

# **BOTSWANA 2018 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Botswana is a constitutional, multiparty, republican democracy. Its constitution provides for the indirect election of a president and the popular election of a National Assembly. In 2014 the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama retained his position until April 1, when at the conclusion of his maximum 10-year term, he stepped down from office and former vice president Mogkweetsi Masisi was sworn in as the country's fifth president. The BDP has held the presidency and a majority of National Assembly seats since independence in 1966.

Civilian authorities maintained effective control over the security forces.

Human rights issues included excessive use of force and abuse by security personnel; criminal libel; corruption; sexual and gender-based violence against women and children; and economic and political marginalization of the Basarwa (San) people.

The government took steps to prosecute officials who committed abuses. Impunity was generally not a problem.

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

#### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were no reports the government or its agents committed arbitrary or unlawful killings.

#### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

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

The constitution and law prohibit such practices, but there were reports of police using such tactics. For example, in October a family reportedly accused the police of torturing their 28-year-old son to death while in police custody. The police confirmed an individual had died, and investigations were ongoing. Some laws prescribe corporal punishment for offenders. Some human rights groups viewed these provisions as cruel and degrading; the Court of Appeals ruled these provisions do not violate the constitution's provisions on torture or inhuman treatment.

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

Prison and detention center conditions generally met international standards.

Physical Conditions: Authorities occasionally held juveniles with adults, although only for a few days while the juveniles awaited transport.

The Francistown Center for Illegal Immigrants (FCII) is a dedicated facility for processing asylum and other immigration claims by individuals who entered the country illegally. In December 2017 the INK Center for Investigative Journalism detailed allegations of authorities abusing asylum seekers in the FCII. International observers noted women and children were housed in tents that provided insufficient protection from heat, cold, and wind. There was no school at the center, and international observers expressed concern some children were separated from parents at a young age.

Administration: Authorities investigated credible allegations of inhumane conditions brought by inmates against prison officials and took disciplinary or judicial action against persons responsible for abuses. The law requires the minister of defense, justice, and security to appoint a committee to visit prisons on a quarterly basis, and allows religious authorities to visit with prisoners. Prisoners in general may also attend religious services.

Independent Monitoring: The government generally allowed international and local nongovernmental organizations (NGOs) to meet with prisoners and permitted independent human rights observers to visit prisons. The International Committee of the Red Cross visited prisons. In August diplomatic missions and UNICEF visited the FCII.

### **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, has primary responsibility for internal security. The Botswana Defense Force (BDF), 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 Directorate for Intelligence and Security Services (DISS), under the Office of the President, 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, BDF, and DISS, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving security forces.

BPS officers received human rights training at the country's International Law Enforcement Academy.

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

Police 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. DISS 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. While some civil society representatives criticized DISS under the Khama administration, claiming it did not receive sufficient independent oversight and posed a potential threat to civil liberties, observers generally welcomed the replacement of the DISS director and increased media engagement under President Masisi.

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. There were no reports authorities held suspects incommunicado or under house arrest.

Pretrial Detention: A writ of pretrial detention is valid for 14 days and is renewable every 14 days. Some detainees, however, waited several weeks or months between the filing of charges and the start of their trials. Pretrial detention in murder, rape, livestock theft, and robbery cases sometimes exceeded a year, but there were no reports of instances in which the length of detention equaled or exceeded the sentences actually imposed. Delays were largely due to judicial staffing shortages and a backlog of pending cases.

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

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence.

#### **Trial Procedures**

The constitution and law provide for the right to a fair and public 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 charges against them, with free interpretation from the moment charged through all appeals if he or she cannot understand the language of the court. Trials in the civil courts are public, although trials under the National Security Act may be secret. Defendants have the right to be present and consult with an attorney in a timely manner. 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. As a result, many defendants were not aware of their procedural rights in pretrial or trial proceedings. Defendants may question witnesses against them. 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.

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. While customary (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.

A separate military court system 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 view evidence to be used against them. Defendants in military court can have their cases transferred to the civilian judicial system. Additionally, military personnel can take other military personnel to civilian civil court.

### **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 the same due process protections as the formal judicial system. The country has not ratified the protocol that established the African Court of Human and Peoples' Rights, although individuals and organizations may file complaints regarding domestic decisions with the African Commission on Human and Peoples' Rights.

## **f. Arbitrary or Unlawful 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.

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

#### **a. Freedom of Expression, Including for the Press**

Freedom of Expression: The constitution and law provide for freedom of speech and press; however, 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 (\$38). 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 (\$47).

Press and Media Freedom: In a break from his predecessor, President Masisi initiated a productive relationship with media shortly after assuming the presidency on April 1. He held two press conferences in his first 100 days and repeatedly assured journalists of his respect for their role in a healthy democracy. He also began the process of establishing a first-ever presidential press office to welcome and promote engagement with media. The government dominated domestic broadcasting.

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, according to some observers, were susceptible to political interference. Opposition political parties claimed state media coverage heavily favored the ruling party. The government ombudsman stated in a 2017 report that public broadcaster Botswana Television “unduly favored” the ruling party in its political coverage.

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

portray the government and country in a positive light. Private media organizations had more difficulty than government-owned media obtaining access to government-held information.

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

Libel/Slander Laws: In 2014 police arrested *Sunday Standard* editor Outsa Mokone and charged him with sedition for publishing articles about an automobile accident allegedly involving President Khama. Observers noted the use of the penal code's sedition clause for a newspaper article was unprecedented and that the *Sunday Standard* had published several articles exposing corruption allegations within the DISS. In 2016 lawyers for Mokone sought to have the charges dropped based on the penal code's infringement of the defendant's constitutional right to freedom of expression. That same year the High Court ruled the penal code's sedition clause was constitutional and charges of sedition against Mokone could proceed. In September the government dropped all charges against Mokone. The Court of Appeal did not rule on the constitutionality of the sedition clause.

## **Internet Freedom**

The government did not restrict or disrupt 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 2017 approximately 41 percent of individuals used the internet.

## **Academic Freedom and Cultural Events**

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

### **b. Freedoms 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**

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. In May the minister of defense, justice and security announced a July 11 deadline for the Namibians whose refugee status was revoked in 2015 to repatriate voluntarily or face deportation proceedings, according to the Immigration Act, as illegal aliens. The Namibians sued the government for restoration of their refugee status. The case remained pending before the court.

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting approximately 2,340 refugees, asylum seekers, and other persons of concern.

In December 2017 the private weekly the *Botswana Gazette* ran a 16-page special report by the INK Center for Investigative Journalism summarizing a four-month investigation into the treatment of the asylum seekers at the FCII. According to the report, the asylum seekers said Botswana authorities physically abused them.

#### **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 generally 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 held refugees and asylum seekers in the FCII until the Refugee Advisory Committee (RAC), a governmental body, made a status recommendation. The committee meets quarterly during the year. UNHCR representatives participated in advisory committee meetings as observers and technical advisers.



In 2017 the Ministry of Defense, Justice, and Security introduced biometric identity cards for refugees and asylum seekers.

Safe Country of Origin/Transit: The government applies the principle of first country of asylum; on that basis in 2015 it detained more than 400 individuals, many of whom had previously received refugee status in a third country and then claimed asylum.

In November 2017 the Court of Appeal ruled only recognized refugees were authorized to reside at Dukwi Refugee Camp, and asylum seekers who were transferred there earlier in the year based on a July High Court order should be returned to the FCII. The ruling prompted the majority of the asylum seekers to flee the camp rather than be returned to the FCII, where they allegedly had been physically abused by guards and prison inmates. The majority of asylum seekers were from the Democratic Republic of the Congo. Composed mainly of families that had transited Zambia and Tanzania, the RAC refused their claims based on its “first country of asylum” policy and held the families at the FCII while they awaited deportation. UNHCR urged the government to review its decision to deny asylum and to keep the asylum seekers at the FCII, where authorities separated family members, and women and children lived in tents in substandard conditions. Asylum seekers were housed at the FCII with inmates from the local men’s prison while it underwent refurbishment. Security at the FCII was a concern, and in 2017 an inmate allegedly sexually assaulted a 12-year-old male asylum seeker. There were reports food rations provided to asylum seekers were inadequate.

Employment: As of September most of the country’s 2,031 registered refugees were living in Dukwi Camp without the right to work outside the camp. As a general policy, all registered refugees must reside in Dukwi under a strict encampment policy, although the government may issue a residence permit to remain 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 Dukwi had access to education and basic health care. They were unable to access government programs for HIV/AIDS medication, but the government allowed an international donor-funded parallel program to provide such medication. 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.

International observers noted there was no access to education in the FCII, which as of August housed 61 children. The center hosts a clinic, and a specialized nurse provides basic health care, while critical cases were referred to the Francistown city hospital.

Durable Solutions: According to the Ministry of Defense, Justice, and Security, as of November 105 Namibians, 37 Zimbabweans, and one refugee each from the Democratic Republic of the Congo, Somalia, and Uganda voluntarily repatriated during the year. The majority of the Namibian population refused to repatriate voluntarily despite the government's announcement they would be considered illegal immigrants and face deportation.

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

### **Section 3. Freedom to Participate in the Political Process**

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

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

Recent Elections: In 2014 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 had held since 2008, until April 1, when Vice President Mokgweetsi Masisi assumed the office at the end of Khama's constitutionally limited 10 years in office.

Participation of Women and Minorities: No laws limit the participation of women and minorities in the political process, and they did participate. Nevertheless, observers suggested cultural constraints limited the number of women in government. There were six women in the 65-seat National Assembly, one of whom was the speaker and five of whom served in the 30-member cabinet. There were also two women in the 34-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 House of Chiefs. The law provides that members from all groups enjoy

equal rights. In August, however, the UN special rapporteur on minority issues noted many tribes are unrecognized or unrepresented, and women are underrepresented in the traditional chieftaincy system.

#### **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, however. Media reports of government corruption increased during the year.

Corruption: There were numerous reports of government corruption during the year, many involving reported mismanagement of the National Petroleum Fund and including allegations directly implicating senior officials in the Khama administration.

The press continued to publish information leaked from a Directorate on Corruption and Economic Crime investigation of the former director of the DISS, a story first reported in 2014. The documents allegedly demonstrated substantive links to corruption and money laundering. On May 2, President Masisi replaced the DISS director.

Financial Disclosure: There are no formal financial disclosure laws; however, a 2009 presidential directive requires 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 asserted financial declarations by senior government officials should be available to the public.

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

The small 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 ombudsman within the Office of the President handled complaints of maladministration, including some human rights abuses in the public sector, and the government generally cooperated with the

ombudsman. The Office of the Ombudsman had inadequate staff, however. In August 2017 the ombudsman released a report stating public national broadcaster Botswana Television “unduly favored” the ruling BDP in its political coverage.

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

### **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. 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 unaware, and 20 years with corporal punishment if the offender is HIV-positive and aware. By law formal courts try all rape cases. A person convicted of rape is required to undergo an HIV test before sentencing.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem. Although statistics were unavailable, media widely reported on cases of violence against women, including several high-profile murders. For example, in July police arrested a man suspected to have murdered and decapitated his girlfriend. The United Nations publicly condemned the murder and “increasing incidences” of violence against women and children. A local NGO said it appeared more victims were reporting incidents of violence to the police.

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, particularly by men in positions of authority, including teachers, continued to be a widespread problem. For example, two staff members of the Law Society of Botswana filed complaints senior colleagues reportedly had sexually harassed them.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: Under the constitution, women and men have the same civil rights and legal status, but under customary law based on tribal practice, a number of traditional laws restricted women's property rights and economic opportunities, particularly in rural areas. Women increasingly exercised the right to marriage "out of common property," in which they retained their full legal rights as adults. Although labor law prohibits discrimination based on gender and in general the government enforced the law effectively, there is no legal requirement for women to 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, unregistered children may be denied some government services. For additional information, see Appendix C.

Education: Primary education was tuition free for the first 10 years of school but not compulsory. Parents must cover school fees as well as the cost of uniforms and books. These costs could be waived for children whose family income fell below a certain level.

Child Abuse: The law penalizes neglect and mistreatment of children. There was reported widespread abuse of children. For example, according to staff at Tsabong hospital, sexually abused children represented the third highest reason for patient intake, although only a fraction of victims sought treatment. Staff said in many cases, sexual predators, rather than family members, assault children left unaccompanied during the day. Child abuse was 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 and Rural Development, as well as to local NGOs. Police referred some cases to the Attorney General's Office for prosecution.

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. For additional information, see Appendix C.

Sexual Exploitation of Children: The law prohibits the prostitution and sexual abuse of children. Sex with a child younger than 16, including a prostituted child, constitutes defilement and is punishable by a minimum of 10 years' incarceration. In April parliament amended the penal code raising the age of consent from 16 to 18 years of age.

Child pornography is a criminal offense punishable by five to 15 years in prison.

Displaced Children: There were small communities of "squatters' camps" where homeless families lived in makeshift shelters without regular access to water or sanitation. One such community outside the mining town of Jwaneng had an estimated 200 residents, although numbers fluctuated. In some cases children were unregistered and did not attend school. According to an international organization, 61,649 orphans and vulnerable children received government support between April and September 2018. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket, 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. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>.

### **Anti-Semitism**

There was a very small Jewish population, and 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 disabilities, but it does not prohibit discrimination by private persons or entities. The government's policy provides for integrating the needs of persons with disabilities into all aspects of policymaking. It mandates access to public buildings or transportation for persons with disabilities, but access for persons with disabilities was limited. Although

new government buildings were being constructed in such a way as to provide access for persons with disabilities, older government office buildings remained largely inaccessible. Most new privately owned commercial and apartment buildings provided access for persons with disabilities.

Children with disabilities attended school, although in 2017 a human rights NGO raised concern the Children's Act does not guarantee accessible education to children with disabilities. In August the UN special rapporteur on minority issues observed most teachers were not trained in sign language or in teaching methods adapted to the educational needs of deaf persons. The special rapporteur also noted the absence of sign language interpreters in the health care sector inhibited the dissemination of information. The government 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 of Labor in the Ministry of Employment, Labor Productivity, and Skills Development 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**

The government does not recognize any particular group or tribe as indigenous. The eight tribes of the Tswana group, which speak mutually intelligible dialects of Setswana, have been politically dominant since independence, are officially recognized by law, and were granted permanent membership in the House of Chiefs. Constitutional amendments subsequently enabled the recognition of tribes from other groups.

English and Setswana are the only officially recognized languages, a policy human rights organizations and minority tribes criticized, particularly with regard to education, as forcing some children to learn in a nonnative language. In August the UN special rapporteur on minority issues noted the lack of mother tongue education or incorporation of minority languages into the school curriculum may constitute discrimination, and encouraged the government to review its language policy with regard to education. In September the minister of basic education stated the government was considering introducing interpreters in primary schools to assist students who spoke languages other than Setswana.

An estimated 50,000 to 60,000 persons belong to one of the many scattered, diverse tribal groups known collectively as Basarwa or San. The Basarwa constituted approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the Basarwa in employment, housing, health services, or because of 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 some members were not fully aware of their civil rights.

The government interpreted a 2006 High Court ruling against the exclusion of Basarwa from traditional lands in the Central Kalahari Game Reserve (CKGR) to apply only to the 189 plaintiffs, their spouses, and their minor children. 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 in the CKGR stalled after a separate court ruling provided the right to access water through boreholes.

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 UN Permanent Forum on Indigenous Issues 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 (i.e., without permits) to the CKGR for their children and relatives.

No government programs directly address discrimination against the Basarwa. With the exception of CKGR lands designated in the 2006 court ruling, there were no demarcated cultural lands.

In previous years the government charged Basarwa with unlawful possession of hunted carcasses. In 2014 five Basarwa filed a lawsuit against the minister of environment, natural resource conservation, and tourism over the hunting ban in the CKGR; the case was pending at year's end. Meanwhile, President Masisi stated in his November 5 State of the Nation Address the government would act immediately after his administration's review of the ban had concluded.



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

The law does not explicitly criminalize lesbian, gay, bisexual, transgender, intersex (LGBTI) status or conduct, but it includes language that has been interpreted as criminalizing some aspects of same-sex sexual activity among consenting adults. The law criminalizes “unnatural acts,” with a penalty of up to seven years’ imprisonment. There was widespread belief this was directed against LGBTI persons. A case challenging the relevant penal code sections remained pending before the court.

There were no reports police targeted persons suspected of same-sex sexual activity. 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 official intimidation. In November Lesbian, Gays, and Bisexuals of Botswana (LeGaBiBo), a group that advocates for LGBTI rights, condemned an attack on a transgender person near Gaborone recorded on video and shared on social media.

In September 2017 the High Court ruled in favor of a transgender man who sued the Registrar of National Registration to change from female to male the gender indicated on his government-issued identity document. In a separate case, in December 2017 the Gaborone High Court ordered the registrar of births and deaths to amend the gender marker on a transgender applicant’s birth certificate from male to female within seven days, and to reissue the applicant’s national identity document within 21 days.

A major international LGBTI conference and public meetings of LGBTI advocacy groups and debates on LGBTI issues occurred without disruption or interference. In 2016 the Court of Appeals upheld a 2014 High Court ruling ordering the government to register LeGaBiBo formally. LeGaBiBo has since participated in government-sponsored events. In October the minister of health and wellness posted on social media seeking input on policy direction with the LGBTI community.

## **HIV and AIDS Social Stigma**

According to UNAIDS data for 2017, the HIV prevalence rate for adults ages 15 to 49 was approximately 23 percent. According to the UN Population Fund, limited access to sexual and reproductive health information and youth-friendly services, as well as gender-based violence, contributed to high HIV rates. The government funded community organizations that ran antidiscrimination and public awareness programs.

## **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 and to bargain collectively. Some workers are provided the right to strike. The law allows registered unions to conduct their activities without interference and with protection from antiunion discrimination.

The law limits the right to organize. Police, military, and prison personnel belong to employee associations to communicate collective needs and concerns to their government employer. Union representatives reported employee associations were generally not as effective as unions in resolving labor disputes.

Trade unions failing to meet the formal registration requirements are automatically dissolved and banned from carrying out union activities. The law does not protect members of unregistered trade unions and does not fully protect union members from antiunion discrimination. This means that those trying to establish, join, or register a trade union are not protected from antiunion discrimination. The law imposes a number of substantive requirements on the constitutions and rules of trade unions and federations of 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.” It also allows the registrar or attorney general to apply for an order to restrain any unauthorized or unlawful expenditure of funds or use of any trade union property. Employers and employer associations have the legal right to ask the registrar to withdraw recognition of a union, and the Ministry of Employment, Labor Productivity, and Skills Development has the right to suspend a union if it is “in the public interest,” although the former practice is uncommon and the latter has never been employed. Any person acting or purporting to act as an officer of a

trade union or federation that fails to apply for registration within 28 days of its formation is subject to sanctions.

The law provides for collective bargaining only for unions that have enrolled one-third of a sector workforce. The law does not allow employers or employers' organizations to interfere in the establishment, functioning, or administration of trade unions. The law provides a framework for either employers or unions to nullify collective bargaining agreements, and provides a mechanism for the other party to dispute the nullification. 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.

Employees in "essential services"--including the Bank of Botswana, railway services, health care, firefighting, military, transport services, telecommunications infrastructure, electricity, water, and sewage workers--are not legally permitted to strike. In 2016 the law was amended, codifying the list of essential services and expanding it to include teachers, veterinarians, and diamond cutters. Many of the occupations included in the law fall outside the International Labor Organization's (ILO) definition of essential services. Department of Labor officials stated they were working with the ILO, trade unions, and an employer's association to amend the legislation required for compliance with ILO standards. At the ILO's June meeting of the Committee of Application Standards, Minister of Employment, Labor Productivity, and Skills Development Tshenolo Mabeo said the government was engaging with social partners to review employment laws and policies to ensure compliance with international obligations.

The law empowers two officials within the Ministry of Employment, Labor Productivity, and Skills Development (the minister and the commissioner of labor) to refer a dispute in essential services to arbitration or to the Industrial Court for determination.

Civil service disputes are referred to an ombudsman for resolution, and in general, the ombudsman's decisions are made without government interference. Labor commissioners mediate private labor disputes, and if not resolved within 30 days, disputes of right may be referred to the Industrial Court.

Workers who are members of registered unions may not be terminated for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which have 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 law severely restricts the right to strike, and strikes were rare. When unions followed legal requirements and exhausted arbitration and notified 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. The law prohibits sympathy strikes. Compulsory arbitration was rare and only applied in cases involving a group dispute of workers in essential services. The government's list of essential services that are restricted from conducting strikes are well outside of international standards, restricting most sectors in the country from being able to conduct a legal strike. The law prohibits an employer from hiring workers to replace striking or locked-out workers and prohibits workers from picketing only if the parties have concluded an agreement on the provision of minimum services or, if no such agreement has been made, within 14 days of the commencement of the strike.

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

The constitution and law prohibit and criminalize all forms of forced and compulsory labor, including by children. Civil society representatives reported in previous years the government did not effectively enforce relevant laws, particularly in remote areas, mainly due to a lack of staff and funding. Labor inspectors refer cases to the BPS for prosecution. There were anecdotal reports of forced child labor in cattle herding and in domestic servitude (see section 7.c.). There were also anecdotal reports that members of the Basarwa community were subjected to forced labor conditions on cattle farms in the Ghanzi district. There was no information available indicating to what extent these penalties were sufficient to deter violations.

The law punishes with compulsory prison labor any willful breach of a contract of employment by an employee who is acting either alone or in combination with others, if such breach affects the operation of essential services. Sentences of

imprisonment involving compulsory prison labor may be imposed on any person who prints, makes, imports, publishes, sells, distributes or reproduces any publication prohibited by the president “in his absolute discretion” as being “contrary to the public interest.” Similar sentences may be imposed concerning seditious publications and on any person who manages, or is a member of, or in any way takes part in the activity of an unlawful society, particularly of a society declared unlawful as being “dangerous to peace and order.” The provisions are worded in terms broad enough to allow punishment for the expression of views and, insofar as they are enforceable with sanctions involving compulsory labor, they are incompatible with international standards. A prisoner may be employed outside a prison under the immediate order and for the benefit of a person other than a public authority.

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**

The law prohibits the worst forms of child labor.

The minimum age for work is 15, but children as young as age 14 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 but only on vacation days between the hours of 6 a.m. and 4 p.m. Although the law prohibits night work and hazardous underground work for children, it does not cover hazardous activities such as the use of dangerous machinery, tools, and equipment. In addition the law establishes the right of children to be protected from sexual exploitation including prostitution and pornography. The penalty for not reporting incidents of child sexual exploitation ranges from 10,000 to 30,000 pula (\$944 to \$2,830), or imprisonment for no less than two years but no greater than three years, or both. Perpetrators who engage in sexual exploitation of children are punished if convicted with a fine of no less than 30,000 pula (\$2,830) but no greater than 50,000 pula (\$4,720), or imprisonment of no less than five years but no greater than 15 years, or both. The law further requires that the government develop programs to prevent the sexual exploitation of children.

The Ministry of Employment, Labor Productivity, and Skills Development 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 within the Ministry of Basic Education and the Ministry of Local Government and Rural Development. Government officials continued to address public gatherings, cautioning against the worst forms of 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. There was no information available indicating to what extent these penalties were sufficient to deter violations.

Despite laws and policies designed to protect children from exploitation in the workplace, there were anecdotal reports of child labor, mostly on subsistence-level cattle posts or farms, where employees lived with their children in family units, particularly in the Ghanzi region. Civil society representatives noted in such cases where it was likely to exist, child labor resulted from a lack of awareness of the law among parents and their employers.

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 and Occupation**

Labor laws prohibit discrimination based on race, color, tribe, place of origin, social origin, sex, disability, language, sexual orientation or gender identity, HIV status, marital status, creed, or social status. The government generally enforced these regulations.

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

According to the Ministry of Employment, Labor Productivity, and Skills Development, the minimum hourly wage for full-time labor in the private sector was determined by sector. The minimum wage for domestic workers was raised 6 percent in October to more than three pula (28 cents) per hour, or approximately 26 pula (\$2.45) per day. The minimum wage for workers in the agricultural sector was also raised to 700 pula (\$66) per month. According to a 2011 survey of formal-sector employment by Statistics Botswana, monthly average earnings were 4,339 pula (\$410) for citizens, 13,055 pula (\$1,230) for noncitizens, and 4,731 pula (\$446) for all employees. Formal-sector jobs generally paid well above minimum wage. The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing the minimum wage, and each of the country's districts

had at least one labor inspector. There was no information available indicating to what extent these penalties were sufficient to deter violations.

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 labor law also applies to farm and migrant workers.

There are limited occupational safety and health (OSH) requirements. The government's ability to enforce OSH legislation remained limited due to inadequate staffing and lack of clear ministerial jurisdictions. The law provides protection against termination for workers who verbally complain about hazardous conditions; however, no specific provisions in the law allow workers to remove themselves from situations that endanger their health or safety without jeopardizing their employment.

The Department of Labor within the Ministry of Employment, Labor Productivity, and Skills Development employed approximately 53 inspectors to oversee and enforce labor regulations. The government generally enforced wage and hour requirements, but the number of labor inspectors was insufficient to inspect all workplaces.

The primary forms of compensation for labor in the informal sector were housing and food, particularly in the agricultural and domestic service areas. Wages 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 reportedly vulnerable to exploitative working conditions, mainly in domestic labor.