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Summary record of the 3815th meeting*

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Chair: Ms. Pazartzis

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Second periodic report of Botswana (CCPR/C/BWA/2; CCPR/C/BWA/QPR/2)

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **Mr. Morwaeng** (Botswana), introducing the second periodic report of Botswana (CCPR/C/BWA/2), said that, although the Government had intended to hold consultations with civil society prior to submitting the report, it had been prevented from doing so by circumstances beyond its control, notably the coronavirus disease (COVID-19) pandemic. However, it had strengthened the institutional framework for engagement with civil society by establishing a national human rights coordinating committee, composed of representatives of ministries and civil society organizations, in June 2020. The committee, which met quarterly, had already conducted human rights education and awareness campaigns, media outreach and joint activities with civil society, culminating in the celebration of Human Rights Day. It was currently drafting a comprehensive human rights strategy and national action plan, which were scheduled for completion in December 2021.
3. Since the declaration of a global pandemic, Botswana, like other States, had been obliged to take steps to curb the spread of COVID-19 and had derogated from certain Covenant obligations relating to the freedom of movement and the right to peaceful assembly. On 2 April 2020, following a parliamentary consultation process, the President of Botswana had declared a state of public emergency, which had lasted until 30 September 2021. The measure had been taken in good faith, with the intention of saving lives, mobilizing resources and preserving jobs and livelihoods. The Government had also adopted a comprehensive COVID-19 response plan that provided for restrictions on movement, the roll-out of social safety nets and wage subsidies, the expansion of health services, the continuity of access to education, and the protection of vulnerable groups, including children and survivors of gender-based violence. Despite the movement restrictions, some travel between health zones and religious and social gatherings – albeit in limited numbers that allowed for social distancing – had been permitted. Botswana had a vaccination rate that was among the highest in Africa and it was on track to meet the World Health Organization target of vaccinating 40 per cent of the population by the end of 2021.
4. One of the country's main human rights achievements was its accession to the Convention on the Rights of Persons with Disabilities in July 2021, a step that had been accompanied by the parliamentary approval of a revised disability policy. A disability bill was in the process of being drafted. Other significant developments included the adoption of a poverty eradication policy; the 2020 review of the funding guidelines of the Citizen Entrepreneurship Development Agency, which would lead to an improvement in women's economic participation; and a review of water-related legislation. Furthermore, at its July 2021 sitting, Parliament had adopted an amendment to the Ombudsman Act that conferred the human rights protection mandate on the Office of the Ombudsman. A review of the Office's structure, to enable it to effectively carry out its new mandate, was under way.
5. A study conducted by the non-governmental organization (NGO) Emang Basadi had identified obstacles to women's participation in politics, including the electoral system, a lack of political funding, patriarchal norms and the multiple roles of women. To close the gender gap in Parliament, a decision had been taken to increase the number of female Specially Elected Members. The Government had achieved significant progress in appointing women to senior positions, and women accounted for 36 per cent of local government councillors and almost half of the executive cadre within the civil service. At the international level, Botswana had sponsored a Human Rights Council resolution on equal participation in political and public affairs, which addressed issues such as access to information, participation, transparency and decision-making and the role of civil society and journalists. The Employment Amendment Act of 2010 prohibited discrimination based on sexual orientation.
6. In order to reduce inequalities and promote social upliftment, the Government had adopted the National Social Protection Framework. Its specific goals were to enhance the

capacity of the poor and vulnerable to better manage risks; to improve nutrition, health and education; to ensure basic income security and access to social services; to establish information systems to support the regular monitoring and evaluation of programmes; and to ensure that resources reached the intended beneficiaries. In 2014, the Government had introduced the Affirmative Action Framework for Remote Area Communities, which allowed remote communities to benefit from national programmes and economic empowerment initiatives. A special dispensation had been created to improve access to tertiary education for inhabitants of remote areas.

7. To address violence against women and children, Parliament had enacted the Sexual Offenders Registry Act in 2021. Specialized courts had been established to speed up the adjudication of gender-based violence cases. The Botswana Police Service had established a gender and child protection branch to encourage reporting. Toll-free helplines and online counselling were available. The Government had significantly increased financial support in areas of high prevalence to increase protection for survivors of gender-based violence and children.

8. Section 4 of the Constitution guaranteed the right to life. Capital punishment was imposed in conformity with the law in force in Botswana and article 6 of the Covenant. The Government had conducted public consultations on the subject, which would conclude in accordance with a timeline to be defined in the forthcoming human rights strategy. The Government planned to carry out a holistic constitutional review to take stock of the changing social, political and economic landscape, including in the area of human rights.

9. The Children's Act contained a bill of children's rights. The Government had signed a memorandum of understanding with the NGO Childline Botswana with a view to fostering stakeholder participation in child rights education. It continued to run the child protection campaign "Eseng Mo Ngwaneng" (Touch not the child), in partnership with the United Nations Children's Fund (UNICEF). Progress was being made in providing young people with the information, skills and values they needed to exercise their sexual and reproductive health rights and to take decisions about their health. One important initiative was the "Di-Palametse" programme, under which roadshows were held throughout the country to empower young people in the fight against HIV.

10. Botswana had issued a standing invitation to all special procedures mandate holders and had drawn up a schedule to facilitate two visits per year. The Government was currently preparing for visits by the Special Rapporteur on the rights of persons with disabilities and the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material. Moreover, in a spirit of openness and cooperation, it would soon respond to a communication from the Special Rapporteur on extrajudicial, summary or arbitrary executions.

11. Botswana took pride in its impressive human rights record. In the 2020 Ibrahim Index of African Governance, it had ranked sixth out of 54 countries in the category of participation, rights and inclusion. It had also performed strongly in the World Justice Project Rule of Law Index. Nevertheless, Botswana continued to experience challenges in the promotion and protection of human rights, largely as a result of technical and financial constraints, lack of capacity and entrenched norms. Overcoming those challenges would require long-term strategies, patience and continuous public education. The Government had taken steps to raise public awareness and engage in community consultations on issues of national concern; to mainstream gender in the customary justice system and in the capacity-building of *dikgosi* (traditional leaders); to develop the capacity of women standing for elections; and to strengthen the Ministry of Finance and Economic Development with a view to implementing zero-based budgeting and gender responsive budgeting.

12. **Mr. Ben Achour** said that Botswana had a reputation for respecting human rights and the rule of law and was one of the most successful African democracies. The Government was also to be commended for its success in combating the pandemic and, in particular, for its efforts to vaccinate the population.

13. The Committee regretted that the report had been submitted late and that a period of 13 years had elapsed since the submission of the previous report. Nevertheless, it welcomed the information concerning the adoption of the Rome Statute of the International Criminal

Court Act of 2017, which transposed the Statute into domestic law. It was also encouraged by the judgments of the High Court of Botswana in the case of *Mmusi and Others v. Ramantele and Others* – in which the Court had declared unconstitutional a rule of customary law that excluded women from inheriting their parents’ dwelling – and the case of *Letsweletse Motshediemang v. Attorney General*. In the respect of the latter judgment, in which the Court had ruled that section 164 of the Penal Code, which criminalized same-sex relations, should be repealed, he asked whether an appeal had been heard and a final judgment handed down and enforced. The Committee would also be interested to know whether the State party planned to withdraw its reservations to articles 7 and 12 (3) of the Covenant, and the extent to which it had incorporated the human rights treaties it had ratified, including the Covenant, into domestic law.

14. Noting that the State party had established several institutions with a human rights mandate, he asked what measures those institutions had taken to implement the recommendations of the Human Rights Committee and to strengthen the application of the Covenant. How did they coordinate their work? He would also like to know whether the President had signed the amended Ombudsman Act into law and whether the Office of the Ombudsman had been invested with the powers of a national human rights institution in full compliance with the Paris Principles, as the Committee had recommended in its previous concluding observations ([CCPR/C/BWA/CO/1](#)).

15. **Mr. Ben Achour**, noting that, according to the State party’s report, the Government had no plans either to abolish the death penalty or to impose a moratorium on its application, since public opinion was in favour of retaining it, said that the right to life was a universal principle that could not be made conditional upon public opinion surveys or political circumstances. In its previous concluding observations, the Committee had recommended that the State party should make sure that the death penalty was imposed only for the most serious crimes and should move towards abolition of the death penalty. The African Commission on Human and Peoples’ Rights had made a similar recommendation in July 2019. So far, the State party had done little to implement those recommendations. The Committee was concerned that the wording of section 34 of the Penal Code, which provided for the application of the death penalty in cases of treason, was excessively broad. Furthermore, the State party’s legislation on the burial of executed prisoners ran counter to the Committee’s recommendation on the subject in its previous concluding observations and violated article 10 (1) of the Covenant insofar as it showed a lack of respect for the inherent dignity of the human person.

16. **Mr. Muhumuza**, commending Botswana on the gender-balanced composition of its delegation, said that he would like to know whether the State party had carried out a thorough analysis of its customary laws in order to identify and change those that were incompatible with the Covenant from a gender perspective; whether the State party had considered ratifying the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa; and what steps would be taken to ensure that lawyers and judges received training on the implementation of the Covenant.

17. He would be interested to know what measures were being taken to prevent sexual harassment, especially in schools, and whether the incidence of child sexual assault had fallen as a result of child victims’ confiding in their parents. In light of the information provided about the sexual assault case involving a former councillor in Sebina, he would like to know what had been done to improve the judicial system so as to build trust in the courts among victims of sexual violence.

18. He would welcome an update on the status of the Independent Police Complaints Commission, as well as information on the number of complaints of torture or ill-treatment received and investigated, the sentences handed down in such cases and the rehabilitation and redress provided to victims. Lastly, he wondered whether the cases that were reported to the officers in charge of prisons differed in nature to those reported to the Ombudsman and whether the outcome of a case was affected by the way in which it had been reported.

19. **Ms. Bassim**, welcoming the State party’s accession to the Convention on the Rights of Persons with Disabilities, said that the Committee had received reports of persistent discrimination against various groups, including women, minorities and persons with

disabilities, especially in the areas of education, health and employment. She wondered whether the State party was planning to enact comprehensive anti-discrimination legislation and to amend section 15 (4) of the Constitution in order to abolish the exceptions to the principle of non-discrimination.

20. She would appreciate more information on the ratio of men to women in academia and representative bodies such as city councils, and on the extent to which women were allowed to participate in decision-making in such contexts. She wondered whether the State party had introduced quotas for the participation of women in representative bodies; how the election of women to political office was viewed by the population as a whole; and what steps would be taken to increase the representation of women in public life. Lastly, she would like to know how the State party planned to eradicate traditional harmful practices such as child marriage, the payment of *bogadi* – a dowry paid to the bride’s family – and widowhood rites, or at least to minimize their impact on society, and what measures were being taken to address deep-rooted stereotypes concerning gender roles.

21. **Mr. Soh** said that the appeal filed by the Government against the High Court ruling in the case of *Letsweletse Motshediemang v. Attorney General* cast doubt on the will of the Government to pursue legislative reforms in order to promote and protect the rights of lesbian, gay, bisexual, transgender and intersex persons. It would be helpful if the delegation could explain what the Government had been hoping to achieve by filing that appeal. The information provided by the State party regarding the lack of convictions under section 164 of the Penal Code was not consistent with media reports on the subject. He wondered whether the delegation could clarify the situation. He would also welcome information on the number of cases of discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons that had been dealt with by the customary courts during the reporting period.

22. He would appreciate information on any training that had been provided to law enforcement officers on the content of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). He would also like information on the number of accused persons who had been declared unfit to plead at trial and admitted to a mental health facility, and on the duration of detention in such cases.

23. The low number of cases of human trafficking detected over the previous six years showed that it was essential to establish formal procedures for the proactive identification of human trafficking victims among vulnerable populations. He would like to hear more about the main obstacles that were hindering the State party’s efforts to combat human trafficking and forced labour. Lastly, the fact that some trafficking offences were currently punishable by a mere fine was a source of concern. He wondered whether the Government intended to conduct a thorough review of the legal provisions that established penalties for such offences, with a view to increasing their deterrent effect.

24. **Mr. Furuya**, recalling that the prohibition of torture was considered a peremptory norm of general international law, said that the State party’s reservation to article 7 of the Covenant granted the authorities significant powers of discretion in interpreting that article and, as such, was incompatible with the object and purpose of the Covenant. It would be helpful if the delegation could provide the definition of torture and inhuman or degrading treatment under the Constitution and clarify whether that definition was compatible with article 7 of the Covenant. He would also appreciate information on any measures taken to prevent torture, to investigate, prosecute and punish perpetrators of torture and to provide effective reparation to victims, as well as information on the number of investigations, prosecutions and convictions in cases of torture over the previous five years.

25. It would be useful if the delegation could provide data on the number of prisoners and pretrial detainees in the State party, in order to enable the Committee to assess the effectiveness of the measures taken to reduce prison overcrowding. He would like more information about the procedure whereby prisoners could submit complaints to the Ombudsman, including clarification as to whether there was any risk of censorship by prison officers and how such complaints were dealt with. He wondered whether any measures had been taken in response to the recommendation of the African Commission on Human and Peoples’ Rights that the State party should establish an independent body with the mandate

to conduct unannounced visits to all places of detention and, if not, whether the State party planned to establish such a body and whether any NGOs had been authorized to conduct visits to prisons.

The meeting was suspended at 4.20 p.m. and resumed at 4.45 p.m.

26. **Ms. Ramokoka** (Botswana) said that the Government had acted swiftly to contain the spread of COVID-19 by setting up a task force, with a diverse membership and chaired by the President, to coordinate the national response. The Government had adopted multisectoral plans, had provided vulnerable groups and families with food during the lockdown, had kept schools open thanks to strict health protocols and had provided wage support to businesses, as well as extra funding to institutions caring for vulnerable people, including women and child victims of gender-based violence.

27. **Ms. Mapodisi** (Botswana) said that, while Botswana had no current plans to withdraw its reservations to articles 7 and 12 of the Covenant, it was a party to the Convention against Torture, did not condone torture and cruel, inhuman or degrading treatment and cooperated with the relevant special procedures. Law enforcement officials were not above the law, and any complaint against a police officer should be given an impartial hearing and be fully investigated. Moreover, the police, prison department, defence and security forces and intelligence service all had boards responsible for ensuring that disciplinary proceedings were brought against personnel who were alleged to have committed an offence. The Office of the Ombudsman could also receive complaints against law enforcement officials, but it could not take action in cases where internal investigations were under way. There were examples of cases of unlawful arrest or detention in which the plaintiff had been awarded damages by the courts. The amendment to the Ombudsman Act, which had been drafted on the basis of consultations with a range of stakeholders and guidance from the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Global Alliance of National Human Rights Institutions, would be enacted in the months to come. Once the President signed the amended Ombudsman Act into law, or “assented” to it, the Office would also serve as the country’s national human rights institution and should be in line with the Paris Principles.

28. **Mr. Segwagwa** (Botswana) said that the appeal filed by the Attorney General in respect of *Letsweletse Motshediemang v. Attorney General* had been argued on 12 July 2021; a judgment was expected within the next two weeks. The fact that the ruling had been appealed should not be taken as an indication of the Government’s unwillingness to decriminalize same-sex relations. On the contrary, the point of the appeal was to obtain a decision that would be binding, as opposed to the lower court’s ruling, which was nothing more than the judge’s opinion and could be disregarded in future.

29. He conceded that the sexual assault case involving a councillor in Sebina was taking an unreasonable amount of time to make its way to the courts; however, it was the prerogative of the Office of the Director of Public Prosecutions to process cases in the manner it saw fit. Transposing an international instrument into domestic law entailed an extensive audit of existing legislation to ensure that there were no conflicts between it and the new instrument. That work was time-consuming and was carried out by highly qualified and specialized staff in the Attorney General’s Office. One example of an international instrument that had been transposed was the Convention on the Rights of the Child, whose transposition process had led to the adoption of one of the most comprehensive laws in Botswana.

30. Concerning the death penalty, he wished to note that the country’s political system was founded on certain principles that were respected at all times, one of which was consultation. In 2012, the Court of Appeal had examined the question of whether it was appropriate to leave a human rights issue such as the abolition of the death penalty to public opinion to decide and had ruled that abolition would entail amending the Constitution, an effort that should be spearheaded by the population.

31. **Ms. Mapodisi** (Botswana) said that the decision to maintain the death penalty had been taken following a public consultation in 1997. The fact that a recommendation had been made during the universal periodic review to conduct a new survey on the issue proved that abolishing the death penalty was a matter that could be put to the people. One reason why it had not been possible to conduct a new survey had been the lack of any means of coordinating

such a public discussion. Debate on the issue could now take place, led by the recently established human rights coordinating committee. The coordinating committee had already shown its effectiveness by facilitating the submission of the State party's reports to both the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, as well as the Government's mid-term report to the universal periodic review procedure. In order to ensure the implementation of recommendations by the treaty bodies, a database was being created with the support of OHCHR and UNDP. All recommendations would be uploaded to form the basis for implementation plans, which would be monitored using the same system.

32. **Ms. Phuthego** (Botswana) said that her Government continued to conduct consultations over the ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Her Government had made deliberate efforts to increase women's participation in public life and leadership roles. The current year's budget included \$290,000 for awareness-raising on gender equality and women's empowerment. Around half of all deputy court presidents and magistrates were women; 48 per cent of director posts in the Directorate of Public Service Management were occupied by women; and two out of six paramount chiefs were women. In the last two elections the Government had worked with an NGO, Gender Links, to provide training for women running for office. It had also engaged the media in awareness-raising efforts and provided it with guidance on gender-sensitive reporting, including in its profiling of women election candidates. Dialogues had been held with political parties on gender mainstreaming and equal representation.

33. Well aware of the critical role that the *dikgosi* played in their communities and in the customary justice system, the Government had involved them since 2012 in the promotion of gender equality and women's empowerment, as well as in the prevention of gender-based violence. *Dikgosi* around the country had been given special training and data-capture tools for recording the cases they handled, with a view to facilitating their subsequent analysis from a gender perspective. The Government was also engaging with other influential members of the community, such as *bahumagadi* (the wives of *dikgosi*), religious leaders and faith-based organizations in combating gender stereotyping, promoting gender equality and preventing gender-based violence. It was also engaging in dialogue with men and boys, as agents of change. In order to scale up the prevention of gender-based violence, the Government had allocated \$300,000 to secure community engagement through dialogue on topics such as gender equality, responses to gender-based violence, positive masculinity and the protection of women and girls. Training had also been provided to stakeholders in the Gender-Based Violence Online Referral System. In order to protect survivors of such violence during the pandemic, a special allocation of \$580,000 had been made to expand shelter capacity, including through the construction of temporary shelters where needed.

34. **Ms. Mautle** (Botswana) said that, in addition to the measures already described to strengthen the State's reporting mechanisms, a database of all treaties and bilateral agreements entered into by Botswana had been set up, an initiative that would also assist the Government in meeting its reporting obligations.

35. **Mr. Sebigi** (Botswana) said that the Prisons Service was reviewing the regulations governing executions. The review would also cover the question of burial of the executed person.

36. **Ms. Lekoba** (Botswana) said that two important measures had been introduced in order to reduce the incidence of sexual harassment in schools. The Ministry of Basic Education, in a multidisciplinary approach, had developed a comprehensive strategy on sexual abuse that included training workshops targeting girls and their families, community leaders and parents in order to develop their skills and knowledge and encourage children to confide in their parents. No evaluation of the workshop outcomes had yet been made. The second initiative, known as DREAMS (Determined, Resilient, Empowered, AIDS-free, Mentored and Safe), targeted 10- to 24-year-old girls and women, mainly persons at risk of HIV/AIDS and gender-based violence survivors. Currently implemented in eight districts, it too had yet to be evaluated but the aim was to scale it up nationwide.

37. **Mr. Ben Achour** asked whether it was true that no appeal for clemency was ever accepted, as the Committee had been informed; and why, in 2016, Patrick Gabaakanye had been executed without regard to the minimum six-week period allowed for preparation of a clemency petition, as set by the Court of Appeal.

38. **Mr. Muhumuza**, noting that there had been a steady increase in the number of cases of violence against women between 2008 and 2018, asked the delegation to provide statistics on cases of violence against women and children, disaggregated by age. He said that he would also appreciate data on the number of investigations, prosecutions and convictions in such cases. He wished to know whether rape and sexual violence within marriage were prosecuted as offences of sexual violence. He would welcome information on the progress of the sexual offences bill through Parliament. Noting that, according to the State party's report, the restrictions imposed on withdrawing cases of physical and sexual violence had led to an increase in the prosecution of such cases, he said that he would welcome statistical data on the reporting and withdrawal of cases. Lastly, he would like to know what steps the State party intended to take to address the lack of shelters and of medical and psychosocial rehabilitation services for victims of domestic violence.

39. **Mr. Furuya** said that, with regard to the issue of torture, and given that detention facilities were reportedly overcrowded and unsanitary, he would welcome information on the capacity of all prison institutions in the State party and the number of prisoners in each one. He would also like to know what measures were in place to prevent the spread of COVID-19 in prisons, and their results.

40. **Mr. Soh** said that, with regard to trafficking in persons, he remained concerned at the sentencing provisions that permitted fines to be imposed in lieu of imprisonment. He noted in particular that the penalties for child prostitution under the Children's Act were less harsh than those imposed under the Human Trafficking Act, which could also include up to 25 years' imprisonment. He would like to know the Government's views on those differences. He would also like to know whether the State party intended to establish a human rights committee in Parliament in order to ensure human rights compliance in legislation and policy and to conduct enquiries into human rights issues.

41. **Mr. Santos Pais** said that he would like to know what measures were in place to address the underreporting of gender-based violence. On the question of torture, he asked whether section 7 of the Constitution could be invoked directly in the courts; and whether any penalties imposed for torture were applied under the Constitution or under criminal law. Lastly, if his understanding was correct that the Directorate of Public Prosecutions did not actually supervise police investigations, he would be interested to know under what circumstances criminal investigations were referred to the Director of Public Prosecutions. Was the latter's role confined to bringing cases to court?

The meeting rose at 6 p.m.