

BOTSWANA

NGO PROGRESS REPORT
ON THE FOLLOW-UP OF THE CONCLUDING
OBSERVATIONS
(CCPR/C/BWA/CO/1)

DITSHWANELO
The Botswana Centre for Human Rights

With the support of:



BOTSWANA

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Concluding observations selected for the follow-up procedure

Paragraph 12

12. The Committee notes with concern that the precedence of constitutional law over customary law is not always ensured in practice, due especially to the low level of awareness the population has of its rights, such as the entitlement to request a case to be transferred to a constitutional law court and the right to appeal customary courts' decisions before constitutional law courts (arts. 2 and 3).

The State party should increase its efforts to raise awareness of the precedence of constitutional law over customary laws and practices, and of the entitlement to request the transfer of a case to constitutional law courts, and of appeal before such courts.

Comments from NGOs

The situation is still the same. No steps have been taken to raise awareness of the precedence of constitutional law over customary law, and of the entitlement to request the transfer of a case from the customary law courts to constitutional law courts, and of appeal before such courts.

Paragraph 13

13. The Committee regrets the delegation's statements that it remains committed to retain the death penalty. It regrets that it was not provided with data on the number of death sentences handed down per year, and on the number of executions per year. It also regrets that it was not provided with full data regarding which crimes incur the death sentence, whereby it could determine whether these offences are included among the most serious crimes within the meaning of article 6, paragraph 2, of the Covenant. The Committee regrets the lack of information on cases considered by the Advisory Committee on the Prerogative of Mercy, and an explanation as to the low level of commutations of the death penalty. It also notes with concern the practice of the secrecy of execution dates, and the fact that the body of the executed person is not returned to the family for burial. The Committee reiterates its view that mandatory imposition of death penalty for any crime is in violation of article 6, paragraph 2, of the Covenant (art. 6).

The State party should ensure that the death penalty is only imposed for the most serious crimes, and it should move towards abolition of the death penalty in accordance with article 6, paragraph 6, of the Covenant. The State party should provide more detailed information on the number of convictions for murder, the number of and reasons for the courts' findings of mitigating circumstances, the number of death sentences imposed by the courts, and on the number of the persons executed year by year. The State party should ensure that public debate on the death penalty is conducted on the basis of a full presentation of all aspects of the matter, especially the importance of achieving progress in the enjoyment of the right to life and the desirability of eventual ratification of the Second Optional Protocol to the Covenant. It should ensure that families are informed in advance of the date of the execution of their family members, and that the body is returned to the family for private burial.

Comments from NGOs

No steps have been taken towards fulfilling the objectives. In fact, **on the 18th of December 2009, a Zimbabwean national by the name of Gerald Dube was executed.** He was charged with the 2001 murder of his previous employer (also his cousin), her two children and their domestic worker. On the 14th of June

2007 he was sentenced to death and was a death row inmate until the time of his execution.

Following his execution his body was not returned to family, 'he was buried in the vicinity of the Maximum Prisons. Normally that is where death row inmates are buried' - The Department of Prisons and Rehabilitation spokesperson, Senior Superintendent Mr. Wamorena Ramolefe. [1]

On the 15th of October 2009, Dube was one of five death row inmates in Botswana. The others are former Secretary General of the Botswana Congress Party Youth League Modise Mokwadi Fly who has been condemned to death for the murder of his two-year old son Tawana Mosinyi in October 2008, Benson Keganne of Pitsane who was sentenced to death in August last year for the murder of Gloria Mahowe at Maisane farmlands near Molapowabojang on March 10, 2001, and Kgotso Brandon Sampson (a Botswana) and Michael Molefe (a South African) who were condemned to be hanged by Justice Dibotelo in March last year for the murders of Zimbabweans Robert Ncube and Sam Hombarume. [2]

In February 2010, DITSHWANELO attempted to verify the statistics on executions and death row inmates. The authorities responded in writing refusing to reveal this information and indicating that it is classified information.

[1] http://www.gazettebw.com/index.php?option=com_content&view=article&id=4984:first-man-hanged-under-khama&catid=18:headlines&Itemid=2 Article The Botswana Gazette, Khonani Ontebetse, 05, January 2010

[2] <http://allafrica.com/stories/200910161195.html> Mmegi Article, Isaiah Morewagae, 15 October 2009

Paragraph 14

14. The Committee notes with concern the vague and extremely wide reservation which the State party entered in relation to articles 7 and 12 of the Covenant. With regard to the reservation entered into in relation to article 7 of the Covenant, it recalls that reservations offending peremptory norms of international law including the prohibition of torture are incompatible with the objects and purposes of the Covenant (General Comment No. 24, para. 8) (arts. 7 and 12).

The State party should immediately withdraw its reservation to article 7 of the Covenant, and should also withdraw its reservation to article 12.

Comments from NGOs

No steps have been taken to withdraw either reservation.

Paragraph 17

17. The Committee expresses concern at the incidence of prison overcrowding and the large proportion of persons held on remand in prison, and welcomes the State party's statements that it is considering ways in which to address the overcrowding problem. It is also concerned that families have limited access to persons deprived of their liberty (arts. 7, 9 and 10).

The State party should take measures to ensure that persons on remand are not kept in custody for an unreasonable period of time. It should significantly increase its efforts to guarantee the right of detainees to be treated with humanity and dignity, by ensuring that they live in healthy conditions and have adequate access to health care and food, and otherwise ensure that conditions of detention in the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of

Prisoners. It should immediately take action to reduce the prison population. The State party should develop alternative measures to imprisonment, such as community service orders and bail arrangements. The State party should enhance access to prisoners by family members.

Comments from NGOs

Presidential pardons to relieve overcrowding

In November 2008, President Lieutenant General Seretse Khama Ian Khama granted presidential pardons to 1060 prisoners under his prerogative of mercy pursuant to section 53 of the Constitution. According to Government Notice No. 259 of 2008, the President said: "I intend, as a gesture of goodwill and mercy, having taken cognisance of the security interests of the nation, to remit in part, punishments imposed on certain prisoners."

According to the Government Notice, prisoners who were serving life imprisonment and had served 15 years with good conduct as at May 10, 2008, "may be released as at 10 May 10, 2008, as solely determined by the president on a case basis, upon application." Prisoners who were serving extra-mural labour were also released and first offenders serving a determinate term of imprisonment who had already served "half of the total sentence before remission shall be released."

Since the release of these prisoners no other action was taken to reduce prison populations such as finding alternate measures to imprisonment. Nothing else has been done to improve the living conditions of detainees.