



Asamblea General

Distr. general
11 de julio de 2023
Español
Original: inglés

Consejo de Derechos Humanos

54º período de sesiones

11 de septiembre a 6 de octubre de 2023

Tema 3 de la agenda

Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Botswana

Informe del Grupo de Trabajo sobre la Detención Arbitraria relativo a su visita a Botswana*

Resumen

El Grupo de Trabajo sobre la Detención Arbitraria realizó una visita a Botswana del 4 al 15 de julio de 2022 por invitación del Gobierno. El Grupo de Trabajo identificó avances positivos, entre ellos los siguientes: la ratificación de instrumentos internacionales de derechos humanos; la ampliación del mandato de la Defensoría del Pueblo para incluir un mandato de derechos humanos y funciones de investigación; la elaboración de una estrategia y un plan de acción nacionales en materia de derechos humanos; la despenalización de las relaciones sexuales consentidas entre adultos del mismo sexo; los esfuerzos para que la revisión de la Constitución sea inclusiva y se celebren consultas con diversas partes interesadas de todo el país; y la aplicación coherente de la reducción de las penas.

Al mismo tiempo, el Grupo de Trabajo observó que había problemas en el sistema de justicia penal, como la excesiva duración de la prisión preventiva, la gravedad de las penas que pueden imponer los líderes tradicionales (*dikgosi*), la falta de asistencia letrada en los casos penales en los que no cabe imponer la pena de muerte, dilaciones indebidas en las actuaciones penales y las penas desproporcionadas y de imposición obligatoria. El Grupo de Trabajo señaló también la falta de un sistema eficaz de derivación para los niños en conflicto con la ley, las deficientes condiciones de reclusión en la mayoría de los lugares de privación de libertad y el hecho de que la Dirección de Inteligencia y Seguridad prescinda de los procedimientos legales. En el contexto de la migración, el Grupo de Trabajo está profundamente preocupado por el carácter punitivo general del enfoque que se aplica actualmente y por la falta de planificación a largo plazo en lo relativo a los refugiados reconocidos como tales. Por último, observó retos relacionados con la privación de libertad en el contexto sanitario, en particular la inexistencia de servicios comunitarios adecuados para las personas con discapacidad psicosocial y las personas afectadas por el abuso de sustancias, así como el hecho de que personas que han sido dadas de alta permanezcan internadas.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que fue presentado.



Entre otras recomendaciones, el Grupo de Trabajo alienta a Botswana a que se adhiera a varios instrumentos de derechos humanos, transponga a la legislación nacional todos los instrumentos en los que sea parte ahora o en el futuro y adopte prácticas específicas que proporcionen mayor protección contra la detención arbitraria.

Annex

Report of the Working Group on Arbitrary Detention on its visit to Botswana

I. Introduction

1. At the invitation of the Government of Botswana, the Working Group on Arbitrary Detention conducted an official visit to Botswana from 4 to 15 July 2022. The Working Group was represented by Elina Steinerte (Latvia) and Mumba Malila (Zambia) and accompanied by staff of the Office of the United Nations High Commissioner for Human Rights.

2. The mission was the first official visit of the Working Group to the country and the first one to Southern Africa in over a decade. The Working Group extends its gratitude and appreciation to the Government of Botswana for the invitation to undertake the visit and for its cooperation, which set an important example for other countries in the region. During its visit, the Working Group met with officials of the Ministry of Foreign Affairs, the Ministry for State President, the Ministry of Local Government and Rural Development, the Ministry of Health, the Ministry of Defence and Security, the Ministry of Justice, the Attorney General's Chambers, the Office of the Ombudsman, the Directorate of Intelligence and Security, the Tlokweng Customary Court and the Customary Court of Appeal for the southern region.

3. The Working Group would like to thank the United Nations country team and the Resident Coordinator and their staff for supporting the visit. It also recognizes the numerous stakeholders within the country who shared their perspectives on the arbitrary deprivation of liberty, including representatives of civil society and members of the legal profession. It thanks all of them for the information and assistance they provided.

4. The Working Group enjoyed full and unimpeded access and visited 19 places of deprivation of liberty, including police custodial facilities, prisons, an intelligence and security facility, a military facility, an immigration detention centre, a refugee camp, a mental health hospital and rehabilitation facilities for children. It was able to confidentially interview over 100 persons deprived of their liberty.

5. The Working Group shared its preliminary findings on 15 July 2022. It intends to continue its constructive dialogue with the Government on the issues discussed in the present report.

II. Overview of the institutional and legal framework

A. Ratification of international and regional human rights instruments

6. Botswana is a party to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Convention on the Rights of Persons with Disabilities, the Convention relating to the Status of Refugees and its 1967 Protocol and the Convention relating to the Status of Stateless Persons.

7. Botswana is not a party to the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the Optional Protocol to the Convention against Torture, the Optional Protocol to the Convention on the Rights of the Child on a

communications procedure, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Reduction of Statelessness, the Optional Protocol to the Convention on the Rights of Persons with Disabilities or the Optional Protocols to the International Covenant on Civil and Political Rights.

8. Botswana has participated in four cycles of the universal periodic review, in 2008, 2013, 2018 and 2022.

B. National legal framework

1. Constitutional protections

9. Chapter II of the Constitution of Botswana includes section 4, on the right to life, and section 5, on the right to personal liberty and the prohibition of unlawful detention. Due process rights, including the rights to be informed of the reasons for arrest as soon as possible, to be brought before a court as soon as reasonably practicable, to be tried within a reasonable time and to be compensated for unlawful arrest or detention, are protected under section 5. Section 7 enshrines the prohibition of torture, inhuman or degrading punishment or other treatment. Section 10 guarantees the rights to a public and fair hearing within a reasonable time by an independent and impartial court, to be presumed innocent, to be informed of charges within a reasonably practicable time, to have adequate time and facilities for the preparation of a defence, to be tried in person, to not be compelled to testify at trial and to be able to examine witnesses. Section 10 also guarantees the right to retain legal counsel, though at the individual's own expense.

10. Sections 12 and 13, respectively, protect the rights to freedom of expression and freedom of assembly and association and allow for the limitation of those rights under specified circumstances.

2. Common law and traditional justice

11. Botswana has a dual legal system encompassing common law and customary law. In addition to common law magistrate courts, there are customary courts, presided over by *Dikgosi* (chiefs), with jurisdiction over civil and criminal matters, which are regulated by the Customary Courts Act. *Dikgosi* are not legal professionals, although they are provided with basic training on statutes. There are two customary courts of appeal in the country. Customary Courts apply the Penal Code and other relevant law. Except for the most serious crimes, they may hear a number of criminal matters and impose penalties, including imprisonment.

3. Criminal Procedure and Evidence Act, Penal Code and Customary Courts Act

12. The Criminal Procedure and Evidence Act allows for arrests with and without a warrant. Both judicial officers and private persons are authorized to arrest an individual without a warrant for certain offences committed in their presence or on reasonable grounds of suspicion of certain offences (sects. 27–36). An individual detained without a warrant must be informed of the reason for the arrest and may not be detained for more than 48 hours unless a warrant has been obtained for further detention upon the charge of an offence (sect. 36). Where the individual is arrested on the basis of a warrant, the arresting officer is required to produce the warrant, notify the individual of its substance and allow the individual to read it upon the latter's request (sect. 39). The person arrested should be brought to a police station or charge office, unless the warrant specifically mentions another place, and must be brought as soon as possible before a magistrate court upon a charge of the offence mentioned in the warrant (sect. 39).

13. Section 25 of the Penal Code provides for various kinds of punishment, including death by hanging, imprisonment and corporal punishment in the form of caning. Under section 27, no individual under the age of 14 years can be sentenced to imprisonment. Sections 176 through 191 of the Penal Code set out a number of nuisances and offences against health and convenience, such as idle and disorderly conduct, the use of insulting

language and rogues and vagabonds, for which sentences range from a fine to imprisonment of two years.

14. The Customary Court Act grants customary courts jurisdiction over civil and criminal matters (sects. 11 and 12) subject to exceptions laid out in section 13. Customary courts may sentence an individual to a fine, imprisonment, corporal punishment or a combination of such punishments (sect. 18). A court warrant delivered by the Ministry of Local Government and Rural Development sets the limits for sentences that each *Kgosi* may impose, namely fines (up to 10,000 pula), corporal punishment (up to eight strokes) and imprisonment in regular prisons (up to 15 years). Corporal punishment may not be imposed on women or any person aged 40 years or over (sect. 18) but may be imposed on children, as provided for under section 85 of the Children's Act. In accordance with section 21 of the Customary Court Act, customary courts apply the Customary Courts (Procedure) (Amendment) Rules of 2016.

III. Positive measures and initiatives

A. Ratification of international treaties

15. The Working Group commends the commitment expressed by the Government to uphold international human rights by ratifying core international human rights treaties and extending a standing invitation to all special procedures of the Human Rights Council since 2018. It also commends the Government's efforts to catch up with its reporting obligations under the various treaties.

16. However, due to the country's dualist legal system, all ratified international treaties must be transposed into domestic legislation. This has yet to take place with respect to most of the international human rights treaties ratified by the State, with the exception of the Convention on the Rights of the Child. The Working Group welcomes the current legislative work to transpose the provisions of the Convention on the Rights of Persons with Disabilities into domestic law and urges the Government to do so with all other international human rights treaties to which Botswana is a party.

17. The Working Group recalls that regular independent oversight over all places of deprivation of liberty significantly reduces and prevents arbitrary detention and urges the Government to ratify the Optional Protocol to the Convention against Torture, promptly transpose it into domestic law and establish an effectively functioning national preventive mechanism, in line with the Optional Protocol.

B. National human rights institution

18. Although the Ombudsman Act (No. 22 of 2021), which repeals the Ombudsman Act No. 5 of 1995, represents progress in approximating the Office of the Ombudsman to a national human rights institution, the Act remains to be commenced. The Government's efforts to expand the mandate of the Office to include a human rights mandate and investigative functions into allegations of human rights violations are welcomed. It is notable that funding has been allocated. The Government must commence the Act without delay to allow the Office to function as an independent national human rights institution, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

C. National human rights strategy

19. The Working Group welcomes the draft National Human Rights Strategy and Action Plan, an initiative of the National Human Rights Coordinating Committee, which has formed a task force to that effect composed of Government authorities and representatives of civil society. The strategy is guided by the Government's Vision 2036 plan, which proposes anchoring human rights across all Government policies. All national authorities should

embrace this comprehensive action plan and the Government should ensure the effective alignment of its policies with the strategy.

D. Decriminalization of consensual same-sex relations

20. The Working Group welcomes the November 2021 decision of the Court of Appeal to uphold the decision of the High Court of Botswana declaring unconstitutional section 164 (a) and (c) of the Penal Code, which criminalize consensual same-sex relations. The Government is urged to entrench this decision in practice, including by amending the relevant legislation without delay and reviewing all cases of individuals convicted under those sections, with a view to releasing them from prison and expunging their criminal records.

E. Constitutional review

21. The Working Group's visit coincided with the constitutional review process, for which the President had appointed a Presidential Constitutional Commission of Inquiry comprising a wide range of stakeholders, in December 2021. In accordance with its terms of reference, the commission carried out consultations and submitted its final report in September 2022. The report forms the basis for further decision-making concerning the review of the Constitution. The commission's extensive efforts to make the process inclusive by travelling across the country, holding consultations in *Kgotlas* (customary courts) and allowing individuals and civil society organizations to submit written comments are welcomed. However, there is no simplified version of the Constitution nor is the Constitution available in local languages. The review process was initiated with little prior notice or explanation of its aims, remit or outcomes to civil society, which prevented it from effectively engaging with its constituencies to aid the process. The Working Group commends the efforts to carry out consultations and invites the Government to ensure that all voices, including the most marginalized, are heard and duly reflected.

F. Remission of sentences

22. The Prisons Act grants remission of one third of the sentence to anyone having been imprisoned for more than one month unless the person is sentenced to life imprisonment or detained at the President's pleasure or if the remission would result in the discharge of any prisoner before the completion of a term of imprisonment of one month. The consistent observance of this rule in practice is commended.

IV. Main findings concerning the right to personal liberty

23. In determining whether the information provided, including from persons interviewed during the visit, raised issues regarding the arbitrary deprivation of liberty, the Working Group referred to the five categories of arbitrary deprivation of liberty outlined in paragraph 8 of its methods of work.¹

A. Detention in the context of the criminal justice system

1. Detention in the context of traditional justice

24. The Working Group was able to observe the proceedings of a customary court, which resemble those of magistrate courts, although customary court hearings take place in the *kgotla* and the accused appear without a lawyer.

25. While the ability of customary courts to deliver swift and often community-based resolution and reconciliation is commendable, the Working Group has serious reservations about their extensive criminal jurisdiction and sentencing powers. It recalls that equality of

¹ [A/HRC/36/38](#).

arms is fundamental to the right to a fair trial, as guaranteed under article 14 of the International Covenant on Civil and Political Rights and article 10 of the Universal Declaration of Human Rights, which presupposes the right to defend oneself in person or through a lawyer of one's own choosing. While individuals are not prevented from having legal representation, if they choose to have such representation their cases must go through the much slower route of the magistrate courts.

26. The Working Group observed that *Dikgosi* do not commonly resort to prison sentences and only about 10 to 15 per cent of individuals sentenced to prison have gone through customary courts. However, among those are individuals who have received extensive prison sentences of 5 to 15 years. In the light of the fact that such severe punishments are imposed by *Dikgosi*, who are not trained legal professionals, following proceedings in which the defendants have no legal representation, there appears to be a prima facie breach of article 14 of the International Covenant on Civil and Political Rights. The Government should urgently review the criminal jurisdiction of the customary courts, especially in relation to the complexity of cases that *Dikgosi* may hear and the severity of punishment that they can impose.

2. Presentation before a judicial authority following an arrest or detention

27. The Criminal Procedure and Evidence Act allows for suspects in criminal cases to be detained in custody for no longer than 48 hours. The Working Group was informed by all officers in charge of the detention facilities it visited that, although suspects were not usually detained beyond the stipulated time, where circumstances required detention beyond 48 hours, a warrant was obtained from a magistrate court authorizing remand detention at prison facilities. However, the Working Group found that, in some cases, detention exceeded 48 hours without a warrant from a magistrate, particularly in cases involving suspected irregular migrants. It was also concerning that there appeared to be no safeguards to ensure that magistrates' warrants authorizing longer detention were not abused and that individuals were produced before the magistrate in person, in accordance with article 9 (3) of the International Covenant on Civil and Political Rights.

28. Additionally, the practice whereby one police station apprehends a suspect and delivers the person to be detained to a different police station may facilitate detention beyond the authorized period. Although the arrests of suspects are generally recorded in registers of the arresting police station, details of their custody at and release from the hosting police station are in some cases not recorded and, therefore, detainees are not accounted for. This leads to detention in excess of 48 hours in some cases.

29. The Working Group is also concerned by the lack of clear guidelines informing the decision as to whether the detainee should appear before a customary court or a magistrate court. In some cases, police officers have reported knowing where to send a case on the basis of "experience" rather than any clear guidelines. It is also concerning that individuals detained by the police often appear before customary courts and that *Dikgosi* make decisions regarding their pretrial detention. Article 9 (3) and (4) of the International Covenant on Civil and Political Rights requires the appearance of the detained person before an independent judicial authority. While *Dikgosi* are designated judicial authorities in Botswana, the Working Group considers that they do not satisfy the requirements of the Covenant.

3. Pretrial detention and alternatives to remand

30. The Criminal Procedure and Evidence Act provides for alternatives to pretrial detention, such as bail, surety and recognizance, which are applied in practice. The further application of such alternatives is strongly encouraged.

31. In relation to bail, section 104 of the Criminal Procedure and Evidence Act allows bail for any offence, except treason or murder, although the magistrate may grant bail to a person under the age of 18 years charged with murder. The Working Group was informed that, in practice, individuals charged with murder may apply for bail.

32. The wide application of bail in practice is commendable but its inconsistent application for those who are not nationals of Botswana is concerning. Furthermore, the Working Group remains seriously concerned about the mandatory pretrial detention of those

charged with murder and treason. Mandatory pretrial detention violates the requirement under article 9 (3) of the International Covenant on Civil and Political Rights that pretrial detention be an exceptional measure rather than the rule. It also violates the requirement that pretrial detention be based on an individualized determination that it is reasonable and necessary in the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Mandatory pretrial detention also deprives judicial authorities of their essential function to assess the necessity and proportionality of detention in each case. The Government must review this issue without delay.

33. The Working Group also observed that those awaiting trial normally constituted the largest population of detainees in Botswana, with an average of two and a half years spent in remand, although some spend in excess of six years. Pretrial detention should be used for the shortest period of time and reviewed periodically by means of an individual assessment that the detention remains necessary, reasonable and proportionate. The Government should ensure that no excessive pretrial detention occurs.

4. Forced confessions and excessive use of force

34. The Working Group received testimonies of the use of excessive force by police, including beatings, electric shocks and the suffocation of suspects to extract confessions. When suspects raised the issue of such treatment with magistrates, medical examinations would be ordered but often not carried out and the consideration of cases would proceed. Any such treatment may amount to torture and ill-treatment, which is absolutely prohibited under international law and may lead to arbitrary detention. Judicial authorities must ensure that the Government has met its obligation to demonstrate that confessions were given freely, without any direct or indirect physical or undue psychological pressure. Judges should consider inadmissible any statement obtained by means of torture or ill-treatment and should order prompt and effective investigations into such allegations.

35. The Working Group is concerned that lawyers are not allowed to be present during police questioning, particularly given the numerous testimonies received regarding the use of excessive force to extract confessions. Confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings. The Government should consider the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles) to assist the work of its law enforcement agencies by eliminating confession as the cornerstone of the investigative process and thus guarding against arbitrary detention.²

5. Right to legal assistance

36. In 2013, the Legal Aid Act was enacted, establishing Legal Aid Botswana. However, legal aid is available only in civil cases. While an attorney is assigned to those facing capital punishment, no State-assigned lawyers are available in other criminal matters.

37. The Working Group met individuals sentenced to exceptionally long prison terms, including up to 45 years, despite their having received no legal assistance. In some cases in which individuals were able to benefit from State-assigned lawyers or hire a lawyer privately, the services lacked the requisite degree of professionalism, as the lawyers failed to consult with their clients or promptly appear at court hearings.

38. The Working Group also received consistent testimonies indicating that, while visits between detainees and lawyers were kept confidential, detainees depended upon the good will of prison officials to be able to call their lawyer.

39. The right to legal assistance is essential to preserving the right to a fair trial as it safeguards the principle of equality of arms, as enshrined in articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (3) (b) and (d) of the International Covenant on Civil and Political Rights. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay. Legal

² See Human Rights Council resolution 31/31 and [A/HRC/51/29](#).

assistance should be available at all stages of criminal proceedings to ensure compliance with fair trial guarantees. The Government must ensure that all individuals deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, that such access is provided without delay and that all persons deprived of their liberty are promptly informed of such right upon their apprehension.

6. Undue delay

40. The Working Group learned of undue delays of trials, usually rooted in the insufficient number of court reporters for producing records of proceedings and the frequent adjournment and rescheduling of trials due to the failure of lawyers or even magistrates to appear. It can take up to two years to produce records, creating significant delays, especially for appellate proceedings. In some cases, court records have been lost, leading to the rejection of the appeal. While the authorities recognize this serious problem, with a backlog of some 2,000 cases reported, and the court registrar is taking steps to train additional court reporters, delays may result in arbitrary detention and prejudice the right to appeal.

41. The Working Group received numerous testimonies about lawyers, especially State-appointed attorneys, failing to appear at court hearings, including without a legitimate reason, causing the frequent adjournment of cases. Similar instances were reported in relation to judges. Such undue delays significantly contribute to excessive pretrial detention. The Working Group recalls that everyone has the right to be tried within a reasonable time and without undue delay under articles 9 and 14 of the International Covenant on Civil and Political Rights. Government agencies should work together to establish effective case management procedures and court schedules that allow for continuous hearings and the effective production of court records.

7. Imprisonment for debt

42. The Working Group met several individuals detained due to their inability to repay a debt, which was often not a large sum of money. In addition to such debt, individuals are liable for sheriff's costs, which in many cases doubles or even triples the owed amount. Although imprisonment is not lengthy, usually a term of three months, such individuals are detained together with other prisoners and are required to repay the debt in addition to the sheriff's costs upon their release.

43. Article 11 of the International Covenant on Civil and Political Rights, which is non-derogable and reflects customary international law, prohibits detention due to the inability to pay a debt. Such detention is arbitrary in itself and discriminates against individuals due to their economic status.³ The Government must urgently review this issue and establish alternative measures for the recovery of debt, such as the deduction of debt payments from salaries and flexible repayment schedules, ensuring that individuals are not imprisoned due to the inability to repay a debt.

8. Vaguely defined offences and disproportionate and mandatory sentencing

44. The Working Group is seriously concerned about vaguely defined offences that may lead to imprisonment under the current legislation, including "common nuisance", "idle and disorderly persons", "use of insulting language" and "rogues and vagabonds". Such offences are treated as matters of criminal law and anyone, including children, can be found guilty of such crimes, with penalties ranging from a fine or imprisonment of one month or both for first offenders to up to a year of imprisonment for repeat offenders. The Working Group was informed that, in the context of legislation relating to the coronavirus disease (COVID-19), failure to wear a face mask may result in imprisonment.

45. The Working Group met individuals imprisoned for such offences and observed that the provisions had been applied against individuals in situations of vulnerability, such as so-called vagrants, and against children considered "unruly". Such provisions are also used

³ Opinion No. 75/2020. See also [A/HRC/45/16/Add.2](#), para. 48; [A/HRC/51/29/Add.1](#), para. 47; [A/HRC/45/16/Add.2](#), para. 48; and [A/HRC/42/39/Add.1](#), para. 65.

against those who have spoken out against Government policies or authorities and to curb legitimate debate in a democratic society.

46. The Stock Theft Act, which is widely applied, imposes a minimum mandatory sentence of five years for first offenders and seven years for repeat offenders, without distinction between adults and children or consideration of mitigating circumstances. The Working Group learned of numerous cases of children as young as 15 years of age having been sentenced under the Act to imprisonment of five years.

47. Article 9 of the International Covenant on Civil and Political Rights requires that detention be used only on an exceptional basis, and article 37 of the Convention on the Rights of the Child makes this obligation even more onerous in respect of children. Mandatory minimum sentencing always deprives judicial authorities of their duty to assess the proportionality of sentences to the individual circumstances in each case. The Government should review its Penal Code, the Stock Theft Act and other legislation to significantly reduce offences punishable by deprivation of liberty, bearing in mind the principles of necessity and proportionality. Sentences already imposed should be reviewed to ensure that they comply with these requirements.

48. The numerous legal provisions imposing criminal sanctions for offences arising from the mere peaceful exercise of rights protected under the International Covenant on Civil and Political Rights, including the rights to freedom of expression, freedom of assembly and freedom of association, are also concerning. The Penal Code criminalizes defamation and the Cybercrime and Computer Related Crimes Act allows for up to one year of imprisonment for “offensive electronic communication”. The Emergency Powers (COVID-19) Regulations of 2020 penalized the publishing of information relating to COVID-19 “with the intention to deceive” with up to five years of imprisonment. The Public Order Act requires prior permission from the police for any public meeting or gathering. Failure to obtain such permission may lead to a fine, up to six months of imprisonment or both. Finally, the Media Practitioners Act, requires all media workers and outlets to register, including websites and blogs. Failure to register leads to a fine, up to three years of imprisonment or both.

49. The chilling effect that such provisions may have on freedom of expression and especially on journalistic freedom is concerning. Deprivation of liberty due to the peaceful exercise of rights protected by the International Covenant on Civil and Political Rights, such as the rights to freedom of expression, freedom of association and freedom of assembly, is arbitrary.⁴

50. Furthermore, laws formulated in vague and broad terms breach the principle of *lex certa* and thus violate due process of law. The principle of legality requires laws to be formulated with sufficient precision so that individuals may access and understand the law and regulate their conduct accordingly.⁵ Vaguely and broadly worded laws may deter the exercise of the rights to freedom of opinion, expression, peaceful assembly and association and to participation in political and public affairs and have the potential for abuse, including the arbitrary deprivation of liberty.

51. In its deliberation No. 11, the Working Group called upon States to devote particular attention to necessity and proportionality of deprivation of liberty in the context of public health emergencies, including the COVID-19 pandemic. In particular, it called for the reduction of the use of detention and recalls that emergency powers must not be used to silence the work of, among others, human rights defenders, journalists, members of the political opposition or any person expressing dissent or criticism of emergency powers or disseminating information that contradicts official measures taken to address the health emergency.

52. The Government should immediately address these issues and review its legislation in line with international human rights law.

⁴ Human Rights Committee, general comment No. 35 (2014) para. 17.

⁵ *Ibid.*, para. 22; and general comment No. 34 (2011), para. 25. See also opinion No. 8/2020, para. 68.

9. Corporal punishment

53. The Working Group notes with concern that section 25 of the Penal Code and section 18 of the Customary Courts Act establish corporal punishment as a non-custodial sentence, which can be imposed by magistrate courts and customary courts. Furthermore, section 85 of the Children's Act allows for corporal punishment to be imposed upon children. Corporal punishment is also widely used in civil disputes and as a measure against "unruly" children. Similarly, the Prisons Act establishes corporal punishment as a disciplinary measure in prisons. While not widely used, its use remains possible and special canes for the purpose are kept in prisons.

54. The Working Group is also concerned about testimonies received indicating that corporal punishment imposed by customary courts may be carried out by members of the public designated by *Dikgosi*. Section 305 of the Criminal Procedure and Evidence Act requires that anyone convicted of corporal punishment undergo a medical examination to ensure that they are fit to receive such punishment. Although section 114 of the Prisons Act provides for the application of section 305 of the Criminal Procedure and Evidence Act, the Working Group received testimonies of individuals having been subjected to corporal punishment without having undergone any prior medical examination.

55. Corporal punishment violates the absolute prohibition of torture, ill-treatment and inhuman or degrading treatment or punishment as codified in article 7 of the International Covenant on Civil and Political Rights and article 39 of the Convention on the Rights of the Child. Moreover, it may never be considered as a legitimate alternative to a custodial sentence under international human rights law. All prisoners must be treated with the respect due to their inherent dignity and value as human beings. The Government must urgently repeal these legal provisions and carry out public awareness-raising campaigns to explain the incompatibility of corporal punishment with the values of a country grounded in respect for human rights and the rule of law.

10. Death penalty

56. Section 25 of the Penal Code provides for the death penalty, the implementation of which is fully operational in Botswana. While an Advisory Committee on the Prerogative of Mercy exists, its terms of reference and the criteria it applies for determining the outcome of applications are unclear. It is concerning that family members are informed of the execution of the detainee only once the execution has already been carried out. Recalling the 2021 concluding observations of the Human Rights Committee regarding Botswana,⁶ the Working Group calls for an urgent revision of the Penal Code to align it with the requirements of article 6 of the International Covenant on Civil and Political Rights. An immediate moratorium on any further executions should be imposed.

11. Conditions of detention

57. Poor detention conditions are prevalent in police cells and prisons in Botswana. While some police cells are undergoing refurbishment, most of that repair work has been outstanding for years. Both police detainees and prisoners lack adequate bedding provisions, as they sleep on the floor or on very thin mattresses, and prison facilities require fundamental refurbishment to ensure the provision of adequate running water and sanitation. There were numerous complaints about both the quality and the quantity of the food provided. The situation of foreign national detainees is particularly challenging as they have no family to provide additional clothing, food or other supplies and have difficulty accessing medication and treatment. Furthermore, prisoners are subjected to an unreasonable regime whereby they are locked up from around 4.30 p.m. until the next morning, without any purposeful activity.

58. Poor detention conditions may negatively affect the ability of detainees to participate in legal proceedings and prepare an effective defence and appeal.⁷ The Government must ensure that conditions in places of detention are fully in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The regime

⁶ [CCPR/C/BWA/CO/2](#), para. 16.

⁷ See, for example, opinion No. 1/2017, para. 51.

should also be adjusted to allow for a reasonable evening lock-up time. Foreign nationals must be provided with clothing and basic necessities and be able to access medication and medical treatment on an equal basis with detainees who are nationals of Botswana. Although attempts to ensure this are made, there are still differences in treatment in practice.

59. The Working Group observed that remand and sentenced prisoners were held together in all facilities visited. Moreover, remand prisoners are not eligible to work or attend other programmes and there is no provision of purposeful activity for them. Article 10 of the International Covenant on Civil and Political Rights and rule 112 of the Nelson Mandela Rules require the separation of pretrial detainees from convicted persons and that they be treated in a manner respectful of their non-convicted status. Rule 116 of the Nelson Mandela Rules further requires that untried detainees be offered the opportunity to work if they so wish.

60. Information was received that family visits are closely supervised by a prison officer, who is required to record everything said during the visit. The Working Group observed this in practice. Furthermore, detainees have no access to phones and must request that prison officers communicate any messages to their family or lawyer. Consistent testimonies were received indicating that such requests, including to organize visits, were often not heeded or were denied as disciplinary measures. Such restrictions run counter to principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 and 58 of the Nelson Mandela Rules, which protect the right to communicate with the outside world and prohibit the denial of family contact as a disciplinary measure. The right to communicate with the outside world is an important safeguard against torture and other forms of ill-treatment. Current restrictions on communication and visits between detainees and their families may deter detainees from reporting instances of abuse in prison and may hinder their ability to seek legal representation.⁸

12. Child justice

61. Section 13 (1) of the Penal Code sets the minimum age for criminal responsibility at 8 years of age while section 13 (2) states that persons under the age of 14 years are not criminally responsible for an act or omission unless it is proven that they had the capacity to know that they ought not to do the act or make the omission. Similarly, section 82 of the Children's Act states that children under the age of 14 years shall not be presumed to have the capacity to commit a crime unless it can be proven that they had the capacity to know that they should not do so. The discrepancy among these provisions is concerning and a number of stakeholders met with during the visit, including those responsible for the administration of justice, were confused about the exact minimum age of criminal responsibility in Botswana. Recalling the concluding observations of the Committee on the Rights of the Child,⁹ the Working Group urges the Government to raise the minimum age of criminal responsibility to at least 14 years without exceptions, making this clear to all stakeholders, especially the police, prosecution, judiciary and *Dikgosi*.

62. There is no effective diversion system for children in Botswana. Although some children are released into the care of their families, who provide sureties that the children will be cared for and supervised, a systemic approach or route to divert children is lacking, especially for children who may not have family able to provide the requisite supervision. The Working Group was able to visit the Ikago Rehabilitation Centre, where children aged 14 to 18 years in conflict with the law are sent as an alternative to prison. While this is a welcome initiative for diverting children from conventional detention facilities, the lack of funding and resources devoted to the centre is concerning. This does not allow for the required educational support, which the centre is meant to provide, or for children to continue their studies while carrying out their sentences.

63. Under article 37 of the Convention on the Rights of the Child, the detention of a child must be a measure of last resort. In addition, article 40 (3) and (4) requires the adoption of measures to divert children through dispositions such as care, guidance and supervision

⁸ See, for example, opinion No. 35/2022.

⁹ [CRC/C/BWA/CO/2-3](#), paras. 66 and 67.

orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care to ensure that children are treated in a manner appropriate to their well-being and proportionate to their circumstances and to the offence. The Government must ensure that effective diversion systems are available to children in conflict with the law.

64. Furthermore, while there are detention facilities for boys, there are no dedicated facilities for girls. The Working Group observed that, while the number of girls detained was commendably low, those who were detained were held together with women prisoners. It urges the Government to cease the current practice of detaining children in facilities with adults without delay, in accordance with article 37 (c) of the Convention on the Rights of the Child.

65. The lack of dedicated courts to handle cases involving children in conflict with the law is also concerning. Currently, magistrate courts convert to children's courts, which means little more than in camera hearings. While the Government's acknowledgement of the need to reform the child justice system and the current "child-friendly justice" project are positive steps, it must urgently expedite the work in this area.

66. Recalling the concluding observations of the Committee on the Rights of the Child,¹⁰ the Working Group urges the Government to ensure, in cases in which detention is unavoidable, that it is carried out in compliance with international standards and in conditions suitable for children, including regarding access to education, recreation and health services.

B. Detention in the context of national security

67. The Directorate of Intelligence and Security, established under the Intelligence and Security Service Act, has powers to arrest with or without a warrant. The Directorate usually requests individuals to appear for an interview and has no powers to detain anyone longer than 48 hours. Any overnight detention takes place in regular police stations. The Working Group was able to visit the Directorate facilities in Sebele and received numerous testimonies from persons who had been taken there for an interview, making it apparent that individuals can be detained there even if such detention does not last more than a few hours, as people are not free to leave until the interview is concluded.

68. Moreover, while arrest without a warrant is permissible only when there is a reasonable suspicion of a crime being committed, the testimonies received indicated that arrest without a warrant was the rule rather than the exception, contrary to article 9 of the International Covenant on Civil and Political Rights. The Working Group learned of instances in which persons had been taken to a Directorate facility to be interviewed without being able to notify their next of kin and that, while individuals were allowed to consult their lawyers prior to being interviewed, lawyers were excluded from the actual interviews.

69. The Working Group recalls that even short periods of detention constitute deprivation of liberty when a person is not free to leave at will and that, in all instances in which safeguards against arbitrary detention are violated, such short periods may amount to the arbitrary deprivation of liberty. The presence of a lawyer and the ability to notify one's family about one's whereabouts are among the key safeguards against arbitrary detention.

C. Detention in the context of migration

70. The Working Group has very serious concerns about the current policy of detention in the migration context in Botswana. It recalls its revised deliberation No. 5, stressing that the right to personal liberty extends to all, including migrants and asylum-seekers, irrespective of their citizenship, nationality or migratory status and that detention in the migratory context must be exceptional.¹¹

¹⁰ [CRC/C/MDV/CO/4-5](#), para. 69 (f).

¹¹ [A/HRC/39/45](#), annex, paras. 7, 10 and 12.

71. Individuals recognized as refugees in Botswana are required to reside in the Dukwi Refugee Camp. At the time of the visit to the camp, just over 800 asylum-seekers, comprising 18 nationalities, were living in the camp, more than half of them children. Recognized refugees must seek a specific permit to leave the camp, even to visit a shop outside the camp. If found outside without a permit, they are sent back to the camp. As such, individuals interviewed self-identified as “eternal refugees”, with the second and even third generation of some families still living there. Existing integration programmes are very limited and extend to only a handful of people. Only recognized refugees are provided with housing, a minimal subsistence allowance, basic medical care and schooling for children. Work is prohibited without a specific permit, which is difficult to obtain. Those whose asylum applications are rejected receive no support from the authorities and are left to fend for themselves. The lack of long-term planning for persons residing in the camp is very concerning. The Government must urgently explore alternative placement options and opportunities for migrants, asylum-seekers and refugees to reside in the community.

72. While some whose applications for refugee status have been rejected are still in the Dukwi Refugee Camp, the majority are held in the Francistown Centre for Illegal Immigrants, which is a completely closed facility akin to a prison. The applicable regime is the same as that of prisons and all guards are prison officers. At the time of the visit, 227 adults and 307 children were being held at the Francistown Centre. The majority had been there for about a year awaiting deportation, but others had spent many years there, even as many as 10 years. Among those held there for especially prolonged periods are the “prohibited migrants”, declared as such under the Immigration Act due to their criminal records. They often cannot be returned to their countries of origin due to non-refoulement obligations and thus languish in the Francistown Centre de facto indefinitely. The Working Group underlines that the indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary.¹²

73. None of those interviewed at the Francistown Centre were aware of what awaited them, whether they would be deported or when. Their desperate plight was plain to see. The conditions of detention were appalling, with lock-up time at around 4:30 p.m., when people were confined to the blocks. Throughout the day, no purposeful activities are offered and provisions for children, in particular education, are lacking. There were numerous credible accounts of widespread violence, including sexual violence involving children, and consistent testimonies indicating verbal and discriminatory abuse towards detainees and a lack of proper medical care and access to medication. Of further concern is that the current detention regime of separating boys from their mothers after the age of 9 years, detaining them with male adults even when no next of kin is available to care for them, and allowing mothers to see their sons for only 15 minutes per week runs counter to the best interests of the child and should be remedied as a matter of priority.

74. The Refugee (Recognition and Control) Bill has been under consideration since 2015 and yet there is no clear prospect for its adoption. The Government reported that there was no current possibility of appealing decisions by the Refugee Advisory Committee. The present approach to migration in Botswana is of a punitive nature and the Working Group recalls that irregular entry and stay in a country should not be treated as criminal offences. Any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording claims or initial verification of identity. The current approach must be urgently revised to reflect the exceptionality of detention in the migratory context and ensure that no indefinite detention takes place. The conditions and regime of the Francistown Centre must urgently be reviewed to guarantee that they are not prison-like.

75. Furthermore, detaining children because of their parents’ migration status always violates the principle of the best interests of the child and the rights of the child. While children must not be separated from their parents or legal guardians, maintaining the family unit cannot justify detaining children whose parents are detained. Non-custodial alternatives must be applied to the entire family instead. The conditions of detention, including the

¹² Ibid., para. 26.

detention of migrants, must be humane and respectful of the inherent dignity of all persons.¹³ The Government is urged to finalize the amendment of the Refugee (Recognition and Control) Act as a matter of priority and ensure that it complies with its obligations under international law and provides for adequate safeguards against the arbitrary detention of migrants. The Office of the United Nations High Commissioner for Refugees (UNHCR) must be granted unimpeded access immediately to all persons of interest, including those in the Francistown Centre.

D. Detention in the context of health care

1. Detention in the context of psychosocial disabilities

76. The Mental Disorders Act of Botswana sets out the legal framework for the deprivation of liberty in the context of psychosocial disabilities. The Working Group welcomes the news from the Government that plans to adopt the Mental Health Bill, which will repeal the Mental Disorders Act, are at an advanced stage; the Bill was circulated in the Government Gazette on 24 March 2023 and will be tabled in parliament in July 2023.

77. Currently, voluntary and involuntary admissions are possible at the Sbrana Psychiatric Hospital. Individuals may be admitted voluntarily, on the basis of a medical report, upon signing a voluntary admission form. In cases of involuntary admission, a family member or social worker may apply to the District Commissioner for a reception order, which is issued on the basis of a medical report certifying that the person poses a danger to self or others. Such reception orders are valid for 30 days and renewable for up to a total of 90 days. The person must then be discharged unless the person agrees to a voluntary commitment. During its visit to the facility, the Working Group learned that stays averaged around 32 days.

78. However, some individuals are kept in the hospital despite having been discharged. The Working Group met with individuals who had been discharged as much as six months earlier but were unable to be released because their family members had not come to collect them. A handful of “long-stay” patients remain in the hospital for the rest of their lives, as they have no family members able to look after them and no community care is available.

79. Persons with psychosocial disabilities are entitled to the full respect of their right to liberty, as stipulated in article 14 of the Convention on the Rights of Persons with Disabilities. The Government must address the situation of such individuals urgently, including by fostering community-based care and other alternatives to institutionalized care.

80. Furthermore, a number of individuals recognized as unfit to stand trial due to their psychosocial disability and therefore not sentenced to a term of imprisonment are detained at the President’s pleasure in Sbrana Psychiatric Hospital and in prisons across the country. Their average length of detention is 14.7 years, although the Working Group encountered persons who had been thus detained for over 20 years. The Mental Health Board assesses the possibility of their release on the basis of their medical condition, their ability to live in the community, their having family support and whether victim reconciliation has occurred. The assessment is sent to the Office of the President, where the release decision is taken. However, there are no published guidelines to inform the process and the Working Group was informed of the challenges that individuals faced in seeking to be released, especially in the absence of community-based support and treatment programmes in Botswana. There were 37 such persons in Sbrana Psychiatric Hospital and more such persons in prisons. The detention of such individuals is de facto indefinite. A number of such individuals interviewed stated that, after decades detained, already exceeding the maximum time for their offence, they still did not know if and when they might be released.

81. The indefinite detention of individuals is contrary to international law and detention on the basis of disability, including psychosocial disability, contravenes article 14 of the Convention on the Rights of Persons with Disabilities. Appropriate community-based services must be made available to people with psychosocial disabilities, including those held

¹³ Ibid., para. 17.

at the President's pleasure. The procedure for the release of the latter must be made clear and transparent.

82. At the time of its visit, the Working Group was informed that there were only three State-employed psychiatrists, including two psychiatrists at Sbrana Psychiatric Hospital, which, on the day of its visit, held 285 patients. Subsequently the Government reported that, as of June 2023, six psychiatrists were employed by the Government, four were employed by the University of Botswana and three were in private practice. The Government should continue to build professional capacity to ensure the provision of appropriate and effective care to people with psychosocial disabilities.

83. The current dilapidated state of the facilities at the psychiatric hospital is also very concerning. Although the staff explained that the patients often damaged the facility, it was evident that the design of the hospital did not provide a safe environment for them. Its current state, with broken windows, water leaks, broken ceilings and a lack of the most basic hygiene, must be urgently remedied. The patients complained of a lack of warm water and soap and of the failure to be provided with clean and decent clothing. These issues must be addressed as a matter of priority.

84. The Government is urged to conduct community-based outreach and encourage the provision of care in the community. Such measures would prioritize personal liberty over the institutional care of individuals with psychosocial disabilities, in compliance with article 9 of the International Covenant on Civil and Political Rights and article 14 of the Convention, and help to reduce the stigma surrounding such disabilities.

2. Detention in the context of drug rehabilitation

85. Botswana currently has no State-owned facilities providing care for individuals suffering from substance abuse. According to the Government, work towards opening the first State-run substance rehabilitation facility has commenced in Serowe, in the central region of Botswana. The situation of individuals suffering from substance abuse is addressed under the Mental Disorders Act and they receive treatment at the Sbrana Psychiatric Hospital. The Working Group observed such individuals sharing facilities with people with psychosocial disabilities and was concerned to learn that, unless collected by their families or relatives, they were unable to leave the facility despite having been discharged.

86. Deprivation of liberty in all settings must be an exception and substance abuse treatments must be decided on the basis of free and voluntary consent. Harm reduction services are essential for persons who are drug dependent.¹⁴ The Government should seek alternative measures, such as specialized facilities dedicated to providing care to individuals suffering from substance abuse, and work towards the release of discharged individuals.

V. Conclusions

87. **The Working Group commends the Government for its willingness to submit itself to scrutiny through the visit and considers that the findings set out in the present report will support the Government to address situations of arbitrary deprivation of liberty.**

88. **Positive changes are being made across Botswana in relation to deprivation of liberty, including the use of bail, alternatives to detention, the remission of sentences and the Government's efforts to confer the human rights mandate on the Office of the Ombudsman.**

89. **However, problems within the criminal justice system place defendants at risk of arbitrary detention or in conditions of detention that might affect their ability to exercise their fair trial rights. Such problems include the following:**

(a) **While individuals are generally not detained for longer than 48 hours before being brought before a judge, some are brought before customary courts that do**

¹⁴ A/HRC/47/40, para. 73.

not satisfy the requirement for an independent judicial authority under article 9 (3) and (4) of the International Covenant on Civil and Political Rights;

(b) Although the use of bail is prevalent, some individuals are held in pretrial detention for lengthy periods, contrary to article 9 (3) of the Covenant;

(c) Individuals charged with murder or treason are subjected to mandatory pretrial detention, contrary to the requirement that pretrial detention remain an exceptional measure based on an individualized determination that it is reasonable and necessary in the circumstances, in accordance with article 9 (3) of the Covenant;

(d) Criminal proceedings are regularly subject to delays, contrary to articles 9 (3) and 14 (3) (c) of the Covenant;

(e) Medical examinations are often not conducted following allegations of ill-treatment or forced confessions, and such confessions are used as evidence during trial, contrary to article 14 of the Covenant;

(f) Individuals are imprisoned for their inability to repay a debt, contrary to article 11 of the Covenant and customary international law;

(g) The right to legal assistance is severely limited in so far as individuals who cannot afford a lawyer are left without legal assistance except in the most severe cases, lawyers are not permitted in customary courts or during questioning and legal services lack the requisite degree of professionalism, impeding the right of detainees to prepare a defence, as embodied in article 14 (3) (b) of the Covenant;

(h) The use of mandatory minimum sentencing does not allow for the individual assessment of the proportionality of sentences and the widespread detention of individuals on the basis of vague and overly broad laws is contrary to the principle of legality;

(i) Conditions of detention in police cells and prisons do not meet international standards and sentenced prisoners are held together with pretrial detainees, contrary to article 10 of the Covenant;

(j) No detention facilities exist for girls, who are detained together with women prisoners, contrary to article 37 (c) of the Convention on the Rights of the Child;

(k) Legal procedures are frequently bypassed by the Directorate of Intelligence and Security, which oversteps its mandate, thereby putting individuals at risk of arbitrary arrest and detention.

90. The Working Group notes that the current detention policy for migrants and the lack of long-term planning for refugees residing in the Dukwi Refugee Camp and for migrants detained at the Francistown Centre for Illegal Immigrants put migrants at risk of indefinite detention, in violation of article 9 of the International Covenant on Civil and Political Rights.

91. The Working Group identified several issues of concern in relation to detention in the context of health care, including the continued detention of individuals who had been discharged, the lack of published guidelines informing the process by which the decision to release individuals held at the President's pleasure is taken, the lack of the appropriate facilities and medical professionals needed to provide effective care to people with psychosocial disabilities and the dire detention conditions in which such people are held at Sbrana Psychiatric Hospital. Currently, individuals with psychosocial disabilities may be held in de facto indefinite detention, contrary to article 9 of the International Covenant on Civil and Political Rights.

92. The Working Group observed the lack of appropriate community-based services for individuals with psychosocial disabilities and individuals suffering from substance abuse, creating a system of institutionalization of individuals in need and further harming vulnerable populations.

VI. Recommendations

93. The Working Group recommends that the Government take the following measures in relation to its international human rights obligations:

(a) Transpose all international human rights treaties to which Botswana is a party into domestic legislation;

(b) Ratify and promptly transpose into the domestic legal system the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the Optional Protocol to the Convention against Torture, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, the International Convention for the Protection of All Persons from Enforced Disappearance, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Reduction of Statelessness, the Optional Protocol to the Convention on the Rights of Persons with Disabilities and the Optional Protocols to the International Covenant on Civil and Political Rights;

(c) Withdraw all reservations and interpretative declarations to the International Covenant on Civil and Political Rights and other international instruments to which Botswana is a party.

94. The Working Group recommends that the Government take the following measures to build upon its positive initiatives to address the arbitrary deprivation of liberty:

(a) Immediately commence the Ombudsman Act No. 22 of 2021 and ensure the functioning of the Office of the Ombudsman as an independent national human rights institution, including by continuing to allocate the necessary human and financial resources;

(b) Decriminalize consensual same-sex relations in its legislation and review the cases of all individuals convicted under sections 164 and 165 of the Penal Code;

(c) Review the criminal jurisdiction of the customary courts to safeguard fair trial and due process rights;

(d) Review its legislation to remove mandatory pretrial detention in cases of allegations of murder and treason, in line with the requirement that pretrial detention be an exceptional measure rather than the rule and that it be based on an individualized determination that it is reasonable and necessary in the circumstances;

(e) Eliminate the use of forced confessions by implementing the Méndez Principles to assist the work of law enforcement agencies, allowing access to legal representation during questioning, eliminating confession as a cornerstone of the investigative process and effectively investigating all allegations of forced confession and the use of excessive force;

(f) Ensure that all individuals deprived of their liberty have the right to effective legal assistance by counsel of their choice at any time during their detention, including immediately after apprehension and during interviews, and promptly inform them of such right;

(g) Ensure that individuals are afforded a trial within a reasonable time and that pretrial detention is used for the shortest period of time and is reviewed periodically;

(h) Ensure that pretrial detention facilities respect the non-convicted status of pretrial detainees and their right to be presumed innocent, including by separating them from convicted persons and allowing the former to wear their own clothing;

(i) Review the Penal Code and other legislation to significantly reduce offences punishable by the deprivation of liberty, bearing in mind necessity and proportionality, and ensure that the wording of laws respects the principle of legality;

(j) Review legislation imposing mandatory minimum sentencing to ensure that judicial authorities are able to assess the proportionality of sentences against individual circumstances in each case and review sentences already imposed to ensure that they comply with the requirements of necessity and proportionality;

(k) Immediately repeal all legal provisions providing for the use of corporal punishment;

(l) Impose a moratorium on the death penalty with a view to abolishing it;

(m) Expedite its work in reforming the current child justice system to establish dedicated children's courts, uniformly and clearly raise the minimum age of criminal responsibility to at least 14 years, without exceptions, provide for an effective diversion system with variety of dispositions for children in conflict with the law and create dedicated detention facilities for girls in conflict with the law;

(n) Address poor detention conditions in both police custodial settings and prisons;

(o) Establish an independent oversight mechanism with jurisdiction over all places of deprivation of liberty, including private settings and those outside the criminal justice setting, with regular, unimpeded and confidential access to all such facilities and persons deprived of their liberty.

95. The Working Group recommends that the Government take the following measures in relation to the deprivation of liberty in the context of national security:

(a) Ensure that legal procedures are followed by all authorities and investigate any and all allegations of abuse of power;

(b) Implement robust oversight over the powers, functioning and operation of the Directorate of Intelligence and Security in relation to arrests and detentions;

(c) Ensure that no individual is held in unofficial places of detention, even for short periods of time, and that all individuals detained are able to notify their families of their whereabouts and have access to legal representation, including immediately after their arrest and during interviews.

96. The Working Group recommends that the Government take the following measures in relation to the deprivation of liberty in the context of migration:

(a) Accelerate its work to finalize and adopt the Refugee (Recognition and Control) Amendment Bill by cooperating and engaging with UNHCR to ensure that the Bill complies with international human rights standards, including by providing for the possibility of appealing decisions by the Refugee Advisory Committee;

(b) Ensure that detention in the course of migration is applied exceptionally, that the legislation clearly specifies the upper limit of permissible detention upon the expiry of which persons should be released unconditionally, that persons are not detained when there is no reasonable prospect of return and that the de facto indefinite detention of "prohibited migrants" is ceased immediately;

(c) Urgently review its current legal framework to implement a long-term plan for persons residing in the Dukwi Refugee Camp, including by considering alternative placement options and opportunities for migrants, asylum-seekers and refugees to reside in the community;

(d) Immediately remedy the unsatisfactory prison-like detention conditions of migrants in the Francistown Centre for Illegal Immigrants, in accordance with international norms and standards, including by allowing for a reasonable evening lock-up time and creating purposeful activities for all and educational programmes for children;

(e) Immediately ensure unimpeded access for UNHCR to all persons of interest, including those held at the Francistown Centre;

(f) Heed the call of the Committee on the Rights of the Child to expeditiously and completely cease the detention of all children on the basis of their immigration status.

97. The Working Group recommends that the Government take the following measures in relation to the deprivation of liberty in the context of psychosocial disability and drug rehabilitation:

(a) Accelerate efforts to enact the Mental Health Bill and ensure its compliance with international human rights standards, in particular those enshrined in article 9 of the International Covenant on Civil and Political Rights and article 14 of the Convention on the Rights of Persons with Disabilities;

(b) Prioritize the deinstitutionalization of individuals with psychosocial disabilities and individuals suffering from substance abuse, including by fostering the creation of effective community-based care;

(c) Increase efforts to provide appropriate medical care to those with psychosocial disabilities, including by raising the numbers and professional capacity of medical professionals;

(d) Establish and publish clear guidelines to inform the process by which release decisions for individuals held at the President's pleasure are taken;

(e) Seek to create specialized facilities dedicated to providing care to individuals suffering from substance abuse, work towards the release of individuals who have been discharged and ensure effective harm-reduction services in the community.

Appendix

Places of deprivation of liberty visited

The Working Group visited 19 places of deprivation of liberty:

- Molepolole Prison
 - Ikago Rehabilitation Centre
 - Molepolole Police Station
 - Moshupa Police Station
 - Moshupa Boys Prison
 - Directorate of Intelligence and Security (Sebele)
 - Dukwi Refugee Camp
 - Dukwi Police Station
 - Francistown Police Station
 - Kutlwano Police Station
 - Francistown Centre for Illegal Immigrants
 - SOS Children's Village (Francistown)
 - Gaborone Women's Prison
 - Central Maximum Security Prison
 - Sbrana Psychiatric Hospital
 - Rakhuna Military Garrison
 - Central Police Station Gaborone
 - Broadhurst Police Station
 - Urban Police Station
-