



# International Covenant on Civil and Political Rights

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## Human Rights Committee 133rd session

### Summary record of the 3816th meeting

Held at the Palais Wilson, Geneva, on Thursday, 21 October 2021, at 10 a.m.

*Chair:* Ms. Pazartzis

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

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Botswana (continued) (CCPR/C/BWA/2;  
CCPR/C/BWA/QPR/2)*

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **The Chair** invited the delegation to reply to the questions raised by the Committee members at the previous meeting.
3. **Mr. Segwagwa** (Botswana), acknowledging that marital rape was not a punishable offence under the Penal Code, said that a recently established law reform unit had been tasked with reviewing all legislation. While the unit was not yet operational, owing to difficulties in recruiting persons of the right calibre and experience, marital rape would be among the subjects to be addressed by the unit eventually. The Sexual Offenders Registry Act had been passed by Parliament and signed into law by the President. The registry was expected to be set up shortly. There was a clear division of labour between the police and the Directorate of Public Prosecutions: the police were responsible for conducting investigations and drafting reports on cases which were then referred to the Directorate. Lastly, the Customary Courts Act established the specific offences to be dealt with by the customary justice system; matters involving the rights of persons of the LGBTQI community did not typically come before the customary courts.
4. **Ms. Mapodisi** (Botswana) said that every effort was being made to train law enforcement personnel, including border control and airline staff, in how to identify potential cases of trafficking in persons. Labour inspections were conducted periodically, in both urban and rural settings. An amendment to the Anti-human Trafficking Act was being prepared which would remove the option of imposing fines in lieu of imprisonment for trafficking offences, with a view to increasing the deterrent effect of the applicable penalties. Acknowledging that victim referral procedures were not standardized, she said that the Government was in the initial stages of developing standard operating procedures in that regard.
5. **Mr. Sebigi** (Botswana) said that, in addition to outreach initiatives and efforts to provide reassuring environments for victims of gender-based violence to report the crimes committed against them, the Government sought to improve investigations in order to secure convictions and so encourage people to continue reporting crimes to the police. Awareness-raising initiatives on gender equality and gender-based violence were being rolled out continuously. A total of 81 police officers had been specially assigned to deal with cases of gender-based violence, and many more had given training in gender-based violence case management in the community.
6. Regarding the Istanbul Protocol, the Government had introduced measures to guard against the possibility of torture, provided human rights training to law enforcement personnel and continued to ensure the prompt investigation of allegations of torture. Decisive action was taken in respect of those found guilty of torture, including disciplinary or even criminal proceedings that could result in dismissal or custodial sentences.
7. **Ms. Molokomme** (Botswana) said that, according to the Constitution, the President could grant a pardon to any person convicted of any offence, and not just capital offences. Where a person had been sentenced to death following a murder conviction, a written report was drafted and sent, together with information from the case file, and the clemency request, as prepared by the convicted person's attorney, to the Advisory Committee on Prerogative of Mercy; after obtaining the advice of the Advisory Committee, the President decided whether or not to exercise his powers of clemency. No one had ever been executed before the Advisory Committee had had a chance to meet. It was true that the President had never deemed it appropriate to exercise his prerogative of mercy in respect of persons convicted of capital offences, which were the most heinous, and extremely violent, crimes; however, scores of prisoners convicted of other offences had been pardoned.

8. The harmonization of customary law and the provisions of the Covenant was a complex issue in any dual legal system, as customary laws were largely unwritten and changed according to the current social mores. However, customary law in Botswana was defined by statute and was only applicable so far as it was not contrary to morality, humanity or natural justice or incompatible with the Constitution. Customary law was generally consistent with the Covenant; any provisions that were not were simply not applicable. It was usually only minor crimes that came before the customary courts, but the standard rules of modern law on the taking of pleas, for instance, and observance of the principle of the presumption of innocence, applied.

9. *Bogadi* was a traditional practice according to which a groom's family gifted livestock to the bride's family as a token of appreciation and so that the children borne of the marriage would be recognized as full members of their father's family. Any abuse reported to the elders or customary courts was sanctioned. While *bogadi* was not necessary for a marriage to be considered legal, it was important in terms of the wife's respect among the community.

10. The communities that practised widowhood rites stated that they were meant to cleanse a widow of the shadow created by her husband's death and to enable her to remarry. While they might appear harmful from the outside, such practices were in fact meant to protect the widow and her family from harm. In cases where detrimental treatment was identified, social workers were sent to educate the community in question against harmful practices.

11. **Ms. Ramokoka** (Botswana) said that, in order to limit the spread of the coronavirus disease (COVID-19) in prisons, some prisoners had been pardoned and subsequently released, while others had been released to complete their sentences as labourers in public facilities. Newly convicted persons were quarantined and tested before being admitted to prisons. Since the beginning of the COVID-19 pandemic, the Prison Service had recorded 2,343 positive cases of COVID-19, with 2,338 recoveries and 4 fatalities. There was a total of 3,952 prisoners nationwide, corresponding to a 91% occupancy rate.

12. **Mr. Muhumuza** said that he would appreciate the delegation's response to reports that the Government had posted notices in the vicinity of Dukwi refugee camp, warning the local population not to employ refugees. Given that refugees were obliged to reside in the camp and that they needed a permit to leave, he wondered how the State party facilitated access by asylum seekers and refugees to the labour market outside the camp and ensured their freedom of movement. He would also like to know what the criteria were for deciding in favour of an asylum claim and how the State party protected asylum seekers against non-refoulement. He would like the delegation to provide details of the composition of the Refugee Advisory Committee and the procedures it followed to ensure that asylum decisions were fair. What were the appeal mechanisms in place, and did they have suspensive effect?

13. Noting that the Committee had received reports of a high rate of rejection of asylum applications, he said that he would welcome statistics on the number of asylum applications that had been received and the number that had been rejected, and on what basis. He would also like to know how many Namibian refugees had been successfully repatriated to Namibia following the July 2019 judgment of the Court of Appeal referred to in the State party's report (CCPR/C/BWA/2). In addition, the Committee had received reports that 275 Zimbabwean refugees, many of whom had been living at a camp in Botswana for more than a decade, had been repatriated but that another 200 refugees had refused repatriation for fear of abuse on their return to Zimbabwe. What assessment had been conducted to ensure that the Namibian and Zimbabwean refugees who had been repatriated were in fact not in need of international protection and to ensure the observance of the principle of non-refoulement?

14. He would welcome the delegation's comments on reports that, at the Francistown Centre for Illegal Immigrants, asylum seekers were kept in mandatory and prolonged detention, spouses were kept in separate facilities for long periods and children were not able to attend school and lived in poor conditions. He would also like to know if it was true that identity documents were often refused to asylum seekers, notwithstanding the fact that they risked being arrested and deported if they were not able to present an identity document.

15. **Mr. Furuya**, welcoming the delegation's statement that Botswana was home to many refugees from various countries, said that he would like information on the status of the

Refugee (Recognition and Control) Bill and on the Bill's compatibility with the State party's obligations under articles 6, 7 and 13 of the Covenant. Close consultations with the Office of the United Nations High Commissioner for Refugees (UNHCR) and with civil society, from the early stages of the drafting process, would be indispensable for ensuring that the Bill was in line with international standards, particularly the Covenant. He would be grateful for details on the State party's plans for such consultations, as well as the expected timeline for the Bill's adoption by Parliament and entry into force.

16. He would like an update on the research done since the submission of the State party's report to better understand the situation of groups and individuals who were stateless or at risk of being stateless in Botswana with a view to finding a solution to their situation and on any discussions in Government and Parliament regarding the review, by 2024, of the Immigration Act and the Citizenship Act, in order to reduce statelessness. Noting that a birth certificate did not confer citizenship on children who were not citizens of Botswana under the terms of the Citizenship Act, said that he would like information on specific efforts by the State party to provide legal guarantees for children born in Botswana who would otherwise be stateless to acquire the nationality of Botswana, and to protect foundlings and children born to displaced persons, asylum seekers, refugees and migrants against statelessness.

17. Noting that section 93 of the Penal Code defined as an offence the use of abusive or insulting language in relation to any public office holder and that section 192 criminalized the publication of any defamatory material concerning another person, he said that the State party might reconsider its penalization of such conduct, at least with regard to public figures. According to the Committee's general comment No. 34 (2011), defamation laws must be crafted with care to ensure that they complied with article 19 (3) of the Covenant and did not serve, in practice, to stifle freedom of expression. The threat of criminal sanction had a strong chilling effect and could unduly restrict people's freedom of expression, particularly that of journalists and reporters. He would like to know the number of cases in which a journalist had been investigated, prosecuted and tried, as well as detailed information on the application of sections 92 and 192 of the Penal Code to journalists in the last 10 years. In the light of reports that national security, corruption, sedition, media and cybercrime laws had been used to restrict the activities of journalists who were critical of the Government, he would appreciate the delegation's comments on the compatibility of the application of those laws with article 19 of the Covenant.

18. Although the Constitution guaranteed the freedom of assembly, the Public Order Act required citizens to apply to the nearest police station for a permit to hold an assembly, and there were reports that the police had sometimes denied such requests for unclear reasons. As indicated in the Committee's general comment No. 37 (2020), where authorization regimes persisted, they must in practice function as a system of notification, with authorization being granted as a matter of course, in the absence of compelling reasons to do otherwise. An authorization regime under which the organizer had to obtain permission in advance to hold a peaceful assembly was not compatible with article 21 of the Covenant.

19. He wished to know whether, under the Public Order Act, permission to hold a peaceful assembly was granted as a matter of course; on what grounds an application for permission to hold an assembly could be denied; whether the Public Order Act had been applied in conformity with the conditions for the restriction of the right to peaceful assembly described in general comment No. 37 (2020); and what measures the Government had taken or intended to take in order to ensure that the application of that Act was fully compatible with article 21 of the Covenant. The Committee had received information that police officers sometimes used force to compel an assembly to disperse. He would appreciate receiving information on the legal provisions and practical guidelines according to which police officers could resort to force in such situations and whether police and other law enforcement personnel received any training in terms of respecting and enforcing the right of peaceful assembly.

20. **Mr. Soh** said that he welcomed the progress made by the State party in the area of legal aid, including the enactment of the Legal Aid Botswana Act in 2013 and the launch of the parastatal organization Legal Aid Botswana in 2015, which performed vital work in the fields of legal advice, representation and education. Notwithstanding, the Committee had received reports of instances where the courts had proceeded with the trials of persons

charged with non-capital crimes who had no legal representation because they could not afford an attorney. There was an urgent need to expand the mandate of Legal Aid Botswana to include all persons facing criminal charges so as to ensure that defendants at every stage of the trial process were afforded basic due process protections. It would be useful to receive statistics on the cases handled or outsourced by Legal Aid Botswana broken down by gender, age, ethnicity, migratory refugee status, type of litigation and other relevant characteristics. Such information would guide the State party in clearly identifying priorities and the gaps to be filled in order to ensure a more comprehensive legal aid system that responded to human rights needs on the ground.

21. Although the State party's report indicated that section 32 of the Customary Courts Act did not contain any prohibition whatsoever for lawyers to appear before the customary courts, that statement did not seem to be borne out in practice. He would be interested to know the number of cases before the customary courts in which legal counsel for defendants had been allowed and the number of appeals that had been filed with the civil and criminal courts against decisions of the customary courts.

22. He would appreciate the delegation's response to the allegation that the scale and scope of electronic surveillance had sharply increased in recent years. There were numerous accounts of the intrusive use of intelligence methods by the police and security agencies, including media reports that the Botswana Police Service had used electronic surveillance devices to extract extensive data from mobile phones indiscriminately. Serious efforts were needed to protect human rights in Botswana from the potential adverse impact of ever-advancing digital technologies. Given reports that the use of such technologies was adding to a growing climate of fear among journalists, human rights defenders and opposition politicians, it was troubling that there was no adequate, independent mechanism to oversee the Directorate of Intelligence and Security.

23. He would welcome further information on measures taken during the COVID-19 state of emergency in the State party, particularly with regard to the collection and management of personal data, including for the purpose of contact tracing. He asked what specific legal safeguards regulated contact tracing for COVID-19 with a view to ensuring that the right to privacy protection under the Covenant was not jeopardized and how the collected data was managed or deleted once it was no longer relevant.

24. Noting that the website [www.agreements.gov.bw](http://www.agreements.gov.bw), on which the documents relating to Botswana's international human rights commitments could be found, did not appear to be working, he asked whether the website itself and the Committee's previous concluding observations were available in Tswana and other local languages besides English. He would be interested to know what other methods were available for disseminating information relating to the Covenant and the Committee's recommendations, particularly among customary institutions, including tribal judges.

25. **Mr. Ben Achour** said that, according to several sources, Botswana had some of the highest rankings in Africa in terms of the independence and impartiality of its judiciary. However, he was concerned about the reportedly excessive power of the executive in relation to the appointment and removal of judges. The decision handed down by the Court of Appeal in *Law Society of Botswana and Motumise v. The President of Botswana and Two Others*, which indicated that the President of the Republic did not have the power to reject the recommendations of the Judicial Service Commission on the appointment of judges, was important because it affirmed the independence of the judiciary. He would appreciate further information on the action taken in follow-up to that decision.

26. The reason given in the State party's report for the suspension of four judges in October 2015 was that the judges had erroneously benefited from a Government housing allowance incentive. However, the Committee had been told that the judges had been suspended because they had filed a petition against the Chief Justice and had criticized their working conditions. The judges had reportedly been reinstated in 2017, after having withdrawn their petition. He asked whether they had withdrawn their petition voluntarily and spontaneously, or whether pressure had been exerted on them to do so.

27. It would be interesting to learn whether the numerous specialized jurisdictions that had been established had helped to expedite procedures and reduce the backlog of cases

pending before the courts; whether the increase in the number of judicial personnel described in the State party's report (para. 134) been sufficient to overcome judicial staffing shortages; and what effect the use of mobile courts in regions that lacked regular courts had been.

28. Referring to the 2006 ruling from the High Court in the case of *Roy Sesana and Others v. The Attorney General* and the information provided by the State party in its report on the implementation of that ruling, he said that the situation of the Basarwa and San people remained unclear. He asked whether there was indeed no relationship between the diamond industry and the displacement of the Basarwa tribes. In the light of the High Court ruling, it would be helpful if the State party could explain why, when a group of Basarwa and San people had attempted to enter the Central Kalahari Game Reserve in January 2007, they had been prevented from doing so. He would like a full account of the current situation of those tribes with regard to both the facts and the law.

29. He would appreciate receiving details on the selection process for the members of the *Ntlo ya Dikgosi* (House of Chiefs), as well as on the role of and powers assigned to it by the Constitution. He wondered whether it constituted a second chamber of Parliament or was merely an advisory body, and whether it participated in drafting all laws voted on by Parliament or only on those that had an impact on chieftainship. He wished to know whether the current rules concerning appointments to the House of Chiefs fully guaranteed an equitable representation of all the tribes in Botswana, in particular non-Tswana-speaking tribes; whether the Constitution granted the Tswana tribes preferential status and the automatic appointment of their chiefs to the House of Chiefs; and whether speaking English was a condition for being elected to the House of Chiefs.

30. **Ms. Bassim**, referring to customs on marriage and widowhood in Botswana, said that there was sometimes a thin line between the beneficial and harmful aspects of the culture and traditions proper to a people's identity. It was therefore important to raise awareness within society of the harmful effects of certain customs on the health and well-being of the population. Those customs could either be abolished or their impact reduced, while explaining to the outside world the symbolism underlying certain habits and their significance in the popular culture.

31. In the light of reports that 9 per cent of children in Botswana, particularly children belonging to certain minorities such as the San community, were engaged in child labour, it would be useful to learn what measures were being taken to address that problem. She would like to know whether the State party planned to amend the Children's Act to include commercial sexual exploitation in the definition of child trafficking, without requiring the use of force, coercion or movement and would welcome information on the measures being taken to combat sexual exploitation, especially of children.

32. Noting that corporal punishment was permitted at school, at home and in the criminal justice system, she said that she would like to know whether the State party had any plans to amend the laws that allowed for corporal punishment and to prohibit corporal punishment in all settings.

33. Information on how the Ministry of Nationality, Immigration and Gender Affairs ensured the safety of children when they crossed borders would be welcome. She wondered how successful the measures taken by the Ministry were and whether any cooperation mechanisms had been established with neighbouring countries to protect children when crossing borders.

34. She would appreciate the delegation's comments on allegations that citizens who were members of minorities and who were illiterate or did not speak English were discriminated against by reason of the language requirements introduced regarding elections to the National Assembly. She asked what steps the Government was taking to respect and protect the identity of minorities when speaking their mother tongue at school or in everyday life, especially given that some of those languages were threatened with extinction. She wished to know what protection measures were in place for orphans, vulnerable children, street children and minority children, especially when it came to harassment and bullying.

35. **Mr. Santos Pais** said that he would like to know whether prosecutors received training in international human rights law; whether their appointment, appraisal and dismissal

were based on objective, legally established criteria; whether responsibility for their appointment lay with the Judicial Service Commission or some other body; and whether there were any professional associations of judges and prosecutors that monitored their working conditions and rights. He would also appreciate statistical data showing the gender breakdown of judges, prosecutors and other judicial personnel. With regard to the right to privacy, he wished to know whether electronic surveillance by the intelligence and security services was subject to the prior authorization of a judge; which body exercised oversight of the intelligence service; and what complaints mechanisms were available to persons who suspected that the intelligence service might have accessed their personal data.

*The meeting was suspended at 11.25 a.m. and resumed at 11.50 a.m.*

36. **Mr. Morwaeng** (Botswana) said that Botswana had functioned well with two official languages, namely, English and Setswana, for the past 55 years, even though many more languages were spoken in the country. He wished to note also that, at present, Botswana was hosting refugees from throughout the continent, not just from neighbouring countries.

37. **Ms. Mapii** (Botswana) said that the Refugee Advisory Committee was composed of representatives of the Ministry of Defence, Justice and Security, the police force, UNHCR, the Office of the President, the Department of Immigration and the Office of the District Commissioner in Francistown. In the refugee status determination process, the Committee adhered to the procedures and criteria set out in the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, together with the provisions of the Convention relating to the Status of Refugees, although it maintained its reservations to the employment-related articles of that Convention. Asylum seekers and refugees no longer faced prolonged detention at the Francistown Centre for Illegal Immigrants. Those with families were housed at the Dukwi refugee camp, where there was a school for children, and new family units were being built at the Francistown Centre. The introduction of an appeals mechanism for persons whose refugee or asylum application had been rejected would be considered as part of the upcoming review of the Immigration Act. UNHCR would be involved in the drafting of the new law and the bill would be circulated to all stakeholders, including civil society organizations, for comment before being brought before Parliament in 2022.

38. **Ms. Ramakoka** (Botswana) said that, although there was no specific law on statelessness, the Immigration Act and the Births and Deaths Registration Act accorded ministers discretionary powers to award citizenship to stateless persons. Contact tracing information, and specifically information collected in the context of the COVID-19 pandemic, was handled in accordance with the provisions of the National Archives Act of 1978, which regulated the collection, storage and management of personal information.

39. **Mr. Koorapetse** (Botswana) said that the Employment Act was due to be amended to incorporate a list of hazardous forms of labour that were prohibited for minors. The list would include activities that involved the handling and spraying of pesticides, exposure to chemicals and toxic gases, the lifting of heavy loads, unsupervised fishing, drawing water from wells, brewing alcohol, working underground and building and construction work. The list of permitted light work would also be reviewed. Botswana had ratified the four key International Labour Organization (ILO) Conventions that dealt with child labour and forced labour, including the Worst Forms of Child Labour Convention, 1999 (No. 182) and the Minimum Age Convention, 1973 (No. 138).

40. **Ms. Mokathebe** (Botswana) said that a review of the Children's Act was planned to bring it into line with legislation such as the Anti-human Trafficking Act, the Education Act and the Employment Act, which set more stringent penalties for violations of children's rights and were thus generally applied in preference to the Children's Act. The latter was considered too lenient and thus ineffective as a deterrent. The review would also assess the possibility of regulating corporal punishment in the Act; the new legislation might, for example, prohibit corporal punishment within the educational system. In the home environment, regulation would be more difficult, but the Government was aware that it was sometimes necessary to go against the will of the people. In the meantime, it would continue to educate communities in alternative forms of discipline. Corporal punishment was not the usual way of disciplining children, and children in conflict with the law were generally placed

on probation in the care of their parents. With regard to the safety and protection of child migrants, Botswana had made arrangements with neighbouring countries that prohibited minors from crossing the border unless they were accompanied by an adult or were able to show a travel document and an affidavit signed by both their parents.

41. **Mr. Sebigi** (Botswana) said that, when policing public gatherings, police officers were guided by the provisions of the Public Order Act, which stipulated that permits were required in order for a gathering to be lawful. Minimum force was used only when the terms of the permit were breached or if violence was used against members of the public or the police. Police officers received training in the content of the Act, besides carrying out physical drills, and any who failed to comply with the Act's provisions and the general rules of police conduct could face disciplinary or even criminal proceedings.

42. With regard to the right to privacy, it was important to note that law enforcement officers were bound by various legal provisions protecting data confidentiality. For example, section 27 of the Cybercrime and Computer-Related Crimes Act of 2018 stipulated that police officers who had reasonable grounds to believe that stored data or information might be relevant for the purposes of an investigation or the prosecution of an offence must apply to a judicial officer for the issue of an order to enter any premises to access such data or information. The Intelligence and Security Service Act contained a similar provision, stipulating that, when the Director General of the Service had grounds to believe that a warrant might be required to enable the Directorate to investigate any threats to security or perform other functions under the Act, he must apply to a senior magistrate or a judge of the High Court. Similar provisions could be found in many other acts.

43. **Ms. Molokomme** (Botswana) said that the legal aid unit in Botswana had been established only recently. Comprehensive legal aid for all defendants in criminal cases who did not have sufficient means to pay for legal representation was not available, and would be very costly, but the Government had taken note of the Committee's recommendation (CCPR/C/BWA/CO/1, para. 20) and had launched a pilot project that it would consider extending to all criminal cases when resources allowed. It should be noted, however, that a pro deo system was in place whereby the High Court was required to ensure legal representation for any person facing trial for a capital offence. She was unable to provide disaggregated data for services provided as the legal aid system was still in its infancy but, while it was against government policy to keep data on ethnicity, statistics for gender and other indicators would be available in the future. She was also unable to provide examples of cases in which lawyers had provided representation in customary court proceedings. However, persons wishing to have legal representation had the right to ask for their case to be transferred to a non-customary court.

44. Disagreements and disputes within the judiciary were rare. Regarding the case of the four judges who, in October 2015, had been suspended for declining to return overpayments of housing allowances, she said that the Constitution provided that certain procedures must be followed before any action could be taken against judges; those procedures had been followed strictly in the case in question. In any event, the judges had ultimately withdrawn their petition and no disciplinary proceedings had been needed.

45. The combined effect of the increase in the number of judges and the introduction of the electronic case management system was helping to reduce the persistent case backlog, albeit to a lesser extent than had been hoped. The authorities had also been experimenting with the use of mobile courts to help to speed up access to justice and reach areas in which there were no permanent courts.

46. With regard to the allegations of links between the diamond industry and the dispossession of land, she wished to emphasize that the Government of Botswana had never dispossessed the Basarwa people or any other group of their land. The judgment issued in *Roy Sesana v. The Attorney General* gave the group of Basarwa led by Roy Sesana the right to continue living in the Central Kalahari Game Reserve, and the terms of that judgment continued to be respected. Any disagreements perhaps lay in the fact that many observers, including some non-governmental organizations (NGOs), viewed the case as a class action, and that the judgment was therefore universally applicable. However, the Government did not share that view and that was why all other persons wishing to enter the reserve required



permits. That restriction on movements helped to prevent the poaching of endangered species but did not apply to the Basarwa community, whose members were provided with health services, water and even transport if they wished to travel to the city. The Government wanted the Basarwa community to develop and not to be left behind in terms of educational and health indicators.

47. The appointment of judges was subject to very rigorous procedures. Whereas previously there had been no application system and judges had simply been headhunted, vacant positions were now advertised and all candidates had to be interviewed by the Judicial Service Commission. Prosecutors, on the other hand, were public servants recruited in the same way as other public servants. However, they received their instructions not from the Government but from the Director of Public Prosecutions, who was an independent official appointed pursuant to the Constitution. Lawyers and other judicial officers received some on-the-job training, but that training could be more regular and systematic.

48. Prior to the recent amendments, the Constitution had expressly recognized only the small number of tribes whose existence was on record at the time of the country's independence. However, following nationwide consultations, a more inclusive Constitution had been adopted that provided, in section 77, for all tribes to have a voice in the *Ntlo ya Dikgosi* by means of a regional representation system under which each tribe was designated as belonging to a certain region and each region nominated one member for the office of *kgosi* (traditional leader). The appointment of the *dikgosi* (traditional leaders) was regulated by the Bogosi Act, which made it clear that they must be appointed by their own people. The system was not perfect, and gaps in regional representation remained, but the intention behind the system was a good one. Although their decisions were not legally binding and their role was thus largely advisory, the *dikgosi* had the right to review bills that had a bearing on customary law, tribal land and other tribal issues and they were well respected. Their opinions were taken very seriously by the National Assembly, which would sit down and negotiate in the event of disagreement in order to ensure that laws were acceptable to the entire country.

49. **Ms. Mautle** (Botswana) said that a review of the content and functionality of the database of international agreements accessible online had been conducted since the submission of the periodic report and had identified a need for various improvements. Whereas the database had initially contained only the texts of treaties and agreements, details of periodic reporting and action taken to respond to the recommendations of international bodies was due to be added and focal points in all areas of government would in future be able to access and update information. It was hoped that the database would ultimately enhance the entire reporting process. With regard to the dissemination of information about the Covenant and other instruments by means other than the database, a key advance had been the formation of the national human rights coordinating committee, whose remit included developing national human rights strategy and providing continuing human rights education, especially in rural areas and using traditional methods. The inclusion of representatives of NGOs among the committee's members would ensure that its human rights awareness-raising plans were not only government-driven and that civil society had input to and information on all treaty-related processes.

50. **Mr. Furuya** said that, although the Criminal Procedure and Evidence Act stipulated that pretrial detention should not exceed a period of six months, the Committee had received reports of remand prisoners being held for periods of up to 36 months, and sometimes for a period longer than any sentence they might receive if convicted. He would like to know the average length of pretrial detention and whether there were any plans to shorten its duration.

51. Since domestic legislation appeared not to contain specific provisions guaranteeing media freedom and protection for journalists and human rights defenders, and there had been reports of undue government pressure on media outlets and torture and attacks against journalists without any investigation having been conducted, he would like to know what the State party was doing to ensure protection for whistle-blowers and all persons who were critical of the Government. He would particularly appreciate data on the number of investigations carried out, prosecutions brought and convictions obtained in cases involving harassment, abuse and attacks against such persons.

52. He was concerned that the Communications Regulatory Authority Act of 2012 failed to provide for the operation of local community-based broadcasters, that community-based radio stations had apparently been refused licences and that private print media and radio stations were not permitted to use languages other than English and Setswana. Since minorities should have the right to communicate in their own language through community radio and other media, he would like to know what the State party was doing to guarantee freedom of expression for all communities.

53. **Ms. Sancin**, referring to the National Policy on Gender and Development described in the State party's report, said she had been pleased to note that the policy encompassed climate change and environmental sustainability since both issues had an impact on Covenant rights. She would welcome further information about the measures taken in application of the policy's climate- and environment-related components.

54. **Mr. Muhumuza**, noting that, according to the report, all *dikgosi* had received training on human rights issues and the customary courts were authorized to administer any written law, asked what efforts were being made to ensure that judges in customary courts were kept up to date and that there was no gap between the passage and implementation of new laws.

55. **Ms. Bassim** said that, while the Special Rapporteur on minority issues had praised the country's progress in improving access to and the quality of education, he had expressed concern about low academic performance and high dropout rates among minority children living in remote areas. The system of hostel accommodation established to prevent such children from having to walk long distances to school or remaining outside of the education system altogether appeared to have negative consequences for many, some of whom were as young as 6 years old, as the hostels were located far from their communities and their parents were usually too poor to visit. She would like to know what the Government was doing to help those underprivileged children who were seriously disadvantaged by the distance between them and the nearest school.

56. **Mr. Zyberi** said that he would appreciate more information about the Office of the Ombudsman, including details of its budget and human resources. Would there be an open call for applications and what selection procedures would be applied? He would also like to know whether the Office had a presence in each of the country's 10 rural and 6 urban districts.

57. **Mr. Soh**, noting that the State party had indicated that it was making every effort to increase enforcement of the Anti-human Trafficking Act through capacity-building and training, said that, with only 33 cases of trafficking in persons having been detected over the past six years, he was not convinced that capacity-building alone would provide a solution to the current situation. With that in mind, he would like to know whether the Government had established a dedicated budget to assist victims of trafficking; what assistance was available and whether it was provided in a systematic manner; and which institutions were involved in providing that assistance.

58. **Mr. El-Haiba** said that, while the creation of the national human rights coordinating committee was a positive development, he was concerned that Botswana did not appear on the list of the States that had established comprehensive and inclusive action plans for the protection of human rights in application of the Vienna Declaration and Programme Action and would appreciate the delegation's comments on that situation.

59. **Mr. Santos Pais** said that the information provided about the appointment of prosecutors supported his fear that, as public servants, they were deprived of security of tenure and other benefits that judges and magistrates enjoyed. That situation was worrying, given the widely held view that public prosecutors should have the same autonomy as members of the judiciary. The State party had indicated that the Public Prosecution Service was independent from the Government, but, in that case, to whom was the Director of Public Prosecutions accountable? Reports suggested that some cases had been with the prosecution service for years, yet it seemed that the Director was unreachable for comment on progress in those cases.

60. **Mr. Morwaeng** (Botswana) said that the Media Practitioners Act was due to be repealed and that consultations with all stakeholders were under way with a view to enacting new and better legislation. He assured the Committee that freedom of expression was

respected, including in Parliament, where several opposition parties had a voice, and that NGOs operated without restriction.

61. **Ms. Phuthego** (Botswana) said that the national policy on climate change currently in place included a chapter on gender mainstreaming. Women often needed access to natural resources, whether for business or living purposes, but were required to apply for a licence in order to gain access.

62. **Ms. Lekoba** (Botswana) said that the Ministry of Basic Education was rolling out an inclusive education policy that recognized the need to enhance access to education for children from minorities and to introduce mother tongue tuition in order to improve their academic performance. The initiative would start with instruction in their mother tongue and eventually local languages would be taught as school curriculum subjects.

63. **Mr. Segwagwa** (Botswana), recalling that the right to liberty was protected in the Constitution, said that current judicial practice was to order pretrial detention only if the suspect presented a flight risk; otherwise, suspects must be released on bail.

64. **Ms. Molokomme** (Botswana) said she wished to emphasize that prosecutors enjoyed security of tenure and other benefits, including pensions, even though they were not treated as judges. As in the British system, they were officers of the court who presented cases before the judge but did not make decisions. However, the Director of Public Prosecutions had the last word on whether or not a case should proceed to trial.

65. **Mr. Ben Achour**, thanking the members of the delegation for their comprehensive responses, said that, despite the challenges it faced, Botswana was succeeding in addressing the main problems, such as how to maintain harmony between customary and State law, how to maintain high levels of independence and impartiality in the judiciary and how to reconcile modernity with tradition.

66. **Mr. Morwaeng** (Botswana), thanking the members of the Committee for their candid approach, said that the delegation had taken note of the Committee's questions and recommendations, and would endeavour to submit any outstanding replies within 48 hours. His Government would continue to maintain a robust consultative approach to the policy and legislative development process and to ensure that the voices of ordinary citizens were respected and taken into account. It was also committed to continued engagement with its partners, including civil society, in fulfilling its obligations under the Covenant and, with that in mind, would welcome technical assistance and capacity-building support.

*The meeting rose at 1.05 p.m.*