



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Initial report submitted by Botswana under article
19 of the Convention pursuant to the simplified
reporting procedure, due in 2001^{*}, ^{**}**

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* The present document is being issued without formal editing.

** The annexes to the present report may be accessed from the web page of the Committee.



I. Introduction

1. Pursuant to Article 19 of the Convention against Torture (CAT) and Other Cruel, Inhuman or Degrading Treatment or Punishment, Botswana is hereby pleased to submit its Reply to the List of Issues (CAT/C/BWA/QPR/1) as adopted by the Committee inter-sessionally on the 2nd December 2020 in relation to the initial report to the Committee. The report covers legislative, administrative, and other measures taken to give effect to the Convention.
2. The report was prepared by the Ministry of Defence, Justice and Security with contribution from relevant Government Ministries and Departments. The report was also circulated and subjected to a review process by the Inter-Ministerial Committee on Treaties, Conventions and Protocols – established by Cabinet in 2002 as a National Mechanism on Reporting and Follow-Up.
3. The required statistical data and other additional documents have been placed as annexes to this report.

II. Response to the list of issues

Reply to paragraph 1 of the list of issues (CAT/C/BWA/QPR/1)

4. The drafting of this report was led by an Inter-Ministerial Drafting Committee comprising representatives from the Ministry of Defence, Justice and Security; the Ministry of Presidential Affairs, Governance and Public Administration; the Ministry of Nationality, Immigration and Gender Affairs; the Ministry of International Affairs and Cooperation; the Attorney General's Chambers; the Directorate of Public Prosecutions; the Administration of Justice; the Botswana Defence Force, the Botswana Prison Service and the Botswana Police Service.
5. All of Government was consulted through a three (3) days' workshop where all Government Ministries and Departments were invited and participated. Furthermore, the draft report was submitted for further inputs and verification by the Inter-Ministerial Committee on Treaties, Conventions and Protocols.
6. The civil society organisations were invited to contribute towards the report through engagement with the Non-Governmental Organisation (NGO) Council which is a multi-stakeholder platform composed of Private Sector and NGO representatives. It coordinates implementation of the NGO representatives. It coordinates implementation of the NGO Policy with reference to the improvement of dialogue and partnership between Government and NGOs towards the achievement of the national development goals.
7. Botswana has committed, as accepted in our UPR Third Cycle, to domesticate all human rights treaties she has ratified including the CAT. However, the process of domestication involves the following several steps:
 - (a) A lead Ministry seeks Cabinet approval for domestication;
 - (b) Where Cabinet approves the request to domesticate, the Ministry may then forward drafting instructions to Attorney General's Chambers accompanied by a Cabinet Directive authorisation;
 - (c) Attorney General's Chambers then drafts a Bill incorporating the international instrument or Treaty's provisions;
 - (d) On approval of the draft Bill by the instructing Ministry, the Ministry then prepares the draft Bill for submission to Cabinet;
 - (e) Where Cabinet approves the draft Bill, and upon signature by the Minister, the Bill is then published in the Gazette for at least thirty (30) days;
 - (f) On the expiry of 30 days publication, it is presented before the National Assembly;

(g) On presentation to the National Assembly, the draft Bill goes through five stages before it is finally enacted into an Act. The five stages are first reading, second reading, committee stage, third reading and Presidential Assent.

8. Notwithstanding, Section 7 (1) of the Constitution of Botswana prohibits torture or inhuman punishment. Other pieces of legislation that prohibit torture include amongst others, the Children's Act of 2009, the Botswana Defence Force Act No. 3 of 2018, The Intelligence and Security Service Act [Chapter 23:02], Botswana Police Act and the Prisons Act.

9. There has not yet been any cases in which the Convention was invoked or applied by the national courts.

Articles 1 and 4

Reply to paragraph 2 of the list of issues

10. Currently, Botswana is not in a position to withdraw the Reservation made with regard to Article 1 of the Convention in that the withdrawal of the Reservation will render the provisions of Section 7 (2) of the Constitution of Botswana contrary to the Convention and thereby making the Constitutional provision unenforceable.

11. There has been no measures taken to amend the Penal Code to introduce the crime of torture. However, the crime of torture has been introduced in the following statutes:

(a) The Botswana Defence Force Act No. 3 of 2018. In terms of Section 66, torture has been prescribed as an offence;

(b) The Children's Act No. 8 of 2009. Section 61 provides that no person shall subject a child to torture or other cruel, inhumane, or degrading treatment or punishment;

(c) The Intelligence and Security Service Act [Chapter 23:02]. Section 16 (1) (b) (i), and (2) provides that:

“ (1) An officer or support staff shall not-

(b) in the performance of his or her functions or the exercise of his or her powers under this Act-

(i) subject any person to torture or to any other cruel, inhuman, or degrading treatment; or

(2) An officer or support staff who contravenes the provisions of subsection (1) shall be guilty of an offence”.

Criminal provisions that are most often applied to punish cases of torture

12. At the time of submission of the report no cases of torture could be established. However, criminal provisions that would be applied to punish cases of torture are as follows:

(a) Section 61 of the Children's Act No. 8 of 2009 which provides that no person shall subject a child to torture or other cruel, inhumane, or degrading treatment or punishment;

(b) Section 23 (I)(ii) of the Police Act [Chapter 21:01] which provides that it is an offence for any police officer to use unnecessary violence to or intimidate any prisoner or any other person with whom he may be brought into contact in the execution of duty;

(c) Sections 246 (common assault), 247 (assault occasioning bodily harm), 248 (assault on persons protecting wreck), 249 (other assault offences against liberty), 252 (abduction), 230 (grievous harm), 202 (murder), 200 (manslaughter), 217 (attempted murder) of the Penal Code.

Whether military criminal law includes provisions relating to torture offences and the related penalties

13. Military criminal law includes provisions relating to torture and related penalties. The Botswana Defence Force Act No. 3 of 2018 Section 66 provides as follows:

“(1) A person subject to this Act shall not subject another person to torture, cruel, inhuman or degrading treatment.

(2) A person subject to this Act who subjects another person to torture commits an offence and shall on conviction by court-martial or the High Court be liable to a fine not exceeding P10 000 or imprisonment for a term not exceeding five years or both.

(3) A person subject to this Act who subjects another person to cruel, inhuman or degrading treatment commits an offence and shall on conviction by court-martial or the High Court be liable to a fine not exceeding two years or both.

(4) In this Section 66 (4)

(a) “cruel, inhuman or degrading treatment” means a deliberate and aggravated treatment or degrading punishment not amounting to torture, inflicted by a person in authority or the agent of the person in authority or the agent of the person in authority against a person under his or her custody, causing suffering, gross humiliation or debasement to the person; and

(b) “torture” means any act by which severe pain or severe suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of:

(i) obtaining information or a confession from the person or from a third person,
(ii) intimidating or coercing that person or a third person, or

(iii) for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence acting of a public official or other person in an official capacity but shall not include reasonable activities undertaken for purposes of training and discipline”.

Whether statutes of limitations apply to such offences

14. The prescriptive period for all offences, including those committed under military criminal law in terms of Section 26 of the Criminal Procedure and Evidence Act [Chapter 08:02] is twenty (20) years, save for murder which does not have a prescriptive period.

Whether there are any other administrative or regulatory provisions relating to the prohibition of torture, including disciplinary sanctions imposed to perpetrators

15. There are administrative or regulatory provisions relating to the prohibition of torture as found in the legislation of the disciplined forces, that is the Botswana Police Service, Botswana Defence Force and the Botswana Prison Service.

16. The administrative provisions relating to disciplinary sanctions imposed on perpetrators of torture in the Botswana Police Service are regulated by Sections 23 and 27 of the Botswana Police Act [Chapter 21:01]. The disciplinary sanctions which can be imposed on a perpetrator of torture are reprimand, severe reprimand, fine, reduction in rank or dismissal.

17. Section 159(1) of the BDF Act states that allegations against an officer or soldier of the Defence Force is to be reported to the commanding Commander who is then obliged to investigate the matter in the prescribed form. Where the Commanding officer determines that the matter requires further investigation, he/she will then refer the allegations to the Military Police or other appropriate authority, who will report their findings to the Commanding officer.

18. As regards the Botswana Prison Service, when a prisoner is subjected to torture or ill treatment, they report the matter to a senior officer within the Prison. The senior officer in

turn registers the matter in the Complaints Register, and the prisoner is immediately taken to hospital for medical attention. The Complaints Register is then forwarded to the Officer in Charge to assess the matter and advise as to whether the matter should be dealt with disciplinarily or referred to the Botswana Police Service for criminal charges to be laid against the perpetrator. If the matter is referred to the Botswana Police Service, the prisoner will then be escorted to the nearest Police Station and handed to the police whereupon an investigator is assigned the matter to investigate. Upon conclusion of their investigation on the matter Botswana Police Service refers their findings to the Directorate of Public Prosecutions to prosecute the perpetrator or accused person.

19. Further, any prisoner who reports being ill-treated or subjected to torture has the right to institute court process claiming damages against the Government.

20. A further safeguard that is provided by Botswana's judicial system is that any confession statement recorded by a judicial officer from an accused person will be inadmissible in court if it is determined that the accused was coerced into making the confession by torture, as provided by the Criminal Procedure and Evidence Act Section 228 (1).

How will the State party ensure the non-derogability of the prohibition of torture and any cruel, inhuman, or degrading treatment or punishment?

21. Botswana's efforts to ensure non-derogability of the prohibition of and any cruel, inhuman or degrading treatment or punishment is through various pieces of legislation including:

(a) Section 46 (1) (l) of the Prisons Act [Chapter 21:03], in terms of which the use of excessive force on a prisoner by a Prison Officer amounts to an offence against the discipline. In terms of sub-section 2 of the same Section, the officer may be charged under any other law;

(b) In terms of Section 47 of the Prisons Act the maximum punishment for the disciplinary offence created under Section 46 is dismissal from service;

(c) Section 66 of the Botswana Defence Force Act provides for offences of torture, cruel, inhuman or degrading treatment. The sentence to be imposed on a military officer who subjects another person to torture in terms of Sections 66(2) and (3) are a fine not exceeding P10 000 or, imprisonment for a term not exceeding five (5) years or both;

(d) Section 61 of the Children's Act No. 8 of 2009 which provides that: "No person shall subject a child to torture or other cruel, inhumane or degrading treatment or punishment". It is further provided that "a person who contravenes the provisions of sections 59 to 63 shall be guilty of an offence and liable to a fine or not less than P30 000 but not more than P50 000 or to imprisonment for a term of not less than seven years but not more than ten years, or both";

22. A further safeguard that is provided by Botswana's judicial system is that any confession statement recorded by a judicial officer from an accused person will be inadmissible in court if it is determined that the accused was coerced into making the confession by torture, as provided by the Criminal Procedure and Evidence Act Section 228 (1).

Article 2

Reply to paragraph 3 of the list of issues

23. The Constitution of Botswana provides for the rights and freedoms of every person in Botswana, whatever their race, place of origin, political opinion, colour, creed, or sex. These rights include the right to life, liberty, security, protection of the law etc.

24. In terms of Section 5(2) of the Constitution, any person who is arrested must be informed, in a language that they understand, the reasons for their arrest or detention. In an

instance where on first contact with an accused person it is discovered that there is a language barrier, an interpreter is immediately engaged to assist in informing them of the charges against them and their right, such as the right to remain silent and the right to legal representation. On arraignment at Court, the accused person is informed about the charges against them in a language of their choice. Sworn interpreters are provided at Government cost.

On requesting and receiving medical examination

25. Standing Order No. 16 (8) under the Police Act provides that all accused persons who are under police custody are treated with dignity and are regularly checked to ensure they are in good health. A suspect who reports illness is taken for medical attention. The Standing Order provides that no suspect is required to divulge the type of his or her sickness to police officer.

26. All accused persons who are under police custody are treated with dignity and are regularly checked to ensure that they are of good health. Any suspect who reports illness is taken for medical attention. This is a mandatory requirement under Police Standing Order No. 16 (8) and no suspect is required to divulge their type of sickness to police officers. Likewise, in Prison, after the admission interview, the prisoner is subjected to medical examination by a medical officer at a Health facility within the Prison to ensure that all his medical needs are addressed. Any prisoner who has any ailment has an opportunity every morning to make a request to the officer on duty and they would accordingly be taken for medical attention.

Having confidential access to counsel, including in proceedings before customary courts, or to free legal aid for those who do not have sufficient means to pay for legal representation

27. Section 10 of the Constitution provides for the protection of the law to all accused persons. This protection includes, amongst other things, the right to be given time and facilities for the accused to prepare their defence, and the right to seek legal counsel of their choice in their defence. Furthermore, every prisoner has the right to be visited by his legal representation whilst in custody. When a Legal Practitioner identifies themselves as the legal Counsel representing the prisoner they are allowed to consult with their client, within the sight of a prison officer.

28. According to Section 32 of the Customary Courts Act [Chapter 04:05], Attorneys or Advocates do not have a right of audience in the Customary Courts. If a prisoner seeks representation in a matter lodged at the Customary Court, then they have the right to request that the matter be transferred to the Magistrate Courts where Attorneys or Advocates have a right of audience.

29. Additionally, in cases of murder where the death penalty is a possible punishment, the Administration of Justice, in terms of Order 68 (4) of the Rules of the High Court and through a *pro deo* system makes provision for legal representation of an accused person, at Government cost if the accused person cannot afford one.

30. The Legal Aid Botswana under the Legal Aid Regulations and the Legal Aid Guide of 2015 provides for the granting of criminal legal aid, subject to availability of funds in the following instances:

(a) Where the accused is to appear before the high Court and the Court of Appeal, provided *pro deo* assistance is not available to them;

(b) Where the accused is a minor charged with an offence which carries an imprisonment sentence.

31. The Legal Aid Guide further outlines that in any case before the customary courts (including criminal cases), legal aid may be provided in the form of legal advice and extends to provision of services to assist, in this case, an accused person to have their matters transferred to the Magistrates Courts or the High Court.

Notification of detention to a family member or a person of their choice

32. In terms of paragraph 6 of the Police Standing Order No. 16, the families of detained individuals are notified of their detention and allowed access to the detainee.

Having their detention recorded

33. The Botswana Police Service maintains a Cell Register and an Occurrence Book Register. These are the registers in which all detainees are recorded together with the allegations leading to their arrest and detention.

34. Section 18 of the Constitution guarantees the right of individuals to challenge the infringement of their right to liberty and seek redress before the High Court. Section 5 of the Constitution provides for the right to personal liberty. In accordance with this right, any person who is arrested and detained is entitled to bail pending his or her prosecution before court. Further to this, any person who is unlawfully arrested and detained is entitled to compensation.

35. Botswana has promulgated the Counter-Terrorism Act of 2014. The Act empowers the arrest and detention of any person subject to the conditions as laid out under the Criminal Procedure and Evidence Act. However, unlike under the Criminal Procedure and Evidence Act, a person arrested without a warrant under the Counter-Terrorism Act can be detained for a period up to 30 days. This is in terms of section 15 of the Act. Further, section 16 thereof allows for a detention of a person arrested with a warrant to a period up to 120 days.

Reply to paragraph 4 of the list of issues

36. Section 134 of the Botswana Defence Force Act No. 3 of 2018 prohibits invoking superior orders, including orders of military authorities as a justification for commission of any offence. Any person who invokes such superior orders commits an offence of abuse of military authority and unlawful command influence and is liable to imprisonment for a term not exceeding 10 years.

37. Section 79 of the BDF Act permits subordinates to obey only lawful superior orders such that if the superior order is deemed unlawful by reason of Section 66 or 133, then the subordinate may disobey.

38. It is mandatory for subordinates to abide by orders of their superiors. However, where the subordinate receiving an order and believes that such an order is unreasonable or unlawful, he or she may indicate it to another supervisor to intervene.

39. The concept of due obedience as a criminal law defence has no impact on the effective implementation of the prohibition on invoking superior orders as a justification for torture as the supreme law of the land is the Constitution and the Constitution prohibits acts of torture.

Reply to paragraph 5 of the list of issues

40. The Parliament of Botswana approved the Ombudsman (Amendment) Bill in July 2021, and the Bill was passed into law on the 19th November 2021. Botswana made a decision to adopt the hybrid model by conferring the human rights mandate on the Office of the Ombudsman in order to establish the Office of the Ombudsman as a National Human Rights Institution in accordance with the Paris Principles. A restructuring exercise to avail human resources to enable the office to execute its human rights mandate is at an advanced stage.

Article 3**Reply to paragraph 6 of the list of issues**

41. Article 33 of the 1951 Convention Relating to the Status of Refugees states that “*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to*

the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

42. The Refugees (Recognition and Control) Act [Chapter 25:01] provides as follows:

“Subject to this Schedule, “political refugee” means a person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it.”

43. In Botswana, asylum seekers are subjected to a process of determining their eligibility for recognition as refugees (Refugee Status Determination (RSD)) in accordance with the provisions of the Refugees (Recognition and Control) Act [Chapter 25:01] and through a Refugee Advisory Committee. If their applications are rejected, the United Nations High Commissioner for Refugees (UNHCR) will then assess if the rejected asylum seekers are not in need of continued international protection. Following a determination by the UNHCR that they do not require continued international protection, they are removed from Botswana in terms of the provisions of the Immigration Act No. 3 of 2011. For example, there are nationals from Zimbabwe and Namibia who have not been removed from Botswana following the repatriation exercises as they have been determined to need continued international protection.

44. The Botswana Government does not expel any undocumented migrant but facilitates their return to their countries as per Sections 8 of the Immigration Act [Chapter 25:02]. This allows them the opportunity to regularise their visit and or stay upon return to Botswana.

45. In terms of Section 20 of the Extradition Act, the Minister responsible for Justice has the final authority to decide whether a person is to be extradited. The Section provides that:

“20. Surrender or discharge of fugitive criminal

(1) Upon the expiration of 15 days from the date of the committal of a fugitive criminal to prison, or if an appeal is made under section 18, from the date of dismissal or lapsing of the appeal, as the case may be, or after such further period as may be allowed by the Minister, the Minister may by warrant order the fugitive criminal to be surrendered to such person as is in his opinion duly authorised by the requesting country to receive the fugitive criminal, together with any property seized under the provisions of section 11(4) and the fugitive criminal and such property shall be surrendered accordingly”.

46. Extraditions as a matter of law, conform and comply with the processes and procedures relating to criminal cases in our jurisdiction. In terms of Section 14 of the Extradition Act, the request is first determined before a Magistrate. Once the court has made a determination on the matter, any aggrieved party is then entitled to approach the higher courts for redress. A case in particular is the Republic of Namibia v Alfred and Others 2004 (2) BLR 101 (CA), in which the respondents were charged with high treason, the unlawful possession of arms and ammunition, murder, attempted murder and the unlawful possession of explosives. At the extradition hearing, the magistrate ordered that the respondents should be extradited from Botswana and surrendered to the Namibian authorities to face trial. Dissatisfied with that decision, the respondents appealed successfully to the High Court, the court finding that the offences were of a political character. The State later lodged an appeal against the decision of the High Court and was unsuccessful.

47. In any consideration on whether or not a fugitive may be extradited, regard must be had to the provisions of Section 8 of the Extradition Act which provides as follows:

“8. Restrictions on surrender of criminals

(1) Subject to the provisions of subsection (2), the following provisions shall be observed with respect to the surrender of fugitive criminals, that is to say-

(a) a fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if it appears to a

court or the Minister that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character.

(b) a fugitive criminal shall not be surrendered to any country if there is the likelihood that he may be prejudiced at his trial or punished, detained, or restricted in his personal liberty by reason of his political opinions.

(c) a fugitive criminal shall not be surrendered to any country if the offence in respect of which his surrender is demanded is punishable by death in that country and if under the laws of Botswana such an offence is not punishable by death if committed in Botswana unless provision is made by an arrangement with that country for securing that he will not be punished by death in respect of that offence.

(d) a fugitive criminal shall not be surrendered if the offence is an offence only under military law or a law relating to military obligations.

(e) a fugitive criminal who is a citizen of Botswana and is not also a citizen or national of the requesting country shall not be surrendered unless provision is made by the law of that country, or by arrangement, that fugitive criminals who are citizens of that country may be surrendered to Botswana on being requested;”

48. Furthermore, Botswana has demonstrated observation of this exemption when it declined an extradition request from Namibia on the grounds that the offence, for which the fugitives were requested, was of a political nature and there was a possibility that they would not receive a fair trial in the case of *Republic of Namibia v Alfred and Others* 2004 (2) BLR 101 (CA).

49. Courts have a legal obligation to consider each case for foreseeable risk of torture in the country of destination as per the case of *Republic of Namibia v Alfred and Others*. The Director of Public Prosecutions in his capacity as the Central Authority and the office responsible for Extradition requests has a duty to make a determination on the possible risks at the Extradition hearing based on the following: -

- (a) the political situation of the requesting state;
- (b) the circumstances of the fugitives, i.e. are they political activists;
- (c) emphasis on the provisions of Section 7 of the Constitution.

Reply to paragraph 7 of the list of issues

50. Persons who have been found to be extraditable are informed of their right to appeal the extradition decision within fifteen (15) days of the decision. They are also informed as to which court their appeal should be made as per Section 17 of the Extradition Act.

51. In the case of asylum seekers, Government provides for interpretation services throughout the asylum application process at her own cost. There is no appellate body provided for in the Refugees (Recognition and Control) Act. However, in terms of the Rules of the High Court, an asylum seeker can bring review proceedings against the Minister's decision within sixty (60) days from the day of publication. However, the Refugee (Amendment) Bill which is yet to become law provides for an appellate body as well as legal representation during asylum applications.

52. Almost all asylum seekers enter Botswana through ungazetted points of entry, but as soon as they are in contact with Government officials, they are assessed for immediate needs including security, food, shelter, medical assistance, and the requisite referrals done to the Department dealing with refugees.

53. Botswana does not have formal or documented mechanisms for the early identification and referral of vulnerable people, including victims of human trafficking, gender-based violence, asylum seekers and victims of torture at border posts. However, with respect to victims of human trafficking, Government is guided by the Anti-Human Trafficking Act No. 32 of 2014 to ensure provision of assistance and requisite services. Notwithstanding the above, referrals and transfers of vulnerable people are coordinated in a

fairly organised manner and such matters fall within existing and normal Government procedures. For example, social workers, who are responsible for facilitating transfers and referrals do so under normal formal Government communication channels such as letters and Memos.

Reply to paragraph 8 of the list of issues

54. The statistical information is attached as Annexure I.

Reply to paragraph 9 of the list of issues

55. The following are the refoulements, extraditions carried out by Botswana to date:

(a) **Namibia:** The extradition of one (1) Namibian was duly executed after Botswana submitted an assurance that the fugitive shall not be subjected to corporal punishment following a conviction of the offence of rape. The fugitive was handed over to the Republic of Botswana authorities on 6th March 2018 at Mamuno Border Post.

(b) **Zimbabwe:** The Extradition of one (1) Zimbabwean in 2016 who was accused of murder.

(c) **South Africa:** The extradition of one (1) South African in August 2018 who was accused of Murder.

56. The minimum required content for the assurance is an indication that where an accused person has been sentenced to capital punishment, they would not be executed.

Articles 5-9

Reply to paragraph 10 of the list of issues

57. Legislative or other measures taken to establish jurisdiction in cases covered by Article 5 of the Convention include:

58. Section 95 of the Constitution of Botswana provides that:

“there shall be for Botswana a High Court which shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law”.

59. The above provision confers jurisdiction on the high court in respect of all offences committed within Botswana including Sedudu Island which forms part of its territory and does not have separate laws of its own. These include offences covered by Article 5 of the Convention which offences are contained in various statutes such as:

(a) Constitution of Botswana - Section 7 provides that:

“Protection from inhuman treatment

(1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment that was lawful in the country immediately before the coming into operation of this Constitution”.

(b) Children’s Act - section 61:

“Cruel treatment or punishment

(1) No person shall subject a child to torture or other cruel, inhuman, or degrading treatment or punishment.

(2) *No person shall subject a child to correction which is unreasonable in kind or in degree relative to the age, physical and mental condition of the child and which, if the child by reason of tender age or otherwise is incapable of understanding the purpose and fairness thereof.*

(3) *The provisions of this section shall not be construed as prohibiting the corporal punishment of children in such circumstances or manner as may be set out in this Act or any other law.*

(4) *The Minister shall cause to be put in place parental guidance programmes aimed at developing the capacity of parents to discipline and guide their children appropriately”.*

(c) Botswana Defence Force Act - Section 66;

(d) Police Act - Section 23;

(e) Penal Code - Sections 246, 247, 248, 249, 252, 230), 202, 200, 217.

60. Botswana refused extradition of MARKOVIC VUKOMIR sought by the Government of Montenegro in 2007 because there was no legal basis for extradition. Botswana did not have a bilateral extradition agreement with Montenegro and could not use the London Scheme as a legal basis because Montenegro is not a Commonwealth country. Further Botswana could not use the Convention due to the fact that it was not yet incorporated into national laws (Domestication). The accused was required for the offence of murder.

Reply to paragraph 11 of the list of issues

61. Botswana has signed four (4) Extradition treaties with the People’s Republic of China, Federal Republic of Nigeria, Republic of Zimbabwe, and the Southern African Development Community (SADC).

62. Any offence that involves any kind of assault to a person is an extraditable offence as defined by the Extradition Act. Such acts are therefore covered under the Extradition Act. Extradition can be refused where it is established that upon extradition, the fugitive is likely to face certain forms of punishment such as the death penalty, corporal punishment, or torture. All treaties Botswana has entered into with other jurisdictions clearly outline that where a fugitive is likely to face inhumane and degrading punishment as encapsulated under the provisions of Section 7 of our Constitution, then Botswana can refuse extradition.

63. Botswana is also party to the Southern African Development Community (SADC) Protocol on Extradition which entered into force on 1st September 2006, and it provides as follows:

“1. For the purpose of this Protocol, extraditable offence are offences that are punishable under the laws of both State Parties by imprisonment or other deprivation of liberty for a period of at least one year, or by a more severe penalty. Where the request for extradition relates to a person wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty imposed for such an offence, extradition may be refused if a period of less than six months of such sentence remains to be served.

2. For the purposes of this Article, in determining what constitutes an offence against the laws of the Requested State it shall not matter whether: (a) the laws of the State Parties place the conduct constituting the offence within the same category of offence or describe the offence by the same terminology; and (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the State Party, the constituent elements of the offence differ”.

64. The provisions of the Protocol cited above covers the offences of torture under the statutes referred to above.

Reply to paragraph 12 of the list of issues

65. Botswana is party to the Southern African Development Community (SADC) Protocol on Mutual Legal Assistance in Criminal Matters which provides a legal basis for SADC Member States to provide each other with the widest possible measures of mutual legal assistance in criminal matters.

66. Botswana has not had cases where agreements on mutual legal and judicial assistance led to the transfer of evidence in connection with prosecutions concerning torture or ill-treatment.

Article 10

Reply to paragraph 13 of the list of issues

67. There is no specific training on the Convention for law enforcement agencies. However, different agencies cover some issues provided for in the Convention in their trainings. Botswana law enforcement officers treat all people as equals and afford them the dignity and humanity they deserve. One of the values of most organisations is *Botho*, which denotes that officers should be courteous to those they serve. To this end, officers always assess the needs of customers and assist them accordingly with due regard to their vulnerability. Pre-service and in-service Customer Service Training is also provided in the Botswana public service.

Botswana Police Service

68. The Botswana Police Service provides training of officer upon recruitment. Once an officer is enlisted into the Service and before such officer is posted to a police station to carry out his duties, he or she first must go through training for a year. During this training a police officer is taught, amongst other things, how to interact with arrested individuals, including the prohibition against torture of suspects. It is made clear that that the Service do not tolerate the ill-treatment of suspects and that appropriate punitive action will be taken against the officer should the ill-treatment be proved.

69. To promote reporting, enhance case management and better serve vulnerable people such as gender-based violence survivors and children, the Botswana Police Service recently established the Gender and Child Protection Branch. The Branch is intended to promote reporting including by children and it is resourced with Police Officers specifically trained in handling GBV cases. Furthermore, the Botswana Police Service has recently designated certain police stations as child friendly centres. The first child friendly centre was piloted in Gaborone (south-east of Botswana), and it has since been rolled out to Francistown (north-east of Botswana). This is to ensure that there is a conducive environment for children to report crimes perpetrated against them.

70. In assessing the effectiveness and impact of training programmes, the Botswana Police Service has a reporting template in which data on matters of GBV is captured and periodically develops strategies to try and increase their effectiveness.

71. The principle of non-refoulement and the right to asylum are issues beyond the mandate of the Botswana Police Service. However, the Service has the mandate to investigate any issue relating to torture, human trafficking, and gender-based violence as these are criminal offences.

72. The Botswana Police Service through its College provides the Certificate of Professional Practice in Policing (CPPP) programme. It is a course targeting Recruit Constables and offers a module called Criminal Procedure and Evidence (CP&E) which includes a topic on Human Rights. The course covers the Constitution of Botswana with a focus on:

- the rights of all individuals
- International Human Rights Standards

- the right to protection of the law – Section 10
- the prohibition against torture - Section 7.

Botswana Defence Force

73. The Botswana Defence Force Act prohibits torture. Even though there is no specific training on the CAT, the BDF conducts training on issues of torture at entry level and there are continuous workshops that cover different modules on torture and on the law of armed conflict.

74. However, public officials, especially law enforcement officers undergo pre-service and in-service training which includes topics on human rights, reasonable use of force, how to interact with arrested individuals and the prohibition against torture of suspects, among others.

Botswana Prisons Service

75. Prison officers are trained in unarmed combat, which provides them with training on the reasonable use of force.

76. In an endeavour to enhance learning, decided cases are also used to explain the concept of prohibition of torture. For example, in the case of *Clover Petrus and Another vs State* (1984) BCR 14 the court held that corporal punishment was not inhumane and degrading, but the way it was administered in instalments was degrading.

77. It is mandatory for all law enforcement agencies to undergo pre-service and in-service training on human rights, including on torture. At the end of each training exercise there is an examination for the officers, and it is only those who passed such examination that are posted to stations to do the police work. Further to this, officers are periodically taken for refresher course on what is expected of them in the workplace.

Reply to paragraph 14 of the list of issues

78. There is no training to detect and document physical and psychological consequences of torture provided to judges, prosecutors, forensic doctors, and other medical staff specific training. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is also not provided to any of our law enforcement agencies.

79. All Botswana Police Service Gender Focal Persons, Station Commanders, Post Commanders, and all front-line officers are trained on handling victims of GBV. Furthermore, police officers are sensitized on the standard operating procedures on handling issues of GBV. Training on how to monitor, investigate and prosecute complaints of torture and ill-treatment in a child and gender sensitive manner is not provided.

80. The Botswana Police Service monitors, investigate and send for prosecution all complaints of torture for all victims including children. The Service has since established Branch which is dedicated to dealing with cases concerning children and gender-based violence. These cases are attended to discreetly the purpose being to protect the victim and avoid re-victimization.

Reply to paragraph 15 of the list of issues

81. The statistical data of detainees, capacity, and occupancy rate of all places of detention, the number of pre-trial detainees and the number of convicted prisoners is annexed to this report as Annexure II.

82. According to Section 74 of the Prisons Act, male and female prisoners are detained in separate prisons or in separate parts of the same prison. Minor or young prisoners, according to Regulation 5 of the Prisons Regulations are kept separately from adult offenders, for example, there is Moshupa Boys Prison where all minor boys are kept. As regards convicts

and pre-trial detainees, they are kept in the same prison but in different wings. All prisons have been separated accordingly and are compliant.

83. Furthermore, minors are admitted in places such as Ikago Centre which is a school of industries as established under the Children's Act. It admits children who have been convicted of a crime and are placed through a court order. They receive skills training and psychosocial support for the duration of their placement. Each juvenile placed is profiled upon arrival and individual care plans are derived from that profiling. The facility currently admits Boys only because since its inception there has not been any female juvenile offenders.

84. Measures taken to prevent overcrowding are extra mural labour, presidential pardon, parole and remission. With extra-mural labour the Courts, Commissioner, and Official Visitors have the powers to order a prisoner whose remaining term in prison is less than twelve (12) months, if they are satisfied that he or she may be usefully employed in public work or services carried on outside prison, may, with the consent of the prisoner order that the prisoner be released from prison and be employed under the immediate control and supervision of a public authority on such public work or service. This is in terms of Section 97 and 98 of the Prisons Act.

85. For Parole, the Minister is empowered, on certain conditions, after receipt of recommendations of the Parole Board, to release a prisoner from prison before he/she has completed his/her term of imprisonment. Remission is undertaken when the sentence imposed on prisoners is not served in total. Every prisoner under a sentence of imprisonment for more than one (1) month is entitled to remission of one third (1/3) of his/her sentence. This is in terms of Section 91 of the Prisons Act. Lastly, Section 53 of the Constitution empowers the President to grant any prisoner a pardon either free or subject to lawful conditions.

Reply to paragraph 16 of the list of issues

86. Every prisoner is accorded a common living area that is adequately cleaned by inmates daily and an inspection is carried out to ensure that the prisons are clean. Prisoners are issued with personal toiletry and cleaning materials. Every prison cell has an ablution block. In terms of Section 34 (1) of the Prisons Act there is a schedule which provides for food ration for every prisoner.

87. According to the Prisons rehabilitation programmes and Section 90 (1) of the Prisons Act every prisoner is accorded an opportunity to enrol in an educational programme to better their lives such as farming, upholstery, carpentry, tailoring, construction, and electrical works. There is also provision for continued education such as the ongoing collaboration by the Botswana Prison Service with the Botswana Open University to facilitate secondary school education. Different types of leisure activities are available in prisons such as football, scrabble, chess, and choral music.

88. On admission every prisoner undergoes a medical examination. All prisons have treatment centres (clinics) where medical assistance to all prisoners is provided. Every morning every prisoner who has any ailment is entitled to lodge a request to the officer on duty and is accordingly taken for medical attention. All medicines prescribed by medical officers for the prisoner are provided to the prisoner free of charge. Where there are challenges with medical staff capacity or a need for specialist medical care, prisoners are referred to public hospitals. Where specialist care is not available in public hospitals, a prisoner can be referred to a local or international Private Hospital at Government cost.

89. Awareness raising campaigns on infectious diseases are carried out in prisons. Prisoners with infectious diseases such as TB and Covid-19 are isolated, treated and given therapy until their recovery and to prevent the spread in prisons. Particularly during COVID 19, masks and sanitisers are continuously provided to prisoners and the following mitigation measures have been adopted:

- continuous needs assessment performed

- Lobatse and Francistown Prisons designated as quarantine centres for newly admitted prisoners
- some Prison cells have been designated isolation cells for prisoners who have tested positive to COVID 19
- provision of hand washing areas in all prisons
- restrictions on Prison visits to one visitor per prisoner per month
- prisoners issued with adequate toiletry and masks
- Kanye prison has been declared an isolation centre.

90. In an effort to address the specific needs of children in conflict with the law, Government established Ikago Centre to house and to rehabilitate first offenders. With respect to the Moshupa Boys Prison which houses and rehabilitates minor convicted boys, they are accorded an opportunity and encouraged to enrol in an educational programme. In terms of Section 34 (1) of the Prisons Act, there is a schedule which provides for food ration for every prisoner including those at Boys Prison. As stated above, all medicines prescribed by medical officers for the prisoner are provided.

91. To address the needs of women in custody, pregnant and nursing women, Section 66 (7) of the Prisons Act provides that subject to such conditions as may be specified by the Commissioner, a nursing infant child of a female prisoner may be received into prison with its mother and may be supplied with clothing and necessities at Government expense.

92. Furthermore, Section 66 (8) of the Prisons Act provides that when an infant child received into prison under subsection (7) has been weaned, the Officer in Charge, if satisfied that there is a relative or friend of the mother able and willing to properly support and look after the child, and the mother agrees to the arrangements made, shall cause the child to be handed over to that relative or friend. If the Officer in Charge is not so satisfied, the child may be handed over to the care of such person or organisation as may be approved for the purpose by the Minister.

93. Expectant women prisoners are also enrolled in Antenatal Care for the duration of their pregnancy and at the time of delivery they are referred to public health facilities for delivery. Postnatal care is also provided to women, and they are taken for all subsequent check-ups. Early childhood care is also provided.

94. According to Section 73 (1) of the Prisons Act, the officer in charge of a prison that houses females shall be a female officer. In the same vein, Female prisoners are guarded by female officers.

Reply to paragraph 17 of the list of issues

95. According to Section 107 (1) of the Prisons Act every prison offence, whether major or minor, is reported to the officer in charge of the prison who shall, if he/she charges the prisoner based on an investigation report, inform him/her of the offence with which he/she is charged. Every prisoner charged with a prison offence shall be entitled to defend himself/herself. Once found guilty and a sentence imposed, the record is forwarded to the Commissioner to assess the findings and sentence.

96. According to Section 111 of Prisons Act no prisoner shall suffer solitary confinement unless the medical officer has, after examination certified his opinion that the prisoner is physically and mentally fit to undergo solitary confinement for the period awarded. Once deemed fit, the prisoner can be detained for solitary confinement for up to fourteen (14) days depending on the offence which are categorised as minor and major.

97. Section 109 of the Prisons Act provides that where the officer hearing and determining a charge against a prisoner charged is a senior officer or Commissioner, punishment of solitary confinement shall not exceed fourteen (14) days. Section 110 of the Prisons Act provides that where the officer hearing and determining a charge against a prisoner charged is the officer-in-charge, punishment of solitary confinement shall not exceed five (5) days.

98. No definitive measures are in place to ensure that solitary confinement is not imposed on children and adolescents, but in practice, solitary confinement is never a punishment meted out to children.

99. A register of disciplinary penalties is kept in all prisons by the officers in charge in accordance with Section 113 of Prisons Act.

100. The Botswana Prison Service has adopted an Anti-Corruption Policy that is implemented by the Corruption Prevention Committees, who also periodically carry out anti-corruption sensitisation workshops to all officers. Any officer who receives payment from a prisoner commits an offence against the Act in terms of Section 43 of the Prisons Act.

Reply to paragraph 18 of the list of issues

101. The statistical data on the number of deaths in custody in the mental health institution in Botswana is annexed to the report as Annexure III.

102. In Annexure III, one of the deaths was due to alleged assault by another psychiatrically ill inmate in the same ward. Police are still investigating the case. There is no history that any type of force was ever used against the patients either by the staff members or by the security forces in the mental health institution. Moreover, timely medical assistance was provided to the injured patient.

103. The following preventive measures were taken to prevent the recurrence of the above incident:

- Supervision of the security and nursing staff was strengthened;
- Aggressive patients in the ward are promptly identified and secluded by following the Standard Operative Procedures (SOPs) of the facility in accordance with the international protocols.

104. In the past five years Botswana Police Service had 21 incidents in which people died during interaction with police officers. All the victims are adult males, four of which were Zimbabweans whilst 17 were Batswana.

105. The statistical data on deaths that occurred in Police custody is attached as Annexure IV.

Reply to paragraph 19 of the list of issues

106. The general psychiatric patients who are reluctant to be treated as inpatients on voluntary basis will be admitted involuntarily by following the provisions of Mental Disorders Act [Chapter 63:02]; the patients will then be discharged back to their relatives after treatment in accordance with the above cited Act. Although there is a well-equipped ward to treat Child and Adolescent psychiatric patients, currently the above ward is not functional due to the lack of enough number of patients in this category.

107. Both the Children's Act and the Domestic Violence Act [Chapter 28:05] create mechanisms for the removal of children from abusive homes and other environments, and for prosecution of the perpetrators of the abuse. In particular, the Child Protection Regulations set out standards for alternative care, provide for licensing and establishment of institutions that care for children and the screening of service providers, alternative care institutions and those working with children. Children and adolescents in residential care homes are placed through court orders which are issued following a sitting of the children's court. A Social Worker conducts a home assessment and makes recommendations for alternative care placement, stipulating duration and other conditions as may be necessary depending on the peculiarities of the case. While in care, children are availed all services necessary for their sustenance, including psychosocial support.

108. When a child is placed in foster care, the Children's Act, Section 74, provides that a Social Worker shall visit such child at such intervals as the court may specify in the placement order and make a report thereon. Section 75 provides for the reunification of the child with

biological parent where the court is satisfied that such placement is possible and is in the best interest of the child. A report on the behaviour, progress and welfare of the child shall be furnished to the Court upon termination of placement. Children placed in alternative care cannot remain in that arrangement beyond their eighteenth birthday. Long term guardianship may only be granted when there is no parent, relative or guardian who is able and willing to care for the child and when it is in the child's best interests to do so.

109. The Children's Act provides for the placement of children in need of protection in foster care following an assessment and submission of report by a Social Worker regarding;

(a) general conduct, home environment, cultural, religious, and linguistic background, school records and medical history (if any) of the child;

(b) availability of a person with similar background to that of the child who is willing and able to provide foster care to the child; and

(c) suitability of the person willing and able to foster the child, keeping in mind the necessity to ensure the safety and general wellbeing of the child.

110. The court shall not make an order placing a child in the care of a person who has been accused or convicted of any offense(s) against children.

111. There are no residential care homes in Botswana which admit persons with mental or psycho-social disabilities, therefore there is no independent mechanism for overseeing such facilities. With regard to children and adolescents living in residential care homes, the Children's Act provides for the licensing of homes, schools and institutions for the reception of children. It further provides for the revocation of same by the licensing authority where:

(a) a licensee under the Act is convicted of any offence under the Act or any other law in Botswana;

(b) it would be in the best interests of the children housed by a licensee; or

(c) it would be in the best interests of the inhabitants of a particular area of Botswana.

112. Section 110 of the Children's Act further provides for the designation of persons to act as authorized officers who shall have the power to inspect the premises and require any person on the premises to furnish any information, including documents, in his or her possession regarding the activities carried out on the premises, and the person by whom they are carried on.

113. Severely violent psychiatric patients who pose a danger to themselves or to the lives of others in the hospital are physically restrained in exceptional cases for a few minutes until they are made calm by chemical restraints, that is, by giving them injectable tranquilizers, by prudently following the Standard Operative Procedures (SOPs) of the facility in accordance with the international protocols on the subject. Until their aggressive behaviours are controlled, and they become stable and not dangerous to themselves or to the others they will be put in seclusion rooms (environmental restraint) for a few hours to days, by ending the seclusion period every half an hour to one hour, by following the Standard Operative Procedures (SOPs) of the facility in accordance with the international protocols on the subject.

Reply to paragraph 20 of the list of issues

114. In terms of Section 4 of the Immigration Act any person entering Botswana shall enter through a point of entry prescribed by the Minister by order published in the Gazette and upon arrival must immediately present themselves to an immigration officer. Section 5 (2) provides that:

“(2) An immigration officer may require any person who has presented himself or herself in accordance with section 4(1) (b) to submit to examination.”

115. This is for the purpose of ascertaining whether that person is or is not an asylum seeker or an undocumented immigrant or whether they are liable for removal under the Act. Section

5 (4) sets out the requirements to be satisfied by a person suspected to be an asylum seeker and an undocumented migrant and once the Immigration Officer is satisfied that one is an undocumented migrant, the Immigration Officer then detains them at the nearest convenient prison for a period not exceeding fourteen (14) days as per Section 45 of the Immigration Act. This dispensation is to allow the officer sufficient time to prepare for their return to their respective countries.

116. As regards asylum seekers and due to security considerations, they are placed at the Francistown Centre for Illegal Immigrants (FCII) while awaiting refugee status determination which is conducted within a reasonable time.

117. All those who do not qualify to remain in Botswana as provided for by Section 18 of the Immigration Act are liable for detention.

118. In terms of Section 18 of the Act:

“A person shall not remain in Botswana unless such a person is

a) a citizen of Botswana

b) in possession of a valid visitors permit

c) in possession of a valid residence permit

d) a member of any class of persons exempted by the Minister under Section 32 from obtaining a residence permit order to reside in Botswana; or

e) entitled to immunity from suit under the Diplomatic Immunities and Privileges Act”.

119. There are currently no alternatives for housing asylum seekers, however, it is worth noting that there are current developments ongoing at the FCII where asylum seekers will be placed as families but in a controlled environment. Furthermore, the Botswana Government remains cognisant of the need to assess each asylum seeker individually and therefore, there are exceptional circumstances where specific needs of asylum seekers are taken into consideration when it comes to placing them.

120. This is for cases where there are persons with disabilities or those with health issues where the FCII would not be conducive for their stay. In these cases, the asylum seekers await refugee status determination at the Dukwi Refugee Camp.

Whether decisions to impose administrative detention are periodically reviewed and whether it is possible to challenge the lawfulness and proportionality of such decisions and the duration of the detention they impose

121. All administrative decisions by the Minister in relation to the asylum seekers in reviewable through the review process of the High Court

122. Statistical Data is on the number of persons detained for migration reasons over the past five years, and the proportion of the total number of cases per year in which alternatives to detention were used is attached as Annexure VI.

Articles 12-13

Reply to paragraph 21 of the list of issues

123. The Government of Botswana does not tolerate any acts of torture or ill-treatment by any person and more particularly, law enforcement agencies. While law enforcement agencies exist to enforce the law, it should be noted that their members are not above the law. Upon assumption of duty, all law enforcement officers take oath to uphold and be subject to the Constitution that guarantees people’s fundamental rights and freedoms.

124. While Botswana does not have independent oversight bodies with specific mandate to investigate allegations of torture or ill-treatment by its law enforcement officers, policies and procedures exist to ensure that investigations are carried out in such instances. The Botswana Police Service “Standing Order No. 4 – Discipline” states that it is essential that any complaint by a member of the Public, involving a member of the Police be given an

impartial hearing and proper investigation. The Internal Affairs Branch of the Service is responsible for investigating such allegations for purposes of disciplinary action.

125. All cases of torture are ultimately addressed by the courts as the final arbiter. However, before invoking the court process. There are organs however, in different institutions that play supervisory roles. Under the BDF Act, there is a provision for the Defence Council, mandated to receive complaints against the military. Section 22 (1) of the BDF Act provides that the Defence Council is responsible of the control, direction, and general superintendence of the Defence Force. It is chaired by the Minister responsible for defence and security issues and composed of the Minister of Finance and Economic Development, Permanent Secretary to the President, Attorney General, Secretary of Defence, Permanent Secretaries of Finance and Economic Development, and of Defence, Justice and Security. The Commander of the Defence Force and his Deputy are ex-officio members of the Council.

126. Disciplinary Boards also exist within the Botswana Police Act, Section 48 of the Prisons Act provides for the appointment of a Board of inquiry to inquire on to any alleged offence against discipline committed by a senior officer.

127. The Ombudsman Act has been amended to confer the human rights mandate on the office of the Ombudsman, which will enable the office to investigate allegations of human rights violations. The Office of the Ombudsman receives complaints of alleged acts of maladministration against officers in the law enforcement agencies.

128. Victims of torture have recourse to justice through the courts of law such as in the case of *Ogomoditse Lekang vs The Attorney General of Botswana* in which the plaintiff claimed general damages for unlawful assault by officials of the Department of Prisons and Rehabilitation where the court ordered that he was entitled to an award which is commensurate with the pain and suffering and injuries sustained. He was awarded damages in the sum of One Hundred Thousand Botswana Pula (BWP 100, 000.00).

129. There is no interaction with the Attorney General's office during investigations. Any interaction during investigations, may be with the office of the Directorate of Public Prosecutions who is vested under Section 7 of the Criminal Procedure and Evidence Act [Chapter 08:02] "*... with the right and entrusted with the duty of prosecuting in the name and on behalf of the State in respect of any offence committed in Botswana*".

130. Suspected perpetrators may be suspended or interdicted from work pending conclusion of investigations to ensure that the process of investigation is not tampered with. If upon conclusion of internal investigations, it is determined that a criminal offence has been committed by a law enforcement officer, the matter is referred to the Director of Public Prosecutions for assessment of evidence and possible prosecution.

131. Section 212 of the BDF Act, Section 52 of the Prisons Act and Section 13 of the Police Act empower the appointing authorities in the respective organisations to interdict or suspend officers suspected of having committed offences under these Acts or any other law. However, the suspension or interdiction is not automatic since there is a requirement that the rules of natural justice be observed.

132. There is no legal provision which mandates the Attorney General to initiate an ex officio investigation where there is reason to believe that an act of torture or ill treatment has been committed by law enforcement officers.

133. Customary courts do not have jurisdiction to adjudicate cases of torture or ill-treatment.

Reply to paragraph 22 of the list of issues

134. Persons who claim to have been subjected to acts of torture or ill-treatment have the right to have their allegations investigated by the police and where evidence gathered submitted to the Director of Public Prosecutions. Where competent authorities refuse to investigate, the victim can lodge a complaint with the office of the Ombudsman in accordance with Section of the Ombudsman Act [Chapter 02:12].

135. Additionally, the victim has a right to claim damages against the Government in courts of law and to institute a private prosecution of their matter in terms of Section 14 of the Criminal Procedure and Evidence Act [Chapter 08:02], where the DPP declines to prosecute the alleged offence.

136. Anonymous reporting and whistle blowing is allowed in public institutions as per the Whistleblowers Act (2016). The Act ensures transparency, protection and accountability for acts and omissions leading to harm or loss of life by any person whom they are dealing with. Section 14 (1) provides that a whistleblower shall not be subjected to victimisation by his or her employer or by a fellow employee or by another for making a disclosure of impropriety. In addition, Section 15 provides that a whistleblower shall not be liable to civil or criminal proceedings in respect of a disclosure of impropriety.

137. Regarding independence, the police enjoy independence in the investigation of a matter while the DPP, enjoys independence in the exercise of his or her prosecutorial functions. Section 51A (6) of the Constitution provides that:

“(6) In the exercise of the functions vested in him or her by subsection (3) of this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority”

138. An exception to this is found in paragraph (b) of this Section which provides that:

“Provided that-

(b)..... before exercising his or her powers in relation to cases considered by the Attorney-General to be of national importance, the Director of Public Prosecutions shall consult the Attorney-General”

139. In relation to persons deprived of liberty, Section 23 of the Police Act and Section 46 of the Prisons Act provide for the protection of detainees in that officers are prohibited from unlawful or unnecessary use of authority to intimidate, use violence against detainees or any other person whom they are brought into contact in the execution of their duties.

140. There are no legal provisions for the protection of families of victims, witnesses and investigators against any form of intimidation or reprisal arising as a consequence of complaints submitted.

Reply to paragraph 23 of the list of issues

141. In Botswana we do not categorise people according to ethnicity. The statistical data on complaints of actual or attempted acts of torture and ill-treatment, complicity, participation, or acquiescence in such acts is attached as Annexure VII.

142. Thirteen (13) of the Inquest dockets opened in relation to the incidents reported have been closed because there was no further police action required. Six (6) inquest dockets are still with the Directorate of Public Prosecution for evidence assessment whilst two (2) are still under investigations.

143. About the 2011 allegations of rape of a young woman while in immigration detention, the Government established a Commission of Enquiry to investigate the same. A thorough investigation was carried out and the investigations revealed that there was no evidence of rape as the victim was impregnated by her boyfriend who was also an asylum seeker. Paternity test results also absolved the accused person as they showed the boyfriend is the putative father. There was therefore no need to provide redress to the victim.

Article 14

Reply to paragraph 24 of the list of issues

144. Redress of victims of torture and their families is covered under Order 36 of the rules of High Court and Section 316 of the Criminal Procedure and Evidence Act. The victim must

initiate a court process through an application supported by admissible evidence for the award of damages. Based on the outcome of internal processes or before the courts of law, the State can be legally responsible for the conduct of perpetrators of torture and ill-treatment based on the principle of vicarious liability. Where the victim cannot afford legal services on their own, they are eligible for Legal Aid.

145. For example, In the case of Kegame Kerepile vs the Attorney General and 2 Others the plaintiff was claiming damages for vicious assault by the Botswana Police Service, loss of dignity, medical expenses, permanent disfigurement as well as pain and suffering. The claim was for damages in the sum of Botswana Pula Three Million, Four Hundred and Forty Thousand (BWP 3 440 000.00), approximately United States Dollars 299,280.00. The parties settled the matter out of court and before trial in the sum of Botswana Pula One Million Five Hundred Thousand (BWP 1 500 000.00), approximately USD130, 500 and the settlement agreement was made an Order of the Court.

146. In the case of Ogomoditse Lekang vs The Attorney General of Botswana the plaintiff claimed general damages for unlawful assault by officials of the Department of Prisons and Rehabilitation and the court ordered that he was entitled to an award which is commensurate with the pain and suffering and injuries sustained. He was awarded damages in the sum of Botswana Pula One Hundred Thousand (BWP 100, 000.00), approximately USD 8700.

147. The right to receive compensation in criminal proceedings is dependent on a judgment having been handed down in terms of Section 316 of the Criminal Procedure and Evidence Act. In terms of the Prescriptions Act, the right to receive compensation has a time limit of three (3) years. In civil matters under Order 36 of the High Court Rules, the time limit starts to run from the time the victims or the family become aware of the right to receive compensation.

Reply to paragraph 25 of the list of issues

148. In the case of Kegame Kerepile vs the Attorney General and 2 Others the plaintiff was claiming damages for vicious assault by the Botswana Police Service, loss of dignity, medical expenses, permanent disfigurement as well as pain and suffering. The claim was for damages in the sum of Botswana Pula Three Million, Four Hundred and Forty Thousand (BWP 3 440 000.00), approximately USD 299,280.00. The parties settled the matter out of court and before trial in the sum of Botswana Pula One Million Five Hundred Thousand (BWP 1 500 000.00), approximately USD USD130 500. The settlement agreement was made an Order of the Court.

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150. There are psycho-social services and medical services that would be provided to victims. In addition, Government has entered into Memoranda of Understanding with Non-Governmental Organisations such as Childline Botswana and Save Our Soul Children's Village in the provision of rehabilitation programmes for child victims of torture.

Article 15

Reply to paragraph 26 of the list of issues

151. Section 228 of the Criminal Procedure and Evidence Act prohibits the admissibility of confession statements into evidence if it is determined that the statement was not freely and voluntarily made. This Section makes it clear that any statement obtained through torture will not be accepted as evidence against the fugitive/accused person.

Article 16

Reply to paragraph 27 of the list of issues

152. Currently Botswana does not have any plans to amend its legislation to expressly prohibit corporal punishment in all settings.

153. About corporal punishment in schools, the Government is currently reviewing the Education Act of 1968 with a view to bringing it up to date with changes that have taken place in the education sector in Botswana. One of the prominent issues in the review is the one regarding corporal punishment as captured by Regulation 2 of the Education Act. The Regulation allows corporal punishment with conditions which were meant to regulate corporal punishment in schools. However, it has become apparent from injuries that learners continue to suffer because of corporal punishment in schools that the conditions are being disregarded.

154. Therefore, to align the Education Act with the provisions of the Children's Act, specifically Section 61 of the Children's Act which states *inter alia* that; “no person shall subject a child to torture or other cruel, inhumane or degrading treatment or punishment”, Section 15 of the Education and Training Bill of 2021 proposes to abolish corporal punishment in schools with more amenable methods of acceptable punishment.

155. The inserted clause reads thus:

“15. (1) A person shall not administer corporal punishment against a learner in a school.

(2) Subject to subsection (1), a person shall be allowed to administer punishment against a learner that is constructive to the learner which shall include –

(a) a warning letter addressed to the parents of the learner.

(b) removal from a class or group for a period not exceeding four hours.

(c) detention after school hours.

(d) isolation from other learners.

(e) expulsion from a school; or

(f) any other punishment as may be prescribed.

(3) Any person who contravenes this section commits an offence and is liable to imprisonment for a term not exceeding five years”.

156. The above change is still at the Bill stage. During consultations there was opposition to the cancelling and removal of corporal punishment as a disciplinary measure from Stakeholders. The Bill remains unchanged to date.

Reply to paragraph 29 of the list of issues

157. The inclusion of human rights in the police training curriculum both pre-service and in-service training is one way in which Botswana seeks to address police brutality and excessive use of force by law enforcement officials. In the event the courts have determined that there has been the use of excessive force, Government pays reparations. In terms of the Police Act, administrative action can be taken against a police officer who uses excessive force. Moreover, criminal proceedings can be instituted against the alleged perpetrator/officer.

158. From 2017 to date the Botswana Police Service has received a total of 25 reported incidents in which it was alleged that police officers had assaulted some individuals. They were reported as follows:

- 2017 = 2
- 2018 = 4
- 2019 = 3
- 2020 = 13

- 2021 = 3

159. Unfortunately, our information was not captured in the format reflecting age, sex, ethnic origin, or nationality of the victim. This is largely because we treat the victims the same without regard to the categories as reflected above. In all then above incidents investigations were carried and appropriate remedial action was taken against the perpetrators. (*See also response at Issue No 23).

160. The statistical data is attached as Annexure VII.

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161. Government adopted the National Policy on Gender and Development has amongst its five (5) priorities, Access to Justice, Protection of Human Rights and Freedom from Violence. The National Strategy Towards Ending Gender Based Violence (GBV) on the other hand provides concrete guidance on the National Gender Based Violence (GBV) Response. The Strategy is multi-sectoral and multi-pronged, and it mainly focuses on Prevention, Protection, Care and Support with clear actions for each development sector.

162. Following the third review cycle of the Universal Period Review mechanism in 2018, Government undertook the following to address GBV.

(a) Surveys and Studies:

- i. Conducted the National Relationship Study (2018) which is a follow up to the 2012 GBV Indicators Study. The National Relationship Study included men both as perpetrators and survivors/victims. Findings from the Study are that 37% women and 21% men have suffered some form of violence in their lifetime. The Study further revealed that 27% women and 8% men reported physical abuse whilst 3% women compared to less than 1% men reported rape to the Police.
- ii. In 2019, Government undertook the Violence Against Children Survey.
- iii. In 2019, Government undertook a Feasibility Study on the Strengthening and Establishment of Safe Havens. The Study is intended to inform the need for establishment of more places of safety. Recommendations are currently being considered in consultation with key stakeholders such as Civil Society, the Health and Education Sector, Child Protection Sector, the Police, *Dikgosi* (Traditional Leaders) and Faith Leaders).

(b) Legal Reforms:

- i. Adoption of the Sexual Offenders Registry Act No.7 of 2021. This Act provides for amongst others stiffer penalties against offenders and prohibits sex offenders from directly working and interacting with children and other vulnerable groups;
- ii. Domestic Violence Act [Chapter 28:05];
- iii. Penal Code Amendment. The Act was amended in 2021 to enhance and make stiffer penalties for sexual offences.

(c) Institutional Reforms:

- i. Establishment of Specialised Courts to speed up the hearing of GBV cases. To date, one thousand, five hundred and nine (1 509) cases have been registered with the courts. Of these, 452 (29.9%) have been concluded;
- ii. Establishment of the Gender and Child Protection Branch in the Botswana Police Service. To promote reporting and enhance case management, the Botswana Police Service established a Gender and Child Protection Branch. The Branch is intended to promote reporting including by children and it is resourced with Police Officers specifically trained in handling GBV cases;

- iii. To further strengthen the national GBV response, Government established an Inter-Ministerial Committee on GBV. The Committee provides strategic guidance on GBV mitigation. In addition, Government continues to set up District Gender Committees across the Country. A total of fifteen (15) have to date been established;
 - iv. The Commissioner of Botswana Prisons Service initiated the GBV Perpetrators Programme in September 2021 which is intended to raise awareness on the integration of offenders to curb them from being re-offenders. More integration and community engagement continues across the Country.
- (d) Strengthening Services:
- i. To address the escalating number of GBV cases during the COVID-19 period, the Botswana Police Service introduced a Toll-Free line for reporting GBV. Civil Society also established Toll-Free lines for reporting GBV as well as offering on-line counselling during the extreme social distancing period;
 - ii. In an effort to promote reporting, the Botswana Police Service undertakes:
 - Continuous improvement of investigations to secure convictions and thereby win public trust
 - Intensified public awareness and outreach on GBV
 - Community Policing approach which promotes the participation of the public in identifying potential threats/ crime and responding accordingly, and
 - Continuous community dialogues on Gender Equality and GBV prevention.
 - iii. The Botswana Police Service also made deliberate efforts to capacitate officers to specifically deal with GBV cases. To this end, 81 officers have been appointed to handle GBV cases. In addition, 241 Police Post Commanders have been trained on GBV management for effective case management at community level;
 - iv. To reduce the rate of withdrawal of GBV cases, Government undertakes the following actions:
 - bringing charges against any person who is obstructing the cause of justice either through intimidation or coercion; and
 - conducting public awareness on consequences of GBV case withdrawals.
- (e) Enhancing Public Knowledge on GBV Through Community Dialogues and Conversations:
- i. The First Lady of the Republic of Botswana upon assumption of duty prioritised the empowerment of women and adolescent girls especially those living in rural areas. To this end, the First Lady is working in close collaboration with the public and private sector, as well as civil society to raise awareness on GBV, sexual reproductive health and HIV/AIDS prevention;
 - ii. As a member of the Organisation of African First Ladies for Development (OAFLAD), the First Lady in May 2021 was awarded a grant for a project aimed at promoting advocacy on GBV related issues. The First Lady's campaign is currently being carried out in six (6) Districts, where incidences of GBV are most prevalent. The intervention is meant to increase knowledge and skills on GBV prevention and to intensify the involvement of men in mitigation efforts. The project targets community leaders, including Dikgosi (Traditional Leaders), Bahumagadi (Spouses of Traditional Leaders), Religious Leaders, People with Disability, Orphans and Vulnerable Children, Women and Girls, Men and Boys as well as Civil Society Organisations.
- (f) Shelters for GBV survivors:

- i. Government currently provides financial support to the two (2) shelters run by Non-Governmental Organisations. For the financial year 2021/2022 the shelters were allocated a total of USD 580, 000.00, being an increase from USD50, 000.00;
- ii. The shelter in the Southern region provides clinical services particularly Post Exposure Prophylaxis (PEP) to prevent HIV infection. The shelter also screens and tests for Sexually Transmitted Infections (STIs) and provides HIV Testing and Counselling. In addition, the shelter provides contraceptive mixed methods to prevent unplanned pregnancies;
- iii. Furthermore, the shelter provides treatment for injuries suffered by victims. These services are provided through the support and guidance of the Ministry of Health and Wellness. To further strengthen support to GBV survivors, the shelters make referrals and provide transport to access services outside their facilities such as meetings with legal representatives. Other support services include:
 - family counselling and reconciliation to ensure sustainability and lifelong benefits for survivors;
 - involvement of men in violence prevention initiatives; and
 - engagement of Religious Leaders/Ministers in counselling services as preferred by survivors.
- iv. Noting the linkages between poverty and GBV, the shelters also provide technical skills for various trades such as Dress making, Culinary, Recycling and Jewellery making. Some of the beneficiaries have been employed and were able to move out of abusive relationships.

163. Whilst Botswana has made significant progress in the GBV Response, it is important to acknowledge that more still needs to be done to ensure the effectiveness of GBV interventions to improve the situation of women and girls. Government on this note acknowledges the need to strengthen coordination and partnerships as well as mobilisation of resources.

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164. Botswana is currently not in a position to commit either to the moratorium or abolition of the death penalty in view of the provisions of the Constitution, pending national consultations in line with the accepted UPR recommendations.

165. The way the condemned are executed is prescribed in the law. Prior to carrying out the execution, the officer in charge of the prison where the execution is to take place and the person charged with the execution shall together satisfy themselves that the appliances to be used for the execution are sound and in good working order and that every reasonable precaution has been taken to ensure the efficient, quick, and humane execution of the sentence.

166. It is maintained that the method of carrying out the execution is done with extreme care so that the dignity of the prisoner is preserved and not undermined.

167. In the spirit of complying with the Covenant on civil and political rights, the death penalty is not imposed arbitrarily in Botswana. Article 6 of the Covenant supports the imposition of the death penalty as an exception to the right to life, while at the same time listing detailed safeguards and restrictions on its implementation. Similarly, Botswana's national legislation sets clear and limited circumstances under which the death penalty may be imposed.

168. The Penal Code provides under Section 25 that death may be inflicted as punishment by a Court of Law. Under the Penal Code, offences that attract death penalty are Treason under Section 34 and Murder as per Section 203. The High Court is the only Court of first instance which has jurisdiction to adjudicate Murder and Treason. In that regard, the High

Court hands down death penalty while the Court of Appeal determines appeals on the death penalty.

169. Furthermore, the strict limitations imposed on the death penalty under Article 6 of the Covenant are also provided for in Botswana's legislation, including those that serve to protect vulnerable people facing the death penalty. Section 26 of the Penal Code provides that the death sentence shall not be pronounced against any person who is under the age of eighteen (18) or pregnant women under any circumstances. Section 11 of the Penal Code further provides that the death sentence shall not be pronounced on persons with diseases that affect their mental capacity. This is in conformity with international standards which require that vulnerable groups facing the death penalty must be protected.

170. In terms of Section 116 of the Prisons Act every prisoner sentenced to death shall be confined in some safe place within a prison, kept apart from other prisoners and placed under constant supervision by a prison officer both day and night. Visitation is flexible for prisoners on death row as opposed to other prisoners.

III. General information on other measures and developments relating to the implementation of the Convention in the State Party

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171. As was the case with many State Parties, when the World Health Organisation declared COVID-19 a global pandemic, Botswana was obligated to undertake some measures with a view to curbing the spread of the pandemic, resulting in derogation from our obligations under the ICCPR, especially those relating to the freedom of movement and the right to peaceful assembly.

172. Following a Parliamentary consultation process, which was broadcast live through public and private media platforms, His Excellency the President of Botswana declared a State of Public Emergency effective 2nd April 2021 which terminated on the 30th September 2021.

173. The State of Public Emergency was instituted in good faith, with the intention to preserve the lives of the population from the COVID-19 pandemic. Its main objective was to allow the country to contain and control the pandemic as well as mobilise resources and preserve jobs and livelihoods.

174. Following the declaration of the State of Public Emergency, Government adopted a comprehensive COVID-19 Response Plan encompassing movement restrictions; the rollout of social safety nets; wage subsidies; broadening of health services; ensuring continuity of access to education; and measures aimed at protecting vulnerable groups, including children and gender-based violence survivors.

175. The Emergency Powers (COVID-19) Regulations, 2020 provides for the parameters within which the state of emergency could be governed in terms of section 3 of the Emergency Powers Act (Cap. 22:04):

“Emergency regulations

(1) *Whenever an emergency proclamation is in force, the President may make such regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the Republic, the maintenance of public order and the suppression of mutiny, rebellion and riot, and for maintaining supplies and services essential to the life of the community.*

(2) *Without prejudice to the generality of the powers conferred by subsection (1), emergency regulations may, so far as appears to the President to be necessary or expedient for any of the purposes mentioned in that subsection-*

a) *make provision for the detention of persons or the restriction of their movements, and for the deportation and exclusion from the Republic of persons who are not citizens of Botswana;*

b) *authorize-*

(i) *the taking of possession or control on behalf of the Republic of any property or undertaking;*

(ii) *the acquisition on behalf of the Republic of any property other than land;*

c) *authorize the entering and search of any premises;*

d) *provide for amending any enactment, for suspending the operation of any enactment, and for applying any enactment with or without modification;*

e) *provide for charging in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under the regulations;*

f) *provide for payment of compensation and remuneration to persons affected by the regulations; and*

g) *provide for the apprehension, trial and punishment of persons offending against the regulations;*

Provided that nothing in this paragraph shall authorize the making of provision for the trial of persons by military courts.

(3) *Emergency regulations may provide for empowering such authorities or persons as may be specified in the regulations to make orders and rules for any of the purposes for which such regulations are authorized by this Act to be made and may contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for the purposes of the regulations.*

(4) *Emergency regulations shall specify the area to which they apply and may contain provision for the exclusion of persons from the area so specified if it consists of only a part of the Republic”.*

176. Therefore, during the state of emergency the operation of the constitution or other laws is not suspended but the Emergency Powers Regulations provide for the measures to be adhered in order to address the emergency.