



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

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Committee against Torture

**Information received from Botswana on follow-up
to the concluding observations on its initial report***

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* The present document is being issued without formal editing.



Introduction

1. Pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Botswana submitted her maiden Report covering legislative and administrative measures implemented to give effect to this Convention in April 2022. Following the submission of the Initial Report, a constructive dialogue was held with the Committee against Torture from the 20th–21st July 2022 on matters covered in the Report.
2. The Committee subsequently adopted its concluding observations and recommendations for consideration by Botswana, which included a request for Botswana to submit a follow-up report on four (4) recommendations pertaining to the reservation to the Convention; the national human rights institution; the death penalty; and the treatment of refugees, asylum-seekers and migrants. The Committee further requested an implementation plan for some or all of the remaining recommendations, both of which are now being submitted in compliance with recommendation 45.
3. It is worth noting that this Follow-Up Report as well as the Implementation Plan are the product of an Inter-Ministerial consultative process, which included a drafting session held from the 13th–14th June 2023, led and coordinated by the Ministry of Defence and Security. Furthermore, both Reports were considered and approved by the Inter-Ministerial Committee on Conventions, Treaties, Protocols.

Follow-up information relating to paragraph 16 of the concluding observations (CAT/C/BWA/CO/1)

4. Botswana subscribes to the Convention and the definition of torture as per Article 1, in so far as it does not contradict Section 7(2) of the Constitution of Botswana. The prohibition of torture, inhuman or degrading treatment or punishment is enshrined in Section 7 of the Constitution, however, withdrawing the reservation would render the provisions of Section 7(2) of the Constitution contradictory to the Convention, thereby making the Constitutional provision unenforceable.

Follow-up information relating to paragraph 22 of the concluding observations

5. The Paris Principles have been infused into the Ombudsman (Amendment) Act of 2021 (herein referred to as “the Act”), as the human rights mandate extends to both the public and private sectors and all constitutionally entrenched fundamental rights and freedoms. Additionally, the Office of the Ombudsman has the function of advising Government on the ratification and implementation of human rights treaties; assisting Government to monitor, address and report on human rights concerns; and to make recommendations and proposals for amendment and reform of laws, policies and administrative processes to bring them in conformity with the country’s international human rights obligations.
6. The Act does not make provision for the consultation and participation of civil society in the process of appointments of the staff of the Office of the Ombudsman. Section 5(1) of the Act provides that the Ombudsman and the Deputy Ombudsman shall be appointed by the President in consultation with the Leader of the Opposition and the Speaker of the National Assembly, while Section 4(3) of the Act provides that the Office of the Ombudsman shall be a public office and accordingly, staff recruitment, amongst others, shall be governed by the Public Service Act. The Act does not provide for the participation of Civil Society Organisations (CSOs) in appointments, however, Section 10 (3)(f) of the Act does provide for collaboration in the promotion of human rights with CSOs, Non-Governmental Organisations (NGOs), Regional and International Organisations.
7. The Ombudsman is empowered by Section 12(b)(i) of the Act to enter into and inspect any building or premises or any part thereof, and make such inquiries therein or thereon and put such questions to any person employed thereon or who finds himself or herself in or on that building or premises. Furthermore, Section 12(b)(iii) empowers the Ombudsman to request particulars and information from any person which the Ombudsman may deem necessary in connection with any enquiry or investigation.

8. The Office of the Ombudsman currently has offices in four (4) regions of the country with the fifth (5th) regional office planned for in the National Development Plan 12. With regard to capacitation, the recurrent budget of the Office of the Ombudsman has been increased by an additional Eleven Million Three Hundred and Sixty-Six Thousand, Two Hundred and Sixty-Six Pula Fifty-Six Thebe (P11,366,266.56), approximately Eight Hundred and Fifty-Five Thousand, Nine Hundred and Twenty-Eight US Dollars (USD 855,928.00). This represents a twenty-two point fifty five percent (22.55%) increase in the budget to cater the additional positions necessary for operationalising the human rights mandate.

9. The Office of the Ombudsman has plans to seek technical and capacity building support as well as advice from the office of the United Nations High Commissioner for Human Rights; the Commonwealth Forum of National Human Rights Institutions; and the Global Alliance of National Human Rights Institutions. Furthermore, a request for capacity building support has already been submitted to the African Commission on Human and People's Rights in May 2023 through the Ministry of Foreign Affairs. Plans are currently underway to solicit the requisite support from the United Nations High Commissioner for Human Rights Office by October 2023.

Follow-up information relating to paragraph 24 of the concluding observations

10. The Constitution of Botswana, in particular Section 4(2), allows for derogation with respect to the protection of the right to life, which is allowed where the deprivation of life is as a result of the execution of a sentence of a court, in respect of an offence under a law in Botswana of which a person has been convicted. The derogation is also in compliance with Article 6(2) of the Covenant on Civil and Political Rights. With regard to the recommendation to commute all death sentences already handed down, Section 53 of the Constitution provides for the prerogative of mercy such as pardon, respite, substitution with a less severe punishment and remission. In this regard, death sentences can only be commuted through a constitutional process provided for in Section 53. Botswana is therefore currently not in a position to establish a moratorium on the death penalty or commute all death sentences already handed down.

11. Important to note is that rigorous legal processes are followed before a decision to impose the death penalty is taken, therefore, the death penalty is not a mandatory sentence in Botswana. Furthermore, the judiciary imposes the death penalty sparingly, as most cases are coupled with extenuating circumstances, which reduce the moral blameworthiness of the perpetrator. Additionally, the courts consider the personal circumstances of the offender which may lead to the imposition of a lesser sentence.

12. The method of carrying out the death penalty is implemented in accordance with Section 26(1) of the Penal Code.

13. The approach which Botswana has adopted of carrying out death sentences without providing advance notice to the individuals or their families or representatives, is done on public security and public interest considerations. Advance notification was given in some cases in the past, and the practice was discontinued as the outcome was contrary to public security and interest.

14. With regard to the observation on the state does not hand over bodies of those executed to their families, Section 120(4) of the Prisons Act and Regulation 79 of the Prisons Regulations provide the legal basis upon which this practice is maintained.

15. In order to ensure that the dignity of the prisoner is preserved and not undermined, Botswana carries out the death penalty in accordance with set protocols and processes, and with extreme care.

Follow-up information relating to paragraph 38 of the concluding observations

16. Botswana entered reservations to the Convention Relating to the Status of Refugees in line with Section 15(4) (b) of the Constitution which allows for differential treatment of persons who are not citizens of Botswana. These reservations were entered in consideration of, among other things, policies of Government such as reservation of businesses for citizens,

the convenience of providing protection and safety to refugees in one place as well as the economic protection of citizens.

17. Government has since 2021 taken a decision to have all asylum-seekers reside in the Dukwi Refugee Camp in order to prevent their retention for prolonged periods at the Francistown Centre for Illegal Immigrants. With regard to irregular migrants, a multi-dimensional stakeholder committee comprising the Ministry of Labour & Home Affairs; the Ministry of Local Government and Rural Development; the Ministry of Foreign Affairs and the Ministry of Justice was established with the objective of exploring alternatives to detention. The strengthened collaboration between the aforementioned Ministries has notably resulted in the voluntary repatriation of some rejected asylum-seekers as well as irregular migrants. It is further worth noting that this is an ongoing exercise which, among others, includes the identification and verification of the irregular migrants by relevant authorities from their country of origin.

18. Another mitigating factor to prolonged retention which is being implemented, is the provision of a surety where someone who is an irregular migrant can be released to a documented migrant after undertaking a written oath to take responsibility until the former sources funds to travel back to their country.

19. On ensuring appropriate reception conditions, all asylum-seekers now reside in Dukwi Refugee Camp as stated above, where they have access to, and benefit from the same social services as recognised refugees such as health, security, education, food and shelter. In the case of irregular migrants, the Botswana Prison Service undertakes regular maintenance of the Francistown Centre for Illegal Immigrants to ensure that it meets set standards. Furthermore, an Inter-Ministerial Committee comprising the Ministry of State President; the Ministry of Labour & Home Affairs; the Ministry of Local Government and Rural Development; the Ministry of Foreign Affairs; the Ministry of Justice; the Botswana Police Service and the Botswana Prison Service will be established to find a sustainable solution to the prevailing living conditions of irregular migrants.

20. In order to protect unaccompanied and separated children, Government has abolished retaining unaccompanied children at the Francistown Centre for Illegal Immigrants. The children are referred for placement at places of safety, where they access basic needs such as shelter, education, health services and psychosocial support. With regard to unaccompanied asylum-seeking children, they are placed with foster parents/families within their nationalities at the Dukwi Refugee Camp, which allows them to benefit from, among others, common and or familiar language, culture and food. Asylum-seeking children also benefit from the services of a resident social worker, police and health personnel in the Camp. It is the intention of Government to develop a formal referral mechanism for dealing with unaccompanied children.

21. In an endeavour to address the separation of families with children, policy considerations are currently being made for the review of legislation governing the Francistown Centre for Illegal Immigrants. Further to that, Government is constructing houses for the purpose of accommodating families with children at the Centre.

Conclusion

22. The Government of Botswana remains committed to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and will continue to explore further, legislative and administrative measures for the protection and promotion of the rights espoused in this Convention. This will include the monitoring and evaluation of progress made in the implementation of initiatives aimed at addressing the accepted recommendations and observations of the Committee.
