



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS  
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND  
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: ohchr-cat@un.org

REFERENCE: Follow-up/CAT –The Republic of Botswana

19 February 2024

Excellency,

In my capacity as Rapporteur for Follow-up to Concluding Observations of the Committee against Torture, I have the honour to refer to the follow-up to the examination of the initial report of Botswana, in accordance with the Guidelines for follow-up to concluding observations (CAT/C/55/3).

At the end of its 74<sup>th</sup> session, held from 12 to 29 July 2022, the Committee transmitted its concluding observations to your Permanent Mission. The Committee's concluding observations (CAT/C/BWA/CO/1, para. 45) requested the State party to provide within one year further information on the specific areas of concern identified in paragraphs 16, 22, 24 and 38 of the concluding observations.

On behalf of the Committee, allow me to express appreciation for your letter of 28 July 2023 providing your Government's response to the above-mentioned paragraphs (CAT/C/BWA/FCO/1) and to make the following comments:

Reservation to the Convention (para. 16 of the Committee's concluding observations)

The Committee takes note of the information provided by the State party regarding constitutional considerations which the State party has taken into account vis-à-vis the full incorporation of the definition of torture contained in article 1 of the Convention into domestic law, and the reasons advanced by the State party for the maintenance of its reservation to article 1 of the Convention. However, the Committee wishes to remind the State party that, as per its preamble, a core purpose of the Convention is to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. A reservation that consists of a general reference to domestic law without specifying its contents does not clearly define for the Committee, the other Parties to the Convention, or to those entitled to protection under the Convention, the extent to which the reserving State commits itself to fulfill its obligations under the Convention, and its commitment to the Convention's object and purpose. In this connection, the Committee also recalls that under customary international law, as reflected in Article 19 of the Vienna Convention on the Law of Treaties, a reservation that is incompatible with the object and purpose of the Convention is impermissible, and that in any case a reservation does not modify the obligations of a state under customary international law. The Committee also regrets that no information was provided by the State party regarding potential means by which such conflict between the State party's Constitution and its international obligations may be resolved (2/C).

.../...

H.E. Ms. Athaliah Lesiba Molokomme  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of the Republic of Botswana  
to the United Nations Office and other international organizations in Geneva  
Email: [botgen@botswanamission.ch](mailto:botgen@botswanamission.ch)

National human rights institution (para. 22 of the Committee's concluding observations)

The Committee welcomes information provided by the State party with regard to the increase in the budget allotted to the Ombudsman, representing a 22.5% increase in its budget, along with its plans to seek technical and capacity building support from the Office of the United Nations High Commissioner for Human Rights. The Committee also takes note of information provided by the State party which states that the Ombudsman is empowered by law to enter into and inspect any building or premises and make inquiries from persons employed or encountered there, though it regrets the lack of inclusion in legislation of a mandate to conduct visits to places of deprivation of liberty that is explicit. With regard to visits carried out by the Ombudsman to places of deprivation of liberty, the Committee would welcome information regarding the number of visits carried out in recent years, along with the results of such visits.

At the same time, the Committee remains concerned that the amended Ombudsman Act does not sufficiently ensure the participation of civil society in the appointment of the officials of the national human rights institution and does not fully meet the principles relating to the status of national institutions for the promotion and protection of human rights (3/B2).

Death penalty (para. 24 of the Committee's concluding observations)

The Committee notes the information provided by the State party regarding the constitutional process required in order to commute all death sentences handed down. However, the Committee takes note of the fact that the role of the Committee under Article 54 of the State Party's constitution appears to be advisory, that authority to commute death sentences, as specified in articles 53 to 55 of the State party's Constitution, appears to remain within the purview of, and is exercisable, by the President, and that the commutation of all death sentences handed down would not appear to bring the State party into constitutional conflict. The Committee regrets that no information was provided by the State party regarding legislative initiatives to remove the death penalty as a potentially imposable sentence for certain crimes. It is also concerned that the death penalty continues to be a mandatory sentence for certain crimes, underscoring that this falls short of the requirement under international law to allow for individualized consideration of the circumstances surrounding any particular person.

Furthermore, the Committee continues to be urgently concerned about reports that death sentences are carried out without providing advance notice of the date and time of executions either to the individuals on death row or to their families or representatives, that individuals and their families are unable to have a final meeting, and that bodies of those executed are not handed over to their families for burial. In its concluding observations, the Committee unequivocally stated that the manner in which death penalties have been carried out, in and of itself, constitutes cruel, inhuman or degrading treatment. (2/C).

Treatment of refugees, asylum-seekers and migrants (para. 38 of the Committee's concluding observations)

The Committee takes note of the information provided by the State party regarding its decision to halt the detention of asylum-seekers and unaccompanied children in Fairtown Centre for Illegal Immigrants, along with the establishment of a multi-dimensional stakeholder committee with the objective of exploring alternatives to detention. The Committee nevertheless remains concerned by the requirement of the State party's asylum policy, under which all asylum-seekers, including unaccompanied children, are placed within Dukwi Refugee Camp, without first exploring viable alternatives to detention. The Committee reiterates its recommendation that unaccompanied and separated children, and families with children, should not be retained solely as a result of their immigration status (2/B2).

### Implementation plan

Lastly, the Committee regrets that the State party has not provided information about its plans for implementing, within the coming reporting period, the recommendations included in its concluding observations (C).

The Government of Botswana is encouraged to provide additional information, if there is any, which would further contribute to the Committee's analysis of the progress made regarding the specific issues of concern cited above. This additional information may be provided in any subsequent report by the State party pursuant to the Committee's request in its concluding observations on the initial periodic report of Botswana or other future periodic reports.

The Committee looks forward to a continued constructive dialogue with the authorities of Botswana on the implementation of the Convention.

Accept, Excellency, the assurances of my highest consideration.



Bakhtiyar Tuzmukhamedov  
Rapporteur for follow-up to concluding observations Committee  
against Torture