

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

UNIVERSAL PERIODIC REVIEW, 3<sup>RD</sup> SESSION  
BOTSWANA (FINAL)  
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## Overview

The delegation of Botswana was headed by Mr Dikgakgamatso Seretse, Minister of Defence, Justice and Security. Both the State under review and the States conducting the review appeared well-prepared. Mr Seretse responded to the majority of the questions posed, and provided details on a range of Government programmes and policies aimed at improving the human rights situation. Nevertheless, Botswana's resistance to modifying its position on issues such as corporal punishment, the death penalty, and criminalisation of homosexuality appeared unlikely to change as a result of its examination under the UPR.

## General information on Botswana

- Botswana is not a member of the Human Rights Council.
- The members of the troika for the examination of Botswana were Uruguay, Senegal, Slovakia.<sup>1</sup>
- Botswana held a national consultation on 5 to 6 August 2008. According to the State report, various stakeholders, including non-governmental organisations (NGOs) were invited to review the initial draft and make comments, suggestions, and recommendations for its improvement.

## Information submitted to the Working Group

The **national report**<sup>2</sup> focuses on the legislation and programmes introduced by the State to improve the implementation of its human rights obligations. The State draws particular attention to the progress made in the areas of education, women's rights, and response to the HIV/AIDS pandemic. The State readily acknowledges challenges that it is facing, but insists that steps are being taken to address the majority of these issues. Of note is the explicit listing of areas in which the State seeks the support of the international community.<sup>3</sup>

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<sup>1</sup> Botswana requested that a member of its regional group be among its troika. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

<sup>2</sup> A/HRC/WG.6/3/BWA/1, available at [www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx](http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx).

<sup>3</sup> Paragraph 121, *ibid*.

The **compilation of UN information**<sup>4</sup> by the Office of the High Commissioner for Human Rights (OHCHR) focuses on: the dual legal system, comprising customary law and ‘received law’ (common law); establishment of a national human rights institution (NHRI); discrimination inherent in the Constitution; the death penalty, corporal punishment, and torture; lack of a legal aid system; prevalence of HIV/AIDS; linguistic barriers in education; alleged violations of the human rights of indigenous populations in the Central Kalahari Game Reserve (CKGR); and growing hostility against undocumented migrants.

Three individual NGOs and one coalition submitted information to the **summary of stakeholders’ information**.<sup>5</sup> The Centre for Human Rights of the University of Pretoria focuses on the deficiencies in the constitutional and legislative framework with respect to the implementation of international human rights obligations, including in the areas of non-discrimination, torture, and protection of children. NGOs highlight the criminalisation of consensual same-sex activities,<sup>6</sup> and the fact that NGOs set up to advocate for lesbian, gay, bisexual and transgender (LGBT) rights have been denied legal status.<sup>7</sup> The Multicultural Coalition of Botswana (RETENG) expresses its concern about laws that permit discrimination on the basis of ethnicity, language and culture. Other areas of concern raised by NGOs are: corporal punishment;<sup>8</sup> discrimination against women in traditional law;<sup>9</sup> absence of legislation on freedom of information;<sup>10</sup> low representation of women in publicly elected bodies;<sup>11</sup> prevalence of child labour;<sup>12</sup> and land disputes involving indigenous tribes.

## Interactive dialogue<sup>13</sup>

### Presentation by the State

Mr Seretse gave a well-organised statement outlining Botswana’s expectations for the UPR, providing a brief overview of the national report, and answering questions submitted prior to the session.<sup>14</sup> While welcoming the establishment of the UPR and reiterating Botswana’s commitment to implementing human rights, Mr Seretse reminded the Working Group of the technical and resource constraints faced by the State. He also insisted that the Government ‘cannot legislate’ against the culture or interests of the citizens with regard to issues such as corporal punishment and LGBT rights. Interestingly, Mr Seretse pointed out that the role of civil society is to educate and advocate change on such issues.

### Themes and issues

The achievements and challenges facing Botswana in its implementation of economic, social and cultural rights were raised by various States. States congratulated Botswana on the reduction in the incidence of

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<sup>4</sup> A/HRC/WG.6/3/BWA/2, available at [www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx](http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx).

<sup>5</sup> A/HRC/WG.6/3/BWA/3, available at [www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx](http://www.ohchr.org/EN/HRBodies/UPR%5CPAGES%5CBWSession3.aspx).

<sup>6</sup> Joint submission by the International Lesbian and Gay Association, Brussels; ILGA-Europe; Pan African ILGA; Lesbians, Gays, and Bisexuals of Botswana (LeGaBeBo); International Gay and Lesbian Human Rights Commission; and ARC International, Brussels. Also Centre for Human Rights of the University of Pretoria.

<sup>7</sup> Centre for Human Rights of the University of Pretoria.

<sup>8</sup> Centre for Human Rights of the University of Pretoria, Global Initiative to End All Corporal Punishment of Children.

<sup>9</sup> Centre for Human Rights of the University of Pretoria.

<sup>10</sup> Centre for Human Rights of the University of Pretoria.

<sup>11</sup> Centre for Human Rights of the University of Pretoria.

<sup>12</sup> Centre for Human Rights of the University of Pretoria.

<sup>13</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group ‘webcast’ are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>14</sup> Answers were provided to questions asked by the Czech Republic, United Kingdom, Sweden, Netherlands, Germany, Denmark, and Latvia.

**HIV/AIDS**,<sup>15</sup> but requested information on related issues such as HIV/AIDS orphans<sup>16</sup> and the high rate of HIV/AIDS among pregnant women.<sup>17</sup> Botswana's efforts in **education**<sup>18</sup> and **poverty reduction**<sup>19</sup> were commended. Many States encouraged Botswana to ratify the *International Covenant on Economic, Social and Cultural Rights*.<sup>20</sup> Botswana's reply on this last point was unclear. Mr Seretse assured the Working Group that all the rights enshrined in the Covenant are already ensured in national law, but explained that the Government is hesitant to create an obligation to implement these rights due to 'financial constraints'. Slovakia's reference to Article 2(1) of the Covenant<sup>21</sup> did not receive any comment.

States urged Botswana to strengthen its efforts to combat **torture** through ratifying the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT),<sup>22</sup> to eliminate **corporal punishment**,<sup>23</sup> and to abolish the **death penalty**.<sup>24</sup> Botswana vehemently denied the widespread use of torture in the State and insisted that all allegations are investigated. Moreover, it is 'not against' the ratification of OPCAT. With regard to corporal punishment, Botswana simply explained that it 'is part of our culture'. On the death penalty, Botswana argued that the majority of the public is in favour of these practices, and that, being a democracy, Botswana legislates on the basis of majority opinion.

States expressed their concern about the lack of protection for specific groups in Botswana. They most frequently raised the need to further empower **women**,<sup>25</sup> better protect the rights of **children**,<sup>26</sup> eliminate **discrimination based on ethnic descent** in the law,<sup>27</sup> and safeguard the property rights of **indigenous populations**.<sup>28</sup> The recommendation by various States<sup>29</sup> to **decriminalise homosexual practices** was criticised by Egypt, who rhetorically inquired 'why certain countries have been attempting through the UPR to impose certain controversial concepts on Botswana'. Botswana itself stressed that homosexuality 'is not part of our culture' and that ignoring the culture of the majority 'could destabilise the country'. Mr Seretse assured that civil society organisations which are not set up with the explicit aim of advocating for LGBT rights could work on this issue and 'educate the people'.

The Working Group also proposed other measures to improve the implementation of human rights in the State, including the establishment of a **NHRI**<sup>30</sup> and extension of a **standing invitation to United Nations special procedures**.<sup>31</sup> Some States also called on the international community and the OHCHR to extend **international assistance** to Botswana.<sup>32</sup>

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<sup>15</sup> Algeria, Cuba, Belgium, Finland, Mexico, Brazil, Slovenia, Sudan, Djibouti, Argentina, Japan, Tanzania, Philippines, Bangladesh.

<sup>16</sup> Spain, Finland.

<sup>17</sup> Belgium.

<sup>18</sup> Cuba, Morocco, Turkey, Brazil, Slovenia, Sudan, Maldives, Japan, Ghana, Tanzania, Zambia.

<sup>19</sup> Belgium, Brazil, China, Bangladesh, Egypt.

<sup>20</sup> Algeria, Chile, Mexico, Slovenia, Turkey, Brazil, Latvia, Tanzania, Bangladesh.

<sup>21</sup> 'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'

<sup>22</sup> France, Czech Republic, Maldives, Denmark.

<sup>23</sup> Chile, France, Brazil, Slovenia.

<sup>24</sup> Spain, Netherlands, Brazil, United Kingdom, Italy, Canada, Australia, Holy See, Ireland, Denmark.

<sup>25</sup> Algeria, Spain, Morocco, Chile, Mexico, Zambia, Canada, Argentina, Holy See, Japan, Egypt, Nigeria.

<sup>26</sup> Spain, Morocco, Chile, Mexico, Czech Republic, Turkey, Sweden, Zambia, Italy, Maldives, Australia, Argentina, Nigeria.

<sup>27</sup> Algeria, Czech Republic, Germany, Canada, Denmark.

<sup>28</sup> Spain, Finland, Mexico, Maldives, Norway, Holy See, Japan, Denmark, Cameroon.

<sup>29</sup> Spain, France, Netherlands, Slovakia, Czech Republic, Canada, Australia.

<sup>30</sup> Mauritius, Brazil, United Kingdom, Tanzania, Philippines.

<sup>31</sup> Mexico, Czech Republic, Maldives.

<sup>32</sup> Mauritius, Sudan, Maldives, China, Egypt.

States also engaged Botswana in discussion on the following themes: detention conditions;<sup>33</sup> freedom of the press;<sup>34</sup> migrant workers;<sup>35</sup> domestic violence;<sup>36</sup> human rights education;<sup>37</sup> disabled persons;<sup>38</sup> asylum-seekers;<sup>39</sup> and trafficking.<sup>40</sup>

In general, the replies by Botswana fell into two distinct categories – either that the Government is already making efforts to address the issue at hand, or that the situation cannot be changed because it would be against the will of the majority. Mr Seretse, for example, informed the Working Group that Botswana is currently considering whether to withdraw its reservation to the *Convention on the Rights of the Child* and that it will establish an NHRI ‘within a very foreseeable future’. In response to Botswana’s position on the latter, Germany commented that the Government has a leadership role to educate its people. While concurring with this, Mr Seretse stood firm and stressed that this ‘has to be a very careful exercise’ and that the Government ‘must not lead to destabilise’. The most perceptible impact of the UPR on Botswana may be in terms of the international assistance it receives to improve the situation of human rights on the ground.

### Adoption of the draft report

The Working Group adopted its draft report<sup>41</sup> on Botswana two days after the review, on 3 December 2008. Botswana reserved its position on all 26 of the recommendations made to it until the adoption of the outcome report by the Human Rights Council at its 10<sup>th</sup> session in March 2009.

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<sup>33</sup> Belgium, United Kingdom, Djibouti, Italy, Maldives, Ghana.

<sup>34</sup> France.

<sup>35</sup> Mexico, Philippines.

<sup>36</sup> Sweden, United Kingdom, Maldives.

<sup>37</sup> Italy.

<sup>38</sup> Australia.

<sup>39</sup> Ireland.

<sup>40</sup> Philippines.

<sup>41</sup> A/HRC/WG.6/3/BWA/L.1. States have two weeks to make editorial changes to the report.

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