

BOTSWANA 2020 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Botswana is a constitutional, multiparty, republican democracy. Its constitution provides for the indirect election of a president and the popular election of a National Assembly. The Botswana Democratic Party has held a majority in the National Assembly since the nation's founding in 1966. In October 2019 President Mokgweetsi Masisi won his first full five-year term in an election that was considered free and fair by outside observers.

The Botswana Police Service, which reports to the Ministry of Defense, Justice, and Security, has primary responsibility for internal security. The Botswana Defense Force, 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 of Intelligence and Security Services, which reports to 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 security forces. Members of the security forces committed some abuses.

The National Assembly passed a six-month state of emergency in April and extended it for an additional six months in September. Ostensibly to give the government necessary powers to respond to the COVID-19 pandemic, the terms of the state of emergency included a ban on the right of unions to strike, limits on free speech related to COVID-19, and restrictions on religious activities. It also served as the basis for three lockdowns that forced most citizens to remain in their homes for several weeks to curb the spread of the virus. Opposition groups, human rights organizations, and labor unions argued that the state of emergency powers were too broad, placed too much power in the presidency, and were unnecessarily restrictive.

Significant human rights issues included: serious restrictions on free expression, press, and the internet, including the existence of criminal slander and libel laws;

BOTSWANA

substantial interference with freedom of association; serious acts of corruption; and the existence of the worst forms of child labor, including commercial sexual exploitation of children and forced child labor.

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. The Botswana Defence Force has a judge advocate general that would investigate any such cases; the Botswana Police Service would conduct an internal investigation into these types of allegations with a referral to civilian prosecutors if necessary.

b. Disappearance

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

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

The constitution and law prohibit such practices, but unlike in years prior to 2019, there were no reports of police using such tactics. Some laws prescribe corporal punishment for convicted offenders in both criminal and customary courts. 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. In April police reportedly used excessive force in at least one instance while enforcing the 2019 COVID-19 lockdown regulations in Lobatse, where two persons were beaten and injured. President Masisi released a statement vowing to investigate the incidents thoroughly and pledged not to tolerate abuse by security forces. The government did not release further information on the

BOTSWANA

investigation following this statement. On September 29, police also fired tear gas and rubber bullets at university students in Palapye who were protesting nonpayment of their student allowances. Students alleged police used excessive force to break up the protests, while police said the students set fires and refused to disperse. Two students were arrested and charged with incitement to violence and disobedience of the law.

Impunity was not a significant problem in the security forces.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards.

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

The Francistown Center for Illegal Immigrants (FCII) is a dedicated facility for processing asylum and other immigration claims by individuals who entered the country illegally. In previous years journalists reported allegations of authorities abusing asylum seekers in the FCII, but there were no reports of such abuses during the year. There was no school at the center, and international observers expressed concern some children were separated from parents at a young age. The government considered FCII to be a transit center for refugees, but some refugees previously spent several years there while awaiting review of their cases. Although in 2019 the government moved remaining long-term residents to the nearby Dukwi Refugee Camp, there was no protocol in place to prevent arrivals from spending long periods in FCII while their cases were processed. There were no significant reports regarding conditions at other prisons that raised human rights concerns.

Administration: 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 the minister of defense, justice, and security to appoint a committee to visit prisons on a quarterly basis and allows religious authorities to visit with prisoners. The

BOTSWANA

government enforced this law. Prisoners in general may also attend religious services.

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

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, and provide for the right of any person to challenge his or her detention in court. The government generally observed these prohibitions.

Botswana Police Service (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. Directorate of Intelligence and Security Services (DISS) personnel have the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime (see also section 2.a.).

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 the right to arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention that 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

BOTSWANA

there were some complaints this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and hire attorneys of their choice, but most could not afford legal counsel. There were no reports authorities held suspects incommunicado or under house arrest.

Pretrial Detention: A writ of pretrial detention is valid for 14 days and is renewable every 14 days. Some detainees, however, waited several weeks or months between the filing of charges and the start of their trials. Pretrial detention in murder, rape, livestock theft, and robbery cases sometimes exceeded a year, but there were no reports of instances in which the length of detention equaled or exceeded the sentences actually imposed. Pretrial detainees comprised approximately 25 percent (2015 data) of prisoners, according to the NGO World Prison Brief. Delays were largely due to judicial staffing shortages and a backlog of pending cases.

e. Denial of Fair Public Trial

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

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 civilian 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 to work pro bono for indigent clients. Courts tried those charged with noncapital crimes without legal representation if they could not afford an attorney. As a result many defendants were not aware of their procedural rights in pretrial or trial proceedings. Defendants may question witnesses against them. Defendants may present witnesses and evidence on their

BOTSWANA

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 civilian court system.

A separate military court system does not try civilians. Military courts have separate procedures from civil courts. Defendants in military courts are able to retain private attorneys at their own expense and view evidence to be used against them. Defendants in military court may have their cases transferred to the civilian judicial system. In addition military personnel may sue other military personnel in 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

BOTSWANA

available. By mutual agreement of the parties involved, customary courts, which handle land, marital, and property disputes, tried most civil cases but; they often did not afford the same due process protections as the formal judicial system. Although individuals and organizations may file complaints regarding domestic decisions with the African Commission on Human and Peoples' Rights, the country has not ratified the protocol that established the court, which means the country does not always implement the court's rulings.

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

The constitution and law prohibit such actions, but there were reports the DISS had developed capabilities for online surveillance. The BPS also used online surveillance of social media as part of COVID-19 state-of-emergency measures.

Section 2. Respect for Civil Liberties, Including

a. Freedom of Expression, Including for the Press

The constitution and law provide for freedom of speech and press.

Freedom of Speech: The law restricts the speech of some government officials and fines persons found guilty of insulting public officials or national symbols. The law states, "Any person in a public place or at a public gathering (who) uses abusive, obscene, or insulting language in relation to the president, any other member of the National Assembly, or any public officer" is guilty of an offense and may receive a substantial monetary fine. 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 receive a substantial monetary fine. There were no arrests or convictions under this law during the year.

The state of emergency includes a statute that makes it illegal to publish COVID-19 statements online "with an intent to deceive" concerning a person's health status or containing information on the virus. The maximum penalty for conviction of violating the provision is five years in prison, a substantial monetary fine, or both. At least six persons were arrested under the statute, including an

BOTSWANA

opposition official and a teacher who questioned the government's decision to impose a seven-week national lockdown.

Freedom of Press and Media, Including Online Media: The government dominated domestic broadcasting. The government owned and operated the Botswana Press Agency, which dominated the print media through its free, nationally distributed newspaper, *Daily News*, and two state-operated FM radio stations. State-owned media generally featured reporting favorable to the government and, according to some observers, were susceptible to political interference. Opposition political parties claimed state media coverage heavily favored the ruling party.

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

A 2008 law mandates registration of media outlets and journalists with the National Press Council and has been criticized by human rights and press freedom NGOs, although it has never been implemented.

On June 18, police arrested journalists David Baaitse and Kenneth Mosekiemang for allegedly taking photos of a DISS facility. DISS stated the pair was surveilling a "highly classified strategic security installation." The pair were charged with nuisance and released on bond pending trial. DISS issued a statement on the case that declared press freedom was not limitless and that media had a responsibility to defend the country's national security. As of October, the two had not been tried.

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

BOTSWANA

Libel/Slander Laws: There were no arrests for slander during the year. Nevertheless, 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. The law also states that any person who insults the country’s coat of arms, flag, presidential standard, or national anthem is guilty of an offense under the sedition clause. The Constitutional Court has not considered the constitutionality of the sedition clause.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content and there were no credible reports the government monitored private online communications without appropriate legal authority. The government did monitor social media content related to COVID-19 while enforcing state of emergency rules (see section 1.f.).

Academic Freedom and Cultural Events

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

b. Freedoms of Peaceful Assembly and Association

The constitution and law provide for the freedoms of assembly and association, and the government generally respected these rights, although there were restrictions on the ability of labor unions to organize and strike (see section 7.a.).

Freedom of Peaceful Assembly

The government barred in-person religious services during lockdown periods and limited the size of services to 50 persons as well as the number of weekly religious services per congregation as part of the state of emergency.

Freedom of Association

Labor leaders expressed views that restrictions on strikes during the COVID-19 state of emergency were unnecessary, unrelated to public health concerns, and were an attempt by the government to restrict trade union activities.

BOTSWANA

c. Freedom of Religion

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

d. Freedom of Movement

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

In-country Movement: The government's COVID-19 restrictions set limits on internal movement. A series of "extreme social distancing" periods (lockdowns) forced most of the population to remain at homes for weeks at a time. Those engaged in essential services such as food supply, utilities, and critical government functions were allowed to circulate with permits. Ordinary individuals required permits to carry out basic functions like visiting the grocery store. The number of permits was strictly limited on a daily basis and could only be acquired through an online application. Additionally, the government divided the country into nine zones, with permits required to pass from one zone to another. Regulations stated permits were meant only for exceptional travel, such as essential services or for funerals. The automated online permit system, however, approved most permits regardless of the purpose of travel.

e. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government generally cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations.

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

BOTSWANA

race, religion, nationality, membership in a particular social group, or political opinion.

The government held refugees and asylum seekers in the FCII until the Refugee Advisory Committee, a governmental body, made a status recommendation. The committee met quarterly during the year. UNHCR representatives participated in advisory committee meetings as observers and technical advisers.

The government repatriated a number of Zimbabwean refugees from the Dukwi Refugee Camp, many of whom had been living at the camp for more than a decade. Approximately 375 persons agreed to repatriate voluntarily, but another 200 refugees refused repatriation, stating they feared abuse in Zimbabwe due to their affiliation with opposition parties. UNHCR alleged the government rushed the repatriation process for the 200, preventing UNHCR from assessing the veracity of their claims and whether they were eligible for resettlement. Under international pressure from UNHCR and foreign missions, the government agreed to a more thorough process of evaluating the Zimbabwean cases.

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

Freedom of Movement: As a general policy, all registered refugees must reside in Dukwi Refugee Camp under a strict encampment policy, although the government may issue a residence permit to remain outside the camp in exceptional cases, such as for refugees enrolled at a university, in need of specialized medical care, or with unique skills.

Employment: In February 2019 UNHCR reported that most of the country's 1,005 registered refugees were living in the Dukwi Refugee Camp and did not have the right to work outside the camp.

Access to Basic Services: Refugees at the Dukwi Refugee Camp had access to education and basic health-care services. In 2019 the government began allowing noncitizens, including refugees, to receive HIV/AIDS medication. UNHCR facilitated refugee and asylum seekers' exit permit applications for medical

BOTSWANA

referrals as necessary. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

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

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

Section 3. Freedom to Participate in the Political Process

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

Elections and Political Participation

Recent Elections: The Botswana Democratic Party (BDP) won a majority in the October 2019 parliamentary elections, returning President Mokgweetsi Masisi to office for a full five-year term and continuing the party's control of the government dating from independence in 1966. The vote was generally considered credible by outside observers; however, opposition parties challenged some of the election results in court, citing primarily irregularities with voter registrations. In December 2019 the Court of Appeals dismissed all claims and ordered the opposition parties to pay court costs.

Using COVID-19 state of emergency powers, the government postponed indefinitely two special elections, scheduled for May, for district council seats to replace two lawmakers who died. As of November the special elections had not been rescheduled.

Political Parties and Political Participation: On July 29, the National Assembly suspended the leader of the opposition (an officially designated position), Dumelang Saleshando, for one week for accusing members of President Masisi's

BOTSWANA

family of improperly manipulating the government tendering process. The speaker of the National Assembly, who was appointed by the president, called for the suspension vote after the opposition leader refused to retract his accusation. All votes for the suspension were from the BDP, which the president leads as party chairman. The Court of Appeals temporarily lifted the suspension after the opposition leader filed a lawsuit challenging it. On August 6, the BDP subsequently suspended from party activities for 60 days the only party member of parliament who voted against the opposition leader's suspension.

Participation of Women and Members of Minority Groups: No laws limit the participation of women and members of minority groups in the political process, and they did participate. Nevertheless, observers suggested cultural constraints, including the sexual exploitation of women in politics, limited the number of women in government. There were six women in the 65-seat National Assembly, three of them elected and three appointed by President Masisi. In 2014, four women were elected to the National Assembly. The president named four female members of parliament to serve in the 30-member cabinet. There were also two women in the 34-seat House of Chiefs.

While the constitution formally recognizes eight principal tribes of the Tswana nation, amendments to the constitution also allow minority tribes to be represented in the House of Chiefs. The law provides that members from all groups enjoy equal rights. Outside observers noted many tribes were unrecognized or unrepresented, and women were underrepresented in the traditional chieftaincy system.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally sought to implement these laws effectively. Officials tasked with enforcement lacked adequate training and resources, however. Media reports of government corruption continued during the year. There were numerous reports of government corruption, including allegations tied to tenders issued by local governments for COVID-19 projects, such as renovating public facilities so that

BOTSWANA

they complied with virus prevention measures and also in the acquisition of personal protective equipment. A 2019 poll by Transparency International found that 7 percent of those polled had paid bribes to government officials. This number grew from the 1 percent who reported paying bribes in a 2015 poll.

Corruption: In July former permanent secretary to Presidents Khama and Masisi Carter Morupisi and his wife stood trial on charges of abuse of office, money laundering, and receiving bribes. The government continued to investigate Isaac Kgosi, the country's former chief of DISS, regarding alleged embezzlement at the National Petroleum Fund. In March, Kgosi was arraigned on charges of embezzlement. Trial procedures continued as of year's end.

Financial Disclosure: In August 2019 parliament passed a bill requiring declaration of assets and liabilities by members of parliament. A 2009 presidential directive requires all cabinet ministers to declare their interests, assets, and liabilities to the president. There were no cases reported where a declaration was questioned or sanctions imposed.

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

The small number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to domestic NGO views on most subjects. The government interacted with and provided financial support to some domestic organizations.

Government Human Rights Bodies: An ombudsman within the Office of the President handled complaints of maladministration, including some human rights abuses in the public sector, and the government generally cooperated with the ombudsman. The Office of the Ombudsman, however, lacked sufficient staff.

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

BOTSWANA

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, although police noted victims often declined to press charges against perpetrators. In February 2019 the BPS Commissioner announced it would no longer allow the withdrawal of gender-based violence (GBV) cases waiting to be heard by magistrate court. On October 13, President Masisi announced the BPS would establish standard operating procedures for dealing with GBV, including establishing dedicated units to handle GBV, establishing a special hotline for GBV victims, and requiring GBV victims to be interviewed in private spaces. By law the minimum sentence for conviction of rape is 10 years' imprisonment, increasing to 15 years with corporal punishment if the offender was unaware of being HIV-positive and 20 years with corporal punishment if the offender was aware of being HIV-positive. By law formal courts try all rape cases. A person convicted of rape is required to undergo an HIV test before sentencing.

The law prohibits domestic and other violence, whether against women or men, but it remained a serious problem. Although statistics were unavailable, media widely reported on cases of violence against women, including several high-profile murder cases.

The government regularly referred victims of gender-based violence to a local NGO that ran shelters for women.

In April shelter operators and civil society groups reported a significant increase in victims of GBV at the start of the seven-week COVID-19 lockdown. The government made statements to discourage such violence but did not devote extra resources to address the issue or help shelters overwhelmed by the influx of victims.

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

BOTSWANA

reprimand. Nonetheless, sexual harassment, particularly by men in positions of authority, including teachers, was widespread.

Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children; and to manage their reproductive health. They had the information and means to do so, free from discrimination, coercion, and violence. A 2018 study of family planning found that 98 percent of women knew of at least one family-planning method. 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. Access to health care during pregnancy and childbirth was widespread, with 95 percent of the population living within an average of 5 miles from the nearest health facility.

The government provided access to sexual and reproductive health services for survivors of sexual violence, including postexposure prophylaxis, emergency contraceptives, counseling, treatment of injuries, and rapid HIV testing.

According to 2019 data, the maternal mortality ratio was 166 deaths per 100,000 live births. The leading causes of maternal mortality included postpartum hemorrhage, genital tract and pelvic infections following unsafe abortion, and ectopic pregnancy.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Discrimination: Under the constitution women and men have the same civil rights and legal status. Under customary law based on tribal practice, however, a number of traditional laws restricted women's property rights and economic opportunities, particularly in rural areas. Women increasingly exercised the right to marriage "out of common property," in which they retained their full legal rights as adults. Although labor law prohibits discrimination based on gender and the government generally enforced the law effectively, there is no legal requirement for women to receive equal pay for equal work.

Children

BOTSWANA

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. Unregistered children may be denied some government services, including enrollment in secondary schools and national exams.

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

Child Abuse: The law penalizes neglect and mistreatment of children. There was reportedly widespread abuse of children. The deputy opposition whip, Pono Moatlhodi, was charged with assault for allegedly setting a dog on a 12-year-old he suspected of stealing mangoes. Child abuse was reported to police in cases of physical harm to a child. Police referred the children and, depending on the level of abuse, their alleged abuser(s) to counseling in the Department of Social Services within the Ministry of Local Government and Rural Development as well as to local NGOs. Police referred some cases to the Attorney General's Office for prosecution.

Child, 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 younger than the minimum legal age of 18.

Sexual Exploitation of Children: The law prohibits the prostitution and sexual abuse of children. Conviction of sex with a child younger than 16, including a prostituted child, constitutes defilement and is punishable by a minimum of 10 years' incarceration. In 2019 parliament amended the law, raising the age of consent from 16 to 18. The penalty for conviction of not reporting incidents of child sexual exploitation ranges from a substantial monetary fine to imprisonment for no less than two years but no greater than three years, or both. Perpetrators who engage in sexual exploitation of children are punished, if convicted, with a substantial monetary fine, imprisonment for no less than five years but no longer than 15 years, or both. The law further requires the government to develop programs to prevent the sexual exploitation of children. In May, Member of

BOTSWANA

Parliament Polson Majaga was charged with defilement of a minor (statutory rape), and was subsequently suspended by the BDP from party activities but retained his seat in the legislature.

Child advocacy groups reported increases in sexual abuse of children during COVID-19 lockdowns. For example, UNICEF in April reported 23 cases of defilement and 22 rape cases during the first seven days of the national lockdown.

Child pornography is a criminal offense punishable by five to 15 years' imprisonment.

Displaced Children: According to an international organization, 61,649 orphans and vulnerable children received government support between April and September 2018. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket, and counseling as needed.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.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 <https://www.state.gov/trafficking-in-persons-report/>.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities. The government's policy provides for integrating the needs of persons with disabilities into all aspects of policymaking. It mandates access to public buildings or

BOTSWANA

transportation for persons with disabilities, but access for persons with disabilities was limited. Although 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.

Violence against persons with disabilities was not common, and authorities punished those who committed violence or abuses against persons with disabilities.

Children with disabilities attended school, although human rights NGOs raised concerns the law does not stipulate accessible education for children with disabilities. In 2018 the UN special rapporteur on minority issues observed that most teachers were not trained in sign language or in teaching methods adapted to the educational needs of deaf persons. The special rapporteur also noted that the absence of sign language interpreters in the health-care sector inhibited the dissemination of information. The government made some accommodations during elections to allow for persons with disabilities to vote, including providing ballots in braille.

There is a Department of Disability Coordination in the Office of the President to assist persons with disabilities. The Department of Labor in the Ministry of Employment, Labor Productivity, and Skills Development is responsible for protecting the rights of persons with disabilities in the labor force and investigating claims of discrimination. Individuals may also submit cases directly to the Industrial Court. The government funded NGOs that provided rehabilitation services and supported small-scale projects for workers with disabilities.

Indigenous People

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

BOTSWANA

English and Setswana are the only officially recognized languages, a policy human rights organizations and minority tribes criticized, particularly with regard to education, as the policy forced some children to learn in a nonnative language. In 2018 the UN special rapporteur on minority issues noted the lack of mother tongue education or incorporation of minority languages into the school curriculum may constitute discrimination and encouraged the government to review its language policy with regard to education.

An estimated 50,000 to 60,000 persons belong to one of the many scattered, diverse tribal groups known collectively as Basarwa or San. The Basarwa constituted approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the Basarwa in employment, housing, health services, or because of cultural practices. The Basarwa, however, remained marginalized economically and politically and generally did not have access to their traditional land. The Basarwa continued to be geographically isolated, had limited access to education, lacked adequate political representation, and some members were not fully aware of their civil rights.

The government interpreted a 2006 High Court ruling against the exclusion of Basarwa from traditional lands in the Central Kalahari Game Reserve (CKGR) to apply only to the 189 plaintiffs, their spouses, and their minor children. Many of the Basarwa and their supporters continued to object to the government's interpretation of the court's ruling.

Government officials maintained the resettlement programs for Basarwa were 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 persons. 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. There has been no ruling in the case to date.

BOTSWANA

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

In previous years the government charged Basarwa with unlawful possession of hunted wildlife carcasses. Five Basarwa filed a lawsuit against the minister of environment, natural resource conservation, and tourism regarding the national hunting ban, implemented in 2014. In 2019 the government lifted the ban on wildlife hunting.

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

The law does not explicitly criminalize lesbian, gay, bisexual, transgender, or intersex (LGBTI) status or conduct, but the penal code includes language that has been interpreted as criminalizing some aspects of same-sex sexual activity between consenting adults. Specifically it criminalizes “unnatural acts,” with a penalty if convicted of up to seven years’ imprisonment. There was widespread belief this was directed against LGBTI persons. In June 2019 the High Court found this language unconstitutional, thereby decriminalizing consensual same-sex sexual conduct in the country. The ruling party welcomed the decision. The government, however, has since appealed the judgment. Consideration of this matter by the Court of Appeals was delayed when the court system shut down for seven weeks as a consequence of the country’s COVID-19 response. A court date for the appeal had not been set as of November, and the existing laws on same-sex sexual activity remained in effect. Security forces generally do not enforce these laws.

There were no reports police targeted persons suspected of same-sex sexual activity. There were incidents of violence, societal harassment, and discrimination based on sexual orientation or gender identity. There were no reported cases of authorities investigating abuses against LGBTI persons, however. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally as a result of overt official intimidation.

In July a transgender woman was given a sentence of flogging by a traditional court after being convicted of violating public order for insulting another person.

BOTSWANA

By traditional law women are excluded from flogging in the traditional courts due to modesty concerns over removing a blouse for canings. The transgender person was not afforded this exception but was able to avoid the punishment after a doctor deemed she was too ill for corporal punishment. She paid a fine instead.

Public meetings of LGBTI advocacy groups and debates on LGBTI matters occurred without disruption or interference. In 2016 the Court of Appeals upheld a 2014 High Court ruling ordering the government to register the NGO Lesbians, Gays, and Bisexuals of Botswana (LeGaBiBo) formally. LeGaBiBo has since participated in government-sponsored events.

HIV and AIDS Social Stigma

According to 2019 UNAIDS data, the HIV prevalence rate for adults, who were 15 to 49 years of age, was approximately 21 percent. According to the UN Population Fund, limited access to sexual and reproductive health information and youth-friendly services, as well as gender-based violence, contributed to high HIV rates. The government funded community organizations that ran antidiscrimination and public awareness programs.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the rights of workers--except police, military, and prison personnel--to form and join independent unions and to bargain collectively. The law provides some workers with the right to strike. The COVID-19 state of emergency barred all industrial actions by unions, although workers at some companies did conduct short work stoppages over pay matters without government interference. The law allows registered unions to conduct their activities without interference and with protection from antiunion discrimination.

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

BOTSWANA

Trade unions failing to meet formal registration requirements are automatically dissolved and banned from carrying out union activities. The law does not protect members of unregistered trade unions and does not fully protect union members from antiunion discrimination. This means that those trying to establish, join, or register a trade union are not protected from antiunion discrimination.

The law imposes a number of substantive requirements on the constitutions and rules of trade unions and federations of trade unions. The law also authorizes the registrar to inspect accounts, books, and documents of a trade union at “any reasonable time” and provides the minister of defense, justice, and security with the authority to inspect a trade union “whenever he considers it necessary in the public interest.” It also allows the registrar or attorney general to apply for an order to restrain any unauthorized or unlawful expenditure of funds or use of any trade union property. Employers and employer associations have the legal right to ask the registrar to withdraw recognition of a union, and the Ministry of Employment, Labor Productivity, and Skills Development has the right to suspend a union if it is “in the public interest,” although the former practice was uncommon and the latter has never been employed. Any person acting or purporting to act as an officer of a trade union or federation that fails to apply for registration within 28 days of its formation is subject to sanctions.

The law provides for collective bargaining only for unions that have enrolled at least one-third of a sector’s workforce. The law does not allow employers or employers’ organizations to interfere in the establishment, functioning, or administration of trade unions. The law provides a framework for either employers or unions to nullify collective bargaining agreements and provides a mechanism for the other party to dispute the nullification. The law also permits an employer or employers’ organization to apply to the government to withdraw the recognition granted a trade union if it establishes that the trade union refuses to negotiate in good faith with the employer.

The law prohibits employees providing “essential services” from striking. In August 2019 the National Assembly passed legislation limiting the sectors covered by this prohibition in line with a recommendation from the International Labor

BOTSWANA

Organization. The law limits its definition of essential services to aviation, health, electrical, water and sanitation, fire, and air traffic control services.

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 the ombudsman generally made decisions without government interference. Labor commissioners mediate private labor disputes, which, if not resolved within 30 days, may be referred to the Industrial Court.

Workers who are members of registered unions may not be terminated for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which have rarely ordered payment of 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 did not respect freedom of association for workers. In addition the government placed significant barriers to union organizing and operations, and there were some restrictions on the right to collective bargaining. Workers exercised the right to form and join unions, and employers generally did not use hiring practices to avoid hiring workers with bargaining rights. The government refused to recognize migrant workers' attempt to form a union after the workers had submitted all required documents to register their association. Legal penalties for violations of laws governing freedom of association were commensurate with those for other laws involving denials of civil rights.

The law severely restricts the right to strike, and strikes were rare. When unions followed legal requirements, exhausted arbitration, and notified the government in advance of a planned strike, the government permitted strikes and did not use force on strikers. Due to strike requirements, however, many strikes were ruled illegal, and striking workers often risked dismissal. The law prohibits sympathy strikes.

BOTSWANA

Compulsory arbitration was rare and only applied in cases involving a group dispute of workers in essential services. The law prohibits an employer from hiring workers to replace striking or locked-out workers and prohibits workers from picketing only if the parties have an agreement on the provision of minimum services or, if no such agreement has been made, within 14 days of the commencement of the strike.

b. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit and criminalize all forms of forced and compulsory labor, including by children. Civil society representatives reported in previous years the government did not effectively enforce relevant laws, particularly in remote areas, mainly due to a lack of staff and funding. Labor inspectors refer cases to the BPS for prosecution. In the past authorities prosecuted cases involving trafficked individuals and won convictions. There were anecdotal reports of forced child labor in cattle herding and in domestic servitude (see section 7.c.). Members of the San community, including children, were sometimes subjected to forced labor conditions on cattle farms in the Ghanzi district. The law prescribed penalties that were not commensurate with comparable serious crimes.

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

BOTSWANA

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the worst forms of child labor.

The minimum age for work is 15, but children as young as 14 may be employed in light work that is “not harmful to (their) health and development” and is approved by a parent or guardian. The law, however, does not define the types of permitted light work activities. The law provides that work shall not exceed six hours per day when a child is not in school and five hours when a child is in school, but only on vacation days between the hours of 6 a.m. and 4 p.m. Although the law prohibits night work and hazardous underground work for children, it does not cover hazardous activities, such as the use of dangerous machinery, tools, and equipment. In addition the law establishes the right of children to be protected from sexual exploitation, including through prostitution and the production of pornography (see section 6).

The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing child labor laws and policies in all sectors, but its resources were too limited for effective oversight in remote areas. District and municipal councils have child welfare divisions, which are also responsible for enforcing child labor laws. Other involved government entities included offices within the Ministry of Basic Education and the Ministry of Local Government and Rural Development. Government officials continued to address public gatherings, cautioning against the worst forms of child labor. Penalties, however, were not commensurate with those for comparable serious crimes.

Despite laws and policies designed to protect children from exploitation in the workplace, child labor occurred mostly on small-scale cattle posts or farms, where employees lived with their children in family units, particularly in the Ghanzi region. Child labor also occurred in domestic work and street vending. Civil society representatives noted in such cases where it was likely to exist, child labor resulted from a lack of awareness of the law among parents and their employers.

BOTSWANA

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

Labor laws prohibit discrimination based on race, color, tribe, place of origin, including national origin, social origin, sex, disability, language, sexual orientation or gender identity, HIV status, marital status, religion, creed, or social status. The government generally enforced these regulations, and penalties were not commensurate with comparable serious crimes.

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 was higher than the official estimate of the poverty income level for all sectors. Formal-sector jobs generally paid well above minimum wage.

The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at time-and-a-half times the base hourly rate. In May the government froze payment for overtime work of public servants as a measure to address a budget shortfall during the COVID-19 pandemic. According to union representatives, some workers were required to perform overtime duties without compensation.

There are limited occupational safety and health (OSH) requirements. The government's ability to enforce OSH legislation remained limited due to inadequate staffing and lack of clear ministerial jurisdictions. The law provides protection against termination for workers who verbally complain about hazardous conditions, but no specific provisions in the law allow workers to remove themselves from situations that endanger their health or safety without jeopardizing their employment. There were no figures available on the number of industrial accidents during the year that caused the death or serious injury of workers.

BOTSWANA

The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing wage, hour, and OSH standards, but the number of inspectors was not sufficient to effectively enforce the law. Penalties were not commensurate with those for similar crimes.

The primary forms of compensation for labor in the informal sector were housing and food, particularly in the agricultural and domestic service areas. Wages in the informal sector were 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.