



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture Seventy-fourth session

Summary record of the 1926th meeting

Held at the Palais des Nations, Geneva, on Thursday, 21 July 2022, at 3 p.m.

Chair: Mr. Heller

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Initial report of Botswana (continued) ([CAT/C/BWA/1](#); [CAT/C/BWA/QPR/1](#))

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **The Chair** invited the delegation of Botswana to respond to the questions previously put by the members of the Committee.
3. **Mr. Shamukuni** (Botswana) said that the preliminary report of the Working Group on Arbitrary Detention was still under consideration by the Government, so the delegation could not answer questions relating to it for the time being.
4. **A representative of Botswana** said that Botswana currently had no central database of statistics on cases of torture and no mechanism to address inconsistencies in data collection. There was no particular methodology for the collection of such statistics; different institutions, such as the national psychiatric hospital, the police and other entities, had their own data-collection processes. There was a need to disaggregate data at the institutional level and to collate such data into a national database; technical assistance would be useful in that regard.
5. Every prisoner entering a prison was interviewed by the officer in charge, who ascertained whether any health issues needed to be addressed. The Botswana Prisons Service employed two medical officers, and each prison clinic was staffed by a nurse. All prisoners were subject to routine medical checks. Cases that exceeded the capacity of the on-site staff were referred to public health facilities.
6. **A representative of Botswana** said that, in 2016, the Botswana Prisons Service had introduced a programme known as “Treat for All”, under which HIV/AIDS testing was made available for all prisoners. Those who tested positive were provided with medication. Some 96 per cent of prisoners had been vaccinated against the coronavirus disease (COVID-19). The Ministry of Health had established procedures for dealing with infectious diseases: in prisons, inmates were subjected to screening, those found to have such diseases were isolated and prisoners who had come into contact with them were regularly tested. There were currently no programmes in place to deal with drug addiction in prisons. Prisoners who showed signs of addiction were referred to psychiatric facilities for assistance. The consumption of medication was monitored by prison officers to avoid cases of overdose or drug abuse.
7. The Prisons Act included provisions that established complaints procedures whereby official visitors and visiting committees had the authority to carry out inquiries into any complaints made by prisoners. At the end of their visits, they issued remarks and recommendations which were recorded in a logbook kept by the officer in charge. Copies of the log were submitted to the responsible government ministries and to the Commissioner of the Botswana Prisons Service. Under the Prisons Act, prison officers were duty-bound to monitor prisoners’ situations and to detect any issues that needed to be addressed, to resolve them immediately or, if that was not possible, to raise them with the Commissioner.
8. **A representative of Botswana** said that there were transparent complaints procedures at the national psychiatric hospital. A complaints process could begin with the ward supervisor, and appeals against decisions could extend all the way up to the Office of the President. The Mental Disorders Act provided for the establishment of an oversight body that received complaints from patients or their families directly. Cases were thoroughly investigated and perpetrators of abuses or violations were held to account both administratively and through the criminal justice system.
9. **A representative of Botswana** said that the Government entered into memorandums of understanding with various non-governmental organizations (NGOs) that provided services for the protection of vulnerable people, including victims of human trafficking and gender-based violence, and psychosocial support to address the effects of trauma, grief and loss. The NGOs also referred victims to different social services and sources of assistance

and care, including for the provision of residential care when necessary. The service providers received support; their staff members' capacities and skill sets were assessed, and training was provided prior to the conclusion of a memorandum of understanding. The professionals who were engaged by the NGOs included social workers, psychologists, behavioural specialists and educators.

10. An institution-based rehabilitation programme had been established for juvenile offenders; it was aimed at providing beneficiaries with marketable skills and with psychosocial support to facilitate reintegration. Other programmes implemented through NGOs helped victims of trafficking to restore family ties and, where applicable, to be repatriated. Facilities for the residential care of children had been established in three regions of the country to ensure access. Psychosocial support and therapy for children were provided through an NGO that maintained a presence in 12 of the country's 16 districts; it also offered capacity-building initiatives for other service providers. In addition, the Regional Psychosocial Support Initiative facilitated capacity-building activities for service providers and provided direct support to victims throughout the country.

11. In 2022/23, some 19 million pula had been allocated to NGO service providers, and over 2 million pula had been assigned to psychosocial support for victims of violence and trafficking. One of the NGOs had a two-pronged intervention plan that comprised two-week intensive psychotherapy programmes for children, followed by a three-year follow-up programme, with training for community-based volunteers to ensure sustainability. As a result of an evaluation of its work in 2018, the decision had been made to expand its programme's coverage from 9 to 12 districts. The respective memorandums of understanding would be sent to the Committee for further reference.

12. **A representative of Botswana** said that law enforcement, prison and defence staff were given training in the application of human rights principles prior to their entry into service. The Human Rights Unit, which the Government had established as the national coordination office for human rights, was working on the national human rights strategy, the outcome of which would be a national action plan including specific activities for human rights education and mainstreaming. Working with the United Nations Development Programme and the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Unit was developing a human rights e-learning course that would be accessible to all on the Internet.

13. **A representative of Botswana** said that the definition of torture in the Botswana Defence Force Act – the only legislation in which it was defined – was consistent with the definition in article 1 of the Convention, which did not stipulate the severity of penalties for various acts. The penalties were established taking into account economic, social and cultural factors and the gravity of the offence. Legislation covering such acts as assault or grievous bodily harm, which included elements of the act of torture, also imposed appropriate penalties. There was some debate about whether the executive or legislative branches should impose minimum sentences, as sentencing was considered a prerogative of the judicial branch.

14. The Police Act did not justify derogation for acts of torture, nor did the country's legislation offer any exceptions to prosecution for offences of torture. The criminal law was subject to amendment, so consideration could be given to adapting the statute of limitations in the case of torture.

15. The reservation filed by Botswana in relation to article 1 of the Convention was not inconsistent with the object and purpose of the Convention; it in fact enabled Botswana to be a State party to the Convention by protecting lawful actions that could otherwise be deemed unlawful under the Convention. There were constitutional provisions that prevented punitive practices predating the Constitution from being defined as torture or inhuman or degrading punishment. As the definition of torture in Botswana hinged on the provisions of article 1 of the Convention, it would not be possible to remove the reservation. The State party's reservations to the International Covenant on Civil and Political Rights in essence captured the same concepts as its reservations to the Convention, differing only in language and presentation. The reservation to the Convention was applicable to customary international law.

16. National legislation did not contain provisions relating to superior orders in respect of civilians. However, orders issued by any authority must be lawful. Botswana recognized extraterritorial jurisdiction for cases of torture committed outside the country; mutual legal assistance agreements and extradition treaties extended the jurisdiction accordingly. As extradition requests should be couched in the language used in the country's jurisdiction, the absence of a definition of torture would not be an obstacle. Provisions relating to extraterritorial jurisdiction could be found *inter alia* in the Police Act.

17. **A representative of Botswana** said that a bill amending the Refugees (Recognition and Control) Act was under review. The next step in the process would be a meeting with OHCHR to discuss its contents, after which it was expected to be adopted in the financial year 2023/24. Although at present applicants were not permitted legal representation during the process to determine refugee status, the bill contained a provision on legal representation; however, discussions on who would pay for it continued. The bill would also introduce an entitlement for asylum-seekers to be informed of their rights under the amended Act. Many asylum-seekers had travelled from the Democratic Republic of the Congo or Somalia and required interpreters; a few reliable interpreters helped Congolese asylum-seekers, while those from Somalia were usually assisted by persons who had been born in refugee camps in Botswana. The division of the Ministry of Justice responsible for tackling trafficking in persons was also responsible for dealing with vulnerable persons. Officials at border posts had received training on how to deal with vulnerable persons, such as victims of trafficking and asylum-seekers.

18. The Legal Aid Act regulated the provision of legal aid and set out the criteria for determining who could receive it, which included consideration of the merits of the case and the means of the person concerned. The assessment was made by a lawyer. The budget for the legal aid system, including its administration, in the financial year 2021/22 was more than 43 million pula, while the budget for 2022/23 was over 44 million pula. Parents or guardians, or, in their absence, social workers, could apply for legal aid on behalf of children.

19. **A representative of Botswana** said that section 228 of the Criminal Procedure and Evidence Act complied with article 15 of the Convention and stipulated that any statement obtained through undue influence was inadmissible. Section 230 of the Act provided that such statements were not admissible against any other person. No specific statutory provisions were in place on the use of coerced statements against perpetrators of torture. Domestic case law generally required that any statement to be introduced in court should meet the criteria of relevancy, materiality and competency.

20. **A representative of Botswana** said that the Botswana Police Service was a professional organization that adhered to the rule of law and policed by consent. The World Internal Security and Police Index had ranked it as the best police service in Africa in 2021. Information on how to make a complaint against the police was disseminated through media platforms, including radio and television, and pamphlets and posters available in all police stations and posts. All persons held in police custody who were in need of medical attention were taken to medical facilities for treatment. Police standing orders set out the procedures to follow to inform individuals and their next of kin of the charges made against them, and guaranteed persons held in custody access to a lawyer and to their family members. Interpretation services were provided as soon as the police realized that a person was not fluent in either of the official national languages.

21. **A representative of Botswana** said, in respect of the protection of potential victims of torture who were due to be removed from the country, that the only law regulating removals was the Refugees (Recognition and Control) Act and that the Government was open to suggestions on how to strengthen it. It set out the action to be taken in the event that a refugee was deemed to be a danger to the community, which did not entail any derogation from the Convention, but rather took into account the factors to consider in relation to returns and the provisions of article 3 of the Convention.

22. As to whether expulsion requests could be appealed to an independent decision maker and whether asylum-seekers were invited to explain their circumstances, he said that all persons who applied for asylum were invited to attend the relevant meetings of the Refugee Advisory Committee in order to submit and justify their applications. The rules for such

meetings were determined by the Advisory Committee and applicants were afforded the necessary privacy to explain the circumstances that had caused them to flee their countries. Decisions on refugee status were made by the Minister of Justice. While there were no legal provisions permitting appeals against such decisions, case law provided that administrative decisions could be challenged in court, although no case had ever been initiated in relation to a decision on refugee status. The Advisory Committee was composed of security, police and immigration officers and the Director for Refugee Management and Welfare; its secretariat was provided by the Ministry of Justice. The members of the Advisory Committee received training; the most recent training session, in November 2021, had been led by the Office of the United Nations High Commissioner for Refugees (UNCHR) and had focused on the factors and developments in determining refugee status.

23. **Ms. Pūce** (Country Rapporteur) said that she would appreciate further details on the way in which the death penalty was carried out, given information from other sources that suggested persons who were due to be executed and their families were not always informed in advance of the date of execution. Information on the changes made to NGO participation in the appointment of members of the national human rights institution would be welcome, as would an explanation of the existence of two different ages of criminal responsibility in national legislation.

24. Regarding Dukwi refugee camp, she wished to know whether the State party's reservation to the Convention relating to the Status of Refugees was the reason why refugees were not authorized to live outside the camp or to work and whether it was accurate that some refugees lived at the camp for protracted periods. As for the deportation camp in Francistown, it would be helpful to know whether UNCHR had access to the camp, at what age boys were sent to the men's area of the camp, whether the State party planned to ensure that children at the camp had all the goods they needed and what steps were being taken to improve security inside the camp, particularly after the gates were shut for the evening.

25. Concerning prisons, she would appreciate the delegation's comments on inmates' access to meaningful activities as a means of rehabilitation and avoiding recidivism, the reason for having only one women's prison in the entire country and any plans to review the limited visiting schedule to preserve family ties, which were critical for rehabilitation and a successful release. It would be helpful to understand whether the disciplinary measure involving a reduced diet, which remained on the statute books, was still applied and, if so, how.

26. Lastly, she would welcome information on any investigations into deaths in police custody and on the rules governing the shooting of poachers, whose deaths could amount to extrajudicial killings.

27. **Mr. Buchwald** (Country Rapporteur) said that, while the Committee would naturally advocate for the complete abolition of the death penalty, he urged the State party to at least find a way to narrow the scope of its reservation to article 1 of the Convention while retaining its ability to impose the death penalty and corporal punishment. The constitutional process currently under way might be a good opportunity to make such an amendment. He wished to know whether he was correct in hoping that, if the State party did not plan to expressly prohibit corporal punishment in all settings, it might be open to indirect means of doing so. He would welcome information on how the reduced diet was applied in practice and, specifically, how often the punishment was meted out, how big a reduction might be imposed and whether a medical professional was involved in the decision and in monitoring its implementation.

28. Torture was treated differently from most other offences under international law and could be cause for exercising extraterritorial jurisdiction, even if the connection to the State that chose to exercise that jurisdiction was tenuous. Extradition agreements and mutual legal assistance treaties did not in themselves establish that jurisdiction; rather, they were a means of getting hold of an individual or evidence. Accordingly, he wished to know whether the State party's law provided for extraterritorial jurisdiction in torture cases.

29. Lastly, it would be useful to know whether the Government was open to extending the statute of limitations on civil remedies in cases of torture and which legal provision banned all types of statements extracted under torture from being admitted into evidence.

The meeting was suspended at 4.25 p.m. and resumed at 5.05 p.m.

30. **A representative of Botswana** said that the Public Service Act indicated the persons to be involved in appointments to public office, including for the Office of the Ombudsman, and that list did not include representatives of civil society.

31. **A representative of Botswana** said that narrowing the scope of the reservation to article 1 of the Convention would fail to provide the level of protection that Botswana had intended to put in place by entering the reservation. Members of the Defence Forces could be tried in the country for offences they committed abroad. Botswana did not engage in extrajudicial killings. An inquest by a duly appointed member of the judiciary was opened into all unnatural deaths, including fatal shootings of poachers. There was nothing preventing Parliament from amending the statute of limitations on civil remedies. The inadmissibility of all statements given involuntarily was governed by section 231 (4) of the Criminal Procedure and Evidence Act. Pursuant to section 13 of the Criminal Code, children under the age of 8 years were not criminally responsible, and those between the ages of 8 and 14 years could be held criminally responsible only if it could be proved that they had known at the time of the act or omission that the act or omission was wrong.

32. **A representative of Botswana** said that Dukwi camp had been established for the purpose of housing individuals with refugee status. The camp contained preschool facilities, a primary school, a clinic and a police station, as well as a UNCHR office, and new arrivals underwent mandatory testing for COVID-19. Fifty units had been rehabilitated or built to accommodate the recent surge in arrivals, mainly from Zimbabwe, the Democratic Republic of the Congo and Ethiopia. The facility in Francistown was a centre for illegal immigrants and their families – in other words, people whose asylum applications had been rejected. The children being housed there were not unaccompanied minors.

33. **A representative of Botswana** said that rehabilitation services, including vocational and skills-based training, were provided in prisons. A variety of recreational activities, such as ball games, music and theatre, were also available.

34. A reduced diet could be imposed as a punishment for prison-based offences under the law. A medical professional would first assess the prisoner to confirm whether the person was fit enough to endure such a punishment; if that was found not to be the case, the officer of the facility was obliged to change the punishment. Prisoners on reduced diets were checked daily, and the punishment was stopped if it was deemed no longer suitable. Prisoners sentenced to a reduced diet could request to undertake light manual labour as an alternative punishment.

35. Women prisoners were not all housed in the same facility; women were held in separate accommodation across several prisons. The Prisons Service would consider the suggestion to extend visiting rights for prisoners.

36. **A representative of Botswana** said that the Government was open to the concept of prohibiting corporal punishment and was currently examining its use in educational settings, taking a consultative approach. Efforts would need to be made to bring parents on board.

37. While Botswana welcomed discussion on the abolition of capital punishment, it was of the view that its use did not contravene international law. Capital punishment was applied only in the most depraved murder cases and never for manslaughter. The courts did not hand down such sentences lightly. A presidential committee met to discuss all cases before execution. The committee did not hear from the person who had been charged, as all evidence was examined in great detail during the court proceedings. Such decisions called for a balance between the interests of the public, the interests of the family and the human rights of the offender. It was true that the process could be protracted, as the defence counsel could take as much time as necessary to prepare the documents for submission to the presidential council once an appeal had been rejected.

38. The matter of informing the offender's family when the execution would take place was a sensitive issue. While that had been the practice in the past, in some cases it had sparked unfounded public controversy, with members of the public submitting appeals to international bodies that had no jurisdiction over such cases. While the use of capital

punishment enjoyed broad popular support, the Government would engage the public on the matter, which might lead to change in future.

39. **A representative of Botswana** said that all deaths in police custody were investigated in accordance with the law on inquests. Once the investigation was completed, the case was referred to the Office of the Public Prosecutor, which decided whether a hearing was necessary.

40. **Mr. Buchwald** said that he would be interested to learn whether the public would be open to changing at least some of the conditions under which death penalties were carried out, such as informing the offender's family when the execution would take place and ensuring that they received the executed person's remains.

41. **Mr. Shamukuni** (Botswana) said that all the Committee's concerns and recommendations regarding the death penalty would be given due consideration.

42. **The Chair** said that the Committee held an established position that States with the death penalty should apply a moratorium, with a view to its ultimate abolition. He thanked the delegation for their participation and hoped that the cooperation would continue.

43. **Mr. Shamukuni** (Botswana) said that he was grateful for the productive and informative dialogue with the Committee. The review was timely, as it followed closely after the establishment of the Ministry of Justice. The Government remained committed to upholding its obligations regarding the rule of law and the protection of human rights and to giving due consideration to the Committee's recommendations.

The meeting rose at 5.45 p.m.