UNITED NATIONS **A**

General Assembly

Distr.
LIMITED

A/HRC/WG.6/3/L.1
12 December 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Third session
Geneva, 1-15 December 2008

DRAFT REPORT OF THE WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW *

Botswana

* The final document will be issued under the symbol A/HRC/10/69. The annex to the present report is circulated as received.

CONTENTS

	Paragraphs	*Page*
Introduction.....	1 - 4	3
I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS ...	5 - 91	3
A. Presentation by the State under review.....	5 - 27	3
B. Interactive dialogue and responses by the State under review.....	28 - 91	5
II. CONCLUSIONS AND/OR RECOMMENDATIONS.....	92 - 93	16

Annex

Composition of the delegation.....	21

Introduction

1. The Working Group on the Universal Periodic Review, established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its third session from 1 to 15 December 2008. The review of Botswana was held at the 1st meeting, on 1 December 2008. The delegation of Botswana was headed by Hon. Mr. Dikgakgamatso Seretse, Minister for Defence, Justice and Security. At its meeting held on 3 December 2008, the Working Group adopted the present report on Botswana.

2. On 8 September 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of Botswana: Uruguay, Senegal and Slovakia.

3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of Botswana:

(a) A national report submitted / written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/3/BWA/1);

(b) A compilation prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/3/BWA/2);

(c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/3/BWA/3).

4. A list of questions prepared in advance by the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, Sweden, the Netherlands, Germany, Denmark and Latvia was transmitted to Botswana through the troika. These questions are available on the extranet of the universal periodic review.

I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

A. Presentation by the State under review

5. At the first meeting, on 1 December 2008, the opening statement of Botswana was presented by the Head of Delegation, the Honourable Mr. Dikgakgamatso N. Seretse, Minister of Defence, Justice and Security.

6. Botswana recognized that the commitment to the implementation of human rights instruments must be demonstrated through a series of actions, including domestication of treaties and reporting. It noted, however, some capacity constraints and the need for technical support.

7. The Minister presented an overview of the Botswana national report. In its preparation, the Government consulted with a cross section of civil society and took into account their comments and inputs.

8. Botswana explained that as a young country it is faced with diverse challenges and had to place emphasis on nation building and developmental issues. In the past four decades, Botswana has made significant strides in the areas of economic freedom, transparency and good governance. Botswana remained focused in its decision to find innovative ways that can guarantee its nationals and residents full enjoyment of human rights.

9. The Minister indicated that Botswana is committed to the democratic process and that it is responsive to the needs of the people and it cannot undertake initiatives that are contrary to their interests. However, he emphasized that civil society organizations are free to mobilize support and educate the people on the need for specific changes, which in its view can enhance the enjoyment of human rights. It was against this background that the position of the Government on the death penalty, corporal punishment, gay and lesbian rights should be understood.

10. The Minister proceeded to respond to written questions submitted in advance. Botswana confirmed its intention to establish a national human rights institution**.** Consultations to initiate the process are ongoing and it is expected that it will be established by the next review.

11. Regarding the issue of discriminatory laws**,** the Commission of enquiry concluded that sections 77 to 79 of the Constitution were discriminatory, and that these had been amended to accommodate the concerns.

12. Concerning measures taken to implement the rights of the child and to prevent violence and sexual exploitation of children, Botswana has developed draft legislation incorporating provisions of the Convention on the Rights of the Child, to be presented to Parliament in February 2009. Subsequent to the enactment of the revised Act, Botswana intends to withdraw its reservation to article 1 of the Convention.

13. Botswana stated, inter alia, that the Education Act provides a strict framework within which corporal punishment is administered.

14. The Minister addressed questions raised on women's rights, especially with respect to Customary laws compromising gender equality, marital rape and measures taken to prevent domestic violence. Particular mention was made of the adoption of the Abolition of the Marital Power Act of 2004, and that Ntlo ya Dikgosi, as custodians of customary law, are consulted on all legislation having an impact on custom and had accepted this new law.

15. Regarding marital rape, it was noted that there are deficiencies in the existing legislation and this may require the enactment of legislation after due consultation. To prevent domestic violence, the Government has embarked on a rigorous public education campaign that includes radio, television, print media and *kgotla* meetings to educate and sensitize members of the public, also on the provisions of the Domestic Violence Act. The Botswana Police Service has started to employ social workers to provide counselling and to be responsive to the needs of victims.

16. Botswana agreed that treaties should be domesticated and implemented and, to this effect, has set up an inter-ministerial committee. However, it noted the challenges relating to technical and financial capacity that it intended to address and hoped to benefit from the support of the international community.

17. On the ratification of the International Covenant on Economic, Social and Cultural Rights, Botswana indicated that it would accede to the Covenant when it is in a position to implement its provisions and emphasized that capacity for the latter was critical.

18. Botswana indicated that it is constructing new prisons and exploring alternative measures to imprisonment.

19. The delegation confirmed that the law in Botswana criminalizes same-sex sexual activities; however, it allows for the registration of civil society organizations that are not set up to advocate for the rights of lesbians, gays, and bisexuals, to nonetheless advocate for the rights of such groups.

20. Regarding the December 2006 court ruling allowing the San (Basarwa) communities to return to their ancestral land in the Central Kalahari Game Reserve and the level of dialogue and progress that has been made since this ruling, the Government of Botswana stated that it has fully implemented the Court order.

21. Recognizing that the question of the Reserve is not just a legal issue, the Government opened dialogue with the people on it. The President of Botswana met with representatives of the Reserve on 12 of June 2008, and subsequently instructed the inter-ministerial committee on the Reserve to continue dialogue. The Committee met with representatives of the Reserve community on 26 November 2008 to map the way forward. They agreed to meet on 22 or 23 of January 2009, when each party will present a list of issues for discussion to bring this matter to an amicable conclusion.

22. On the death penalty, the delegation explained that there are no plans to abolish capital punishment or impose a moratorium on its application. It noted that, in 1997, the Parliamentary Law Reform Committee produced a report which showed that the public was in favour of its preservation.

23. Regarding clemency proceedings, the Government replied that concerns of Member States on representations by family and or lawyers are reasonable and will be put to the relevant authorities.

24. Regarding torture, the delegation vehemently denied any widespread use of torture in Botswana. It indicated that it was not opposed to ratifying the Optional Protocol to the Convention against Torture, but explained that taking on additional structures, as may be required by its ratification, would place a burden on its resources.

25. The delegation affirmed that the Government considers youth unemployment a priority issue and has established a ministry responsible for youth and introduced initiatives, such as youth officers in each ministry and a young farmers' fund.

26. Botswana explained that it will look into extending standing invitations to all special procedures but it is comfortable with its status quo.

27. The Minister reaffirmed Botswana's commitment to the work of the Council and to the success of the universal periodic review.

B. Interactive dialogue and responses by the State under review

28. During the interactive dialogue, statements were made by 42 delegations. The broad consultation conducted in preparing the national report and the openness and commitment to the universal periodic review dialogue of Botswana were welcomed. A number of delegations praised the progress made in the realization of economic, social and cultural rights, particularly by referring to the national strategy for poverty reduction "Vision 2016", the advances made in universal primary education, the development of a national primary health-care strategy and a national institution for the prevention and treatment of pandemics, particularly HIV/AIDS. The

efforts made to eliminate discrimination against women, empower women and ensure gender equality were also praised. In this regard, particular mention was made of the establishment of the Department for Women's Affairs, the improvement of several legal instruments to safeguard women's rights, including the abolition of the Marital Power Act and the Domestic Violence Bill, the translation of the Convention on the Elimination of All Forms of Discrimination against Women into Setswana and the efforts made in gender mainstreaming. Botswana's efforts to promote children's rights, particularly through the adoption of the National Action Plan for Children 2006-2016, were welcomed. Mention was made of the efforts to address the special needs of children with disabilities and of the exemption of school fees for households in need of assistance. A number of delegations also praised the democratic culture of Botswana backed up by a strong multiparty democracy, the enshrinement of equal rights and fundamental freedoms in the Constitution, the rule of law and good governance. Some delegations referred to the establishment of the office of the Ombudsman as a demonstration of the Government's commitment to human rights. The establishment of an investigative commission to examine discriminatory provisions in the Constitution was also welcomed. Some delegations praised the efforts made to end discrimination against minority groups. Delegations noted that Botswana is party to most of the regional human rights treaties and mechanisms. Further, the role of Botswana as a regional mediator for peace and conflict resolution was commended.

29. Algeria recommended continuing their efforts, particularly in favour of women in rural areas. It also recommended adhering to the International Covenant on Economic, Social and Cultural Rights, as Botswana applies on the ground the provisions of the Covenant. Algeria congratulated Botswana on its pilot project to fight HIV/AIDS and recommended that Botswana enable migrants and refugees to benefit from it.

30. Morocco requested further information on the participation of women in public life and the nature of the difficulties faced in the implementation of the national policy on women. Morocco also asked what specialized United Nations agencies could do to assist the Government to protect children.

31. Cuba recommended continuing to incorporate the provisions in the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child into national legislation. It commended the 2003 national poverty reduction strategy, and encouraged the Government to continue the efforts made to achieve the goal of Vision 2016. It recommended that the implementation of the National Action Plan for Children 2006-2016, to overcome the difficulties identified by the Government in its national report, be continued.

32. Spain requested information on the draft legislation for the protection of children and on recent measures taken to deal with the increasing number of HIV/AIDS orphans. It also asked about the policy regarding illegal immigrants, particularly from Zimbabwe. Spain asked for information on recent measures to promote gender equality. It recommended that Botswana explore the possibility of a moratorium on the death penalty or its definitive abolition. It said it looked forward to a resolution of the dispute between the San of the Central Kalahari Game Reserve with the Government. It recommended the decriminalization of homosexual relationships and practices.

33. Belgium noted that HIV/AIDS prevalence is still high and asked what approaches Botswana would take to prevent the transmission of the HIV from mother to child and to tackle related challenges. Belgium recommended a medical follow-up for HIV-positive mothers and children who have received the virus from the mother. It noted the high HIV/AIDS prevalence

rates in prison populations and enquired about approaches to prevent its spread. Belgium recommended that the prison population be educated about the risks of the spread of the HIV/AIDS virus and that sanitary conditions of prisons be respected.

34. Chile recognized the establishment of a women's affairs department and the policies aimed at empowering the development of women and integrating them in the education system, recommending that Botswana continue those efforts. Deeply concerned about corporal punishment of children, Chile recommended that Botswana continue to incorporate the provisions of the Convention into domestic legislation, especially article 19(1). It also recommended that consideration be given to designating an institution responsible for coordination and implementation of policy on children. Following up to remarks by Botswana on the International Covenant on Economic, Social and Cultural Rights, it asked whether the Government has a date for accession.

35. Finland noted the routine HIV-testing introduced in 2004 in public health facilities and that HIV prevalence is declining. It recommended that Botswana ensure the prompt and effective implementation of its programme for AIDS orphans. Finland expressed concern regarding the relations between the diamond business and the indigenous peoples who have suffered from forced eviction or have been prevented from having access to their water boreholes or practicing their means of livelihood. It asked the Government what it intends to do to ensure respect for the rights of the indigenous people inhabiting the areas of interest to companies active in the business. It recommended that Botswana take immediate action in this regard.

36. With regard to unemployment, France noted that a racist xenophobic attitude against migrant workers, particularly Zimbabweans, is developing and enquired about countermeasures. France also noted that the Penal Code criminalizes the relations of people of the same sex and that the Constitution does not provide protection for people discriminated against on the basis of sexual orientation. In 2003, the Court of Appeal ruled Section 164 of the Penal Code discriminatory; in this connection, France enquired as to whether Botswana envisages the decriminalization of consenting same-sex activity. France recommended that Botswana adopt the necessary measures to combat discrimination of all kinds, including those based on homosexual orientation, gender, colour, religion and political opinion. France recommended that Botswana put an end, *de jure* and *de facto*, to the practice of corporal punishments in traditional judicial systems. It noted that the Constitution guarantees freedom of expression and of the press, but some intimidation and threats have been noted against journalists. France also asked about the impact of the media practitioners' bill on the media. France recommended that Botswana ratify the Optional Protocol to the Convention against Torture.

37. The Netherlands noted that the Constitution forbids discrimination on the base of ethnicity, race, nationality, creed, sex or social status, but that civil society organizations advocating for the rights of LGBT have been denied legal status and same-sex sexual activities between consenting adults remain a criminal offence. It recommended that the Government decriminalize such activities and forbid discrimination on the base of sexual orientation. It recommended that the Government consider the abolition of the death penalty, in conformity with the latest relevant General Assembly resolutions.

38. Mauritius noted Botswana's reply on the establishment of a human rights institution and asked if it is facing any obstacles in terms of human or financial capacity in its establishment. Mauritius requested further information on the issue of legal aid, noting the appointment of the consultant to conduct a feasibility study. Having noted the challenges Botswana faces regarding

poverty, marginalization and unemployment, it called on development partners to assist Botswana with the necessary technical and other support to strengthen their implementation and development capacity with regard to human rights instruments and their domestication wherever desirable.

39. While Mexico indicated that customary practices undermine the rights of women, foreigners, children, indigenous peoples, and minority groups. Mexico emphasized that the appeals of indigenous peoples and the decision of the Supreme Court in favour of indigenous peoples must be respected. Mexico recommended that Botswana accept the visits of the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on contemporary forms of racism. It recommended that favourable consideration be given to the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples. Mexico recommended the adoption of all measures necessary to harmonize customary laws with international instruments signed by Botswana. It recommended that Botswana accede to the International Covenant on Economic, Social and Cultural Rights and that it ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Mexico recommended that Botswana issue a standing invitation to the special procedures and indicated that this recommendation was made in the context of Botswana's appeal for the international community to provide assistance and support for human rights.

40. In response to the issues raised, Botswana noted that financial constraints were an obstacle to the ratification of the International Covenant on Economic, Social and Cultural Rights. However it pointed out the existing Government policies covering the issues reflected in the Covenant's provisions and the efforts being made in providing free housing to everyone, including through a programme to be initiated in the upcoming financial year.

41. Botswana reaffirmed that the draft legislation on children incorporates all the provisions of the Convention on the Rights of the Child and noted that the only reservation made to it, on the definition of the child, will be withdrawn once the national law is enacted.

42. Botswana reconfirmed its position on the death penalty. It noted the role of civil society in educating the people and in advocating for change on the issue of the death penalty and the criminalization of homosexuals activities. It repeated its openness towards organizations advocating for these issues.

43. As regards the San people, Botswana noted the opening of dialogue and consultation and expressed hope that they would be able to reach an amicable solution with the Basarwa people of the Central Kalahari Game Reserve.

44. Botswana denied that xenophobia in the country is at an alarming extent, though recognized the report of complaints, particularly those regarding the employment of migrants. It noted the problem of undocumented migrants from Zimbabwe and indicated that an influx of people in the country would have economic and social consequences. It explained that illegal immigrants are taken to specific detention centres and are repatriated, at the cost of approximately two million Pula a year.

45. With regard to HIV and its transmission to unborn children, Botswana referred to its programmes whereby treatment is provided to pregnant mothers, and referred to significant improvements in the rates of HIV prevalence in the country.

46. Regarding corporal punishment, Botswana reaffirmed that the practice is part of their culture and that parents believe that it is important as a form of correction.

47. Botswana indicated that there is freedom of the press in the country although it is not absolute, given that there are regulations to be respected by the media in the performance of their functions. It noted that the media practitioners' bill is currently before Parliament.

48. Botswana expressed its willingness to ratify the Optional Protocol to the Convention against Torture, but reiterated, as a priority, its need to identify the challenges it will face with regard to the establishment of a new human rights institution.

49. Slovakia noted with appreciation the establishment of the Inter-Ministerial Committee on Treaties, Conventions and Protocols, asking for more information. It encouraged the Government to consider signing and ratifying the International Covenant on Economic, Social and Cultural Rights and cooperating with the OHCHR Regional Office for Southern Africa in this regard, while taking note of the explanation given by Botswana, but recalling that, according to the Covenant, State parties take steps only to the maximum of their available resources. It echoed the recommendation of the Committee on Civil and Political Rights, suggesting that Botswana repeal provisions on the criminalization of same-sex activities between consenting adults from its legislation.

50. The Czech Republic recommended the continuation of efforts to establish a comprehensive institutional framework for the promotion and protection of human rights, including by providing it with necessary funding and personnel, and that its efforts to ensure non-discrimination of all ethnic minorities also be continued. It welcomed the decision to adopt national legislation ensuring implementation of its obligations under the Convention on the Rights of the Child and recommended the adoption of further practical measures in this regard, in particular in the area of the prevention of violence and sexual exploitation of children. It also recommended that Botswana accede to the Option Protocol to the Convention against Torture and establish its national preventive mechanism accordingly. It recommended that consensual same-sex activity between adults be decriminalized and that measures to promote tolerance in this regard, which would also allow more effective educational programmes for prevention of HIV/AIDS, be taken. It recommended that a standing invitation be issued to representatives of the special procedures and implemented.

51. Germany indicated that the Government could play a leadership role in educating people. Germany recommended that the Government of Botswana amend the definition of discrimination in the Constitution in such a way that it covers discrimination based on descent, abolish those laws that permit discrimination on the basis of ethnicity, language and culture.

52. Turkey commended the establishment of the Directorate of Corruption and Economic Crime, and appreciated the Government's economic policies, encouraging the activities of the authorities in combating unemployment. It welcomed the adoption of the National Action Plan for Children 2006-2016 and the finalization of an action programme for the elimination of child labour, requesting information on the challenges met in their implementation, and recommending that the Government fully adhere to them with a view to reach international standards on the prevention of child labour. It recommended that a timeline for the ratification of the International Covenant on Economic, Social and Cultural Rights be defined.

53. Brazil, recognizing the challenges of a multicultural society, requested additional comments on how Botswana is tackling discrimination, particularly based on descent and ethnic origin. It also noted that the General Assembly, in its resolution 62/149, calls upon States to establish a moratorium on executions with a view to abolishing the death penalty and asked about the steps taken towards progressive restriction of its use. It also asked about the establishment of an independent national human rights institution and if there are any expectations with regard to international cooperation. In a constructive and open spirit, Brazil indicated it saw the opportunity to propose to the Government of Botswana that it consider the possibility of acceding to the International Covenant on Economic, Social and Cultural Rights. It would also welcome the efforts to suppress death sentences and measures to prevent corporal punishment. Brazil encouraged the Government of Botswana to accomplish progressively the human rights goals set by the Human Rights Council in its resolution 9/12. Brazil took note of Botswana's expectations in the areas of national capacity-building on treaty body reporting, on human rights education and training, support capacity of components of national statistical system and the strengthening of the system to monitor development. Considering the emphasis of the universal periodic review on enhancing cooperation in the field of human rights, it invited the delegations that are materially capable to positively consider assisting the Government of Botswana in these endeavours.

54. Slovenia recalled general comment No.8 of the Committee on the Rights of the Child on the prohibition of corporal punishment of children and the study of the Secretary-General on violence against children, in which the universal prohibition of corporal punishment for children by 2009 was recommended. Slovenia recommended that consideration be given to changing legislation to expressly prohibit all forms of corporal punishment in all settings: at home, in schools and in other institutions. Slovenia also recommended that efforts be made to raise the awareness of the public and change their attitude to corporal punishment. Slovenia noted the concern of the Human Rights Committee about prison overcrowding, the large number of people held on remand and the limited access of families to people held in custody. Slovenia enquired about how the best interests of the child are considered when a parent is arrested and sentenced. Slovenia recommended that Botswana develop non-custodial alternatives such as community service orders and bail arrangements, and particularly recommended implementation of those in relation to the sole or primary carers of children. Slovenia further recommended that Botswana take measures to protect the best interests of babies and children affected by parental detention or imprisonment. It asked how gender perspectives are included in preparation for the universal periodic review and recommended that a gender perspective be included in the review follow-up process in a systematic and continuous manner.

55. Sweden recommended that the Government pursue efforts to ensure the full implementation of the Convention on the Rights of the Child, and specifically to continue efforts to eliminate corporal punishment, especially in schools. It recommended that the Government continue efforts to promote gender equality and pursue work on the new legislation on marital rape, and bring forward new legislation as a matter of priority. Concerning the application of the new norms, it recommended that the Government consider additional measures, such as public awareness-raising initiatives or campaigns in order to promote the implementation of the rights in the legislation in question.

56. The Sudan asked the international community to provide the Government with technical assistance in the areas mentioned in the national report.

57. The United Kingdom enquired about the database of all treaties to measure progress against domestic legislation. It recommended that steps be taken to abolish capital punishment, enquired about the level of public debate on the death penalty, and expressed concerns that the family or lawyers representing inmates are not formally informed in advance of the date of execution and the body is not returned to the family for private burial, and asked how this issue is being addressed. The United Kingdom also noted prison overcrowding and the large proportion of persons held on remand in prison. Noting the Human Rights Committee's recommendation that Botswana increase efforts to ensure that detainees are treated with humanity and dignity, live in healthy conditions and have adequate access to health care and food, the United Kingdom asked how Botswana is addressing these issues. It noted that Botswana is addressing issues such as domestic violence through the Domestic Violence Bill, although the reporting of incidents still remains low. The United Kingdom also noted the insufficient capacity of law enforcement agencies to respond to domestic violence appropriately. It recommended that the Government of Botswana take further steps to strengthen the application of the domestic violence bill and the Abolition of Marital Power Act. It enquired about Botswana's intention to ensure access to services throughout the country, particularly for minority groups in rural areas. The United Kingdom also asked about the consideration given to ensuring a more rights-based approach to development.

58. Djibouti recommended that Botswana double its efforts to improve conditions of detention in prisons and guarantee the compatibility of rights with cultural practice.

59. In response to additional comments, Botswana agreed that the Government must play a leading and cautious role in educating its people so as not to destabilize the country.

60. The Government noted that discrimination against ethnic minorities does not exist in Botswana. A commission was established to look at some of the provisions of the Constitution that appeared to be discriminatory or dealt with issues that are sensitive to ethnicity. It noted challenges faced as a multicultural and multilingual country and that it was in the process of encouraging different ethnic groups to develop their language with a view to having these languages taught in school in the future, provided there are resources and capacity.

61. Botswana referred to its programme for orphans, which includes the provision of free health care, education, counselling, and other social services.

62. Zambia encouraged Botswana to continue to address the disparities and extent of the application of the Marital Act to customary and religious marriages. It called upon the Government to continue its good work in the area of HIV/AIDS and to address the issues raised by treaty bodies in the report prepared by OHCHR. Zambia enquired about challenges in the implementation of the National Plan of Action for Children and if the draft bill on the domestication of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child were tabled before parliament in November 2008.

63. Italy expressed the hope that the national debate on the death penalty would be reopened and involve all civil society, and that the Government would educate the general public on the resolutions adopted by the General Assembly on the death penalty in 2007 and 2008. It recommended that Botswana establish a moratorium on the use of death penalty with a view to abolishing capital punishment in its national legislation. Italy expressed concern over the conditions of detainees as prison establishments are overcrowded, insufficiently lit and lacking basic services, such as water. Italy recommended that Botswana align its legislation and practice

with international standards on prisons. Italy noted that the worst forms of child labour are still practiced in Botswana and that, according to the ILO Committee of Experts, no programme of action to eliminate them has been designed by the Government. Italy also noted child labour has been linked to cases of commercial sexual exploitation. It recommended that the Government of Botswana urgently design and adopt the necessary programmes of action to address the problem of child labour, as requested by the Committee on the Rights of the Child and ILO. Italy noted the importance of human rights education in school systems at all levels. In this connection, Italy recommended that Botswana develop a national strategy for human rights education in the school system at all levels in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of teachers and the practice of human rights in the school community.

64. South Africa requested additional information on the lessons learned after the conclusion of its National Plan of Action for Children. South Africa recommended Botswana consider providing sufficient resources to the Office of the Ombudsman for its effective functioning, and recommended that the Council make available the requisite support in the areas highlighted under section VI on expectations in terms of technical assistance in the national report of Botswana.

65. Canada, while noting that universal human rights exist to protect minorities from the rule of the majority, suggested that Governments should not leave social progress to civil society alone, particularly if they are not allowed to be organized. Governments have the responsibility to lead by example. Canada recommended that Botswana decriminalize same-sex activity by adults and that it eliminate the use of death penalty. Canada recommended that Botswana review the definition of discrimination provided under section III of the Constitution with regard to its compatibility with the prohibition against discrimination on the basis of descent and national or ethnic origin. It recommended that it take appropriate measures for the provisions in article 15 of the Constitution to fully comply with the International Covenant on Civil and Political Rights. Concerned about the removal of communities residing in the Central Kalahari Game Reserve, Canada recommended that Botswana take steps to promote a just and equitable solution through renewed negotiations with affected members of these communities. Canada also recommended that Botswana respect the economic, social and cultural rights of persons belonging to minorities living or formerly living on the Reserve. It recommended that Botswana follow the Human Rights Committee’s recommendation to increase efforts to raise awareness of the precedence of constitutional law over customary laws and practices so as to promote gender equality.

66. Latvia recommended that Botswana consider issuing a standing invitation to all special procedures mandate-holders of the Council.

67. Maldives noted that Botswana faced complex challenges relating to the rights of indigenous peoples, especially the Basarwa, child protection, domestic violence, the administration of justice, legal aid and prison conditions, adding that it was vital for the international community, led by the Council and OHCHR, to assist in addressing these issues. Maldives asked if the Government has considered extending a standing invitation to special procedures, adding that mandates, including the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on violence against women could offer practical assistance. It also asked if the Government considered ratifying the Optional Protocol to the Convention against Torture, a mechanism that can support efforts to improve the administration of justice and detention conditions. It recommended that OHCHR support Botswana in its efforts to improve national

capacity on treaty reporting, including through exploring the possibility of producing a common-core Document, if Botswana so wishes.

68. China noted the challenges faced by Botswana in achieving the Millennium Development Goals and the positive efforts in this regard, and asked about implementation of the 2003 national strategy for poverty reduction and the difficulties encountered. China enquired whether international assistance was obtained and what support it needed from the international community. It asked about progress made and challenges encountered in Botswana's ambitious 2016 Vision.

69. Australia, noting the concern of the Committee on the Rights of the Child at the levels of physical and sexual abuse of children, enquired whether the national plan of action specifically tackles the issue of abuse and, if not, what other actions were taken to combat it. It noted that Botswana could play a leading role in the area of the death penalty and the decriminalization of homosexuality. Australia recommended that Botswana ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights to abolish the death penalty. It asked when Botswana intended to sign the Convention on the Rights of Persons with Disabilities.

70. Norway welcomed the initiatives by the Government on the situation of indigenous peoples and minorities, but added that outstanding issues remained, relating to indigenous peoples' right to land, and education for children belonging to such groups. Norway requested Botswana's comments thereon and recommended that Botswana agree to the request by the Special Rapporteur on the rights of indigenous peoples to undertake a visit. It said the existence of two parallel judicial systems in Botswana poses special challenges when securing the rights of women. The fact that the Abolition of Marital Power Act does not apply to Customary and Religious marriages illustrates the need for revision of all relevant laws to ensure that the rights of women as stated in international conventions are reflected. It welcomed the intention to amend the Marriage Act to ensure that all marriages are registered, and recommended a specific timeline for the implementation of this amendment.

71. Argentina emphasized the ratification of the Convention of the Rights of the Child. It suggested that Botswana adapt its domestic legislation to prevent the physical abuse of minors and to ensure girl children are protected from sexual abuse, as traditions and customs do not take into account the Convention. Argentina also noted the progress made in empowering women and promoting gender issues in its national policy, suggesting concrete measures be taken to eliminate the persistence of customs harmful to the rights of women, such as early contract marriages and polygamy. Argentina congratulated Botswana on its policies to prevent and control HIV/AIDS, but noted with concern the large number of people suffering from this disease.

72. The Holy See commended Botswana on the abolition of the Marital Power Act in 2004. It noted, however, that the abolition does not apply to customary and religious marriages, as women who marry under traditional law are regarded as legal minors. It noted the consultations aimed at addressing the disparities and asked about progress made. It recommended that Botswana completely abolish the death penalty. The Holy See noted that the High Court declared the evictions of Basarwa from their ancestral territory as unlawful and unconstitutional and that the Basarwa are still struggling to return to their ancestral land because of limitations on their way of life imposed by the authorities. It enquired about measures the Government could take to improve the situation.

73. Japan noted that the Special Rapporteur on the right to education, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination expressed concern over the lack of legislation ensuring education for all children and over cultural and linguistic barriers to educational access. Japan said it hoped Botswana is taking steps to reach its target for universal and free education up to secondary level by 2016, and asked about concrete measures. On the elimination of gender discrimination and efforts to empower women, Japan appreciated the accomplishments, but said the Human Rights Committee had found discriminatory practices in women's roles in marriage and in the home remained and asked for more information on efforts to resolve this. On the displacement of the Basarwa tribe raised by the Committee on the Elimination of Racial Discrimination, it asked about the Government's outlook on the situation and how it intends to move forward.

74. Ghana noted that the authorities are facing prison congestion and that new facilities are being constructed. It asked about measures taken to ease congestion pending construction. Ghana requested information on the judicial case management system, which would achieve more expeditious dispensation of justice. It encouraged Botswana to increase efforts to improve access to education by children in remote areas, especially girls and minorities, and urged the international community to continue contributing to the Government's efforts to promote and respect the rights of its people.

75. The United Republic of Tanzania recommended that concrete actions be taken to reverse the trend of secondary school drop outs that may be as a result of the introduction of cost-sharing. It said it was pleased with the progress made regarding the rights of minority groups. It recommended that more action be taken to consolidate these endeavours. Noting the wide provision of anti-retroviral treatment, it recommended that the Government take action to address non-coverage of treatment among the refugee populations as indicated in the report. It recommended that Botswana make a definite pronouncement of accession to the International Covenant on Economic, Social and Cultural Rights. The United Republic of Tanzania recommended that Botswana take action to establish an independent national human rights institution in accordance with the Paris Principles.

76. Ireland noted that domestic violence remains a problem, and asked how the Government is addressing the need to balance the importance of respecting traditions and ensuring equal rights and protection for women. It recommended that the State ensure full participation of women in the review of customary laws and practices and discourage the persistence of customary practices that are detrimental to women's rights. Ireland understood that the number of undocumented migrants and asylum-seekers coming to Botswana, particularly from Zimbabwe, has increased dramatically, and some had been detained in prisons owing to lack of space. This was a matter of concern since these persons had not been convicted of any crime. It recommended that the Government work to end this practice. Ireland asked about action being taken to ensure the fair representation of minority groups, particularly the San ethnic group in the House of Chiefs. It recommended that the Government engage with ethnic groups on an ongoing and systematic basis, to ensure that their rights to equality and non-discrimination are guaranteed. In the light of Botswana's overall positive human rights record, it recommended that the Government adopt a leadership role and take concrete steps to move towards the abolition of the death penalty.

77. The Philippines asked the Government about measures aimed at HIV prevention, including education, awareness-raising and information campaigns. It appreciated the establishment of a national human rights institution and enquired if Botswana is considering

ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It also asked if human trafficking was a concern and what measures were in place to curb it.

78. Bangladesh stated that given various constraints as a developing country, Botswana has to prioritize its undertakings based on genuine societal need and the Government's needs to remain steadfast in pursuing pro-people policies, but should not be intimidated by suggestions on issues that do not enjoy universal acceptance as social norms. Bangladesh recommended that, with the support of the international community, Botswana continue to fight HIV/AIDS; continue to fight poverty, ensuring that benefits are accrued for all citizens in all regions of the country; and continue to achieve universal basic education and reduce the drop-out rate in primary schools.

79. Egypt expressed interest in the Office of the Ombudsman and saluted Botswana's achievements in women's rights. It recommended that the Government continue its efforts to strengthen its national human rights architecture, including through further development, with international support, of the human rights training and capacity-building exercise for judiciary and law enforcement personnel, and mainstream human rights in the education system, at all levels. It also recommended that efforts be continued to combat poverty and to meet the Millennium Development Goals and Vision 2016. It recommended that OHCHR and the international community assist the Government in the areas that it has identified, particularly in building national capacities for treaty body reporting, human rights education, improving the justice system and strengthening the monitoring of progress in achieving the Millennium Development Goals and the goals of Vision 2016. It recalled the basis of review as contained in Council resolution 5/1, urging all parties to scrupulously abide by what was agreed to in that resolution.

80. Nigeria noted the importance of the programmes on women empowerment, gender mainstreaming and child protection. It noted Botswana's combination of policies in promoting civil and political rights with economic, social and cultural rights as steps towards achieving the Millennium Development Goals. Nigeria commended Botswana for its regional peace efforts and encouraged it to continue its democratization process.

81. Denmark noted the High Court ruling concerning the traditional land of the Central Kalahari Game Reserve. While appreciating the dialogue between the Government and the Basarwa, Denmark noted that it is not sufficient and enquired about concrete steps to implement the High Court ruling. Denmark recommended that the Government of Botswana provide access and support for residents of the Reserve based on the right to their land, as specified in the United Nations Declaration on the Rights of Indigenous Peoples. Denmark also recommended that the Government work with the land boards of the various districts to ensure equity in land allocation among all applicants for residential, arable and grazing land, water sources and business sites. It recommended that discrimination on the basis of ethnicity, language and culture, including de jure discrimination, be abolished. Denmark recommended that the Government of Botswana pursue a policy of mother-tongue language education in conjunction with national languages of Setswana and English. It recommended that Botswana step up efforts to prevent torture and ill treatment and that it ratify the Optional Protocol to the Convention against Torture with utmost importance.

82. Cameroon requested additional information on the importance of customary courts, and whether they weaken the application of normative rights and challenge the integration of

international norms. It also asked what measures are being taken to promote the rights of indigenous peoples, in particular those of the Kalahari Desert. Cameroon said it would like Botswana to create a national commission on human rights and freedoms; to finalize various reports due to treaty bodies, particularly the Committee on the Elimination of Discrimination against Women, as this would allow better evaluation of the efforts and actions taken in favour of women; to elevate penal responsibility to the same level as international standards in this area; and delete the marital prerogative in customary and religious marriage.

83. In response to additional questions, Botswana indicated that all decisions of the customary court system are appealable to the Customary Court of Appeal and to the Court of Appeal of the Land, the highest court. It noted that this system has worked well.

84. The Government noted that all nationalities or ethnic groups in Botswana are entitled to all amenities and rights, including the Basarwa in the Central Kalahari Game Reserve. Botswana noted that the Basarwa were allowed to go back to their land and that the court order was fully implemented by the Government. The Government is also open to dialogue, including on other issues, and hoped that this matter would be resolved amicably. Botswana also indicated that the Basarwa are represented in the traditional House of Chiefs.

85. The delegation emphasized that Botswana does not accommodate asylum-seekers in prisons but in centres.

86. Botswana intended to extend anti-retroviral treatment to refugees; the United States has undertaken to assist in this regard.

87. The judicial case management system removes the control of the case from the litigants to the presiding judges and ensures that dates and conclusions are synchronized.

88. The delegation indicated that the implementation of the national plan of action for children was on course and social and economic programmes have been implemented, including on addressing the issue of child labour.

89. Botswana clarified that the Inter-ministerial Committee on Treaties and Conventions, with relevant ministries, has a mandate to consider the signature, ratification and implementation of conventions.

90. On gender issues, Botswana is currently reviewing its policy on women in development. It also enacted the Domestic Violence Act of 2008 and has conducted gender mainstreaming activities within a number of ministries.

91. In his concluding remarks, the Minister expressed his gratitude to all delegations for their comments, questions and recommendations and noted that it would provide further answers in due time. It noted the strong recommendations made particularly on corporal punishment, the death penalty and the decriminalization of homosexual practices. It reaffirmed the leading role of the Government and the importance of a democratic process in decision-making.

II. CONCLUSIONS AND/OR RECOMMENDATIONS

92. In the course of the discussion, it was recommended that Botswana:

1. Adhere to the International Covenant on Economic, Social and Cultural Rights (Algeria); consider the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (Mexico); adopt measures necessary to harmonize customary laws with international instruments (Mexico); consider ratifying/acceding to the International Covenant on Economic, Social and Cultural Rights (Mexico, Slovakia, Brazil, United Republic of Tanzania); ratify the Convention on the Rights of Migrant Workers and Their Family Members (Mexico); accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (France) and to establish a national preventive mechanism accordingly (Czech Republic, Denmark); set a timeline for the ratification of the International Covenant on Economic, Social and Cultural Rights (Turkey); and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights to abolish the death penalty (Australia);

2. Finalize various outstanding treaty reports, particularly to the Committee on the Elimination of Discrimination against Women (Cameroon);

3. Accomplish progressively the human rights goals set up by the Human Rights Council in its resolution 9/12 (Brazil); and take measures to ensure that article 15 of the Constitution fully complies with the International Covenant on Civil and Political Rights (Canada);

4. Consider issuing a standing invitation to special procedures of the Human Rights Council (Latvia, Mexico, Czech Republic); agree to the request for visit by the Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples (Mexico, Norway) and the Special Rapporteur on contemporary forms of racism (Mexico);

5. Continue efforts to strengthen the national human rights architecture (Egypt) and institutional framework (Czech Republic), including by providing necessary funding and personnel (Czech Republic); to further develop, with international support, a human rights training and capacity-building exercise for judiciary and law enforcement personnel (Egypt); and provide sufficient resources to the Office of the Ombudsman for its effective functioning (South Africa);

6. Take action to establish an independent national human rights institution in accordance with the Paris Principles (United Republic of Tanzania) and create a national commission of human rights and freedoms (Cameroon);

7. Increase efforts to raise awareness of the precedence of constitutional law over customary laws and practices to promote gender equality (Canada);

8. Mainstreaming human rights in the education system (Egypt) and the development of a national strategy for human rights education in the school system at all levels, in accordance with the Plan of Action 2005-2009 of the World Programme for Human Rights Education, including the review and revision of curricula and textbooks, the training of teachers and the practice of human rights in the school community (Italy);

9. Continue efforts in favour of women in rural areas (Algeria) and on gender issues, including policies aimed at the empowerment of women and their integration in the education system (Chile); promote gender equality and pursue work on legislation on marital rape as a priority. and consider additional measures, such as public awareness-raising initiatives or campaigns in order to promote the implementation of the rights in the legislation in question (Sweden);

10. Ensure the full participation of women in the review of customary laws and practices, and discourage the persistence of practices detrimental to women's rights (Ireland);

11. Strengthen the application of the domestic violence bill and the abolition of the Marital Power Act (United Kingdom); establish a specific timeline for the implementation of the amendment in the Marriage Act (Norway); take measures to eliminate the persistence of traditions harmful to the rights of women, including early contract marriages and polygamy (Argentina): and to elevate penal responsibility to the level of international standards and delete the marital prerogative in customary and religious marriage (Cameroon);

12. Include a gender perspective in the review follow-up process in a systematic manner (Slovenia);

13. Continue to incorporate the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child into national legislation (Cuba); take further measures to adopt legislation ensuring the implementation of the Convention, in particular in the area violence prevention and sexual exploitation of children (Czech Republic, Argentina) and ensure girls are protected from sexual abuse (Argentina);

14. Continue the implementation of the National Action Plan for Children 2006-2016 (Cuba); adhere to the National Action Plan for Children and programme for the elimination of child labour (Turkey); implement the programme for AIDS orphans (Finland); design and adopt programmes of action on child labour, as requested by the Committee on the Rights of the Child and ILO (Italy); consider designating an institution for coordination and implementation of policy on children (Chile);

15. Develop non-custodial alternatives in relation to the sole or primary carers of children (Slovenia); take measures to protect the best interests of babies and children affected by parental detention or imprisonment (Slovenia);

16. Continue efforts to achieve universal basic education and reduce primary school drop-out rates, with the support of the international community (Bangladesh); take measures to reverse secondary school drop-out rates resulting from the introduction of cost-sharing (United Republic of Tanzania);

17. Take more action to consolidate efforts regarding the rights of minority groups (United Republic of Tanzania); take immediate action to ensure respect for the rights of the indigenous people living in the areas of interest to companies active in the diamond business (Finland); take steps to promote a just and equitable solution through renewed negotiations with affected members of the Central

Kalahari Game Reserve communities and respect the economic, social and cultural rights of minorities living or formerly living on the Reserve (Canada); engage with the ethnic groups, in an ongoing and systematic basis, to ensure their rights to equality and non-discrimination are guaranteed (Ireland); provide access to land and support for the residents of the Reserve, as specified in the United Nations Declaration on the Rights of Indigenous Peoples, and work with the land boards of the various districts to ensure equity in land allocation among all applicants for residential, arable and grazing land, water sources and business sites (Denmark); pursue a policy of mother-tongue language education in conjunction with national languages of Setswana and English (Denmark); and resolve the dispute between the San of the Reserve (Spain);

18. Adopt the measures necessary to combat discrimination of all kinds, including those based on homosexual orientation, gender, colour, religion and political opinion (France); amend the definition of discrimination in the Constitution in such a way that it covers discrimination based on descent and abolish those laws that permit discrimination on the basis of ethnicity, language and culture (Germany); review the definition of discrimination provided under the section III of the Constitution in terms of its compatibility with the prohibition against discrimination against descent and national or ethnic origin (Canada); and abolish discrimination on the basis of ethnicity, language and culture, including de jure discrimination (Denmark);

19. Develop non-custodial alternatives, such as community service and bail arrangements (Slovenia); redouble efforts to improve conditions of detention in prisons, guaranteeing the compatibility of rights with cultural practices (Djibouti); and align its legislation and practice with international standards with regard to prisons (Italy);

20. Continue to incorporate the provisions of the Convention on the Rights of the Child into domestic legislation, especially article 19(1), in relation to deep concerns about the corporal punishment of children (Chile); consider changing legislation to expressly prohibit all forms of corporal punishment in all settings (at home, in schools and in other institutions) and conduct awareness-raising efforts to change the public's attitude to corporal punishment (Slovenia); to continue efforts to eliminate corporal punishment (Brazil, Sweden), especially in schools (Sweden); to put an end, de jure and de facto, to the practice of corporal punishments in traditional judicial systems (France);

21. Explore the possibility of a moratorium on the application of the death penalty towards its complete abolition, in conformity with the latest General Assembly resolutions on the subject (Spain, Brazil, Netherlands, Italy, Canada, Holy See); adopt a leadership role and take concrete steps to move towards the abolition of the death penalty (United Kingdom, Ireland);

22. Step up efforts to prevent torture and ill treatment (Denmark);

23. Decriminalize homosexual relations and practices/consensual same-sex activities between adults (Spain, Netherlands, Slovakia, Czech Republic, Canada); and outlaw discrimination on the basis of sexual orientation (Netherlands);

24. Provide medical follow-up for HIV-positive mothers and respective infected children (Belgium); educate prison populations on the HIV/AIDS virus and respect sanitary conditions of prisons (Belgium); with regard to consensual same-sex activity between adults, take measures to promote tolerance and allow effective educational programmes on HIV/AIDS prevention (Czech Republic); with the support of the international community, continue to fight HIV/AIDS (Bangladesh);

25. Enable migrants and refugees to benefit from the pilot project to fight HIV/AIDS (Algeria); take action to address the non-coverage of anti-retroviral treatment for refugees (United Republic of Tanzania); and work to end the practice of detaining asylum-seekers in prisons owing to lack of space (Ireland);

26. With the support of the international community, continue to fight poverty (Bangladesh, Egypt) and meet the Millennium Development Goals and those of Vision 2016 (Egypt); and continue efforts made to achieve the goals of Vision 2016 (Cuba);

27. Seek technical assistance and other support from development partners to strengthen implementation and development capacity with respect to human rights instruments and their domestication (Mauritius); seek assistance from delegations that are materially capable of assisting Botswana in its endeavours with regard to treaty body reporting, human rights education and training, components of the national statistical system and the system to monitor development (Brazil); seek support from the Council in the areas highlighted in the national report (South Africa); seek contributions from the international community in the Government's efforts to promote rights (Ghana); seek the assistance of OHCHR and the international community in relation to the rights of indigenous peoples, especially the Basarwa, child protection, domestic violence, the administration of justice, legal aid and prison conditions, as well as for producing a common-core document (Maldives), human rights education, improving the justice system and strengthening the monitoring of progress in achieving the Millennium Development Goals and the goals of Vision 2016 (Egypt).

93. The response of Botswana to the above recommendations will be included in the outcome report, to be adopted by the Human Rights Council at its tenth session.

94. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

Annex

COMPOSITION OF THE DELEGATION

The delegation of Botswana was headed by Hon. Mr. Dikgakgamatso Seretse, Minister for Defence, Justice and Security, and comprised 12 members:

H.E. Mr. Boometswe Mokgothu, Ambassador and Permanent Representative to the United Nations, Geneva;

Mr. Augustine Makgonatsotlhe, Secretary for Defence, Justice and Security, Office of the President;

Ms. Dimpho Mogami, Director, Legal Affairs Department, Ministry of Foreign Affairs;

Ms. Tebatso Menyatso, Deputy Director, Women's Affairs Department;

Mr. Pule Mphothwe, Assistant Director, Multilateral Department, Ministry of Foreign Affairs;

Mr. O. Rhee Hetanang, Councellor and Head of Chancery, Botswana Mission to the United Nations, Geneva;

Mr. Hamilton, Mogatusi, Principal Social Worker, Ministry of Local Government;

Ms. Chandida Thembe, Principal State Counsel, Attorney General's Chambers;

Mr. Myron Bonang, First Secretary, Botswana Mission to the United Nations, Geneva;

Ms. Mabedi T. Motlhabani, First Secretary, Botswana Mission to the United Nations, Geneva;

Ms. Kelebogile M. Lekaukau, Trade Attaché, Botswana Mission to the United Nations, Geneva;

Mr. Michael Manowe, Agriculture Attaché, Botswana Mission to the United Nations, Geneva.
