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2009 Human Rights Report: Botswana

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

March 11, 2010

Botswana, with a population of 1.84 million, has been a multiparty democracy since independence in 1966. Its constitution provides for indirect election of a president and popular election of a National Assembly. On October 16, the ruling Botswana Democratic Party (BDP) won the majority of parliamentary seats in an election deemed generally free and fair. President Ian Khama, who has held the presidency since the resignation of President Festus Mogae in April 2008, retained his position. The BDP has held a majority of National Assembly seats since independence. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, some problems remained, including reports of abuses by security forces, poor prison conditions, lengthy delays in the judicial process, reports of restrictions on press freedom, and restrictions on the right to strike. Societal discrimination and violence against women, and discrimination against children, persons with disabilities, the lesbian, gay, bisexual, and transgender (LGBT) community, persons living with HIV/AIDS, persons with albinism, and members of the San ethnic group, and child labor were problems. The government's continued narrow interpretation of a 2006 High Court ruling resulted in the majority of San originally relocated from the Central Kalahari Game Reserve (CKGR) being prohibited from returning to or hunting in the CKGR.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings; however, there were reports that the government or its agents committed arbitrary or unlawful killings. During the year eight incidents of police shootings during apprehension, in which 11 civilians were killed, were reported. Of these, police opened four murder cases for investigation, and seven coroner's investigations were opened into the cause of death. The four murder cases were subsequently submitted to the Directorate of Public Prosecution (DPP) for further action and were pending at year's end. Six of the seven coroner's investigations were also forwarded to the DPP for action; two were closed due to lack of evidence and one continued at year's end.

For example, on January 4, police shot and killed Mothusinyana Moag, who reportedly fled from police who confronted him because he fit the description of a suspect; an investigation was in progress at year's end.

On March 4, police shot and killed Mark Gumbo while in pursuit of Gumbo and others suspected of an attempted robbery; an investigation continued at year's end.

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On May 9, police shot Tshepo Molefe during an attempted robbery. Police claimed that Molefe or other suspects in the group fired at police and that Molefe ran toward the police officers, who then shot him. An investigation continued at year's end.

On May 13, unidentified government security officers shot and killed John Kalafitas while he sat in a parked car, according to attorneys for the Kalafitas family. The government contended that Kalafitas was a wanted criminal who was killed during a lawful arrest. The case was turned over to the DPP; no further action was taken by year's end.

There were at least two reports of deaths of persons in police custody. On March 5, David Monggae collapsed during interrogation related to accusations of cattle theft and subsequently died. Four police officers present during the interrogation were charged with murder; the case continued at year's end.

On July 29, Italy Setlampoloka was arrested as a suspect in a series of robberies and detained at the Mogoditshane police station. On July 30, Setlampoloka was found dead in an uninhabited area near Mogoditshane. Police officers present during the investigation were charged with murder; the case was ongoing at year's end.

There were no developments in the investigations into the 2008 police killings in which five persons died during apprehension.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices; however, there were reports that security forces occasionally beat and abused suspects to obtain evidence or elicit confessions. No further information was available.

Investigations continued into the October 2008 case in which the Directorate of Intelligence and Security Services (DIS) allegedly tortured four men, including two police officers and two soldiers, after a weapon in their possession went missing.

There were no developments in the 2007 case in which two men stated that threats and beatings were used to obtain their confessions to robbery and murder charges.

Prison and Detention Center Conditions

Conditions in the country's 22 prisons and two detention centers for illegal immigrants remained poor due to overcrowding. The prison system held approximately 5,170 prisoners as of December, which exceeded the authorized capacity of 4,219. Overcrowding, which was worse in men's prisons, constituted a serious health threat due to the high incidence of HIV/AIDS and tuberculosis. Rape of inmates by inmates occurred. Mistreatment of prisoners is illegal; however, there were reports of abuse during the year.

The Department of Prisons received three complaints of alleged assault by officers during the year. Of these, two incidents were being investigated and one was before the court at year's end; no further information was available.

Mothers were allowed to bring their nursing babies under the age of two with them into the prison system, which lacked maternity facilities. Juveniles were sometimes held with adults due to overcrowding in the two main juvenile prison

facilities. In December there were 63 juveniles incarcerated in adult prisons. Pretrial detainees and convicts were held together.

During the year officers of the courts, including magistrates and judges, conducted 13 prison visits to check on prison conditions. Government-appointed welfare and oversight committees visited prisons 45 times during the year. Committee reports were not made public. In previous years the government permitted the International Committee of the Red Cross (ICRC) to visit prison facilities; however, during the year the ICRC did not seek access to prisoners. During the year representatives of the Office of the UN High Commissioner for Refugees (UNHCR) were able to regularly visit prisons and the Center for Illegal Immigrants.

Voluntary and free HIV testing and peer counseling were available to prisoners. As of December, 933 inmates out of the total prison population tested positive for HIV/AIDS, of whom 368 were receiving antiretroviral drug treatment. Two female prisoners were enrolled in the government program to prevent mother-to-child transmission. The government did not provide antiretroviral treatment to noncitizens in detention; however, those in long-term detention could receive such treatment free from a local nongovernmental organization (NGO).

The prison commissioner had the authority to release terminally ill prisoners in the last 12 months of their sentences and allow citizen prisoners with sentences of 12 months or less to complete their sentences outside the prison by completing an "extramural" work release program at government facilities. To be eligible, prisoners must have served at least half of a short-term sentence and not have been previously incarcerated. Prisoners convicted of violent or other serious felonies were ineligible. By December, to ease overcrowding, 659 prisoners had been released to complete their sentences in the program.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

The Botswana Police Service (BPS), under the Ministry for Presidential Affairs and Public Administration, has primary responsibility for internal security. In 2008 the cabinet disbanded the Local Police Service and began merging it with the BPS; previously customary or local police, under the Ministry of Local Government, had law enforcement responsibility in specified tribal areas. The army is responsible for external security and has some domestic security responsibilities.

Police officials acknowledged that corruption was a problem in the lower ranks; some officers took advantage of illegal immigrants and traffic violators. During the year there were 35 police officers arrested for crimes. Of these, courts tried and convicted five, six were reinstated, and 24 were under investigation at year's end.

Civilian authorities generally maintained effective control of the security forces, and the government had effective mechanisms to investigate and punish abuse and corruption, including investigation by police and referral into the criminal court system.

During the year 30 BPS officers received human rights training at the International Law Enforcement Academy located in the country.

Arrest Procedures and Treatment While in Detention

Police officers must produce an arrest warrant issued by a duly authorized magistrate upon the presentation of compelling evidence, except in certain cases, such as when an officer witnesses a crime being committed or discovers that a suspect is in possession of a controlled substance. In April 2008 the government established the DIS, with the power to enter

premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime. Elements of civil society continued to criticize the DIS, claiming it was not subject to sufficient independent oversight and posed a potential threat to civil liberties.

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

Pretrial detainees waited from several weeks to several months between the filing of charges and the start of their trials. As of December, of the 5,170 persons in custody, 1,441 were pretrial detainees. Pretrial detention in murder cases sometimes lasted beyond one year. Such delays were largely due to judicial staffing shortages.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. The civil courts remained unable to provide timely trials due to severe staffing shortages and a backlog of pending cases. A 2005 report by the Office of the Ombudsman characterized the "delays in the finalization of criminal matters in all courts" as a "serious concern," particularly the delays in processing appeals.

The civil court system includes magistrates' courts, an industrial court, a court of appeal, and the High Court. A customary or traditional court system also exists. A small claims court was established during the year in Gaborone and some surrounding areas; there were some reports of heavy case loads and new procedures impacting the courts' effectiveness.

Trial Procedures

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

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

Although customary or traditional courts enjoy widespread support and citizen 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. Defendants can confront, question, and present witnesses in customary court proceedings. Customary trials are open to the public, and defendants can present evidence on their own behalf. Tribal judges, appointed by the

tribal leader or elected by the community, determine sentences, which may be appealed through the civil court system. Many judges were poorly trained and ill-equipped to make legal decisions. The quality of decisions reached in the customary courts varied considerably and often lacked a presumption of innocence. In some cases tribal judges may issue sentences that include corporal punishment such as lashings on the buttocks.

There is a separate military court system; military courts do not try civilians. Military courts have separate but similar procedures from civil courts.

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, which includes a separate industrial court for most labor-related cases. Administrative remedies were not widely available.

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

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

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

Section 2 Respect for Civil Liberties, Including

a. Freedom of Speech and Press

The constitution and law provide for freedom of speech and of the press, and the government generally respected freedom of speech in practice. The Media Institute of Southern Africa (MISA) and other NGOs reported that the government attempted to limit press freedom and continued to dominate domestic broadcasting. Individuals could generally criticize the government publicly or privately without reprisal.

In December 2008 parliament passed the Media Practitioners' Act, which established a new media council to register and accredit journalists, promote ethical standards among the media, and receive public complaints. Some NGOs, including MISA, the independent media, and opposition members of parliament continued to criticize the law, stating that it restricted press freedom and was passed without debate after consultations between the government and stakeholders collapsed.

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

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

to portray the government and the country in a positive light. It was sometimes more difficult for private media organizations to obtain access to government-held information.

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

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

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

In 2007 the NGO First People of the Kalahari (FPK) reported the government would allow the FPK to have two-way radios in the CKGR provided it followed licensing requirements. However, as of December the FPK had not completed licensing requirements due to inability to afford the annual 1,500 pula (approximately \$227) licensing fee.

In 2007 the government required 17 foreigners, including seven journalists who had written articles critical of the government, to apply for visas prior to entry even though they were from countries generally exempt from this requirement. The requirements continued during the year.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. Internet access was most common in large urban areas but began to expand to smaller cities and some rural areas. According to International Telecommunication Union statistics for 2008, approximately 6.25 percent of the country's inhabitants used the Internet. However, there were some reports during the year that the figure was higher.

Academic Freedom and Cultural Events

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

b. Freedom of Peaceful Assembly and Association

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

c. Freedom of Religion

The constitution and law provide for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

Government policy and practice contributed to the generally free practice of religion. There was no known Jewish community and no reports of anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at www.state.gov/g/drl/rls/irf/.

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

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

The government restricted the ability of indigenous San who had been relocated from the CKGR to designated settlement camps in 2002 to return to the reserve. Only the 189 San named in a 2006 High Court case, their spouses, and their minor children were permitted to live in the CKGR. A few San had never left the reserve, and some San moved back to the CKGR after the High Court's decision. Many of the 189 did not return to live in the CKGR, as lack of water made the CKGR an extremely inhospitable environment, and some who initially returned left again. The government was not required to provide water in the CKGR per the 2006 ruling (see sections 1.f and 6). Visitors to the reserve, including relocated former residents not named in the 2006 case, must obtain a permit to enter the CKGR.

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

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol relating to the Status of Refugees, and the 1969 African Union Convention Governing the Specific Aspects of the Refugee Problem in Africa. The government has established a system for providing protection to refugees. The government granted refugee status or asylum. The government's system for granting refugee status was accessible but slow. In practice the government provided protection against the expulsion or return of persons to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention or the 1967 Protocol. During the year fewer than 100 persons were granted refugee status. The government cooperated with the UNHCR and other humanitarian organizations in assisting refugees and asylum seekers.

The government held newly arrived refugees and asylum seekers, primarily from Zimbabwe, in the Center for Illegal Immigrants in Francistown until the Refugee Advisory Committee (RAC), a governmental body whose chairperson is the district commissioner of Francistown, made a status recommendation; the UNHCR was present at RAC meetings in the status of observer and technical advisor. Once persons were granted refugee status, the government transferred them to the Dukwe Refugee Camp. Refugee applicants who were unsuccessful in obtaining asylum were nonetheless allowed to remain at Dukwe if they wished while the government referred their cases to the UNHCR. Refugees in Dukwe were provided access to education and health care. The UNHCR criticized the detention of asylum seekers at the Center for Illegal Immigrants on the grounds that asylum seekers should not be held in detention facilities, although asylum seekers were housed separately from illegal immigrants. Conditions at the center were generally adequate, but children in the center did not have sufficient access to education for the duration of their detention, which in a few cases lasted many months.

Approximately 600 of the country's 3,500 registered refugees were living and working outside Dukwe Camp at the beginning of the year. Since 1997 the government had allowed refugees to apply for special residency permits to live and work outside of the camp for a one-year period with the possibility of renewal. In June the government decided to restrict the ability of registered refugees to live and work outside the camp. The Ministry of Defense, Justice, and Security informed the refugees that their permits would not be renewed and that they would receive assistance with returning to the camp on a rolling basis as permits expired and circumstances allowed, including completion of school terms for children. The government stated that in some exceptional cases, such as for refugees enrolled in higher education or with "unique skills," residence outside the camp would be permitted. By year's end 95 refugees had returned to Dukwe.

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

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

Elections and Political Participation

On October 16, the ruling BDP won the majority of National Assembly seats in a general election deemed by international and domestic observers to be generally free and fair. President Ian Khama, who has held the presidency since April 2008, when former president Festus Mogae resigned, retained his position. However, the ruling BDP received preferential access to state-owned television during much of the campaign. The BDP won 45 of 57 competitive National Assembly seats, the Botswana National Front won six, the Botswana Congress Party won five, and an independent candidate won one seat. The BDP has won a majority of seats in the National Assembly in every election since independence. There are also four additional specially elected National Assembly members who are nominated and elected by parliament.

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

Political parties operated without restriction or outside interference.

There were four women in the 61-seat National Assembly, a female speaker of the National Assembly, four women in the 24-member cabinet, and four women in the 35-seat House of Chiefs.

While the constitution formally recognizes eight principal ethnic groups of the Tswana nation, amendments to the constitution also allow minority tribes to be represented in the expanded House of Chiefs. By law members of all groups enjoy equal rights, and minority tribes have representation that is at least equal to that of the eight principal tribes.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. There were isolated reports of government corruption during the year.

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

During the year the Directorate on Corruption and Economic Crime (DCEC) initiated investigations into 39 suspicious transactions; at year's end 18 remained under investigation and 21 were concluded. Of these, 18 cases were dismissed after allegations of illegal conduct were disproved, and three cases were dismissed for insufficient evidence.

Through December police initiated 22 investigations of alleged corruption involving police officers; all 22 continued at year's end. An additional 18 police officers were dismissed during the year for failure to adhere to the code of conduct.

The four police corruption cases from 2008 concluded with all four officers being convicted and fired.

In April the National Assembly enacted an antimoney laundering law entitled the Financial Intelligence Act. Until the new Financial Intelligence Agency, as provided for under the act, is fully functional, the DCEC has responsibility for investigating suspected instances of money laundering and has the authority to demand access to bank records during an investigation.

The law does not provide for public access to government information, and the government generally restricted such access. Information that is made public is available for a fee from the Government Printing Office.

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

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to NGO views on most subjects but were considerably less open to the involvement of some international NGOs on the issue of the CKGR relocations. The government interacted with and provided financial support to some domestic organizations. Independent local human rights groups included Childline, a child welfare NGO; Emang Basadi, a women's rights group; the Botswana Network on Ethics, Law, and HIV/AIDS; and DITSHWANELO, the Botswana Center for Human Rights.

In 2007 the government placed visa requirements on certain foreign NGO workers, a practice which continued during the year.

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

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

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

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

Women

The law prohibits rape but does not recognize spousal rape as a crime. Laws against rape were effectively enforced; however, police noted that victims often declined to press charges against the perpetrators, and statistics on prosecutions and convictions were unavailable. The number of reported rape cases increased during the year from 1,360 to 1,539. However, it was unclear whether this was a result of increased reporting due to NGO efforts to improve awareness of the crime or an increase in the number of rapes. By law the minimum sentence for rape is 10 years in prison, increasing to 15 years with corporal punishment if the offender is HIV-positive, and 20 years' imprisonment with corporal punishment if the offender was aware of having HIV-positive status. Corporal punishment was used more often in the customary courts and typically consisted of strokes to the buttocks with a stick. A person convicted of rape is required to undergo an HIV test before being sentenced. However, police lacked basic investigative techniques in rape cases.

The law does not specifically prohibit domestic violence against women, and it remained a serious problem. Police did not keep statistics for the specific category of domestic violence, as it is not considered a crime under the penal code. Customary law allows husbands to treat their wives in the same manner as minor children. Under customary law

husbands may use corporal punishment to discipline their wives, which was common in rural areas. Greater public awareness resulted in increased reporting of domestic violence and sexual assault.

Prostitution is illegal but was widespread. Enforcement was sporadic and complicated by vague laws that made it easier to charge violators with offenses such as unruly conduct or loitering than for prostitution. Most police enforcement took the form of periodic sweeps of areas used for solicitation.

The law prohibits sexual harassment in both the private and public sectors. Sexual harassment committed by a public official is considered misconduct and is punishable by termination with or without forfeiture of all retirement benefits, suspension with loss of pay and benefits for up to three months, reduction in rank or pay, deferment or stoppage of a pay raise, or a reprimand. However, sexual harassment continued to be a widespread problem, particularly by men in positions of authority, including teachers, supervisors, and older male relatives.

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

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

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

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

Children

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

The government continued to allocate the largest portion of its budget to the Ministry of Education. The Ministry of Local Government distributed books and other materials for primary education and food. Education was not compulsory. In 2006 the government reintroduced school fees. The fees could be waived for children whose family income fell below a certain amount. The government also provided uniforms, books, and fees for students whose parents were destitute. Students in remote areas received two free meals a day at school. Girls and boys attended school at similar rates. School attendance and completion rates were highest in urban areas, where transportation was readily available, and lowest in rural areas, where children often lived far from schools and often assisted their families as cattle tenders, domestic laborers, and child care providers.

No law specifically prohibits child abuse. Sex with a child younger than 16 is known as defilement and is prohibited and punishable by a minimum of 10 years of incarceration. Police reported that through the end of September there were 1,197 reported cases of rape, 350 cases of defilement, four cases of incest, 93 cases of indecent assault on girls, and two cases of indecent assault on boys. There were defilement investigations and convictions during the year, but detailed statistics were unavailable. Sexual abuse of students by teachers was reported to be a problem. Children were sometimes sexually abused by the extended family members with whom they lived. The law considers incest a punishable act only if it occurs between blood relatives.

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

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

There were reports of child labor. Of the children employed, approximately half were below the legal working age of 14. Two-thirds of employed children were working in rural villages, and more than 60 percent worked in the agricultural sector, mostly on a subsistence level on family cattle posts or farms.

In 2005 the UN Children's Fund estimated there were 150,000 orphans in the country, of whom approximately 120,000 had lost one or both parents due to HIV/AIDS. During the year the government registered 58,000 children as orphans, a discrepancy that was due to the government's use of a more restrictive definition of orphan, which required both parents to be deceased, than the one used by the UN. Once registered, the children received clothes, shelter, a monthly food basket worth between 216 pula (approximately \$33) and 350 pula (\$53) depending upon location, and counseling as needed. Some relatives continued to deny inheritance rights to orphans.

Trafficking in Persons

The law does not prohibit trafficking in persons, although penal code provisions cover related offenses such as abduction and kidnapping, slave trafficking, and procuring women and girls for the purpose of prostitution. There were reports that persons were trafficked to, from, through, or within the country. The country was a source, transit, and, to a lesser extent, destination country for men, women, and children trafficked for the purpose of forced labor and sexual exploitation. Children were trafficked internally for domestic servitude and cattle herding. According to one NGO, women reported

being forced into commercial sexual exploitation at safari lodges. The country was a staging area for both the smuggling and trafficking of third-country nationals, primarily from Namibia and Zimbabwe, to South Africa. Zimbabweans were also trafficked into Botswana for forced labor as domestic servants. Residents most susceptible to trafficking were illegal immigrants from Zimbabwe, unemployed men and women, those living in rural poverty, agricultural workers, and children orphaned by HIV/AIDS.

Traffickers charged with kidnapping or abduction could be sentenced to seven years' imprisonment. However, the government did not prosecute, convict, or punish any trafficking offenses during the year.

The government funded and otherwise supported NGO programs that provided assistance and services to victims of general crimes that were also accessible to victims of trafficking. Authorities, in partnership with other governments in the region, assisted the safe repatriation of a trafficking victim to the victim's country of origin.

The government placed antitrafficking education posters at all of its border posts and included trafficking awareness segments in some of its law enforcement training sessions.

The State Department's annual *Trafficking in Persons Report* can be found at www.state.gov/g/tip.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities in education, employment, access to health care, or the provision of other state services. The government has a national policy that provides for integrating the needs of such persons into all aspects of government policymaking. The government mandated access to public buildings and access to transportation for persons with disabilities. However, although new government buildings were being built to ensure access for such persons under the supervision of the Ministry of Works, most older government buildings remained inaccessible. There was some discrimination against persons with disabilities, and employment opportunities remained limited. The government did not restrict persons with disabilities from voting or participating in civil affairs, and some accommodations were made during elections to allow such persons to vote.

The Ministry of Labor and Home Affairs is responsible for ensuring that the rights of persons with disabilities are protected and investigating claims of discrimination. Individuals can also bring cases directly to the Industrial Court. The government funded NGOs that provided rehabilitation services and supported small-scale projects for workers with disabilities.

Indigenous People

The country's estimated 50,000 to 60,000 San represented approximately 3 percent of the population. The San are culturally and linguistically distinct from most of the population. By law discrimination against the San with respect to employment, housing, health services, and cultural practices is illegal. However, they remained economically and politically marginalized and generally did not have access to their traditional land. The San continued to be isolated, had limited access to education, lacked adequate political representation, and were not fully aware of their civil rights. In 2002 the government forcibly resettled San who were living in the CKGR to the settlement areas of Kaudwane, New Xade, and Xere.

While the government respected the 2006 High Court ruling on a suit filed by 189 San regarding their forced relocation, it continued to interpret the ruling to allow only the 189 actual applicants and their spouses and minor children, rather than all San affected by the relocations, to return to the CKGR. The court ruled the applicants were entitled to return to the CKGR without entry permits and to receive permits to hunt in designated wildlife management areas that are not located in the CKGR. The court also ruled the government was not obligated to resume providing services within the CKGR, and during the year the government did not reopen water wells in the CKGR. Many of the San and their supporters continued

to object to the government's narrow interpretation of this ruling. In November a small group of San filed a lawsuit that sought to require the government to open a water well at a specific location inside the CKGR. The San contended that a well had existed at this location previously, but the government denied this. Government sources confirmed that negotiations with San representatives on residency, water, and hunting rights continued at year's end.

During the year the government arrested several San for illegally hunting in the CKGR. Although the law allows for a sentence including a fine or prison term for those found guilty of illegal hunting, none of the San arrested during the year were sanctioned.

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

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

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

The law does not criminalize sexual orientation. However, the law does criminalize "unnatural acts," which was widely believed to include homosexual conduct. Police did not target homosexual activity, and during the year there were no reports of violence against persons due to their sexual orientation or gender identity. However, there were reports of societal discrimination and harassment of members of the LGBT community. The independent organization LEGABIBO (Lesbians, Gays, and Bisexuals of Botswana) attempted to register as an advocacy NGO; however, the government refused to register it.

Other Societal Violence or Discrimination

Discrimination against persons with HIV/AIDS continued to be a problem, including in the workplace. The government funded community organizations that ran antidiscrimination and public awareness programs. The Botswana Network on Ethics, Law, and HIV/AIDS continued to advocate for an HIV employment law to curb discrimination in the workplace.

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

Section 7 Worker Rights

a. The Right of Association

The law allows workers, except for police officers, the BDF, and the prison service, to form and join unions of their choice without excessive requirements, and workers exercised this right in practice. Most public sector associations have converted to unions. The industrial or wage economy was small, and unions were concentrated largely in the public sector, mineral extraction, and to a lesser extent in the railway and banking sectors. The law requires that an organization have more than 30 employees to form a trade union.

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

The 2006 case regarding the copper mine's dismissal of 178 workers for striking that was dismissed by a lower court was appealed during the year; the Industrial Court had not heard the appeal by year's end.

In 2008 the Industrial Court dismissed a 2005 case in which 461 workers were fired in 2004 after a strike against their employer, Debswana, the joint government-DeBeers diamond mine venture. The court found that the case was not tried in a timely fashion. The 461 former employees appealed the dismissal; however, the dismissal was upheld.

b. The Right to Organize and Bargain Collectively

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

Civil service disputes were referred to an ombudsman for resolution. Private labor disputes were mediated by labor commissioners; however, an insufficient number of commissioners resulted in one- to two-year backlogs in resolving such disputes.

Workers may not be fired for legal union-related activities; however, unregistered trade unions are not protected against antiunion discrimination. Dismissals on other grounds may be appealed to civil courts or labor officers, which rarely ordered more than two months' severance pay.

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

c. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit forced and compulsory labor, including by children; however, there were reports that such practices occurred.

According to one NGO, women reported being forced into commercial sexual exploitation at safari lodges, and some Zimbabwean women reported being exploited by employers for forced labor. Children were trafficked internally for domestic servitude and cattle herding.

d. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age for basic employment at 14 years. Only an immediate family member may employ a child age 13 or younger, and no juvenile under age 14 may be employed in any industry without permission from the commissioner of labor. Children 14 years old who are not attending school may be employed by family members in light work that is not considered hazardous or as approved by the labor commissioner, but for no more than six hours a day or 30 hours a week. In industrial settings those under age 15 may only work up to three consecutive hours without the labor commissioner's approval, and those between ages 15 and 18 may work only up to four consecutive hours without such approval. Those under 18 may not be employed in work underground, at night, in work that is harmful to health and development, or in work that is dangerous or immoral. The law provides that adopted children may not be exploited for labor and protects orphans from exploitation or coercion into prostitution.

According to the 2005-06 labor survey, slightly fewer than 38,000 children between the ages of seven and 17 were employed in the formal sector in 2006. Approximately half of those employed were younger than 14. More than 60 percent of employed children worked in agriculture, 20 percent in retail trade, and 4 percent in private homes. Children also worked as domestic laborers, prostitutes, and in informal bars. Outside of supermarkets they sometimes assisted truck

drivers with unloading goods and carried bags for customers. Many orphans also left school to work as caregivers for sick relatives. Most employed children worked up to 28 hours per week.

The Ministry of Labor and Home Affairs was responsible for enforcing child labor laws and policies, and it was generally effective, despite limited resources for oversight of remote areas of the country. District and municipal councils have child welfare divisions, which are also responsible for enforcing child labor laws. Other involved government entities included offices of the Ministry of Education and the Ministry of Local Government. Oversight of child labor issues was facilitated through the Advisory Committee on Child Labor, which included representatives of various NGOs, government agencies, workers' federations, and employers' organizations. During the year there were no prosecutions, convictions, or fines levied for illegal child labor.

The government supported and worked with partners to conduct workshops to raise awareness of child labor. The Department of Labor partnered with the Department of Social Services to advocate against and raise awareness of exploitative child labor.

e. Acceptable Conditions of Work

The minimum hourly wage for most full-time labor in the private sector was 3.80 pula (approximately \$0.58), which did not provide a decent standard of living for a worker and family. The cabinet determined wage policy based on recommendations from the National Economic, Manpower, and Incomes Committee, which consists of representatives of the government, private sector, and the Botswana Federation of Trade Unions. The Ministry of Labor and Home Affairs was responsible for enforcing the minimum wage, and each district had at least one labor inspector.

Formal sector jobs generally paid well above minimum wage levels. Informal sector employment, particularly in the agricultural and domestic service sectors, where housing and food were provided, frequently paid below the minimum wage. In March the Ministry of Labor and Home Affairs introduced new minimum wages for workers in the agricultural and domestic sectors; the wages took effect on April 1. The minimum wage for domestic workers was 2 pula (approximately \$0.30) per hour. Workers in the agricultural sector were required to be paid 408 pula (\$62) per month; however, the cost of feeding a worker who lived on the employer's premises could be deducted from the wage.

The law permits a maximum 48-hour workweek, exclusive of overtime, which is payable at time-and-a-half. The law does not specifically mandate rest periods or prohibit excessive compulsory overtime. Most modern private-sector jobs had a 40-hour workweek; the public sector, however, had a 48-hour workweek. The labor law applies to farm and migrant workers. The Department of Labor had inspectors to enforce labor regulations; however, the number was insufficient to conduct inspections fully.

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

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