THE UPR PROJECT AT BCU

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About the UPR Project at BCU:

Birmingham City University's Centre for Human Rights was created in 2014 to promote human rights, ensure access to justice, and enhance the rule of law around the world. We seek to achieve this through leading research, education, and consultancy. We submit expert reports to international human rights regions, provide advisory services to governments and nongovernmental organisations, and draft legal opinions and file legal briefs in domestic courts and international human rights courts.

The Centre for Human Rights established the UPR Project in 2018 as part of our consultancy service. We engage with the Human Rights Council's review process in offering support to the UPR Pre-sessions, providing capacity building for UPR stakeholders and National Human Rights Institutions, and the filing of stakeholder reports in selected sessions. The UPR Project is designed to help meet the challenges facing the safeguarding of human rights around the world, and to help ensure that UPR recommendations are translated into domestic legal change in member state parliaments. We fully support the UPR ethos of encouraging the sharing of best practice globally to protect everyone's human rights. The UPR Project at BCU engages with the UPR regularly as a stakeholder, having submitted numerous reports and been cited by the OHCHR. You can read more about the UPR Project here: www.bcu.ac.uk/law/research/centre-for-human-rights/projects-and-consultancy/upr-project-at-bcu

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INTRODUCTION

1. The Government of Botswana, and civil society organisations working in the area of HIV/AIDS, must be commended for their work as Botswana has met the UNAIDS 95-95-95 goal.[1] In fact, in 2022, "among adults in Botswana living with HIV, 95 percent were aware of their status, 98 percent of those aware of their status were on antiretroviral therapy (ART), and 98 percent of those on ART achieved viral load suppression."[2] Furthermore, Botswana has taken great steps to reducing mother-to-child transmission of HIV, with the ultimate goal being complete elimination.[3]

2. It is estimated that 20.9% of adults in Botswana are living with HIV.[4] Whilst the number of people currently living with HIV is still steadily increasing, the number of new infections is decreasing.[5] There are several reasons for this, including a rise in the general population, and an expansion of access to antiretrovirals (HIV medication) in Botswana, meaning that more people infected with HIV are living longer lives. However, there is still work to be done in Botswana, particularly in terms of women and girls, as the rate of HIV in women is 26.3% compared with 15.4% in men.[6]

3. This Stakeholder Report focuses on a key issue that remains a source of concern in Botswana: female sex workers and HIV. We make recommendations to the Government of Botswana on this issue, implementation of which would also see the country moving towards achieving Sustainable Development Goal 5 which aims for gender equality.

A. Botswana and International Law

4. It is widely agreed that taking a human rights approach to tackling HIV is both progressive and effective.[7] Botswana is a party to six of the nine core international human rights treaties.[8] Particularly relevant for the regulation of the right to health, including in the context of HIV, is the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), which, unfortunately, Botswana has neither signed nor ratified. Article 12(1) ICESR states that:

> 1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
>
> 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
>
> (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; …
>
> (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
>
> (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

5. Also relevant to the right to health, and in particular ensuring access to antiretrovirals, is Article 27 of the Universal Declaration of Human Rights, which states, "[e]veryone has the right…to share in scientific advancement and its benefits,"[9] and Article 15(1)(b) ICESCR, which recognises the right of everyone "[t]o enjoy the benefits of scientific progress and its applications."[10]

6. Furthermore, Botswana should abide by the International Guidelines on HIV/AIDS and Human Rights ('International Guidelines'), which were published by the OHCHR and UNAIDS to ensure that Member States were implementing international human rights standards on HIV in practice.[11] There are twelve guidelines in place, followed by recommendations for implementation and guidance on how to enact international human rights laws.[12]

B. Implementation of Recommendations from Cycle Three in 2018

7. Botswana received 207 recommendations in the Third Cycle, of which 93 were accepted and 114 were noted.[13] The number of noted recommendations is disappointing, and we encourage the government to reconsider its approach in the Fourth Cycle. Furthermore, it is also important that accepted recommendations are subsequently implemented by the government.[14]

8. Eight of the 207 recommendations focused specifically on HIV/AIDS, seven were supported by the government and one was noted. Whilst it is generally a positive response from the government, this is a relatively low number of recommendations for such a serious issue, and Member States should ensure all key areas are being covered in Botswana's Fourth Cycle of review in 2023.

9. Four countries made general recommendations to Botswana, asking them to strengthen or maintain current efforts (**Senegal (para 127.56):** "[s]trengthen the policies to combat HIV/AIDS," **Ukraine (para 27.57):** "[m]aintain the Government's programmes on combating HIV/AIDS with the support of the World Health Organization and other international partners," **Azerbaijan (para 127.58)** "[t]ake further steps to ensure the right to health, particularly by combating the scourge of HIV/AIDS," **Ethiopia (para 127.60)** "[s]trengthen targeted interventions on vulnerability to HIV.") These recommendations were accepted. Whilst, on its face, it seems that strengthening efforts would likely assist in protecting people from HIV, **these recommendations are too broad to ensure any meaningful implementation.** Recommendations from Member States would be more effective if they provided details of specific policies and programmes to be employed.[15] Specific recommendations can easily be formulated through utilising information provided in the Compilation and Stakeholder Reports.

10. **Indonesia (para 127.55)** asked Botswana to "[f]urther strengthen its national programme to reduce HIV prevalence, especially among young people." Whilst **India (para 127.54)**

and **Myanmar (para 127.59)** asked Botswana to focus on "awareness-raising programmes" related to HIV/AIDS, with **India** specifically noting the need to focus on "women and adolescent girls in rural areas." These recommendations have been accepted and **have been implemented in part.** Botswana has achieved the UN's 95-95-95 target, but there remains "a gap in awareness" of HIV status, especially among "younger adults, particularly young women."[16]

11. **France (para 128.62)** suggested Botswana "[w]iden the programmes to combat HIV for non-Botswana nationals." This was noted. However, **this recommendation has been implemented.** In 2019, the government changed its policy and confirmed that it would offer free treatment to foreign nationals.[17] Given that, in 2019, it was estimated that 30,000 non-Botswana nationals were living in the country with HIV,[18] this will undoubtedly have helped Botswana to meet the 95-95-95 target.

12. Whilst one recommendation did mention women and girls in rural areas, there are further issues that UN Member States should particularly focus their efforts on. Section C provides an overview of a key issue for Member States to recommend on: female sex workers and HIV.

C. Further Points for Botswana to Consider: Female Sex Workers and HIV

13. Although recent successes in Botswana should be celebrated, as JS2 noted in Cycle Three, "the implementation of [HIV] strategy must be inclusive and cover all key populations including…sex workers."[19] There is an estimated 25,772 sex workers in Botswana, with over 42% living with HIV[20] and 45% not having consistent access to antiretrovirals.[21]

HIV Self-Testing

14. In 2021, PEPFAR set out its HIV prevention strategy in Botswana, and one of the key populations being targeted is female sex workers.[22] There are multiple ways in which this can be achieved, including through self-testing. PEPFAR is co-ordinating an "HIV self-testing" approach to identify people who are living with HIV from hard-to-reach communities, including the clients of female sex workers and the partners and children of female sex workers.[23] PEPFAR notes that such self-testing "is a voluntary process, meaning they can decline or refuse at any time without any impact on the services they receive."[24] Therefore, to ensure that self-testing is widely used, education is required to tackle stigmatisation related to HIV and sex work.

Education

15. Whilst formal education and training is necessary, it is not the only way of tackling such stigmatisation. International Guideline 9 provides specific ways that the public can be educated on this issue, as "[p]ublic programming explicitly designed to reduce the existing

stigma has been shown to help create a supportive environment which is more tolerant and understanding."[25] Botswana should consider using different types of accessible media, "including creative and dramatic presentations, compelling ongoing information campaigns for tolerance and inclusion and interactive educational workshops and seminars,"[26] especially as this approach to educating people on HIV, as a way of reducing stigma, has been supported by scientific studies and academic literature.[27] The government should make use of these studies, looking to the successful implementation of these educative materials as a guide.

16. Another invaluable resource of education and support is civil society in Botswana. Non-governmental organisations have put a great deal of effort towards engaging projects and strategies to tackle stigma and foster inclusivity, for example, Aidsfonds has a specific line of work related to HIV and female sex workers.[28] However, whilst these NGOs carry out invaluable work, they often lack the requisite financial support, which is something the international community must address.

Access to Pre-Exposure Prophylaxis (PrEP)

17. Pre-Exposure Prophylaxis (PrEP) "is a way for people who do not have HIV but who are at very high risk of getting HIV to prevent HIV infection by taking a pill every day."[29] PEPFAR noted in 2021 that female sex workers in Botswana who are currently HIV negative "will be initiated into PrEP."[30] There are examples of this working well elsewhere in Africa. For instance, when South Africa became the first country in Africa to approve the use of PrEP in 2016, one of the first groups of people it targeted was sex workers.[31] Should Botswana follow in South Africa's footsteps, caution must be taken. This was demonstrated by a study conducted by Eakle et al on female sex workers and PrEP in South Africa, which found that it is "important to ensure accurate, relevant, and widespread messaging in communities to generate demand and support for PrEP."[32] As PEPFAR rolls out PrEP for sex workers in Botswana, this must be done using clear and targeted messaging to avoid further stigmatisation of this vulnerable community.

D. <u>Recommendations</u>

We recommend that the government of Botswana should:

i. Ratify the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol as a priority action.
ii. Ensure that PEPFAR's HIV self-testing is rolled out to a wide audience, especially female sex workers, their families and clients.
iii. Develop education provisions for all people in Botswana on HIV, female sex workers, and stigmatisation. This should include, but is not limited to, formal education and training, and other, alternative sources of media.

iv. Establish opportunities to work with NGOs who are offering projects and strategies to tackle stigma relating to HIV and female sex workers, providing financial support where possible.

v. Ensure female sex workers in Botswana are made a high priority for PrEP, using positive examples from other countries and studies conducted, with clear and targeted messaging being utilised to avoid further stigmatisation of this vulnerable community.

[1] Jacqui Thornton, 'Botswana's HIV/AIDS Success' (2022) *The Lancet*.
[2] US Embassy in Botswana, 'The Government of Botswana and PEPFAR Celebrate a Milestone in Bostwana's HIV Response' (8 August 2022) <https://bw.usembassy.gov/the-government-of-botswana-and-pepfar-celebrate-a-milestone-in-botswanas-hiv-response/>.
[3] Kago Kgosietsile, '"A Bright Life Ahead": Botswana on Path to Seeing No Babies Born with HIV' *The Guardian* (18 July 2022) <https://www.theguardian.com/global-development/2022/jul/18/botswana-mother-baby-transmission-hiv-rates-fall-who>
[4] US Embassy in Botswana (n 2).
[5] UNAIDS 'Botswana' <www.unaids.org/en/regionscountries/countries/botswana> accessed 30 September 2022.
[6] ibid.
[7] Bell et al, 'Sexual and Reproductive Health Services and HIV Testing: Perspectives and Experiences of Women and Men with HIV and AIDS' (2007) 19(59) Reproductive Health Matters 113-135.
[8] International Convention on the Elimination of All Forms of Racial Discrimination, ratified in 1969; International Covenant on Civil and Political Rights, ratified in 2004; International Covenant on Economic, Social and Cultural Rights, ratified in 2004; Convention on the Elimination of All Forms of Discrimination Against Women, ratified in 2004; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified in 2004; Convention on the Rights of the Child, ratified in 1995; Convention on the Rights of Persons with Disabilities, ratified in 2012; International Convention for the Protection of all Persons from Enforced Disappearances, signed in 2012 See, OHCHR, 'Status of Ratification Interactive Dashboard' <http://indicators.ohchr.org> accessed 30 September 2022.
[9] Universal Declaration of Human Rights (adopted 10 December) 1948 UNGA Res 217 A(III), Article 27.
[10] International Covenant on Economic, Social and Cultural Rights*,* 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 15(1)(b).
[11] OHCHR & UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights' (2006) <www.ohchr.org/Documents/Publications/HIVAIDSGuidelinesen.pdf>.
[12] ibid. The guidelines provide that: (1) There should be a national framework in place to prevent HIV; (2) There is community input in the creation of HIV policies; (3) Public health laws should take HIV into account; (4) Criminal laws should not be misused in the context of HIV; (5) Anti-discrimination laws should be in place to protect those with HIV; (6) All should have access to HIV-related goods, services, and information; (7) Legal support services should be provided; (8) A supportive environment should be created for women, children, and other vulnerable groups; (9) Educative materials should be provided to avoid stigmatisation; (10) Codes of practice for professional responsibility should be developed; (11) Monitoring and enforcement mechanisms should be created; and (12) States should cooperate with UN agencies on HIV.
[13] UNHRC, 'Report of the Working Group on the Universal Periodic Review – Botswana Addendum 1' (2 May 2018) UN Doc A/HRC/38/8/Add1.
[14] Amna Nazir, 'The Universal Periodic Review and the Death Penalty: A Case Study of Pakistan' (2020) 4(1) RSIL Law Review 126, 153; Alice Storey, 'Challenges and Opportunities for the UN Universal Periodic Review: A Case Study on Capital Punishment in the USA' (2021) 90 UMKC L Rev 129, 148-49.
[15] ibid.
[16] Mine et al, 'Botswana Achieved the Joint United Nations Programme on HIV/AIDS (UNAIDS) 95-95-95 Targets' *UNAIDS* (29 July – 2 August 2022).
[17] UNAIDS, 'Botswana Extends Free HIV Treatment to Non-Citizens' (24 September 2019) <www.unaids.org/en/resources/presscentre/featurestories/2019/september/20190924_Botswana_treatment_non-nationals>.
[18] ibid.
[19] UNHRC, 'Summary of Stakeholders' Submissions on Botswana' (31 October 2017) UN Doc A/HRC/WG.6/29/BWA/3 para 36.
[20] PEPFAR Botswana, 'Strategic Direction Summary' (12 May 2021) www.state.gov/wp-content/uploads/2021/09/Botswana_SDS_Final-Public_Aug-11-2021.pdf 11.
[21] Aidsfonds, 'Hands Off II Sex Work Botswana' <https://aidsfonds.org/work/hands-off-ii-sex-work-botswana> accessed 30 September 2022.
[22] PEPFAR Botswana (n 20) 40-1.
[23] ibid.
[24] ibid 34.
[25] OHCHR & UNAIDS, 'International Guidelines on HIV/AIDS and Human Rights' (n 11) para 63.
[26] ibid.
[27] Thomas J Coates, 'Behavioural Strategies to Reduce HIV Transmission: How to Make them Work Better' (2008) 372(9639) Lancet, 669–684.; Elizabeth Armstrong-Mensah et al, 'Perinatal HIV Transmission Prevention: Challenges Among Women with HIV in sub-Saharan Africa' (2020) 9(3) IJMA, 354–359.
[28] Aidsfonds (n 21).
[29] Centers for Disease Control and Prevention, 'Pre-Exposure Prophylaxis (13 May 2020) <www.cdc.gov/hiv/risk/prep/index.html>.
[30] PEPFAR Botswana (n 210 30.
[31] Pillay et al, 'Factors Influencing Uptake, Continuation, and Discontinuations of Oral PrEP among Clients at Sex Worker and MSM Facilities in South Africa' (30 April 2020) Plos One <https://doi.org/10.1371/journal.pone.0228620>.
[32] Eakle et al, '"I Am Still Negative": Female Sex Workers' Perspectives on Uptake and Use of Daily Pre-exposure Prophylaxis for HIV Prevention in South Africa' (9 April 2019) Plos One <https://doi.org/10.1371/journal.pone.0212271>.