



International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination 108th session

Summary record of the 2938th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 22 November 2022, at 10 a.m.

Chair: Ms. Shepherd

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The meeting was called to order at 10 a.m.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)*

Combined seventeenth to twenty-second periodic reports of Botswana (continued)
([CERD/C/BWA/17-22](#); [CERD/C/BWA/Q/17-22](#); [CERD/C/BWA/QPR/17-22](#))

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **Ms. Esseneme** (Country Rapporteur) said that the Committee wished to know how development policies were designed to ensure they met the needs of all socioeconomic groups, including ethnic minorities and Indigenous Peoples; how the State party assessed the impact of its policies in the absence of disaggregated data on ethnicity; and what procedures were in place for the recognition of the status of ethnic minorities and Indigenous Peoples.
3. Noting the country's rich linguistic and ethnic diversity, she would appreciate having an account of the languages that were used in education settings, from preschool to university level. According to the report of the Special Rapporteur on minority issues on his visit to Botswana in August 2018 ([A/HRC/40/64/Add.2](#)), the teaching of minority languages in schools was prohibited, thereby cutting children off from their native languages and requiring them instead to learn Setswana and English. What measures were being taken to remedy that situation? While four schools had been opened in Ghanzi District, where a significant part of the population was Basarwa, it was not clear whether they offered native-language instruction. She would like to hear of steps taken or envisaged by the State party to provide children from minority groups, including the many who struggled at poorly run boarding schools, with education on an equal footing with Tswana children and to teach the history of non-Tswana peoples in the education system.
4. The Committee would appreciate information on the impact of measures targeting non-Tswana groups, in particular the Basarwa/San, Kalanga, Wayeyi and Basubiya peoples. It would also be interesting to hear the delegation's response to allegations that some communities had insufficient space to graze livestock obtained under a government programme as a result of State restrictions on land use.
5. The Committee had received reports that the Bogosi Act governing the administration of customary law in Botswana, which had been adopted with the intention of including non-Tswana tribes in the Ntlo ya Dikgosi (House of Chiefs), was not being implemented in practice. Only four non-Tswana tribes were represented in the Ntlo ya Dikgosi in comparison to eight Tswana tribes; non-Tswana tribes had been denied the right to install their chiefs in accordance with cultural norms and practices; unlike Tswana chiefs, non-Tswana chiefs had to be elected to the Ntlo ya Dikgosi; and Tswana chiefs were more likely to become a *kgosi*, or paramount chief. It would thus be useful to hear of any measures to resolve the discrepancy between the letter of the law and its implementation on the ground. The Committee also wished to hear how the Bogosi Act had contributed towards the recognition and participation of all tribes in the Ntlo ya Dikgosi and in the social life of Botswana, how a community could be given the status of a tribe and how many non-Tswana communities had been recognized as tribes since the adoption of the Bogosi Act. She would also like to know whether the Ntlo ya Dikgosi was consulted on administrative decisions other than bills concerning customary law, traditions and chieftainship and whether its views were taken into account by the State party in decision-making processes, even when those views were at odds with the Government's proposals.
6. Since one of the goals of the national strategy Vision 2016: Towards Prosperity for All was to ensure tolerance towards ethnic minorities, she wished to know which ethnic minorities had been identified within the framework of that strategy, to what extent they were involved in developing and carrying it out, how their situation had improved following its implementation and whether measures concerning those groups had been envisaged in the development of Vision 2036. It was her understanding that the kgotla – the traditional gathering of the Tswana communities – were presided over by the Tswana and other tribes did not participate in kgotla meetings. Statistics on representation of the different ethnic groups in the Government and public office and in elected positions would be welcome.

7. Turning to the matter of non-citizens, she wished to know of the outcome of the study conducted following the meeting held in October 2019 with the Office of the United Nations High Commissioner for Refugees (UNHCR) and would like to receive an update on the status of reviews of the Immigration Act and Citizenship Act. It would be interesting to learn why people migrated from Zimbabwe, Somalia and the Democratic Republic of the Congo to Botswana, the measures being taken to provide judicial protection to refugees and asylum-seekers deemed “illegal immigrants” and the current status of the Zimbabwean migrants, who had been stigmatized and abused by the police. At the previous meeting, the State party had reported that some refugees had appealed to the High Court against decisions for their removal to their home countries, which seemed incompatible with the suggestion that such returns were voluntary; she would therefore appreciate a more detailed explanation of the voluntary return process for refugees. Further information on the number of cases of racial discrimination recorded by refugee welfare committees and complaints lodged with the commander of the Dukwi refugee camp would also be welcome.

8. Given that HIV prevention and treatment awareness-raising activities were only carried out in Setswana and English, she would like to know of measures taken by the State party to communicate with language minority groups on the subject. Furthermore, in the light of the State party’s obligations under the Universal Declaration of Human Rights, the delegation might wish to explain why most non-citizens were excluded from free HIV/AIDS treatment. Statistics on the number of HIV-positive non-citizens in Botswana would also be welcome.

9. The Committee wished to know why non-citizens, who were often on low incomes, experienced discrimination in the exercise of their right to education since – unlike Botswanan nationals – they were liable for school fees for the first 10 years of education and could not benefit from reduced secondary school fees and higher education grants.

10. **Ms. Tebie** (Country Task Force) said that she would be interested in learning about measures taken by the State party to protect the traditions, culture and way of life of the Khoisan peoples and to enable them to escape their situation of vulnerability. She would also welcome information on lessons learned from the implementation of the Remote Area Development Programme that could benefit the Khoisan peoples and other isolated tribes.

11. The State party had not provided information previously requested by the Committee on trafficking in persons. Noting that the Anti-Human Trafficking Act of 2014 provided for compensation for victims of trafficking and that the perpetrators of trafficking had received fines in four cases, she would like to know the fate of the victims in those cases and why redress had not been provided to victims of trafficking since the entry into force of the Act. It would also be useful to receive an update on the adoption of the Act’s implementing legislation.

12. Information on the number of people trained on matters concerning trafficking in persons through the training activities described in the State party’s report and the real-world impact of the knowledge acquired would be appreciated. She would also welcome details on the composition of the Human Trafficking (Prohibition) Committee and on its activities, including its follow-up to the resolutions emanating from the colloquiums held in 2017 and 2019.

13. The Committee would like to receive additional information on trafficking in children and women, especially Indigenous and migrant girls, for the purpose of sexual and labour exploitation. It would also be helpful to receive an explanation of the victims of child trafficking referred to as “miracle babies” in the State party’s periodic reports and statistical data on trafficking in persons, including on reported cases, investigations, sentences, support provided to victims and awareness-raising campaigns.

14. Alternative reports had suggested that some Zimbabwean women who had migrated to Botswana for employment were being subjected to domestic servitude and labour rights violations; the delegation might wish to respond to those allegations and inform the Committee of any steps taken to put an end to that situation. It would also be useful to know whether the State party had signed any cooperation agreements with other countries on the investigation, prosecution and extradition of suspected traffickers and on the protection, rehabilitation and reintegration of victims. An update on the revision of the Adoption of

Children Act of 1952 would be appreciated, as would statistics on the adoption of Botswanan children, including their ethnicities and origin.

15. The Committee would like to know how the coronavirus disease (COVID-19) pandemic had affected those most vulnerable to discrimination in Botswana and the measures being taken to protect them from its impact, including any socioeconomic effects and acts of racial discrimination that could be linked to the pandemic.

16. She would appreciate details of the case of the former President of Botswana, Ian Khama, and his staff, who had reportedly been living in exile in South Africa since November 2021 in fear of persecution. What security measures was the State party planning to take to ensure their safe return to Botswana?

17. **Ms. Tlakula** said that the Committee had received reports that women in detention at the Francistown Centre for Illegal Immigrants were often abused by police officers, who requested sexual favours from them in exchange for food. Non-national female prisoners were more likely to be targeted for sexual abuse than Botswanan nationals. She wondered whether the State party had received such complaints and whether they had been investigated. If not, why not? If so, what had been the outcomes of those investigations?

18. **Ms. Esseneme** said that more recent data on the implementation of the Remote Area Development Programme would be welcome since the most recent statistics provided in the State party's report dated from 2018.

19. **Ms. Tebie** said that the Committee would like to know of measures taken by the State party to ensure the safety of all individuals, especially women, who were victims of the crimes perpetrated at the Francistown Centre for Illegal Immigrants and other detention centres. It would also be interesting to receive an update on the review of the Refugees (Recognition and Control) Act of 1967. Noting that Botswanan legislation recognized the equal rights of men and women concerning the transmission of nationality to their children following the landmark decision in the case of *Attorney General v. Unity Dow*, she wished to know whether the law also permitted the transmission of nationality from a Botswanan woman to her foreign spouse.

The meeting was suspended at 10.35 a.m. and resumed at 11.10 a.m.

20. **A representative of Botswana** said that the Government's Vision 2036 programme sought to eliminate discrimination on the basis of race, ethnicity, language, nationality or religion and to promote and protect the diversity of peoples and cultures in Botswana. The Government was taking steps to ensure that children could be schooled in their native languages, particularly in early years and primary education. A total of 13 of the 29 languages spoken in Botswana were due to be used in schools from 2023 onwards. Teaching assistants had been recruited from within indigenous communities to that end. Moreover, the Government had incorporated cultural studies and moral and religious education into the primary school curriculum to promote respect for diversity. Radio and television programmes were broadcast in a range of different languages, and more than 20 different cultural festivals were celebrated annually throughout the country with the financial support of the Government.

21. **Ms. Molokomme**, speaking as head of the delegation, said that the Government was reluctant to disaggregate data on its population by race and ethnicity, as such practices had underpinned racist policies in neighbouring countries in the relatively recent past. However, that did not stop it from taking measures to support peoples in the more remote areas of the country.

22. **A representative of Botswana** said that antiretroviral treatment was now provided to non-Botswanan prisoners, in the light of the decision handed down in 2015 by the Court of Appeal in the case *Attorney General et al. v. Dickson Tapela et al.* – namely to uphold the lower court's decision that the denial of testing, assessment and antiretroviral treatment to foreign prisoners discriminated unlawfully against non-citizens. A total of 144 such prisoners had received antiretroviral treatment to date. The Government had taken measures to extend the provision of antiretroviral treatment and related services to other non-Botswanan population groups, including undocumented immigrants. A total of 20 persons in refugee camps were currently receiving antiretroviral treatment. The Government also collaborated

with civil society and district health management teams to disseminate material on HIV prevention and treatment at the local level, including in minority languages. Furthermore, the national school curriculum included learning material on the prevention, treatment and destigmatization of HIV.

23. **A representative of Botswana** said that the status of implementation of projects under the Remote Area Development Programme was monitored and reported to the Cabinet every two months. The projects covered health, education and other areas and were tailored to the needs of the remote communities that they served. The Affirmative Action Framework for Remote Area Communities (2015–2025) aimed to accelerate the implementation of programmes in areas such as infrastructure and housing. Some children in areas without schools were placed in one of around two dozen boarding schools in the country. Although those children were necessarily separated from their parents, they received comprehensive support, including psychosocial assistance, to ensure that they settled well. Lastly, under poverty eradication programmes, persons in remote communities received training in income-generating activities such as sewing and basket weaving.

24. **Ms. Molokomme** said that the COVID-19 pandemic had severely curbed the Government's revenue and hence its ability to fund services for foreign nationals. However, it had spared no effort in providing support for marginalized communities.

25. **A representative of Botswana** said that the Government had lowered the entry requirements for access to tertiary education for young persons from marginalized rural communities, who tended to underperform at school, in order to improve their prospects. The national old-age pension scheme was paid to all persons aged 65 years and above, including those in remote areas. Likewise, programmes for the benefit of vulnerable children covered all minority groups, without exception. Turning to the issue of tribal lands, the law did not discriminate as to who could claim land or where, and, under the Tribal Land (Amendment) Regulations of 2020, any Botswanan without a criminal record was permitted to sit on a land allocation board. Communities likely to be affected by mineral exploration projects were duly consulted. In the case of Canadian mining company ReconAfrica, while the Government had yet to explore the possibility of compensating the communities affected, it could provide evidence that they had been properly consulted, if required. All Botswanans benefited from the mining of minerals in the country. Mining firms, in accordance with their social responsibility commitments, built vital infrastructure such as schools and hospitals and provided a range of services for local communities.

26. **A representative of Botswana** said that there were 806 asylum-seekers currently registered in Botswana, from five countries. The biggest group was from the Democratic Republic of the Congo, followed by Somalia, Burundi, South Africa and Lesotho. Migration to Botswana was motivated by inadequacies in public services in countries of origin and the perception that Botswana had the space to receive asylum-seekers and had a good education system where their children could learn and where they had a strong chance of resettlement. Asylum-seekers had the right to seek redress through the legal system in a manner similar to that of citizens. Indeed, the courts had heard several appeals of asylum decisions in recent years. One example had been the case of a group of five Zimbabwean nationals who had no longer been recognized by the Government as refugees in Botswana and who had not been found by UNHCR to be in need of international protection. Rather than accept a voluntary repatriation package that had been offered them, they had taken their case to court, and lost. Despite the fact that it had been determined that it was safe for them to return to their country of origin, they were afforded every legal remedy against the decisions of the Government. The cases of all returned persons were assessed individually, and they were given financial assistance, food and non-food items upon their return.

27. The manager of the Dukwi refugee camp had received no complaints of racial discrimination or hatred. The camp contained a fully operational police station that was accessible to all inhabitants, and a system of refugee welfare committees allowed them to communicate their needs to the camp manager or, if necessary, the Government. Consideration was currently being given to the comments made by stakeholders during consultation on the bill drafted as part of the review of the Refugees (Recognition and Control) Act.

28. **A representative of Botswana** said that there were no records of abuse of Zimbabwean female inmates by police officers or any other law enforcement official at the Francistown Centre for Illegal Immigrants or in prisons.

29. **A representative of Botswana** said that her Government had replied to the urgent appeal of the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the alleged risk to the life of the former President, Ian Khama, in an interim communication from the Permanent Representative in July and a substantive response October 2021.

30. **A representative of Botswana** said that there had been four convictions in the 19 recorded cases of trafficking in persons. Awareness-raising campaigns had targeted all stakeholders, including border and airline officials, leading to a significant increase in detection rates and revealing the need for strengthened standard operating procedures to identify cases of trafficking accurately. The Anti-Human Trafficking Act, which was fully implemented, was currently under review with a view to eliminating fines for perpetrators in lieu of prison sentences, increasing sentences and establishing a formal referral procedure, among other changes. The resolutions resulting from the colloquiums with judges and magistrates would be implemented through a five-year action plan that was under development and due to commence in 2023. The Human Trafficking (Prohibition) Committee comprised relevant stakeholders, including representatives of the police, the Government, a non-governmental organization (NGO) and the health sector.

31. The trafficking victims identified in Botswana included two women and one girl who had been trafficked for the purpose of sexual exploitation, and one girl trafficked for the purpose of labour exploitation. Victims received safe accommodation, adequate protection and access to social services, health care and education until repatriation arrangements had been made or their court cases had concluded. The Government had signed extradition treaties and mutual legal assistance agreements with other countries that addressed trafficking in persons.

32. **A representative of Botswana** said that 497 children had been adopted since 2015–2016; figures dating back further would be provided in writing. The Government had deposited instruments of accession to the Convention on the Civil Aspects of International Child Abduction, the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.

33. **A representative of Botswana** said that, under the Ombudsman (Amendment) Act, the Office of the Ombudsman would assume the function of a national human rights institution, in addition to its existing mandate. The Government would seek the accreditation of the Office once it was fully operational in its new role with a view to ensuring that it was in compliance with the Paris Principles in both law and practice. The Act set out details of the Office's resources and functions and provided that it would be staffed by the Ombudsman, deputy ombudsmen and other personnel, who would all be required to swear an oath to serve the country faithfully and maintain the confidentiality of any matters coming to their attention during the course of their work. They would also be liable to disciplinary proceedings, and even prosecution, in the event of misconduct but enjoy protection from liability for actions taken in good faith while fulfilling their duties.

34. The Act also provided that, as a public body, the Office would be subject to the provisions of the Public Service Act, its administrative costs would be borne by the Government and it would be attached to the Ministry of Defence, Justice and Security for the purposes of funding, administration and accountability. Nevertheless, it would enjoy operational independence and the power to inspect the premises and records of any entity during its investigations, and would also work with civil society and NGOs. While education on human rights was provided, it did not address racial discrimination specifically. Targeted campaigns in that area would be undertaken once the Office of the Ombudsman had fully assumed its new role, and as part of the human rights action plan drawn up by the Human Rights Unit.

35. The society of Botswana was a tolerant one, and both State-owned and private media outlets recognized their responsibility to refrain from disseminating information or reflecting

prejudices that would give rise to racial discrimination. The Media Practitioners Act of 2008, adopted with the intention of regulating the media, had not been implemented owing to stakeholders' concerns. Parliament had, however, passed a bill on media practitioners' associations that would establish a committee to deal with complaints involving the media, along with other bodies such as an ethics committee, thereby enabling action to be taken against persons disseminating such information in the media. Botswana had one State-owned and 13 private print media outlets; three State-owned, three private and eight foreign television channels and several online newspapers. The necessary conditions for freedom of expression were therefore in place, and information reached all areas of the country.

36. Legal Aid Botswana provided general human rights education as part of its legal education efforts, as well as legal representation for persons with low incomes. Its services were provided through offices across the country, along with mobile units, thus ensuring that its programmes and activities reached all communities, including those in remote areas. Access to justice for all was guaranteed through the provision of interpreters for litigants who did not speak English or Setswana. While legal aid was means-tested, persons who owned assets but were experiencing temporary financial problems were occasionally granted assistance to ensure that their legal representatives received payment. A pilot project to provide legal aid in criminal proceedings was under way.

37. **Ms. Esseneme** said that the Committee would welcome responses to questions raised during the previous day's meeting, relating to land categories and tribal territories and areas, land allocation and land boards. Clarifications on the issues raised about the Central Kalahari Game Reserve would also be appreciated.

38. **Ms. Molokomme** (Botswana) said that, for historical reasons, freehold land, which was owned by the private sector, made up a very small proportion of the country's land area. More than two-thirds of land in Botswana was tribal land, which meant that any person from Botswana could apply for free access to that land. State land was land where cities and game reserves were situated.

39. **A representative of Botswana** said that applicants seeking appointment to a land board needed to be citizens of Botswana, hold a valid identity card, be between 26 and 70 years of age, and reside within the tribal area in which appointment was being sought.

40. **Ms. Molokomme** (Botswana) said that the Government had complied with the decision reached in the case of *Sesana and others v. Attorney General*, taking the view that the verdict applied only to those members of the San community who had gone to court. As such, it did not cover those who were not parties to the lawsuit. Although decisions to separate children from their parents were not taken lightly, the fact that they were only allowed to live in the Central Kalahari Game Reserve until the age of 18 was also consistent with the court decision. Complaints of police brutality against inhabitants of the Reserve were not indicative of systematic harassment of those people and had been addressed. Although hunting was prohibited in the Reserve, permits had been made available to those who had been parties to the court case. The ban on hunting elephants had been lifted in light of the danger their increasing numbers and encroachment posed to the human population. International assistance to help manage the elephant population would be welcomed by Botswana.

41. **Ms. Stavrinaki** said that she would appreciate clarification of the wording from the State party report according to which all refugees were "required to stay in Dukwi refugee camp for their safety and protection". In particular, she would like to know what they needed to be protected from. In the light of the unfortunate fact that violence and abuse were a common feature of all refugee camps, further targeted measures should be adopted to deal with such problems, including gender-based violence. The presence of a police unit in the camp might help that. The absence of complaints about violence within refugee camps did not indicate that no violence was taking place. She invited the State party to look into the incidence of abuse and provide measures to help women and children to lodge complaints. Lastly, it was important to note that the use of offensive and insulting language towards persons in the camp could be of a racial nature per se, irrespective of the precise vocabulary used. She would welcome further information on the subject.

42. **Ms. Tebie** said that she agreed that investigations might be a positive step forward in order to help understand the situation of women and others in the camp and take appropriate measures.

43. **A representative of Botswana** said that, although no complaints that included a racial component had been lodged with the Dukwi refugee camp manager or police in the camp, complaints of a non-racial nature had been reported, including theft, affray or insulting language. The latter scenario, which concerned an unpaid debt, was not considered to involve racism.

44. With respect to the safety and protection of refugees in the refugee camp, although it was referred to as a “camp”, it was a settlement like others in the country, in which a community lived and was provided with services including school, a clinic, a police station and water. Refugees and asylum-seekers were allowed to leave the camp. Women at the camp were assisted with start-up packages to help them open small businesses such as hair salons or small poultry businesses. Other women performed agricultural work in the camp or sought formal employment outside the camp.

45. **Ms. Esseneme** said that she would like to congratulate the delegation on the clarity of their responses and hoped that Botswana would continue to work towards the social inclusion of all of its communities.

46. **Mr. Mthimkhulu** (Botswana) said that he wished to thank the Chair for the cordial and balanced manner in which the meetings had been conducted. Botswana remained fully committed to creating an environment conducive to the promotion and protection of the rights enshrined in the Convention.

The meeting rose at 12.55 p.m.