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U.S. Department of State

Botswana Country Report on Human Rights Practices for 1996

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BOTSWANA

Botswana is a longstanding, multiparty democracy. Constitutional power is shared between the President, Sir Ketumile Masire, and the 44-member popularly elected lower house of Parliament. The ruling Botswana Democratic Party (BDP) continued to dominate the National Assembly, holding 31 of 44 seats. The opposition Botswana National Front (BNF) holds the remaining 13 seats. In October 1994, the President was reelected in free and fair elections for a third 5-year term. The Government respects the constitutional provisions for an independent judiciary.

The civilian Government exercises effective control over the security forces. The military, the Botswana Defense Force (BDF), is responsible for external security. The Botswana National Police (BNP) are responsible for internal security. Members of the security forces occasionally committed human rights abuses.

The economy is market oriented with strong encouragement for private enterprise. Steady diamond revenues and effective economic and fiscal policies resulted in continuing growth, although the economy grew at a relatively modest annual rate of 4.5 percent following a downturn from 1991 to 1993. Per capita gross domestic product was approximately \$3,000 in 1996. Over 50 percent of the population is employed in the informal sector, largely subsistence farming and animal husbandry. Rural poverty remains a serious problem, as does a widely skewed income distribution.

The Constitution provides for citizens' human rights, and the Government generally respects those rights

in practice. Despite some continuing problems, Botswana's overall human rights record has been consistently positive since independence. There were credible reports that the police sometimes mistreated criminal suspects in order to coerce confessions. Women continued to face legal and societal discrimination, and violence against women is a continuing problem. Some Botswana, including groups not numbered among the eight "principal tribes" identified in the Constitution because they live in remote areas, still do not enjoy full access to social services and, in practice, are marginalized in the political process. In many instances the judicial system did not provide timely fair trials due to a serious backlog of cases. Trade unions continued to face some legal restrictions, and the Government did not always ensure that labor laws were observed in practice.

The Government continued to address human rights problems in 1996. Parliament ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and adopted a national policy on women in July. However, the Government's plan announced in September 1995 to construct a separate

detention facility for asylum seekers whose refugee claims have been rejected has been delayed pending resolution of a dispute between two government ministries over how improvements to the property will be made. The facility is now referred to by the Government as the Center for Illegal Immigrants. Until the Center is completed, refused asylum seekers continue to be detained in prison. Refugees and asylum seekers refused under Botswana's "first country of origin" policy are housed at Dukwe Refugee Camp.

RESPECT FOR HUMAN RIGHTS

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

a. Political and Other Extrajudicial Killing

There were no reports of political killings. However, in February six members of the military intelligence unit of the BDF were implicated in the death of a man who died while under interrogation about stolen vehicles and computers. An alleged witness, who claimed that he had also been assaulted, charged that he saw the officers suffocate the deceased with a plastic bag.

In a case related to a violent student protest in early 1995, the 12-year sentence of a riot police officer convicted of murdering a man who apparently had no connection with the demonstrations was reduced at a February hearing.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The Constitution explicitly forbids torture, inhuman, and degrading treatment or punishment. The authorities generally respect this prohibition in practice and, in some cases, have taken disciplinary or judicial action against persons responsible for abuses. However, instances of abuse do occur. While coerced confessions are inadmissible in court, evidence gathered through coercion or abuse may be used in prosecution. There were credible reports that police sometimes used intimidation techniques in order to obtain evidence or elicit confessions. In the past police sometimes suffocated criminal suspects with a plastic bag. There was one such allegation in 1996 (see Section 1.a.). In general, however, beatings and other forms of extreme physical abuse remained rare.

In June the Government filed unlawful rioting and assault charges against several students who had been detained and released following violent student demonstrations in February 1995. Some of the students had alleged police assault when initially detained.

In January a district customary court sentenced nine young men to six strokes each on the buttocks for common nuisance. In October the House of Chiefs adopted a motion to request the Government to reinstate corporal punishment in the form of flogging across the back rather than the buttocks as is currently permitted. The House of Chiefs is an advisory body only.

Prison conditions meet minimum international standards, although overcrowding is a problem. Women in custody are placed in the charge of female officers. The Government permits visits by human rights monitors after a detailed inquiry procedure.

The Government neither forcibly repatriates nor deports failed asylum seekers, but it has incarcerated them alongside convicted felons. Asylum seekers refused under Botswana's "first country of origin" policy, who through mid-1995 were incarcerated, are now housed at Dukwe refugee camp, which is funded by the United Nations High Commissioner for Refugees (UNHCR) with support from the Government (see Section 2.d.). Asylum seekers who do not qualify as refugees are detained in prison. The Government's plan to build a dedicated facility for refused asylum seekers, announced in September 1995, has been delayed pending resolution of a dispute between two ministries over how improvements to the property are to be made. The facility, to be called the Center for Illegal Immigrants, will be administered jointly by the Department of Prisons and Rehabilitation with the Immigration Department, which will assist with processing asylum and immigration requests.

d. Arbitrary Arrest, Detention, or Exile

Under the Constitution "every person in Botswana" is entitled to due process, the presumption of innocence, and freedom from arbitrary arrest. The authorities respected these guarantees in practice. Suspects must be informed of their legal rights upon arrest, including the right to remain silent, to be allowed to contact a person of their choice, and generally to be charged before a magistrate within 48 hours. A magistrate may order a suspect held for 14 days through a writ of detention, which may be renewed every 14 days. Most citizens charged with noncapital offenses are released on their own recognizance; some are released with minimal bail. Detention without bail is highly unusual, except in murder cases, where it is mandated. Detainees have the right to hire attorneys of their choice.

Poor police training and poor communications in rural villages make it difficult for detainees to obtain legal assistance, however, and authorities do not always follow judicial safeguards. The Government does not provide counsel for the indigent, except in capital cases, and there is no public defender service. Two nongovernmental organizations (NGO's)--the University of Botswana Legal Assistance Center and the Botswana Center for Human Rights--provide cost free legal services, but their capacity is limited. Constitutional protections are not applied to illegal immigrants, although the constitutionality of denying them due process has not been tested in court.

Following student demonstrations in February 1995 (see Section 1.c.), police detained and then released several hundred persons. In June the Government brought charges of unlawful rioting and assault against some of those who had been detained and released. This sparked renewed, although peaceful, student demonstrations. The Attorney General's Office has reviewed the charges and evidence and has decided to prosecute. Hearing dates had not been set by year's end.

The Government does not use exile for political purposes.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice.

The judiciary consists of both a civil court (including magistrates' courts, a High Court, and a Court of Appeal) and a customary (traditional) court system. The law provides for the right to a fair trial. The civil courts remained unable to provide for timely, fair trials in many cases, however, due to severe staffing shortages and an accumulated backlog of pending cases. The courts are making a major effort to clear this backlog, especially in murder cases.

Most trials in the regular courts are public, although trials under the National Security Act (NSA) may be held in secret. As a rule, courts appoint public defenders only for those charged with capital crimes (murder and treason). Those charged with noncapital crimes are often tried without legal representation if they cannot afford an attorney. As a result, many defendants may not be informed of their rights in pretrial or trial proceedings.

Implementation of the 1994 Anticorruption Act assuaged earlier concerns that it would weaken the defendant's constitutional presumption of innocence.

Most citizens encounter the legal system through the customary courts, under the authority of a traditional leader. These courts handle minor offenses involving land, marital, and property disputes. 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, determine sentences, which may be appealed through the civil court system. The quality of decisions reached in the traditional courts varies considerably. In communities where chiefs and their decisions are respected, plaintiffs tend to take their cases to the customary court; otherwise, people seek justice from the civil courts.

There were no reports of political prisoners.

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

The Constitution provides for the protection of privacy and the security of the person, and government authorities generally respect these rights.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and the Press

The Constitution provides for freedom of expression, both individual and corporate, and the Government respects this right in practice. Botswana has a long tradition of vigorous, candid, and unimpeded public discourse.

The independent press is small, but lively and frequently critical of the Government and the President. It reports without fear of closure or censorship. Concern has been expressed, however, that charges recently filed against a journalist may have an intimidating effect. In October the journalist was accused of violating a law that prohibits disclosure of the names of persons being investigated by the Directorate on Corruption and the Economic Crime Unit. However, a magistrate's court dismissed the charges on November 1. No further charges were brought either against the journalist or the reporter's two editors and the independent newspaper's coowners and publishers, who had been implicated at one point in the

case.

The Government also subsidizes a free daily newspaper which depends heavily on the official Botswana Press Agency (BOPA) for its material. The broadcast media remain a government monopoly, with radio the most important medium of information in this highly dispersed society. Radio Botswana follows government policies and draws most of its stories from BOPA. Opposition leaders have access to the radio, but they complain--with some justification--that their air time is significantly limited. There are no privately owned radio or television stations, but there is a semilegal television station broadcasting to viewers in the capital city. Independent radio and television from neighboring South Africa are easily received.

On occasion the Government has taken steps, under loosely defined provisions of the NSA, to limit publication of national security information.

Academic freedom is not restricted.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for these rights, and the Government respects them in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice.

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

There are no barriers to domestic and international travel or migration. Citizenship is not revoked for political reasons.

The Government cooperates with the UNHCR and other humanitarian organizations in assisting refugees. Botswana has maintained a policy of considering resettlement requests only from refugees from contiguous countries. The Government has, however, permitted failed asylum seekers to remain in the country either at the Dukwe Refugee Camp or in jail. There were no confirmed reports of forced return of persons to a country where they feared persecution. Refugees and asylum seekers refused under Botswana's "first country of origin" policy are housed at Dukwe Refugee Camp until they are resettled or repatriated. New arrivals considered by the Government to be illegal immigrants are detained in prison until the Government's plan to construct a separate facility, announced in September 1995, has been completed. The plan, which is in the design stage, has been delayed pending resolution of a dispute between two ministries over how improvements to the property will be made.

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

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal adult (21 years of age) suffrage. The Botswana Democratic Party continued to dominate Parliament following the October 1994 elections, ensuring the reelection of BDP leader Sir Ketumile Masire as President. The opposition Botswana National Front, the only opposition party to win seats, increased its representation from 3 to 13 seats.

The House of Chiefs, an advisory upper chamber of Parliament with limited powers, is constitutionally

restricted to the eight "principal tribes" of the Tswana nation. Consequently, other groups (e.g., the Basarwa "bushmen," Herero, Kalanga, Humbukush, Baloi, or Lozi) are not represented there. Given the limited authority of the House of Chiefs, the impact of excluding other groups of Botswana citizens is largely symbolic, but it is viewed as important in principle by some non-Setswana speakers. Members of the National Assembly are required to be able to speak English. This restriction has never been challenged in court.

In practice, women are underrepresented in the political process. Although women constitute just over 50 percent of the population, there are only 4 women among the 44 members of the National Assembly, and only 2 women in the Cabinet.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Domestic and international human rights groups operate without government restriction, investigating and publishing their findings on human rights cases. Government officials are generally cooperative and responsive to such inquiries.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution and Penal Code forbid discrimination on the basis of ethnicity, nationality, or creed, but do not address discrimination based on sex. These provisions are implemented in practice by the government authorities.

Women

Violence against women, primarily beatings, remains a serious problem. Under customary law and in common rural practice men have the right to "chastise" their wives. Statistics are believed to underreport the levels of abuse against women. Police are rarely called to intervene in cases of domestic violence, and there were no court cases related to domestic violence in 1996. Spousal abuse is beginning to receive increased attention both from the media and from local human rights groups.

Women in Botswana do not have the same civil rights as men. However, one important step was the Government's accedence to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). In addition a national policy on women was adopted in July following consultations among the Government, NGO's and the private sector. The plan identifies six critical areas of concern, prioritized as follows: 1) women and poverty, 2) women and powersharing and decisionmaking, 3) education and training of women, 4) women and health, 5) the girl child, and 6) violence against women.

A number of other laws, many of which are attributed to traditional practices, restrict civil and economic opportunities for women. A woman married in "common property" is held to be a legal minor, requiring her husband's consent to buy or sell property, apply for credit, and enter into legally binding contracts. Women have, and are increasingly exercising, the right to marriage "out of common property," in which case they retain their full legal rights as adults. Polygyny is still legal under traditional law and with the consent of the first wife, but it is rarely practiced. In October the Government solicited bids for consultants to review existing laws alleged to discriminate against women.

Well trained urban women enjoy growing entry level access to the white collar job market, but the number of opportunities decreases sharply as they rise in seniority. Discrimination against women is

most acute in rural areas where women work primarily in subsistence agriculture.

A number of women's organizations have emerged to promote the status of women. The Government has entered into a dialog with many of these groups. While some women's rights groups reportedly felt that the Government has been slow to respond concretely to their concerns, women's NGO's say that they are encouraged by the direction of change, and by the increasingly collaborative relationship with government authorities. Within the Ministry of Labor and Home Affairs, the Women's Affairs Unit, which is charged with handling women's issues, was upgraded to a division. Plans to make it a separate department had not yet been implemented.

Children

The Government provides 7 years of education for children. The rights of children are addressed in the Constitution and the 1981 Children's Act. Under the act Botswana has a court system and social service apparatus designed solely for juveniles. There is no societal pattern of abuse against children.

People with Disabilities

The Government does not discriminate on the basis of physical or mental disability, although employment opportunities for the disabled remain limited. The Government does not require accessibility to public buildings and public conveyances for people with disabilities, and the NGO community has only recently begun to address the needs of the disabled.

National/Racial/Ethnic Minorities

The Tswana majority, of which the Constitution recognizes eight principal tribes, has a tradition of peacefully coexisting with "minor" tribes. Each of the eight principal tribes is represented in the advisory House of Chiefs, while the other groups are permitted only a subchief, who is not a member of the House. Other than the lack of schooling in their own language and representation in the House of Chiefs, Botswana's Bantu minorities and nonindigenous minorities, such as the white and Asian communities, are not subject to discrimination. However, the nomadic Basarwa remain marginalized; they have lost access to their traditional land and are vulnerable to exploitation. Their isolation, ignorance of civil rights, and lack of representation in local or national government have stymied their progress.

Section 6 Worker Rights

a. The Right of Association

The Constitution provides for the right of association. In practice all workers, with the exception of government employees, are free to join or organize unions of their own choosing. Government workers may form associations that function as quasi-unions but without the right to negotiate wages. The industrial or wage economy is small, and unions are concentrated largely in the mineral and to a lesser extent in the railway and banking sectors. There is only one major confederation, the Botswana Federation of Trade Unions (BFTU), but there are no obstacles to the formation of other labor federations.

Unions are independent of the Government and are not closely allied with any political party or movement. Unions may employ administrative staff, but the law requires elected union officials to work full time in the industry the union represents. This severely limits union leaders' professionalism and

effectiveness and has been criticized by the International Confederation of Free Trade Unions (ICFTU).

The law also severely restricts the right to strike. Legal strikes are theoretically possible after an exhaustive arbitration process, but in practice none of the country's strikes to date has been legal.

Unions may join international organizations, and the BFTU is affiliated with the ICFTU. The Minister of Labor must approve any affiliation with an outside labor movement, but unions may appeal to the courts if an application for affiliation is refused.

b. The Right to Organize and Bargain Collectively

The Constitution provides for collective bargaining for unions that have enrolled 25 percent of a labor force. In reality only the mineworker unions have the organizational strength to engage in collective bargaining, and collective bargaining is virtually nonexistent in most other sectors.

Workers may not be fired for union-related activities. Dismissals may be appealed to labor officers or civil courts, but labor offices rarely do more than order 2-months' severance pay.

Botswana has only one export processing zone--in the town of Selebi-Phikwe--which is subject to the same labor laws as the rest of the country.

c. Prohibition of Forced or Compulsory Labor

The Constitution specifically forbids forced or compulsory labor, and it is not practiced.

d. Minimum Age for Employment of Children

Although education is not compulsory, the Government provides 7 years of free education to every child, and most children in Botswana take advantage of this opportunity. Only an immediate family member may employ a child 13-years-old or younger, and no juvenile under 15 years may be employed in any industry. Only persons over 16 years may be hired to perform night work, and no person under 16 years is allowed to perform hazardous labor, including in mining. District and municipal councils have child welfare divisions which are responsible for enforcing child labor laws. Because research on the issue of child labor is limited, it is difficult to state whether child labor laws are effectively enforced. Child labor is not perceived to be a significant problem in Botswana. The high level of primary and junior school attendance, coupled with the Government's policy of increasing the number of schools so as to accommodate more pupils for a greater number of years is a good indicator of dedication in principle and practice to deterring child labor.

e. Acceptable Conditions of Work

The minimum monthly wage for full-time labor increased by \$4.60 (16 Pula) in 1996 to \$82 (286 Pula), which is less than 50 percent of what the Government calculates is necessary to meet the basic needs of a family of five. (Because of exchange rate changes, the dollar value of the minimum wage declined compared to 1995.) The Ministry of Labor is responsible for enforcing the minimum wage, and each of the country's districts has at least one labor inspector. The Ministry of Labor began developing a small number of potential cases to take to the Industrial Court, but none had been brought before the Court by year's end.

Formal sector jobs almost always pay well above minimum wage levels. Informal sector employment,

particularly in the agricultural and domestic service sectors where housing and food are included, frequently pay below the minimum wage. The Ministry of Labor recommends a monthly minimum wage of \$92.60 (250 pula) for domestics, but this is not mandatory. Illegal immigrants, primarily Zambians and Zimbabweans, are easily exploited as they would be subject to deportation if they filed grievances against employers.

Botswana law permits a maximum 48-hour workweek, exclusive of overtime which is payable at time and a half for each additional hour. Most modern private and public sector jobs are on the 40-hour workweek.

Workers who complain about hazardous conditions cannot be fired. The Government's institutional ability to enforce its workplace safety legislation remains limited, however, by inadequate staffing and unclear jurisdictions between different ministries. Nevertheless, worker safety is generally provided for by employers, with the occasionally notable exception of the construction industry.

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