



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

Distr.
GENERAL

CERD/C/61/CO/2
23 August 2002

Original: ENGLISH
UNEDITED VERSION

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Sixty-first session
5-23 August 2002

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the
Elimination of Racial Discrimination

BOTSWANA

1. The Committee considered the sixth to fourteenth periodic reports of Botswana (CERD/C/407/Add.1), which were due from 22 March 1985 to 22 March 2001 respectively, at its 1544th and 1545th meetings, held on 19 and 20 August 2002 (CERD/C/SR.1544 and 1545). At its 1551st meeting (CERD/C/SR.1551), held on 23 August, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the sixth to fourteenth periodic reports of Botswana and the resumption of the dialogue with the Committee after a lapse of eighteen years. The Committee is encouraged by the attendance of a high level delegation, and further expresses its appreciation for the constructive responses it provided.
3. The Committee welcomes the assurances given by the State party that it will ensure the timely submission of all periodic reports to the Committee, and that these reports

will be elaborated in compliance with its reporting guidelines.

A. Positive aspects

4. The Committee notes the progress made by the State party through the considerable investments by the Government in the area of education, health, and other welfare programmes, and the progress achieved generally in the enjoyment of socio-economic rights.
5. The Committee appreciates the statement made during the oral presentation that there would be consultations with civil society organisations in the preparation of future periodic reports of the State party.

C. Concerns and recommendations

6. The Committee notes that the report does not contain adequate information on the practical implementation of the Convention, and does not fully conform with the Committee's reporting guidelines.
7. In the view of the Committee, the Constitution and the laws adopted in Botswana do not seem to fully respond to the requirements of the Convention. It recommends the State party to ensure that the Convention is comprehensively incorporated into domestic law. The Committee also reminds the State party that the adoption of programmes and strategies to ensure the practical implementation of the Convention is necessary.
8. The Committee notes the acknowledgement by the State party of the significant diversity of languages and cultures in Botswana, but regrets the lack of disaggregated data or precise information about the ethnic and linguistic composition of the population. The Committee recommends the State party to submit in its next periodic report such detailed information, in particular on the existence and situation of different ethnic groups, giving due consideration to paragraph 8 of the Committee's reporting guidelines. Specific information on gender-related dimensions of racial discrimination should also be included, as requested in the Committee's General Recommendation XXV.
9. The Committee expresses concern that Sections 3 and 15 of the Constitution do not fully respond to the requirements of article 1 of the Convention. In particular, section 15 permits many derogations from the prohibition of racial discrimination, for instance on the basis of laws, such as the Tribal Territories Act, which were in force before the

coming into operation of the Constitution. The Committee recommends the State party to review these provisions.

10. The Committee is concerned by the discriminatory character of certain domestic laws, such as the Chieftainship Act and the Tribal Territories Act, which only recognise the Tswana-speaking tribes. Other tribes, especially the Basarwa/San peoples, are reported to suffer from cultural, social, economic and political exclusion, do not enjoy group rights to land, and do not participate in the House of Chiefs. Noting that the amendment of sections 77 to 79 of the Constitution is currently in process, the Committee recommends that recognition and representation of all tribes in Botswana be ensured on an equal basis in the Constitution, and that the Chieftainship Act and the Tribal Territories Act be amended accordingly.
11. The Committee is concerned at expressions of prejudice against the Basarwa / San people, including by public officials. It recommends that information be provided in the next periodic report on the practical implementation of article 4 of the Convention, in particular on the number of complaints received and cases prosecuted under the Penal Code or any other law relevant to the issue of racial discrimination, as well as on sentences for those found guilty of acts of racial discrimination and remedies provided to the victims.
12. The Committee notes with concern that, in spite of the significant economic growth achieved in Botswana, 47 % of the population remains below the poverty line, and that no special and concrete measures have been taken to ensure the adequate development and protection of marginalized ethnic groups. The Committee recommends that the State party identify further the specific needs of persons belonging to minorities and indigenous peoples, and adopt special measures to enhance the equal enjoyment of human rights amongst the various sectors of the population.
13. The Committee expresses concern at the ongoing dispossession of Basarwa/San people from their land, and about reports stating that their resettlement outside the Central Kalahari Game Reserve does not respect their political, economic, social and cultural rights. The Committee draws the attention of the State party to its General Recommendation XXIII on Indigenous Peoples, and recommends that no decisions directly relating to the rights and interests of members of indigenous peoples be taken without their informed consent. The Committee recommends that negotiations with the Basarwa/San and non-governmental organizations be resumed on this issue, and that a rights-based approach to development be adopted.

14. The Committee notes that the cultural and linguistic rights of the Basarwa/San are not fully respected, especially in educational curricula and in terms of access to the media. The Committee recommends the State party to fully recognize and respect the culture, history, languages and way of life of its various ethnic groups as an enrichment of the State's cultural identity, and adopt measures to protect and support minority languages, in particular within education.
15. The Committee is concerned that HIV/AIDS affects all population groups in Botswana. It requests that more information be provided on the impact on the various ethnic groups of the national strategies developed in this regard, and that due consideration be given to the specific situation of women.
16. The Committee is concerned at reported cases of intimidation by local police in Gaborone against the Wayeyi people, and recommends that thorough inquiries be conducted into these cases. The Committee recommends that human rights education programmes for law enforcement officers be undertaken, especially in matters relating to the elimination of racial discrimination. It requests that the next periodic report of the State party contain information about the steps taken in this regard.
17. The Committee expresses concern about information relating to the forced repatriation of some Namibian refugees. Taking note of the responses provided by the delegation, the Committee recommends that repatriation be effected only when voluntary, and requests that more information be provided on the situation of refugees in Botswana in the next periodic report.
18. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that the possibility of making such a declaration be considered.
19. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, which were adopted on 15 January 1992 at the Fourteenth Meeting of States parties, and endorsed by the General Assembly in its resolution 47/111.
20. Referring to the difficulties encountered in the preparation of its periodic reports, as mentioned by Botswana, the Committee recommends that the State party avail itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for the elaboration of its next periodic report.

21. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at national level.
22. Appreciating the statement of the State party that it will consult with non governmental organizations in the process of the preparation of its periodic reports, the Committee recommends that these reports be made widely available to the public from the time they are submitted, and that the Convention, as well as the Committee's concluding observations, be widely publicized.
23. The Committee recommends that the State party submit its fifteenth periodic report, jointly with its sixteenth periodic report, due on 22 March 2005, and that it address the points raised in the present observations.
