III. BOTSWANA COUNTRY BACKGROUND

Geography and Population

The Republic of Botswana (Botswana) is a sub-tropical[111] landlocked nation of approximately 581,730 square kilometers located in southern Africa.[112] It is bordered by Namibia to the west and north, Zimbabwe to the east and north and South Africa to the south.[113] The yearly climate is generally characterized by warm winters and hot summers[114] that often result in drought.[115]

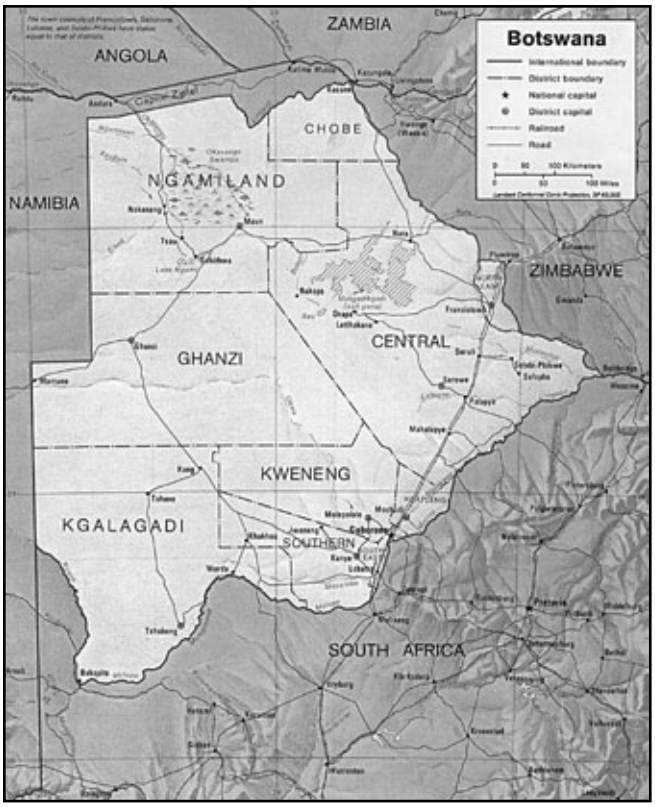
Botswana has a relatively small population of 1,639,833 with an estimated -0.04 percent growth rate.[116] Settlement is primarily concentrated in the eastern reaches of the country where enough rain falls for land cultivation and grazing. Nearly 57 percent of the population lives in urban areas.[117] While Botswana's economic growth has precipitated an increase in urban migration over the past two decades, people maintain strong ties to rural villages.[118]

Thirty-eight percent of the general population is under the age of 15.[119] Approximately 555,000 people are between 15 and 29 years of age, 393,000 people are between the ages of 30 and 49 and over 260,400 are above the age of 50.[120]

Eighty percent of men and 82 percent of women were literate in 2004.[121] Nearly 12 percent of the total population has never attended school, while over 34 percent has completed primary school and over 41 percent has finished secondary school. Only slightly more than 3 percent are university graduates.[122]

The major ethnic groups of the country include the Tswana (or Setswana) who are the vast majority of the population, 79 percent; the Kalanga who make up 11 percent of the population; and the Basarwa (or San people, the original bush population) at 3 percent.[123] Other groups, such as the Kgalagadi and Europeans, comprise the remaining 7 percent of the population.[124] Seventy-two percent of the population identifies as Christian.[125] Twenty-one percent of Batswana claim no religious affiliation.[126]

As one of the more prosperous and stable nations in southern Africa, Botswana plays host to a sizeable contingent of immigrants as day laborers, refugees or undocumented migrants. It has been estimated that thousands of Zimbabweans have fled to Botswana since



Zimbabwean President Robert Mugabe instituted a controversial land reform scheme in 2000.[127] In addition, by the end of 2005, approximately 3,000 refugees were living in Botswana,[128] primarily from Namibia and Angola.[129] The vast majority of refugees are housed in the Dukwi refugee camp located in the central west of Botswana.[130]

History and Politics

Botswana gained its independence from the United Kingdom in 1966.[131] Since then it has been held up as a model of good governance and prudent economic policy throughout the continent.[132]

Botswana is a tri-cameral democracy comprised of an executive, a legislature and a judiciary.[133] The president is both the head of state and head of government[134] and is elected by the National Assembly for a five-year term.[135] The current president, Festus G. Mogae, came into office in 1998, was elected in 1999 and reelected in

2004.[136] The president, the National Assembly and the House of Chiefs comprise the National Parliament.[137] The National Assembly is a 63-member chamber, of which 57 representatives are directly elected by the populace.[138] Four seats are filled by appointments from the ruling party.[139] The president is also an *ex officio* member of the National Assembly, as is the Attorney General, which raises questions about the separation of powers.[140] The House of Chiefs is a fifteen-member advisory body of permanent and non-permanent members which consists of the major tribal chiefs and indirectly elected and appointed sub-chiefs.[141] The House has limited powers, of which perhaps the most important is the ability to delay passage of legislation regarding tribal affairs and chieftainship.[142] All Assembly members and non-permanent House members serve five-year terms. The next national election will take place in 2009.

President Mogae's Botswana Democratic Party (BDP) has been the ruling party since Independence.[143] In the 2004 National Assembly elections, the BDP took 52 percent of the vote.[144] Other parties include the Botswana National Front (BNF), the Botswana Congress Party (BCP), the Botswana People's Party and the Botswana Independence Party, though the BDP and the BNF are the most popular.[145]

Botswana ranked 37 out of 163 countries on a corruption perceptions index, the "least corrupt" ranking of any African country.[146] The country scored 5.6 out of 10 on a scale where 0 indicates a "highly corrupt" country and 10 denotes a "highly clean" country.[147]

The legal system is a mix of both customary and Roman-Dutch law.[148] Customary law is largely unwritten and applied by tribal courts, while Roman-Dutch common law and statutes are utilized by civil courts.[149] Customary courts have only limited criminal jurisdiction but general civil jurisdiction, meaning that Batswana have a choice of forum when seeking the resolution of civil disputes.[150] The levels of state courts include the Court of Appeals, the High Court, the Industrial Court, as well as Magistrates and Customary Courts.[151] Magistrates can hear all matters save for capital offenses.[152] Customary courts have limited jurisdiction over civil and criminal matters.[153] Civil judicial officers are appointed by the president in consultation with the Judicial Services Commission.[154]

The country is divided into 15 districts, each of which has their own local government structure, including District Committees, Village Development Committees and tribal entities.[155] Local entities are charged with implementing policies conceived by the national government.[156]

Economy

Botswana has been hailed as an African success story[157] because it has transformed itself from one of the poorest countries in the world to an upper middle-income country since Independence.[158] This is largely due to the discovery of extensive diamond mines in 1967.[159] Diamond mining accounted for 79 percent of exports in 2006.[160] Other key sectors include agriculture and services, including government.[161] In 2006, Botswana's Gross Domestic Product (GDP) was approximately US$18.72 billion.[162]

The workforce is divided among three major sectors, services, industry and agriculture.[163] Despite the country's national economic success, over 23 percent of the population lives below the poverty line of US$1 per day,[164] and the country's official unemployment rate is 23.8 percent.[165] Over half of the population lives in rural areas and depends on subsistence farming.[166] Moreover, in an index of 124 countries ranked in ascending order of income inequality, Botswana was ranked 122nd, superceded only by Lesotho and Namibia.[167] Batswana women earn 36 percent their male counterparts' wages.[168]

Health Care System

The Government of Botswana provides an estimated 90 percent of health services, with private clinics run by mines or sole practitioners making up the remaining providers.[169] The Ministries of Health and Local Government work in concert to deliver services to the population at hospitals, clinics and mobile units.[170] The Ministry of Health sets policy and provides secondary and tertiary care while the Ministry of Local Government delivers primary care services.[171] In 2002 Botswana had three national referral hospitals and one private referral hospital as well as 239 clinics and 810 mobile stops.[172]

Botswana ranks 168 out of 191 nations on an index of overall health attainment among WHO member states.[173] The Government devoted 5.6 percent of its gross domestic product (GDP) to health care in 2003.[174] The per capita expenditure that same year was US$232.[175] Private health expenditure accounted for just over 41 percent of the nation's total health expenditure in 2003;[176] sources for private expenditure included both pre-paid plans and out-of-pocket expenditures.[177] Health worker staffing remains a problem in Botswana. In 2004, there were only 0.4 physicians for every 1,000 people;[178] Botswana has encouraged the immigration of physicians from Cuba and neighboring African countries to fill some of the gaps.[179] The WHO has reported

that Botswana is experiencing a brain drain of migrating experienced local medical staff due to opportunities overseas and the demands of the HIV/AIDS epidemic.[180] Between 1999 and 2005 Botswana lost approximately 17 percent of its health workers to AIDS.[181]

Over 85 percent of Batswana live within 15 kilometers of a health care facility.[182] While there is a standard US$0.38 charge for outpatient medical services in government clinics, no one is refused care for inability to pay.[183] Moreover, most primary care services such as antenatal care, HIV/AIDS treatment, and child welfare services are exempt from any service fee.[184] By 2005, over half of people with HIV/AIDS in need of treatment were receiving ARVs.[185]

Prior to the HIV/AIDS epidemic, Botswana's success permeated its health system. In the 1980s, it posted some of the best health indicators in the region, including a drop in the crude birth rate and incidence of childhood immunizable diseases.[186] Since the HIV/AIDS epidemic, however, the country has experienced a rise in its crude death and infant mortality rates.[187] Life expectancy for women and men is 40 years,[188] down from 72.4 prior to the advent of AIDS.[189] In addition to the HIV/AIDS epidemic, Botswana's health system is battling rising tuberculosis prevalence and malaria transmission.[190]

HIV/AIDS Epidemic

Since the first case of HIV infection was recorded in Gaborone in 1985,[191] Botswana has developed one of the highest prevalence levels of HIV/AIDS infection in Africa.[192] Until 2004, when Swaziland surpassed it, it had the highest HIV prevalence in the world.[193] The Government's most recent sentinel surveillance survey of pregnant women ages 15 to 49 making their first ante-natal clinic visit found 37.4 percent of women to be HIV-positive.[194]

The estimated prevalence of HIV in the country varied by age and residence location. The nation's highest prevalence, 73.7 percent, existed among unmarried women who lived with their partners in the Selebi Phikwe district.[195] HIV prevalence for all pregnant women in Selebi Phikwe was 52.2 percent.[196] Residents of the Bobirwa district between the ages of 25 to 29 had a 71.7 percent prevalence of HIV.[197] In that same district, 67.6 percent of pregnant women with regular jobs were HIV-positive.[198]

Recent government data from a systematic sample of Batswana households in 2004 revealed that nearly 10 percent of women and almost four percent of men ages 15 to 19 were HIV positive.[199] Approximately 44 percent of women and 36 percent of men ages 30 to 35 were estimated to be HIV-positive.[200] Francistown led the urban infection category with an aggregate prevalence of 24.6 percent. [201]

It has been estimated that 18,000 adults and children died of AIDS in Botswana in 2005.[202] Approximately 120,000 children under the age of 17 have been orphaned as a result of AIDS.[203] The spread of HIV in Botswana has been attributed to a host of factors ranging from the subordination of women, to stigma and denial, to urbanization and migration.[204]

As elsewhere in the region, the epidemic in Botswana disproportionately affects women: there were three HIV-positive females to every HIV-positive male in the 15 to19 year-old cohort.[205] The Botswana government has recognized that the reasons for this imbalance include power inequities, women's lack of sexual negotiating power, migration patterns[206] and the lack of economic empowerment of women.[207] More than a decade ago women's elevated vulnerability to HIV/AIDS in Botswana was attributed to their subordinate position in society and a mix of cultural, social and economic factors including men's culturally-sanctioned entitlement to sex "on demand," the "cultural imperative" of a woman to prove her fertility before marriage by bearing children, women's powerlessness to insist on condom use, the legitimization of violence against women, internal migration patterns and the commercial sex trade.[208]

Botswana HIV/AIDS Policy

Governmental and Organizational Response

Botswana reported that it spent US$165 million on HIV/AIDS in 2005.[209] The primary body informing the Botswana government's response to the HIV/AIDS epidemic is the National AIDS Council (NAC), chaired by President Mogae.[210] The NAC's policy direction both informs and is informed by other national development strategies including those outlined in Vision 2016, Botswana's vision for 50 years following independence; National Development Plan 9 (NDP9) the socio-economic development plan for the country; and the 1997 National Population Policy.[211] The National AIDS Coordinating Agency (NACA), a directorate of the Office of the President, provides secretariat and technical support to the NAC and coordinates the national response to the epidemic.[212]

Vision 2016, developed in 1996 by a Presidential Task Group, is an inspirational guide for the development of Botswana.[213] The goals are based on the five principles of democracy, development, self reliance, unity and

botho (respect).[214] Vision 2016 incorporates the goal of halting the spread of HIV/AIDS.[215]

Botswana's National AIDS Policy was first developed in 1992, revised in 1998[216] and again in 2002.[217] The 12th version is reportedly being finalized by NACA and the Attorney General's Chambers for consideration by NAC and the Cabinet.[218] The current policy enumerates the role of each ministry in the government response to HIV/AIDS and is explicitly based on principles of health, human rights and privacy for PLWA.[219] Section 8.3 of the draft policy acknowledges and condemns the role discrimination against women plays in their risk of HIV.[220]

The National Strategic Framework (NSF) for HIV/AIDS 2003-2009 was developed over an eighteen-month period "to articulate, disseminate, and educate the public at large on agreed national priorities and strategies within the scope of Vision 2016" and "to provide clear guidance for Ministries, districts, NGOs, and the Private Sector to enable them to work in a collaborative manner in achieving the intended goal of the National Response to HIV/AIDS: to eliminate the incidence of HIV and reduce the impact of AIDS in Botswana." In the development of the multi-sectoral NSF, consultations were held in communities in each district of the country, and with each ministry, civil society and the private sector.[221]

The five goals of the NSF are prevention; treatment, care and support; strengthening national response management; impact mitigation; and strengthening the legal and ethical environment. [222] For each goal, there are a limited number of specific and measurable objectives, followed by a series of strategies.[223] The NSF is undergoing a comprehensive Mid-Term Review with completion expected in June 2007.[224]

One of the six priority groups for the NSF is women.[225] As a priority group, women are subject to target interventions,[226] including their empowerment through PMTCT[227] and income generation programs.[228] The NSF charges the Women's Affairs Department with mainstreaming gender into HIV/AIDS programs.[229] This progressive rhetoric has to-date not been matched by implementation of gender-focused programming.

Commitment to addressing HIV/AIDS in Botswana's private sector lags behind that of the public sector. In 2003, the United Nations assisted NACA in establishing a private sector coordination unit.[230] Less than 20 percent of private companies surveyed in 2005 reported having HIV policies.[231] In 2005 the Botswana Business Coalition on HIV/AIDS began mobilizing the private sector around the epidemic.[232]

The international community has been a key player in augmenting Botswana's national response to the HIV/AIDS epidemic, both financially and in terms of research and the creation of health infrastructure. The Global Fund to Fight HIV/AIDS, Tuberculosis and Malaria awarded a grant of US$18.6 million to Botswana's Ministry of Finance and Development Planning to fund health care personnel training, strengthen the treatment of PLWA, scale-up prevention, counseling and testing and create other initiatives over the course of two years, commencing July 1, 2004.[233] The U.S. President's Emergency Plan for AIDS Relief (PEPFAR) supports the Botswana Government's treatment plan through financial support and technical assistance.[234] In fiscal year 2005, PEPFAR gave Botswana over US$51.8 million for HIV/AIDS prevention, treatment and care.[235] The BOTUSA Project, a collaboration between the Government of Botswana and the U.S. Centers for Disease Control, employs over 12 international and 100 local staff to provide financial support, technical assistance, program support and HIV/AIDS research.[236]

The Botswana government has formed a number of partnerships to implement HIV/AIDS initiatives. The Botswana-Harvard School of Public Health AIDS Initiative for HIV Research and Education was launched in 1996 to assist with research and education projects on HIV/AIDS.[237] The African Comprehensive HIV/AIDS Partnerships, an initiative of the Government of Botswana, the Bill and Melinda Gates Foundation and Merck, has built and renovated clinics, scaled up laboratory facilities and trained healthcare workers.[238] UNAIDS Program Acceleration Funds amounted to $0.5 million between 2002 and 2003 in the area of workplace education.[239] In addition, UNAIDS assisted the government in finalizing the NSF and providing guidance on routine testing policies.[240]

There are a number of local and national NGOs in Botswana working on HIV/AIDS and related issues. The Botswana Network of AIDS Service Organizations serves as an umbrella for such organizations.[241] It provides capacity building in the form of small grants and coordinates information sharing among groups.[242] The Botswana Network of People Living With HIV/AIDS (BONEPWA) was established in 2000 as a network of PLWA.[243] BONEPWA coordinates support groups, prevention activities and care for PLWA in Botswana.[244] It also sponsored the first "Mr. HIV Positive Living" pageant and campaign in April 2006.[245] The Centre for Youth of Hope (CEYOHO) provides care and support to youth living with HIV/AIDS.[246] Its signature program is the

"Miss Stigma Free" pageant, which annually crowns an HIV-positive woman as a role model for destigmatization and ARV adherence.[247] The Botswana Network on Ethics, Law and AIDS (BONELA) advocates and lobbies at the national and international level for legislation that protects the rights of PLWA.[248] The Botswana Christian AIDS Intervention Programme (BOCAIP) has been providing pre- and post-test counseling to PLWA since 1997.[249] Bomme Isago Association is a growing network of support for HIV-positive women founded in 2005. The International Community of Women Living with HIV/AIDS also maintains a program officer in Botswana.

Prevention/Education

HIV awareness is high in Botswana. Over 80 percent of people surveyed in the national AIDS household survey in 2004 correctly reported at least one method of preventing HIV transmission.[250] However, only 27 percent of females and 29 percent of males ages 15-24 were able to identify a method of HIV prevention.[251] As a PEPFAR-funded country, Botswana's prevention program has taken the "ABC" approach: abstinence before marriage (A); being faithful to one sexual partner (B); and, failing A and B, consistent condom use (C).[252]

Testing

VCT has played an important role in HIV-related prevention and care in Botswana, particularly as an access point for other HIV/AIDS-related services. Since 2000, BOTUSA has supported the *Tebelopele* network of VCT centers, which provides HIV testing and counseling services for Batswana ages 18 to 49.[253] In 2004, *Tebelopele* established itself as an autonomous NGO offering VCT at 16 locations throughout the country.[254] In addition, prevention of mother-to-child transmission (PMTCT) programs provide testing, care and treatment for pregnant women.[255]

Despite the availability of testing, in the 2004 national survey just over a quarter of Batswana reported being tested for HIV.[256] Low testing rates in Botswana have been attributed in part to denial[257] and to the fear of potential stigma and discrimination associated with HIV/AIDS, causing Batswana to avoid seeking testing or attending treatment facilities.[258] The majority surveyed in 2004 reported stigma and discrimination against PLWA. For example, approximately 70 percent of the 2004 survey participants reported that they would prefer an HIV-positive teacher to stop teaching.[259] Over 92 percent of survey participants, however, indicated that they would be willing to care for a family member who had fallen ill from HIV/AIDS.[260]

Persistent low levels of testing in the general population, despite having launched a program of universal access to ARV treatment in 2002, prompted a shift in Botswana's HIV testing policy in early 2004.[261] In January of that year, the Botswana government introduced a policy of "routine testing" under which nearly all patients would be tested as a part of routine medical visits.[262] The initial policy was unclear, however, as to whether patients would be tested unless they explicitly refused ("opt-out" testing) or whether they would only be tested if they gave their specific consent to an HIV test ("opt-in" or "routine offer"). Guidelines on the policy were only issued in February 2004 from the Ministry of Health to hospitals. A year later, training materials were still being developed.[263] In June 2004, WHO and UNAIDS issued a recommendation, in part based on the Botswana experience, that such testing should be "routine offer."[264] The Government has subsequently stated that the policy is one of "opt-out" testing.[265] Since reporting has been incomplete, the nature, extent and uniformity of the implementation of the program in Botswana remain unclear.[266] At least one study has documented increased acceptance of testing in antenatal programs in Francistown in the first three months after the initiation of routine testing[267] and the Government reported an increase in testing rates since the introduction of the policy.[268]

Treatment

In May 2002, Botswana became the first country in Africa to widely disseminate anti-retroviral therapy to HIV-positive people.[269] The program, named Masa ("new dawn"), is a collaboration of the Government of Botswana, the pharmaceutical company Merck and the Bill and Melinda Gates Foundation and is funded by the Gates and Merck Foundations at a cost of US $50 million over five years.[270] As of 2003, the Ministry of Health was administering the program, operating in Gaborone, Francistown, Serowe and Maun.[271] The Botswana Guidelines on Anti-Retroviral Treatment were developed, aligned with international standards.[272] Under the 2002 Guidelines, ARV treatment is provided to patients with CD4 counts under 200 or with a physician's recommendation.[273] The Guidelines also stipulate that sexual assault survivors should be provided with post-exposure prophylaxis within 48 hours of the attack and follow-up treatment if HIV test results are positive.[274]

By January 2004, only 17,500 patients were enrolled in Masa, out of an estimated 110,000 eligible individuals.[275] Low enrollment in the ARV treatment program was partly attributed to underutilization of HIV-testing;

by mid-2003, only 70,000 tests in total had been performed out of a population of 1.7 million.[276] From the advent of routine testing, the Government reported a significant increase in testing[277] and treatment[278] by mid-2005. UNAIDS/WHO estimated that, by the end of 2005, between 67,000 and 77,000 eligible Batswana were receiving ARV treatment, representing 85 percent coverage and surpassing the WHO '3x5' target of fifty percent of eligible PLWA.[279] In 2006 Masa reported that ARVs were being distributed to nearly 55,000 patients through 32 treatment sites, [280] comprising at least one dispensing site in each of the 24 health districts.[281] It has been observed, however, that the proportion of women accessing treatment is far greater than that of men, a disparity that cannot be explained by sex distribution in the population or HIV prevalence, but may have to do with the volume of referrals from antenatal clinics and women's leadership role in Botswana's HIV response.[282]

Women's Status

Botswana has ratified or acceded to several international and regional human rights instruments that pertain to women's civil, political, economic, social and cultural status. Botswana ratified the African Charter in the Rights and Welfare of the Child,[283] African Charter on Human and Peoples' Rights[284] and the International Covenant on Civil and Political Rights.[285] It has acceded to the Convention on the Elimination of All Forms of Discrimination against Women[286] and the Convention on the Rights of the Child.[287]

Legal Status

Civil Law

Women's rights vary, depending on the application of common or customary law. Under Botswana's Constitution women and men are equally entitled to certain fundamental rights and freedoms irrespective of their sex.[288] The constitutional prohibition against discrimination in Section 15 of the Bill of Rights, however, does not refer to sex in its definition and is subject to a number of exceptions.[289] For example, Section 15 does not apply to laws "for the application in the case of members of a particular race, community or tribe of Customary Law."[290] In 1991, the Court of Appeals held that women and men are equally entitled to the fundamental rights and freedoms mentioned in Section 3 of the Bill of Rights. [291] However, subsequent court rulings have preserved the state's power to abridge rights on the basis of sex on "reasonable" grounds.[292] Furthermore, the bifurcation of the legal system means that customary laws that discriminate against women continue to be enforced, particularly in rural areas.[293]

In recent years reforms have been made to several discriminatory civil laws disempowering women; however, implementation has been weak. Most significantly, in December 2004 the Abolition of Marital Power Act was enacted to abolish the common law principle of marital power that men married in community of property enjoyed and it was replaced with equal joint powers to dispose of the assets of the joint estate.[294] Effectively, the marital power that existed between spouses married in community of property[295] (the majority of marriages) reduced women to minors, and granted husbands power and control over the joint estate. Most women are married customarily, however, so effectively, marital power still applies to those marriages. Moreover, several civil property-related laws circumscribe married women's rights. The Penal Code, for example, by inference suggests that only women can steal from jointly owned property[296] thus rendering such property under the husband's legal control. Women also face problems securing business loans or property because the Companies Act prohibits them from accepting company director positions without their husbands' consent.[297]

Customary Law

Given that Botswana's legal system comprises both customary and Roman-Dutch traditions, Batswana theoretically have a choice of venue.[298] However, in light of the population's rural concentration, most civil disputes are heard by traditional tribunals.[299]

Under customary law, women are often subordinated to men, lack independent legal capacity and are subjected to the guardianship of their fathers, brothers, uncles or husbands.[300] There has been progress regarding women's representation at the tribal level, however. In 2003, Mosadi Seboko, a single mother and former bank manager, was appointed paramount chief of the Balete tribe.[301] Seboko assumed the throne after a protracted battle with her male relatives to claim the position left vacant by the deaths of her father and brother.[302] She and her female relatives relied on the Constitution's provision against discrimination to secure her ascension.[303] Seboko is joined by two other female chiefs in the national House of Chiefs,[304] of which she was appointed chairwoman.[305] The House of Chiefs advises the president on customary and tribal land issues.[306]

The Customary Courts Act codified the regime of customary courts throughout the country and provided that

such courts should apply "the customary law of that tribe or tribal community so far as it is not incompatible with the provisions of any written law or contrary to morality, humanity, or natural justice."[307] Conflicts are resolved through the *kgotla*, the traditional court and meeting place, over which the chief presides. Traditionally although women could take part in these meetings, they generally only spoke up on behalf of a male minor[308] and could not initiate legal proceedings or claim damages.[309] The situation has changed, however, regarding women's assertion of their rights. There is evidence that women take their cases to various customary courts to sue for adultery, damages and criminal offenses including assault.[310] While statutory law may yield judgments in favor of women's status and property rights, many women avoid civil courts as a result of wanting to preserve family unity, due to lack of resources, or other restrictions resulting in their inability to travel to courts that are located in urban centers.[311]

A number of traditional laws restrict women's property and inheritance rights.[312] For example, a woman married under traditional law is held to be a legal minor vis-à-vis her husband, requiring her husband's consent to buy or sell property.[313] This severely impinges women's access to credit, since they lack the collateral necessary to secure loans.[314] An unmarried woman under customary law will remain under the guardianship of the male head of her family, her rights being determined, and possibly restricted, through him.[315] Women are also traditionally barred from owning cattle, an important symbolic and financial asset, and a linchpin of the rural economy.[316] Under tribal tradition, a man must pay *bogadi* (cattle) to his potential bride's father.[317] This practice reinforces the idea that wives become their husband's property upon marriage and, as such, are to be controlled by them.[318] This fact is significant because, "[a] woman's capacity to voluntarily enter into marriage, to dissolve a marriage, and to have equal rights within her marriage are essential to her ability to control her life and make voluntary, informed reproductive choices."[319] Moreover, when women lack secure property rights they are not free to leave abusive marriages and relationships.[320]

The Administration of Estates Act stipulates that the property of all Batswana will be disposed of according to customary law.[321] Under customary law, women are not permitted to inherit property.[322] When a woman's husband dies, his property is transferred to his eldest son, although the widow is allowed to remain in the home until her death or remarriage.[323] In the event that the eldest son dies before his father, the father's property passes to the second eldest son and his heirs.[324] It is only if a man dies with no sons that a daughter may inherit; even in that case, the property is maintained by her male guardian.[325] However, in the case of a deceased tribesman who accumulated property that cannot be equitably distributed under customary law, an executor will be appointed by a Master of the High Court to handle the affairs of the estate and divide the property in terms of common law.[326]

Violence Against Women

While the dimensions of violence against Batswana women have been difficult to quantify due to fear, poor policing and scant data, social norms condone it and the Government has been slow to respond to this form of gender discrimination.[327] A report presented in May 2005 estimated that six out of ten women in Botswana are lifetime survivors of domestic violence.[328] Women of all classes and social strata are victims of violence.[329] Rape, incest and intimate partner violence are prevalent throughout the country.[330] Reasons for gender-based violence in Botswana include gender hierarchy, the equation of women with property, women's dependence on men and the overall failure to grant women social, economic and legal rights.[331] In 2006, 1,544 rapes were reported nationally.[332]

The Penal Code stipulates a maximum life sentence accompanied by corporal punishment for rape, but such sentences are rarely pronounced.[333] Actual sentences have been found to fall between six months and nine years.[334] A Penal Code provision automatically denying bail to rape respondents was declared unconstitutional in 1998.[335] Botswana law takes into account the added risk of HIV when meting out sentences for rape. For example, while the minimum sentence is 10 years, it rises to 15 if the assailant is HIV-positive.[336] The term rises to 20 years if the assailant knew his or her HIV status.[337] Respondents in criminal rape cases are tested for HIV prior to sentencing;[338] however, the test cannot confirm whether the perpetrator was positive at the time of the attack, raising the issue of whether it is criminal intent that is being punished or HIV-positive status.[339]

Botswana's criminal law makes no provision for marital rape.[340] Furthermore, rape is a moral offense rather than an offense against the person, which diminishes its status as a crime against women[341] and equates women's value with family or community honor. The process for the prosecution of rape hinders reporting by requiring corroboration, allowing the admissibility of evidence of a prior relationship between the assailant and

the survivor and directing the conduct of rape trials in open court.[342] If survivors do report assaults, they are frequently faced with noncompliant and insensitive police.[343] In general, family violence is often considered a "domestic dispute" in which police officers are reluctant to intervene.[344] The nation has one shelter for battered women, the Kagisano Society Women's Shelter Project.

Sexual harassment, especially at the workplace and in learning institutions, is prevalent in Botswana.[345] According to one report in 2000, 60 percent of secondary school students in Botswana have been sexually harassed by their teachers and girls' declining school enrollment since 1997 is partly blamed for fear of sexual abuse.[346] In a survey of 560 secondary school students in 2002, 20 percent said that they had been asked by teachers to have sex with them and 42 percent of these reportedly accepted, "mainly because they feared lower grades if they refused."[347]

Socio-Economic Status

Economically, women in Botswana are significantly disadvantaged in comparison to men. In 2004, for example, the female GDP per capita was PPP (purchasing power parity) US$5,322 while the male GDP per capita was PPP US$14,748.[348]

Different factors account for gender-specific economic inequality, including the prevalent situation of households headed by women with little financial resources and the uneven distribution of family responsibilities between men and women.[349] During the last three decades, the number of female-headed households has increased greatly in Botswana. By 2001, 50 percent of all households in rural areas and 44 percent of those in urban areas were headed by women.[350] Women have nearly a 28 percent official unemployment rate as compared with less than 22 percent for men.[351] The gender disparity in income and employment has been attributed to a history of occupational segregation that has resulted in the exclusion of women from certain job sectors, such as construction.[352] Moreover, few income-generation opportunities for women exist outside of formal employment, particularly in rural areas.[353]

Historically, Batswana girls have enjoyed greater access to primary and junior secondary school than boys; since the late 1980s, however, girls and young women have tended to prematurely leave secondary school, partly due to family demands, including unwanted pregnancies.[354] Pregnancy is a leading reason girls terminate their schooling since discriminatory school regulations make it nearly impossible for girls to resume their education after giving birth.[355] Also limiting their future opportunities, young women rarely pursue vocational and technical training, for similar reasons,[356] although in 2000, the Botswana Minister of Labour and Home Affairs reported to the UN a revision to the National Policy on Education to expand vocational and technical education to attract more women.[357]

Health Indicators and Access

Urban women in Botswana give birth an average of 2.8 times and rural women average 3.7 births over their lifetimes.[358] Over 93 percent of women reported having attended an antenatal clinic during their last pregnancy.[359] Less than 1.5 percent of women experienced an unattended birth in 2002.[360] The adjusted maternal mortality ratio in 2000 was 100 maternal deaths per 100,000 live births.[361] Pregnancy can be legally terminated within the first 16 weeks for rape or incest, fetal impairment or risk to the mother's life, mental or physical health.[362]

Botswana has made gains over the past decade in reducing the rates of adolescent pregnancy. The United Nations Population Fund has reported that, in 1996, six out of 10 teenage women had been pregnant at least once, whereas that ratio dropped to two in 10 in 2003.[363] While an encouraging downward trend, the problem remains serious, particularly for young girls.[364] A study by the Botswana Ministry of Health and Social Services in 2003 revealed that most adolescent pregnancies are the result of sexual relationships with older men.[365] Some of the reasons identified for this age disparity are young women's fear of refusing older men sex and disempowerment vis-à-vis older, wealthier male partners.[366]

As discussed in the previous section on legal status, female subordination has been an integral part of traditional society.[367] Women's customary roles were defined as "docile daughter, wife or caring mother."[368] Women have had little control over their sexuality, including the right to decide when and how many children to bear or when and if to marry.[369] Women who refused sexual advances risked losing their partners[370] and women were not socially or culturally permitted to insist on condom use in male-dominated relationships.[371] Men's continuing control of women's sexuality and reproduction in Botswana directly translates into ill health for women and specifically into an elevated risk of contracting HIV and developing AIDS.

General Gender Policy

In 1981, the government established a National Women's Unit which was elevated in 1996 to a Department of

Women's Affairs (WAD) in the Ministry of Labor and Home Affairs.[372] WAD is staffed by 11 professionals[373] who work to integrate gender policies into various government initiatives.[374] United Nations Agencies including UNDP, UNAIDS, UNFPA and UNICEF support WAD objectives and initiatives to enhance women's status. Certain ministries have a designated Gender Focal Point.[375]

In 1996, in recognition of the vast gender inequalities in Botswana, the government instituted an ambitious National Policy of Women and Development with the aim of achieving "effective integration and empowerment of women in order to improve their socio-economic status, enhance participation in decision making and their role in the development process." Specifically, the policy aims to eliminate all economic, social and legal discrimination against women, to improve women's health, to promote education and skills training and to mainstream gender into development planning.[376] Vision 2016 called for strengthening and implementation of this policy, as well as a commitment of resources from the NDP to combat discrimination, and included six detailed areas of focus related to gender.[377]

Two years later, in 1998, the Government responded to the Fourth World Conference on Women in Beijing by creating the National Gender Programme Framework to transform policy principles into concrete strategies. The framework prioritized six areas of concern from the Beijing Declaration and Platform for Action, including poverty and economic empowerment; power and decision making; education and training; health; and girls.

In 1999, the Advocacy and Social Mobilisation Strategy and the Botswana National Council on Women (BNCW) were established.[378] The BNCW has the mandate to guide and support the Government, NGOs, and the private sector as well as monitoring and reviewing policies and programs for gender equality, awareness and progress; it is the highest advisory body to the government on women's issues.[379]

Several population health and gender equality indicators attest to improvements for women in Botswana in the last decade.[380] These impacts and the government policies that produced them represent real advances. Policies are limited, however, by being operational only at the national level[381] and in isolation from many Batswana women. As a result, political and social change addressing gender inequalities in Botswana has been indebted to the initiation and insistence of civil society, through the women's movement and women's NGOs such as Emang Basadi ("Stand Up Women") and Women and Law in Southern Africa (WLSA) — Botswana.[382] Among other initiatives, WLSA has offered training on women's rights as human rights, provided legal advice and services, and lobbied and advocated for policy and legal reform. It has published several books documenting the status of women's rights in Botswana.[383]

Founded in 1986, Emang Basadi has conducted participatory research, mobilization and education to increase women's participation in national development, for example through the support of female politicians with its 1998 publication, *A Woman Candidate's Guide to Campaign Management*.[384] The organization has also secured major legislative victories for women's rights. Prior to 1995, the government denied women the ability to pass their Batswana citizenship to their children if they were born to foreign husbands.[385] Through researching state precedents and international standards, lobbying members of Parliament and publicizing the discriminatory nature of the practice, Emang Basadi was instrumental in securing the passage of the Citizenship Amendment Act in 1995 which granted Batswana women the right to pass their nationality onto their children born to foreign fathers.[386]

Other organizations focusing on gender include the Women's NGO coalition, Botswana Caucus for Women in Politics and the Botswana Council of Women. Ditshwanelo, the Botswana Centre for Human Rights, conducts human rights advocacy and education in a number of areas, including HIV/AIDS.[387] Women Against Rape trains women in income-generating skills and helps them gain credit to start their own small businesses.[388] The Kagisano Society Women's Shelter Project operates the only domestic violence refuge for women and children in Botswana, begun in 1998 and located in Gaborone.[389] The Parliamentarians for Women's Health Project is a three-year project in Botswana, Kenya, Namibia and Tanzania to educate and strengthen leadership in those countries with the goal of improving access to health services for women and girls, particularly related to HIV/AIDS.[390] In 1991 the University of Botswana established the Gender Policy and Programme Committee.

Women's representation in government has improved somewhat, largely as a result of NGO advocacy. The percentage of women elected to Parliament increased from 5 percent in 1990 to just over 11 percent in 2005.[391] Women's representation at the level of senior government officials was close to 31 percent in 2005.[392]

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