



# 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 1923rd meeting\*

Held at the Palais Wilson, Geneva, on Wednesday, 20 July 2022, at 10 a.m.

*Chair:* Mr. Heller

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\* No summary record was issued for the 1922nd meeting.

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

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

*Initial report of Botswana (CAT/C/BWA/1; CAT/C/BWA/QPR/1)*

1. *At the invitation of the Chair, the delegation of Botswana joined the meeting.*
2. **Mr. Shamukuni** (Botswana), introducing his country's initial report (CAT/C/BWA/1), said that Botswana had been progressively building capacity to fulfil its human rights reporting obligations. To that end, the Government had established the Inter-Ministerial Committee on Treaties, Conventions and Protocols to monitor adherence to international agreements, the Human Rights Unit, which acted as a national coordination office, and the National Human Rights Committee, which included representatives of government ministries and civil society organizations. It had produced a draft comprehensive human rights strategy and a national action plan in cooperation with non-governmental organizations and, with technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR), had set up a special database to track the implementation of recommendations made by the treaty bodies.
3. Those measures had resulted in Botswana meeting all its reporting obligations to the treaty bodies and in a general improvement in the implementation of international human rights obligations and cooperation with human rights mechanisms, such as the recent visit from the Working Group on Arbitrary Detention in July 2022. In April 2022, the new Ministry of Justice had taken over the justice portfolio from the former Ministry of Defence, Justice and Security and been given a specific mandate to ensure the protection and promotion of human rights.
4. Although the Penal Code did not include a specific offence of torture in line with the Convention, there were other pieces of legislation that expressly prohibited torture: the Children's Act, the Botswana Defence Force Act, the Intelligence and Security Service Act, the Botswana Police Act, the Prisons Act and the Mental Disorders Act, *inter alia*. The administrative provisions applicable to law enforcement and armed forces personnel provided for disciplinary measures, such as a reprimand, a severe reprimand, a fine, reduction in rank or dismissal, in cases of torture.
5. All persons, including those deprived of liberty, who claimed to have been subjected to torture or ill-treatment were entitled to sue the Government for damages. Confessions by accused persons were inadmissible in court if it was determined that they had been obtained under torture.
6. The Constitution guaranteed access to substantive and procedural justice for all aggrieved persons, which was a principle of such paramount importance that, even during the height of the coronavirus disease (COVID-19) pandemic, measures including the organization of virtual and specialized courts had been taken to ensure continued access to justice. To combat gender-based violence during the pandemic, additional shelters, a gender and child protection branch of the police service and toll-free hotlines had been introduced.
7. Botswana would maintain its reservation to article 1 of the Convention, on the basis of section 7 (2) of the Constitution, which permitted the infliction of the death penalty and corporal punishment as possible sentences following due process of the law. A comprehensive constitutional review process focused on consultations with the general population was ongoing and the constitutional review commission was due to submit its report by the end of 2022.
8. Botswana had an unwavering commitment to the implementation of the Convention and other human rights obligations, which would continue to be a guiding beacon for interactions between the State and society. The Government stood ready to consider the Committee's recommendations and called on international partners to provide the necessary technical assistance.
9. **Ms. Puce** (Country Rapporteur) said that, in view of the State party's dualist legal system, she would appreciate an indication of the progress of incorporation of the Convention

into national law and the estimated time frame for the Government to meet the commitment it had made under the universal periodic review procedure to incorporate all the core human rights treaties. She also encouraged the State party to ratify the Optional Protocol, incorporate its provisions into national law and establish an operational national preventive mechanism.

10. **Mr. Buchwald** (Country Rapporteur) said that the Committee urged Botswana to amend its Penal Code to introduce a separate offence of torture because it had observed that the absence of a law including a definition of torture in line with article 1 of the Convention could lead to loopholes allowing for impunity for torture. He would like to know whether the specific pieces of legislation prohibiting torture contained a definition compatible with that in the Convention applicable to their limited scope and whether, in addition to allowing for prosecution of the perpetrator, they ensured compliance with other articles of the Convention in the same way that a comprehensive law against torture would. For example, if a case of torture was prosecuted as assault under the Penal Code, would sufficiently harsh sentences be imposed, in line with the obligation under article 4 of the Convention, to ensure that penalties were commensurate with the gravity of the offence?

11. He would also like to know whether acquiescence in torture was a criminal offence under the Police Act and the Penal Code and whether all the sector-specific legislation stipulated that the prohibition of torture was non-derogable and that orders from superior officers could not be invoked as a justification for torture.

12. He would like to learn about any plans to ensure compatibility with the Convention by amending the definition of torture in the Defence Force Act, which currently provided for an exception for “reasonable activities undertaken for purposes of training and discipline”, and to stiffen the applicable penalties, which did not include a mandatory minimum prison sentence and allowed for a fine of a sum equivalent to US\$ 800. He would appreciate the delegation’s view on whether the sanctions for torture under the Police Act, of reprimand, severe reprimand, fine, reduction in rank or dismissal, were commensurate with the gravity of the offence.

13. He would appreciate further explanation of the extent to which customary courts were required to act in conformity with the Convention. Specifically, he wished to understand whether the article of the Customary Courts Act providing that such courts could not apply rules incompatible with the provisions of any written law or contrary to morality, humanity or natural justice was interpreted as prohibiting conduct incompatible with the Convention. If so, he wondered whether the customary court judges were aware of the State party’s obligations under the Convention. Given that accused persons did not have the right to a lawyer in customary courts, he would like to understand how they became aware of and asserted their rights under the Convention.

14. He would welcome clarification in respect of reports that, although accused persons were entitled to request the transfer of a case from the customary courts to a magistrate court, there was no obligation to grant the request. He also wondered how the persons concerned were made aware of that right, given that they did not have the right to a lawyer. He would like to know whether the provision of the Customary Courts Act which established that laws relating to evidence or procedure did not apply in customary courts meant that article 15 of the Convention, on the inadmissibility in court of statements obtained under torture, did not apply in customary courts.

15. He would like to know whether the Government would consider removing the statute of limitations for torture, as was currently the case for murder.

16. He invited the delegation to clarify whether the State party’s reservation to the Convention, which stated that the definition of torture contained in article 1 of the Convention was accepted only to the extent provided for in section 7 of the Constitution – subparagraph (1) of which referred to the prohibition on torture – meant that it would accept only the constitutional definition of torture and not the definition given in the Convention and would thus reject any assessment of its actions against the internationally accepted definition of torture. Given that section 7 (2) of the Constitution could be considered to permit the contemporary use of punishments that were lawful prior to the adoption of the Constitution in 1966, he would welcome an explanation of how that provision was interpreted and, specifically, whether the acts it covered were permissible only when used as punishment.

17. Given that the State party's reservation to the Convention applied to article 1, the definition of torture, and that its reservations to the International Covenant on Civil and Political Rights concerned the definitions of both torture and cruel, inhuman and degrading treatment or punishment, it would be helpful to know whether it thus considered that there was no reservation to the provisions on cruel, inhuman or degrading treatment or punishment set out in article 16 of the Convention. Furthermore, mindful of the fact that the prohibition on torture was considered a part of customary international law from which no derogation was permissible, did the delegation consider that the State party's reservation to the Convention created an exception to its obligations under customary international law?

18. Since the State party had stated in its initial report that the reservation could not be withdrawn due to the provisions of section 7 (2) of the Constitution, he would be interested to hear whether it had considered amending the reservation to refer only to that subparagraph of section 7; and whether consideration would be given in the context of the constitutional review process to modifying section 7 of the Constitution to bring it into line with the Convention.

19. He would appreciate an explanation of how section 228 of the Criminal Procedure and Evidence Act complied in full with the provisions of article 15 of the Convention concerning the use of statements, not just confessions, extracted through torture in any proceedings. Clarification would also be welcome of whether statements extracted through torture became admissible in evidence if made by someone other than the defendant. Given that sections 79 and 134 of the Botswana Defence Force Act No. 3 of 2018 prohibited, respectively, disobedience in respect of a lawful order and the issuance of an improper order, he asked whether there were any more specific provisions in law to prohibit the invocation of a superior officer's order as justification for torture and to establish the same prohibition outside the military. Clarification would be welcome of whether the State party had jurisdiction over offences of torture committed outside its territory, as set out in article 5 of the Convention, and the details of any relevant legal provisions.

20. He asked for information on the memorandums of understanding with non-governmental organizations on the provision of rehabilitation programmes for child victims of torture; whether specific rehabilitation programmes were in place for other vulnerable groups, such as women or victims of trafficking in persons; what the rehabilitation programmes involved; whether their results were monitored; and how much funding the programmes received. He would also like to know how many rehabilitation facilities existed and their capacity and locations, and what measures were in place to ensure that victims could exercise their rights to redress, compensation and rehabilitation under article 14 of the Convention. Clarification would be appreciated of how the start of the three-year limitation period on the right to receive compensation was determined and whether the State party intended to review that period for cases involving victims of torture, since such persons may not be in a position to make a complaint or pursue legal proceedings so close to the time of their injury. He requested details of the legal provisions intended to address the harm suffered by victims of torture pending the completion of any criminal or civil case, in the event that a victim was not in a position to pursue a case or if the perpetrator of torture was never identified.

21. Information on the involvement of civil society in monitoring the implementation of the Convention would be helpful, particularly in the light of the recommendation made during the universal periodic review procedure on enlarging the space for the participation of civil society. Given the involvement of the Non-Governmental Organisation Council in the preparation of the initial report, he would welcome information on how the Council worked and who was able to participate in it.

22. With regard to due process guarantees for persons subject to expulsion, he would like to know whether such individuals were informed of their right to apply for asylum. According to paragraph 50 of the State party's report, persons found to be extraditable were informed of their right to appeal within 15 days. However, it was noted in paragraph 51 that there was no appellate body; he would appreciate some clarification in that regard. It was his understanding that asylum seekers' right to a lawyer was not currently enshrined in law but was provided for under the Refugee (Amendment) Bill. He would therefore be interested to know when the Bill would be adopted, at what point in the asylum process applicants would

have access to a lawyer and whether the Bill also addressed the provision of free legal aid for indigent asylum-seekers. He would like the delegation to comment on reports that interpretation services were not always provided in practice throughout the asylum application process. Given that the State party did not have a formal mechanism for the identification of vulnerable persons at border crossing points, he would welcome further information on how support was provided to such persons in practice and whether the State party might consider formalizing that mechanism. Were adequate resources and training made available to border personnel to help them identify vulnerable persons?

23. He would be interested to hear the delegation's comments on the preliminary findings of the Working Group on Arbitrary Detention following its recent visit to the country. He would also like to know whether the State party had given further consideration to the recommendation made during the universal periodic review procedure that it should recognize the Committee's competence to receive individual communications under article 22 of the Convention, and whether there were any obstacles to it doing so.

24. **Ms. Puce** said that, as one of the few countries in the region that still routinely implemented the death penalty, the State party had agreed during the universal periodic review procedure to undertake public discussion on that matter; she would like to know whether the discussions had begun, or when it was planned to hold them, and which stakeholders were invited to participate. While the death penalty was not expressly prohibited under the Convention, certain related practices were banned. For example, in the State party, the death penalty was carried out by hanging, which was considered by the African Commission on Human and Peoples' Rights to be torture. Detainees were often not aware of when their death penalty would be carried out, which amounted to psychological torture and made it impossible for them to receive final visits from their families. She would like the delegation to comment on those issues and explain why such practices, which amounted to torture, were maintained.

25. The collection of statistics was an important element of the institutional framework needed to prevent torture. Given the discrepancies in the State party's initial report regarding the existence of instances of torture, she would appreciate clearer statistics on cases identified, with an indication of the outcome of investigations. She would be interested to know how the statistics were gathered, whether there was a mechanism in place specifically for that purpose and which agency was responsible. Was there a body that provided oversight for the police force?

26. The Committee had received reports that the draft legislation that would establish the Office of the Ombudsman as a national human rights institution was not in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles); she would like to know why that was the case and what the status of the bill was. It would be interesting to hear whether the Office of the Ombudsman had jurisdiction over the police force, prisons and psychiatric hospitals and, if so, learn about cases of maladministration that had been resolved. She would welcome details of its human rights mandate, including whether it covered the issues addressed by the Convention. Would regional offices be established; would the Office be permitted to conduct unannounced visits to places of detention; and would it receive any additional funding or staff to fulfil its new mandate?

27. She would like to know whether an independent complaints mechanism was available to individuals who had been mistreated by police officers and how they were made aware of its existence. She would also like further information on the complaints mechanisms in prisons and psychiatric hospitals. Given the importance of legal assistance as a safeguard against torture, she would like to know how that system worked and whether there was a network of paralegals in place to provide assistance if, as was often the case, a lawyer was not available. It was her understanding that accused persons would receive legal aid if their crime was serious and they could not afford a lawyer; she would like to know the criteria used to determine whether that was the case. Similarly, as domestic law provided that minors would receive legal aid if funds were available, she would like an explanation of criteria on which the decision was based. Furthermore, in the light of reports that providers of legal aid often did not appear in court, she would like to know how the providers were regulated and what their responsibilities were.

28. She invited the delegation to respond to the claim that police officers were authorized to interview arrested persons without the presence of a lawyer and before the start of any formal investigation. Such practices went against the principles of the Convention, since arrested persons were less likely to be subjected to violence, threats or ill-treatment if a lawyer was present at their questioning.

29. The Government had a responsibility to raise awareness of the Convention among the people who were tasked with implementing its provisions in practice. The training of police officers, prison staff, judges and prosecutors would have a central role to play in the process by which outdated ways of working were progressively eradicated and replaced with practices in line with the Convention. The Committee would therefore welcome further information on any plans or measures to be taken, including with the support of other countries, to provide human rights training for the personnel of the Police Service, the Prison Service, the Directorate of Public Prosecutions and the Administration of Justice. Information on any projects that were already under way would be of particular interest.

30. She would welcome further information about the procedure by which people were informed of the charges against them immediately following their arrest. The State party had declared in its report that, if on first contact with an accused person it was discovered that there was a language barrier, an interpreter was immediately engaged to read the charges against him or her; she wished to know how that worked in practice. It would also be useful to understand whether there was a time frame within which the accused person's relatives or next of kin must be informed about the arrest and, particularly, whether arrested persons were permitted to make a telephone call for that purpose or if that was the police officer's responsibility. She would also like to know whether family members were permitted to visit relatives being held at police detention facilities.

31. Lastly, the Committee would welcome further information on access for arrested persons to medical aid, including who made the final decision on requests for medical assistance, and on what basis, and who provided the medical treatment.

32. **Ms. Racu** said that she would appreciate further information on the conditions of detention of juveniles and women, especially in relation to their access to medical care, employment and vocational or recreational activities. It would also be useful to know whether a special detention regime had been established for mothers with dependent children.

33. With regard to the provision of medical treatment to inmates, she invited the delegation to clarify whether the State party's prisons faced shortages of medical staff or equipment. The Committee understood that the Government had been working in cooperation with the United Nations Development Programme on preventing and combating the spread of COVID-19. She would welcome further information on those projects and on any specific action taken to address the pandemic in prisons, including the administration of vaccinations and the treatment of inmates with COVID-19. She also wished to know whether there had been any recent developments concerning the rights of prisoners with HIV/AIDS or other infectious diseases and drug users in prison.

*The meeting was suspended at 11.50 a.m. and resumed at 12.35 p.m.*

34. **Mr. Shamukuni** (Botswana) said that the Ministry of Justice had been tasked with incorporating the Convention into the domestic legal order, in accordance with commitments made during the universal periodic review procedure. However, the domestication process was a lengthy one, not least because all bills brought before Parliament were subject to extensive public consultation. The Ministry would be responsible for coordinating future consultations regarding the potential accession of Botswana to the Optional Protocol and any possible amendments to national legislation on the death penalty. Formal discussions on the abolition of the death penalty had not yet commenced but the legislation was nonetheless the subject of regular public debate, including in the context of ongoing discussions on constitutional review.

35. **A representative of Botswana** said, with respect to engagement with civil society, that the Government had adopted a policy on non-governmental organizations and had formed the Non-Governmental Organisation Council to oversee its implementation. The National Human Rights Coordination Committee had also recently been established to

provide a space where civil society organizations could consult representatives of the Government on human rights matters, including the ratification of international instruments, the domestication of international standards and the drafting of reports. The Government had developed a productive working relationship with civil society, and the joint projects undertaken so far had included the drafting of the country's first ever national human rights strategy.

36. The amendment to the Ombudsman Act, under which the Office of the Ombudsman was assigned a human rights mandate, had received presidential assent and had thereby come into effect in November 2021. However, the restructuring exercise aimed at enabling the Office to execute its new human rights functions had still not been completed and it had not yet been fully operationalized as a national human rights institution. Its compliance with the Paris Principles had therefore not been assessed and it had not yet received a rating from the Global Alliance of National Human Rights Institutions. However, it had received additional funding of approximately 8 million pula in its budget for 2022/23 to help it to fulfil its new human rights mandate.

37. Throughout the restructuring exercise, the Office of the Ombudsman had continued to perform its functions in relation to complaints. It was mandated to address complaints received from members of the public, including prisoners and patients in psychiatric hospitals, concerning issues such as unlawful detention, denial of medical services and assault at the hands of police officers or prison wardens. Its jurisdiction covered the whole country and it had branches in all the main geographical regions. Under the amended legislation, the powers and functions of the Office included conducting unannounced visits to places of deprivation of liberty and proactively monitoring the human rights situation in the country. Once it became fully operational as a national human rights institution, formal consultations would be held concerning the possible ratification by Botswana of the Optional Protocol and the establishment of a national preventive mechanism. In the meantime, through the powers and functions that had been conferred on it, the Office was already contributing to preventing arbitrary detention and improving conditions in places of deprivation of liberty.

38. **A representative of Botswana** said that the Police Service collected statistics on crime, including crimes committed by its members. Investigations had been completed in 19 of the 25 cases brought against members of the Service.

39. **A representative of Botswana** said that a procedure had been put in place according to which alternative care was provided for young children of female prisoners. So long as the child had been weaned and the mother and prison officer in charge both agreed with the arrangements, the child would be transferred into the care of a relative or friend who was willing and able to provide the necessary support. If nobody could be found, or the officer in charge was not satisfied that any of the mother's relatives or friends could provide such support, the child would be handed over to an approved person or organization offering childcare services. Pregnant female prisoners received antenatal care throughout their pregnancy and were transferred to public health facilities for the delivery. New mothers were taken to postnatal check-ups and provided with early childcare services.

40. Juvenile prisoners were able to participate in a range of programmes proposing vocational activities such as carpentry, gardening and computer literacy. They were also offered educational services ranging from informal schooling to primary and secondary education. All new inmates were systematically screened on admission for communicable and chronic diseases. Prisoners found to have any such diseases were referred for treatment, in accordance with government policies that had been put in place to deal with such cases.

41. **A representative of Botswana** said that the customary branch of the judiciary was made up of lower courts, higher courts and the customary court of appeal. However, those courts did not constitute a separate justice system; rather, they existed below all the national courts of law in the country's judicial hierarchy. All decisions handed down by customary courts, including the customary court of appeal, could therefore be appealed before the national courts. Furthermore, the Customary Courts Act provided for a long list of offences that the customary courts were not authorized to hear; customary courts thus did not have jurisdiction to rule on cases of torture or ill-treatment.

42. The actions of the customary courts were regulated by statutory rules of procedure and were bound by the provisions of the Penal Code and the Criminal Procedure and Evidence Act. The Attorney General's office and the Ministry of Justice regularly organized training and awareness-raising courses to ensure that all personnel working at customary courts were aware of the statutory procedures in place and of principles such as the presumption of innocence and the entitlement of accused persons to be read their right to appeal.

43. The right of accused persons to seek legal counsel of their choice was guaranteed under the Constitution. Free legal aid was provided in certain circumstances, including in murder cases where the death penalty was a possible punishment. However, lawyers did not have a right of audience in customary courts. If an accused person sought representation in a case brought before a customary court, they had the right to request that the matter be transferred to a magistrate court. That request could not be refused, even if the accused person was unable to prove that he or she had a lawyer.

*The meeting rose at 1 p.m.*