



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventeenth to twenty-second reports of Botswana*

1. The Committee considered the combined seventeenth to twenty-second periodic reports of Botswana,¹ submitted in one document, at its 2937th and 2938th meetings,² held on 21 and 22 November 2022. At its 2949th and 2950th meetings, held on 29 and 30 November 2022, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the seventeenth to twenty-second periodic reports of the State party, but regrets that the reports were submitted 16 years late. The Committee also welcomes the constructive dialogue with the State party's high-level, multisectoral delegation and thanks the delegation for the information provided during and after the dialogue.

B. Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party since the consideration of the previous report:

- (a) The Cybercrime and Computer Related Crimes Act, in 2018;
- (b) The national development strategy (Vision 2016, replaced by Vision 2036);
- (c) The Anti-Human Trafficking Act, in 2014;
- (d) The Remote Areas Development Programme and its Affirmative Action Framework for Remote Area Communities, in 2014;
- (e) The law establishing Legal Aid Botswana, in 2013;
- (f) The law on traditional chieftainship, the Bogosi Act, in 2008;
- (g) The establishment of the Human Rights Unit within the Ministry of Presidential Affairs, Governance and Public Administration;
- (h) The establishment of the Interministerial Committee on Treaties, Conventions and Protocols under the Ministry of International Affairs and Cooperation;

* Adopted by the Committee at its 108th session (14 November–2 December 2022).

¹ [CERD/C/BWA/17-22](#).

² See [CERD/C/SR.2937](#) and [CERD/C/SR.2938](#).



C. Concerns and recommendations

Statistics

4. Despite the data provided by the State party with regard to the number of languages spoken in Botswana and the explanations provided in the State party's report of the reasons that prevent it collecting data referring to the ethnicity of persons constituting its population, the Committee regrets the persistent absence of comprehensive statistics on the ethnic composition of the population.

5. **The Committee recommends that the State party pursue efforts to develop and apply alternative methods and tools, such as surveys, to collect data and information in line with the principles of self-identification and anonymity that would enable an accurate assessment of progress towards the equal enjoyment by all groups without discrimination of the rights protected under the Convention and provide the Committee with the relevant information in its next periodic report.**

Definition of racial discrimination

6. The Committee is concerned about the lack of a harmonized and comprehensive definition of racial discrimination in the State party's legislation that is fully in line with article 1 of the Convention. In particular, the Committee notes that the prohibited grounds of discrimination stipulated in section 3 of the Constitution, sections 92 and 94 (2) of the Penal Code and the Cybercrime and Computer Related Crimes Act differ among them (art. 1).

7. **The Committee recommends that State party review the above-mentioned provisions of the Constitution with a view to adopting a definition of racial discrimination that fully complies with article 1 of the Convention, including with regard to legislation and practices that may not be discriminatory in purpose, but in effect.**

Convention in the domestic legal order

8. While noting the State party's explanation about its dualistic system, the Committee regrets the limited number of domestic legislation and judicial cases in which the Convention is invoked. The Committee also regrets the lack of information on measures taken to increase the visibility of the Convention among the population, as well as the judiciary and law enforcement officials, of the State party (art. 2).

9. **The Committee recommends that the State party take appropriate measures, including through training, to ensure that judges, prosecutors, lawyers and law enforcement officials are sufficiently familiar with the provisions of the Convention. The Committee also requests that the State party include in its next periodic report specific examples of the implementation of the Convention by domestic courts.**

Measures to address inequalities

10. The Committee takes note of the State party's measures aimed at poverty reduction and access to basic social services in remote areas. The Committee notes that, among the thematic groups responsible for implementing these plans, the Thematic Working Group on Governance, Safety and Security deals directly with issues related to racial discrimination. However, due to the lack of details provided, the Committee remains concerned about the concrete impact of these plans on disadvantaged or remote communities (arts. 2 and 5).

11. **While noting the State party's efforts to improve the livelihoods of disadvantaged groups, the Committee recalls its general recommendation No. 32 (2009) and recommends that the State party take all special measures necessary to address the existing structural discrimination faced by all ethnic groups in the enjoyment of their rights, in conformity with articles 1 (4), 2 (2) and 5 of the Convention. The Committee also recommends that the State party give due consideration to the Convention in implementing the above-mentioned strategies and in evaluating their impact on the targeted communities, in particular as regards the Basarwa/San, the Basubiya, the Bayeyi, the Mbukushu, the Ovambo, the Herero and the Kalanga.**

National human rights institution

12. The Committee takes note of efforts by the State party to transform the Office of the Ombudsman into a national human rights institution, which was completed in November 2021, but remains concerned that it is yet to be operational. The Committee is also concerned that, according to the information provided by the State party's delegation, it will function under the supervision of the Ministry of Justice, which does not guarantee its independence (art. 2).

13. The Committee recommends that the State party ensure that the national human rights institution is fully operational, including by allocating the necessary human and financial resources for the fulfilment of its mandate. The Committee also recommends that the State party guarantee the full independence of the institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Furthermore, the Committee invites the State party to consider including issues relating to the prohibition of racial discrimination and the promotion of tolerance among ethnic groups in the mandate of this new institution.

Racist hate speech and hate crimes

14. The Committee is concerned about the absence of the grounds of ethnic origin and descent in its legislation relating to the criminalization of the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, in particular in section 94 (2) of the Penal Code (art. 4).

15. In the light of its general recommendation No. 35 (2013), the Committee recommends that the State party bring its legislation on racist hate speech and hate crimes into full compliance with article 4 of the Convention. To this end, the Committee reiterates its recommendation to the State party to criminalize the dissemination of such activities by integrating the elements of ethnic origin and descent into the definition of discrimination provided in section 94 (2) of the Penal Code. The Committee also recommends that, in its next periodic report, the State party provide detailed information about the implementation of legislation prohibiting hate crimes and hate speech, including disaggregated data on complaints, investigations, prosecutions and the sentences imposed.

Access to justice

16. The Committee regrets that the legal aid provided for in the State party's legislation enacted in 2013, including interpretation services for persons belonging to the most disadvantaged ethnic groups, is only provided in civil matters; in criminal matters, it is still in the pilot phase. The Committee also regrets that the State party does not apply the principle of the reversal of the burden of proof in matters of racial discrimination. The Committee further regrets that the consideration of racial discrimination as an aggravating circumstance is not enshrined in law. Furthermore, the Committee is concerned that, according to the information provided by the State party, there are no cases in which reparations have been awarded in cases related to racial discrimination, whereas section 316 (1) of the Criminal Procedure and Evidence Act makes provision for such reparations (arts. 6–7).

17. The Committee draws the attention of the State party to its general recommendation No. 31 (2005). The Committee also recalls its recommendation to the State party that it provide adequate legal aid and interpretation services, especially to persons belonging to the most disadvantaged ethnic groups, to ensure their full access to justice, including in criminal matters. The Committee also recommends that the State party recognize racist motives as an aggravating circumstance for all acts criminalized under the Penal Code. The Committee further recommends that the State party consider the reversal of the burden of proof in all cases related to racial discrimination and provide the victims with just and fair reparation.

Complaints of racial discrimination

18. The Committee regrets that the number of complaints registered, prosecutions initiated and sentences handed down in matters of racial discrimination by the police and judicial authorities of the State party is relatively limited. It also regrets the opinion provided by the State party's delegation that this limited number of complaints is justified by the culture of tolerance prevailing in Botswana (arts. 6–7).

19. The Committee reminds the State party that a lack of cases or complaints does not signify the absence of racial discrimination in the State party, but may, rather, signify that barriers exist regarding invoking the rights under the Convention before domestic courts, including lack of public awareness of those rights and of the methods available for seeking judicial remedies. The Committee, therefore, recommends that the State party carry out public education campaigns on the rights under the Convention and on how to file complaints of racial discrimination, as well as on available remedies; and provide this information in its next periodic report.

Lands, territories and national resources

20. The Committee notes with concern that the information contained in the alternative reports differs from the information provided by the State party regarding the implementation of the High Court's decision regarding the Central Kalahari Game Reserve. In particular, those groups who were not party to the *Roy Sesana and others v. Attorney General* case have not been allowed to return to the Reserve to settle there. Furthermore, those who are allowed to return must obtain a permit in advance and encounter difficulties in resuming and conducting their traditional activities. Contrary to the State party's assertions that the Central Kalahari Game Reserve is not intended for human habitation, reports from United Nations mandate holders indicate that the Reserve was originally created in 1961 to enable the San peoples, ancestral inhabitants of the Kalahari Desert, to live there according to their hunting and gathering traditions while respecting wildlife. In these reports, the mandate holders also underline that the aim of the restrictive execution of the High Court's decision, and particularly the removal of the children from the Reserve at the age of 18, is for there to be no more inhabitants after the death of the elders (art. 5).

21. The Committee urges the State party to fully implement the High Court's decision in *Roy Sesana and others v. Attorney General*, by allowing all ethnic groups originating from the Central Kalahari Game Reserve to return and settle there unconditionally. The Committee also recommends that the State party provide them with effective access to basic social services and enable them to resume their traditional activities without hindrance.

22. The Committee is concerned about the impact of the inclusion of several sites in the country on the World Heritage List on the conditions of life of the inhabitants of those sites, including those of the Okavango Delta and Mount Tsodilo (art. 5).

23. The Committee recommends that the State party ensure that the way of life and the traditional structures of groups living on World Heritage sites are not adversely affected by the inclusion of such sites on the World Heritage List.

24. The Committee takes note of the amendment of the Tribal Land Act and of the fact that, according to the declarations of the State party's delegation, any citizen of Botswana is eligible, without distinction on the basis of ethnic origin, to acquire land anywhere in the country. However, the Committee remains concerned about the different statuses of lands belonging to different groups and the lack of collective demarcation and complaints procedures for indigenous peoples (art. 5).

25. The Committee recommends that the State party ensure full and complete equality between different groups regarding access to and ownership of land, as well as legal or judicial procedures relating thereto. The Committee also recommends that the State party organize awareness-raising campaigns among minority groups regarding administrative and legal procedures related to the allocation of lands.

26. The Committee notes the initiation of several mining exploration projects, notably in the Okavango Delta and the Central Kalahari Game Reserve, in which an exploration

company has been authorized to mine for several decades, employing about 1,200 workers. While taking note of the State party's statement that the populations affected by these projects have been consulted, the Committee is concerned about the impact of these projects on the way of life and traditional structures of such ethnic groups (art. 5).

27. The Committee recommends that the State party protect the areas of cultural significance of the communities affected by projects carried out by extractive and manufacturing industries. The Committee also recommends that the State party take appropriate measures to prevent the adverse effects of economic activities on the rights and ways of life of minority groups and indigenous peoples. Furthermore, the Committee invites the State party to update the Committee on the adoption and implementation of the planned law on community-based national resources management.

Minorities in political and public affairs

28. The Committee notes that sections 77–79 of the Constitution concerning the representation of tribes in the House of Chiefs have been revised and that the Bogosi Act has replaced the previous Chieftainship Act (1933). However, the Committee remains concerned that a limited number of non-Tswana tribes have been admitted into the House of Chiefs. The Committee is also concerned that Tswana chiefs are “appointed” as ex officio members with the status of paramount chiefs whereas the non-Tswana chiefs must be elected, not according to their customs, but within regional electoral colleges, and occupy subordinate positions within the House of Chiefs (art. 5).

29. The Committee recommends that the State party ensure that non-Tswana tribes be admitted to the House of Chiefs in an inclusive manner and according to their own decision-making mechanisms. The Committee also recommends that the chiefs of tribes be treated within the House of Chiefs on an equal footing. The Committee further recommends that the State party intensify efforts to ensure equal opportunities for ethnic minorities to be represented at all levels of government, at the national and local levels. Furthermore, the Committee requests that the State party provide updated statistics in its next periodic report on the representation of minority groups in decision-making positions and in representative institutions.

30. The Committee notes that the Bogosi Act provides that, after consultation with a tribal community in its *Kgotla*, the Government recognizes that community as a tribe. The Committee regrets that this provision concerns only non-Tswana tribes and that the State party has not provided information on the number of communities recognized as tribes since the entry into force of the Bogosi Act in 2008, nor has the State party given any explanation on the blocking of the installation of Chief Wayeyi in Gumare and Chief Basubiya in Chobe (art. 5).

31. The Committee recommends that the State party ensure the full application of the Bogosi Act by treating all tribes on an equal footing in terms of recognition and respect for the rituals and cultural practices specific to each tribe.

Language of ethnic minorities

32. While welcoming the State party's decision to provide education in minority languages at the primary level as of 2023, the Committee remains concerned that such a decision concerns only 13 of the languages spoken in the State party (arts. 1–7).

33. The Committee recommends that the State party consider the generalization of mother tongue education, at least in regions inhabited traditionally or in substantial numbers by persons belonging to non-Tswana tribes, and ensure that the representatives of the groups concerned are consulted for the purpose of including references to the history, culture and traditions of these groups in the curriculum.

34. While noting the willingness of the State party to allow greater openness of the media to the languages of disadvantaged groups, the Committee regrets the lack of information on the measures taken in this regard. In particular, the Committee remains concerned that the Communications Regulatory Authority Act (2012) does not provide for the existence of

community-based radio and television stations, which would allow linguistic minorities to express themselves on their subjects of interest (art. 7).

35. The Committee invites the State party to include in its next periodic report information regarding measures aimed at taking into consideration minority languages and interests in its media policy.

Refugees, asylum-seekers and migrants

36. The Committee reiterates its concern that some exceptions to the prohibition of discrimination provided under section 15 of the Constitution cannot be justified under the Convention. In particular, section 15 (4) (b) authorizes exceptions in relation to non-citizens to an extent that is not in compliance with the Committee's general recommendation No. 30 (2004) (art. 5).

37. The Committee recommends that State party review section 15 of its Constitution in order to ensure its full compliance with articles 1 and 2 (1) (c) of the Convention. In this context, the State party should take into consideration the principle that, under the Convention, differential treatment constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim and/or are not proportional to the achievement of this aim.

38. The Committee takes note of the assurances provided by the State party, during the dialogue, regarding the access of all non-citizens, including asylum-seekers and refugees, to the Anti-Retroviral Therapy Programme, as well as the improvement of services in the Dukwi refugee camp and the freedom of movement of asylum-seekers. However, the Committee remains concerned about the information received concerning the ill-treatment of undocumented immigrants, in particular those from Zimbabwe and women detainees. The Committee is also concerned about the dismissal of all those who have appealed against their deportation before the High Court (art. 5).

39. Recalling its general recommendation No. 30 (2004), the Committee recommends, once again, that the State party ensure that its competent authorities proceed to a prompt and impartial investigation into complaints of ill-treatment of non-citizens and invites the State party to provide the Committee with detailed information on the results of such an investigation. The Committee also recommends that the State party ensure that the remedies exercised by asylum-seekers before the courts are effective and that subsequent decisions are fully implemented.

Combating trafficking in persons

40. While noting the State party's efforts to prosecute cases of trafficking in persons, the Committee is concerned that no redress has been provided to victims whereas, according to the Anti-Human Trafficking Act, a court may order a convicted person to make restitution or compensate a victim (art. 5).

41. The Committee recommends that the State party continue its efforts to eliminate trafficking in persons, including through the implementation of laws and strategies to ensure that all cases of trafficking are investigated, that the perpetrators are prosecuted, that appropriate sentences are imposed on them and that the victims obtain reparation. It also recommends that the State party provide aid and assistance to victims of trafficking.

Training, education and other measures to combat prejudice and intolerance

42. The Committee regrets that the content of human rights training programmes for judicial and law enforcement personnel remains very general and does not specifically address the issue of racial discrimination (art. 7).

43. The Committee recommends that the State party increase its efforts to provide adequate training in the field of human rights, including on the prohibition of racial discrimination, to its judicial and law enforcement personnel. The Committee also recommends that the State party organize awareness-raising campaigns, particularly

targeting individuals and groups that are most vulnerable to racial discrimination about the Convention's provisions and the legal framework providing protection against racial discrimination.

E. Other recommendations

Ratification of other treaties

44. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee encourages the State party to accede to the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Amendment to article 8 of the Convention

45. The Committee recommends that the State party accept the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Declaration under article 14 of the Convention

46. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

Follow-up to the Durban Declaration and Programme of Action

47. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

48. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015–2024 the International Decade for People of African Descent, and Assembly resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies in collaboration with organizations and peoples of African descent. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

49. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in

connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Dissemination of information

50. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly made available to all State bodies entrusted with the implementation of the Convention, including municipalities, and publicized on the website of the Ministry of Foreign Affairs or any other website accessible to the public, in the official and other commonly used languages, as appropriate.

Common core document

51. The Committee requests the State party to provide its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006.³ In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for such documents.

Follow-up to the present concluding observations

52. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 12 (national human rights institution) and 20 (lands, territories and natural resources) above.

Paragraphs of particular importance

53. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6 (definition of racial discrimination), 8 (Convention in the domestic legal order) and 30 (minorities in political and public affairs) above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.

Preparation of the next periodic report

54. The Committee recommends that the State party submit its twenty-third to twenty-fourth periodic reports, as a single document, by 22 March 2026, taking into account the reporting guidelines adopted by the Committee during its seventy-first session⁴ and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

³ HRI/GEN/2/Rev.6, chap. I.

⁴ CERD/C/2007/1.