

# **BOTSWANA 2012 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Botswana has been a constitutional multiparty republican 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 former 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.

Violence, including sexual violence, against women and children; child labor in cattle herding, agriculture, and other work; and discrimination against the San people persisted as principal human rights concerns.

Other significant human rights problems included occasional excessive use of force and abuse by security personnel including possible unlawful killings, police corruption, government attempts to limit press freedom, lack of recognition of San minority land and resource rights, 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, gay men and lesbians, and persons with HIV/AIDS.

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 was at least one report the government or its agents may have committed an unlawful killing during the year. In July security forces shot and killed two suspected poachers who had entered the country illegally from Namibia in a canoe. The case was under investigation at year's end.

In October 2011 police arrested and detained Pulaenele Sekate for various offenses. Police claimed the suspect committed suicide in custody. The case remained under investigation at year's end.

Four government security officers who shot and killed John Kalafatis in 2009 while, according to the Kalafatis family attorneys, he sat in a parked car were convicted in June 2011 of murder and sentenced to prison. The government contended Kalafatis was a wanted criminal who was killed during a lawful arrest. Corporals Dzikamani Mothobi, Goitsewang Sechele, Ronny Matakoto, and Boitshoko Maifela appealed. The court upheld the conviction of Mothobi, Sechele, and Matakoto but overturned Mothobi's conviction on February 10. President Khama pardoned the three convicted officers in June in a move some local civil society organizations criticized.

### **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; however, there were unconfirmed reports that security force personnel abused suspects and prison officials beat inmates during the year. Rape of inmates by inmates also occurred.

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

Prison and detention center conditions improved markedly during the year with the elimination of inmate overcrowding. The inmate population declined to below recommended capacity in the country's 22 prisons and one detention center for irregular immigrants.

Physical Conditions: As of December the prison system held 4,241 inmates against its authorized capacity of 4,337. At year's end there were 156 juvenile prisoners and 141 female prisoners. Pretrial detainees and convicts were generally held separately. Juveniles occasionally were held with adults but only for a few days while awaiting transport. Mothers were allowed to bring their nursing babies under the age of two with them into the prison system, some of which lacked maternity facilities. In instances where a child is above two years in age, and if no family is available to take care of the child, arrangements are made with

nongovernmental organizations (NGOs) to care for the child until the mother is released. Conditions for men and women prisoners were comparable.

There were three deaths in prisons and none in pretrial detention centers during the year. Prisons and overnight jails had potable water. There was adequate food, sanitation, ventilation, and lighting in prisons. Prisoners received access to basic medical care. There were 655 citizen prisoners and 101 noncitizen prisoners who tested HIV positive during the year. HIV-positive citizen prisoners had access to antiretroviral drugs, CD 4, and viral load monitoring, but noncitizen HIV-positive prisoners did not. However, the government provided voluntary, free HIV testing and peer counseling through infectious disease control centers located within the prison precincts for both citizen and noncitizen prisoners. In addition, its programs of voluntary safe-male circumcision and prevention of mother-to-child transmission of HIV to reduce the spread of new HIV/AIDS infections were available to all prisoners.

Administration: Prison recordkeeping was adequate but mostly utilized 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. Authorities released 324 prisoners during the year to complete their sentences through extramural labor.

Prisoners and detainees had access to visitors, including foreign government representatives, and were 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 in some cases took disciplinary or judicial action against persons responsible for abuses. Officers of the courts, including magistrates and judges, regularly conducted visits to prisons to check on prison conditions. Government-appointed welfare and oversight committees visited prisons 19 times during the year. Reports on such visits were not made public.

Monitoring: The government allowed access to citizen and noncitizen prisoners by international and local NGOs. 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 during the year.

#### **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 army, which reports to the president through the presidentially appointed Defense Council and its commanding general, an ex officio member of the council, is responsible for external security and has some domestic security responsibilities. The Directorate for Intelligence and Security (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 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.

During the year 79 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 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.

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. There were no reports during the year

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 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 due to heavy court caseloads. 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; however, in practice most could not afford legal counsel. In capital cases the government provides legal counsel or private attorneys provide pro bono services for indigent clients. Those charged with noncapital crimes were tried without legal representation if they could not afford an attorney. There were no reports during the year that suspects were held incommunicado or under house arrest.

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, 1,054 of the 4,241 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 Francistown, Gaborone, and some surrounding areas; there were reports of heavy caseloads and new procedures limiting 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. As a result, many defendants were not informed 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 appeal and to adequate time and facilities to prepare their defense. 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 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. Corporal punishment was applied more often in customary courts, where tribal judges may issue sentences that include punishment such as lashings on the buttocks, than in formal court sentences.

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 agreement 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 (CKGR). In 2002 the government forcibly resettled the remaining indigenous San and other minority members living in the CKGR who had not voluntarily left in 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. In May the San appealed to the UN Permanent Forum on Indigenous Issues, asking the UN 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 government disenfranchisement of indigenous people.

### **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 in practice. However, the Media Institute of Southern Africa (MISA) and other NGOs reported 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 continued to criticize the law, stating 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.

Censorship or Content Restrictions: Some members of civil society organizations alleged the government occasionally censored stories in the government-run media 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 the government monitored e-mail or Internet chat rooms. According to the International Telecommunication Union, in 2011, 7 percent of individuals used the Internet.

### **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 internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

In-country Movement: In January 2011 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 2011. Of commitments made by the mining company to drill four new waterholes, hire San residents, and establish a community trust, only one, the opening of a single waterhole, was met by the end of the year. According to a case study published June 28 by Minority Rights Group International, *Basarwa Evicted over Diamonds*, Gope mine owner, Gem Diamonds, was to work with CKGR residents to ensure they benefited from the mine. Gem was to drill four new waterholes, hire residents, and establish a community trust.

#### **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 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 cooperated with the UNHCR and other humanitarian organizations in assisting more than 3,500 refugees and asylum seekers. During the year refugee status was granted to 12 persons. 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. UNHCR was present at RAC meetings as

observer and technical adviser. Once persons were granted refugee status, the government transferred them to the Dukwe Refugee Camp.

Refugee applicants who were unsuccessful in obtaining asylum were also allowed to remain at Dukwe if they wished pending deportation or voluntary repatriation. During the year, following the UNHCR's revocation of refugee status for 43 people, the government gave notice it intended to start deportation proceedings. As of year's end, those denied refugee status had not been deported.

Employment: 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 almost all of the country's 3,300 registered refugees and 250 registered asylum seekers were living and working in and around 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 exceptional cases, such as for refugees enrolled at a university or with unique skills.

Access to Basic Services: Refugees in Dukwe had access to education and health care. Although asylum seekers were not housed with irregular immigrants, UNHCR criticized the detention of asylum seekers at the Center for Illegal Immigrants because, according to international law, 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. Detention periods were generally of short duration but in some cases lasted several months.

Durable Solutions: In August UNHCR began a voluntary repatriation program for an estimated 1,000 Namibian refugees to their native Caprivi Strip.

Temporary Protection: The government also provided temporary protection to 57 individuals who may not qualify as refugees under the 1951 UN refugee convention or the 1967 protocol.

### **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.

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 tribes 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 National Assembly, the cabinet, and on the High Court.

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

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. 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.

The Parliamentary Committee on Statutory Bodies is responsible for the oversight of state-owned enterprises and all government bodies. The committee was active and during the year released its first report, which examined statutory bodies and sought to identify operational irregularities.

The Auditor General's Office is required by law to submit an annual government audit report and in general it did so in a timely and effective manner. However, its most recent report released in March 2011 did not address investigations of allegations of corruption. A new law enacted during the year brought the Auditor General's Office under the Office of the President and made the auditor general's position a presidentially appointed one. Concerned the law weakened the

independence of the Auditor General's Office, local media questioned the law's constitutionality, but no legal challenge had been lodged by year's end.

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. Media and civil society observers viewed the DCEC as reluctant to challenge high-level public figures but otherwise as generally effective.

According to media reports, the DCEC initiated investigations into 433 allegations of corruption during the year. The media reported on investigations into allegations of corruption and financial mismanagement at the Botswana Meat Commission, Botswana Development Corporation, Botswana Export Development and Investment Authority, and Botswana Marketing Board. The investigations, reportedly pending at year's end, allegedly implicated some senior level officials.

The FIA is not an investigative organ and has no police powers. It collects, analyzes, interprets, and disseminates financial information to identify potential domestic and international criminal activity, including money laundering and terrorist financing. The minister of finance appointed a permanent director for the FIA in October 2011 and the agency secured independent office space but was not fully staffed or operational by year's end.

During the year police initiated investigations into corruption charges against four police officers, who were found guilty and dismissed. There were also 31 officers who were dismissed for failure to adhere to the code of conduct; of these, three were charged with criminal offenses and 28 were charged with disciplinary offenses. Police officials acknowledged corruption was a problem in the lower ranks; some officers took advantage of irregular immigrants and traffic violators by exacting bribes.

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. In August the National Assembly voted down an opposition Freedom of Information bill.

## **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 violation of human rights in the public sector and the government generally cooperated with the ombudsman. However, the office suffered from a shortage of 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 2011, of which two were referred to the Department of Public Prosecutions 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 in practice. 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. 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; gays and lesbians; persons with HIV/AIDS; and persons with albinism.

### **Women**

Rape and Domestic Violence: The law criminalizes rape but does not recognize spousal rape as a crime. 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 and attempted rape cases increased during the year from 1,271 in September 2011 to 1,451 in September 2012. 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. 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 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 released the following domestic violence statistics for the first nine months of the year: five cases of incest; 375 of defilement; 102 of indecent assault on females, although those sexual assault cases reported were thought to represent only a fraction of the actual number of such incidents; 73 reported cases of passion killings; and 589 of death threats. 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. The minister of presidential affairs and public administration along with the Women's Affairs Department in the Ministry of Labor and Home Affairs and local government officials began a campaign to address sexual harassment in the public sector.

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. Family planning services were widely available and the UN reported 51 percent of women ages 15-49 used a modern method of contraception. According to UN estimates, 95 percent of births across the country were attended by skilled health personnel, with lower rates in rural areas. Obstetric and postpartum care was generally available. A government program, Prevention of Mother-to-Child Transmission of HIV, has effectively reduced mother-to-child transmission. According to the UN Population Fund, the maternal mortality rate was 160 deaths per 100,000 live births in 2010 and the Ministry of Health reported 90 percent of births took place in hospitals.

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 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 and other property in their own names and the law stipulates 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 was not common. On October 12, 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.

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. These included speaker of the national assembly, governor of the bank of Botswana, attorney general, ministers of trade and industry and of education and skills development, assistant ministers of local government and of the Office of the President, and numerous permanent secretary positions. However, a Southern Africa 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 Botswana Defense Force (BDF) began to admit women. In September 2011 four women completed flight training and became BDF pilots. In October the BDF announced it would begin recruiting women in the enlisted ranks, where previously women could enter only as officer cadets.

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. 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.

## **Children**

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 registered births promptly; however, there were some delays in remote locations. Unregistered children may be denied some government services.

Education: Education was not compulsory. School fees and uniform and book costs had to be covered by parents, but 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 involving physical harm to the child. Police referred the children and, depending on the level of abuse, their alleged abuser(s) to counseling in the Department of Social Services as well as to local NGOs. Some cases were referred 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. There were no known cases of physically harmful traditional practices, such as female genital mutilation/cutting.

Child 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.

Sexual Exploitation of Children: The Children's Act of 2010 prohibits the prostitution and sexual abuse of children. Sex with a child younger than 16 constitutes defilement and is punishable by a minimum of 10 years' incarceration. Police reported 375 cases of defilement and five cases of incest through the end of September. There were defilement investigations and convictions during the year. There were reports teachers sexually abused students. Reports indicated that

children occasionally were sexually abused by extended family members with whom they lived.

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 prostituted children were made available to truck drivers, mainly concentrated along the trucking route in the eastern region linking the country with South Africa, and that many of the girls and boys were thought to be orphans.

Displaced Children: In 2011 UNICEF estimated there were 150,000 orphans in the country, of which approximately 120,000 had lost one or both parents due to HIV/AIDS. As of March 2011, the government had registered 42,069 children as orphans and 35,336 as vulnerable. The difference between the UN and government figures is because the government defines an orphan as a child both of whose parents have died, while the UN defines an orphan as a child with one or both parents deceased. Once registered as orphans, the children received school uniforms, shelter, a monthly food basket worth between 216 pula (\$28) and 350 pula (\$45) 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. Although the law does not specifically prohibit discrimination against persons with sensory or intellectual disabilities, there was little

discrimination against these persons in general. The government has a 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. The law does not specifically include air travel with other modes of transportation, but in general people with disabilities were provided access to air transportation. 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 was some discrimination against persons with disabilities and employment opportunities remained limited. Children with disabilities attended school, and there were no 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 is a department of disability coordination in the Office of the President to assist persons with disabilities. The department held a workshop in July to teach sign language to labor and home affairs ministry officers.

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. 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. NGOs report forced labor of San people – 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 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 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. At year's end the government had yet to respond to a September request by attorneys for the San requesting the government to explain its failure to comply fully with a ruling by the Court of Appeals allowing them to reside in the CKGR.

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 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 San.

In December police were accused of beating two San for allegedly hunting without a permit in the CKGR. The cases were pending at year's end.

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

The law does not explicitly criminalize 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 during the year of violence against persons based on their sexual orientation or gender identity. While gay rights activists claimed some societal harassment and discrimination, stigma or intimidation were not factors in preventing reports of incidents of abuse.

Public meetings of gays and lesbian advocacy groups and debates on the issue of rights for all sexual orientations occurred without disruption or interference. 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 on the basis that LeGaBiBo promoted an illegal activity. LeGaBiBo operated under the umbrella of the Botswana Network of Ethics on Law and HIV/AIDS (BONELA), which in February 2011 filed a lawsuit challenging the government's decision not to register LeGaBiBo. In November 2011 BONELA withdrew its lawsuit against the government due to technical errors in its founding affidavit. During the year LeGaBiBo again applied for registration as a gay rights organization with the Registrar of Societies. It was again denied on the same basis as the first time. LeGaBiBo appealed the denial to the minister of home affairs, who also denied the application.

### **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. 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. The law provides for certain restrictions that limit the right to organize. 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. Trade unions that fail to meet some of the formal registration requirements are automatically dissolved and banned from carrying out union activities. 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 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 that 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,” 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 law 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 are referred to an ombudsman for resolution. Private labor disputes are 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 protection to public employees’ organizations from acts of interference by the public authorities in their establishment or administration.

Despite the broad legal restrictions with regard to “nonessential services,” freedom of association and the right to collective bargaining were generally respected in practice. 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 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.

After the failure of an April 2011 strike, the unions brought 15 strike-related cases against the government. The Botswana Federation of Public Section Unions (BOFEPUSU) leadership claimed they won or favorably settled 13 of these cases. At year's end two cases were pending before the courts, the government's deregistration of BOFEPUSU and retrenchment of "essential" service employees.

On May 28, the unions appealed to the International Labor Organization (ILO) with complaints that included union freedom of assembly restrictions in the constitution, unlawful deregistration of BOFEPUSU, onerous balloting and meeting requirements for unions, improper categorization of "essential workers" to prohibit striking, and a lack of impartial mediation machinery. At year's end the ILO continued investigating these charges. BOFEPUSU brought six additional cases against the government, which covered the same complaints brought to the ILO, and also challenged the president's industrial court judicial appointments as unconstitutional. The cases were pending at year's end.

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

The constitution and law prohibit all forms of forced and compulsory labor, including by children. Lack of sufficient staff and funding made it difficult for the government to send labor officers to enforce effectively the law in remote areas. In 2011 the government conducted 2,291 labor inspections, finding 360 cases of unpaid overtime worked and 265 cases of payment below the minimum wage. The Ministry of Labor and Home Affairs began work on a detailed classification of occupations deemed hazardous for children and conducted outreach events, including a weekly radio program, to spread awareness in rural areas. However, there were reports of forced child labor in cattle herding and in domestic servitude (see section 7.c.).

The children's rights NGO Childline reported it removed 67 children from forced labor in agriculture and commercial sexual exploitation between August 2010 and January 2012.

Some Zimbabwean women employed as domestic workers reported exploitation by employers through inadequate or nonpayment of wages, restriction of movement, and threats of deportation. In 2011 the BPS arrested a Motswana individual and deported an Indian national suspected of forcing two Indians to labor on a farm. Charged under the Employment of Non-Citizens Act, the Motswana pled guilty and paid a 1,000 pula (\$128) fine. He and his Indian accomplice also provided 18,000 pula (\$2,316) in salary arrears for each victim and return tickets to India.

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 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. The law provides that adopted children may not be exploited for labor and prohibits 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. Ministers continue to address public gatherings (referred to locally as “kgotla”) cautioning against child labor.

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 (\$0.49). The minimum wage for domestic workers was two pula (\$0.26) per hour, or approximately 16 pula (\$2.05) a day. The minimum for workers in the agricultural sector was 408 pula (\$52.31) per month; however, the cost of feeding a worker who lived on the employer's premises could be deducted from the wages. 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. The law provides that workers who complain about hazardous conditions may not be fired. The government's ability to enforce its workplace safety legislation remained limited by inadequate staffing and unclear jurisdictions among different ministries.

The government generally enforced wage, hour, health, and safety requirements, but the number of labor inspectors was insufficient to inspect all workplaces. A 2003 government household income survey found 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 30 percent of people lived in poverty. A smaller survey in 2009 estimated 23 percent were impoverished. 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.