



REPUBLIC OF BOTSWANA

**COMBINED 1ST, 2ND, 3RD, 4TH, 5TH 6TH AND 7TH REPORT SUBMITTED BY THE REPUBLIC OF
BOTSWANA TO THE AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE
OF THE CHILD ON THE IMPLEMENTATION OF THE AFRICAN CHARTER ON THE RIGHTS
AND WELFARE OF THE CHILD
(2003 -2021)**

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ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
ART	Antiretroviral therapy
BAIS	Botswana AIDS Impact Survey
BCO	(UNICEF) Botswana Country Office
BGCSE	Botswana General Certificate in Secondary Education
BISA	Botswana Integrated Sports Association
CSO	Central Statistics Office
CSS	Community Support Strategy
DPE	Department of Primary Education
DSE	Department of Secondary Education
DSS	Department of Social Services
EDS	Educational Development Services
ETSSP	Education Training Sector Strategic Plan
HRDP	Human Resources Development Plan
IHSP	Integrated Health Management Programme
JCMS	Judicial Case Management System
LEO	Legal Education Orientation
MDAs	(State) Ministries, Departments and Agencies
MIS	Multiple Indicator Survey
NASA	National AIDS Spending Assessment
NPA	National Programme of Action for Children
OBE	Outcome Based Education
OVC	Orphans and Vulnerable Children
PMTCT	Prevention of Mother to Child Transmission
RNPE	Revised National Policy on Education
STPA	Short-Term Plan of Action on the Care of Orphans
TWG	Technical Working Group
UAC	Unaccompanied Children
VMMC	Voluntary Medical Male Circumcision

PART ONE

COMMON CORE REPORT

1.0 GENERAL INFORMATION ABOUT THE REPORTING STATE PARTY

1.1 General Background on Country Profile and Socio Economic Overview

1. The Republic of Botswana (RoB) is a landlocked country situated in Southern Africa and covers a surface area of 581,730sq km. The results of the latest National Population and Housing Census (2011), estimates the total population at 2,024,904, an increase of 20.5% from 1,680,683 registered in the 2001 Census. The population comprises of 1,035,833 females and 989,071 males.

2. Botswana is a multi-party democracy which holds free and fair elections every five (5) years the last of which were held in 2019. Policy, accountability and governance institutions are fully fledged and functioning. The branches of government in Botswana comprise the National Assembly, the Executive, the Judiciary and the House of Chiefs (*Ntlo ya Dikgosi*). Local Government comprises 16 Administrative Districts and 16 District Councils in which district, town and city councillors are elected.

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

4. There is some convergence of ideas between government and the private sector economists, that the Botswana economy will not experience the growth rates recorded in the past. The economic challenges experienced by the country over the years, have among other measures resulted in government formulating a cost recovery policy, Economic Recovery and Transformation Plan (ERTP), post COVID, the introduction of value-added tax and eventual increase in 2021 as well as devaluing the national currency. Government Ministries are also expected to abolish 50 percent of vacant positions, in value, as of 1st April, 2021 to reduce their wage bill (Budget Speech 2021). The immediate impact of such reforms has been adverse particularly on the poorest sections of the society who have been hardest hit by inflation. Women, particularly female-headed households experience greater levels of poverty and have a high dependency ratio (BIDPA 1997).

Poverty remains a significant and persistent challenge in Botswana. However, preliminary results of the Botswana Core Welfare Indicators (Poverty) Survey of 2009/10 indicate that the number of individuals living below the Botswana Poverty Datum Line declined from 30.6% of the population in 2002/03 to 20.7% in 2009/10 (Budget Speech 2012).

5.0 Constitutional Framework

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

6.0 Legal, Political and Administrative Measures adopted to give effect to ACRWC

6 In order to consolidate national efforts to fully meet the requirements of the African Charter on the Rights and Welfare of the Child, the Government of Botswana enacted the Children's Act in 2009 as an attempt to domesticate the Charter. The Children's Act (2009) is an "An Act to make provision for the promotion and protection of the rights of the child; for the promotion of the physical, emotional, intellectual and social development and general well-being of children; for the protection and care of children; for the establishment of structures to provide for the care, support, protection and rehabilitation of children; and for matters connected therewith. Its date of Commencement is 19th June 2009.

1.0 INTRODUCTION

1.1 Background

1. The State Party acceded to the African Charter on the Rights and Welfare of the Child (ACRWC) in 2001. The Republic of Botswana has also ratified a number of international and regional human rights instruments touching on the rights of the child.

2. Under international human rights law, the State Party is obliged to submit periodic progress/implementation reports as required under the said international human rights instruments. In respect of the ACRWC, the State Party is obliged under Article 43(1), to submit an initial report within two years of the entry into force of the Charter and thereafter every three years. In compliance with the foregoing state reporting obligation, the State Party would like to submit its combined Initial State Party Report along with the 2nd, 3rd, 4th 5th, 6th and 7th reports to the African Committee of Experts on the Rights and Welfare of the Child.¹

3. This report contains two major parts: Part One sets out the Common Core Report, and Part Two provides information on the State Party's measures undertaken to implement the treaty-specific provisions of the Charter.

1.2 Preparation of the Report

4. The Ministry of Local Government and Rural Development was responsible for coordinating an Inter-Ministerial effort towards the preparation of this report. The report was prepared through extensive consultations among Ministries and organizations that serve children in the different arenas. In the preparation of this report, both qualitative and quantitative methods of data collection were employed to inform the drafting process. The Ministry worked closely with a Technical Working Group (TWG), which comprised of members from all key and line MDAs² and NSA's involved in the implementation of the ACRWC. The TWG examined available relevant official reports (prepared by agencies under the State Party as well as recognized, reputable non-state actors, i.e. NSA's) to provide a set of complementary information on the various draft reports. This also included reviewing all relevant legislation, policies, judicial decisions and administrative actions concerning the implementation of the ACRWC and other related international human rights treaties. The TWG also reviewed the existing structural operating systems within which the State Party implements the Charter with a view to coming out with supplementary information on how to improve issues of institutional set ups and procedures to enhance smooth and organized coordination of child rights-related matters geared towards the implementation of the Charter.

5. In this regard, primary data was obtained from amongst TWG members, MDAs, UN Agencies, children and CSOs as primary sources of information and was used in making relevant analyses, observations and conclusions in the preparation of the report. Paper presentations and group or target-oriented discussions were also made at various consultative workshops and seminars involving TWG members, MDAs, UN Agencies, children and CSOs. In addition to obtaining both qualitative information and quantitative data from these respondents, the TWG also reviewed relevant existing literature, including relevant treaty-bodies³,

² State Ministries, Departments and Agencies (MDAs).

³ It should be noted that in the period under report the State Party has reported to the Committee on the Elimination of Discrimination against Women. See particularly Committee on the Elimination of Discrimination against Women, *Concluding*

media coverage reports and the relevant international and municipal laws/regulations relating to the implementation of the ACRWC and other relevant international child rights instruments.

6. After data collection and collation were completed, the TWG prepared several draft reports that were disseminated to all relevant stakeholders, including representatives of children and UN Agencies under the auspices of UNICEF, who provided their respective inputs. The inputs from stakeholders further informed the refinery of the draft reports. At the end of the consultative process stakeholders met to validate the report and forwarded it to the Inter-Ministerial Committee on Treaties, Conventions and Protocols for their technical advice before the final report was transmitted to the Ministry responsible for Foreign Affairs for onward submission to the Committee.

1.3 Landmark Developments in the Period under Review

7. In the period under report, the State Party has witnessed some landmark developments that have a bearing on children since accession to the Charter. These include:

- i) The enactment of the Children's Act in 2009, the Domestic Violence Act in 2008, development of a National Plan of Action on Orphans and Vulnerable Children, Review of the Education Act;
- ii) Conducting four General Elections;
- iii) The Establishment of a Ministry of Youth Empowerment, Sports and Culture Development; and
- iv) The upgrading of the Division of Social Welfare to a Department of Social Protection with increased responsibility and more resources for better coordination of matters pertaining to the welfare of vulnerable members including orphans and vulnerable children.

In effect, these developments have, in one way or another, impacted on the implementation of the Charter in the State Party.

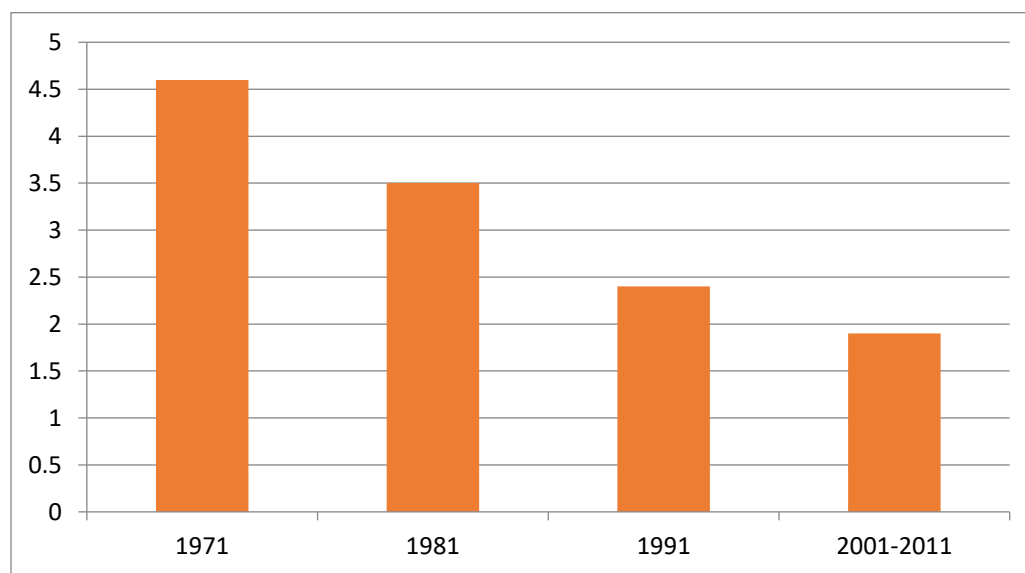
2.0 GENERAL INFORMATION ABOUT THE STATE PARTY

2.1 Population

8. The last population census was held in 2011. It yielded a population count of 2,038,228 compared to 1,680 863 in 2001. This is evidence to the fact that Botswana's population continues to increase at diminishing growth rates as illustrated in Figure A. The annual population growth rates for decennial censuses held from 1971 to 2001 were 4.6, 3.5 and 2.4 respectively. The annual population growth between 2001 and 2011 was 1.9 percent.

Observations of the Committee on the Elimination of Discrimination against Women: Botswana (45th Session) (18 January – 5 February 2010) (CEDAW/C/BOT/CO/3); and Government of the Republic of Botswana, *Botswana Report on the Implementation of the Convention on Elimination of all forms of Discrimination against Women – Combined Initial, First, Second and Third* (Gaborone: Government of Botswana, 1 June 2008). The State Party has also reported to the UN Human Rights Council under the Universal Periodic Review (UPR) mechanism. See particularly United Nations, *National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1: Botswana* (Geneva: Human Rights Council Working Group on the Universal Periodic Review, 3rd Session, 1-15 December 2008).

Figure A: Botswana Decennial Censuses 1971 – 2001 Declining Growth Rates



9. A close analysis of the results of the census illustrate that it has taken 28 years for Botswana’s population to increase by 1 million. The demographic indicators taken from a comparison of the 1971, 1981, 1991 and 2001 censuses show a declining fertility rate and life expectancy, and increasing mortality rate (Figure 1). Crude death rate rose between 1981 and 1991 mainly due to the HIV/AIDS pandemic. Life expectancy at birth also decreased from 65.3 years in 1991 to 55.7 years in 2001. Regarding the fertility rate, there has been a significant decline in all fertility indicators. Indeed, factors such as declining fertility rates, increased women participation in economic activities, increased literacy rates, access to better health care such as family planning measures have had a profound impact on slow population growth.

10. Overall, population density increased from 3 persons per square kilometre in 2001 to 3.5 persons per square kilometre in 2011. Notable is the increase in densities in villages within close proximity to cities, possibly due to peri-urban migration from the cities and towns. The increase in population density in peripheral villages may be attributed to the high cost of living in the cities.

2.2 Economic Profile

11. Today, the State Party is one of the world’s leading diamond producers and the diamond sector continues to be the mainstay of the economy. It accounts for about one-fifth of Gross Domestic Product (GDP), one third of Government revenue, and about 80% of export earnings. In 2019, Botswana produced 25% of the global rough diamond output, by value with exports of \$3.5 billion. The growth in diamond exports has enabled Botswana to accumulate foreign exchange reserves equal to around ten months of import cover. After diamonds, tourism has been the second most important export earner in recent years

12. The State Party’s economy contracted by 8.5% in 2020 due to the impact of the COVID-19 pandemic. Over the prior five years, (2015 – 2019), growth averaged 2.5% a year. Post COVID, the economy is expected to recover strongly in 2021 and experience steady growth of around 4% a year in 2022 – 23. The opening of new copper mines will support growth over this period. Looking further ahead, growth prospects depend on the speed of recovery of the crucial tourism sector and, more generally, how quickly

exports can be diversified. This requires the competitive production of goods and services that can be sold to the regional and global economies, thereby creating much needed employment.

13. Programmes for an effective labour market are underway, prompted by the persistent high unemployment rate which was 24.5% in the fourth quarter of 2020. High unemployment is mainly due to a mismatch between labour supply, determined by the education system and the qualifications obtained, needs of employers and labour market demand. in the qualifications obtained and the labour-market demand. Within the context of the National Human Resource Development Strategy initiated in 2010, a comprehensive Human Resource Development Plan (HRDP) underpinned by a sector-wide approach is underway. This will be supported by the Education and Training Sector Strategic Plan (ETSSP), which aims to rebalance the provision of resources across the education system, and support the development of multiple pathways at secondary school level. A National Employment Policy (NEP) has recently been developed and proposes to improve labour supply and the functioning of the labour market.

3.0 THE GENERAL LEGAL FRAMEWORK FOR PROMOTION AND PROTECTION OF HUMAN RIGHTS

3.1 Constitutional Framework

28. The State Party's Constitution provides the bedrock for the promotion and protection of human rights. Chapter II of the Constitution of Botswana entrenches a Bill of Rights which protects the fundamental rights and freedoms of the individual. Section 57 of the Constitution provides that the legislature consists of the President and the National Assembly. The National Assembly is made up of the Speaker, fifty-seven (57) directly elected members and six (6) Specially Elected members. The Attorney General is an ex-officio member of the National Assembly. In 2009 2014 and 2019, Botswana successfully held its tenth, eleventh and twelfth general elections, a woman was elected to the position of Speaker of the National Assembly in 2009, for the first time in the country's history.

3.2 Legal and Institutional Framework

29. In addition to the Constitution, the State Party has ensured that its legislative, policy and institutional frameworks effectively promote and protect human rights in its jurisdiction. In particular, in 2010, the Government of Botswana implemented a Judicial Case Management System (JCMS), with a view to better manage case flow and achieve a speedy resolution of cases. The JCMS encourages parties to a dispute to consider resolving issues outside court, and shortening the amount of time normally required for disposing of a matter. In 2011, the Legal Aid Botswana pilot project was introduced as an initiative aimed at designing a legal aid programme to promote greater access to justice and utilisation of legal services by citizens. It began as a project under the National Governance Programme, which is a partnership between the Government of Botswana and United Nations Development Programme (UNDP). Legal Aid Botswana is now a fully-fledged institution established through an Act of Parliament passed in 2013.

30. Government continues to improve its institutional frameworks geared towards ensuring systematic follow up and implementation of recommendations from treaty bodies.

31. The Inter Ministerial Committee on Treaties, Conventions and Protocols (IMCTCP) which was established in 2002 continues to ensure Botswana's compliance to international agreements, including reporting and follow-up on recommendations from treaty bodies.

32. In addition, the Human Rights Unit (HRU) which was established in August 2019 under The Ministry for Presidential Affairs, Governance and Public Administration (MOPAGPA), coordinates State Party reporting and follows up the obligations and recommendations made by regional, continental and international systems to ensure implementation.

33. The Government, through the support of the United National Development Programme (UNDP) and the Office of the High Commissioner for Human Rights (OHCHR), is in the process of establishing a National Human Rights Recommendations Tracking Database (NRTD). This is an electronic tool aimed at facilitating the recording, tracking and reporting on the implementation of human rights recommendations issued by International Treaty Mechanisms.

34. The existing Agreement Database which contains all Agreements which the country is party to, is currently being revamped to improve its functionality.

35. Government is currently working on the development of a Comprehensive Human Rights Strategy and National Action Plan (CHRSNAP). The CHRSNAP is expected to be completed in December 2021.

4.0 NON-DISCRIMINATION AND EQUALITY

36. The State Party has undertaken several measures including the enactment of the Children's Act, which expressly prohibits discrimination of any kind against children.⁴ In a number of cases, the Court of Appeal and the High Court of Botswana have also interpreted the constitutional provisions so as to align them with the non-discrimination provisions in international human rights treaties, particularly the Convention. In particular, in *GK v AG & Others*⁵; *Mfundisi v Kabelo*⁶; *Macheme v Ndlovu*⁷; both the High Court and the Court of Appeal upheld the view taken in *Attorney General v Dow*⁸ in broadening and updating the principle of non-discrimination from the narrow one in the Constitution so as to make the Constitution relevant and consistent with international human rights law.

⁴ See particularly Section 7(a) of the Children's Act.

⁵ MAHGB-000291-14.

⁶ 2003 (2) BLR 129 (HC).

⁷ CACLB-035/08 [2009] BWCA 49.

⁸ 1992 BLR.

PART TWO

TREATY-SPECIFIC REPORT

1.0 Obligation of State Parties

(art. 1 of the Charter)

1. In the period under report, the State Party has undertaken several policy, legislative and administrative measures all of which were aimed at, *inter alia*, fully implementing the Charter on the Rights and Welfare of the Child.

1.1 Legislative Measures

(a) Adoption of the Children's Act 2009 to Domesticate the Charter

2. In 2009 the State Party enacted the Children's Act (2009)⁹, which effectively domesticates the ACRWC and grants children born in Botswana, irrespective of the nationality of their parents, a detailed and comprehensive set of human rights. In particular, the Act grants children, in unambiguous language, two sets of rights from which many others traditionally flow; the right to be registered at birth and the right to nationality. There remains a challenge relating to the discipline of children in general and punishment of children in conflict with the law, the details of which are discussed hereunder.

(b) Amendments Made to Child-related Laws

3. The Marriage Act was amended in 2001; and has raised the age of marriage to 21 years for both girls and boys. The amendment also set the age of marriage at 18 years and provides for parental or guardian's consent for marriages of persons between 18 and 21 years. The amendment further makes the registration of Customary, Muslim, Hindu and other religious marriages compulsory. Although the substantive provisions of the Act do not apply to customary law and religious marriages, from a practical point though, while most marriages in Botswana are conducted by employing both customary and civil law processes, the ultimate regime governing such marriages is the Marriage Act.

4. The Education (Primary Schools) Regulations provide for the readmission of students who had dropped out of school due to pregnancy after being declared fit by a Medical Practitioner.

5. The Affiliations Proceedings Act of 1999 [Cap. 28:02] was reviewed to ensure that a person other than the mother can institute legal proceedings under the Act. It also made it possible for legal action to be brought against the mother and extended the time limit within which an action can be instituted.

6. The Public Health (Prevention of Immunizable Childhood Diseases) Regulations¹⁰ were enacted in 2005 to make it illegal for any parent to refuse to immunise their child against immunizable childhood diseases. This was prompted by the refusal by some religious groups to immunize their children due to their beliefs.

7. The National Registration Act [Cap. 01:02] has been amended by Act No 11 of 2017 to allow the Registrar to exempt any person who has not obtained a national identity card within the prescribed time. The

⁹ Act No. 8 of 2009. This law has repealed and replaced the Children's Act (1981) with a view to harmonizing it with the provisions of the Convention.

¹⁰ Statutory Instrument 45, 2005.

Act required that children who have attained age 16 years and have not yet obtained their identity card (Omang) be liable to charges. Section 19(b) stipulates the maximum amount chargeable is BWP500.00 (US \$83.00) or 6 months' imprisonment or both a fine and imprisonment.

8. The Domestic Violence Act was enacted in 2008 to make provision for the prevention and prosecution of abuse against women and children.

9. Another positive development in legislation has been the amendment of the Penal Code in 2018. The amendment aligns the provisions of the Penal Code with the Children's Act by increasing the age of consent from sixteen (16) years to eighteen (18) years, in line with the Charter.

10. Criminal Procedure and Evidence Act

11. The Anti-Human Trafficking Act came into effect on the 27th August 2014 and since then, Botswana has made great strides in preventing, suppressing and combating trafficking in persons. The Act, was amended in 2018 to, among other things, criminalise smuggling and introduce new definitions to comply with the anti-money laundering and counter-terrorism best practices. An Anti-Human Trafficking National Action Plan (2018-2022) has been developed to facilitate coordinated implementation of the Act and to define the roles of different actors.

12. Furthermore, in 2014 Cabinet approved the amendment of the Ombudsman Act [CAP 02:12] to confer the human rights mandate on the Office of the Ombudsman. The Ombudsman Bill was subsequently passed into law in November 2021.

13. In order to ensure further protection of the most vulnerable groups in Botswana and their special circumstances from sexual abuse and exploitation, the Sexual Offenders Registry Act has been enacted. The law consolidates all sexual offences, provides for stiffer penalties, establishes a Sex Offenders Register and prohibits sex offenders from directly working and interacting with children and other vulnerable people. In addition, all laws in conflict with the Children's Act (2009) are currently being reviewed with a view to harmonizing them with this law.

14. The State Party has further ensured that whatever the rule of Customary Law that could possibly undermine the rights of children as contained in the Charter, such rule has no force in law because:

- (a) the High Court, as the upper guardian of all minors, has the power to strike down such a rule; (b) the Children's Act (2009) has created a comprehensive Bill of Rights for Children;
- (c) in the event of conflict between the Children's Act and any other rule of law, the Children's Act applies;
- (d) both the Customary Law Act and the Customary Courts Act¹¹ specifically provide that: "in any case relating to the custody of the children, the welfare of the child concerned shall be the paramount consideration irrespective of which law or principle is applied"; and
- (e) the Customary Courts Act specifically defines "customary law" as law that is "is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice and f) submission to the jurisdiction of the Customary Court is elective".

15. The result is that there is no need to review or seek to amend rules of customary law since their application is limited as indicated above.

¹¹ Customary Court Act Cap 16:01 Section 2 and Customary Courts Act Cap 04:05, Section 2

16. **The Position of Common Law:** With the clear language of the Children’s Act (2009) no rule of common law that in any way erodes the bill of rights as contained in the Children’s Act of 2009 is to have any legal effect.

17. In conclusion, Botswana has, since the middle nineties, embarked on a systematic review and reform of its laws and policies with a view to ‘bringing human rights home.’ Since children live in a gendered environment, an important part of promoting the human rights of children has been the promotion of gender equality in general and the human rights of women in particular.

1.2 Policy and Administrative Measures

(a) Withdrawal of Reservation on Article 2

18. Having enacted the Children’s Act in 2009 that brings its definition of a child in line with that of the Charter, the State Party is now working towards lifting its reservation to Article 2 because there remains no legal impediment for this step. Currently, the Ministry of Local Government and Rural Development is working with Attorney General’s Chambers to lift the reservation by end of September 2021.

(b) Realisation of Vision 2036

19. Botswana has adopted and promoted a set of values called “*Vision 2036*” which values have a bearing on the enjoyment of human rights. There has been a nation-wide drive to promote Vision 2036 and children have been specifically targeted.

(c) Monitoring the Implementation of the Charter

20. **The Ministry of Local Government & Rural Development; Department of Social Protection:** the Ministry of Local Government through the Department of Social Protection (DSP) holds the mandate for Child Welfare and Children’s Rights. The Ministry coordinates, formulates, and reviews social policies, laws and programmes for the nation with emphasis on the vulnerable groups of the society, among them, children, women and the poor. The other services like promotion of child survival such as Immunisation, and Primary Education and Secondary Education are provided by Ministry of Health and Wellness and Ministry of Basic Education respectively.

21. In order to put emphasis on the promotion and protection of human rights at the highest level, a Human Rights Unit has been established within the Office of the President.

22. **Collaboration with Civil Society:** Recognising the important role played by non-governmental organisations in development and service delivery, the State Party funds or subsidises some non-governmental organisations as provided for under the Government’s *Policy Guidelines for Financial Support to Non-Governmental Organisations*. The Government also continuously builds the capacity of the civil society organisation through training on various issues affecting the wellbeing of children. Civil Society organisations involved in the care of children are actively participating in the development, review of policies, laws and programmes for children.

23. The need to coordinate children’s issues is crucial in facilitating inter-sectoral partnerships towards realizing children’s rights. The Children’s Act has already set ground for this by providing for the establishment of the National Children’s Council (NCC) whose mandate is to: –

(a) coordinate, support monitor and ensure the implementation of sectoral Ministries’ activities relating to children;

(b) guide sectoral Ministries’ interventions as they relate to or impact on children;

- (c) advocate for a child-centred approach to legislation, policies, strategies and programmes; and
- (d) advocate for a substantive share of national resources to be allocated to children related initiatives and activities.

24. The NCC, however, in its current form and character, has not been able to effectively deliver on its assigned mandate of coordination and provision of oversight at national level. It, therefore, needs to be adequately capacitated to do so. In recognition of the need for a dedicated annual budget, and as clearly stipulated in the Children's Act, for the Council's funds to be sourced from the consolidated budget, the Council was allocated a vote within the Department of Social Protection with effect from the 2019/20 Financial Year and subsequently allocated a budget of BWP 6,175,687.98 and BWP 3,030-,390 for the 2019/20 and 2020/21 Financial Years respectively. These funds under the allocated vote will cater for, amongst other things, putting up a functional Secretariat that will have adequate staff, equipment and other resources, as well as cater for programme and administration costs of a fully functional Council.

25. **The National Plan of Action for OVC (NPA – OVC, 2006-2016):** The Plan was informed by the findings from the Situational Analysis on OVC as well as reviews and lessons learnt from the implementation of the Short Term Plan of Action for Orphans (1999 – 2001). It serves as a national multi-sectoral and multi-level response to the challenges faced by OVC and facilitates decentralised planning by districts, villages and sectoral actors. The plan is still in use while a Policy for OVC is being developed as informed by the findings of another Situational Analysis of OVC in 2019.

26. **The Children's Consultative Forum:** The *Children's Act* has established a Children's Consultative Forum, which is advisory to the National Children's Council. Membership to the Forum includes ten children representatives from each district in the State Party. The Forum is fully functional and serves as a liaison structure between child representatives, service providers and policy makers

27. **The Village Child Protection Committees:** At the community level, the Village Child Protection Committees, established by the Children's Act, have the mandate of educating communities on child neglect, ill-treatment, exploitation or other abuse of children and the laws and conventions governing them, such as the *Children's Act*, CRC and ACRWC.

(d) Education, Information and Training

28. Human Rights Education has been incorporated in the school curricula, at pre-school, primary and secondary school levels.

29. The State Party has also disseminated the ACRWC through the *Lentswe La Bana* Newsletter, which was a quarterly Children's Newsletter with nationwide circulation. This newsletter was distributed to all schools through the Ministry of Basic Education and to some lead non-governmental organisations. A total of 10, 000 copies of the newsletter were printed and disseminated to children in schools every year from 2015 to 2017. The dissemination was done through Peer Approach to Counselling by Teens (PACT) clubs within the schools. Furthermore, efforts have been made to disseminate information on the ACRWC and child rights through various ways such as the Ministry of Local Government and Rural Development Batho Pele TV and Radio program as well as Talkback TV program by Ministry of Basic Education.

30. Orientation sessions for Parliamentary Committees and Ntlo ya Dikgosi (House of Chiefs) have been initiated to sensitise them on the African Charter on the Rights and Welfare of the Child (ACRWC) and CRC.

31. Communities are also sensitised through regular public forums on the ACRWC and other child protection frameworks and issues. Training of professional groups working for and with children is held

regularly. In 2011 and 2012, a Training of Trainers Manual for pre and in-service police officers on juvenile justice, child friendly process and procedures was used to train 200 pre-service police officers and 20 in-services police officers.

32. The Ministry of Local Government & Rural Development spearheads the commemoration of the Day of the African Child every year and holds post commemoration events at which information on the ACRWC is passed on to a wide audience, particularly the public.

33. The process of preparing this combined 1st, 2nd, 3rd, 4th, 5th, 6th and 7th reports was participatory, involving NGOs, all relevant Ministries and Development partners. The report will be widely distributed as soon as it is submitted to the Committee. This is aimed at informing members of the public about the achievements so far made and challenges faced in the implementation of the Charter by the State Party.

1.3 Independent Human Rights Monitoring

34. There is no national human rights institution in Botswana. However, the State Party is at an advanced stage of establishing one. Instead of creating a new institution with exclusive mandate to deal with human rights, Government opted for the option to expand the mandate of the Office of the Ombudsman to promote and protect human rights. Hybrid NHRIs are not uncommon. Some African countries such as Ghana, Malawi, Tanzania and Namibia have offices of the Ombudsman performing a dual role and have proven to be effective.

35. Government's decision to confer a human rights mandate on the Office of the Ombudsman was that the office handled human rights complaints, although at a low scale, and without being endowed with an express human rights mandate. To that end, the Ombudsman Bill which seeks to confer an express human rights mandate on the Office of the Ombudsman was debated in Parliament during the July-August 2021 law making session and subsequently passed into law in November 2021.

36. The State Party has also extended an open invitation for Special Rapporteurs of the United Nations Human Rights Council and has also hosted human rights experts from the African Union to monitor the Human Rights situation in the country.

1.4 Data Collection

(a) General Sources of Data

37. Statistics Botswana has a comprehensive schedule of households' surveys, which routinely collects information on, *inter alia*, children's health, education, and other social indicators. These surveys include:

- (a) Census conducted every 10 years;
- (b) Demographic Survey;
- (c) Labour Force Survey;
- (d) Household Income and Expenditure Survey (HIES);
- (e) Botswana Family Health Survey;
- (f) Multiple Indicator Survey; and
- (g) Botswana AIDS Impact Survey (BAIS).

(b) Child-Specific Sources of Data

38. The State Party has continued to make improvements in collecting information on children's issues. This has resulted in the gathering and dissemination of important information on child rights issues, including the fact that in 2004 the BAIS began collecting HIV prevalence rates among children aged 2.5 months up to 18years. The 2005/6 Labour Force survey included a child labor module for the first time. Major national programs continue to strengthen their data collection systems to collect information on children.

39. Efforts are underway to collect information on Child Poverty while Program routine monitoring systems continue to be improved to collect information on children. Currently, under development are national social protection indicators that will assist in the effective monitoring of Children's welfare.

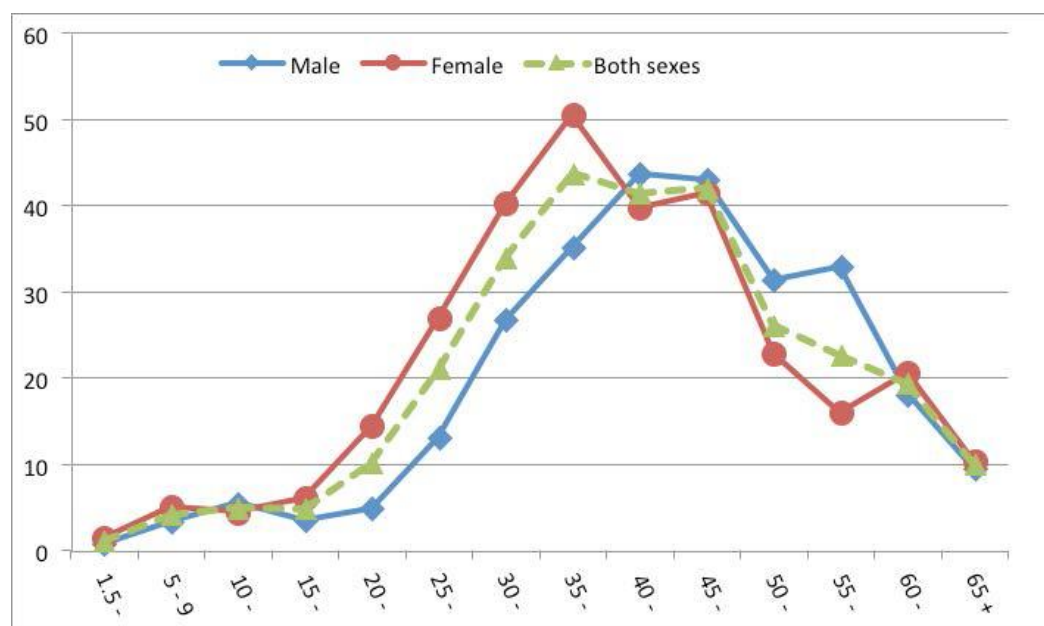
1.5 Challenges in Implementing the General Measures of Implementation

(a) The Prevalence of HIV/AIDS

40. HIV/AIDS was and continues to be a major health and social problem with significant financial and other resource implications in the late nineties and early 2000. To demonstrate this point, part of the HIV/AIDS program falls under the Ministry of State President and is managed by the National Aids and Health Promotion Agency which was budgeted to take up P838.8million of the of P2.09 billion during the 2010/11 Financial Year budgeted for that ministry. The figures have however continued to reduce to P5,23 and P150 million respectively, over a five year period in line with the changing trends.

41. The BAIS IV survey estimated a national prevalence rate of 18.5 percent compared to 17.6 percent in BAIS III among population aged 18 months and above. With respect to infants, HIV prevalence was recorded at 1.2 percent for the 1.5-4 age group.

Figure B: HIV Prevalence Rate by Age and Sex



42. Furthermore, while the availability of drugs and the establishment of a comprehensive network of service provision means that more children are protected before birth and those who have not escaped infection are treated afterbirth, the future challenges will be drug availability, drug toxicity and the counselling of teenagers who would have grown up on drugs.

(b) Child Support/Maintenance

43. The State Party recognizes that it needs to do more to ensure that child-maintenance court orders are obeyed. Failure to pay child support limits resources available to the concerned child and thus undermines the best interest of the child principle. Under customary law, fathers of non-marital children make a one-off child-support payment and thereafter have no obligations to their children. The child is then adopted into its maternal family and might later be adopted into the mother's marital family. While that one-off payment may have been sufficient for the needs of a child in a cattle economy, the demands of a cash economy cannot be met by this arrangement. This cultural mind-set has proven difficult to change, even with the recent amendments to the Affiliation Proceedings Act.

2.0 Definition of the Child

(art. 2 of the Charter)

44. The *Children's Act* (2009) defines 'child' as "any person who is below the age of 18 years". Significantly, the new Act has also provided in its section 3 as follows:

In the event of any conflict or inconsistency between the provisions of this Act and any other legislation, the provisions of this Act shall take precedence, except where the exercise of the rights set out in this Act has or would have the effect of harming the child's emotional, physical, psychological or moral well-being, or of prejudicing the exercise of the rights and freedoms of others, national security, the public interest, public safety, public order, public morality or public health.

45. However, there are still some challenges to harmonizing the "definitions" of the child in the different laws

3.0 General Principles

(arts. 3, 4, 5 and 7 of the Charter)

3.1 Non-discrimination (art. 3)

46. The Constitution of Botswana contains a Bill of Rights granting the standard 'first generation rights' and its interpretation by the Courts has been to interpret derogations narrowly and grant of rights broadly. This principle was emphasized in *Attorney General v Dow*¹² where the Court of Appeal struck down, as unconstitutional, a legislative provision that denied citizenship to children of women married to non-nationals. The State Party has since amended its Constitution accordingly.

¹² 1992 BLR.

47. In addition, the Children's Act (2009) uniquely introduces a Bill of Children's Rights for all children in Botswana and the thread that runs through the whole Act is the promotion of equal rights between, and the elimination of all forms of discrimination against, any class of children. In particular, Section 7(a) of the Children's Act provides lucidly that:

[...] no decision or action shall be taken whose result or likelihood is to discriminate against any child on the basis of sex, family, colour, race, ethnicity, place of origin, language, religion, economic status, parents, physical or mental status, or any other status [...].

48. Since the Children's Act was enacted in 2009 Courts in the State Party have elaborated the import of the non-discrimination clause in the Bill of Children's Rights. For instance, in *GK v AG & Others*¹³ the High Court of Botswana, while determining the constitutionality of Section 4(2)(d)(i) of the Adoption of Children Act that did not require a biological father of child born out of wedlock to give consent in adoption proceedings concerning such child, held that:

[...] no decision or action shall be taken that would result in the discrimination against any child on any status, including family; and, the parents of a child have the primary responsibility of safeguarding and promoting the child's well-being.¹⁴

Furthermore, in another case involving the adoption of a child without the consent of the biological father, the Gaborone High Court ruled that Section 4(2) (d)(i) of the Adoption Act (1952) was in contravention of the provisions of Section 3 of the Children's Act and therefore should be nullified for being unconstitutional.¹⁵ In fact, the adoption law allowed the adoption of children born out of wedlock without the consent of the biological father. Judge Dingake held that: 'In my view, it is unfair gender discrimination to require consent of a mother, but not of a father to adoption of a child born out of wedlock.' According to the Judge, this is because of the prejudicial or stereotypical cultural views that a child born out of wedlock belongs to the mother. So, the father is effectively excluded from parenting responsibilities because he is considered less fit to exercise parental care simply because he is an unwed father.

3.2 Best Interests of the Child (art. 4)

49. The concept of the best interests of the child is a principle which is now categorically provided for in Section 5 of the Children's Act (2009), which provides that: 'A person or the court performing a function or exercising a power under this Act shall regard the best interests of the child as the paramount consideration.' It should be noted that the principle of the child's best interests has also been part of Botswana law even before the Children's Act was enacted.¹⁶ In particular, Section 6(1) of the Children's Act enumerates the guiding principles in determining the best interests of the child as follows:

- (a) the need to protect the child from harm;

¹³ MAHGB-000291-14.

¹⁴ Ibid, para 152.

¹⁵ *GK v AG & Others* MAHGB-000291-14.

¹⁶ Elaborating on this principle before the adoption of the Children's Act in 2009, the in *Mfundisi v Kabelo*, 2003 (2) BLR 129 (HC) the High Court held that: 'The predominant approach, shared by all the cases, seems to be that the illegitimacy of the child is not the compelling reason for denying access by its father. Rather it is the interest of the child which must predominate.'

- (b) the capacity of the child's parents, other relative, guardian or other person to care for and protect the child;
- (c) the child's spiritual, physical, emotional and educational needs;
- (d) the child's age, maturity, sex, background, and language;
- (e) the child's cultural, ethnic or religious identity;
- (f) the likely effect on the child of any change in the child's circumstances;
- (g) the importance of stability and continuity in the child's living arrangements and the likely effect on the child of any change in, or disruption of, those arrangements;
- (h) any wishes or views expressed by the child, having regard to the child's age, maturity and level of understanding in determining the weight to be given to those wishes or views; and
- (i) any other factor which will ensure the general well-being of the child.

50. Under Section 6(2) it is provided that the provisions of subsection (1) of Section 6 'shall not be construed as limiting the factors that may be taken into account in determining what is in the best interests of the child.'

51. Ever since the Children's Act was enacted Courts in the State Party have progressively expounded the import of the principle of the child's best interests. Upholding the decision of the High Court in *Dumisani Ndlovu v Letsile Macheme*¹⁷, in *Macheme v Ndlovu*¹⁸, where at issue was the question of a father's access to his biological child, the Court of Appeal held that:

[...] the primary standard to be applied in all questions of guardianship or access to children, whether their parents are married or unmarried, is that of the best interests of the child.

3.3 Survival and Development (art. 5)

(a) The Child's Protection from Death Penalty and Life-Imprisonment

52. The State Party has continued to protect the child's right to life, survival and development by particularly undertaking both legislative and various administrative measures. Under the Children's Act (2009), and in terms of other several laws, a child in the State Party cannot be sentenced to death nor can s/he be sentenced to life imprisonment.

(b) Administrative Measures to Guarantee the Child's Survival and Development

53. According to the 2011 Census, 42.7% of the Country's population are children, with a significant proportion of the population being under fourteen years (see Table 1). In 2011, average life expectancy at birth had declined from 63.3 years in 1991 to 52.0 years in 2001 for men and from 67.1 years to 57.4 years in the same period for women, (averaging 55.6 years). The 2006 Botswana Demographic Survey (BDS) estimated that the life expectancy was 54.4 years (60 years females and 48.8 years males). Comparatively, the 2017 BDS indicated that life expectancy at birth increased from 54 to 66.2 years between 2006 and 2017. The overall decline in death rate in Botswana can be attributed to the improved economic status, improved accessibility of health care as well as successful reduction in HIV/AIDS related deaths.

¹⁷ [2008] 3 BLR 230 HC.

¹⁸ CACLB-035/08 [2009] BWCA 49.

54. The 2017 Botswana Demographic Survey further showed that infant mortality rate (IMR) declined from 48 to 38 deaths per 1000 live births between 2006 and 2017. Furthermore, the under-five mortality declined from 76 to 56 deaths per 1000 live births over the same period.

55. Childbirth remains a serious health risk for women in Botswana, especially among young mothers. Maternal Mortality Ratio continues to increase as shown in Figure C. The Central Statistics Office estimated that Maternal Mortality Ratio was estimated at 193 per 100,000 live births¹ in 2007.

56. Before the onset of HIV and AIDS mortality among children was reducing. However, the trend has been fluctuating as shown in Figure B and C of the attached annexure. Coverage of major child survival interventions is generally high. Table 2, shows immunization coverage of vaccinations.

57. Although relatively low, malnutrition is one of the major underlying factors contributing to child mortality in Botswana. The 2000 Multiple Indicator Cluster Survey revealed that 23% of the 0 to 5 years were stunted, 5% were wasted, and 12% were underweight. Only 2.4% of the children suffered severe under nutrition, and 7.9% were severely stunted. The Botswana Family Health Survey of 2007 showed an increase in malnutrition rates for children aged 0-59 months. The rates of stunting, underweight and wasting increased from 23% to 25.9%, 12% to 13.5% and 5% to 7.2% respectively.

58. The vulnerable group feeding program is one of the oldest social safety nets for children and vulnerable groups. Established since independence in 1966, the program aims at distributing meals and nutritional supplements to children who are vulnerable to malnutrition and women of child bearing age from poor or low income households. The program is implemented by the Ministry of Health and Wellness and the Local Authorities.

59. Beneficiaries of this program are pregnant and lactating mothers, nutritionally at risk under-fives and TB patients. During drought years, supplementary feeding is provided to all under-fives as well as food rations for lactating mothers. However, in non-drought years, supplementary feeding is based selectively on the weight progression of the child. Children who are underweight are given preference. There are 268,000 beneficiaries registered under this scheme.

60. The level and type of nutritional assistance depends on the nature of vulnerability. Table 3 provides a summary of what each category receives

61. Records indicate that there has been considerable improvement in the nutritional status of children, particularly the under-fives. However, the HIV and AIDS pandemic has somewhat impacted negatively on the health and household food security of the beneficiaries¹⁹.

62. The PMTCT services are fully integrated into routine antenatal care provided by nurse midwives and PMTCT uptake increased to 95% in 2014. HIV transmission to infants has been reduced dramatically from an expected 35-40% without a program, and it is estimated that only 2.2% of infants of HIV-infected mothers are HIV-infected themselves (MoH, 2014).

63. Estimates also show that in 2000, when the HIV epidemic was at its peak and the PMTCT program was just beginning, that ~5000 HIV-exposed infants were either dead or HIV-positive by six months old; in 2006, only 1500-2000 babies were dead or HIV-positive by six months old, a reduction of 70-80%. Paediatric antiretroviral treatment is available nationwide, with high-level specialty care available in Gaborone and Francistown, and 6,831 children have ever received ART.

¹⁹ Ministry of Finance and Development Planning, *National Development Plan 9*, (1995), p. 315.

64. Botswana has become the first high burden country to be certified for achieving an important milestone on the path to eliminating mother to child transmission of HIV. The country has achieved the silver tier status for bringing HIV transmission rate to less than 5%, providing antenatal care to more than 90% of pregnant women and achieving an HIV case rate of fewer than 500 per 100,000 live births.

65. Antenatal Care services are available in all public health facilities and over 90% of pregnant women attend ANC and are assisted by a trained health professional during delivery.

3.5 Policy and Administrative Measures

66. All secondary school institutions are encouraged to form School Councils, with a representation of a cross section of the school community, including students. The intention is for students to be given effective channels of communication and to air their views. It has been found that institutions which have councils in place, avert crises have been averted easily before erupting into riots or school disturbances.

67. The Department of Social Protection facilitates activities for the Day of the African Child in partnership with different stakeholders including radio, print and Botswana Television (Btv Youth and children's television programmes (*Silent Shout, Mantlwaneng*) have also featured activities that relate to the themes on the month of June. Newspaper articles and radio broadcasts at which children are interviewed are run for the month of June on issues related to children. Consultative forums are also held to get children's views on how they perceive the interventions that are available to them.

68. The World Children's Day is another child led commemoration that is observed to promote dialogue and awareness on matters that affect children among children themselves and with different mandate holders. The 2021 commemoration brought together 100 children from Botswana, Zimbabwe, Namibia and Zambia and their respective Presidents to Botswana as a way of promoting regional cooperation in matters relating to the wellbeing of children

69. The *Children's Act* (2009) provides for the establishment of the Children's Consultative Forum, which will strengthen the participation of children in the decision-making processes about matters affecting them, such as education, health, safety, or general well-being of children. The *Children's Act* further establishes structures that will facilitate child participation at the village level Village Child Protection Committees.

70. Even though in contested custody cases, court procedures allow for, and in fact the High Court routinely seeks, the views of the children involved, on the best custody arrangements for them, the court environment is generally an unfriendly, adversarial and conflict ridden environment. It is particularly unfriendly to children, who are not seen as parties but rather "the spoils" to be fought over.

3.6 Challenges in Implementing the General Principles

71. While coverage of key child survival interventions is generally good, the following key challenges have been identified:

- (a) High coverage, but poor quality of some services and delay in interventions - ANC, PNC, & other SRH services;
- (b) More focus needed to address socio-economic, cultural & other factors contributing to maternal and newborn mortality.

- (c) Unavailability of a mechanism to facilitate linkages between the Ministry responsible for children and umbrella CSOs to facilitate implementation, reporting as well as Monitoring and Evaluation of programmes and policies.

4.0 Civil Rights and Freedoms

(arts. 6, 7, 8, 9, 10, 16 and 19)

4.1 Name and Nationality (art. 6)

72. Births and deaths form the oldest and most advanced part of the registration system. The State Party has ensured that: *'Every child has a right to a nationality from birth'* through the provisions of Section 12 of the *Children's Act* (2009). This means that now a child's nationality is an inherent right to every child in its jurisdiction. The birth registration function is a computerized real-time system linked to the national identity system to issue a child with a unique identity number, which will be also used as an identity number at the age of sixteen. The unique identity number identifies the person from birth to death. The office of the Registrar of Births, Deaths and Marriages has the mandate for birth registration. The office functions well in urban and semi-urban centres; because the State Party still faces financial and institutional challenges to extend the presence of the Registrar to remote centres.

73. There are 34 decentralized district registration offices across the country, with all hospitals and some clinics equipped with maternity facilities which are mandated by the law to register birth. In terms of administrative measures, currently all major hospitals including private hospitals have the Births and Deaths registration desk. These are complemented by mobile field visits of teams to reach out to children in remote settlements. The issued birth certificate is embedded with high security features to curb/reduce any act of fraud. Furthermore, the Department of Civil and National Registration has placed Tirelo Setshaba Participants (TSP) in every village to identify unregistered events. The department in collaboration with UNICEF embarked on a project for mobile registration through which on spot real time registration and issuance of birth certificate in the remotest areas was achieved

74. The Ministry of Nationality, Immigration and Gender Affairs has embarked upon a national birth registration campaign aimed at increasing the numbers of children registered countrywide but to also create a routine birth registration system amongst various stakeholder organizations such as the Ministry of Basic Education, Ministry of Local Government and Rural Development and the Ministry of Health and Wellness.

75. In order to motivate all Batswana families to register their children, the Government has further waived late birth registration fees for children from vulnerable families.

76. Though 95% of births were reported to occur in Health facilities, the Botswana Population and Housing Census (2011) indicated that registration of births is reported at just 75% nationally, with a higher percentage of vital events registered in urban areas (84% in Towns, 58% in rural areas (BFHS, 2007). In 2017 and 2018, birth registration stood at 94.7% and 100% respectively, marking a near universal birth registration nationally.

77. There are variations in birth registration across districts and rural-urban categories. The Botswana Population and Housing Census (2011) indicated that registration of births is reported at 75% nationally, though 95% of births reported to occur in Health facilities. Due to availability of facilities, higher percentage of vital events registered in urban areas (84% in Towns, 58% in rural areas (BFHS, 2007).

78. The Government of Botswana in 2013 embarked on the comprehensive civil registration and vital statistics (CRVS) systems assessment as a collaborative exercise of the institutions with administrative responsibilities for delivering and managing services associated with the four key vital events (transport, elections, social benefits registration, and government payroll), namely birth, death, marriage and divorce. The assessment was a basis for devising strategies to improve the CRVS system in the country.

4.2 Preservation of Identity

79. The State Party has guaranteed the preservation of identity under Section 11 of the *Children's Act* (2009), which provides that every child has the right to a name and that name shall not be such that it demeans his/her dignity. This is the first time the State Party has sought to regulate child-naming, a matter of importance as children are often named after events or persons of significance at the time of their births, including unpopular ones or names that describe bad experiences of their mothers.

80. Progressively, the Children's Act has recognised the unmarried father as a parent. Upholding this provision, in *GK v AG & Others*²⁰ the High Court held that the Children's Act 'acknowledges that there is a relationship between him and his offspring – with the exception of those children sired through rape or incest.'²¹ Accordingly the High Court held that:

The Children's Act defines the parent to include biological (no distinction is made on the basis of marital status) with the exception of those biological fathers whose children were born on an act of rape or incest with the biological mother.

81. In addition, the preservation of identity of the child is also addressed in the Citizenship Act, where if one of the parents of the child is Botswana, the child is considered to be a citizen of Botswana, accessing all rightful services and holding dual citizenship of both parents until they turn 21 years to choose their citizenship.

4.3 Freedom of Thought, Conscience and Religion (art. 9)

82. The State Party has domesticated the child's freedom of thought, conscience and religion in the Children's Act (2009). In particular, Section 21 of the Children's Act provides that: "While a parent, other relative or guardian may provide a child with guidance on political and other matters, no parent, other relative or guardian shall force that child to adopt any particular religion, philosophy or doctrine." The State Party has ensured that this provision is effectively translated into practice and all citizens are obliged to ensure that the child effectively realize their freedom of thought, conscience and religion through the guidance of their parents and/or guardians.

83. In addition, the Public Health (Prevention of Immunizable Childhood Diseases) Regulations were developed in 2005 to make it illegal for any parent who refuses to immunize their children for religious beliefs

²⁰ MAHGB-000291-14.

²¹ Ibid, para 94.

or any other reason. This was prompted by the refusal by some religious groups to immunize their children due to their beliefs.

4.4 Freedom of Expression (art. 7)

84. The Botswana *Constitution* stipulates that no person shall be hindered in the enjoyment of his freedom of expression except by his consent (Section 12). This right to freedom of expression includes the right to hold opinions and to receive and impart ideas and correspondence without any interference. Reasonable restrictions may be imposed by law on the exercise of such right, but only in so far as such restrictions are necessary for public defence, public health, and public morality and to protect the reputation and freedoms of other persons. Freedom of conscience includes freedom of thought and of religion, freedom to change his religion or belief and freedom either alone or in community with others, in public or private, to manifest or propagate his religion or belief (Section 11) In addition, Section 20 of the *Children's Act* (2009) grants children the right to freedom of expression.

85. The *Penal Code* also protects freedom of thought, conscience and religion. It makes it an offence to insult any religion or to disturb any religious assembly (Sections 136 and 137).

86. In addition, the State Party has created conducive environment ensuring children are free to and do form various clubs and associations and routinely employ drama and music to make statements about, educate on and/or voice their concerns about various issues.

87. One of the important nation-wide leadership programs is a project called Camp-GGLOW (*Girls and Guys Leading Our Nation*), which brings together children selected by their peers to a national leadership workshop every year. The project also runs a newsletter to which children are free to contribute articles and debate their issues.

4.5 Freedom of Association (art. 8)

88. The State Party has domesticated the child's freedom of association and peaceful assembly in Section 22 of the *Children's Act* (2009). In particular, this section provides clearly that: "Every child has the right to freedom of association subject to the child's age, maturity and level of understanding, of parental guidance, national security, public health or morals, and the rights and freedoms of others."

89. Student Representative Councils (SRC) are encouraged in schools so they can advocate for the voice of children. Such councils provide students an opportunity to engage with school management, hence inform decision making. There are also clubs where students gather to discuss their issues.

90. Section 13 of the Botswana *Constitution* protects the right of all persons to assemble freely and to associate with other persons, in particular to form or belong to trade unions or other associations for the protection of their interests. The Constitution ensures this right for all persons including children, subject to reasonable restrictions that may be imposed by law. According to the Trade Unions and Employers Organisations Act CAP 48:01 no individuals under the age of 15 years shall be a member of a registered trade union or employer's organisation. However, where the constitution of a registered trade union or employer's organisation allows for a young person to be a member, such young person shall enjoy all the rights of a member. individual trade

4.6 Protection of Privacy (art. 10)

91. The right to privacy is guaranteed by Section 9 of the Botswana Constitution as well as the *Children's Act*. Specifically, Section 23 of the *Children's Act* guarantees children the right to privacy. This section provides, *in extenso*, that:

23. (1) Every child has a right to have his or her privacy protected.
- (2) The right to privacy shall be exercised subject to the child's best interests taking into account-
- (a) the child's age, maturity and level of understanding;
 - (b) the need for parental guidance and to protect the child from pornography and other influences which may cause emotional, physical, psychological or moral harm to the child;
 - (c) the public interest, national security, public morality, public health and the rights and freedoms of other people.

92. The Ministry of Basic Education through the Guidance and Counselling Programmes in all 994 public schools is mandated to protect the privacy of all learners. Guidance and counseling teachers, who offer counseling to learners, keep confidential records of all issues affecting learners. Some schools have counselling rooms where learners who access counselling services are fully assured of confidentiality and privacy.

93. Where a child is a victim of human trafficking, Section 20 of the Anti-Human Trafficking Act of 2014 provides for their rights to privacy and prescribes punitive measures. In this respect and under Sub Section (3) “a person who discloses the name and personal circumstances of the victim of trafficking in persons or any other information tending to establish the identity of a victim of trafficking in persons commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 10 years, or to both”.

94. In addition, Sub Section (4) provides that “where a trial is conducted in camera, any person who publishes the proceedings of the court commits an offence and is liable to a fine not exceeding P 100 000 or to imprisonment for a term not exceeding 15 years, or to both.”

4.7 Protection Against Child Abuse and Torture (art 16)

95. Section 7 of the Constitution of Botswana provides that “no person shall be subjected to torture or to inhuman and degrading punishment or other treatment.” It also states that nothing done under the authority of any law which authorises the infliction of any kind of punishment that was lawful in the country immediately before the coming into operation of the Constitution shall be held to be inconsistent with or in contravention of this right (Section 7(2)). Children are protected from the imposition of the death penalty as well as from life-imprisonment.

96. The State Party’s commitment to combat torture is reflected in the ratification of the Convention Against Torture on 8 September 2000. However, a reservation was entered regarding the definition of torture.

97. In practice, corporal punishment as a disciplinary measure within the educational system presents special challenges. Many see corporal punishment as addressing the twin goals of making children learn that a) Rule breaking will lead to adverse personal consequences and b) Adult intervention will come into play if set rules have been broken. A debate continues about what alternative methods have worked in other countries and Botswana being a democracy, sensitization continues and arguments for and against corporal punishment continue.

98. While there are occasional reports of police officers applying force and on occasion torturing suspects in their custody, there is no independent institution, outside the police service structure, specifically

tasked with receiving and or investigating complaints. The case of *Lesego Thebe & Four Others v The State*²² publicised an instance of police torture as well as an instance where those responsible were tried and held responsible for their actions.

99. In order to address this challenge, the State Party has undertaken several administrative measures, including undertaking training of police officers particularly in policing methods. It has also continued to review, revise and improve its police training methodologies, with a view to bringing human rights perspectives into the policing. The very fact that the institution changed its name from Botswana Police Force to Botswana Police Service is indicative of a mind-set change.

100. Furthermore, in 2020 and 2021 Child Friendly Centres were opened in Gaborone and Francistown respectively with the aim of creating safe spaces for children coming into contact with the law either as perpetrators or victims.

101. Standard operating procedures that guide on how to respond to children's cases have also been developed. All police officers working with children are trained on child friendly ways of dealing with children's cases this includes interrogation and evidence collection.

102. In addition, the Magistrate Court has a system, provided for by the Criminal Procedure and Evidence Act which mandates monthly appearance by persons in custody pending trial. This procedure, called 'mentioning a case' serves as a monitoring system for all remand prisoners, including children. It is not possible in Botswana for a remand prisoner to disappear into the prison system for months unaccounted for and the monthly appearances, at which the prisoner is allowed an opportunity to comment on his/her continued incarceration, gives such a prisoner a chance to complain about any improper treatment at the hands of the police or prison warders. The practice though is to generally release children awaiting trial to the custody of their parents or guardians.

103. In addition, the State Party has prepared and is negotiating the Education and Training Bill, which proposes that the Minister shall implement the right of every child to free basic education. It also proposes to repeal the old Education Act. The Bill is at an advanced stage with on-going consultations. and is expected to go to Parliament before December 2022.

104. To protect children against abuse, all child services organisations are required to register and license with government and to have child safe guarding policies in place before they may be allowed to operate.

4.8 Challenges to Implementing Civil Rights and Freedoms

105. The State Party faces a number of challenges in its endeavours to fully implement the child's civil rights and freedoms as elaborated below.

(a) Corporal Punishment within the Criminal Justice System

106. The State Party has retained corporal punishment in its Children's Act (2009) as one possible criminal punitive measure in case of child offenders. The State Party is well aware that it must, ultimately,

²² Criminal Trial No. 40 of 1993.

adopt measures that reform and rehabilitate children who have offended against the society, but it is currently faced with a situation where the majority of its population, including children, have not been persuaded that detention of children in places of safety is necessarily humane and non-degrading. The criminal justice system is generally loath to send young offenders, especially those in schools, to prison. The State Party is faced with following general arguments for the retention of corporal punishment:

- (a) The pain inflicted [a maximum of six strokes with a cane whose size is regulated by law] does not meet the torture standard. It is argued that it cannot be the injury to the child that is found objectionable;
- (b) The humiliation that results, which appears to be the main objection to corporal punishment, is less than the humiliation a Motswana child would feel if he were sent to a juvenile center or prison. Humiliation, it is argued, occurs in cultural context;
- (c) Juveniles sent to places of safety/detention centers are removed from the positive influence of their parents and family members and afterwards consider themselves 'government children' and reject guidance from family members;
- (d) Life in Botswana revolves around family and family events and if it is lived primarily outside – incarceration, of whatever nature is a harsh and humiliating treatment;
- (e) Children who have been to detention centers can expect to be stigmatized as 'criminals' whilst children who have been lashed for exactly the same crimes are generally not considered as criminals;
- (f) For punishment to be potentially reformative, the person receiving the punishment must see it as such. Juveniles accept corporal punishment as intended to reform them and incarceration as punishment intended to take them away from their families;
- (g) Corporal punishment is quick and over in a few minutes and allows the juvenile to go on with his life; and
- (h) Juvenile offenders would choose corporal punishment over any other form of punishment any day. As the central piece of the ACRWC is that children's views must be taken into account when decisions about their welfare are made, their views on corporal punishment are to be taken into consideration as well.

(b) Corporal Punishment within the Education System

107. The challenge is not just to change mindsets, but is also to supervise the actions of teachers who fail to follow the guidelines on using corporal punishment. The State Party is exploring reformative measures which incorporate such cultural values as parental participation in discipline and punishment, while abandoning acts that degrade and dehumanize the child. The Botswana Education Act is also under review and recommendation to abolish corporal punishment came out strongly from some key stakeholders.

(c) Corporal Punishment within the Home Environment

108. It is acknowledged that allowing corporal punishment of children within homes can allow for a situation where serious abuse occurs and since and indeed Child Line, an NGO offering counselling for abused children reports that corporal punishment of the nature that qualifies as physical abuse is a common complaint by children. Public debates on the issue of corporal punishment are ongoing with the support of UNICEF Botswana Country Office to engage influential persons i.e. former Minister of Local Government and Rural Development to discuss with the traditional leaders and communities the importance of other alternative ways of discipline for children with antisocial behaviours and through the media and kgotla meetings.

5.0 Family Environment and Alternative Care

(arts. 18, 19, 20, 24 and 25)

5.1 Family Environment and Parental Guidance

(a) Parental Responsibilities (art 20)

109. The Children's Act (2009) places the principal responsibilities for the care of children on their biological parents. Under Section 27(1), the primary duty to care for and maintain a child shall rest upon the biological parents of the child. In terms of Section 13, the Children's Act provides that a child has the right to know and be cared for by both parents.

110. The Abolition of Marital Power Act (2004) guarantees equal rights between spouses in respect of, *inter alia*, the guardianship of their children. This Act promotes the principle of 'the best interest of the child' in that the guardianship and domicile of a child as well as decisions on the child's adoption, education, etc, will not be premised on traditional gendered assumptions, but rather on actual circumstances of the child in issue.

(b) Child Maintenance (art. 18 para 3)

111. The Affiliations Proceedings Act was amended in 1999 and the consequence of that amendment was two-fold: it gives non-marital children the same rights to be supported by their fathers as marital children and secondly, it equalises the child-support burden between married women and un-married women. Previously, and this may explain the existing challenge of enforcement discussed below, the law placed various limitations on the child support of non-marital children by their fathers. The amount of child support is to be set on the basis of the needs of the child, balanced with the ability of the parents to provide for the child.

112. Section 3(1) of the Affiliation Proceedings Act provides that, a woman with child, a parent of a child or a person having the care or custody of a child may apply upon complaint to a court for a summons to be served, where the complainant is a woman with child, on the man alleged to be the father of the child; a parent, on the other parent of the child; or a person having the care or custody of the child, on either or both parents. In terms of Section 3(2) of this law, a summons served under subsection (1) 'shall state whether the complainant seeks a paternity order or a maintenance order.' Furthermore, Section 7(1) of the Affiliation Proceedings Act provides that, the person entitled to any payments to be made under an order shall be the child's parent, and the order 'shall make provision accordingly.' This section provides, *in extenso*, further that:

(2) An order may, on the application of a person other than the child's parent who for the time being has the custody of the child either legally or by any arrangement approved by the court, be made or varied by a court so as to entitle that person to any payments to be made under the order.

(3) Where an order for the time being provides for the child's parent to be entitled to any payments to be made under the order the payments shall be due under the order in respect of such time and so long as he is living and of sound mind and is not in prison, and if the parent has died, or is of unsound mind, or is in prison, any court may by order from time to time appoint some person (with his consent) to have the custody of the child; and a person appointed as custodian under this subsection shall be entitled to any payments to be made under the affiliation order and may make application for the recovery of any payments due thereunder in the same manner as the parent might have done.

(4) Where there is evidence that the person entitled to any payments to be made under an order is no longer able to receive such payments, or is not using such payments judiciously or for the purpose for which they were intended, the court shall-

- (a) order that a social worker identify and assess another person to whom payments shall be made; and
 - (b) upon the satisfactory report of the social worker, appoint such person (with his consent) in place of the parent or other person formerly appointed.
- (5) (a) The social worker shall monitor the use to which the payments referred to in this section are put and shall keep and maintain a record of those persons who misuse the said payments.
- (b) The social worker shall forward or cause to be forwarded to the court every three months, a copy of the record referred to in paragraph (a).

113. In terms of Section 7(6) of the Affiliation Proceedings Act, an order ‘shall, in any case where payments to be made thereunder are not ordered to be made to the clerk of court under the Maintenance Orders Enforcement Act, provide for the payments to be made to the person for the time being entitled thereto in accordance with the provisions of this Act.’

114. The Maintenance Orders Enforcement Act makes further provisions for the enforcement of maintenance orders. The collection of maintenance has however proved to be very difficult as the funds can only be collected at the Court of the district in which the person who is supposed to pay is resident. In many instances, the funds have remained uncollected because the cost incurred to collect them may exceed even the maintenance amount. It has also been observed that a majority of presiding Magistrates often set the minimum amount provided under the Act as a benchmark.

115. The State Party recognizes that it needs to do more to ensure that child-maintenance court orders are obeyed and that the mechanism for the collection of maintenance funds is more efficient. Failure to pay child support limits resources available to the concerned child and thus undermines the best interest of the child principle. Under customary law, fathers of non-marital children make a one-off child-support payment and thereafter have no obligations to their children. The child is then adopted into its maternal family and might later be adopted into the mother’s marital family. While that one-off payment may have been sufficient for the needs of a child in a cattle economy, the demands of a cash economy cannot be met by this arrangement. This cultural mindset has proven difficult to change, even with the amendments to The Affiliation Proceedings Act.

116. Similarly, the Deserted Wives and Child Protection Act provides for the maintenance of wives and children who have been deserted and are without adequate means of support.

5.2 Parents’ Common Responsibilities, Assistance to Parents and the Provision of Childcare Services (art. 18)

117. The State Party has ensured that parents have common responsibilities towards their children. In particular, Sections 27-29 of the Children’s Act provide for parental duties and rights. Section 27 on Parental duties provides, *in extenso*, that:

- (1) The primary duty to care for and maintain a child shall rest upon the biological parents of the child.
- (2) The duties of the biological parents of a child shall, where those parents do not live together, be carried out jointly by them unless it would not be in the best interests of the child.
- (3) Where both or one of the biological parents is deceased, or the biological parents do not live together as a nuclear family and the absent parent plays no role in the child's life, the other relatives, guardian, adoptive parent, step-parent or foster parent of the child shall be deemed to have assumed the parental duties associated with the biological parents of the child.
- (4) Subject to subsections (1) to (3), every parent shall have the duties, in respect of his or her child to-
 - (a) ensure that the basis of every decision and action he or she takes concerning the child is in the child's best interests;

- (b) provide for the physical, emotional, educational and material needs of the child;
 - (c) provide direction and guidance to the child in accordance with the age, maturity and level of understanding of the child;
 - (d) seek professional advice, including advice from family members and community leaders, and comply with such advice where it is in the best interests of the child to do so;
 - (e) encourage the child's participation in household decisions and actions subject to the child's age, maturity and level of understanding;
 - (f) raise each child in the household as being of equal dignity as other persons in the household, irrespective of sex;
 - (g) ensure the child inherits adequately from his or her estate;
 - (h) respect the child's dignity and refrain from administering discipline which violates such dignity or adversely affects the physical, emotional or psychological well-being of the child or any other child living in the household;
 - (i) bring up the child to respect and value the family and the institution of marriage; and
 - (j) do all such other things as are necessary to ensure the good health, safety, educational development and general well-being of the child.
- (5) Subsection (4) (h) shall not be construed as prohibiting the corporal punishment of a child in such circumstances or manner as may be set out in this Act, the Penal Code or any other law.
- (6) Where the biological parent of a child dies intestate or fails to make adequate provision for his or her surviving child in a will or other bequest, the child shall be awarded such portion of such parent's estate as is required by the Administration of Estates Act or any other relevant law to be awarded to the child.
- (7) Any person who dispossesses a child of his or her inheritance or who, without the authority of a court, takes possession of any portion of a deceased's estate under which a child is or may be a beneficiary, shall be guilty of an offence and shall be sentenced to a fine of not less than P20 000 but not more than P30 000, or to imprisonment for a term of not less than six months but not more than two years, or both.

118. In *GK v AG & Others*²³ the High Court has upheld these provisions by particularly holding that parental responsibilities for, and rights over, their children extend to include those of the unmarried fathers. Before the enactment of the Children's Act unwed fathers did not assume any parental responsibilities over their children.²⁴ According to the High Court, the Children's Act 'has established that the unmarried father may no longer be categorically excluded from the legal definition of "parent" and thus must participate in legal proceedings concerning the future of his child.'²⁵ This position has earlier been articulated by the highest court in the State Party (the Court of Appeal) in *Mey v July*²⁶ where it was held, *inter alia*, that the Children's Act gives a biological father of a child born out wedlock 'greater rights of involvement in the child's upbringing and outlines in details his duties. What flows from the Children's Act of 2009 is that the father would now expect to be consulted if he had hitherto involved himself in the life of the child.'²⁷

5.3 Separation from Parents (art. 25)

²³ MAHGB-000291-14.

²⁴ *Ibid*, para 134 (pointing out that: 'In the olden days when the law was retrogressive, it was the position of our common law that a father of a child born out of wedlock has no relationship to his/her father. The law has since developed and now frowns upon the notion that a child may not have a legally recognizable relationship with a biological father who is not married to the other'). In *Motlogelwa v Khan* 2006 2 BLR 147, at p.149 F-G, the High Court explained the old position of the law thus: 'the Roman Dutch law position espoused in a number of South African decisions [...] is well known and in its crudest form, it is that as a general rule, Roman Dutch law does not recognize a relationship between a child born out of wedlock and its father, except in so far as his obligation to maintain the child [is concerned].'

²⁵ *Ibid*, para 101.

²⁶ CACGB – 134-13.

²⁷ *Ibid*, para 6.

119. The State Party has undertaken legislative measures to guarantee the rights of children who are compelled to be separated from their parents. Both the Children's Act (2009) and the Domestic Violence Act (2007) 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 of 2015 set 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.

120. Examples of institutions providing residential care are The SOS Children's Villages of Tlokweng, Serowe and Francistown, Mpule Kwelagobe Children's Centre, Lorato House and the Childline Place of Safety. In cognisance of the service being provided by such institutions, the government makes annual grants to them basing on the number of children in care at a given time. The budget for NGO partners for the 2021/22 Financial Year was P12, 668,780 and the total number of children in such institutions as at December 2021 was 447.

121. Sometimes hospitals provide temporary residence for children, especially abandoned babies while a suitable place of safety is being sought.

5.4 Family Reunification (art. 19 para 2)

122. In the State Party removal of a child from the family environment can only be done as a measure of last resort, and should be for the shortest time possible, while long term measures are explored. There are, however, some children who have been forced out of their families by various factors including household poverty, dysfunctionality within the family, orphanhood and other factors. Such children's natural homes are often not friendly to their welfare. Where a child is placed in foster care, the Children's Act (2009), under 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. The Department of Social Protection has developed a manual for foster parents as a way of capacitating them in their care giving role.

123. Reunification services in the State Party are provided by Social Workers in the Local Authorities. The challenge has however been that the monitoring of alternative care arrangements is often compromised by capacity issues and limited options for placement, especially for older orphans, children with disabilities and those with terminal illnesses as they are perceived as care burdens. Such children also face the additional disadvantage of overstaying in alternative care facilities as reintegrating them is often problematic. Parents who are no longer staying with their children are capacitated so they can take up some parenting roles including facilitation of visits to their children in care.

5.5 Children Deprived of a Family Environment (art. 19 para 3)

(a) Children Placed in Alternative Care

124. The State Party has undertaken several administrative measures to protect and provide assistance to children who are placed in alternative care. *ChildLine Botswana*, which is a non-governmental organization^[1], provides residential care and support services to abused children as well parents and children who have

^[1] A place of safety where children from difficult circumstances are accommodated temporarily while a permanent home is arranged for them in terms of foster or adoptive home.

difficult relationships. In February 2022, the institution had 24 children in residence and 616 children in counselling. The general trend is that *ChildLine* has over the years seen a steady increase in cases reported to the centre. The nature of abuse ranged from child custody, behaviour problems, relationship issues, seeking of information on Childline Botswana and general child protection issues. *Lorato House Rescue Centre* (Love Botswana) which is another residential care facility in the northern part of the country had 30 children during the same period. Most of the children are children with disabilities. *SOS- Botswana* on the other had 311 children under its 3 villages, with 7 families having been reintegrated into the community. The Mpule Kwelagobe Children's Centre, which is the only state run residential care facility ²⁸ had 48 children in residence at the time it was closed for renovation and restructuring.

125. Ikago Centre in Molepolole, which provides residential care and rehabilitative services for boys in conflict with the law has 6 children in residence. The centre is under-utilised because generally, the criminal justice system is slow to send children to institutions; the preference seems to be releasing them to their guardians with social workers' supervision.

126. The Botswana Gender Based Violence Prevention and Support Centre (BGBVC) Project is a battered women shelter and counselling centre that admits women and their children who are under the age of 12 years. The shelter is situated in Gaborone. The centre houses on average 20 women and about 14 children. The upsurge of cases following the COVID 19 enforced lock downs however, resulted in the organisation mobilising other NGO's to accommodate up to 367 clients who needed alternative shelter.

5.6 Periodic Review of Placement (art. 19)

127. The State Party undertook a review of placement of children and the Children's Act (1981) so that it would provide for alternative placement of children in need of protection. Such children are normally placed under the supervision of a social worker who shall visit the child and the family with which he/she is placed for the duration of the placement. 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 and protect the child and when it is in the child's best interests to place the child in alternative care.

5.7 Adoption (art. 24)

128. Traditionally, adoption of children by persons not related to the child is not part of Botswana culture. The surrender of one's child to a person not known to the family of the child is still viewed with disapproval and it is fair to say that fostering, as opposed to adoption is much more acceptable. Certainly, adoption by persons who then take children out of the country is not a common occurrence. The most common type of adoption is where a man adopts his wife's non-marital child.

129. The review of the Adoption of Children Act (1952) in order to bring existing rules and practices regulating adoption into full compliance with the Charter to ensure that in cases of informal adoption, the rights of the child are well protected to encourage formal domestic adoptions is ongoing. The intention is to provide for the registration of customary adoptions to protect children in the event of the death of an adoptive parent or the divorce of the child's parents. At present it is not uncommon for a man, upon divorce, to deny that he had adopted the ex-wife's non-marital child. This has serious and negative implications for the child's maintenance after divorce because the practical reality is that the mother would have lost touch with the

²⁸ A Place of Safety run by Government for children removed from difficult circumstances.

biological father, who would have by conduct accepted the adoption of his child by the mother's husband. Upon divorce therefore, such a child will be left without either biological father or an adoptive father to support her or him.

130. The State Party has now commenced the Accession process for the Hague Convention No. 33 on the Protection of Children and Cooperation in Respect of Intercountry Adoption to facilitate inter-country cooperation in matters related to adoption.

In *G. Khwarae vs B.O.Keaiketse and Attorney General's Chambers, 2014*, the High Court ordered that:

1. *Section 4 (2) (d) (i) of the Adoption of Children Act is unconstitutional to the extent that it does not require the consent of the father in the adoption of his illegitimate child in all cases;*

2. *Any adoption of second respondent can only be done with the consent of the applicant.*

3. *Any adoption of the second respondent without the applicant's consent is rescinded.*

5.8 Measures to Improve the Child's Standard of Living

(a) Orphans and Vulnerable Children Care

131. The State Party defines an orphan as a child who has lost at least one parent. As at September 2021, there were 20 623 registered orphans, from over 65, 000 registered when the programme commenced in 1999.²⁹ The numbers of registered orphans are consistently dropping because not as many are enrolled because of other health interventions resulting in parents living longer. The children exit the programme when they attain the age of 18.

132. All registered orphaned children are entitled to a food basket worth an average of P900.00 per month. This amount is regularly adjusted for inflation at the beginning of each financial year. The Ministry of Local Government & Rural Development in partnership with the Ministry of Health has developed this food basket as a measure to ensure that beneficiaries receive a well-balanced nutritional basket.

133. Orphans and vulnerable children also receive additional support ranging from clothing, toiletry, educational needs, psycho-social support and legal protection. other forms of support include, free medical fees in government health facilities, transport allowance and assistance with bills for utilities such as water and electricity.

134. The State Party, through local authorities, has various social protection programmes for the poor and other vulnerable groups. The National Policy on Destitute Persons defines a destitute person as: 'an individual without assets; a person who is physically or mentally incapable of working due to old age or a handicap; a minor child or children whose parent(s) have deserted the family or are not supporting his family or; an individual who is rendered helpless due to a natural disaster or temporary hardship'. Of significance therefore is the inclusion of minor children in the classes of destitution. Eligibility for destitute benefits is therefore targeted and conditional. The Department of Social Protection under Ministry of Local Government & Rural Development provides the destitute persons with cash allowance and a monthly food basket.

135. Beneficiaries of the National Policy on Destitute Persons are provided with food, toiletries, medical care and shelter when the need arises. They are further exempted from payment of service levies,

²⁹ Official statistics obtained from Department of Social Services, Ministry of Local Government, 2006.

taxes, water and street licences. Funeral expenses are also covered. Additionally, the government makes provision for children whose parents are registered as destitute to be exempted from any user charges.

136. It has been observed that elderly people who have limited resources, are caring for an increasing number of orphans resulting in many of them having to be registered as destitute.

137. All categories of destitute persons are exempted from payment of publicly provided services such as medical fees, school fees, water charges, service levy and electricity charges. Further, when a destitute person dies, the burial expenses are fully covered by the Local Authorities. Finally, social workers are expected to provide rehabilitation and psycho-social support to enhance quality of life and sustain dignity of the individual clients.

138. Within the spirit of the Revised Policy, destitute persons are expected to exit the program once they have been provided with relevant skills, knowledge and the right attitude to engage in sustainable economic and social activities. Initial funding has been provided to kick start implementation of the various rehabilitation activities in 2006. The major challenge is that majority of beneficiaries enrolled in the scheme are old, sometimes frail elderly, who have low educational levels and no skills. However, there have been some successes in places where registered destitute persons and orphans have been able to make sustainable livelihoods out of such projects.

5.9 Challenges for Implementation of Family Environment and Alternative Care

(a) Violence against Women

139. To the extent that some children live in environments which are prone to gender based violence; Botswana has been experiencing spates of femicides – typically involving young couples. HIV/AIDS related deaths and family upheavals are quite common, which then means that some children live in especially emotionally charged family settings.

(b) Child Abuse - Reporting

140. It can be assumed that the numbers, do not tell the whole story. This presents a special challenge. Public education and the establishment of child-friendly services are very crucial to ensure reporting of cases of child abuse to the relevant authorities. A number of in-depth qualitative studies and quantitative surveys in limited geographical areas show that children are at risk or become victims of abuse, exploitation and violence at home, in the community, and in schools.

141. The Violence Against Children Survey specifically indicated that physical violence is the most common form of violence against children. On average, 28.4% and 43.0% of female and male children in Botswana, respectively experience physical violence before the age of 18. The leading three perpetrators of physical violence amongst females are parents, adult caregivers or adult relatives (14.8%); adults in the community (11.6%); and peers (8.7%).

142. In contrast, the leading perpetrators amongst males are peers (23.2%); parents, adult caregivers or adult relatives (21.1%); and adults in the community (20.9%). The study further revealed that in most cases, those who are supposed to protect children such as parents, other family members as well as teachers and other adults in the community are the ones committing violence against children. The figures of reported cases of violence against children however, do not reflect a true picture because of under reporting.

143. In most cases, child victims are afraid to report because the abusers are prominent people in society such as breadwinners, teachers, community leaders, close relatives or even siblings. In some, cases

victims fear secondary abuse in the child protection systems i.e. Cross-examinations by defence attorneys in the courts of law, lack of child-friendly courts and lack of child protection units in the police service.

144. the Botswana Police Services has since established a child friendly Police facility as a way of addressing the challenge of non-reporting of child violations as well as better management of other matters involving children within the justice system.

145. The lack of data, particularly on the national prevalence of violence against children, has become one of the main challenges in planning, budgeting, implementing and evaluating programs on child protection.

146. If the abuse of a child manifests in any form of exploitation in accordance with what could amount to human trafficking, the Anti-Human Trafficking Act of 2014 prescribes under Section 13 (3) that “a social worker or police officer who, on reasonable grounds, suspects that a child is a victim of trafficking in persons, shall within 24 hours, refer that child to a place of safety in terms of section 44 of the Children’s Act or to a centre for victims pending a police investigation into the matter.” In addition, and subsequently, Section (4) prescribes punitive measures and states that “a person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding P 5000 or to imprisonment for a term not exceeding 2 years, or to both”.

© Alternative care

147. The placement of some children such as those with special needs or terminal illnesses, older children as well as those who had been in conflict with the law is quite problematic. Potential foster or adoptive parents prefer infants with no physical or mental challenges, hence the long waiting periods. Furthermore, capacity to care for children with different developmental needs is often inadequate at both family and organisational level.

5.10 Abuse and Neglect (art. 16)

148. Child abuse and neglect are prohibited under the Children’s Act. Under Section 7(b) of the Act, ‘every child shall be cared for and protected from harm.’ Neglect³⁰ or ill-treatment of children is criminalised under Section 56 of the Act.³¹ Under Section 56(3) a parent, other relative, guardian, or other person in whose custody a child is, who misuses any money given to him or her for the child’s support ‘shall be guilty of an offence and shall be sentenced to a fine of not less than P2 000 but not more than P5 000, or to imprisonment for a term not exceeding three months but not more than six months, or both.’

³⁰ Under Section 56(2) of the Children’s Act, a child shall be deemed to have been neglected if the parent, other relative or guardian or any other person having the custody of the child-

- (a) unreasonably fails to provide or pay for adequate food, clothing or housing for the child;
- (b) unreasonably fails to make adequate provision for the proper health and care of the child;
- (c) unreasonably leaves the child in the care of any person or institution without showing any further interest in the child; or
- (d) exposes the child to conditions or circumstances which are likely to cause that child physical, mental or psychological distress or harm.

³¹ Section 56 (1) of the Children’s Act provides that: ‘Any parent, other relative or guardian of a child or any other person having the custody of a child, who neglects, ill-treats or exploits the child or allows or causes that child to be neglected, ill-treated or exploited shall be guilty of an offence and shall be sentenced to a fine of not less than P5000 but not more than P20 000, or to imprisonment for a term of not less than six months, but not more than two years.’

149. The Penal Code does not recognise, rather, it has other terms that are used like causing grievous bodily harm, rape, defilement, etc. which only talk to the physical. The emotional aspect would therefore not be charged under the Penal Code which still remains the preferred law over the Children’s Act.

150. Despite the foregoing provisions, the number of child victims of abuse or neglect has continued to rise over the years. This may also be attributable to increased awareness, which is created through community engagements, children’s fora, PACT Clubs in schools as well as the introduction of Pastoral care in schools. Children who have social issues may be referred to pastoral staff for intervention or refer themselves. According to statistics from the Department of Social Protection, neglect is the most common form of abuse, followed by sexual abuse and physical abuse. Other forms of abuse are very difficult to locate and compute because they mostly occur either within the domestic setting or are difficult to identify.

6.0 Health and Welfare

(art 14)

6.1 Programs and Policies

151. The State Party has adopted the Accelerated Child Survival and Development strategy (2009/10 – 2015/16) in 2008 to address child survival in Botswana. To-date high impact interventions are being introduced in a phased manner. These include introducing new vaccines and vitamin A supplement, strengthening the coverage and quality of services, and monitoring systems. High impact interventions are being implemented nationally while new vaccines are being introduced in a phased manner.

152. The State Party is committed to preventing the untimely deaths of children. In response to the 2007 Botswana Family Health Survey results revealing that IMR 39/1000 and U5MR 48/1000 live births in 1994 had increased to IMR 57/1000 and U5MR 76/1000 by 2006, the Accelerated Child Survival and Development (ACSD) Strategy: 2009-2016 was developed to promote implementation and upscaling of lifesaving High Impact Interventions (HIIs). The initiative was quite successful.

153. According to population census (2011) U5 mortality was at 28/1000 and infant mortality at 17/1000. The Botswana Demographic Survey of 2017 has revealed that comparisons over the long term show that the number of deaths per 1000 live births declined from 152 deaths in 1971 to 48 deaths in 2017. The main contributors to under-five mortality in Botswana are Neonatal causes and Acute Respiratory Infections (ARI) 25% and Diarrhoea 20% among the older children.

154.. The revised National Population Policy has a target to reduce infant mortality from 46.5 deaths per 1000 live births in 2007 to less than 23 deaths per 1000 live births by 2020 and to further increase life expectancy from 50.7 years in 2001 to at least 67.7 years. Available data shows that there have been remarkable declines in both infant and adult mortality over the years. This shows that Botswana is on course to achieve the targets of the revised National Population Policy.

Table 3: Examples of successfully implemented HIIS

Intervention	Distribution/coverage
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To support emergency ORT at homes	ORS (2 pkts for each under 5)	Distributed at all Health facilities National coverage \geq 52% (MoHW coverage data) (MoH, 2020)
	Zinc sulphate tabs (2 per u% child)	Distributed at all Health facilities National coverage \geq 52% (MoHW coverage data 2020)
Twice yearly Vitamin A to U5s		Administered twice annually during May and November Child Health Days National coverage \geq 75% (MOH coverage data 2020)
Comprehensive Emergency Obstetric and Neonatal Care		Offered at all hospitals
Normal delivery by skilled birth attendant		\geq 95% (MoHW coverage data 2020)
Immunizations		\geq 80% (MOHW coverage data 2020)

155. The State Party has undertaken several measures to address persistent issues such as:

- (a) Inadequate health services coverage in 'Hard to Reach Populations' (groups that are difficult to access due to geographical, cultural and social factors) and the non-acceptance of interventions like immunizations by some individuals and some sectors; and
- (b) Delayed care seeking practices and resistance to behavioural change.

156. As such, a Community Support Strategy (CSS) developed in keeping with ACSD recommendations was piloted starting May 2014. Three hundred (300) specifically trained workers began implementation of the pilot in six districts, and subsequently rolled out to other districts.

157. A National Integrated Community Based Guideline is now in place to operationalize the Harmonization of Botswana's Community Health Worker Groups in Primary Health Care Strategy of 2017. The guideline, which was launched in November 2020, has adopted a wide health sector approach that will involve civil society and the private sector.

Table 3: Community Support Strategy (CSS) May – October 2014

Total Under five population in the six targeted districts (data from Central Statistical Office)	Number of Under 5s that received first time visits health at their homes	ORS sachets delivered to homes with U5 children	Zinc Sulphate tablets delivered to homes with U5 children	Number of U5s referred to health facilities (mainly immunization and nutrition care defaulters)	Persons identified as having special needs
63048	43139 (68% of districts total U5 population)	36492	35939	3757	763

6.2 Under-five Auditing

158. The State Party has established Under-5 mortality audit system since 2013 in order to calculate annual trends. However this is a new initiative and measures to address challenges are still being put in place to strengthen and regularize reporting.

159. Public Health (Prevention of Immunizable Childhood Diseases) Regulations³² were enacted in 2005 to make it illegal for any parent to refuse to immunise their children against immunizable childhood diseases. Some groups have attempted to resist the implementation of these Regulations on the basis of their religious beliefs. The High Court of Botswana decided, though, in a case brought by a hospital, that in balancing the freedom to religion with the right to life of a minor and in employing the principle of the ‘best interest of the child’, the right to life and/or health will reign supreme. The High Court is the ‘upper guardian’ of all minors in Botswana and as such, has the power to overturn decisions of parents and/or guardians if it deems that such decisions are not in the best interest of the child.

6.3 Children’s rights in VMMC

160. Children’s rights for consent in VMMC is being considered just like in any other surgical procedure. In the case of minors, consent is made by a parent or guardian since they are the custodians of the wellbeing of the child. In case of emergency, the hospital superintendent or district magistrate are legally empowered to consent for the child where the parents/guardians are not available or are withholding such consent, to the detriment of the child. All these are based on patients’ bill of rights regarding surgical procedures.

161. Additionally, the country has adopted the World Health Organization {WHO} 2020, guidelines which advice the country to consider delaying circumcision among the children below the age of consent because these children are at risk of developing complications (adverse events) related to the procedure.

6.4 Targeted Training of Personnel

162. The Government of Botswana is continuously improving the health system. The Human resources are continuously being improved. The enrolled midwifery course has been discontinued and the enrolled midwives in the field are upgraded to registered nurse-midwives. A medical school has been established at the University of Botswana to address lack of medical officers in the country. The Botswana Integrated Health Services Programme (IHSP) has further outlined a Human Resource Strategy through which

- the below key strategic deliverables are to be achieved;
- Reduction in the shortage of health professionals
- Improvement on the distribution of health professionals
- Ensuring staff have the necessary skills to deliver the required services
- Improvement of performance and motivation of human resources
- Co-ordination of human resource planning across the health sector, including an integrated human resource information system.

³² Statutory Instrument 45, 2005.

6.5 Affordable Health Care

163. Some members of the public, who include the poor, as defined by the *Destitute Policy*, children. This arrangement allows more women, and especially rural women with limited resources, to access health care.

164. The State Party has continued to improve the health sector so as to ensure that children enjoy their right to health as guaranteed in the Charter. Most of the public health budget is financed by the Government and Government health facilities offer free health care to children, destitute persons, people with disabilities as well as TB and patients enrolled on ARV programme. The range of free services include sexual and reproductive health services, such as family planning, ante- and post- natal care. For other people the consultation fee is only P5.00 (less than US\$1) and medication is free.

165. The national health care delivery system is structured to have different levels namely the University Teaching Hospital, National referral hospitals, District hospitals, Primary hospitals, Clinics, Health posts and Mobile stops.

166. Specialised health care may be received at referral hospitals as well as private hospitals being Gaborone Private Hospital, Bokamoso Private Hospital and Sidilega Hospital or, at the expense of government, in South Africa where the treating physician recommends same. There is one Psychiatric Hospital in the country.

167. According to the CSO Stats Brief No 2007/4, at national level, 95% of the population are within 8km radius of a health facility, 84 % are within 5km radius from the nearest health facility.

6.6 Reproductive Health Rights of Adolescents and Measures to Promote a Healthy Lifestyle

168. Termination of rape-induced pregnancy is allowed under the law providing relief for women who wish to terminate the pregnancy. There are guidelines for medical personnel to follow when a demand for termination is made within sixteen weeks of pregnancy.

6.7 Resource Allocation for Health Services

169. The State Party has strived to allocate sufficient resources to the provision of health services for children. Public spending on health care has accounted for approximately 4 percent of GDP over the decade to 2020, and 12 percent of overall government spending. The allocation of public financial resources to health care has been increasing steadily over the years, rising from 4.0 percent of total government spending in 1990/91 to 12.5 percent in 2019/20 According to the National Health Accounts for 2013/14, the government financed 65.4 percent of total national health care spending in that year, with the remainder coming from private sector companies (16.3 percent), households(11.5 percent) and external donors (6.7 percent). Insert table showing health expenditure over the years. The budget does not, however, specify spending that is targeted towards children.

6.8 Leisure, Recreation and Cultural Activities (art. 12)

170. The Department of Sports and Recreation (DSR) under the Ministry of Youth Empowerment, Sports and Culture Development is responsible for providing a conducive environment to increase and retain participation of every Motswana in sport and recreation regardless of age, gender, ethnic origin, physical and mental ability. This is done in collaboration with the Botswana National Sports Council (BNSC), the Botswana

National Olympic Committee (BNOC), the Paralympics Association of Botswana (PASSOBO), the Women and Sport Botswana (WASBO), the Botswana Integrated Sports Association (BISA), charged with the responsibility of managing sport in the secondary schools and national sports associations amongst others.

171. BNSC introduced the Re Ba Bona Ha program in 2001, first as a pilot project in football, confined to only four centres in Gaborone. The project became a full program in 2002, rolling out to other centres and other sports.

172. The Sport and Recreation policy was developed in 2001 to guide and support all sporting and recreational activities in Botswana. The development of the policy resulted from the acknowledgment that the culture of sport was low; funding for Sport and Recreation activities was limited; there were poor or inadequate facilities; there was poor participation of people with disabilities, the marginalized as well as girls.

173. This resulted in Government issuing a Presidential Directive to commence construction of four Sport complexes in Molepolole, Masunga, Maun and Serowe with the view to promote participation in sport and recreational activities by youth.

174. In recognition of the importance of sports and recreation to the overall growth and development of children and young people in schools, the Ministry of Basic Education has included physical education as a critical component of the primary schools curriculum. At secondary schools, the policy requires each student to, at least, register for one extra-curricular sporting activity, a school club, or undertake a sporting hobby. This has paid dividends, since it has given impetus to sport development in schools, and has inspired more female students.

175. As a result of Covid-19 pandemic and challenges of financial resources support for sport which halted continuation of sport in schools, the Ministry of Youth Empowerment, Sport and Culture Development in reacting to this, developed a task team in 2020 with the view to resuscitate school sport. The task team came with recommendations of which most of them were adopted. The recommendations recognised the importance of sport and recreational activities in contributing to cognitive development, motor skills, and coordinated movement of a child at young age. This therefore resulted in the Ministry of Basic Education forming a Committee to develop Physical Recreational Activities Policy for children at primary schools while the Ministry of Sport was tasked with taking over of running of school sport as one of their mandate.

176. The Ministry so far has developed a draft Policy on School Sport which is yet to be shared with other Ministries for the input. In Addition to School Sport, the Ministry of Youth Empowerment, Sport and Culture Development developed a strategy, guidelines and implementation action plan for gender mainstreaming in sport in Botswana. This strategy is intended to contribute to the realisation of the MYSC objectives in relation to gender equality in sport, national policy objectives relating to gender equality, and selected targeted areas relevant to the commitments of Botswana under the 2030 Agenda for Sustainable Development Goals.

177. The State Party has carried several measures to ensure that children enjoy their right to recreation and cultural activities. The following are some of the achievements in sporting activities:

- (a) Various sports codes doing well in regional, continental and international competitions increasing the interest of young Botswana in sports;
- (b) Increased access to sport and recreation through a network of publicly subsidized Integrated Sports Facilities in Maun, Masunga, Serowe and Molepolole, providing a wide range of sports open to all;
- (c) 33 affiliates of Botswana National Sports Council, covering the country and all sport codes available in the country;

- (d) Junior Sport Programme providing sporting opportunities for in-school children 6 – 14 years old Botswana Integrated Sports Association (BISA) managing sport in secondary schools;
- (e) Active participation of many children and youth in programmes such as the District Sports Festivals, which organize special activities for children and is, designed to complement the school curriculum;
- (f) Ministry through its affiliates have access to NAHPA grants to promote awareness on sexuality, sexual reproductive health and HIV/AIDS throughout the country through its affiliates. NAHPA is currently collaborating with BFA to promote HV/AIDS and other NCDs diseases amongst the girl child. BNSC promoting awareness on sexuality, sexual reproductive health and HIV/AIDS throughout the country through its affiliates;
- (g) Programmes linking sports to other major development issues such as Environment or HIV/AIDS;
- (h) Introduction of the concept of Active Community Clubs, trying to engage out-of- school youth in sporting activities; and
- (i) Establishment of a body to manage sport in Primary Schools, Botswana Primary School Sport Association.

6.9 Challenges Facing the Implementation of Child Health Services

178. A significant portion of the population is on HIV/AIDS treatment and that has implication for resources available to the rest of the health sector. In mitigation, risky sexual behaviours among young girls continue to be addressed by policy and legislative reforms as well educational campaigns.

179. Teenage pregnancy, with the obvious health and other consequences remains unacceptably high – while a Western teenager who engages in unprotected sex and becomes pregnant has the morning-after-pill, abortion and adoption as possible responses to her problem, the Botswana teenager almost invariably has the child. With a nationwide prevalence of 18.5% and the national age pattern of rising to its peak between ages 35-39 and 45-49 years estimated at 43.7 percent and 41.8 percent, respectively³³, a large number of Batswana are either infected or affected by HIV/AIDS. Treatment, care and support of these people, to make sure they stay healthy, productive and able to care for their families are crucial. For children and young people too, the issue of treatment and care is key, with an estimated 7,500 children aged 0- 14 and 29,500 young people aged 15 – 24 HIV positive by end 2020³⁴.

180. The COVID 19 pandemic has further put a strain on the capacity to deliver on comprehensive health services. A lot of resources have had to be invested towards the management, treatment as well as mitigation of the impacts of the epidemic.

181. Even though the number of COVID 19 orphans has not been documented, an increase in the overall number of newly registered orphans has been observed over the past year. For example, in 2019/20 1,411 new orphans were registered compared to 1,565 in 2020/21 while in 2021/22 in 1,807 new orphans were registered.

³³ *BAIS IV*, 2014.

³⁴ *2020 Report on the Global AIDS Epidemic*, UNAIDS.

7.0 Education

(Art. 11)

7.1 Early Childhood Care, Education, and Development in the Country

(a) Early Childhood Care and Education

182. The MoBE is implementing the Early Childhood Care and Education Policy of 2001. The policy was developed as an improvement of the National Day Care Centre Policy of 1980. This came about in recognition of the fact that early childhood education is an integral part of the education system which contributes to the development of young children. The policies are meant to regulate all early childhood education services provided by different stakeholders and to improve the standards as well as protect children accessing services provided. However, access to the programme was only limited to private, community and NGO providers since government did not implement the programme except to regulate.

(b) Early Childhood Development Policy (ECD) Review

183. In 2015 the Ministry commenced the review of the Early Childhood Care and Education (ECCE) Policy of 2001. The review, which was completed in 2001 and culminated in the development of a comprehensive Early Childhood Development framework, covered other aspects of development and protection of young children which were not part of the current policy including safety & protection, health & nutrition, early childhood education as well as stimulation and care. The project was conducted with the support of UNICEF Botswana Country Office.

(c) Early Childhood Education Curriculum

184. The MoBE has developed a curriculum which will be used in the programme for children aged 54 months to 60 months. Children commence their grade 1 at 66 months (5 ½ years). A 0-3 (36 months) years learning framework has also been developed to guide service providers. The teacher training curriculum has also been developed. All curricular were developed with the support of UNICEF BCO to improve the care and education of young children.

(d) Teachers' Training Initiative for Early Childhood Education

185. The State Party has put in place a teachers' training curriculum for early childhood. After completion of the curriculum for teachers the training programme commenced in 2014 in Serowe College of Education which has been selected to host the programme. The first cohort of the trained teachers graduated in 2016. Currently MOBE has employed 870 pre-school teachers and all teachers employed at Pre-primary level have Diploma in ECD or higher qualification. Total Number of Early Childhood Teachers is 870.

186. The pre-primary programme and primary programme also engage teacher aides to support learners with special needs and language challenges. Total Number of Teacher Aides employed is 459. The Ministry is expecting 264 graduates from Colleges of Education to complete end of July 2021 and these will support Pre and Primary education across the country.

(e) Reception Class Programme in Government Primary Schools

187. The MoBE has introduced the Early Childhood Education Programme on a gradual basis in government primary schools starting in 2014. The programme started with 115 schools in all regions in the country. The programme, which is accessed by children aged 4 ½ years – 5 years so that they are ready for grade 1 at 5 ½ years, is provided free and is to be scaled out to all government schools. It runs for a period of 12 months' school calendar year.

188. MOBE continues to incrementally roll out the Reception Programme for Early Childhood Development (Pre-Primary Education) to public primary schools in collaboration with the Ministry of Local Government and Rural Development. By the end of 2020, Early Childhood Development programme had been rolled out to 613 out of the 756 primary schools translating to 81.1% programme uptake, with an enrolment of 25 640 learners. Prior to the commencement of the pre-primary classes by government, preschool education was only accessible to 17% of all eligible children whose parents could afford the services which was mostly offered by private institutions.

189. During 2021, 23 additional primary schools will start to offer pre-primary education, bringing the total of primary schools offering Pre-Primary Education to 636. The opening of these classes was delayed due to the COVID-19 pandemic impact on education.

(f) Children in hard to reach places without Schools

190. The MoESD has, through its revised Strategic Plan of 2014-2020, outlined the means to ensure that children in places without schools are not left out of accessing the early childhood education programme. The MLGRD aims to provide contextually appropriate and culturally sensitive alternative forms of child care and development. These are usually run by the Village Development Committees (VDCs) and require additional support, including critical feeding programmes, to ensure access and quality for young children from these historically disadvantaged communities.

7.2 School- Based Food Program

191. School feeding program is applicable in all public primary and secondary schools in Botswana. The objective of this program is to provide prepared food to children to alleviate short-term hunger thereby enhancing classroom learning. In some remote rural areas, school feeding has considerably increased school attendance and retention. Learners are provided with two meals per day.

7.3 The Right to Education, Including Vocational Training and Guidance (art. 28)

192. The State Party has continued to ensure that primary education is free for nationals and refugees; but non-nationals pay a subsidised fee of P200 per term. The right to free basic education has been formalized into law by the enactment of The Children' Act of 2009 which further makes it a criminal offence for parent, guardian or relative who denies a child the enjoyment of this right. Unlike in many other countries, basic education in Botswana is 10 years.

193. In January 2006, the government, reintroduced, school fees at secondary schools as part of its cost recovery. The fees were set at a level equivalent to 5% of the cost to government of providing secondary education, with a provision for exemption for children from destitute families, orphans, students in need of care and registered with the Social Welfare Services and students whose parents are terminally ill and incapable of caring for the student materially low-income households. Fees per child were set at P300 a year for Junior Secondary and P450 a year for Senior Secondary schools. Furthermore, students from households whose total earnings are less than P550 per month receive partial exemption if they have more than one child in secondary school. The RNPE provides for seven years of primary education (Standards 1-7), starting not earlier than age six, three years of junior secondary (Forms 1-3), and two years of senior secondary (Forms 4-5) education.

194. The medium of instruction in schools is Setswana for the first four years and thereafter English. English is the official language (the language of the courts, civil service, commerce etc); whilst *Setswana* is the

national language (the language promoted as the unifying medium of communication). There are however numerous other languages and dialects which are spoken by the people.

195. The Policy that allows pregnant girls to return to school continues to be implemented. Preventive measures such as life skills education are also being used to reduce pregnancy rates in schools. This policy applies even in vocational training institutions.

7.4 Aims of Education with Reference also to Quality of Education

196. The State Party, through the MoBE, continues to strengthen its efforts to address gender imbalances in education by particularly undertaking a number of administrative measures.

197. *An Equal Opportunities Policy* is being prepared. The policy seeks to promote equality of learning opportunities and eliminate any existing potential discrimination of learners on the grounds of race, ethnic origin, religion, sex, marital status, disability, age, social status or location. A high level *Gender Reference Committee*, consisting of Departmental Gender Contact Persons, and chaired by the Deputy Permanent Secretary – Educational Development Services (EDS) had been established to ensure that gender is mainstreamed in the educational curricula, education programmes and practices.

198. *A National Vocational Education Policy* is in place. The Policy sets out the Framework for the Establishment of Vocational Training Schools to cater for those learners unable to continue with formal education. The System offers equal opportunities.

199. *The Guidance and Counselling Unit in the Ministry of Basic Education* has conducted a number of *Gender Sensitization Workshops* targeting *Vocational Training Centres* and *Brigade Management*. In addition, the Department of Vocational Education Training has a gender sensitive *Career Guidance Role Model Video*-through which it is expected that more students, especially women, will be encouraged to take up technical careers. In this video, women and men who have been successful in technical careers, serve as *role models*. *Counselling and Guidance Services* are made, in part, to break the gender stereotypes that have always prevailed in relation to career decision making for both boys and girls.

200. The *RNPE* led to a reinterpretation of the goals and objectives of basic education into aims from which subject aims and curricula could be developed. These are based on the assumption that education is a fundamental human right, which promotes the all-round development of the individual; fosters intellectual growth and creativity; enables citizens to reach their full potential; develops moral, ethical and social values, cultural identity, self-esteem and good citizenship enables citizens to participate actively to develop the democracy of Botswana and prepare them for life in the 21st Century. Basic education is aimed at providing a sound pre-vocational preparation, ability to optimise career choices as well as guidance and counselling for learners throughout their schooling.

201. The Curriculum Development and Evaluation Division under MoBE, is responsible for the development of *Curriculum Blueprints* for all levels of education. Teachers have been trained to teach new subjects, such as Moral Education, and Guidance and Counselling in schools.

202. Following the adoption of the Education and Training Sector Strategic Plan (ETSSP) in 2015 the review of the BGCSE curriculum is on-going and 32 new syllabi have been approved for use at Senior Secondary level premised on Outcome Based Education (OBE). Maun Senior Secondary School and Moeng College have started offering the new OBE curriculum in 2021. The new subject of Hospitality and Tourism is on offer in Maun SSS and Crop Production, Animal Production and Horticulture are on offer in Moeng College.

203. Distance learning for secondary school children is available through the Botswana College of Distance learning.

204. The State Party has embarked upon various strategies, in order to expand secondary education provision. Such strategies include constructing new schools in major centres, expanding existing schools, converting some of the strategically placed schools into unified secondary schools, which now cater for Form 1 to Form 5.

205. In 2007, the Government of Botswana introduced a *Double Shift System* in Senior Secondary Schools, in order to increase access to Senior Secondary Schools. The Double Shift System was later phased out during 2012/13 Financial Year due to logistical challenges faced including learner security issues when travelling to schools and strain on the infrastructure including ablutions, furniture and equipment.

206. A revised smaller shifting system has been introduced in 2020 in many schools at all levels, from primary through to senior secondary to provide for social distancing. This has reduced class sizes to 30-34 in all schools and all lessons are scheduled between the normal operating hours to avoid issues experienced in the past. A staff complement of temporary teachers was introduced to cover the additional classes created by splitting classes. It has to be noted that contact lesson time has not been affected by this arrangement.

7.5 Challenges Facing the Implementation of the Child's Right to Education

207. Primary school enrolment rates in remote areas are among the lowest in the country. In order to address this, the Ministry of Basic Education has piloted multi-grade teaching method in 6 different sites. Matsaodi Primary School in Maun has since developed a fully-fledged multi-grade teaching method while others are still at a pilot stage. Multi-grade teaching materials to support one or two teacher primary schools to support learners in remote areas who face challenges of distance to access education, have also been developed.

208. In collaboration with local communities 13 satellite primary schools which provide access to Pre-primary Standard 1 to 4 to allow learners a reduced commute to school have been constructed. The settlements in which the satellite schools have been established are Kajaja, Mowana, Tsodilo, Danega, Sexaxa, Eretsha, Mokgacha, Sheikarawe, Xhaoga, Letoreng, Maratswana, Machana and Bikwe. Kajaja Satellite School has since grown into fully fledged primary school offering all standards.

209. Teacher Aides have been recruited to assist with Standard 1 and Pre-primary learners who are not Tswana speakers. The Teacher Aides assist with language translation to ensure inclusivity for all.

210. Some NGOs, such as Tirisanyo Catholic Council, have established a Pre-school Programmes in these areas, staffed by people from the local communities, in order to enable these youngsters to learn Setswana and English, and to become familiar with a school environment and routine. They are, however, seriously under-funded and under-resourced.

211. One of the biggest challenges in providing education to children in remote areas is high turnover of staff and low morale due to unavailability of social and other amenities. This impacts negatively on children's education. The government has since put in place incentives such as non-payment of rent for teachers who work in remote areas. As more and more teachers are being trained and employment opportunities shrink, teachers are now willing to work in remote areas and that has helped in addressing high turnover of staff.

212. By the end of 2020, the Early Childhood Development programme had been rolled out to 613 out of the 756 primary schools translating to 81.1% programme uptake, with an enrolment of 25 640 learners. During 2021, 23 additional primary schools will start to offer pre-primary education, bringing the

total of primary schools offering Pre-Primary Education to 636. The opening of these classes was delayed due to the COVID-19 pandemic impact on education. The curriculum Framework for ECD has been developed with UNICEF and all classes of pre-primary have qualified teachers at least Diploma in ECD.

213. In the Education Act (Corporal Punishment) Regulations, provision is made that corporal punishment on a pupil at any school can only be administered by the headmaster or another teacher in the presence of the headmaster. Furthermore, no instrument of punishment other than a light cane shall be used; and no corporal punishment shall exceed 10 strokes of the cane. No male teacher may inflict corporal punishment upon any girl whom he has grounds for believing is under the age of ten years. The situation with the secondary schools is that no male teacher, except the headmaster, may inflict corporal punishment upon a girl, and no such punishment shall exceed five strokes. Notwithstanding these Regulations, the emphasis is on moral education, and corporal punishment should only be used as a last resort.

214. To ensure that the Corporal Punishment Regulations are adhered to, the Ministry of Basic Education has introduced a *Punishment Book* at every school. All acts of punishment should be recorded in this book, and it should reflect the type of offence committed by the pupil, type of punishment, date when administered, the teacher who administered it, the name of the child, the number of strokes, and the way they were administered.

215. In essence, corporal punishment can only be administered by the headmaster or someone authorised by the headmaster. Although the Ministry has received few complaints relating to corporal punishment, the reality is that a lot of the conditions stipulated above are flouted, and that teachers do administer corporal punishment outside of these rules. This has led to numerous complaints by children to the NGO, *Childline*. But it is not clear how often these are taken seriously.

216. The review of the Education Act and the new Education and Training Bill advocates for the abolition of Corporal Punishment in schools. MOBE is currently consulting on this Bill with key stakeholders, so far there has been support for the abolition of Corporal Punishment but consultations are continuing. The Bill is expected to be presented to Parliament before the end of 2022.

217. The State Party, therefore, realizes that it will require a considerable amount of public sensitization to get the citizens, including the children themselves, to accept the abolition of corporal punishment in schools.

8.0 Special Protection Measures

8.1 Handicapped Children (*art. 13*)

218. According to the 2017 Botswana Demographic Survey about 4.2 % (90,945) of the child population of Botswana is disabled. The most common disabilities are physical disability (22.7%), mental disability (22.1%) and hearing impairment (19.8%).

219. Special education has always been seen as an important mechanism for the integration of learners with special needs.

220. The development of Special Education in Botswana can therefore be traced back to 1969, when the Dutch Reformed Church established the first Resource Centre in Mochudi at Linchwe Primary School for visually challenged children. In the 1970's two more schools were established, namely Rankoromane Camphill Community Special School for children with mental and physical impairments in Otse and

Ramotswa Centre for Deaf Education. Another Centre for Deaf Education has been established in Francistown, in the Northern Part of Botswana. Credit must be given to the NGOs which started and are running Centres for Children who require Special Education. Government, however, makes annual subventions to these Centres.

221. There are 47 special education units that cater for learners with moderate to severe intellectual disabilities, 3 resource classes for learners with vision impairments, 5 units for learners with hearing impairments in the public education system. An inclusive education agenda is at the heart of provision of education and 7 inclusive resource classes have been established in regular Junior Secondary Schools to support the inclusion of learners with diverse needs.

222. Diverse support mechanisms are offered to promote access and participation in education for learners with special needs and these range from access arrangements during examinations, modifications and adaptations of curriculum to provision of support personnel such as teacher aides and braillists. Currently a centre catering for children with severe to profound intellectual and multiple disabilities is under construction and shall expand on access to education, rehabilitation and care for this group of children.

223. The Ministry has established structures at national, regional and school levels to support inclusion of children with diverse needs in education and capacity building to ensure that teachers and non-teaching staff have the relevant competencies and skills to support learners with special educational needs is continuously provided.

8.2 Administration of Juvenile Justice (art. 17)

224. In the period under report, the State Party has undertaken several measures to provide effective protection of children in conflict with the law and for the better administration of juvenile justice in its jurisdiction. Such measures include enacting in Section 81 of the Children's Act (2009) specific provisions to that effect. In particular, this section provides for the institution of proceedings against a child alleged to have committed an offence. Specifically, this section provides clearly that:

- (1) Any person having reasonable cause to believe that an offence has been committed by a child shall make a report thereof to a police officer in the district in which the offence was alleged to have been committed.
- (2) If, on receipt of a complaint, the police officer is satisfied that *prima facie* an offence has been committed, the police officer shall-
 - (a) investigate the alleged crime; and
 - (b) cause a social worker to enquire into, and file a report to, the children's court, on the general conduct, home environment, school records and medical history (if any) of the child.
- (3) The social worker shall, in the report, recommend the best way of dealing with the child.
- (4) After concluding his or her investigations into the alleged crime, the police officer shall refer the docket relating to the child's matter to the Director of Public Prosecutions who shall take such steps as are appropriate in respect of the matter.

225. Furthermore, Section 85 of the Children's Act provides categorically that:

Where a child charged with an offence is tried by a children's court and the court is satisfied of his or her guilt, the court shall, after taking into consideration the general conduct, home environment, school records and medical history (if any) of such child dispose of the case by-

- (a) placing the child on probation for a period of not less than six months or more than three years;
- (b) sending the offender to a school of industries for a period not exceeding three years or until he or she attains the age of 21 years;
- (c) sentencing the child to community service for such period as the court considers appropriate;

- (d) sentencing the child to corporal punishment; or
- (e) sentencing the child to imprisonment.

(a) Criminal Responsibility

226. The Children's Act has raised the age of criminal responsibility from 8 to 14 years and a child under 14 is presumed to be incapacitated to commit a criminal offence unless it can be proved that at the time of committing the offence the child had capacity to know that he or she ought not to do so.

(b) In Camera Hearings to Protect Children

227. In criminal cases where the child is a victim of abuse, the proceedings are held in camera to protect the identity of the child. Only authorised officials and the parents are allowed inside the court room; the proceedings cannot be published, and the identities of the child may not be disclosed (Section 172 of the Criminal Procedure and Evidence Act and Section 93(1) of the Children's Act).

(c) Child Offenders and their Treatment

228. Botswana identified five priority gaps for intervention on justice for children. These include the establishment of child protection units in the police services, establishment of child-friendly courts, provision of knowledge and training among stakeholders on justice for children and diversion. A child friendly police service centre was established in 2021 in Gaborone. The model will be rolled out to Francistown, Maun, Palapye and Lobatse over a two year period.

(d) Children Deprived of their Liberty

229. The School of Industries, also known as Ikago Centre in Molepolole, is operational even though it has never operated to full capacity because institutionalisation of children in conflict with the law is done only as a measure of last resort. In many cases, children are taken care of by social welfare officers, instead of being placed in incarceration. Social workers in the districts serve as probation officers. Under Customary law the emphasis is on arbitration and reconciliation with child offenders.

(e) Sentencing of Children

230. The State Party has prohibited imposition of capital punishment on children in terms of the Children's Act (2009). Alternative sanctions, which are imposed on children, include: probation; community service; committal to a school of industries; corporal punishment; and imprisonment.

(f) Training Activities For Juvenile Justice Professionals

231. The State Party has undertaken several measures to provide specialised training to all professionals involved in the administration of juvenile justice. For instance, in 2010, the Administration of Justice in the Ministry of Defence, Justice and Security, in collaboration with UNICEF Botswana Country Office, provided Legal Education Orientation (LEO) to 28 magistrates on the implementation of the Children's Act (2009). The magistrates were from various parts of the country.

232. Furthermore, in 2011, UNICEF Botswana Country Office supported the Botswana Police Service with the development of a Training of Trainers Manual on Juvenile Justice, Child-friendly process and procedures. Through this Manual 18 police officers were trained as trainers at Botswana Police College and in 2012, 200 pre-service police officers were trained using the Manual which incorporates international legal instruments such as the African Charter on the Rights and Welfare of the Child, Convention on the Rights of the Child, Beijing Rules, Riyadh Guidelines as well as the Botswana Children's Act (2009).

(g) Review of the juvenile justice system

233. In an effort to cater for child responsive criminal procedures and evidence gathering and its presentation to court, the juvenile justice system is under review. Other areas under investigation include review of the Criminal Procedure and Evidence Act to cater for responsive court procedure and criminal evidence gathering.

8.3 Protection Against Harmful Social and Cultural Practices (art. 21)

234. The State Party has undertaken legislative measures to prohibit and eliminate all forms of harmful traditional practices, including early and forced marriages. In particular, Section 62 of the Children's Act 2009 prohibits harmful social, cultural and religious practices. Subject to Section 61(3), and Section 90, every child has a right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being. In terms of Section 62(2), a child shall not be subjected, by any person, to a forced marriage; a child betrothal; genital mutilation or female circumcision; or any other cultural rite, custom or tradition which may inflict physical, emotional or psychological pain or harm to the child, or otherwise violate or endanger his or her bodily integrity, life, health, dignity, education or general well-being. Under Section 62(3),

- (3) Unless it is in the interest of the child, no person shall circumcise a male child except where-
 - (a) the circumcision does not expose the child to any harm and does not conflict with any regulations made under this or any other Act;
 - (b) the circumcision is performed for medical reasons on the recommendation of a medical practitioner; and
 - (c) proper counselling of the child is obtained, subject to the child's age, maturity and level of understanding.

235. Under Section 62(4), a child above the age of 16 'may be circumcised only if he consents thereto, has received proper counselling, and it has been certified by a medical practitioner that the procedure is unlikely to cause him any harm taking into consideration his maturity and state of health.'

236. According to Section 62(5), any person 'who coerces, pressures or deludes a child into participating in any of the practices referred to in this section shall be guilty of an offence and liable to a fine of not less than P10 000 but not more than P30 000, or to imprisonment for a term of not less than 12 months but not more than three years or both.' In addition, Section 63 of the Children's Act 2009 provides that: "A person who contravenes the provisions of Sections 59 to 63 shall be guilty of an offence and liable to a fine of not less than P30 000 but not more than P50 000, or to imprisonment for a term of not less than seven years but not more than 10 years, or both."

237. Children are protected from early marriages by The Marriage Act Under Section 14 which provides that persons below the age of 18 years may marry. Although there are no official reports on arranged marriages in the State Party, it is still believed that there are some cases of arranged marriages that are taking place in some parts of the country.

8.4 Armed Conflicts (art. 22)

238. The State Party has ratified the Rome Statute for an International Criminal Court on 8 September 2000 and acceded to the Geneva Convention on the Laws of War on 10 December 1976. It also acceded to Protocols I and II to the Geneva Conventions on 23 May 1979. These have been incorporated into Botswana Legislation (CAP 39:03).

239. In addition, the Botswana Defence Force Act (1977) provides that no person will be recruited into the army who is under the age of 18 years. Section 17 provides for enlistment of persons in the BDF. In, *extenso*, this section provides that:

17. (1) A person offering to enlist in the Regular Force shall be given a notice in the prescribed form setting out the questions to be answered on attestation and stating the general conditions of the engagement to be entered into by him, and a recruiting officer shall not enlist any person in the Regular Force unless satisfied by that person that he has been given such a notice, understands it and wishes to be enlisted.

(2) A recruiting officer shall not enlist a person under the apparent age of 18 years.

240. Botswana, as a country, has never been involved in armed conflict; and, as such, children in its jurisdiction have never taken part in hostilities involving armed conflict.

8.5 Refugee Children (art 23)

241. Asylum seekers, including children, are provided with primary, secondary, and tertiary health care services while refugees in the camp get health services from Dukwi clinic based in the camp.

242. The State Party, in collaboration with UNHCR Botswana Red Cross Society and Skillshare International (Botswana), runs activities towards the support of unaccompanied children (UAC) or orphans and vulnerable children (OVC). These activities include:

- (a) Extended family tracing and reunification processes where possible for all identified cases of UAC and OVC;
- (b) Community fostering of children was encouraged who are not within families through enlisting the support of refugee leaders, government and UNHCR to identify foster/host families;
- (c) Registration and monitoring of foster families and the children through home visits;
- (d) Introducing regular educational activities on health including games through the youth centre program;
- (f) Training of new school based peer educators to continue health education in the school;
- (a) Running the annual orphans and vulnerable children (OVC) retreat, in the form of provision of children with educational and fun filled activities;
- (b) Partnering with agencies offering child oriented mentoring services for regular activities in the camp. Such agencies are Ghetto Artists and the Salvation Army Psychosocial Support Initiative (SAPSSI);
- (c) Offering group counselling for children in the camp once each month through the youth centre and follow-ups for children presenting cases in need of special attention; and
- (d) Opening the youth centre library and television services to all the children in the camp.
- (e) The government runs a feeding program for children under the age of five on a monthly basis in Dukwi clinic. The children at the nursery school receive a daily balanced meal.

240. The Ministry of Local Government and Rural Development, through its social protection programmes, provides some mitigation services for victims of emergency situations. The same services are extended to children even though there are no interventions that are specific to

children. Emergency situations include floods and droughts as well as displacement of people. Through such programmes, families are provided with temporary shelter, food packages, blankets and any other immediate needs that may be identified at the time. For refugee children, medical care is provided for free.

243. The country has so far recorded 58 unaccompanied refugee children at the Dukwi refugee camp. Such children are placed with foster parents within the camp while family tracing is done. This is done through the Botswana Red Cross Society and the UNHCR.

244. Other services aimed at facilitating social reintegration and recovery include restoration and maintenance of contact between family members – location of missing persons, ascertaining the whereabouts of detainees and family reunification, Pauper burials, temporary social welfare relief (where needed) for migrant families eligible for citizenship, inducement (by host countries) for legal migration to country of origin – transport, processing of international adoptions where needed.

8.6 Sexual Exploitation (art. 27)

245. In State Party the number of cases of sexual abuse and violence reported to the police is on the increase as reflected at Table: 4 in the attached annexure. The increase in cases can be explained by both an actual increase of incidences as well as increase in police responsiveness to the problem. The Botswana Police Service not only changed its name from Botswana Police Force, but it has also improved its responsiveness to issues of gender and sexual abuse.

246. Young children, especially young girls as they are perceived to be attractive sexual partners, for they are seen as less-likely to be HIV positive. Girls may be attracted by the material inducements offered by older men who offer them money and gifts in exchange for sex. The engagement in commercial sexual work by young girls, especially in urban areas, cannot be discounted, but the extent of the problem has not been ascertained.

247. In order to protect children from exposure to obscene materials, the State Party has enacted the Cybercrime and Computer Related Crimes Act (2018) to, *inter alia*, protect children from information or materials that are harmful. In particular, Section 16 prohibits electronic traffic in pornographic or obscene material. In, *extenso*, this section provides that:

- (3) A person who-
 - (a) publishes child pornography or obscene material relating to children through a computer or computer system;
 - (b) produces child pornography or obscene material relating to children for the purpose of its publication through a computer or computer system;
 - (c) possesses child pornography or obscene material relating to children in a computer or computer system or on a computer data storage medium;
 - (d) publishes or causes to be published an advertisement likely to be understood as conveying that the advertiser distributes or shows child pornography or obscene material relating to children; or
 - (e) accesses child pornography or obscene material relating to children through a computer or computer system, commits an offence and shall be sentenced to a minimum fine of P40, 000 but not exceeding P100, 000, or to imprisonment for a minimum term of two years but not exceeding three years, or to both.

248. The Anti-Human Trafficking Act of 2014 prescribes stiffer penalties against persons that sexually exploit children in actions that amount to human trafficking. In this regard, Section 9 states that any person who during the commission of the offence under section (1) – (d) instigates a person to commit an act of prostitution; (e) instigates a person to take part in an obscene publication or obscene display; or (f) commits a sexual offence against a person – commits an offence and is liable to a fine not exceeding P 1 000 000 or to

imprisonment for a term not exceeding 30 years, or to both. In addition and most importantly for child victims, the Act states under Section 9 (3) that “the consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection (1) have been used.”

8.7 Drug Abuse (art. 28)

249. The State Party has undertaken several administrative measures to protect children from substance abuse. In particular, children who are involved in drugs and require rehabilitation are normally referred to BOSASNET (Botswana Substance Abuse Network). The Anti-Tobacco Network is also involved in providing public education on the effects of tobacco and advocating for prohibition of the sale of tobacco to children under the age of 18 years. The Ministry of Health and Wellness (MoHW) – Department of Public Health is also involved in public education on the same issue. The First Botswana Youth Risk Behavioural Surveillance Survey Among 10-19 years old Students (2013) by MoESD found that:

- 13.8% of students had ever used snuff;
- 18.6% of students had ever smoked a cigarette and 7.1% of students had smoked a cigarette on at least one day during the 30 days prior to the survey (current cigarette use);
- 16.6% of students had ever had at least one drink of alcohol and 7.3% of students reported having had at least one drink of alcohol in the past 30 days (current alcohol use); and
- 14.9% of students reported having ever used marijuana, 5.6% had ever used cocaine and 3.7% had ever used ecstasy, and 5.7% had ever used sextasy.

250. The national curriculum has mainstreamed substance abuse issues in different subjects from primary to secondary schools as a preventative and awareness raising measure. Life skills education covered under the Guidance and Counselling Programme is also taught across all levels to empower learners to make informed decisions. Clubs are also established in schools to promote healthy lifestyles among learners and to promote peer support.

251. The Ministry of Basic Education periodically holds drug and alcohol campaigns where stakeholders are invited to share information on substance abuse and ways of prevention. Students who are identified by schools and they come out seeking help are referred through the schools Guidance and Counselling units so they can access professional assistance. The Ministry also conducts studies to find the trends of drug and alcohol abuse by students and to come up with intervention to address the challenges.

252. There is increasing abuse of marijuana and prescription drugs (*Rohypnol*) in urban areas. The extent of the problem is not clear though, thus more needs to be done to both understand the scale of the problem so as to put in place strategies for combating same. Botswana has a National Drug Regulatory Council with membership from the Police and Ministry of Health and Wellness among others. The Council registers drugs and determines which drugs may be sold over-the-counter. It is an offence to have habit-forming drugs without a prescription and specific provisions exist outlawing the possession of drugs in the *Penal Code* and the *Habit Forming Drug Act*.

253. The State Party has ratified the Protocol on Combating Illicit Drug Trafficking in the Southern Africa Development Community Region, and has also acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

8.8 Sale, Trafficking and Abduction (art 29)

254. The Anti – Human Trafficking Act which was passed in 2014 provides for special protection measures for children who are victims of trafficking under Sections 10, 13 and 18. There are no tailor made programmes for child victims of trafficking, hence they are provided through the mainstream structures that are available. Due regard is however made in managing individual cases as security issues also have to be considered.

255. In accordance with the Anti-Human Trafficking Act of 2014 under Sections 3 and 4, Botswana established the Human Trafficking (Prohibition) Committee. The multi-sectorial Committee is charged with the general responsibility of determining policies for giving effect to the objects and purposes of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. As such Government administered a survey to which a select 10% (1516) of the 14, 783 secondary level school students trained on human trafficking participated. The evaluation determined the level of awareness on human trafficking matters before and after sensitization workshops and also identified areas where interventions were urgently required to better protect children against human trafficking.

256. Places of safety have been identified in different parts of the country for the reception of child victims of trafficking. Since the passing of the law, 12 cases of children have been reported and safe custody was provided while prosecution and reintegration/resettlement procedures were being handled.

257. Botswana has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children and Child Prostitution on the 24 September 2003 and came into force on the 18th January 2002. Currently, the Children’s Act criminalises persons using children for immoral purposes; otherwise there is no law that deals specifically with child prostitution or commercial sexual exploitation. Reported cases only address incest, rape, and defilement, which are punishable by law.

258. Under Sections 57-58 of the Children’s Act it is an offence for persons to use children for immoral purposes, otherwise there is no law that deals specifically with child prostitution or commercial sexual exploitation. Reported cases only address incest, rape, and defilement which are punishable by law. Children are not criminalised but are seen as “at risk” or “vulnerable” and are often just “encouraged” to go home when they are seen in areas that may expose them to some risk.

8.9 Children of Imprisoned Mothers (art. 30)

259. The State Party has undertaken several measures to protect children with incarcerated mothers, including enacting in Section 64 of the Children’s Act 2009 specific provisions to this effect. This section provides that: “(1) Where a parent, other relative or guardian or other person having custody of a child, is convicted under this Act, a social worker shall, within 14 days of such conviction, apply to a children's court for an order to place the child into alternative care.”

8.10 Protection Against Apartheid and Discrimination (art. 26)

260. The population in the State Party comprises of various ethnic minority groups – amongst them the Basarwa. After much national debate, the Botswana Constitution has been amended to recognise the diverse ethnic composition of the nation. Marginalisation of, or special hardships experienced by, ethnic minorities is generally centred on their remoteness and distance from service centres. Botswana has a population of about 2 million people, however, service delivery to remote areas can be a challenge. Botswana’s policy has always been to promote national unity. An important part of that policy is to provide service on the basis of population size and locality rather than ethnicity.

261. The State Party also has an integrated programme for assisting all those who live in remote areas, regardless of their ethnicity. The *Remote Area Development Programme*, which is coordinated from the Ministry of Local Government and Rural Development began in 1974. It recognises that some of Botswana’s citizens

are socio-economically marginalized and require special attention. The overall goal of the programme is to promote the social, cultural and economic development of the remote area dwellers so they can benefit equally from the rapid growth of the country.

262. Specifically this involves intensified development of remote settlements, promotion of income-generating activities, enhancement of the remote area dwellers' access to land, encouragement of community leadership and active participation, provision of training and education and social, cultural and economic advancement as well as preservation of their unique culture and traditions.

263. The approach of the *Remote Area Development Programme* has been to encourage the development of permanent settlements to allow for the provision of basic social services. The main *Programme* components are the provision of safe water, health facilities, primary schools and hostels for pupils, and an economic promotion fund. The objectives of these *Programmes* are to promote production-oriented activities, create employment opportunities, assess and exploit resources available in each community and diversify community involvement in development; challenge and promote community participation in alleviating unemployment; making communities self-reliant.

266. There are approximately 65 officially designated *Remote Area Dweller Settlements*. *Settlement Policy* is determined by the Ministry of Land, Management, Water and Sanitation Services.

267. The State Party has forged itself into a stable united nation; and, recently, there has been a welcome resurgence and deepening of cultural confidence by various ethnic groups. The government considers this a mark of its maturity as post-colonial state and supports these efforts under the guidance of its National Policy of Culture.

8.11 Child Labour (art. 15)

268. The Botswana Labour Force Survey 2005/06 was adapted to capture information on child work and labour. A report entitled "Child labour in Botswana: An Analysis of the Botswana Labour Force Survey 2005/06" was generated to obtain information about the incidence and nature of child labour in the country.

269. The results of the 2005/06 Labour Force Survey showed that 37,936 children aged 7 to 17 years (23,109 boys and 14,828 girls) were economically active. Overall, more than 35,000 children were found to be in hours-related child labour, of whom more than half (19,610) were boys. Slightly more than 19,000 children were recorded as being in at least one form of schooling-related child labour and this form of child labour is more common for girls than boys. The survey found that household chores causing problems with school attendance or studies is the most common form of schooling-related child labour. Overall, just under 50,000 children aged 7-17 (11.6%) years are in some form of hazard-related child labour, with more boys than girls facing hazards. Child labour, overall, is more common for boys than girls.

270. In 2007 the State Party carried out a rapid assessment study on child trafficking in Botswana, which revealed that most children recruited into exploitative domestic services or commercial agricultural work have been moved from within the country. Most of the children who are affected by this kind of displacement are those from poverty stricken households. Poverty is linked to absence of opportunities for productive employment and education.

271. The study further revealed that the agricultural sector absorbs quite a sizeable number of children whose parents are working in the farms. Exploitative domestic work where children work long hours, often finishing at night is also very common. Some children who are engaged in domestic work go to

school and pick up the domestic chores after school. Other findings pointed to children who were used by adults to commit crime which was more rampant in towns.

272. The Anti-Human Trafficking Act of 2014 in its interpretation specifically includes child labour as a form of exploitation. The Act, under Section (9) and under Part (C) criminalizes any person who “subjects a person to slavery or forced labour”. Such an offence attracts a fine not exceeding P 1 000 000 or to imprisonment for a term not exceeding 30 years, or to both. It is also important to note that the act states under Section 9 (3) that “the consent of a victim of trafficking in persons to the intended exploitation shall not be relevant where any of the means set out in subsection 1 (which is the definition of trafficking in persons) have been used.

8.12 Children in Street Situations

273. Another group of children of particular concern to the Botswana government are street children. These generally constitute children who have dropped out of formal school and because of inadequacies in the system could not be absorbed back. They come mostly from poor families and are largely found in the main urban areas. There are efforts by some NGOs to assist these children including the Botswana Christian Council and Window of Hope in Gantsi whose programs are aimed at getting street children back to school, providing training to those over the primary school age of 10 years and parental empowerment. The major constraint on NGOs is their lack of resources to provide services, or to expand their programme to other towns.

274. A street child in the context of Botswana is defined as “a person aged 18 years and below who is working or living in the streets or related sites” (Situation Analysis of Street Children, 2002). There is no national programme that targets street children, but they fall within the ambit of the orphans and vulnerable children programme as vulnerable or children at risk. According to a study on the Situation Analysis of Street Children (2002), the majority of street children were males (94%) aged 5-18 years and were found mostly in urban areas. Street children originate from varying family backgrounds but come mainly from female-headed households. Poverty, broken families, unemployed parents and abusive home environment (domestic violence) were cited as some of the socio-economic push factors that force children into the streets. Ninety percent of the street children had both or one parent alive.

8.13 Monitoring of the Implementation of Special Protection Measures

(a) Refugee Children

275. The cooperation and collaboration with the Botswana Red Cross and the UNHCR provides adequate monitoring.

(b) Children with Disabilities

276. There is a shortage of disability assessment specialists which has resulted in late identification and delayed intervention. Early childhood centres for children diagnosed with different forms of disabilities are also inadequate hence the disproportionate levels of enrolment, which compromises transition at subsequent stages. The school health programme identifies disability, especially mild disability through the Satellite centre in Francistown and mobile facilities are some of the ways through which

277. Access to services has also been hampered by structural issues where roads are not suitable for the wheelchair bound and walking sticks and buildings as well as channels of information sharing are also not accessible to some children with disabilities.

(c) Criminal Responsibility

278. The Judiciary in the State Party is very child-friendly and will seldom send a child to prison and/or deny him or her bail. The High Court takes its role as the ‘upper guardian of all minors’ very seriously.

(d) Child Trafficking

279. The population of Botswana and the social structures make child trafficking a difficult undertaking to hide. The practice of requiring that a child have his or her own passport, as opposed to an endorsement of an adult’s passport serves as a monitoring tool for the movement in and out of the country of Botswana national children.

280. The provision that an adopted child cannot be removed from Botswana within two years of the adoption, without the written consent of the Minister also serves as a monitoring tool for the movement of children. The adoption process itself involves a thorough assessment by social workers and has in-built monitoring aspects, making it difficult for traffickers to remove children without supervision.

281. Botswana enacted the Anti-Human Trafficking Act of 2014 in a bid to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons supplementing the United Nations Convention against Transnational Organised Crime (UNTOC).

282. The Anti-Human Trafficking Act under Section (10) specifically outlines the following as acts that specifically constitute the promotion of child trafficking:

10. (1) A person who for the purpose of trafficking in persons –

- (a) adopts a child or offers a child for adoption;
- (b) fosters a child or offers a child for fostering; or
- (c) offers guardianship to a child or offers a child for guardianship, commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 25 years, or to both.

(2) A person who initiates or attempts to initiate adoption, fostering or guardianship proceedings for the purpose of subsection (1) commits an offence and is liable to a fine not exceeding P 100 000 or to imprisonment for a term not exceeding 15 years, or to both.

283. In addition to the above, Botswana’s Anti-Human Trafficking Act also has a specific provision pertaining to child victims of trafficking vis-à-vis their identification and protection and makes a nexus with Botswana’s Children’s Act. The Act prescribes the following under Section (13):

13 (1) Notwithstanding any other law prohibiting the disclosure of personal information, any person who, on reasonable grounds suspects that a child is a victim of trafficking in persons shall immediately report that suspicion to a social worker or a police officer for investigation.

(2) A person referred to in subsection (1) –

- (a) Shall provide reasons of that suspicion to the social worker or police officer;
- (b) who makes the report in good faith, is not liable to civil action on the basis of the report;
- (c) is entitled to have his or her identity kept confidential if his or her safety is at risk as a result of the report, unless the interests of justice require otherwise.

(3) A social worker or police officer to whom a report has been made in terms of subsection (1) or a social worker or police officer who, on reasonable grounds, suspects that a child is a victim of trafficking in persons, shall within 24 hours, refer that child to a place of safety in terms of section 44 of the Children's Act or to a centre for victims pending a police investigation into the matter.

(4) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 2 years, or to both.

(e) Child Abuse and Exploitation

284. Professionals involved in child related services, such as teachers, social workers and the police, have been sensitised on working with children who have been abused, and reporting such cases when they become aware of them. They are increasingly using child-friendly mechanisms in their work. The introduction of Guidance and Counselling in schools has provided children with an avenue for reporting abuse and obtaining support at school.

285. The Botswana Police have been promoting what they call "Community Policing" and have introduced the following:

- (a) Anti-Crime Clubs in schools to assist children to make reports of criminal activities. Trained officers go into schools to work with children in these clubs;
- (b) Crime Prevention Teams (In urban areas) working directly with street children to enable them to report abuse;
- (c) Neighbourhood-watch Committees; and
- (d) Sensitisation work-shops and conferences and general public education campaigns.

9. Responsibility of the Child

(Art. 31)

286. The State Party has, through the Department of Curriculum introduced Social and Cultural Studies to empower children from primary school with good citizenship knowledge and promote cultural awareness. The subject is marked and graded and therefore contributes to the overall student marks. The fact that it is not optional extends exposure to all children.

287. Volunteerism is also promoted among children through organisations like the Botswana Girl Guides Association, Botswana Work Camp Association, Botswana Red Cross Society (especially through the mentorship programme), Botswana Scouts Association. The Botswana Workcamps Association (BWA) engages children and young people to participate fully in community development through practical leadership training, teamwork, decision making, confidence, goal setting and time management. Activities are carried out in a social set up controlled by the children themselves.

288. The workcamp projects are implemented across the country over school vacations and are monitored by teachers as their patrons and project owners like district councils and Village Development Committees. The projects have, over time provided exposure on cultural and environmental diversity among the participants as well as build positive discipline, integrity, unity, tolerance for one another, non-racial, non-tribalistic well-being, which are fundamental for peace in Botswana and world.

289. Other initiatives are aimed at inculcating good morals among young people like the SKY Girls initiative through which a magazine is produced to disseminate information to adolescent girls about issues like dangers of intergenerational relationships, discipline, confidence and sexuality. Young girls and boys are also discouraged from engaging in premarital sex through the Face the Nation Initiative.

290. The Peer Approach to Counselling for Teens (PACT), which operates from schools is aimed at promoting good relations among children so that they can share issues among each other and provide support to each other as may be needed. The idea behind this initiative was borne from the fact that children most often find it easier to open up to their peers as opposed to adults.

291. Leadership skills are promoted through the Junior Achievement Botswana which promotes independence through provision of business and life skills to children. Children are encouraged to form companies and are assigned various roles and responsibilities which they have to carry out to ensure the company remains profitable and sustainable. Furthermore, student representation structures in schools have been established in secondary schools to promote dialogue between student bodies and school managements.

292. Schools also run various clubs to create awareness, share information and promote certain courses such as environmental conservation, culture, religion, and others.
