

# BOTSWANA

## EXECUTIVE SUMMARY

Botswana has been a multiparty democracy since independence in 1966. Its constitution provides for indirect election of a president and popular election of a National Assembly. In 2009 the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama, who has held the presidency since the resignation of President Festus Mogae in 2008, retained his position. The BDP has held the presidency and a majority of National Assembly seats since independence. Security forces reported to civilian authorities.

The main human rights concerns during the year included violence against women and children, child labor in the form of cattle herding, and discrimination against the San people.

Other human rights problems included overcrowded prison conditions and lengthy delays in the judicial process. Societal problems included trafficking in persons.

The government took steps to prosecute officials who committed abuses, including prosecuting and convicting military officers for murder. Impunity was generally not a problem.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were no reports that the government or its agents committed politically motivated killings. However, unlawful killings by police or other security force members reportedly occurred during the year.

For example, in June police officers shot and killed Jonathan Eliot while attempting to arrest him for smuggling tobacco into the country. The case was under investigation at year's end.

In October police arrested and detained Pulaenele Sekate for various offences. The suspect reportedly committed suicide in custody. The case was under investigation at year's end.

Robbery suspect Olebile Kefhitilwe disappeared while in police custody after being detained by police in September 2010. The investigation continued at year's end. The case of Moitaly Setlampoloka, who died in custody in 2009, was opened as a murder case in 2011 and was before the High Court at year's end.

In 2009 a police officer mistakenly shot and killed Mothusinyana Moag, who fit the description of a man police were chasing. The victim ran from police when confronted and was shot during the chase. The inquest determined the police officer involved was negligent. He was charged with manslaughter, and his case was pending at year's end.

Four government security officers who shot and killed John Kalafatis in 2009 were convicted in June of murder and sentenced to prison. Corporals Dzikamani Mothobi, Goitsewang Sechele, Ronny Matakō, and Boitshoko Maifela appealed, and their cases were pending appeal at year's end. Attorneys for the Kalafitas family alleged he was killed by government agents while he sat in a parked car. The government contended that Kalafitas was a wanted criminal who was killed during a lawful arrest.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices; there were no confirmed reports that security forces abused suspects during the year.

### **Prison and Detention Center Conditions**

Conditions in the country's 22 prisons and two detention centers for irregular immigrants remained poor due to overcrowding. The prison system held approximately 15-20 percent more inmates than its authorized capacity of 4,219. Overcrowding, which was worse in men's prisons, constituted a serious health threat due to the high incidence of HIV/AIDS and tuberculosis. Rape of inmates by inmates occurred. Mistreatment of prisoners is illegal. Unlike during the prior year, there were no reports of abuse by government agents in prison.

There was adequate food, sanitation, ventilation, and lighting in prisons. Prisoners received access to basic medical care, and HIV-positive citizen prisoners received access to antiretroviral drugs if needed. The government allowed access to noncitizen prisoners by international and local nongovernmental organizations (NGOs) but did not provide HIV-positive noncitizen prisoners with antiretroviral drugs.

Mothers were allowed to bring their nursing babies under the age of two with them into the prison system, which lacked maternity facilities. In instances where a child is above two years in age, and no family is available to take care of the child, arrangements are made with NGOs to care for the child until the mother is released. Juveniles occasionally were held with adults but only for a few days while awaiting transport. Pretrial detainees and convicts were held together.

Officers of the courts, including magistrates and judges, regularly conducted visits to prisons to check on prison conditions. Government-appointed welfare and oversight committees also visited prisons during the year. Reports on such visits were not made public.

Prisoners and detainees had access to visitors, including foreign government representatives, and were permitted to observe religious practices. Prison authorities investigated allegations of inhumane conditions, which could be reported directly to authorities or through a prison ombudsman.

The International Committee of the Red Cross (ICRC) visited prison facilities, and Representatives of the Office of the UN High Commissioner for Refugees (UNHCR) visited the Center for Illegal Immigrants in Francistown during the year.

The prison commissioner had the authority to release terminally ill prisoners in the last 12 months of their sentences and to allow citizen prisoners with sentences of 12 months or less to complete their sentences outside the prison by completing an “extramural” work release program at government facilities. Eligible prisoners must have served short-term sentences with at least half of their sentences completed and must not have been previously incarcerated. Prisoners convicted of violent and other serious felonies were ineligible. A total of 170 male and five female prisoners were released during the year to complete their sentences through extramural labor.

Prisons and overnight jails had access to potable water, and prisoners and detainees could register complaints about prison conditions with authorities. Prison record

keeping was mostly by hard copy record, and there was no immediate plan to upgrade to computerized systems.

Conditions for men and women prisoners were comparable.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions.

#### **Role of the Police and Security Apparatus**

The Botswana Police Service (BPS), under the Ministry of Defense, Justice, and Security in the Office of the President, has primary responsibility for internal security. The security forces are accountable to civilian leaders in the ministry. The army is responsible for external security and has some domestic security responsibilities.

During the year 72 BPS officers received human rights training at the International Law Enforcement Academy located in the country.

#### **Arrest Procedures and Treatment While in Detention**

Police officers must produce an arrest warrant issued by a duly authorized magistrate upon the presentation of compelling evidence, except in certain cases, such as when an officer witnesses a crime being committed or discovers that a suspect is in possession of a controlled substance. Directorate on Intelligence and Security (DIS) personnel have the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime. Elements of civil society continued to criticize the DIS, claiming that it was not subject to sufficient independent oversight and posed a potential threat to civil liberties.

Suspects must be informed of their rights upon arrest, including the right to remain silent, and must be charged before a magistrate within 48 hours. Authorities generally respected these rights in practice. Unlike in the past, there were no reports during the year that suspects' right to an attorney had been denied during the first 48 hours after arrest, prior to a suspect being brought before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which he may renew every 14 days. The law provides for a prompt judicial

determination of the legality of a person's detention. However, this determination occasionally was delayed in practice. Authorities generally informed detainees of the reason for their detention, although there were some complaints this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and to hire attorneys of their choice; however, in practice most could not afford legal counsel. In capital cases the government provides counsel or private attorneys provide pro bono services for indigent clients.

Pretrial Detention: Pretrial detainees waited from several weeks to several months between the filing of charges and the start of their trials. As of December 2010, 900 of the 5,063 persons in custody were pretrial detainees. Pretrial detention in murder cases sometimes lasted beyond one year. Such delays were largely due to judicial staffing shortages.

#### **e. Denial of Fair Public Trial**

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. The civil courts remained unable to provide timely trials due to severe staffing shortages and a backlog of pending cases. Trials are open to the public.

In addition to the civil court system, a customary or traditional court system also exists. According to traditional practice, a tribal chief presides over most small villages. Small claims courts were established in 2009 in Gaborone and some surrounding areas; there were some reports of heavy caseloads and new procedures impacting the courts' effectiveness. The courts reduced their backlog of cases during the year, but cases still were delayed for several months.

#### **Trial Procedures**

Defendants enjoy a presumption of innocence. Trials in the civil courts are public, although trials under the National Security Act may be held in secret. There is no jury system. Defendants have the right to be present and consult with an attorney in a timely manner, but the state provides an attorney only in capital cases. Those charged with noncapital crimes are tried without legal representation if they cannot afford an attorney. As a result many defendants were not informed of their procedural rights as they relate to pretrial or trial proceedings. Defendants can question witnesses against them and have access to government-held evidence relevant to their cases. Defendants can present witnesses and evidence on their

own behalf. Defendants have the right to appeal. The constitution states these rights extend to all citizens.

Some NGOs provided limited free legal assistance.

While customary or traditional courts enjoy widespread citizen support and respect, they often did not afford the same due process protections as the formal court system. Defendants can confront, question, and present witnesses in customary court proceedings. They do not have legal counsel, and there are no standardized rules of evidence. Customary trials are open to the public, and defendants can present evidence on their own behalf. Tribal judges, appointed by the tribal leader or elected by the community, determine sentences, which may be appealed through the civil court system. Many judges were poorly trained. The quality of decisions reached in the customary courts varied considerably, and defendants often lacked a presumption of innocence. In some cases tribal judges may issue sentences that include corporal punishment such as lashings on the buttocks.

There is a separate military court system, which does not try civilians. Military courts have separate procedures from civil courts. Defendants in military courts are able to retain private attorneys at their own expense and see evidence that will be used against them.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

In the formal judicial system, there is an independent and impartial judiciary in civil matters, including for human rights cases, which includes a separate industrial court for most labor-related cases. Administrative remedies were not widely available. By mutual agreements of the parties involved, most civil cases were tried in customary courts, which handle land, marital, and property disputes and often do not afford due process.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit arbitrary interference with privacy, family, home, or correspondence, and the government generally respected these prohibitions in

practice. However, the government's continued narrow interpretation of a 2006 High Court ruling resulted in a few hundred indigenous San people being prohibited from living or hunting in their tribal homeland, the Central Kalahari Game Reserve. In 2002 the government forcibly resettled the remaining indigenous San and other minority members living in the Central Kalahari Game Reserve (CKGR) who had not voluntarily left to resettlement sites outside the reserve. Government officials maintained the resettlement program was voluntary and necessary to facilitate the delivery of public services, provide socioeconomic development opportunities to the San, and minimize human impact on wildlife (see section 6, Indigenous People).

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

#### **Status of Freedom of Speech and Press**

The constitution and law provide for freedom of speech and press, and the government generally respected freedom of speech in practice. The Media Institute of Southern Africa (MISA) and other NGOs reported that the government attempted to limit press freedom and continued to dominate domestic broadcasting.

Freedom of Press: In 2008 Parliament passed the Media Practitioners Act, which established a Media Council to register and accredit journalists, promote ethical standards among the media, and receive public complaints. Some NGOs, including MISA, the independent media, and opposition members of parliament (MPs), continued to criticize the law, stating that it restricted press freedom and was passed without debate after consultations between the government and stakeholders collapsed.

The government owned and operated the Botswana Press Agency, which dominated the print media through its free, nationally distributed newspaper, *Daily News*, and it operated two FM radio stations. State-owned media generally featured reporting favorable to the government and were susceptible to political interference. Opposition political parties claimed state media coverage heavily favored the ruling party.

The independent media were active and generally expressed a wide variety of views, which frequently included strong criticism of the government; however, members of the media stated they were sometimes subject to government pressure

to portray the government and the country in a positive light. It was sometimes more difficult for private media organizations than for government-owned ones to obtain access to government-held information.

Radio continued to be the most broadly accessible medium. Government-owned Radio Botswana and Radio Botswana 2 covered most of the country. Privately owned Yarona FM, Gabz FM, and Duma FM cover most of the major towns. They produced news and current affairs programs without government interference. State-owned Botswana Television was the primary source of televised news and current affairs programs. The privately owned Gaborone Broadcasting Corporation broadcast mostly foreign programs. International television channels were available through cable subscription and satellite.

Some members of civil society organizations alleged that the government occasionally censored stories in the government-run media that it deemed undesirable, and government journalists sometimes practiced self-censorship.

### **Internet Freedom**

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the expression of views via the Internet, including by e-mail.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights in practice.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt)

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**



The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

In-country Movement: In January the Court of Appeals awarded the San the right to reopen or drill new boreholes to gain access to water for domestic use. Prior to the ruling, the government had banned the San from accessing wells, which had prevented them from returning home to the CKGR. Following the ruling, the government granted the appropriate permits for workers and machinery to enter the CKGR to drill the borehole. With funding from international advocacy groups and a local diamond mining company, the San were able to access water through a borehole in September.

### **Protection of Refugees**

Access to Asylum: The country's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government's system for granting refugee status was accessible but slow. In practice the government provided protection against the expulsion or return of persons to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 UN refugee convention or the 1967 protocol. During the year fewer than 100 persons were granted refugee status. The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers. During the year, following the UNHCR's revocation of refugee status for 43 people, the government gave notice that it intended to deport those denied refugee status. As of year's end, the refugees had not been deported.

The government held newly arrived refugees and asylum seekers, primarily from Zimbabwe, in the Center for Illegal Immigrants in Francistown, until the Refugee Advisory Committee (RAC), a governmental body whose chairperson is the district commissioner of Francistown, made a status recommendation; the UNHCR was present at RAC meetings in the status of observer and technical advisor. Once persons were granted refugee status, the government transferred them to the Dukwe Refugee Camp until their resettlement or voluntary repatriation. Refugee applicants who were unsuccessful in obtaining asylum were nonetheless allowed to remain at Dukwe if they wished while the government referred their cases to the

UNHCR for possible resettlement. Refugees in Dukwe had access to education and health care.

Although asylum seekers were housed separately from illegal immigrants, the UNHCR criticized the detention of asylum seekers at the Center for Illegal Immigrants on the grounds that asylum seekers should not be held in detention facilities. Conditions at the center generally were adequate, but children in the center did not have sufficient access to education during their detention, which in a few cases lasted many months. In 2009 the government changed its 1997 policy that allowed some registered refugees to obtain special residency permits allowing them to live and work outside the camp for one year with the possibility of renewal. As of December 2010, only 19 of the country's 3,185 registered refugees were living and working outside Dukwe. The government stated that as a general policy all registered refugees must reside in the Dukwe camp, although it may permit residence outside the camp in a few exceptional cases, such as refugees enrolled at a university or with unique skills.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.

#### **Elections and Political Participation**

Recent Elections: In 2009 the ruling BDP won the majority of National Assembly seats in a general election deemed by international and domestic observers to be generally free and fair. President Ian Khama retained the presidency, which he has held since 2008.

Political Parties: At year's end the BDP held 39 seats in parliament, the new Botswana Movement for Democracy (BMD) party led the opposition with six seats, the BNF controlled six seats, the BCP had five seats, and there was one independent. The BMD, which split from the BDP in 2010, had two of its eight MPs return to the BDP in 2011.

The House of Chiefs consists of eight paramount chiefs, five chiefs chosen by the president, and 22 elected chiefs from designated regions. It acts as an advisory upper chamber to the National Assembly on any legislation affecting tribal

organization and property, customary law, and administration of the customary courts. The paramount chiefs are members of the House of Chiefs for life, while the chosen and elected chiefs serve five-year terms since 2009. The first election, based on amendments made to the constitution in 2006, was held the same year. In order to hold concurrent elections with Parliament, another election was held in 2009.

Political parties operated without restriction or outside interference.

Participation of Women and Minorities: There were five women in the 61-seat National Assembly, one of whom was the speaker; four in the 24-member cabinet; and four in the expanded 35-seat House of Chiefs.

While the constitution formally recognizes eight principal ethnic groups of the Tswana nation, amendments to the constitution also allow minority tribes to be represented in the expanded House of Chiefs. Under the law members from all groups enjoy equal rights, and minority tribes have representation that is at least equal to that of the eight principal tribes. There were members of minority tribes in the assembly, the cabinet, and on the High Court.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. There were isolated reports of government corruption during the year. The minister of defense, justice, and security resigned his cabinet position in August 2010 while charges of corruption were investigated. He was exonerated on all charges by the High Court in October 2011 and resumed his duties.

There are no formal financial disclosure laws; however, in 2009 a presidential directive required all cabinet ministers to declare their interests, assets, and liabilities to the president. Critics contended the policy did not go far enough to promote transparency and that financial declarations by senior government officials should be available to the public. In 2010 the Directorate on Corruption and Economic Crime initiated investigations into 38 suspicious transactions.

In April 2010 portions of an anti-money laundering law enacted in March 2009 came into effect. The act created a new Financial Intelligence Agency (FIA), but the agency was still being formed during the year. The minister of finance appointed a permanent director for the FIA in October, and the agency secured

independent office space. At year's end the agency had not hired staff or begun processing suspicious transaction reports.

The law does not provide public access to government information, and the government generally restricted such access. Information that is made public is available for a fee from the Government Printing Office.

During the year police initiated investigations into 15 cases of police corruption; 10 officers were charged, and five officers were dismissed. Police officials acknowledged that corruption was a problem in the lower ranks; some officers took advantage of illegal immigrants and traffic violators. During the year 27 police officers were arrested for criminal offenses. Thirteen cases were before the courts at year's end, two were referred for prosecution, and seven cases remained under investigation.

The security forces reported to civilian authorities, and the government had effective mechanisms to investigate and punish abuse and corruption, including investigation by police and referral to the criminal court system.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to domestic NGO views on most subjects but were considerably less open to the involvement of some international NGOs on the issue of the CKGR relocations. The government interacted with, and provided financial support to, some domestic organizations. Independent local human rights groups included Childline, a child welfare NGO; Emang Basadi, a women's rights group; the Botswana Network on Ethics, Law, and HIV/AIDS; and DITSHWANELO, a human rights organization.

UN and Other International Bodies: The government worked cooperatively with the ICRC and the UN during the year. The government allowed visits from UN representatives and representatives from human rights and humanitarian organizations such as the ICRC.

The UN special rapporteur on indigenous persons visited the country in 2009, and the UN issued a report on his visit in February 2011. The UN noted that although

the government had undertaken many initiatives to address the conditions of disadvantaged and marginalized peoples and to celebrate their cultures, it needed to increase its efforts to tackle the challenges faced by indigenous groups, such as land rights. According to the UN report, “Certain indigenous groups continue to suffer from a lack of secure land tenure, including access to and use of their ancestral lands and resources, in part due to the nonrecognition of these groups’ customary land use practices.”

Government Human Rights Bodies: An autonomous ombudsman handled complaints of administrative wrongdoing in the public sector, and the government generally cooperated with the ombudsman. However, the office suffered from a shortage of staff, and public awareness of the office and its services was low.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit governmental discrimination on the basis of ethnicity, race, nationality, creed, sex, or social status, and the government generally respected these provisions in practice. As long as a government job applicant is able to perform the duties of the position, he or she may not be discriminated against due to disability or language. However, the law does not prohibit discrimination by private persons or entities, and there was societal discrimination against women; persons with disabilities; minority ethnic groups, particularly the San; persons with HIV/AIDS; persons with albinism; and gays and lesbians.

### **Women**

Rape and Domestic Violence: The law prohibits rape but does not recognize spousal rape as a crime, which is difficult to track without reporting. Laws against rape were effectively enforced when victims pressed charges; however, police noted victims often declined to press charges against the perpetrators, and the extent of the problem was likely underreported. In some cases of domestic but nonspousal rape, victims were afraid of losing financial support if perpetrators were found guilty and imprisoned. The number of reported rape cases decreased during the year from 1,332 in 2010 to 1,173 in 2011 between January and September in both years. NGOs continued efforts to improve awareness of the crime. By law the minimum sentence for rape is 10 years in prison, increasing to 15 years with corporal punishment if the offender is HIV-positive, and 20 years with corporal punishment if the offender was aware of having HIV-positive status. Corporal punishment was used more often in the customary than in the formal

courts and typically consisted of strokes to the buttocks with a stick. Rape cases must be tried in formal courts. A person convicted of rape is required to undergo an HIV test before sentencing. The police do not have a specific unit dedicated to rape investigation, but the police have trained crime scene investigators and a forensics unit to respond to cases of rape and domestic violence.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem. Police reported the following statistics for the year related to domestic violence: four cases of incest; 393 of indecent assault on girls, although those sexual assault cases reported were thought to represent only a fraction of the actual number of such incidents; 60 reported cases of passion killings; and 663 of death threats. In 2010 police reported 12,367 cases of common assault and 2,069 cases of assault causing bodily harm. Greater public awareness resulted in increased reporting of domestic violence and sexual assault.

Sexual Harassment: The law prohibits sexual harassment in both the private and public sectors. Sexual harassment committed by a public officer is considered misconduct and punishable by termination, potentially with forfeiture of all retirement benefits; suspension with loss of pay and benefits for up to three months; reduction in rank or pay; deferment or stoppage of a pay raise; or reprimand. Nonetheless sexual harassment continued to be a widespread problem, particularly by men in positions of authority, including teachers, supervisors, and older male relatives.

Reproductive Rights: Couples and individuals have the right, and were able in practice, to decide freely the number, spacing, and timing of their children, and to have the information and means to do so free from discrimination, coercion, and violence. Contraception was widely available. According to the Population Reference Bureau, skilled attendance during childbirth averaged 94 percent across the country, with higher rates in urban areas. Obstetric and postpartum care was generally available, and women had equal access to testing and treatment for sexually transmitted diseases, including HIV/AIDS. A government program, Prevention of Mother-to-Child Transmission of HIV, has effectively curtailed mother-to-child transmission. According to the Ministry of Health, the maternal mortality rate was 193 deaths per 100,000 births, and 90 percent of births were in hospitals.

Discrimination: By law women have the same civil rights as men, but societal discrimination persisted. A number of traditional laws enforced by tribal structures and customary courts restricted women's property rights and economic

opportunities, particularly in rural areas. Marriages can occur under one of three systems, each with its own implications for women's property rights. A woman married under traditional law or in "common property" is held to be a legal minor and required to have her husband's consent to buy or sell property, apply for credit, and enter into legally binding contracts. Under an intermediate system referred to as "in community of property," married women may own real estate in their own names, and the law stipulates that neither spouse can dispose of joint property without the written consent of the other. Women increasingly exercised the right to marriage "out of common property," in which they retained their full legal rights as adults. Polygamy is legal under traditional law with the consent of the first wife, but it was not common.

Skilled urban women had increasing access to entry- and mid-level white-collar jobs. According to a 2007 Grant Thornton International Business Report, 74 percent of businesses employed women in senior management positions, and women occupied 31 percent of such positions. Women occupied many senior-level positions in government bodies, such as speaker of the General Assembly, governor of the Bank of Botswana, attorney general, ministers of trade and industry and in education and skills development, assistant ministers in finance and development planning and in local government, and numerous permanent secretary positions. However, a 2007 UN report found that women's political participation trailed that of men. In 2008 the Botswana Defense Force began to admit women. In 2008 the first class of Botswana female officer candidates completed training in Tanzania. During 2009 women were included as officer candidates in the first such in-country training and continued to be inducted as officer candidates during the year.

The Women's Affairs Department in the Ministry of Labor and Home Affairs has responsibility for promoting and protecting women's rights and welfare. The department provided grants to NGOs working on women's issues. A local NGO reported in 2010 that women were increasingly able to access credit markets and be paid as much as their male counterparts for similar work.

## **Children**

The law provides for the rights and welfare of children, and the government respected these rights in practice.

**Birth Registration:** In general, citizenship is derived from one's parents, although there are very limited circumstances in which citizenship can be derived from birth

within the country's territory. The government generally registers births immediately; however, there were some delays in remote locations. Unregistered children may be denied some government services.

Education: The government continued to allocate the largest portion of its budget to the Ministry of Education. The Ministry of Local Government distributed books, food, and materials for primary education. Education was not compulsory. The government reintroduced school fees in 2006. The fees could be waived for children whose family income fell below a certain amount. The government also provided uniforms, books, and covered some fees for students whose parents were destitute. Students in remote areas received two free meals a day at school. Girls and boys attended school at similar rates.

Child Abuse: Child abuse occurred and was often reported to the police in the case of physical harm to the child. The police referred the children to counseling in the Department of Social Services as well as to local NGOs. Some cases were referred to the attorney general's chambers for prosecution. There were no known cases of physically harmful traditional practices, such as female genital mutilation.

Child Marriage: Child marriage occurred infrequently and was largely limited to certain ethnic groups. Marriages that occur when either party is under the minimum legal age of 18 are not recognized or permitted by the government.

Sexual Exploitation of Children: The Children's Act of 2010 prohibits prostitution and sexual abuse of children. Sex with a child younger than 16 is known as defilement and is prohibited and punishable by a minimum of 10 years' incarceration. Police received reports through the end of September of 393 cases of defilement, 1,173 cases of rape (of both girls and women), 118 cases of indecent assault on females, and four cases of incest. There were defilement investigations and convictions during the year. There were reports of sexual abuse of students by teachers. Children were sometimes sexually abused by extended family members with whom they lived. The law considers incest a punishable act only if it occurs between blood relatives.

Child prostitution and pornography are criminal offenses punishable with five to 15 years in prison. Media and NGO reports claimed that prostituted children had been made available to truck drivers on the main road linking the country with South Africa and that many of the girls and boys were thought to be orphans. This was mainly concentrated along the trucking route in the eastern part of the country.



Displaced Children: In 2005 the UN Children's Fund estimated there were 150,000 orphans in the country, of whom approximately 120,000 had lost one or both parents due to HIV/AIDS. As of December 2010, the government had registered 37,233 children as orphans. The discrepancy between the two estimates was due to the fact the government has a more restrictive definition of when a child is orphaned than the UN. The government requires both parents of a child to have died before considering the child an orphan. Once registered as orphans, the children received clothes, shelter, a monthly food basket worth between 216 pula (approximately \$33) and 350 pula (\$54) depending upon location, and counseling as needed. There were no reports of orphans being abused by the police.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

The Jewish community was estimated to number 70 people. There were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical and mental disabilities in education, employment, access to health care, or the provision of other state services. The government has an effective national policy that provides for integrating the needs of persons with disabilities into all aspects of government policymaking. The government mandates access to public buildings or transportation for persons with disabilities. There was some discrimination against persons with disabilities, and employment opportunities remained limited. The government did not restrict persons with disabilities from voting or participating in civil affairs, and some accommodations were made during elections to allow for persons with disabilities to vote. Although new government buildings were being constructed to assure access by persons with disabilities, older government office buildings remained largely inaccessible. Most new privately owned buildings provide disabled access. There is a Department of Disability Coordination in the Office of the President to assist persons with disabilities.

The Department of Labor is responsible for protecting the rights of persons with disabilities in the labor force and investigating claims of discrimination. Individuals can also bring cases directly to the Industrial Court. The government funded NGOs that provided rehabilitation services and supported small-scale projects for workers with disabilities.

### **Indigenous People**

An estimated 50,000-60,000 people belong to one of the many scattered, diverse tribal groups known as San or Basarwa. The San represented approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the San with respect to employment, housing, health services, and cultural practices; however, the San remained economically and politically marginalized and generally did not have access to their traditional land. The San continued to be geographically isolated, had limited access to education, lacked adequate political representation, and were not fully aware of their civil rights.

While the government respected the December 2006 High Court ruling on a suit filed by 189 San regarding their forced relocation, it continued to interpret the ruling to allow only the 189 actual applicants and their spouses and minor children to return to the CKGR. The court ruled that the applicants were entitled to return to the CKGR without entry permits and to be issued permits to hunt in designated wildlife management areas, which are not located in the CKGR. Many of the San and their supporters continued to object to the government's narrow interpretation of this ruling. Negotiations between San representatives and the government regarding residency and hunting rights stalled after the court ruling provided the right to access water.

During the year there were no government programs directly addressing discrimination against the San. With the exception of the 2006 court ruling, there were no demarcated cultural lands.

A number of NGOs made efforts to promote the rights of the San or to help provide economic opportunities. However, the programs had limited impact. The NGO Survival International, along with other independent organizations, continued to criticize the decision by the government to allow mining exploration in the CKGR. The NGOs argued that diamond exploration in the CKGR would have a significant negative impact on the life and environment of the San.

## **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The country has no law explicitly criminalizing consensual same-sex sexual activity. However, what the law describes as “unnatural acts” are criminalized, and there is widespread belief this is directed toward gay, lesbian, bisexual, and transgender persons. Police did not target same-sex activity, and there were no reports of violence against persons based on their sexual orientation or gender identity during the year.

An independent organization LeGaBiBo (Lesbians, Gays, and Bisexuals of Botswana) attempted to register in 2009 as an NGO to advocate for the rights of gay, lesbian, transgender, and bisexual persons, but the government refused to register it. LeGaBiBo operated under the umbrella of the Botswana Network of Ethics on Law and HIV/AIDS (BONELA), which in February filed a lawsuit challenging the government’s decision not to register LeGaBiBo. In November BONELA withdrew its lawsuit against the government due to technical errors in its founding affidavit.

### **Other Societal Violence or Discrimination**

Discrimination against persons with HIV/AIDS continued to be a problem, including in the workplace. The government funded community organizations that ran antidiscrimination and public awareness programs. The Botswana Network on Ethics, Law, and HIV/AIDS continued to advocate for an HIV employment law to curb discrimination in the workplace.

In contrast to 2010, there were no reports that persons with albinism were subject to societal discrimination.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the rights of workers, except police, military, and prison personnel, to form and join independent unions to bargain collectively, and to strike, provided certain restrictions are observed. Police, military, and prison personnel are represented by employee associations, which serve as a means to communicate collective needs and concerns to their government employer. The

Trade Union and Employers' Organizations (TUEO) law provides for certain restrictions that limit the right to organize. The TUEO law grants certain privileges (such as access to an employer's premises for purposes of recruiting members, holding meetings or representing workers, deduction of trade union dues, recognition of trade union representation with regard to grievances) only to unions representing at least one-third of the employees in an enterprise. Trade unions that fail to meet some of the formal registration requirements are automatically dissolved and banned from carrying out union activities. The TUEO law also authorizes the registrar to inspect accounts, books, and documents of a trade union at "any reasonable time" and provides the minister of defense, justice, and security with the authority to inspect a trade union "whenever he considers it necessary in the public interest."

The law provides for collective bargaining only for unions that have enrolled 25 percent of an organization's labor force. The law also permits an employer or employers' organization to apply to the government to withdraw the recognition granted to a trade union on the grounds the trade union refuses to negotiate in good faith with the employer.

The law severely restricts the right to strike. Strikes are illegal unless arbitration procedures are first exhausted. Sympathy strikes are prohibited. Employees categorized as those in the "essential services" as specified in the Schedule of the Trade Disputes Act, including the Bank of Botswana, railway services, health care, firefighting, military, transport services, telecommunications infrastructure, electricity, water, and sewage are not allowed to strike. In response to the 2011 Public Sector Strike, the minister of labor and home affairs issued a regulation that added teachers, veterinarians, and diamond workers to the list of those providing essential services. The Trade Disputes Act empowers the commissioner and the minister to refer a dispute in essential services to arbitration or to the industrial court for determination. Striking workers participating in an illegal strike may face dismissal.

Civil service disputes were referred to an ombudsman for resolution. Private labor disputes were mediated by labor commissioners and, if not resolved, sent to the Industrial Court. The average time to resolve a labor dispute dropped from 20 months to 11 months by year's end.

While the law allows formally registered unions to conduct their activities without interference, members of nonregistered unions are not protected against antiunion discrimination. The law provides for protection against antiunion discrimination.

Workers may not be fired for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which rarely ordered more than two months' severance pay. The law does not provide for reinstatement of workers, but a judge may order reinstatement if the firing is deemed to be related to union activities. However, the law does not provide adequate protection to public employees' organizations from acts of interference by the public authorities in their establishment or administration.

Workers exercised the right to form and join unions. The government protected the right to conduct union activities in practice. When the unions followed legal requirements of exhausting arbitration and notifying the government of a strike, the government permitted the unions to strike and did not use force on strikers.

In a public sector strike from April 18 to June 10, unions and government claimed the other side had not maintained the terms negotiated for striking by workers in the "essential services." The unions filed a case against the government and the Industrial Court ruled the government was in violation of the Trade Dispute Act by using replacement labor in the first 14 days of a strike. The Directorate of Public Service Management filed a counter court application, and on April 26, the court ruled in favor of the government, ordering all health workers, including workers not in essential services (such as cooks and cleaners) to return to work immediately.

### **b. Prohibition of Forced or Compulsory Labor**

The constitution and law prohibit forced and compulsory labor, including by children; however, there were reports of forced child labor in cattle herding and in domestic servitude.

Some Zimbabwean women employed as domestic workers reported being exploited by employers through inadequate or nonpayment of wages, restriction of movement, and threats of deportation. The government conducted 2,291 labor inspections throughout the year, finding 360 cases of unpaid overtime worked and 265 cases of payment below the minimum wage.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

Children 14 years or older may be employed in light work that is “not harmful to [their] health and development” and is approved by a parent or guardian. The law provides that work shall not exceed six hours per day when a child is not in school, and five hours when a child is in school. The law provides that adopted children may not be exploited for labor and prohibits the exploitation or coercion into prostitution.

The Ministry of Labor and Home Affairs is responsible for enforcing child labor laws and policies in all sectors; however, resources were too limited for effective oversight in remote areas. District and municipal councils have child welfare divisions, which are also responsible for enforcing child labor laws. Other involved government entities included offices with the Ministry of Education and the Ministry of Local Government. Oversight of child labor issues was facilitated through the Advisory Committee on Child Labor, which included representatives of various NGOs, government agencies, workers’ federations, and employers’ organizations and which advised the government on the state of children three to four times throughout the year. The government supported and worked with partners to conduct workshops to raise awareness of child labor. The Department of Labor partnered with the Department of Social Services to advocate against and raise awareness of exploitative child labor.

The law provides that a child should not “move anything so heavy as to be likely to endanger his physical development,” work underground or at night, or engage in anything dangerous or immoral. Despite the laws and policies designed to protect children from exploitation in the workplace, there were reports of child labor, mostly on subsistence-level cattle posts or farms.

Of the children employed, approximately half were below the legal working age of 14. Two-thirds of employed children were working in rural villages, and more than 60 percent worked in the agricultural sector. According to the 2005-06 labor survey, slightly fewer than 38,000 children between the ages of seven and 17 were employed in 2006. Approximately half of those were under 14. More than 60 percent of employed children worked in agriculture, 20 percent in retail trade, and 4 percent in private homes. Children also worked as domestic laborers and in informal bars. Outside of supermarkets they sometimes assisted truck drivers with unloading goods and carried bags for customers. Many orphans also left school to work as caregivers for sick relatives. Most employed children worked up to 28 hours per week.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm).

#### **d. Acceptable Conditions of Work**

The minimum hourly wage for most full-time labor in the private sector was 3.80 pula (\$0.58). Formal sector jobs generally paid well above minimum wage levels. Informal sector employment, particularly in the agricultural and domestic service sectors, where housing and food were provided, frequently paid below the minimum wage. The minimum wage for domestic workers was two pula (\$0.30) per hour, or approximately 16 pula (\$2.40) a day. The minimum for workers in the agricultural sector was 408 pula (\$62) per month; however, the cost of feeding a worker who lived on the employer's premises could be deducted from the wages. A 2003 government household income survey found that 23 percent of people lived on less than a dollar a day. The government defines poverty as a lack of food, shelter, clothing, etc. rather than an absolute income level; the same survey estimated that 30 percent of people lived in poverty. A smaller survey in 2009 estimated that 23 percent were impoverished.

The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consists of representatives of the government, private sector, and Botswana Federation of Trade Unions. The Ministry of Labor and Home Affairs is responsible for enforcing the minimum wage, and each of the country's districts had at least one labor inspector.

The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at time-and-a-half. The law does not specifically outline rest periods or prohibit excessive compulsory overtime. The law prescribes 40-hour workweek for most modern private sector jobs, and a 48-hour workweek for the public sector. The labor law also applies to farm and migrant workers. The Department of Labor had inspectors to oversee and enforce labor regulations. There are limited requirements for occupational safety contained in the Employment Act. The government's ability to enforce its workplace safety legislation remained limited by inadequate staffing and unclear jurisdictions among different ministries.

The law provides that workers who complain about hazardous conditions may not be fired, and authorities in the Ministry of Labor and Home Affairs effectively enforced this right.

The government generally enforced wage, hour, health, and safety requirements, but the number of labor inspectors was insufficient to inspect all workplaces. Foreign migrant workers were vulnerable to exploitative working conditions, mainly in domestic labor. Employers in the formal sector generally provided for worker safety.