** Guarantee of Basic Human Rights and Fundamental Freedoms

**Article 4:** Special Measures

**Article 5:** Sex Role Stereotyping and Prejudice

**Article 6:** Prostitution

33. Part I of the report covers six articles of the convention i.e. Discrimination, Policy Measures, Guarantees for Basic Human Rights and Fundamental Freedoms, Special Measures, Sex Roles Stereotyping and Prejudice, and Prostitution.

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<sup>3</sup> Participation of Women in the Economic Sectors in Botswana, Country Report, Women's Affairs Department, Ministry of Labour and Home Affairs, Republic of Botswana, 1999, p. 23.

## Article 1: - Discrimination

### Definition of discrimination against women

34. The Constitution of Botswana guarantees protection to every person residing in the country regardless of race, colour, political affiliation and or social status. This means that both women and men are legally entitled to the rights and freedoms contained in the Bill of Rights, Section 3 of the Constitution which states that

*“Every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say the right whatever his race, place of origin, political opinions, colour, creed or sex but subject to respect for the rights and freedoms of others and for public interest ...”*

35. Section 15(3) of the Constitution was amended in 2004 by adding the word ‘sex’ in the definition of the word ‘discrimination’. Prior to the amendment, the word ‘discriminatory’ was defined as *‘affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.’*
36. Even before the Constitution was amended the decision of the High Court in case of Unity Dow versus Attorney General, 1992 BLR (119<sup>4</sup>) was that the omission of the word ‘sex’ from the definition of the word ‘discriminatory’ was neither intentional nor made with the object of excluding sex based discrimination. The Judge President Aguda held that in the final analysis custom must yield to the pre-eminence of the Constitution stating that *“a constitutional guarantee cannot be overridden by custom. Of course, the custom will as far as possible be read so as to conform to the Constitution. But where this is impossible, it is custom not the Constitution which must go.”*
37. In a concurring opinion Judge Bizos acknowledged that *“the customs, traditions and culture of a society must be borne in mind and afforded due respect,”* but they cannot prevail when they conflict with the express provisions of the Constitution. He noted that *“in relation to the protection of personal and political rights the primary instrument to determine the heartbeat of Botswana is its Constitution”*.
38. Section 15(4) of the Constitution provides specific exclusions from the non-discrimination clause. The general rule on the prohibition of the enactment of laws that are discriminatory as defined above does not apply to laws that make provision inter alia for the following:

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<sup>4</sup> Information Pack on the Abolition of Marital Power Act 2004, WAD, MLHA.

- With respect of adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law;
  - For the application in the case of members of a particular race, community or tribe of Customary Law with respect to any matter whether to the exclusion of any law in respect to that matter which is applicable in the case of other persons or not; or be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a democratic society<sup>5</sup>.
39. To ensure compliance with the CEDAW, the Government of Botswana commissioned a review of all the laws affecting the status of women in 1997.
40. The study recommended that Sections 3 and 15 of the Constitution be amended so that. They are unequivocally consistent with the provisions of CEDAW. The following laws have since been reviewed and amended in line with the CEDAW.
- The Citizenship Act 1995 and 2003,
  - Mines and Quarries Act 1996,
  - Criminal Procedure and Evidence Act 1997,
  - Deeds Registry Act 1996,
  - Penal Code 1998 and 2004,
  - Affiliations Proceedings Act 1999,
  - Marriage Act 2001, and
  - Public Service Act 2000
  - Employment Act 1996
41. Botswana has taken cognisance of the provisions of the CEDAW leading to a comprehensive review of some laws and incorporation of provisions of the CEDAW as appropriate. However, there is need to fully domesticate the convention in order to strengthen the legal framework for the promotion and accordance of women's rights.
42. Botswana has deposited instruments of accession to the Optional Protocol on the CEDAW with the United Nations Secretariat.

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<sup>5</sup> Constitution of Botswana, Section 15(4).

## **Article 2: Policy Measures**

### **Introduction**

43. Botswana has made tremendous progress in addressing gender inequality. The Government has taken initiatives to review laws that have consequently had an impact on policy and administrative procedures. The affected laws are outlined in paragraph 40 above. In addition changes in policy guidelines have increased women's access to financial and land resources. With the Abolition of Marital Power Act 2004, women have more control over property than ever before.

### **Constitutional Law**

44. Section 3 of the Constitution enshrines the principle of equality of men and women. Any person who feels they have been afforded differential treatment on the basis of sex, or who is of the view that a particular provision of any law has such an effect, either at the instance of Government or individual(s) has recourse to the Courts as illustrated by the landmark case of Unity Dow mentioned above. The enabling legal provisions that proscribe discrimination are conducive to the advancement and protection of women. Against the backdrop of this judicial pronouncement, more work still needs to be done on customary laws and practices in order to ensure equal rights and therefore treatment of women and men.

### **Common Law and Customary Law**

45. Botswana operates under the dual legal system of the Common Law based on the Roman Dutch and Statutory Law, and the Customary Law of the peoples of Botswana. Customary law is shaped by the living experiences of different peoples and generally applies to civil actions between people of similar tribal context. Unlike Common Law, the Customary Law is not coded and hence difficult to have universal application.
46. Under Customary Law have unequal status regarding their legal capacity, property rights, inheritance rights as well as customary and guardianship rights to children. In most instances women are treated as minors, subjecting them to a subordinate position.
47. Under Customary Law women are subject to male guardianship, while men are released from guardianship when they marry. This is better illustrated by the Customary Law's recognition and assignment of the "male" as the head of the family, giving him control over family assets, and guardianship of all dependent children. Although the principle is changing to allow women who are unmarried to be independent, the practice is uneven around the country. Some cultural practices and traditions have limited women's access and participation, particularly in traditional settings such as the Kgotla. Furthermore, there are some socio-cultural practices which still discriminate against unmarried women. For example, they are not allowed to participate in any bride-seeking negotiations.

48. Customary Law maintains that a husband is the head of the household and has final decision making power on family matters. The husband has the marital power in personal matters, which means that a married woman has no capacity to bring or answer legal proceedings without the assistance of her husband. The marital power also means that upon marriage, the wife forfeits the capacity to acquire a domicile of her own choice. The matrimonial domicile becomes that of the husband. However this practice is gradually changing as documented in the Report on the Review of All Laws Affecting the Status of Women in Botswana by the Government (1998).
49. The Abolition of Marital Power Act 2004 provides equality between men and women married in community of property. The effect of the Abolition of Marital Power Act is to remove the restrictions which the marital power placed on the legal capacity of a wife and abolish the Common Law position of the husband as head of the family. However, this has no effect on customary and religious marriages. There is therefore need to harmonise the various provisions in the Customary and Common laws in order to give effect to the Abolition of Marital Power Act.

### **Marriage and Marital Status**

50. A couple may choose to marry under the Customary Law or Common Law. An estate of a marriage under Customary Law is a joint estate. Under the Common Law, a couple may choose to marry in or out of community of property. In community of property (joint estate), the property acquired by either spouse upon marriage and during marriage is held jointly. Prior to 1 May 2005, were not allowed to control assets, even if their contribution to the joint estate may have been significant. Under the concept of marital power, the husband was the sole administrator of the estate and the law permitted the husband to bind the estate, lease, or sell moveable assets without the consent of the wife. A wife could not make any legally binding transactions without her husband's consent such as obtaining credit from a bank or other such financial institutions to start a business of her own. In situations where the wife had a business of her own, she may conduct business in her own name with her husband's consent but the business fell under the joint estate and under the husband's administration.
51. However, under Common Law, the amendment of the Deeds Registry Act in 1996, Allowed women, whether married in community of property or not, to execute deeds and other documents required or allowed them to be registered in the deeds registry without their husband consent.
52. This situation has changed for women married under the Common Law with the Abolition of the Marital Power Act. Now women have equal rights in decision making on matters that affect family property or business. However, the situation has not changed for those married under the Customary Law. Under this status women's chances for economic or personal development are limited given that those opportunities are dependent on the husband. As a strategy to influence behaviour change among men especially those in community leadership positions, the government is supporting national and community education, awareness and advocacy programmes, in partnership with civil society organisations.

53. In general all marriages are automatically out of community of property unless both parties expressly state otherwise in writing as provided in the Marriage Act. Marriages out of community of property allow each person to keep their separate property. Under this arrangement the wife has the legal capacity to administer her own property. She is equally allowed to conduct business in her own name without his consent. The government has created this enabling environment through the amendment of relevant laws and the establishment of policies such as the National Policy on Women in Development (1996).

### **Emancipation of Women**

54. Under the Common Law, upon attaining 21 years of age any person is an adult responsible for his or her own decisions and resources. On the contrary, most tradition in Botswana regards an unmarried woman, at whatever age, as a minor under the guardianship of her male relatives and in particular the father or uncles. On the contrary males in similar circumstances are accorded relatively more freedom and independence. The practice is however changing due to more education and awareness of individual rights. Moreover there is need to do more in order to further reduce the prevalence of this practice throughout the country. The amendment of several statutes demonstrates determination by Government to balance power relations and create equal status for men and women.

55. The following are legal measures that the Government has put in place to eliminate all forms of discrimination against women and create a gender balance.

#### **(a) The Citizenship Act 1995**

56. The Government amended the Citizenship Act in 1995 to allow Botswana women married to spouses of foreign origin to pass citizenship to their children. The amendment was based on the case of Unity Dow versus the Attorney General, in which the law was seen as discriminatory against women by disallowing them to pass citizenship to their children who were considered as alien. Mrs Dow believed that the discriminatory effect of the said Sections (4 and 5 supra) offend against Section 3 (a) of the Constitution of the Republic of Botswana. Furthermore, Section 13 of the said Citizenship Act only made special provision for application for naturalization by a woman married to Botswana citizen men and no such special provision existed for foreign husbands of Botswana citizen women. However the Citizenship Act Amendment of 1995 did not cover children born before 1982. The Citizenship Act was further amended in 2003 to the following effect:-

- A citizen of Botswana who has acquired the citizenship of another country as a consequence of marriage shall; upon renouncing such citizenship and applying to resume citizenship of Botswana, be reinstated as a citizen of Botswana;
- Where the law of the country of a citizen's spouse requires that the foreign spouse of its citizen should be registered as a citizen of that country, or the law of that country automatically confers citizenship on the foreign spouse of its citizen, a citizen of Botswana shall not cease to

be a citizen of Botswana if he/she does not, by a voluntary and formal act, acquire the citizenship of his/her spouse's country notwithstanding the requirement of registration; or if after contracting marriage, he/she continues to live in Botswana.

**(b) The Mines and Quarries Act 1996**

57. The Government amended the Act in 1996 by removing restrictions placed on women to work underground in mines, thereby creating equal opportunities for women and men to work in the mining industry.

**(c) The Criminal Procedure and Evidence Act 1997**

58. The Government amended the Act to provide for the mandatory hearing in camera of sexual offences such as rape. This provided women with the privacy required and opportunity to limit discrimination and stigmatisation following the incidence of rape.

**(d) The Deeds Registry Act 1996**

59. The Act was amended in 1996 to:

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

**(e) The Penal Code 1998 and 2004**

60. The Penal Code Act was amended in 1998 to make the offence of rape gender sensitive and deny bail to persons accused of the offence. The amendment introduced a minimum sentence of 10 years imprisonment and mandatory HIV testing for persons convicted of rape. In the case where rape was accompanied by violence, and or the rapist was unaware of their HIV+ status a minimum sentence of 15 years with corporal punishment was introduced. Where the convicted person was aware of their HIV status, the minimum sentence was set at 20 years imprisonment with corporal punishment.

61. The Penal Code was further amended in 2004 to provide that notwithstanding any provision in any enactment which provides for the imposition of statutory minimum period of imprisonment upon a person convicted of an offence, a court may, where there are exceptional extenuating circumstances which would render the imposition of the statutory minimum period of imprisonment totally inappropriate, impose a lesser and appropriate penalty.
62. The implementation of the above legal provisions has created new challenges as reflected in the decision of the court in the case of Ishmael Dintwa vs the State, where the High Court held that denial of bail to a person accused of rape is unconstitutional. A person is presumed innocent until proven guilty therefore by being accused a person should not be denied bail in case the court does find such a person not guilty of the allegations of rape.
63. The enactment of the Domestic Violence Act would go a long way in the administration of justice and in the realisation of the objectives of CEDAW.

**(f) The Affiliations Proceedings Act 1998**

64. The Government amended the Affiliations Proceedings Act in 1998 to make it possible for a person other than the mother to institute legal proceedings under the Act for child support and maintenance. It also made it possible for legal action to be brought against the mother and extended the time limit after the birth of a child within which an action can be instituted. Two significant achievements of the amendment were an increase in the number and ranks of courts before which action may be instituted, and the separation of paternity issues from those of maintenance. In addition the amendment increased the amount of the monthly payment which a parent should make towards the maintenance of a child. Based on the parent's income, the courts are empowered to take into consideration their ability to pay the prescribed minimum. This provision notwithstanding, the need to continue creating awareness and education on how intended beneficiaries can access these services remains significant.

**(g) The Public Services Act 2000**

65. The Public Service Act was amended in 2000 to recognize sexual harassment as misconduct in the workplace and introduced appropriate penalties. This has equally influenced other private sector and parastatal organisations (e.g. University of Botswana and Botswana Training Authority-BOTA) to establish policies that recognise sexual harassment as a misconduct. The challenge in implementing this provision has been the onus placed on the claimant to prove beyond doubt that sexual harassment did actually occur. This has proved to be difficult as in most cases the offence is normally committed in private. The difficulty is compounded by the fact that there is no universally accepted definition of sexual harassment and that contradictions exist between Common Law and customary practices of regarding what may constitute sexual harassment.



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**(h) The Marriage Act 2001**

66. The Marriage Act was amended in 2001 to make it illegal for any person under the age of 18 to marry. The amendment further stipulated that no minor below the age of 21 years may marry without the consent of parents or legal guardian. The amendment provided for the registration of Customary, Muslim, Hindu and other religious marriages. Prior to the amendment girls could be married at the age of 14, involuntarily imposing the responsibilities of motherhood and being a wife upon them and denying them the opportunity to continue with education. In addition women were denied social and economic rights and privileges that accompany registered marriages.

**(i) The Abolition of Marital Power Act 2004**

67. The Act was enacted in 2004 and consequently abolished the Common Law principle of marital power which positioned the husband as the head of the family with powers over his wife including legal representation and administration of the wife's property. This was replaced with equal powers of spouses married in community of property to dispose off assets held in a joint estate.

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

69. The Act has necessitated the review and harmonisation of the other statutes to align them with its provisions. In this regard the Government passed the Statute Law (Miscellaneous Amendment) Act, 2008 to accelerate the process. Some of the laws affected are:

- Married Persons Property Act ( Aligned to the Abolition of Marital Power Act 2008)
- Marriage Act 2001
- Administration of Estates Act (Aligned to the Abolition of Marital Power Act 2008)
- Matrimonial Causes Act ( Aligned to the Marital Act 2008)
- Companies Act (Aligned to the Abolition of Marital Power Act 2008)
- Deeds Registry Act 1996
- Deserted Wives and Children Protection Act ( Aligned to the Abolition of Marital Power Act 2008)
- Children's Act (1981).

70. The Abolition of Marital Power Act does not apply to Customary and Religious marriages. Discussions are on going on how to address the disparities and extend the application of the Act to these marriages.

### **Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms**

#### **National Machinery to Support Gender Mainstreaming**

71. Botswana has demonstrated a strong political commitment to create a meaningful national framework and machinery to promote gender equality and to eliminate all forms of discrimination against women.
72. In 1981, a unit was established in the Ministry of Labour and Home Affairs to facilitate the promotion of equal opportunities for women and men and to coordinate the interventions on the elimination of all forms of discrimination against women in Botswana. In 1991, the unit was upgraded to a division and in 1996 to a fully fledged department. The Government has provided both human and financial resources and has set up a nationwide infrastructure to ensure effective operations of the Department. Currently the department has decentralised services to outer stations such as Francistown, Ghanzi, Maun, Tsabong Kanye, Kasane, Selebi-Phikwe and Serowe. The financial allocation to the department has steadily increased from P6 million in 2003/2004, to P7,809,900 in 2004/2005 and to 8,063,190.00<sup>6</sup> in 2005/2006 reflecting the Government commitment to the realisation of gender equality and elimination of all forms of discrimination.
73. The Department has further been charged with the responsibility of facilitating the integration of women in national socio-economic development processes through the promotion of gender sensitive policies and programmes. In practical terms the Department is assisting other sectors in:
- Formulating and interpreting gender and development policies or components thereof and the establishment of performance standards.
  - Providing technical assistance in the development of gender sensitive sectoral policies, procedures and planning strategies.
  - Monitoring and evaluating all development projects undertaken by partner organisations.
  - Promoting effective information dissemination on gender and development that is appropriately packaged to make it relevant, useful and user friendly.
  - Coordinating and facilitating capacity building through training on gender and development.
  - Coordinating and conducting research relating to gender and development to address gender disparities in national development.

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<sup>6</sup> The current exchange rate is US\$1 = P6.3 (February 2007).

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## **The Policy on Women in Development**

74. In 1996, the Government promulgated the Policy on Women in Development. The policy provides a multi-sectoral framework to address women in development issues. Its primary focus is on the:
- Elimination of all negative economic and socio-cultural practices and inappropriate laws that are a barrier to achieving equality and a non-discriminatory environment.
  - Enhancement of women's health. This is anticipated to be achieved through improved reproductive health and adequate access to services.
  - Promotion of gender sensitive education and skills development.
  - Promotion of gender awareness and mainstreaming in development planning process to ensure women issues are adequately addressed.
75. The greatest challenge is the implementation of the national policy and in particular the mainstreaming of a gender perspective into development planning and decision making processes. Gender issues are still perceived as the responsibility of Women's Affairs Department. Discussions are advanced on the draft National Gender Policy, which is the next developmental step following the National Women in Development Policy of 1996.

## **The Botswana National Council on Women (BNCW)**

76. To strengthen institutional capacity for the implementation of gender related activities including CEDAW, the Government established the Botswana National Council on Women (BNCW) in 1999. The Council is the highest policy advisory body on all matters relating to gender and development. One of the key roles of the Council is to advise the Minister responsible for women and gender issues on policy matters relating to how other sectors are mainstreaming gender issues in their development activities.
77. The Council operates through six Technical Sub-Committees that provide advice and assistance in the implementation of the National Gender Programme Framework. The Sub-Committees address the following six critical areas of concern.
- Women and poverty, including economic empowerment
  - Women in power sharing and decision-making
  - Education and training of women
  - Women and health
  - The girl-child
  - Violence against women, including women's human rights

**Gender Focal Points (persons)**

78. As part of gender mainstreaming in other development sectors, Gender Focal Points/ persons (GFPs) have been appointed. Their responsibility is to ensure that policies, development and training programmes initiated by their respective ministries or sectors are gender sensitive. However, lack of adequate skills and experience particularly in gender mainstreaming remains a key barrier for the Focal Points Persons. In addition, gender responsibilities are seen as an add-on to the staff's normal duties and hence not usually given the high priority they deserve. The challenge is compounded by lack of sufficient awareness and institutional support.

**Study of All Laws Affecting the Status of Women**

79. In 1997, the Government commissioned a study on Laws Affecting the Status of Women in Botswana. This study aimed at providing the basis for law and policy reviews to ensure Botswana's compliance with CEDAW and the standards set therein. Several workshops were held after the submission of the report in September 1998 to disseminate the results to the broader stakeholders. The report has informed the review of several statutes as discussed in Part I, Article 2 above.

**Study on the Socio-Economic Implications of Violence Against Women**

80. In 1999, Government commissioned the study on the Socio-Economic Implications of Violence Against Women in Botswana. The study documented the effects of violence on women ranging from poor physical and emotional health, poor self esteem, low self-confidence, chronic fear, low productivity at work, abuse of alcohol and drugs, maternal and infant deaths, disability, to being helpless and suicidal. The study findings have contributed to the ongoing discussions on the proposed "Domestic Violence Bill".

**Gender Mainstreaming Pilot Project**

81. The Women's Affairs Department piloted gender mainstreaming in the following four Ministries in 2002/03: Finance and Development Planning; Labour and Home Affairs; Local Government; and Trade and Industry. As part of the process gender policies and action plans for each of the ministries were developed. The Department is working in collaboration with the ministries in monitoring the implementation of the Action Plans. In 2005/2006, gender mainstreaming was further extended to the Ministries of Agriculture and Education. Plans are at an advanced stage for rolling out the gender mainstreaming exercise to Ministries of Foreign Affairs, Health, Environment, Communications, Science and Technology, and Lands and Housing.

82. Beyond the ministries gender mainstreaming advocacy efforts are beginning to bear fruits. Different government agencies have started mainstreaming gender as reflected in the Rural Development Policy, the Energy Policy, the Land Policy, and the Sports and Recreation Policy, and the Policy on Vocational Educational and Training.

83. Attempts were made to pilot the “Gender Responsive Budget Analysis” Project in the Ministries of Labour and Home Affairs and Local Government in 2002 to 2003. However, the project came to an end when the lead agency, the Women’s Non Governmental Coalition experienced organisational development problems and eventually closed operations.

#### **Government / UNDP “Programme Support Document” (PSD)**

84. The PSD was developed in 1997 as a joint initiative between the Government of Botswana and UNDP. It focused on institutional capacity development of key line ministries and departments including the Women’s Affairs Department (WAD) in the Ministry of Labour and Home Affairs. A key component of WAD’s institutional capacity development was related to policy development, gender mainstreaming, and technical support for Civil Society Organisations and other sectors. The strengthened capacity enabled the department to train Gender Focal Point persons, address issues of women in politics and gender based violence. The implementation of PSD ended in 2003 and has since been replaced by a new PSD that combined gender and HIV and AIDS.

#### **The Involvement and Participation of Civil Society Organisations**

85. In 2003 the PSD mentioned above was reviewed and based on the outcomes it was extended to October 2006. The assistance provided benefited several NGOs, Faith-based Organisations, Community-based Organisations and women’s groups that were identified as the National Gender Programme Framework implementing partners. Some of these key organisations include the Women NGO Coalition, Women Against Rape, Emang Basadi and the Women’s Shelter Project. Their involvement and participation has contributed to significant achievements in the implementation of the National Gender Programme Framework (1997), the African Platform of Action (1994) as well as the Beijing Platform for Action (1995).
86. The Women's Affairs Department continues to build and strengthen institutional capacity of other sectors through skills training, technical assistance in programme development and financial assistance. The Department is in the process of facilitating standardisation of training programmes to ensure quality through the development of standard modules. Some of beneficiaries are:
- Gender Focal Points/Persons in the different sectors.
  - Members of the Botswana National Council on Women.
  - Senior Government officials including Permanent Secretaries.
  - Political leaders including Members of Parliament, Local Government, Local Authorities
  - Ntlo ya Dikgosi
  - Civil society organisations
  - Development partners
  - Selected communities

- Members of different Workers Unions
- The Private Sector
- Parastatal Organisations

87. Over the years information dissemination and sensitisation on gender issues has taken the form of annual campaigns, celebrations and commemorations of important events such as the International Women's Day and the Sixteen Days of Activism Against Violence on Women and Children. The Government of Botswana has continued to support these and other initiatives that promote the objectives of CEDAW through provision of financial, human and technical resources for events in urban and rural areas.

### **Ntlo ya Dikgosi**

88. Four women are members of the Ntlo ya Dikgosi (House of Chiefs) generally considered a male territory. While the main function of the House is to advise Parliament and the Government on matters of culture and traditional customs, it is also entitled to discuss other matters within the mandate of the Executive or Legislative branches, which it considers desirable, taking cognizance of the interests of the tribes and tribal organizations. Key issues and recommendations of such discussions are presented to the President or National Assembly.

### **National Gender Programme Framework (NGPF) and Plan of Action (POA)**

89. The National Gender Programme Framework and the Plan of Action were developed in 1998. These provide the long term vision for gender development in Botswana and are aligned to Vision 2016, and the Policy on Women in Development. These documents have taken on board the recommendations of the UN Fourth World Conference on Women (1995). The framework addresses six critical issues adopted by Botswana from among the twelve in the Beijing Platform for Action (1995), which are:

- Women and poverty, including economic empowerment
- Women in power sharing and decision-making
- Education and training of women
- Women and health
- The girl-child
- Violence against women, including women's human rights

90. While paying attention to the above critical issues, stakeholders recognise and acknowledge that the priorities are continually changing as new developments and interventions come into place. Emerging issues include the environment and the role of media on the advancement of women's issues. These issues are discussed in more detail in Part II and Part III.

91. The National Gender Programme Framework has further articulated specific strategies for the implementation of the six critical areas of concern. The strategies include a vigorous resource mobilization, development of appropriate policies and programmes, effective coordination of interventions, capacity development through training, research and evaluation, development of effective information and management systems and lobbying and advocacy.
92. In 1999 a comprehensive Advocacy and Social Mobilisation Strategy for the National Gender Programme was developed. The strategy advocates for consensus building, resource mobilisation, and sustained political commitment to the National Gender Programme. A popular version of the National Gender Programme was also produced with the intention to serve as an outreach advocacy tool to build public consensus on gender issues around the six critical issues.

#### **Article 4: Special Measures**

##### **Socio-Economic Empowerment of Women**

93. The Government's approach to gender equality seeks to build a framework for promoting the equality of women with men. The National Gender Programme Framework has outlined specific strategies to address the six critical areas discussed in Article 3 above and elsewhere in the report. The socio-economic empowerment of women and in particular poverty alleviation through the creation of employment is a critical consideration for special measures that should be put in place.
94. The amendment of the Deeds Registry Act in 1998 and the passing of the Abolition of Marital Power Act in 2004 have created new social and economic opportunities for women. Women married in community of property are now able to register immovable assets in their own names and they have been empowered to conduct business in their own right.
95. In terms of economic empowerment, the Government has reviewed and improved opportunities for women and men to access productive resources especially finance. After the closure of the Financial Assistance Programme (FAP) in 1997, and Small, Medium and Micro Enterprise (SMME) in 2001, the Government established the Citizen Entrepreneurial Development Agency (CEDA) that continue to provide finance for development projects including those owned and managed by women. In the area of agriculture the Arable Land Development Programme (ALDEP) was established. These are examples of affirmative action programmes intended to equally benefit women.

##### **Arable Land Development Programme (ALDEP)**

96. The primary objective of ALDEP was to address the problem of access to draught power by small farmers by providing subsidies such as inputs and draught power. The programme initially failed to reach women mainly due to the beneficiary contribution requirement. In 1991 the programme was redesigned and the contribution for women was reduced from 15% to 10%. This has resulted in more women participating in ALDEP.

### **Financial Assistance Policy (FAP) and Small, Medium, Micro Enterprises**

97. The FAP was meant to stimulate the growth of sustainable productive employment. The programme was characterised by grants to eligible businesses that promoted and supported active participation of Botswana entrepreneurs in income generating ventures. The Government provided 75% of funding to new programmes for capital development, labour cost and training for a period of five years. In addition to assisting Botswana entrepreneurs, the FAP provided a 15% dispensation to female entrepreneurs relative to their male counterparts to promote more participation by women. Although the programme had been effective in addressing its desired goals, the issue of down payment of 10% still acted as a barrier to the poor, particularly rural women. The programme was closed in 1997.
98. The FAP and SMME programmes have been replaced with Citizen Entrepreneurial Development Agency (CEDA). However CEDA has not taken into account the overall unequal economic status of women and men, reversing gains for women accrued from preceding economic empowerment programmes.

### **Power and Decision Making**

99. Women are still under represented in institutions of decision making such as Parliament, the Cabinet, Local Authorities, the Public Service and in most national boards. However there has been a steady progress in these institutions except Parliament. After the 2004 elections, there were 7 women in Parliament. Of these six were in Cabinet and one serves as the Deputy Speaker of the National Assembly. By November 2005, out of a total of 591 councillors 116 were women. By June 2006, the number of female Permanent Secretaries had increased to 6 out of??) with 13 female Deputy Permanent Secretaries (out of??). While these numbers illustrate Government commitment to ensure gender equality and women participation in decision making, Botswana has not attained the international target of 50% women in decision making positions.
100. The Women's Affairs Department is spearheading national campaigns and collaborating with civil society in political education and sensitisation of policy makers and in particular Members of Parliament. These interventions are intended to mobilise the public, policy and decision makers and promote meaningful representation of women in decisions making fora and institutions.

### **Article 5: Sex Role Stereotyping and Prejudice**

#### **Customs and traditional practices**

101. In Botswana, customs and traditions play an important role in shaping the society. Customs and traditional practices constitute the foundations for the customary legal system, and permeate social norms which, accordingly, have an impact on the social structure of the society. This has implications on the women's human rights as they relate to sexual stereotyping and role



differentiation; among others. While this scenario holds for most societies, the traditional practices are also changing as development entrenches itself. There is also diversity of practices especially between urban and rural areas. This is partly due to urbanisation and improvement in communication.

## **Sexual Stereotyping and Expectations**

### **Early Socialisation**

102. In many homes in Botswana and particularly in rural areas, the inequality of the girl child in comparison to the boy is reinforced in the allocation of responsibilities and expectations starting from childhood. For example, boys will be assigned tasks having to do with family assets (ploughing, tending cattle, taking charge of the borehole, learning how to run family businesses in urban areas) while girls are likely to be assigned domestic duties (cooking, washing, fetching firewood or water). Boys are taught from infancy to assume leadership roles from their fathers while girls are taught to become “good wives” characterised by submissiveness, caring and being a homemaker. Cultural attitudes are often the root cause of negative stereotypes about women. In Botswana there is a popular proverb that says, *ga di nke di etelelwa ke manamagadi*, ‘cows cannot lead the herd’ which, in essence, means women cannot lead. However, it is important to note that these traditional practices, norms and beliefs are changing with time. The Government continues to support public education, awareness creation and social programmes intended to remove socialisation practices that disadvantage women and in particular the girl-child.

### **Language as a Source of Stereotyping and Reinforcing Prejudice**

103. The use of language has sometimes reinforced gender roles by attributing possession for certain things to men or women. For example, a family’s home is often referred to by the name of a person’s mother (for example, Mma Tebogo’s home) whereas its cattle or other assets would be referred to by the name of a person’s father (for example, Rra Tebogo’s cattle).
104. Another example is recognition of marital status or standing through the use of greetings. When a married man is greeted, he is often asked about the well-being of his children - which also includes his wife. The wife’s well-being is not distinguished from that of the children. If a wife is asked about the well-being of her children this does not include her husband. This is not perceived as intentionally negative or discriminatory against the woman, but it demonstrates a distinction in status between men and women.
105. In most local cultures, *mosadi oa tsewa* (a woman gets taken) when she marries. On the other hand *monna oa tsaya* (a man takes) when he marries. These expressions reinforce the ascribed women’s subordinate position and therefore perpetuate gender stereotyping as well as unequal spousal power relations.

106. Beyond the general use of language, the naming of children is still along gender lines and continues to reinforce gender roles and stereotypes. Setswana names often describe both functional roles and gendered attributes. For example, male names include: *Modisa* (taking care of cattle); *Motsumi* (hunter); *Mojaboswa* (the male heir) in some cultures a girl cannot be named *Mojaboswa* as traditionally she is not entitled to inheritance of some assets; *Kgosi* (chief). Female names include *Segametsi* (Fetcher of water); *Mmamotse* (homemaker); *Sethunya* (flower); *Bontle* (beauty).

### **The Men as the Head of the Households**

107. Societies in Botswana generally assign the male the power to lead the family, control family assets and be a guardian of all minor children irrespective of his competence relative to assigned responsibilities. This custom gives men considerable economic control of the family assets whether or not they proportionately contributed to associated resources. Traditionally, although the man controlled the family property, he consulted his wife (and sometimes his children) prior to disposing of family assets. However, with modernization and the changing value systems, men tend to dispose off family assets as they see fit without the consent of their wives. The situation has changed with the adoption of the Abolition of Marital Power Act of 2004. It will be important to improve on the provisions of this Act in order to ensure it applies to all marriage unions, including traditional and religious marriages.
108. Prior to 2004, male dominance presumed that women did not possess the ability to competently manage economic affairs. The consequence of patriarchal power was that many women remained financially powerless in the event of the dissolution of a marriage. Furthermore, most women were left ignorant of the value and location of the family assets. They were often cheated in the division of the matrimonial property such as cattle; which serve as a vital measure of a family's economic status. The situation has since changed with the adoption of the Abolition of Marital Power Act in 2004.
109. With changes in law, increased levels of education and employment among women, and urbanization, men are no longer automatically the head of households. Women's economic dependence on men has been significantly reduced because they are able to work outside the home. As more women work outside the home, there is a growing trend towards hiring domestic workers who are primarily women. Similarly men are becoming more involved in child upbringing such as caring functions, cooking, taking the child to hospital or school. This re-conceptualisation of gender roles demands adjustment from both men and women.

### **Cultural Perspectives on the Practice of *Bogadi***

110. The way women are socialised arises from societal expectations and beliefs about women and their mythically innate characteristics, including being docile and submissive. Attitudes regarding sexuality are derived from these assumptions and beliefs. There are presumed or expected ways a woman should behave. In some families, the payment of the *bogadi*, dowry; is interpreted as a symbolic representation of the transference of a woman from her father's

guardianship to that of her husband's, hence demands for a woman's subservience to her husband.

111. While *bogadi* began as a symbolic act, it has assumed an obligatory status in many parts of Botswana. The obligatory status of *bogadi* may have negative ramifications for both the woman and the man. If a man is unable to give *bogadi* this may prevent or delay a marriage from taking place (and therefore impede both a woman's and a man's right to marry and form a family). It may also exclude them from some social community activities if they choose to live together without marriage or get married without *bogadi*. For example, if *bogadi* has not been given, the couple is considered socially "unequal" to those couples where *bogadi* has been settled. A relatively small number of people interpret the exchange of *bogadi* as a "payment" for the bride. This perception vests the man with rights of absolute control over the woman. However this notion is not currently commonly held because of Government's continuous efforts to educate the public on negative cultural and customary practices.

### **Reinforcement of Gender Roles through Marriage Customs**

112. In some cultures new couples are counselled by elders just before the wedding ceremony regarding the obligations and responsibilities of marriage and family. This reinforces the socialization and gender roles which have been developed throughout childhood. Men and women are taken aside separately. Women are counselled by other married women and among the advice they are given is "*monna ke ngwana o a tlhokomelwa*" (a man is a child, he must be nurtured or looked after) "*monna ga a botswe kwa a letseng*" (a man should not be asked where he spent the night, if he did not spend the night at home) "*monna ke selepe o a adimanwa*" (a man is an axe that can be lent and borrowed). The use of this advice has changed over time. Where some of these expressions may have originated from polygamous environments, it should be noted that with the widespread prevalence of HIV and AIDS; among other current societal challenges; some of this advice is no longer given.
113. Men are counselled by married men. Among the advice they are given is "*mosadi ke galase, o tshwarwa sentle*" (a woman is as fragile as glass and must be handled with care) "*mosadi ke mokgabo wa monna*" (the woman is the man's ornament).

### **Differential Views on Sexual Behaviour**

114. There are different expectations for women and men regarding their respective involvement in extramarital relationships. Some of the men who have extramarital affairs do not expect to be questioned or confronted by their wives. This kind of practice is unsafe given the high HIV infection rates and other Sexually Transmitted Infections (STIs). However, if a woman is seen as seeking sexual gratification outside of marriage, she is labelled as promiscuous and of no virtue. For a man, this kind of behaviour of having multiple partners is not seen to be stigmatizing. Some of the men's behaviour emanated from a polygamous environment. Some religious communities still sanction or permit polygamy in spite of the fact that it has been outlawed under the Common Law. This is yet another instance justifying the need to provide

information and support services in order to facilitate informed decision making by women and men, regardless of whether they married under Common Law, Customary Law or Religious Law.

115. There are cases where husbands use force on their wives if they refuse them or demand the use of a condom. The use of force is premised on a cultural belief that a man has conjugal rights and a woman is obliged to provide. This often leads to marital rape, which is rarely reported. Furthermore, due to the lack of a marital rape provision in the Botswana Penal Code, it is difficult to press charges on this offence. Preliminary consultations by civil society organisations and the Parliamentary Law Committee are continuing regarding the development of an express provision in the Penal Code regarding marital rape.
116. Further efforts to address the issue of marital rape include current discussions on a proposed bill advocating for the development of legislation on domestic violence that would also cater for the offence of marital rape. Discussions on the bill are on going between parties.

### **The Role of Religion**

117. While some religious sectors reinforce discriminatory gender stereotypes, others have taken steps to break down barriers and open up opportunities for women. A classic example is the Dutch Reformed Church case on ordaining women to priesthood. In 2003, an elderly priest retired in Mochudi and a woman was nominated to replace him. In line with traditional practice of priesthood being the domain for men, part of the congregation objected to the ordination and took the matter to court. In his judgement in July 2006, Justice Modiri Letsididi ruled that the appointment of the female priest by the Dutch Reformed Church in Mochudi was not in contravention to the church order, and hence the appointment was sustained.

### **The Role of the Media in Perpetuating Gender Stereotypes**

118. Femicide/domestic murder suicides are reported in graphic detail, which appears to have contributed to encouraging the practice by challenging potential perpetrators to outdo one another. However it has been noted that the media is increasingly becoming gender sensitive in the coverage and reporting of such incidents.
119. In the advertising and marketing industry the lack of business moral and ethical standards has caused women to be used as objects for advertising and marketing campaigns, and/or in the beauty pageants, perpetuating standards of beauty which rely on nudity. These trends portray women as commodities, reinforce stereotypes and have direct impact on how young girls and boys think about them. With financial and technical support from the Government and other development partners, media managers are being sensitised on the need for gender sensitive reporting and advertising. It is anticipated that the media will come up with a Code of Conduct that will guide and inform their work, when it involves women.

## Reproductive Health Issues

120. There are cultural norms which affect the rights of women with regard to reproductive health. Men in most cases make decisions on when, how and where to have sex. Women in marriage relationship are not expected to demand the use of condoms. These practices disadvantage women with regard to their health.
121. In the case of maternity, after giving birth, the tradition requires women to stay home (*botsetse*) for a period of time, which may range from 14 to 90 days. This has now been institutionalised by allowing women take maternity leave. There is no official paternity leave for fathers. While men can take ordinary leave after the birth of a child, the absence of firm arrangements for paternity leave is likely to bolster stereotypes that place higher responsibility for the care of children on women.
122. However, given the education and awareness campaigns, some private sector and civil society organisations have adopted policies that allow husbands to take paternity leave for shorter periods.

## Article 6: Prostitution

### Trafficking in women

123. In Botswana human trafficking is prohibited in general terms. Sections 144 and 145 of the Penal Code (Cap 08:01) speaks to the abduction of females for immoral purposes and abduction of girls under 16 years respectively. Anecdotal information suggests that Botswana is being used as a transit route to and from neighbouring countries. In 2003, the International Organization on Migration reported that Botswana was both a source country and a transit country for human trafficking into South Africa. Contrary to the report on IOM, no cases of trafficking in women have been officially reported locally. However the Government is cognisant of the potential problem and the Police are vigilant in monitoring suspected cases. There is provision under the Penal Code to prosecute for offences in women trafficking.

### Prostitution

124. There are challenges in dealing with prostitution in Botswana because it has not been legally defined. However the society has defined prostitution as the exchange of sex for monetary or material gain. It is generally perceived as a female domain, though women cannot conceivably practice prostitution without the involvement of men. Given the lack of a legal definition, and legal management provisions under the Penal Code, issues of exploitation and abuse of prostitutes cannot be dealt with in a court of law. It becomes even more difficult where prostitution is practised in a more subtle and unconventional forms.
125. However, the Government is aware of these challenges and continues to support education and awareness programmes through civil society organisations that encourage and support women

engaged in commercial sex work to find alternative means of livelihood and occupation. The Government in collaboration with other stakeholders is ~~are~~ supporting civil society organisations such as Nkaikela Youth Project in Tlokweng, Itsotseng Banana in Palapye and Matshelo Community Development Association in Francistown in the implementation of activities based on the abovementioned initiative.

126. Abuses and exploitation of commercial sex workers are dealt with under other statutes such as those related to violence and physical abuse, rape, misrepresentation, and theft.

## Part 2

**Article 7:** Political and Public life

**Article 8:** Representation

**Article 9:** Nationality

### Article 7: Political and Public Life

#### Political and Public Life

127. The political system allows women equal opportunities to participate in public events of political, social and economic nature. The opportunities are founded in the democratic culture and participatory processes that are enshrined in the Botswana society. While there are no legal restrictions on women to stand for any elected public office, the reality is that there are many gender related factors limiting women's advancement in political and all aspects of life particularly in power-sharing and decision-making. Women's political involvement is to a large extent shaped by the socialisation process and public perception.
128. Socially women tend to have a higher level of responsibilities in terms of looking after children and the elderly, and being primary caregivers especially in the context of HIV and AIDS. Consequently they are not able to fully engage in political processes, including adequately campaigning and developing their political career. This challenge is compounded by lack of resources to participate profitably. Finally, the aggressive nature increasingly assumed by politics effectively discourage many women from active political involvement and participation – pitched against the cultural norm of women being submissive and staying at home and away from politics, which is perceived as a preserve for men.

#### Women Representation in Parliament

129. Botswana has no restrictions on women vying for elected political office in Parliament or in the Local Authorities. Historical evidence shows that women have held elected political positions since the country's independence. The Parliamentary Electoral System is constituency based while the Local Authority is ward based. By 2004, there were 57 electoral constituencies. Seven of these were held by women. Parliamentary elections are held every five years and every citizen of 18 years and above is eligible to vote.
130. The President has the prerogative of nominating four "specially elected" members of Parliament. In the last general elections the President appointed three women out of the four Specially Elected Members to Ministerial positions. Parliament is responsible for electing the Speaker and the Deputy Speaker of the National Assembly. The President of the Political Party with the largest electoral votes becomes the State President. The occupation of lower ranks by women in political decision making limits their possibility of ascending to the highest political positions such as the presidency.

131. Table 1, below shows women representation in Parliament and Cabinet respectively. The number of women in Parliament increased from 4 in 1994 to 8 in 1999 and subsequently declined to 7 in 2004. The number of women Cabinet Ministers increased from 3 in 1994 to 4 in 1999 and 5 in 2004. In 2004 women constituted 25% of the total Cabinet membership.

**Table 1: Women representation in Botswana Parliament and Cabinet**

	1994			1999			2004			2006/2007		
	M	F	%-F	M	F	%-F	M	F	%-F	M	F	%F
Parliament	40	4	9	36	8	18.2	55	7	11	55	7	12.7
Cabinet	14	3	21	13	4	23.5	15	5	25	18	5	27.7

Source: National Assembly (Nov 2005) February 2007

132. Table 2, below shows the number of women members compared to their male counter parts by political parties. Botswana Democratic Party (BDP) is the ruling party while the Botswana National Front (BNF) and Botswana Congress Party (BCP) are the leading opposition parties.

**Table 2: Women in Central and Executive Committees: Ruling and Opposition Parties**

Party	Central Committee			Executive Committee		
	Total	Male	Female	Total	Male	Female
Botswana Democratic Party (BDP)	18	14	4	6	6	0
Botswana National Front (BNF)	18	13	5	6	5	1
Botswana Congress Party (BCP)	22	16	6	7	5	2

Source: Offices of the Parties – June 2006

### The Local Government structure

133. The structure of the Local Government is made up of District and Urban Councils under the political leadership of Councillors. The Local Government elections and their term of office take place simultaneously with those of Parliament. Apart from the elected Councillors, the Minister of Local Government is responsible for nominating additional Councillors in the different Councils. By the end of the 2004 General Elections, there were 591 Councillors countrywide, comprising of 490 elected and 101 nominated Councillors. Out of the 591, 116 are women representing 19.6% of all Councillors as compared to 80.4% of men. The 116 women comprises of 78 elected and 38 nominated Councillors. Most of the women who became councillors had started their political careers as members or Chairpersons of Village



Development Committees (VDC) and Village Health Committees (VHC). These committees are the moulding schools for confidence, development of leaderships and building self-esteem for most women councillors. Table 3 shows the distribution of councillors by sex.

**Table 3: Representation at Local Government**

Representation	Total	Male	Female	Female %
Councillors	591	475	116	19.6%

Source: National Assembly – Nov 2005

#### 134. Ntlo ya Dikgosi (House of Traditional Leaders)

Ntlo ya Dikgosi (House of Traditional Leaders) is the advisory body to Parliament on issues of Customary Law. By 2004 the membership of the House was 35 of whom 4 are women. *Bogosi* (chieftainship) is male dominated and have greater influence on who eventually gets elected to the House of Traditional Leaders. Table 4, below indicates that by February 2005, women constituted 11% of the membership.

**Table 4: Women Representation in the Ntlo ya Dikgosi**

Representation	Total	Male	Female	Female %
Ntlo ya Dikgosi	35	31	4	11.42%

Source: National Assembly – Nov 2005 (Feb 2007)

### Women in the Public Services Sector

135. The Government is the largest employer in Botswana. The task of employment in the public service has been the responsibility of the Directorate of Public Service Management (DPSM) which until recently was headed by a woman. The Government employs a total of 54,036 (CPMS June 2006). Of these figures 29.0% were females compared to 71.0% males. Statistics presented in table 5 below shows that only 34.3% of women were holding positions of responsibilities at the level of Permanent Secretaries and Deputy Secretaries. While this has been a marginal increase compared to 2004, it is viewed as a significant progress.

**Table 5: Women in decision making positions**

Position				
	Women	Percentage representation	Men	Percentage representation
Permanent Secretary	2	9.5	19	90.5
Deputy Permanent Secretary	13	26	37	74

Source: CPMS, DPSM - June 2006

136. Other women hold senior management positions in the public sector such as the Governor of Bank of Botswana, the Attorney General, and the Head of Prosecution among others. In most cases these women made history by becoming the first females to hold the positions since independence.
137. An overall assessment of the public sector indicates that women constitute majority workers in several public institutions. This has been attributed to the government efforts in mainstreaming gender in public service. Table 6, below provides statistics that support this argument.

**Table 6:** *Women in the Public Service*

<b>Institution</b>	<b>Percentage of female employees</b>
Office of Ombudsman	73.5
Ministry of Health	66.8
Industrial Court	65.7
Ministry of Finance and Development Planning	65.4
Administration of Justice	64.3
Attorney General	62.5
Auditor General	60.4
Ministry of Local Government	59.2
Parliament	58.9
Ministry of Trade and Industry	57.9
Ministry of Foreign Affairs and International Cooperation	56.2
Ministry of Lands and Housing	50.7
Ministry of Education	49.9
Ministry of Communication, Science and Technology	47.2
Ministry of Labour and Home Affairs	45.9
Office of the State President	41.9
Independent Electoral Commission	41.3
Ministry of Environment, Wildlife and Tourism	34.0
Ministry of Works and Transport	26.8
Ministry of Agriculture	26.7
Ministry of Minerals, Energy, and Water Resources	26.3

**Source:** CPMS, DPSM June 2006

138. In the Private Sector, women have equally ascended to senior management positions such as Executive Managers, General Managers, Chief Planning Officers and Chief Accountants. However, they are conspicuously absent on the Management Boards of many companies.
139. Table 7, below, provides statistics of women holding decision and policy making positions within the parastatal organisations. Similarly the number of women is comparatively small.

**Table 7:** *Women in management and decision making positions of selected Boards, Commissions and Parastatal organisations*

<b>Parastatal organisations</b>	<b>Total</b>	<b>Males</b>	<b>Females</b>	<b>% of Females</b>
Botswana Meat Commission	29	23	6	21%
Botswana Bureau of Standard	15	11	4	27%
Botswana National Productivity Centre	26	20	6	23%
Botswana Technology Centre	23	17	6	26%
Botswana Post	31	18	13	42%
Rural Industries Innovation Centre	18	16	2	11%
Water Utilities Corporation	38	26	12	32%
<b>TOTAL</b>	<b>180</b>	<b>131</b>	<b>49</b>	<b>27%</b>

*Source: Women's Affairs Department - April 2006*

### **Women in the Judiciary**

140. The Judiciary of the Republic of Botswana is an independent arm of Government which is made up of the Customary Courts, Magistrates Courts, Industrial Court, High Court, and the Court of Appeal. The Court of Appeal is the highest institution for the administration of justice in the country. The appointment of Judges is the prerogative of the President. Magistrates are appointed by the Judicial Service Commission. Table 8 below shows the number of Judges in the Court of Appeal by June 2006. There are no female Judges appointed to the Court of Appeal.

**Table 8:** *Court of Appeal*

<b>Position</b>	<b>Male</b>	<b>Female</b>
<b>President</b>	1	0
<b>Judges</b>	7	0

*Source: Administration of Justice – February June 2006*

141. By 2004, the President had appointed 2 female Judges to serve in the High Court. The first woman Judge was appointed in 2002 and the second in 2004. One of the female Judges was appointed as the first female Attorney General in 2005. Table 9 below shows the distributions of personnel at the High Court.

**Table 9: The High Court**

Position	Male	Female
Chief Justice	1	0
Judges	14	1
Registrar	1	0
Deputy Registrar	2	0
Assistant Registrars	8	0

Source: Administration of Justice – July 2008

**Table 10: Industrial Court**

Position	Male	Female
Judge President	1	0
Judges	4	3
Registrar	1	0
Deputy Registrar	1	0
Total	7	3

Source: Administration of Justice – July 2008

142. There are more male than female Magistrates. By June 2006, there was a total of 21 female Magistrates serving in the Magistrate Courts countrywide. It is at the Magistrate Courts that most cases are heard and determined. Table 10, shows the distribution of female Magistrates by rank in comparison to their male counterparts.

**Table 11: Magistrates**

Position	Female	Male	Total
Chief Magistrates	3	1	4
Acting Chief Magistrates	0	2	2
Principal Magistrates	5	5	10
Senior Magistrates	8	8	16
Magistrates Grade I	5	4	9
Magistrates Grade II	3	1	4
Magistrates Grade III	4	2	6
<b>Total</b>	28	3	51

Source: Administration of Justice – July 2008

## Women Participation in the Kgotla

143. The Kgotla is an important community decision making platform. The Kgotla is used for a variety of purposes including community consultations, dispute resolution, public announcements and information dissemination on ongoing development programmes. It is also a strategic entry point into the community, for outsiders.
144. Leadership and organization of the *kgotla* is generally provided by a male from the Royal Family. Most tribes are patrilineal and therefore responsibilities are passed down through male relatives. The Kgotla has strict dress code for men and women. This may require that men wear jackets and not wear hats. Women are expected to wear head scarves covering their heads and may not wear trousers. Men and women sit on different sides and also sit in different positions at the *Kgotla*. Traditionally in *Dikgotla*, men sit on chairs and women sit on the ground. While these practices are not perceived as discriminatory in modern Botswana, they serve to show how society perceives gender roles and responsibilities as well as associated conduct.
145. Men tend to attend *Kgotla* meetings more than women (although both are encouraged and permitted to attend). In particular, there is a clear expectation that the head of the family, which is often a male, will participate. The tradition of male heading a family has been challenged by the upsurge of female-headed families; creating opportunities for more women participation in *Kgotla* deliberations. Where women have ascended to Chieftainship, they preside over *Kgotla* meetings.

## Participation in Non-Governmental Organizations

146. The number of civil society organisations has increased tremendously in the country. The primary objective of some of these organisations is to work on gender issues and/or focus on development issues affecting women. Anecdotal information indicates that in 1999, there were approximately 10 organisations that were actively involved on gender and women's issues. By 2007, the number had increased to 25 organisations.
147. The number of major civil society organisations headed by women also increased from 10 in 1999 to 25 in 2007. Women employed by these organisations also held senior positions such as Programme Officers, Accountants and Monitoring and Evaluation officers. However, there is need for continuous capacity building for civil society organisations in order to sustain programme implementation momentum.
148. NGOs generally face challenges including low institutional capacity for programming and implementation of interventions, limitations in leadership, inadequate skills and inexperienced staff, high staff turnover, and lack of resources to sustain most of their activities. As a result some of the organisations have closed down. In recognition of the critical role played by NGOs in the national development process and in particular in the delivery of women's empowerment programmes, Government has developed guidelines on NGO funding to facilitate NGOs' access to funding from Government.

## Article 8: Representation

### Diplomatic Representation by Women

149. The Botswana Diplomatic Service is part of the Public Service, administered through the Ministry of Foreign Affairs and International Cooperation. Traditionally the Diplomatic Service has attracted more men than women. However in the recent past the number of women in Diplomatic Service has significantly increased. Table 11 below compares the number and positions held by women and men in the Diplomatic Service. Women constitute 35.89% of diplomatic staff.

**Table 12:** *Distribution of Senior Posts by gender at Botswana Missions Abroad*

Senior Post in Missions Abroad	Male	Female	Total
Ambassadors	6	3	9
High Commissioners	5	3	8
Consul General	1	1	2
Minister Counsellors	3	1	4
Counsellors	3	8	11
Total	18	16	34

*Source: Ministry of Foreign Affairs – July 2008*

150. While Botswana is a member of most international organisations such as United Nations, The Commonwealth, the African Union and SADC among others, it is grossly under-represented among the staff of these organisations. The situation is even more compromised regarding women's representation. The Government has initiated efforts to encourage and support Botswana participation in international organisations.

## Article 9: Nationality

### Acquisition of Nationality

151. According to the Citizenship (Amendment) Act of 1984, a person born in Botswana shall be a citizen of Botswana by birth and descent if, at the time of birth such a as person fulfils the following conditions:

- The father or mother was a citizen of Botswana,
- In the case of a person born out of the wedlock, the mother (or father) was a citizen of Botswana.
- A person born before the commencement of the Act and seeking citizenship shall not be a citizen by virtue of this provision.

152. The Court of Appeal has maintained that these provisions are unconstitutional, leading to Government's subsequent amendment of the Citizenship Act to rectify the anomaly. The 1995 Amendment Act introduced gender neutral provisions. Citizenship may be acquired by birth or descent if either the mother or father was a citizen at the time of birth of such a person (Section 2). In the case of citizenship by adoption, the requirement that the male adopter be a citizen has been discarded, providing that one of the adopters must be a citizen (Section 3). With regard to the acquisition of citizenship by registration, no distinction is made for marital or non-marital children and the amendment has held that the citizenship of either of the parents suffices (Section 4). For naturalisation of a foreign spouse, the amendment accords equal treatment to both male and female (Section 6).
153. The Act applies retrospectively to 1982, and as such excludes those individuals born prior to that date to Botswana women married to foreigners and those born outside Botswana to unmarried women. The amended Citizenship Act of 1995 allows the registration of children under 21 years as citizen, where one of their parents is a citizen. However it excludes those born outside Botswana before 1982, and have attained the age of 21 years.
154. Prior to 1995, the law was seen as discriminatory against Botswana women as demonstrated in the case of Unity Dow who; by reason of her being female; could not pass citizenship to her children who were considered as alien. Mrs Dow believed that the discriminatory effect of the said sections (4 and 5 supra) offend against Section 3 (a) of the Constitution of Botswana. Furthermore, Section 13 of the said Citizenship Act only makes special provision for application for naturalization by women married to Botswana citizen men. However no such special provision exists for foreign husbands of Botswana citizen women hence the need to continuously review and amend laws to ensure equitable provision and benefit for women and men.

### **Effect of Marriage on Nationality**

155. The amendment of the Citizenship Act in 2004, made it possible for Botswana women married to foreign nationals to retain their nationality. The law of the country of a citizen's spouse may require that the foreign spouse be registered as a citizen of that country, or the law of that country automatically confers citizenship on the foreign spouse of its citizen. In such cases a citizen of Botswana shall retain citizenship, if he/she does not, by voluntary and formal act, acquire the citizenship of his/her spouse's country notwithstanding the requirement of registration or if after contracting marriage he/she continues to live in Botswana.

### **Tribal Affiliation**

156. It is now generally acknowledged that tribal affiliation may bestow identity, language, culture and tradition. This has gender dimensions. When a woman gets married she joins her husband's tribe. This may have positive or negative implications for her as the customary law of the tribe may treat women differently than that of her own tribe. All people are born into a tribe. If their mother is married, they are born into the father's tribe. If the mother is not married, they are

born into the mother's tribe. The legal status of children is determined by the legal status of the mother. If the child is born in wedlock she/he belongs to her/his father's family. If the child is born out of wedlock she/he is part of her/his mother's family. While these practices are not perceived as discriminatory against women, they may contribute indirectly to the marginalisation or eventually discrimination of women.



**Part III**

**Article 10:** Education

**Article 11:** Employment

**Article 12:** Health

**Article 13:** Economic and Social Benefits

**Article 14:** Rural Women

**Article 10: Education****Empowerment of Women through Education**

157. The Government of Botswana has made tremendous efforts in ensuring that education opportunities are available and accessible to all people. The National Commission on Education Report of (1993) underscored the importance of education as a life long process of improving the quality of life of people and in particular the empowerment of women and the girl child. This is in line with the recommendations of the World Conference on Education for All (Thailand, 1990).
158. The Ministry of Education is not the sole provider of education in Botswana. There are private colleges and schools that are officially registered to provide educational services and Government has extended scholarships to Botswana to enrol in these tertiary institutions. Men and women are accorded equal opportunities. The Government is in the process of establishing a second university, thereby creating more education opportunities for Botswana.

**Gender Imbalances in Education**

159. The Ministry of Education has taken cognisance of gender imbalances in education and is currently preparing an “Equal Opportunities Policy” that should facilitate the ‘promotion of equality of learning opportunities and eliminate any existing potential discrimination of learners on the grounds of race, ethnic origin, religion, sex, marital status, disability, age, social status or location. In this respect the Ministry has formed a high level “Gender Reference Committee” consisting of departmental gender contact persons and chaired by the Deputy Permanent Secretary – Educational Development Services (EDS). The priority task of the Committee is to ensure that gender is mainstreamed in the educational curricula, educational programmes as well as practices; and provide advice to the Permanent Secretary.
160. The following Tables 12 and 13 compare the enrolment of male and female learners in both secondary and primary schools for 2001 and 2002. The total enrolment for girls for forms 1 to 6 represented 52.85% of the total students enrolled. It is also evident that the number of girls declined as they progressed to higher classes.

**Table 13: Secondary Enrolment by Sex and Form**

Form	Male	Female	Total
1	19,396	20,672	40,282
2	19,145	20,121	39,266
3	19,060	19,682	38,742
4	8,250	11,104	19,490
5	9,450	11,013	20,463
6	175	178	353
<b>Total</b>	<b>76,476</b>	<b>82,770</b>	<b>158,596</b>

Source: Ministry of Education 2005

161. As shown in Table 13 below primary school the enrolment for males and females aged between 7 and 13 was almost the same for the period from 1995 to 2004, possibly indicating that efforts by government to create equal opportunities for boys and girls, were yielding positive results.

**Table 14: Percentage of Enrolment in Primary Schools by Sex and Year**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>First Level – Primary Schools</b>										
Male	156,560	159,502	161,497	162,565	162,124	163,192	165,932	167,246	166,973	166,759
Female	157,133	159,127	160,771	160,125	160,351	161,091	163,519	163,589	163,403	161,933
<b>Total</b>	<b>313,693</b>	<b>318,629</b>	<b>322,690</b>	<b>322,475</b>	<b>324,283</b>	<b>329,451</b>	<b>329,451</b>	<b>330,835</b>	<b>330,376</b>	<b>328,692</b>
<b>%Female</b>	<b>50.1</b>	<b>49.9</b>	<b>49.9</b>	<b>49.6</b>	<b>49.7</b>	<b>49.7</b>	<b>49.6</b>	<b>49.4</b>	<b>49.5</b>	<b>49.3</b>

Source: Botswana National SADC Progress Report on the Implementation of the SADC Declaration on Gender and Development, June 2006

### Measures for improving Availability, Access, Equity to Education and Training

162. The following are measures that the Government of Botswana has taken to improve the availability and accessibility of education, based on the recommendations of the Revised National Education Policy 1994.

#### (a) Vocational Education and Training

163. **Vocational Educational Policy:** A national Vocational Education Policy is in place. The Policy provides a framework for the establishment of vocational training schools to cater for learners who are unable to continue with formal education. The policy promotes equal opportunities.

164. The Ministry of Education is working on the Equal Opportunities Policy that is expected to create more opportunities for vocational education and training especially for women in traditionally male-dominated trades. This endeavour should lead to more empowerment of women both in skills and income. In this regard the Guidance and Counselling Unit in the Ministry of Education has conducted a number of gender sensitization workshops targeting Vocational Training Centres and Brigade Management. In addition the Department of Vocational Education Training has a gender sensitive career Guidance Role Model Video targeting girls, particularly encouraging them to take up technical careers. The video profiles women and men who have been successful in technical careers as role models. Counselling and Guidance services as well as training and sensitisation are provided in order to break the gender stereotypes that negatively influence career decision making for both boys and girls.
165. A key challenge for women in vocational training is pregnancies. To address this challenge and provide equal opportunity for continuing education the Department of Vocational Education and Training has come up with a pregnancy policy that allows women to continue their training.

**Table 15: Enrolment in Vocational and Technical Training**

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
<b>Second Level – Vocational and Technical Training</b>										
Male	5,563	4,351	5,598	6,226	6,178	7,092	7,092	6,728	6,882	7,885
Female	2,532	1,857	3,232	3,713	3,431	4,415	4,415	4,154	4,251	4,764
<b>Total</b>	<b>8,095</b>	<b>6,208</b>	<b>8,830</b>	<b>9,939</b>	<b>9,609</b>	<b>11,507</b>	<b>11,507</b>	<b>10,882</b>	<b>11,133</b>	12,649
<b>%Female</b>	<b>31.3</b>	<b>29.9</b>	<b>36.6</b>	<b>37.4</b>	<b>35.7</b>	<b>38.4</b>	<b>38.4</b>	<b>38.2</b>	<b>38.2</b>	<b>37.7</b>

*Source: Botswana National SADC Progress Report on the Implementation of the SADC Declaration on Gender and Development, June 2006*

**(b) Distance Education**

166. The Government introduced the Distance Education Programme through the Botswana College of Distance and Open Learning (BOCODOL), as part of the strategy to increase and expand learning opportunities for men and women. The students sit for the same examination as those in the formal education system. Apart from government, distance education is also being offered by private colleges.
167. Available statistics indicate that more women have benefited from the Distance Education Programme compared to men. Table 15 below shows the enrolment for Junior Certificate (JC), General Certificate of Education (GCE) and Botswana Government Certificate of Secondary Education (BGCSE) for the years 2001 to 2008.

**Table 16:** *Number of students enrolled with Distance Education Programme (Dept. Non Formal Education between 2001- 2004)*

Distance Education Enrolment by Gender and Year							
Programme	Gender	BOCODOL					TOTAL
		2001	2002	2003	2004	2008	
Junior Certificate of Education	Male	155	302	396	287	395	<b>2186</b>
	Female	400	791	782	664	557	<b>4700</b>
	<b>Total</b>	<b>555</b>	<b>1093</b>	<b>1178</b>	<b>951</b>	<b>952</b>	<b>6892</b>
General Certificate of Education	Male	151	-	-	-	-	<b>1935</b>
	Female	294	-	-	-	-	<b>2772</b>
	<b>Total</b>	<b>445</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>4707</b>
Botswana Government Certificate of Secondary Education	Male	226	871	997	1215	1354	<b>4663</b>
	Female	554	1794	1997	2472	2814	<b>9631</b>
	<b>Total</b>	<b>780</b>	<b>2665</b>	<b>2994</b>	<b>3687</b>	<b>4168</b>	<b>14294</b>

Source: BOCODOL annual report (2008)

### Women in the Teaching Service

168. Table 16, below shows the distribution of lecturers in four of the teacher training colleges. The statistics show that there are more women than men employed as lecturers in the four colleges.

**Table 17:** *Number of trained and un-trained primary school teachers*

Lecturers	Francistown	Lobatse	Serowe	Tlokweng	Total
<b>Batswana:</b> Male	17	13	18	14	62
Female	27	39	26	31	123
<b>TOTAL</b>	<b>44</b>	<b>52</b>	<b>44</b>	<b>45</b>	<b>185</b>
<b>Non-Batswana:</b> Male	4	4	0	5	13
Female	4	2	0	3	9
<b>TOTAL</b>	<b>8</b>	<b>6</b>	<b>0</b>	<b>8</b>	<b>22</b>
<b>All Lecturers:</b> Male	21	17	18	19	75
Female	31	41	26	34	132
<b>TOTAL</b>	<b>52</b>	<b>58</b>	<b>44</b>	<b>53</b>	<b>207</b>
<b>Students:</b> Male	93	146	80	120	439
Female	143	179	122	173	617
<b>TOTAL</b>	<b>236</b>	<b>325</b>	<b>202</b>	<b>293</b>	<b>1056</b>

Source: Ministry of Education (2005)

169. The Teaching Services Management Act (1978) provides for fair and gender sensitive teacher transfers. However there are some challenges. Women often get transferred to places nearer their husband's place work. This can be interpreted as perceived perpetuation of sexual stereotyping that instils the attitude that female interests are subservient to male interests.
170. Although the Teaching Service Act has undergone a number of amendments, Section 14.(2) still states that 'Subject to the provisions of this Section a teacher shall retire from the Teaching Service on attaining the age of 65 years but a female teacher may retire on marriage'. A corresponding interpretation of Section 14 (1) as stated in the Code of Regulation 105 (1976) on re-appointment of a female teacher on marriage, states, 'if a female teacher on permanent terms marries, she shall notify the Director in writing immediately following marriage whether she elects to continue to serve on permanent terms or retire'. She may be re-employed on temporary terms in the event of her retirement on marriage'. This tends to discriminate women by perpetrating stereotypes and not giving sufficient attention to women's rights. The Act does not provide similar provisions for men, even though the provisions for women may have the same effect to some men.
171. Boys and girls are exposed to the same curricula, examination, teaching staff and materials. The curriculum and teaching materials have been made gender sensitive and hence books are prescribed on the basis their gender sensitivity. A Girls' Education Movement has been started with support from UNICEF with the objective of breaking gender stereotypes and empowering girls with life skills.

### **Scholarships**

172. The Ministry of Education offers equal scholarship opportunities for boys and girls. In this way, students from all social backgrounds have access to the scheme. This should eventually help to address poverty, especially in relation to female – headed families.
173. The private sector also offers scholarship for promising learners and people in employment who are desirous of continuing with higher and more specialised education and training. One private company sponsored 16 females and 28 males in 1998, and 40 males and 10 females in 1999 for a number of science courses such as engineering, information systems, metallurgy, medicine, geology, mining, to mention just a few fields that were dominated by men.

### **Continuing Education**

174. A number of continuing education programmes have been developed including those offered by the Botswana College of Distance and Open Learning, non-governmental organisations, the University of Botswana, study groups and private colleges. These programmes have expanded learning opportunities for women as evidenced by consistently higher female enrolments.
175. The National Literacy Programme aims at reducing illiteracy rates among citizens of Botswana. Most of its beneficiaries are women mainly in rural and semi-urban areas. In 1998, the

programme enrolled 3 980 men and 6 736 women. It had 91 female and 32 male Adult Education Assistants.

### Efforts to Curb School Drop Outs Due to Pregnancy

176. The government has adopted a “re-admission policy” to allow girls who drop out of school due to pregnancy to return to school after a period of six months, based on government’s position to provide equal education opportunities. The Diphilana Continuing Education Project was initiated as a pilot to assess the policy’s effectiveness and relevance. The project entailed the provision of a day care facility adjacent to the school where teen mothers could continue with studies while their babies were being taken care of. Civil society organisations such as Young Women Christian Association also provide continuing education and skills training opportunities for teen mothers.

### Promotion of Sport and Recreation at Schools

177. Recognising the importance of sports and recreation to the overall growth and development of young people in schools, the Ministry of Education has included physical education as a critical component of the primary schools curriculum. At secondary schools, the policy requires each student to register for at least one extra-curricular sporting activity, a school club or undertake a hobby. This has paid dividends through giving impetus to sport development in schools and inspiring more female students to get involved in sport and recreation. Table 17 compares female and male participation in selected sporting events between 2000 and 2003.

**Table 18:** *Participation of girls/women and boys/men at major regional and international sport competitions*

Year	Competition	Number of female athletes	Number of male athletes
2000	Sydney Olympic Games	0	0
2002	Manchester Commonwealth Games	2	15
2003	Nigeria 8 <sup>th</sup> All Africa Games	11	39
2006	Melbourne Commonwealth Games	6	24
2007	Algeria All Africa Games	19	81
2008	Beijing Olympic Games	4	19
<b>TOTAL</b>	-	<b>42</b>	<b>178</b>

*Source: Department of Sports and Recreation – Botswana National Sports council (Annual report 2000-2008)*

### Article 11: Employment

178. The Employment Act defines an employee in gender neutral terms, “as any person who has entered into a contract of employment for labour”. The basic terms and conditions set out in the

Act, as well as in the Trade Disputes Act, Workers' Compensation Act, Trade Unions and Employers Organizations Act, Employers of Non-Citizens Act, and Factories Act; apply to all employees regardless of sex. Potential employees are considered on the basis of education and technical competencies. Hence the laws related to employment are considered "non discriminatory" on the basis of gender.

179. Promotions and access to benefits are based on merit rather than gender. This gives women equal opportunities to ascend to positions of responsibility within the organisations and/or private sector companies. The revision of the Mines and Quarries Act (1994) has created more employment opportunities for women by allowing them to work underground. However, there are still some reports of instances of abuse based on race, pregnancy and age by the local media.
180. Women still predominate in professions such as teaching, nursing and secretaries while men are in the majority in disciplined forces. However the military is planning to recruit female cadets as of April 2007. Table 18 presents the results of the last Labour Force Survey conducted in 1995/96, by sex and sector.

**Table 19:** *Employed persons by sector and gender*

<b>Sector</b>	<b>Total</b>	<b>Male</b>	<b>Female</b>
Central Govt.	75,479	39,355	36,124
Local Govt.	39,917	18,737	21,180
Parastatal	12,135	8,230	3,905
Traditional Agriculture	48,657	33,232	15,425
Informal Sector	57,240	18,958	38,282
Other Private	111,977	70,789	41,188
<b>Total</b>	<b>345,405</b>	<b>189,301</b>	<b>156,104</b>

*Source: CSO 1995/96 Labour Force Survey*

181. Remuneration and grading of jobs does not depend on the sex of the incumbent. Government has ratified ILO Convention No. 100 on Equal Remuneration for Men and Women Workers for work of equal value (June 1997). The Trade Disputes Act and the Trade Unions and Employers Organisations Act were amended in 2004 to align them with the Convention. The Employment Act Cap 47.01 also provides for equity in Social Security and retirement benefits of employees, regardless of sex. Eligibility to these provisions is determined by age rather than sex. The Factories Act (Cap 44.01) addresses issues of safety, health and welfare in the work place irrespective of the sex of the employee.
182. Women draw a percentage of the monthly earnings while on maternity leave. In Female Government employees get 100% of their monthly salary while in the private sector the percentage varies from one organisation to another. However, the Public Service General Orders limits this provision to three pregnancies which should be at least two years apart. Another notable dispensation by the Government is the one hour per working day recess



entitlement for a period of one year for purposes of nursing the new born baby. These entitlements are meant to ensure that women and their babies are taken care of and illustrate government's sensitivity to women's needs.

### **Termination of Employment**

183. The Employment Act prohibits the termination of employment on the basis of marital status and sex. Section 121 of the Employment Act specifically provides protection of women on maternity leave, which means employment of women on maternity leave cannot be terminated.

### **Sexual Harassment**

184. Sexual harassment regardless of sex is prohibited in the workplace. In 2000 the Government amended the Public Service Act to include sexual harassment as a misconduct which can attract penalties under the Public Service Act. The limitation of this provision is that it is only applicable in the public sector. However some private sector institutions have policies on sexual harassment.

### **Article 12: Health**

185. The government has initiated comprehensive primary health care strategy in line with the Alma Ata Declaration of 1978. The strategy ensures that all people regardless of gender, age, location, social status among others have equal access to comprehensive care and support. The general population is within 15 kilometres of a health facility. In nearly all the districts there are well equipped and staffed primary hospitals, clinics and health posts. Some of the clinics have maternity facilities that make it easier for mothers to have safe delivery. The public health system is financed by the government at a token user fee of P2<sup>7</sup> for outpatients. Some members of the public are exempted from paying this fee. These include the poor as defined by the Destitute Policy; children; the handicapped; women attending sexual and reproductive health services such as family planning, ante- and post-natal care; TB and patients as well as those enrolled on the ARV programme. Other fee exempted services include child welfare and Adolescent Sexual Reproductive Health care. This arrangement allows more women to access health care, especially rural women with limited resources.
186. Generally the health sector has performed well in Botswana. In 1999, life expectancy for women was 67.1 years compared to 63.3 years for males. In 2002, 94.3% of pregnant women in urban and 93% in rural areas attended antenatal clinic. Approximately 97% of deliveries are supervised by a trained Health Personnel in health facilities. According to the World Health Organisation projections the mortality rate is estimated at between 200 and 300 per 100,000 live births.

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<sup>7</sup> Current rate is US\$ 1 = P6.3.

187. The HIV and AIDS epidemic is gender biased. Women are more vulnerable to infection than men, given their anatomy. The sentinel surveillance of 2003 shows that 37.4% of women attending antenatal clinic were infected by the virus. Women also bear the burden of care as they are the key service providers in the home based care programme. Women constitute the largest number of volunteers in the home based care programme. Girls are sometimes withdrawn from school to take care of sick relatives or siblings. Clearly society still considers “care and support” as the duty of women. In fact men’s involvement in care and support has been very limited. In addition most of the members of support groups of PLWHA are women. The government in collaboration with civil society organisations has initiated support programmes that reduce the burden of care and support on women.
188. The Government has established several programmes including prevention services; care, support and treatment; support for interventions that mitigate the impacts of HIV and AIDS, PMTCT, ARV, counselling, routine testing, blood safety, CHBC, food baskets and treatment of opportunistic infections including STIs and TB. In addition the National AIDS Council has established the Men’s Sector to promote the involvement of men in the prevention of new infections and general responsible management of the HIV and AIDS epidemic.
189. Another area of importance is the unprecedented involvement of men in the National Health Care System. The continuing lack of men’s involvement disadvantages women because as a consequence, men are poorly educated on their responsibilities concerning personal and family health and the needs of their partners. The Ministry of Health has involved men in SRH, HIV and AIDS and the gender based violence project since 2004. ¶ The Ministry aims at increasing male involvement and participation in sexual and reproductive health matters in order to reduce transmission of STIs, HIV and AIDS and to combat gender based violence.

### **Article 13: Economic and Social Benefits**

190. The Vision of Botswana at independence was to end hunger, alleviate poverty, and ensure equal access to resource, education, health and employment. The criterion for qualification to access services related to Government schemes such as Tenant Purchase Scheme, the Motor Vehicle and other Property Advance Scheme does not include sex. The Government has further initiated a number of socio-economic development programme such as the Citizen Economic Development Agency (CEDA) that serves as the vehicle for financial and technical support to Botswana. Services are equally available to both women and men Additional programmes include the ALDEP and the small stock initiatives. These services are accessible to women on an equal basis with men.

### **The Right to Family Benefit**

191. The Abolition of Marital Power in 2004 empowered women in relation to decision making on family property management. In addition the Act increased opportunities for women to make decisions on their own in terms of economic activities of their choice.

192. In the traditional setup women have limited inheritance rights as evidenced by the application of Customary Law. The law stipulates that the principal heir is the eldest son. Daughters generally have no rights to inherit except property specifically earmarked for them during their father's lifetime. In this regard the law tends to treat men and women differently. It is more pronounced in circumstances of un-married women living in their parent's homestead. Upon the death of their parents unmarried women are likely to be evicted by the heir. The Abolition of Marital Power Act of 2004 does not apply to marriages under customary or religious laws.

### **The Right to Participate in Recreational Activities, Sports and all Aspects of Cultural Life**

193. The Botswana Government has developed the National Policy on Culture and National Sports and Recreation Policy in 2001 and 1999 respectively. These policies have increased opportunities for women's participation in nearly all forms of arts, sports, and recreational activities. Women now serve on the National Sports Council. In 2007, given the importance of sports and recreation, the Government of Botswana established the Ministry of Youth, Sports and Culture. The recent formation of the Women in Sport in Botswana, an association that promotes and supports women's involvement in sport, should further strengthen women's involvement in sport. The association, together with the Department of Sports and Recreation, has embarked on a countrywide sensitization of women and girls on sports.

194. The priority for the National Sport and Recreation Policy is to develop broad-based sport, recreation and leisure programmes across the country that are accessible to all people including women and girls; and to ensure that sporting centres are user friendly. Therefore the policy has made provision for the development of child care facilities at selected sporting facilities to ensure that parental child care functions do not interfere with women's participation in sports. Table 19 shows the level, roles and responsibilities of women in sports and recreation in Botswana.

**Table 20:** *Level and involvement of women in selected sports & recreation and administration of the National Sport Association*

<b>Activity: National Sport Association</b>	<b>Number of women serving in the committee</b>	<b>Ratio of Total membership</b>	<b>Role played / or position held / by women</b>
Athletics	1	1/9	Vice Secretary
Badminton	1	1/7	Tourney/Secretary
Botswana Institute of Sports Associations	2	1/6	Secretary/Vice Secretary
Bridge	1	2/5	Member
BPLSA	1	1/7	General Secretary
Chess	1	1/19	Additional Member

Netball	2	2/6	President and Secretary
Special Olympics	4	4/6	
Softball	2	1/7	V/President – Legal, V/President - Finance
Tennis	1	1/6	Tech Director
Ladies Golf	Entire Committee	1/7	Treasurer
Basketball	2		Acting Secretary /Technical Director
Bowling	2		Competition Secretary/Secretary
Brigades	1		Vice Secretary/Treasurer
Premier League	1		Ex Officio
Horse	6		Additional Member
Motor Sport	1		Secretary
Netball	3		President/Treasurer/Sec General/Dev Officer
National Olympic	1		Publicity Secretary
Paralympic	1		Assistant Secretary
Special Olympics	1		Treasurer
Table Tennis	1		Secretary General
Judo	1		Secretary
Sports Volunteers	3		Treasurer / Add Member Chairperson

*Source: Department of Sports and Recreation (April 2004)*

### **Women's Participation in Leisure and Recreational Activities**

195. Recreational facilities are not well developed and hence the opportunities for Women's participation in leisure and recreation outside of their residential townships are limited. However, women have started forming clubs that are promoting sporting activities, including volley ball, squash and golf. In some cases married women are less involved because, unlike their unmarried counterparts, according to common customary practice, they would need the consent of their spouses.
196. Barriers that prevent meaningful participation of women in sports and leisure include unavailability of sporting and recreation facilities, lack of funds to join clubs, lack of adequate time after a normal day's work due to family commitments, and the distance women have to travel to recreational or sporting facility. Development of sports and recreation has generally favoured sports likely to attract men more than women.

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## Article 14: Rural women

### Botswana Policy on Rural Development

197. Access to resources and services is more difficult in rural settings than urban areas. Equally poverty is more prevalent in rural than urban environment. The government has put in place programmes to address these problems which impact more negatively on women than men. In 1972, the Rural Development programme was launched through White Paper Number 1, of 1972. The Rural Development Policy was revised in 2003 and has set out the basic principles guiding Rural Development in Botswana. Through the policy the government has undertaken to improve the services in rural areas and promote employment creation especially for women. In 1975, the Government embarked on the Accelerated Rural Development Programme (ARDP) to provide basic social and development infrastructure across all key sectors of the rural economy.
198. These rural development programmes seek to reduce poverty within rural communities through economic empowerment and provide support for sustainable livelihoods; with particular focus on women's participation. Special attention is paid to skills training, improvement in access to credit, delivery of extension services, increased community participation in planning and implementation of development programmes in general. These services have benefited rural communities, especially women.

### The Situation of Rural Women

199. In 1996, the Government adopted the policy on "Women in Development". The policy created an enabling environment for women across all sectors, including the informal business sector as well as those in rural settings. Income generating activities are supported through programmes such as CEDA, ALDEP, small stock initiatives, destitute programmes and through labour intensive public works under the Drought Relief Scheme. These programmes have benefited women.
200. The Women's Affairs Department in particular has been active in conducting a series of gender awareness and sensitisation training activities for policy makers and implementers, non-governmental organisations (NGOs), community-based organisations (CBOs), parastatals and the private sector. This has had a direct and positive impact on the lives of women and has contributed to women becoming active in setting up small and medium rural business ventures such as poultry farming, basket making, dress making, retail shops and pottery.

## **The Feminization of Poverty**

201. In the past gender blind development planning and programme implementation as well as non-gender responsive laws has contributed significantly to the marginalisation of women in the development process. While encouraging gender-related developments are evident, restricted access to and control of productive resources, limited access to formal employment and the increasing burden of care of vulnerable children have eroded women's resource base and left them relatively poorer than men. The problem is compounded by lack of sustainability in the agriculture sector where the majority of rural women are active. Agriculture remains predominantly subsistence based and labour intensive. In the case of livestock, very few women own cattle.
202. Female-headed households tend to suffer poverty and economic marginalization more acutely than men and male-headed households. In 1993/94 about 50% female-headed households were living below the poverty datum line compared to 44% male-headed households. The poorest urban female-headed households earned per capita disposable monthly income of 46% of that earned by the poorest urban male-headed households. In rural areas, the poorest female-headed households still earned 95% of per capita income of the male-headed households in the same category. About 22% of households in rural areas either had no disposable cash income, or else reported disposable resources of less than P50 a month in (HIES 1993/94). Female-headed households make up 38% of households in this category. Another 12% of all rural households reported a disposable cash income of between P755 - P1510<sup>8</sup> per month. Female-headed households account for 41% of these households. Only 7% of rural households commanded greater disposable cash income. Female headed households made up 18% of this category of households. Inadequate access to productive resources tends to entrench poverty among female-headed households more than those headed by males.

## **Limitations on Rights and Freedoms of Women**

203. The Constitution of Botswana accords women and men equal rights and freedoms. However, until 2005, the rights and freedoms of most married women were limited, given that their spouses had the absolute power in decision making on matters of family property, social and economic development. This situation has since changed with the adoption of the "Abolition of Marital Power Act". However the provisions of this Act, does not apply in traditional and religious marriages. There is therefore need to further develop legal provisions in order to ensure the protection of all married women.

## **Employment**

204. While unemployment is a national problem, it is more prevalent in rural areas particularly among women. Unemployment leads to lack of income which in turn contributes to poverty. Botswana's labour force is stratified such that half of it is in the formal sector where wages are

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<sup>8</sup> US\$1=P6.3 current rates.

comparatively higher and more stable. The rest, mostly women; are in the informal trading sector and agriculture, or those who are unemployed. Their earnings are often below the minimum wage level. In 1991 women accounted for 38% of workers aged 12 years and above, whereas 90% of their male counterparts were recognized as workers. It has however been noticed that failure to account for women's labour in the home environment has resulted in their low rates of participation in economic activity. Therefore while in reality women contribute significantly to family and household economy, such under-reporting creates an impression that women's contribution is minimal.

205. In 1991, one woman in four of all working females was a domestic worker which implies that this is an important sector for women. However, with no statutory minimum wage, earnings tend to be low. The government has taken a policy decision to introduce a minimum wage in order to protect employees against economic exploitation. By 2003, HIV infection among domestic workers was estimated at 22% according to the Sentinel Surveillance 2003. Government is working with civil society organisations to address the challenges encountered in this sector.

### **Access to Safe Water and Sanitation**

206. Major strides have been made in Botswana to provide safe drinking water to the majority of the population. In 1993/94 all households in urban areas and urban villages had access to safe drinking water, which included 90% of the poor and very poor female-headed households. Access to water has improved the lives of women in many ways. In particular it has shortened the time spent collecting clean drinking water. Many households in urban villages have shifted from pit to water system toilets, improving the sewage disposal and consequently contributing to better women's health.
207. In the rural areas the government has initiated the Rural Village Water Supply Programme that is providing water to communities. About 97% of population has access to safe drinking water. In spite of this development, the burden of collecting water still remains predominantly a women's responsibility.

### **Access to Energy**

208. Generally, people in Botswana use the most convenient forms of energy for their household needs. These include electricity, firewood, oil or paraffin and usage depends on availability as well as affordability. The burden of accessing forms of energy sources other than electricity disproportionately affects women, more especially in rural areas. In urban settings the impact is considered to be equal between men and women. This may, translate into poor households in rural areas and in particular female-headed households living in unhealthy conditions.
209. In order to address the situation the government is committed to providing electricity to all people through the Rural Electrification Collective Scheme. Under the scheme individuals are required to make a deposit contribution of 10% of the connection fee. The balance is provided

by the Government as a bridging finance and is payable over a period 10 years. In the absence of economically viable rural based business initiatives by women, generating the 10% contribution by women remains a challenge and a barrier for them to access electricity.

### **Access to Transport and Communications**

210. Botswana has made remarkable progress in the development of roads and communications. Major villages are connected by all weather roads and are served by a good telecommunication and postal services network. Gravel and sandy roads connect smaller settlements, whose residents are mostly women. Transportation is difficult and sometimes not available at all, and this has compromised the quality of the life of women. The Government through a regulatory system ensures that transportation costs are minimised for users. As a result the “Rural Bus Subsidy Scheme” which is used to encourage operators to provide transport services where they would not otherwise be viable was introduced.
211. Botswana Telecommunication Corporation as a parastatal body is responsible for the provision of national and international public telecommunications systems including in rural areas. Most major villages in rural Botswana have telecommunication services. The policy is that every village with a population of 500 people should be provided with telecommunication services. By and large, these two services are market driven and hence go to areas where there is demand. The incoming of cellular phones and other forms of e-communication has drastically improved the situation. This has significant implication on access to information by women, particularly those in rural areas.

### **Women in Agriculture**

212. The role of Agriculture and its contribution to Botswana’s rural economy have changed considerably over the past 30 years. While at independence agriculture contributed nearly 40% to the GDP, today it contributes only 5%. Today, agriculture accounts for only 2% of the formal sector and 16% of the traditional Sector. In agriculture women are engaged in a wide range of activities from producing small stock, cultivating vegetable gardens, harvesting veld products to small scale farming and producing handicraft. In 1981, 41% of rural women were engaged in agriculture and 77% in wage employment. In 1991, the percentage fell from 41% to 12% (Report on Gender Equity and Access to Economic Opportunities in Agriculture in Botswana).
213. While the number of women engaged in agriculture is on the decline, the sector remains important for most rural families, especially for elderly women who remain entrenched in their rural farm based activities because they have no alternative occupations in other sectors. They are also less likely to own productive resources. The potential for women participation has been compromised by a number of factors including lack of adequate access to: land, water, labour, credit, agricultural inputs, information, research and technology, and markets. Traditionally these input areas and resources are controlled by men. Furthermore, it is common practice for males to inherit boreholes since culturally women are not expected to inherit such assets. This



cultural practice compounds women's lack of access to agricultural productive resources. The situation is likely to improve through the implementation of the Rural Development Policy.

214. Land policies in Botswana are gender neutral in that laws do not prevent women from holding land, much against traditional practice, which does not encourage ownership of land by women. Under the Common Law land is allocated by the Land Boards based in guidelines provided through the Tribal Lands Act. While the Act does not stipulate that women cannot be allocated land in their own right, the Land Boards have in their daily operations introduced regulations, policies, and practices that require women to be assisted by their husbands or male relatives. In fact, in the case of married women, the Land Boards demand that the husband be the one who applies for land and the justification is that 'customarily' the man is the head of the family. This situation may change with the adoption of the Abolition of Marital Power Act in 2004, and the amendments of the Deeds Registry Act in 1996 abolishing discriminatory provisions.

### **Access to Technology and Training**

215. Appropriate Technology is a prerequisite for women if they are to meet their diverse needs and develop a competitive edge. Women are assuming an increasingly large share of responsibilities by generating resources for family maintenance including through serving as rural wage earners; agricultural workers; small business entrepreneurs, selling local craft; brewing beer; selling prepared food; collecting mopane worms (caterpillars) and other similar small scale economic activities. In addition, they serve as wives, caregivers and community organisers. In 1998, the Government adopted a Science and Technology Policy that is gender inclusive. It is anticipated that the effective application of the policy will improve not only access to technology by women, but an improvement on their daily work.

**Part IV**

**Article 15: Law**

**Article 16: Marriage and Family Life**

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**Article 15: Law**

216. The Government of Botswana is committed to eliminating all forms of discrimination and violence against women. It has embarked on policy and law review to ensure consistency between the laws, the policies and CEDAW provisions. In doing so the Government has taken into consideration of existing capacity for implementation, coordination and monitoring.
217. In 1998, the Government reviewed all the laws affecting the status of women in Botswana within the context of Common Law. The review led to the revision of several laws to align them with the provisions of CEDAW. However, CEDAW in its form as convention has not been domesticated in Botswana and hence it cannot be applied in the courts of law.

**Legal Capacity**

218. In terms of Section 45 of the Interpretation Act the legal age of majority in Botswana is 21 years irrespective of sex. This effectively accords any such person locus stand to act in his/her name without any parental consent, save for persons who have been incapacitated by mental illness.
219. With the Abolition of the Marital Power Act, women have the right to make independent decisions with regard to their personal life and participate in decision making in the case of joint property previously administered by their spouses prior to 2004. This also enables married women to make their own legal representation.
220. With regard to the acquisition of immovable property, the Deeds Registry Act Cap. 33:02 is of relevance. Prior to the amendment of this Act, women could not have immovable property registered in their own name either by way of transfer or cession, unless that property was specifically excluded from the community of property, or by a condition in the bequest or donation. Women were also required to be assisted by their husbands in the execution of deeds or other documents in the Deeds Registry (Section 18 of Cap 33:02). This has changed with the Abolition of the Marital Power Act.

**Capacity under Customary Law**

221. The amendment of the Deeds Registry Act, and the Abolition of Marital Power Act, do not apply to the Customary Law and hence the benefits have not extended to women married under traditional and religious marriages. Women in traditional and religious marriages need the assistance of their husbands. In the past unmarried women were expected to be assisted by their male relatives in the execution of contracts and administration of property. Current application of Customary Law sometimes still reflects the same connotation. In this regard some aspects of the Customary Law are perceived to discriminate against women.

**Freedom to choose residence and domicile**

222. Women can now acquire and choose their residence and domicile under the Common Law, as provided by the “Abolition of Marital Power Act, 2004”. Females married under the Customary Law don’t enjoy the same benefit. Upon marriage, women acquire the domicile of their husbands which is deemed to be the matrimonial domicile for purposes of Customary Law. The Government is exploring how to minimise the level of discrimination against women under the Customary Law.

**Ability to appear in court**

223. No distinction on the basis of sex is provided for in the Botswana laws with respect to the competence to give evidence in judicial proceedings. However, in rape cases it is a long established practice to invoke the “cautionary rule” which requires that the testimony of the complainant must be corroborated in some material way particularly in the prosecutions for the offence. This requirement is in most cases very difficult to fulfil because the offence is normally privately committed. Consequently, many alleged perpetrators get away without punishment at the disadvantage of women.

**Article 16: Marriage and Family Life****Marriage and Family Relations****Marriage under the Civil Law**

224. The Marriage Act Cap 29:01 regulates the solemnisation and registration of marriages, but does not apply to marriages contracted under customary or religious law. This Act sets out the process that must be followed in order to validate a marriage. In addition the Act has set out the minimum age of consent to marriage as 18 years for both boys and girls. Consent is not required after the age of 21 years.

225. Civil marriages can be contracted in or out of community of property. Marriages contracted prior to 1971 are deemed to be in community of property and post 1971 marriages are deemed to be out of community of property, unless the parties execute an ante-nuptial contract to the contrary.

**Marriage under Customary Law****The Right to Enter into Marriage**

226. The Marriage (Amendment) Act of 2000, increased marriage age to 21 for both females and males. Furthermore, persons below the age of 18 years may not marry without written consent from parents or guardians (Section 17). A distinction is made between marital and non-marital children on the issue of consent. When married parents of a minor disagree the consent of the

father shall be sufficient. However, when a minor is born out of wedlock, the consent of only the mother or a lawful guardian shall be required. In practice girls tend to marry younger and as such this requirement affects them more than boys.

227. Under Customary law, there is no minimum age at which one is eligible for marriage. After reaching puberty and going through initiation rites, minors are deemed to be of marriageable age and old enough to take the responsibility of marriage. Despite this fact parents still have to “consent” to their children marrying even if the children are majors. This consent is more of permission and in practice parents sometimes refuse to give it for various reasons. The practice of child marriages affects girls most as they constitute the majority of those involved. In addition, upon marriage girls assume roles and responsibilities they are not adequately prepared for.

### **The right to choose a spouse**

228. In most cases in Botswana under both Customary and Common Laws the choice of a spouse is voluntary. It is only in isolated instances where forced marriages occur. In such cases there has been some condemnation of the parents of involved young women, especially if they are still in school. The traditional practice of arranged marriages through betrothal (*peeletso*), is no longer permissible as it adversely affected women usually involved with elderly men. In such cases the girl-child has no say as the matter would have been concluded with her parents. If she is a minor, the law allows the parents to consent on her behalf.
229. Marriage officers cannot readily ascertain whether consent to marriage was given freely or not because parents are given the latitude to decide what is in the best interest of their child and if they readily consent there is no reason for the marriage officer to doubt. This practice could deny girls the right of choice and independent decision making.

### **Rights and Responsibilities During Marriage**

230. Traditionally under Customary Law, a family consisted of people related through marriage, and by blood. In such a set up, each person owed obligations to all the members of the family. The head was the man, with overall responsibility for his wife, children, and members of his extended family. This situation is changing and women are assuming more family welfare related responsibilities.
231. In some few cases and cultures polygamous marriages are tolerated. However, women are not allowed to have multiple husbands. Multiple marriage partnerships are therefore gender biased.
232. Under the Common Law, spouses married in community of property have equal powers to dispose of the assets of the joint estate, contracts and debts for which the joint estate is liable, as well as to administer the joint estate. Equal powers of spouses married in community of property replace the Common Law elements of marital power.

### **Guardianship of minor children**

233. The Abolition of Marital Power Act has given married women equal power to become guardians of minor children and can determine the domicile of the child.

### **Equality at dissolution by divorce**

234. The Matrimonial Causes Act Cap 29:06 regulates matters pertaining to divorce, judicial separation and other incidental matters. However, this Act does not apply to marriages contracted in accordance with Customary Law. Although any spouse to the marriage may bring an action for divorce on the grounds specified by the Act, it must be noted that for purposes of establishing jurisdiction in matrimonial cases, a wife must have been “*resident within Botswana for a continuous period of three years immediately preceding the date of the institution of proceedings*”. This requirement does not affect male persons although either spouse must be domiciled in Botswana. Therefore it is considered gender biased.

235. The situation in Botswana regarding women’s legal rights was for a long time unsatisfactory due to the dual legal system comprised of the Customary Law and Common Law, with the former effectively reducing married women to minors. Under Customary Law, women have minimal independent legal capacity irrespective of their age. In some instances unmarried women may be required to seek assistance from their male relatives. The Abolition of Marital Power Act accords married women equal rights as their husbands. Consultations with traditional leaders are ongoing regarding how best to address the situation.

236. Traditionally, women whether married or not could only access the “Customary Tribunals” with the assistance of a male relative. However, in some parts of the country there appears to be a change as women are allowed to appear unaided to litigate in the customary courts.

### **Sexual Abuse and Violence Against Women**

237. Some of the most common offences associated with abuse and domestic violence include murder, grievous harm, assault occasioning actual bodily harm, unlawful wounding, battering, defilement, incest, indecent assault, psychological abuse and rape – which is currently defined as “unlawful” carnal knowledge and is outlawed under the Penal Code.

238. There is currently no provision for marital rape in the Laws of Botswana. Consequently many married women continue to suffer marital rape without re-course to the law. More importantly, unequal power relations between women and men are likely to put women at a higher risk of HIV infection. The courts in Botswana take the position that the evidence of a complainant in a sexual case has to be corroborated. The corroborative evidence must show that intercourse did take place, without the consent of the victim and that the accused is the one who committed the crime. The standard of proof for all such cases is ‘beyond reasonable doubt’. The requirement for corroborative evidence in sexual offences places an additional burden of proof on the prosecution and women because rape is seldom committed in the presence of a witness.

239. The victim of a sexual offence is often put through a humiliating and traumatic experience of establishing that she did not consent to the act of intercourse. The conduct of rape trials indicates that undue focus tends to be placed on the character of the victim. First, an effort is made to determine the victim's credibility, and secondly, whether the complainant had any history of sexual intimacy with the accused person. If there was prior history of sexual intimacy, consent is on many occasions presumed.
240. Termination of rape-induced pregnancy is allowed under the law providing relief for women who wish to terminate the pregnancy. There are guidelines for medical personnel to follow when a demand for termination is made within sixteen weeks of the pregnancy.
241. The Government provides financial and technical support to initiatives that offer assistance to victims or survivors of violence such as the Women's Shelter Project run and managed by civil society organisations.

## Annexes

### Annex 1: People who Participated in the Development of the Report

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5	National Policy on Vocational Education and Training , 1997
6	National Policy on Women in Development
7	National Youth Policy, Dept. of Culture and Youth /MLHA 1996
8	Revised national Policy on Education, 1994



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<b>Legal Statutes</b>	
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3	Citizenship (Amendment) Act 1995
4	Constitution of Botswana
5	Criminal Procedure and Evidence Act 1997
6	Deeds Registry (Amendment) Act 1996
7	Revised National Education Policy 1994
8	Marriage Act 2001
9	Married Persons Property Act (CAP:29:03)
10	Mines and Quarries (Amendment) Act 1996
11	Penal Code (Amendment) Act 1998 and 2004
12	Public Services (Amendment) Act 2000
13	Employment Act (Year)

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