



# 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 2937th meeting\*

Held at the Palais Wilson, Geneva, on Monday, 21 November 2022, at 3 p.m.

*Chair:* Ms. Shepherd

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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*

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\* No summary record was issued for the 2936th meeting.

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*The meeting was called to order at 3 p.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*  
([CERD/C/BWA/17-22](#); [CERD/C/BWA/QPR/17-22](#); [CERD/C/BWA/Q/17-22](#))

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **Mr. Mthimkhulu** (Botswana), introducing his country's combined seventeenth to twenty-second periodic reports ([CERD/C/BWA/17-22](#)), said that the accession of Botswana to the Convention in 1974 had been a declaration of its long-standing commitment to multiracialism, cultural diversity and equality, at a time when those values had been under serious threat in many parts of the world. In Botswana, society revolved around the *kgotla* system of traditional governance, which had been founded on the key principles of respect for humanity, consultation, democracy and tolerance. Those tenets formed a solid foundation for the effective implementation of the Convention.
3. Section 3 of the Constitution guaranteed equality for all, regardless of race, place of origin, political opinions, colour, creed or sex, in line with article 1 of the Convention. Persons alleging a violation of the fundamental rights and freedoms protected under the Constitution could apply to the High Court for redress. Moreover, domestic legislation criminalized discrimination on grounds including descent, nationality and ethnic origin.
4. Through the adoption of Vision 2036, the country's road map for development, which promoted a spirit of tolerance, Botswana had reaffirmed its resolve to combat all forms of racial discrimination. The fact that it had not submitted a periodic report to the Committee since 2006 should not be construed as a lack of commitment to the Convention. Despite the delay, which had been caused by institutional and technical capacity challenges, Botswana had been implementing the Convention and remained mindful of the obligations it had undertaken.
5. Botswana had gradually been developing its institutional capacity to ensure compliance with the Convention. In April 2022, the Ministry of Justice had been decoupled from the then Ministry of Defence, Justice and Security. The new Ministry housed the Human Rights Unit, which was the national body responsible for human rights issues. With effect from 1 November 2022, the Law Reform Unit had been set up within the Attorney General's Chambers to support the implementation of national strategic priorities. In 2009, the Internal Affairs Branch of the Botswana Police Service had been established to investigate allegations of professional misconduct by officers.
6. With technical assistance from the Office of the United Nations High Commissioner for Human Rights, the Government had begun to develop a database to track the implementation of recommendations from the human rights treaty bodies. Botswana was up to date with its reporting obligations in that regard. The strengthening of the national human rights framework had facilitated cooperation with the special procedures mandate holders, to whom the Government had extended a standing invitation. Botswana had hosted the Working Group on Arbitrary Detention in 2022, the Special Rapporteur on the human rights to safe drinking water and sanitation in 2019 and the Special Rapporteur on minority issues in 2018.
7. The Government recognized the significant role played by non-governmental organizations (NGOs) as partners in the promotion and protection of human rights and in complementing the Government's efforts to deliver services, including in remote areas. Accordingly, it had established the National Human Rights Coordination Committee in 2020 to serve as a forum for meaningful engagement with civil society. The Committee had produced a draft comprehensive human rights strategy and national action plan to drive the implementation of treaty body recommendations and ensure timely reporting.
8. The National AIDS and Health Promotion Agency had set up a dedicated unit to lead multi-stakeholder action to address human rights and gender barriers to HIV/AIDS and other health services, with a focus on minority and vulnerable groups. Botswana had acceded to the Convention on the Rights of Persons with Disabilities in July 2021. To incorporate the Convention into national law, a revised disability policy had been adopted and a disability

bill was being drafted. Furthermore, sections 77 to 79 of the Constitution had been amended to make the Ntlo ya Dikgosi (House of Chiefs) more representative and inclusive, leading to the adoption of the Bogosi Act regarding the recognition of tribes in 2008.

9. A recent development had been the appointment of a presidential commission to conduct a comprehensive review of the Constitution. The commission had presented its report to the President of Botswana in September 2022, with the next steps to be announced in due course. Key legislative reforms had included the adoption of the Children's Act of 2009; the Ombudsman (Amendment) Act of 2021, establishing the national human rights institution; the Trust Property Control Act of 2018; the National Arts Council of Botswana Act of 2020; and the Media Practitioners' Association Act of 2022.

10. Policies and strategies adopted to achieve the objectives of the Convention included the 2019 Creative Industries Strategy, which provided opportunities for the flourishing and preservation of diverse cultures through the creation of cultural repository centres; the 2022 Language Policy, which would introduce the use of native languages, including sign language, as a medium of instruction in early childhood education from 2023; the 2009 Remote Area Development Programme; the 2014 Affirmative Action Framework for Remote Area Communities; the 2013 National Policy on HIV/AIDS; and the 2019–2023 National Strategic Framework for HIV/AIDS.

11. To improve access to quality services and amenities in line with article 5 of the Convention, the Government had tasked the Assistant Minister of Local Government and Rural Development with providing strategic direction and oversight to district bodies responsible for implementing the Remote Area Development Programme. Moreover, 22 subdistricts had been upgraded to fully fledged districts to enhance administrative effectiveness and citizen participation. A midterm review of the Affirmative Action Framework for Remote Area Communities had been undertaken in 2021 to assess the progress made with regard to various indicators and determine the level of development in remote area settlements.

12. In 2021, the Government had drafted a national action plan to end statelessness in Botswana, in line with the Global Action Plan to End Statelessness 2014–2024. A memorandum of understanding between the Ministry of Labour and Home Affairs and the Office of the United Nations High Commissioner for Refugees was being finalized to operationalize the plan. The Government had decided to house all asylum-seekers at the Dukwi refugee camp while their claims were being assessed. Housing units had been constructed at the Francistown Centre for Illegal Immigrants to accommodate the families of rejected asylum-seekers while their repatriation was arranged.

13. In conclusion, Botswana had made strides in implementing the Convention and would continue to engage with partners to receive the technical support necessary for the progressive realization of the rights covered under the Convention.

14. **Ms. Esseneme** (Country Rapporteur) said that she welcomed the considerable progress achieved by the State party during the reporting period, including on legislative reform. In that regard, she asked whether there were plans to amend section 15 (3) of the Constitution and sections 92 and 94 (2) of the Criminal Code to bring them into line with the Convention, in particular by including descent and national origin as prohibited grounds of discrimination. According to the State party, indirect discrimination was covered by section 15 (1) of the Constitution, which seemed, however, to address only direct discrimination. She therefore wished to know what was being done to combat indirect racial discrimination couched in ostensibly neutral laws, practices and measures such as the 2014 national ban on elephant hunting.

15. She would appreciate details of how the Human Rights Unit coordinated the incorporation of international instruments ratified by Botswana into its legal system, a description of the activities it had carried out to raise public awareness of the Convention and an explanation of the relationship between the Unit and the Interministerial Committee on Treaties, Conventions and Protocols, which appeared to have overlapping competencies. According to the information at her disposal, the two bodies were not yet fully functional. If that was indeed the case, she wondered what interim steps the State party was taking to implement the Committee's recommendations and with what results, how the bodies would

function and when they would be up and running in earnest. She would also be interested to hear examples of cases in which the Convention had been applied by judges or at least invoked by parties to the proceedings or their lawyers.

16. She would be grateful for information on the strategic pillars of the 2009 National Poverty Reduction Strategy and the results achieved through the Strategy's implementation, along with an indication of whether a new strategy had been developed and, if so, whether it took into account minorities.

17. According to several sources, Tswana customary law was the only customary law applied by domestic courts and was imposed on ethnic minorities in civil matters and in the *kgotla*, or traditional community gathering. In addition, Tswana traditional leaders allegedly tried criminal cases despite not having been trained in the application of the Criminal Code. She wished to know what kinds of cases were tried and what sources of law were applied by each category of court in Botswana, what the conditions were for bringing a case before each category, what the working languages of the courts were, whether the officials responsible for dispensing justice in customary courts were qualified judges and what appeals could be brought against civil and customary court decisions. Details of the composition of civil and customary courts would also be welcome.

18. It would be helpful to hear a description of the State party's justice system, in particular details of the levels of jurisdiction and the hierarchy of legal norms. She wished to know whether international law prevailed over domestic law in the event of a conflict between the two and whether legal decisions rendered acquired the authority of *res judicata* so as to be enforceable at all levels of decision-making. In that connection, the State party was encouraged to apply the principle of reversal of the burden of proof in cases of racial discrimination brought before the civil and criminal courts.

19. According to the State party, there were no documented cases in which reparations had been awarded to victims of racial discrimination. It would be interesting to know whether section 316 (1) of the Criminal Procedure and Evidence Act, which provided for reparations, was applicable only to cases of racial discrimination and why judges had to refer to the case law on reparations established in other countries rather than making a sovereign assessment of the facts of each case and applying the law in force.

20. In 2013, the State party had adopted a law establishing a legal aid mechanism that was currently available only in civil proceedings. She would be grateful if the delegation could explain the scope of the legal aid, the conditions that had to be met to benefit from it and why it was not granted in criminal proceedings.

21. The Committee would like to know the content of the training provided to pupils and students in the context of teaching the human rights enshrined in article 5 of the Convention. It would also like to know the content of the human rights training modules for law enforcement officials, whether there were plans to introduce equality and non-discrimination lessons into their training curricula, the number of staff trained and the impact of that training. The Committee would welcome information on any training provided to judges, prosecutors and lawyers on the prohibition of discrimination and the Convention.

22. Given that sections 21 and 22 of the Cybercrime and Computer Related Crimes Act did not appear to cover the full scope of dissemination of racist ideas and speech, it would be of interest to have information on how racial hate speech and incitement to racial discrimination in the media and on the Internet were dealt with in practice.

23. With regard to Indigenous Peoples, the Committee noted the steps taken by the Government to implement the High Court judgment in the case of *Sesana and others v. Attorney General*, in which the Court had ruled that the eviction of the San/Basarwa people from their ancestral lands in the Central Kalahari Game Reserve had been illegal and unconstitutional. However, according to several reports, the judgment had been implemented in a restrictive manner such that the San/Basarwa people felt more disadvantaged than before the decision. The Committee would be interested to hear why the San/Basarwa people who had been living in the game reserve at the time of the relocation but not parties to the lawsuit had not been allowed to resettle there and why San children were only allowed to live there until the age of 18. The delegation might also explain why the police and eco-guards

prevented inhabitants of the reserve from carrying out their traditional ancestral activities of hunting and gathering and comment on what was being done to ensure that they enjoyed the benefits of mining activities and on the measures being taken to protect them from elephant invasions.

24. She would also be interested to know what measures were being taken to alleviate the poverty experienced by the ethnic groups living in the Okavango Delta – the San, Hambukushu and Wayeyi people – and protect their cultural practices following the site's inclusion in the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage List in 2014. She would appreciate it if the delegation could provide information on the compensation provided to the San and Hambukushu people of Tsodilo who had been relocated following the inscription of that site in 2001 and what measures were being taken to ensure that they benefited from the tourism development of the site.

25. According to alternative reports, Tswana tribes had collective rights to land, while land occupied by ethnic minorities such as the Basubiya, Wayeyi and Indigenous Peoples was considered State property, meaning that they could be evicted with little or no compensation. The Committee would like to know the difference between the three types of land established by the land tenure system, namely tribal land, freehold land and State land, the requirements for land allocation and the composition of the Land Councils. It would also welcome statistics disaggregated by ethnic or tribal groups on the land allocated in the period under review.

26. **Ms. Tebie** (Country Task Force) said that she would like to know the status of the Ombudsman (Amendment) Bill, which would provide for the transformation of the Ombudsman's Office into a national human rights institution in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). She would also be interested to hear about awareness-raising activities on the Convention and racial discrimination conducted by the Human Rights Unit and the Ombudsman's Office and their impact. The Committee would welcome information on the impact of the measures taken in the context of promoting tolerance, understanding and dialogue through the Vision 2016 programme, especially on the different ethnic, Indigenous and other groups living in the territory of the State party.

27. The Committee would be interested to hear about the State party's strategy to raise awareness among all segments of society about human rights in general and the Convention in particular given that radio and television stations broadcast only in English and Setswana and that the Communications Regulatory Authority Act did not provide for community radio. The delegation might also describe the measures being taken to regulate the media landscape and the role played by the official media in disseminating information aimed at combating prejudices that led to racial discrimination. The Committee would appreciate it if the delegation could provide information on measures taken to promote awareness among media professionals of their special responsibility not to propagate prejudices and stereotypes, particularly against groups protected by the Convention. It would also like to know the number of journalists in the public and private media who had been brought before the Press Council for violating provisions of the Media Practitioners Act and the penalties imposed on them. It would appreciate details of the number of public and private newspapers and media outlets in the country and their national coverage, especially in rural areas, as well as the representation of Indigenous Peoples and minorities, including women from those groups, in the media. Lastly, the Committee would welcome clarification of reports that a plan to transform the State broadcaster into a more independent public service media outlet had been rejected.

28. **Mr. Kut** (Follow-up Coordinator) said that, in its concluding observations following the last dialogue with the State party ([CERD/C/BWA/CO/16](#)), the Committee had requested the State party to provide information on its follow-up to the recommendations contained in paragraphs 11, 12, 15 and 19. Regrettably, the Committee had never received a response to that request. The Committee attached great importance to the follow-up procedure and hoped that the authorities of Botswana would provide a timely interim report following the current dialogue.

29. In paragraph 11 of the concluding observations, the Committee had reiterated its recommendation that the State party should amend the Chieftainship Act and the Tribal Territories Act in order to remove their discriminatory character against non-Tswana groups. In paragraph 24 of the periodic report, it was stated that the Chieftainship Act had been repealed in 2008. The Committee welcomed that fact, but would like more information on the Tribal Territories Act.

30. In paragraph 12 of the concluding observations, the Committee had made a recommendation concerning the relocation of the residents of the Central Kalahari Game Reserve. The State party had provided information on that issue in paragraphs 109 and 110 of the periodic report, noting that, in the case of *Sesana and others v. Attorney General*, the High Court had held that the applicants had been deprived of the possession of the land which they had lawfully occupied in the Reserve and that the Government was under an obligation to heed the Committee's opinions. The Committee would welcome further information on the impact of that decision.

31. In paragraph 15 of the concluding observations, the Committee had made a recommendation concerning primary education in the main native languages of non-Tswana tribes. The issue was addressed in paragraph 72 of the periodic report but, again, the Committee would appreciate further details on the practical implementation of the State party's policy. In paragraph 19 of the concluding observations, the Committee had recommended that the State party should respect refugees' right to an adequate standard of health and grant them access to the Anti-Retroviral Therapy Programme and the Prevention of Mother-to-Child Transmission of HIV Programme. According to paragraph 98 of the periodic report, refugees had access to those programmes in the Dukwi camp. The Committee would appreciate updated information in that regard.

32. **Mr. Diaby** said that it would be helpful to have more information on the expulsion, in April 2022, of 57 Zimbabwean refugees who had been living in the country since 2008. In view of the recent awarding of a petroleum licence to Canadian oil company Recon Africa in the Kavango Basin, he wished to know whether the Indigenous communities living in the area had been asked to give their informed prior consent for those activities, which would undoubtedly have a negative impact on their living conditions. He would appreciate it if the delegation could comment on the negative impact of measures taken in response to the coronavirus disease (COVID-19) pandemic on women and girls, specifically when it came to gender-based violence. Given that the amendments made to sections 77, 78 and 79 of the Constitution had not been sufficient to establish equality between tribes in Botswana, he wished to know whether any further reforms were being planned. Lastly, he would welcome information on the consultation and participation of civil society organizations in the preparation of the periodic report, as the Committee had had great difficulties in making contact with such organizations.

33. **Mr. Amir** said that he would be interested to hear about the provision of education in rural areas. He would also like to know whether disputes in rural areas were settled based on customary law or the modern justice system. Lastly, he would welcome information on how the State party was dealing with environmental issues and on its participation in the recent Conference of the Parties to the United Nations Framework Convention on Climate Change.

34. **Mr. Payandeh** said that, in its previous concluding observations, the Committee had already expressed concern that, under section 15 (4) (b) of the Constitution, the prohibition of discrimination did not apply to non-citizens of Botswana. He would be interested to hear the delegation's comments on that point. It would also be helpful to know whether any consideration was being given to the enactment of comprehensive non-discrimination legislation in response to the recommendation to that effect by the Human Rights Committee. According to the periodic report, there were virtually no cases of hate speech being reported. He would be interested to know the reasons why victims did not bring cases and whether those reasons had been addressed. Was it down to a lack of awareness or a lack of trust in the effectiveness of the justice system? Although there was no legislative provision for racial motive as an aggravating factor, the courts apparently considered racial motive as an aggravating factor in the determination of punishment or sentence. He would be interested to hear of any cases in which that had been done.

35. **Ms. Tlakula** asked whether all of the country's recognized tribes were admitted to the House of Chiefs so as to ensure that all tribes had equal protection and enjoyment of rights under the Constitution and the law.

*The meeting was suspended at 4.10 p.m. and resumed at 4.40 p.m.*

36. **A representative of Botswana** said that all the rights enshrined in the Convention were covered by section 3 of the Constitution together with the provisions of other domestic laws. Section 3 guaranteed the rights of all persons, regardless of their race, place of origin, political opinions, colour, creed or sex. Section 18.1 provided that any person within the country's jurisdiction whose rights had been or were likely to be violated could apply to the High Court for redress. Section 92 of the Penal Code criminalized the utterance or publication of expressions of hatred against persons because of their race, tribe, place of origin, colour or creed. Section 1 of the Public Service Act criminalized discrimination against employees on grounds of sex, race, tribe, place of origin, national extraction, social origin, colour, creed, political opinion or several other grounds. Section 37 (e) classified as misconduct the appointment or promotion of persons to a post in the public service on the basis, inter alia, of their tribe or favouritism. Section 5 (1) (c) of the Mutual Assistance in Criminal Matters Act provided for refusal of assistance to a foreign State where, in the opinion of the Director of Public Prosecutions, there were substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of his or her race, sex, religion, nationality or political opinions. Section 9 of the Refugees (Recognition and Control) Act prohibited the removal of a recognized refugee from Botswana to another country unless, in the opinion of the Minister, the life or freedom of the refugee would not be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion. Section 7 of the Children's Act criminalized the exposure of children to discriminatory conduct.

37. The Presidential Commission that was conducting a comprehensive review of the Constitution had submitted a preliminary report to the Government, which would consider the recommendations and launch the normal legal procedures involving the Attorney General's Chambers, the House of Chiefs and Parliament. A referendum would then be held.

38. The Law Reform Unit established on 1 November 2022 in the Attorney General's Chambers would address issues relating to indirect discrimination, section 15.3 of the Constitution and discrimination against foreign nationals in section 4 of the Constitution. The Unit would also seek to ensure that the legal framework covered all provisions of the Convention and other international treaties.

39. International law was not automatically incorporated into domestic legislation since the dualist system required the enactment of a law to that effect by Parliament.

40. The case of the *Attorney General v. Rammoge* had addressed the issue of the Government's refusal to register the Organization of Lesbians, Gays and Bisexuals of Botswana (LEGAGIBO). The High Court had granted the applicants' request for recognition, citing the tenet of international human rights law set forth in paragraph 33 of the periodic report. The fact that the courts took international law into account was also reflected in the case of *Motshediemang v. Attorney General*, in which the applicants had complained that the Penal Code violated their rights to liberty, dignity, privacy and freedom from discrimination. Sections of the Penal Code had been declared unconstitutional and the judge had stated that human dignity was harmed when minority groups were marginalized. The case of *Tapela v. Attorney General* concerned foreign prison inmates who had been unable to access antiretroviral therapy because they were not citizens of Botswana. The Court of Appeal had ruled that they should have access to such therapy. Ms. Violet O'Connell had been convicted and fined in the 1972 case of *State v. O'Connell* for using a racial slur in addressing one of her employees.

41. The Inter-Ministerial Committee on Treaties, Conventions and Protocols, which had been established in 2002, adopted a holistic approach to compliance with all international instruments ratified by Botswana. The Human Rights Unit focused on reporting to human rights treaty bodies and the implementation of recommendations. The two bodies cooperated, for instance on the human rights recommendations tracking database that was currently being

developed with the assistance of the Office of the United Nations High Commissioner for Human Rights (OHCHR).

42. It was necessary to develop systematic planning and data collection for education on international human rights law. The Botswana Chapter of the International Association of Women Judges provided training courses for judges on international law in general and on issues of racial discrimination, xenophobia and related intolerance. The Comprehensive National Human Rights Strategy and Action Plan, which had been drafted in consultation with civil society organizations and the National Human Rights Coordination Committee, prioritized human rights education and mainstreaming.

43. The Ombudsman (Amendment) Act establishing the national human rights institution had been approved by the President in November 2021. The recruitment of human resources to facilitate its operationalization was at an advanced stage.

44. Legal Aid Botswana, which had been established in 2013, provided indigent litigants with support for access to justice. Its mandate had been expanded in the financial year 2022/23 to provide free legal aid in criminal cases.

45. Section 94 (2) of the Penal Code had not been amended, but it criminalized discrimination on the ground of a person's nationality. In addition, section 2 of the Cybercrime and Computer Related Crimes Act mentioned the terms "descent", "nationality" and "ethnic origin".

46. **A representative of Botswana** said that non-citizens, including refugees, had access to antiretroviral therapy. There was a fully equipped clinic in Dukwi Refugee Camp, and 10 male and 10 female refugees were currently receiving therapy. Only one 24-year-old woman was currently receiving therapy for mother-to-child transmission of HIV.

47. A total of 373 Zimbabwean asylum-seekers in Dukwi Refugee Camp had been voluntarily repatriated between 9 December 2019 and 1 February 2020. The remaining 313 Zimbabwean nationals had been offered the opportunity to undergo the refugee status determination procedure by the Office of the United Nations High Commissioner for Refugees (UNHCR), which had found that 242 asylum-seekers were not in need of international protection. Nevertheless, the Government and UNHCR had offered them the opportunity to register for voluntary repatriation, and 192 had done so. The remaining 50 had been repatriated under the Immigration Act. A total of 2,098,684 pula (P) had been allocated to finance the repatriation of Zimbabwean nationals. A group of five asylum-seekers had challenged their repatriation before the High Court, but they had not been successful.

48. **A representative of Botswana** said that the Government had complied with the High Court ruling in the case of *Sesana and others v. Attorney General*. As noted in paragraphs 66 to 68 of the State party report, the persons who had reportedly been dispossessed had been allowed to return to the Central Kalahari Game Reserve and the Government had taken the recommended action and, in addition, had restored services for the residents. Furthermore, it had appointed a community liaison officer, who linked the resident communities with the Government in order to guarantee their welfare.

49. **A representative of Botswana** said that very few cases of racial hatred had been reported to the police or the Ombudsman because Botswana was a tolerant nation. Any persons who felt that they were victims of discrimination were free to report such cases. The police had investigated four cases between 2017 and 2019.

50. **Ms. Molokomme** (Botswana), speaking as head of the delegation, said that Tswana customary law was not imposed on other ethnic groups. Her country had a dual legal system that sometimes involved a multiplicity of systems. Common law, a legacy of the colonial period, formed the background of the current national law. Not all laws from that period had not been repealed, although some had been altered or replaced by recent statutes. Customary laws – as opposed to one customary law – were applicable to particular tribes, groups or tribal communities. Many Tswana tribes implemented a shared customary law, but there was no sweeping or general law. However, many of the laws applied among the Tswana groups were similar to those applied by other groups. There were lower and higher customary courts and customary courts of appeal. The customary courts of appeal were not, however, final courts



of appeal. Decisions of the customary courts could be appeal right up to the highest court in Botswana, the Court of Appeal.

51. Chiefs presided over customary court cases. As many were born to those positions, they were raised and socialized in the customary system. However, the customary courts had limited jurisdiction in criminal matters, for which the country mostly relied on statute law and the Constitution. When hearing criminal cases, customary courts were required to follow the rules of criminal procedure and respect all procedural safeguards, including the presumption of innocence. The Constitution always took precedence over customary law.

52. Botswana did not apply the laws of other countries. In some areas, such as commercial matters, the courts followed judicial precedent from South Africa, given the two countries' shared history. South African case law was not binding in Botswana courts, however. The burden of proof was never reversed in criminal cases; the onus always fell on the State to prove that a defendant was guilty beyond reasonable doubt. Civil cases were decided on based on a balance of probabilities.

53. All tribes now had equal recognition under the Constitution. While the Constitution still made reference to the original eight tribal groupings represented, there were no longer any so-called principal tribes. Representatives of non-Tswana tribes were elected to the Ntlo ya Dikgosi on an equal footing with other representatives, regardless of the tribe's size, and had the same right to vote.

54. **A representative of Botswana** said that the Government had developed a robust language policy to teach all children in public primary schools in their native language. The policy would be implemented from 2023, with the ultimate aim of using children's first languages, including sign language, as the medium of instruction at all levels of compulsory education. Teaching aids in 30 languages had been made available.

55. **A representative of Botswana** said that, under section 3 of the Bogosi Act, any community could be recognized as a tribe. When deciding on recognition, the community's history, origins and organizational structure was taken into account.

56. **The Chair** said that she wondered how attitudes toward local languages had changed in the postcolonial era and how the State party had managed to overcome lingering prejudices against them.

57. **A representative of Botswana** said that it was not easy for the population to accept that all languages were equal and prejudices had not yet been overcome. Nevertheless, the implementation of the policy of teaching children in their native language was a step in the right direction.

58. **A representative of Botswana** said that the current environment allowed local cultures to flourish. It was not a matter of accepting local languages but rather using them actively to ensure their survival. Many communities were documenting their cultural practices and codifying their languages.

59. **Ms. Molokomme** (Botswana) said that there had been an upsurge in gender-based violence as a result of the lockdowns and confinement measures imposed to mitigate the spread of COVID-19. The Government had set up telephone helplines and shelters for women and girls who had been victims of violence.

60. **Ms. Esseneme** said that she would like to know whether the inhabitants of the Central Kalahari Game Reserve were entitled to social services as citizens of Botswana. She would be interested to learn whether the customary courts were responsible for enforcing the Penal Code or other statutes. She would appreciate additional information about the extent to which free legal aid was provided, including whether lawyers' fees and court costs were covered and what the criteria were in order to be eligible for aid. Were there bodies that assessed the finances of legal aid applicants to determine their eligibility? She wished to know whether legal aid had been extended to cover criminal as well as civil cases.

61. **Ms. Tebie** said that she would be curious to hear what the composition was of the national human rights institution and how it interacted with the State party's other institutions.

62. **Mr. Amir** said that he would appreciate more information about the management of land and, in particular, how land disputes between tribes were resolved.

63. **Ms. Ali Al-Misnad** said that she wished to know how many different languages were spoken in Botswana, how the Government would provide sufficient school materials and allocate enough time to teaching in children's native languages and whether parents supported the initiative. She wondered whether there was a movement that had campaigned for teaching in children's native languages.

64. **Mr. Diaby** said that he would like to know whether ReconAfrica, a Canadian mining company, had obtained consent to conduct mining activities in the Okavango Basin from the Indigenous communities who lived in the area, and whether assessments had been carried out on the impact of such activities on the way of life and living conditions of those communities. He was keen to learn whether civil society organizations had been involved in the preparation of the State party's report and whether there was a law regulating the activities of such organizations in the country. He wondered whether any legal reforms, in addition to the constitutional amendment, were envisaged to ensure equality of all tribes in the country and whether any laws were being planned to protect human rights defenders. He asked whether any human rights defenders had received death sentences and what steps had been taken to abolish the death penalty entirely.

65. **Mr. Payandeh** said that he would appreciate additional information about the measures taken to ensure that the Constitution prohibited discrimination in full compliance with the Convention. He wished to know whether the burden of proof shifted in cases of profiling by the police, where the onus fell on the State to demonstrate that the authorities' actions were not discriminatory.

66. **Mr. Guissé** said that he would be interested to hear more about how the State party dealt with cases of conflict between customary and statute laws.

*The meeting rose at 5.55 p.m.*