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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review *

Botswana

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

* The present document was not edited before being sent to the United Nations translation services.

**RESPONSE OF THE GOVERNMENT OF BOTSWANA TO THE
RECOMMENDATIONS MADE BY DELEGATIONS DURING
THE UNIVERSAL PERIODIC REVIEW OF BOTSWANA**

The Government of Botswana has examined the recommendations made by delegations during the Universal Periodic Review of Botswana and responds as follows:

| <i>Recommendation</i> | <i>Response</i> |
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| 1 Adhere to the International Covenant on Economic, Social and Cultural Rights (Algeria); Consider ratifying/acceding to the ICESCR (Mexico, Slovakia, Brazil, Tanzania); Set a timeline for the ratification of the ICESCR (Turkey); | Botswana notes the recommendation, (ICESCR), but 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. |
| Consider the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (Mexico); | Botswana does not accept the recommendation. |
| Adopt measures necessary for harmonising customary laws with international instruments (Mexico); | Botswana does not consider its customary law to be in conflict with international instruments, and therefore does not accept the recommendation. |
| Ratify the Convention on the Rights of Migrant workers and their family members (Mexico); | Botswana supports the spirit and intent of the convention, but does not consider accession to this convention a priority, as there are already laws in place to protect migrants. |
| Accede to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (France) and to establish its national preventive mechanism accordingly (Czech Republic, Denmark); | Botswana does not presently support the recommendation. The Government would consider accession when resources permit. Regarding establishing national preventive measures, the Government confirms that there are available effective preventive mechanisms. |
| Ratify the Second Optional Protocol of the ICCPR to abolish the death penalty (Australia); | Botswana rejects this recommendation. There are no plans to abolish the death penalty. |
| 2 To finalize various outstanding treaty reports, particularly to the CEDAW (Cameroon); | Botswana accepts this recommendation. The Government submitted the CEDAW report in November 2008. Efforts are underway to bring the country's reporting obligations up to date. |
| 3 Accomplish progressively the human rights goals set up by the Human Rights Council Resolution 9/12 (Brazil); | Botswana accepts the recommendation. |
| Take measures to ensure that Article 15 of the Constitution fully complies with the ICCPR (Canada); | Botswana does not accept that Section 15 of the Constitution of Botswana is in conflict with the ICCPR. |

| <i>Recommendation</i> | <i>Response</i> |
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| 4 Consider issuing a standing invitation to Special Procedures of the Human Rights Council (Latvia, Mexico, and Czech Republic); | Botswana has always accepted visits from Special Procedures and does not intend to depart from the Government's commitment to cooperate in this regard. The recommendation is therefore not accepted. |
| Agree to the request for visit by the Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples (Mexico, Norway); | Botswana accepts the recommendation. The Government has already invited the Special Rapporteur who is expected to visit the country in March 2009. |
| The Special Rapporteur on Contemporary Forms of Racism (Mexico) | Botswana does not accept the recommendation. To the extent that there has been no request for such a visit. In the context that the CERD is already being implemented, the Government expresses its commitment to cooperate with the Special Rapporteur, including in the event the Special Rapporteur expresses a wish to visit Botswana. |
| 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); | Botswana accepts the recommendations. The Government reiterates its appeal for technical assistance to meet related challenges in this regard. |
| 6 Take action towards establishing an independent national human rights institution in accordance with the Paris Principles (Tanzania), and create a national commission of human rights and freedoms (Cameroon). | Botswana accepts the recommendations. Consultations on the establishment of an independent national human rights institution in accordance with the Paris Principles have been concluded. The recommendations will soon be submitted to Cabinet for consideration. |
| 7 Increase efforts to raise awareness of the precedence of constitutional law over customary laws and practices to promote gender equality (Canada). | Botswana does not accept the recommendation. Customary law is not in conflict with constitutional law. |
| 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) | Botswana accepts the recommendations. |

| <i>Recommendation</i> | <i>Response</i> |
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| 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 priority and consider additional measures to new legislation, such as public awareness-raising initiatives or campaigns in order to promote the implementation of the rights in the legislation in question (Sweden); | Botswana accepts the recommendations. |
| 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); | Botswana accepts this recommendation. |
| 11 Strengthen the application of the domestic violence bill and the abolition of Marital Power Act (United Kingdom); | Botswana accepts this recommendation. The Government has undertaken necessary measures to ensure immediate implementation of amended legislation. |
| Establish a specific timeline for the implementation of the amendment in the Marriage Act. (Norway). | Botswana does not accept the recommendation. Botswana cannot give specific timelines. |
| Take measures to eliminate the persistence of traditions harmful to the rights of women including early contract marriages and polygamy (Argentina); | Botswana does not accept the recommendation. In Botswana there are no traditions harmful to the rights of women. |
| To elevate penal responsibility at the level of international standards and delete the marital prerogative in customary and religious marriage (Cameroon); | The Government of Botswana does not accept this recommendation. The Government has already undertaken necessary measures to implement through the Abolition of Marital Powers Act. |
| 12 Include a gender perspective into the UPR follow-up process in a systematic manner (Slovenia); | Botswana accepts the recommendation. |
| 13 Continue to incorporate the provisions of the Convention on the Rights of the Child and the African Charter on the Rights and Wellbeing of Children 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); | Botswana accepts the recommendation. The Children's Act is already being amended, which will domesticate the Convention. The Bill is before Parliament in its second reading. |

| <i>Recommendation</i> | <i>Response</i> |
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| <p>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 the ILO (Italy); Consider designating an institution for coordination and implementation of policy on children (Chile),</p> | <p>Botswana accepts the recommendations. The Government intends to address the concerns through the Children's Act currently under review.</p> |
| <p>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)</p> | <p>Botswana accepts the recommendation.</p> |
| <p>16 Continue to achieve universal basic education and reduce primary school dropout, with the support of the international community (Bangladesh); Take measures to reverse secondary school drop-out resulting from the introduction of cost-sharing. (Tanzania);</p> | <p>Botswana accepts the recommendations while noting that on the issue of cost sharing, children will be assessed, and those that cannot afford school will be exempted from having to pay school fees.</p> |
| <p>17 Take more action for the consolidation of the endeavours in the area of minority rights groups (Tanzania);</p> | <p>In Botswana every Motswana's rights are respected.</p> |
| <p>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);</p> <p>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 belonging to 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 land, arable land, grazing land, water sources, and business sites (Denmark);</p> | <p>In the spirit of solving problems amicably among Batswana, the Government is already actively engaged in consultations with all relevant stakeholders. The Government already has a clear and effective policy and land tenure system that addresses issues related to access to land for all Batswana, including residents of the reserve. To this end the Government does not accept these recommendations.</p> |

| <i>Recommendation</i> | <i>Response</i> |
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| Pursue a policy of mother tongue language education in conjunction with national languages of Setswana and English (Denmark); | Botswana accepts the recommendation. The Government is in the process of encouraging different ethnic groups to develop their languages with a view to having them taught in schools in the future. |
| Resolve the dispute between the San of the Reserve (Spain); | The Government of Botswana has already stated that it has fully implemented the Court order in relation to the said dispute. The recommendation is therefore not accepted . |
| 18 Adopt the necessary measures 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 does embrace 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); abolish discrimination on the basis of ethnicity, language and culture, including <i>de jure</i> discrimination (Denmark); | Botswana does not accept the recommendations. The laws of Botswana do not allow same sex sexual activity. Section 15 of the Constitution of Botswana is comprehensive in effectively addressing all issues relating to discrimination. The Government has no plans to amend the Constitution in line with these recommendations |
| 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 practice (Djibouti); | Botswana accepts the recommendations The Government, is already implementing initiatives and measures aimed at improving conditions of prisons. |
| Align its legislation and practice with international standards on prisons (Italy); | Botswana does not support this recommendation. The Government considers current legislation and practice to be aligned to international standards on prisons. |
| 20 Continue to incorporate the provisions of the Convention on the Rights of the Child into domestic legislation, especially Article 19(1); | Botswana accepts the recommendation. The Children's Act is being amended with a view to domesticate the Convention. |

| <i>Recommendation</i> | <i>Response</i> |
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| <p>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 public awareness efforts to change the mindsets of people and their view of the corporal punishment (Slovenia); to continue efforts to eliminate corporal punishment (Brazil, Sweden), especially in schools (Sweden); to put an end, <i>de jure</i> and <i>de facto</i>, to the practice of corporal punishments in traditional judicial systems. (France);</p> | <p>The recommendation is not accepted. The Government, however, has no plans to eliminate corporal punishment, contending that it is a legitimate and acceptable form of punishment, as informed by the norms of the society. It is administered within the strict parameters of legislation in the frame of the Customary Courts Act, the Penal Code and the Education Act.</p> |
| <p>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, the Holy See); Adopt a leadership role and undertake concrete steps to move towards the abolition of the death penalty (United Kingdom and Ireland);</p> | <p>Botswana does not accept the recommendations. The Government has no plans to either abolish the death penalty or impose a moratorium on its application.</p> |
| <p>22 Step up efforts to avoid torture and ill treatment taking place (Denmark);</p> | <p>Botswana does not accept the recommendation. The Government has consistently ascertained that there are no attested cases of torture and ill treatment.</p> |
| <p>23 Decriminalize homosexual relationships and practices/consensual same-sex activities between adults (Spain, Netherlands, Slovakia, Czech Republic, Canada); and forbid discrimination on the basis of sexual orientation (the Netherlands);</p> | <p>Botswana does not accept the recommendations. The law does not allow same sex sexual activity, a position that reflects the moral and religious norms of Botswana society.</p> |
| <p>24 Provide medical follow-up for HIV-positive mothers and respective infected children (Belgium); Educate prison population HIV/AIDS virus and respect sanitary conditions of prisons (Belgium);</p> | <p>Botswana accepts the recommendations. They are in line with the Government's health strategies and are currently being implemented.</p> |
| <p>With regard to consensual same-sex activity between adults, adopt 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);</p> | <p>Botswana does not accept the recommendation. Educational programmes and awareness campaigns on HIV/AIDS target all adults.</p> |
| <p>25 Enable migrants and refugees to benefit from the pilot project to fight HIV/AIDS (Algeria); Take action to address the non-coverage of ARVs among the refugee populations (Tanzania);</p> | <p>Botswana accepts the recommendations in so far as they relate to refugees, and not migrants. The Government reiterates its stated challenges relating to resource constraints to implement its decisions in this regard.</p> |

| | <i>Recommendation</i> | <i>Response</i> |
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| | Work towards ending the practice of detaining some asylum seekers in prisons due to lack of space (Ireland); | Botswana does not accept the recommendation. The Government confirms that asylum seekers are not detained in prisons, but are kept in dedicated and well-equipped centres. |
| 26 | With support of the international community, continue to fight poverty (Bangladesh, Egypt) and meet the MDG goals in Vision 2016 (Egypt); continue the efforts made to achieve the goals of the Vision 2016 (Cuba); | Botswana accepts the recommendations. |
| 27 | Seek technical assistance and other support from development partners to strengthen Botswana's implementation and development capacity with respect to human rights instruments and their domestication (Mauritius); seek assistance from delegations that are materially capable to assist Botswana in its endeavours with regards 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 Human Rights Council in the areas highlighted in the national report (South Africa); seek contributions from the international community in the Government's efforts towards promoting rights (Ghana); seek OHCHR and the international community's assistance relating 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 producing a Common Core Document (Maldives), human rights education, improving the justice system and strengthening the monitoring of progress in achieving MDGs and the goals in Vision 2016 (Egypt). | Botswana accepts the recommendations. |
