



General Assembly

Distr.
GENERAL

A/HRC/WG.6/3/BWA/3
15 September 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Working Group on the Universal Periodic Review
Third session
Geneva, 1-15 December 2008

**SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1**

Botswana*

The present report is a summary of four stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The periodicity of the review for the first cycle being four years, the information reflected in this report mainly relates to events that occurred after 1 January 2004.

* The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. Concern has been expressed by the Centre for Human Rights of the University of Pretoria (CHR) regarding the record of Botswana with respect to ratification and reporting on international treaties and conventions and its commitment to incorporate ratified instruments into domestic law. Botswana has not ratified the International Covenant on Social Economic and Cultural Rights.² Customary International law is applicable in so far as it is not inconsistent with any piece of domestic legislation.³

B. Constitutional and legislative framework

2. Botswana does not have a national human rights commission or a comprehensive constitutional framework to promote and protect human rights, particularly for women and children, as also indicated by the CHR.⁴

C. Institutional and human rights infrastructure

N/A.

D. Policy measures

N/A.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

3. As also noted by the CHR, Botswana has not submitted any report to the African Commission on Human and People's Rights, the Committee Against Torture (CAT) nor has it incorporated the Convention on the Rights of Child which it ratified in 1995 into its domestic law.⁵

B. Implementation of international human rights obligations

1. Equality and non discrimination

4. As noted by the CHR, the Constitution of Botswana contains a list of issues (in section 15(4)(c)) which operate as claw-back provisions to the provision (in section 15(1)), which guarantees that no law shall make any provision that is discriminatory either of itself or in its effect. These issues are regarded as matters of personal law and include adoption, marriage, divorce, burial, devolution of property on death. By virtue of that categorisation, the CHR indicated that the Constitution of Botswana offers a strong basis for discrimination and societal abuses against women in Botswana.⁶

2. Right to life, liberty and security of the person

5. Section 7 of the 1966 Constitution guarantees protection from torture, other cruel, inhuman or degrading treatment or punishment but recognises the infliction of lawful punishment, as highlighted by the CHR.⁷ In Botswana, reports on the activities of the security forces in closed institutions remain a great concern. Notably, the paramilitary Special Support

Group of the Botswana Police Service and the Criminal Investigation Department are known for their lack of accountability and use of torture, abuse and threats of suspects. In November 2005, five soldiers and two police special constables were arrested for allegedly forcing several foreign detainees to perform sex acts on one another. In August, two police special constables were charged with beating a foreign prisoner.⁸

6. According to the CHR, the prison system, which had an authorized capacity of 3,910, held 5,969 prisoners, a 12 percent reduction in overcrowding since September 2005. Overcrowding was worst in men's prisons and constituted a serious health threat because of the country's high incidence of HIV/AIDS and tuberculosis. Rape between inmates occurred. Generally, prison conditions remained poor in Botswana.⁹

7. In the penal system, corporal punishment is lawful as a sentence for crime under the Penal Code, the Criminal Procedure and Evidence Act (article 305), the Customary Courts Act, and the Customary Courts Amendment Act, as also indicated by the Global Initiative to End All Corporal Punishment of Children (GIEACPC). The Children's Act (article 20) and the Prisons Act (sections 108 and 109) allow for corporal punishment as a disciplinary measure in penal and other institutions accommodating children in conflict with the law. As of May 2008, a proposed amendment to the Children's Act would prohibit corporal punishment as a sentence of a children's court, but this would not apply to customary courts.¹⁰

8. Corporal punishment is lawful in the home and at school while children have limited protection from violence under the Children's Act (1981) and the Penal Code (1986, amended 2004), as reported by the CHR¹¹ and GIEACPC.¹² There is no defence of "reasonable chastisement" or similar enshrined in existing legislation but draft amendments to the Children Act, presented to Parliament in June 2008, recognise "reasonable" correction of a child by prohibiting only "correction which is unreasonable in kind or in degree" (section 84).¹³ GIEACPC indicated that corporal punishment is lawful in schools under the Education Act (Corporal Punishment) Regulations. The head teacher is authorised to inflict up to five strokes of the cane on a child, but this authority can be delegated to a teacher. Draft amendments to the Children Act confirm the right of teachers to administer "reasonable" correction. According to GIEACPC, in June 2007, the Education Secretary for Ngami region reported a Baseline Study which found that 92 per cent of students had been beaten at school, and this was supported by 67 per cent of parents. In a survey by Ditshwanelo (The Botswana Centre for Human Rights) on corporal punishment in schools, cited by GIEACPC, 90 per cent of respondents said they used corporal punishment on children.¹⁴ The Children's Act (article 20) allows for corporal punishment in children's homes and industrial schools, and draft amendments to the Act confirm the right to administer "reasonable" correction in all alternative care settings.¹⁵

9. Sexual abuse of the girl child by stepfathers and community members is common in Botswana, as noted by the CHR. The causes have been associated with pornography, drug abuse, poor parenting and child neglect.¹⁶ Although Botswana acceded to the Convention on the Rights of the Child on 14 March 1995, this is yet to translate into tangible benefits to children as the treaty has not been incorporated into Botswana law. The CHR noted that it is therefore not surprising that cases of girl child abuse rarely get to the courts.¹⁷

10. As reported by the CHR, although recently the Domestic Violence Bill was passed into law in Botswana, domestic violence remains pronounced. Although the new law does create an offence in respect of domestic violence, it only serves to protect the victims of violence. Prostitution remains illegal and is perceived as a women's offence. Sexual harassment takes

place in the work place and at school and is often unreported let alone being addressed by the law enforcement agents.¹⁸

3. Administration of justice and the rule of law

11. A 2005 report by the Office of the Ombudsman characterized the "delays in the finalization of criminal matters in all courts" as a "serious concern," particularly the delays in processing appeals, as cited by the CHR.¹⁹ CHR also indicated that in another survey conducted during 2005, 31 per cent of respondents cited inefficiencies in the justice system as a reason for the perceived increase in fraud in the country. Although the constitution provides for an independent judiciary, the civil courts remained unable to provide timely, fair trials due to severe staffing shortages and a backlog of pending cases. CHR further noted that trials under the 1986 National Security Act (NSA) could be held in secret. In some cases, tribal judges may issue sentences that include corporal punishment such as lashings on the buttocks as well as capital punishment.²⁰

4. Right to privacy, marriage and family life

12. With respect to the institution of marriage and its implications on women's right to property, as indicated by the CHR, discrimination persists notwithstanding the prospects of the Abolition of Marital Power Act of 2004. A woman married under traditional law known as the 'common property' system is considered as a legal minor and will require her husband's consent to buy or sell property, apply for credit, and enter into legally binding contracts.²¹ The CHR further indicated that polygamy is legal under traditional law with the consent of the first wife, but it is not common.²²

13. As highlighted in a joint submission by the International Lesbian and Gay Association, ILGA-Europe, the Pan African ILGA, LeGaBiBo - Lesbians, Gays, and Bisexuals of Botswana, the International Gay and Lesbian Human Rights Commission and ARC International, as well as by the CHR, Botswana maintains criminal sanctions against consensual same-sex activity.²³ The CHR reported that civil society organisations that advocate for the rights of the GLBT community have been denied legal status because the Republic of Botswana does not recognise homosexuals.²⁴

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

14. The 1966 Constitution of Botswana as amended, provides for freedom of speech and of the press but the commitment of government towards achieving these rights is not impressive, as reported by CHR.²⁵ The 1986 NSA, has been used to restrict reporting on government activities. The NSA prohibits publication of any classified material without authorization and generally, the law does not provide public access to government information.²⁶ According to CHR, the negative consequence of absence of legislation on freedom of information is well pronounced in the documented incidents of grievous threats, harassment and attacks on journalists in retaliation for their reporting. For instance in 2005, immigration legislation was employed by the government to deport two foreign journalists who were critical of state policies in their articles. A foreign academic was also charged under the NSA and deported for criticising democratic practices in Botswana.²⁷

15. The Constitution of Botswana makes no provision for quotas to ensure women's representation in publicly elected bodies at any level, as raised by the CHR.²⁸ Women

accounted for approximately 57 per cent of voters in the October 2004 election, but stood for office much less frequently. There were seven women in the 61-seat parliament, five women in the 20-seat cabinet, three female justices on the 13-seat High Court, and two women in the 15-seat House of Chiefs.²⁹

6. Right to work and to just and favourable conditions of work

16. Workers in Botswana have the right to form and join unions of their choice, as stated by the CHR.³⁰ However, striking workers have on several occasions been at the risk of dismissal. The CHR further indicated that in 2006, two mining companies tried to subvert the Botswana Mine Workers Union (BMWU), by instigating a strike to get workers dismissed, withholding union fees and starting a rival, 'yellow' (company-sponsored) union. In 2005, 461 miners were discharged, including the BMWU Chairman and General Secretary, for taking part in what the government deemed was an illegal 13 day strike held in August - September 2004.³¹ According to the CHR, the teaching profession was not spared from assault against workers. The President of the Botswana Teachers' Union (BTU) and the President of the Southern Africa Teachers' Organisation were "retired" from teaching due to union activities in support for social issues and teachers' welfare. The BTU President was later reinstated, after hundreds of BTU members took to the streets to protest and following intense media coverage.³² The previous BTU President was also dismissed from his post at the Seepapitso secondary school under similar circumstances.³³

17. Although child labour is prohibited and addressed in the Children's Act, child labour is still prevalent in Botswana, as indicated by the CHR.³⁴ As further pointed out by the CHR, the ILO estimated that 13.5 percent of children ages 10 to 14 years in Botswana were working in 2002. The CHR also noted that in a more recent National Labour survey conducted in Botswana in 2005/2006, it was established that 9 per cent of all children between the ages of 7 and 17 were employed. Child labour as practiced in Botswana has been found to include commercial sexual exploitation, using children as instruments in the commission of crimes and exposure to hazardous works.³⁵

7. Right to social security and to an adequate standard of living

18. The CHR reported that there are discriminatory traditional laws which restrict women's property rights and economic opportunities, particularly in the rural areas.³⁶

8. Minorities and indigenous peoples

19. As indicated by the Multicultural Coalition of Botswana (RETENG), Botswana laws permit discrimination on the basis of ethnicity, language and culture.³⁷ There are 45 tribes in Botswana who speak 27 languages (including 8 Tswana tribes).³⁸ The Tswana make 18 per cent of the population, while the non-Tswana make 60 per cent.³⁹ According to RETENG, the laws continue to deny the non-Tswana ethnic groups the following rights: a) the right to recognition as a tribe with a distinct language and culture; b) group rights to land; c) representation in the House of Chiefs (Ntlo ya Dikgosi); d) the right to educate their children in their languages; e) the right to educate their children about their histories, customs, values and culture; f) the right to access information and enjoy their languages and cultures on national radio and television and g) access to certain jobs, especially those related to management of land such as Land Board Secretaries.⁴⁰

20. RETENG further reported that in 1948 and 1999, the Wayeyi went to the High Court and an order to make all ethnic groups equal was issued. After six years of no action, the Wayeyi submitted the case for admissibility to the African Commission on Human and Peoples' rights. According to RETENG, the matter was to be heard in May 2008, however, the government requested that dialogue be carried at the local level with the Wayeyi. The Wayeyi were asked to submit an application to be recognized as a tribe in line with the new Bogosi Act. The application was submitted on 20 June 2008 and they are awaiting the decision.⁴¹ RETENG also reported intimidation of other non-tswana tribes for wishing to designate their chiefs, citing the case of the Batswapong who were in 2003 asked to seek permission from the Bangwato (The Tswana tribe which rules over the Batswapong in the Central District) before they could designate their chief.⁴² RETENG also reported that the Basarwa of the Central Kalahari Game Reserve are struggling for the implementation of the December 2006 ruling to return to their ancestral land. They need water, food, school medical facilities and roads in the CKGR.⁴³

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

N/A.

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

N/A.

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

N/A.

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council)

CHR	The Centre for Human Rights of the University of Pretoria, Pretoria (South Africa)
GIEACPC	Global Initiative to End All Corporal Punishment of Children
ILGA	Joint submission by the International Lesbian and Gay Association, Brussels (Belgium); ILGA-Europe*; Pan African ILGA; LeGaBiBo (Lesbians, Gays, and Bisexuals of Botswana); International Gay and Lesbian Human Rights Commission and ARC International, Brussels ,(Belgium)
RETENG	RETENG: The Multicultural Coalition of Botswana, Gaborone (Botswana)

² The Centre for Human Rights of the University of Pretoria, page 7.

³ The Centre for Human Rights of the University of Pretoria, page 2.

⁴ The Centre for Human Rights of the University of Pretoria, page 7.

⁵ The Centre for Human Rights of the University of Pretoria, page 7.

⁶ The Centre Human Rights of the University of Pretoria, page 4.

⁷ The Centre for Human Rights of the University of Pretoria, page 3.

⁸ The Centre for Human Rights of the University of Pretoria, page 3.

⁹ The Centre for Human Rights of the University of Pretoria, page 3.

¹⁰ The Global Initiative to End All Corporal Punishment of Children Corporal, page 1.

¹¹ The Centre for Human Rights of the University of Pretoria, page 3.

¹² The Global Initiative to End All Corporal Punishment of Children Corporal, page 2.

¹³ The Global Initiative to End All Corporal Punishment of Children Corporal, page 2.

¹⁴ The Global Initiative to End All Corporal Punishment of Children Corporal, page 2.

¹⁵ The Global Initiative to End All Corporal Punishment of Children Corporal, page 2.

¹⁶ The Centre for Human Rights of the University of Pretoria, page 5.

-
- ¹⁷ The Centre for Human Rights of the University of Pretoria, page 5.
- ¹⁸ The Centre for Human Rights of the University of Pretoria, page 4.
- ¹⁹ The Centre for Human Rights of the University of Pretoria, page 3.
- ²⁰ The Centre for Human Rights of the University of Pretoria, pages 3-4.
- ²¹ The Centre for Human Rights of the University of Pretoria, page 4.
- ²² The Centre for Human Rights of the University of Pretoria, page 5.
- ²³ Joint submission by the International Lesbian and Gay Association, ILGA-Europe, the Pan African ILGA, LeGaBiBo - Lesbians, Gays, and Bisexuals of Botswana, the International Gay and Lesbian Human Rights Commission and ARC International, page 1. See also The Centre for Human Rights of the University of Pretoria, pages 6 -7.
- ²⁴ The Centre for Human Rights of the University of Pretoria, pages 6-7.
- ²⁵ The Centre for Human Rights of the University of Pretoria, page 2.
- ²⁶ The Centre for Human Rights of the University of Pretoria, page 2.
- ²⁷ The Centre for Human Rights of the University of Pretoria, page 2.
- ²⁸ The Centre for Human Rights of the University of Pretoria, page 4.
- ²⁹ The Centre for Human Rights of the University of Pretoria, page 4.
- ³⁰ The Centre for Human Rights of the University of Pretoria, page 5.
- ³¹ The Centre for Human Rights of the University of Pretoria, page 6.
- ³² The Centre for Human Rights of the University of Pretoria, page 6.
- ³³ The Centre for Human Rights of the University of Pretoria, page 6.
- ³⁴ The Centre for Human Rights of the University of Pretoria, page 6.
- ³⁵ The Centre for Human Rights of the University of Pretoria, page 6.
- ³⁶ The Centre for Human Rights of the University of Pretoria, page 4.
- ³⁷ The Multicultural Coalition of Botswana, page 2.
- ³⁸ The Multicultural Coalition of Botswana, page 1.
- ³⁹ The Multicultural Coalition of Botswana, page 3.
- ⁴⁰ The Multicultural Coalition of Botswana, page 2.
- ⁴¹ The Multicultural Coalition of Botswana, page 3.
- ⁴² The Multicultural Coalition of Botswana, page 4.
- ⁴³ The Multicultural Coalition of Botswana, page 4.
