

BOTSWANA

Botswana, with a population of 1.84 million, has been a multiparty democracy since independence in 1966. Its constitution provides for indirect election of a president and popular election of a National Assembly. In October 2009 the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama, who has held the presidency since the resignation of President Festus Mogae in 2008, retained his position. The BDP has held a majority of National Assembly seats since independence. Security forces reported to civilian authorities.

Some human rights problems remained, including abuse of detainees by security forces, poor prison conditions, and lengthy delays in the judicial process. There were reports of restrictions on press freedom. Societal problems included discrimination and violence against women; child abuse; trafficking in persons; and discrimination against persons with disabilities, gays and lesbians, persons with HIV/AIDS, and persons with albinism. There was societal discrimination against the San people, and the government's continued narrow interpretation of a 2006 high court ruling resulted in the majority of San who originally relocated from the Central Kalahari Game Reserve (CKGR) being prohibited from returning to or hunting in the CKGR. The right to strike was restricted, and child labor was a problem.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings, and no unlawful killings by police or other security forces were reported during the year.

During 2009 eight incidents of shootings by police forces were reported, in which 11 civilians were killed, allegedly while being apprehended. Four persons were investigated for possible murder charges, and seven coroner's investigations were opened. The four murder cases were submitted to the Directorate of Public Prosecution (DPP) for further action. Six of the seven coroner's investigations were also forwarded to the DPP; two were subsequently closed due to lack of evidence.

In January 2009 a police officer mistakenly shot and killed Mothusinyana Moag, a 27-year-old man who fit the description of a man police were chasing. The victim ran from police when confronted and was shot during the chase. The inquest determined that the police officer involved was negligent. He was charged with manslaughter and was expected to appear before the High Court in early 2011.

In March 2009 police fired shots while in pursuit of robbery suspects. One of the suspects, Edson Mark Gumbo, was killed. The inquiry into this case determined that the officers acted lawfully and the case was closed.

In May 2009 Tshepo Molefe was shot by police during a robbery. The victim, or other suspects in his group, allegedly fired shots at police, and the victim ran toward the police officers, who shot him. He was pronounced dead at the hospital. After investigations into the shooting, police determined that the officers acted lawfully and closed the case.

Also in May 2009, John Kalafitas was shot and killed by government security officers. Attorneys for the Kalafitas family alleged that he was killed by government agents while he sat in a parked car. The government contended that Kalafitas was a wanted criminal who was killed during a lawful arrest. Four members of the Botswana Defense Force, Corporals Dzikamani Mthobi, Goitsewang Sechele, Ronny Matakoko, and Boitshoko Maifela, were charged with murdering Kalafitas, and the case was expected to be heard at the High Court in early 2011.

In August 2009 two men were shot and killed in Kasane. Police investigations established that offenders were of Zambian origin and elephant poachers; investigations were ongoing with the help of Zambian police.

During 2009 there were two reports of deaths of persons in police custody. In March 2009 a suspect, David Monggae, collapsed during interrogation related to accusations of cattle theft and subsequently died. Four police officers present during the interrogation were charged with murder and were awaiting trial at the High Court.

In July 2009 Italy Setlampoloka was arrested as a suspect in a series of robberies and break-ins. He was detained at the Mogoditshane Police Station and subsequently found dead by a passerby in an uninhabited area near Mogoditshane.

Police officers present during the investigation were charged with murder; the case was ongoing at year's end.

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 reports that security forces occasionally beat and abused suspects to obtain evidence or elicit confessions. Investigations continued into the 2008 case in which Directorate on Intelligence and Security (DIS) personnel allegedly tortured four men, including two police officers and two soldiers, after a weapon in their possession went missing. The Directorate of Public Prosecutions was assessing evidence on the case at year's end.

Prison and Detention Center Conditions

Conditions in the country's 22 prisons and two detention centers for illegal immigrants remained poor due to overcrowding. The prison system held approximately 5,063 prisoners as of December, exceeding the authorized capacity of 4,219. Overcrowding, which was worse in men's prisons, constituted a serious health threat due to the high incidence of HIV/AIDS and tuberculosis. Rape of inmates by inmates occurred. Mistreatment of prisoners is illegal; there were no reports of abuse during the year.

Mothers were allowed to bring their nursing babies under the age of two with them into the prison system, which lacked maternity facilities. In instances where a child is above two years in age, and no family is available to take care of the child, arrangements are made with nongovernmental organizations (NGOs) to care for the child until the mother is released. Juveniles were sometimes held with adults due to overcrowding in the two main juvenile prison facilities. In December 2009, 63 juveniles were incarcerated in adult prisons. Pretrial detainees and convicts were held together.

During 2009 officers of the courts, including magistrates and judges, conducted 13 visits to prisons to check on prison conditions. Government-appointed welfare and oversight committees visited prisons 30 times during the year. Reports on such

visits were not made public. In previous years the government permitted the International Committee of the Red Cross (ICRC) to visit prison facilities; however, the ICRC did not seek access to any prisoners during the year. Representatives of the Office of the UN High Commissioner for Refugees (UNHCR) and a foreign embassy visited the Center for Illegal Immigrants during the year.

Voluntary and free HIV testing and peer counseling were available to prisoners. In December the HIV infection rate was 5.5 percent for males and 10.4 percent for females. As of December, 106 prisoners were receiving antiretroviral (ARV) drug treatment. The government did not provide ARV treatment to noncitizens in detention; however, those in long-term detention could receive such treatment without cost from a domestic NGO.

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 sentence completed and must not have been previously incarcerated. Prisoners convicted of violent and other serious felonies were ineligible. By December, to ease overcrowding, 580 male and 73 female prisoners had been released to complete their sentences in the program. The president pardoned an additional nine prisoners 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 for Presidential Affairs and Public Administration, has primary responsibility for internal security. The merging of the Local Police Service and the BPS was completed in August 2009. Previously customary or local police, under the Ministry of Local Government, had law enforcement responsibility in specified tribal areas. The army is responsible for external security and has some domestic security responsibilities.

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

Arrest Procedures and Treatment While in Detention

Police officers must produce an arrest warrant issued by a duly authorized magistrate upon the presentation of compelling evidence, except in certain cases, such as when an officer witnesses a crime being committed or discovers that a suspect is in possession of a controlled substance. In 2008 the government established the Directorate on Intelligence and Security (DIS), a new intelligence agency with the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime. Elements of civil society continued to criticize the DIS, claiming that it was not subject to sufficient independent oversight and posed a potential threat to civil liberties.

Suspects must be informed of their rights upon arrest, including the right to remain silent, and must be charged before a magistrate within 48 hours. Authorities generally respected these rights in practice; however, there were allegations in the media and by defense attorneys that the right to an attorney was often denied during the first 48 hours after arrest, prior to the suspect being brought before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which he may renew every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. However, this determination was occasionally delayed in practice. Authorities generally informed detainees of the reason for their detention, although there were some complaints that this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and to hire attorneys of their choice; however, in practice most could not afford legal counsel. The government provides counsel for the indigent only in capital cases, although attorneys are required to accept pro bono clients.

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

e. Denial of Fair Public Trial

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

In addition to the civil court system, a customary or traditional court system also exists. Small claims courts were established in 2009 in Gaborone and some surrounding areas; there were some reports of heavy case loads and new procedures impacting the courts' effectiveness.

Trial Procedures

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

Several organizations, such as the Botswana Law Society and The Botswana Network on Ethics, Law, and HIV/AIDS, provided free legal services but had limited capacity. The University of Botswana Legal Assistance Center provided free legal services for some civil, but not criminal, matters.

While customary or traditional courts enjoy widespread support and respect on the part of citizens, they often did not afford the same due process protections as the formal court system. Defendants do not have legal counsel, and there are no standardized rules of evidence. Defendants can confront, question, and present witnesses in customary court proceedings. 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 and ill equipped to make legal decisions. The quality of decisions reached in the customary courts varied considerably and often lacked a presumption of innocence. In some cases tribal judges may issue sentences that include corporal punishment such as lashings on the buttocks.

There is a separate military court system; military courts do not try civilians. Military courts have separate procedures from civil courts. Defendants in military courts are able to retain attorneys 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.

Most civil cases were tried in customary courts. These courts handled land, marital, and property disputes and often did not afford due process.

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

The constitution and law prohibit such actions, and the government generally respected these prohibitions in practice. However, the government's continued narrow interpretation of a 2006 High Court ruling resulted in the majority of San being prohibited from living or hunting in the CKGR. In 2002 the government forcibly resettled the remaining indigenous San and other minority members living in the CKGR who had not voluntarily left to resettlement sites outside the reserve. Government officials maintained the resettlement program was voluntary and necessary to facilitate the delivery of public services, to provide socioeconomic development opportunities to the San, and to minimize human impact on wildlife (see section 6, 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 of the press, and the government generally respected freedom of speech in practice. The Media Institute of Southern Africa (MISA) and other NGOs reported that the government

attempted to limit press freedom and continued to dominate domestic broadcasting. Individuals could generally criticize the government publicly or privately without reprisal.

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

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

The independent media were active and generally expressed a wide variety of views, which frequently included strong criticism of the government; however, members of the media stated they were sometimes subject to government pressure to portray the government and the country in a positive light. It was sometimes more difficult for private media organizations than for government-owned ones to obtain access to government-held information.

Radio continued to be the most broadly accessible medium. Government-owned Radio Botswana and Radio Botswana 2 covered most of the country. Privately owned Yarona FM, Gabz FM, and Duma FM expanded their broadcasts from Gaborone to cover most of the major towns. They produced news and current affairs programs without government interference.

State-owned Botswana Television was the primary source of televised news and current affairs programs. The privately owned Gaborone Broadcasting Corporation broadcast mostly foreign programs. International television channels were available through cable subscription and satellite.

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

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet access was most common in urban areas, but has begun to expand to smaller cities and some rural areas. According to International Telecommunication Union statistics for 2009, approximately 6.15 percent of the country's inhabitants used the Internet. However, there were some reports during the year that the actual figure was significantly higher as citizens increasingly accessed the Internet through both mobile telephones and home and office Internet connections.

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

For a description of religious freedom, please see *the 2010 International Religious Freedom Report* at www.state.gov/g/drl/irf/rpt.

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

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

The government continued to restrict the freedom of indigenous San to return to the CKGR, despite a 2006 High Court ruling in a suit brought by 189 San declaring that the forced relocation of many San in 2002 had wrongfully deprived them of their property and that government prohibitions against their returning to the reserve and hunting there were unconstitutional. The government interpreted the High Court ruling to apply only to the 189 plaintiffs in the case and their families, and permitted only them to hunt or live in the CKGR. A few San had

never left the reserve, and some moved back to the CKGR after the High Court's decision. Many of the 189 did not return to live in the CKGR, as lack of water made the CKGR an extremely inhospitable environment, and some who initially returned left again. The government was not required to provide water in the CKGR per the 2006 ruling (see sections 1.f. and 6). Visitors to the reserve, including relocated former residents not named in the 2006 case, must obtain a permit to enter the CKGR. During the year the San took the government to the High Court, pleading for permission to use the borehole the government disabled in 2002. The High Court dismissed their case. The government continued to hold discussions with groups of San to reach an amicable solution regarding terms of CKGR residency.

The law prohibits forced exile, and the government did not use it.

Protection of Refugees

The government has established a system for providing protection to refugees. The government granted refugee status or asylum. The government's system for granting refugee status was accessible but slow. In practice the government provided protection against the expulsion or return of persons to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 UN refugee convention or the 1967 protocol. During the year fewer than 100 persons were granted refugee status. The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers.

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

for Illegal Immigrants on the grounds that asylum seekers should not be held in detention facilities. Conditions at the center were generally adequate, but children in the center did not have sufficient access to education during their detention, which in a few cases lasted many months.

In June 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 only 19 of the country's 3,185 registered refugees were living and working outside Dukwe. The government has stated that as a general policy all registered refugees must reside in the Dukwe camp, although it may permit residence outside the camp in a few exceptional cases, such as refugees enrolled at a university or with unique skills.

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

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

Elections and Political Participation

In October 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, who has held the presidency since 2008, when former President Festus Mogae resigned, retained his position. However, the BDP received preferential access to state-owned television during much of the campaign. The BDP won 45 of 57 competitive National Assembly seats, the Botswana National Front (BNF) won six seats, the Botswana Congress Party (BCP) won five seats, and an independent candidate won one seat. The BDP has won a majority of seats in the National Assembly in every election since independence. There are also four additional MPs who are nominated and elected by parliament.

In May the BDP split, with five of its MPs forming a new opposition party, the Botswana Movement for Democracy (BMD). Other MPs switched parties during the year, including among opposition parties, from the ruling party to opposition, and from the opposition to the ruling party. At year's end, the BDP held 45 seats in

parliament, the new BMD party led the opposition with six seats, the BNF controlled five seats, and the BCP had five seats.

The House of Chiefs acts as an advisory upper chamber to the National Assembly on any legislation affecting tribal organization and property, customary law, and administration of the customary courts. It consists of eight paramount chiefs, five chiefs chosen by the president, and 22 elected chiefs from designated regions. The paramount chiefs are members of the House of Chiefs for life, while the chosen and elected chiefs serve five-year terms. The first election based on amendments made to the constitution in 2006 to expand the House of Chiefs was held later that year.

Political parties operated without restriction or outside interference.

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

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

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. There were isolated reports of government corruption during the year. The minister of defense, justice and security resigned his cabinet position in August immediately preceding an official charge of corruption.

There are no formal financial disclosure laws; however, in October 2009 a presidential directive required all cabinet ministers to declare their interests, assets, and liabilities to the president. Critics contended the policy did not go far enough to promote transparency and that financial declarations by senior government officials should be available to the public.

In 2009 the Directorate on Corruption and Economic Crime (DCEC) initiated investigations into 39 suspicious transactions. Of these, 18 remained under investigation and 21 were concluded by year's end. Of the 21 cases, the directorate dismissed 18 after allegations of illegal conduct were disproved and found insufficient in three.

During the year police initiated investigations into 20 cases of police corruption.

Police officials acknowledged that corruption was a problem in the lower ranks; some officers took advantage of illegal immigrants and traffic violators. During the year 29 police officers were arrested for criminal offenses, with 12 brought before the courts by year's end. Of the 24 officers who were charged in 2009 and remained under investigation during the year, 18 were dismissed, two were acquitted, two resigned, and two cases remained under investigation.

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

In April portions of an anti-money-laundering law enacted in March 2009 came into effect. The act created a new Financial Intelligence Agency (FIA), but the agency was still being formed during the year. Until the FIA is fully functioning, the DCEC retains responsibility for investigating suspected instances of money laundering, including the authority to demand access to bank records during the course of an investigation.

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.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to domestic NGO views on most subjects but were considerably less open to the involvement of some international NGOs on the issue of the CKGR relocations. The government interacted with, and provided financial support to, some domestic organizations. Independent local human rights groups included

Childline, a child welfare NGO; Emang Basadi, a women's rights group; the Botswana Network on Ethics, Law, and HIV/AIDS; and DITSHWANELO.

Beginning in 2007 the government required that certain foreign NGO workers obtain visas, a practice which continued during the year.

The government worked cooperatively with international organizations, including the ICRC and UN, during the year. The government allowed visits from UN representatives and representatives from human rights and humanitarian organizations such as the ICRC.

The UN Special Rapporteur on Indigenous Persons visited the country in March 2009, and the UN issued a report on his visit in February. The UN noted that although the government had undertaken many initiatives to address the conditions of disadvantaged and marginalized peoples and to celebrate their cultures, it needed to increase its efforts to tackle the challenges faced by indigenous groups, such as land rights. According to the UN report, "Certain indigenous groups continue to suffer from a lack of secure land tenure, including access to and use of their ancestral lands and resources, in part due to the nonrecognition of these groups' customary land use practices."

An independent, autonomous ombudsman handled complaints of administrative wrongdoing in the public sector, and the government generally cooperated with the ombudsman. The office suffered from a shortage of staff, and public awareness of the office and its services was low.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

The law prohibits 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. In some cases victims were afraid of losing financial support if perpetrators were found guilty and imprisoned. The number of reported rape cases decreased during the year from 1,539 as of December 2009 to 1,332 as of November 2010. The NGOs continued efforts to improve awareness of the crime. By law the minimum sentence for rape is 10 years in prison, increasing to 15 years with corporal punishment if the offender is HIV-positive, and 20 years with corporal punishment if the offender was aware of having HIV-positive status. Corporal punishment was used more often in the customary than in the formal courts and typically consisted of strokes to the buttocks with a stick. A person convicted of rape is required to undergo an HIV test before sentencing. However, police lacked basic investigative techniques in rape cases.

The law prohibits domestic and other violence, whether against women or men, and it remained a serious problem. The police reported the following statistics related to domestic violence: defilement, 389 cases; incest, 5 cases; indecent assault on females, 129 cases; common assault, 12,367 cases; and assault occasioning bodily harm, 2,069 cases. There were 90 reported cases of passion killings and 834 of death threats. Greater public awareness resulted in increased reporting of domestic violence and sexual assault.

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, with or without 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 a reprimand. However, sexual harassment continued to be a widespread problem, particularly by men in positions of authority, including teachers, supervisors, and older male relatives.

Couples and individuals have the right, and were able in practice, to decide freely and responsibly the number, spacing, and timing of their children, and to have the information and means to do so free from discrimination, coercion, and violence. Contraception is widely available. According to the Population Reference Bureau, skilled attendance during childbirth averaged 94 percent across the country--with higher rates in urban areas. Obstetric and postpartum care was generally available, and women had equal access to testing and treatment for sexually transmitted diseases, including HIV/AIDS. The government's program, Prevention of Mother-to-Child Transmission of HIV, has effectively curtailed mother-to-child

transmission. According to the Ministry of Health, the maternal mortality rate was 198 deaths per 100,000 births.

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

Skilled urban women had increasing access to entry- and mid-level white collar jobs. According to a 2007 Grant Thornton International Business Report, 74 percent of businesses employed women in senior management positions, and women occupied 31 percent of such positions. Women occupied many senior-level positions in government agencies, such as speaker of the General Assembly, governor of the Bank of Botswana, attorney general, minister in the Office of the President, minister of education and skills development, and numerous permanent secretary positions. However, a 2007 UN report found that women's political participation was not equal to that of men. In 2008 the Botswana Defense Force (BDF) began to allow women to serve in the military. In 2008 the first class of Botswana female officer candidates completed their training in Tanzania and joined the BDF. During 2009 women were included as officer candidates in the first integrated training class to be conducted in the country and they continued to be inducted as officer candidates during the year.

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

Children

The law provides for the rights and welfare of children, and the government respected these rights in practice. In general, citizenship is derived from one's parents, although there are very limited circumstances in which citizenship can be derived from birth within the country's territory. The government generally registers births immediately; however, there were some delays in the most remote locations. Unregistered children may be denied some government services.

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

No law specifically prohibits child abuse. Sex with a child younger than 16 is known as defilement and is prohibited and punishable by a minimum of 10 years' incarceration. Police reported that through the end of November there were 1,332 cases of rape, 389 cases of defilement, 129 cases of indecent assault on girls and five cases of incest. There were defilement investigations and convictions during the year. Sexual abuse of students by teachers was reported to be a problem. Children were sometimes sexually abused by extended family members with whom they lived. The law considers incest a punishable act only if it occurs between blood relatives.

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

Child prostitution and pornography are criminal offenses. Media and NGO reports claimed that prostituted children had been made available to truck drivers along the main road linking the country with South Africa and that many of the girls and boys were thought to be orphans.

There were reports of child labor. 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, mostly on a subsistence level on family cattle posts or farms.

In 2005 the UN Children's Fund estimated there were 150,000 orphans in the country, of whom approximately 120,000 had lost one or both parents due to HIV/AIDS. As of December the government had registered 37,233 children as orphans. The discrepancy between the two estimates is due to the fact that the government has a more restrictive definition of when a child is orphaned than the UN. The government requires both parents of a child to have died before considering the child an orphan, except in cases where the child is raised by only one parent. Once registered, the children received clothes, shelter, a monthly food basket worth between 216 pula (approximately \$33) and 350 pula (\$54) depending upon location, and counseling as needed. Some relatives continued to deny inheritance rights to orphans.

The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at http://travel.state.gov/abduction/country/country_3781.html.

Anti-Semitism

There was no known Jewish community in the country, and no reports of anti-Semitic acts.

Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in education, employment, access to health care, or the provision of other state services. The government has an effective national policy that provides for integrating the needs of persons with disabilities into all aspects of government policymaking. The government mandated access to public buildings or transportation for persons with disabilities. There was some discrimination against persons with disabilities, and employment opportunities remained limited. The government did not restrict persons with disabilities from voting or participating in civil affairs, and some accommodations were made during elections to allow for persons with disabilities to vote. Although new government buildings were being

constructed to assure access by persons with disabilities, most older government office buildings remained inaccessible. There is a Department of Disability Coordination in the Office of the President to care for persons with disabilities.

The Department of Labor is responsible for protecting the rights of persons with disabilities 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 persons belong to one of the many scattered, diverse tribal groups known as San or Basarwa. The San represented approximately 3 percent of the population and were 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. In 2002 the government forcibly resettled San who were living in the CKGR to the settlement areas of Kaudwane, New Xade, and Xere. The government continued to maintain that the move was to enable the resettled San to have better access to education and health facilities.

While the government respected the December 2006 High Court ruling on a suit filed by 189 San regarding their forced relocation, it continued to interpret the ruling to allow only the 189 actual applicants and their spouses and minor children, rather than all San affected by the relocations, to return to the CKGR. The court ruled that the applicants were entitled to return to the CKGR without entry permits and to be issued permits to hunt in designated wildlife management areas, which are not located in the CKGR. The court also ruled that the government was not obligated to resume providing services within the CKGR, and the government did not reopen water wells in the CKGR during the year. Many of the San and their supporters continued to object to the government's narrow interpretation of this ruling. Government sources confirmed that negotiations between San representatives and government regarding residency, water, and hunting rights were ongoing at year's end. However, a small group of San also filed suit in November 2009 seeking to force the government to open a water well at a specific location inside the CKGR. San contend that this location had previously been a

well, while the government argued that it had never been a well and had been used for geological exploration. In July the High Court ruled against the plaintiffs. Attorneys for the San filed an appeal, which remained under consideration by the court at year's end.

During the year there were no reports of the arrest of San for illegal hunting in the CKGR. In 2009 the government made several arrests of San for illegally hunting in the CKGR. Although the law allows a fine or prison term for those found guilty of illegal hunting, none of the San arrested in 2009 were sanctioned.

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

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

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

The country has no law criminalizing sexual orientation. 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. The police do not target homosexual activity, and there were no reports of violence against persons based on their sexual orientation or gender identity during the year. However, there were reports of societal discrimination and harassment of gay, lesbian, bisexual, and transgender persons. An independent organization LEGABIBO (Lesbians, Gays, and Bisexuals of Botswana) attempted to register as an NGO to advocate for the rights of gay, lesbian, transgender, and bisexual persons, but the government refused to allow it to do so.

Other Societal Discrimination

Discrimination against persons with HIV/AIDS continued to be a problem, including in the workplace. The government funded community organizations that ran antidiscrimination and public awareness programs. The Botswana Network on

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

While persons with albinism were subject to some social discrimination, individuals were generally able to exercise their rights in practice.

Section 7 Worker Rights

a. The Right of Association

The law allows workers to form and join unions of their choice without excessive requirements, and workers exercised this right in practice. Only police, military, and prison personnel are prevented from forming or joining labor unions. However, members of those professions are represented by employee associations, which serve as a means to communicate collective needs and concerns to their government employer. In March 357,919 persons were employed in the formal sector, of whom 51 percent worked in the private sector, 28 percent worked for the national government, 17 percent for local governments, and 4 percent for parastatal enterprises. Only 1.7 percent of formal sector employees worked in agriculture, 3 percent in mining, 13 percent in retail sales, and 10 percent in manufacturing. Exact statistics regarding union membership were not available, but analysts estimated that trade unions had approximately 70,000 members, which would represent 20 percent of the formal sector workforce. Unions were concentrated largely in the public sector, mineral extraction, and to a lesser extent in the railway and banking sectors. The law requires that an organization have more than 30 employees to form a trade union.

The law severely restricts the right to strike, and virtually all strikes are ruled illegal, leaving striking workers at risk of dismissal. Legal strikes theoretically are possible only after an exhaustive arbitration process. Sympathy strikes are prohibited.

The 2006 case regarding a copper mine's dismissal of 178 workers for striking concluded with a lower court dismissal of the case, which was based on procedural errors by the plaintiffs' attorney. The case was appealed and had not been heard by the Industrial Court by year's end.

In 2008 the Industrial Court dismissed a 2005 case in which 461 workers were fired in 2004 after a strike against their employer, Debswana, the joint government-DeBeers diamond mine venture. The court found the case was not

tried in a timely fashion. The 461 former employees appealed the dismissal; the appeal was dismissed by the Industrial Court early in the year.

b. The Right to Organize and Bargain Collectively

The law allows unions to conduct their activities without interference, and the government protected this right in practice. The law provides for collective bargaining for unions that have enrolled 25 percent of an organization's labor force.

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

Workers may not be fired for legal union-related activities. Dismissals on other grounds may be appealed to civil courts or labor officers, which rarely ordered more than two months' severance pay.

The country's export processing zone (EPZ) exists on paper only. There are no special laws or exemptions from regular labor laws in the EPZ.

c. Prohibition of Forced or Compulsory Labor

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

Some Zimbabwean women reported being exploited by employers for forced labor. Children were trafficked internally for domestic servitude and cattle herding.

Also see the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

d. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age for basic employment at 14 years. Only an immediate family member may employ a child age 13 or younger, and no juvenile under age 14 may be employed in any industry without permission from the commissioner of labor. Children 14 years old who are not attending school may be employed by family members in light work that is not considered hazardous or as approved by the labor commissioner, but for no more than six hours per day or 30

hours per week. In industrial settings those under age 15 may only work up to three consecutive hours without the labor commissioner's approval, and those between ages 15 and 18 may work only up to four consecutive hours without such approval. Those under 18 may not be employed in work underground, at night, in work that is harmful to health and development, or that is dangerous or immoral. The law provides that adopted children may not be exploited for labor and protects orphans from exploitation or coercion into prostitution.

According to the 2005-06 labor survey, slightly fewer than 38,000 children between the ages of seven and 17 were employed in the formal sector 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.

The Ministry of Labor and Home Affairs was responsible for enforcing child labor laws and policies in all sectors, and it was generally effective, despite limited resources for oversight in remote areas of the country. 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. One child was found to be working illegally in the agricultural sector during the year. The employer was charged and fined and the child was assisted by the Department of Social Services.

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.

e. Acceptable Conditions of Work

The minimum hourly wage for most full-time labor in the private sector was 3.80 pula (\$0.58), which did not provide a decent standard of living for a worker and family. The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consists of

representatives of the government, the private sector, and the Botswana Federation of Trade Unions. The Ministry of Labor and Home Affairs was responsible for enforcing the minimum wage, and each of the country's districts had at least one labor inspector.

Formal sector jobs generally paid well above minimum wage levels. Informal sector employment, particularly in the agricultural and domestic service sectors, where housing and food were provided, frequently paid below the minimum wage. The minimum wage for domestic workers was two pula (\$0.30) per hour. The minimum for workers in the agricultural sector was 408 pula (\$62) per month; however, the cost of feeding a worker who lived on the employer's premises could be deducted from the wages.

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. Most modern private sector jobs had a 40-hour workweek; the public sector, however, had a 48-hour workweek. The labor law applies to farm and migrant workers. The Department of Labor had inspectors to oversee and enforce labor regulations; however, the number was insufficient to allow for inspection of all relevant workplaces.

The government's ability to enforce its workplace safety legislation remained limited by inadequate staffing and unclear jurisdictions among different ministries. Nevertheless, there are limited requirements for occupational safety contained in the Employment Act, and employers in the formal sector generally provided for worker safety.

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