



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

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

**Fourth periodic report submitted by Botswana under
article 18 of the Convention, due in 2014***

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Acronyms

| | |
|--------|--|
| AIDS | Acquired Immune-Deficiency Syndrome |
| ARDP | Accelerated Rural Development Programme |
| AU | Africa Union |
| BAIS | Botswana AIDS Impact Survey |
| BCW | Botswana Council of Women |
| BDF | Botswana Defence Force |
| BHC | Botswana Housing Corporation |
| BLR | Botswana Law Reports |
| BOFWA | Botswana Family Welfare Association |
| BONASO | Botswana Network of AIDS Service Organisations |
| BONELA | Botswana Network on Ethics, Law and HIV/AIDS |
| CBOs | Community Based Organisations |
| CDC | Centre for Disease Control and Prevention |
| CEDA | Citizen Entrepreneurship Development Programme |
| CEDAW | Convention on the Elimination of all Forms of Discrimination Against Women |
| CSO | Central Statistics Office |
| DHT(s) | District Health Teams |
| DPSM | Directorate of Public Service Management |
| FHH | Female Headed Households |
| FSW | Female Sex Workers |
| GeAD | Gender Affairs Department |
| GDP | Gross Domestic Product |
| GFP(s) | Gender Focal Persons |
| GNP | Gross National Product |
| GSI | Gender Status Index |
| HIES | Household Income and Expenditure Survey |
| HIV | Human Immune Virus |
| IEC | Independent Electoral Commission |
| IEC | Information Education and Communication |
| ILO | International Labour Organisation |
| LDCs | Least Developed Countries |
| LIMID | Livestock Management and Infrastructure Development |
| M&E | Monitoring and Evaluation |

| | |
|----------|--|
| MEC | Medical Eligibility Criteria Wheel |
| MFDP | Ministry of Finance and Development Planning |
| MHH | Male Headed Households |
| MIC | Middle Income Country |
| MLG&RD | Ministry of Local Government and Rural Development |
| MLHA | Ministry of Labour and Home Affairs |
| MMR | Maternal Mortality Ratio |
| MOH | Ministry of Health |
| MSM | Men Having Sex with other Men |
| MTCT | Mother to Child Transmission (of HIV) |
| MTP (II) | Medium Term Plan II |
| NAC | National AIDS Council |
| NACA | National AIDS Coordinating Agency |
| NDP | National Development Plan |
| NGO(s) | Non-Governmental Organization(s) |
| NGPF | National Gender Programme Framework |
| NOP | National Operation Plan |
| NSF | National Strategic Framework |
| PLHIV | People living with HIV |
| PMTCT | Prevention of Mother to Child Transmission |
| POA | Plan of Action |
| PRRR | Pink Ribbon Red Ribbon |
| PTA | Parents Teachers Association |
| PWID | People who inject Drugs |
| RADS | Remote Area Dwellers |
| RNPE | Revised National Policy on Education |
| SADC | Southern African Development Community |
| SGDI | SADC Gender and Development Index |
| STI(s) | Sexually Transmitted Infections |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNICEF | United Nations Children's Fund |
| WHO | World Health Organisation |

Foreword

1. Botswana ratified and acceded to the Convention on the Elimination of all Forms of Discrimination Against Women on 13th August 1996 demonstrating her commitment to prohibit all forms of discrimination against women and to provide for the practical realisation of the principle of equality of women and men. Botswana as such, submitted her combined First, Second and Third Periodic Reports in 2010.
2. As part of the development of Botswana's 4th Country Report to the CEDAW Committee, a wide ranging consultation process was undertaken. The outcome of the consultation is documentation of this Report.
3. The Government of Botswana is fully convinced that promoting gender equality and harnessing the productive potential of women is the only option that can guarantee Botswana sustainable socio-economic development in the 21st century. To this end, Government has developed targeted support to women through programmes and policies that ensure and accelerate their sustainable participation in socio-economic development; with the aim to reverse imbalances created by previous policies and programmes which impacted negatively on women and hindered their effective participation in the economy. Botswana continues to widely publicise the Convention and its Optional Protocol through various medium including community dialogues led by the National Gender Machinery.
4. The Ministry of Nationality, Immigration and Gender Affairs has established institutional, administrative and legal reforms to facilitate gender equality and has realized a number of important developments since Botswana's last report.
5. This report highlights the considerable progress made since accession. Examples include establishment of the Legal Aid Programme in 2011 and the enactment of the Legal Aid law in 2013 to enable women's access to justice. Regulations for the Domestic Violence Act; 2008 were also developed in 2013 to enable effective implementation of the Act. Moreover, consultations continue on the establishment of the National Human Rights Institution.
6. In addition, Government has intensified efforts to mainstream gender including active engagement of various sectors as evidenced by amongst others; development of the Gender Strategy which currently informs National Gender Programming; the National Policy on Gender and Development and its National Operational Plan; continuous law reform such as amendment of the Marriage Act which is at its final stage of drafting and the Married Persons Property Act; strengthening of administrative arrangements for implementation of the Land Policy to promote equal access to land; Affirmative Action Policy on Remote Area Communities (2012); Poverty Eradication Framework of 2011; Child Sexual Abuse Strategy of 2010; and Botswana National Action Plan Towards Ending Gender Based Violence.
7. To facilitate effective implementation and strengthen monitoring, learning and evaluation, the National Gender Commission was established in September, 2016.
8. Notwithstanding the above, the Government of Botswana is conscious that much work still needs to be done to accord equal opportunity for Botswana women and men. Intense efforts to strengthen mechanisms that facilitate equity and gender equality in Botswana for the coming years thus continue.

Executive Summary

9. This constitutes Botswana's Fourth (4th) periodic report to the Committee on the Elimination of Discrimination against Women on the implementation of the

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as per Article 18 of this Convention. The report follows the Concluding Observations of the Committee on the Elimination of Discrimination against Women which identified principal areas of concern and made certain recommendations after Botswana's submission of the Combined Initial, Second and Third Periodic Reports.

10. The Report is presented in two main parts being the Response to the Concluding Observations and Examination of Progress on the Implementation of CEDAW. These are preceded by an Executive Summary and an introduction. The Response to the Concluding Observations addresses the recommendations arising from the previous Periodic Report on the implementation of CEDAW. The Progress on Implementation of CEDAW covers progress on all the Articles of the Convention since the previous Report to date. The Introduction covers information on the profile and socio economic overview of the country, its constitutional framework; and legal, political and administrative measures adopted to give effect to CEDAW.

11. As regards definition and prohibition of discrimination it is submitted that Botswana courts do not accept values of the custom which are inconsistent with the values of or principles of natural justice and are unconscionable either of itself or in its effect. In this regard, customary law must be applied with the set of principles of morality, humanity or natural justice with the object of achieving justice and equality. Where a practice or custom is not ascertainable, the court is enjoined to determine it in accordance with the principles of justice, equity and good conscience.

12. Botswana continues to widely publicise the Convention and its Optional Protocol through workshops, focused group discussions, and commemorations of days like International Women's Day; 16 Days of Activism on Violence against Women and World Aids Day and the media.

13. As a special measure towards addressing poverty among women and improving their participation in economic development of the Country, the Government of Botswana in 2012 committed and allocated 5% of the Alcohol Levy Fund as additional support for women economic empowerment programme. This has since increased to 10% from financial year 2014/2015.

14. Botswana continues to strive for promotion of positive aspects of culture. It is in this regard that in 2008 the Government commissioned national consultations on social values to discuss with communities the social ills afflicting the nation, their causes and possible strategies for addressing such. Gender issues discussed included domestic violence, cohabitation, rape, partner killings, commercial sex work and payment of bogadi (dowry). The enactment of the Children's Act in 2009 has also contributed to addressing some of the discriminatory cultural practices. For example, whereas customarily an unmarried father has no access to his child, let alone custody, the Children's Act, 2009 permits access and custody to the father and in appropriate circumstances the father can be given sole custody.

15. Some of the gaps identified as hindrances in the effective implementation of the Domestic Violence Act, 2008 were addressed through the development of Regulations to this Act in 2013. The Government continues to provide technical and financial support to non-governmental organizations to offer counselling services to GBV survivors and their families and shelter facilities. In 2011, there was developed Gender Based Violence Health Sector Policy Framework and Health Care Service Providers Protocols and Service Standards. The Botswana Police Service has also included gender and gender based violence in their pre-service and in service training.

16. Botswana has put into place the Anti-Human Trafficking Act of 2014 in order to curb trafficking in persons particularly women and children. Furthermore the Government, in conjunction with civil society organizations has implemented

comprehensive empowerment programmes which encompass life skills, technical skills, business management and financial assistance for income generating projects to enhance opportunities for women's employment and their advancement in society.

17. One of Botswana's greatest challenges is reaching the desired numbers of women in decision making positions, particularly in politics. However, significant progress has been made with regards to participation of women in public service decision making positions, with women accounting for more than 40% of those at Deputy Director level and above. The National Policy on Gender and Development also prioritises adoption of measures by sectors as necessary to address identified gender gaps in line with their mandates, including issues of decision making.

18. Gender parity has been reached on the literacy rate in Botswana. Enrolment statistics show that girls enrolled more than boys in secondary and tertiary education. However, the likelihood of attaining secondary and tertiary education is higher among men compared to women. Fewer females continue to enrol in science and technology fields than males. The Government has introduced a back to school program to facilitate re-admission of children and youth who dropped out of school either due to pregnancy, failing and or absconding.

19. Unemployment in Botswana still affects more women than men. Botswana continues to demonstrate its commitment to ILO Conventions as reflected in the Amendments to the Employment Act. With regards to health, Botswana conducts health related surveys annually. Maternal Mortality Ratio in Botswana continues to decline. Some of the leading causes of maternal mortality have been identified as haemorrhage, hypertensive disorders in pregnancy, abortion and HIV/AIDS related infections. HIV prevalence is still high among females than males and therefore more effort is still required to ensure that the gender specific vulnerabilities are taken into cognizance in the national response to HIV and AIDS. The National HIV/AIDS Policy together with its strategic framework was revised in 2013 to take into account the dynamics of HIV/AIDS. Botswana has improved access to family planning services, contraceptive methods mix and access to emergency contraception and medical termination of pregnancy or legal abortion where permitted by law.

20. The National Development Plan 10 (NDP10) has prioritized economic development, prosperity and eradication of abject poverty for program focus to achieve sustainable development. Botswana has registered significant progress in reducing poverty in Botswana. However, women continue to represent a high proportion of the nation's poor. Economic empowerment and poverty eradication programmes, social safety nets and agricultural subsidies are some of the interventions aimed at reducing poverty. Economic empowerment of women continues to be promoted through provision of financial grants to women and women's groups. Ownership of livestock and small stock remain predominantly in the hands of men. Government's agricultural schemes such as Livestock Management and Infrastructure Development have a deliberate window that promotes increased women's access to productive resources including small stock and boreholes.

21. Women in rural areas continue to be faced by a number of challenges including poverty and lack of knowledge and information on laws. The Government has specific programmes targeted at improving services in the rural areas and eradicating abject poverty within rural communities, directly benefitting women in rural areas and resulting in reduced poverty incidence over the years. Furthermore, the government has engaged in a consultative process aimed at formulating a comprehensive gender in agriculture and rural development policy, to specifically address the challenges faced by rural women. The policy will prioritize equal access to (i) natural resources; (ii) decision making positions in rural development fora; (iii) rural extension services.

This effort reiterates the government's commitment towards the empowerment of rural women in the country.

22. Women are subjected to customary law and they lack knowledge and information, particularly on marriage laws and this continues to perpetuate discriminatory practices in the area of marriage under customary law. The Legal Aid Programme has been established to deal with issues of access to justice and Legal Aid Act was passed in 2013. This will greatly enhance access to justice by women.

23. The Married Persons Property Act, 2014 makes provision for persons married under customary law to opt for the property to be administered under civil law. Those already married will further be permitted to change the status of their proprietary regime from out-of-community to in-community of property or vice versa depending on what works best for them. In 2011, a National Conference was held on marriage patterns and trends to consider the effect the Abolition of Marital Power Act has had on marriages, mainly as an effort to reinforce its application and come up with strategies on public education. The Regulations to the Domestic Violence Act, 2008 have also been developed to facilitate effective implementation of the Act for greater access to protection measures for victims of domestic abuse.

24. Whilst data collection and analysis remain a challenge there are steps to strengthen evidence based planning and program implementation for improved impact. In this regard a number of National frameworks have a dedicated monitoring and evaluation component.

A. Introduction

The Botswana Context — Country Profile and Socio Economic Overview

25. The Republic of Botswana is a landlocked country situated in Southern Africa and covers a surface area of 581,730 sq km. The results of the latest National Population and Housing Census (2011), estimates the total population at 2,024,904, an increase from 1,680,683 registered in the 2001 Census. The population comprises of 1,035,833 females and 989,071 males.

26. Botswana is a multi-party democracy which holds free and fair elections every five (5) years the last of which were held in 2014. Policy, accountability and governance institutions are fully fledged and functioning. The branches of government are comprised of the National Assembly, the Executive, the Judiciary and the House of Chiefs (*Ntlo ya Dikgosi*). Local Government is comprised of 16 Administrative Districts and 16 District Councils in which district, town and city councillors are regularly elected.

27. Macro-economic indicators show Botswana as one of the few economic success stories on the African continent. Since independence in 1966, Botswana has made significant socio-economic progress and made a notable transition from the category of Least Developed Countries (LDCs) to an Upper Middle Income Country (MIC). The country is recognized as having one of the highest per capita incomes in the whole of Africa. Largely as a result of the discovery of diamonds post-independence and vigorous development of the mining sector, Botswana has sustained admirable economic growth. Diamonds remain the mainstay of Botswana's economy while the beef industry, tourism and to a limited extent the manufacturing sector have over the years contributed to Botswana's rapid economic growth. Efforts to diversify the economy beyond minerals continue.

28. There is some convergence of ideas between government and the private sector economists, that the Botswana economy will not experience the growth rates recorded

in the past. The economic challenges experienced by the country have among other measures resulted in government formulating a cost recovery policy, the introduction of value-added tax and devaluing the national currency. Government Ministries are also expected to reduce their wage bill by at least 5% annually over the next three years (Budget Speech 2012). The immediate impact of such reforms has been adverse particularly on the poorest sections of the society who have been hardest hit by inflation. Women, particularly female-headed households experience greater levels of poverty and have a high dependency ratio (BIDPA 1997). Poverty remains a significant and persistent challenge in Botswana. However, preliminary results of the Botswana Core Welfare Indicators (Poverty) Survey of 2009/10 indicate that the number of individuals living below the Botswana Poverty Datum Line declined from 30.6% of the population in 2002/03 to 20.7% in 2009/10 (Budget Speech 2012).

Constitutional Framework

29. The Botswana Constitution establishes a republican government with the Executive vested in a president elected by Parliament which was elected by universal suffrage. The Constitution maintained the advisory role of the chiefs and the entrenchment of the bill of rights. In terms of constitutional development, establishment of the Republic necessary meant that political leadership was to be elected rather than hereditary. Political Parties became the vehicles to attain political power.

Legal, Political and Administrative Measures adopted to give effect to CEDAW

30. In order to consolidate national efforts to fully meet the requirements of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), Botswana has commenced the process of fully domesticating the Convention in 2012. The relevant CEDAW domestication structures were established followed by a benchmarking exercise in 2013 in Ghana which also practices a dual legal system. Furthermore, the Government of Botswana conducted nationwide consultations to solicit input on the different CEDAW Articles and the domestication process. The results of the consultations are currently being compiled together with drafting of recommendations that will inform legislation and policy reform.

31. In addition, the Gender National Strategy adopted by the National Gender Machinery has prioritized the following national development areas for gender mainstreaming as they differently inform programme implementation for women empowerment: Economic diversification, prosperity and poverty eradication to achieve sustainable development; Social Protection and social services (health, adequate sanitation and improved well-being, access to quality education, training and information, safe housing and consideration for addressing issues of energy and climate change for a sustainable environment); Political power, democratic governance and decision making; Access to justice, protection of human rights and freedom from violence; Special measures targeting vulnerable groups of men, women, girls and boys across all the four areas.

B. Response to the concluding observations

Definition and Prohibition of Discrimination: Recommendations 10 & 12

32. Whereas the Botswana Constitution guarantees and promotes protection to every person residing within the Country irrespective of their race, tribe, place of origin, political opinions, colour, creed or sex, the definition of discrimination in the Constitution does not include discrimination against women (herein “CEDAW” or “the Convention”). The ongoing CEDAW domestication process takes into

consideration recommendations of the concluding observations. Furthermore, in practice Botswana Courts continue to interpret and address discrimination in line with international law.

33. Botswana notes the Committee on the Elimination of Discrimination Against Women's (the Committee) concern with the exclusion of discrimination against women as part of the definition of discrimination in the Botswana Constitution in accordance with Article 1 of the Convention. Whereas the Committee has called on the Government of Botswana to amend her Constitution to include discrimination against women as part of the definition of discrimination; and whereas the Government of Botswana is desirous to have an inclusive and public consultation on constitutional amendment and whereas that process is yet to start; the courts have always re-affirmed the view that the judiciary is obliged to interpret Botswana laws in line with its obligation under international law.

Interpretation of Section 15 (4) of the Constitution of Botswana

34. The Constitution of Botswana recognizes the equality of women and men before the law. Gender equality is a key principle that is embraced in national policies and planning frameworks. Over the years gender equality has been increasingly accepted as an important development variable by various sectors of the economy. This recognition of the critical importance of gender gained momentum after the Beijing UN Conference on Women which saw the Government of Botswana formulating the National Gender Programme Framework (NGPF) prioritizing Six Critical Areas of Concern for Botswana women. These were Poverty including Economic Empowerment of Women; Women in Power and Decision Making; Training and Education for Women; Women in Health; Violence against Women including Human Rights and the Girl Child as a cross-cutting issue.

35. The courts of Botswana take matters that seem to be discriminatory against women seriously as it was declared by Dingake J in the Appeal case of *Molefi Silabo Ramantele v. Edith M. Mmusi and Others* in which he declared that "the Ngwaketse customary law rule that provides that only the last born son is qualified as instate heir to the exclusion of his female siblings is *ultra vires* Section 3 of the Constitution of Botswana in that it violates the respondents' rights to equal protection of the law".

36. In the Court of Appeal in the *Ramantele case* the Court held that there are certain values which are required for a customary rule to receive the status of law and thus be enforceable. These values are that the customary rule must not be inconsistent with the values of or principles of natural justice; must not be unconscionable either of itself or in its effect and should not be inhuman. The Court of Appeal said customary law must be applied with the set principles of morality, humanity or natural justice with the object of achieving justice and equity between the disputants.

37. The court based its decision in the terms of Section 10 (2) of the Customary Act and Section 2 of the same Act. The two sections bear quoting in full. Section 2 defining customary law provides:

"in relation to any tribe or tribal community, the customary law of that tribe or tribal community so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice."

38. Section 10 (2) provides:

"if the system of customary law cannot be ascertained in accordance with subsection (1) of the customary law, the court shall determine the matter in accordance with the principles of justice, equity and good conscience."

39. The court in *Ramantele case* then pronounced itself as follows:

“A customary rule that denies those children [a woman] of a deceased parent who played a major role in developing a particular part of the estate for the benefit of the deceased, a right on intestacy to any share of that asset, in favour of child [a man] who has refused to play any part in the building up and maintenance of that part of the estate, without any compensatory award, goes against any notion of fairness, equity and good conscience. It does not qualify to be given the status of law nor should it be applied or enforced by the courts...”

40. It is important to also note that the Adoption Act in terms of Section 16 provides that nothing contained in the Act shall be construed as preventing or affecting the Adoption in accordance with customary law of a child who is subject to customary law by a person who is also subject to customary law. The High Court in a number of decisions has held itself as the upper guardian of all minor children and in terms of the Children’s Act which incorporates the concept of the best interests of the child as espoused in the Convention on Children’s Rights. The High Court is enjoined to ensure that the best interests of the child are of primary importance.

41. The Marriage Act applies to all marriages solemnised in Botswana except marriages contracted in accordance with customary law of Botswana, Muslim or Hindu or other marriages. In terms of the Married Persons’ Property Act people can express which proprietary regime (whether in or out of community) they opt for, and failing such expression their mode of life can determine whether or not they are subject to customary law.

Customary discriminatory laws: Recommendation 14

42. Whereas some customary laws discriminate against women it ought to be noted that Botswana Government is doing much to rectify the situation. There are measures in place to address discrimination within the customary law. In Botswana the term “customary law” describes the laws of tribes and tribal communities while “common law” essentially refers to all other law, including Acts of Parliament, judicial precedent (decisions of the Industrial Court, High Court and Court of Appeal), and Roman-Dutch “Common” Law which remains in force. Customary law is unwritten, evolves and changes over time, and in principle is a plural body of law in and of itself, in that its content varies among tribes. Although the content of customary law is distinct from common law, the general framework for its application and the structures which enforce it are subject to legislative regulation, in particular through the Customary Law Act and the Customary Court Act. Although discriminatory and biased customary laws negatively affect women across the entire country, rural women tend to be particularly disadvantaged by their application. This is due to the fact that customary law is particularly enforced in rural areas, where local customs are still very vibrant. This can have great adverse impacts on rural women’s enjoyment of their human rights, particularly in the area of family law, inheritance and land tenure, among others.

43. The Courts of Botswana play a significant role in addressing discriminatory customary laws as captured in the case of *Mmusi*. To keep customary law in check not to be discriminatory and oppressive to women, the panel of Judges in the *Mmusi* case further quoted section 10 (2) of the Customary Law Act which provides that “if the system of customary law cannot be ascertained in accordance with subsection (1) or if the customary law is not ascertainable, the court shall determine the matter in accordance with the principles of justice, equity and good conscience”.

44. In terms of Section 42 of the Customary Court Act decisions of both the Customary Court and the Customary Court of Appeal are appealable to the High Court. Section 4 of the Customary Law Act specifies that customary law shall be applied in all civil cases between tribal members unless the parties expressly agree,

or relevant circumstances indicate their intention to determine the matter under common law. Meanwhile the Customary Court Act provides that if one party to civil or criminal proceedings in a customary court requests transfer of the matter to an ordinary court and the application of common law, the Customary Court of Appeal shall agree to the transfer if it is “in the interests of justice” in terms of Section 37.

45. Efforts to increase awareness of gender issues among the tribal chiefs and other community leaders, as custodians of customary law, continue to be implemented by the Government together with civil society organisations.

Visibility of the Convention and the Optional Protocol: Recommendation 16

46. Botswana continues to disseminate the Convention and its Optional Protocol to different stakeholders from policy makers, Government structures to civil society organisations and community based structures. The National Gender Machinery and its stakeholders which include among others the NGO Gender Sector continue to provide public education and focused group discussions on international instruments which include the CEDAW, policies and the laws that promote gender equality in Botswana. Some of the strategies used include national consultations (Dipitso), district/regional/national workshops, seminars and awareness building campaigns which are undertaken throughout the year and during commemoration days such as the International Women’s Day; 16 Days of Activism on Violence against Women; World AIDS Day.

47. The existence of the National Gender Machinery satellite offices in Kanye, Maun, Francistown, Ghanzi, Tsabong, Kasane, Selibe-Phikwe and Serowe to decentralise gender and women empowerment services to district and community level have provided opportunities to improve access to information including on the CEDAW. Media programmes (radio, TV, print) aimed at disseminating information on women’s rights and the laws that promote gender equality are also ongoing. These have served to facilitate public engagement on gender issues and prominence in the national agenda. The CEDAW Convention has been translated into Setswana which is a language that is spoken predominantly in rural areas. Translation of the CEDAW into Setswana is a commendable development that will allow for the Convention to be widely publicized.

48. Furthermore, the country continues to intensify public education particularly women focused education on laws that affect their rights to enhance women’s access to justice and enjoyment of their human rights. The initiatives include among others community conversations and dialogue sessions with focus on elimination of the negative cultural practices that contribute to the disparities between women and men; awareness on gender based violence and its effect, gender concepts, gender and HIV/AIDS and laws that were amended and/or enacted to address components that were discriminatory against women. The 2013 Baseline Study on Gender revealed that 61.6% of study respondents were aware of laws that address gender equality and intimate partner violence. The Gender Based Violence Indicators Study of 2012 indicated that 46.2% of women and 42.5% of men noted that they have heard about the Domestic Violence Act. Approximately a third of women and men in sample, 3.9% of women and 31.4% of men, were aware of protection orders.

Access to justice and legal complaints mechanisms, including a national human rights institution: Recommendation 18

49. Though there has not been deliberate effort to target the judiciary, efforts to intensify dissemination of the Convention to this group is ongoing through different fora. The judiciary is obliged to interpret Botswana laws in line with the provisions of the Convention. There is evidence that some judicial officers align their judgements

to the provisions of the Conventions as seen in the case of *Ramantele v. Mmusi & Others*. The Legal Aid programme was piloted from 2011 to 2013 in collaboration with four civil society organisations. The Legal Aid Act was passed by Parliament in 2013 and the legal aid programme is being rolled-out nationally to enhance women's access to justice. Public education on laws that promote gender equality is ongoing with a specific target on women, including on free legal aid services through the radio and other communication modes. Furthermore, Regulations for Domestic Violence Act 2008 have been developed to facilitate effective implementation of the Act for protection of survivors of domestic abuse.

50. The Administration of Justice has set up maintenance courts in major centre areas to enable women to access payment of maintenance. Implementation of the Affiliation Proceedings Act has been intensified by ensuring the enforcement of maintenance orders by the police.

51. In 2010 the Administration of Justice introduced a case management system which was intended to deal with backlog of cases. Statistics reflect that the disposal rate of cases stand at 75–80% on average on yearly basis. Plans are currently under way to introduce case management to lower courts with the Magistrate Court being the first. This will enable litigants who appear in court to access justice faster. Over and above these majors, the Administration of Justice has also introduced Mobile Courts. Mobile Courts are intended to take justice to the people, particularly in areas where there are no courts.

52. The Government continuously engages with Dikgosi (Chiefs) in efforts to achieve gender justice through promotion of equal opportunities and rights for women and men with a particular focus on mainstreaming gender within the customary justice system.

53. The Government had previously formed the view to strengthen the Office of the Ombudsman in order for it to serve as an independent national human rights institution. The assistance of the Office of the High Commissioner for Human Rights was sought to analyse the Ombudsman Act, leading to further consultations regarding the establishment of a national human rights institution.

National Machinery: Recommendation 20

54. Botswana has demonstrated 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”. To this end, on 1st October, 2016; gender was made prominent within the new Ministry named: Ministry of Nationality, Immigration and Gender Affairs. This is anticipated to give the National Gender Machinery visibility and eminence.

55. At the time of reporting, the National Gender Machinery was allocated 4.8% of the total budget for Ministry of Labour and Home Affairs (MLHA); under which it fell. However, it is unclear in the national budget the exact amount of funding allocated to gender related issues across institutions. Regular briefing sessions with His Excellency the President on the National Gender Machinery's performance created a platform to engage and highlight needs and challenges which resulted in increased support and additional budget allocation.

56. 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. Capacity-building of sectoral gender focal persons (GFPs) has been intensified through training on gender mainstreaming and application of gender analysis tools. 34 officers from different Ministries have been trained as GFPs. Monitoring and reporting tools are being developed to facilitate systematic

coordination and implementation of sectoral policies and action plans to address gender gaps. However, the levels of authority of the officers serving as GFPs in Line Ministries and lack of ownership and support by Ministries leadership undermine the potential for effective gender mainstreaming at the highest level of planning.

57. The National Gender Machinery continues to facilitate establishment of Gender Committees for sectors and at district level to support gender mainstreaming and promotion of gender equality at all levels, including at local level.

Temporary Special Measures: Recommendation 22

58. The Government implements economic empowerment programmes through different strategies to contribute to poverty alleviation. The women's economic empowerment programme provides grants to business groups to start or strengthen income generating projects. In the years 2012/2013 and 2013/2014, the Government committed and allocated 5% of the Alcohol Levy fund as additional support for women's economic empowerment. This allocation was increased to 10% of this fund in 2014/2015. The Government has also taken affirmative action to promote economic development in rural areas by provision of funding for livestock rearing and small projects as well as access to productive resources such as land. In addition, the economic development programme also specifically targets women and girls with disabilities. Furthermore, caregivers of people with multiple disabilities (i.e. people with disabilities who need a care-giver round the clock) are allowed to get economic empowerment support on behalf of those living with disability under their care, including their children.

Stereotypes and cultural practices: Recommendation 24

59. Botswana embraces and promotes positive aspects of culture and continues to implement different strategies to address harmful and discriminatory cultural practices. The Draft National Strategy Towards Ending Gender Based Violence in Botswana by 2020 developed in 2013 highlights key interventions targeting negative cultural practices that impact on gender equality. The Government commissioned national consultations on social values spearheaded by the Chairperson of Ntlo Ya Dikgosi (House of Chiefs) in 2008 to consult the communities on the social ills afflicting the nation, their causes and possible strategies for addressing such. Some key gender issues discussed included domestic violence, cohabitation, rape, partner killings, commercial sex work and payment of bogadi (dowry).

60. There is continuous engagement with community and religious leaders as well as the general community on different social, cultural and religious issues that perpetuate gender inequality. This is done through cultural and community dialogues, television and radio discussions, seminars and campaigns. There are also community mobilisation strategies by Government institutions and civil society targeting men and boys in addressing gender stereotypes and promoting behavioural and attitudinal change. Government collaborates with Men Care, a civil society organisation, to strengthen greater involvement of men in ante-natal, delivery and post-natal care as well as child rearing.

61. The Government and civil society organisations conduct outreach mobile stops where key services and information are made accessible to women and men in rural areas. To enhance understanding and support for equality of women and men, the Government has developed public education materials specifically on the concept of gender equality and translated these into the local language (Setswana) for easy understanding.

62. Media engagement on gender-sensitive reporting continues to be promoted. Government and civil society organisations conduct media briefs, workshops and

trainings on gender, GBV and related issues throughout the year. The Botswana chapter of the Media Institute of Southern Africa has developed a gender policy and action plan to mobilize media houses on gender issues, including non-stereotypical reporting.

63. According to the local customs in Botswana an unmarried man has no rights to the child. The Children's Act, 2009 has made provision for fathers to have access and custody to their children who are born out of wedlock. In some instances, the Act permits for joint custody of the child, and in other circumstances, sole custody could be given to the father.

64. Efforts to gauge progress on interventions and measures taken are ongoing through national surveys and studies. However, there is need to have a systematic monitoring and evaluation framework to establish the impact of gender education and sensitisation efforts targeting elimination of negative cultural practices and stereotypes.

Violence Against Women: Recommendation 26

65. The Domestic Violence Act, 2008 abolishes spousal exclusion in rape cases. The Act provides a wide range of remedies for abuse and abusive behaviour including "sexual abuse or threat thereof" in a "domestic relationship". Domestic relationship in terms of Section 2 of the Act includes a relationship where people "are or were married to each other". The Domestic Violence Act is a clear legislative statement of public policy which advances the construction of Section 141 of the Penal Code to include marital rape. It is a clear intent to criminalise abusive conduct even within the marriage. Moreover, it eliminated the common law spousal exclusion. The High Court in 2008 addressed the matter of marital rape, holding that "to suggest that it should be permitted if the perpetrator is a spouse is ... totally unacceptable and a historic aberration." (*Letsholathebe v. The State* 2008, [3] BLR 1 HC (Kirby J)). Whereas the case did not involve allegations of rape within marriage and thus the Court's pronouncement was not determinative on the facts it indicates, contrary to public opinion, that marital rape is prohibited.

66. In 2012, gaps and challenges that hinder effective implementation of the Domestic Violence Act, 2008 were documented and they informed the development of the regulations that facilitate effective implementation of this Act and increase access to immediate means of redress. Stiffer measures have been put in place to prohibit withdrawal of domestic violence cases at Police but only at the Magistrate Courts and to strengthen prosecution of perpetrators. This was due to the high incidence of withdrawal of domestic violence cases by victims.

67. Furthermore, Botswana is currently piloting a gender based violence referral system in an effort to provide comprehensive service delivery to survivors of gender based violence. In addition, the Government acknowledges that currently there is no specific legislation that addresses sexual abuse. However, the ongoing process of domesticating the CEDAW is intended to address such issues.

68. The Government continues to collaborate with different stakeholders and partners in efforts to address gender based violence and raise public awareness on the issue. There have been national consultative fora for Dikgosi/Chiefs (2012) and for leaders of faith based organisations (2011) as an effort to mobilise these structures in responding to GBV. The health sector engages communities in the prevention and management of GBV through the District Male Action Group community mobilization strategy. Civil society organisations mobilize community participation in the prevention of gender based violence through house-to-house campaigns. This contributes to early detection, identification and timely referral of gender based violence cases.

69. Training of health care providers on the clinical management of GBV including forensic evidence preservation, collection and reporting was enhanced since 2011 following the development of the Gender Based Violence Health Sector Policy Framework and Health Care Service Providers' Protocols and Service Standards. These Protocols and Service Standards provide for counselling by health care providers and training for hospital based social workers on GBV. The clinicians are also trained in screening skills to identify survivors of GBV.

70. Government provides financial and technical support to Civil Society Organisations to offer counselling services to GBV survivors and their families. Representatives of all district Social Workers received training on gender mainstreaming and gender based violence using the developed National Gender Mainstreaming Curriculum. The training enhanced general knowledge on gender and the skills to provide psychosocial support to gender based violence survivors and their families.

71. The Botswana Police Service has regularised inclusion of gender and gender based violence in their pre-service and in-service trainings. Tools to facilitate capturing of gender disaggregated data at service points have also been developed by the police.

72. Although there are no State owned shelters for women gender based violence survivors, the two shelters run by civil society organisations receive financial and technical support from the Government and development partners. Government runs one shelter for vulnerable children and also provides financial support to four others run by civil society organisations.

73. Public awareness raising activities on violence against women and girls are done through cultural and community dialogues, television and radio discussions, seminars and campaigns including international commemorations. The development of the National Action Plan Towards ending GBV is under way, targeting inclusion of all efforts by the different stakeholders and training of the service providers. This plan will facilitate monitoring of interventions to gauge progress and impact.

Trafficking and exploitation of prostitution: Recommendation 28

74. The Protocol on the Suppression and Punishment of Trafficking in persons especially women and children was ratified in August 2002 as a way of trying to curb the issue of trafficking and exploitation. It must however, be noted that Immigration laws have no provision addressing trafficking but there are deliberate measures in place to prevent child trafficking. Anybody travelling with a child outside the country is required to have an affidavit from the child's parents or guardian. Research to assess the prevalence of trafficking has not yet been carried out. However, the Anti-Human Trafficking Act, 2014 is in place.

75. The Government in collaboration with civil society organisations continue to implement comprehensive empowerment programmes including life skills, technical skills, business management and financial assistance for income generating projects to enhance opportunities for employment creation for women. These facilitate reintegration of commercial sex workers into society. Current efforts to provide alternatives to commercial sex work include: youth and women empowerment programmes including development of business and technical skills, financial support for entrepreneurship and enterprise development; poverty eradication programmes; micro lending programmes to provide start-up capital and mentorship for small businesses; provision of free education, back-to-school programme for youth who dropped out and those who previously failed, re-admission after pregnancy; orphan care programmes; and the national internship programme.

**Political participation and participation in public life by women:
Recommendation 30**

76. The participation of women in politics and in general public life is still lagging behind. Botswana has not attained the international target of 50% women in decision making positions. Out of 1,611 of all those individuals who participate in high political posts and other public life, 429 are women compared to 1,182 of their male counterparts representing 26.6% of the involvement of women in political participation and participation in public life. While women continue to be generally underrepresented in institutions of decision making such as Parliament, the Cabinet, Local Authorities, the Public Service and in most national boards, efforts at national level are ongoing to promote participation of women in decision making.

77. Special temporary measures to accelerate political participation of women are not yet in place. However, recognising the critical importance of equal inclusion of women and men in politics and decision making, the National Policy on Gender and Development prioritises adoption and application of affirmative measures by sectors as necessary to address identified gender gaps in line with their mandates. This Policy and its National Operational Plan have a 5-year timeframe. Given the strategic importance of gender mainstreaming in all aspects of development, private and parastatal institutions continue to be enrolled and encouraged to consider equal participation of women and men in governance structures.

78. Efforts to raise awareness on women's participation in public and political life are addressed under the response to Recommendations 24 & 26.

Education: Recommendation 32

79. The Botswana Core Welfare Indicators Survey 2009/10 indicates that the national literacy rate for those aged 15–65 years is 83.2%, with females at 83.8% and males at 82.3%.

80. As shown in the previous Country Report regarding enrolment, girls consistently enrol in larger numbers than boys in secondary and tertiary education (page 51 of the [CEDAW/C/BOT/3](#)). For secondary education, more females than males were enrolled in 2009. Botswana observes the same pattern on enrolment as confirmed by the African Gender and Development Index Botswana Report of 2012. An analysis of the 2011 Population and Housing Census results reflect that the likelihood of attaining secondary education is 11% higher among men compared to women. The Botswana MDG Report of 2010 indicates that the number of females entering tertiary education is higher (52% — University of Botswana, 68% — Teacher Training Colleges and 58% — Colleges of Education). However, in science and technology fields Botswana continues to register lower female enrolment rates (38% — Vocational Training Centres, 28% — Botswana College of Agriculture).

81. The implementation status on the re-entry policy enabling young women to return to schools is as reported in the last report (page 55 of the [CEDAW/C/BOT/3](#)). Furthermore, the Government introduced the back-to-school program effective from 2013 to facilitate re-admission of children and youth who dropped out of school due to various reasons including pregnancy, failure and absconding. There is collaboration with parents on education through the Parents Teachers Associations; however, the association needs strengthening in some schools. The Government also bears the cost of education and parents cover consumables. Regarding remote area dwellers, the Government fully covers the education cost and provides accommodation for them. Special dispensation is also given to remote area dwellers for entry into institutions of higher learning and employment in selected areas of service such as Police, health and education.

82. Regarding the safety of children within the school environment, each school has a guidance and counselling unit with teachers trained on counselling; however there are some schools that experience shortage of teachers trained as counsellors. Additionally, each local council has a dedicated social worker to reinforce programming efforts to ensure safety in schools. There is also a National Life Skills Framework which is used to educate boys and girls on social skills. The Education Policy clearly prohibits teachers and other school staff members from having sexual relationships with learners because of their custodial responsibilities and strict penalties are applied for those who violate this provision. Furthermore, the ongoing development of the GBV referral system is intended to strengthen implementation of the Penal Code provision on defilement through networking of key service providers for effective response to this issue.

83. The Government in collaboration with civil society organisations continues to raise awareness among school going youth through school-based activities aimed at developing self-esteem. Such initiatives include capacity-building for social clubs for peer counselling and education programmes, experiential learning and reflection on personal experiences in order to bring closure to negative experiences.

84. The Policy on Inclusive Education (2011) articulates strategies for retaining girl children as well as children with special needs in the educational system. The country is however experiencing challenges in education of children with special needs more especially in the area of early intervention, assessment and school placement. Resources are also still a challenge to fulfil the inclusion mandate; but the Government continues to send a number of people with disabilities out of the country to further their education.

85. The Revised National Population Policy (2010) makes provisions for Adolescent Friendly Health Services to ensure access to Reproductive Health Services that can in turn promote the retention of girl children in education. Information, education and communication initiatives have focused on holistic youth empowerment. HIV and AIDS prevention programmes continue to emphasise a broad range of choices available to young people. These include Adolescent and Young People Multi-media Campaign for HIV Prevention (*Wise Up*) and *Silent Shout* television programme which focus on STIs, HIV and AIDS knowledge and prevention. In addition *Ntwakgolo* TV drama which targets all age groups; airs weekly to generate interactive discussions on HIV and AIDS, GBV and other related issues. The adolescent and youth friendly health services are also offered outside of normal school hours to allow for greater access by school-going youth. These strategies have the potential to reduce occurrence of unwanted teenage pregnancy and female dropout rates. The *Talk Back* interactive television programme also ensures regular discussion on Adolescent Reproductive Health issues among teachers.

Employment: Recommendation 34

86. Botswana Core Welfare Indicators Survey 2009/10 indicates that the national unemployment rate for those aged 18 years and above is 17.6%. Unemployment in Botswana still affects more women than men. This survey also reflects that males accounted for 38% and females for 29.6% of the labour force in paid employment. The 2011 Population and Housing Census reflect that 22.6% of women compared to 17.7% of men are unemployed in Botswana. Women tend to also comprise a higher percentage of those employed in the local government while men are mostly in the central government, private and parastatal organisations. Through affirmative action, all people with disabilities who have gone through higher education training are given priority during placement in the government jobs and others are hired by the private sector.

87. The 2007 Informal Sector Survey indicates that females accounted for 60.7% of total employment in the informal sector, three times the figure recorded in the 1999 survey.

88. The Employment (Amendment) Act of 2010 has set a minimum pay of 50% salary for women on maternity leave as compared to the previous dispensation where it was left to the discretion of the employer. Botswana continues to comply with ILO Convention No. 100 on equal pay and ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation as reflected in the amendments made to the Employment Act.

Health: Recommendation 36

89. Botswana conducts the Family Health Surveys (latest being 2009) and the Demographic Health Surveys every four years. Health Statics Briefs are produced annually by Statistics Botswana. Botswana conducts quarterly Maternal Mortality Audits and these are compiled into Annual Reports. According to the Maternal Mortality Audit Report of 2012, the leading top four causes of maternal mortality in Botswana have been identified as haemorrhage (28%), hypertensive disorders in pregnancy (17%), abortion (15%) and HIV/AIDS related infections (17%). Botswana has adopted the Confidential Enquiries into Maternal Deaths (CEMD) as a form of maternal mortality audit process. The Maternal Mortality Ratio (MMR) was reported at 186/100,000 in 2011 and 147.9/100,000 in 2012.

Regarding the management of maternal health and unsafe abortions, Botswana has improved access to family planning services, contraceptive methods mix and access to emergency contraception and medical termination of pregnancy or legal abortion where eligible as per the Abortion Act 1991. In this regard the country continues to intensify capacity-building for nurses and doctors through the Comprehensive Emergency Obstetric and Neonatal Care (CEmONC) training to improve quality in the provision of comprehensive abortion care to reduce maternal morbidity and mortality.

90. Botswana has strengthened the Adolescent Sexual and Reproductive Health programme through the establishment of youth friendly communication strategies including “Wise Up” — a social media platform and “Youth Counselling on Air” (YOCA) — a telephonic counselling service targeting youth. Other initiatives include community mobilization, Information Education and Communication, capacity-building, and Youth Friendly Services and provision of contraceptives, prevention and treatment of STIs for the eligible youths.

HIV/AIDS: Recommendation 38

91. The 2012 Revised National HIV and AIDS Policy takes into account the gender dynamics of HIV and AIDS. The country has also developed its second national HIV and AIDS strategic framework (2010–2016) which embraces gender sensitivity as one of the guiding principles of the national response to HIV and AIDS. The National AIDS Council has established the Women and Men’s Sectors to promote involvement of both women and men in the prevention of new HIV infections. In 2012 and 2013, the two Sectors developed national HIV & AIDS strategies to address the respective vulnerabilities of women and men to HIV & AIDS and GBV. Key objectives include enrolling men as partners for the promotion of gender equality and elimination of GBV as well as enrolling prominent males as advocates and creating exclusive platforms for discussing female and male related issues.

92. Available evidence (Botswana AIDS Impact Survey I, II, III and IV) shows that more women and girls are infected with HIV and shoulder the heavy burden of care and support of people living with HIV (PLHIV). In response the Government of

Botswana has put in place key programmes to address women's vulnerability and mitigate impact of HIV. These include; provision of HAART to HIV positive pregnant women, clinical management of gender based violence, sexual reproductive health/HIV integrated services, cervical cancer screening and treatment for women living with HIV, promotion of female condoms and HPV vaccine for the adolescent girls. Botswana's Second National Strategic Framework on HIV and AIDS (NSF II) for the period 2010–2016 has embraced gender sensitivity and prioritised gender based violence as one of the key drivers of the HIV epidemic.

93. In order to meaningfully mainstream gender, the NSFII National Operational Plan (NOP) has highlighted the pre-requisite activities. These include accelerating gender awareness and education at all levels including interventions that will enhance better understanding and appreciation of the gender concept; conducting training in gender analysis, planning and programming, gender based data analysis, and gender budgeting; establish a Gender Technical Planning Group; reviewing the M&E system and M&E tools to address gender and human rights issues; and advocating for increased funding for gender programmes especially within the context of the NSF and NOP.

94. The Government provides safety nets including food baskets and facilitation of foster care services to curb GBV and HIV & AIDS vulnerability of children from child-headed households.

Economic Empowerment of women: Recommendation 40

95. The principles of gender equality and equity are embodied in the Constitution of Botswana and in Vision 2016. Gender has been adopted as a cross cutting issue in the National Development Plan 10 review process. Furthermore the National Policy on Gender and Development, endorsed in August 2015, has adopted gender mainstreaming as the fundamental strategy in ensuring that all development sectors address gender inequality and inequity. The policy has also prioritized economic development, prosperity and eradication of abject poverty for programme focus to achieve sustainable development. To this end, the Government has made a commitment to allocate substantial resources in 2013/2014 for the women's economic empowerment programme supporting income generating projects, which is in excess of an eightfold increase from the 2010/2011 allocation. Consultations are also ongoing to formulate a comprehensive policy on gender in agriculture and rural development, planned to be finalised and endorsed by mid-2017. The policy aims at specifically addressing the issues and challenges faced by rural women across Botswana. In addition, the Government has established a flagship programme to eradicate abject poverty among Botswana, particularly targeting rural and remote area communities; of which women beneficiaries constitute about 80%, including women with disabilities. The poverty eradication programme is funded at around US\$ 23 million. Up to date information on the situation of rural women in the country is included below, under article 14 section.

96. For capacity-building and training, refer to response to Recommendation 28.

97. With respect to ownership of land as indicated in the last report, women and men have equal right to own land. The Ministry of Lands and Housing has aligned their administration arrangements and practice with the law to afford married women equal chance with men to own land. There is need to continue public education to promote knowledge on the right to land ownership and strengthen capacity to challenge malpractice in land allocation. Deliberate effort and progressive exposure by Dikgosi to systematically address gender discrimination through the customary justice system have led to narrowing the gap between application of customary and common law. This has resulted in increased awarding of inheritance to women, which

would have traditionally been given to men. Data sourced from the Botswana Housing Corporation (BHC) indicates that between 2005 and 2012, the majority of urban houses mainly in the cities of Gaborone and Francistown were purchased by men at 51.73% while females followed at 48.7%.

98. Furthermore, as reflected in the Botswana case law, there is progression towards complying with the common law duty of ensuring that the laws continue to move with the changes in the society. This was reflected in the case of *Ramantele v. Mmusi & Others*. Moreover, the Administration of Estates Act also takes into consideration the deceased's lifestyle when dealing with devolution of estate. Under the same Act, where a tribesman dies interstate, the law considers whether such a tribesman lived solely according to culture or modern ways. Where it is found that such a tribesman had a modern lifestyle then the heirs, including females, inherit according to common law administration of estates.

99. Information on rural development is collected by different sectors and managed through the Rural Development Council. However, there is need to strengthen consolidation of this information from different sectors.

100. Livestock ownership by sub-sector shows that cattle ownership is highly skewed towards men. However, ownership of small-stock specifically goats, although predominantly owned by men, shows a slightly smaller gender gap. The same gendered pattern of livestock ownership is also reflected in the ownership of sheep. Lack of disposable income, animal husbandry skills and the disinheritance of women all combine to reduce women's access to livestock resources. Government agricultural subsidy schemes such as the Livestock Management and Infrastructure Development (LIMID) have a deliberate window that promotes increased women's access to productive resources including small stock and boreholes.

Family relations and equality before the law: Recommendation 42

101. In terms of Section 45 of the Interpretation (Amendment) Act, 2013 the legal age of majority in Botswana is 18 years irrespective of sex. This effectively accords any such person *locus standi* to act in his/her name without any parental consent, save for persons who have been mentally incapacitated. With the Abolition of the Marital Power Act, 2004, women have the right to act in their independent capacity 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.

102. The Married Persons Property Act 2014 makes provision for persons married under customary law to opt for their property to be administered under civil law. The new dispensation will allow persons getting married under customary law to opt either in or out of community of property. Furthermore, the new law will allow those persons whose joint property is administered under civil law to be able to approach the High Court to change their marriage regime where their initial property regime seems to be of an advantage to them. These new developments in the Botswana Laws will ensure equal rights for married persons whether such marriages were contracted under civil law or customary law. Furthermore the Marriage Bill is in its development stages.

103. The Committee on the National Intervention on Population held a National Conference on Marriage Patterns and trends in Botswana in November 2011. One of the objectives of the Conference, which was predominantly attended by District Commissioners and marriage officers (religious, non-religious and traditional) was to consider the effect which the Abolition of Marital Power Act has had on marriages, to reinforce its application and come up with a strategy on public education. District Commissioners and marriage officers are ordinarily the first stop a married couple will make in the event of a conflict and it was necessary for them to understand the

relevance and application of the Act so that they are able to give it wide publication. Public awareness is ongoing to educate the public and all sectors of the society on laws that promote gender equality.

Data collection and analysis: Recommendation 44

104. Data collection and analysis remains a challenge. However incremental steps continue to be taken to strengthen evidence based planning and programme implementation for improved impact. The National Policy on Gender and Development has a dedicated monitoring and evaluation component. The Gender Study of 2013 establishes baseline information on various components of gender and development, necessarily indicating the relative positioning of women. The Government also conducted a national study on GBV (GBV Indicators Study, 2012) to establish the prevalence of violence against women. The National Strategic Framework on HIV and AIDS (2010–2016) and the HIV and AIDS Women Sector Strategy (2012–2016) have a monitoring and evaluation framework.

105. Furthermore, Botswana continues to conduct periodic surveys and studies such as: annual education, health and labour statistics; sentinel surveillance surveys every two years to monitor HIV prevalence amongst pregnant women; Botswana HIV & AIDS Impact Surveys (BAIS) (2001; 2004; 2008; 2013) carried out every four years to monitor prevalence and impact among the general population; Informal Sector Survey; Botswana Literacy Survey for Education: Vision 2016 Survey; Agricultural Statistics Survey; Botswana Core Welfare Indicator Survey and Labour Force Survey. These surveys and studies have generated useful information/data on knowledge, attitudes, behaviours and practices and they inform gender programming and critical interventions that address gender inequality.

C. Examination of progress in implementing the CEDAW provisions

Part I

Article 1: Discrimination

106. The Government of Botswana recognizes its obligations to implement systematically and continuously all the provisions of the Convention. Regarding the interpretation of Botswana laws in line with the provisions of the Convention, the Government reaffirms that the judiciary is obliged to interpret laws in line with these provisions in cases where the language of the statute is unclear, including any of the provisions in the constitution. Section 24 of the Interpretation Act specifically provides thus: “as an aid to the construction of the enactment a court may have regard to ... any relevant international treaty, agreement or convention ...”.

107. The Government further reaffirms that the process of full domestication of the Convention is one of its high priorities. The process is ongoing and takes on board the concerns and recommendations of the Committee on discrimination.

108. Section 15 of the Constitution specifically forbids the making of discriminatory laws. The *Dow* case found that the outlawing of discrimination was simply based on affording different treatment to different persons wholly or mainly attributable to their respective characteristic groups without any rational basis.

109. In the *Mmusi v. Ramantele* case (Case No CACGB–104–12) the presiding judge was being called upon to employ interpretation techniques that will enable section 3(a) (guaranteeing applicants’ rights to equality and protection of the law) to co-exist within a single unitary constitutional scheme with section 15(4) (c), which

permits discrimination on matters of inheritance and personal law. The judge stressed that courts of law, as the conscience and voice of contemporary society, must do their part to ensure that the ideal of gender parity is achieved. In this regard, the learned judge, Dingake J remarked: “It seems to me that the time has now arisen for the justices of this court to assume the role of the judicial midwives and assist in the birth of a new world struggling to be born, a world of equality between men and women as envisioned by the framers of the Constitution”.

110. More critically, the judge concluded his judgment by calling upon the Government of Botswana to repeal all discriminatory laws which may in themselves or by their effect undermine the rights of women. In this connection, the Court assertively delivered itself thus:

“In conclusion, I wish to point out that there is an urgent need for parliament to abolish all laws that are inconsistent with section 3(a) so that the right to equality ceases to be an illusion or a mirage, but where parliament is slow to effect the promise of the Constitution, this Court, being the fountain of justice and the guardian of the Constitution, would not hesitate to perform its constitutional duty when called upon to do so”.

111. As the *Mmusi* case bears testimony, one area where the rights of women are often trampled is that of the law of inheritance. Inheritance is an important issue touching on the question of the distribution of resources in society. It also partly accounts for relational power differences between men and women because of the exclusion of women from inheriting property which mostly define the social status of a person in an African community. Whereas statutes guarantee equal rights and opportunities between men and women, discrimination against women is still endemic in the villages, fields, cattle posts and other obscure corners of African countries. *Mmusi* has not abolished the oppression of women in Botswana, but most certainly it is a critical step in that direction.

112. Since section 3 of the Constitution guarantees fundamental rights and section 15 seeks to limit them for no policy reasons whatsoever (at least within the context of *Mmusi*), then it is submitted that the latter section must yield.

113. The Customary Law Act also attempts to reconcile possible conflicts between customary law and common law. It does this through its definition of customary law, specifying that customary law to be applied by the customary courts includes only that tribal law which, “is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice.” It follows that where a custom or tribal rule does not comply with written common law, for example legislation, it is not part of customary law and is not applicable by the customary courts.

114. The Court of Appeal has reiterated this principle and has simultaneously held that customary law is also subject to, and must be applied and interpreted in accordance with, the Constitution: “Custom and tradition have never been static. Even then, they have always yielded to express legislation. Custom and tradition must a fortiori ... yield to the Constitution” (per Amissah JA in *Attorney General v. Dow*).

115. The key challenge is that a significant number of Botswana women are subjected to customary law even though Constitutional law takes precedence over it. The lack of knowledge and information on the part of women themselves regarding Marriage laws and their implications have perpetuated discriminatory practices in the area of marriage under Customary law. Women’s lack of information and resources to enable access to Civil Courts and exercising their rights to transferring cases to the same represents a major challenge. Government continues to mitigate these challenges through strategies as discussed under response to Recommendations 18 & 24. In addition, the Botswana Defence Force (BDF) in 2007 started recruiting women in the

army as female cadets as an effort to eliminate discrimination and contribute to equal access to employment opportunities.

Article 2: Policy Measures

116. Botswana is at an advanced stage of domesticating the CEDAW. The consultative processes which are intended to design and gauge the readiness for translating Convention into law has provided sufficient basis and opportunity to consult widely and openly with the public and disseminating information on harmful practices and rights of women. In addition to CEDAW domestication, key policy measures adopted include: the Gender Strategy which currently informs national gender programming; the National Policy on Gender and Development and the National Operational Plan; continuous law reform (draft amendment of the Marriage Act and the Married Persons Property Act, development of Regulations for the Domestic Violence Act (2013), Interpretation (Amendment) Act (2013)); strengthening of administrative arrangements for the implementation of the Land Policy to promote equal access to land; affirmative action policy on Remote Area communities (2012); Poverty Eradication Guidelines (2011); Child Sexual Abuse Strategy (2010); Draft National Response to Gender Based Violence and the framework for the Botswana National Action Plan Towards Ending GBV. A process for the formulation of a comprehensive gender in agriculture and rural development policy is also ongoing.

117. Consistent with the shift from an almost exclusive focus on women towards a broad national gender and development framework and strategy, the National Gender Machinery has been renamed from Women's Affairs Department to Gender Affairs Department (GeAD). This has facilitated inclusive programmes resulting in increased numbers of male clients.

Article 3: Guarantee of Basic Human Rights and Fundamental Freedoms

118. One of the goals of the National Development Plan 10 (NDP 10) underscores "promoting gender equality and the empowerment of women". Recognizing limited capacity of *Dikgosi* in the delivery of justice, one of the outcomes of the Governance and Human Rights component, under the Government of Botswana-UN Programme Operational Plan (GOB-UN POP) include review of customary law for gender biases as well as the legal framework and mainstreaming of gender into policies to comply with international commitments.

119. Efforts to mainstream gender in the customary justice system and further promote access to justice by women continue. Subsequent to the Bogosi Gender Pitso of 2012 Dikgosi involved other community leaders at local level in a bid to strengthen consistency of interpretation, judgements and sentencing. Other local stakeholders have also been enrolled to ensure strategic alliances in responding to community needs.

120. Limited support is provided to civil society organisations that collaborate with Government to facilitate access to justice through aided application for court orders.

Article 4: Special Measures

121. Refer to Response to Recommendation 22 (Temporary Special Measures). In addition to the women's economic empowerment programme by the Government, there is need for continued support towards sustainability of the funded women's projects. This includes consideration for mechanisms to support those who graduate from the incubation to access subsequent credit, i.e. a revolving fund. There is also need to mainstream gender in the administration of the different youth-targeted

economic empowerment programmes in order to ensure equality of access to opportunity.

Article 5: Sex role stereotypes and cultural practices

122. The GBV Indicators Study of 2012 and the Gender Study of 2013 provide baseline information on stereotypes, personal attitudes towards gender relations, gender equality, GBV and intimate partner violence. The GBV Indicators Study indicated that 83% of women and 82% of men respondents agree that men and women should be treated equally. Even though higher proportions of women and men in this study agree to the concept of gender equality, they further contradicted themselves (especially men) in their views on issues that are supposed to reflect this equality. Such views include agreeing that women must obey their husbands; that a wife needs the permission of her husband to pursue paid work; and that a man should have the final say in all family matters. These findings reflect that although gender equality in the public domain is widely accepted and the concept is internalised, this is not the case in the private sphere where this does not translate into the individual men and women's lives. However, women are beginning to understand and assert their rights and the need to further engage men and boys in efforts to achieve gender equality and empowerment of women is critical.

123. Whereas certain roles continue to be performed along gender lines strides have been made towards elimination of role stereotypes and negative cultural practices. The provisions of the Domestic Violence Act and the Regulations to the Act; the Children's Act and the Abolition of Marital Power Act confront some of these role stereotypes and cultural practices.

124. The Children's Act, 2009 challenges the notion that children as minors have no say in decisions affecting their welfare. The Act insists on children being allowed to participate in matters concerning their well-being and those born out of wedlock have access to their fathers. Fathers, including unmarried men can therefore have custody and access to their children with their names appearing on the child's birth certificate.

125. The Government, in collaboration with civil society organisations and with support by development partners, continues to implement initiatives aimed at addressing stereotypes and negative cultural practices that reinforce discrimination against women within religious and community settings. Such initiatives include the "TAMAR Campaign" aimed at addressing violence against women within religious settings; the "I Stories" written by survivors of gender based violence; a fatherhood program aimed at encouraging men and boys to be partners with women in parenting and upbringing of children, as well as cultural dialogues with different community groups across the country.

126. For additional strategies to respond to stereotypes, refer to responses to Recommendations 24 and 26.

Article 6: Prostitution

127. The Anti-Human Trafficking Act has adopted. Consultations, sensitisation and capacity-building for stakeholders on human trafficking are ongoing.

128. The Children's Act is explicit on the issue of trafficking in children. The section on Child Abduction and Trafficking in children states that "Any person, including a parent, other relative or guardian of a child, who abducts or sells any child, traffics in children or uses any child to beg, shall be guilty of an offence and shall be sentenced to a fine of not less than P30,000 but not more than P50,000 or to imprisonment for a term of not less than five years but not more than fifteen years." The Government, with the support of UNICEF has commenced work to develop an Implementation

Framework for the Children's Act, which criminalises child trafficking. It is anticipated that the Framework will serve as a guide to stakeholders and various Ministries to identify their stake in the implementation of the law and allocate resources for implementation of activities under their direct mandate.

129. The National Plan of Action for Orphans and Vulnerable Children is in place to facilitate and advocate for targeted programming and interventions for the welfare and protection of vulnerable children.

130. The Ministry of Health in 2012 conducted a Mapping, Size Estimation & Behavioural and Biological Surveillance Survey (BBSS) of HIV/STI Among Select High-Risk Sub-Populations in Botswana. The survey indicated the high-risk sub-populations as Female Sex Workers — FSW, Men Having Sex with other Men — MSM and People who inject Drugs — PWID. It found that reasons for sex work were mostly for financial gain. One of the objectives of the survey was to estimate the incidence and prevalence of HIV infection among FSW, MSM and PWID in Botswana. The survey showed FSWs as a sub-population most affected by HIV in Botswana. The FSWs population size was estimated at 4,000 in the three districts surveyed (Gaborone, Kasane and Francistown). High HIV prevalence (62.1%) and incidence (12.5%) were also reported amongst this group in the surveyed districts. The HIV prevalence amongst men who have sex with men is at 13.1%. Experiences of sex workers have also been documented as an effort to contribute to building safer spaces in the HIV and AIDS response in Botswana. In addition, there is need for strengthened monitoring mechanisms for early detection and support to girls who drop out of school before they could venture into activities like prostitution.

131. Also refer to response to Recommendation 28.

Part II

Article 7: Political and Public Life

132. The 2012 African Gender and Development Index Botswana Report shows that the country, at an overall score of 0.99 in the Gender Status Index (GSI) Social Power Block, has achieved some level of gender parity.

Women representation in Botswana Parliament and Cabinet

133. Women participation in political life continues to show a stagnated and slow growth and in other instances a decline. As depicted in the table below, women are under-represented in Parliament and Cabinet. Local Councils very much like Parliament are also dominated by men.

Table 1
Women in Botswana Parliament and Cabinet

| | 2004 | | | 2009 | | | 2014 | | |
|------------|------|--------|-------------|------|--------|-------------|------|--------|-------------|
| | Male | Female | % Female | Male | Female | % Female | Male | Female | % Female |
| Parliament | 55 | 7 | 11 | 57 | 4 | 6.6 | 56 | 5 | 8.2 |
| Cabinet | 15 | 5 | 25 | 19 | 4 | 17.4 | 20 | 4 | 17 |

Source: Botswana National Assembly; 2014.

Women representation at Local Government

134. Local Councils, very much like Parliament, continue to be dominated by men as indicated in the table below.

Table 2
Representation at Local Government

| | <i>Female</i> | <i>Male</i> | <i>% Female</i> |
|----------------|---------------|-------------|-----------------|
| Local Councils | 116 | 473 | 24.5 |

Source: BIDPA, 2014.

Women representation in NGO and Union Leadership and participation in Central Committees of Political Parties

Table 3
Women in NGO and Union Leadership and in Central Committees of Political Parties, 2013

| <i>Sector</i> | <i>% Female</i> |
|-----------------------------|-----------------|
| Parties' Central Committees | 31 |
| Heads of NGOs | 45 |
| Heads of Trade Unions | 20 |

Source: Sectors; 2014.

135. The Executive or Central Committees of Political Parties are also male dominated with the majority of them having only one female representative at this level of their structure. Trade Unions show a similar trend of male predominance with females accounting for only 20%. Women in the management of NGOs are at 45%. However, this is not surprising given the voluntary nature of such organizations and their social development mandates. Governing bodies of Parastatal Organizations also show huge gender gaps and a closer examination of the composition of these showed that some institutions had no women at all on their Governance Structures.

Women in the Administration of Justice

136. Higher courts are male dominated. At the level of Magistrates, however, the number of women is slightly higher. Court Presidents and Deputy Court Presidents for customary courts are male dominated and show a similar pattern to Traditional Leadership at *Ntlo Ya Dikgosi* which has historically been a male preserve. The tables below show the numbers within the judiciary disaggregated by sex and positions within the Administration of Justice.

Table 4
Participation of women in the Court of Appeal and High Court, 2015

| <i>Position</i> | <i>% Female</i> | <i>% Male</i> |
|-----------------|-----------------|---------------|
| Chief Justice | 0 | 100 |
| President | 0 | 100 |
| Judges | 24 | 76 |

Source: Administration of Justice;2014.

Table 5
Participation of women in the Magistrate Courts, 2012

| <i>Position</i> | <i>% Male</i> | <i>% Female</i> |
|-----------------|---------------|-----------------|
| Magistrates | 44 | 56 |

Source: SADC Gender Monitor, 2013.

Table 6
Women in Traditional Leadership positions

| | <i>Female</i> | <i>Male</i> | <i>% Female</i> |
|-----------------------------------|---------------|-------------|-----------------|
| Court Presidents | 1 | 18 | 10.0 |
| Deputy Court Presidents | 1 | 22 | 4.3 |
| Ntlo ya Dikgosi (House of Chiefs) | 4 | 31 | 12.9 |

Source: The African Gender and Development Index, Botswana Report, 2012.

Women in the Public Service

137. The participation of women in decision making positions in the Public sector and within the NGO sector continue to be at higher levels as compared to other sectors. In 2013 women in the Public sector accounted for 42% of all persons holding positions of Deputy Director to Permanent Secretary level making Botswana second in Southern Africa with a record of 35% women Permanent Secretaries and 45% Directors.

Article 8: Representation

Representation of Women in Diplomatic Missions

138. Botswana has been able to get over one thirds of women representation in its Heads of Missions across the globe.

Table 7
Heads of Missions by Sex

| | <i>Male</i> | <i>Female</i> | <i>Total</i> |
|-------------------|-------------|---------------|--------------|
| Heads of Missions | 13 | 8 | 21 |
| Percentage (%) | 62 | 38 | 100 |

Source: Ministry of Foreign Affairs and International Cooperation, 2013.

Article 9: Nationality

139. The Children's Act, 2009 has somewhat neutralized tribal affiliation in that it is no longer given that a child born out of wedlock is born into the mother's tribe. The determining factor for guardianship when a child is born out of wedlock is the best interest of the child, which is always of paramount consideration.

140. The status is as per the previous report.

Part III

Article 10: Education

141. The Ministry of Education continues to take cognisance of gender imbalances in education and is currently implementing an “Equal Opportunities Policy” to 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”. The Education Statistics reflect a consistent ratio of boys to girls from 2007 to 2011. Girls continue to register higher enrolment numbers than boys at tertiary education.

Table 8

Ratio of Girls to Boys in Education

| <i>Education</i> | <i>Years</i> | | | | |
|--|--------------|-------------|-------------|-------------|-------------|
| | <i>2007</i> | <i>2008</i> | <i>2009</i> | <i>2010</i> | <i>2011</i> |
| Ratio of girls to boys in Primary School | 0.96 | 0.96 | 0.95 | 0.95 | 0.96 |
| Ratio of girls to boys in Secondary School | 1.08 | 1.09 | 1.08 | – | – |
| Ratio of girls to boys in Tertiary School | 1.09 | 1.12 | 1.2 | 1.26 | – |

Source: Statistics Botswana 2012.

Table 9

Enrolment Early Childhood, Primary, Secondary & Tertiary Education by Sex

| <i>Enrolment</i> | <i>Women</i> | <i>Men</i> | <i>Indicator</i> |
|--------------------------------|--------------|------------|------------------|
| Early Childhood Enrolment | 12 317 | 12 152 | 1.01 |
| Primary Enrolment Rate (net) | 93.5 | 92.6 | 1.01 |
| Secondary Enrolment Rate (net) | 69.8 | 61.9 | 1.13 |
| Tertiary Enrolment (gross) | 20 291 | 16 020 | 1.27 |

Source: Education Statistics 2012, Tertiary Education Council Statistics 2010/11 & African Gender and Development Index Botswana Report 2012.

142. The 2011 Population and Housing Census reflect that 16% of men and 12% of women had Vocational and Technical education. The percentage of men with University education (15%) was significantly higher than that of women (10%) who attained the same level of education. In addition, the status as discussed under the response to Recommendation 32 on Education also refers.

Article 11: Employment

143. The 2011 Population and Housing Census reflect that women are still the group mostly affected by unemployment as compared to men. The unemployment rate for Botswana is 19.9%, with females at 17.7% and males at 22.6%. Females continue to dominate the local government employment while males dominate parastatals and the private sector.

Table 10
Employment and unemployment rates by sex

| <i>Sex</i> | <i>Employed</i> | <i>Unemployed</i> |
|------------|-----------------|-------------------|
| Male | 82.3% | 17.7% |
| Female | 77.4% | 22.6% |
| All | 80.1% | 19.9% |

Source: 2011 Population and Housing Census.

Table 11
Employment by Sector and Sex

| <i>Institution</i> | <i>Male</i> | <i>%</i> | <i>Female</i> | <i>%</i> | <i>Total</i> |
|-----------------------|-------------|----------|---------------|----------|----------------|
| Central Government | 49 958 | 47.6 | 54 967 | 52.4 | 104 925 |
| Local Government | 27 387 | | 51 338 | 65.2 | 78 725 |
| Private & Parastatals | 122 440 | 59.4 | 83 602 | 40.6 | 206 015 |

Source: Statistics Botswana, 2013.

144. It is however worth noting that youth unemployment in Botswana is a major development challenge and in recent years a new phenomenon of low absorption of graduates from tertiary institutions into employment sectors has been experienced. Unemployment in the 15–24 year age group is significantly higher amongst females than males.

145. The Botswana Defence Force (BDF) in 2007 started recruiting women in the army as female cadets. A challenge experienced by the BDF in recruiting females during 2012 was the lack of adequate accommodation to house the female Officer Cadet recruits. However, the Government has committed to employing more female cadets following the temporary freezing of their employment on account of lack of accommodation.

146. The 2010 Employment (Amendment) Act compels employers to pay employees on maternity leave not less than 50% of their salary. The Income and Wages Index across sectors as reflected in the African Gender and Development Index Botswana Report of 2012 illustrates that overall women in Botswana earn less than men. Although the gender gap is not enormous, the fact that women constitute the majority of the population and their employment in the Civil Service is higher masks the real income inequalities (wages) between women and men.

147. As illustrated in the table below, the share of women in non-agricultural wage employment is significantly lower than that of men. The Millennium Development Goals Indicators Report (2011) further reveals that the share of women in formal sector wage employment has remained below 50% across the years, considering that it was 38.7% and 47.9% in 2004 and 2009 respectively.

Table 12
Women in Non-Agricultural Wage Employment

| <i>Indicators</i> | <i>Women</i> | <i>Men</i> |
|--|--------------|------------|
| Share of women in non-agricultural wage employment | 48.8% | 51.2% |

Source: The African Gender and Development Index, Botswana Report, 2012.

Article 12: Health

148. The 2006 Demographic Health Survey reflects that under-5 Mortality (per 1,000 <5) for boys is 70 and for girls is 85. The 2011 Population and Housing Census have revealed a decline in national infant mortality rate at 17 deaths per 1,000 live births. This is a drop from the 56 deaths per 1,000 live births recorded in 2001. Male infants are more likely to die under the age of one (1) (18 deaths per 1,000 live births), compared to female infants whose incidences were recorded at 17 deaths per 1,000 live births.

149. Studies reveal that there have been decreases in number of maternal deaths in Botswana. In year 2008, a total number of 88 cases of maternal deaths were recorded as compared to 85 cases in 2011. The 2010 Maternal Mortality Ratio was lower at 163.0 per 100,000 live births compared to the year 2008 at 195.7 per 100,000 live births. This ratio decreased from 188.7 per 100,000 live births in 2011 to 147.9 per 100,000 live births in 2012. Botswana Maternal Mortality Ratio for the period 2008 to 2012 is given in Table 15.

Table 13
Botswana Maternal Mortality Ratio, 2008–2012

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|--|---------------|---------------|---------------|---------------|---------------|
| Institutional live births | 44 212 | 45 145 | 49 853 | 44 904 | 49 957 |
| Non-Institutional live-births | 749 | 220 | 475 | 104 | 91 |
| Total live-births | 44 961 | 45 365 | 50 328 | 45 008 | 50 048 |
| Maternal Deaths | 88 | 86 | 82 | 85 | 74 |
| Maternal Morality Ratio (per 100,000 live-births) | 195.73 | 189.57 | 163.0 | 188.86 | 147.9 |

Source: Central Statistics Office, 2012.

150. The Maternal and Neonatal Health Programme initiated the National Roadmap for Accelerating the Reduction of Maternal and Newborn Mortality to strengthen institutional mechanisms to address child and maternal mortality. Furthermore, the issue of unsafe abortions requires attention given that it is one of the drivers of the country's high maternal mortality. Furthermore comprehensive Emergency Obstetric and neonatal care is employed to reduce the impact of clandestine and unsafe abortion on maternal morbidity and mortality.

151. According to the 2011 Population and Housing Census, life expectancy in Botswana stands at 68 years, an increase from 55.6 years registered in 2001. Females continue to register a higher life expectancy at 70 years compared to males at 66 years.

152. The Botswana AIDS Impact Survey IV (BAIS IV) shows that the national HIV prevalence for 2013 stands at 18.5% for population aged 18 months to 64 years compared to 17.6% in 2008. Females continue to record high rates of HIV prevalence at 20.8% compared to their male counterparts who are at 15.6%. Although gender is considered an important variable in HIV and AIDS programming, more needs to be done to ensure that the gender specific vulnerabilities are taken into full cognizance and that the rights of women and girls that are infected and affected by the disease are protected.

153. The Revised National Population Policy, 2010 has as its goal to “improved quality of life and standard of living of all people in Botswana”. HIV and AIDS, as a

key national challenge, receives due attention in this Policy. One of the policy objectives is to “control the spread of HIV, reduce AIDS deaths and manage the impact of HIV and AIDS on the economy and its repercussions on the society”.

154. Botswana has, through World Health Organisation (WHO) support, adapted the WHO Medical Eligibility Criteria Wheel (MEC) which provides guidance to health-care workers in ensuring safety while initiating contraceptives as well as increasing access to family planning services. In order to improve access to contraception Family Planning IEC Toolkit was designed, printed and dissemination is ongoing which focuses on strengthening SRH and HIV linkages within various facility units especially IDCC, maternity and gynaecology. Various strategies are used to disseminate family planning information to eligible women. This has contributed to the increase in the contraceptive prevalence rates from 52% in 2007 to 76.1% in 2008.

155. Cervical cancer is a major concern especially among the HIV positive women in Botswana. In an effort to address this problem the Country is implementing a five Year Comprehensive Cervical Cancer Prevention and Control Strategy (2012–2016). This strategy introduces screening and outpatient treatment of cervical pre-cancer in one single visit, commonly referred to as “See and Treat”. The Government of Botswana is collaborating with WHO, Centre for Disease Control and Prevention (CDC) Botswana, Pink Ribbon Red Ribbon (PRRR) and World Bank through National AIDS Coordinating Agency (NACA) to build capacity in this regard.

156. A trend emerging in efforts to combat violence against women is the involvement of men in campaigns and programmes. In Botswana, the Strategy and Programme of Action for Male Involvement in Sexual Reproductive Health and Rights (2007–2012) was developed to support institutions and programmes in initiatives aimed at reducing the spread of sexual transmitted diseases — particularly HIV/AIDS — and combating gender based violence. With these programmes, the country can better respond to the gender dynamics of the HIV/AIDS epidemic, sexual and reproductive health issues, and gender violence.

Article 13: Economic and social benefits

157. The Government together with civil society organisations and as part of the implementation of the National Gender Programme continues to provide training and education for individuals and stakeholders who have contact with victims of gender based violence and who are responsible for ensuring implementation of gender sensitive programmes and services. Such stakeholders include among others politicians, chiefs, churches, other community leaders, the police and court officials, and social and health workers. Information sessions and cultural community dialogues are held on an ongoing basis with different community groups to sensitise women, men and the public on women’s human rights and gender equality for the realisation and respect of these rights.

158. The Government has made significant progress in reducing poverty in Botswana. The population living below the poverty datum line (PDL) was estimated at 19.3% in 2009/10 compared to 30.6% observed in 2002/03. Women continue to represent a high proportion of the nation’s poor, representing 10.7% of the population living below the PDL compared to 8.6% of males. The Government continues to reduce poverty through its social safety nets, agricultural subsidies and economic empowerment and poverty eradication programmes. The National Gender Machinery continues to financially support women and women’s groups by providing grants to promote economic empowerment of women.

159. Botswana is also afflicted by the challenge of high prevalence of violence against women and girls. The Gender Based Violence Indicators Study conducted in 2012 reflects that 67.3% of women in Botswana have experienced gender based

violence in their lifetime. The country was scored at 53% on the SADC Gender and Development Index (SGDI) documented in the 2012 Botswana SADC Gender Protocol Barometer.

160. With access to resources a striking pattern of gendered-access is reflected. Although women constitute a significant majority amongst subsistence farmers, ownership and control of land resources reflect a male dominance. Information from the Botswana Housing Corporation (BHC), a Parastatal Organization wholly owned by the government of Botswana, indicates that between 2005 and 2012, the majority of urban houses mainly in the cities of Gaborone and Francistown were purchased by men at 51.73% while females followed at 48.7%.

161. Livestock farming in Botswana is an important livelihood source particularly in rural Botswana where the majority of the population resides. An analysis of livestock ownership shows that cattle ownership is highly skewed towards men. Ownership of small-stock specifically goats, although predominantly owned by men, shows a slightly smaller gender gap.

Table 14
Access to Resources — Means of Production

| <i>Indicators</i> | <i>Women</i> | <i>Men</i> |
|---------------------------------|--------------|------------|
| Ownership of rural farms | 31 866 | 50 112 |
| Ownership of urban houses/plots | 1 896 | 1 972 |
| Ownership of livestock | 1 040 789 | 2 711 096 |

Source: The African Gender and Development Index, Botswana Report, 2012.

162. Whereas a lot remains to be done in terms of women representation in sports there has been significant strides towards achieving this. Out of 281 people who participated in sports decision making in 2013, 66 of these are women; representing 23% of them in decision making positions on sports matters.

Table 15
Representation of Women in Sports Committees

| <i>Committee</i> | <i>Male</i> | <i>Female</i> | <i>All</i> | <i>% Female</i> |
|--------------------------------------|-------------|---------------|------------|-----------------|
| BNSC Executive Committee | 6 | 0 | 6 | 0 |
| Botswana Athletics Association | 7 | 1 | 8 | 13 |
| Botswana Badminton Association | 7 | 1 | 8 | 13 |
| Botswana Basketball Association | 8 | 2 | 10 | 20 |
| Botswana Weightlifting Federation | 5 | 1 | 6 | 17 |
| Botswana Bowling Association | 5 | 1 | 6 | 17 |
| Botswana Boxing Association | 7 | 1 | 8 | 13 |
| Botswana Brigades Sports Association | 4 | 1 | 5 | 20 |
| Botswana Bridge Federation | 6 | 1 | 7 | 14 |
| Botswana Chess Federation | 7 | 1 | 8 | 13 |
| Botswana Cricket Association | 7 | 0 | 7 | 0 |
| Botswana Cycling Association | 5 | 1 | 6 | 17 |
| Botswana Dance Association | 7 | 2 | 9 | 22 |
| Botswana Darts Association | 6 | 2 | 8 | 25 |
| Botswana Football Association | 12 | 2 | 14 | 14 |

| <i>Committee</i> | <i>Male</i> | <i>Female</i> | <i>All</i> | <i>% Female</i> |
|---|-------------|---------------|------------|-----------------|
| Botswana Golf Union | 8 | 1 | 9 | 11 |
| Botswana Hockey Association | 5 | 2 | 7 | 29 |
| The Horse Association of Botswana | 6 | 3 | 9 | 33 |
| Botswana Integrated Sports Association | 7 | 0 | 7 | 0 |
| Botswana Judo and Kurish Association | 4 | 4 | 8 | 50 |
| Botswana Karate Association | 6 | 1 | 7 | 14 |
| Botswana Motorsport | 4 | 1 | 5 | 20 |
| Botswana Netball Association | 0 | 7 | 7 | 100 |
| Botswana Primary School Sports Association | 5 | 2 | 7 | 29 |
| Paralympics Sport Association of Botswana | 5 | 3 | 8 | 38 |
| Botswana Rugby Union | 6 | 1 | 7 | 14 |
| Special Olympics of Botswana | 4 | 6 | 10 | 60 |
| Botswana Softball Association | 8 | 1 | 9 | 11 |
| Botswana Squash Association | 6 | 1 | 7 | 14 |
| Botswana Swimming Sport Association | 0 | 5 | 5 | 100 |
| Botswana Tertiary Student Sport Association | 6 | 1 | 7 | 14 |
| Botswana Tennis Association | 4 | 1 | 5 | 20 |
| Botswana Table Tennis | 4 | 2 | 6 | 33 |
| Botswana Volleyball Federation | 4 | 1 | 5 | 20 |
| Parachute Association Botswana | 7 | 0 | 7 | 0 |
| Korfball Association Botswana | 4 | 2 | 6 | 33 |
| Handball Association Botswana | 8 | 0 | 8 | 0 |
| Botswana Wrestling Federation | 5 | 4 | 9 | 44 |
| Total | 215 | 66 | 281 | 23 |

Source: Botswana National Sports Council 2013.

Article 14: Rural Women

163. As mentioned previously, consultations are currently ongoing to formulate the first national gender in agriculture and rural development policy. The policy's objective is to specifically address the issues and challenges faced by rural women in the country by prioritizing three aspects: equal access to (i) natural resources; (ii) decision making positions in rural development fora; and (iii) rural extension services. The responsibility for the formulation and implementation of the policy is with the Gender Committee within the Ministry of Agriculture. The Gender Committee has been re-established in early 2016 and it is composed of representatives from every Department within the Ministry of Agriculture. The policy represents an important step forward and reiterates the Government's commitment towards the advancement of gender equality and the empowerment of rural women in Botswana. A training on gender in agriculture as well as on the domestication of CEDAW article 14 at country level was organised in July 2016, together with the Food and Agriculture Organization of the UN (FAO), as part of the capacity development efforts on gender within the country's line Ministries.

164. As indicated in the previous report, poverty levels continue to be prevalent in the rural areas than in the urban villages and cities/towns. With rural population standing at about 36.4 per cent of total population of Botswana, rural areas of Botswana are characterised by a concentration of poor households, the majority of

which are headed by women more than men. The Government has put in place a number of measures intended to promote social inclusion, equal opportunities and meaningful participation for remote area dwellers as well as enhancing their capacity and skills development, intensifying efforts to improve services in the rural areas and reducing poverty levels within rural communities. The results of the Botswana Core Welfare Indicators Survey 2009/2010 indicate that, even though poverty levels are still high in the rural areas, significant reductions have been estimated as the poverty incidence have dropped from 44.8% in 2002/2003 to 24.3% in 2009/2010, a drop of 20.5%. The significant decrease in poverty incidence in rural areas followed efforts by government to eradicate abject poverty, with concerted efforts in targeting the very poor in rural areas, directly benefitting women in rural areas. Following the publication of the Botswana Poverty Map in 2008, stakeholders implementing poverty eradication programmes were able to target poor localities. The distribution of poor households at national level revealed a slightly higher percentage of female headed households living below the PDL at 6.3% compared with 4.4% of male headed households, while in rural areas it was at 2.6% for male headed households and 3.5% for female headed households. The majority of rural women do not have a partner supporting them with the day-to-day management of the household nor contributing financially to children growth and development. This traditional family construct contributes to the overrepresentation of women among poor rural households.

165. More women than men in Botswana are engaged in crops and vegetables production, as they own more arable land than men do (57.6 per cent against 41.6 per cent), even if rural women's plots tend to be much smaller than men's. However the dominant production activity in the country is livestock farming, beef cattle production and small stock, and the sector is dominated by men, who represent the majority of livestock owners and managers. Women do however dominate in chicken ownership and production.

166. Access to water remains a challenge for rural women in Botswana. Although the rights of access to land generally include access to surface water resources, subject to existing rights, women's plots tend to be far from water points access. As water collection is still traditionally the responsibility of women and young girls in rural areas, this imposes a heavy work burden on them as sometimes water points are 25 km distant from rural villages. Boreholes ownership is highly skewed towards men, with women owning 27 per cent of them versus 73 per cent of the country's boreholes owned by men. Nevertheless, overall improvements have been registered in water access as about 774,000 people received improved water supply in the rural areas in 2015 as compared to 752,000 in 2013. The policy on agriculture and rural development currently in formulation stage, aims to target the issue by prioritizing access to natural resources, particularly water, as a way to improve the situation of rural women in Botswana.

167. Rural HIV prevalence rate stands at overall, 15.80 per cent with 13.9 per cent males and 17.6 per cent females being affected by the disease.

168. Botswana has recorded a rising adult literacy rate of adults aged 15 and above, respectively 87.12 per cent females and 86.34 per cent males. Enrolment at school in rural areas is still affected by high levels of dropout among girls more than boys. Teenage pregnancy accounted for 31.7 per cent of all girls who dropped out of secondary school in 2010 and discernible patterns indicated that teenage pregnancy increased with rural location, poverty and double orphan status.

169. Women in Botswana continue to engage in self-help groups (*Motshelo*) and cooperatives for their economic sustenance. Some financial institutions have commenced to support such initiatives with the aim of encouraging the spirit of saving and growing the money through accumulation of interest. This has been identified as

a strategy to promote financial inclusion and facilitate economic and social development of the communities.

170. Women in Botswana still face challenges in accessing adequate loans and financial services in the conventional financial institutions as they often lack the collateral required. The Government has adopted affirmative action for women's empowerment through provision of both financial and technical support for women's empowerment and programmes. One such programme is the Alternative Packages Program (APP). APP provides financing, training, and equipment for micro-businesses, agricultural activities such as beekeeping and poultry rearing. Since women are the majority (70 per cent) informal sector players, they were the majority beneficiaries of the APP. The Gender Affairs Department GeAD also disburses grants to Women's NGOs, Community Based Organisations who support economic empowerment programmes for women and women farmer groups/cooperatives who work together as income generating groups.

171. The Government, through His Excellency's 2010 initiative titled "President Housing Appeal", continues to engage in efforts to promote adequate living conditions, particularly with regard to housing. The President's Housing Appeal calls on all who are able i.e., individuals, groups of individuals and companies, to help build houses for the needy. The Government, together with other partners (private sector, development partners, NGOs, etc.) also target improving of living conditions through community service activities that address mainly housing, sanitation, and water supply concerns. Women and women-headed households, particularly those in the rural areas, have substantially benefitted from such initiatives. As a result, the rural population served with improved sanitation progressed from 360,000 in 2013 to 377,000 in 2015 in the rural areas. Access to energy is however still largely insufficient in rural areas, with only 23.9 per cent of total rural areas reached by electricity.

Part IV

Article 15: Law

172. The Customary Law Act also attempts to reconcile possible conflicts between customary law and common law. It does this through its definition of customary law, specifying that customary law to be applied by the customary courts includes only that tribal law which, "is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice." It follows that where a custom or tribal rule does not comply with written common law, for example legislation, it is not part of customary law and is not applicable by the customary courts. The Court of Appeal has reiterated this principle and has simultaneously held that customary law is also subject to, and must be applied and interpreted in accordance with, the Constitution: "Custom and tradition have never been static. Even then, they have always yielded to express legislation. Custom and tradition must a fortiori ... yield to the Constitution. 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." (per Amissah JA in *Attorney General v. Dow*).

173. The key challenge is that a significant number of Botswana women are subjected to customary law even though Constitutional law takes precedence over it. The lack of knowledge and information on the part of women themselves regarding Marriage laws and their implications have perpetuated discriminatory practices in the area of marriage under customary law. Women's lack of information and resources to enable access to Civil Courts and exercising their rights to transferring cases to the same

represents a major challenge. The role of Traditional Courts that apply customary law in settling disputes is significant given their broad accessibility by members of the public.

174. Following a pilot project in 2011–2012 the Attorney General Chambers established Legal Aid Botswana and legislation providing for and regulating the operation of comprehensive state legal aid services scheme has been adopted in Parliament during the November 2013 sitting and the roll out plan is underway. The scheme will guarantee qualified individuals representation in criminal matters before the High Court and Court of Appeal and in Magistrates Courts where specifically authorised by the Interim Legal Aid Coordinator. It also explicitly entitles qualified individuals to legal representation in civil claims concerning divorce, child custody, maintenance and protection from domestic violence. Again, legal representation in other matters, such as claims related to constitutional rights or discrimination, may be provided upon authorisation on a case-by-case basis by the Interim Legal Aid Coordinator. The scheme's explicit goal is to provide legal services in relation to issues predominantly affecting women.

175. There has been outreach and practical engagements to ensure those who can benefit from the scheme are aware of its existence, and that its establishment is meaningful for women living in poverty in rural areas. Currently the Legal Aid Board has an outlet in the two main cities of the country, Gaborone and Francistown, while another is planned for Maun. Similarly the NGOs to whom the Board has sub-contracted a number of services are largely located in urban centres or peri-urban areas. The importance of taking steps to ensure meaningful access for women living in remote areas cannot be gainsaid.

176. Botswana has had reservations signing the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa; The Solemn Declaration on Gender Equality and the Southern African Development Community (SADC) Gender Protocol. The implications of this is that Botswana women are placed at some disadvantage and the potential for fast tracking the full attainment of gender equality in Botswana through the targets and time frames set by these instruments is undermined. This notwithstanding, Botswana continues to provide progress reports on these protocols on regular basis.

Article 16: Marriage and Family Life

177. The Interpretation Act has set the age of majority to 18 years entitling one at 18 to marry or be married without parental consent. An assessment of Primary and Secondary School dropouts indicates marriage as one of the reasons for a number of girls abandoning schooling which is a cause for concern that could also imply the existence of child marriages.

178. The Abolition of Marital Power Act has enabled women to acquire property and have meaningful participation on joint property which was otherwise administered by their spouses without consent. Most importantly women can acquire their own place of residence on permanent basis and independent of the man.

179. The Married Persons Property Act is currently undergoing an amendment to allow parties to the marriage to change their marital proprietary regime. This means parties to the marriage can freely elect whether to continue married in or out of community as and when their economic circumstances suit them and is necessarily permitted by law.

180. The Department of Social Services is currently working on the development of a Family Policy for the country.

181. With regard to the acquisition of immovable property, the Deeds Registry Act, 2003 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 request 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. Both the Abolition of Marital Power Act and the Deeds Registry Act provides for an injunction (a remedy) against a man who refuses to give or withholds his consent unreasonably or tries to dispose of the property without the consent of the wife. Where the consent is unreasonably withheld by the husband the court may dispose of the need for such consent to be sought or given by the husband or may interdict the husband from disposing of the property.

182. The Domestic Violence Act, 2008 has since been operationalised by the promulgation of the Regulations to the Domestic Violence Act to close gaps that have been hindering effective implementation of the Act in addressing domestic violence cases.

183. A study conducted in 2012 (GBV Indicators Study) revealed that 2 out of 3 women in Botswana have experienced gender based violence in their lifetime and within intimate partner relationships. This is an area of concern as abuse is a factor that contributes to lack of freedom in deciding on sexual reproductive health matters, including on the number and spacing of children. The Children's Act, 2009 promotes participation of children in family discussions and provides that the best interest of children is paramount in decisions that affect their lives.
