



REPUBLIC OF BOTSWANA

STATEMENT BY

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THE AMBASSADOR & PERMANENT REPRESENTATIVE OF
THE REPUBLIC OF BOTSWANA TO THE UN-GENEVA**

DURING

THE 45TH SESSION OF THE CEDAW COMMITTEE

FOR

**CONSIDERATION OF THE
COMBINED INITIAL, SECOND AND THIRD PERIODIC
REPORTS ON THE IMPLEMENTATION OF THE CONVENTION
ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION
AGAINST WOMEN (CEDAW)**

January 2010

GENEVA, SWITZERLAND.

Madam Chair,

Members of the CEDAW Committee,

Ladies and Gentlemen,

1. Let me on behalf of the Government of the Republic of Botswana, express our gratitude for having this opportunity to present for your consideration the combined initial, second and third reports on the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).
2. This report is a culmination of a wider consultative process with various stakeholders including state and non state actors. In preparing this report wider consultations were made with government ministries/departments, members of the civil society in Botswana, including Non Governmental Organisations (NGO's), the academia, the media, religious organisations, trade unions, political parties and other individuals concerned with human rights. We took into consideration the guidelines provided as well as the recommendations from the CEDAW Committee. The involvement of the civil society in the process was valuable and we intend to continue to involve them in the preparation of future reports.
3. I must emphasise **Madam Chair**, that Botswana recognizes the importance and the work of this Committee. We view this as an important catalyst for the promotion and protection of the rights of women.

4. **Madam Chair**, allow me to present a brief overview of Botswana's National Report. The report covers the legislative, judicial, administrative and other measures that have been adopted to give effect to the provisions of the Convention and achievements made in this respect. I will emphasise in particular the developments that have taken place in my Country since the ratification of the Convention. As we hope to learn from this process I will also accentuate factors and difficulties affecting the degree of fulfilment of obligations under the Convention.

5. **Madam Chair**, Botswana signed and ratified the CEDAW in 1996 and acceded to its Optional Protocol in 2007. Since the ratification of this Convention, efforts have been made to identify laws which had elements of discrimination against women. In doing so, the first effort was to realign the definition of the word 'discrimination' under the Constitution of Botswana with the definition of 'discrimination' under Article 1 of the Convention. The definition of the word 'discrimination' under Section 15(3) of the Botswana Constitution was not in line with the definition of the Convention. To this effect Section 15(3) was amended to include the word 'sex' to the list of descriptions that define the expression 'discriminatory'.

6. Chapter II of the Constitution of Botswana guarantees every person in Botswana the fundamental rights and freedoms of the individual, whatever his or her race, place of origin, political opinions, colour, creed or sex. Both women and men are guaranteed equal protection before the law in Botswana.

7. With regard to review of Section 15 (4)(c) of the Constitution which exempts adoption, marriage, divorce, burial and devolution of property on death and other matters of personal law, the position of Botswana is that Section 15(3) which defines 'discriminatory' and Section 3 which protects and guarantees fundamental rights of an individual under the Constitution cannot be superseded by any Act of Parliament. Any other law in force in Botswana, whether customary or common law, if it deals with a matter of adoption, marriage, divorce, burial shall not do so in violation of the provisions of the Constitution.
8. **Madam Chair**, at this point allow me to clarify the status of the Convention in the national legal system. Ratification of the Convention does not automatically imply that it becomes part of the domestic laws of Botswana. The legal procedure for domestication of Articles of the Convention is that a Bill has to be presented and approved by Parliament – the Government body responsible for legislature - before it becomes part of the national legal system. Numerous pieces of legislation that negatively affected the status of women in Botswana have been amended or reviewed following this procedure.
9. A total of 15 laws that were found to be discriminatory have already been reviewed. Some of these laws are:
 - i Mines and Quarries Act
 - ii Criminal Proceeding and Evidence Act
 - iii Deeds Registry Act
 - iv Marriage Act

- v Pensions Act
- vi Marriage Property Act
- vii Penal Code Act

10. **Madam Chair**, I wish to apprise the Committee on the operations between customary and constitutional laws. The Constitution is the supreme law of Botswana and any other law is subordinate to it. Customary law which is regulated by the Customary Law Act (Cap 16:01) does not operate ultra vires the Constitution. The Chiefs and Tribal Authorities who administer Customary Law uphold the sanctity and inviolability of the Constitution of Botswana. Customary law has subjected itself to the supreme operation of the Constitution. Section 2 of the interpretation part of the Act reads '*Customary Law means in relation to any particular tribe or tribal community, the Customary Law of that tribe or community so far as it is not incompatible with provisions of any written law or contrary to morality, humanity or natural justice*'.
11. The Government of Botswana embarked on a huge exercise to review or enact laws that removed inequality from the common law perspective. Issues related to marriages, property, inheritance, civil actions, dissolution of marriages and rights of the child were addressed through amendments to the Marriage Act and introduction of gender responsive provisions. The concept of marital power was also removed through the enactment of the Abolition of Marital Power Act of 2004.
12. We note nevertheless that some Customary Laws and practices impaired gender equality related to marriages, property, inheritance, civil actions, dissolution of marriages and rights of the child.

These are yet to be addressed following the customary perspective.

13. It is Government intention to ensure that customary laws follow the positive development of the civil laws in order to enhance equality by continuing to educate and inform the relevant stakeholders and the public. Efforts continue to be made periodically to brief and sensitize Ntlo ya Dikgosi on issues of gender and development and human rights. Dikgosi are the custodian of the principles of culture and customary laws and practices. Sensitization of the Dikgosi is very important to solicit their support, especially that some of the discriminatory and harmful practices that impact negatively on women and development are found in this area. The Government continues to explore the various aspects that discriminate against women with a view to bring in positive corrective measures that promote harmony, justice and fairness in the society.

14. **Madam Chair**, Botswana believes in the principle of good governance which requires the participation of both women and men. I am pleased to inform the Committee that for the first time ever, a woman has been appointed Speaker of the National Assembly of Botswana. This is a great achievement indeed. The importance of this position in Botswana's democracy cannot be over emphasised. Not only does the position occupy fourth place in the National Order of Precedence, it is a constitutional position that is expected to prevail and arbitrate when members of Parliament cannot agree among themselves.

15. Apart from the Speaker of the National Assembly, there are four women among the sixty-one members of the National Assembly. All four of them have been appointed Cabinet Ministers. Regrettably we are not doing well in this area as depicted by the outcome of the 2009 General Elections. At the Parliamentary level 11 stood for elections and only 2 were elected and another two were specially nominated. Out of 150 women who stood for Council seats only 68 were elected into political positions. However, 51 were later nominated as a positive step to increase women participation at the political level. Election of women into political positions is still a challenge that requires rigorous introspection.
16. Botswana has made good progress in the area of women in decision making in the public service at the level of permanent secretaries and senior managers as they now stand at 44%. For the first time in the history of Botswana women were recruited in the Botswana Defence Force in 2008.
17. We will continue to work towards improving representation of women for we believe that empowering women to make full contribution to development is essential to the development and success of any country.
18. **Madam Chair**, Botswana has made significant progress in addressing violence against women and the girl child through the adoption of the Domestic Violence Act of 2008. The law provides victims of domestic violence with maximum protection against abuse. Since the adoption of the Act, the Botswana Police in conjunction with the Women's Affairs Department have strengthened collection of

disaggregated data on violence against women in areas such as rape, murder, defilement, incest and threat to kill. The enactment of the Act is a reflection of the Governments' commitment and determination to eradicate violence against women and the girl child. A National Action Plan to implement positive initiatives to end gender based violence was developed in 2007 and is currently under review.

19. **Madam Chair**, it is important to point out that gender based violence still remains a serious threat to the attainment of gender equality in Botswana. Statistics from the Botswana Police Services and Research shows that most violence against women in Botswana is domestic. The perpetrators are often partners, family members or close acquaintances. Our emphasis is to create a more inter-sectoral collaboration between the legal, medical, social and psychological service providers to assist survivors of gender violence. The Government is currently collaborating with the United Nations Development Fund for Women (UNIFEM) to support capacity development of service providers to effectively manage the challenges posed by gender based violence and related high incidences of HIV and AIDS. The project aims at developing capacity for accelerated implementation of existing laws, policies and plans that address gender based violence, and where such instruments do not exist, initiate a process of developing new ones.
20. **Madam Chair**, the Government of Botswana embraces change if it carries the will and aspirations of the people. The Government of Botswana will not undertake initiatives that are contrary to the interests and wishes of the people. It is against this background that the position of my government on

issues such as corporal punishment, termination of pregnancy and sexual orientation should be understood.

21. The law in Botswana criminalizes same sex sexual activity, this being founded on the repulsion with which the nation of Botswana views sexual acts traditionally held to be immoral. The current Botswana traditional system and beliefs do not provide room for consideration of such way of life.

22. Though Botswana does not have a specific law dealing with human trafficking, it is however a criminal offence under the laws of Botswana. The Penal Code (Cap 08:01) Section 261 of the laws of Botswana, prohibits and punishes human trafficking. The Children's Act of 2009 also prohibits the trafficking of children for any unlawful purpose whatsoever.

23. Corporal punishment is provided for under the laws of Botswana and specific regulations have been spelt out on how it has to be applied. Global Initiative raised an issue on progress being made to ensure that corporal punishment on girls is explicitly prohibited in all settings. Chairperson, the Government has not seen the need to exclude girls

from this form of punishment. I must indicate that corporal punishment legally is administered after confirmation by a medical doctor that the person is fit for such punishment. In any case, it is administered to persons below the age of 40 years.

24. The Children's Act of 2009 has incorporated some of the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of Children which were not part of our legislation. Among the offences involving children set out in the Act which will amount to criminal offences when children are subjected or exposed to are;
 - cruel treatment or punishment;
 - harmful social, cultural and religious practices.
25. In that regard the Education Act and Regulations prescribe a strict framework within which corporal punishment is to be administered in schools.
26. **Madam Chair**, the International Disability Alliance has rightly observed that Botswana has not signed the Convention on the Rights of Persons with Disabilities. Though Botswana has not signed and ratified this Convention, major progress has been made to address the concerns and challenges faced by people with disabilities. A Council on people with disabilities has been established to provide a forum for the promotion of the interests and coordination of activities that support their concerns. In order to

uplift the prominence of this group, an office was established at the Office of the President to oversee the needs of people with disability. This is a positive response to challenges faced by people with disabilities.

27. **Madam Chair**, I am pleased to inform that Botswana has made significant strides in sports, particularly in codes that were traditionally viewed as male-friendly such as football, athletics, volleyball, tennis and others. In 2009 the Botswana Football association, in partnership with Federation of International Football Association (FIFA), trained 39 women referees and 40 women football coaches (6 of whom were Junior Secondary School students) and 2 women football instructors. There are 11 registered women football teams. Women and Sports Botswana (WASBO) was established and its mission is to promote the participation of Women and Girls in sports.

28. Through the enactment of the Marital Power Act of 2004 married women were accorded equal opportunity to access and acquire loans with their male counterparts. This enabled women with interest to acquire property to do so in their own right. However, we acknowledge the fact that most of the women have not been able to access credit from financial institutions not because of discrimination

but the required payment of collateral and some other loan requirements.

29. **Madam Chair**, Botswana had made impressive gains in the area of health, many of which have been reversed by the impact of HIV and AIDS. However Government continues to provide universal access to treatment and care for women living with HIV and AIDS as well as support for the Community Home Based Care programme. It has been noted that women and children are burdened with home based care.

30. **Madam Chair**, let me indicate that while Botswana is making meaningful progress to accord women equal opportunities the country is still faced with some serious challenges of producing gender disaggregated data and gender mainstreaming. However, targets will continue to be set for improvement in these areas to ensure our success in accomplishing all the requirements under the articles of CEDAW.

31. In conclusion, **Madam Chair**, I wish to assure the Committee that there is commitment at the political level to the implementation of all articles of CEDAW. Botswana is convinced that implementation of this Convention provides a base for strengthening our

social harmony and cohesion, as well as advancement in the process of development. We reaffirm our continued cooperation with the committee and look forward to hearing your comments and advice.

I thank you.