

# **BOTSWANA 2022 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 2019, President Mokgweetsi Masisi won his first full five-year term in an election that outside observers deemed free and fair. The Botswana Police Service, which reports to the Ministry of Defense and Security, has primary responsibility for internal security. The Botswana Defense Force, which reports to the Office of the President through the minister of defense and security, has some domestic security responsibilities. The Directorate of Intelligence and Security Services, which also 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.

Significant human rights issues included credible reports of: arbitrary or unlawful interference with privacy; serious restrictions on free expression and media, including an unjustified arrest or prosecution of journalists; serious government corruption; and the existence of the worst forms of child labor.

The government took steps to prosecute officials who committed abuses or were implicated in corruption. Impunity was generally not a problem.

## **Section 1. Respect for the Integrity of the Person**

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

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

## **b. Disappearance**

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

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

The constitution and law prohibit such practices, and there were no reports of government officials employing 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.

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

There were no significant reports regarding prison or detention center conditions that raised human rights concerns. Prison and detention center conditions generally met international standards.

**Abusive Physical Conditions:** Authorities occasionally held juveniles with adults generally for a few days while the juveniles awaited transport.

**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 and security to appoint a committee to visit prisons on a quarterly basis and allows religious authorities to visit with prisoners. The government enforced this law.

**Independent Monitoring:** The government generally allowed international and local nongovernmental organizations (NGOs) to meet with prisoners, and it permitted independent human rights observers to visit prisons. The International Committee of the Red Cross visited prisons. Representatives of diplomatic missions were also allowed access to the Francistown Centre for Illegal Immigrants, a dedicated facility for detaining migrants.

## **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. While the government generally observed these prohibitions, compliance was not universal.

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

The law also requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and requires authorities to file charges before a magistrate within 48 hours.

Upon arrest, 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.).

Those arrested or detained have the 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 further 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.

The country has 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.

**Arbitrary Arrest:** 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. Overall, authorities generally respected these rights and legal requirements, although some complaints of violated rights have arisen related to DISS's exercise

of its arrest powers.

On March 18, the Directorate of Intelligence and Security Services arrested an opposition member of parliament and his brother for 48 hours without any warrant or charges. The two were denied legal representation during their incarceration.

On June 7, DISS arrested the legal adviser for the Directorate on Corruption and Economic Crime's (DCEC). DISS's actions were a continuation of ongoing political tensions between DISS and the DCEC, whose director general previously took DISS to court over accusations that DISS had attempted to confiscate files regarding corruption investigations into DISS officials. The adviser had previously filed a supporting affidavit in the case filed by DCEC opposing attempts from DISS to access the case files.

**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 22.5 percent (2021 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, but there were a few reports of executive overreach in a few high-profile cases. These included an executive branch attempt to influence the trial outcome of a former minister accused of murder. Further, a tribal chief claimed that the presidency warned her that it would intervene in a case involving a dispute between the Balete tribe and the government.

## **Trial Procedures**

The constitution and law provide for the right to a fair and public trial, and an

independent judiciary generally enforced this right. Trials in civilian courts are public, although trials under the National Security Act may be secret. Defendants have the right to be present and to 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 the defendant could not afford an attorney. As a result, many defendants were not aware of their procedural rights in pretrial or trial proceedings. Some NGOs provided free but limited legal assistance.

A customary or traditional court system exists in addition to the formal court system. 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. Defendants do not have legal counsel, and there are no standardized rules of evidence. 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 formal courts.

A separate military court system does not try civilians. Military courts have separate procedures from civilian courts. Defendants in military courts 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 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. Abuses in customary courts could be reviewed by the formal court 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, and the country did not always implement the court's rulings.

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

The constitution and law prohibit interference with privacy, family, home, or correspondence, but there were reports that DISS had developed capabilities for online surveillance.

A law enacted in February that gave security forces broad wiretapping powers and the ability to carry out unchecked undercover law enforcement operations, faced widespread condemnation from civil society over an encroachment on civil liberties. The law allows authorities to conduct wiretaps, compels communications companies to provide access and share data under threat of prosecution, allows for the creation of fake identifications in the national register, and gives authorities immunity on actions related to undercover operations. Journalists, human rights organizations, labor unions, as well as opposition lawmakers and lawyers' organizations attacked the law, declaring it would allow unfettered interference in areas such as journalism, attorney-client privilege, and could even be a pretext for tampering with elections. The government stated the law was intended to address concerns raised by the Financial Action Task Force over illicit currency flows. The law was later amended to remove warrantless wiretaps and instead established an oversight committee for surveillance.

### **Section 2. Respect for Civil Liberties**

#### **a. Freedom of Expression, Including for Members of the Press and Other Media**

The constitution and law provide for freedom of expression, including for the press and other media. With some exceptions, the government generally respected the rights of freedom of speech and press.

**Freedom of Expression:** 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 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 and may receive a substantial monetary fine under the sedition clause. The Constitutional Court has not considered the constitutionality of the sedition clause.

**Violence and Harassment:** On July 13, journalist Tshepo Sethibe of the news site *Moeladilothoko News Boiler* was arrested, along with a traditional doctor, and accused of reporting misinformation regarding the disappearance of a boy age six, and thereby of inciting persons to riot. Sethibe was charged with alarming the public. His cell phones were confiscated but he was released the next day. In January 2021, the Botswana Police Service (BPS) in Phitshane Molopo (a border town between South Africa and Botswana) arrested Sethibe and Michelle Teise, a fellow journalist employed by the news site. Police charged them with criminal trespass but dropped the charges in April 2021.

**Censorship or Content Restrictions for Members of the Press and Other Media, Including Online Media:** Some members of civil society organizations stated the government occasionally censored news stories it deemed undesirable in government-run media. Government and private journalists sometimes practiced self-censorship.

**Libel/Slander Laws:** There were no arrests or convictions under these laws (see the above subsection on Freedom of Expression) during the year. The law criminalizes insults to religion, as well as comments or writings intended to wound others’ religious feelings. There were no reports of prosecutions or convictions under these provisions during the year.

## **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.

## **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**

On June 13, police arrested Pastor Thuso Tiego after he was found demonstrating in front of foreign-owned shops, forcing them temporarily to close. The pastor complained that the country was facing a serious unemployment situation because foreigners had taken jobs that could be reserved for locals. He was arrested and released without charge. In September 2021, police detained Tiego on charges of holding a political demonstration without a permit.

On June 13, police used force to disperse angry residents of Lobatse who protested the purported ritual killing of a boy aged six. Three police officers were injured, and four police vehicles were damaged. Approximately 10 persons were arrested for questioning.

## **c. Freedom of Religion**

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

## **d. Freedom of Movement and the Right to Leave the Country**

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

## **e. Protection of Refugees**

The government generally cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, or asylum seekers, as well as other



persons of concern.

**Access to Asylum:** The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The system for granting refugee status was accessible but slow. The government generally provided protection against the expulsion or return of persons to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

The government held asylum seekers in the Francistown Centre for Illegal Immigrants (FCII) detention facility until the Refugee Advisory Committee, a governmental body, made a refugee status determination. The committee met quarterly. UNHCR representatives participated in advisory committee meetings as observers and technical advisers.

**Safe Country of Origin/Transit:** The government applied 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. 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 August, UNHCR reported that most of the country's 841 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. UNHCR facilitated refugee and asylum seekers' exit permit applications for medical referrals, as necessary. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

Asylum seekers with children were transferred to Dukwi Refugee Camp from

FCII. International observers expressed concern that young children were sometimes separated from their parents in the FCII facility while their cases were processed. In one case, this included a family with eight minor children. International observers stated there was no access to education in the FCII, which, during the year, held more than 200 children younger than age 18. The center hosted a clinic, and a specialized nurse provided basic health care, while critical cases were referred to the Francistown city public hospital.

The government considered the FCII to be a less than ideal transit center for asylum seekers; however, there were reports of asylum seekers who spent several years detained in FCII while awaiting review of their cases. Although the government moved remaining long-term asylum seekers to the nearby Dukwi Refugee Camp in 2019, it did not establish a protocol to prevent new arrivals from spending long periods in FCII while their cases were processed. International refugee groups reported that an average of 50 to 60 persons were held in the FCII at any given time while awaiting refugee processing.

**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 won a majority in the 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. Outside observers generally considered the vote credible. Using COVID-19 state of emergency powers, the government postponed indefinitely 11 special elections, scheduled from 2019 onwards, for district council seats to replace lawmakers who died. These elections took place in December

2021. Three other council wards' by-elections have been held since.

**Political Parties and Political Participation:** In 2020, the National Assembly suspended the officially designated leader of the opposition, Dumelang Saleshando, for one week for accusing members of President Masisi's 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. In August 2021, the High Court ruled that the speaker's action was irrational and unprocedural because he violated Saleshando's constitutional rights to freedom of expression and speech as a duly elected representative. In June, the opposition coalition, which included Saleshando's party, suspended Saleshando as its vice president and replaced Saleshando as the official parliamentary Leader of the Opposition.

**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 the lack of support from political parties, fundraising challenges, and cultural constraints, including the sexual exploitation of women in politics, limited the number of women in government.

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 tribes enjoy equal rights. Outside observers noted many tribes were unrecognized or unrepresented, and women were underrepresented in the traditional chieftaincy system. The government does not recognize any group or tribe as indigenous.

The election authority makes accommodation for persons with disabilities during voting, including providing ballots in braille upon request and installing temporary ramps at polling places. During the 2019 national election, polling places were established in the Central Kalahari Game Reserve, an area inhabited primarily by Indigenous groups. There are no restrictions on lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) persons seeking to take part in the political process.

## **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, although media reports of government corruption continued. During the year there were isolated media reports of government corruption. A 2019 poll by Transparency International found that 7 percent of those polled had paid bribes to government officials, an increase from the 1 percent who reported paying bribes in a 2015 poll.

**Corruption:** On June 14, DISS arrested and interrogated its Deputy Director General, Tefo Kgotlhane, for a day. Media reports claimed that Kgotlhane was arrested in connection with corruption allegations in government tenders.

In August 2021, a court also dismissed a case against Welheminah Mphoeng Maswabi, a former DISS agent accused of facilitating a \$10 billion theft of bonds from the Bank of Botswana by former President Ian Khama and Isaac Kgosi – the Director General of DISS under Ian Khama. Neither Kgosi nor Khama were charged in the case, although government court filings in Maswabi’s case implicated the pair. Khama responded by filing a formal complaint in April 2021 against government investigators, alleging the investigators committed perjury by naming him in Maswabi’s case. On August 5, the Court of Appeal ruled against the High Court, arguing that Maswabi has a case to answer and should stand trial.

In 2020, the 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. On October 31, the High Court found Morupisi guilty while his wife was found not guilty. The court sentenced Morupisi on November 30 to a two-year suspended prison sentence and fines totaling 130,000 pula (\$10,800). Some observers regarded the sentence as relatively light. Minister of Youth, Sports, and Culture Tumiso Rakgare posted on his Facebook page, “We trust the process but...are we saying it’s ok to loot, it’s ok to steal, it’s ok? What message are we sending?”

## **Section 5. Governmental Posture Towards 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 ombudsperson 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 ombudsperson. The Office of the Ombudsman, however, lacked sufficient staff.

## **Section 6. Discrimination and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The law criminalizes rape without specifying gender but does not recognize spousal rape as a crime. By law, formal courts try all rape cases and the minimum sentence for conviction of rape is 10 years imprisonment; the sentence increases to 15 years with corporal punishment if the offender was unaware of being HIV-positive; and increases to 20 years with corporal punishment if the offender was aware of being HIV-positive. A person convicted of rape is required to undergo an HIV test before sentencing.

Authorities effectively enforced laws against rape when victims pressed charges, although police noted victims often declined to press charges against perpetrators.

In 2019, the BPS Commissioner announced BPS would no longer allow the withdrawal of gender-based violence cases waiting to be heard by magistrate court.

In 2020, President Masisi announced the BPS would establish standard operating procedures for dealing with gender-based violence, including establishing dedicated units to handle such cases, establishing a special hotline for victims, and requiring victims to be interviewed in private spaces. In 2020, the government

introduced special courts to hear gender-based violence cases.

The law prohibits domestic and other violence, whether against women or men, but domestic violence remained a serious problem during the year. The government regularly referred survivors of gender-based violence to a local NGO that ran shelters for women. Although statistics were unavailable, media widely reported on cases of violence against women, including several high-profile murder cases.

In 2020, shelter operators and civil society groups reported a significant increase in victims of gender-based violence at the start of the seven-week COVID-19 lockdown. The shelter operators noted the situation became more stable but gender-based violence remained a significant problem. Violence remained high during the COVID-19 pandemic. The government made statements to discourage such violence and devoted extra resources to help shelters address the problem.

**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 is 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, and deferment or stoppage of a pay raise or reprimand. Nonetheless, sexual harassment, particularly by men in positions of authority, including teachers, was widespread.

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

While awareness of family planning methods was generally high, factors hindering contraceptive access 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 five 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 most recent data set, the country's 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.

**Discrimination:** Under the constitution women and men have the same civil rights and legal status. Under customary law based on tribal practice, however, several 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.

## **Systemic Racial or Ethnic Violence and Discrimination**

The eight tribes of the Tswana group, who 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.

## **Indigenous Peoples**

The government does not recognize any group or tribe as indigenous.

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, and lacked adequate political representation. Some members were not fully aware of their civil rights. During the year there were no reported threats to the Basarwa

from business or commercial interests.

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.

In February, Lesiame Pitseng, a member of the Basarwa tribe, took the government to court after it refused him the right to bury his deceased father within the CKGR. The government argued that the 2006 High Court ruling did not apply to the deceased because he had voluntarily resettled outside of the CKGR. The court ordered Pitseng to bury his father outside the CKGR or face 30 days in custody. He appealed the case and was granted a stay on the execution of the arrest. The body of the deceased remained in a morgue pending a legal ruling.

Government officials maintained that resettlement programs for Basarwa were voluntary but necessary to facilitate the delivery of public services, provide socioeconomic development opportunities to the Basarwa, and minimize human impact on wildlife.

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

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

**Education:** Primary education is tuition-free for the first 10 years of school but is not compulsory. Parents of secondary school students must cover tuition 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.



Human rights organizations and minority tribes criticized the policy that designates English and Setswana as the only officially recognized languages, thereby forcing some children to learn in a nonnative language.

In 2018, the UN special rapporteur on minority issues noted that the lack of mother tongue education or failure to incorporate minority languages into the school curriculum may constitute discrimination.

In July, the government announced the final draft of an education language policy to provide guidance on implementation of mother tongue teaching in schools. The government proposed to implement 11 languages for Phase 1 beginning in January. A pilot project was ongoing in some districts and a public campaign took place in October, before rolling it out to the entire country.

**Child Abuse:** The law penalizes neglect and mistreatment of children. There was reportedly widespread abuse of children. Child abuse was reported to police in cases of physical harm to a child. Police referred 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.

On August 10, First Lady Neo Masisi launched the second phase of the "*Eseng mo Ngwaneng*" campaign under the theme, "Ending Violence Against Children." The campaign, in partnership with UNICEF and the government, followed growing concerns over increasing cases of violence against children. The campaign promotes reporting violence against children and advocates for cases that involve violence against children to be expedited at all levels.

**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 child sex trafficking and sexual abuse of children. Conviction of sex with a child younger than 18 years constitutes defilement (statutory rape) and is punishable by a minimum of 10 years' incarceration. 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. If convicted, perpetrators who engage in sexual exploitation of children are punished 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. Child pornography is a criminal offense punishable by five to 15 years of imprisonment. The government generally enforced the law.

**Displaced Children:** Orphans and vulnerable children received government support. Once registered as an orphan, a child receives school uniforms, shelter, a monthly food basket, and counseling as needed.

## **Antisemitism**

There was a very small Jewish population, and there were no reports of antisemitic acts.

## **Trafficking in Persons**

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

## **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics**

**Criminalization:** The High Court ruled in 2019 to decriminalize same-sex sexual conduct. In November 2021, the Court of Appeals, the final arbiter, affirmed this ruling. In November, the country celebrated the one-year anniversary of decriminalization. The NGO Lesbians Gays and Bisexuals of Botswana (LeGaBiBo) reported there were no laws forbidding public same sex displays of affection, nor had their members reported any harassment by authorities during the year.

**Violence Against LGBTQI+ Persons:** 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 LGBTQI+ persons. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally because of overt official intimidation.

**Discrimination:** The law prohibits discrimination by state and nonstate actors based on sexual orientation, gender identity or expression, or sex characteristics and recognizes LGBTQI+ individuals. The High Court's 2019 LeGaBiBo judgment stated that the Penal Code stigmatized gay men unnecessarily and that those provisions had outlived their usefulness and only served to incentivize law enforcement agents and others to become intruders into the private spaces of citizens. The judgment concluded that the sections breached the fundamental right to privacy. In November, a secondary school principal expelled 11 students from a boarding school on allegations that the students were lesbians. The Ministry of Education reinstated the students the next day. The Botswana Network on Ethics, Law, and HIV/AIDS expressed concerns regarding the school's action, noting that the decision to expel the students had a discriminatory undertone, based on its reference to sexual orientation.

**Availability of Legal Gender Recognition:** LeGaBiBo championed efforts to push the government to allow individuals to change their gender identity marker on legal and identifying documents to bring them into alignment with their gender identity. Two individuals had their gender markers changed in 2017, after they took the government to court.

**Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals:** LeGaBiBo reported no known instances of conversion "therapy" in the country. Nonetheless, LeGaBiBo disclosed that a family sent one member of a local LGBTQI+ support group to Nigeria for attempted conversion therapy.

**Restrictions of Freedom of Expression, Association, or Peaceful Assembly:** Public meetings of LGBTQI+ advocacy groups and debates on LGBTQI+ matters occurred without disruption or interference.

In 2016, the Court of Appeal upheld a 2014 High Court ruling ordering the government to register LeGaBiBo formally. LeGaBiBo has since participated in

government-sponsored events. Subsequently other LGBTQI+ groups registered successfully.

## **Persons with Disabilities**

Persons with disabilities could not always access education, health services, and public buildings on an equal basis with others. The government's policy provides for integrating the needs of persons with disabilities into all aspects of policymaking. It mandates access to public buildings and transportation, but access for persons with disabilities was limited. Although newer government buildings were constructed 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. The government at times provided official information to persons with disabilities in accessible formats. During the COVID-19 pandemic, the government hosted several national addresses with President Masisi and cabinet ministers but departed from standard procedures by not including a sign language interpreter provided by Botswana Television.

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

The law prohibits discrimination against persons with disabilities, but there is no specific disability act. Children with disabilities attended school, although human rights NGOs raised concerns the law does not stipulate inclusive education for children with disabilities. Children with disabilities attended both public schools and segregated schools, depending on resource availability and the wishes of parents.

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 Independent Electoral Commission made some accommodations during elections to enable persons with disabilities to vote, including providing ballots in

braille and installing temporary ramps at polling places that were not accessible to persons with disabilities.

There is a Department of Disability Coordination in the Office of the President to assist persons with disabilities. The Department of Labour in the Ministry of Labour and Home Affairs 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. During the year parliament passed an updated National Policy on Disabilities.

## **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 registered unions and to bargain collectively. The law allows some workers to conduct legal strikes. The law allows registered unions to conduct their activities without interference. The law places legal restrictions limiting the right to form and join independent unions, collective bargaining, and the right to strike, as further outlined below. Because the law does not protect members of unregistered trade unions, those trying to establish, join, or register a trade union have no legal protection from antiunion discrimination.

The law imposes restrictions limiting workers' right to form and join independent trade unions. An association must have more than 30 worker members to be a union, and the law gives the registrar authority to refuse registration upon determining that an existing trade union is sufficiently representative of employee interests. 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 labour and home affairs 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 Labour and Home Affairs 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.

Trade unions failing to meet formal registration requirements are automatically dissolved and banned from carrying out union activities.

The law provides for collective bargaining only for unions that have enrolled at least one-third of an employer or industry’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 who provide “essential services” from striking. The law limits its definition of essential services to aviation, health, electrical, water and sanitation, fire, and air traffic control services. Police, military, and prison personnel are not permitted to form or join unions, but they are allowed employee associations that 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.

The law empowers two officials within the Ministry of Labour and Home Affairs, the minister and the commissioner of labour, to refer a dispute in essential services to arbitration or to the Industrial Court for determination.

Civil service disputes are referred to an ombudsperson for resolution, and the ombudsperson 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 enforced some labor laws but did not protect the 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. The government has not acted to revive the Public Sector Bargaining Council. Workers exercised the right to form and join unions, and employers generally did not use hiring practices to avoid hiring workers with bargaining rights. Legal penalties for violations of laws governing freedom of association were commensurate with those for other laws involving denials of civil rights. Penalties were rarely applied against violators.

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. 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 of children, with an exception for compulsory labor as part of a prison sentence for civil and political offenses.

The law allows compulsory prison labor in the case of a 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.

Apart from the prison exception, labor inspectors from the Ministry of Labour and Home Affairs referred cases of forced labor to the BPS for prosecution. The government did not effectively enforce the law, particularly in remote areas, and compulsory and forced labor occurred in several sectors.

There were no prosecutions for forced labor during the year. Members of the San community, including children, were sometimes subjected to forced labor conditions on farms and ranches in the Ghanzi District. The law prescribed penalties that were not commensurate with comparable serious crimes.

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**

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 law does not address discrimination based on age. Penalties were less than penalties related to other civil rights. The government generally enforced these regulations in the public and formal sectors. Penalties were regularly applied against violators.

There was not a pattern of discrimination in employment or barriers to employment. According to the World Economic Forum, women earned 32 percent less than men employed in equal work.

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

**Wage and Hour Laws:** The law provides for minimum hourly wages for full time work by sector, with these minimum wages set by the Ministry of Labour and Home Affairs. The minimum wage for all sectors was higher than the official estimate of the poverty income level. Formal-sector jobs generally paid well above minimum wage.

In January, the government revised the minimum wage increasing it slightly from 6.70 pula (\$0.52) per hour to 7.22 pula (\$0.56) per hour. For the domestic as well as the agriculture sector, the minimum wage has been increased from \$76 per month to \$83 per month. The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at one-and-a-half times the base hourly rate.

In May 2021, 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. Alleged violations of wage, hour, or overtime laws were common in the automotive manufacturing sector.

**Occupational Safety and Health:** There were 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 regarding 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.

**Wage, Hour, and OSH Enforcement:** The Ministry of Labour and Home Affairs is responsible for enforcing wage, hour, and OSH standards, but did not effectively enforce the law. Penalties for violations were commensurate with those for similar crimes, such as fraud or negligence. Penalties were regularly applied against violators. The number of inspectors was not sufficient to enforce compliance. Inspectors did have authority to conduct unannounced inspections and could demand that an employer suspend the use of hazardous materials or equipment. Inspectors could not initiate sanctions on their own but could require employers to meet in a public office to discuss matters.

**Informal Sector:** The 2020 *National Informal Sector Recovery Plan* estimated that the country had approximately 190,000 informal workers who contributed approximately 5.3 percent of all economic activity. Informal work sectors included wholesale and retail trade (45 percent), manufacturing (15 percent), and construction of buildings (12 percent). A higher percentage of women and young persons worked in the informal sector. Some workers in the informal sector received only 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 and part time workers generally were covered by wage, hour, OSH, and other labor laws available to formal-sector workers, but enforcement in the informal sector was rare. The Department of Social and Community Development provides social protection for informal economy workers.

Foreign migrant workers were vulnerable to exploitative working conditions, such as working excessive hours or having their wages withheld, mainly in domestic labor.