



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

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Committee against Torture

List of issues prior to submission of the initial report of Botswana*

Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations

1. Please provide information on the consultations held within Government, non-governmental organizations and other organizations in the process of preparing the initial report of the State party.¹ Since the Convention is not directly applicable in Botswana, please indicate whether the State party will take legislative steps to incorporate the Convention into the domestic legal order, in accordance with commitments made during the third cycle of the universal periodic review mechanism of the Human Rights Council and, if so, whether there is a timetable for the legislative process.² Please clarify whether there have been cases in which the Convention has been invoked before or applied by the national courts.

Articles 1 and 4

2. Bearing in mind the reservation made upon signature and ratification of the Convention with regard to article 1, and the fact that section 7 of the Constitution, which prohibits torture and ill-treatment, provides that the infliction of any punishment that was lawful before the adoption of the Constitution must not be held to be in contravention of that section, please clarify whether the State party intends to withdraw this reservation.³ Please also provide information on the steps taken or envisaged by the State party to introduce the crime of torture and the different forms of participation in this crime into the Penal Code, in accordance with articles 1 and 4 of the Convention.⁴ Please clarify whether there is a timetable for the amendment of this Code. In addition, please indicate: (a) which criminal provisions are most often applied to punish cases of torture; (b) whether military criminal law includes provisions relating to torture offences and the related penalties; (c) whether statutes of limitations apply to such offences;⁵ (d) whether there are any other administrative or regulatory provisions relating to the prohibition of torture, including disciplinary sanctions imposed on perpetrators; and (e) how the State party will ensure the non-derogability of the prohibition of torture and any other cruel, inhuman or degrading treatment or punishment.

* Adopted by the Committee intersessionally on 2 December 2020.

¹ CAT/C/4/Rev.3, para. 4.

² See A/HRC/38/8/Add.1, in which the State party accepted the recommendations in paras. 128.43 and 128.44 of the report of the Working Group (A/HRC/38/8).

³ CCPR/C/BWA/CO/1, para. 14.

⁴ Ibid., para. 15.

⁵ CAT/C/4/Rev.3, para. 13.



Article 2⁶

3. Please provide information on legislative and other measures taken by the State party to ensure, in law and in practice, that all persons deprived of their liberty enjoy all fundamental legal safeguards from the outset of deprivation of liberty, specifically: (a) being informed about their rights and the charges against them, in a language that they understand; (b) requesting and receiving a medical examination, in accordance with the principles of confidentiality and privacy, by independent medical personnel, and having access to medical assistance upon request; (c) having confidential access to legal counsel, including in proceedings before customary courts, or to free legal aid for those who do not have sufficient means to pay for legal representation;⁷ (d) notifying a family member, or a person of their choice, of the detention; (e) having their detention recorded; and (f) enjoying the right to challenge the lawfulness of their detention (habeas corpus). Please also indicate whether emergency or anti-terrorism legislation exists under which the procedural guarantees of detainees may be restricted or prohibited and whether incommunicado detention is allowed and practised.

4. Please clarify whether legislation or jurisprudence exists relating to the prohibition on invoking superior orders, including orders from military authorities, as a justification for torture. Please also indicate whether there are any circumstances in which a subordinate is permitted lawfully to oppose an order to commit acts of torture, and provide information on the recourse procedures available to the subordinate in such circumstances and on any such cases that may have occurred. In addition, please clarify whether the concept of “due obedience” as a criminal law defence has any impact on the effective implementation of the prohibition on invoking superior orders as a justification for torture.⁸

5. Please clarify whether the State party still envisages amending the Ombudsman Act to create an independent national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), in accordance with commitments made during the third cycle of the universal periodic review.⁹ Please provide the timetable for the legislative amendments.

Article 3

6. Please indicate whether the principle of non-refoulement is recognized under the legislative framework regulating extradition, asylum and expulsion of undocumented migrants, in accordance with article 3 of the Convention. Please also clarify which authority decides whether a person is to be extradited, expelled or returned and whether this authority has a legal obligation to consider in each case the personal and foreseeable risk of the person concerned being subjected to torture in the country of destination.¹⁰ Please explain how compliance with this obligation is ensured in practice and on the basis of which criteria compliance is determined. In addition, please clarify whether it is possible to appeal an extradition, expulsion or refoulement decision to an independent authority.¹¹ If so, please indicate with which authority appeals are filed, which procedure is applicable and whether appeals and applications for asylum have a suspensive effect on expulsion and extradition decisions.

⁶ The issues raised under article 2 could also touch on issues raised under other articles of the Convention, including article 16. As stated in paragraph 3 of the Committee’s general comment No. 2 (2007) on the implementation of article 2, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also chapter V of the same general comment.

⁷ CCPR/C/BWA/CO/1, paras. 20–21.

⁸ CAT/C/4/Rev.3, para. 11.

⁹ CCPR/C/BWA/CO/1, para. 8; A/HRC/WG.6/29/BWA/3, para. 14; A/HRC/38/8, para. 7; and CEDAW/C/BWA/CO/4, paras. 19–20.

¹⁰ CAT/C/4/Rev.3, para. 12.

¹¹ A/HRC/WG.6/29/BWA/2, para. 33.

7. Please clarify whether persons subject to expulsion, refoulement or extradition orders are informed of their right to apply for asylum and/or appeal a decision on expulsion or extradition and of the prescribed time limits for requesting asylum and appealing a refused asylum application or a decision on expulsion or extradition. Please indicate how asylum seekers are guaranteed access to legal assistance and interpretation services throughout the asylum procedure and whether these services are provided free of charge. Please also provide information on existing mechanisms or protocols for the early identification and immediate referral of vulnerable asylum seekers at borders, including victims of torture, trafficking in persons and gender-based violence, and whether these mechanisms include an independent medical examination.

8. Please provide detailed statistical information for each of the past five years, disaggregated by the sex, country of origin or nationality and age group (minor/adult) of the victim, on: (a) the number of asylum applications registered; (b) the number of applications for asylum or other forms of humanitarian protection approved and the number of asylum seekers whose applications were granted because they had been tortured or ran the risk of being tortured if returned; (c) the number of persons who were returned, extradited or expelled, indicating the grounds on which they were returned, extradited or expelled and providing a list of the countries of destination; and (d) the number of appeals filed against expulsion decisions on the basis that the applicants could be in danger of being subjected to torture and ill-treatment in their countries of origin, and the results of these appeals.

9. Please indicate the number of refoulements, extraditions and expulsions carried out by the State party over the past five years after receiving diplomatic assurances, and the number of cases in which the State party has provided diplomatic assurances or guarantees. Please indicate the minimum required content of these assurances or guarantees, whether given or received, and the arrangements made for subsequent monitoring in these cases.

Articles 5–9

10. Please provide information on the legislative or other measures taken or envisaged to establish jurisdiction in the cases covered by article 5 of the Convention and include examples of occasions in which the provisions established in paragraph (1) (b) and (c) of this article were applied. Please indicate whether the State party has rejected, for any reason, the request of a State for the extradition of an individual suspected of having committed torture and whether it has started prosecution proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

11. Please inform the Committee of any extradition treaties concluded with other States parties and indicate whether the offences referred to in article 4 of the Convention are included as extraditable offences in such treaties. Please provide information on cases in which the State party has agreed to extradite a person for torture or related offences.

12. Please clarify what treaties or agreements on mutual legal and judicial assistance the State party has entered into, and whether such treaties or agreements have led in practice to the transfer of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

Article 10

13. Please provide information on training programmes conducted by the State party with a view to ensuring that all public officials, including, in particular, members of the armed forces, police officers, law enforcement officials, prison officers and immigration and border control officers: (a) have a full understanding of the provisions of the Convention and are aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted; (b) treat persons in a vulnerable situation appropriately, with due regard for their age, gender, cultural or ethnic affiliation and sexual orientation or gender identity; and (c) are aware of the principle of non-refoulement and the provisions guaranteeing the right to asylum and facilitating the identification of applicants who may be victims of torture, human trafficking and gender-based violence.¹² Please indicate whether this training is

¹² A/HRC/WG.6/29/BWA/3, para. 40.

mandatory or optional, how often it is provided, how many officers and public officials, as a proportion of their total number, have received the training, whether there are plans to provide training for officers who have yet to receive it, and whether the State party has developed a methodology to assess the effectiveness and impact of its training programmes in terms of reducing the number of cases of torture and ill-treatment. If so, please provide information on the methodology's content and application.

14. Please provide detailed information on the training programmes organized for judges, prosecutors, forensic doctors and other medical staff who deal with persons deprived of their liberty to equip them to detect and document the physical and psychological consequences of torture. Please indicate whether these programmes include specific training about the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). Please clarify whether the State party provides training on how to monitor, investigate and prosecute complaints of torture and ill-treatment in a child- and gender-sensitive manner.¹³

Article 11

15. Please provide statistical data for each of the past five years, disaggregated by the place of detention, sex, age group (minor/adult) and ethnicity or nationality of detainees, on the capacity and occupancy rate of all places of detention, the number of pretrial detainees and the number of convicted prisoners. Please provide information on measures taken to ensure the separation of pretrial detainees from convicted prisoners, minors from adults,¹⁴ and men from women, and specify in which places of deprivation of liberty detainees are yet to be separated in this way. Please also provide information on the steps taken to prevent overcrowding in places of detention,¹⁵ such as abolishing status offences and adopting alternatives to pretrial detention and non-custodial sentencing measures, particularly in cases involving children in conflict with the law.¹⁶

16. Please indicate what steps have been taken to ensure adequate living conditions, hygiene and sanitation in all places of detention, and to provide sufficient and appropriate food, a minimum number of educational and leisure activities and adequate medical assistance and access to medicines in prisons. Please also indicate whether medical examinations are routinely carried out upon admission to detention centres and describe the procedure by which medical personnel can document and report signs of ill-treatment without risk of reprisals. Please provide information on the efforts taken by the State party to prevent HIV/AIDS, tuberculosis, hepatitis and other infectious diseases in places of detention. Please also provide information on the efforts made to address the specific needs of children in conflict with the law in detention centres,¹⁷ particularly with respect to, inter alia, educational services, access to adequate food and medicines and protection against violence. Please indicate the measures taken to address the needs of women deprived of their liberty, in particular pregnant women and women with children, and clarify whether women are guarded by personnel of the same sex in all places of detention.

17. Please provide information on the disciplinary system in places of detention and indicate whether there is a procedure that guarantees due process and an independent body that reviews the disciplinary measures taken. Please also provide information on: (a) the maximum duration, in law and in practice, of solitary confinement; (b) the measures in place to ensure that solitary confinement is not imposed on children and adolescents in conflict with the law or persons with intellectual and psychosocial disabilities; and (c) whether a register of disciplinary penalties is kept in all places of detention and whether the proportionality of penalties is monitored. Please also provide information on measures taken to prevent and eradicate corruption in prisons, examples of which include offering better conditions of detention and pardoning punishments on the basis of payments to prison staff.

¹³ CRC/C/BWA/CO/2-3, para. 37 (d).

¹⁴ *Ibid.*, paras. 66–67.

¹⁵ CCPR/C/BWA/CO/1, para. 17.

¹⁶ CRC/C/BWA/CO/2-3, paras. 66–67.

¹⁷ *Ibid.*, paras. 66–67.

18. Please provide statistical data for each of the past five years on the number of deaths in custody, including in mental health institutions and police detention centres, disaggregated by the place of detention, sex, age group (minor/adult) and ethnic origin or nationality of the deceased and cause of death. Please provide detailed information on the results of investigations into these deaths, the number of deaths attributed to assaults committed or tolerated by public officials, in which excessive force was used or timely medical assistance and treatment was lacking, the steps taken to prevent similar cases from occurring in the future, and the measures taken by the State party in order to prevent violent incidents and deaths in custody.

19. Please provide information on the procedural and substantive guarantees that are applicable to the involuntary confinement of persons with intellectual or psychosocial disabilities and of children and adolescents living in residential care homes. Please also provide information on the measures in place to provide alternative family- and community-based care options for children deprived of their family environment and persons with intellectual or psychosocial disabilities.¹⁸ Please clarify whether there is an independent mechanism for overseeing residential care homes and whether there are accessible channels for reporting, monitoring and remedying any ill-treatment that occurs within them. In addition, please provide information on the use of physical and chemical means of restraint and other medical non-consensual coercive measures on persons admitted to psychiatric institutions.

20. Please describe the procedure and criteria used to assess the necessity and proportionality of placing asylum seekers and undocumented migrants in administrative detention and indicate the alternatives to administrative detention that exist.¹⁹ Please clarify whether decisions to impose administrative detention are periodically reviewed and whether it is possible to challenge the lawfulness and proportionality of such decisions and the duration of the detention that they impose. Please provide annual statistical data, disaggregated by the sex, age group (minor/adult) and nationality of detainees, on the number of persons detained for migration reasons over each of the past five years, and the proportion of the total number of cases per year in which alternatives to detention were used. Please clarify whether persons in administrative detention are separated from ordinary detainees and in which type of establishment they are held, including families with children and unaccompanied children.²⁰

Articles 12–13

21. Please indicate which authorities or oversight bodies are competent to initiate and carry out an investigation, at both the criminal and the disciplinary levels, when there is reason to believe that an act of torture or ill-treatment has been committed under the State party's jurisdiction by police officials or by prison or military personnel. Please explain how these authorities or bodies interact with the Attorney General's Office during the investigation and what safeguards are in place to ensure that there is no hierarchical or institutional link between the suspected perpetrators and the inspectors. Please clarify whether the Attorney General's Office is required to initiate an ex officio investigation where there is reason to believe that an act of torture or ill-treatment has been committed and to request that the potential victim undergo a forensic medical examination. Please also clarify whether the alleged perpetrator is automatically suspended from his or her functions while the investigation is being conducted and/or prohibited from further contact with the alleged victim. Please clarify whether customary laws and practices are compatible with the obligations emanating from the Convention; for instance, whether customary courts are competent to adjudicate cases of torture or ill-treatment.²¹

22. Please indicate what remedies are available to persons who claim to have been subjected to acts of torture or ill-treatment, especially persons deprived of their liberty,²² and

¹⁸ Ibid., paras. 41–42.

¹⁹ Ibid., paras. 60–61.

²⁰ Ibid., and CEDAW/C/BWA/CO/4, para. 44 (c).

²¹ A/HRC/WG.6/29/BWA/2, para. 16.

²² CCPR/C/BWA/CO/1, para. 18.

what remedies are available to complainants in the event that the competent authorities refuse to investigate their case. In addition, please explain how the State party guarantees the confidentiality, independence and follow-up of the system for receiving complaints of torture and ill-treatment,²³ including in cases where the victim is deprived of their liberty, and indicate what mechanisms are in place to protect victims of torture and ill-treatment, members of their family, witnesses and investigators against any form of intimidation or reprisal arising as a consequence of complaints submitted.

23. Please provide statistical data for each of the past five years, disaggregated by the sex, age group (minor/adult) and ethnic origin or nationality of the victim and the service to which the accused person belongs, on complaints of actual or attempted acts of torture and ill-treatment, and complicity, participation or acquiescence in such acts, by State officials.²⁴ Please indicate how many ex officio investigations have been opened into the above-mentioned offences. Please provide information on all judicial and disciplinary proceedings initiated, convictions handed down, decisions to stay proceedings made, cases dropped, and criminal penalties and disciplinary measures imposed. In particular, please clarify whether the State party opened an investigation into the 2011 allegations of the rape of a young woman while in immigration detention, and whether it provided redress to the victim, as requested by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.²⁵

Article 14

24. Please describe the procedure established in the State party to ensure that victims of torture and their families obtain redress. Please clarify whether the State party is legally responsible for the conduct of perpetrators of torture and ill-treatment and is therefore obliged to compensate the victims. Please also clarify whether the right to receive compensation for torture or ill-treatment is dependent on a judgment having been handed down in criminal proceedings and whether civil proceedings related to torture and ill-treatment are subject to a statute of limitations.

25. In the light of paragraph 46 of the Committee's general comment No. 3 (2012) on the implementation of article 14, please provide information on redress and compensation measures, including the means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families over each of the past five years. This should include the number of requests for compensation that have been made, the number of requests granted and the amounts awarded and actually disbursed in each case. Please also provide information on rehabilitation programmes for victims of torture and ill-treatment and whether they include medical and psychological assistance, and the degree of cooperation with specialized non-governmental organizations in this area.

Article 15

26. Please provide information on legal provisions concerning the prohibition on using statements obtained through torture as evidence. Please provide examples of any cases that have been dismissed by the courts owing to the introduction of evidence or testimony obtained through torture or ill-treatment.

Article 16

27. Please indicate whether the State party envisages amending its legislation and expressly prohibiting corporal punishment in all settings, including the sentence of caning, foreseen in section 28 of the Penal Code and section 305 of the Criminal Procedure and Evidence Act.²⁶

²³ CRC/C/BWA/CO/2-3, paras. 39–40.

²⁴ CCPR/C/BWA/CO/1, para. 18.

²⁵ A/HRC/19/61/Add.4, para. 30.

²⁶ CEDAW/C/BWA/CO/4, paras. 33 (b) and 34 (c); A/HRC/WG.6/29/BWA/3, paras. 38 and 40–43; A/HRC/38/8, paras. 129.41–129.44; CRC/C/BWA/CO/2-3, paras. 35 and 66–67; and CCPR/C/BWA/CO/1, para. 19.

28. Please indicate what steps have been taken to address police brutality and excessive use of force by law enforcement officials. Please provide annual statistical data, disaggregated by type of offence and the sex, age group (minor/adult) and ethnic origin or nationality of the victim, on the number of cases of excessive use of force and extrajudicial killings by public officials identified in each of the past five years and the number of prosecutions sought, convictions secured and penalties imposed in relation to these cases.

29. Please provide information on the steps taken to combat all forms of violence against women and children, in accordance with commitments made during the third review cycle of the universal periodic review mechanism, with particular regard to cases that involve acts or omissions on the part of State authorities or other entities that engage the State party's international responsibility in accordance with the Convention.²⁷ Please also provide information regarding:

(a) The protection services, support and legal assistance available to victims of all forms of violence against women and children, including human trafficking and sexual exploitation;²⁸

(b) Annual statistical data, disaggregated by the type of crime or offence and by the age group (minor/adult) and ethnic origin or nationality of the victim, on the number of incidents registered, complaints submitted, investigations opened, prosecutions sought, sentences handed down and penalties imposed over each of the past five years in cases of gender-based violence, including domestic violence, femicide, rape, human trafficking or sexual exploitation and abuse of children, as well as the number of protection orders issued and the reparations afforded to victims during this period. Please also indicate how many State officials were implicated in cases of trafficking, sexual exploitation of children and gender-based violence during the same period.²⁹

30. Please indicate whether the State party intends to abolish the death penalty or declare a moratorium and commute all death sentences to imprisonment sentences. Alternatively, please indicate the measures taken or envisaged to ensure that the procedure for the imposition of the death penalty and the way in which it is carried out do not amount to torture or inhuman or degrading treatment and are in compliance with international standards.³⁰ Please describe the conditions of detention of prisoners on death row and clarify whether they are subjected to more stringent detention conditions than the rest of the prison population.

General information on other measures and developments relating to the implementation of the Convention in the State party

31. Given that the prohibition of torture is absolute and cannot be derogated from, including within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the coronavirus disease (COVID-19) pandemic to ensure that its policies and actions comply with its obligations under the Convention. Please also specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement, such as in homes for older persons, hospitals or institutions for persons with intellectual and psychosocial disabilities.

²⁷ CEDAW/C/BWA/CO/4, paras. 25–26. See also A/HRC/38/8/Add.1, in which the State party accepted the recommendations in paras. 128.48 and 128.67 of the report of the Working Group.

²⁸ CRC/C/BWA/CO/2-3, paras. 36–37 and 65; CEDAW/C/BWA/CO/4, paras. 25–28, 33 (a) and 34 (a); CCPR/C/BWA/CO/1, para. 16; and A/HRC/WG.6/29/BWA/3, para. 29. See also A/HRC/38/8/Add.1, in which the State party accepted the recommendation in para. 128.58 of the report of the Working Group.

²⁹ CRC/C/BWA/CO/2-3, paras. 36–37 and 65; CEDAW/C/BWA/CO/4, paras. 25–28, 33 (a) and 34 (a); and CCPR/C/BWA/CO/1, para. 16.

³⁰ CCPR/C/BWA/CO/1, para. 13.