



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE
CONSIDERATION OF THE INITIAL REPORT OF BOTSWANA**

**Constitutional and legal framework
within which the Covenant is implemented (art. 2)**

1. Please indicate whether and to what extent the High Court may refer to the Covenant while interpreting and implementing provisions of the Botswana Bill of Rights. Please inform the Committee on the level of knowledge by members of the judiciary and law enforcement officials about the provisions of the Covenant. (initial report, paras. 103-106)
2. Have measures been adopted specifically to raise awareness of traditional leaders of tribes about the rights protected under the Covenant, and to ensure that these are taken into consideration by customary courts and local police, and with what results? (initial report, paras. 60-63, and 318)
3. Please provide more detailed information on the extent to which the Ombudsman exercises jurisdiction over human rights violations in practice, and provide examples and statistics on complaints received and dealt with, and on their outcome. What measures have been adopted to ensure the full independence of the Ombudsman from the executive authority? Does the State party envisage establishing an independent institution for the promotion and protection of human rights, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993?(initial report, para. 54)

Non discrimination and equality between the sexes (arts. 2, 3 and 26)

4. Please provide information on the application and extent of implementation of Section 15, Sub-section 4 (b), (c) and (d) and Sub-section 9 of the Constitution, providing for wide exceptions to the principle of non discrimination. Does the State party envisage withdrawing or amending these provisions? Please also provide information on the extent to which non-citizens, including asylum-seekers and refugees, enjoy their Covenant protected rights in the State party.
5. Please provide information on measures adopted to address the issue of the status of women under customary law. (initial report, para. 128)
6. Please indicate how the State party reconciles the provisions of the penal code criminalizing same-sex sexual activity with its obligations under articles 2, 17 and 26 of the Covenant. Furthermore, how does the State party reconcile the prohibition of condoms in prisons as a result of such provision of the penal code, with its obligations under article 6 of the Covenant? (initial report, para. 259)

Right to life (art. 6)

7. Please indicate how the State party reconciles the mandatory imposition of the death penalty with its obligations under article 6 of the Covenant. Please explain the low number of commutations from death sentence to life imprisonment and comment on the information according to which the composition of and procedures followed by the Advisory Committee on the Prerogative of Mercy do not allow for a fair examination of pleas for clemency. (initial report, paras. 144-153)

Prohibition of torture, and of cruel, inhuman and degrading treatment or punishment (art. 7)

8. Please provide more information on the scope of the reservation made by the State party to article 7 of the Covenant. What kind of punishment is authorized by virtue of Section 7 (2) of the Constitution? Following the Court of Appeal decision adopted in *Clover Petrus and Another v State*, 1984, please explain why corporal punishment has not been abolished, in schools and elsewhere. (initial report, paras. 156-159 and 186-187)
9. Please provide more information on the mechanisms in place to consider complaints of torture and ill-treatment against police and prison staff during all stages of deprivation of liberty. In particular, to what extent are these mechanisms independent? Is access to all prisons provided to them? In addition, please provide data on the number of such complaints and their outcome. Do non-governmental organizations have access to prisons, and upon which conditions? (initial report, paras. 178-179, 185, 233)
10. Please provide information, including statistical data, on the occurrence of domestic violence in Botswana. What avenues for complaint and redress are available? Has the State Party adopted legislation criminalizing domestic violence?

**Liberty and security of the person
and treatment of prisoners (arts. 9 and 10)**

11. On average, what is the length of police custody and of pre-trial detention? Please provide information on the implementation of the right of access to a lawyer for persons held in police custody, including indigent persons. (initial report, paras. 218-228)

12. Please provide statistical data on the prison population, including data on the proportion of persons held on remand. Does the State party encounter a problem of prison over-crowding, and to what extent? If so, what measures has it adopted or does it envisage adopting to address this issue?

13. Please explain why convicted prisoners are allowed so little contact with friends and relatives. Please comment on the information according to which families are not notified about the scheduled date of execution of a condemned prisoner, and that executed prisoners are buried within prisons, thereby impeding access to the graves for their families. (initial report, para. 255)

Right to a fair trial (art. 14)

14. Please provide more detailed information on measures adopted to ensure the independence of the judiciary, in particular in relation to appointment, career advancement, removal from office and other disciplinary sanctions. (initial report, paras., 308-314)

15. Please provide further information on the extent to which indigent persons facing capital punishment are provided with good quality legal representation, and on the steps the State party envisages to adopt in order to ensure the full implementation of the right of everyone charged with a criminal offence to have legal assistance, in accordance with article 14 (3) (d) of the Covenant. (initial report, paras. 147, 227 and 328)

16. Please provide further information on the criminal jurisdiction of customary courts. Please also indicate why legal representation before customary courts is not permitted, and provide further information on the right of an individual to have a case transferred to another court where legal representation is permitted. Do such transfers actually occur in practice, and to what extent? Are individuals informed of the possibility of such transfers? (initial report, para.315)

Freedom of expression (art. 19)

17. Please provide information on the extent to which private newspapers and radios operate throughout Botswana, in comparison to public media.

18. Please provide more detailed information, including statistical data and examples of cases, on the implementation of sections 90, 91 and 93 (1) of the Penal code, in relation to the enjoyment of the right to freedom of expression. (initial report, paras. 357-361)

**Right to marriage, choice of spouse, and
equality of rights and responsibilities of spouses (art. 23)**

19. Please indicate to what extent Section 14 of the Marriage Act setting out the minimum age required to marry at 18 years old is implemented in practice, in particular for girls. (initial report, paras. 382-383)

20. Please provide information on measures adopted to ensure the implementation of articles 3 and 23 of the Covenant in relation to customary and religious marriages. Does the State party envisage prohibiting polygamous marriages? What concrete steps have been taken to address the fact that women are subjected to the guardianship of their fathers, brothers, and uncles when they are unmarried and to their husbands where they are married? (initial report, paras. 128, 386-389, and 397)

**Right to take part in the conduct of public affairs, to vote and to be elected, and
to have access to public service (art. 25)**

21. Please indicate whether the State party provides public funding to political parties for election purposes, and whether private funding of political parties, as well as use of public assets and funds for partisan political purposes are regulated to ensure the fairness of elections. Do regulations exist, guaranteeing all political parties equal access to the media, whether private or public, in particular during electoral campaigns? If so, please describe such rules and provide information on their practical implementation.

22. Please provide information, including statistical data, on the level of participation of women in political life, including in government and parliament, as well as in public administration. Please also provide such statistical data in relation to the participation of non-Tswana people.

Rights of persons belonging to minorities (art. 27)

23. Please explain further what the position of the State party is in relation to the rights-based approach to development proposed by the non governmental organization Ditshwanelo in relation to the relocation of the residents of the Central Kalahari Game Reserve, as indicated in the initial report. What concrete steps has the State Party undertaken to implement the 2006 High Court Decision *Sesana et al.v Attorney General*? (initial report, paras. 276-295)

24. Please provide updated information on the reform of sections 77, 78, 79 of the Constitution, in relation to the equal participation of all ethnic groups in the House of Chiefs. Please comment on the information according to which the Bogosi Bill of 2007, the Tribal Territories Act, as well as other laws, contain discriminatory elements against Basarwa and non-Tswana ethnic groups. (initial report, paras. 83 and 427)

25. Please provide information on the extent to which Basarwa and non-Tswana languages are taught in schools and/or used as teaching languages. To what extent

does school curriculum reflect Basarwa and non-Tswana cultures? Please indicate to what extent persons belonging to Basarwa and non-Tswana ethnic groups have access to the media on an equal basis.
