

BOTSWANA 2016 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Botswana has been a constitutional, multiparty republican democracy since independence in 1966. Its constitution provides for the indirect election of a president and the popular election of a National Assembly. In October 2014 the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama, who has held the presidency since the resignation of former president Festus Mogae in 2008, retained his position. The BDP has held the presidency and a majority of National Assembly seats since independence.

Civilian authorities maintained effective control over the security forces.

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

Other significant human rights problems included occasional excessive use of force and abuse by security personnel; shortcomings in the judicial process, including lengthy delays and failure to inform defendants of their pretrial rights; government attempts to limit freedoms of the press and assembly; mistreatment of asylum seekers and refugees; corruption; and government curtailments of the right to strike. Societal problems included trafficking in persons and discrimination against women; those with HIV/AIDS; and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

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. A local human rights nongovernmental organization (NGO) criticized the May 25 execution of a death row inmate, stating that the clemency

process had not been fully completed nor the victim's family given advance notice of his execution.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices, but there were reports of police using such tactics. Some laws prescribe corporal punishment for offenders. Although 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.

Survival International, a UK-based NGO, claimed that on July 30, police on an antipoaching operation shot from a helicopter at a group of Basarwa (San) hunting in the Central Kalahari Game Reserve (CKGR). Survival International stated nine of the men were later stripped and beaten while in police custody. The Botswana Police Service (BPS) denied the claims.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards and continued to improve with further reduction of inmate overcrowding.

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

The Center for Illegal Immigrants (CII) in Francistown is a dedicated facility for processing asylum and other immigration claims by individuals who entered the country illegally. According to the UN High Commissioner for Refugees (UNHCR), conditions in the CII deteriorated considerably and no longer met minimum standards. UNHCR reported authorities housed some women and children asylum seekers in tents that were prone to leaking during rains. There were inadequate sanitary conditions, increasing the risk of communicable diseases.

Administration: Prison recordkeeping was adequate but utilized mostly paper records, and there was no plan to upgrade to computerized systems.

Authorities investigated credible allegations of inhuman conditions brought by inmates against prison officials and took disciplinary or judicial action against persons responsible for abuses. The law requires visits to prisons on a quarterly basis.

Independent Monitoring: The government allowed access to citizen and noncitizen prisoners by international and local NGOs and permitted independent human rights observers to visit prisons. The International Committee of the Red Cross visited prisons, and representatives of UNHCR visited the CII in Francistown.

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 BPS, under the Ministry of Defense, Justice, and Security in the Office of the President, 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 (DIS), 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 DIS, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving security forces.

During the year 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. DIS personnel have the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is

about to commit a crime. Elements of civil society continued to criticize the DIS, claiming it did not receive sufficient independent oversight and posed a potential threat to civil liberties.

The law requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and to file charges before a magistrate within 48 hours. Authorities generally respected these rights. There were no reports of denial of a suspect's right to an attorney during the first 48 hours after arrest and arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. Heavy court caseloads occasionally delayed this determination. Authorities generally informed detainees of the reason for their detention, although there were some complaints this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and hire attorneys of their choice but most could not afford legal counsel. 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 lasted beyond one year, but there were no reports of instances in which the length of detention equaled or exceeded the sentences later actually imposed. Such delays were largely due to judicial staffing shortages.

Detainee's Ability to Challenge Lawfulness of Detention before a Court: Detainees are entitled to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained.

Protracted Detention of Rejected Asylum Seekers or Stateless Persons: The government applies the principle of first country asylum; on that basis it detained more than 400 individuals in 2015, many of whom had received refugee status in a third country and then entered Botswana illegally and claimed asylum. UNHCR worked with the government to resolve their situation.

e. Denial of Fair Public Trial

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

Trial Procedures

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

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.

Small-claims courts were established in 2009 in Francistown and Gaborone. There were reports of heavy caseloads and new procedures limiting the courts' effectiveness. Many cases remained delayed for several months, and the National Legal Association criticized judges who did not deliver rulings in a timely manner.

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

The government's continued narrow interpretation of a 2006 High Court ruling resulted in a few hundred indigenous Basarwa people (also called the San) being prohibited from living or hunting in their tribal homeland, the CKGR). The

Basarwa filed an appeal, and a decision was pending at year' end (see section 6, Indigenous People).

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Freedom of Speech and 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 (\$39). 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 (\$48).

On September 13, security services arrested a man in Maun for allegedly producing and disseminating a satirical digitally manipulated image of President Khama. The INK Center for Investigative Journalism, a nonprofit organization based in Gaborone, condemned the arrest as a violation of freedom of expression.

Press and Media Freedoms: NGOs reported the government attempted to limit press freedom and continued to dominate domestic broadcasting. The INK Center for Investigative Journalism said the environment for journalists was one of “intimidation” by officials.

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 independent media were active and generally expressed a wide variety of views, which frequently included strong criticism of the government; however, members of the media complained they were sometimes subject to government pressure to portray the government and the country in a positive light. Private media organizations had more difficulty than government-owned media obtaining access to government-held information.

Violence and Harassment: On March 17, police detained overnight a journalist who wrote a series of articles exposing corruption by government officials. Initially charging the journalist with receiving stolen property, the Directorate of Public Prosecutions later dropped all charges. The INK Center for Investigative Journalism called the arrest a government “scare tactic.”

On August 8, the BPS arrested and detained for several hours two print media journalists as well as a radio talk show host and his producer who were covering a protest outside the National Assembly. One of the journalists arrested was the president of the Botswana Media and Allied Workers Union, which condemned the incident.

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

Libel/Slander Laws: In 2014 police arrested *Sunday Standard* editor Outsia 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 further noted the *Sunday Standard* had recently published several articles exposing corruption allegations within the DIS. 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. On August 30, the High Court ruled the penal code’s sedition clause was constitutional and charges of sedition against Mokone could proceed.

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 2015 approximately 27 percent of individuals used the internet.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

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

Freedom of Assembly

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

On August 8, police dispersed a group outside the National Assembly protesting youth unemployment. Police took five protesters into custody and held three overnight. Police released all five without charge within 24 hours.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

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

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

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 generally cooperated with UNHCR and other humanitarian organizations in assisting more than 2,800 refugees, asylum seekers, and others of concern. The government held refugees and asylum seekers in CII in Francistown

until the Refugee Advisory Committee (RAC), a governmental body, made a status recommendation. The committee met once during the year. UNHCR representatives participated in advisory committee meetings as observers and technical advisers. During the year RAC authorities approved refugee status for one minor, and the case awaited final government approval at year's end.

More than 400 persons, including more than 200 children, sought asylum during 2015; the majority 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 "first country of asylum" policy, and held the families at the CII while they awaited deportation. UNHCR urged the government to review its decision to deny asylum and to keep the asylum seekers at the CII, where authorities separated families, and women and children lived in tents in substandard conditions.

Employment: As of September most of the country's 2,123 registered refugees and 725 registered asylum seekers were living in Dukwi Camp without the right to work outside the camp. As a general policy, all registered refugees must reside in Dukwi, 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 through their implementing partner, the Botswana Red Cross. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

According to UNHCR there was no access to education in the CII. The center hosts a clinic, and a specialized nurse provides basic health care, while critical cases were referred to Francistown city hospital.

Durable Solutions: Since 2000 an estimated 2,000 Namibian refugees previously living in Botswana have voluntarily returned to Namibia. During the year five Namibian refugees applied to return voluntarily to Namibia, and at year's end they were awaiting clearance from the Namibian government.

Temporary Protection: Since 2012 the government has provided temporary protection at Dukwi to approximately 50 individuals who may not qualify as refugees under the 1951 UN Refugee Convention or the 1967 Protocol. UNHCR provided food and other provisions to individuals under temporary protection.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide 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.

Participation of Women and Minorities: There are no laws limiting the participation of women and minorities in the political process, and women and minorities participated. Nevertheless, observers suggested cultural constraints may limit the number of women in government. There were six women in the expanded 65-seat National Assembly, one of whom was the speaker and four of whom served in the 24-member cabinet. There was one female opposition member of parliament; however, she died in November and will be replaced after a by-election in 2017. There were also two women in the expanded 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 expanded House of Chiefs. The law provides that members from all groups enjoy equal rights, and minority tribes have representation in the House of Chiefs in equal standing to that of the eight principal tribes.

Section 4. Corruption and Lack of Transparency in Government

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

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

The press continued to publish information leaked from a Directorate on Corruption and Economic Crime (DCEC) investigation of the director of the DIS, a story first reported in 2014. The documents allegedly demonstrated substantive links to corruption and money laundering. At year's end the director retained his position, and the DCEC had not initiated any action against him.

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.

Public Access to Information: The law does not provide public access to government information, and the government generally restricted such access. The Government Printing Office releases information made available to the public for a fee.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations 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 autonomous ombudsman 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, and some criticized its effectiveness. Public awareness of the office and its services was low.

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, and the extent of the problem was likely underreported. In some cases of domestic nonspousal rape, victims were afraid of losing financial support if perpetrators were found guilty and imprisoned. By law the minimum sentence for rape is 10 years in prison, increasing to 15 years with corporal punishment if the offender is HIV-positive and 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 BPS did not have a specific unit dedicated to rape investigation, but trained crime scene investigators and a forensics unit to respond to cases of rape and domestic violence. NGOs continued efforts to improve awareness of rape.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem. Greater public awareness resulted in increased reporting of domestic violence and sexual assault.

According to a 2012 study of gender-based violence funded by the Ministry of Labor and Home Affairs' Department of Women's Affairs, 67 percent of women had experienced gender-based violence (GBV) at least once in their life, while 29 percent experienced it in the previous year. Approximately 44 percent of men admitted perpetrating violence against women. A 2016 report by an international donor agency stated that most GBV cases went unreported due to fear of further violence or loss of economic support from the perpetrator.

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

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; manage their reproductive health; and have the information and means to do so, free from discrimination, coercion, and violence. The UN Population Division reported 53 percent of girls and women

ages 15-49 used a modern method of contraception in 2013. According to World Bank data, the maternal mortality ratio was 129 deaths per 100,000 live births, although skilled health personnel attended 99 percent of births in the country as a whole, with lower rates in rural areas. The leading causes of maternal mortality included postpartum hemorrhage, hypertensive disorders of pregnancy, unsafe abortion, and HIV/AIDS-related infections. The major factors hindering greater contraceptive prevalence rates included a shortage of supplies, provider biases, inadequately skilled health-care workers, HIV status, culture, religion, and popularly accepted myths and misconceptions.

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

Skilled urban women had increasing access to entry- and mid-level white-collar jobs. Women occupied many senior-level positions in government, including speaker of the National Assembly, governor of the Bank of Botswana, attorney general, minister of foreign affairs and international cooperation, minister of education, and minister of health.

The Gender Affairs Department in the Ministry of Nationality, Immigration, and Gender Affairs has responsibility for promoting and protecting women's rights and welfare. The department provided grants to NGOs working on women's issues. A Southern Africa Development Community study in 2012 found women owned and operated the majority of informal-sector businesses, but the proportion of women in salaried formal employment was lower than that of men. There is no legal requirement that women receive equal pay for equal work.

Children

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

Education: 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. All school-age children have a right to the first 10 years of schooling. Thereafter, to access further education, they must pass the Junior Certificate Examination to get into senior secondary school.

Child Abuse: Child abuse occurred and often 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. Local human rights groups raised concerns about the use and administration of corporal punishment by traditional courts and in schools, which many believed to be excessive.

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

Sexual Exploitation of Children: The law prohibits the prostitution and sexual abuse of children. Sex with a child younger than age 16 constitutes defilement and is punishable by a minimum of 10 years' incarceration. There were defilement investigations and convictions during the year. There were reports teachers sexually abused students. Other school officials and members of victims' extended family with whom they resided also reportedly sexually abused children.

By law child prostitution is an act of defilement punishable by a minimum of 10 years' imprisonment. Child pornography is a criminal offense punishable by five to 15 years in prison. Media and NGO reports claimed most incidents of child

trafficking occurred in villages, where children were used for forced labor and sexual exploitation.

Displaced Children: In 2013 the UN Children's Fund, which defines an orphan as a child with one or both parents deceased, estimated there were 130,000 orphans in the country, of whom approximately 96,000 had lost one or both parents due to HIV/AIDS. The government, which defines an orphan as a child both of whose parents are dead, registered 38,596 children as orphans and 32,068 as vulnerable in 2013. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket worth between 216 pula (\$21) and 600 pula (\$57), depending upon location, and counseling as needed.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.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/.

Persons with Disabilities

The law prohibits discrimination against persons with physical and mental disabilities in education, employment, access to health care and the judicial system, or the provision of other state services. The law does not prohibit discrimination by private persons or entities. The law does not specifically prohibit discrimination against persons with sensory or intellectual disabilities. The government has a policy that provides for integrating the needs of persons with disabilities into all aspects of government policymaking. The government mandates access to public buildings or transportation for persons with disabilities, but civil society sources reported access for persons with disabilities was limited. The law does not specifically include air travel with other modes of transportation, but in general persons with disabilities were provided access to air transportation.

Although new government buildings were being constructed 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; there was no information available regarding patterns of abuse in educational and mental health facilities. The government did not restrict persons with disabilities from voting or otherwise participating in civil affairs and made some accommodations during elections to allow for persons with disabilities to vote.

There was a Department of Disability Coordination in the Office of the President to assist persons with disabilities. The Department of Labor in the Ministry of 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 a mutually intelligible dialect of Setswana, have been politically dominant since independence and officially recognized by law, granting them permanent membership in the House of Chiefs. Former president Festus Mogae established a commission of inquiry in 2000 in response to complaints from minority tribes that the constitution was discriminatory. The resulting constitutional amendments enabled the recognition of tribes other than the eight Tswana tribes; however, the United Nations expressed concern the changes merely put in place new discriminatory rules and the constitution continues to accord preferred status to the Tswana tribes.

On May 26, the government formally recognized as a tribe the Wayeyi, which had first applied for recognition in 2008.

English and Setswana are the only officially recognized languages, a policy human rights organizations and minority tribes criticized particularly with regard to education, where some children were forced to learn in their nonnative language. In a January report from a 2014 visit, the UN special rapporteur in the field of

cultural rights noted that this policy disadvantaged children in remote areas with limited exposure to 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 with respect to employment, housing, health services, and cultural practices; however, the Basarwa remained marginalized economically and politically and generally did not have access to their traditional land. The Basarwa continued to be geographically isolated, had limited access to education, lacked adequate political representation, and some members were not fully aware of their civil rights. NGOs have previously reported forced labor of Basarwa--including adults and children--on private farms and cattle posts.

While the government respected the 2006 High Court ruling on a suit filed by 189 Basarwa regarding their forced relocation, it continued to interpret the ruling narrowly, allowing only the 189 actual applicants and their spouses and minor children to return to the CKGR. Many of the Basarwa and their supporters continued to object to the government's interpretation of the court's ruling. Negotiations between Basarwa representatives and the government regarding residency and hunting rights stalled after a separate court ruling provided the right to access water through boreholes.

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.

A British citizen affiliated with NGO Survival International, who serves as an attorney for some Basarwa groups, was on a list of individuals from visa waiver countries who must apply for a visa to enter the country, impeding the group's ability to respond to legal and advocacy matters involving the Basarwa.

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

A number of NGOs made efforts to promote the rights of the Basarwa or to help provide economic opportunities, but such programs had limited impact. Survival International, along with other independent organizations, continued to criticize the government decision to allow mining exploration in the CKGR; mining operations in the area expanded during the year. The NGOs argued diamond exploration in the CKGR would have a significant negative impact on the lives and environment of the Basarwa.

The government previously 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.

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

The law does not explicitly criminalize consensual same-sex sexual activity, but it includes language criminalizing some aspects of same-sex sexual activity. What the law describes as “unnatural acts” are criminalized with a penalty of up to seven years’ imprisonment, and there was widespread belief this was directed toward LGBTI persons. On August 31, the Gaborone Magistrate Court sentenced a man to three and one-half years’ imprisonment, two of them suspended, for committing “unnatural acts.” The man was among 580 prisoners pardoned by President Khama as part of the 50th Independence Day celebrations in September. There were no reports police targeted persons suspected of same-sex sexual activity. LGBTI-rights organizations claimed there were incidents of violence, societal harassment, and discrimination based on sexual orientation or gender identity. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally as a result of overt intimidation.

Public meetings of LGBTI advocacy groups and debates on LGBTI issues occurred without disruption or interference. In March the Court of Appeals upheld a 2014 High Court ruling ordering the government to formally register LeGaBiBo (Lesbian, Gays, and Bisexuals of Botswana), a group that advocates for LGBTI rights. LeGaBiBo has since participated in government-sponsored events.

HIV and AIDS Social Stigma

Discrimination against persons with HIV/AIDS continued to be a problem, including in the workplace. The government funded community organizations that ran antidiscrimination and public awareness programs. The Botswana Network of Ethics, Law and HIV/AIDS continued to advocate for an HIV employment law to curb discrimination in the workplace. A 2016 report by an international donor noted that HIV-related stigma and discrimination had increased according to statistical surveys completed between 2008 and 2013, with women particularly susceptible to stigmatization.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers, except police, military, and prison personnel, to form and join independent unions, to bargain collectively, and to strike, provided certain restrictions are observed. Employee associations, which serve as a means to communicate collective needs and concerns to their government employer, represent police, military, and prison personnel. Union representatives reported that employee associations were generally not as effective as unions in resolving labor disputes. The law provides for certain restrictions that limit the right to organize. Trade unions that fail to meet the formal registration requirements are automatically dissolved and banned from carrying out union activities. The law does not afford protection to members of unregistered trade unions and does not fully protect union members from discrimination. 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.” Employers have the right to apply to the registrar for withdrawal of 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.

The law provides for collective bargaining only for unions that have enrolled one-third of a sector workforce. The law does not prohibit acts of interference by employers or employers’ organizations in the establishment, functioning, or administration of trade unions. The law provides a framework for either employers or unions to nullify 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. There were no such cases during the year.

The law severely restricts the right to strike. All strikes are illegal unless arbitration procedures are first exhausted. Compulsory arbitration was rare and only applied in cases involving a group dispute of workers in essential services. Strikes were rare. The law prohibits sympathy strikes. Striking workers participating in an illegal strike may face dismissal.

Employees categorized as those in the "essential services"--including the Bank of Botswana, railway services, health care, firefighting, military, transport services, telecommunications infrastructure, electricity, water, and sewage workers--are not allowed to strike. Parliament passed and President Khama signed the amended Trade Disputes Act into law, codifying and expanding this list to include teachers, veterinarians, and diamond cutters, occupations that fall outside the International Labor Organization's (ILO's) definition of essential services. The act went into force on November 1. In December the Botswana Federation of Public Sector Unions (BOFEPUSU) challenged the act in court. The case remained pending at year's end.

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 independently without government interference. Labor commissioners mediate private labor disputes, and if not resolved within 21 days as required by the amended Trades Disputes Act, they are sent to the Industrial Court. A case brought to the Industrial Court took two years to resolve, and as of October there was a backlog of 311 pending cases.

While the law allows formally registered unions to conduct their activities without interference and with protection from antiunion discrimination, members of unregistered trade unions are not protected against antiunion discrimination. Workers may not be terminated for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which rarely ordered more than two months' severance pay. The law does not provide for reinstatement of workers,

but a judge may order reinstatement if the termination is deemed to be related to union activities. The law does not provide protection to public employees' organizations from acts of interference by public authorities in their establishment or administration.

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

When unions followed legal requirements of exhausting arbitration and notifying the government in advance of a planned strike, the government permitted strikes and did not use force on strikers. Due to strike requirements, however, many strikes were ruled illegal, and striking workers often risked dismissal.

The government had an insufficient number of labor commissioners, resulting in an estimated two-year backlog of unresolved labor disputes at year's end. The government informed the ILO it recognized the need to have an independent dispute resolution mechanism and that the mechanism was to be included in the National Development Plan 10 (2009-2016). At year's end no independent dispute resolution mechanism was in place.

In September 2015 the High Court ruled that President Khama and the Directorate of Public Service Management (DPSM) must use the Public Service Bargaining Council when negotiating salary structures for unionized public employees. BOFEPUSU previously sued the president and DPSM after a 2014 wage hike they claimed undercut ongoing negotiations in the Bargaining Council. The ruling also stated the Bargaining Council would not cover nonunionized employees, an aspect BOFEPUSU stated it would appeal.

b. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit all forms of forced and compulsory labor, including by children. In 2014 parliament passed the Anti-Human Trafficking Act that prohibits trafficking of children and forced labor of both children and adults. Civil society representatives, however, reported the government did not effectively enforce existing relevant laws, particularly in remote areas, mainly because a lack of staff and funding made it difficult for the government to send labor officers to remote areas. Labor inspectors refer cases to the BPS for prosecution. There were reports of forced child labor in cattle herding and in domestic servitude, including using the labor of migrant children from Zimbabwe (see section 7.c.). There were also anecdotal reports that members of the Basarwa (San) community were subjected to forced labor conditions on cattle farms in the Ghanzi district.

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

c. Prohibition of Child Labor and Minimum Age for Employment

The minimum age for work is 15, but children 14 years or older may be employed in light work that is “not harmful to [their] health and development” and is approved by a parent or guardian. The law provides that work shall not exceed six hours per day when a child is not in school and five hours when a child is in school. The law prohibits children from engaging in hazardous work, including moving heavy objects that could endanger physical development, working underground or at night, or engaging in anything dangerous or immoral. The law prohibits the exploitation for labor or coercion into prostitution of adopted children.

The Ministry of 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 Education and the Ministry of Local Government and Rural Development. The Advisory Committee on Child Labor facilitated the oversight of child labor issues. It included representatives of various NGOs, government agencies, workers' federations, and employers' organizations and advised the government on the state of children three or four times during the year. The government supported and worked with partners to conduct workshops to raise awareness of child labor. The Department of Labor within the Ministry of Employment, Labor Productivity, and Skills Development collaborated with the

Department of Social Services within the Ministry of Local Government and Rural Development to advocate against and raise awareness of exploitative child labor. Ministers continued to address public gatherings (referred to locally as “kgotla”), cautioning against child labor. Penalties for violations of child labor laws range from a fine to up to 12 months’ imprisonment in most cases, with stricter penalties for cases involving the worst forms of child labor.

Despite laws and policies designed to protect children from exploitation in the workplace, there were reports of child labor, mostly on subsistence-level cattle posts or farms.

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

Labor laws prohibit discrimination regarding race, color, tribe, place of origin, social origin, sex, disability, language, sexual orientation and/or gender identity, HIV-positive status, marital status, creed, or social status. The government effectively enforced these regulations. After reports of harassment, the then minister of Labor and Home Affairs Edwin Batshu in August threatened expatriate tourist operators with deportation if found guilty of discrimination, racism, abusive language, and harassment of their employees.

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 in June to approximately three pula (\$0.29) per hour, or approximately 24 pula (\$2.30) per day. The minimum wage for workers in the agricultural sector was also raised to 620 pula (\$60) per month. According to a 2011 survey of formal sector employment by Statistics Botswana, monthly average earnings were 4,339 pula (\$420) for citizens, 13,055 pula (\$1,270) for noncitizens, and 4,731 pula (\$459) for all employees. The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consisted of representatives of the government, private sector, and Botswana Federation of Trade Unions. The Ministry of 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.

The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at time-and-a-half. The law does not specifically outline rest periods or prohibit excessive compulsory overtime. The law prescribes a 40-hour workweek for most modern private sector jobs and a 40-hour workweek for the public sector. The labor law also applies to farm and migrant workers. The Department of Labor within the Ministry of Employment, Labor Productivity, and Skills Development employed inspectors to oversee and enforce labor regulations.

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

The government generally enforced wage, hour, and OSH requirements, but the number of labor inspectors was insufficient to inspect all workplaces. During the year the government conducted 4,999 labor inspections and referred 32 cases to the BPS for prosecution.

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

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

Four miners died and six were seriously injured at a nickel-copper mine in Selebi Phikwe when a cable supporting a transportation cage snapped at the end of a shift. There have been nine fatalities at the same mine since 2015.

A December 2015 UN Development Program report stated that between 2005 and 2013 there were 1,200 nonfatal workplace injuries and 24 fatalities.