

**BOTSWANA COUNCIL OF  
NON-GOVERNMENTAL ORGANISATIONS  
(BOCONGO)**



**UNITED NATIONS CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)**

---

**BOTSWANA NGOs SHADOW REPORT TO CEDAW:  
THE IMPLEMENTATION OF THE CONVENTION**

October, 2009

EXECUTIVE SUMMARY

LIST OF ACRONYMS

CONSULTATIVE PROCESS IN PREPARING SHADOW REPORT

COUNTRY PROFILE

GENERALLY APPLICABLE PRINCIPLES OF CEDAW

1. ARTICLE 1: DEFINITION OF DISCRIMINATION

1.1. NGO Report on the Situation

1.2. Recommendations

2. ARTICLE 2: POLICY MEASURES UNDERTAKEN TO ELIMINATE DISCRIMINATION

2.1. NGO Report on the Situation

2.2. Recommendations

3. ARTICLE 3: MEASURES TO ENSURE THE FULL ADVANCEMENT OF WOMEN

3.1. NGO Report on the Situation

3.2. Recommendations

4. ARTICLE 4: SPECIAL MEASURES TO ACCELERATE THE EQUALITY BETWEEN MEN AND WOMEN

4.1. NGO Report on the Situation

4.2. Recommendations

5. ARTICLE 5: GENDER ROLES AND STEREOTYPING

5.1. NGO Report on the Situation

5.2. Recommendations

6. ARTICLE 6: TRAFIKKING, EXPLOITATION AND PROSTITUTION OF WOMEN

6.1. NGO Report on the Situation

6.2. Recommendations

7. ARTICLE 7: WOMEN IN POLITICAL AND PUBLIC LIFE
  - 7.1. NGO Report on the Situation
  - 7.2. Recommendations
8. ARTICLE 8: WOMEN'S PARTICIPATION AND REPRESENTATION AT INTERNATIONAL LEVEL
  - 8.1. NGO Report on the Situation
  - 8.2. Recommendations
9. ARTICLE 9: NATIONALITY
  - 9.1. NGO Report on the Situation
  - 9.2. Recommendations
10. ARTICLE 10: EDUCATION
  - 10.1. NGO Report on the Situation
  - 10.2. Recommendations
11. ARTICLE 11: EMPLOYMENT
  - 11.1. NGO Report on the Situation
  - 11.2. Recommendations
12. ARTICLE 12: EQUALITY IN ACCESS TO HEALTH CARE AND FAMILY PLANNING
  - 12.1. NGO Report on the Situation
  - 12.2. Recommendations
13. ARTICLE 13: SOCIAL AND ECONOMIC RIGHTS
  - 13.1. NGO Report on the Situation
  - 13.2. Recommendations
14. ARTICLE 14: RURAL WOMEN
  - 14.1. NGO Report on the Situation
  - 14.2. Recommendations

15. ARTICLE 15: EQUALITY BEFORE THE LAW

15.1. NGO Report on the Situation

15.2. Recommendations

16. ARTICLE 16: EQUALITY IN MARRIAGE AND FAMILY LAW

16.1. NGO Report on the Situation

16.2. Recommendations

17. CONCLUSIONS AND RECOMMENDATIONS

17.1. Proposed Questions for Government Delegation

## LIST OF ACRONYMS

### **Acronyms**

**ACRWC Africa Charter on the Rights and the Welfare of the Child**  
**AIDS Acquired Immuno-Deficiency Syndrome**  
**BLR Botswana Law Reports**  
**BNCW Botswana National Council of Women**  
**BONASO Botswana Network of AIDS Service Organisations**  
**BONELA Botswana Network on Ethics, Law and HIV/AIDS**  
**BONEPWA Botswana Network of People Living with HIV/AIDS**  
**CBOs Community Based Organisations**  
**CEDAW Convention on the Elimination of all Forms of Discrimination Against Women**  
**CRC Convention on the Rights of the Child**  
**CSO Central Statistics Office**  
**HIV Human Immune Virus**  
**ICCPR International Convention on Cultural and Political Rights**  
**IEC Information Education and Communication**  
**NAC National AIDS Council**  
**NACA National AIDS Coordinating Agency**  
**NGO(s) Non Governmental Organisation(s)**  
**NGPF National Gender Programme Framework**  
**PMTCT Prevention of Mother to Child Transmission**  
**POA Plan of Action**  
**RADS Remote Area Dwellers**  
**RNPE Revised National Policy on Education**  
**SADC Southern African Development Community**  
**STI(s) Sexually Transmitted Infections**  
**UN United Nations**  
**UNCSW United Nations Commission on the Status of Women**  
**UNDP United Nations Development Programme**  
**UNICEF United Nations Children's Fund**  
**VDC Village Development Committee**  
**WAR Women Against Rape**  
**WAD Women Affairs Department**  
**WILSA Women In Law in Southern Africa**  
**YWCA Young Women Christian Association**

## **EXECUTIVE SUMMARY**

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly in 19<sup>th</sup> December, 1979 and came into force as a binding treaty on the 31<sup>st</sup> September 1981. As a monitoring mechanism for the effective implementation of CEDAW, the treaty makes it an obligation for State parties to submit periodic reports to the CEDAW Committee, which meets every year to review country reports submitted by State parties.

The Republic of Botswana became a State party to CEDAW when she acceded to it on the 13<sup>th</sup> August, 1996. Despite this ratification, women in Botswana still face many challenges accessing their human rights, due mostly to the fact that there still exists in the Botswana legal and socio-economic framework laws, customs and practises that are discriminatory. Many State parties including Botswana seem to have struggled with fully complying with the obligations under the CEDAW treaty, which has resulted in inequities in the development of women in all spheres of life.

The fact that Botswana has submitted a report, though commendable, is way overdue as the first report should have been submitted a year after ratification in 1997 and to be followed up in interval of 4 years thereafter. Though the report under consideration is a consolidation of the first, second and third reports, it still fails to present the full account of the status of women within the reporting period. This lack of accuracy in reporting and in-depth information seems to have been handicapped by several factors: the lack of reliable data collection and statistics; the delayed action to domesticate CEDAW by the national machinery despite the advocacy efforts of civil society organisations and NGOs and other support groups and, the general lack of political will to bring women within equal rights with their male counterparts.

This Shadow report is essentially being produced to supplement and fill the gaps in the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> combined periodic report of the Government of Botswana to the CEDAW Committee, further it is meant to encourage the Botswana Government to strengthen the institutional mechanisms to fully implement CEDAW towards the full realisation of equal human right by women of Botswana. It is also an attempt to

respond to the recommendations of the CEDAW Committee which considered the Botswana Government report at its 45<sup>th</sup> session in 2010.

This report, as facilitated by Botswana Council of Non-Governmental Organisations (BOCONGO), is a result of a consultative process involving several women's Non-Governmental Organisations (NGO), civil society organisations and local women consulted through national, regional and stakeholder workshops and meetings. A Task force of 5 members was charged with the development of terms of reference for a consultant to compile the report and to engage same. The Consultant began by conducting a literature survey which consisted of the examination of all laws and policies affecting the status of women, various reports and studies by Government, NGOs and/ or other agencies, national and private programmes on women. After the collection, a draft report was formulated and distributed to the Task Force and their different constituencies before a final report was generated which incorporated all the different positions and aspirations of the women of Botswana.

The report is structured to address the different topics on gender discrimination in a manner consistent with the CEDAW articles. The format focuses on individual CEDAW articles, the Government efforts to implement CEDAW as per the Government report, reflect the real situation on the ground as reported by NGOs, offer an independent assessment on the progress made or lack thereof and present recommendations made by NGOs on the best way to achieve the implementation and full elimination of all forms of discrimination against women, including domestic violence.

## PURPOSE AND OBJECTIVES

---

- To produce an alternative/shadow report on CEDAW and Botswana Government's accountability to gender equality, that will be used for constructive engagement of the UN Committee on CEDAW during the January 2010 presentation of Botswana's State Party report;
- To facilitate involvement of gender specific organizations and gender activists participation in developing the NGO CEDAW report;
- To organize a national and regional stakeholders forum to make inputs and to validate the alternative/shadow report;
- To use the CEDAW Shadow report to engage and influence policy makers in Botswana;
- To share and disseminate the report with stakeholders and all actors concerned with advancing gender equality and women's empowerment.

## CONSULTATIVE PROCESS

---

The process of consultation was national, zonal and local in dimension to ensure that all voices were heard.

Three workshops were held at Palapye, Tsabong and Gaborone to take care of NGO's from the central, southern and northern areas. A total of seven meetings were organized throughout the country.

Questionnaires were also distributed to ensure that those who could not participate directly had the opportunity to participate and contribute their views on: ***the status of CEDAW Implementation in Botswana, what constitute issues of critical concerns to Botswana women and how best to advance the gender equality agenda as non-State actors.***

The project engaged a consultant to develop working paper series in eight major thematic areas. This formed a think piece and background information for the stakeholders consultative workshops, the report writing stage, and the peer review



meeting. The report produced can thus truly be said to be representational and participatory.

The report reveals the under-representation of women in Botswana across all sectors and, consequent exclusion of women from key decision-making and policy formulation processes. Furthermore, it highlights how, women's participation and contributions at all levels and in all sectors is largely undervalued and constrained, as a result of patriarchal norms, attitudes and beliefs.

## **COUNTRY PROFILE**

Botswana gained independence from British rule on the 30<sup>th</sup> of September, 1966. The population is estimated to be 1, 680 683 in 2001<sup>1</sup>. Although there has been a steady population growth since independence, the effects of HIV/AIDS have contributed greatly to a decline in the last decade. This has resulted in lower life expectancy, higher infant and maternal mortality rates and significant changes in the distribution of population according to sex and age. The HIV/AIDS prevalence rate is estimated to be presently at 37%, as a result the life expectancy at birth has declined from 65 years in 1991 to 56 years in 2001<sup>2</sup>.

The population itself comprises many different ethnic communities such that the customary practices as well as customary law differ from community to community. Botswana operates a system of dual law, comprising the customary laws and practises of the different ethnic tribes and the common law. The customary law is largely unwritten and, as aforementioned, differs from tribe to tribe and from community to community. The common law is constituted by a combination of old English Roman Dutch law and the statutory enactments passed by parliament through time.

---

<sup>1</sup> 2001 Population and Housing Census Results, CSO

<sup>2</sup> Analysis of Child Focused Indicators based on the 2001 Housing and Population Census, CSO. UNICEF 2005

Upon attaining independence in 1966, Botswana adopted a constitution which is in place today with a few amendments here and there. The Constitution is the supreme law of the land, all other laws and practises which do not comply can and have been declared unconstitutional, However, it should be noted that the Botswana society is highly patriarchal, with many practices and much stereotyping which privilege men on the basis of their gender still being prevalent. This culture of patriarchy has contributed largely to the unequal relations between men and women which prevail to date disadvantaging women at all spheres of life.

Botswana inherited one of the poorest economies at independence. However, with the discovery of minerals, there has been steady growth such that it is now rated among the best in Africa. Studies have shown however that there is unequal distribution of resources with most of the rural population living under poverty. Most of the poorest are constituted by women who at the same time bear the biggest burden of caring for the young, the ill and the elderly. The unequal power relations between men and women brought about by patriarchy has led to women's lack of access to resources such as land, cattle, money resources and other income raising resources.

## 1. ARTICLE 1: DEFINITION OF DISCRIMINATION

The relevant sections which deal with discrimination under the Constitution of Botswana are Sections 3 and 15 respectively, and they read as follows

### Section 3

*“every person in Botswana is entitled to fundamental rights and freedoms of the individual, that is to say the right whatever his race, place of origin, political opinions, colour, creed or sex but subject to respect for the rights and freedoms of others and for public interest...”*

### Section 15(3)

*“affording different treatment to different people attributable wholly or mainly to their respective description by race, tribe, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description”*

### 1.1. NGO Report on the Situation

The Government report States that the Constitution and other subsidiary legislation were amended to ensure compliance with the non-discrimination clause of CEDAW. However, much of this has had very little effect due to the fact that the Constitution is totally imbedded in the patriarchal system that gave birth to it. In fact, the same provision that defines discrimination makes exceptions under subsection 4 to allow discrimination in matters of *‘adoption, marriage, divorce, devolution of property upon death and other matters of personal law’*

This implies that there can be a valid law or policy that discriminates either in fact or in its effect. This is a huge concern for women because the existence of unequal relations perpetrated through the patriarchal system puts them in a precarious position, especially on issues relating to inheritance, marriage and its dissolution. This particular exception from discrimination may deny women

legal backing on issues of discrimination, especially on private matters as already mentioned.

The Government report also discusses the judgment in the case of *Unity Dow vs The State*<sup>3</sup>, where it was Stated that the Constitution of Botswana is the supreme law and that, therefore any other law or custom that is contrary or in conflict with the Constitution cannot be held to prevail. This is, however all good only in theory as has been shown by many studies for the majority of Batswana the living law is customary law, this customary law which is largely unwritten and differs from tribe to tribe, tolerates unequal power relations between men and women, consistently holding out a woman to be a lesser human being than a man. These exceptions, therefore, become even more significant within this framework which generally privileges men over women on the basis of their sex. The case was a milestone for many women in Botswana, as it provided the impetus that led to the review of the many laws that have been repealed and/or amended to date.

Dissemination of the laws however is a concern as many of the people in the country are unaware of the old let alone the new amendments. The result is that customary law and practises rule the day and many women and girl children are subjected to discriminatory practises in their daily lives, especially in marriage.

Botswana applies a dualist system where the implementation of international treaties is restricted unless and until the particular treaty has been specifically enacted into law by an Act of parliament. The implication of this is that even as CEDAW has been signed and ratified by the Botswana Government for over a decade, unless it domesticated, it would remain non-justiciable. The Government report again argues that the many piecemeal amendments that have been undertaken through the years were aimed at domesticating CEDAW. These laws are only facially gender neutral, especially as they are applied within the customary law gender perspectives.

---

<sup>3</sup> 1992 BLR

The complete domestication of CEDAW would go a long way into eliminating some forms of discrimination against women. Admittedly, the ratification and domestication by themselves would not and cannot be enough to change behaviours and attitudes borne out of centuries of socialisation and patriarchy. The co-existence of common law with unwritten customary law makes for a complicated jumble. The result is that there is a huge gap between the formal guarantee of equality between the sexes and actual practice.

The CEDAW Committee recognises sexual orientation as a prohibited basis for discrimination. The Committee emphasizes that sexual rights include freedom from violence and discrimination for both women who do and those who do not conform to dominant sexual and gender norms. Lesbian, Bisexual and Transgendered women experience human rights abuses **both** because they are women and because of their sexual orientation and/or gender identity.

Botswana's official report to the CEDAW Committee does not address discrimination on the basis of sexual orientation or gender identity. In actual fact, no mention is made at all to the existence of such a community of people. The reasons for this silence include a mixture of homophobia, transphobia, and discrimination against women. The Government argues that there is no need for laws that protect a community that does not exist.

The most egregious violation of LGBT rights in Botswana lies in the Botswana penal code that still criminalizes same-sex sexual conducts in private between consenting adults, which contravenes Articles 2(1), 17, and 26 of the ICCPR.<sup>11</sup> Section 167 of the Penal Code Act, Chapter 8 of the Laws of Botswana, which states that:

*“any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.”*

Section 164 provides that

*“Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits any other person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.”*

Politicians and religious organisations in Botswana defend sodomy laws based on the belief that homosexuality represents the antithesis of Botswana culture and a reflection of Western influence. They point to the fact that ‘even people who claim to be homosexual’<sup>4</sup> to prove that it does not form of Botswana culture. Certainly, fear of being exposed to negative and discriminatory treatment by political and religious forces keeps these individuals from coming out into the open. It will continue to be difficult for the LGBT community to be open about their sexual orientation if it constitutes a criminal offence. According to BONELA (The Botswana Network on Ethics, Law and HIV/AIDS) and LeGaBiBO (Lesbians, Gays and Bisexuals of Botswana), homosexuality has always been a taboo subject and society has more often than not tried to hide the history of homosexuals. Hardly anything positive has ever spoken about gays and lesbians and their contribution to society.

As a result of these political and religious influences, Botswana has not only retained its criminalization of same-sex sexual acts between men, but in 1998, expanded its laws to criminalize sexual conduct between women. The effect of having legal penalties for same sex sexual conduct is that, even when they are not enforced, these laws strengthen and reinforce social stigma and homophobia against sexual and gender non-normative behaviour, whether perceived or real, that may easily cause discrimination or more serious forms of human rights abuses. That stigma, in turn, can be even more effective than legal penalties in stripping individuals of the human rights as guaranteed to them under the Constitution and many of the UN treaties such as the ICCPR.

---

<sup>4</sup> Aubrey Lute, Homosexuality is rubbish--Mfa, *The Botswana Gazette*, May 24-30, 2006.

Notably, the law criminalizing same sex sexual conduct is also detrimental to Botswana's efforts toward HIV/AIDS education, prevention and care. In *Toonen v Australia*<sup>5</sup>, the Human Rights Committee noted that the criminalization of same sex sexual practices "could not be considered a reasonable means or proportionate measure to achieve the aim of preventing the spread of HIV/AIDS."

According to Botswana's State report, the protection of freedom of association is provided for under Section 13(1) of the Constitution. The only restrictions that may be placed on these rights are those that are necessary for national security and public order or safety. Botswana has violated these rights by denying groups and non-Governmental organizations the right to register and enjoy a formal, legal existence, based on discriminatory grounds. The country has also violated these rights by offering no protection to gays and lesbians, who are subject to violence when they gather, socialize, or meet in public places, which include bars, pubs, and clubs. Due to the repressive laws enforced by State officials in Botswana and the homophobic public statements and speeches delivered by politicians, these rights continue to be violated in Botswana. The laws of Botswana that criminalize any form of consensual same-sex conduct between consenting adults provide for the possibility of imprisonment for seven years. Beyond establishing a legal ground for the deprivation of life, liberty, physical integrity, health, and opportunity, these laws preserve ingrained stereotypes about LBT individuals and, in effect, serve to reinforce and strengthen social stigmas against them.

The discriminatory culture against LBT individuals in Botswana denies these persons of their right to freedom of association and further limits the possibility of providing education, prevention and care programmes to individuals with HIV/AIDS. Thus, anti-discrimination legislation, directed specifically at LBT rights, is needed.

---

<sup>5</sup> *Toonen v. Australia*, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994), *Kanane v. The State 2003*, 2003(2) BLR 64 (CA).

## **Recommendations:**

- The Government should take all necessary steps to fully domesticate CEDAW and all other international instruments that have been ratified.
- The exceptions to the definition of discrimination under section 15(4) of the Constitution should be repealed and the more basic provisions of CEDAW should be incorporated.
- All customary laws and practices that affect women and girls should be abolished and laws that protect women's human rights enacted.
- The Government should undertake an extensive public awareness campaign on all the international instruments, laws and amendments to enable all its citizens especially women, to know and better access their rights.
- Botswana has to refrain from Statements that incite division, hatred, violence and discrimination based on sexual orientation or gender expression or identity.
- To repeal so-called "sodomy laws," or laws that criminalize consensual, adult, homosexual acts. In particular, Botswana should repeal Sections 164, 165, and 167 of its Penal Code.
- The Government end discrimination in the provision of health care by ensuring that, lesbian, bisexual, transgender, and inter-sexed people as well as all other vulnerable groups have access to relevant, population targeted and appropriate information on health, including information on sexual health and HIV/AIDS.
- The Government must enact laws protecting against discrimination on the basis of sexual orientation or gender identity or expression.



- In future processes of constitutional revision, provisions should be included that:
  - Affirm or strengthen the right to privacy;
  - Strengthen anti-discrimination protections, and include sexual orientation and gender identity or expression in their scope;
  - Eliminate any exemption from equality protections for customary laws or traditional practices.

## **2. ARTICLE 2: POLICY MEASURES UNDERTAKEN TO ELIMINATE DISCRIMINATION AGAINST WOMEN AND TO IMPLEMENT PRINCIPLES OF EQUALITY BETWEEN MEN AND WOMEN**

### **2.1. NGO Report on the Situation**

The Government report outlines under paragraph 40, all laws and policies that have been reviewed since CEDAW was ratified in 1996, all of which are discussed and positioned as enabling for the women in Botswana to access their full human rights. The case of Unity Dow is also used to illustrate that, that even in cases where someone might feel that he/she have been afforded differential treatment on the basis of their gender or who is of the view that a particular law has a discriminatory effect, such a person has recourse to the courts who, in turn, obligated to interpret the laws in a non-discriminatory manner. Again, this is commendable but access to justice delivery remains a challenge for many women due to limited financial resources and lack of knowledge about their rights in the first instance. There is no organised mechanism for addressing legal aid for women and the few NGOs that provide such services are under huge financial strain.

Customary law as seen does not always comply with either human rights standards as stated in international instruments, neither or with national statutes of Botswana. On the face of it the superior status of common law seen to protect women and girls from these defects. However, things are much more complex in real life, especially because often common law is not

given the opportunity to supersede customary law. Although the position of women has changed for the better, some due to the economic windfall that the country has been enjoying since independence, access to many resources still remains largely unequal between men and women due mainly to the many deep seated convictions on patriarchy that favour men over women. Notwithstanding, the supremacy of the common law customary law is the law that most Batswana live under and respect.

The Government report suggests that law reform was undertaken in order to put the national legislation in conformity with human rights standards. However, the questions that need to be asked is, to what extent it has been taken into consideration that Botswana has a pluralist legal system that includes an unwritten customary law and whether customary law was included as part of the law reform process?

The type of law reform referred to above consists of piecemeal amendments of relevant statutes. It is exemplified by the review and amendment of the Penal Code, focused on particular provision related to issues of sexual violence and exploitation. The review and amendments were primarily reactions to the country's high HIV prevalence, rape and defilement cases. This type of law reform was too patchy and failed to address the problem holistically. It was result oriented and failed to take into account the root causes of the violence.

In an attempt to redress the inadequacies of the first type of law reform, the Government adopted a new strategy, which consisted in checking laws against international standards. The review of all laws relating to the status of women and the early efforts to review the Children's Act are examples of this strategy. These reviews however, have not achieved the *de facto* equality that women and girls in Botswana are entitled to, because too much emphasis was put on common law statutes and international standards and not on the aspirations of the people and the need to use the law to make maximum contribution to well-being in the context of the country's politico-economic situations. There is still a huge gap between the formal guarantee of equality

between men and women as envisioned by the law reform and the realisation of human rights in practise. Gender stereotypes remain prevalent to reinforce discrimination in law and in practise.

## **2.2. Recommendations**

- A free legal aid mechanism should be provided to assist women whose rights are violated through the application of discriminatory customary and religious practises.
- The review and reform of all laws affecting the status of women should be inclusive of customary laws and religious practises to ensure *de facto* as well as *de jure* equality between men and women.
- The Government needs to establish specific programmes to eliminate the existing impediments in socio-cultural, economic, political and religious spheres and promote equal opportunities for women and girls at all levels.

## **3. ARTICLE 3: GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS = NATIONAL MACHINERY TO ENSURE THE FULL ADVANCEMENT OF WOMEN.**

### **3.1. NGO Report on the Situation**

This article obliges State parties to ensure the full advancement of women in all fields for purposes of guaranteeing them the full enjoyment of human rights and fundamental freedoms on the basis of equality with men. The Botswana Constitution addresses both men and women and guarantees full human rights and fundamental freedoms and, the Government has indicated its goodwill in taking steps to create machinery to promote gender equality. However, all efforts remain short of eliminating all forms of discrimination against women as proscribed by the CEDAW. The establishment of a Women's Affairs Department (WAD) in 1996, to facilitate and coordinate programmes that promote non discrimination on the basis of sex, was one such step, but the said department has faced many challenges. The

budgetary allocation for this department has been low over the years, thus making it impossible for the said department to meet the aspirations of the women and girls of Botswana. The department is making the effort, but it remains very distant from its primary constituencies.

Socially and culturally, women are considered to be inferior and, consequently, are forever being sidelined in decision making processes within families, religious bodies and in political associations. Women still constitute the majority of the poorest people in every community of Botswana, yet they bear most of the economic burdens of the family caring for the children, the sick and the elderly.

Several policies, plans of action and gender frameworks have been developed, some as far back as 1996 [Women in Development]. However, most of these have had little impact due to the fact that they were not given adequate resources to achieve their goals and objectives. In fact many of these were even formulated without the women's participation and the Government has still taken no steps to ensure the full participation of women in issues that affect them.

The introduction of a gender framework should have made gender mainstreaming a lot easier as it sought to create focal points in all ministries. However, its implementation has been fraught with many impediments. There has been no support from the parent ministries in terms of budgetary allocation to these focal points, the human resource component is limited in number and skills and, most importantly, people perceive gender issues to be the sole responsibility of the Women's Affairs Department. Many women's NGOs and, indeed the Women's Affairs Department itself, have suggested that the location of the department be within an implementing ministry instead as opposed to being in a coordinating ministry, as its present location contributes to the general inability by the Department to effectively carry out its mandate of coordinating women's programmes. It has been suggested that the department should be located with the Office of the President, in order for

it to be able to efficaciously coordinate gender mainstreaming within all ministries.

The Women's Conference in Beijing is an important part of the history of the women's movement, as it created a huge momentum to improve the status of women in Botswana. Many of the mechanisms alluded to in the Government report happened soon after the return from Beijing but this impetus has since been lost and not much effort is being made to implement the platforms of action which resulted from there. The Government's initiative in establishing the mechanisms to advance women's equality and translating laws and policies into tangible actions have not reached the desired level. Response has become slower and, when it does happen, it is woefully inadequate.

The representation of women in positions of power or political appointments is still insignificant as compared to men's, yet women constitute the majority of the public sector work force. Chieftaincy is still decided and enforced on the basis of male superiority; custom and tradition deny women the opportunity to ascend to that position of power.

### **3.2. Recommendations**

- The Government should increase the budgetary allocation to the Women's Affairs Department as well as adequately resource ministerial focal points for targeted programming. Alternatively, WAD should be located within an implementing ministry, such as the Office of the President and give it the wherewithal in order to coordinate the gender framework effectively.
- Gender mainstreaming should be undertaken in all Government and private institutions and NGOs to ensure the proper collection of disaggregated data that will inform national planning and engender budget and allocation of resources.
- Mechanisms for monitoring and evaluation of the implementation of existing laws, policies and programmes should be set up as a matter of priority.

- Positive affirmative action to allow women's full participation in political life should be implemented, particularly in line with the Beijing Platform of Action, CEDAW and the SADC Protocol on Gender and Development.
- Massive public awareness campaigns should be regularly undertaken to enlighten women, especially those living in rural areas and the girl child on issues of national interest, in particular about the laws, policies and programmes created for their benefit.

#### **4. ARTICLE 4: TEMPORARY SPECIAL MEASURES TO ACCELERATE EQUALITY BETWEEN MEN AND WOMEN**

##### **4.1. NGO Report on the Situation**

The Government argues that through development of the National Gender Programme whose strategies were to address the six critical areas of concern; the review of some policies to improve the economic empowerment of women; the Abolition of Marital Power Act to allow married women to hold title to property and access credit in their own names, has created new social and economic opportunities for women. This is all true on paper, as all these actions were intended to benefit women. However the situation on the ground tells a different story, particularly because most of the intended beneficiaries remain unaware of these products and not enough action has been taken to disseminate the programmes.

These programmes should be directed at ensuring that there are equal and adequate opportunities for all, irrespective of sex, access to employment, education, political participation and health facilities. However, although available on paper, none of these create a mandatory obligation on the Government. Policies within the WAD have remained ineffective due to an inadequate budget and the because of the fact that there has not been any formal adoption of a legal framework for gender mainstreaming.

Gender stereotyping is still largely a big impediment to women ascending to positions of power. After the 2004 general election, women occupied only 7 seats, while men occupied 55 and only 3 women sat on the High Court bench. The distribution of power and resources along patriarchal lines renders women incapable of competing equally with men. The Government continue to resist legislating for a quota for affirmative action for women. Even the 30% recommendation by the Beijing Platform of Action has not been reached.

In order to monitor the effectiveness of the mechanisms that the Government has put in place, there is need for gender disaggregated data. The institutional mechanisms for collecting such data are ineffectual leading to unavailability of data to support the argument for more gender specific programmes and interventions.

Efforts to put in place special measures to overcome traditional attitudes that impede girls' education are highly commendable, BUT they remain woefully inadequate. The majority of Botswana women are still disadvantaged by extreme poverty<sup>6</sup>. That no targeted measures have been taken to prevent girls dropping out of school due to pregnancy, HIV/AIDS and unsafe abortions is among the many challenges to women's health despite the availability of family planning and HIV drugs.

On the issue of the Socio-economic Implications of Violence against Women in Botswana, March 1999, a report commissioned by the Women's Affairs Department, reported violence and sexual abuse of women and children to be wide spread in all societies of Botswana<sup>7</sup>.

The Botswana society identifies itself as a patriarchal traditional society which generally supports the unequal power relations between men and women. The distribution of power and resources favours the men, and yet studies have shown that women bear the brunt of child rearing and caring for the sick, the

---

<sup>6</sup> Botswana Institute of Development and Policy Analysis 2002. GABORONE

<sup>7</sup> Socio-Economic Impact of VAW in Botswana, 1999, Women's Affairs Dep't. BOTSWANA:

disabled and the elderly<sup>8</sup>. The result is that many female headed households are hugely affected by poverty. Women and children constitute the bulk of the poor section of the population, most of who are affected by high rates of unemployment or under employment. Economic hardships in the rural areas push young women to the urban areas in search of employment, where they venture into sex work as the last hope for survival. Early marriage and other harmful traditional practices continue to exacerbate the vulnerability of these young girls to HIV and Sexually Transmitted Infections (STI).

#### **4.2. Gender Based Violence (Recommendation 19)**

Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

In 1989, the CEDAW Committee recommended that States should, in their reports, include information on violence and spell out measures introduced to deal with it.

Article 1 of CEDAW defines discrimination to include gender-based violence, which basically refers to violence that is directed towards a woman because of her sex or affects women disproportionately. Gender violence manifests itself in many forms which may include acts inflicted to cause physical, mental, sexual harm or suffering, coercion, threats or other deprivation of liberty. The CEDAW is specifically concerned with violation committed by public authorities and these may occur where such authorities fail exercise due diligence to prevent the violence or take action to investigate and punish acts of violence. Gender based violence, therefore, impedes women from their full enjoyment of human rights and fundamental freedoms.

Gender based violence is pervasive in Botswana society and it affects women across all distinctions by class, colour, tribe, education, religion, and age. It is

---

<sup>8</sup> NTSEANE P, Cultural Dimensions of Sexuality: Empowerment Challenge for HIV Prevention in Botswana 2004



mainly understood as a pattern of behaviour used to establish power and control over the victim through fear and intimidation.

Traditional attitudes which subordinate women to men as well as gender stereotyped roles that perpetuate and tolerate the use of violence against women for whatever reason, affect women's physical and mental integrity and deprives them of the enjoyment of their fundamental rights and freedoms.

The Government of Botswana has enacted some gender positive laws and, policies, however these are to be found scattered in many different laws and at times, have been given gender blind interpretations. The 1998 amendment of the Sexual offences in the Penal Code<sup>9</sup> exemplifies the effort by the State to respond to the demand to protect women against violence. There are many arguments that the penal laws on violence are gender neutral and therefore protect all without discrimination, yet battered women who seek Police protection are sometimes advised to solve the matter at family level, much as the same would not apply where it involved violence between strangers. Moreover, the investigation and prosecution of these cases in many instances are not given due priority.

Sexual abuse is another form of gender based violence that is common in Botswana. In the domestic arena, married women have no recourse to the law because marital rape is not recognised as an offense punishable by law. Again this is giving credence to the perception that by paying bride wealth, a husband has purchased unlimited conjugal relations with his wife and has acquired control over her reproductive functions.

The Domestic Violence Act which was passed to provide support and protection from domestic violence is not being effectively implemented, due to lack of knowledge about its remedies and a reluctance to eliminate the sources of the unequal power that men wield over women.

---

<sup>9</sup> Laws of Botswana CAP 08:01

Sexual harassment in the work place and in schools is also quite common, and although prohibited by law the implementation of such laws or policies is somewhat limited, so that it goes on unfettered.

The review of all laws affecting the status of women commissioned by the Women's Affairs Department in 1997 provided baseline data for planning, budgeting and monitoring. However the piecemeal response through the various amendments to the laws and the scattered interventions have been counteracted by the lack of both knowledge and community support.

All in all, there are very few targeted measures that have been taken to accelerate the advancement of women. Those that exist only benefit a small number of women and, therefore, are woefully inadequate.

#### **4.3. Recommendations**

- The capacity of the Women's Affairs Department and the gender focal points should be enhanced, with more financial and human resources made available to adequately implement the institutional mechanisms for the advancement of women.
- The Government should provide more opportunities for the education of women, in particular the pilot programme for the education of young mothers should be expanded to cover the whole country.
- Effective monitoring mechanisms should be established with appropriate data collection strategies.
- The Government should introduce a 50% quota system for decision making positions.
- A legal framework for gender mainstreaming should be formalised as a matter of urgency and the same should be supported by appropriate resources to ensure effective implementation.
- The Government needs to make a more targeted response through the provision of gender sensitive interventions, especially the enactment of

very specific legislation that provides protection against gender based violence.

- The Government should establish and/or support shelters for women and children who have been survivors of abuse.
- The interventions to educate communities on gender based violence and services that are available to the survivors should be cascaded to remote rural areas where the so called harmful traditional practises are most rampant.

## **5. ARTICLE 5: GENDER ROLES AND STEREOTYPING**

### **5.1. NGO Report on the Situation**

The Government report identifies patriarchal norms that stereotype women as lesser human beings than men as the root cause of gender discrimination that is widespread in Botswana societies. However, it fails to offer any concrete plans to eliminate these problems. As mentioned before, the Botswana society identifies itself as patriarchal in nature, using language and early socialisation of children through thrusting them into stereotyped sex roles to prejudice women.

The early socialisation teaches boys and girls to believe that women are not equal to men by ascribing leadership roles to boys and all domestic and submissive duties to girls. These same gender roles that are developed throughout childhood are reinforced in marriage and widowhood through custom and practise which maintain the man as the head of the household not because he is more able and responsible, but simply because of his gender. The payment of bride price or ***bogadi*** further renders women more vulnerable in marriage to be treated as objects that can be bought, used and disposed of at the owner's whim. Subsequently, many women are on a daily basis subjected to all kinds of abuse especially sexual and physical violence. Marital rape remains a big concern despite overwhelming demand by

women's organisations that it be made an offense punishable by the law. Notwithstanding, the Government has failed, refused and/or neglected to protect women from sexual abuse in marriage. The recently enacted Domestic Violence Act seems to have fallen within the cracks with many magistrates and district commissioners, who should be the main judicial enforcers of the law, claiming not to be aware of it.

Despite the fact that the Government has undertaken a review of all laws that affect the status of women coupled with the fact that some of these laws have been actually reviewed, it has taken too long when it comes to reviewing the customary laws and practises that pertain to family issues.

HIV/AIDS has indeed affected every family in Botswana. Many lives have been lost and many children have been orphaned, yet the sexual behaviours of many men still follow the cultural attitudes that tolerate extra-marital affairs for men or men engaging with multiple partners. Society generally turns a blind eye to this male behaviour, but the same behaviour for a woman gets her labelled promiscuous and undesirable. Without a doubt this is unacceptable and unsafe behaviour, especially in the face of an incurable disease such as HIV/AIDS. The introduction of Prevention of Mother To Child Transmission (PMTCT) and ante-retroviral therapy (ART) only takes care of the symptoms and not the root cause. The evidence of Botswana's high infection rate is testimony to the fact that the root causes are not being addressed effectively.

Although the enrolment rate between boys and girls in school is encouraging, there are far too many reports of sexual violence against girls in schools and too many cases of teenage pregnancy, all of which combined deprive the girl child of her right to education. The pilot programme of continuation of education for young mothers has not been extended to adequately cover the whole country. The Government report fails to offer any solutions to these problems, given that there are no specific mechanisms which are in place to deal with them.

It is reported that women make up the majority of the private and public work force, yet at the same time women are in the minority when it comes to positions of power and decision making. The stereotype that men cannot be led by a woman is pervasive such that Botswana has consistently failed to even attain the Beijing Platform call for 30% minimum representation of women in parliament since independence.

The Government report is clearly cognizant of these issues, but more effort needs to be put towards educating communities regarding all programmes and policies aimed at eradicating these practises and stereotypes that discriminate against women, especially women in rural areas where custom and tradition are the living laws of the communities.

## **5.2. Recommendations**

- There should be regular dialogue at the local and national level on issues of gender stereotyping and cultural practises. Advocacy and awareness raising efforts to traditional leaders, religious leaders, community leaders, policy makers and other stakeholders should be increased, especially on the need to abolish harmful, stereotypical, and gender discriminatory cultural practises that impede the advancement of women.
- The Government needs specific plan of action to increase the retention of female students at all forms of formal education. More mechanisms for combating gender stereotypes should be adopted in schools, with particular attention on the curriculum that continues to teach and perpetuate gender stereotyping in schools should be reviewed.
- The Government needs to amend laws appropriately to ensure the protection of women within marriage against sexual violence, especially with regard to marital rape, which should made into an offence punishable by law.

## **6. ARTICLE 6: TRAFFICKING AND EXPLOITATION OF WOMEN FOR PROSTITUTION**

### **6.1. NGO Report on the Situation**

There are provisions in the laws to prevent trafficking of human beings, especially women and children. Although the report suggests that this does not yet happen on a regular basis here, anecdotal information suggests that it is taking root in recent times, especially as both a source and transit route for trafficked women and children from neighbouring countries. Poverty is clearly a contributory problem and children from low income families especially girls are more vulnerable than boys.

Prostitution or commercial sex work is a lot more problematic to deal with, especially as the Penal laws do not provide a specific definition. The increasing poverty and low standard of living in rural areas leads to a considerable rural-urban migration of women and young girls and the lack of employment opportunities leads them into sex work.

The demand for sex work has increased, but no protection measures have been put in place to regulate the industry, such that all sex workers are prone to abuse by their clients, who often refuse to use a condom and the Police who are reported to arrange raids in order to extort money from the sex workers. Sexually transmitted infections (STI) and HIV/AIDS are a special public health concern in this country and yet they are being neglected in favour of moral values that hold commercial sex work as being immoral.

### **6.2. Recommendations.**

- Public awareness programmes on the laws should be undertaken among the communities especially the Police, immigration and customs officers, for control of cross-border movement and deterring trafficking of trafficked persons.
- Preventative programmes against social conditions that lead to trafficking and exploitation of women for prostitution should be

established through providing women with income generating and employment opportunities so that prostitution should never be a viable career option.

- Mechanisms to ensure access to reproductive health information and facilities should be promoted, especially the use of condoms and other health products.

## **7. ARTICLE 7: WOMEN IN POLITICAL AND PUBLIC LIFE**

## **8. ARTICLE 8: DIPLOMATIC REPRESENTATION BY WOMEN**

### **8.1. NGO Report on the Situation**

From independence, Botswana declared itself a multi party democracy, a system that allows for the equal participation of both men and women in the political process. The Government report correctly points out that although there are no legal restrictions on women to ascend to position of power and decision making, there exist age-old gender related factors which restrict women's advancement in political and all other spheres of life. The socialised perception that women cannot be leaders while at the same preserves the leadership roles for men, is a practice that is naturally compounded by the women's inability to compete due to limited access to economic resources, makes it a huge challenge for women to fully engage in political life.

Parliamentary elections are held every 5 years and everyone who is 18 years old and above is eligible to vote. Not surprising though is the fact that, in almost every election year, women have constituted the majority of those who turn out to vote, and yet the best they have managed was to elect only 7 women members out of a house of fifty seven (57). In the just concluded national elections held October 16<sup>th</sup> 2009, there were a total of 117 candidates from 7 political parties contesting for parliamentary seats; out of these only 10 were women, constituting approximately 8%. Of those 10, only 2 females were elected to parliament, which constituted only 3.5% of the total seats available.

Disappointingly, this last election seems to have produced even more dismal results for women's representation in political office. The political climate that supports female tokenism, the entrenched patriarchal attitudes that discourage women from participating in politics and the low financial status of women that hinders their ability to meaningfully compete for political positions are the real reasons why women have been unable to ascend to positions of power. Political parties are yet to initiate programmes that articulate women's issues, let alone integrate affirmative action and plans into their manifestos to allow for the proportional representation of women. It is encouraging though that women have progressed from mere voting and belonging to women's political wings where they act as mobilisers and singing and dancing for the men's entertainment. Significantly, women are getting actively involved in constructive politics, making it even more incumbent on the Government to harness this initiative and create bridges for increased participation of women in politics and decision making at all levels of public life.

While commending the Government for making women in politics one of its critical areas of concern, which has largely led to the increase in the appointment of women, it is still up to the discretion of the head of State to appoint women even to higher positions of decision making. The number of women commissioned to serve abroad by the Government is low as compared to that of men, especially in senior positions. This position is the same at community, local and national levels and it is indeed a reflection of the general perception that is prevalent in Botswana society regarding the worth of women.

The unwillingness by the Government to institute positive affirmative action is also indicative of a lack of interest and political will to address this issue. Many of the international treaties on women's rights stipulate that State parties should put in place affirmative action measures in order to eliminate all barriers which prevent women from participating meaningfully and to create a conducive environment for such participation in all spheres of life. The Southern African Development Community's Protocol on Gender and



Development<sup>10</sup> in Articles 12 and 13 enjoins State parties to endeavour that by 2015, at least 50% of decision making positions in both the public and private sectors are held by women. Sadly, Botswana has so far refused to sign this very important protocol.

## **8.2. Recommendations**

- The Government should institute a quota system in appointment and elective positions, as this will encourage political parties to actively recruit women and to circumvent the male privileging and female tokenism that is rife in today's political appointments.
- Gender mainstreaming should, as a matter of priority, be formally integrated in all Government, private sector and civil societies.
- The provisions of all international instruments on women's political participation should be domesticated and implemented.
- Concrete efforts should be made to recruit women into Foreign affairs and International agencies.
- Efforts to encourage women into political office should be consistent and information on such programmes should be widely disseminated.
- Existing programmes to promote and improve women's political participation by non-Governmental and donor agencies should be supported by the Government.

---

<sup>10</sup> Southern African Development Community Protocol on Gender and Development. 2009

## 9. ARTICLE 9: NATIONALITY

### 9.1. NGO Report on the Situation

Nationality may be acquired by birth or descent if, at the time of birth, either the mother or father was a citizen. Patriarchy has been the greatest challenge to ensuring equal rights to nationality for women. In particular, married women were, for a long time, disadvantaged by laws that treated women as appendages to men.

The case of *Unity Dow vs State*<sup>11</sup> challenged the discriminatory provisions of the Citizenship Act of 1982, which Act prevented a woman married to a foreigner to pass on her nationality to her children. This was held to be contravening the non-discriminatory clause of the Constitution of Botswana. The Court decision led to the amendment of the Citizenship Act in 1995 to make this provision gender neutral, such that both men and women whether married or not, could pass on their nationality to their children. This was indeed a commendable act on the Government's part. However, the issue of tracing lineage through male lines still influences many practises which, by and large remain discriminatory. For example, tribal affiliation has not been affected by the amendment of the citizenship laws. Children born in marriage automatically affiliate to their father's tribe and those born out of wedlock automatically affiliate to their mother's tribe. A married woman automatically affiliates to her husband's tribe upon marriage, which is the direct opposite of the common law position on domicile as it stands today, following the enactment of the Abolition Of Marital Power Act<sup>12</sup> in 2005. Prior to this Act, a husband married in community of property in Botswana acquired marital power over the person and property of his wife. Effectively, a married woman's domicile became automatically dependant on that of her husband upon marriage, which the woman could not, in her own right, acquire one. The situation was clearly discriminatory as the law gave all the control of

---

<sup>11</sup> BLR 1992

<sup>12</sup> Laws of Botswana CAP 29:07

deciding on the matrimonial regime to the husband, without any due regard to the needs and aspirations of the wife. This was again a customary practise that was given formal legitimacy within our legal framework. However, after some sustained pressure from the women's NGOs, this provision was abolished so that a woman can today, notwithstanding her marital status, acquire a domicile of choice independent of her husband. In fact, the determinants for domicile are now gender neutral.

## **9.2. Recommendations**

- The law reform process should include a review of all customary and religious practises which discriminate against women.
- Awareness raising programmes on the amended laws should be instituted to ensure that women, especially illiterate and rural women, are able to understand and enforce their rights to nationality.

## **10. ARTICLE 10: EDUCATION**

### **10.1. NGO Report on the Situation**

The provision of education in Botswana has improved steadily since independence. However, there are wide disparities in the educational and learning standards between men and women. The main obstacles have been gender issues related to socio-cultural beliefs and practises that inhibit women' and girls' access to education. The Revised National Policy on Education of 1993 provides for equal access to education and indeed, the early school enrolment pays tribute to that policy. However, the dropout rate of girls in the higher grades is higher than that of boys and the reasons are varied but often centre on gender stereotypes, which means that it is more likely to be girls who withdraw from school to care for relatives than boys. Violence against girls in schools is a factor which has caused much concern, as has been revealed by reports and studies which have established that some girls are subjected to sexual harassment by male teachers despite the

existence of laws and policies that protect students from such harassment. The long distances between schools and students' homes and the lack of hostels to accommodate the students expose many girls to sexual violence in the streets.

Many girls also face gender stereotypes which are most often manifested through sexual abuse and early marriages which often leads to early pregnancies. The handling of pregnancy in schools has been found to be wanting and often discriminatory. The pilot Diphilana Continuing Education programme initiated for the reintegration of young teen mothers (into what?) was apparently rejected by the Government as being costly and therefore has not been cascaded to all districts to ensure equal access within the whole country.

Poverty plays a big role in the issue of retention of girl children in schools. A Needs Assessment Study of Sex-workers in Botswana<sup>13</sup> found that most of the out of school girls who are 16 years old and above are generally full time sex-workers and do this type of work in order to support themselves, their siblings and families. It was also found that poverty drives certain families to use their children as sex workers in order to meet their basic economic needs.

There is generally a lack of comprehensive educational support programmes to increase the retention of the girl child in schools and much of this is inextricably linked to the lack of an enabling environment of familial support, which is often unavailable, due to the gender traditional discriminatory practices that are rife within Botswana societies.

So, although the Government's educational policies have a multi-dimensional gender perspective there is still a multiplicity of gender stereotypes that pervade our society and hinder the equal advancement of women in education.

---

<sup>13</sup> NTSEANE, Gabo Peggy November, 2003

The Government report points to the problem of pregnancy as being a problem in the retention of female students in tertiary education and, to combat this, a pregnancy policy has been passed which allows for women to continue their education after giving birth. What the report fails to address is the fact that, more often than not, these women end up having to take on the responsibility of caring for the newly born child on their own without the fathers' assistance. This not only is a challenge because of the financial strain, but because of the demands of caring for a young baby, which hinders the mother's ability to continue with her education. A more critical analysis of this problem is therefore necessary for the Government to assist women with childcare and to deal with the issue of absentee fathers, to ensure that they are held to their responsibilities as fathers to support and maintain their children.

The unavailability of disaggregated data in Botswana has been ignored by Government reports, much as it is an important tool necessary for effective planning and budgeting. There are presently poor monitoring and evaluation mechanisms for both public and private schools.

## **10.1 Recommendations**

- The Government should upgrade the free primary education policy to compulsory free education.
- Large scale reforms are necessary to increase the enrolment and retention of female students at all levels of education, especially by addressing the socio-economic factors and cultural stereotypes that impede access to education by women and girl children.
- Affirmative action for girls in tertiary education centres should be instituted with special scholarship programmes to motivate career oriented education as well as retention in schools, especially with the regard to the enrolment of girls in science and technology fields of studies.

- There is a need to constantly monitor and evaluate progress of the educational reforms in order to determine the types of funding, budgeting and other support mechanisms.
- The Diphallana project meant to reintegrate teen mothers should be spread to the rest of the country or alternatively a programme for teen mothers to continue their education should be developed and implemented.
- A gender disaggregated data collection system should be maintained to facilitate and engender educational programming and budgeting.
- The Government should develop a sustainable adult education programme that takes into account life challenges that affect women at the family and community levels.

## **11. ARTICLE 11: EMPLOYMENT**

### **11.1. NGO Report on the Situation**

The Employment Act provides for the employment of all persons in very gender neutral terms and a cursory look at the employment regulations shows that potential employees are considered on the basis of technical abilities and merit rather than gender. However, although the labour force has more men than women, most of these women occupy junior positions or are in the informal sector, where they do not qualify for retirement or other work related benefits. The contribution of women's work in the domestic and household arena is highly unappreciated and is not taken into account within the gross domestic product.

High rates of poverty and under-employment affect most women's ability to challenge gender unfriendly practices and policies in the workplace. People are afraid to negotiate for the enforcement of their rights for fear of losing their jobs, as a result employers, especially in the private sector, abuse their positions with little restraint. Sexual harassment, therefore, continues to be a

challenge for female employee despite the existence of laws and policies that prohibit such behaviour.

Childcare is similarly a critical area of concern for most working mothers and, in the absence of sufficient child care, most women end up foregoing employment opportunities. The lack of uniformity in the maternity leave policies also leaves a lot to be desired as it allows for abuse by private employers.

The stereotyped gender division of labour continue to encourage gender disparities in the workplace.

## **11.2. Recommendations**

- Government should as a matter of priority compel all private sector employers to implement good maternity and sexual harassment policies to ensure a safe working environment for women.
- A law on sexual harassment should be enacted and implemented.
- More capacity building programmes for women should be created by the Government to empower women to access more employment opportunities that are otherwise available only to men.
- More childcare facilities should be created at places of work to allow working mothers to continue with their employment.
- A mechanism for monitoring the compliance of all employers to gender friendly policies should be developed.

## **12. ARTICLE 12: EQUALITY IN ACCESS TO HEALTH CARE**

### **12.1. NGO Report on the Situation**

Health, like most services in Botswana, is provided without discrimination on any basis whatsoever including on the basis of sex, age and disability. Botswana has been commendable in ensuring that every citizen has access to primary health care. More attention and resources have been committed annually to ensure the provision of quality health services to the citizens. Special emphasis has been directed to the fight against HIV/AIDS as well as reproductive health issues.

In addition to Government's effort to run prevention campaigns, Civil Society Organisations (CSO) has contributed a lot. The most common community-based organizations involved in the Botswana Network of AIDS Service Organizations include over 130 NGOs that provide support to people living with HIV/AIDS. The Botswana Network of People Living with HIV/AIDS and the Botswana Christian AIDS Integration Programme play an important role in mobilizing communities. The Ministry of Health provides leadership and coordination in monitoring and evaluation, surveillance, tracking people receiving antiretroviral therapy, operational research and information.

The Government reports a decline in fertility rates and an increase in infant survival rates. What they fail to mention is the fact that many of these children's maintenance and support invariably become the sole burden of their mothers, some of whom resort to risky sexual behaviour in order to support the children. The 2001 population census found that 55% of all children live in female headed households which are indeed poorer and more vulnerable than male headed households.<sup>14</sup>

The lack of regulation within the sex work business again makes it impossible for women to access reproductive health services which are specifically targeted for their needs.

---

<sup>14</sup> 2001 Population and Housing Census Results, CSO



The first case of HIV/AIDS in Botswana was diagnosed in 1985. Today Botswana faces one of the most severe HIV epidemics in the world. The Preliminary Botswana HIV/AIDS Impact Survey of 2009<sup>15</sup> shows that at the end of 2003, an estimated 350 000 adults and children were living with HIV/AIDS in Botswana, with an estimated average adult prevalence of 37.3%. The results of this survey also indicate that both prevalence and incidence rates of HIV is higher among females than males. It cites the key determining factors driving the HIV/AIDS epidemic as including stigma and denial, the vulnerability of women, the incidence of unprotected sex, poverty and demographic mobility. Although the Government has made attempts through the provision of ante retro-viral therapy (ART) and through the PMTCT programmes, the stigma and discrimination attached to the epidemic continues to affect women disproportionately.

The lack of trained human resources is, however, the most significant challenge in Botswana. Antiretroviral therapy services need to be rapidly decentralized beyond the district and primary hospital levels to include initiation of treatment at the clinic level in order to ensure further up scaling towards achieving universal access to services.

The Government needs to pay attention to more than just the negative effects of HIV/AIDS. More attention should be focused on eliminating the social indicators that make women more vulnerable to infection. More work needs to be done in the areas of education, prevention and treatment across all sectors of the population, especially the most vulnerable sectors of the society including women and girls and sexual minorities such as sex workers and women.

Male controlled condoms are made available in abundance. However, the ever present gender based attitudes combined with the unequal power relations between men and women limit women's ability to negotiate for safer sex, thus increasing women's vulnerability to infection. In spite of the vulnerability of

---

<sup>15</sup> Preliminary Botswana HIV/AIDS Impact Survey Results, CSO. 2009 May

women to infection, the availability of the female condom has not yet been sufficiently promoted to give women the choice and autonomy to protect themselves. The male controlled condom continues to be advocated as being the major preventative method against sexually transmitted diseases.

Although the Government has made it possible for most women to access family planning methods, the prevailing cultural stereotypes and religious practises have worked to counteract against these efforts. The methods which have been promoted put too much burden on women who, at the same time, because of the male dominance in power relations, have very little autonomy in negotiating for the use of contraception. The reproductive functions of a woman are controlled by men, especially women married under customary marriage, who have no autonomy in deciding the number of children to have or even the spacing of children, which is at the discretion of the husbands by virtue of their having paid bride wealth. The male controlled condom has largely been promoted more as a safe sex barrier method than for contraceptive purposes.

The emergency contraceptive (morning after pill) as a form of prevention of unwanted pregnancy has not been widely promoted and, although it can be found in some of the private suppliers its availability is definitely limited to urban areas. Even more significant is that there is general lack of knowledge about its use as an emergency contraceptive, such that even if it were readily available, its use would be negligible.

Abortion is illegal and punishable by law and it is only permissible in limited cases. The effect is that women and girls are forced to resort to clandestine methods of abortion especially among rural women and young girls. Disturbingly, these are often done under unhygienic conditions with use of traditional herbs or other unsafe substances. These abortions can be fatal and most of the time results in long term reproductive health problems for the women because private providers cannot be held accountable through reporting or documenting medical procedures, women have no recourse should complications or malpractices occur.

In addition to protecting the rights to life and providing the best attainable health, the Government of Botswana is obliged to protect the lives of women before, during and after birth. The CEDAW Committee has repeatedly instructed States parties to take active measures to reduce rates of maternal mortality, especially among rural, low-income, uneducated women and adolescent girls.

Sexuality education is an essential component of any comprehensive attempt to eradicate gender injustice and to improve public health. As the International Convention on Economic, Social and Cultural Rights (ICESCR) protects the rights to health and education, the Governments are required to establish “education programmes for behaviour-related health concerns such as sexually transmitted diseases.”

The importance of sexuality education in preventing the spread of HIV/AIDS is noted and appreciated by many including the Government of Botswana, and sexuality education is also a crucial tool for preventing early and unsafe sexual activity, early unplanned pregnancies, and STIs.

Age-appropriate and scientifically accurate sexuality education can also contribute to empowering young women to negotiate for themselves in relationships, teaching respect and gender equality to young men and helping to eradicate taboos and myths around sexuality and gender roles that, as the State itself has noted, create a climate wherein discriminatory and dangerous practices such as bride price and child marriage further threaten women’s autonomy and health. Sex education can also help adolescents deal positively with the relationships and emotions that come with impending adulthood, and can help young people develop crucial communication and negotiation skills, so that they can use to protect themselves from potential sexual violence, unwanted pregnancies and STIs.

When women cannot obtain safe reproductive health services, including abortion, their rights to health and to the benefits of scientific progress are violated. Not only must reproductive health care be accessible and affordable, such services must be confidential, for if women are forced to disclose details of their personal lives, their rights to autonomy and equality are compromised as well as their right to health are compromised.

## **12.2. Recommendations**

- The Government should establish education programmes for behaviour related health concerns such as STIs, as the introduction of age appropriate sexuality education in schools would provide a good baseline for children to grow up with the skills and the knowledge to protect themselves.
- There should be increased and sustained promotion of the female condom to make them more accessible to women and to provide women with female controlled barrier methods which afford them a little freedom and autonomy to protect themselves.
- Family planning education should be improved especially to prevent teenage pregnancy and the availability of the morning after pill should be improved to prevent unwanted pregnancies.
- The Government needs to develop and implement a plan to address cultural issues which shape sexual behaviour and put women and girls at high risk of contracting HIV/AIDS.
- The Government should consider reviewing the Penal Code to legalise lawful termination of pregnancy under safe and hygienic environment with proper procedures to prevent post abortion complications.
- Awareness through sensitisation programmes on HIV/AIDS and STIs should be strengthened especially among youths and rural women.
- Sexuality education should be made a major component of school curriculum to empower young women to protect themselves from sexual violence and exploitation.

- Efforts should be made to prohibit stigma and discrimination especially against people living with HIV/AIDS, sex workers and sexual minorities.
- The Government should institute proper data and statistics collection tools to document gender based violence in order to track its prevalence and develop ways of combating it.

### **13. ARTICLE 13: SOCIAL AND ECONOMIC BENEFITS**

#### **13.1. NGO Report on the Situation**

Customary law which is the living law of most people in Botswana treats men and women differently. Patriarchal gender stereotypes limit women's access to, control over, and use of most of the productive resources available in Botswana. The constitution provides for non-discrimination, but the reality for women is that most face numerous challenges, including lack of control over land and capital. The emphasis on land as collateral by the banks and money lending companies which women have limited access to, makes it extremely difficult for women to acquire credit. Even with the abolition of marital power, matrimonial property is usually registered in the name of the husband and women need the assistance of the husband to acquire any form of credit. The Government report correctly points to the fact that female children have very little rights to family property as inheritance customs always favour the male heir.

The Government report alludes to having set up programmes to empower women in money making ventures, but nothing is said about the success of these programmes or the fact that most of these ventures are merely income generating activities for household needs while their male counterparts treat the businesses for profit making. The businesses cannot be sustainable because women increasingly have to meet household economic needs.

There is a general lack of cultural acceptance of the role of women as entrepreneurs, which means that women have to work harder to succeed in business than men due to these stereotypical attitudes that marginalise them in business.

The participation of women in sporting activities in Botswana is limited by patriarchal attitudes and gender stereotypes that limit women's roles to those within the household and farming. These roles usually involve duties that are time consuming, leaving very little leisure time. The State has provided some facilities for sport but very few women participate in sport after leaving school. Although of late there have been some women teams of different sporting codes, there has not been level of support commensurate to that given to the male national teams, who receive considerable funding from the Government.

### **13.2. Recommendations**

- More gender sensitive macro-economic policies have to be enacted by the Government, especially with regard to simplifying tax policies, compliance procedures and registration processes and where possible give exemptions to micro-enterprises where the majority of women entrepreneurs are found.
- The Government should take necessary action to ensure that the women especially the girl child are afforded equal rights in inheritance of property within the family.
- A campaign to promote the acceptance of women in entrepreneurship should be undertaken together with a plan to address the socio-economic factors that limit women's access to resources and capital.
- The Government should extend the application of the Abolition of Marital Power Act to customary and religious marriages to facilitate women married under customary and religious marriages control over their matrimonial assets.
- The Government should enact relevant laws against discriminatory practises in the economic sphere to ensure that women get fair competition for equal business with men.

- The Government should support all sporting codes without discrimination on the basis of gender, age or disability. In particular women and girls should be encouraged from a young age to participate in sport and other recreational activities.
- Infrastructure for sporting facilities should be provided in rural areas and a national campaign should be launched to encourage women to participate in sport and even choose sport as possible careers.

## **14. ARTICLE 14: RURAL WOMEN**

### **14.1. NGO Report on the Situation**

The majority of people in Botswana live in rural areas, and the majority of people living in rural areas are women and children. The Government of Botswana has been quite commendable in ensuring that most development plans reach the rural areas where there are some serious factors which limit access to social and economic rights. However, the quality of services can be affected by the inadequate distribution of qualified staff to remote areas.

Women's access to economic resources in rural areas is limited due to cultural structures that discriminate against them, thus impoverishing them.

The lack of access to land and resources affects their ability to grow food.

Decision making in rural areas is the preserve of men both at the family and community levels. It is in rural areas that harmful traditional discriminatory practices are most practised which serve to keep rural women even more disadvantaged.

Poverty affects rural women disproportionately, especially because they are not only disadvantaged by location but the intersection with cultural practises which limit women's access to economic resources. The burden of caring for children, the elderly and the sick makes them more vulnerable to poverty. The Government report correctly reports that female headed families tend to be affected more by poverty and marginalisation and that, despite the many

programmes targeting rural women many of these families still live below the poverty datum line. There needs to be sustained efforts by the Government to ensure that the programmes designed for rural women address their needs, in particular the barrier factors that limit their ability to access economic resources. Rural women, because of their geographical location, are also excluded from participating in national development programmes designed to empower women.

The Abolition of Marital Power Act should provide women some freedom to take control of their matrimonial property. However this law does not apply to women married under customary and religious marriage. The application of unequal power relations between men and women and the unavailability of opportunities, therefore conspire to make rural women's lives extremely difficult.

With regard to rural women's health needs, a lot has been done to ensure that primary hospitals are within reasonable distance for most areas of Botswana. However, access to the necessary technical equipment and medication is still a challenge. HIV/AIDS has indeed exacerbated the situation as more and more resources are being committed to its prevention and care. Many doctors and, indeed, ART drugs are only available in the major hospitals which may not be close enough to rural women.

The contribution to the economy by rural women has never been acknowledged or credited, with their roles, especially at the household level and within the agricultural sector, having always been undervalued. Because access to land is limited, accesses to agricultural credit none existent, their economic empowerment is therefore also limited, leading to a vicious cycle of poverty. It is not enough for the report to acknowledge that, due to the patriarchal nature of Botswana societies as well as harmful traditional practices, the socio-economic rights of women are unenforceable, they must offer some form of plan to alleviate and eventually eliminate these problems.



## **14.2. Recommendations**

- CBOs and NGOs which have more access and influence over the lives of rural women should be supported by Government to continue engaging in promoting and positively affecting the lives of rural women.
- There is need to cascade the application of statutory provisions universally, especially those that incorporate the principles of equality and non-discrimination.
- Land reforms to provide equal access to land should be undertaken, especially taking into consideration the social dynamics that are faced by women as result of gender stereotyping.
- The Government should accelerate the provision of HIV/AIDS drugs and amenities to within reasonable distances for rural women. The health facilities should as well be equipped with trained staff and basic equipment and drugs.
- More effort should be made to initiate sexual and reproductive health programmes that empower women with skills to take control of their bodies and reproductive functions.
- The Government should involve women especially community women leaders in the formulation of programmes that benefit them.
- The Government needs to design tools to track women's contribution to the economy and use the information to engender budgeting.

## **15. ARTICLE 15: EQUALITY BEFORE THE LAW**

### **15.1. NGO Report on the Situation**

The Constitution of Botswana guarantees equality before the law for all persons irrespective of gender. However, the same Constitution makes exceptions for discrimination to apply in matters of marriage, divorce, burial and other matter of personal law. There are indeed other legal positions which proscribe discrimination against women. For instance, under customary and religious marriages, women are treated differently than those married under statutory law, who tend to enjoy better access to their human rights,

especially in relation to divorce and dissolution of matrimonial property, custody of children, rights to land, etc.

As it has already been observed, it is only when women invoke the inviolability of human rights that customary and religious practises can be declared null and void. Litigation costs and legal representation are high and most women cannot afford to take on the challenge. The non-existence of legal aid means that, more often than not, women's human rights are violated without any repercussions for the perpetrators.

The Penal Code's evidentiary requirement for corroboration makes proof of the offense an arduous task for many women. Although the Government did amend the laws on sexual offenses and made them gender neutral, the majority of victims of sexual violence are women.

The Abolition of Marital Power Act and the amendment of the Deeds Registry Act ideally should have improved women's access to immovable property. However, by design both these Acts do not apply to marriages conducted under customary and religious marriages. Husbands are still able to administer the joint estate of the marriage without any due recourse to their spouses and, in some instances, women have been displaced out of their homes by abusive husbands and have been unable to have any legal recourse because of lack of financial aid or inability to access the judiciary.

The domicile of choice of married women in Botswana has also been positively affected by this latest amendment in allowing women to acquire and choose their residence or domicile independent of their husbands. Again this is not applicable to customary and religious marriage. In this regard, a great number of women suffer discrimination in marriage, upon divorce and in regard to inheritance.

## 15.2. Recommendations

- Legal Aid should be provided for indigent women whose social and economic rights are being violated through the application of discriminatory laws and customary practises.
- The evidentiary procedures for sexual offences should be revised to address the unequal power relations that manifest in sexual violence.
- The exceptions to the principles of non-discrimination contained in the Constitution should be repealed and the legal reforms that allow women to own and control property in their own right should apply universally.
- The Government should develop and implement a plan to educate women about all laws and policies that improve their status before the law.

## 16. ARTICLE 16: MARRIAGE AND FAMILY LAW

### 16.1. NGO Report on the Situation

Discrimination and inequality continue to flourish in marriage, and the Government report fully acknowledges this fact. The patriarchal norms that are practised in many communities of Botswana promote inequality between men and women, especially in marriage where a woman is subordinate to her husband. The payment of bride price or *bogadi* by the man further cements the man's perceived right to be head of the family. As a result the decision making in family is exercised at the discretion of the husband, including the decision to have children and the spacing between those children.

The newly enacted Children's Act<sup>16</sup> prohibits marriage of a child below the age of 18 years of age. However, this Act is still to be fully implemented. There are still parts of the country where young girls have been forced into marriage, to their detriment. The pressures of marriage means that these children are unable to continue their education as they are being forced into adulthood and

---

<sup>16</sup> Act No.. of 2009

they end up being dependant on their husband for support, since they end up with no skills to earn their own income. These are some of the customs and practises that are perpetuated in spite of existing statutory laws protecting women and girls against discrimination.

Domestic violence has its root within these patriarchal structures where the men abuse their power to keep and control their spouses. This form of violence that occurs in the family is very prevalent, due mainly to the fact that society tolerates it as a form of legitimate chastisement of the wife by the husband. To aggravate the situation the law enforcement officers do not treat it with the seriousness it deserves. However, domestic violence has, in too many occasions, led to the loss of lives for women.

Women's NGOs over the years rallied and lobbied successfully and a Domestic Violence Act was enacted to ensure the protection from violence within the home. This Act is gender neutral and makes it obligatory for the Police to arrest perpetrators if there is probable cause, that is to say that where there is sufficient evidence to make an arrest then the abuser should be arrested. This has worked as a deterrent for some, although many of the cases reported never reach the courts because the women themselves come back to withdraw the charges against their spouses or partners. Under customary practises and beliefs a woman is expected to remain silent about domestic violence, since it has come to be perceived to reflect her own shame and failure. She is also expected to remain in an abusive relationship. Under these view points, family obligations must be prioritized over a woman's individual rights. Such extreme cultural dictates usually manifest themselves in the belief in the need to remain in abusive relationships for the sake of the children.

Other factors may also influence a woman's willingness to suffer silently through a violent relationship. They may be concerned for their children, live living in fear that reporting any violent incidents will exacerbate the situation,

or fearing that the violator may become even more violent after the Police leave.

Women victims of violence are often economically dependent on their abusive partners or their families. Fear of losing the only breadwinner should the abusive partner be found guilty and sent to prison, for a mother with children the choice becomes simple, she would rather sacrifice her own well being for her children to have food and shelter which are being provided for by the abusive partner. Most importantly, having realised that the family, as we knew it, has changed as more and more people choose to cohabit outside of marriage, the Act defines 'domestic' to refer to people living in the same residence who may or may not be related in any way whatsoever.

Many women in the rural areas are unaware of this new Act as no effort were made to disseminate the information. Few are aware that action can be taken to remove and/or interdict an abusive husband from the matrimonial home, few are aware that the law would compel such a husband to continue maintaining the household even when he is no longer residing in it by reason of having been interdicted. Not enough training has been given to law enforcement and medical officers to understand and deal with this issue comprehensively. Notwithstanding, there are some who have rejected this law because they feel that it goes against the grain of custom, which insists that a man is the head of the family. The Government is however commended for making the effort to respond to the demand by women to have a law that protects them from violence in the home.

Although at first sight the State may seem to be undertaking necessary measures to eliminate both *de jure* and *de facto* discrimination, the situation in practice is very different. In spite of the existence of internationally recognized obligations and a constitutional framework that provides an extraordinary basis for legislative and other measures to eliminate discrimination against women in all areas of life, a majority of all laws, measures and policies are introduced

without any required sensitivity to the impact they could have on gender-based discrimination.

## **16.2. Recommendations**

- More effort to create awareness on existing laws protecting women from violence should be supported by Government.
- The judiciary should be trained to ensure the effective enforcement of existing laws that protect women against discrimination and violence.
- The review of all laws affecting the status of women should include the review of customary and religious practises and those that act to discriminate against women should be prohibited especially the laws regulating marriage, divorce, widowhood and inheritance.

## **17. CONCLUSIONS AND RECOMMENDATIONS**

**17.1.** Non State actors are extremely important as partners in the implementation of CEDAW. The State however remains responsible for the actions of all actors within the borders especially with regard to non-State actors who sometimes act against the spirit and principles of CEDAW. Non State actors can be NGOs, multi-national corporations, private companies, media, religious institutions, individuals and many other social organisations, clubs and societies.

In Botswana, the contribution to the advancement of gender equality for women of many of these organisations have been stellar. Women's NGOs in particular are always in the forefront of promoting the rights of all women especially grassroots or rural women. Most of these NGOs, although struggling with financial challenges, have had the greatest impact on women's lives both in terms of advocating for and defending women's basic human rights, as well as holding the Government accountable for the implementation of CEDAW. There is however a serious lack of resources and capacity with NGOs for the effective implementation and mainstreaming of gender equality principles.

For example some of the more established NGOs operate as follows:

- Botswana Council of Non-Governmental Organisations (BOCONGO), which is the national umbrella body of all NGOs in Botswana, has a gender programme which works with the women's GNOs providing technical and financial support. Of recent they have been directly involved in advocating for the signing by Botswana Government of the SADC Protocol on Gender and Development. They are working on the review on the implementation of the Beijing Platform for Action on the 12 critical areas of concern.
- Emang Basadi Women's Association has, who through the years, consistently campaigned, lobbied and advocated for the advancement of women in politics and for the empowerment of women to participate in power sharing and decision making at all levels of society. They also provide limited legal aid and counselling to women whose rights have been violated.
- Women against Rape focus mainly on the protection of women, especially the girl child, against all forms of sexual violence and exploitation. Their programmes in schools have provided comfort to people living with a lot of girls in schools who are subjected to sexual violence and harassment.
- Kagisano Women's Shelter Project provides shelter for women and children who are victims of domestic violence. They also advocate for the elimination of all forms of discrimination against women through the provision of educational workshops and counselling services.
- Metlhaetsile Women's Information Centre provided legal aid for women and children whose human rights were violated. They undertook test case litigation to advance and protect women's rights and to advocate for legal reform. Sadly, through lack of financial resources, this organisation had to close its doors and is no longer in existence.
- Ditshwanelo Centre for Human Rights, although they are more generally for human rights, have always had a gender section, which has through the years run activities to support all actions which

promote gender equality and advocated for the elimination of all forms of discrimination on any basis whatsoever.

- Botswana Network of AIDS Service Organisations (BONASO) is a network of all HIV/AIDS NGOs which, although not solely focused on women, has provided support for women living with HIV by advocating for programmes targeted to their special needs and interests. PMTCT for pregnant mothers and issues related thereto, such as stigma and discrimination, discrimination at the workplace due to HIV status and other women's reproductive health related issues are some of the many programmes they have involved themselves in, to protect the rights of women in Botswana.
- Botswana Network of Ethics, Law and HIV (BONELA) have emerged as the leader of a network of NGOs whose main focus is the protection from HIV related human rights violations. They advocate for the ethical and human rights based programming in the national response to HIV/AIDS. They also have a legal aid programme that has provided legal counselling and representation for people living with HIV/AIDS (PLWHA) whose rights have been violated especially pregnant women's rights to have a family.

Many other NGOs have advocated and lobbied for the legal reforms that have been introduced recently, such as the Domestic Violence Act, the Abolition of Marital Power Act, the Affiliations (Maintenance of Children) Act, the amendments in the sexual offences provisions of the Penal Code and the Deeds Registry Act.

Many private and multi-national corporations take their responsibility seriously. through philanthropic endeavours, they have supported initiatives that promote gender equality. Many of these actions are indeed commendable, especially in the absence of a legal obligation being enforced by the Botswana Government to mainstream gender into their programmes.



The media has wielded a double edged sword in the development of equality and the elimination of gender discrimination. On the one hand, through their negative depiction of women, especially as sexualised objects in advertisements, their actions have worked to cement the age old cultural stereotypes that undervalue women's dignity and human rights. On the other hand, the media coverage of all issues relating to gender has exposed, which has generated a dialogue nationally and internationally on issues of women's human rights in Botswana. There is a need to educate and increase the media on gender sensitive reporting, so that they can better play the role of holding all State and non-State actors accountable for women's human rights violations.

The Government of Botswana has signed and ratified many UN human rights instruments and almost all of them require monitoring through the submission of periodic reports. The same is true for the CEDAW which was ratified in 1996 and the 1<sup>st</sup> periodic report which was due one year after the ratification and every four years thereafter. This did not happen as evidenced by the presentation of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> consolidated reports. This procedure is provided in CEDAW as a monitoring mechanism for the implementation of the Convention and thus, inability to comply for so long is indicative of Botswana's lack of appreciation of the importance of CEDAW to the welfare and advancement of women of Botswana. The report argues that the Government of Botswana has complied with most of the provisions of CEDAW yet one wonders why it has been so difficult for the Government to domesticate CEDAW fully and indeed many of the human rights treaties that provide for equal human rights.

The recent elections results lamentably testify the fact that the Government of Botswana has little political will to improve the participation of women in politics and decision making by failing to put on the ground concrete policies and programmes which will eliminate all factors that inhibit the advancement of women in all spheres of life. The lack of disaggregated data is a big concern because, without accurate statistics, it becomes difficult to accurately present

the magnitude and extent of the problems, which prohibits to adequate planning for resolution of the adverse situation. There has been regular under budgeting for women throughout the years from since independence and, without scientific and, disaggregated data, it becomes extremely difficult to advocate for and to justify the provision of resources towards women's programmes.

**17.2. Proposed Questions for Government Delegation.**

- What efforts if any are being taken to eliminate the *de jure* and *de facto* discrimination?
- What is preventing Botswana from incorporating the provisions of CEDAW into national laws? More to the point, when does the State intend to amend Section 15(4) which creates exemptions from the non-discriminatory clause?
- What actions are being taken to disseminate the laws and programmes that are enacted for women's benefit, especially in light of the admission that many women especially rural women are unaware of them?
- Customary law is the living law of most Botswana and it is rife with discriminatory practices against women, what steps are being taken to review custom and religion to ensure that are in line with the constitution and CEDAW?
- What Government support, if any, is available to NGOs which provide *pro bono* legal services to women whose human rights are violated?
- What is being done to tackle the rampant sexual harassment of women in the workplace and girls in schools?
- To what extent, if any, is the persistence of gender stereotypes that deter women from seeking election and participating in decision making being addressed?
- What is the level of women's participation in the planning, implementation and monitoring of budget processes at different

levels of Government in Botswana? What data collections tools have been set in place to provide gender disaggregated data in order to engender budgets, policy making and progress development?

- When does the Government intend to do elevate the department of Women's Affairs into a full ministry with an independent budget allocation?
- The Domestic Violence Act as is does not criminalise marital rape, because of existing cultural convictions that render married women vulnerable to sexual abuse. What steps or mechanisms have been put in place to protect women from marital rape and other forms of abuse in the family?
- Many women have lost their lives through 'crimes of passion' at the hands of their spouses or intimate partners. What steps or mechanisms have been enacted to eradicate this problem and deter the perpetrators?
- What is preventing the State from instituting affirmative, action in accordance with Article 4 of CEDAW to ensure the equal representation of women in positions of power and decision making?
- What is the overall rate of teenage pregnancy in Botswana and what measures have been taken to accelerate the re-integration of the teenage mothers back to school? Why is the Diphilana Pilot project for Continuing Education not been cascaded to the rest of the country?
- With many female and child headed families being affected by poverty which lead to engagement in sex work, what actions are being taken to provide alternative sources of income?
- Why has Government failed to acknowledge the existence of commercial sex trade in its report? and what actions, if any, are being taken to provide protection for women involved in this kind of work? Are they any reproductive and sexual health

programmes targeted to women involved in commercial sex work or prostitution?

- In light of prevailing stereotypes that impede women's autonomy, what actions have been taken to integrate a gender perspective to the HIV/AIDS programmes, in particular PMTCT, voluntary testing and home based care?
- What is the effect of clandestine abortions on the lives of women? Please provide statistics on mortality rate of women as a result of unsafe abortions. What is stopping the Government from legalising termination of pregnancy at health facilities to avoid post-abortion complications?
- What is the contraception prevalence rate and what steps are being taken to make the female controlled condom as readily available and free of charge?
- Please provide recent statistical evidence of the number of women who are in prison by reason of abortion or infanticide.
- What steps is the Government to take to ensure that LGBT organizations are not denied registration?
- Has the Government considered repealing the laws that criminalize same sex sexual conduct?
- Why has the Government failed to mention any issues regarding discrimination against LGBT persons in its State party report?
- Is the Government providing HIV/AIDS education which target people who have sex with partners of the same sex as well as of the opposite sex?
- Has the Government inquired into the issue of discrimination against LGBT people affected by HIV/AIDS?
- Rural women are disproportionately affected by poverty- what actions have the Government taken to facilitate rural women's access to land and credit? How does the Government ensure that rural women know about and have access to the programmes set up for their benefit?

- There is no mention in the State report of women from remote areas, minority women and women with disabilities. Are there any programmes targeted especially for their needs? What monitoring and evaluation tools have been set up to ensure their effective implementation?
- What is preventing the Government in prescribing the Abolition of Marital Power Act, from applying it universally to all marriages in Botswana, including customary and religious marriages?

## **References**

1. 2001 Population and Housing Census Results, CSO.
2. Analysis of Child Focused Indicators based on the 2001 Housing and Population Census, CSO. UNICEF 2005
3. Botswana Law Reports
4. Aubrey Lute, Homosexuality is rubbish--Mfa, *The Botswana Gazette*, May 24-30, 2006.
5. Toonen v. Australia, Communication no. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)
6. Kanane v. The State 2003, 2003(2) BLR 64 (CA).
7. Botswana Institute of Development and Policy Analysis 2002. GABORONE
8. Socio-Economic Impact of VAW in Botswana, 1999, Women's Affairs Dep't. BOTSWANA:
9. NTSEANE P, Cultural Dimensions of Sexuality: Empowerment Challenge for HIV Prevention in Botswana 2004
10. Laws of Botswana
11. Southern African Development Community Protocol on Gender and Development. 2009
12. Population and Housing Census Results, CSO, 2001
13. Preliminary Botswana HIV/AIDS Impact Survey Results, CSO. May, 2009