



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Botswana and welcome the constructive engagement of your Government during the 29th session of the UPR Working Group in January 2018.

As the final outcome report on the review of Botswana was recently adopted by the Human Rights Council at its 38th session, I take this opportunity to follow up on a number of areas raised in the two reports that my Office had prepared for the review – the Compilation of UN information and the Summary of Stakeholders' submissions – which I consider in need of particular attention over the next four and a half years, leading up to the next cycle of the UPR. In identifying those areas, I have also considered the statements and recommendations made by 83 delegations, the presentation and responses by the delegation of Botswana, and the action that had been taken to implement over 100 recommendations accepted from the second cycle of the UPR. Those areas cover a range of issues and appear in the Annex to this letter.

I welcome ongoing initiatives to confer a human rights mandate on the Office of the Ombudsman to enable it to serve as a national human right institution. I would encourage the establishment of such an institution in full compliance with the Paris Principles as soon as possible, and my Office stands ready to provide any requested assistance with this endeavour, including advice on the required legislation and the process for its establishment.

I encourage the strengthening of Botswana's Inter-Ministerial Committee on Treaties, Conventions and Protocols that serves as a national mechanism with particular focus on reporting to human rights mechanisms. I also encourage this mechanism to work in collaboration with other stakeholders to follow up on outcomes of all human rights mechanisms and welcome its effective operation in line with the practical guide published by my Office in 2016, which is available at:
http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

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H.E. Mr. Vincent T. Seretse
Minister of International Affairs and International Cooperation
Botswana



Kindly note that I will be offering my advice to all Member States as they undergo their respective reviews in the third cycle of the UPR with a view to assisting them with the implementation of UPR recommendations as soon as possible after the reviews. An important measure that can positively contribute to follow-up action is voluntary mid-term reporting. I strongly encourage all Member States to submit a voluntary mid-term report two years after the adoption of the outcome report. In this regard, I encourage Botswana to submit a mid-term report for the third cycle, by 2020.

As the Secretary-General stated in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals"*.

I look forward to holding discussions with you on ways in which my Office may best assist Botswana to take action in the areas that have been identified.

Please accept, Excellency, the assurances of my highest consideration.

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights



Annex

Scope of international obligations and national human rights framework

- Consider ratifying the International Covenant on Economic, Social and Cultural Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Second Optional Protocol to International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the International Convention for the Protection of All Persons from Enforced Disappearance; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ensure all ratified international human rights conventions are incorporated into the national legal framework.
- Expedite ongoing efforts to establish a national human rights institution in compliance with the Paris Principles and, if required, seek the assistance of OHCHR in that regard.

Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination

- Review Section 15 of the Constitution, in particular, sub-sections 4 (c) and (d) and 9 (a), in order to abolish exceptions to the principle of non-discrimination.

B. Development, the environment and human rights

- Produce an implementation plan to reduce carbon emissions by 15 percent by 2030 in accordance with Botswana's nationally determined contribution for climate change, and develop public-awareness materials on climate change.
- Ensure that the authorities conduct social impact assessments and hold consultations with affected communities before the promulgation of any laws related to the environment, to ensure that no community is arbitrarily deprived of its natural resources and land.

C. Civil and political rights

Right to life

- Consider imposing a moratorium on executions and hold public consultations on the desirability and long-term effectiveness of the use of the death penalty.

Administration of justice and the rule of law

- The dual legal system comprising of customary law and common law should be reviewed so as to ensure consistency with constitutional rights and international human rights standards.
- Increase access to legal aid throughout the country by increasing the number of offices and expanding the mandate of the Programme to include all legal matters.

Fundamental freedoms and the right to participate in public and political life

- Decriminalize defamation and make provision for such acts in the civil code.
- Revise the Communications Regulatory Authority Act, 2012 to allow the licencing and operation of community broadcasters.
- Continue to work towards ensuring that the Ntlo ya Dikgosi (House of Chiefs) which served as an advisory body to the Parliament was in fact effectively represented in that institution, with due regard to the traditional leadership structures and the practices of all the tribes.

Prohibition of all forms of slavery

- In light of Botswana being a source, transit and destination country for human trafficking, the Government is encouraged to undertake a study on the sexual exploitation of children to determine the extent of such exploitation, and to identify target areas, vulnerable groups, and areas for improvement,
- Provide appropriate training to service providers and stakeholders working with children who were victims of human trafficking.
- Consider integrating the definition of child prostitution from the Optional Protocol to Convention on the Rights of the Child on the sale of children, child prostitution and child pornography into the Penal Code and Criminal Procedure and Evidence Act.

Right to privacy and right to family

- Same-sex relations between consenting adults are criminalised in Botswana. The Government is encouraged to decriminalize same-sex relations and legalize same-sex marriage.

D. Economic, social and cultural rights

Right to an adequate standard of living

- Adopt and implement the Botswana National Water Policy as a comprehensive approach to water and sanitation needs, guided by the principles and normative content of the human rights to water and sanitation.
- In light of the increasing cost of living, due consideration should be given to increase the amount of the old age pension.

Right to health

- The lack of drugs and poor infrastructure in health care facilities, such as a lack of electricity and running water, and the inaccessibility of hospitals were some the factors that significantly contributed to the high number of maternal deaths and Botswana is urged to address these issues with a view to improving the medical care for mothers and children.
- Ensure that the national strategy to combat HIV and AIDS is inclusive and covers all key populations, including men who have sex with other men, the LGBTIQ community and sex workers.

Right to education

- Address the concerns by UNESCO that despite the education pillar in “Vision 2016”, the quality of education was on a decline and the education system remain monolingual.
- All minority languages should be recognized and all primary school children, particularly minority children, should be provided with the opportunity to access education in their mother tongue.

E. Rights of specific persons or groups

Women

- Criminalize marital rape, provide training to police officers and other stakeholders on the handling of reported cases of gender-based violence, ensure that there were sufficient shelters for victims and develop public awareness of the Domestic Violence Act.

Children

- Criminalize corporal punishment in all settings.
- Access to water, sanitation and hygiene in schools should be improved, including by installing menstrual hygiene management systems in all schools.
- Consider immediately releasing those children detained at a facility referred to as CII and whose asylum requests were rejected; ensure durable solutions that are in their best interest.

Minorities and indigenous peoples

- Ensure that indigenous peoples are recognized in the Constitution and to enact legislation to protect their rights.
- Address the concerns of the Special Rapporteur in the field of cultural rights arising from the strong imbalance in recognition and power between Tswana and non-Tswana communities by engaging in a new era of nation-building which, from a cultural rights-based perspective, inter alia implied equal recognition and acknowledgement of the country's various communities.
- Enhance the capacity of the kgotla system to take on board marginalized groups and people, such as women and minorities and recognize and respect the cultural patterns and traditional leadership structures of non-Tswana communities.
- In light of hunting being important for the livelihood of the Basarwa/San community, consider lifting the hunting ban. In this context, due recognition should be given to the indigenous knowledge systems of the community which support the sustainable use of the environment, including traditional hunting and gathering practices. Engage with the indigenous peoples in the development of policies for the sustainable use of resources within the game reserves and federally-protected lands.

Migrants, refugees, and asylum seekers

- Withdraw the reservations to Articles 17 and 26 of the 1951 Convention concerning freedom of movement, and to revise the encampment policy and



provide work permits and decent work opportunities to asylum-seekers and refugees. The reservation to Article 34 of the 1951 Convention should also be withdrawn so that refugees, particularly those with ties to the country, can be naturalised.

Stateless persons

- Consider amending relevant provisions of the Citizenship Act 1998 and Citizenship Regulations 2004 to allow for the granting of nationality, at birth to any child born in Botswana who would otherwise be stateless, as well as to foundlings.
- All necessary steps should be taken to ensure immediate and universal birth registration of children born on its territory, particularly foundlings, those born to migrants and undocumented persons and those born outside of hospitals.
- Legislation restricting acquisition of nationality through adoption to children below three years of age should be revised to ensure that all children (under 18 years of age) adopted by citizens of Botswana acquire Botswanan nationality.