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10 March 2005

Excellency,

The Committee wishes to inform you that it considered, at its 66th session in March 2005, the preliminary responses provided by the Republic of Botswana in its letter dated 10 February 2005, regarding the implementation of paragraph 301 of the Committee's previous concluding observations on Botswana, adopted in August 2002 (A/57/18).

The Committee welcomes with appreciation the extensive and substantial information provided by the Republic of Botswana, as requested by the Committee in its letters dated 20 August and 23 September 2004. It appreciates the willingness of the State party to pursue a dialogue with the Committee in a constructive manner.

The Committee notes with a particular interest the useful information provided by the State party on the history of Botswana, and its implications regarding territories, tribes, and representation in the House of Chiefs. While understanding that traditions and customs constitute an important heritage of Botswana, the Committee wishes to stress, however, that the State party should also take into consideration the obligations it has undertaken under the International Convention on the Elimination of all Forms of Racial Discrimination.

H.E. Mr. Charles T. Ntwaagae
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The Committee reiterates its views that the Tribal Territories Act, the Chieftainship Act and Sections 77 to 79 of the Constitution, as currently drafted, have a discriminatory effect, in particular against those ethnic groups which are subordinate to a dominant tribe on a Tribal territory, and are not represented on an equal basis in the House of chiefs. It notes that the High Court of Botswana, in a decision adopted on 23 November 2001, declared that the Chieftainship Act was discriminatory and ordered that its section 2 be amended in order to give equal protection and treatment to all tribes under that Act.

The Committee welcomes efforts made by the State party to ensure better representation in the House of Chiefs, and notes its willingness to enhance territorial representation rather than ethnic representation in this House.

The Committee wishes to stress however that whatever system is chosen, it should not discriminate between groups, and should not lead to a situation where some groups are recognized while others are not, or where the interests of some groups are taken into consideration while interests of other groups are not. In this regard, the Committee wishes to stress that the Convention prohibits direct as well as indirect discrimination, and draws the attention of the State party to its General Recommendation XXIV, according to which criteria for recognition of groups should be consistently applied. It further notes that, according to some information, non-Tswana speaking regions all rejected the proposed Bill.

The State party indicates that it is currently redrafting those aspects of Section 2 of the Chieftainship Act which had been declared discriminatory by the High Court, and that the draft Bill on the House of Chiefs will be amended accordingly. The Committee wishes to be kept closely informed about the ongoing reform process, and requests that copies of the new draft Bills be transmitted to it as soon as they are available. It would also like to receive more detailed information clarifying what the terms “dominant tribe” and “historical agreement of all concerned”, by which a paramount chief rules over all tribal groupings living in Tribal territories, actually mean.

Please allow us, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue renewed with your Government in 2002, and to underline that the Committee’s observations and request for further information is made with a view to ensuring the implementation of the Convention in cooperation with your Government.

Yours sincerely,

Mario Yutzis
Chairman of the Committee for the
Elimination of Racial Discrimination

Morten Kjaerum
Coordinator of the Committee for the
Elimination of Racial Discrimination
on Follow-up