



**International Convention on the
Elimination of All Forms of Racial
Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-eighth session

SUMMARY RECORD OF THE 1750th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 6 March 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

SUMMARY

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (*continued*)

Fifteenth and sixteenth periodic reports of Botswana (*continued*)

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

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (agenda item 6) (*continued*)

Fifteenth and sixteenth periodic reports of Botswana(CERD/C/495/Add.1; an additional document, without symbol, in English only, distributed at the meeting by the Botswana delegation) (*continued*)

1. *At the invitation of the Chairperson, the delegation of Botswana resumed their places at the Committee table.*

2. Mr. VALENCIA RODRÍGUEZ asked how the problem of growing urbanization and increased population concentrations around the cities affected ethnic groups, immigrants and refugees in Botswana. He noted that according to the report, one of the causes of dissatisfaction reported by “minority” groups was the law on tribal lands, which sought to protect the status of the “dominant” tribes (CERD/C/495/Add. 1, para. 125), and that alongside these tribal areas there existed “Crown lands” with a territorial status equivalent to that of the tribal lands (para. 127). Mr. Valencia Rodríguez asked why that situation persisted, as there was no difference in principle in terms of enjoyment of rights between the two types of territories and there were minority groups that did not enjoy the benefits of either the Crown lands or the tribal territories. Mr. Valencia Rodríguez asked about the actual situation of women belonging to ethnic minorities and immigrant and refugee women as regards employment, wages, education and access to health.

3. The expert welcomed the efforts of the Government of Botswana to promote greater participation in the electoral process; nevertheless, he asked the delegation to indicate whether measures had been taken to ensure adequate representation of ethnic minority groups in political bodies such as the National Assembly and the State’s administrative organs.

4. Mr. Valencia Rodríguez noted that Botswana had apparently recently received a huge influx of illegal immigrants who, according to some sources, were deprived of their rights or were taken to the detention centre for illegal immigrants and deported. He would like information on the treatment of detainees at the centre, including the average length of imprisonment, whether detainees were able to contact their consulate or retain counsel and, if necessary, whether they had access to a health centre.

5. Mr. Valencia Rodríguez also asked the delegation to indicate the status of children born in Botswana to non-Batswana parents not residing in the country and children with only one parent holding foreign citizenship.

6. He also asked whether a referral to a civil court was required to obtain reparations when an industrial tribunal (para. 77) found that an act of racial discrimination had been committed.

7. Mr. SKELMANI (Botswana) said that Article 15(4)(d) of the Constitution aimed to protect the customary law of each community or tribe, and therefore their culture. Customary law did not cover discrimination because that issue was within the purview of the Penal Code, which could also be applied by customary courts.

8. On representation in the House of Chiefs (para. 129), he said that under the bill amending articles 77, 78 and 79 of the Constitution, which some held discriminated against “minority” tribes, some members of the House of Chiefs would be elected and others appointed, five of them by the President. That method of representation was the result of a compromise but was still causing debate in the country.

9. Mr. Skelmani said that in Botswana, land rights were not granted to some ethnic groups in preference to others and that any citizen could request title to available land no matter where it was located. The speaker also said that the Central Kalahari Game Reserve (CKGR) had been founded in 1961 and that at that time there were some 3,000 people, mostly Basarwa, living in the area, in small multilingual, multiethnic communities, mainly from hunting and gathering. Over time, however, communities within the reserve had abandoned their traditional lifestyle to settle more or less permanently near water sources. In 1985 the Government had appointed a fact-finding mission to study the situation in the reserve. In 1986, based on its findings, the Government had decided to stop the social and economic development of establishments in the reserve because there was little prospect of economically viable development and because of the obvious conflict between the inhabitants’ lifestyle and wildlife survival, and to identify sites offering viable opportunities for economic and social development outside the reserve. The Government had encouraged people from the reserve to settle voluntarily at those sites.

10. After 10 years of negotiation, the Basarwa of the Central Kalahari Game Reserve had moved voluntarily in 2002 and been duly compensated. Subsequently, some had decided to return to the reserve, contrary to the agreement.

11. With regard to language and education, the Botswana representative said that Setswana and/or English (para. 334) were the languages of instruction in public primary and secondary schools but that the dropout rate could not be attributed exclusively to that teaching mode. Moreover, English was used in the courts, which provided interpretation services.

12. In the case of refugees, Mr. Skelmani indicated that the authorities handled applications for asylum as soon as possible but that in some cases the evidence adduced to justify the applications was hard to verify. He denied the claim that refugees had no right to work, but acknowledged that refugees were not admitted to the antiretroviral treatment programme, the reason being that the treatment was very expensive and had to be continued life-long, whereas there was no knowing whether the refugees would remain in Botswana permanently.

13. Replying to a question from Mr. Avtonomov on the ethnic aspect of the distribution of public revenues, Mr. Skelmani said that the Government collected revenues that were then allocated by Parliament to the appropriate departments and ministries in accordance with national programmes. The ethnic factor was not taken into account in that exercise.

14. On the issue of tribal and political representation in Parliament, the representative of Botswana said that members of Parliament were not elected on the basis of their tribe or ethnicity. The electoral system in Botswana was based on constituencies; there was no proportional or ethnic-based representation.

15. The Office of the Ombudsman had been established to review complaints filed by individuals and corporations against an injustice or maladministration. It was also empowered to examine cases of racial discrimination within the meaning of the Convention.

16. Replying to a question from Mr. Pillai, Mr. Skelmani denied that a court had refused to return Mr. Roy Sesana's passport to prevent him from going to Geneva. Mr. Sesana had been convicted of a crime and had been required to surrender his passport to the court as a surety. Mr. Sesana had asked the court in November 2005 to return the passport so that he could travel to Sweden, where he was to receive an award. The court had granted that request on condition the document was again returned to the court upon Mr. Sesana's return to Botswana. However, he had not again asked the court in question to return his passport so that he could travel to Geneva.

17. As regards the question as to why some people wished to go back and live in the Kalahari Central Game Reserve (KCGR), which they regarded as their ancestral land, Mr. Skelmani indicated that the reserve provided no services comparable to what those people would find in the villages in which they had been resettled. Neither were there any statistics on the exact number of tribes or the population of each. Moreover, some argued that the Constitution, even as amended, did not guarantee equality between the tribes; however, the provisions relating to the House of Chiefs represented a compromise that had been reached after extensive public consultation.

18. Replying to Ms. Dah's questions, Mr. Skelmani said that the exemptions provided in Articles 3 and 15 of the Constitution were intended to protect communities in which the law generally applicable would, if enforced, have a discriminatory effect. However, he did not consider those articles incompatible with the Convention. He explained that the terms "majority" and "minority", as used in the report, simply indicated that the Tswana-speaking population was apparently larger than other any other ethnolinguistic group.

19. The Basarwa were certainly one of the most marginalized populations of Botswana, but they benefited from various programmes. Moreover, the relocation of Basarwa individuals had not been imposed but had been negotiated over 10 years with the population of the reserve; only those who so desired had been resettled.

20. The representative of Botswana said that the disparities between the State party's report and those of the NGOs flowed from the fact that the latter, because they represented special interests, did not address the problems in the same manner as the Government, which must reconcile competing interests while implementing the programme for which it had been elected. He indicated, too, that marital authority had been abolished to ensure equality between husband and wife; that provision, having been adopted by Parliament, took precedence over customary law.

21. In response to several questions from Mr. Kjaerum, Mr. Skelmani said, with respect to hunting licences, that they specified where hunting was allowed and the number and type of species that could be hunted. People who had been resettled received a free licence, but for other wildlife reserves than the Kalahari. In addition, not all refugees were in the centre of Dukwi; some lived or worked in other parts of the country. When a refugee found work, the work permit was applied for by the prospective employer. Persons whose application for refugee status had been

rejected could appeal to the Minister for Presidential Affairs and Public Administration. The Refugee Advisory Council considered all applications on the same footing, regardless of the applicant's country of origin. Finally, there was currently no proposal to create a Human Rights Commission. A number of factors were relevant, such as funding and the relative priority of such an institution.

22. In response to questions from Mr. Tang, Mr. Skelmani said there had been no conflict between statutory law and customary law as the latter applied only under certain conditions, as when a tribe member died intestate; otherwise the common law applied. Decisions of a court of customary law could be appealed to a higher court of customary law or, if there was none, to the court of appeal of customary law, whose decisions were appealable to the High Court in certain limited circumstances. Regarding the case of the racist graffiti referring to the dispute with the Indian community over conflicting commercial interests related to the slaughter of halal chickens, Mr. Skelmani said that the police had closed the investigation because they had been unable to find the culprit.

23. Of the 35 new members of the House of Chiefs, eight were the current leaders of the eight principal tribes, but 20 others would be elected in the regions. It was not anticipated that the leaders would be elected based on tribal affiliation.

24. On the subject of the impact of urbanization on migrants and refugees living in cities, Mr. Skelmani advised Mr. Valencia Rodríguez that migrants, at least those in a regular situation, were often more skilled than the Batswana themselves and were able to integrate without difficulty. Most refugees did not leave the centre of Dukwi, although some did leave to find work elsewhere or succeeded in starting their own business.

25. Tribal affiliation was not considered in the allocation of Crown lands, which were administered by the State. Any Batswana could acquire land in those areas provided it was available. People with the highest incomes were more likely to acquire such land.

26. Mr. ABOUL-NASR was impressed by the replies given, which covered most of the points raised by Committee members. He believed it would have been fairer for the State party and for Committee members if the extensive documentation provided to the committee had been made available well in advance, to allow a thorough review.

27. Regarding the passports of Roy Sesana and Jumanda Gakelebone, Mr. Aboul-Nasr said that international human rights instruments gave every person the right to freely leave and return to his or her country. He asked why the above-mentioned persons had been required to state their destination and return their passports to the court, and why they had been unable to travel to Switzerland for the Committee's consideration of the report of Botswana.

28. Mr. THORNBERRY asked whether the consultations leading up to the relocation of the Basarwa had been subject to the principle of free consent knowingly given, and whether due regard had been had to the contribution the Basarwa could make to management of the reserve in the interests of all Batswana, given their special knowledge of the land. Regarding education, Mr. Thornberry asked whether mother tongue education could be considered for the teaching of minority languages, at least in primary education, balancing the right to cultural identity with the need to assure everyone the means to succeed in society.

29. Mr. PILLAI would like to know whether there was a special category for interpreters in the Botswana public service to help people who did not speak the language of the court, and if so whether the interpreters, like law enforcement personnel, received training to sensitize them to plaintiffs' social and cultural idiosyncrasies.

30. Ms. DAH asked whether, as was often the case in Africa, people generally mentioned their ethnicity, village or region of origin when greeting each other. She asked whether there was an intertribal and intra-tribal hierarchy between chiefs, and especially whether the "paramount chiefs" wielded authority not only over their own tribe but also other tribes. She also wanted to know what the *dikgotla* really were, and specifically whether these structures acted as an assembly or court and whether they covered the whole territory or only certain regions or tribes.

31. Mr. EWOMSAN would be glad to know whether the designation of chiefs met the criteria of the tribes concerned, given that they were appointed by the President.

32. Mr. SICILIANOS asked whether the State party was considering inviting either the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance or the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people to study the situation in the country.

33. Mr. SKELMANI (Botswana) said that the freedom of movement enshrined in the Constitution could be restricted where a judge considered that a suspect must be detained, for example to ensure that the suspect did not leave the country before his or her trial. The suspect could apply for bail or ask to turn over his or her identity documents to the authorities to prove that he or she was not seeking to evade justice. That was indeed what Roy Sesana had done to receive pre-trial release in a criminal case. He was then given back his identity documents so he could travel to Sweden, on the understanding they would again be turned over to the authorities upon his return.

34. Mr. Skelmani indicated that in the case of the Central Kalahari Game Reserve, the Government had convened the tribes concerned in a *kgotla* meeting to outline why it believed they should be moved: essentially because they were endangering wild animals, so that it was becoming urgent to create managed wildlife areas. The natural environment was being harmed by the traditional inhabitants of those lands, the Basarwa. Mr. Skelmani emphasized that all persons concerned had been informed and consulted and that many of them had knowingly consented to the Government's decision, though the consent could not be unanimous.

35. In the field of education, Mr. Skelmani said that there was no longer any political debate over the proposition that primary education should be in the native language of "minority" groups, but that the Government had not yet been able to implement that policy, in part because of the dispersal of the speakers of a given language owing to urbanization.

36. He said that those who spoke neither English nor Setswana were routinely assisted by an interpreter when appearing in court and that interpreters received awareness training on cultural differences, but that there was currently no requirement for lawyers to provide such services to their clients during discussions prior to the hearing.

37. He said that in Setswana, greetings could indicate the greeter's region or tribe of origin, but that not everyone used that form of greeting. Furthermore, due to the reluctance of members of minority groups who feared they would be victims of discrimination, there was no longer any mention of ethnicity or tribal affiliation on official documents, including ID cards; Mr. Skelmani explained, too, that the system providing for a hierarchy between tribal leaders and the role of the "paramount chief", with responsibility for several tribes, was currently the subject of heated debate within society and would need to be reviewed.

38. Mr. Skelmani said that the *dikgotla* were both assemblies and courts: they could, depending on the circumstances, serve as loci for negotiation and consultation on all matters affecting the social organization of the tribe or community, or as fora for dispute resolution for the members of a community. He noted that the tribes came together at *dikgotla* to designate the successor of a deceased chief, under the auspices of the community elders—often the uncles of the late chief. The new chief, once appointed, must be approved by the Government.

39. The representative of Botswana said that illegal immigrants in detention had access to health care and the right to use their embassy's good offices if they so desired. In addition, children born to a Batswana parent and a foreign parent had dual citizenship until the age of majority, at which time it was understood they would opt for one or the other of the two nationalities. However, persons born in Botswana to non-Batswana parents did not receive Botswana citizenship.

40. Mr. Skelmani said that the Permanent Mission of Botswana to the United Nations in New York had indicated that the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous people would be welcome if they wanted to go on a mission to Botswana.

41. Ms. JANUARY-BARDILL welcomed the close and constructive relationship the State party had established with NGOs and was very impressed by the "Vision 2016" plan. She nevertheless wanted to know whether, when the plan was being drafted, the Basarwa had been consulted as to their vision of their future in Botswana. She noted, too, that there had been various collaborative initiatives between countries in the region to create wildlife parks to allow the free movement of animals between countries and whether those countries could, without compromising their sovereignty, cooperate on regional projects to achieve the full development of ethnic groups, especially the Basarwa.

42. Mr. CALI TZAY asked whether the Botswana authorities had recourse to other measures than the confiscation of identity documents to ensure that lawbreakers would remain in the country pending trial. He agreed with Ms. January-Bardill that some states were making greater efforts to protect wildlife in wildlife parks to promote the welfare of their indigenous peoples, who had much to offer in such areas as environment and culture.

43. Mr. SKELMANI (Botswana) said that the "Vision 2016" plan was a kind of social contract whose goal it was to imagine what Botswana's society would be like in 2016, when the country celebrated the fiftieth anniversary of its independence. "Vision 2016" comprised seven objectives that had been defined at the conclusion of a prolonged consultative process, as the Botswana authorities had sought the

views of the entire population, including the Basarwa. All ethnic groups, it appeared, had endorsed the plan's objectives. Obviously, some people probably had a different vision of the country, but as Botswana was a democracy, they had the timely opportunity to put it forward.

44. Mr. Skelmani did not understand how cooperative projects between neighbouring countries for the establishment of wildlife parks could be compared to possible projects relating to ethnic groups. Moreover, groups such as the Basarwa were distributed throughout the country and were not usually on reserves.

45. The Government of Botswana believed that the confiscation of identity documents was the best way for the authorities to ensure that lawbreakers would remain in the country pending trial and not be tempted to travel to nearby countries like Zambia or Namibia. Application of the rule of law required the Government to restrict the free movement of those who did not respect the law.

46. In conclusion, Mr. Skelmani welcomed the extremely useful dialogue that had been instituted between the delegation and the Committee members and had no doubt that the latter's comments and suggestions would enable his country to better fulfil its obligations under the Constitution and make every effort to achieve the ultimate goal of the Botswana authorities, that is, to ensure the happiness of each and every citizen and to build a better future for Botswana.

47. Mr. SICILIANOS (Rapporteur for Botswana) welcomed the fruitful discussions held between the Committee and the delegation of Botswana and the delegation's very frank answers, which had helped clarify a number of points. He noted with satisfaction that, according to the delegation, the Constitution (Amendment) Act of 2004 was not the end of the process; the State party would continue to work on amending the Constitution to better fulfil its obligations under the Convention. He also noted with satisfaction that Botswana had undertaken to review the law on chieftaincy, to introduce the teaching of certain native languages up to the college level, and to welcome special rapporteurs and other special procedures mandate holders to the country under a special procedure so that they could study the situation on the ground.

48. The CHAIRPERSON said that the Committee had concluded its examination of the fifteenth and sixteenth periodic reports of Botswana.

49. *The Botswana delegation withdrew.*

The meeting rose at 12:40 p.m.