



Convention on the Rights of the Child

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Committee on the Rights of the Child

Combined second and third reports submitted by Botswana under article 44 of the Convention, due in 2017* **

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** The annexes to the present report are on file with the secretariat and are available for consultation. They may also be accessed from the web page of the Committee on the Rights of the Child.

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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
BISA	Botswana Integrated Sports Association
CSO	Central Statistics Office
DPE	Department of Primary Education
DSE	Department of Secondary Education
DSS	Department of Social Services
EDS	Educational Development Services
HRDP	Human Resources Development Plan
JCMS	Judicial Case Management System
LEO	Legal Education Orientation
MDAs	(State) Ministries, Departments and Agencies
MIS	Multiple Indicator Survey
NASA	National AIDS Spending Assessment
NCC	National Children's Council
NPA	National Programme of Action for Children
OVC	Orphans and Vulnerable Children
PMTCT	Prevention of Mother to Child Transmission
STPA	Short-Term Plan of Action on the Care of Orphans
TWG	Technical Working Group

Part one

I. Introduction

Background

1. The State Party acceded to the Convention on the Rights of the Child (the CRC) in 1995. The Republic of Botswana has also ratified a number of international and regional human rights instruments touching on the rights of the child, including two out of the three Optional Protocols to the CRC. In particular, the State Party signed the Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts (OPAC) on 24 September 2003 and ratified it on 4 October 2004. It also acceded to the Optional Protocol to the CRC on the Sale of Children, Child Pornography and Child Prostitution (OPSP) on 24 September 2003.
2. Under international human rights law, the State Party is obliged to submit periodic progress/implementation reports as required under international human rights instruments. In respect of the CRC, the State Party is obliged under Article 44(1), to submit periodic reports every five years. In compliance with the foregoing state reporting obligation, the State Party submitted its Initial State Party Report to the United Nations Committee on the Rights of the Child (the Committee) on 10 January 2003.¹ A follow up addendum with statistical information was submitted to the Committee in 2004. The Committee considered the Initial Report at its 977th and 978th meetings² held on 16 September 2004, and adopted its Concluding Observations at the 999th meeting held on 1 October 2004.³
3. In its Concluding Observations to the Initial Report, the Committee urged the State Party to submit its 2nd and 3rd reports in one consolidated report by 15 April 2007.⁴ However, the State Party could not meet this deadline. Therefore, the State Party is now submitting its consolidated 2nd, 3rd and 4th periodic report in line with the United Nations Harmonised Guidelines⁵ and the Committee's Reporting Guidelines.⁶
4. This report provides information on the State Party's measures undertaken to implement the treaty-specific provisions of the Convention in light of the United Nations Harmonised Guidelines and the Committee's Reporting Guidelines.

Preparation of the report

5. The Ministry of Local Government and Rural Development was responsible for coordinating an Inter-Ministerial effort towards the preparation of this report. Extensive consultations among Ministries and organizations that serve children in the different arenas, under the technical guidance of a Consultant who was hired under UNICEF financial support were conducted. The Consultant worked closely with a Technical Working Group (TWG), which comprised of members from all key and line MDAs⁷ and NSA's involved in the implementation of the CRC. The TWG under the support of the Consultant examined relevant official reports reviewed all relevant legislation, policies, judicial decisions and administrative actions concerning the implementation of the CRC and other related

¹ See CRC/C/51/Add.9.

² See CRC/C/SR.977 and CRC/C/SR.978.

³ See CRC/C/SR.999.

⁴ This is in the light of the recommendation on reporting periodicity adopted by the Committee (CRC/C/139), under which the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of Article 44 of the Convention.

⁵ HRI/GEN/2/Rev. 6.

⁶ Committee on the Rights of the Child, *Treaty-specific Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States Parties under Article 44, paragraph 1 (b), of the Convention on the Rights of the Child* (adopted by the Committee at its fifty-fifth session (13 September–1 October 2010) (CRC/C/58/Rev.2) (adopted on 1 October 2010, replace those adopted by the Committee on 3 June 2005 (CRC/C/58/Rev.1) (UNCRC Reporting Guidelines).

⁷ State Ministries, Departments and Agencies (MDAs).

international human rights treaties to provide complementary information on the various draft reports. Existing structural operating systems within which the State Party implements the Convention were also reviewed 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 Convention.

6. In this regard, primary data used in making relevant analyses, observations and conclusions in the preparation of the report was obtained from amongst TWG members, MDAs, UN Agencies, children and CSOs. Paper presentations and group or target-oriented discussions were also made at various consultative workshops and seminars involving different data sources and interested parties. In addition to obtaining both qualitative information and quantitative data from these respondents, relevant existing literature, including the previous Concluding Observations by the Committee⁸ and relevant treaty-bodies,⁹ media coverage reports and the relevant international and local laws/regulations relating to the implementation of the CRC and other relevant international child rights instruments were reviewed.

7. After data collection and collation were completed, several draft reports were disseminated to relevant stakeholders, including representatives of children and UN Agencies, to further inform the refinery of the draft reports. At the end of the consultative process the report was validated by stakeholders and forwarded to the Inter-Ministerial Committee on International Treaties for technical advice before transmission to the Ministry responsible for Foreign Affairs for onward submission to the Committee.

Part two

II. Treaty-specific report

A. General measures of implementation

Arts. 4, 42 and 44, para. 6, of the Convention

8. In the period under report, the State Party has undertaken several policy, legislative and administrative measures aimed at, inter alia, fully implementing the Convention on the Rights of the Child in compliance with the previous Concluding Observations of the Committee¹⁰ as elaborated below.

⁸ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Botswana* (U.N. Doc. CRC/C/15/Add.242 (2004).

⁹ 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 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).

¹⁰ Concluding Observations of the Committee on the Rights of the Child, Botswana, U.N. Doc. CRC/C/15/Add.242 (2004).

1. Legislative measures

(a) *The Children's Act to domesticate the Convention*

9. In compliance with the previous Concluding Observations of the Committee¹¹, the State Party enacted the Children's Act [Cap. 28:04]¹² in 2009, which effectively domesticates the UNCRC 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.

(b) *Amendments made to child-related laws*

10. The Marriage Act [Cap. 29:01] was amended in 2001; and has raised the age of marriage to 21 years for both girls and boys. The amendment also 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.

11. 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.

12. The Affiliations Proceedings Act of 1999 [Cap. 28:02] provides that a person other than the mother can institute legal proceedings under the Act. It also extended the time limit within which action can be instituted.

13. The Public Health (Prevention of Immunizable Childhood Diseases) Regulations¹³ 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.

14. 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 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.

15. The Domestic Violence Act [Cap. 28:05] was enacted in 2008 to make provision for the protection of survivors of domestic violence, and prevention and prosecution of abuse against women and children.

16. The State Party has ensured that whatever rule of Customary Law that could possibly undermine the rights of children as contained in the Convention, 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 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 Act¹⁴ 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";

¹¹ Ibid para. 11.

¹² 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.

¹³ Statutory Instrument 45, 2005.

¹⁴ Customary Court Act Cap 16:01 Section 2 and Customary Courts Act Cap 04:05, Section 2.

(e) the Customary Courts Act specifically defines “customary law” as law that is not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice; and

(f) the submission to the jurisdiction of the Customary Court is elective.

17. There is therefore no need to review rules of customary law since their application is limited as indicated above.

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

19. In conclusion, Botswana has, since the middle nineties, embarked on a systematic review and reform of its laws and policies with a view to integrate human rights.

2. Policy and administrative measures

(a) Withdrawal of Reservation on Article 1

20. Having enacted the Children’s Act that brings its definition of a child in line with that of the Convention, the State Party is now working towards lifting its reservation to Article 1 because there remains no legal impediment for this step.

(b) Monitoring the Implementation of the Convention

21. The Ministry of Local Government & Rural Development: The mandate for Child Welfare and Children’s Rights is held by the Ministry of Local Government and Rural Development. The Ministry coordinates, formulates, and reviews social policies, laws and programmes with emphasis on the vulnerable groups of the society, among them, children.

22. 14. Collaboration with Civil Society: Recognising the important role played by non-governmental organisations in development and service delivery, the State Party has maintained its relationship with partner organisations. The Government funds some of these organisations as per *Policy Guidelines for Financial Support to Non-Governmental Organisations* and continuously builds the capacity of the civil society through training on various issues affecting the wellbeing of children. Civil Society organisations involved in child protection actively participate in development and review of policies, laws and programmes for children.

23. 15. 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 grounds 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, still needs to be adequately capacitated to, inter alia, and establish a functional Secretariat that will have adequate staff, equipment and other resources to support a fully functional Council.

25. In order to improve on the coordination of sector Ministries and partners, the State Party is considering establishing a Children’s Desk at institutions such as the Ombudsman and other implementing partners as a way of enhancing coordination of children’s matters.

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.

27. The Village Child Protection Committees: At the community level, the Village Child Protection Committees, established by the Children's Act, shall have the mandate to educate the 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.

(c) *Education, information and training*

28. A child friendly version of the CRC has been developed and has been widely distributed to children and in all child protection forums.

29. The State Party has also disseminated the CRC through the *Lentswe La Bana* Newsletter, which is a quarterly Children's Newsletter with nationwide circulation. This newsletter was distributed to all schools and to some lead non-governmental organisations. Other means through which dissemination has been made include TV programs such as *Itshireletse* drama by Botswana Police Service, Batho Pele documentaries by Ministry of Local Government, *Mantlwaneng*, a Children's programme as well as various radio programs. In addition, an independent, national weekly newspapers, like *Mmegi*, have published the simplified version of the CRC.

30. Orientation sessions for Parliamentary Committees and House of Chiefs have been initiated to sensitise them on the CRC.

31. Communities are also sensitised through public forums on the CRC and other child protection issues. In 2011 and 2012, a Training of Trainers Manual for police officers on juvenile justice, child friendly process and procedures was used to train 200 pre-service and 20 in-services police officers.

32. This combined 2nd, 3rd and 4th report will be widely distributed as soon as it is submitted to the Committee.

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

3. Independent human rights monitoring

34. There is no national human rights monitoring institution in Botswana. However, the State Party is exploring the possibility of establishing one. Plans are under way to fast track the establishment of the Human Rights Commission within the Office of the Ombudsman.

4. Data Collection

(a) *General Sources of Data*

35. The State Party's Central Statistics Office has a comprehensive schedule of household surveys which routinely collect 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*

36. The State Party has continued to make improvements in collecting information on children's issues. In 2004 the BAIS began collecting HIV prevalence rates among children aged 2.5 months up to 18years. The 2005/6 Labour Force survey also included a child labour

module for the first time. Major national programs continue to strengthen their data collection systems to collect information on children.

37. Efforts are underway to collect information on Child Poverty. 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 the Children's welfare.

5. Challenges in Implementing the General Measures of Implementation

(a) The Prevalence of HIV/AIDS

38. HIV/AIDS continues to be a major health and social problem with significant financial and other resource implications. To demonstrate this point, part of the HIV/AIDS program falls under the Ministry of State President and is managed by the National Aids Coordinating Agency which is budgeted to take up P838.8million of the of P2.09 billion budgeted for that ministry. This only goes to emphasize the costs of HIV/AIDS intervention.

39. 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, toxicity and the counselling of teenagers who would have grown up on drugs.

(b) Child Support/Maintenance

40. 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 once-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 once-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.

B. Definition of the child

Art. 1 of the Convention

41. The Children's Act defines 'child' as "any person who is below the age of 18 years". Significantly, the 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".

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

C. General Principles

Arts. 2, 3, 6 and 12 of the Convention

1. Non-discrimination (art. 2)

43. 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 rights broadly. This principle was emphasized in *Attorney General v Dow*¹⁵ 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 the Citizenship Act accordingly.

44. 36. In addition, the Children's Act 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 [...]”.

45. 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 and others v AG*¹⁶ 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”.¹⁷

2. Best interests of the child (art. 3)

46. The principle of the best interests of the child is now categorically provided for in Section 5 of the Children's Act, 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.¹⁸ In particular, Section 6(1) of the Children's Act provides for the considerations to be made in determining the best interests including the:

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

47. Under Section 6(2) it is provided that the provisions of Section 6(1) ‘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’.

48. Since the Children's Act was re-enacted Courts in the State Party have progressively expounded the import of the principle of the child's best interests. Upholding the decision of

¹⁵ 1992 BLR.

¹⁶ MAHGB-000291-14.

¹⁷ Ibid, para. 152.

¹⁸ 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.’

the High Court in *Dumisani Ndlovu v Letsile Macheme*,¹⁹ where at issue was the question of a father's access to his biological child which had been denied, the Court of Appeal held in *Macheme v Ndlovu*,²⁰ 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. The Right to life, survival and development (art. 6)

(a) *The child's protection from death penalty and life-imprisonment*

49. 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, 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*

50. Before the onset of HIV and AIDS mortality among children was reducing. However, the trend has been upward as illustrated in Figure A. Coverage of major child survival interventions is generally high. Figure D, shows common causes of neonatal deaths in Botswana. Although relatively low, malnutrition is one of the major underlying factors contributing to child mortality in Botswana. The 2000 Multiple Indicator Cluster Survey indicates 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.

51. The PMTCT services are fully integrated into routine antenatal care provided by trained 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).

52. 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.

53. 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 nutritionally at risk under-fives, pregnant and lactating mothers from poor or low income households.

54. However, in non-drought years, supplementary feeding is based selectively on the weight progression of the child. By July 2005, there were 268,000 beneficiaries registered under this scheme.²¹ Since the implementation of this program, the prevalence of severe protein energy malnutrition has decreased from 0.5% in 1991 to 0.3% in 1995²² and a considerable improvement in the nutritional status of children, particularly the under-fives has been noted.

55. The level and type of nutritional assistance depends on the nature of vulnerability. Table 18 provides a summary of what each category receives.

¹⁹ [2008] 3 BLR 230 HC.

²⁰ CACLB-035/08 [2009] BWCA 49.

²¹ *BIDPA Consultancy on Social Safety Nets* (2006).

²² Ministry of Finance and Development Planning, *National Development Plan 8*, (1990), p. 393.

4. Respect for the Views of the Child (art. 12)

(a) Policy and Administrative Measures

56. All secondary schools 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 opportunities to air their views.

57. The Ministry of Local Government and Rural Development facilitates activities for the annual commemoration of the Day of the African Child (June 16) in partnership with different stakeholders including radio, print and Botswana Television (Btv). Youth and children's television and radio programmes as well as newspapers feature discussions and interviews with and by children throughout the month of June and during the Children's month of broadcasting.

58. The *Children's Act* addresses the concerns raised by the Committee about the rights of participation of the child, in that it provides for structures that facilitate child participation at village level through the Village Child Protection Committees and at national level through the Children's Consultative Forum. Such forums provide children with a platform to participate in the decision-making processes on matters affecting them, such as education, health, safety, or general well-being.

59. 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.

5. Challenges in implementing the general principles

60. 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 — ANC, PNC, & other SRH services; and

(b) Some socio-economic, cultural & other factors contributing to maternal and newborn mortality still persist.

61. The court environment is a generally unfriendly, adversarial and conflict ridden environment. It is particularly unfriendly to children, a factor that often compromises their right to participation, especially in contested custody cases.

D. Civil rights and freedoms

Arts. 7, 8, 13–17, 28, para. 2, 37 (a) and 39

1. Birth registration, name and nationality (art. 7)

62. 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*. This means that now a child's nationality is an inherent right to every child in its jurisdiction. Through a computerized real-time system, birth registration is linked to the national identity system to issue a child with a unique identity number, which will be used as an identity number at the age of sixteen. This unique number identifies the person from birth to death. The birth registration system functions well in urban and semi-urban centres, while remote centres are still challenged.

63. There are 34 decentralized district registration offices across the country, with all hospitals and clinics equipped with maternity facilities which are mandated by the law to register births and deaths. These are complemented by mobile field visits of teams to reach out to remote settlements. The issued birth certificate is embedded with high security features to curb acts of fraud. The department in collaboration with UNICEF is embarking on a project for mobile registration that will achieve on spot real time registration and issuance of birth certificate in the remotest areas.

64. The State Party has continued its efforts to ensure the registration of all children at birth through awareness-raising campaigns, in compliance with the Committee's recommendation. In particular, the State Party, through the Ministry of Labour and Home Affairs with the technical support of UNICEF, have established a routine birth registration system amongst Ministries Education, Local Government and Rural Development as well as Health.

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

66. 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).

2. Preservation of identity (art. 8)

67. The State Party has guaranteed the preservation of identity under Section 11 of the *Children's Act*, which provides that every child has the right to a name that shall not demean his/her dignity. This is the first time the State Party has sought to regulate child-naming.

68. The Children's Act also recognises the unmarried father as a parent. Upholding this provision, in *GK and others v AG*²³ 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'.²⁴ Accordingly the High Court held that:

69. "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".

70. 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 Motswana, 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 when they may choose their citizenship.

3. Freedom of expression and the right to seek, receive and impart information (art. 13)

71. The Botswana *Constitution* stipulates that no person shall be hindered in the enjoyment of his freedom of expression, including the right to hold opinions and to receive and impart ideas and correspondence without any interference, except by his consent (Section 12). Reasonable restrictions may be imposed on the exercise of such right, 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. In addition, Section 20 of the *Children's Act* grants children the right to freedom of expression.

72. In addition, the State Party has created a conducive environment ensuring children are free to make statements about, educate on and/or voice their concerns about various issues.

4. Freedom of thought, conscience and religion (art. 14)

73. The State Party has domesticated the child's freedom of thought, conscience and religion in the Children's Act. 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".

74. Both the *Constitution* and the *Penal Code* protect freedom of thought, conscience and religion. The *Constitution* provides that no person, except with his/her consent, shall be hindered in the enjoyment of his freedom of conscience, including freedom of thought and

²³ MAHGB-000291-14.

²⁴ *Ibid*, para. 94.

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).

75. In addition, the Public Health Regulations were developed in 2005 to make it illegal for any parent to refuse to immunize their children for religious beliefs or any other reason. This was prompted by the refusal by some religious groups to immunize their children due to their beliefs.

76. Furthermore, the *Penal Code* of Botswana makes it an offence to insult any religion or to disturb any religious assembly (Sections 136 and 137).

5. Freedom of association and of peaceful assembly (art. 15)

77. The State Party has domesticated the child's freedom of association and peaceful assembly in Section 22 of the Children's Act. 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, parental guidance, national security, public health or morals, and the rights and freedoms of others".

78. 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.

6. Protection of privacy and protection of the image (art. 16)

79. 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 further provides that:

"23. (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".

80. The Ministry of Education and Skills Development is mandated to protect the privacy of all learners. Guidance and Counseling teachers, who offer counseling to learners, keep confidential records of issues affecting learners who access counselling services. Some schools have counselling rooms where learners may be fully assured of confidentiality and privacy.

7. Access to information from a diversity of sources and protection from material harmful to his or her well-being (art. 17)

81. The State Party has enacted the Cybercrime and Computer Related Crimes Act (2007) 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”.

82. The State Party launched the national television station in July 2000 to serve as an additional medium to inform and educate the children of Botswana. There are public libraries in different towns and major services, but their utilisation by the public, including children, is limited by generally associating reading with classroom education.

8. The Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment (arts. 37 (a) and 28, para. 2)

83. 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.

84. 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.

85. 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 may work in Botswana while sensitization and debates against corporal punishment continue.

86. While there are occasional reports of police officers roughing-up 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*²⁵ publicised an instance of police torture where those responsible were tried and held responsible for their actions.

87. The State Party has since undertaken several administrative measures, including training of police officers in policing methods which are continuously reviewed with a view to bringing human rights into 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.

88. 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 and provide prisoners with an opportunity to complain about any improper treatment at the hands of the police or prison warders over their incarceration period. Children awaiting trial are however, generally released to the custody of their parents/guardians.

²⁵ Criminal Trial No. 40 of 1993.

9. Measures to promote physical and psychological recovery and social reintegration of child victims (art. 39)

89. The Ministry of Local Government and Rural Development, through its social protection programmes, provides some mitigation services for victims of emergency situations such as floods and droughts. The same services are extended to children since there are no interventions that are specific to children. 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.

90. 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.

91. 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, social welfare relief (where needed) for migrant families, inducement (by host countries) for legal migration to country of origin — transport, processing of international adoptions where needed.

10. The Role of the Media with Regard to the Promotion and Protection of Child Rights

92. The State Party has created conducive environment to ensure that the media plays a significant role in the promotion and protection of children's rights in its jurisdiction. UNICEF Botswana Country Office has capacitated media personnel on reporting on issues concerning children.

11. Implementation of General Comment No. 8 (2006)

93. Before implementing General Comment No.8, the State Party has undertaken wide consultations with citizens to ensure that the implementation measures to be undertaken are effective and take into account all fundamental issues. Public debates on the issue of corporal punishment are ongoing with the support of UNICEF BCO to engage influential persons to discuss with the traditional leaders and communities on the importance of other alternative discipline for children with antisocial behaviours.

12. Challenges to Implementing Civil Rights and Freedoms

94. 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

95. 85. The State Party has retained corporal punishment in Section 90 of its Children's Act as one possible criminal punitive measure in case of child offenders. The State Party is well aware that it must, ultimately, adopt measures that reform and rehabilitate children who have offended against the society. However, 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. The resultant injury is less than the type that could result from a rough game of football, body piercing, tattoos, boxing match etc. 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;

(c) Juveniles sent to 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 if it is lived in incarceration, of whatever nature and duration it is 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 reformatory, 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; and

(g) Juvenile offenders would choose corporal punishment over any other form of punishment. In imposing corporal punishment, children’s views on it are often taken into consideration, in line with the principles contained under the UNCRC.

(b) *Corporal Punishment within the Education System*

96. The State Party is exploring reformatory measures which incorporate such cultural values as parental participation in discipline and punishment, while abandoning acts that degrade and dehumanize the child. The challenge lies, however in changing mindsets and supervising the actions of teachers who fail to follow the guidelines on using corporal punishment.

(c) *Corporal Punishment within the Home Environment*

97. It is appreciated that allowing corporal punishment of children within homes can allow serious abuse to occur. Child Line, an NGO offering counselling for abused children, has indeed reported that corporal punishment of the nature that qualifies as physical abuse is a common complaint by children. In that regard, public debates on the issue of corporal punishment and alternative punishment continue.

E. Family environment and alternative care

Arts. 5, 9–11, 18 (paras. 1 and 2), 19–21, 25, 27 (para. 4) and 39

1. Family environment and parental guidance in a manner consistent with the evolving capacities of the child (art. 5)

(a) *Parental responsibility*

98. Section 27(1) of the Children’s Act, places the principal responsibility for the care of children, including the duty to care for and maintain a child upon the biological parents. 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.

99. In a 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 of Children Act was in contravention of the provisions of Section 3 of the Children’s Act and therefore should be nullified for being unconstitutional.²⁶ The adoption law allows 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 simply because he is unwed”.

²⁶ *GK v AG & Others* MAHGB-000291-14.

100. The Abolition of Marital Power Act [Cap. 29:07] 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*

101. 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, the law placed various limitations on the child support of non-marital children by their fathers. The amount of child support is set on the basis of the means of the respective parents and the needs of the child.

102. The Maintenance Orders Enforcement Act [Cap. 29:04] 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.

103. More still needs to be done to ensure that child-maintenance court orders are obeyed to maximise resources available to the child and promote the best interest principle. Under customary law, fathers of non-marital children make a once-off payment and thereafter have no further obligations to their children. The child is then adopted into its maternal family and might later be adopted into the mother’s marital family.

104. Similarly, the Deserted Wives and Child Protection Act [Cap. 28:03] provides for the maintenance of wives and children who have been deserted and are without adequate means of support.

2. Parents’ common responsibilities, assistance to parents and the provision of childcare services (art. 18)

105. Sections 27–29 of the Children’s Act provide for common responsibilities among parents. Specifically, Section 27 on Parental duties provides among others 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;
- (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.

106. In *GK & Others v AG*,²⁷ 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.²⁸ 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.'²⁹ This position has earlier been articulated by the highest court in the State Party (the Court of Appeal) in *Mey v July*³⁰ 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 is that the father would now expect to be consulted if he had hitherto involved himself in the life of the child'.³¹

3. Separation from parents (art. 9)

107. 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 and the Domestic Violence Act 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 Children in Need of Care Regulations of 2005,³² 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.

4. Family reunification (art. 10)

108. 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, children who have been forced out of their families by various factors including household poverty, dysfunctionality within the family, orphanhood and other factors hence require alternative care since their natural homes are not conducive for their welfare. Where a child is placed in foster care, the Children's Act, 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.

109. Reunification services in the State Party are provided by Social Workers in the Local Authorities. There are however, limited placement options, especially for older children, children with disabilities and those with terminal illnesses as they are perceived as care burdens. Monitoring of alternative care arrangements is also often compromised by capacity issues at service delivery points.

5. Recovery of maintenance for the child (art. 27, para. 4)

110. 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

²⁷ MAHGB-000291-14.

²⁸ 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]'.

²⁹ Ibid, para. 101.

³⁰ CACGB — 134–13.

³¹ Ibid, para. 6.

³² These regulations will, by operation of Section 120 of the Children's Act, remain in force until new regulations are adopted.

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'.

111. 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'.

6. Children deprived of a family environment (art. 20)

(a) Children placed in alternative care

112. The State Party has undertaken several administrative measures to protect and provide assistance to children who are placed in alternative care. In 2009 *ChildLine Botswana*, which is a non-governmental organization³³, had 18 children in residence. The year before that there were 23 children. In 2009, The Mpule Kwelagobe Children's Centre³⁴ had 58 children in residence.

113. In 2009 Ikago Centre in Molepolole, a centre providing residential care and rehabilitative services for boys in conflict with the law had 23 children in residence. The centre is under-utilised because generally, the criminal justice system is slow to send children to institutions; the preference being to releasing them to their guardians with social workers' supervision.

114. The Kagisano Women's Shelter 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 and houses on average 20 women and about 14 children.

7. Periodic review of placement (art. 25)

115. Children in need of protection are normally placed under the supervision of a social worker who shall visit the child and the family/institution 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 the child and when it is in the child's best interests to do so.

8. Adoption, national and inter-country (art. 21)

116. Adoption of children by persons not related to the child is not common within the Botswana culture and is still viewed with disapproval. It is therefore fair to say that fostering, as opposed to adoption is much more acceptable. The most common type of adoption is where a man adopts his wife's non-marital child.

117. In compliance with the Committee's recommendation that it should expedite the review of the Adoption of Children Act to facilitate, among other things, protection of children adopted informally and to encourage local adoptions, the State Party is currently reviewing the Adoption of Children Act. Consideration has been given towards 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 negative implications on the child's maintenance after divorce because the practical reality is that the

³³ 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.

³⁴ A Place of Safety run by Government for children removed from difficult circumstances.

mother would have lost touch with the biological father, who would have by conduct accepted the adoption of his child by the mother's husband.

118. As the Committee recommended in its previous Concluding Observations, the State Party is considering ratifying the Hague Convention No. 33 on the Protection of Children and Cooperation in Respect of Intercountry 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.

9. Illicit Transfer and Non-return (art. 11)

119. In 2007 the State Party carried out a rapid assessment study on child trafficking in Botswana. It revealed that most children recruited into exploitative domestic services or commercial agricultural work have been moved from within the country, most of them coming from poverty stricken households. The study further revealed that the agricultural sector absorbs quite a sizeable number of children whose parents are working in the farms while some are engaged in exploitative domestic work entailing long hours of work, often finishing at night. 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.

120. In order to reduce vulnerability to child labour and illicit transfer, the State Party has intensified efforts towards addressing poverty among vulnerable people. Poverty alleviation Programmes include agricultural subsidies, support towards income generation by, especially social welfare beneficiaries, educational support to children from needy families, food packages and feeding of vulnerable groups like under 5's, expectant and lactating mothers.

121. Other interventions include promoting access to education at all levels; formal, informal and vocational. The Department of Out of School Education and Training offers a flexible curriculum that facilitates practical skills development as well as basic literacy and numeracy for out of school children. Furthermore, some Civil Society Organisations were engaged to implement some Towards the Elimination of Child Labour in Botswana (TECL) projects in selected areas. The main aim was to get children of school going age back to school and provide ongoing support to them and their families. Tsholofelong Centre, which caters for children earning a living from the streets further provides temporary shelter for those who do not have a home in Gaborone, conducts street education as well as life skills training.

10. Abuse and neglect (arts. 19 and 39)

122. 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.' Neglect³⁵ or ill-treatment of children is criminalised under Section 56 of the Act.³⁶ The Penal Code does not recognise,

³⁵ 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.

³⁶ 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

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

123. 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 forums, 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.

11. Challenges for implementation of family environment and alternative care

(a) Violence against women

124. Botswana has been experiencing spates of femicides — typically involving young couples. HIV/AIDS related deaths and family upheavals have also been observed, which then means that some children live in especially emotionally charged family settings.

(b) Child Abuse — Reporting

125. 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 therefore 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. Those studies show that the problems are pervasive and require attention. 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.

126. In most cases, child victims are afraid to report because the abusers are prominent people in society, breadwinners, teachers, close relatives or even siblings. In some cases victims fear secondary abuse in the child protection system. 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. The Government of Botswana acknowledges that 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.

F. Disability, basic health and welfare

Arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1–3) and 33

127. According to the 2011 Population and Housing Census about 1.5% (10,832) 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%).

1. Survival and Development (art. 6, para. 2)

(a) Population and life expectancy

128. According to the 2011 Census, 42.7% of the Country's population are children, with a significant proportion of them being under fourteen years (see Table 4). In 2011, average

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'.

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).

129. 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 at 193 per 100,000 live births¹ in 2007. The three main causes of maternal deaths in Botswana are sepsis, toxæmia and haemorrhage even³⁷ though skilled/trained midwives attend most normal deliveries.

130. 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. While HIV prevalence among pregnant women remains high, mother to child transmission of HIV was 2.1% in 2013. Botswana is among the first countries in Africa to implement a successful PMTCT programme at 99% testing and 95% uptake of women who receive ARVs for PMTCT at national level. As a result Mother to Child transmission of HIV has been reduced from the expected 35–40% to about 2.1% in 2013. The coverage of PMTCT services is near universal.

(b) *School-based food program*

131. School feeding program is universal in all public primary and secondary schools in Botswana. Through this program prepared food is provided 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.

2. Health and health services, in particular primary health care (art. 24)

(a) *Health and health services*

132. 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 Convention. Government health facilities offer free health care to children, destitute persons, and women seeking ante-natal care while for the general population, consultation fee is only P5.00 (less than US\$ 1) and medication is free.

133. Specialised health care may be received at Princess Marina Hospital, Gaborone Private Hospital, Bokamoso Private Hospital or, at the expense of government, in South Africa where the treating physician recommends same. 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.

(b) *Child survival programs and policies*

134. The State Party has adopted the Accelerated Child Survival and Development strategy (2009/10–2015/16) to address the deteriorating child survival in Botswana. To-date high impact interventions like new vaccines and vitamin A supplement, strengthening the coverage and quality of services, and monitoring systems are introduced in a phased manner.

135. The ACSD further served to respond to the 2007 Botswana Family Health Survey results which revealed that IMR 39/1000 and U5MR 48/1000 live births in 1994 had increased to IMR 57/1000 and U5MR 76/1000 by 2006. According to population census (2011) U5 mortality was at 28/1000 and infant mortality at 17/1000, indicating some success. 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.

Table 1:

Examples of successfully implemented HHS

³⁷ Government of Botswana and the United Nations 920040, Botswana *Millennium Development Goals, Status Report 2004, Achievements, Future Challenges and Choices*.

<i>Intervention</i>		<i>Distribution/coverage</i>
To support emergency ORT at homes	ORS (2 pkts for each under 5)	Distributed at all Health facilities National coverage ≥ 75% (MOH coverage data) (MoH, 2014)
	Zinc sulphate tabs (2 per u% child)	Distributed at all Health facilities National coverage ≥ 75% (MOH coverage data)
Twice yearly Vitamin A to U5s		Administered twice annually during Man and November Child Health Days National coverage ≥ 92% (MOH coverage data)
Comprehensive Emergency Obstetric and Neonatal Care		Offered at all hospitals
Normal delivery by skilled birth attendant		≥ 95% (MOH coverage data)
Immunizations		≥ 95% (MOH coverage data)

136. 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.

137. As such, a Community Support Strategy (CSS) developed in keeping with ACSD recommendations was being piloted. Starting May 2014, 300 specifically trained workers began implementation of the pilot in six districts.

Table 2:

Community Support Strategy (CSS) May – October 2014

<i>Total Under five population in the six targeted districts (data from Central Statistical Office)</i>	<i>Number of Under 5s that received first time visits health at their homes</i>	<i>ORS sachets delivered to homes with U5 children</i>	<i>Zinc Sulphate tablets delivered to homes with U5 children</i>	<i>Number of U5s referred to health facilities (mainly immunization and nutrition care defaulters)</i>	<i>Persons identified as having special needs</i>
63 048	43 139 (68% of districts total U5 population)	36 492	35 939	3 757	763

138. Public Health (Prevention of Immunizable Childhood Diseases) Regulations³⁸ 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 then, 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.

³⁸ Statutory Instrument 45, 2005.

139. There are eight³⁹ facilities for children with disabilities. Most of these facilities are run by NGOs. The Government provides a subsidy to those NGOs.

(c) *Targeted training of personnel*

140. 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 the shortage of medical officers. A Ministry of Health human resources' strategic plan for up to 2016 was developed to address equity and efficiency in the delivery of the services.

(d) *Affordable Health Care*

141. Most of the public health budget is financed by the Government, and only a token user fee of P5⁴⁰ is charged for outpatients. Some members of the public, who include the poor, as defined by the Destitute Policy, children, people with disabilities, women attending sexual and reproductive health services, such as family planning, ante- and post- natal care, child welfare, ASRH services, etc, TB and patients enrolled on ARV programme, are exempted from paying this fee. This arrangement has facilitated increased access to health care.

3. Reproductive health rights of adolescents and measures to promote a healthy lifestyle

142. Termination of rape-induced pregnancy is allowed under the law providing relief for women and young girls 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.

4. Measures to prohibit and eliminate all forms of harmful traditional practices, (art. 24, para. 3)

143. 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 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.

144. 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 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".

145. Although there are no official reports on arranged marriages in the State Party, it is still believed that there are some incidents that may be taking place in some parts of the country. The magnitude of the problem is not known because these issues are considered culturally sensitive hence non reporting.

5. Measures to protect children from substance abuse (art. 33)

146. 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

³⁹ The facilities are Chesire Foundation of Botswana, Thuso Rehabilitation Centre, Botswana Red Cross Society, Motswedi Rehabilitation Centre, Camphill School, Francistown Centre for Deaf, Ramotswa Centre for the Deaf, and Sir Seretse Khama Memorial.

⁴⁰ Current rate is US\$ 1 = P9. 5.

years. The Ministry of Health (MoH) 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.

147. The national curriculum has mainstreamed substance abuse issues from primary to secondary schools as a preventative 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 established in schools which promote healthy lifestyles among learners.

6. Measures to Ensure the Protection of Children with Incarcerated Parents and Children Living in Prison with their Mothers

148. The State Party has undertaken several measures to protect children incarcerated with mothers, including enacting in Section 64 of the Children’s Act 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”.

7. Measures to Improve the Child’s Standard of Living (art. 27, paras. 1–3)

(a) Orphans and vulnerable care

149. The State Party defines an orphan as a child who has lost at least one parent. As at July 2009, there were 47 604 registered orphans who are provided with the food basket.⁴¹ The number of registered orphans by end of March 2015 was 34,441 and the number of registered needy children was 31, 526 (MLGRD, 2015). All registered orphaned children are entitled to a food basket worth an average of P450.00 per month. This amount is regularly adjusted for inflation. The food basket was developed such that it is nutritionally well-balanced. Orphans and vulnerable children also receive additional support ranging from clothing, toiletry, educational needs, psycho-social support and protection from abuse. Other public supported service components include free medical fees in government health facilities, transport allowance and assistance with bills for utilities such as water and electricity.

150. 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 died or 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. Under the Destitute Persons programme, destitute persons are provided with cash allowance and a monthly food basket which is determined by the size of the family, toiletries, medical care and shelter as per need. They are also exempted from payment of service levies, taxes, water and street licences. Funeral expenses are also

⁴¹ Official statistics obtained from Department of Social Services, Ministry of Local Government, 2006.

covered. Additionally, the government makes provision for children whose parents are registered as destitute to be exempted from any user charges.

151. As at March, 2015 there were 32,696 registered destitute persons in Botswana. This number has been growing steadily since the program was implemented.

152. Within the spirit of the Revised Policy, temporary 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. 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 some places where registered destitute persons and potential orphans are engaged in sustainable income generating activities.

8. Implementation of General Comments No. 3 (2003), No. 4 (2003) and No. 9 (2006)

(a) HIV/AIDS and children

153. HIV/AIDS prevalence amongst children in the State Party is high. Fifty eight percent (58%) of deaths among the under-fives is attributable to HIV/AIDS and the remaining 42% percent are attributable to preventable causes as follows: pneumonia (26.2%), ill-defined conditions (18%), and other conditions (12%) AIDS (9%). As of 2000, almost one third of child (34%) deaths occur during the neonatal period. According to 2007 BFHS — neonatal mortality is 45% of all under-five mortality.

154. One of the important treatment interventions the State Party has undertaken, includes the Prevention of Mother to Child Transmission (PMTCT) and the provision of anti-retroviral therapy (ART) to all who need it, through the public health system. PMTCT services are integrated into routine maternal-child health care in all public facilities, and women identified as HIV-positive during pregnancy are referred to the national ART programme for ARV evaluation and treatment. As at June 2007, 80,585 patients were on ART. Of this number, about 6,853 (9%) patients were children aged 12 years and below.

(b) HIV/AIDS policies and programs

155. The State Party has developed the Botswana National Strategic Framework (NSF) for HIV/AIDS 2003–2009 and for 2010–2016 with the central aim of ensuring and driving a multi-sectoral and multi-level national response to the spread of HIV/AIDS. The NSF articulates, disseminates and educates the public at large on the agreed national priorities and strategies as well as providing guidance for all stakeholders involved in the fight against HIV/AIDS. The NSF clarifies the roles and responsibilities of districts, ministries and sectors in terms of planning and implementation. Botswana has identified *prevention as the first priority of the national response*.

156. In 2007 the State Party, through its National AIDS Coordinating Agency, facilitated a Mid-Term Review (MTR) of the NSF (2003–2009). The goal of this MTR was to identify and assess the strengths, weaknesses, facilitators and constraints of the management and implementation of the national response to HIV/AIDS under the National Strategic Framework 2003–2009, document key themes and emerging issues, and recommend appropriate action aimed at greater achievement of the national response over the remainder of the plan period.

157. HIV prevention especially among children and adolescents has also been prioritised. To date a National Operational Plan for Scaling up HIV Prevention in Botswana: 2008–2010 had been developed. A combination of these strategies is expected to yield better results for children.

158. Paediatric antiretroviral treatment was launched in 2005. To date, all 634 health facilities can draw blood from infants aged 6 weeks to 18 months using the dry blood spot technique for testing at the Botswana Harvard partnership laboratory in the capital city, Gaborone. All the 48 ARV sites in the country also provide paediatric drugs. Since 2003, the Botswana-Baylor Children's Clinical Centre of Excellence (BBCCOE) provides

specialized treatment for HIV positive children (up to 12yrs), counselling, outreach and psychosocial for children aged 12–18 yrs positives.

159. Out of the total 76,668 people on ARVs as of February 2008, 6,872 (9%) are children aged up to 12 years. Access to pediatric ART and quality of service provision need to be further scaled up to reduce HIV related under five mortality. Innovative methods such as the extended physician outreach from the Botswana Baylor Centre and the Department of Pediatrics in the two referral hospitals has assisted in taking specialist care too hard to reach districts. It currently covers 21 of the 32 ARV sites in the country. There is also a training program for pediatric HIV care for health workers. The family-centred care model used in most district and primary hospitals has proved very effective in engendering intra-family disclosure and support, hence improving adherence for better treatment outcomes.

(c) *Targeted education of young people*

160. The State Party has carried out a lot of sensitisation about the dangers of teenage pregnancies and HIV/AIDS. Parents, however, seem to prefer that somebody else talks to their children. To address this issue, the Ministry of Education and Skills Development has integrated Family Life/Sexual Health Education into the new primary and secondary school syllabi. These syllabi are being implemented.

161. Public health care, which covers prevention services, care, support and treatment, support for interventions that mitigate the impacts of HIV/AIDS, PMTCT, ARV, Counselling, routine testing, blood safety, CHBC, Food baskets and treatment of opportunistic infections including STIs and TB have also been strengthened. In addition, the National AIDS Council has established the Men's Sector to promote the involvement of men in the prevention of new infections.

9. Resource allocation for health services

162. The State Party has strived to allocate sufficient resources to the provision of health services for children. According to the National Health Accounts for 2000/01 to 2002/03, total spending on health constituted 4.7% of the GDP in 2000/01 financial year. It rose to 7.02% of the GDP in 2001/02 and finally to 7.9% of the GDP in 2002/03. Public spending constitutes almost three quarters of total health expenditure compared to roughly one-fifth provided by private entities.

10. Challenges facing the implementation of child health services

163. A significant portion of the population is on HIV/AIDS treatment and this has implications on resources available to the rest of the health sector. The tendency of young girls to submit to risky sexual relationships has been, and continues to be addressed by policy and legislative reforms as well educational campaigns.

164. Teenage pregnancy, with the obvious health and other consequences remains high.

165. With a nationwide prevalence of 17.6% and an adult prevalence (15–49 year-olds) of 25.3%,⁴² a large number of Botswana are either infected or affected by HIV/AIDS. For children, it has been estimated that 25,000 will be HIV positive by end 2003.⁴³

G. Education, leisure and cultural activities

Arts. 28, 29, 30 and 31

1. The Right to education, including vocational training and guidance (art. 28)

166. 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. Free education was formalized into law by the enactment of the Children's Act which grants every child the right

⁴² *BAIS III*, 2004.

⁴³ *2004 Report on the Global AIDS Epidemic*, UNAIDS.

to 'free basic education' (Section 18) and makes it a criminal offence for parent, guardian or relative who denies a child the enjoyment of this right.

2. Implementation of General Comment No. 7 (2005)⁴⁴

167. As elaborated below, the State Party has undertaken several measures to implement General Comment No. 7 (2005) and the Guidelines for Alternative Care of Children.

(a) *Early childhood care and education in the country*

168. The MoESD is implementing the Early Childhood Care and Education Policy of 2001. The policy regulate all early childhood education services provided by different stakeholders, sets standards serves to protect children accessing services provided.

(b) *Early childhood development policy (ecd) review*

169. In 2015 the Ministry commenced the review of the Early Childhood Care and Education Policy of 2001. The review covers other aspects of development and protection of young children which were not part of the current policy. The project is conducted with the support of UNICEF Botswana Country Office.

(c) *Early childhood education curriculum*

170. The MoESD 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 with the support of UNICEF BCO.

(d) *Teachers' training initiative for early childhood education*

171. The State Party has put in place a teachers' training for early childhood. After completion of the curriculum for teachers the training programme commenced in 2014. The first cohort of the trained teachers is expected to graduate in 2016.

(e) *Reception class programme in government primary schools*

172. The MoESD has introduced the Early Childhood Education Programme on a gradual basis in government primary schools starting in 2014. The programme started in 115 schools in all regions in the country. Currently there are 222 schools already with the programme and all the 756 schools are to be reached by 2018. The programme is provided free in all government schools. The programme is accessed by children who are 4 ½ years – 5 years so that they are ready for grade 1 at 5 ½ years. It runs for a period of 12 months school calendar year.

173. 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. 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.

174. The medium of instruction in schools is Setswana for the first four years and thereafter English.

⁴⁴ Annexed to General Assembly resolution 64/142 of 18 December 2009.

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

3. Aims of Education (art. 29) with Reference also to Quality of Education

176. The State Party, through the Ministry of Education, continues to strengthen its efforts to address gender imbalances in education by particularly undertaking a number of administrative measures, including:

177. An Equal Opportunities Policy is being prepared. The policy seeks to promote equality of learning opportunities and elimination of 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.

178. 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.

179. The Guidance and Counselling Unit in the Ministry of 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.

180. The Ministry of Education and Skills Development has a Curriculum Development and Evaluation Division, which has developed *Curriculum Blueprints* for all levels of education. Teachers are currently being trained to enable them to teach the new curriculum, which has introduced new subjects, such as Moral Education, and Guidance and Counselling. In addition, old syllabi for subjects which remain in the curriculum have been revised.

181. Botswana has employed a number of expatriate teacher trainers in Teacher Training Colleges, to enhance the workforce in various skills and subject areas. Difficulties may be faced with the introduction of the new curricula, as older teachers are not familiar with them and will need on-going training.

182. There is need for vocational schools to develop fully fledged *Guidance and Counselling Programmes* to help ensure that students receive adequate career counselling to prepare them for challenges posed by the world of work.

183. Distance learning for secondary school children is now available through the Botswana College of Distance Learning.

184. 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.

185. The Department of Sports and Recreation (DSR) under the Ministry of Youth, Sports and Culture 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.

186. 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.

187. 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 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.

4. Cultural rights of children belonging to indigenous and minority groups (art. 30)

188. 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 by region and not by tribe. Marginalisation of, or special hardships experienced by, ethnic minorities is generally centred on their remoteness and distance from service centres. Botswana is the size of France with a population of about 2 million people, therefore 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.

189. 178. 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. Specifically this involves 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 culture preservation.

190. 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.

5. Education on human rights and civic education

191. The State Party has put in place several administrative measures to scale up its efforts to raise public awareness on human rights, particularly children's rights. Continuous public education on human rights especially child rights and civic rights to sensitize members of the public has been embarked on. Generally, there have always been mixed feelings among parents and community leaders on child rights *visa viz* cultural issues because of the general belief that children should only be seen and not heard. This therefore calls for intensified public education on human rights and civic education.

6. Rest, Play, leisure, recreation and cultural and artistic activities (art. 31)

192. 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 of State Party in sporting activities:

(a) Various sports codes doing well in regional, continental and international competitions increasing the interest of young Batswana 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) 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.

7. Implementation of General Comments No. 1 (2001), No. 7 (2005), No. 9 (2006) and No. 11 (2009)

193. The development of Special Education in Botswana can be traced back to 1969, with two more units established in the 1970's.

194. To date, there are 11 units for the mentally and physically handicapped, three Resource Classes for the blind, and two units for the deaf in the public education system. The Ramotswa Community Junior Secondary School has a special education unit, with hostels, that caters for 39 pupils who are hearing-impaired. Braille examinations are provided for blind children. Some children with other serious disabilities have been sent to institutions outside Botswana. Currently 17 children are receiving special training in South Africa.

195. The Ministry of Education further plans to absorb children with learning disabilities into the mainstream educational system. Teacher Training for Special Education is therefore gradually being increased as well as in-Service training.

8. Resource allocation

196. The Ministry of Education and Skills Development supports NGOs and communities with grants in their efforts to provide the pre-school programme. Support does not extend to private providers due to limited budget.

9. Challenges facing the implementation of the child's right to education, leisure and cultural activities

197. Primary school enrolment rates in remote areas are among the lowest in the country. In order to address this, the Ministry of Education is piloting multi-grade teaching method in 6 different sites. Some of these schools have developed to fully-fledged multi-grade teaching method while others are still at a pilot stage, such as Lekgotlhwane Primary School.

198. Some NGOs, such as Tirisanyo Catholic Council, have established a Pre-school Programme in some remote areas, staffed by people from the local communities, in order to enable 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.

199. One of the biggest challenges in providing education to children in remote areas is high staff turnover and low staff morale which impacts negatively on children's education. The government has put in place incentives such as non-payment of rent for teachers who work in remote areas and introduction of a Remote Area Service Allowance. 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.

200. Low access to preschool education, with only 10%⁴⁵ of children enrolled, and inadequate public pre-schools in the country is also another challenge. There are also limited training opportunities for pre-school teachers.

201. To ensure that the Corporal Punishment Regulations are adhered to, the Ministry of 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.

202. 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, but it is not on record how often these are taken seriously.

203. 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.

H. Special protection measures

Arts. 22, 30, 32–36, 37 (b) – (d), 38, 39 and 40

1. Children outside their country of origin seeking refugee protection (art. 22)

(a) *Refugee Children*

204. Section 53 of the Children's Act provides that: "The Minister shall provide or cause to be provided, for refugee and displaced children, such basic social services as are necessary for their survival or sustenance." Asylum seekers, including children, are provided with primary, secondary, and tertiary health care services. Refugees in the camp get health services from Dukwi clinic based in the camp.

205. The State Party, in collaboration with UNHCR and Botswana Red Cross Society, runs activities towards the support of unaccompanied children (UAC) or orphans and vulnerable children (OVC). Relevant activities included:

- (a) Extended family tracing and reunification processes where possible for all identified cases of UAC and OVC;
- (b) Community fostering of children who are not within families through enlisting the support of refugee leaders, government and UNHCR to identify foster/host families was promoted;
- (c) Registration and monitoring of foster families and the children through home visits.

The following services for children and adolescents have continued through 2007:

- (a) Introducing regular educational activities on health including games through the youth centre program;
- (b) Training of new school based peer educators to continue health education in the school;
- (c) Running the annual orphans and vulnerable children (OVC) retreat, in the form of provision of children with educational and fun filled activities;

⁴⁵ UNICEF, *Analysis of Child Focused Indicators, Based on the 2001 Housing and Population Census*, CSO. UNICEF 2005.

(d) 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);

(e) 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

(f) Opening the youth centre library and television services to all the children in the camp.

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.

2. Children in armed conflicts (arts. 38 and (art. 39)

206. The information on children in armed conflict remains the same as there are no children in armed conflicts in the State Party. There is also no military conscription and the age at which a person can join the army or police force is 18 years.

207. 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].

208. In addition, the Botswana Defence Force Act [Cap. 21:05] 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”.

209. 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.

3. Children in situations of exploitation

(a) *Economic exploitation, including child labour (art. 32)*

210. 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. 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.

(b) *Sexual exploitation and sexual abuse (art. 34)*

211. In State Party the number of cases of sexual abuse and violence reported to the police is on the increase as reflected at Table: 31. 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. A lot is still to be done though.

212. The HIV/AIDS epidemic makes young children, especially young girls, 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.

(c) *Sale, trafficking and abduction (art. 35)*

213. Botswana has 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 and 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.

214. Under Sections 57–58 of the Children's Act it is an offence for persons to use children for immoral purposes. In addition, Section 16 of the Cybercrime and Computer Related Crimes Act [Cap. 08:06] criminalizes electronic traffic in pornographic or obscene material.

4. Other forms of exploitation (art. 36)

Children in street situations

215. Street children are of particular concern to the Botswana government. 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. The Botswana Christian Council is currently the only NGO that operates an active program that aims at getting street children back to school, providing training to those over the primary school age of 10 years. The major constraint on NGOs is their lack of resources to provide services, or to expand their programme to other towns.

216. 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. 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.

5. Children in conflict with the law, victims and witnesses

(a) *The Administration of juvenile justice (art. 40)*

217. 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 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.

218. 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 take into consideration the general conduct, home environment, school records and medical history (if any) of such child.

(b) *In Camera hearings to protect children*

219. 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 authorized officials and the parents are allowed inside the court room; the proceedings cannot be published, disclosing the identities of the child (Section 172 of the Criminal Procedure and Evidence Act and Section 93(1) of the Children's Act).

(c) *Children offenders and their treatment*

220. The School of Industries, is fully operational even though it has never operated to full capacity. This has mainly been due to the fact that institutionalization of children in conflict with the law is done only as a measure of last resort. In many cases, children are placed under the care of social welfare officers, instead of being placed in residential facilities. Social workers in the districts serve as probation officers. The officers are provided with on the job training on probation and aftercare with the assistance of development partners. Botswana identified five priority gaps for intervention on justice for children, namely; 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.

(d) *Children deprived of their liberty (art. 37 (b)–(d))*

221. Institutionalization of children in conflict with the law is done only as a measure of last resort. In many cases, children deprived of their liberty are taken care of by social welfare officers, instead of being placed in carceral facilities. Under Customary law the emphasis is on arbitration and reconciliation.

(e) *The Sentencing of Children*

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

(f) *Physical and psychological recovery and social reintegration (art. 39)*

223. The State Party has not experienced hazardous situations and disasters that would warrant any physical and psychological recovery and social reintegration. Where families experience flood disasters or fire disasters, social workers provide counselling and immediate needs (welfare) to all victims including children.

(g) *The Training for juvenile justice professionals*

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

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 Convention on the Rights of the Child, Beijing Rules, Riyadh Guidelines as well as the Botswana Children's Act.

6. Children belonging to a minority or an indigenous group (art. 30)

225. Information on this Sub-Cluster has been provided in item 7.4 above.

7. Monitoring of the implementation of special protection measures

(a) Refugee Children

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

(b) Criminal responsibility

227. The Judiciary in the State Party 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.

(c) Child trafficking

228. 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.

229. 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.

(d) Child abuse and exploitation

230. Professionals involved in child related services, such as teachers, social workers and the police, have been sensitised to 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.

231. 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.

8. Implementation of General Comments No. 6 (2005), No. 10 (2007) and No. 11 (2009)

232. The State Party has undertaken several measures to implement General Comments Nos. 6(2005), 10(2007) and 11(2009). In particular, the Children's Act has raised the age of criminal responsibility from 8 to 14 years. In this context, a child under 14 is presumed to be

incapable of committing a criminal offence, unless it is can be proved that at the time of committing the offence the child had the capacity to know that he or she ought not to do so.

(a) *Hearings held in camera to protect children*

233. The State Party has ensured that, 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, disclosing the identity of the child.⁴⁶

(b) *Child Offenders and their treatment*

234. The School of Industries is fully operational but is only used as a last option facility for children in conflict with the law.

⁴⁶ See Section 172 of the Criminal Procedure and Evidence Act and Section 93(1) of the Children's Act.