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Botswana

Country Reports on Human Rights Practices - [2005](#)

Released by the Bureau of Democracy, Human Rights, and Labor
March 8, 2006

Botswana, with a population of 1.76 million, has been a multiparty democracy since its independence in 1966. The constitution provides for indirect election of a president and popular election of a National Assembly. In October 2004 the Botswana Democratic Party (BDP), led by President Festus G. Mogae, returned to power in elections generally deemed free and fair. 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, the following human rights problems were reported:

- police use of excessive force during interrogation of suspects
- poor and possibly life-threatening prison conditions
- lengthy delays in the judicial process
- restrictions on press and academic freedoms
- harassment of human rights activists
- violence against women and ethnic San
- child abuse
- restrictions on trade unions

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, police shot and killed five individuals in three separate incidents during which suspects had shot at police attempting to apprehend them.

The results of the investigation into the March 2004 police shooting were not released during the year.

There were occasional instances of mob violence against criminal suspects, which resulted in at least one death. In August a mob caught a suspected robber and stoned him to death.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law explicitly prohibits such practices; however, there were reports that security forces occasionally beat and abused suspects to obtain evidence or elicit confessions. Coerced confessions and evidence gathered through coercion or abuse were inadmissible in court.

In May, in Gaborone, a robbery suspect claimed that officers at Broadhurst Police Station undressed him, placed a hood over his head to suffocate him, and beat him. An investigation was conducted but did not result in any charges.

In June San residents of Kaudwane village charged that Department of Wildlife and National Parks officers beat five members of the community in two separate instances during which suspects were questioned about poaching. The five, whose accounts were corroborated by other residents of the village, were briefly detained. One of the victims presented documentation from a local clinic verifying that he had been beaten. On July 22, the office of the president refuted the charges, quoting from a draft investigation report that characterized the charges as "baseless"; the report had not been released by year's end.

In September leaders of the nongovernmental organization (NGO) First People of the Kalahari (FPK) charged that police harassed and intimidated human rights activists (see section 4).

Police forcibly dispersed demonstrators, which resulted in injuries (see section 2.b.).

Customary courts continued to impose corporal punishment in the form of lashings on the buttocks, generally against young male offenders in villages for crimes such as vandalism, theft, and delinquency.

Prison and Detention Center Conditions

Prison conditions remained poor and possibly life threatening. As of early September the prison system, which had an authorized capacity of 3,910, held 6,259 prisoners. Overcrowding was worse in men's prisons and constituted a serious health threat because of the country's high incidence of HIV/AIDS and tuberculosis. Voluntary HIV testing and peer counseling were available to prisoners. Rape between inmates occurred. The prison commissioner has the authority to release terminally ill prisoners who are in the last 12 months of their sentences and to allow citizen prisoners with sentences of 12 months or less to perform "extramural" labor. During the year the government released 710 prisoners under the extramural labor program.

Mistreatment of prisoners is illegal; however, the Department of Prisons received three complaints that guards had mistreated inmates. One of the three complaints was forwarded to the police for investigation; police concluded there was insufficient evidence to charge the officer involved.

By December 8, 72 prisoners had died in custody, primarily from HIV/AIDS-related illnesses. Although the Department of Prisons routinely investigated deaths in custody, the results of those inquests were not made public.

Due to overcrowding, juveniles occasionally were held with adults. Some parents requested that their incarcerated children be transferred to facilities nearer to their homes, which also resulted in the detention of juveniles with adults. Pretrial detainees and convicts were held together.

The minister of labor and home affairs appointed visiting committees charged with visiting each prison facility quarterly, and they did so during the year. Although the committees documented their findings, their reports were not made public. By September no NGOs had requested to visit a prison. The government permitted the International Committee of the Red Cross to visit prisoners during the year.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions in practice.

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. Customary or local police under the Ministry of Local Government have law enforcement responsibility in some rural areas. The army is responsible for external security and has some domestic security responsibilities.

There were approximately 6,500 BPS officers and approximately 1,800 local police. Corruption was not considered a major problem, but respondents to a July survey listed the police among the top five government agencies most prone to corruption. Impunity generally was not a problem. Unlike in the previous year, there were no convictions of police officers for criminal acts.

During the year approximately 170 police officers received human rights training at the International Law Enforcement Academy in Botswana.

Arrest and Detention

Police officers must produce an arrest warrant 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. Suspects must be informed of their rights upon arrest, including the right to remain silent, and must be charged before a magistrate within 48 hours; authorities respected these rights in practice. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. There was a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and to hire attorneys of their choice, but in practice most were unable to afford legal counsel. The government provides counsel for the indigent only in capital cases, although attorneys are required to accept pro bono clients.

There were no reports of political detainees.

Pretrial detainees waited from several weeks to several months between the filing of charges and the start of their trials. 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 law provides for an independent judiciary, and while the judiciary was independent, the civil courts remained unable to provide timely, fair trials due to severe staffing shortages and a backlog of pending cases. A June report by the office of the ombudsman characterized the "delays in the finalization of criminal matters in all courts" a "serious concern," particularly the delays in processing appeals. A survey conducted during the year found that 31 percent of respondents cited inefficiencies in the justice system as a reason for the perceived increase in fraud in the country.

The judiciary consists of both a civil court (including magistrate's courts, a high court, and a court of appeal) and a customary or traditional court system.

Trial Procedures

Most trials in the regular courts were public, although trials under the National Security Act may be held in secret. There was 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 were tried without legal representation if they could not 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. There is a presumption of innocence, and defendants have the right to appeal. The Botswana Center for Human Rights provided free legal services but had limited capacity. The University of Botswana Legal Assistance Center provided free legal services in civil, but not criminal, matters.

On March 21, the high court granted a permanent stay of prosecution to two San accused of committing murder in 1995. The judge cited unacceptable delays in the process of trying the men. The two had been convicted in 1997, but the high court later ordered a retrial on the grounds they had not received a fair trial due in part to a lack of appropriate translation facilities.

Most civil cases were tried in customary courts under the authority of a traditional leader. These courts handled minor offenses involving land, marital, and property disputes. Foreigners may be tried in customary courts. In customary courts the defendant does not have legal counsel, and there are no precise rules of evidence. Tribal judges, appointed by the tribal leader or elected by the community, determined sentences, which may be appealed through the civil court system. The quality of decisions reached in the customary courts varied considerably. In some cases tribal judges may mete out sentences such as public lashings (see section 1.c.).

There is a military court system; civilians are not tried in military courts.

Political Prisoners

There were no reports of political prisoners.

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

The law prohibits such actions, and the government generally respected these prohibitions in practice. However, in 2002 the government forcibly resettled most of the San and other minority members living in the Central Kalahari Game Reserve (CKGR) to resettlement sites on the perimeter of the reserve. Government officials maintained that the resettlement program was voluntary and necessary to reduce the cost of providing public services, to "develop" the San, and to minimize human impact on wildlife. On September 1, the government closed the reserve to control a disease outbreak. The reserve remained closed at year's end; despite the closure and earlier relocations, some San remained in the reserve at year's end (see section 5).

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected freedom of speech in practice; however, the government attempted to limit freedom of the press and continued to dominate domestic broadcasting. The government occasionally censored stories or news sources that it deemed undesirable.

The Botswana Press Agency, owned and operated by the government, provided most of the information found in the media through the *Daily News* newspaper (distributed nationwide at no cost) and two FM radio stations. State-owned media generally featured uncritical reporting on the government and were susceptible to political interference. For example, on March 7, the minister of communications, science, and technology reportedly advised government journalists not to ask visiting dignitaries "direct and embarrassing questions." In November BTV canceled a panel discussion on the salaries of cabinet ministers after alleged interference by the government, which claimed the cancellation resulted from "technical mistakes."

The independent media were active and generally expressed a wide variety of views; however, the government placed strict controls on their access to 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 and Gabz FM broadcast in 5 of the country's 10 largest towns. They produced news and current affairs programs without government interference.

During the year the government stopped renewing radio licenses held by the FPK, charging that the vehicle-mounted and hand-held radios were being used by poachers to help avoid wildlife patrols in the CKGR. The FPK said that the radios were vital for the safety of widely scattered families living in the reserve.

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.

During the year the government deported at least two journalists whose reporting was critical of the government. In each case, the government exercised its right not to specify reasons for the deportations other than to cite national security concerns. On July 27, the government deported Zimbabwean journalist and *Ngami Times* reporter Rodrick Mukumbira, whose work and residence permits were valid until October 2007; the government again cited national security concerns. Government officials also refused to discuss their decision to bar another Zimbabwean journalist from entering the country on August 5.

The government's 2003 suspension of *Masa-a-sele*, a radio call-in program, remained in effect at year's end; the government cited the program's content and use of profanity as the reason for the suspension.

Government officials sometimes complained of bias in the private press; however, government officials and other public figures have recourse to the courts if they believe that they have been libeled. Libel is a civil matter.

There were no government restrictions on the Internet; however, the government restricted academic freedom during the year. On May 31, the government deported Dr. Kenneth Good, a professor at the University of Botswana, who had written papers critical of the government. The government attributed its actions to national security concerns. In a June 11 press conference, President Mogae highlighted Dr. Good's support for Survival International's public campaign to depict the country's diamonds as "conflict diamonds" because of the government's relocation of San and other minorities from the CKGR (see section 5). There also were reports that government officials had discouraged academics from presenting papers, especially in international fora, that were critical of the government.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected these rights in practice; however, on September 24, police forcibly dispersed and shot rubber bullets into a demonstration led by San leaders Roy Sesana and Jumanda Gakelebone. One person was injured. The demonstrators had conducted a peaceful protest and then tried to force entry into the CKGR, which was temporarily closed due to a disease outbreak in reserve animals. Police arrested 21 protesters, who were released on September 27. No trial had been held by year's end.

c. Freedom of Religion

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

Societal Abuses and Discrimination

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

For a more detailed discussion, see the [2005 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration and Repatriation

The law provides for these rights, and the government generally respected them in practice.

In 2002 the government required the San to relocate from the CKGR to one of three designated settlements outside of the reserve (see section 5). Visitors to the reserve, including relocated former residents, had to register with Department of Wildlife officials to obtain a permit to enter the CKGR. A few San remained in the reserve, and some San moved back to the CKGR during the year. The government denied an NGO entry into the CKGR during the year (see section 4).

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

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has established a system for providing protection to refugees. In practice the government provided protection against *refoulement*, the return of persons to a country where they fear persecution, and granted refugee status or asylum. The government's system for granting refugee status was accessible but slow. During the year the government also provided temporary protection to approximately 480 individuals who did not qualify as refugees under the 1951 convention and the 1967 protocol. The government generally cooperated with the office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers.

The government held newly arrived refugees and asylum seekers, who were 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; UNHCR was present at RAC meetings as observer and technical advisor. Once persons were granted refugee status, the government transferred them to the Dukwe Refugee Camp until their resettlement or voluntary repatriation. Refugee applicants who were unsuccessful in obtaining asylum also were allowed to remain at Dukwe until the government referred their cases to the UNHCR for resettlement. The UNHCR opposed the detention of asylum seekers at the center on the grounds that asylum seekers should not be held in detention facilities.

During the year refugees in the center alleged that prison guards beat them and that they were not allowed to see family members. Refugee children in the center did not have access to education or recreation for the duration of their detention, which in some cases lasted for almost 10 months.

The remaining 11 alleged Caprivi secessionists remained in detention while the UNHCR reviewed their refugee claims.

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

The law provides citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections held on the basis of universal suffrage.

Elections and Political Participation

The country held parliamentary elections in October 2004. The BDP, led by President Mogae, won 44 of 57 competitive seats; the Botswana National Front won 12; and the Botswana Congress Party won 1. The BDP has won a majority of seats in the National Assembly in every election since independence. Domestic and international observers characterized the elections as generally free and fair; however, BDP candidates had preferential access during much of the campaign to state-owned television. Reports of large anonymous campaign contributions to the ruling party, particularly by international diamond interests, resulted in public calls for greater transparency in political party funding.

Although women accounted for approximately 57 percent of voters in the October 2004 election, they stood for office much less frequently. There were 7 women in the 61-seat parliament, 5 women in the 20-seat cabinet, 3 female justices on the 13-seat high court, and 2 women in the 15-seat house of chiefs.

The law recognizes only the eight principal ethnic groups of the Tswana nation; however, members of ethnic groups not recognized by the law participated actively in the government, particularly members of the Kalanga and Bakalagadi ethnic groups. There were 23 members of minorities in the 61-seat parliament, 10 in the 20-seat cabinet, and 5 on the high court.

Government Corruption and Transparency

There were isolated reports of government corruption during the year. A corruption perception survey conducted in July in the business sector found that nearly 40 percent of respondents believed that corruption was "very high," and 33 percent described it as "moderate." Seventy-four percent of respondents believed that corruption was increasing in the country. Respondents most frequently identified local councils, police officers, immigration, labor, and transportation officials as corrupt.

During the year the government took steps to curb corruption. The Directorate on Corruption and Economic Crime (DCEC) investigated allegations of corruption, although there were no prosecutions. The DCEC promoted public awareness and education, and also worked to prepare codes of ethical conduct.

The law does not provide public access to government information, and the government generally restricted such access.

Section 4 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 at times were cooperative and responsive to their views; however, during the year government officials harassed and arrested NGO members.

Independent local human rights groups included The Botswana Centre for Human Rights; Childline, a child welfare NGO; Emang Basadi, a women's rights group; and the Botswana Network on Ethics, Law, and HIV/AIDS. The government interacted with and sometimes financially supported some of these organizations.

In July the government denied the FPK entry to the CKGR, charging that the group intended to encourage illegal resettlement in the reserve and to help poachers. The FPK, which represented the San in their legal challenge against the government, claimed that its members sought entry to consult with San plaintiffs (see section 5). The government also refused to renew the FPK's licenses to operate two-way radios within the reserve, charging that the NGO had used the radios to encourage and facilitate illegal activities (see section 2.a.).

In September government officials harassed and intimidated a group of foreign human rights activists visiting the CKGR. A government official subsequently apologized to the group. The government initiated an investigation into the incident, the results of which were not

available by year's end. In December the government facilitated a return visit to the CKGR by representatives of First Peoples Worldwide, an international NGO whose representative had been present during the September incident.

On September 24, police dispersed an FPK demonstration and arrested 21 protesters after they attempted to force entry into the CKGR, which was closed (see Section 2.b.).

In June the government facilitated a visit by a delegation from the African Commission on Human and Peoples Rights to investigate treatment of the San. In September the delegation commended the government for being the first country to invite the commission to visit.

An independent, autonomous ombudsman handled human rights and other issues in the country, and the government generally cooperated with the ombudsman.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits governmental discrimination on the basis of ethnicity, race, nationality, creed, sex, or social status, and the government generally respected these provisions in practice. However, the law does not prohibit discrimination by private persons or entities, and there was societal discrimination against women, persons with disabilities, persons with HIV/AIDS, and minority ethnic groups, particularly the San.

Women

The law does not specifically prohibit domestic violence against women, and it remained a serious problem. Under customary law and in common rural practice, men have the right to "chastise" their wives. Greater public awareness and improved legal protection resulted in increased reporting of domestic violence and sexual assault; however, police rarely were called to intervene in such cases. During the year there was extensive media coverage of "passion killings," in which jealous men killed their girlfriends or wives and often then committed suicide.

The law prohibits rape but does not recognize the concept of spousal rape. During the year 1,540 incidents of rape were reported to the police. By law the minimum sentence for rape is 10 years, increasing to 15 years with corporal punishment if the offender is HIV-positive, and to 20 years with corporal punishment if the offender knew his HIV-positive status. A person convicted of rape is required to undergo an HIV test before being sentenced; however, the test did not determine if the person was HIV positive at the time of the crime. Police lacked basic investigative techniques in rape cases.

Prostitution is illegal but was widespread throughout the country.

The law does not prohibit sexual harassment, although the amended Public Service Act recognizes sexual harassment as misconduct punishable under the terms of that act. Sexual harassment continued to be a problem, particularly with men in positions of authority, including teachers, supervisors, and older male relatives who pressured women and girls to provide sexual favors.

Women legally enjoy 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" was held to be a legal minor and requires 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 were permitted to own immovable property 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.

Well-trained urban women had growing access to entry- and mid-level white collar jobs. Although women occupied many senior level positions in government agencies, such as the governor of the Bank of Botswana, the attorney general, and the director of public prosecution, their counterparts in the private sector seldom held such positions.

The Women's Affairs Department in the Ministry of Labor and Home Affairs had responsibility for promoting and protecting women's rights and welfare. During the year it provided approximately \$240 thousand (1.3 million pula) to NGOs working on such issues.

Children

The law provides for the rights and welfare of children, and the government continued to allocate the largest portion of its budget to the Ministry of Education and the second largest portion to the Ministry of Local Government, which distributed books, food, and materials for primary education. The country also has a court system and social service apparatus designed solely for juveniles.

The government provided access to primary and secondary education free of tuition. The state provided uniforms, books, and development fees for students whose parents were destitute. Education was not compulsory. According to the most recent government statistics, approximately 88 percent of children attended school, and approximately 30 percent of children completed secondary 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 lived far from schools and often assisted their families as cattle tenders, domestic laborers, and child care providers.

The UN Children's Fund (UNICEF) reported there were approximately 112 thousand orphans in the country, due largely to deaths of their parents from HIV/AIDS. As of June, the government had registered approximately 50,237 children as orphans. Once registered these children received clothes, shelter, a monthly food basket worth \$40 (216 pula), and counseling as needed. Relatives continued to deny inheritance rights to orphans.

Children had access to government healthcare centers for \$0.50 (2 pula), and students in remote areas received two free meals a day at school. Approximately 28 percent of babies born from HIV positive mothers were protected from the virus, largely as a result of the government's Prevention of Mother to Child Transmission Program.

Although the law prohibits defilement (sex with a child below the age of 16), no law specifically prohibits child abuse. Sexual abuse of students by teachers was a problem, and there were frequent media reports of rape, sexual assault, incest, and defilement. The increasing number of HIV/AIDS orphans contributed to an increase in incest. The law considers incest a punishable act only if it occurs between blood relatives, leaving children unprotected from incestuous acts performed by step parents, caregivers, and the extended family. In view of the belief held by some persons in southern Africa that intercourse with a virgin was a cure for HIV/AIDS, intergenerational sex (sexual relations between older men and girls) and the problems of teenage pregnancy caused by older men continued to receive extensive media attention during the year.

Child marriage occurred infrequently and was largely limited to certain ethnic groups.

Child prostitution and pornography were criminal offenses, and the law stipulates a 10-year minimum sentence for defilement of persons less than 16 years of age. Many children, mostly believed to be orphans, became street children and resorted to prostitution to survive.

There were reports of child labor (see section 6.d.).

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 unconfirmed reports that women and children have been trafficked out of the country to South Africa. Traffickers charged with kidnapping or abduction could be sentenced to seven years' imprisonment. Local police had primary responsibility for combating trafficking-related crimes.

The government worked with NGOs to assist potential trafficking victims and provided grants to shelters that provided short- and long-term care for street children.

Persons with Disabilities

The law does not prohibit 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 persons with disabilities into all aspects of government policymaking; however, the government did not mandate access to public buildings or transportation for persons with disabilities. There was some discrimination against persons with disabilities, and employment opportunities remained limited. The government funded NGOs that provided rehabilitation services and supported small-scale work projects for workers with disabilities.

Indigenous People

The earliest known inhabitants of the country, the San, were linguistically, culturally, and often morphologically distinct from the rest of the population. They were not, however, a homogenous group. The estimated 48 thousand San in the country represented approximately 3 percent of the country's population. The San remained economically and politically marginalized, have generally lost access to their traditional land in fertile regions of the country, and were vulnerable to exploitation by their non-San neighbors. Their isolation, low educational levels, ignorance of civil rights, and lack of political representation have stymied their progress. Although the San traditionally were hunter-gatherers, a substantial proportion of them resided in government-created Remote Area Dweller settlements and subsisted on government welfare benefits. Most employed San worked as agricultural laborers on cattle ranches that belonged to other ethnic groups.

The colonial government established the 20 thousand square mile CKGR in 1963 to protect the area's ecosystem and to allow some San groups to continue to pursue a subsistence hunter-gatherer livelihood within the reserve. By 1997 the government had concluded that San settlements within the CKGR were incompatible with wildlife protection and social development, and most San were relocated from the CKGR under an arrangement that included government transportation and a modest, government-set compensation, usually in the form of livestock. Several hundred residents did not accept the government's relocation inducements, and remained in the reserve. In January 2002 the government delivered an ultimatum to remaining CKGR residents declaring that public services within the reserve, most significantly provision of water, would cease and that all residents would be relocated outside the reserve. In April 2002 the government forcibly resettled most San from the CKGR to the settlement areas of Kaudwane, New Xade, and Xere.

Settlement sustainability was threatened by poor employment opportunities, rampant alcohol abuse, and the high cost of providing public services. The San continued to struggle with the lack of economic opportunities in the relocation areas and with a general yearning to return to their homes within the CKGR. During the year a number of individuals and families moved back into the CKGR, which prompted the government to ban radios and to bar the FPK from the reserve. This heightened ill will among the San and generated local and international media attention. San groups called for the government to recognize their land use system and to grant them land rights.

In July 2004 the high court began hearing a case filed by the FPK against the government to challenge the constitutionality of the government's removal of the San from the CKGR into settlements. The court case, which the government announced it would appeal should it lose, continued until August, when the plaintiffs requested a continuance to raise funds for their legal expenses. The case was scheduled to resume in February 2006.

A number of NGOs have made efforts to promote the rights of indigenous people or to help provide economic opportunities; however, the programs have had limited impact.

Other Societal Abuses and Discrimination

Discrimination against persons with HIV/AIDS continued to be a problem, including in the workplace. The government funded community organizations that ran programs to reduce the stigma of HIV/AIDS.

The law prohibits homosexuality, and there were instances of harassment of homosexuals.

Section 6 Worker Rights

a. Right of Association

The law provides for the right of workers' association, and workers exercised this right in practice. Public sector employees, who were extended the right to organize in 2004, were still in the process of establishing unions. The industrial or wage economy was small, and unions were concentrated largely in mineral extraction and to a lesser extent in the railway and banking sectors.

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

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 a labor force; however, only the mineworker and diamond sorter unions had the organizational strength to engage in collective bargaining. There are no special laws or exemptions from regular labor laws in the country's export processing zone.

The law severely restricts the right to strike. Legal strikes theoretically are possible only after an exhaustive arbitration process. Sympathy strikes are prohibited.

During the year the Botswana Federation of Trade Unions (BFTU) registered a formal complaint with the International Labor Organization (ILO) over the dismissal by Debswana, the government-DeBeers joint venture that runs the country's diamond mines, of 461 employees who participated in a 2004 strike. Debswana also dismissed several union leaders who did not participate in the strike. In 2004 the industrial court ruled the strike illegal. The ILO had not responded to the complaint by year's end.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced and compulsory labor, including by children, and unlike in the previous year, there were no reports that poor rural children were taken from their homes under false pretenses and forced to work as maids or cattle herders (see section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

Although child labor is addressed in the Children's Act, some child labor occurred. 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. No organization has petitioned the commissioner for such permission. Only persons over age 16 may be hired to perform night work, and no person under age 16 is allowed to perform hazardous labor, including mining.

District and municipal councils have child welfare divisions, which are responsible for enforcing child labor laws; however, no systematic investigation has occurred. The labor commissioner, UNICEF, and officials of the Ministry of Local Government, Lands, and Housing generally agreed that child labor was limited to young children in remote areas who worked as cattle tenders, domestic laborers, and child care providers. Childline, a child welfare organization, received 12 reports of child labor from January to July.

The law provides that adopted children may not be exploited for labor and protects orphans from exploitation or coercion into prostitution, but HIV/AIDS has resulted in numerous orphans, many of whom have been forced to leave school to care for sick relatives and are potentially vulnerable to such exploitation.

e. Acceptable Conditions of Work

The minimum hourly wage for most full-time labor in the private sector was \$0.64 (2.90 pula), which did not provide a decent standard of

living for a worker and family. The cabinet determined wage policy based on recommendations made by the National Economic, Manpower, and Incomes Committee, which consists of representatives of the government, private sector, and the BFTU. The Ministry of Labor was responsible for enforcing the minimum wage, and each of the country's districts had at least one labor inspector. 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.

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 included, frequently paid below the minimum wage. There was no mandatory minimum wage for domestic workers, and the Ministry of Labor did not recommend a minimum wage for them.

The law permits a maximum 48-hour workweek, exclusive of overtime, that is payable at time and a half for each additional hour. Most modern private sector jobs had a 40-hour workweek; however, the public sector had a 48-hour workweek.

The law provides that workers who complain about hazardous conditions may not be fired, and authorities effectively enforced this right. The government's ability to enforce its workplace safety legislation remained limited by inadequate staffing and unclear jurisdictions among different ministries. Nevertheless, employers generally provided for worker safety, with occasional exceptions in the construction industry.

Illegal immigrants from poorer neighboring countries, primarily Zimbabweans, were easily exploited in labor matters, since they would be subject to deportation if they filed grievances against their employers.

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