BOTSWANA

Despite intensive and aggressive HIV/AIDS prevention campaigns, Botswana continues to have one of the world's highest rates of HIV/AIDS infection. Of the population age 18 months and older, 17.6% of the population was infected in 2008. The epidemic has a strong gender dimension, with HIV prevalence rates higher for females than males (20.4% compared to 14.2% respectively in 2008). There has, however, been a decline in both the number of children under age 15 newly infected with HIV and the number of deaths due to advanced AIDS among this same age group.

The status of women in Botswana is affected by the dual legal system, under which customary law is applied alongside common law. While reforms have been made to remove discriminatory provisions under the common law, discriminatory practices under customary law remain. Section 15 of the Constitution of Botswana provides the right to non-discrimination on the grounds of sex. However, this right does not apply to “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law.” Botswana became a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996 and has also acceded to the CEDAW Optional Protocol.

1. Discriminatory family code

Under the Marriage Act, which was amended in 2001, the legal age of marriage is 18 for both sexes, conditional on parental consent. Without parental consent, the legal age is 21. This age limit does not apply to marriages contracted under customary or religious law according to which there is no such limit; after reaching puberty and going through initiation rites, minors are deemed to be of marriageable age. Based on 2001 data (more recent data is not available), the United Nations reports that 5.3% of girls between 15 and 19 years of age were married, divorced or widowed. While constitutional law has precedence over customary law, this is not always ensured in practice. That said, most people choose to register their marriage under the Act (or as a “common law” marriage), so as to ensure they fully receive the legal benefits of marriage.

In the area of parental authority, the Abolition of Marital Power Act was introduced in 2004 to remove the legal principle of the husband as the head of the family and the sole guardian of children in the family. The common

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1 United Nations General Assembly Special Session on HIV and AIDS (UNGASS) (2012), p. 8
2 United Nations General Assembly Special Session on HIV and AIDS (UNGASS) (2012), p. 8
3 Section 15, Constitution of Botswana 1966
4 CEDAW (2010a), p. 11
5 CEDAW (2008), p. 114
6 United Nations Department of Economic and Social Affairs, Population Division (2013)
7 CEDAW (2010a), p. 5
8 US Embassy – Gaborone Botswana (n.d.)
law now provides that mothers and fathers have equal guardianship of their children. However, these provisions do not apply to customary or religious marriages, where women are considered legal minors.9

Women and men have equal inheritance rights under common law. The 2004 Abolition of Marital Power Act provides women with equal decision making on property management, including upon the death of a husband. Customary laws, however, provide that the principal heir is the eldest son. Eldest daughters can inherit but in such cases a male guardian must specifically allocate property.10 The Abolition of Marital Power provides women equal rights with regard to decision making on family property management, including upon the death of a husband although, again, this does not apply to customary or religious marriages where the eldest male son assumes the role as head of the household.11

In recent years the supremacy of the constitution over customary law has been tested by Botswana citizens. In May 2012, the case of Mmusi v Ramantele was heard by the Botswana High Court. The plaintiff, Edith Mmusi, and her sisters were challenging the Ngwaketse customary rule that only the youngest son can inherit the family home, on the basis that they contributed to its upkeep and expansion and that the rule violated their right to gender equality. The High Court held that Ngwaketse customary law was biased against women and as such unconstitutional. In September 2013, the Court of Appeal, the highest court in the country, definitively upheld this decision establishing it as a clear benchmark for future disputes in this area.12

With respect to divorce rights, both women and men have equal rights for seeking a divorce. However the law is discriminatory in requiring only women to be a resident of Botswana for three continuous years prior to seeking a divorce.13 Women may also lack the relevant information and resources needed to access civil courts and often remain subject to the rulings of courts that apply customary law.14

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Customary law authorises polygamy with the consent of the first wife, but it is not a common practice. However, the practice of paying bogadi (dowry) persists.15

The adolescent fertility rate of women aged 15-19 years in Botswana has been in constant decline since the late 1980s, from 23.7% in 1988 to 11.8% in 2006.16

2. Restricted physical integrity

The Domestic Violence Act prohibits domestic violence and provides civil remedies to victims, including the right to seek protection orders from courts. The Act defines domestic violence as "any controlling or abusive behaviour that harms the health or safety of the applicant" and lists the types of abuse that this includes, such as physical, sexual, emotional and economic.17 Some measures have been taken to ensure its implementation, including the training of law enforcement officials, the co-ordinating of police forms and procedures, and the

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9 US Embassy – Gaborone Botswana (n.d.)
10 CEDAW (2008), p. 116
11 CEDAW (2008), p. 35
12 Hallward-Driemeier and Hassan (2012), and Southern Africa Litigation Center (2012, 2013)
13 CEDAW (2008), p. 116
14 CEDAW (2010a), p. 3
15 CEDAW (2010a), p. 5
17 Botswana (2008)
establishment of two government-run shelters, although more work needs to be done to ensure full implementation of the Act.\textsuperscript{18}

Non-government organisations report that despite the new domestic violence legislation, law enforcement officers do not always treat domestic violence as serious. Further, some cases do not reach the courts as women often withdraw charges due to the expectation that they should remain silent about domestic violence and remain in an abusive relationship.\textsuperscript{19} The economic dependence of women is also a factor preventing women from reporting domestic violence. Finally, it is reported that women in rural areas are not necessarily aware of the legislation.\textsuperscript{20} The majority of violence committed against women in Botswana is domestic.\textsuperscript{21}

**Rape** is prohibited under the Penal Code with a minimum sentence of 10 years in prison, although the definition of rape excludes marital rape and the High Court has ruled that denial of bail to an individual who has been accused of rape is unconstitutional.\textsuperscript{22} No reference is made to rape in the Domestic Violence Act.

Attitudes that normalise and condone violence against women are an obstacle to ensuring women’s physical integrity. A study by the Women’s Affairs Department within the Ministry of Labour and Home Affairs reports that 23.1% of women and 37.1% of men strongly agree with the statement “I think if a wife does something wrong, her husband has the right to punish her.”\textsuperscript{23} The same study reports that 67.3% of women have experienced domestic violence in their lifetime; 29% experienced domestic violence within the past year.\textsuperscript{24}

There is no legislation that specifically addresses sexual harassment, although the Public Services Act (1999) makes sexual harassment in the public services a criminal offense. The act was amended in 2000 to provide the following definition: “unwanted, unsolicited or repeated verbal or sexual advance, sexually derogatory statement or sexually discriminatory remark made by a public officer to another, or by a person in authority over another in the public service.”\textsuperscript{25} Sexual harassment committed by a public official is punishable by termination with or without forfeiture of all retirement benefits, suspension with loss of pay and benefits for up to three months, reduction in rank or pay, or a reprimand.

**Female genital mutilation** (FGM) is reported to not exist in Botswana, although information on specific legislation against FGM is limited.\textsuperscript{26}

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Having control over the timing and spacing of children is another important aspect of women’s physical integrity. Recent data on unmet need for family planning is not available, but among women aged 15-49, the prevalence of modern contraceptive use has steadily risen, from 16% in 1984, to 40% in 1996 and to 52.8 in

\textsuperscript{18} CEDAW (2010b), p. 12
\textsuperscript{19} Botswana Council of Non-Governmental Organizations (2009), pp. 52-53
\textsuperscript{20} Botswana Council of Non-Governmental Organizations (2009), pp. 52-53
\textsuperscript{21} Gender Links Botswana (2010), p. 43
\textsuperscript{22} Gender Links Botswana (2010), p. 24
\textsuperscript{23} Ministry of Labour and Home Affairs and GL Botswana (2012), p. 15
\textsuperscript{24} Ministry of Labour and Home Affairs and GL Botswana (2012), p. 12
\textsuperscript{25} Oette (2011), p. 277
\textsuperscript{26} Inter-Parliamentary Union (n.d.)
Since the 1980s, the total fertility rate in Botswana has steadily declined to an estimated 2.41 births in 2013.\textsuperscript{28}

**Abortion** is available in Botswana only to save a woman’s life, physical and mental health and in the case of rape or foetal impairment.\textsuperscript{29}

### 3. Son bias

The male-to-female **sex ratio** at birth in 2013 is 1.03 and for the working age population (15-64 years old) is 1.03.\textsuperscript{30}

There is evidence to suggest that Botswana is a country of low concern in relation to **missing women** due to high gender-based AIDS mortality.

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**Infant mortality** rates are somewhat higher among males than females.\textsuperscript{31}

According to the World Economic Forum, in 2010 Botswana achieved gender parity in **educational attainment** in terms of literacy, primary school enrolment, secondary school enrolment and tertiary enrolment.\textsuperscript{32} However, other sources report that enrolments rates of girls in secondary and higher education remain low and dropout rates among girls are high, in part due to early pregnancies and marriages.\textsuperscript{33}

Gender disaggregated data on **vaccines** and immunisations shows equality between male and female children, as do data on the level of **work** expected of male and female children.\textsuperscript{34}

### 4. Restricted resources and assets

Under common law, there is no discrimination against women with regard to **land** ownership, nor do they need their husband’s consent when applying for loans. However, despite approval of the Abolition of Marital Power Act (introduced in 2004) and sensitisation of its provisions, marital power continues to apply to marriages under customary and religious law. Under the latter, women are considered legal minors and require their husband’s consent to buy or sell property and land, apply for bank loans, and enter into legally binding contracts.\textsuperscript{35}

The Abolition of Marriage Act grants women equal opportunity in obtaining loans, facilitating the acquisition of **non-land assets.**\textsuperscript{36} In addition, an amendment to the Deeds Registry Act in 1996 allows women to register immovable property in their own names.\textsuperscript{37} However, women’s lower socio-economic position and emphasis on land as collateral by the banks make women’s access to **financial services**, including bank loans, difficult.\textsuperscript{38}

\textsuperscript{27} World Bank (2011)  
\textsuperscript{28} CIA (2013)  
\textsuperscript{29} United Nations. www.un.org/esa/population/.../abortion/doc/botswa1.doc (accessed 06/05/2014)  
\textsuperscript{31} Central Statistics Office Government of Botswana (2009), p. 62  
\textsuperscript{32} World Economic Forum (2011), p. 84 and United Nations Statistics Division (2013b)  
\textsuperscript{33} CEDAW (2010a), p. 7  
\textsuperscript{34} Maundeni, T. and Nnyepi. M.S. (eds.),(2011), pp. 110-115  
\textsuperscript{35} CEDAW (2010b), p. 4  
\textsuperscript{36} CEDAW (2010b), p. 3  
\textsuperscript{37} CEDAW (2010b), p. 10  
\textsuperscript{38} Botswana Council of Non-Governmental Organizations (2009), p. 45
The government has introduced a number of programmes to address these barriers, including an economic empowerment programme, although non-governmental organisations report that there is a general lack of cultural acceptance of the role of women as entrepreneurs. Microcredits are available to both men and women, and banks often stipulate the consent of both spouses for loan applications. Emphasis has been placed on registering marriages, regardless of type, so as to ensure that women receive their rightful share should a divorce or separation occur.

5. Restricted civil liberties

The constitution guarantees freedom of movement and access to public space for women in Botswana. However, under customary law women’s rights to choose their residence and domicile are restricted. Non-governmental organisations report that there is a strong women’s movement, which has played a critical role in securing the rights of women in Botswana. While there exists a Women’s Affairs Department within the government (housed within the Ministry of Labour and Foreign Affairs), it has relatively few resources and is understaffed, making work on implementing legislation difficult. With regard to political voice more broadly, Botswana recently elected the first woman Speaker of the National Assembly, and women were appointed as Governor of the Bank of Botswana and as Attorney General. However, women make up only 7.9% of the Parliament and no quota system currently is in place. Women do make up a significant proportion of the public service sector (44% of all secretaries and senior managers), and in 2008 women joined the armed forces for the first time. Employment legislation has also been reformed to counter discriminatory provisions which previously banned women from working in mines, industry and agriculture at night.

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With respect to the representation of women in the media, non-governmental organisations report a mixed impact for gender equality, with the media playing a role in drawing attention to women’s rights issues but also reinforcing negative gender stereotypes. Women have equal rights to paid employment and equal pay; Botswana has ratified various International Labour Organization (ILO) Conventions including No.100 on equal pay and No.111 on discrimination. The principle of equal pay has yet, however, to be reflected in the Employment Act, and the non-discrimination clause of the latter applies only to termination of employment.

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39 CEDAW (2009), p. 18
40 Botswana Council of Non-Governmental Organizations (2009), p. 45
41 CEDAW (2010c), p. 9
42 CEDAW (2008), p. 26
43 CEDAW (2010a)
44 Botswana Council of Non-Governmental Organizations (2009), p. 54
45 CEDAW (2010a), p. 4
47 CEDAW (2010b), p. 2
48 CEDAW (2010c), p. 2
49 CEDAW (2010b) p. 2
50 Botswana Council of Non-Governmental Organizations (2009), p. 57
51 CEDAW (2008), p. 26 and CEDAW (2010a), p. 8
52 CEDAW (2010a), p. 8
In the public sector, women have a right to paid maternity leave of 12 weeks. Many women, however, are employed in the informal sector and hence do not have access to such benefits.

There are no explicit references to gender equality or women’s empowerment in the national ICT policy.
Sources


United Nations Committee on the Elimination of Discrimination against Women (CEDAW) (2010b) Summary record of the 920\textsuperscript{th} meeting CEDAW/C/SR.920, Geneva

United Nations Committee on the Elimination of Discrimination against Women (CEDAW) (2010c) Summary record of the 921\textsuperscript{st} meeting CEDAW/C/SR.921, Geneva


