

# **BOTSWANA 2014 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Botswana has been a constitutional, multi-party republican democracy since independence in 1966. Its constitution provides for the indirect election of a president and the popular election of a National Assembly. In October 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 former president Festus Mogae in 2008, retained his position. The BDP has held the presidency and a majority of National Assembly seats since independence. Authorities maintained effective control over the security forces.

Principal human rights abuses included violence, particularly sexual violence against women and children; discrimination against the Basarwa people; and child labor in cattle herding, agriculture, and other work.

Other significant human rights problems included occasional excessive use of force and abuse by security personnel, police corruption, government attempts to limit press freedom, and shortcomings in the judicial process, including lengthy delays and failure to inform defendants of their pretrial rights. Societal problems included trafficking in persons and discrimination against women and children, persons with disabilities, persons with HIV/AIDS, and lesbian, gay, bisexual, and transgender (LGBT) 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 the government or its agents committed arbitrary or unlawful killings. In June, however, a wildlife officer shot and killed a Zambian citizen suspected of wildlife poaching in Chobe National Park, highlighting the government's increased effort to combat poaching with deadly force.

#### **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, but there were reports that government officials employed them.

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

Prison and detention center conditions generally met international standards and continued to improve with further reduction of inmate overcrowding. The inmate population declined to below authorized capacity in the country's 22 prisons, as well as in the one detention center for irregular immigrants.

Physical Conditions: The average monthly population of inmates from January through November was 3,853; total prison capacity was 4,337. There were 227 juvenile prisoners, including 223 male and four female inmates. Authorities held pretrial detainees and convicted prisoners separately. They also occasionally held juveniles with adults, although only for a few days while awaiting transport. Authorities allowed mothers to bring their nursing babies under age two with them into the prisons, some of which lacked maternity facilities. In instances where a child was above two years in age, and if no family was available to take care of the child, nongovernmental organizations (NGOs) cared for the child until release of the mother.

There were 16 deaths in prisons and pretrial detention centers during the year. Prisons and overnight jails provided drinking water. There was adequate food, sanitation, ventilation, and lighting in prisons. Prisoners received access to basic medical care. The government provided voluntary, free HIV testing and peer counseling through infectious disease control centers located within prison precincts for both citizen and noncitizen prisoners. Through December 1,648 inmates underwent voluntary HIV testing, including 588 citizen-prisoners and the remaining noncitizens. HIV-positive citizen-prisoners received free antiretroviral (ARV) drugs and blood counts, specimen collection, and viral load monitoring. In August the High Court ruled that noncitizens must be included in the same free ARV program. In addition a program of voluntary, safe male circumcision and prevention of mother-to-child transmission of HIV to reduce the spread of new

HIV/AIDS infections was available to all prisoners. Through December 1, 126 male citizen inmates underwent circumcision.

Administration: Prison recordkeeping was adequate but utilized mostly paper records, and there was no plan to upgrade to computerized systems. 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. Through December 1, authorities released 110 prisoners to complete their sentences through extramural labor.

Prisoners and detainees had access to visitors, including foreign government representatives, and authorities permitted religious observance. Inmates could file uncensored complaints directly to judicial authorities or through a prisoner ombudsman. Authorities investigated allegations brought by inmates against prison officials and took disciplinary or judicial action against persons responsible for abuses. Officers of the courts, including magistrates and judges, regularly conducted visits to prisons to examine prison conditions. Although the law requires visits to prisons on a quarterly basis, government-appointed welfare and oversight committees did not visit prisons during the year.

Independent Monitoring: The government allowed access to citizen and noncitizen prisoners by international and local NGOs and permitted independent human rights observers to visit prisons. The International Committee of the Red Cross visited prison facilities, and representatives of the Office of the UN High Commissioner for Refugees (UNHCR) visited the Center for Illegal Immigrants in Francistown.

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

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

Arbitrary Arrest: In 2013 the Directorate for Intelligence and Security (DIS) detained a citizen overnight based on an overheard political comment a DIS agent interpreted as a threat to the president. Authorities released him the following day,

but he filed a lawsuit against the DIS. In August the Botswana High Court awarded him 2.9 million pula (\$306,878).

According to Namibian online media sources, in July the BDF arbitrarily detained 70 Namibian citizens on an island on the border between Namibia and Botswana. The BDF allegedly held the group for four days without explanation before deporting them to Namibia.

### **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 army, which reports to the president through the minister of defense, justice, and security, is responsible for external security and has some domestic security responsibilities. The DIS is under the Office of the President. It collects and evaluates external and internal intelligence, provides personal protection to high-level government officials, and advises the presidency and government on matters of national security. Civilian authorities maintained effective control over the BPS, army, and the DIS, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving security forces.

During the year 18 BPS officers received human rights training at the International Law Enforcement Academy located in the country.

### **Arrest Procedures and Treatment of Detainees**

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 a suspect is in possession of a controlled substance. 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 it did not receive sufficient independent oversight and posed a potential threat to civil liberties.

The law requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and to file charges before a magistrate within 48 hours. Authorities generally respected these rights. There were no reports of denial of a suspect's right to an attorney during the first 48 hours after arrest and

arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. Heavy court caseloads occasionally delayed this determination. 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 hire attorneys of their choice but most could not afford legal counsel. In capital cases the government provides legal counsel or private attorneys work pro bono for indigent clients. Courts tried those charged with noncapital crimes without legal representation if they could not afford an attorney. There were no reports authorities held suspects incommunicado or under house arrest.

Pretrial Detention: A writ of pretrial detention is for 14 days and is renewable every 14 days. Some detainees waited from several weeks to several months between the filing of charges and the start of their trials. The total number of pretrial detainees as of December 1 was 818. In August the Francistown High Court awarded Teseletso Modumo 200,000 pula (\$21,164) after he was held in pretrial detention for 16 months. Pretrial detention in murder, rape, livestock theft, and robbery cases sometimes lasted beyond one year, but there were no reports of instances in which the length of detention equaled or exceeded the sentences. 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. The civil courts remained unable to provide timely trials due to severe staffing shortages and a backlog of pending cases.

#### **Trial Procedures**

The constitution and law provide for the right to a fair trial, and an independent judiciary generally enforced this right. Defendants enjoy a presumption of innocence, and authorities generally informed them promptly and in detail of the charge against them. Trials in the civil courts are public, although trials under the National Security Act may be 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. As a result, many defendants were not

aware of their procedural rights as they relate to pretrial or trial proceedings. Defendants may question witnesses against them and have access to government-held evidence relevant to their cases. Defendants may present witnesses and evidence on their own behalf. Defendants have the right to adequate time and facilities to prepare their defense and to appeal. Defendants are not compelled to testify or confess guilt. The constitution states these rights extend to all citizens. Some NGOs provided limited, free legal assistance.

While customary or traditional courts enjoyed widespread citizen support and respect, they often did not afford the same due-process protections as the formal court system. Although defendants may 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 may present evidence on their own behalf. Tribal judges, appointed by the tribal leader or elected by the community, determine sentences. Many tribal judges were poorly trained. The quality of decisions reached in the customary courts varied considerably, and defendants often lacked a presumption of innocence. Tribal judges applied corporal punishment, such as lashings on the buttocks, more often than did civil courts. Those convicted in customary courts may file appeals through the civil court system.

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 Francistown, Gaborone, and some surrounding areas, but there were reports of heavy caseloads and new procedures limiting the courts' effectiveness. Many cases remained delayed for several months, and the National Legal Association criticized judges who did not deliver rulings in a timely manner.

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 to 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 agreement of the parties involved, customary courts, which handle land, marital, and property disputes, tried most civil cases; they often did not afford due process.

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

The constitution and law prohibit such actions, and there were no reports the government failed to respect these prohibitions. The government's continued narrow interpretation of a 2006 High Court ruling, however, resulted in a few hundred indigenous Basarwa people (also called the San) being prohibited from living or hunting in their tribal homeland, the Central Kalahari Game Reserve (CKGR). Although authorities permitted some of the original residents to return to the CKGR, their children and other relatives were required to have permits to come and go from the CKGR. Government officials maintained the resettlement program was voluntary and necessary to facilitate the delivery of public services, provide socioeconomic development opportunities to the Basarwa, and minimize human impact on wildlife. In 2012 the Basarwa appealed to the UN Permanent Forum on Indigenous Issues, asking the United Nations to force the government to recognize their land and resource rights. The forum approved a set of nine draft recommendations addressing the impact of land seizures and disenfranchisement of indigenous people. In 2013 attorneys for the Basarwa filed a High Court case in which the original complainants from the 2006 CKGR case appealed to the government for unrestricted access to the CKGR for their children and relatives (i.e., without permits). The case continued at year's end.

In 2013 the government conducted a series of relocations from the Ranyane settlement; however, members of the Basarwa community filed an injunction, and in June 2013 the High Court issued a restraining order prohibiting the government from relocating residents from the Ranyane settlement. There were no relocations connected to the Ranyane settlement during the year.

The government denied allegations the 2013 relocations were forced, claiming many Ranyane residents expressed a desire for relocation assistance so they would have better access to government schools, medical facilities, and other accommodations not available at Ranyane.

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

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

The constitution and law provide for freedom of speech and press, and the government generally respected freedom of speech.

Freedom of Speech: The law restricts the speech of some government officials and fines persons found guilty of insulting public officials or national symbols. The law states, “Any person in a public place or at a public gathering (who) uses abusive, obscene, or insulting language in relation to the President, any other member of the National Assembly, or any public officer” is guilty of an offense and may be fined up to 400 pula (\$42).” The penal code also states that any person who insults the country’s coat of arms, flag, presidential standard, or national anthem is guilty of an offense and may be fined up to 500 pula (\$53).

Press Freedoms: The Media Institute of Southern Africa (MISA) and other NGOs reported the government attempted to limit press freedom and continued to dominate domestic broadcasting.

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, continued to criticize the law, stating it restricted press freedom and was passed without debate after the collapse of consultations between the government and stakeholders. Officials had not implemented the act by year’s end.

The government owned and operated the Botswana Press Agency, which dominated the print media through its free, nationally distributed newspaper, *Daily News*, and two state-operated 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 complained they were sometimes subject to government pressure to portray the government and the country in a positive light. Private media organizations had more difficulty obtaining access to government-held information than government-owned media.

Censorship or Content Restrictions: Some members of civil society organizations alleged the government occasionally censored stories in the government-run media it deemed undesirable. Government journalists sometimes practiced self-censorship.

Libel Laws/National Security: In September police arrested *Sunday Standard* editor Outsa Mokone and charged him with sedition for articles about an automobile accident allegedly involving President Ian Khama. Observers noted the use of the penal code's sedition clause for a newspaper article was unprecedented and further noted the *Sunday Standard* had recently published several articles exposing corruption allegations within the DIS. The case continued at year's end.

### **Internet Freedom**

The government did not restrict access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, in 2013 approximately 15 percent of individuals used the internet.

In July parliament passed the Electronic Records (Evidence) Bill, allowing the admissibility of documents produced by electronic record systems in court cases. Critics of the bill said it would act as a de facto check on internet freedom by allowing posts on social media sites to be used as evidence.

### **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 the freedoms of assembly and association, and the government generally respected these rights.

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

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

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

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

In-country Movement: In 2011 the Court of Appeals awarded the Basarwa the right to reopen or drill new boreholes to gain access to water for domestic use. Prior to the ruling, the government banned the Basarwa from accessing wells, which 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 boreholes. With funding from international advocacy groups and a local diamond mining company, the Basarwa were able to access water.

#### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The system for granting refugee status was accessible but slow. 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 cooperated with the UNHCR and other humanitarian organizations in assisting more than 3,500 refugees, asylum seekers, and others of concern, including former Angolan refugees. During the year authorities granted refugee status to 10 persons. The government held newly arrived refugees and asylum seekers, except for children joining refugee parents, in the Center for Illegal Immigrants in Francistown until the Refugee Advisory Committee, a governmental body whose chairperson is the district commissioner of Francistown, made a status recommendation. UNHCR representatives participated in advisory committee meetings as observers and technical advisers. Persons who received refugee status were transferred to the Dukwe Refugee Camp. Authorities allowed refugee applicants who were unsuccessful in obtaining asylum to remain at Dukwe if they wished, pending deportation or voluntary repatriation.

Refugee Abuse: In January the *Botswana Guardian* newspaper published allegations that security forces routinely physically and sexually abused refugees in Dukwe. The government denied the allegations.

Employment: As of September almost all of the country's 2,810 registered refugees and 294 registered asylum seekers were living and working in and around Dukwe. Additionally, 428 former Angolan refugees--whose refugee status ceased following the government's 2012 declaration of the cessation clause--were awaiting voluntary repatriation at Dukwe. As a general policy, all registered refugees must reside in Dukwe, although the government may permit residence outside the camp in exceptional cases, such as for refugees enrolled at a university, in need of specialized medical care, or with unique skills.

Access to Basic Services: Refugees in Dukwe had access to education and health care but were unable to access government programs for HIV/AIDS medication; however, the government allowed an international donor-funded parallel program to provide such medication. The UNHCR facilitated refugee and asylum seekers' exit permit applications for medical referrals as necessary. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

Although authorities did not house asylum seekers with irregular migrants, the UNHCR expressed concern about the detention of asylum seekers at the Center for Illegal Immigrants because it claimed international law does not permit asylum seekers to be held in detention facilities. Detention periods were generally short, but in some cases they lasted several months and differed depending on a detainee's nationality. The UNHCR publicly advocated for a change in the policy, and the government agreed to construct a separate reception center for asylum seekers.

Durable Solutions: In 2012 the UNHCR announced a voluntary repatriation program for an estimated 1,000 Namibian refugees to their native Caprivi Strip. During the year, 14 Namibian refugees returned to Namibia voluntarily.

In 2012 the government, following UNHCR policy guidance, announced the cessation of refugee status for Angolan refugees in the country and stated that it would work with the UNHCR to repatriate voluntarily all Angolans by the end of October 2013. The government issued a notice stating that any Angolan not accepting voluntarily repatriation would be considered an illegal immigrant after November 2013. An estimated 50 Angolans remained behind and were still in the country at year's end.

Temporary Protection: Since 2012 the government has provided temporary protection at Dukwe to 57 individuals who may not qualify as refugees under the 1951 UN Refugee Convention or the 1967 Protocol. The UNHCR provided food and other provisions to individuals under temporary protection.

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

The constitution and law provide citizens the ability to change their government through free and fair elections, which they exercised through elections based on universal suffrage.

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

Recent Elections: In October the ruling BDP won a 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.

Participation of Women and Minorities: There were six women in the 61-seat National Assembly, one of whom was the speaker and four of whom served in the 24-member cabinet. There was one female opposition member of parliament. There were also three women in the expanded 35-seat House of Chiefs.

While the constitution formally recognizes eight principal tribes of the Tswana nation, amendments to the constitution also allow minority tribes to be represented in the expanded House of Chiefs. The law provides that members from all groups enjoy equal rights, and minority tribes have representation that is at least equal to that of the eight principal tribes.

### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, and the government generally sought to implement these laws effectively. Officials tasked with enforcement lacked adequate training and resources. There were isolated reports of government corruption during the year.

Corruption: Police officials acknowledged corruption was a problem in the lower ranks, and some officers took advantage of irregular immigrants and traffic violators by exacting bribes. In 2012 police initiated investigations for corruption

against four police officers, and 31 officers were dismissed for failure to adhere to the code of conduct.

The Parliamentary Committee on Statutory Bodies is responsible for the oversight of state-owned enterprises and all government bodies. In previous years the committee was active and released several reports relating to alleged mismanagement in certain state-owned enterprises, but it did not do so during the year.

The law requires the Auditor General's Office to submit an annual government audit report, and it did so in a timely manner. A law enacted in 2012 brought the Auditor General's Office under the Office of the President and made the auditor general's position a presidentially appointed one.

The Directorate on Corruption and Economic Crime (DCEC) and the Financial Intelligence Agency (FIA) are responsible for combating corruption. The DCEC is an autonomous law enforcement agency established by law to combat corruption through investigation, prevention, and education. Following investigation, it submits its findings to the Directorate of Public Prosecutions (DPP). Media and civil society observers viewed the DCEC and the DPP as insufficiently resourced to combat high-level or sophisticated corruption schemes.

Through September the DCEC received 937 reports of fraud, corruption, economic crime, and money laundering. Of these, 304 cases fell under the Corruption and Economic Crime Act, while the rest fell outside the DCEC's mandate. There were 1,480 active investigations, including carryovers from previous years. The most common types of allegations were illegal land acquisition, abuse of office, bribery, conflicts of interest, and illegal acquisition of documents such as work and residence permits, visas, and driver's licenses.

In July several newspapers published information leaked from a DCEC investigation of DIS Director Isaac Kgosi. The documents allegedly demonstrated substantive links to corruption and money laundering. At year's end Kgosi retained his position, and the DCEC had not initiated any actions against him. Local newspapers continued to publish reports on Kgosi's finances.

The FIA is not an investigative organ and has no police powers. The FIA is to collect, analyze, interpret, and disseminate financial information to identify potential domestic and international criminal activity, including money laundering and terrorist financing. The minister of finance and development planning

appoints the director of the FIA, but the organization was not fully staffed or operational by year's end. In 2013 the Eastern and Southern Africa Anti-Money Laundering Group cited the country as not being in full compliance with Financial Action Task Force standards, in part because of the minister's failure to issue regulations that would allow the FIA to become fully operational.

In July parliament passed an asset forfeiture law, the Proceeds and Instruments of Crime Act. The act provides a mechanism to seize property associated or purchased with laundered or otherwise illicit funding. The act was awaiting presidential assent and did not have implementing regulations as of September.

Financial Disclosure: 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 this policy did not go far enough to promote transparency and financial declarations by senior government officials should be available to the public.

Public Access to Information: The law does not provide public access to government information, and the government generally restricted such access. The Government Printing Office releases information made available to the public for a fee. In 2012 the National Assembly rejected an opposition Freedom of Information bill. In February the minister of presidential affairs and public administration promised in parliament that a Freedom of Information bill would be tabled, but no subsequent action was taken.

## **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. The government interacted with and provided financial support to some domestic organizations.

Government Human Rights Bodies: An autonomous ombudsman handled complaints of maladministration and human rights abuses in the public sector, and the government generally cooperated with the ombudsman. The Office of the Ombudsman had inadequate staff, and some criticized its effectiveness. Public awareness of the office and its services was low. It reported 18 cases of alleged police torture between 2006 and 2013, and referred two cases to the DPP for

prosecution. The ombudsman determined there was insufficient evidence to justify referring the 16 remaining cases for prosecution.

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

The constitution and law prohibit governmental discrimination based on ethnicity, race, nationality, creed, sex, or social status, and the government generally respected these provisions. The law does not specifically mention sexual orientation or gender identity, although same-sex sexual activity remains illegal under the penal code. Sexual orientation is protected from discrimination under the employment act. In addition, 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. The law does not prohibit discrimination by private persons or entities, however, and there was societal discrimination against women; persons with disabilities; minority ethnic groups, particularly the San; LGBT persons; and persons with HIV/AIDS.

### **Women**

Rape and Domestic Violence: The law criminalizes rape but does not recognize spousal rape as a crime. Authorities effectively enforced laws against rape when victims pressed charges; however, police noted victims often declined to press charges against perpetrators, and the extent of the problem was likely underreported. In some cases of domestic nonspousal rape, victims were afraid of losing financial support if perpetrators were found guilty and imprisoned. 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. By law formal courts try all rape cases. A person convicted of rape is required to undergo an HIV test before sentencing. The BPS did not have a specific unit dedicated to rape investigation but had trained crime scene investigators and a forensics unit to respond to cases of rape and domestic violence. NGOs continued efforts to improve awareness of rape.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem. Police released the following domestic violence statistics for 2012: five cases of incest; 375 of defilement; 102 of indecent assault on females, although those sexual assault cases reported were believed to represent only a fraction of the actual number of such incidents; 73 reported cases of passion

killings; and 589 death threats. Greater public awareness resulted in increased reporting of domestic violence and sexual assault.

According to a 2012 study funded by the Ministry of Labor and Home Affairs' Department of Women's Affairs on gender-based violence (GBV) indicators, 67 percent of women had experienced GBV at least once in their life, while 29 percent experienced GBV in the previous year alone. Approximately 44 percent of men admitted perpetrating violence against women.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C, but the practice was virtually unknown. In 2013 the Ministry of Defense, Justice, and Security responded to a parliamentary query on female genital mutilation, stating the BPS had never received such a case.

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 and supervisors. In 2012 the minister of presidential affairs and public administration, along with the Gender Affairs Department in the Ministry of Labor and Home Affairs and local government officials, announced plans to begin a campaign to address sexual harassment in the public sector but had not begun implementation by year's end.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children and to have the information and means to do so, free from discrimination, coercion, and violence. Family planning services were widely available, and the UN Population Division reported 53 percent of girls and women ages 15-49 used a modern method of contraception in 2013. According to UN estimates, skilled health personnel attended 99 percent of births in the country as a whole, with lower rates in rural areas. The Ministry of Health reported 90 percent of births took place in hospitals, where obstetric care was widely available. A government program, Prevention of Mother-to-Child Transmission of HIV, effectively reduced mother-to-child transmission. According to the UN Population Fund, the maternal mortality ratio was 170 deaths per 100,000 live births in 2013, with 23 percent of deaths related to HIV/AIDS. In 2013, 28 of the 83 maternal deaths were related to HIV/AIDS. The leading causes of maternal mortality included postpartum hemorrhage,

hypertensive disorders of pregnancy, unsafe abortion, and HIV/AIDS-related infections. The major factors hindering greater contraceptive prevalence rates included a shortage of supplies, provider biases, inadequately skilled health-care workers, HIV status, culture, religion, and popularly accepted myths and misconceptions. Human rights observers noted that hospitals would not turn away a patient suffering from complications from an illegal abortion; however, the hospital might refer the case to police after treating the patient.

Discrimination: By law women have the same civil rights as men, but societal discrimination persisted. The country has a dual legal system consisting of formal law derived from the constitution and customary law based on tribal practice. 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 may 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 and other property in their own names, and the law stipulates neither spouse may 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. Polygyny is legal under traditional law with the consent of the first wife but was not common. In 2012 the High Court ruled gender discrimination based on customary law was unconstitutional. The court found in favor of three sisters who challenged Ngawaketse customary law giving rights of inheritance to the youngest son. In 2013 an appeals court upheld the 2012 decision.

Skilled urban women had increasing access to entry and mid-level white-collar jobs. Women occupied many senior-level positions in government bodies. These included speaker of the national assembly, governor of the Bank of Botswana, attorney general, minister of foreign affairs and international cooperation, and the minister of health. Other jobs included assistant minister of education and skills development, assistant minister of local government and rural development, the ombudsman, and numerous permanent secretary positions. Nevertheless, a Southern African Development Community (SADC) study, *Gender Protocol 2012 Barometer-Botswana*, reported women's representation was 21 percent of cabinet ministers, 8 percent of parliamentarians, and 19.4 percent of local government councilors. The study found that more than 60 percent of local government employees were women. In 2008 the BDF began to admit women. In 2011 four

women completed flight training and became BDF pilots. In 2012 the BDF announced it would begin recruiting women into the enlisted ranks, although recruitment did not begin until August; previously women could enter the BDF only as officer cadets. Officials reported that gender integration issues must be resolved before they can begin accepting female enlistees.

The Gender 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. The SADC study found that women owned and operated the majority of informal sector businesses, but the proportion of women in salaried formal employment was lower than that of men. There is no legal requirement that women receive equal pay for equal work.

## **Children**

Birth Registration: In general citizenship is derived from one's parents, although there are limited circumstances in which citizenship may be derived from birth within the country's territory. The government generally registered births promptly; however, there were some delays in remote locations. Unregistered children may be denied some government services.

Education: Education was not compulsory. Parents must cover school fees as well as the cost of uniform and books. These costs could be waived for children whose family income fell below a certain amount.

Child Abuse: Child abuse occurred and was often reported to police in cases of physical harm to a child. Police referred the children and, depending on the level of abuse, their alleged abuser(s) to counseling in the Department of Social Services within the Ministry of Local Government as well as to local NGOs. Police referred some cases to the Attorney General's Office for prosecution. Local human rights groups raised concerns about the use and administration of corporal punishment by traditional courts and in schools, which many believed to be excessive.

Early and Forced Marriage: Child marriage occurred infrequently and was largely limited to certain tribes. The government does not recognize marriages that occur when either party is under the minimum legal age of 18.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C, but the practice was virtually unknown (see section 6, Women).

Sexual Exploitation of Children: The Children's Act of 2010 prohibits the prostitution and sexual abuse of children. Sex with a child younger than age 16 constitutes defilement and is punishable by a minimum of 10 years' incarceration. Police reported 375 cases of defilement and five cases of incest during 2012. There were defilement investigations and convictions during the year. There were reports teachers sexually abused students. Other officials and extended family members with whom they lived also reportedly sexually abused children.

By law child prostitution is an act of defilement punishable by a minimum of 10 years' imprisonment. Child pornography is a criminal offense punishable by five to 15 years in prison. Media and NGO reports claimed that most incidents of child trafficking occurred in villages, where children were used for forced labor and sexual exploitation. In July parliament passed a comprehensive antitrafficking-in-persons law that includes prohibition of child prostitution.

Displaced Children: In 2013 the UN Children's Fund, which defines an orphan as a child with one or both parents deceased, estimated there were 130,000 orphans in the country, of whom approximately 96,000 had lost one or both parents due to HIV/AIDS. The government, which defines an orphan as a child whose two parents are dead, registered 38,576 children as orphans and 32,068 as vulnerable in 2013. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket worth between 216 pula (\$23) and 600 pula (\$64), depending upon location, and counseling as needed.

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 100 persons. 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/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **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 law does not prohibit discrimination by private persons or entities. The law does not specifically prohibit discrimination against persons with sensory or intellectual disabilities. The government has a 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, but civil society sources reported access for persons with disabilities was limited. The law does not specifically include air travel with other modes of transportation, but, in general, persons with disabilities were provided access to air transportation. Although new government buildings were being constructed to provide access for persons with disabilities, older government office buildings remained largely inaccessible. Most new privately owned buildings provided access for persons with disabilities.

Discrimination against persons with disabilities occurred, and employment opportunities remained limited. Children with disabilities attended school, and there were no reported patterns of abuse in educational and mental health facilities. The government did not restrict persons with disabilities from voting or participating in civil affairs and made some accommodations during elections to allow for persons with disabilities to vote.

There was a department of disability coordination in the Office of the President to assist persons with disabilities. The Department of Labor in the Ministry of Labor and Home Affairs is responsible for protecting the rights of persons with disabilities in the labor force and investigating claims of discrimination. Individuals may 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 to 60,000 people belong to one of the many scattered, diverse tribal groups known as Basarwa. The Basarwa constitute approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the Basarwa with respect to employment, housing, health services, and cultural practices; however, the Basarwa remained marginalized economically and politically and generally did not have access to their traditional land. The Basarwa continued to be geographically isolated, had limited access to education, lacked adequate political representation,

and were not fully aware of their civil rights. NGOs reported forced labor of Basarwa--including adults and children--on private farms and cattle posts.

While the government respected the 2006 High Court ruling on a suit filed by 189 Basarwa regarding their forced relocation, it continued to interpret the ruling narrowly, allowing only the 189 actual applicants and their spouses and minor children to return to the CKGR. The court ruled the applicants were entitled to return to the CKGR without entry permits and to receive permits to hunt in designated wildlife management areas, which are not located in the CKGR. The government did not permit adult children and other family members of the original applicants to return to the CKGR without entry permits. Many of the Basarwa and their supporters continued to object to the government's interpretation of the court's ruling. Negotiations between Basarwa representatives and the government regarding residency and hunting rights stalled after a separate court ruling provided the right to access water through boreholes. An appeal was in progress at year's end.

In a move criticized by civil society and local media, the government added the Basarwa applicants' lawyer, a United Kingdom citizen affiliated with Survival International, to a list of individuals from visa waiver countries who must apply for visas to enter the country, impeding the group's ability to respond to issues in the Basarwa community.

Government relocations ceased in the western settlement of Ranyane after a June 2013 restraining order issued by the High Court, prohibiting the government from relocating further residents.

There were no government programs directly addressing discrimination against the Basarwa. 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 Basarwa or to help provide economic opportunities, but such programs had limited impact. The NGO Survival International, along with other independent organizations, continued to criticize the government decision to allow mining exploration in the CKGR. The NGOs argued diamond exploration in the CKGR would have a significant negative impact on the life and environment of the Basarwa.

The government had previously charged Basarwa with alleged unlawful possession of hunted carcasses. In August five Basarwa filed a lawsuit against the minister

of environment, wildlife, and tourism over the hunting ban in the CKGR, and the case was pending at year's end.

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

The law does not explicitly criminalize consensual same-sex sexual activity. What the law describes as “unnatural acts” are criminalized with a penalty of up to seven years' imprisonment, and there was widespread belief this was directed toward LGBT persons. There were no reports police-targeted persons suspected of same-sex sexual activity. LGBT-rights organizations claimed there were incidents of violence, societal harassment, and discrimination based on sexual orientation or gender identity. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally as a result of overt intimidation.

Public meetings of LGBT advocacy groups and debates on LGBT issues occurred without disruption or interference. In November the High Court ruled the Ministry of Labor and Home Affairs' refusal to register the LGBT advocacy organization LeGaBiBo (Lesbian, Gays, and Bisexuals of Botswana) was unconstitutional, since it violated the group's right to freedom of association. LeGaBiBo attempted to register as an NGO since 2009 to advocate for the rights of LGBT persons, but the government refused registration on the basis that the group promoted an illegal activity. In 2013, after several unsuccessful attempts at litigation, LeGaBiBo filed a lawsuit challenging the government's refusal to grant the organization legal status. In the judgment the High Court did not address the ban on homosexual activity.

### **HIV and AIDS Social Stigma**

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 of Ethics and Law, and HIV/AIDS (BONELA) continued to advocate for an HIV employment law to curb discrimination in the workplace.

## **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. Union representatives reported that employee associations were generally not as effective as unions in resolving labor disputes. The 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, and recognition of trade union representation with regard to grievances) only to unions representing at least one-third of the employees in an enterprise. The law provides for certain restrictions that limit the right to organize. Trade unions that fail to meet some of the formal registration requirements are automatically dissolved and banned from carrying out union activities. The law does not afford protection to members of unregistered trade unions. The 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 one-third of a sector workforce. The law does not prohibit acts of interference by employers or employers' organizations in the establishment, functioning, or administration of trade unions. The law also permits an employer or employers' organization to apply to the government to withdraw the recognition granted to a trade union if it establishes that the trade union refuses to negotiate in good faith with the employer. There were no such cases during the year.

The law severely restricts the right to strike. All strikes are illegal unless compulsory arbitration procedures are first exhausted. Compulsory arbitration was rare and could require more than a year to complete. Strikes were exceedingly rare; the last major strike was in 2011. The law prohibits sympathy strikes. Employees categorized as those in the "essential services"--including the Bank of Botswana, railway services, health care, firefighting, military, transport services, telecommunications infrastructure, electricity, water, and sewage workers--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 unions won a High Court case challenging the reclassification, a decision upheld by the Court of Appeals in April.

The law empowers two officials within the Ministry of Labor and Home Affairs (the minister and the commissioner of labor) 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 are referred to an ombudsman for resolution, and in general the ombudsman's decisions are made independently without government interference. Labor commissioners mediate private labor disputes, and if not resolved, they are sent to the Industrial Court. A labor dispute generally required between 11 months and five years to resolve.

While the law allows formally registered unions to conduct their activities without interference and with protection from antiunion discrimination, members of unregistered trade unions are not protected against antiunion discrimination. Workers may not be terminated 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 termination is deemed to be related to union activities. The law does not provide protection to public employees' organizations from acts of interference by public authorities in their establishment or administration.

The government generally respected freedom of association, although there were some restrictions on the right to collective bargaining. Workers exercised the right to form and join unions, and in general employers did not use hiring practices to avoid hiring workers with bargaining rights. The government, while seeking to expand the definition of essential services, generally protected the right to conduct union activities. In 2012 unions appealed to the International Labor Organization (ILO) with complaints that included constitutional restrictions on freedom of assembly, unlawful deregistration of the Botswana Federation of Public Sector Unions (BOFEPUSU), onerous balloting and meeting requirements for unions, improper categorization of "essential workers" to prohibit striking, and a lack of impartial mediation machinery. The ILO was investigating the matter as of November and had made some informal recommendations.

Following the 2011 strikes, BOFEPUSU brought several cases before the courts, including the deregistration case, reduction of essential services workers, the government's lack of participation in bargaining councils, the government's withdrawal of benefits from some union members, and a challenge to the president's appointments to the industrial court. Attorneys for the government

failed to appear for several successive hearings on the deregistration case, and in July the presiding judge ruled in favor of BOFEPUSU. A full judgment, however, remained pending as of November.

When unions followed legal requirements of exhausting arbitration and notifying the government in advance of a planned strike, the government permitted strikes and did not use force on strikers. Due to strike requirements, however, many strikes were ruled illegal, and striking workers often risked dismissal. In 2011 the government dismissed 2,844 public sector workers for strike activity, some of whom were selectively re-employed later on less favorable terms and conditions.

The government had an insufficient number of labor commissioners, resulting in two-year backlogs in resolving labor disputes. The government informed the ILO it recognized the need to have an independent dispute resolution mechanism and that the mechanism was to be included in the National Development Plan 10 (2009-16). No data concerning such a program were available.

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

The constitution and law prohibit all forms of forced and compulsory labor, including by children. In July parliament passed a comprehensive antitrafficking-in-persons bill that prohibits child prostitution and forced labor of both children and adults. Penalties for violations were awaiting clarification by the Ministry of Labor and Home Affairs. Civil society representatives, however, reported that the government did not effectively enforce existing relevant laws, particularly in remote areas, mainly because a lack of sufficient staff and funding made it difficult for the government to send labor officers to remote areas. There were reports of forced child labor in cattle herding and in domestic servitude, including using the labor of migrant children from Zimbabwe (see section 7.c.).

Government officials suggested that Zimbabweans may have used the country as a transit point to move trafficking victims to South Africa.

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

### **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 prohibits a child from moving heavy objects that could endanger physical development, working underground or at night, or engaging in anything dangerous or immoral. The law prohibits the exploitation for labor or coercion into prostitution of adopted children.

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. The Advisory Committee on Child Labor facilitated the oversight of child labor issues. It included representatives of various NGOs, government agencies, workers' federations, and employers' organizations and advised the government on the state of children three to four times during the year. The government supported and worked with partners to conduct workshops to raise awareness of child labor. The Department of Labor within the Ministry of Labor and Home Affairs collaborated with the Department of Social Services within the Ministry of Local Government to advocate against and raise awareness of exploitative child labor. Ministers continued to address public gatherings (referred to locally as "kgotla"), cautioning against child labor. Penalties for violations of child labor laws range from a fine to up to 12 months' imprisonment in most cases, with stricter penalties for cases involving the worst forms of child labor.

Despite 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.

According to the 2005-06 labor survey, approximately 38,000 children between the ages of seven and 17 were employed in 2006; half of the children were under age 14. More than 60 percent of employed children worked in agriculture, 20 percent in retail trade, and 4 percent in private homes. Two-thirds of employed children worked in rural villages. Children also worked as domestic laborers and in informal bars. Outside of supermarkets, children 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/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

#### **d. Discrimination with Respect to Employment or Occupation**

With respect to employment or occupation, labor laws prohibit discrimination regarding race, gender, disability, language, sexual orientation and/or gender identity, HIV-positive status, or social status. The government effectively enforced these regulations.

#### **e. Acceptable Conditions of Work**

According to the Ministry of Labor and Home Affairs, the minimum hourly wage for full-time labor in the private sector was determined by sector. The minimum wage for domestic workers was 2.7 pula (\$0.28) per hour, or approximately 21.6 pula (\$2.28) per day. The minimum wage for workers in the agricultural sector was 550 pula (\$58) per month, but the cost of feeding a worker who lived on the employer's premises could be deducted from the wages. According to a 2011 survey of formal sector employment by Statistics Botswana, monthly average earnings were 4,339 pula (\$459) for citizens, 13,055 pula (\$1,381) for noncitizens, and 4,731 pula (\$501) for all employees. The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consisted 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 a 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 within the Ministry of Labor and Home Affairs had inspectors to oversee and enforce labor regulations.

There are limited requirements for occupational safety, but the government's ability to enforce workplace safety legislation also remained limited due to inadequate staffing and lack of clarity among ministries regarding jurisdictional responsibilities. The law provides that workers who complain about hazardous conditions may not be terminated.

The government generally enforced wage, hour, health, and safety requirements, but the number of labor inspectors was insufficient to inspect all workplaces. During the year the government conducted 1,123 labor inspections, finding 261 cases of unpaid overtime and 66 cases of payment below the minimum wage. The Ministry of Labor and Home Affairs conducted outreach events, including a weekly radio program, to spread awareness in rural areas.

Formal sector jobs generally paid well above minimum wage levels. The primary forms of compensation for labor in the informal sector were housing and food, particularly in the agricultural and domestic service areas. Pay in the informal sector was frequently below the minimum wage. Informal sector workers generally were covered by the same legal protections available to formal sector workers.

Foreign migrant workers were vulnerable to exploitative working conditions, mainly in domestic labor. Employers in the formal sector generally provided for worker safety. There are no specific provisions in the law allowing workers to remove themselves from situations that endanger their health or safety without jeopardizing their employment; however, no abuses were reported.