



DITSHWANELO

**Botswana's Compliance with the Convention Against Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment
Suggested List of Issues Prior to Reporting Relating to the Death Penalty**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

The World Coalition Against the Death Penalty

and

DITSHWANELO—The Botswana Centre for Human Rights

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty.

The World Coalition Against the Death Penalty is a volunteer-based non-government organization committed to strengthen the international dimension of the fight against the death penalty. Established in 2002, its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

DITSHWANELO - The Botswana Centre for Human Rights is a human rights and an advocacy non-governmental organisation founded in 1993 in Botswana. It plays a key role in the promotion and protection of human rights. It seeks to affirm human dignity and equality irrespective of gender, sexual orientation, social status and political convictions. In pursuit of this, we seek to

inform, educate, train, research and counsel on issues of human rights, with specific reference to the marginalised and the disempowered. The group has and continues advocate for the abolition of capital punishment, as well as for the promotion and protection of indigenous and minority groups.

EXECUTIVE SUMMARY

1. This report addresses Botswana’s compliance with its international human rights obligations with respect to the death penalty. Botswana continues to retain the death penalty—including as a punishment for non-lethal crimes such as espionage, aiding the enemy, cowardly behaviour, failure to suppress mutiny, and terrorism—going against global trends and regional trends in Southern Africa.¹ Moreover, the law calls for mandatory death sentences in cases of murder, treason, instigating a foreigner to invade the country, and aggravated piracy. A court sentenced one person to death in 2024, after courts sentenced two people to death in 2023.² 16 people are currently on death row.³ Botswana’s retention of the death penalty is particularly concerning because the criminal justice system fails to respect the right to due process, officials use torture to obtain confessions, and detention conditions violate the prohibition against cruel, inhuman, or degrading treatment. The government appears to support the continued use of the death penalty,⁴ and legislation still authorizes the death penalty for premeditated murder without acceptable extenuating circumstances as well as other crimes that do not rise to the level of “most serious” under international human rights standards.⁵
2. This report recommends that Botswana abolish the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, improve detention conditions, and ensure that all State actors within the criminal justice system respect the due process and fair trial rights of all people charged with capital crimes.

Botswana fails to uphold its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I. Botswana authorities use unrepresentative public submissions regarding the constitutional review process as a pretext for retaining the death penalty yet fail to initiate public debates on the death penalty, while courts continue to sentence people to death and carry out executions using methods that are cruel and may rise to the level of torture (Concluding Observations paras. 23-24).

3. In its 2022 Concluding Observations, the Committee against Torture expressed several concerns about Botswana’s death penalty practices and offered several recommendations.⁶

¹ ReliefWeb, *Death sentences and executions 2021*, (23 May 2022). Available online at <https://reliefweb.int/report/world/death-sentences-and-executions-2021>.

² Amnesty International, *Death Sentences and Executions 2023*, (29 May 2024). Available online at <https://www.amnesty.org/en/documents/act50/7952/2024/en/>; Mmegionline, *DITSHWANELO criticizes insurance killer death sentencing*, (29 May 2024). Available online at <https://www.mmegi.bw/news/ditshwanelo-criticises-insurance-killer-death-sentencing/news>.

³ Mmegionline, *DITSHWANELO criticizes insurance killer death sentencing*, (29 May 2024). Available online at <https://www.mmegi.bw/news/ditshwanelo-criticises-insurance-killer-death-sentencing/news>.

⁴ Botswana carried out its most recent execution in 2021. *DITSHWANELO Press Statement on the execution of Phemelo Botogeleng*, The Botswana Gazette, June 17, 2021, <https://www.thegazette.news/editorial/ditshwanelo-press-statement-on-the-execution-of-phemelo-botogeleng/>.

⁵ Mushininga, Cecilia (2023). *A History of the death penalty in Botswana, c. 1891-2021*. Stellenbosch University, 192; Government of Botswana, Report of Presidential Mission of Inquiry into the Review of Constitution of Botswana (Sept. 2022), ¶ 91.

⁶ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶¶ 23-24.

The Committee identified these recommendations for follow-up,⁷ and Botswana submitted its follow-up report in 2023.⁸ The following subsections review each recommendation and Botswana's responses in turn.

Use of the death penalty and the mandatory death penalty

4. The Committee first expressed concern that Botswana continues to implement the death penalty and maintains laws that mandate imposition of the death penalty.⁹ The Committee recommended that Botswana commute all death sentences and establish a moratorium on the death penalty, with a view toward its eventual abolition.¹⁰
5. In response to this recommendation, Botswana's follow-up report asserts that Botswana's death penalty practices comply with international human rights standards and that authorities cannot commute death sentences except through the process set forth in Section 53 of the Constitution for the prerogative of mercy.¹¹ It also asserts that because of this provision, Botswana "is . . . currently not in a position to establish a moratorium on the death penalty."¹²
6. Botswana's follow-up also states that "the death penalty is not a mandatory sentence in Botswana" because "rigorous legal processes are followed before a decision to impose the death penalty is taken."¹³ It states that "courts consider the personal circumstances of the offender which may lead to the imposition of a lesser sentence," and that "most cases are coupled with extenuating circumstances, which reduce the moral blameworthiness of the perpetrator."¹⁴
7. The Penal Code of Botswana allows the death penalty for an expansive list of crimes, many of which do not rise to the level of "most serious crimes" under Article 6(2) of the ICCPR. The law authorizes the death penalty for non-lethal crimes, such as espionage, aiding the enemy, cowardly behaviour, and mutiny and failure to suppress mutiny,¹⁵ and the law mandates death sentences for people convicted of murder, treason, instigating a foreigner

⁷ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 45.

⁸ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶¶ 10-15.

⁹ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23.

¹⁰ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 24.

¹¹ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 10.

¹² Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 10.

¹³ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 11.

¹⁴ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 11.

¹⁵ Cornell Center on the Death Penalty Worldwide Database, *Botswana Country Profile*, (2020). Available online at <https://deathpenaltyworldwide.org/database/>; ; Kwame Frimpong, National Coordinator, British Institute of International and Comparative Law Death Penalty Project, Botswana, *The Death Penalty in Botswana* (undated), https://www.biicl.org/files/2193_country_report_botswana_frimpong.pdf

to invade the country, aggravated piracy,¹⁶ and terrorism resulting in death.¹⁷ Despite this long list of capital crimes, reports suggest that in practice courts sentence people to death only for the crime of murder.¹⁸

8. Botswana courts continue to sentence people to death. In 2023, courts sentenced two people to death¹⁹ and in 2024 a court sentenced another person to death.²⁰ As of the end of 2023, at least 15 people were under sentence of death.²¹ Botswana's most recent execution took place in 2021.²²

Failure to provide execution notices

9. Second, the Committee expressed “urgent concern regarding the manner in which death sentences have been carried out, which in and of itself constitutes cruel, inhuman or degrading treatment.”²³ The Committee identified several concerns: First, “death sentences are carried out without providing advance notice of the date and time of executions either to the individuals on death row or to their families or representatives, resulting in the individuals not knowing at any moment whether their execution is imminent, and the individuals and their families unable to have a final meeting.”²⁴
10. Regarding this concern, Botswana's follow-up report contends without further explanation that its practice of not providing execution notices “is done on public security and public interest considerations.”²⁵ When DITSHWANELO—The Botswana Centre for Human Rights requested information about the outcome of a clemency process and the date of execution of a particular case, prison officials informed them that this information was classified.²⁶ DITSHWANELO—The Botswana Centre for Human Rights has observed that

¹⁶ Penal Code of Botswana (Amendment) Act, Cap. 08:01 2018; Kwame Frimpong, National Coordinator, British Institute of International and Comparative Law Death Penalty Project, Botswana, *The Death Penalty in Botswana* (undated), https://www.biicl.org/files/2193_country_report_botswana_frimpong.pdf

¹⁷ Counter-Terrorism Act, 2014, sec. 3(2)(a) (2014), https://counterterrorlaw.info/assets/downloads/Botswana_2014_Counter-Terrorism_Act.pdf.

¹⁸ Mmegionline, *Child-killer condemned to death*, (19 December 2023). Available online at <https://www.mmegi.bw/news/child-killer-condemned-to-death/news>. Mmegionline, *Insurance killer gets sentence date*, (29 April 2024). Available online at <https://www.mmegi.bw/news/insurance-killer-gets-sentence-date/news>.

¹⁹ Amnesty International, *Death Sentences and Executions 2023*, (23 May 2024). Available online at <https://www.amnesty.org/en/documents/act50/7952/2024/en/>.

²⁰ Mmegionline, *DITSHWANELO criticizes insurance killer death sentencing*, (29 May 2024). Available online at <https://www.mmegi.bw/news/ditshwanelo-criticises-insurance-killer-death-sentencing/news>.

²¹ Amnesty International, *Death Sentences and Executions 2023*, (29 May 2024), at 35. Available online at <https://www.amnesty.org/en/documents/act50/7952/2024/en/>; News24, *Pro-death-penalty Botswana appeals death penalty for citizen busted for drugs in Bangladesh*, (31 May 2024). Available online at <https://www.news24.com/news24/africa/news/pro-death-penalty-botswana-appeals-death-penalty-for-citizen-busted-for-drugs-in-bangladesh-20240531>.

²² DITSHWANELO *Press Statement on the execution of Phemelo Botogeleng*, The Botswana Gazette, June 17, 2021, <https://www.thegazette.news/editorial/ditshwanelo-press-statement-on-the-execution-of-phemelo-botogeleng/>.

²³ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23.

²⁴ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23.

²⁵ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 13.

²⁶ Elizabeth Maxwell & Alice Mogwe, *In the Shadow of the Noose* (2006, publication by DITSHWANELO—The Botswana Centre for Human Rights), at 106.

one consequence of this practice of refusing to provide execution notices is that it denies the person under sentence of death the right to access protection of the law under the African Charter on Human and Peoples' Rights.²⁷

11. Concerns about failure to provide execution notices are longstanding. For example, in Botswana's second-cycle Universal Periodic Review (UPR) in 2013, Uruguay recommended that Botswana "provide information to concerned families, so that they can know in advance the date of execution of their relatives."²⁸ At the time, Botswana supported this recommendation,²⁹ but in a UPR mid-term follow-up report, DITSHWANELO—The Botswana Centre for Human Rights reported that authorities took no action implement it.³⁰
12. Amnesty International reports that the conditions under which authorities carry out executions amount to cruel, inhuman and degrading punishment, noting that "[t]he date and time of the set execution is not communicated [to the person sentenced to death] in advance," people on death row are housed in a separate location called "Cell 10," and are transported to a "death watch" cell at 6:00 am the day before they are executed "where they spend the last 24 hours of their life." Amnesty International also recalled that "[f]ailure to provide individuals on death row with timely notification about the date of their execution constitutes, as a rule, a form of ill-treatment, which renders the subsequent execution contrary to article 7 of the [International Covenant on Civil and Political Rights]."³¹
13. After its 2022 visit to Botswana, the Working Group on Arbitrary Detention expressed its concern that authorities notify family members of the execution only after authorities have carried out the execution.³²

Method of execution

14. Third, the Committee stated that "[t]he fact that hanging is still being used as a method of execution" was further evidence of cruelty.³³ DITSHWANELO—The Botswana Centre for Human Rights has raised similar concerns, observing that "medical evidence shows that hanging [i]s an inhumane method of execution."³⁴
15. Regarding these concerns, Botswana's follow-up report simply states that "the method of carrying out the death penalty is implemented in accordance with Section 26(1) of the Penal

²⁷ Elizabeth Maxwell & Alice Mogwe In the Shadow of the Noose (2006) (published by ditsh) p. 107

²⁸ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/23/7, ¶ 115.60.

²⁹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/23/7, ¶ 115 ("The recommendations listed below have been examined by Botswana and enjoy its support.").

³⁰ Botswana: Civil Society Universal Periodic Review (UPR) Mid-Term Review Stakeholder Report, Second UPR Cycle (June 2015), at 22, https://upr-info.org/sites/default/files/documents/2017-12/civil_society_universal_periodic_review_upr_mid-term_report.pdf.

³¹ Amnesty International, *Botswana Submission to the UN Committee Against Torture*, 74th Session, (12-29 July 2022). Available online at <https://www.amnesty.org/en/wp-content/uploads/2023/01/AFR1557622022ENGLISH.pdf>.

³² Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 10.

³³ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23.

³⁴ Elizabeth Maxwell & Alice Mogwe, In the Shadow of the Noose (2006, publication by DITSHWANELO—The Botswana Centre for Human Rights), at 99.

Code,” and “[i]n order to ensure that the dignity of the prisoner is preserved and not undermined, Botswana carries out the death penalty in accordance with set protocols and processes, and with extreme care.”³⁵

16. Amnesty International has similarly recalled that the African Court’s judgment found that execution by hanging “inevitably encroaches upon dignity in respect of the prohibition of torture and cruel, inhuman and degrading treatment” because of the inherent suffering involved when using this method of execution.³⁶

Custody of the bodies of people who have been executed

17. Fourth, the Committee observed that the fact that “the bodies of those executed are not handed over to their families for burial further exacerbates the cruelty of the situation.”³⁷ The Committee referenced a 2019 African Court of Human and Peoples’ Rights decision, which found that these factors “inevitably encroached upon dignity in respect to the prohibition of torture and cruel, inhuman and degrading treatment.”³⁸

18. Regarding this concern, Botswana’s follow-up report simply states that “Section 120(4) of the prisons Act and Regulation 79 of the Prisons Regulations provide the legal basis upon which this practice [regarding custody of the bodies of people who have been executed] is maintained.”³⁹

Detention conditions

19. Fifth, the Committee urged Botswana authorities “to take these concerns into consideration as a matter of priority” and to ensure “that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading treatment.”⁴⁰

Public opinion

20. In defending its use of the death penalty, authorities contend that “the majority of the submissions received by the Presidential Commission of Inquiry into the Review of the Constitution of Botswana had supported the retention of the death penalty.”⁴¹

21. Botswana has consistently failed to uphold its commitment to hold public debates on the death penalty despite pressure from international mechanisms and from civil society within

³⁵ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶¶ 12, 15.

³⁶ African Court on Human and Peoples’ Rights, *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015, para.119, (28 November 2019). Available online at <https://www.african.court.org/cpmt/storage/app/uploads/public/5f5/63d/f99/5f563df99fbc7507699184.pdf>.

³⁷ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23.

³⁸ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 23; see African Court on Human and Peoples’ Rights, *Ally Rajabu and Others v. United Republic of Tanzania*, Application No. 007/2015, para.119, (28 November 2019). Available online at <https://www.african.court.org/cpmt/storage/app/uploads/public/5f5/63d/f99/5f563df99fbc7507699184.pdf>.

³⁹ Committee Against Torture, *Information received from Botswana on follow-up to the concluding observations on its initial report*, UN Doc. CAT/C/BWA/FCO/1 (Aug. 25, 2023), ¶ 14.

⁴⁰ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 24.

⁴¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/54/9 (June 23, 2023), ¶¶ 14, 125.

Botswana. As early as 2013, in Botswana’s second-cycle UPR, Uruguay recommended that Botswana “[h]old a public debate on the death penalty, in which all aspects of the issue should be highlighted in a holistic manner.”⁴² At the time, Botswana supported this recommendation,⁴³ but in a UPR mid-term follow-up report, DITSHWANELO—The Botswana Centre for Human Rights reported that “[t]he Government of Botswana has not done anything in relation to [the] recommendation to hold a public debate around the issue of the death penalty.”⁴⁴ The organization further observed that “[t]here is a call by civil society for a public survey/referendum on the death penalty, as no survey/referendum has been conducted since 1997. Without this, it is not possible to definitely state that the majority of Botswana still want the death penalty in Botswana.”⁴⁵ In presenting its National Report during its third UPR in 2018, the Botswana government delegation stated that “the Government intended to hold public debates on the death penalty and would welcome technical and financial assistance in carrying out that exercise.”⁴⁶ At that time, Botswana supported Rwanda’s recommendation to “[t]ake active steps to ensure that public consultations on the abolition of the death penalty, including on its abolition, are held.”⁴⁷

22. In its March 2023 National Report for the Universal Periodic Review, Botswana stated that “[t]he Draft Comprehensive Human Rights Strategy and National Action Plan, which will be implemented in 2023 is expected to include the death penalty public debates under the National Action Plan.”⁴⁸ As DITSHWANELO—The Botswana Centre for Human Rights, noted in a press statement for World Day Against the Death Penalty on October 10, 2023, there was no public information available on progress relating to the death penalty and CHRSNAP.⁴⁹ As of December 2024, no further public information appears available.
23. Even though researchers have not carried out any authoritative assessment of public opinion regarding the death penalty, officials frequently rely on their perceptions of “public will” to justify retaining the death penalty and continuing executions. In connection with his pledge on behalf of the government to assist the family of a Motswana woman

⁴² Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/23/7, ¶ 115.59.

⁴³ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/23/7, ¶ 115 (Mar. 22, 2013) (“The recommendations listed below have been examined by Botswana and enjoy its support.”).

⁴⁴ Botswana: Civil Society Universal Periodic Review (UPR) Mid-Term Review Stakeholder Report, Second UPR Cycle (June 2015), at 22, https://upr-info.org/sites/default/files/documents/2017-12/civil_society_universal_periodic_review_upr_mid-term_report.pdf.

⁴⁵ Botswana: Civil Society Universal Periodic Review (UPR) Mid-Term Review Stakeholder Report, Second UPR Cycle (June 2015), at 22, https://upr-info.org/sites/default/files/documents/2017-12/civil_society_universal_periodic_review_upr_mid-term_report.pdf.

⁴⁶ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/38/8, ¶ 20 (Apr. 11, 2018).

⁴⁷ Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Botswana*, UN Doc. A/HRC/38/8, ¶ 127.28 (Apr. 11, 2018); *id.* ¶ 127 (“The recommendations listed below have been examined by Botswana and enjoy the support of Botswana.”).

⁴⁸ Human Rights Council, *National Report Submitted Pursuant to Human Rights Council Resolutions 5/1 and 16/21*, UN Doc. A/HRC/WG.6/43/BWA/1, ¶ 118 (Mar. 17, 2023).

⁴⁹ DITSHWANELO - The Botswana Centre for Human Rights, *DITSHWANELO Press Statement on the World Day against the Death Penalty, 10 October 2023*, (10 October 2023). Available online at <https://www.facebook.com/ditshwanelobotswana/posts/ditshwanelo-press-statement-on-the-world-day-against-the-death-penalty-10-octobe/720728846755231/>.

sentenced to death in Bangladesh in 2024, the former president, His Excellency Dr. Mokgweetsi Erik Keabetswe Masisi, “highlighted that, in Botswana, there was general support for the death penalty on issues of a serious nature - such as drug smuggling,”⁵⁰ President Masisi further stated, “I must also remind you that, even in our consultation of the constitutional review, Botswana expressed a similar view to the country where she is being sentenced. There are some strong sentiments out there about involvement in the drug trade.”⁵¹

24. Recent election results may signal an openness to moving away from the death penalty. In October 2024, Botswana citizens voted the Umbrella for Democratic Change (UDC) into power over the Botswana Democratic Party, which had been in power since independence in 1966.⁵² UDC leader Duma Boko is a former human rights lawyer and the UDC now has an outright majority in parliament.⁵³ Prior to his election to office, His Excellency Advocate Duma Gideon Boko, President of the Republic of Botswana, had consistently opposed the death penalty and promised to abolish the death penalty,⁵⁴ but abolition of the death penalty and other reforms of the criminal justice system are not part of the UDC Manifesto for the 2024 Botswana Elections.⁵⁵ President Boko did not mention the death penalty or reforms of the criminal justice system in his State of the Nation address to Parliament on 19 November 2024.⁵⁶ It should be noted that Minister Phenyio Butale, the Minister of International Relations, has stated that the government will apply a human rights-based foreign policy. He said by prioritizing human rights in its foreign relations, Botswana reaffirmed its dedication to democratic principles, justice, and equality and such a framework would allow the country to engage with other nations from a position of integrity and conviction.⁵⁷ On 17 December 2024, the United Nations General Assembly adopted the 10th resolution calling for a global moratorium on the use of the death

⁵⁰ News24, *Pro-death-penalty Botswana appeals death penalty for citizen busted for drugs in Bangladesh*, (31 May 2024). Available online at <https://www.news24.com/news24/africa/news/pro-death-penalty-botswana-appeals-death-penalty-for-citizen-busted-for-drugs-in-bangladesh-20240531>.

⁵¹ News24, *Pro-death-penalty Botswana appeals death penalty for citizen busted for drugs in Bangladesh*, (31 May 2024). Available online at <https://www.news24.com/news24/africa/news/pro-death-penalty-botswana-appeals-death-penalty-for-citizen-busted-for-drugs-in-bangladesh-20240531>.

⁵² Wycliffe Muia & Damian Zane, *Botswana ruling party rejected after 58 years in power*, BBC News, Nov. 1, 2024, <https://www.bbc.com/news/articles/c238n5zr51yo>.

⁵³ Wycliffe Muia & Damian Zane, *Botswana ruling party rejected after 58 years in power*, BBC News, Nov. 1, 2024, <https://www.bbc.com/news/articles/c238n5zr51yo>.

⁵⁴ *Will Boko abolish death penalty?* MmegiOnline, Nov. 12, 2024, <https://www.mmegi.bw/news/will-boko-abolish-death-penalty/news>.

⁵⁵ Umbrella for Democratic Change, *Inclusive Growth, Quality Lives: UDC Manifesto for 2024 Botswana Elections* (on file with The Advocates for Human Rights).

⁵⁶ Advocate Duma Gideon Boko, President of the Republic of Botswana, *State of the Nation Address to the First Meeting of the First Session of the Thirteenth Parliament: Theme: Transforming Botswana for inclusive growth* (19 Nov. 2024, Gaborone) (on file with The Advocates for Human Rights).

⁵⁷ *Butale Emphasises Human Rights Approach in Foreign Policy*, Botswana Daily News, Dec. 3, 2024, <https://dailynews.gov.bw/news-detail/83493>.

penalty.⁵⁸ Botswana voted against it,⁵⁹ in seeming contradiction with the government’s stated human rights-based approach.⁶⁰

25. The UDC has committed to establishing a new constitution, starting with “a comprehensive review and public engagement (people-driven, participatory, inclusive, and transparent) for a new constitution crafted to offer our nation an inclusive government system.”⁶¹ It is not clear whether these efforts, however, might be constrained by the findings of the Presidential Commission of Inquiry into the Review of the Constitution of Botswana under former President Masisi.⁶² He established the Commission of Inquiry without engaging in any prior civil society consultation, and the Commission sent its findings directly to President Masisi without involving Parliament.⁶³ President Masisi’s cabinet, again without engaging in any civil society consultations, subsequently released a White Paper accepting some Commission recommendations and rejecting others.⁶⁴ The Commission’s recommendations included proposals to expand the death penalty to “drug lords and drug traffickers”⁶⁵ and “persons convicted of raping children under 12 years.”⁶⁶ The White Paper and subsequent Constitutional Amendment Bill of 2024 (which failed to pass on the 4th of October 2024) did not propose to change the status of the death penalty in Botswana law.⁶⁷
26. DITSHWANELO—The Botswana Centre for Human Rights, along with several other civil society organizations, has pushed to sensitize the public about proposed constitutional reforms.⁶⁸ With UDC’s parliamentary majority and President Boko’s leadership, the time is ripe for reopening the constitutional review process to begin an open dialogue with civil society and to initiate debates on the need for a moratorium on executions and progress

⁵⁸ World Coalition Against the Death Penalty, *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*, Dec. 20, 2024, <https://worldcoalition.org/2024/12/20/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/>

⁵⁹ World Coalition Against the Death Penalty, *Two thirds of the United Nations General Assembly vote in favor of the 10th resolution for a moratorium on the death penalty*, Dec. 20, 2024, <https://worldcoalition.org/2024/12/20/two-thirds-of-the-united-nations-general-assembly-vote-in-favor-of-the-10th-resolution-for-a-moratorium-on-the-death-penalty/>

⁶⁰ See *Butale Emphasises Human Rights Approach in Foreign Policy*, Botswana Daily News, Dec. 3, 2024, <https://dailynews.gov.bw/news-detail/83493>.

⁶¹ Umbrella for Democratic Change, *Inclusive Growth, Quality Lives: UDC Manifesto for 2024 Botswana Elections*, at 13 (on file with The Advocates for Human Rights).

⁶² Government of Botswana, Report of Presidential Mission of Inquiry into the Review of Constitution of Botswana (Sept. 2022); *Will Boko abolish death penalty?* MmegiOnline, Nov. 12, 2024, <https://www.mmegi.bw/news/will-boko-abolish-death-penalty/news>.

⁶³ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

⁶⁴ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

⁶⁵ Government of Botswana, Report of Presidential Mission of Inquiry into the Review of Constitution of Botswana (Sept. 2022), ¶ 91 (“The Commission recommends an amendment to the Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act should be amended to include a provision prescribing the death penalty for drug lords and drug traffickers.”).

⁶⁶ Government of Botswana, Report of Presidential Mission of Inquiry into the Review of Constitution of Botswana (Sept. 2022), ¶ 61; *Will Boko abolish death penalty?* MmegiOnline, Nov. 12, 2024, <https://www.mmegi.bw/news/will-boko-abolish-death-penalty/news>.

⁶⁷ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

⁶⁸ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

toward abolition of the death penalty.⁶⁹ President Boko promised to launch a new constitutional review process in the first six months of his term.⁷⁰

II. People charged with capital crimes face torture to coerce confessions (Concluding Observations paras. 31-32).

27. The Committee in 2022 expressed concern “about reports of excessive use of force by police against suspects to extract confessions,” despite provisions purporting to render confessions obtained by torture inadmissible. The Committee also observed that the relevant provisions (sections 228 and 231 of the Criminal Procedure and Evidence Act) did not automatically render inadmissible coerced statements that did not constitute confessions.⁷¹
28. The Committee recommended that Botswana “review its legislation in order to ensure that any statement—regardless of whether it constitutes a confession—that is made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”⁷²
29. During its 2022 visit to Botswana, the Working Group on Arbitrary Detention received testimonies about the use of excessive force by police to extract confessions, “including beatings, electric shocks and the suffocation of suspects.”⁷³ Moreover, when people raised the issue of such treatment with magistrates, the court often ordered medical examinations but they never took place and the cases moved forward without further addressing the issue.⁷⁴ The Working Group noted that any such treatment could amount to torture and ill-treatment in violation of international law and may lead to arbitrary detention.⁷⁵
30. The Working Group also expressed concern that lawyers are not allowed to be present during interrogations, particularly in light of the numerous testimonies it received related to the use of excessive force to obtain confessions.⁷⁶
31. DITSHWANELO—The Botswana Centre for Human Rights has noted that physical mistreatment violates both the right to a fair trial and the right to be free from torture and cruel, inhuman, and degrading treatment or punishment.⁷⁷
32. A survey conducted by Afrobarometer in 2022, “established that ‘significant proportions of the population say the police ‘often’ or ‘always’ engage in improper practices, including

⁶⁹ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

⁷⁰ Telephonic interview with DITSHWANELO—The Botswana Centre for Human Rights, Dec. 11, 2024.

⁷¹ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 31.

⁷² Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶ 32.

⁷³ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 34.

⁷⁴ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 34.

⁷⁵ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 34.

⁷⁶ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 35.

⁷⁷ Elizabeth Maxwell & Alice Mogwe, *In the Shadow of the Noose* (2006, publication by DITSHWANELO—The Botswana Centre for Human Rights), at 91.

using excessive force in dealing with criminal suspects (41%) . . . [and] participating in illegal activities (35%).”⁷⁸ Experts express concern about the absence of independent oversight with respect to police misconduct, especially because government officials appear to condone such conduct; police accused of wrongdoing are often officially pardoned after being convicted.⁷⁹

III. Detention conditions continue to be inadequate (Concluding Observations paras. 33, 34(a), (b)).

33. The Committee in its 2022 Concluding Observations expressed concern about overcrowding in prisons and other detention conditions and recommended that Botswana “[s]eek to eliminate overcrowding in penitentiary institutions and other detention facilities through the application of non-custodial measures” and “[i]ntensify efforts to bring conditions of detention into line with the Nelson Mandela Rules.”⁸⁰
34. When the Working Group on Arbitrary Detention visited Botswana in 2022 it determined that “poor detention conditions are prevalent in police cells and prisons in Botswana.”⁸¹ Specifically, the Working Group noted inadequate—or completely absent—bedding, insufficient food, and an unreasonable restraint on physical and purposeful activity.⁸² The Working Group also stated that Botswana must improve the condition of running water and sanitation for those conditions to be deemed adequate.⁸³ Foreign nationals held in Botswana prisons are subject to even worse conditions, as they do not have family to provide them with necessities like clothes, food, and medication.⁸⁴
35. The Working Group further observed that “family visits are closely supervised by a prison officer” and that “detainees have no access to phones and must request that prison officers communicate any messages to their family or lawyer.”⁸⁵ The Working Group received information that prison officers often ignored these requests and posited that such conditions are likely to prevent prisoners from reporting abuse or contacting their legal representatives.⁸⁶

⁷⁸ Kebonyengwana T. O. Mashaka, Ikayeng S. Malila and Ishmael Mugari, *Police oversight in the Republic of Botswana: Challenges and prospects*, African Security Review 2024, Vol. 33, No. 4, 440, (26 August 2024). Available online at <https://doi.org/10.1080/10246029.2024.2393119>.

⁷⁹ Kebonyengwana T. O. Mashaka, Ikayeng S. Malila and Ishmael Mugari, *Police oversight in the Republic of Botswana: Challenges and prospects*, African Security Review 2024, Vol. 33, No. 4, 440, (26 August 2024). Available online at <https://doi.org/10.1080/10246029.2024.2393119>.

⁸⁰ Committee Against Torture, *Concluding observations on the initial report of Botswana* (23 August 2022), U.N. Doc. CAT/C/BWA/CO/1, ¶¶ 33, 34(b).

⁸¹ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 57.

⁸² Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 57.

⁸³ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 57.

⁸⁴ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 57.

⁸⁵ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 60.

⁸⁶ Human Rights Council, *Report of the Working Group on Arbitrary Detention on its mission to Botswana* (11 July 2023), U.N. Doc. A/HRC/54/51/Add. 1, ¶ 60.

36. In *DITSHWANELO v. Attorney General of Botswana*, Judge Dibotelo recognized that, when with their lawyer, people under sentence of death have the right to private consultation within sight but out of hearing of prison officers.⁸⁷

IV. Suggested questions for the Government of Botswana

37. The coauthors suggest the following questions and requests for information for the Government of Botswana:

- Has the State Party taken any steps to re-consider its reservation to Article 1 of the Convention?
- Describe the steps that authorities have taken since April 2023 to implement the Comprehensive Human Rights Strategy and National Action Plan’s provisions calling for death penalty debates and any forward-looking timeline for implementing the strategy. Is the death penalty part of the CHRSNAP agenda?
- Please provide comprehensive data since 2022 regarding the number of people charged with capital crimes, the number of people sentenced to death, and the number of people under sentence of death, disaggregated by sex, nationality, occupation at the time of arrest, date of arrest and date of conviction, crime of conviction, relationship to any codefendants or victims, status of any appeals or requests for clemency, and current location.
- Provide an update on the current administration’s constitutional review process and plans to engage with civil society in that process, particularly as regards the death penalty. How will this constitutional review process differ from its predecessor?
- What initiatives are in place to review the Penal Code and any draft laws to amend it to ensure that the death penalty is limited to the most serious crimes, defined as crimes entailing an intentional killing committed by the person to be sentenced to death?
- What efforts are underway to clarify to judges, prosecutors, and defense attorneys that the Penal Code under no circumstances mandates that a court sentence a person to death? Under what procedures may a person sentenced to death under a mandatory scheme receive commutation of that sentence pending any resentencing hearing? What procedures are in place to hold such resentencing hearings and to ensure that all affected persons have access to counsel to gather and present evidence in mitigation? How many persons have received resentencing hearings and what has been the result of those hearings? How many persons have yet to receive resentencing hearings?
- Describe the “public interest and public security considerations” that justify not providing advance notice of executions.

⁸⁷ *DITSHWANELO v. Attorney General of Botswana* MISCRA Case No. 2 of 1999 [21 Apr. 1999] at 14-15 (DITSHWANELO on behalf of Tlhabologang Phetsolo Maauwe and Gwara Brown Motswetla). *See also* Elizabeth Maxwell & Alice Mogwe, *In the Shadow of the Noose* (2006, publication by DITSHWANELO—The Botswana Centre for Human Rights), at 55.

- What steps has Botswana taken to address impunity for public officials accused of torture or other forms of ill-treatment?
- Under what circumstances may a person suspected of committing a capital crime have legal representation present during questioning?
- How do courts ensure that confessions or other evidence obtained through the use of torture or other forms of ill-treatment are not used to convict the accused individual?
- What measures has Botswana taken to implement the Committee's recommendation to amend sections 228 and 231 of the Criminal Procedure and Evidence Act to ensure that all statements extracted through torture are automatically excluded from evidence, regardless of whether such statements are confessions?
- For the executions carried out since 2020, did prison officials return the deceased person's body to their family? If not, explain the reason for this practice.
- What steps have authorities taken to create appropriate channels for people in detention to make allegations of torture and other ill-treatment? Have authorities formed an independent oversight mechanism to investigate such claims and/or review the Botswana Police Internal Affairs Unit/Branch?
- What steps have authorities taken to reduce overcrowding in detention facilities and increase access to adequate bedding and other necessities?
- What measures are in place to ensure that all persons in detention are able to communicate with and have access to visits from family members and lawyers?
- What measures has Botswana implemented to ensure that all persons on death row, as well as their family members and lawyers, have advance notice of any execution?
- What steps, if any, has Botswana taken to improve conditions in prisons for all persons, including people on death row, in accordance with the Nelson Mandela Rules?
- What steps has Botswana taken to implement the recommendations of the Working Group on Arbitrary Detention regarding coerced confessions and detention conditions?
- What is the status of efforts to review the Prisons Act's provisions that authorize the use of corporal punishment? Is a moratorium on corporal punishment in prisons currently in place? What procedures are in place to ensure that all prison staff are compliant with any moratorium and any subsequent changes in the Prisons Act regarding corporal punishment?
- What efforts will Botswana authorities make to engage with civil society to explore alternatives to addressing the causes of anti-social behavior that may result in people committing capital offenses without resorting to the death penalty?