



**Convention on the
Rights of the Child**

Distr.
GENERAL

CRC/C/15/Add.242
3 November 2004

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-seventh session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 44 OF THE CONVENTION**

Concluding observations: Botswana

1. The Committee considered the initial report of Botswana (CRC/C/51/Add.9), submitted on 10 January 2003, at its 977th and 978th meetings (see CRC/C/SR.977 and CRC/C/SR.978), held on 16 September 2004, and adopted at the 999th meeting (CRC/C/SR.999), held on 1 October 2004, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's initial report, despite the fact that it was submitted with considerable delay, and the written replies to its list of issues (CRC/C/Q/BWA/1), which gave a better understanding of the situation of children in the State party. It also notes the open and constructive dialogue it had with the State party's high-level delegation.

B. Positive aspects

3. The Committee welcomes the adoption of a National Programme of Action for the Children of Botswana for the period 1993-2003, the establishment of the District Child Welfare Committees and of a National Child Welfare Committee.

4. The Committee takes note with appreciation the establishment of the National AIDS Council, chaired by the President, and of the recently revised National Policy on HIV/AIDS.

5. The Committee welcomes the State party's ratification in 2000 of ILO Conventions No. 138 concerning the minimum age for admission to employment and No. 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour.

6. The Committee also welcomes the ratification of the African Charter on the Rights and Welfare of the Child.

C. Factors and difficulties impeding the implementation of the Convention

7. The Committee notes that the large-scale HIV/AIDS epidemic has had a serious negative impact on the overall development of the State party and in particular on the implementation of children's rights.

D. Principle areas of concern and recommendations

1. General measures of implementation

Reservations

8. The Committee notes with regret the reservation that the State party has made to article 1 of the Convention, but welcomes the information during the dialogue that the reservation will be withdrawn as soon as the review of the law is completed.

9. The Committee recommends that the State party withdraw its reservation to article 1 of the Convention at the earliest time possible by expediting the law review process.

Legislation

10. The Committee notes with appreciation the comprehensive review of the Children's Act of 1981 with a view to harmonizing it with the provisions of the Convention. However, it remains concerned that this process has been slow and that the current act is outdated and does not fully take into account the Convention's principles and provisions. The Committee is also concerned that the Convention is not incorporated in the domestic legislation and therefore cannot be invoked before a court of law. Furthermore, customary laws and traditions do not fully reflect the principles and the provisions of the Convention.

11. The Committee recommends that the State party complete its general review of the Children's Act as soon as possible and use the recommendations from that review as a basis for the necessary changes of the law in order to bring it in conformity with the principles and provisions of the Convention. It further recommends that the State party expedite this process of change of the law as much as possible and ensure the implementation of the revised Children's Act. The Committee also recommends that the Convention be incorporated in domestic law and to undertake the necessary steps to bring customary law in conformity with the Convention.

Coordination

12. The Committee is concerned at the situation of the National Child Welfare Committee, which apparently remains inactive, mainly due to lack of human and financial resources.

13. **The Committee also recommends that the State party provide the National Child Welfare Committee with the necessary and adequate human and financial resources, as to enable it to effectively play its fundamental role as the main implementing and coordinating body for children's rights. If necessary, the State party should seek international assistance in this regard.**

National plans of action

14. The Committee welcomes the adoption of a National Programme of Action on Children for the period 1993-2003 and the information that a successor National Plan of Action (NPA) for the period 2004-2013 is currently being developed. However, the Committee is concerned that the National Plan of Action may lack clear provisions on monitoring and coordination of its implementation and that the delay in its evaluation has resulted in a delay in formulating the successor NPA.

15. **The Committee recommends that the State party expedite the evaluation of the previous National Plan of Action and ensure that the new NPA covers all areas of the rights of the child.**

Independent monitoring

16. While taking note of the establishment of the Office of the Ombudsman in 1997, the Committee expresses its concerns at the fact that the Office lacks the necessary human and financial resources for proper functioning. The Committee is also concerned at the lack of awareness of the role of the Ombudsman among people, especially children.

17. **With reference to General Comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2), the Committee recommends that the State party provide the Office of the Ombudsman with the necessary human and financial resources for an adequate performance of its function, in particular to strengthen its capacities to deal with and adequately address complaints from children or others concerning the violation of children's rights and to improve accessibility of the Office for Children, including via systematic information campaigns and a free telephone line.**

Resources for children

18. The Committee, while appreciating the commitment of the State party in providing resources for social expenditure, remains concerned that budgetary allocations are insufficient to respond to national and local priorities for the promotion and protection of children's rights.

19. **The Committee recommends that the State party allocate more resources for the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular**

those belonging to economically disadvantaged groups, including children and families infected and affected by HIV/AIDS “to the maximum extent of ... available resources and, where needed, within the framework of international cooperation”.

20. In this regard, the Committee also recommends that the State party ensure that regional and other free trade agreements do not have a negative impact on the implementation of children’s rights and, more specifically, that these will not affect the possibility of providing children and other victims of HIV/AIDS with effective medicines for free or at the lowest price possible.

Data collection

21. The Committee welcomes the statistical data provided in the written replies but is concerned at the absence of a mechanism to systematically collect and analyse disaggregated quantitative and qualitative data on persons under the age of 18 years in all areas covered by the Convention, especially the most vulnerable groups, including children living in poverty, children living in rural and the most remote areas, children with disabilities, refugee children, indigenous children and street children.

22. The Committee recommends that the State party develop a comprehensive system for collecting disaggregated data as a basis to assess progress achieved in the realization of children’s rights and to help design policies to implement the Convention. It also recommends that the State party seek technical assistance from, inter alia, the United Nations Children’s Fund (UNICEF).

Dissemination of the Convention

23. The Committee, while taking note of the efforts undertaken by the State party in awareness-raising campaigns, remains concerned that professional groups, children, parents and the general public are not sufficiently aware of the Convention and the rights-based approach enshrined therein. In addition, the Committee is concerned that the Convention is not sufficiently disseminated at the local level, particularly in rural and the most remote areas.

24. The Committee recommends that the State party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children alike. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular judges, lawyers, law enforcement personnel, traditional chiefs, teachers, school administrators, health personnel, including psychologists and social workers, and personnel of childcare institutions. In addition, the Committee recommends that the State party incorporate human rights, especially the Convention on the Rights of the Child, into the school curricula at all levels. The Committee suggests that the State party seek technical assistance from, among others, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and UNICEF.

2. Definition of the child

25. While acknowledging that the State party is aware of the lack of legislative clarity regarding the definition of the child, the Committee would like to reaffirm the fact that the various ages defined in the current legislation are not in conformity with the Convention.

26. **With reference to paragraph 11 of these concluding observations, the Committee recommends that the State party expedite the necessary legislative reform in order to establish a definition of the child in conformity with article 1 of the Convention of the Rights of the Child and also applicable with customary law.**

3. General principles

Non-discrimination

27. The Committee is concerned that, as noted by the State party, the Constitution is inconsistent with the non-discrimination provision of the Convention. The Committee is also concerned that societal discrimination persists against vulnerable groups of children, including children with disabilities, street and rural children, children born out of wedlock, orphans and fostered children and children affected or infected by HIV/AIDS. The Committee is deeply concerned at the situation of girls, in particular adolescent girls who, as acknowledged by the State party, suffer marginalization and gender stereotyping, compromising their educational opportunities and are more vulnerable to sexual violence, abuse and HIV/AIDS.

28. **The Committee recommends that the State party:**

(a) **Amend the existing legislation and adopt new laws to ensure that all children within its territory enjoy all rights set out in the Convention without discrimination, in accordance with article 2;**

(b) **Prioritize and target social services for children belonging to the most vulnerable groups;**

(c) **Pay special attention to the situation of girls through education campaign, participation, support and protection of girls;**

(d) **Include specific information in the next periodic report on the measures, legislative and otherwise, undertaken by the State party to combat discrimination on any grounds and against all vulnerable groups.**

29. **The Committee requests that specific information be included, in the next periodic report, on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in 2001, taking into account General Comment No. 1 on article 29, paragraph 1, of the Convention (aims of education).**

Best interests of the child

30. The Committee notes with concern the information that the principle of the best interests of the child is not fully applied and duly integrated into the State party's legislation and into the implementation of the policies and programmes.

31. **The Committee recommends that the State party take all appropriate measures to ensure that the principle of the best interests of the child is appropriately integrated into all legislation and judicial and administrative decisions as well as into projects, programmes and services which have an impact on children. The Committee encourages the State party to take all necessary measures to ensure that customary law does not impede the implementation of this general principle, notably through raising awareness among community leaders.**

Respect for the views of the child

32. The Committee welcomes the organization of a Children's Forum in 2001. However, the Committee remains concerned that the opinions of children are not given sufficient consideration and that respect for the views of the child remains limited within the family, at schools, in courts, administrative authorities and in the society at large.

33. **In the light of article 12 of the Convention, the Committee recommends that the State party:**

(a) **Promote and facilitate, within the family, the schools, the courts and administrative bodies, inter alia, through the adoption of legislation, respect for the views of children and their participation in all matters affecting them, in accordance with their age and maturity;**

(b) **Provide educational information to, among others, parents, teachers, government administration officials, the judiciary, traditional leaders and society at large on children's rights to participate and to have their views taken into consideration.**

4. Civil rights and freedoms

Birth registration

34. While the Committee welcomes the amendments to the Birth and Death Registration Act of 1998 that ensures the compulsory registration of both, throughout the State party, it is concerned at the significant number of children who are not yet registered at birth, particularly in remote areas.

35. **In the light of article 7 of the Convention, the Committee urges the State party to increase its efforts to ensure the registration of all children at birth, including through awareness-raising campaigns.**

Corporal punishment

36. The Committee notes with deep concern that corporal punishment is permissible under the State party laws and is used as a way of disciplining children at home, as a disciplinary measure by schools as stipulated in the Education Act and as a sanction in the juvenile justice system.

37. **The Committee strongly recommends that the State party take legislative measures to expressly prohibit corporal punishment in the family, schools and other institutions and to conduct awareness-raising campaigns to ensure that positive, participatory, non-violent forms of discipline are administrated in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28, paragraph 2, as an alternative to corporal punishment at all levels of society.**

5. Family environment and alternative care

Parental responsibilities

38. The Committee notes with concern that there is an increasing number of children without adequate parental support due to various reasons, inter alia, the lack of child support by fathers.

39. **The Committee recommends that the State party:**

(a) **Take all necessary measures to provide parents and families in particularly difficult circumstances with the necessary financial and other support as much as possible;**

(b) **Take the necessary legislative and other measures to ensure that the best interests of the child are of primary consideration and that guardianship with one of the parents after divorce is not automatically granted to the father;**

(c) **Take measures to improve the enforcement of child support by fathers, in particular of children born out of wedlock, inter alia, by providing mothers with information about the legal provisions in this regard and with the necessary legal or other assistance free of charge for mothers who cannot afford it, not only for initiating legal actions but also for enforcing court decisions.**

Alternative care

40. While noting the efforts undertaken to develop guidelines for alternative care placements, the Committee is concerned at:

(a) The lack of legislation governing alternative care in the State party and the long delays in adopting such legislation;

(b) The excessive number of children deprived of their family environment.

41. The Committee urges that the State party:

(a) Undertake without further delay the necessary steps for the full and effective implementation of the Alternative Care Guidelines and for the drafting and adoption of legislation governing the various forms of alternative care, including those provided by civil society organizations in compliance with the Convention;

(b) Better coordinate and provide adequate financial support to civil society involved in the area of child support.

Adoption

42. The Committee is also concerned that the rules and the procedures of the Adoption Act are not applicable under customary law.

43. The Committee recommends that the State party:

(a) Expedite the review of the Adoption Act in order to bring existing rules and practices regulating adoption into full compliance with the Convention to ensure that in cases of informal adoption, the rights of the child are well protected to encourage formal domestic adoptions;

(b) Consider ratifying the Hague Convention No. 33 on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

Child abuse and neglect

44. While taking note that the Women's Affairs Department commissioned a study in 1998 on the socio-economic implications of violence against women, the Committee remains concerned at the increasing level of domestic violence, at both physical and sexual abuse of children and at the lack of a comprehensive legal and policy framework.

45. In the light of articles 19 and 39 of the Convention, the Committee recommends that the State party:

(a) Adopt legal measures and comprehensive and responsive policies which will help to change attitudes and improve the prevention and treatment of cases of violence against children;

(b) Introduce an effective system for reporting cases of abuse, including sexual abuse, of children;

(c) Properly investigate cases of violence against children through a child-sensitive judicial procedure and impose sanctions on perpetrators, with due regard to the right to privacy of the child;

(d) **Take measures to ensure the care and rehabilitation of victims as well as perpetrators;**

(e) **Take measures to prevent the criminalization and stigmatization of child victims of abuse; and**

(f) **Seek technical assistance from, among others, UNICEF and the World Health Organization (WHO).**

6. Basic health and welfare

Children with disabilities

46. While welcoming the formulation of a national policy on the care of people with disabilities, the Committee is concerned that children with disabilities are still discriminated against and often considered “an embarrassment” by their parents, are not adequately integrated in the society or in the mainstream school system and do not have adequate access to social services, including health care, especially those living in remote areas.

47. **In the light of the Standards Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee’s recommendations adopted at its day of general discussion on the rights of the children with disabilities (CRC/C/69, paras. 310-339), the Committee recommends that the State party continue to strengthen its efforts to combat discriminatory attitudes towards children with disabilities, particularly amongst children and parents, and promote their participation in all aspects of social and cultural life. The State party should also ensure that all children with disabilities have access to health care facilities and education and, wherever possible, they are integrated into the mainstream education system.**

Health services

48. The Committee notes with appreciation the developments in the primary health care strategy, notably the decentralization and mobile units as well as the dialogue conducted with traditional leaders to ensure that health care strategies are complementary. Nevertheless, it remains concerned at the regional disparities in the health service provisions as well as the still high maternal mortality rates.

49. **The Committee recommends that the State party continue to strengthen its primary health care strategy by ensuring adequate staffing and providing the highest attainable standard of health for all children. The Committee recommends that the State party reduce regional disparities and lower maternal mortality rates by improving prenatal care services and providing training of birth attendants in healthy midwifery practices.**

HIV/AIDS

50. While welcoming the establishment of the National AIDS Council, chaired by the president, the National AIDS Coordinating Council, the National Policy on HIV/AIDS, the Prevention of Mother to Child Transmission Programme and the programme for AIDS orphans, the Committee shares the serious concern of the State party at the still

exceedingly high prevalence rate of HIV/AIDS, especially among women in their child-bearing years compounded, in part, by inappropriate traditional practices, stigmatization and lack of knowledge on prevention methods.

51. In the light of General Comment No. 3 on HIV/AIDS and the rights of children (CRC/GC/2003/3), the Committee urges the State party to strengthen its efforts in combating the spread and effects of HIV/AIDS by, inter alia, training professionals, conducting education campaigns on prevention, improving the prevention of mother to child transmission programme, by providing free and universal antiretroviral medication and improving protection and support for AIDS orphans.

Adolescent health

52. The Committee is concerned at the high incidence of teenage pregnancies, the inadequate reproductive health services and at the lack of mental health services for adolescents.

53. In the light of General Comment No. 4 on adolescent health and development in the context of the Convention on the Rights of the Child (CRC/GC/2003/4), the Committee recommends that the State party establish adequate health care services for adolescents, focusing on reproductive and mental health programmes.

7. Education, leisure and cultural activities

54. The Committee is concerned at the information that primary education is not free for non-nationals and that the State party is considering introducing fees for parents who can afford it. The Committee is also concerned that primary education is not compulsory and at the high dropout rates in particular of girls in secondary schools, partly due to pregnancies.

55. The Committee recommends that the State party:

- (a) Take all necessary measures, legislative and administrative, to ensure that primary education is free and compulsory as required in article 28 of the Convention;**
- (b) Continue to strengthen the activities providing pregnant girls with ongoing access to education (before and after giving birth);**
- (c) Take measures to reduce school repetition and dropout rates;**
- (d) Strengthen its efforts to improve the quality of education by revising curricula, introducing child-centred and active teaching and learning methods;**
- (e) Expand the system of vocational training and improve its quality;**
- (f) Seek international technical assistance from, inter alia, UNICEF and UNESCO.**

8. Special protection measures

Economic exploitation, including child labour

56. While noting the ratifications made by the State party concerning International Labour Organization Conventions No. 138 concerning the minimum age for admission to employment and No. 182 concerning the worst forms of child labour, the Committee notes with concern the information in the State party's report that child labour is a serious problem.

57. **The Committee recommends that the State party:**

- (a) Undertake studies to assess the incidence and nature of child labour, in particular the worst forms of child labour;**
- (b) Improve the system and quality of labour inspection;**
- (c) Seek international technical assistance; inter alia, from ILO and UNICEF.**

Sexual exploitation

58. The Committee is concerned at the increasing incidence of sexual exploitation and abuse of children as mentioned in the State party report.

59. **The Committee recommends that the State party:**

- (a) Undertake a study of children involved in commercial sexual exploitation and use its data to design policies and programmes to prevent commercial sexual exploitation of children, including through the development of a national plan of action on commercial sexual exploitation of children, as agreed at the first and second World Congresses Against Commercial Sexual Exploitation of Children, held in 1996 and 2001;**
- (b) Train law-enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints, in a child-sensitive manner that respects the privacy of the victim;**
- (c) Prioritize recovery assistance and ensure that education and training as well as psychosocial assistance and counselling are provided to victims.**

Juvenile Justice

60. While recognizing the efforts made by the State party in this domain, including the establishment of the New School of Industry in 2002 for children in conflict with the law, the Committee remains concerned that the juvenile system is not yet compatible with the provisions and principles of the Convention. It is especially concerned at the fact that the age of criminal responsibility, fixed at 8 years, is too low.

61. **The Committee recommends that the State party:**

- (a) Ensure the full implementation of juvenile justice standards and, in particular, articles 37, 39 and 40 of the Convention, as well as the United Nations Standard**

Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), and in the light of the Committee's 1995 discussion day on the administration of juvenile justice;

(b) Raise the age of criminal responsibility to an internationally acceptable standard;

(c) Ensure that detained children are always separated from adults, and that deprivation of liberty is used as a last resort, for the shortest appropriate time and in appropriate conditions;

(d) Improve training programmes on relevant international standards for all professionals involved with the system of juvenile justice; and

(e) Seek technical assistance in developing and enforcing the juvenile justice system from, inter alia, UNICEF and OHCHR.

9. Optional Protocols to the Convention on the Rights of the Child

62. The Committee notes that the State party has acceded to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and signed the Optional Protocol on the involvement of children in armed conflict.

63. The Committee recommends that the State party ratify the Optional Protocol to the Convention on the involvement of children in armed conflict.

10. Follow-up and dissemination

Follow-up

64. The Committee recommends that the State party take all appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the members of the Council of Ministers or the Cabinet or a similar body, the Parliament, and to provincial or State governments and parliaments, when applicable, for appropriate consideration and further action.

Dissemination

65. The Committee further recommends that the initial report and written replies submitted by the State party and related recommendations (concluding observations) that it adopted be made widely available, including through Internet (but not exclusively), to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Convention, its implementation and monitoring.

11. Next report

66. In the light of the recommendation on reporting periodicity adopted by the Committee (CRC/C/139), the Committee underlines the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. An important aspect of States parties' responsibilities to children under the Convention is ensuring that the Committee on the Rights of the Child has regular opportunities to examine the progress made in the Convention's implementation. In this regard, regular and timely reporting by States parties is crucial. As an exceptional measure, in order to help the State party catch up with its reporting obligations, so as to be in full compliance with the Convention, the Committee invites the State party to submit its second and third reports in one consolidated report by 15 April 2007, the due date for the submission of the third report. Such a report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention.
