
HUMAN RIGHTS WATCH/AFRICA HUMAN RIGHTS WATCH WOMEN'S RIGHTS PROJECT

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BOTSWANA SECOND CLASS CITIZENS DISCRIMINATION AGAINST WOMEN UNDER BOTSWANA'S CITIZENSHIP ACT

I. INTRODUCTION	2
II. HISTORICAL AND LEGAL CONTEXT	3
Women's Position of Inferiority Under Botswana Law	3
1. Customary Marital Law	5
2. Guardianship.....	5
3. Property Rights (Inheritance and Succession)	6
4. The Income Tax Act	6
Botswana's Obligations Under Domestic and International Law	7
III. A CASE IN POINT: UNITY DOW	8
Background.....	8
Governmentally Imposed Sex Discrimination.....	9
IV. GOVERNMENTAL REACTION TO THE COURT OF APPEAL DECISION	11
Failure to Enforce the Decision.....	11
The Effect of Non-Enforcement on Other Fundamental Rights of Women and Children	13
1. Denial of Women's Rights.....	14
2. Denial of Children's Rights	16
VI. CONCLUSIONS AND RECOMMENDATIONS	18

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*It is plain and beyond any controversy, in my view, that the effect of section 4 of the [Citizenship] Act is to accord an advantage or a privilege to a man which is denied to a woman. The language of the section is extremely clear and the effect is inconvertible, namely that whilst the offspring of a Botswana man acquires his citizenship if the child is born in wedlock such an offspring of a Botswana woman similarly born does not acquire such citizenship. A more discriminatory provision can hardly be found.*⁴⁸

I. INTRODUCTION

Human Rights Watch is concerned that the government of Botswana is continuing to enforce provisions of the Botswana Citizenship Act that discriminate on the basis of sex, in defiance of a 1992 Botswana Court of Appeal decision holding those provisions unconstitutional and contrary to international human rights standards. The enforcement of the Act perpetuates discrimination on the basis of sex and undermines the authority of Botswana's highest court.

In 1990, Unity Dow, a citizen of Botswana, initiated a legal challenge to the constitutionality of sections 4, 5, 6, and 12 of the Botswana Citizenship Act. Her challenge rested on the claim that sections 4 and 5 of the Act were discriminatory and unconstitutional because they deny Botswana⁴⁹ women married to foreign men the right to pass citizenship on to their children. Such children can only remain in Botswana if they are granted a residence permit. In contrast, Botswana men married to foreign women automatically pass citizenship to their children. Sections 6 and 12 were similarly discriminatory on grounds of sex in relation to adopted children and the residency requirements for naturalization.⁵⁰

The High Court declared sections 4 and 5 of the Act discriminatory and unconstitutional. The Botswana government appealed this decision, arguing that

discrimination on the grounds of sex must be permitted in Botswana society as the society is patrilineal and therefore male oriented. The appellant accepts that the citizenship act is discriminatory but this was intentionally made so in order to preserve the male orientation of Botswana society.⁵¹

In a June 11, 1992 decision, the Court of Appeal, Botswana's highest court, found that section 4 of the Act is unconstitutional and inconsistent with international human rights standards. The Court did not decide

⁴⁸ Judgement of T. A. Aguda, Judge of Appeal in *Attorney General vs. Unity Dow*, certified judgement of the Court of Appeal Civil Appeal, No. 4/91, Botswana, June 11, 1992, p. 73.

⁴⁹ Botswana is the country. Batswana is an adjective that modifies a plural noun, as in "Batswana women." Motswana is an adjective that modifies a singular noun, as in "a Motswana woman."

⁵⁰ Section 6 grants citizenship to adopted children only if the male adopter is a Botswana citizen at the time of adoption. Section 12 reduces the residency requirements for naturalization by over seven years for foreign women who marry Botswana men. It also grants them temporary citizenship until naturalization is complete. No such provisions apply to the alien spouses of Botswana women.

⁵¹ *Attorney General vs. Unity Dow*, p. 21.

on other sections of the Act because it ruled that Unity Dow lacked legal standing to raise the issues. Yet, more than two years later the government has taken no substantial action to comply with the Court's decision. Instead, it has continued to enforce the Citizenship Act.

Subsequent to the decision of the Court of Appeal, Unity Dow and several other women who are similarly situated have applied for citizenship for their children as recently as March of 1994. The Botswana government has rejected Dow's application, and ignored the others. In addition, immigration authorities continue to prevent Botswana women married to foreign men from traveling in and out of the country with their children because the children are denied citizenship under section 4 of the Citizenship Act.

The government's defiance of the Court of Appeal's decision in the Unity Dow case has greater implications for the rights of women in Botswana and for the protection and promotion of human rights in general. In particular, the government's refusal to abolish such sex discrimination which, as ruled by the highest court in the country, is clearly prohibited by the Constitution, reflects a determination to perpetuate Botswana women's status as second class citizens. This refusal also signifies blatant disregard of the fundamental principles of the rule of law and independence of the judiciary in a democratic society. The government seeks to justify its defiance of the Court of Appeal on the grounds of respect for national customs and tradition.

Respect for traditions and customs should not be allowed to override the constitutional guarantees and international obligations into which Botswana has freely entered. Human Rights Watch urges the government of Botswana to immediately implement legislative, administrative, educational and other measures to resolve any perceived conflict between local custom and international human rights norms in order to uphold the rule of law and the principles of non-discrimination and equal protection of the rights of women. In particular, we call on Botswana to bring its administrative practices in line with the decision of the Botswana Court of Appeal, to amend other sex discriminatory sections of the Citizenship Act, and to consider other sex discriminatory legislation currently in operation in Botswana with a view to amendment.

II. HISTORICAL AND LEGAL CONTEXT

Botswana is a landlocked country located in the southern region of Africa. It is bordered to the south by South Africa, to the west by Namibia, to the north by Angola and Zambia, and to the east by Zimbabwe. Botswana originally formed part of the Tswana territories which became a British colony in 1885. Formerly known as Bechuanaland protectorate, Botswana gained independence in 1966.⁵²

Botswana has practiced multi-party democracy since its independence, with elections held every five years. Botswana has often been cited as a rare example of peace and good governance in Africa.⁵³ As such, its human rights record has never drawn significant international attention, which has been directed instead at the neighboring countries of South Africa, Mozambique, Namibia, Angola and

⁵² Thomas Reynolds and Arturo Flores, *Foreign Law: Current Sources of Codes and Legislation in Jurisdictions of the World*, AALL Publication Series, no. 33, vol. III (Rothman and Co., 1993).

⁵³ See, N.S. Rembe, "Emang Basadi: Women, Sex Discrimination and the Constitution of Botswana," *Lesotho Law Journal*, vol. 6, no. 2 (National University of Lesotho, 1990), p. 155.

Zimbabwe. However, the Botswana government's open embrace of sex discrimination in both statutory and customary law, and its refusal to enforce the Court of Appeal decision which strikes down such discrimination in the Unity Dow case, raise serious concerns regarding the protection of human rights in Botswana.

Women's Position of Inferiority Under Botswana Law

The sex discriminatory citizenship provisions challenged by Unity Dow are only the tip of the iceberg of statutory and customary law bias against women in Botswana. In fact, the Court of Appeal decision in favor of Unity Dow is extremely limited, and to some extent both reflects and acknowledges more generalized discrimination against women. The decision of the Court of Appeal focused exclusively on the right of Botswana women to pass their citizenship onto children born in wedlock within Botswana, regardless of the father's nationality. Due to the requirements of standing, the Court would only allow Mrs. Dow to argue the constitutionality of section 4 of the Act. In addition, she could not address violations of her children's rights under the Act because under Botswana law, the position of guardian or guardian *ad litem* (for the purposes of the lawsuit) is reserved for the father.⁵⁴ In fact, under Botswana marital laws, Unity Dow could not even file the suit on her own behalf without the permission of her husband.⁵⁵ Moreover, while the Court of Appeal held that section 15(1) of the constitution shall be interpreted to prohibit sex discrimination generally,⁵⁶ it recognized that, in accordance with section 15(4)(c), any law "with respect to adoption, marriage, divorce, devolution of property on death or other matters of personal law" is excluded from the general non-discrimination prohibition.⁵⁷ Tragically, these are areas in which most women in Botswana continue to suffer extensive discrimination.

Although there are many areas in which Botswana law puts women in a position of inferiority and subordination, a few statutes have been implemented to improve the condition of women in Botswana. The Age of Majority Act, for instance, establishes twenty-one years as the age of legal majority for everyone regardless of sex.⁵⁸ From the age of twenty-one Botswana women can now enter into contracts on their own account. Also, recent legislation has changed the common law presumption of marriage

⁵⁴ Mesh Moeti, "A Law Comes Before the Courts," *MMEGI/The Reporter*, vol. 7, no. 26, July 13-19, 1990, p. 7.

⁵⁵ Ian Kirby, "Dow Has No Right to Litigate on Behalf of her Kids and Hubby," *The Midweek Sun*, February 12, 1992, Botswana.

⁵⁶ The Attorney General's argument that the word "sex" in the definition of discrimination in the Botswana Constitution, sec. 15(3), was intentionally omitted to allow sex discrimination has been denied by the Court of Appeal. "If the makers of the Constitution had intended that equal treatment of males and females be excepted from the application of subsection 15(1) or (2), I feel confident, after the examination of these provisions, that they would have adopted one of the express exclusion forms of words that they had used in this very same section." - *Attorney General vs. Unity Dow*, p. 36.

⁵⁷ Constitution of Botswana, 1966, sec. 15(4)(c). According to a judge of the Court of Appeal, the omnibus clause "other matters of personal law" would cover issues such as "domicile, guardianship, legal capacity, and rights and duties in the community and such matters." *Attorney General vs. Unity Dow*, p. 46.

⁵⁸ The Age of Majority Act was incorporated into Botswana law by the General Law Act Cap 14:01 of 1959.

from being in community of property to out of community of property.⁵⁹ Unfortunately, however, other legislation, rather than challenging women's subordinate status, has incorporated discriminatory elements of customary law into the statutory legal system, thereby entrenching it into Botswana law.⁶⁰ This is particularly true, as noted above, in the areas of marriage, adoption, devolution of property upon death, and other matters of personal law.

1. Customary Marital Law

When women marry, they automatically take the domicile of their husband.⁶¹ This in itself can have far reaching consequences. A person's domicile determines which system of law has jurisdiction over them, and which customary laws, if any, apply.⁶² Further, most marriages, whether in or out of community of property still create a marital power in the husband.⁶³ Marital power makes the male spouse the sole administrator of any joint properties and allows him to sell, burden, donate, destroy or otherwise deal with property without his wife's consent. A woman subject to marital power cannot make legally binding agreements or take a case to court without her husband's consent.⁶⁴

⁵⁹ There are two types of marriage under Botswana law, customary and common law marriage. The increasing tendency is to be married under the common law. Since January of 1971, common law marriage is presumed to be out of community of property unless otherwise stated by the couple. In community of property, property is jointly owned by the couple, but the right to manage it is exclusively reserved to the husband. Out of community of property marriages have no joining of estate, and may exclude some discriminatory aspects of marital power if stipulated by the couple. For a summary of marital property rights see, Athaliah Molokomme, *His, mine or ours? The property rights of women married under Botswana common law*, (University of Botswana for the Ministry of Home Affairs/Women's Affairs Unit, Botswana, 1986).

⁶⁰ See Amendment of the Customary Court's Proclamation of 1967, chpt. 04:05, secs. 2, 14, which establishes customary courts to administer the customary laws of tribal communities. See also, The Married Persons Property Act Cap. 29:03; Dissolution of African Marriages (Disposal of Property) Cap. 29:06; and Administration of Estates Act, Section 3, Cap. 31:01, which provide that the assignment of property rights in marriages between 'Africans' or 'tribesmen' shall be determined in accordance with customary law.

⁶¹ Married Persons Property Act. See also, Athaliah Molokomme, "Marriage - what every woman wants or civil death?," *Women and Law in South Africa* (Zimbabwe Publishing House, 1987), p. 182.

⁶² Customary laws differ from region to region. Where customary laws cannot be properly applied due to jurisdictional limits, the courts will apply the common or statutory law. J.A.M. Khumalo, *Practice and Procedure of Customary Courts of the Republic of Botswana* (Juta & Company Limited, 1977), pp. 6-7.

⁶³ As mentioned in footnote 60 above, in marriages out of community of property the marital power can be excluded if done specifically and by the proper forms. Most women, however, are unaware of this option and therefore it is seldom used in practice. Athaliah Molokomme, *The Women's Guide to the Law* (prepared for the Women's Affairs Unit, Ministry of Home Affairs, Government of Botswana, 1987), p. 48.

⁶⁴ Limited exceptions are made for the purchase of household necessities, and where the woman is a public trader, if she holds that position with the consent of her husband. Molokomme, *His, Mine or Ours*.

Many couples still opt for marriages in community of property because it creates a joint estate, allowing both the husband and wife to share equally in the gains and profits of the marriage if it should ever terminate due to death or divorce.⁶⁵ Unfortunately, during the marriage, the wife has absolutely no control over what happens to the estate. In addition, under this customary law arrangement, the wife is considered a minor, subject to the guardianship of her husband.

The payment of *bogadi*, where a man presents cattle or sheep, or in modern day pays a cash amount to the father or guardian of his bride to be, is still practiced in many areas of Botswana. The formality and necessity of the practice are diminishing even under customary laws, but the social pressures to present *bogadi* are still very strong.⁶⁶ The payment of *bogadi* perpetuates the idea that women are their husbands' property. Many men view the payment of *bogadi* as a license to control their wives. "I have paid for her, therefore she must listen to me."⁶⁷

2. Guardianship

Under traditional customary law children belong to their father, and he is their sole legal guardian. In the event of a divorce, the father retains legal guardianship, although actual physical custody does not always follow. Often, when young children are involved, custody will be awarded to the mother.⁶⁸ Even within marriage, mothers are limited in their ability to act in the best interests of their children. Fathers are given the final say on any matters affecting the children. For example, under the Marriage Act, the father's consent alone is sufficient to allow the marriage of his legitimate minor child, even where the mother does not agree.⁶⁹

Botswana males remain subject to guardianship only until the time of their first marriage, or until they break ties with their family home. Women are subject to guardianship throughout their entire life. Under customary law, they remain under the guardianship of their father until they are married, at which point guardianship is transferred to their husband. A wife is regarded as her husband's child. Traditionally, if the marriage ended, due to death or divorce, the woman would be returned to the guardianship of her father, or her closest eligible male relative.⁷⁰ However, more recently, women have been able to establish some independence following the dissolution of a marriage.⁷¹

3. Property Rights (Inheritance and Succession)

⁶⁵ Many choose to marry in Community of Property precisely because it does embody the notion of male leadership in marriage which is the societal norm.

⁶⁶ Letter from Unity Dow dated July 25, 1994. See also, Simon Roberts, "Botswana I: Tswana Family Law," *Restatement of African Law*, vol. 5, (London: Sweet and Maxwell, 1972), p. 34.

⁶⁷ Letter from Unity Dow, July 25, 1994, quoting men who have been interviewed at her counselling center.

⁶⁸ Roberts, "Tswana Family Law," p. 52.

⁶⁹ Molokomme, "Marriage," p. 183.

⁷⁰ Simon Roberts, *A Restatement of the Kgatla Law of Domestic Relations*, (Gaborone: Government Printer, 1970), pp. 15-17.

⁷¹ HRW telephone interview, Botswana, July 25, 1994.

A woman is not her husband's customary heir and generally has no real rights to any inheritance under customary law, although she is entitled to remain in the family home and be maintained by the heir until she remarries or dies. The natural heir of a deceased man's estate is his eldest son. The order of priority passes through the male children in order of their seniority. If the eldest son has died before his father, and without a son, the succession passes in the same manner to the second son and his issue.⁷² Only where a man dies with no male son does the daughter become the principal heir. Even then, the property is managed by her male guardian.

4. The Income Tax Act

Even statutes which do not defer to traditional customary law in areas of marriage and personal law, such as the Botswana Income Tax Act, have incorporated sex discriminatory provisions. The Income Tax Act provides that any income earned by a married woman shall be deemed to have been accrued by her husband. Therefore, the husband files tax returns based on his and his wife's combined earned income. Thus, although the tax payments are withheld directly from a married woman's pay, any refund which is owed her is given directly to her husband. This occurs whether the marriage is in or out of community of property.⁷³

Given such prevalence of sex discrimination in Botswana as a matter of both law and practice,⁷⁴ the government's reluctance to enforce even the limited decision in the Unity Dow case is deeply troubling. The government's defiance of the Court of Appeal's decision in this matter may also dissuade any future attempts to challenge other discriminatory statutory provisions or customary laws. Such defiance signifies a serious lack of commitment not only to the principle of non-discrimination on grounds of sex, but also to the rule of law.

Botswana's Obligations Under Domestic and International Law

The Botswana Court of Appeal, under the authority of the Botswana Interpretation Act which provides that "as an aid to the construction of the enactment a court may have regard to... any relevant international treaty, agreement or convention,"⁷⁵ declared that sex discrimination is generally prohibited by the Botswana Constitution. The Court took into consideration standards set forth by the African Charter, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child in making this interpretation. According to the judge,

Botswana is a member of the community of civilized states which has taken to abide by certain standards of conduct, and unless it is impossible to do otherwise, it would be wrong for its Courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken.⁷⁶

⁷² Simon Roberts, *The Malete Law of Family Relations, Land and Succession to Property*, (Gaborone: Printed by the Government Printer, 1970), p. 57.

⁷³ The Income Tax Act Cap. 52:01.

⁷⁴ Constitution of Botswana, 1966, sec. 15(4)(C).

⁷⁵ The Interpretation Act, Botswana, sec. 24(1).

⁷⁶ *Attorney General vs. Unity Dow*, pp. 53-54.

Section 4 of the Botswana Citizenship Act, which discriminates against women on the basis of their sex is, therefore, *ultra vires* (prohibited by) the Botswana Constitution and continued enforcement of the Act is a violation of Botswana's self-defined obligations to its citizens.⁷⁷

Although the Court reaffirmed a Constitutional exclusion from the general prohibition on sex discrimination in areas of "adoption, marriage, divorce, devolution of property on death or other matters of personal law," Botswana has an international obligation under the African Charter, which it has ratified, to ensure that "every individual shall be equal before the law" and have "the right to the respect of the dignity inherent in a human being and to the recognition of his legal status."⁷⁸ The Charter further obliges states parties to "ensure the elimination of every discrimination against women."⁷⁹ Therefore, even in areas where Botswana women are not protected by their Constitution, Botswana has an international duty under the African Charter to eliminate "all forms of discrimination, particularly those based on...sex."

Article 18, paragraph 3 of the African Charter creates a legal obligation for states parties to the Charter to "ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions." In addition, the preamble of the African Charter pledges states parties to "promote international cooperation having due regard to the... Universal Declaration of Human Rights" and to adhere to "the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the ... United Nations." Botswana has ratified the African Charter. By virtue of this ratification, Botswana should look to the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child for authoritative guidance to interpret its obligations contracted in the African Charter.⁸⁰

The Convention on the Elimination of All Forms of Discrimination Against Women clearly condemns all forms of sex discrimination. With respect to the nationality of children, it specifically provides that "states parties shall grant women equal rights with men with respect to the nationality of their children."⁸¹ The Convention on the Rights of the Child protects children from discrimination of any kind "irrespective of the child's or his or her parent's ... sex, birth or other status."⁸² Article 7 goes on to

⁷⁷ *Ibid.*, p.66.

⁷⁸ The African Charter on Human and Peoples' Rights (hereinafter African Charter), arts. 1-2. Botswana ratified the African Charter on July 17, 1986.

⁷⁹ *Ibid.*, art. 18(3).

⁸⁰ Botswana has not ratified the International Covenant on Civil and Political Rights, U.N. GA Res. 2200A(XXI), adopted December 16, 1966 (hereinafter ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter CEDAW), or the Convention on the Rights of the Child (hereinafter the Convention on the Child). The Universal Declaration on Human Rights (hereinafter Universal Declaration) articulates universal standards of human rights and was adopted by the United Nations in 1948. Unlike the other treaties we cite, it does not impose legally binding obligations on governments.

⁸¹ CEDAW, U.N. GA Res. 34/180, U.N. Doc. A/34/46; art. 9; adopted December 18, 1979; entry into force September 3, 1981).

⁸² Convention on the Child, U.N. GA Res. 44.25; art. 2; adopted November 20,

guarantee all children the "right to acquire a nationality."

The government's failure to enforce the decision of the Court of Appeal also violates its international obligations under the African Charter by undermining the authority of the Court. Article 26 of the Charter assigns states parties the duty of guaranteeing "the independence of the Courts" as institutions entrusted with the promotion and protection of human rights and freedoms.⁸³

The Botswana government's enforcement of the Citizenship Act discriminates against women with respect to the equal protection of the law and to the nationality of their children, and undermines the independence of its court system. It is, therefore, clearly violating explicit provisions of the African Charter, to which Botswana is a party, as well as the Convention on the Elimination of Discrimination Against Women and the Convention on the Rights of the Child. Human Rights Watch urges Botswana to resolve the conflict of custom and international law in accord with developing human rights norms which favor non-discrimination and the protection of the rights of women. This can be accomplished through a process of legislative reform and educational programs aimed at the promotion of equality between the sexes. Enforcement of the Court of Appeal decision in the Unity Dow case would be an important first step.

III. A CASE IN POINT: UNITY DOW

Background

The Botswana government's handling of the Unity Dow case exemplifies their resolution to preserve a male oriented society in Botswana and to perpetuate governmentally endorsed sex discrimination even where such discrimination is clearly prohibited by the Constitution, the country's supreme judicial body, and international law.

Unity Dow, a citizen of Botswana, is married to Peter Nathan Dow, a United States citizen who has been in residence in Botswana for nearly fourteen years. Unity's daughter, Cheshe Maitumelo Dow, was adopted by Peter after he married Unity in 1984. Since then, the couple has had two more children, Tumisang Ted Dow, born in 1985 and Natasha Selema Dow, born in 1987. The entire family resides in Mochudi, Botswana.⁸⁴

On June 22, 1990, Unity Dow initiated an action at the High Court in Botswana.⁸⁵ The action challenged the constitutionality of sections 4 and 5 of the Citizenship Act which deny Botswana citizenship to any child born within a marriage if, at the time of birth, the father was not a citizen of Botswana. It further challenged section 15 which gives preferential treatment to the alien spouses of Botswana men, reducing their requirements for naturalization. Dow argued that these provisions of the Act deny women the fundamental rights and freedoms which are guaranteed under the Botswana Constitution.

1989; entry into force September 2, 1990.

⁸³ African Charter, art. 26.

⁸⁴ *Unity Dow vs. Attorney General*, Certified judgement of the High Court of Botswana (at Lobatse), MISCA 124/90, June 1991, p. 1.

⁸⁵ Sue Montgomery, "Getting Up to Fight," *African Concord*, July 23, 1990, Nigeria, p. 9.

The Citizenship Act, 1982 and the Citizenship (Amendment) Act, 1984 represent an increasing encroachment on the rights of women in Botswana. The Act limits a pre-existing right of women, under the 1966 Botswana Constitution, to pass citizenship onto their children. It also creates discriminatory standards for the naturalization of spouses which reduce the residency requirement for foreign women who marry Botswana men by over seven years, and grants them temporary citizenship status in the interim. No such provisions are afforded to alien men who marry Botswana women.⁸⁶ The 1984 Amendment repealed the right of persons born in Botswana to receive automatic citizenship. A child's nationality now depends entirely on the nationality of the father.⁸⁷ Therefore, the child of a Botswana woman married to a non-citizen can only remain in Botswana if the child is granted a residence permit. The only way the child can achieve citizenship is through the long and heavily conditioned process of naturalization and s/he cannot even begin that process until after s/he reaches the age of twenty-one.

Dow's first daughter, Cheshe, having been born out of wedlock and prior to the 1984 Citizenship (Amendment) Act, acquired citizenship by birth in Botswana. Her other two children, born within marriage and after the adoption of the Citizenship Act, have been denied Botswana citizenship. Due to the Act they have different nationalities and different rights than their sister, even though they were born to the same mother and within the same country.

Both the High Court and the Court of Appeal found that certain provisions of the Citizenship Act are discriminatory and unconstitutional.

Governmentally Imposed Sex Discrimination

Dow's argument that the Citizenship Act is unconstitutional relied heavily upon section 3 of the Botswana Constitution which provides:

[E]very person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right whatever his race, place of origin, political opinion, colour, creed or *sex*... to each and all of the following namely... life, liberty, security of the person and

⁸⁶ The 1982 Citizenship Act, Botswana, sec. 12.

⁸⁷ The 1984 Citizenship (Amendment) Act, Botswana, sec. 4, reads as follows: "A person born in Botswana shall be a citizen of Botswana by birth and descent if, at the time of his birth, - (a) his father was a citizen of Botswana: or (b) in the case of a person born out of wedlock, his mother was a citizen of Botswana." The 1982 Citizenship Act, Botswana, sec. 5, sets forth the same requirements for children born outside Botswana.

protection of the law. [emphasis added]⁸⁸

In response to Unity Dow's arguments, the state first offered a few obfuscatory arguments as to why sex discriminatory provisions of the Citizenship Act should be acceptable under the Botswana Constitution. For example, the government asserted that though discriminatory in effect, the Act is not discriminatory in intent and was passed only to deal with the problem of dual citizenship.

Human Rights Watch joins the Botswana Court of Appeal in summarily dismissing this argument as insufficient to support the government's contention that the Citizenship Act is constitutional. The Act does not eliminate dual citizenship.⁸⁹ In fact, it expressly provides for dual citizenship until the age of twenty-one. Children born to Botswana men or unmarried Botswana women have a right to Botswana citizenship and the citizenship of another country as long as they reject one of them by the age of twenty-one.⁹⁰ By contrast, children of Botswana females married to non-citizen males are automatically precluded from acquiring Botswana citizenship. If dual citizenship were the state's real concern the problem could have been more effectively addressed by non-discriminatory legislation which would prevent any Botswana child from maintaining dual citizenship regardless of the whether the Botswana parent was male or female.

The Botswana government also argued that sex discrimination must be constitutional because they have enacted sex discriminatory laws. They brazenly drew attention to other statutes which perpetuate sex discrimination. The government, in effect, argued that its legislative acts should override the Botswana Constitution. If this were held true it would undermine one of the basic principles of modern democracy, the constitutional protection of disadvantaged groups.

The Court of Appeal noted that by the state's reasoning, the government "could for example legislate that the women of Botswana shall have no vote... [or] that no woman shall be President or be a Member of Parliament."⁹¹ The Court also took great pains to document and herald the supremacy of the Botswana Constitution in relation to any parliamentary, legislative acts.⁹² Even if all of the statutes of Botswana contained provisions which violated the Constitution, the Court could not refrain from declaring those which are challenged to be unconstitutional.⁹³

Having dismissed these arguments, the Court of Appeal focused in on the government's defense of sex discriminatory provisions of the Citizenship Act as necessary to the maintenance of customs and traditions which advance a patrilineal society. The Attorney General spoke candidly of this purpose, asserting that "discrimination on the grounds of sex must be permitted in Botswana society as the society

⁸⁸ Constitution of Botswana, 1966, sec. 3.

⁸⁹ *Attorney General vs. Unity Dow*, p. 30.

⁹⁰ The Citizenship Act, sec. 13.

⁹¹ *Ibid.*, p. 23.

⁹² *Ibid.*, pp. 9-13.

⁹³ *Ibid.*, p. 88.

is patrilineal and therefore male oriented. The appellant accepts that the citizenship act is discriminatory but this was intentionally made so in order to preserve the male orientation of Botswana society.⁹⁴ The Court duly rejected this argument, pointing out that tradition and custom have never been static,⁹⁵ and held that the idea that citizenship must follow the customary or traditional systems of a society is not supported by developing citizenship law.⁹⁶

It is universally accepted that slavery and racial discrimination are unacceptable and contrary to basic standards of human rights. Yet, traditionally they have been practiced worldwide. Traditionally, women had no right to vote, or to receive any type of higher education. Human Rights Watch does not believe that the Botswana government would go so far as to justify slavery, racial discrimination, or subordination of women's political rights on the basis of tradition. Yet, this is exactly the argument it makes in regard to the discriminatory nature of the Citizenship Act.

Instead of seeking to rationalize its failure to uphold the rule of law and to respect and protect human rights norms, the government of Botswana should contest and challenge the view that tradition and custom justify discrimination against women. Tradition and custom are not only constantly evolving and changing in any society, but they are also open to different interpretations at any given point in time. By their very nature and function, traditional and customary norms and institutions should protect and respect the rights and interests of all members of the community in the specific historical context. In a modern democratic nation state like Botswana, tradition and custom should serve to uphold the rule of law and equality for women, rather than to justify the violation of these fundamental and universally valid norms.

The Court of Appeal upheld the High Court's decision that Unity Dow had been denied her rights to equal treatment of the law and freedom of movement, as a result of section 4 of the Citizenship Act.⁹⁷ The Court further held that custom and tradition must yield to the Constitution of Botswana, and that legislation should be interpreted in a manner which is consistent with international standards of human rights.⁹⁸ Thus, section 4 of the Citizenship Act has been declared *ultra vires* the Constitution and section 15 of the Constitution is to be interpreted to prohibit discrimination on the basis of sex.

IV. GOVERNMENTAL REACTION TO THE COURT OF APPEAL DECISION

Failure to Enforce the Decision

Following the Court of Appeal's 1992 decision in the Dow case, the Minister of Labor and Home Affairs,

⁹⁴ *Attorney General vs. Unity Dow*, p. 21.

⁹⁵ *Ibid.*, p. 24.

⁹⁶ *Ibid.*, pp. 26-30.

⁹⁷ *Ibid.*, pp. 65-66. The rights infringed are those guaranteed by the Constitution of Botswana, 1966, sec. 3 (on fundamental rights and freedoms), sec. 14 (freedom of movement), and sec. 15 (protection from discrimination).

⁹⁸ *Ibid.*, pp. 26, 53-54.

Patrick Balopi, was reported to be considering a referendum to change the Botswana Constitution so that sex discrimination would be permanently enshrined into Botswana law.⁹⁹ However, no steps were taken to put this into action, and no further mention has been made of such a possibility. The Minister has, in fact, been unusually silent despite Member of Parliament Mothibamele's repeated requests for a public denial or clarification.¹⁰⁰

Human Rights Watch has written a letter to the President of Botswana urging the government to enforce the Unity Dow decision and to consider ratifying some of the human rights instruments which would protect the rights of women.¹⁰¹ The Botswana government briefly acknowledged receipt of the letter, but set forth no plans or considerations for taking any action on the matter.¹⁰²

To date, no governmental action has been taken to enforce the decision of the Court of Appeal in the Unity Dow case, or to revise any of Botswana's other sex discriminatory legislation. The government has continued to enforce the Citizenship Act despite the international publicity received by the Unity Dow case and protests by women's groups such as the Emang Basadi (Stand Up Women), the Young Women's Christian Association, the Women and Law in Southern Africa Research Project and many other local and international organizations.

In November 1993, more than a year after the Dow decision, a female citizen married to a South African was prevented from traveling to South Africa with her six month old baby who had been born in Botswana. The baby was denied a passport and the mother's application to have the baby's name included on her passport for traveling purposes was turned down by the immigration authorities. The refusal, according to the authorities, was because the child was not a citizen of Botswana.¹⁰³

Dow and several other women who are similarly situated have filed applications for citizenship for their

⁹⁹ "Two MPs Ask Minister to Resolve Citizenship Issue Quickly," *The Botswana Gazette*, November 17, 1993, p. 5.

¹⁰⁰ Transcript of the Committee of Supply: Head 40 +41 - Member of Parliament for Kgalega, Mr. Mothibamele, speaking, March 2, 1994.

¹⁰¹ Letter to the President of Botswana from Abdullahi An-Na'im, Executive Director, Human Rights Watch/Africa, and Dorothy Q. Thomas, Director, Human Rights Watch/Women's Rights Project, February 2, 1994.

¹⁰² Letter to Abdullahi An-Na'im, from S.S. Modimakwane, for/Permanent Secretary to the President of Botswana, March 4, 1994, ref. no: OP 46/54 IV (4). The full text reads:

Dear Sir/Madam,

I refer to your letter dated 2nd February, 1994 in which you are urging Botswana Government to enforce the Appeal Court Ruling on the Unity Dow case. You have also urged the Government to ratify some of the Human Rights conventions which have not been ratified. This response is in acknowledgement of the letter and to assure you that your observations have not been taken lightly.

¹⁰³ *The Botswana Gazette*, November 10, 1993, p. 11.

children as recently as March 7, 1994. Replying to a follow-up letter from Dow, Attorney General P.T.C. Skelemani wrote:

I have been unable to see the relevance of [the Court of Appeal's] judgement to the question of the issue of passports. Passports as I understand it are not a right but rather a privilege granted by the State to facilitate movement outside the Republic of Botswana.

I have also not been able to see a contravention of the Freedom of Movement as guaranteed by the Constitution.¹⁰⁴

The right of citizens to leave and to enter freely their own country is clearly guaranteed under international law.¹⁰⁵ Passports enable citizens to exercise this right. If the Botswana government were to amend the discriminatory provisions of its Citizenship Act, the two Dow children's passport applications would be granted since they would qualify for Botswana citizenship. Dow's first child, Cheshe, who is a Botswana citizen, was granted a passport within about two weeks of submitting her application.¹⁰⁶

In parliament, many have been reported to be dissatisfied with the position of the government on this issue. They are calling on the government to amend the unconstitutional Citizenship Act. The Attorney General's office seems to have washed its hands of the case and has advised the government to accept the Court of Appeal's decision and to:

1. Amend the citizenship laws to exclude the current discrimination against women.
- Or
2. Amend the constitution to make sex discrimination legal.¹⁰⁷

Human Rights Watch finds the second proposal clearly unacceptable in light of international human rights standards and Botswana's obligations under the African Charter. We have tried unsuccessfully to contact the Attorney General's office and the Minister of Home Affairs to verify reports that a task force has been established to study the situation. Human Rights Watch asserts that the time for studies and deliberations has passed. The Citizenship Act must be amended and credibility must be restored to the legal system of Botswana. It has been more than two years since the Court of Appeal declared the Act unconstitutional. Yet, women and children still suffer the effects of this discriminatory law, not only in matters relating to citizenship, but also with regard to other fundamental rights.

The Effect of Non-Enforcement on Other Fundamental Rights of Women and Children

The government's continued enforcement of the Citizenship Act has discriminatory effects that are not

¹⁰⁴Letter from P.T.C. Skelemani, Attorney General of Botswana, to Unity Dow, July 25, 1994.

¹⁰⁵See, for example, African Charter, art. 12, and ICCPR, art. 12(4). According to the African Charter, the right to return to one's country may "only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality." The Attorney General did not cite any of these grounds as the reason for rejecting the Dow children's passport applications.

¹⁰⁶Letter from Unity Dow to the Attorney General of Botswana, June 30, 1994.

¹⁰⁷Outsa Mokone, "Minister Fumbles Over Dow Case?" *The Botswana Gazette*, November 10, 1993.

limited to a woman's right to pass nationality onto her children. The deleterious effects of the Act include the deprivation of many fundamental rights which are guaranteed to women and children under international standards of human rights. There can be no doubt that these effects are widespread. The Act applies to all Botswana women who marry non-citizens. Many of Botswana's largest villages are located near borders and for centuries women in these villages have intermarried with men from neighboring countries. In addition, many women have married political refugees who now reside in Botswana. Given its location in the southern African region and its relative peace, Botswana has been a haven for many refugees from neighboring countries over the years.

The discriminatory effects of the Citizenship Act cross many boundaries. Women from rural and urban communities are affected. Female citizens who establish residence in or out of Botswana are affected. Their children and foreign spouses are affected. The children alone are too numerous to count. According to a local Botswana newspaper, "Children who were born in 1982 just after the old citizenship laws were changed and who are affected by the new laws are now ten years old. Hundreds more must have been born after 1982, especially in the border areas of Gaborone, Tlokweng, Ramotswa, Kgatleng, Lobatse, Malolwane, Ghanzi and Shakawe."¹⁰⁸ As long as the Botswana government continues to enforce the Citizenship Act it will remain in violation of the Botswana Constitution and its duties under international law.

1. Denial of Women's Rights

The hardship women suffer as a result of the enforcement of the Citizenship Act is not merely emotional and psychological pain deriving from the effect the law has on their children. The Citizenship Act places serious limitations on women's fundamental freedoms as well.

A. Restrictions on Freedom of Movement

The Citizenship Act violates the Botswana Constitution, the African Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights which guarantee that women shall have the right to leave and return to their country without undue restrictions. As noted by the Court of Appeal,¹⁰⁹

it is totally unrealistic to think that you could permanently keep the child out of Botswana and yet by that not interfere with the freedom of movement of the mother. When the freedom of the mother to enter Botswana to live and to leave when she wishes is indirectly controlled by the location of the child, excluding the child from Botswana is in effect excluding the mother from Botswana.¹¹⁰

Botswana women who have married alien men are unable to exercise their right to travel freely in and out of the country without leaving their children behind. They must choose between their guaranteed

¹⁰⁸ *The Botswana Gazette*, November 10, 1993, p. 10.

¹⁰⁹ Constitution of Botswana, sec. 14. African Charter, art. 12(2). Universal Declaration, art. 13(2). ICCPR, art. 12. The Universal Declaration and ICCPR are applicable by virtue of Botswana's ratification of the African Charter, see preamble and art. 60.

¹¹⁰ *Attorney General vs. Unity Dow*, p. 60.

rights and their children. This is, in effect, no choice at all, but a governmentally imposed restriction on their travel. Through the Citizenship Act, Botswana has made the rights of the child and, by extension, the mother to leave and enter Botswana entirely dependent upon the rights of the father. Children are granted residence permits on the basis of their father's permit. They can travel only on their father's passport. If the father was removed from the family by death or divorce, the children could be expelled from Botswana permanently.

Ms. Y is a Motswana woman married to an American and is currently residing in the United States. Her only child was born in the United States and is therefore a U.S. citizen by birth and descent. Ms. Y is contemplating returning to Botswana with her child, but is faced with great anxiety and difficulties. When she asked for forms to apply for her daughter's passport, she was told unofficially that since her child was born in the United States, and her father is a U.S. citizen, it would be impossible to get the child a Botswana passport. Her child could be granted a residence permit which could be renewed every two years, at most. If the situation of the parents was reversed and the father was the citizen of Botswana, the child would simply be granted Botswana citizenship. Instead, because she is female, Ms. Y must face the possibility that her child may not be allowed into Botswana and could be denied residency at any time. She believes "[t]hey should at least give the same right the men are getting."¹¹¹ By denying citizenship to Ms. Y's child, the Botswana government is discriminating against her on the basis of her sex. It is further preventing her from exercising her right to travel freely in and out of Botswana.

B. Interference with Freedom of Marriage

Although the Botswana Constitution permits sex discrimination in issues relating to marriage and other matters of personal law, Botswana's international obligations prohibit interference with a woman's right to marry and establish a family. As a party to the African Charter, Botswana has pledged to protect the family as the "natural unit and basis of society."¹¹² In addition, the Charter binds states parties to ensure the rights of women as stipulated in international declarations, such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which guarantee women equal rights with men "as to marriage, during marriage and at its dissolution."¹¹³ Yet while Botswana men can marry foreign women without worrying about negative consequences to their children, Botswana woman must weigh such consequences and may be dissuaded from marrying the partner of her choice. Furthermore discriminatory provisions of the Citizenship Act "may compel them to live and bear children outside of wedlock in order to preserve her children's right to citizenship."¹¹⁴ Thus, they violate Botswana's duty to protect the integrity of the family unit. As noted by the High Court,

Had the applicant not married and continued having children, those children would be citizens of Botswana. Because she is married to an alien father, her children are not Botswana citizens. On the other hand if a male citizen marries a non-citizen their progeny will be citizens... It seems to me that the effect of section 4(e) of the Citizenship Act is to hamper unnecessarily free choice, the liberty of the subject to exercise her rights in the way

¹¹¹Human Rights Watch interview with Ms. Y, United States, May 24, 1994.

¹¹² African Charter, art. 18.

¹¹³ Universal Declaration, art. 16. ICCPR, art. 23. See also, African Charter, arts. 18, 60.

¹¹⁴ *Unity Dow vs. Attorney General*, p. 12.

she sees fit, [and] to punish a citizen female for marrying a non-citizen male.¹¹⁵

Such "punishment" constitutes a governmentally imposed restriction on a woman's right to marry and to choose to create a family that violates Botswana's duties under international law. When confronted with this situation, Attorney General Mokama replied to the women's plight by saying they should stop "marrying strangers" if they want their children to have Botswana citizenship.¹¹⁶

C. Infliction of Degrading Treatment

After considering the cumulative discriminatory impact of the Citizenship Act, the High Court judge found that "the effect is to lower a person in her position and reputation, and that can be regarded as degrading treatment." Remarking that "what is considered degrading treatment today has changed from former conceptions," he ruled that the Act, by "denying or limiting as it does [women's] equality of rights with men is fundamentally unjust and constitutes an offense against human dignity."¹¹⁷

In the opinion of the judge, section 4 is discriminatory not only because it interferes with Botswana women's freedom of marriage and movement, but also because it leads to violations of their children's fundamental rights for no reason other than that Botswana women are precluded from passing citizenship to their children from marriage to foreign men.

2. Denial of Children's Rights

The consequences of the Citizenship Act are even more severe for the children who are denied citizenship under its discriminatory provisions. They are denied basic human rights because the Botswana government has seen fit to discriminate against their mothers on the basis of sex. The Convention on the Rights of the Child prohibits discrimination against children on the basis of their parent's sex.¹¹⁸ Children born to Botswana women married to alien men suffer the consequences of being aliens in their mothers' homeland, even though many of them were born in Botswana and have never resided in, or even visited, any other country. This constitutes a clear violation of Botswana's obligation under the African Charter to uphold international standards on the rights of the child.¹¹⁹

¹¹⁵ Judgement of Martin Horwitz, Ag. Judge in *Unity Dow vs. Attorney General*, pp. 9, 11.

¹¹⁶ Rembe, "Emang Basadi," p. 164.

¹¹⁷ *Unity Dow v. Attorney General*. Upon appeal by the Botswana government, Judge President A.N.E. Amissah of the Court of Appeal found it unnecessary to go into the question of degrading treatment for the purposes of dismissing the appeal in favor of Dow. However, in his concurring opinion, Judge T.A. Aguda wrote:

In my view it is too artificial and unnatural to hold that in these circumstances the respondent's rights not to be subject to inhuman and degrading treatment...have not been breached. *Attorney General v. Unity Dow*, p.95.

¹¹⁸ Convention on the Child, art. 2.

¹¹⁹ African Charter, art. 18. See also preamble and art. 60.

A. Creation of Stateless Children

The Citizenship Act denies many children the right to a nationality as guaranteed by the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights and the Convention on the Reduction of Statelessness.¹²⁰ Botswana has ratified the Convention on the Reduction of Statelessness and is bound to the human rights standards set forth in the other international documents by virtue of its ratification of the African Charter.¹²¹ Children born to Botswana women who have married alien men are rendered potentially stateless under the Citizenship Act. The High Court observed that

[t]he fact that according to the Citizenship Act a child born to a marriage between a citizen female and a non-citizen male follows the citizenship of the father may not in fact have that result. It depends on the law of the foreign country. The result may be that the child may be rendered stateless unless its parents emigrate.¹²²

Children born to Botswana women who have married South African exiles, for example, have been put in this position. The children could not acquire Botswana citizenship because their fathers were not citizens. However, they cannot receive a South African passport either because of their father's status in exile.¹²³ They and their families may not be able to enter any other country, or return to Botswana if they ever left.

Nationality is a principal link between the individual and the law. People invoke the protection of the state by virtue of their nationality. In addition, international law is based on a view that "nationality is the essential condition for securing to the individual the protection of his rights in the international sphere."¹²⁴ Most international efforts to mitigate the effects of statelessness have been focused on protecting refugees. Children who have been born stateless remain largely unprotected. As a result of the Botswana Citizenship Act, children born in Botswana to Botswana mothers and alien fathers are denied the full protection of both domestic and international law.

B. Restricted Freedom of Movement

The children affected by the Citizenship Act also face strict limitations on their external travel as they may not be entitled to any country's passport. These limitations violate the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the African Charter, and the Convention on the Rights of the Child, all of which guarantee that children and their parents shall have the right to leave and return to their country without undue restrictions.¹²⁵ While minors, they cannot

¹²⁰ Universal Declaration, art. 15. Convention on the Child, art. 7. ICCPR, art. 24(3). Convention on the Reduction of Statelessness, art. 1(3), U.N. GA Res. 896(IX), adopted August 30, 1961, entered into force December 13, 1975. Botswana has ratified the Convention on the Reduction of Statelessness.

¹²¹ African Charter, preamble, arts. 18, 60.

¹²² *Unity Dow vs. Attorney General*, p. 13.

¹²³ Sue Montgomery, "Aliens in the Country of Their Birth," *The Standard*, October 7, 1990, Nairobi, p. 13.

¹²⁴ Paul Weiss, *Nationality and Statelessness in International Law* (Hyperion Press, Inc., 1979), p. 166.

¹²⁵ Universal Declaration, art. 13(2). African Charter, art. 12(2). ICCPR, art. 12. Convention on the

travel in the absence of their father. Even as adults, they are unable to get a Botswana passport until naturalization has been completed. Passport applications require the applicants to stipulate not only their place of birth, but the place of birth and nationality of both of their parents. Without this information, no passport will be issued. Unless the children can travel on the father's passport, they would not be able to leave or enter the country. This restriction persists until they are able to complete the naturalization process at age twenty-one, which is by no means guaranteed.

In some cases, the inability to travel outside the country could actually become life-threatening. If a child is born to a Motswana woman and a foreign man, and the child were to require medical treatment outside the country, the citizenship laws could prevent that child from leaving the country to receive the medical attention necessary to save his life.

No valid basis exists for placing such restrictions on these children. Allowing them to travel with their mother or on their own passport would have no adverse effects on Botswana's national security or public health. These limitations are simply the result of governmentally imposed sex discrimination stemming from a desire to preserve a male-oriented Botswana society.

C. Denial of Political Rights

Children of Batswana women married to foreign men are treated as aliens in Botswana. They are, therefore, denied basic political and civil rights available to citizens such as the right to vote and to hold certain public offices.¹²⁶ A number of "sensitive" jobs are not open to non-citizens. A recent amendment to the constitution requires that positions such as member of parliament, councillor, president, vice-president and other specified public service positions, be filled by citizens by birth or descent.¹²⁷ Naturalized citizens and non-citizens cannot be considered. This amendment prevents children of Batswana women married to foreign men from ever being able to hold such jobs, whether or not they have lived their entire lives in Botswana or hold any other citizenship. Yet, children born to Batswana men married to foreign women, even if they are born outside of Botswana, have lived in other countries, or have held citizenship in another country, are not similarly excluded. In contrast, the children of Batswana men married to foreign women are awarded citizenship and their civil and political rights are thereby fully protected.

But for the discriminatory provisions of the Citizenship Act, children of Batswana women and foreign men would be able to participate in the government of their country by voting and standing for public office. Denial of these rights violates the African Charter, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights.¹²⁸

Rights of the Child, art. 10. See also the preamble and art. 60 of the African Charter which allows the Commission to look to the Universal Declaration of Human Rights as a standard of international human rights. Additionally, article 18 of the Charter directs States Parties to the provisions of the Convention on the Rights of the Child for authoritative guidance in interpreting their obligations under the Charter.

¹²⁶ Constitution of Botswana (Amendment) Act, 1987.

¹²⁷ Constitution of Botswana (Amendment) Act, 1987. The date of commencement was November 20, 1987.

¹²⁸ African Charter, arts. 13, 15. Universal Declaration, arts. 21, 23. ICCPR, art. 25.

D. Discrimination in Education

The children of the Botswana women who marry alien men also suffer disparate treatment in regard to their educational opportunities. Non-citizen children are admitted to public schools only when "they do not prejudice a 'genuine' Motswana child's chances of being enrolled."¹²⁹ *The Botswana Gazette* observed that "it would be virtually impossible for such children to obtain scholarships for tertiary education as one of the preconditions for qualifying is Botswana citizenship."¹³⁰ According to one mother, "I might not get my daughter into a public school because of the citizenship issue. I may have to find a private school for her and that will be expensive." In addition, because they may not be able to travel outside the country, they may sacrifice educational opportunities which may be available to them outside of Botswana.

VI. CONCLUSIONS AND RECOMMENDATIONS

The Botswana government's continued enforcement of the provisions of its Citizenship Act that discriminate on the basis of sex demonstrates its willingness to accept and perpetuate sex discrimination in Botswana, even where it is clearly banned by domestic and international law. As long as the government persists in blatantly violating these prohibitions, there is no possibility of reforming legislation and societal attitudes in Botswana that continue to treat women as second class citizens, denying them fundamental rights and freedoms. Human Rights Watch takes no position on whether any society should be patrilineal or matrilineal. However, regardless of which system applies, Botswana must pursue its goals through laws and practices that do not violate international human rights standards and, in particular, intrude upon women's right to be treated without discrimination.

Amending the Citizenship Act to reflect the Court of Appeal's ruling would be an important first step to bringing Botswana into accord with internationally accepted standards of nondiscrimination against women, and restoring the country's commitment to the rule of law. The government must also undertake a comprehensive effort to eliminate all forms of discrimination against women, whether it is based on statutory or customary law or is a matter of practice. Instead of alleging that tradition and custom justify discrimination against women, the government of Botswana should implement legislative, administrative, educational and other measures to combat such misconceptions of traditional values and institutions in light of societal changes. The government must do this in order to fulfill its obligation to defend the Botswana Constitution and to abide by internationally accepted standards of human rights which favor nondiscrimination.

Human Rights Watch recommends that the Botswana government:

1. Enforce the decision of the Unity Dow case. The government should:
 - (a) amend section 4 of the Citizenship Act to allow children born in Botswana to a Botswana woman and foreign male to acquire Botswana citizenship;
 - (b) issue to the two affected children of Unity Dow, and all others similarly situated, appropriate papers documenting their citizenship;

¹²⁹ *The Botswana Gazette*, November 10, 1993, p. 10.

¹³⁰ *Ibid.*

- (c) bring all administrative policies and practices in line with the decision; and
- (d) grant to such children all privileges, duties, and benefits to which they are entitled as citizens.

2. Amend other discriminatory sections of the Citizenship Act, particularly sections 5, 6, and 12, to conform to international human rights standards of equality and nondiscrimination.¹³¹
3. Consider with a view to amendment, section 15(4)(d) of the constitution which excludes from the general prohibition against discrimination matters relating to "adoption, marriage, divorce, burial, devolution of personal property or other matters of personal law." These are precisely the areas where most women face extreme discrimination and abuse.
4. Consider other legislation currently in operation in Botswana that discriminates on the basis of sex, with a view to its amendment.
5. Consider amending the constitution expressly to include distinctions on the basis of sex in the definition of discrimination under section 15.
6. Ratify the major international instruments protecting the rights of women and children, particularly the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.
7. Progressively undertake educational and other efforts to combat discriminatory attitudes and practices against women, and to promote full respect for their rights as equal citizens of the country.

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Human Rights Watch/Africa (formerly Africa Watch)

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and

¹³¹ Citizenship Act, sec. 5, provides that a person born outside of Botswana shall be a citizen by descent if, at the time of his birth, his father was a Botswana citizen, or if born out of wedlock, his mother was a Botswana citizen; sec. 6 provides that when a couple adopts a child under three years of age, the child will become a Botswana citizen only if at the time of the adoption, the male adopter is a Botswana citizen; sec. 12 relaxes the residency requirements for the naturalization of a male citizen's alien spouse and provides for temporary citizenship until these requirements are met. No such provisions apply to the alien spouse of a female citizen.

among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Africa division was established in 1988 to monitor and promote the observance of internationally recognized human rights in sub-Saharan Africa. Abdullahi An-Na'im is the executive director; Janet Fleischman is the Washington representative; Karen Sorensen, Alex Vines and Berhane Woldegabriel are research associates; Kimberly Mazyck and Urmi Shah are associates; Bronwen Manby is a consultant. William Carmichael is the chair of the advisory committee and Alice Brown is the vice chair.

Human Rights Watch Women's Rights Project

The Women's Rights Project was established in 1990 to monitor violence against women and gender discrimination throughout the world. Dorothy Q. Thomas is the director; Sarah Lai is research associate; Regan Ralph is staff attorney; Evelyn Miah is associate. Kathleen Peratis is chair of the advisory committee.