

Women's rights protection instruments ratified by Botswana:

- **CEDAW:** ratified 1996
- **CEDAW Protocol:** ratified 2007
- **Maputo Protocol:** not signed

Ratify! While Botswana has ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and its Optional Protocol, Botswana has so far failed to ratify – or even sign – the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

Respect! The Coalition of the Campaign is particularly concerned about the following continued violations of women's human rights in Botswana: application of discriminatory customary laws; access to property; violence against women; access to decision-making positions; access to employment and health services; and the persistence of discriminatory stereotypes and patriarchal attitudes.

/ Some positive developments...

The Coalition of the Campaign acknowledges several developments in recent years aimed at improving respect for women's rights, including:

- The adoption of the Domestic Violence Act in 2008, which criminalises many acts of gender-based violence and provides some protection to the victims.
- The adoption of the Abolition of Marital Power Act in 2007 which abolished the common law principle of marital power, according to which the husband was the sole administrator of the family estate, and replaced it with the principle of equality of the spouses with respect to the joint matrimonial assets. However, customary and religious marriages are unaffected by these reforms. The Act also abolished the common law principle of unity of matrimonial residence and allows women to choose their place of residence.
- The adoption of the Children's Act 2009 (not yet in force) under which birth certificates contain the names of both parents.

/ But discrimination and violence persist

IN LAW

Botswana has a dual legal system, under which customary law is applied alongside common law. While there have been several reforms of discriminatory provisions under the common law, customary law remains particularly prejudicial to women's rights, perpetuating unequal power relations between men and women and strengthening stereotypes on the role of women in society.

Although the **Constitution of Botswana** contains a provision on non-discrimination, under clause 15(4)(c) the prohibition does not apply to: "adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law".

Customary law remains deeply discriminatory against women, in particular in the areas of family and property law. For example:

Marriage: While the Marriage Act was amended in 2001 to specify 18 years as the minimum age for marriage for both sexes with parental consent, many marriages take place under customary law according to which there is no such limit. The principle of marital power continues to apply to marriages under customary and religious law. Women are considered legal minors and require their husband's consent to buy or sell property and land, apply for a bank loans, and enter into legally binding contracts. Customary law authorises polygamy with the consent of the first wife, but it is not a common practice.

Separation: In case of separation, custody is traditionally granted to the husband's family. Mothers have only the right to visit. Although the Affiliation Proceedings Act of 1999 mitigated discrimination against children born out of wedlock, allowing women or care-givers to seek maintenance from the father; under customary law an unmarried mother has no right to receive such maintenance. The mother's own father has a duty to support the child.

Inheritance: A widow has no right to inheritance from her husband; all property passes to the eldest son. If the husband had no sons, his eldest daughter can inherit but in such case property is administered by her male guardian.

IN PRACTICE

• Violence

Violence against women remains highly prevalent. Although the Domestic Violence Act 2008 criminalised many forms of violence against women, under customary law and common rural practices men are perceived to have the right to "chastise" their wives. The majority of crimes are unreported and those complaints that are registered are rarely effectively investigated and prosecuted. In 2009, it was estimated by the United Nations that 3 in 5 women in Botswana have experienced some form of domestic violence. Botswana has also recently seen an increase in cases of murder of women by their partners.

By law, the minimum sentence for rape is ten years, however, the majority of perpetrators are not prosecuted or convicted. Marital rape is not criminalised. As a result post exposure prophylaxis (PEP) is not provided to married women who have been raped by their spouses. The Domestic Violence Act contains other significant gaps. For example, it empowers police officers to remove survivors of domestic violence from their residences but does not provide for the creation of shelters for victims of violence. Botswana currently has one such shelter, run by a NGO.

• Under-representation in political life

While the Southern African Development Community (SADC) Declaration on Gender and Development includes a commitment to achieving at least 30% representation of women in political and decision making structures by 2005, Botswana has failed to take effective measures to increase representation, for example by introducing a quota system. In 2008, there were only 7 women in the 61 seat National Assembly, 4 women in the 24 member cabinet and 4 women in the 35 seat House of Chiefs (an advisory upper chamber to the National Assembly). There were 3 female judges in

the 13 seats High Court. In the October 2009 elections, of a total of 117 candidates, only 10 were women and only two were elected to parliament.

• **Obstacles to access to education and employment**

Whilst some efforts have been made by the government to increase girls' access to education, girls continue to drop out of education due to pregnancy, early marriage or to earn money to support their families. Although the law prohibits sexual harassment, it remains a serious problem both in schools and in the workplace.

The Coalition of the Campaign calls on the authorities of Botswana to:

- **Reform or repeal all discriminatory statutory laws**, in conformity with CEDAW, including by abolishing article 15(4)(c) of the Constitution and widely disseminating statutory laws protecting women's rights.
- **Harmonise civil, religious and customary law**, in conformity with CEDAW and ensure that where conflicts arise between statutory legal provisions and customary or religious law, the statutory provisions prevail.
- **Eliminate discrimination against women concerning access to property**, including by raising awareness on land and property rights, especially of rural women, and expanding legal assistance to women wishing to file claims of discrimination.
- **Strengthen laws and policies to protect women from violence and support victims**, including by criminalising marital rape; establishing a legal aid system for women victims of violence; ensuring effective prosecution and punishment of offenders; implementing awareness-raising programmes for the general population; and establishing shelters for women victims of violence.
- **Increase women's representation in decision-making positions**, in conformity with CEDAW and the SADC Declaration on Gender and Development, including through the adoption of temporary special measures such as quotas.
- **Increase women's access to education and employment**, including by addressing socio-economic and cultural factors that impede access to education; and enforcing legislation on sexual harassment.
- **Ensure women's access to health services**, including by intensifying efforts to combat HIV/aids; providing PEP to women victims of rape, including marital rape; and reforming the Penal Code to decriminalise abortion in all circumstances.
- **Ensure women's access to justice**, including by adopting specific law to implement CEDAW into national legislation and enable its provisions to be invoked before the national courts; implementing training for all law enforcement personnel; ensuring that women are aware of their rights; providing access to free legal representation.
- **Eliminate discriminatory cultural practices and stereotypes**, including through awareness-raising programmes targeting women and men, traditional and community leaders and the media.
- **Ratify the Maputo Protocol and the SADC Protocol on Gender and Development.**
- **Implement all recommendations issued by the CEDAW Committee**, in February 2010.

Employment legislation has been reformed to remove some discriminatory provisions (in particular those prohibiting women from working in mines, industrial and agricultural work at night) and in 2008 women were authorised to serve in the military. Yet, women mainly occupy junior positions or are employed in the informal sector and thus have no access to social security benefits. Although there have been increases in women occupying high level positions in the private and public sector, they remain under represented (31% in 2007). Women's limited access to property and credit also form major obstacles to the establishment of businesses.

• Obstacles to access to health

The very high prevalence of HIV/ AIDS and the practice of unsafe abortions remain a major problem. The Criminal Code criminalises abortion, unless pregnancy is a result of rape, defilement, or incest, poses a physical or mental health risk to the pregnant woman, or if the unborn child would suffer from or later develop serious physical or mental abnormalities or disease.

• Obstacles to access to justice

Obstacles include a lack of information on women's rights and the laws protecting them, social pressure, a culture of silence and legal costs. Law enforcement agents have not been sufficiently trained on how to deal with cases of gender-based violence. Furthermore, there is no specific law implementing CEDAW in national legislation and enabling its provisions to be invoked before the courts.

PRINCIPAL SOURCES

- Focal Points: DITSHWANELO and Emang Basadi
- Shadow report submitted to the CEDAW Committee, Botswana Council of NGOs (BOCONGO), October 2009
- Inter Parliamentary Union, www.ipu.org
- Wikigender, www.wikigender.org

For more information on women's rights and the actions of the campaign in Botswana, see: www.africa4womensrights.org

THE CAMPAIGN FOCAL POINTS IN BOTSWANA

DITSHWANELO - The Botswana Centre for Human Rights



DITSHWANELO - The Botswana Centre for Human Rights is an NGO established in 1993. It is the only organisation in Botswana dealing with the full range of human rights issues. It works towards achieving gender equality by incorporating it in actions to advocate for legislative changes, providing information to the public and offering paralegal services.

www.ditshanelo.org.bw

EMANG BASADI



The EMANG BASADI Women's Association was established in 1986 to lobby against discriminatory laws. Emang Basadi seeks to raise awareness on women's rights through lobby, advocacy and capacity building and provides legal aid and counselling services for the empowerment of women.