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**COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR  
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF THE  
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

**Botswana**

This report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most documents are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty and/or to a low level of interaction or cooperation with international human rights mechanisms.

## I. BACKGROUND AND FRAMEWORK

### A. Scope of international obligations<sup>1</sup>

<i>Core universal human rights treaties<sup>2</sup></i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
ICERD	20-02-1974 (a)	None	Individual complaints (art. 14): No
ICCPR	08-09-2000	Yes (art. 7, 12 (3))	Inter-State complaints (art. 41): No
CEDAW	13-08-1996 (a)	None	-
OP-CEDAW	21-02-2007 (a)	None	Inquiry procedure (art. 8 and 9): Yes
CAT	08-09-2000	Yes (art. 1)	Inter-State complaints (art. 21): No Individual complaints (art. 22): No Inquiry procedure (art. 20): No
CRC	14-03-1995 (a)	Yes (art. 1)	-
OP-CRC-AC	04-10-2004	Yes	-
OP-CRC-SC	24-09-2003 (a)	None	-
<i>Core treaties to which Botswana is not a party: ICESCR, ICCPR-OP1, ICCPR-OP2, OP-CAT, ICRMW, CPD, CPD-OP, CED.</i>			
<i>Other main relevant international instruments</i>			<i>Ratification, accession or succession</i>
Convention on the Prevention and Punishment of the Crime of Genocide			No
Rome Statute of the International Criminal Court			Yes
Palermo Protocol <sup>3</sup>			Yes
Refugees and stateless persons <sup>4</sup>			Yes, except 1961 Convention on the Reduction of Statelessness.
Geneva Conventions of 12 August 1949 and Additional Protocols thereto <sup>5</sup>			Yes, except AP III
ILO fundamental conventions <sup>6</sup>			Yes
UNESCO Convention against Discrimination in Education			No

1. The Committee on the Elimination of Racial Discrimination (CERD) recommended that Botswana consider the possibility of making the declaration, for the acceptance of complaints, provided for in article 14 of ICERD.<sup>7</sup> The Special Rapporteur on the right to education recommended that Botswana ratify ICESCR.<sup>8</sup> The HR Committee noted with concern the vague and extremely wide reservations which Botswana entered in relation to articles 7 and 12 of ICCPR. Concerning article 7, it was recalled that reservations offending peremptory norms of international law including the prohibition of torture are incompatible with the object and purposes of the Covenant. The Committee recommended that Botswana should immediately withdraw its reservation to article 7 and withdraw its reservation to article 12 of the ICCPR.<sup>9</sup> The Committee on the Rights of the Child (CRC) also recommended that Botswana withdraw its reservation to article 1 of the Convention at the earliest time possible by expediting the law review process.<sup>10</sup>

### B. Constitutional and legislative framework

2. The HR Committee noted that the ICCPR was not directly applicable in domestic law, and was concerned that not all rights provided for in the Covenant were addressed in the Constitution and legislation.<sup>11</sup> It was also concerned that there still remained customary laws and practices that were inconsistent with the rights provided for in the Covenant.<sup>12</sup> It recommended that Botswana should increase its efforts to raise awareness of the precedence of constitutional law over customary laws and practices, and of the entitlement to request the transfer of a case to constitutional law courts, and of appeal before such courts.<sup>13</sup> CRC also recommended that the Convention be

incorporated in domestic law and that Botswana undertake the necessary steps to bring customary law into conformity with the Convention.<sup>14</sup>

### C. Institutional and human rights infrastructure

3. The CRC<sup>15</sup> and the Special Representative of the Secretary General on human rights defenders<sup>16</sup> expressed concern that the Office of the Ombudsman lacked the necessary human and financial resources for its proper functioning. The HR Committee<sup>17</sup> welcomed Botswana's statements that it is willing to consider establishing a national human rights institution. This Committee together with CERD<sup>18</sup> recommended that Botswana establish an independent national human rights commission in accordance with the Paris Principles.

4. A 2004 UNODC report provided information about the provisions of the Corruption and Economic Crime Act of 1994<sup>19</sup> and a 2004 World Bank Report noted that, following a series of high level corruption scandals, Botswana created a Directorate of Corruption and Economic Crime in 1994, under the Office of the President, with powers to investigate and prosecute suspects, prevent corruption, and educate the public.<sup>20</sup>

### D. Policy measures

5. CRC noted with appreciation the establishment of the National AIDS Council, the National Policy on HIV/AIDS,<sup>21</sup> the National AIDS Coordinating Council, the Prevention of Mother to Child Transmission Programme and the programme for AIDS orphans.<sup>22</sup>

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A. Cooperation with human rights mechanisms

#### 1. Cooperation with treaty bodies

<i>Treaty body<sup>23</sup></i>	<i>Latest report considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD	2005	March 2006	Overdue since 2007	Seventeenth and eighteenth report due in 2009
HR Committee	2006	March 2008	due in 2009	Second report due in 2012
CEDAW			-	Initial and second report overdue since 1997 and 2001 respectively
CAT				Initial and second report overdue since 2001 and 2005 respectively
CRC	2003	October 2004	-	Combined second and third report overdue since 2007
OP-CRC- AC			-	Initial report overdue since 2006
OP-CRC- SC				Initial report overdue since 2005

6. CERD welcomed the setting up of an Inter-Ministerial Committee on Treaties, Conventions and Protocols, with the mandate to facilitate the implementation of the reporting obligations of Botswana under the international instruments to which it is a party.<sup>24</sup>

## 2. Cooperation with special procedures

<i>Standing invitation issued</i>	None
<i>Latest visits or mission reports</i>	The Special Rapporteur on the right to education - visit from 26 September to 4 October 2005 <sup>25</sup>
<i>Visits agreed upon in principle</i>	None
<i>Visits requested and not yet agreed upon</i>	The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.
<i>Facilitation/cooperation during missions</i>	The Special Rapporteur on the right to education expressed his sincere appreciation to the Government for the cooperation extended to him throughout the course of his mission <sup>26</sup> .
<i>Follow-up to visits</i>	None
<i>Responses to letters of allegations and urgent appeals</i>	Between 1 July 2004 and 30 June 2008, a total of 3 communications were sent to the Government of Botswana. Apart from communications sent for particular groups, 1 individual, a man was covered by these communications.  Between 1 July 2004 and 30 June 2008, the Government of Botswana replied to 1 communication, which represents replies to 33 per cent of the communications sent.
<i>Responses to questionnaires on thematic issues</i> <sup>27</sup>	Botswana responded to 1 of the 12 questionnaires sent by special procedures mandate-holders <sup>28</sup> between 1 July 2004 and 30 June 2008, within the deadlines. <sup>29</sup>

7. CERD recommended<sup>30</sup> that Botswana invite the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, for a visit on its territory.

### 3. Cooperation with the Office of the High Commissioner for Human Rights

8. Developments in Botswana have been covered by the OHCHR regional office for Southern Africa in Pretoria since its establishment in 1998.<sup>31</sup> The Regional Office provided advice and assistance to the Government when it considered and subsequently ratified the ICCPR and CAT. In 2004, a workshop on treaty reporting, attended by government stakeholders and civil society, was also supported by OHCHR.<sup>32</sup> OHCHR also facilitated the first SADC Conference for chief justices on human rights and access to justice in 2004, in Kasane, Botswana.<sup>33</sup> In 2005, the Office undertook activities with civil society and Governments for strengthening national institutions and treaty body reporting in Botswana.<sup>34</sup>

9. In 2003, Botswana made a financial contribution to OHCHR.<sup>35</sup>

## B. Implementation of international human rights obligations

### 1. Equality and non discrimination

10. In 2008, the HR Committee noted with concern that the exceptions to the right not to be discriminated against, as provided for in section 15(4) (b), (c) and (d) of the Constitution, were not in compliance with articles 2, 3 and 26 of the ICCPR. The HR Committee was concerned, in particular, at exceptions relating to non-citizens; adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and the application of customary law. The Committee recommended that the State review section 15 of the Constitution in order to bring it in line with the Covenant, and ICERD amend relevant legislation accordingly.<sup>36</sup> Similar concerns and

recommendations were recorded by CERD in 2006, which also noted that section 15(9) of the Constitution authorizes the implementation of discriminatory laws in force before the coming into operation of the Constitution.<sup>37</sup>

11. In 2006, CERD remained concerned that the definition of discrimination provided under section 3 of the Constitution did not explicitly prohibit discrimination based on descent and national or ethnic origin, nor indirect discrimination. CERD recommended a review of this provision.<sup>38</sup> CERD noted in particular the State's reluctance to recognize the existence of indigenous peoples on its territory. CERD urged the State to respect and protect the existence and cultural identity of all ethnic groups within its territory and to review its policy regarding indigenous peoples.<sup>39</sup>

12. While taking note of the willingness of the State party to ensure better representation in the House of Chiefs (Ntlo ya Dikgosi), CERD, in 2006, recommended that the State adopt necessary measures to ensure the participation of all ethnic groups in the House of Chiefs on an equal basis.<sup>40</sup> In 2008, the HR Committee was concerned that, despite recent amendments, the current rules regarding appointments to the Ntlo ya Dikgosi did not make provision for fair representation of all tribes. The Committee recommended that the State ensure that it repeals any discriminatory element in the appointment and representation of tribes in the Ntlo ya Dikgosi, to ensure fair representation of all tribes; and that consultations are held in relation to the adoption of the Bogosi Bill.<sup>41</sup>

13. In 2004, the CRC was concerned that, as noted by the State party, the Constitution is inconsistent with the non-discrimination principle of the Convention. CRC was also concerned that societal discrimination persists against vulnerable groups of children, including children with disabilities, children working or living on the street, rural children, children born out of wedlock, orphans and fostered children and children affected or infected by HIV/AIDS. It was also deeply concerned at the situation of girls, in particular adolescent girls who, as acknowledged by the State party, suffer marginalization and gender stereotyping, compromising their educational opportunities and are more vulnerable to sexual violence, abuse and HIV/AIDS.<sup>42</sup>

## **2. Right to life, liberty and security of the person**

14. The HR Committee expressed regret at the delegation's statements that it remained committed to retaining the death penalty and at the lack of explanation as to the low level of commutations of the death penalty. The Committee reiterated its view that mandatory imposition of death penalty for any crime was in violation of article 6, paragraph 2, of the ICCPR. It recommended that the State ensure that public debate on the death penalty be conducted on the basis of a full presentation of all aspects of the matter, especially the importance of achieving progress in the enjoyment of the right to life and the desirability of eventual ratification of the Second Optional Protocol to the ICCPR. The Committee also recommended that Botswana ensure that families are informed in advance of the date of the execution of their family members, and that the body is returned to the family for private burial.<sup>43</sup>

15. The HR Committee regretted that the Penal Code did not contain a definition of torture. It did not consider that existing laws treat all forms of torture as offences of sufficient gravity. The Committee recommended that Botswana define, as soon as possible, the concept of "torture" in accordance with article 7 of the Covenant and make torture a criminal offence. An inquiry should be opened in each case of alleged torture, and the perpetrators of such acts should be prosecuted and punished appropriately. Effective reparations, including adequate compensation, should be granted to any victims.<sup>44</sup>

16. The HR Committee expressed concern at the incidence of prison overcrowding and the large proportion of persons held on remand in prison. It was also concerned that families had limited access to persons deprived of their liberty. The HR Committee recommended that the State take measures to ensure that persons on remand are not kept in custody for an unreasonable period of time. It should significantly increase its efforts to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food, and otherwise ensure that conditions of detention in the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should immediately take action to reduce the prison population. The State should develop alternative measures to imprisonment, such as community service orders and bail arrangements. The State should enhance access to prisoners by family members.<sup>45</sup>

17. The HR Committee was concerned about the existence in law and in practice of penal corporal punishment by the State, in violation of article 7 of the ICCPR. The State should abolish all forms of penal corporal punishment.<sup>46</sup> Additionally, CRC noted with deep concern that corporal punishment was permissible and was used as a way of disciplining children at home, in schools as stipulated in the Education Act and as a sanction in the juvenile justice system.<sup>47</sup> CRC strongly recommended that the State, inter alia, take legislative measures to expressly prohibit corporal punishment in the family, schools and other institutions.<sup>48</sup>

18. CRC remained concerned at the increasing level of domestic violence, at both physical and sexual abuse of children and at the lack of a comprehensive legal and policy framework.<sup>49</sup> CRC recommended that the State: adopt legal measures and comprehensive and responsive policies which will help to change attitudes and improve the prevention and treatment of cases of violence against children; introduce an effective system for reporting cases of abuse, including sexual abuse, of children; properly investigate cases of violence against children and impose sanctions on perpetrators; take measures to ensure the care and rehabilitation of victims as well as perpetrators; take measures to prevent the criminalization and stigmatization of child victims of abuse.<sup>50</sup>

19. In 2004, CRC was concerned at the increasing incidence of sexual exploitation and abuse of children.<sup>51</sup> In 2008, an ILO Committee of Experts noted that most of the sexual offences provisions in the Penal Code refer to girls, and there do not appear to be any similar provisions protecting boys. The Committee requested the Government to take the necessary measures to secure the prohibition of the use, procuring or offering of both boys and girls under 18 years of age for prostitution.<sup>52</sup> In 2008, the HR Committee recommended that the State redouble its efforts to combat human trafficking and should ensure that no State actors are involved.<sup>53</sup>

20. CRC in 2004 noted with concern the information in the State's report that child labour was a serious problem.<sup>54</sup> In 2008, an ILO Committee of Experts further noted the Government's statement, that no programmes of action to eliminate the worst forms of child labour have been designed as yet and requested the Government, inter alia, to urgently design and adopt the necessary programmes of action.<sup>55</sup>

### **3. Administration of justice and the rule of law**

21. The HR Committee was concerned that the customary court system did not appear to function according to basic fair trial provisions, and noted the rule which forbids legal representation in customary courts. The Committee recommended that the State ensure that the customary law system and its courts function in a manner consistent with article 14 and general comment No. 32, paragraph 24, which lays down the basic requirements to be met for customary

courts handing down binding judgements recognized by the State, and in particular which allow legal representation in customary courts.<sup>56</sup>

22. The HR Committee welcomed the provision of free legal assistance in cases where capital punishment may be inflicted, but noted with concern the State's own admission that the quality of legal representation in such cases was unequal and could be improved. It also noted with concern that there was no provision for legal aid to indigent accused in other criminal cases. It welcomed the State's intention to carry out a study on establishing a legal aid system and recommended that Botswana should introduce a comprehensive criminal legal aid system for those who do not have sufficient means to pay for legal representation. in accordance with article 14, paragraph 3 (d) of the ICCPR.<sup>57</sup> Similar issues were raised by CERD, which was concerned about the reported difficulties experienced by poor people, many of whom belong to San/Basarwa groups and other non-Tswana tribes, in accessing common law courts, due in particular to high fees, the absence of legal aid in most cases, as well as difficulties in accessing adequate interpretation services.<sup>58</sup>

23. CERD noted with concern that the decrees by the President of Botswana declaring a non-citizen as a "prohibited migrant", could not be effectively appealed before a judicial body. CERD recommended to the State that any person declared as a "prohibited migrant" be granted an effective remedy before a judicial body.<sup>59</sup>

24. CRC remained concerned that the juvenile system was not compatible with the provisions and principles of the Convention and was especially concerned at the fact that the age of criminal responsibility, fixed at 8 years of age, was too low.<sup>60</sup> CRC recommended the age of criminal responsibility be raised to an internationally acceptable standard.<sup>61</sup>

#### **4. Right to privacy, marriage and family life**

25. In 2008, the HR Committee welcomed the State's intention to amend the Marriage Act to ensure that all marriages are registered. It remained concerned by the persistence of customary practices that were highly detrimental to women's rights, such as discrimination in the area of marriage and custody of children born outside of wedlock, early marriages and polygamy, and the continued practice of legal guardianship by men of unmarried women. The Committee recommended that the State ensure the full participation of women in the review of customary laws and practices, outlaw polygamy, and take effective steps to discourage the persistence of customary practices that were highly detrimental to women's rights.<sup>62</sup>

26. The HR Committee noted with concern that the State criminalizes same-sex sexual activities between consenting adults and recommended that the State repeal these provisions.<sup>63</sup>

#### **5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

27. On 19 November 2003, the Special Rapporteur on the right to freedom of opinion and expression<sup>64</sup> sent an urgent appeal to the Government regarding the reported suspension by the Ministry for Communications, Science and Technology on 12 November 2003 of the popular morning program "Masa-a-sele" ("Morning has broken"), reportedly because opposition parties used it to attack the ruling Botswana Democratic Party (BDP). The Special Rapporteur also indicated that he received information according to which the Minister for Communications, Science and Technology said that Botswana Television (BTV) would stop covering political parties, but that this order would not affect coverage of the President and the Vice-President because "they represent the nation in their positions". The Special Rapporteur did not receive

any reply to this communication. More recently, a 2008 United Nations Statistics Division source indicated a decrease in the proportion of seats held by women in the parliament ranging from 17 per cent in 2004 to 11.1 per cent in 2007.<sup>65</sup>

## **6. Right to social security and to an adequate standard of living**

28. The 2003-2007 the United Nations Development Assistance Framework (UNDAF) noted that, despite a sparse population distribution, Botswana has managed to put a health facility within a 15 km radius for 85 per cent of the rural population. An estimated 97 per cent of the population has access to safe drinking water within 2.5 kilometres of their homes.<sup>66</sup> CRC noted with appreciation the developments in the primary health care strategy, but it remained concerned at the regional disparities in the health service provisions as well as the still high maternal mortality rates.<sup>67</sup> CRC was also concerned at the high incidence of teenage pregnancies, the inadequate reproductive health services and at the lack of mental health services for adolescents.<sup>68</sup> CRC recommended that the State reduce regional disparities and lower maternal mortality rates by improving prenatal care services and providing training of birth attendants in healthy midwifery practices<sup>69</sup> and that it establish adequate health care services for adolescents.<sup>70</sup> In 2004, CRC shared the State's serious concern at the still exceedingly high prevalence rate of HIV/AIDS, especially among women in their child-bearing years.<sup>71</sup> A 2004 WHO report noted that life expectancy decreased from nearly 65 years in 1985-1990 to 40 years in 2000-2005.<sup>72</sup> While a 2006 UNAIDS report noted that declines in HIV prevalence among young people were reported,<sup>73</sup> a 2007 UNICEF report noted that one third of pregnant women aged 15-24 in Botswana were HIV-positive.<sup>74</sup>

## **7. Right to work and to just and favourable conditions of work**

29. In 2008, an ILO Committee of Experts recalled that the principle of equal remuneration for work of equal value is not reflected in the legislation of Botswana.<sup>75</sup>

## **8. Right to education and to participate in the cultural life of the community**

30. During his visit in 2005, the Special Rapporteur on the right to education noted that Botswana faces challenges in addressing the multilingual and intercultural nature of its society; the fact that many parts of the country were without school facilities; and that continuing traditional discrimination relatively increased girls' dropout rate at the secondary level, especially due to early pregnancies. The Special Rapporteur regretted the lack of a rights-based approach to education, which leads to uneven education indicators within the country. The absence of a rights-based approach to education resulted in education being considered a service granted by the Government and not a human right. This had contributed to the decision of the Government to reintroduce school fees at junior secondary level, where enrolment rates decrease and increased dropouts are registered. The Special Rapporteur called on the authorities to withdraw the measure as it represents a serious step backwards and would undermine the progress achieved in the field of education.<sup>76</sup> Similar concerns were raised by the CRC.<sup>77</sup>

31. CERD noted with concern the linguistic barriers in education for many children belonging to non-Tswana tribes.<sup>78</sup> CERD recommended that the State provide primary education in the main mother tongues of non-Tswana tribes, in particular in regions inhabited traditionally or in substantial numbers by persons belonging to non-Tswana tribes. It further recommended that the State consult with the concerned tribes in this regard.<sup>79</sup> The Special Rapporteur on the right to education also recommended that Botswana develop new approaches to education more responsive to the needs of nomadic populations.<sup>80</sup>



## 9. Minorities and indigenous peoples

32. In 2004 it was reported<sup>81</sup> that the Government intended to bring the standards of living of the Baswara up to the level of the rest of the country, and to avoid land-use conflicts in the Central Kalahari Game Reserve (CKGR). The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people communicated with the Government on this issue in 2003<sup>82</sup> and 2005.<sup>83</sup> Also in 2005, the Special Rapporteur in a joint urgent appeal with the Special Rapporteur on adequate housing, the Representative of the Secretary-General on the human rights of internally displaced persons<sup>84</sup> expressed concern over the deterioration of the situation of the Bushmen living within the CKGR and of those who have been relocated out of it over the last few years.

33. In April 2006, CERD noted with concern that CKGR residents were reportedly forcibly removed, through, in particular, such measures as the termination of basic and essential services inside the Reserve, the dismantling of existing infrastructures, the confiscation of livestock, harassment and ill-treatment of some residents by police and wildlife officers, as well as the prohibition of hunting and restrictions on freedom of movement inside the Reserve. CERD reiterated its recommendation to the State that it resume negotiations with the residents of the Reserve, including those who had been relocated, as well as NGOs, with a view to finding a solution acceptable to all. CERD recommended that the State should pay particular attention to the close cultural ties that bind the San/Basarwa to their ancestral land; protect the economic activities of the San/Basarwa that are an essential element of their culture, such as hunting and gathering practices, whether conducted by traditional or modern means; study all possible alternatives to relocation; and seek the prior free and informed consent of the persons and groups concerned.<sup>85</sup>

34. In November 2007 the Special Rapporteur on food and the Special Rapporteur on indigenous people<sup>86</sup> received information on alleged violations of the human rights of the Gana and Gwi indigenous communities (also known as “the San” or “the Bushmen”) in the CKGR. The Special Rapporteurs referred to the ruling of the High Court of Lobatse on 13 December 2006, which concluded that the San had been unlawfully deprived of their traditional lands in the Reserve and that the Government’s denial to allow the entry of former residents into CKGR, as well as their refusal to issue game licenses to remaining residents, was unlawful and unconstitutional. The Special Rapporteurs informed the Government that despite this court ruling, they continued to receive numerous communications indicating that the court’s decision was not being fully implemented by the authorities. Information received stated that the San recurrently received eviction threats as a result of the herds they introduced in the reserve for their traditional subsistence herding.

35. In its response of 21 December 2007 the Government denied that the entry into the reserve was refused to members of the indigenous communities. As to the alleged denial of access to water, the Government stated that it used to provide the residents before the relocations with water, but the Court ruled that the Government was not obliged to restore services. Therefore the services were terminated. According to the Government, although the decision of the Court declared both unlawful and unconstitutional the ceasing of issuance of the Special Game Licenses by the Government, this did not mean that the residents were automatically entitled to those licenses. Finally, the Government said that ill-treatment and torture were inconsistent with their law and practice and declared their non-awareness of the allegations of arrest and ill treatment of the members of the Gana and Gwi communities by wildlife officers. An investigation on the cases referred by the Special Rapporteurs would be instituted, the results of which would be communicated to the Special Rapporteurs. The Special Rapporteurs have not received any information on this matter since then.

36. In 2008, the HR Committee noted with concern reports that not all relocated persons would benefit from the High Court decision in *Roy Sesana et al vs Attorney-General*, and that the practical enjoyment of the right to return was conditional on providing identity documents prior to entering the CKGR, obtaining special game licences to hunt and that the State will not provide access to ground-water for such persons. The Committee recommended that the State should ensure that all persons who were relocated are granted the right to return to the CKGR.<sup>87</sup>

### **10. Migrants, refugees and asylum-seekers**

37. CERD expressed concern about alleged growing hostility against undocumented immigrants and that some undocumented immigrants had been ill-treated by police officers. CERD recommended, inter alia, that the State ensure that its competent authorities proceed to a prompt and impartial investigation into complaints of ill-treatment increase its efforts to provide adequate training in the field of human rights, including on the prohibition of racial discrimination, to its law enforcement personnel.<sup>88</sup> CERD was concerned that, in practice, asylum-seekers were automatically detained in prison-like conditions up to three to four years. CERD also recommended that the State recognize the right of asylum-seekers to appeal the decision denying them refugee status before a judicial body.<sup>89</sup> CERD also recommended to the State that it respect the right of refugees to an adequate standard of health by, inter alia, refraining from denying or limiting their access to preventive, curative and palliative health services, and that it grant access of refugees to the Anti-Retroviral (ARV) Therapy Programme and the Prevention of Mother-to-Child Transmission of HIV Programme.<sup>90</sup>

## **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

38. The HR Committee in 2008 noted with satisfaction the strong democratic culture of the State, as well as the establishing of universal basic education, and its considerable achievements in addressing the challenges posed by the HIV/AIDS pandemic.<sup>91</sup>

## **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

### **Specific recommendations for follow-up**

39. In 2006, CERD requested the State to provide, within one year, relevant information on measures taken in response to the Committee's recommendations related to: the discriminatory character of the Chieftainship Act and other laws; allegations that the residents of the Central Kalahari Game Reserve had been forcibly removed outside the Reserve; difficulties of children belonging to non-Tswana tribes to benefit from the educational curricula on account of linguistic barriers; and refugees without access to the ARV Therapy Programme and the Prevention of Mother-to-Child Transmission of HIV Programme including preventive, curative and palliative health services.<sup>92</sup> The follow-up response has been overdue since March 2007.

40. In 2008, the HR Committee requested the State party to provide, within one year, relevant information on the implementation of the Committee's recommendations related to: the precedence of constitutional law over customary laws and practices; retention of the death penalty; wide reservation to articles 7 and 12 of the ICCPR; and treatment of persons deprived of their liberty.<sup>93</sup> The follow-up response is due in March 2009.

41. Following his official country visit in 2005, the Special Rapporteur on the right to education recommended<sup>94</sup> to Botswana to adopt a rights-based approach to education by providing a constitutional guarantee to education; to withdraw the measure aiming at reintroducing school fees at junior secondary level; to analyse the factors that cause delays in the distribution of books and

adopt measures to guarantee timely delivery to all schools in the country; to establish and implement rationalized policies for the recruitment and training of teachers; to engage, as a matter of priority, in the training of teachers coming from the most remote areas; to provide the same facilities for all teachers wherever they are affected; to ensure that foreign and refugee children have the same access to education as nationals; to develop special projects and programmes for orphaned adolescents who are forced into work to support their families, ensuring their integration into school and the provision of support to their families; to elaborate and disseminate accessible versions of the chapter of the Education Act dealing with the rights of adolescents who are pregnant or raising children, as well as evaluate programmes of sex education and explore new approaches empowering adolescents to exercise responsibly their sexual and reproductive rights.

## V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

42. The 2003-2007 UNDAF noted that the overarching goal of United Nations assistance is articulated in the country's "Vision 2016: Towards Prosperity for All"<sup>95</sup>, in which Botswana has set itself the more ambitious target of eradicating absolute poverty by 2016.<sup>96</sup> UNODC provided information regarding their capacity-building and technical assistance programmes and activities, including in the area of countering terrorism, which was provided to Botswana.<sup>97</sup>

### Notes

<sup>1</sup> Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://untreaty.un.org/>.

<sup>2</sup> The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPD	Convention on the Protection of Persons with Disabilities
OP-CPD	Optional Protocol to Convention on the Protection of Persons with Disabilities
CED	Convention on the Protection of Persons from Enforced Disappearance

<sup>3</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>4</sup> 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

<sup>5</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Convention relative to the Treatment of Prisoners of War (Third Convention); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the

Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at [www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).

<sup>6</sup> International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>7</sup> CERD/C/BWA/CO/16, para 24.

<sup>8</sup> E/CN.4/2006/45/Add.1, para 76 (a).

<sup>9</sup> CCPR/C/BWA/CO/1, para 14.

<sup>10</sup> CRC/C/15/Add.242, para. 9.

<sup>11</sup> CCPR/C/BWA/CO/1, para 6.

<sup>12</sup> *Ibid.*, para. 10.

<sup>13</sup> *Ibid.*, para 12.

<sup>14</sup> CRC/C/15/Add.242, para. 11.

<sup>15</sup> *Ibid.*, para.16

<sup>16</sup> E/CN.4/2006/95/Add.5, para. 243.

<sup>17</sup> CCPR/C/BWA/CO/1, para 8.

<sup>18</sup> CERD/C/BWA/CO/16, para 21.

<sup>19</sup> UNODC, UN Anti-Corruption Toolkit, Vienna, 2004, p. 199.

<sup>20</sup> World Bank, World Development Report 2005, Washington DC, 2004, p. 42.

<sup>21</sup> CRC/C/15/Add.242, para. 4.

<sup>22</sup> *Ibid.*, para. 50.

<sup>23</sup> The following abbreviations have been used for this document:

CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
HR Committee	Human Rights Committee
CEDAW	Committee on the Elimination of Discrimination against Women
CAT	Committee against Torture
CRC	Committee on the Rights of the Child
CMW	Committee on the Protection of the Rights of All Migrant Workers and Their Families

<sup>24</sup> CERD/C/BWA/CO/16, para 3.

<sup>25</sup> E/CN.4/2006/45/Add.1

<sup>26</sup> *Ibid.*, para.1

<sup>27</sup> The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate holder.

<sup>28</sup> See (a) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (b) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (c) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (d) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (e) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (f) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the sent in July 2005; (g) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (h) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (i) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (j) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (k) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/7/8), questionnaire on assistance and rehabilitation programmes for child victims of sexual

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exploitation sent in July 2007; (l) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

<sup>29</sup> E/CN.4/2006/95 and Add.5, para. 231.

<sup>30</sup> CERD/C/BWA/CO/16, para 22.

<sup>31</sup> 2007 OHCHR Report of Activities and Results, p. 73.

<sup>32</sup> 2004 OHCHR Annual Report, p. 110.

<sup>33</sup> Ibid., p. 111.

<sup>34</sup> 2005 OHCHR Annual Report, p.127.

<sup>35</sup> 2003 OHCHR Annual Report, pp.11, 27 and 29.

<sup>36</sup> CCPR/C/BWA/CO/1, para 9.

<sup>37</sup> CERD/C/BWA/CO/16, para 8.

<sup>38</sup> Ibid.,para 7.

<sup>39</sup> Ibid.,para 9.

<sup>40</sup> Ibid., para 10.

<sup>41</sup> CCPR/C/BWA/CO/1, para 24.

<sup>42</sup> CRC/C/15/Add.242, para. 27.

<sup>43</sup> CCPR/C/BWA/CO/1, para 13.

<sup>44</sup> Ibid., para 15.

<sup>45</sup> Ibid., para 17.

<sup>46</sup> Ibid., para 19.

<sup>47</sup> CRC/C/15/Add.242, para. 36.

<sup>48</sup> Ibid., para. 37.

<sup>49</sup> Ibid., para. 44.

<sup>50</sup> Ibid., para. 45.

<sup>51</sup> Ibid., para. 58.

<sup>52</sup> ILO Committee of Experts on the Application of Convention and Recommendations, document . 092008BWA182, para. 2.

<sup>53</sup> CCPR/C/BWA/CO/1, para 16.

<sup>54</sup> CRC/C/15/Add.242, para. 56.

<sup>55</sup> ILO Committee of Experts on the Application of Convention and Recommendations, document 092008BWA182, para. 8.

<sup>56</sup> CCPR/C/BWA/CO/1, para 21.

<sup>57</sup> Ibid.,para 20.

<sup>58</sup> CERD/C/BWA/CO/16, para 14.

<sup>59</sup> Ibid., para 17.

<sup>60</sup> CRC/C/15/Add.242, para. 60.

<sup>61</sup> Ibid., para. 61.

<sup>62</sup> CCPR/C/BWA/CO/1, para 11.

<sup>63</sup> Ibid., para 22.

<sup>64</sup> E/CN.4/2004/62/Add.1, paras 103 to 106

<sup>65</sup> United Nations Statistics Division coordinated data and analyses, available at <http://mdgs.un.org/unsd/mdg/Data.aspx>.

<sup>66</sup> 2003-2007 UNDAF for Botswana, p. 6, available at [http://www.undg.org/archive\\_docs/821-Botswana\\_UNDAF\\_2003-2007\\_-\\_Botswana\\_2003-2007.pdf](http://www.undg.org/archive_docs/821-Botswana_UNDAF_2003-2007_-_Botswana_2003-2007.pdf).

<sup>67</sup> CRC/C/15/Add.242, para. 48.

<sup>68</sup> Ibid., para. 52.

<sup>69</sup> Ibid., para. 49.

<sup>70</sup> Ibid., para. 53.

<sup>71</sup> Ibid., para. 50.

<sup>72</sup> WHO, The World Health Report 2004, Geneva, 2004, p. 6.

<sup>73</sup> UNAIDS, Annual Report 2006, Geneva, 2007, p. 9.

<sup>74</sup> UNICEF, State of the World's Children 2008, New York, 2007, p. 81.

<sup>75</sup> ILO Committee of Experts on the Application of Convention and Recommendations, document 092008BWA100, para. 1.

<sup>76</sup> See E/CN.4/2006/45/Add.1.

<sup>77</sup> CRC/C/15/Add.242, para. 54.

<sup>78</sup> CERD/C/BWA/CO/16, para 15.

<sup>79</sup> Ibid., para 15.

<sup>80</sup> E/CN.4/2006/45/Add.1, para. 76 (m).

<sup>81</sup> E/CN.4/2004/80/Add.1, paras. 75-76

<sup>82</sup> Ibid., para 75-76

<sup>83</sup> E/CN.4/2006/78/Add.1, paras. 17-18

<sup>84</sup> E/CN.4/2006/41/Add.1, paras 7-8.

<sup>85</sup> CERD/C/BWA/CO/16, para 12.

<sup>86</sup> A/HRC/7/5/Add.1, paras 13-14

<sup>87</sup> CCPR/C/BWA/CO/1, para 23.

<sup>88</sup> CERD/C/BWA/CO/16, para 20.

<sup>89</sup> Ibid., para 18.

<sup>90</sup> Ibid., para 19.

<sup>91</sup> CCPR/C/BWA/CO/1, para 4.

<sup>92</sup> CERD/C/BWA/CO/16, para 27.

<sup>93</sup> CCPR/C/BWA/CO/1, para 26.

<sup>94</sup> E/CN.4/2006/45/Add.1, para 76

<sup>95</sup> See 2003-2007 UNDAF for Botswana, p. 3([www.undg.org/archive\\_docs/821-Botswana\\_UNDAF\\_\\_2003-2007\\_-\\_Botswana\\_2003-2007.pdf](http://www.undg.org/archive_docs/821-Botswana_UNDAF__2003-2007_-_Botswana_2003-2007.pdf)). The signatories to the UNDAF are: UNDP, WHO, UNICEF, UNFPA, UNHCR, UNAIDS and the UN Resident Coordinator Office.

<sup>96</sup> Ibid., p. 9.

<sup>97</sup> UNODC submission to the UPR on Botswana, p. 1.

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