

## Concluding Observations and Recommendations on the Initial Periodic Report of the Republic of Botswana (2009)

The concluding observations reprinted here were adopted by the African Commission after consideration of the initial state report submitted by Botswana under article 62 of the African Charter. These concluding observations were adopted in November 2009. Source: Secretariat of the African Commission

### **Part I: Introduction**

1. The Republic of Botswana is a state party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified the Charter on 17 July 1986.
2. The periodic report was the first ever since the Republic of Botswana ratified the African Charter.
3. The present concluding observations follow the presentation and examination of the initial periodic reports of Botswana at the 46th ordinary session of the African Commission. The report covers human rights development in the country since independence (1966).
4. The report was presented to the African Commission by the Minister for Defence, Justice and Security, Honourable Dikgagamatso Seretse. It highlights the developments that have taken place in the areas of human and peoples' rights and measures put in place with a view to implement the country's obligations under the African Charter.
5. The present concluding observations give an account of the constructive and positive aspects, and concerns identified in the report. The comments, remarks and observations during the examination of the report, enhanced the recommendations formulated after the dialogue.

### **Part II: The positive factors**

The African Commission:

6. Welcomes the presentation of the initial periodic report of Botswana in accordance with article 62 of the African Charter and the fact that both the format and presentation of the report are in conformity with the African Commission's Guidelines on state reporting.
7. Appreciates the quality and candidness of the report and the constructive dialogue the Commission had with the delegation of Botswana. The Commission welcomes the positive reactions to the suggestions and recommendations made during the discussion.
8. Welcomes the additional information and answers to the questions provided by the delegation of Botswana during the examination of the report, and further welcomes the undertaking made by the delegation to provide as soon as possible to the African Commission, answers to questions and additional information which were not immediately available, as well as to include such information in its next periodic report to the African Commission.
9. Commends Botswana for the successive and consistent high economic growth rate it has achieved through the years and for becoming one of the few middle income countries in Africa.
10. Welcomes the establishment of the Office of the Ombudsman and also appreciates the work done by it in fighting maladministration and injustice in the public sector.

11. Commends Botswana for having a dynamic and independent judiciary which is playing an important role in the protection of human rights and fundamental freedoms.

12. Notes that since its independence in 1966 the Republic of Botswana had conducted successive elections which have been deemed to be free and fair, making the country a model for a functioning multiparty democracy, whose foundations are based on the promotion and protection of human rights.

13. Particularly congratulates Botswana for conducting peaceful elections in October 2009 which were declared free and fair by national and international observers.

14. Commends Botswana for ratifying major international and regional human rights instruments.

15. Welcomes the establishment of an Inter-Ministerial Committee on Treaties, Conventions and Protocols in 2002 to ensure the existence of laws and effective mechanisms for the enforcement and assertions of human rights.

16. Commends Botswana for making education free up to the tertiary level and for having a special scheme that ensures that children in need attend school.

17. Commends Botswana for its social security programs for older people and World War II veterans.

18. Commends Botswana for amending and enacting the following legislations which contribute to the economic, social and political empowerment of women:

- The amendment of the Deeds Registry Act of 1996 which among others enable women to execute deeds and other required documents and to be registered in the deeds registry without their husbands' consent and allow for immovable property to be transferred or ceded to a woman married in a community of property and allow the woman to have her own separate estate.
- The amendment of the Abolition of Marital Power Act in 2004 which provides for equality between men and women in marriage in community of property.
- The amendment of the Criminal Procedure and Evidence Act to provide for the mandatory hearing of rape and related offences in closed proceedings.
- The amendment of Sections 141 and 142 of the Penal Code which brought about gender neutrality in relation to rape by moving it away from being phallus-specific.
- The amendment of Public Service Act to recognise sexual harassment as misconduct.
- The enactment of the Domestic Violence Act in 2007 which provides for the protection of survivors of domestic violence and for matters related therewith.
- The amendment of the Citizenship Act in 1995 following court ruling in the *Unity Dow* case.

19. Further commends Botswana for acceding to the Convention for the Elimination of All Forms of Discrimination against Women and for ratifying the Optional Protocol to the Convention.

20. Notes the extensive consultations made with the people and various stakeholders that eventually led to the enactment of the Bogosi Act to amend sections 77, 78 and 79 of the Constitution to make them tribally neutral.

21. Appreciates the social safety net programs put in place like the Destitute Program, the Orphan Care Program, the Community Home Based Care Program and Remote Area Development Program for vulnerable members of the society.

22. Commends the efforts made by Botswana to contain the spread of HIV/ AIDS by making Anti-Retroviral Treatment and Prevention of Mother to Child

Transmission Programs widely available for people living with HIV/AIDS and through HIV/AIDS awareness campaigns.

23. Notes and appreciates the National Strategy for Poverty Reduction programme that tries to foster sustainable livelihoods, expand employment opportunities and improve access to social investment.

24. Commends Botswana for the progress made in ensuring the availability, accessibility and affordability of health care programs and facilities to the population.

25. Notes the human rights program introduced by the Botswana Police College.

### **PART III: Areas of concerns**

26. While recognising the efforts of Botswana to promote and protect human rights and to promote awareness of the principles and provisions of the African Charter, the African Commission remains concerned that:

27. Non-governmental organisations working in the field of human rights like the Botswana Centre for Human Rights (Ditshwanelo) did not have an input into the preparation of the report.

28. The report does not address environmental issues and concerns.

29. Nothing has been mentioned in the report about the measures taken by the state as to how it is fulfilling its obligations laid out in articles 27 to 29 of the African Charter.

30. Corporal punishment is still allowed in schools and prisons as one form of punishment. The African Commission regards such forms of punishment as cruel, inhuman and degrading.

31. There is no organ that is mandated to look into human rights violations that are perpetrated by non-state actors.

32. The Constitution does not give recognition to economic, social, cultural and environmental rights.

33. Despite all the efforts that Botswana has made to avail its citizens economic, social and cultural Botswana has not yet ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR).

34. The reservations made by Botswana on CAT and the definition of torture provided under the Constitution of the Republic of Botswana undermine the protection and guarantees that torture, cruel, inhuman and degrading treatment or punishment will not be carried out by law enforcement officials.

35. Botswana still retains the death penalty and that it does not have plans to abolish it soon. The African Commission is especially concerned that the Republic of Botswana is one of the few African Countries that carries out the death penalty regularly.

36. The President has a very vast and unchecked power in expelling non-nationals out of the country and in branding an individual as dangerous to peace and order.

37. The participation of women in parliament and in other organs of the government is very nominal.

38. There is no clear provision that criminalises torture.

39. Female prisoners do not have their own separate prison.

40. Convicted prisoners are only allowed visits by friends and relatives for twenty minutes each month, which in the opinion of the African Commission is insufficient.

41. Free legal assistance by the state is restricted only to persons charged with capital offence.

42. The government is not giving the necessary attention to the rights and concerns of the Basawara people who were evicted from the Central Kalahari Game Reserve.

43. The language requirement for the election of the National Assembly discriminates against the poor/illiterate and minority groups who do not speak English.

44. There is no provision for free legal aid.

44. There is undue delay in the disposal of cases, especially pre-trial detention, leading to a backlog of cases and ultimately overcrowding in prisons and detention centres.

45. There is no legislation that makes basic education compulsory.

46. The fact that minors are required to be accompanied by their parents for HIV testing may be contributing to the spreading of AIDS.

**PART IV: Factor(s) restricting the enjoyment of the rights prescribed by the African Charter**

47. The report acknowledges that resource constraints have largely been responsible for Botswana not being able to meet all of its human rights obligations. It also indicates that the high rate of HIV infection has obliged the government to shift resources to fight the AIDS pandemic.

48. The report further recognises the deep rooted beliefs in otherwise human rights unfriendly practices like corporal punishment and the death penalty.

49. The report also reveals that the official definition of settlements for purposes of planned development in many instances do not match the population and geographical distribution of human settlement.

**PART V: Recommendations to the Government of the Republic of Botswana**

50. The African Commission recommends that the Government of Botswana:

(i) Should ensure that it involves all relevant NGOs in the preparation of its next periodic report, including the Botswana Centre for Human Rights (Ditshwanelo);

(ii) The next periodic report should include environmental issues, and should enumerate how the government is fulfilling its obligations under articles 27 - 29 of the African Charter.

(iii) Should take urgent and concrete measures to abolish laws that allow corporal punishment in schools and prisons.

(iv) Take steps towards establishing a National Human Rights Commission or elevate the Office of the Ombudsman to look into cases of violations of human rights by non-state actors.

(v) Expedite the implementation of the Judicial Case Management System to address the problems of backlog of cases;

(vi) Take the necessary steps to amend the Constitution to incorporate economic, social, cultural and environmental rights.

(vii) Ratify the International Covenant on Economic, Social and Cultural Rights.

(viii) Should undertake to make a declaration accepting the competence of the African Court under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights.

(ix) Should consider withdrawing the reservations made by it on CAT and remove the qualifying provisions in the Constitution on the definition of torture.

(x) Should legislate laws that criminalise torture.

(xi) Take the necessary steps to institute a moratorium on the death penalty and to this effect the Commission recommends that the government of Botswana works closely with the Commission's Working Group on the Death Penalty;

- (xii) Take legislative measures to limit and check the President's powers in expelling non-nationals out of the country and in branding an individual as dangerous to peace and order.
- (xiii) Should put in place mechanisms to encourage and promote women's participation in the social, economic and political affairs of the state.
- (xiv) Make the necessary arrangements to build a separate prison for female prisoners with the necessary facilities.
- (xv) Conduct consultations with all the relevant stakeholders involved in the administration of justice, including families of detainees with a view to increase the frequency and time duration of visit by friends and relatives of convicted prisoners.
- (xvi) Take the necessary legislative measures and material preparations to extend free legal assistance to all crimes where the accused person cannot afford to pay legal representation fees. Such assistance could be means tested.
- (xvii) Should start implementing the 2006 decisions of the High Court in relation with the Basawara people of the Kalahari. In this regard, it should focus on the cultural rights and socio-economic needs of the Basawara people.
- (xviii) Consult and or work closely with the African Commission's 'Working Group on Indigenous Populations/Communities in Africa' in finding practical ways of implementing the decisions of the Court.
- (xix) Should take the necessary steps to amend the provision of the Constitution which makes the English language a requirement for election to the National Assembly.
- (xx) Should promote civil societies and NGOs that provide free legal aid and should also enact laws that regulate legal aid.
- (xxi) Take the necessary measures to legislate laws that ensure basic compulsory education for all.
- (xxii) Look into ways of amending the law that requires minors to be accompanied by their parents for HIV testing.
- (xxiii) Should include standards like the Robben Island Guidelines in the human rights program of the Botswana Police College and the training of prison officers.
- (xxiv) Finally, the African Commission requests that the Republic of Botswana in its next periodic report inform the African Commission of the steps it has taken to address the areas of concern as well as how it has implemented the recommendations in these concluding observations.