

BOTSWANA

CERD 30th No. 18 (A/10018) (1975)

182. Members of the Committee noted that the initial report of Botswana, though concise, contained information indicating that the reporting State had given effect to some of the provisions of articles 2, 3, 4, 5 and 6 of the Convention. However, the information was not organized in accordance with the guidelines laid down by the Committee at its first session; and the legislative provisions to which the report referred in general terms were neither specifically cited nor textually reproduced. Furthermore, information on the implementation of article 7 of the Convention, as well as the information envisaged in the Committee's general recommendations III (on relations with racist régimes) and IV (on the composition of the population), was lacking.

183. Members of the Committee took note of the statement that "legislation pertaining to the colonial period which had racial overtones has already been either amended, rescinded or nullified" and expressed the hope that future reports would include detailed information illustrating that statement, which was in accord with article 2, paragraph 1 (c), of the Convention. Similarly, with regard to the statement in the report which recited the words of article 6 of the Convention, a desire for more specific information on the relevant machinery and procedures as well as cases brought before the courts and judgements handed down by the courts, if any, was expressed. And, with respect to article 4 of the Convention, members of the Committee expressed the hope that information on specific legislative provisions would be provided; however, it will be recalled that such information had been supplied by the Government of Botswana separately, in response to Committee decision 3 (VII). Some members were of the opinion that section 3 (chap. II) of the Constitution, which laid down the principle of non-discrimination and equality before the law in the enjoyment of certain rights, was not co-extensive in its scope with article 5 of the Convention; other members, however, expressed the view that the list of rights enumerated in article 5 was intended to be illustrative list, not an exclusive or exhaustive one, that it was for each country to decide what fundamental rights and freedoms it was in a position to guarantee to its citizens, and that the Committee was concerned not so much with the nature of the rights proclaimed by States parties as with the application of those rights without discrimination on the basis of race, colour, descent or national or ethnic origin.

184. The representative of Botswana informed the Committee that he would convey the views and request for additional information made during the discussion to his Government, and assured the Committee that the next report of Botswana would follow the guidelines laid down by the Committee and would supply all the information it had requested.

CERD A/33/18 (1978)

148. In the Committee's consideration of Botswana's second periodic report and the introductory statement of the representative of the reporting State, due account was taken of the special geographical situation which made that country "in a way economically a hostage of South Africa", as one Committee member put it.

149. It was noted with regret that the report under consideration did not contain the information the Committee had requested when examining the initial report of Botswana (A/10018, paras. 182 -184); and the requests for the information in question were reaffirmed.

150. Noting that the only new information given in Botswana's second periodic report consisted of the statement that "an average of 15 cases have been prosecuted successfully every year, since 1970", members of the Committee asked for information on these cases and on the outcome of the proceedings. The representative of Botswana, in his reply, stated that the persons who had been prosecuted for racial discrimination were not Botswana nationals, but nationals of the neighbouring countries under racist régimes: "Botswana was regrettably forced to maintain trade relations with South Africa and, inevitably, South African businessmen and others visited the country, bringing their racial prejudices with them".

151. Recalling that the European Convention for the Protection of Human Rights and Fundamental Freedoms had been extended to British colonies, a member of the Committee inquired whether any legislation to implement that Convention had been enacted prior to independence and, if so, whether it had been integrated into post-independence law or had been abrogated.

152. A member of the committee asked for information on the steps that might have been taken to ensure equitable distribution of seats among the representatives of various ethnic groups. The representative of Botswana said that the population of that country was homogeneous, although there were 10 principal tribes with their own local chiefs; and that the attempt made after independence to strike a balance between the new political system and the country's authentic tribal traditions led to the setting up of a House of Chiefs in addition to the National Assembly. Legislation which dealt with traditional customs and practices had to be submitted to the chiefs for their consideration. While some parliamentary seats were reserved for specific groups, elections took place on the basis of universal suffrage, not ethnic origin. In that connection, it was observed by a member of the Committee that it would be helpful to have details of the demographic composition of Botswana in the next report.

153. The representative of Botswana assured the Committee that he would transmit the comments and inquiries made by its members to his Government and would request the inclusion of further information in the third periodic report.

CERD A/39/18 (1984)

103. The third, fourth and fifth periodic reports of Botswana, submitted in one document (CERD/C/105/Add.1), were considered by the Committee after a brief introductory statement made by the representative of the reporting State.

104. The Committee expressed appreciation of the report of Botswana which it considered a valuable effort to maintain and enhance a constructive dialogue between the reporting State and the Committee, despite that country's strategic position in the escalating southern African race conflict.

105. Referring to the demographic composition of the country, some members wished to know how the policy of discouraging ethnocentrism among the different ethnic groups could be reconciled with the establishment of a separate house of chiefs in addition to the National Assembly. Further information was requested on the Government's policy of decreasing heavy reliance on foreigners in the public and mining sectors, the extent to which they were being replaced by trained nationals, and whether any programmes had been instituted under the Southern African Development Co-ordination Conference to decrease Botswana's reliance on foreigners. The Committee requested a list of the relevant laws in addition to those contained in the report. Members inquired whether, upon attaining independence, it had been necessary for Botswana to review any laws and regulations from the colonial period which might have had the effect of creating or perpetuating racial discrimination.

106. As far as article 2 was concerned, the Committee was of the opinion that the report provided ample information concerning implementation of that article. However, it wished to know how the efforts being made to preserve racial harmony affected the traditions of various ethnic groups in the country, what provision was made to preserve their culture, and what were the consequences of fostering the process of nation-building while guaranteeing the identity of ethnic groups. In the field of economic and cultural development, it was asked whether the Basarwa and other people living in remote areas felt disadvantaged in any way, whether they lacked the educational opportunities available to other groups, and whether they received any technical assistance and health care.

107. Referring to the information provided on the implementation of article 4, members felt that, although section 92 (1) of the Botswana Penal Code went a long way towards meeting the requirements of article 4 (a) of the Convention, it did not appear to cover all the acts punishable by law which were enumerated in that article, in particular, assistance to racist activities, including the financing thereof. In the same context, the Committee wished to know whether public authorities or public institutions were prohibited from inciting racial discrimination, as required by article 4 (c) of the Convention, since South Africa would be likely to use local public authorities to incite racial disharmony. The Committee also asked for more specific information regarding the provisions governing the registration of societies, since the information provided on section 7 (2) of the Penal Code was general in nature.

108. With respect to the implementation of article 5, it was noted that public institutions were open to all without discrimination. In this connection it was asked whether there had been certain laws permitting racially exclusive facilities, contrary to article 5 of the Convention and, if so, whether they had been repealed. The Committee also wished to know whether any review had been made of

municipal laws, for experience had shown that international instruments were often difficult to enforce against the background of such laws.

109. With reference to article 6, it was noted that some cases involving interracial friction were remedied by addresses by Cabinet Ministers. It was asked how the people were made aware of their right to seek redress, and whether public awareness of their rights was promoted, for example, by means of radio programmes and other broadcasts, in view of the low literacy rate in Botswana.

110. In replying to questions raised by members of the Committee, the representative of Botswana stated that the Constitution of his country was fairly new and that the Government had not yet identified any outstanding problems requiring new legislation. Regarding the question concerning the house of chiefs he said that it was an advisory body that provided advice to Parliament and that the chiefs played a co-ordinating role between the Government and the tribes. With regard, in particular, the policy of decreasing reliance on foreigners the representative explained that the Government was doing what it could to replace them as more nationals were trained, and that, in connection with the Southern African Development Co-ordination Conference, training was the responsibility of the Swazi Government. At present there were very few foreigners in administrative positions and many in the technical field. Answering the question on the Government's efforts to achieve racial harmony among various ethnic groups, he stated that there had been no upheavals in his country as a result of the attempt to build an interracial society. Botswana was still basically rural: about 80 per cent of its population lived in rural areas, and, since people could live wherever they chose, they could remain with other members of their ethnic group if they so desired. With regard, in particular, to the facilities available to the Basarwa and other people living in remote areas, he pointed out that the Government had been developing a programme for such people for several years which gave them access to clinics, schools and clean drinking water and fulfilled other basic needs, and that no delegation from those people had ever accused the Government of not doing enough for them.

111. In reply to questions concerning measures taken to discourage public institutions from practicing racial discrimination, he stated that, when a society was established, it had to present its constitution to the Register of Societies whose task it was to determine whether any element of the constitution was contrary to racial harmony.

112. As to the question of the right to seek redress, the representative said that legal aid was provided to persons who sought redress through the courts, however, since there were very few lawyers in the country, it was not always possible for everyone to get the assistance they required.

113. Finally, the representative of Botswana assured the Committee that its comments would be taken into account and the questions duly answered in the next report.

CERD A/47/18 (1992)

267. At its 949th and 952nd meetings, and 10 and 12 August 1992 (see CERD/C/SR.949 and 952), the Committee reviewed the implementation of the Convention by Botswana, on the basis of its previous reports (CERD/C/105/Add.1) and their consideration by the Committee (see CERD/C/SR.654). The Committee noted that no report had been received since 1983.

268. Members of the Committee recalled that in the fifth periodic report the Government had provided information on the demographic composition of the country. It was further recalled that subsequent to the consideration of that report the Committee had raised some questions on the conformity of Botswana's legislation with all the provisions of article 4 of the Convention. On the other hand, information contained in the report on the implementation of article 7 of the Convention had been deemed quite satisfactory.

269. Concerning article 2 of the Convention, members of the Committee wished to know whether there were any integrationist, multiracial or non-governmental organizations dealing with racial equality, and whether any specific governmental project was being implemented in favour of the indigenous San population. In that connection, further information was requested on current agricultural schemes and on the Remote Area Development Programme.

270. With regard to article 5 of the Convention, members of the Committee sought clarification on how the various provisions of that article were reflected in Botswana's legislation. They wished to receive information on measures taken to sensitize the police to human rights problems and prevent beatings of detainees. They also requested information on the involvement of people in the modern political system, and on the situation of refugees settled in the Dukwe settlement camps. With regard to economic, social and cultural rights, additional information was requested on measures taken to narrow the gap between urban and rural areas. It was noted that the refusal of the Government to allow for instruction in minority languages in schools appeared to contravene the provisions of article 5 (e) (v) of the Convention. More information was also requested on trade-union rights, which had been reported to be severely limited, as well as the right to strike, and members of the Committee wished to know whether any initiative had been taken with a view to reforming labour laws.

271. In relation to article 6 of the Convention, members of the Committee noted that the availability of redress for racial discrimination in the High Court did not necessarily meet the obligations under the article, as it usually involved expenses. They wished to know whether free legal aid was being contemplated. More information was requested on the incidence of racial discrimination in various sectors of the society and on the frequency with which individuals were able to obtain redress.

272. Concerning article 7, members of the Committee wished to know whether the Botswana Association for Human Rights had obtained official registration. They also asked if steps had been taken to ensure compulsory education.

Concluding observations

273. In concluding the review, the Committee regretted that Botswana had not been able to respond

to its invitation to participate in its meeting and to furnish relevant information. The Committee wished to draw the attention of the State party to the possibility of requesting technical assistance from the Centre for Human Rights in the preparation of its report. The Committee hoped to receive a new report shortly.

274. The Committee invited Botswana to provide an account of integrationist multiracial organizations, how its legislation corresponded with article 5 of the Convention and how easily the general public could utilize their legal remedies.

CERD A/57/18 (2002)

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

A. Introduction

293. The Committee welcomes the sixth to fourteenth periodic reports of Botswana and the resumption of the dialogue with the Committee after a lapse of 18 years. The Committee is encouraged by the attendance of a high-level delegation and expresses its appreciation for the constructive responses it provided.

294. 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 the reporting guidelines.

B. Positive aspects

295. The Committee notes the progress made by the State party through the considerable investments by the Government in the areas of education, health and other welfare programmes, and the progress achieved generally in the enjoyment of socio-economic rights.

296. The Committee appreciates the statement made during the oral presentation that there would be consultations with civil society organizations in the preparation of future periodic reports of the State party.

C. Concerns and recommendations

297. 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.

298. In the view of the Committee, the Constitution and the laws adopted in Botswana do not seem to respond fully to the requirements of the Convention. It recommends that the State party 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.

299. 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 that the State party 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.

300. 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 force of the Constitution. The Committee recommends that the State party review these provisions.

301. The Committee is concerned by the discriminatory character of certain domestic laws, such as the Chieftainship Act and the Tribal Territories Act, which only recognize 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 on an equal basis be ensured in the Constitution, and that the Chieftainship Act and the Tribal Territories Act be amended accordingly.

302. 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.

303. The Committee notes with concern that, in spite of the significant economic growth achieved in Botswana, 47 per cent of the population remain 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 equal enjoyment of human rights among the various sectors of the population.

304. The Committee expresses concern that 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 on this issue be resumed, and that a rights-based approach to development be adopted.

305. 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 that the State party 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.

306. The Committee is concerned that HIV/AIDS affects all population groups in Botswana. It requests more information 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.

307. 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.

308. 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.

309. 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 doing so be considered.

310. 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.

311. With regard to the difficulties encountered in the preparation of its periodic reports mentioned by the State party, the Committee recommends that it 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 its next periodic report.

312. 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 taken to implement the Durban Declaration and Programme of Action at national level.

313. Noting with appreciation the statement by the State party that it will consult with non-governmental organizations in the process of preparing 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.

314. 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.