

BOTSWANA 2021 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

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

The Botswana Police Service, which reports to the Ministry of Defense, Justice, and Security, has primary responsibility for internal security. The Botswana Defense Force, which reports to the president through the minister of defense, justice, and security, has some domestic security responsibilities. The Directorate of Intelligence and Security Services, which reports to the Office of the President, collects and evaluates external and internal intelligence, provides personal protection to high-level government officials, and advises the presidency and government on matters of national security. Civilian authorities maintained effective control over the security forces. Members of the security forces committed some abuses.

In April 2020, at President Masisi's request, the National Assembly passed a six-month state of emergency as a COVID-19 mitigation measure. The National Assembly, again at the president's request, extended the state of emergency for an additional six months in September 2020 and in April. Ostensibly to give the government necessary powers to respond to the COVID-19 pandemic, the terms of the state of emergency included a ban on the right of unions to strike, limits on free speech related to COVID-19, and restrictions on religious activities. It also served as the basis for several lockdowns that forced most citizens to remain in their homes for several weeks to curb the spread of the virus. Opposition groups, human rights organizations, and labor unions argued that the state of emergency powers were too broad, placed too much power in the presidency, and were unnecessarily restrictive. Parliament did not extend the state of emergency beyond September 30 when President Masisi declared it no longer necessary.

Significant human rights issues included credible reports of: arbitrary or unlawful interference with privacy; serious restrictions on free expression and media, including an unjustified arrest or prosecution of journalists and the existence of criminal slander and libel laws; substantial interference with freedom of association; serious acts of government corruption; and the existence of the worst forms of child labor, including commercial sexual exploitation of children and forced child labor.

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

Section 1. Respect for the Integrity of the Person

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

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

b. Disappearance

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

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

The constitution and law prohibit such practices, and unlike in years prior to 2019, there were no reports of government officials employing such tactics. Some laws prescribe corporal punishment for convicted offenders in both criminal and customary courts. Human rights groups viewed these provisions as cruel and degrading; the Court of Appeals ruled these provisions do not violate the constitution's provisions on torture or inhuman treatment.

On September 7, police used force to disperse protesters outside a Gaborone police station where a pastor was held on charges of holding a political demonstration without a permit (see section 2.g., Freedom of Peaceful Assembly). Officers used whips to break up the peaceful group. Press photos showed persons with deep

bruises and cuts, reportedly resulting from police actions. There was no evidence police investigated the uses of force.

Impunity was not a significant problem in the security forces.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards.

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

After a fire damaged Francistown Prison during the year, some prisoners were held in the Francistown Center for Illegal Immigrants (FCII), which is a dedicated facility for detaining migrants and processing asylum and other immigration claims made by individuals who entered the country illegally; the prisoners were kept in separate areas from asylum seekers and migrants. In previous years journalists reported allegations of authorities abusing asylum seekers in the FCII, but there were no reports of such abuses during the year. There were no significant reports regarding conditions at other prisons that raised human rights concerns.

Administration: Authorities investigated credible allegations of inhuman conditions brought by inmates against prison officials and took disciplinary or judicial action against persons responsible for abuses. The law requires the minister of defense, justice, and security to appoint a committee to visit prisons on a quarterly basis and allows religious authorities to visit with prisoners. The government enforced this law. Prisoners in general may also attend religious services.

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

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention and provide for the

right of any person to challenge his or her detention in court. The government generally observed these prohibitions.

Arrest Procedures and Treatment of Detainees

Police must produce an arrest warrant issued by a duly authorized magistrate upon the presentation of compelling evidence, except in certain cases, such as when an officer witnesses a crime being committed or discovers a suspect is in possession of a controlled substance. Directorate of Intelligence and Security Services (DISS) personnel have the power to enter premises and make arrests without warrants if the agency suspects a person has committed or is about to commit a crime (see also section 2.a.).

The law requires authorities to inform suspects of their rights upon arrest, including the right to remain silent, and requires authorities to file charges before a magistrate within 48 hours. Authorities generally respected these rights. There were no reports of denial of a suspect's right to an attorney during the first 48 hours after arrest and the right to arraignment before a magistrate. A magistrate may order a suspect held for 14 days through a writ of detention that may be renewed every 14 days. The law provides for a prompt judicial determination of the legality of a person's detention. Heavy court caseloads occasionally delayed this determination. Authorities generally informed detainees of the reason for their detention, although there were some complaints this did not always occur. There is a functioning bail system, and detention without bail was unusual except in murder cases, where it is mandatory. Detainees have the right to contact a family member and hire attorneys of their choice, but most could not afford legal counsel. There were no reports authorities held suspects incommunicado or under house arrest.

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

of pending cases.

e. Denial of Fair Public Trial

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

Trial Procedures

The constitution and law provide for the right to a fair and public trial, and an independent judiciary generally enforced this right. Defendants enjoy a presumption of innocence, and authorities generally informed them promptly and in detail of the charges against them, with free interpretation from the moment charged through all appeals if he or she cannot understand the language of the court. Trials in the civilian courts are public, although trials under the National Security Act may be secret. Defendants have the right to be present and consult with an attorney in a timely manner. In capital cases the government provides legal counsel or private attorneys to work pro bono for indigent clients. Courts tried those charged with noncapital crimes without legal representation if the defendant could not afford an attorney; as a result, many defendants were not aware of their procedural rights in pretrial or trial proceedings. Defendants may question witnesses against them. Defendants may present witnesses and evidence on their own behalf. Defendants have the right to adequate time and facilities to prepare their defense and to appeal. Defendants are not compelled to testify or confess guilt. The constitution states these rights extend to all citizens. Some NGOs provided limited, free legal assistance.

In addition to the formal court system, a customary or traditional court system also exists. According to traditional practice, a tribal chief presides over most small villages. While customary (traditional) courts enjoyed widespread citizen support and respect, they often did not afford the same due process protections as the formal court system. Although defendants may confront, question, and present witnesses in customary court proceedings, they do not have legal counsel, and there are no standardized rules of evidence. Customary trials are open to the public, and defendants may present evidence on their own behalf. Tribal judges, appointed by the tribal leader or elected by the community, determine sentences.

Many tribal judges were poorly trained. The quality of decisions reached in the customary courts varied considerably, and defendants often lacked a presumption of innocence. Tribal judges applied corporal punishment, such as lashings on the buttocks, more often than did formal courts. Those convicted in customary courts may file appeals through the formal court system.

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

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

In the formal judicial system, there is an independent and impartial judiciary in civil matters, including for human rights cases, which includes a separate industrial court for most labor-related cases. Administrative remedies were not widely available. By mutual agreement of the parties involved, customary courts, which handle land, marital, and property disputes, tried most civil cases, but they often did not afford the same due process protections as the formal judicial system. Abuses in customary courts could be reviewed by the formal court system. In March a tribal chief was charged with abuse of power after he ordered a woman flogged in violation of the law that forbids corporal punishment for persons older than age 40. Although individuals and organizations may file complaints regarding domestic decisions with the African Commission on Human and Peoples' Rights, the country has not ratified the protocol that established the court, and the country did not always implement the court's rulings.

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

The constitution and law prohibit such actions, but there were reports the DISS had

developed capabilities for online surveillance. In a March media report, the main opposition party accused DISS of using spyware technology to eavesdrop on opposition politicians and union leaders. The Committee to Protect Journalists accused the Botswana Police Service (BPS) of using digital forensic equipment to reveal journalists' communications and sources in previous years. The BPS also used online surveillance of social media as part of COVID-19 state of emergency measures.

Section 2. Respect for Civil Liberties

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

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

Freedom of Expression: The law restricts the speech of some government officials and fines persons found guilty of insulting public officials or national symbols. The law states, "Any person in a public place or at a public gathering (who) uses abusive, obscene, or insulting language in relation to the president, any other member of the National Assembly, or any public officer" is guilty of an offense and may receive a substantial monetary fine. The law also states that any person who insults the country's coat of arms, flag, presidential standard, or national anthem is guilty of an offense and may receive a substantial monetary fine under the sedition clause. The Constitutional Court has not considered the constitutionality of the sedition clause.

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

Independent media were active and generally expressed a wide variety of views,

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

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

Violence and Harassment: On January 28, the BPS in Phitshane arrested Tshepo Sethibe and Michelle Teise, two journalists employed by the news site *Moeladilothoko News Boiler*, along with three other persons. Police seized their phones and charged them with criminal trespass for entering two houses while investigating the disappearance of a local man, Obakeng Badubi. Authorities dropped the charges on April 15.

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

Libel/Slander Laws: There were no arrests or convictions under these laws (see the above subsection on Freedom of Expression) during the year, although Minister for Presidential Affairs Kabo Morwaeng told parliament in July that the law could be used against those “disrespecting” President Masisi regarding growing dissatisfaction with his government’s handling of the COVID-19 crisis.

Internet Freedom

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

The state of emergency included a statute that makes it illegal to publish online,

“with an intent to deceive,” COVID-19 statements concerning a person’s health status or containing false information on the virus. The maximum penalty for conviction of violating the provision is five years in prison, a substantial monetary fine, or both. During the year there were no arrests under this statute, unlike in 2020 when at least six persons were arrested under the statute, including an opposition official and a teacher who questioned the government’s decision to impose a seven-week national lockdown.

Academic Freedom and Cultural Events

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

b. Freedoms of Peaceful Assembly and Association

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

Freedom of Peaceful Assembly

Under the state of emergency, COVID-19 mitigation efforts included the government barring in-person religious services during lockdown periods or limiting the size of services to 50 persons and limiting the number of weekly religious services per congregation. The government also periodically set caps on funeral attendance, banned weddings, and limited gatherings to no more than two persons to minimize large groups that could contribute to the spread of COVID-19.

On September 7, police detained a pastor on charges of holding a political demonstration without a permit (see also section 1.c.). The pastor was detained on his way to the Office of the President to deliver a letter demanding President Masisi resign for allegedly mishandling the government response to the COVID-19 pandemic.

Freedom of Association

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

c. Freedom of Religion

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

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

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

In-country Movement: The government's COVID-19 restrictions set limits on internal movement. A series of "extreme social distancing" periods (lockdowns) in 2020 forced most of the population to remain at home for weeks at a time. During the year the government imposed overnight curfews, some beginning as early as 6:00 p.m. Additionally, the government divided the country into nine zones, with permits required to pass from one zone to another. Regulations stated permits were meant only for exceptional travel, such as essential services or for funerals. The regulations resulted in authorities stopping some travelers without proper permits at zonal border checkpoints and not allowing the travelers to proceed. The online permit system also occasionally went offline around public holidays.

e. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

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

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

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

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

In 2020 and during the year, the government repatriated approximately 700 Zimbabwean refugees from the Dukwi Refugee Camp, using a combination of voluntary removals and deportation. Many of the Zimbabweans had been living at the camp for more than a decade. Following UNHCR intervention into the fast-tracked refugee status determination process for Zimbabweans, the government agreed to a more thorough process. The government determined, with UNHCR's agreement, that 10 persons warranted further protection due to lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) status or because they were senior ranking members of Zimbabwean political opposition groups. Most of the remaining 171, who were deemed no longer needing international protection, left voluntarily, although the government ultimately deported 36 persons in April, including military deserters who expressed fear of retribution upon return.

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

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

Employment: In May UNHCR reported that most of the country's 790 registered refugees were living in the Dukwi Refugee Camp and did not have the right to work outside the camp.

Access to Basic Services: Refugees at the Dukwi Refugee Camp had access to

education and basic health-care services. In 2019 the government began allowing noncitizens, including refugees, to receive HIV and AIDS medication. UNHCR facilitated refugee and asylum seekers' exit permit applications for medical referrals as necessary. Officials typically granted exit permits for three days; refugees found outside the camp without a permit were subject to arrest.

Asylum seekers with children are transferred to Dukwi Refugee Camp. International observers expressed concern that young children were sometimes separated from their parents while their cases were processed. In one case this included a family with eight minor children. International observers stated there was no access to education in the FCII, which, as of August, held 148 children younger than age 18. The center hosted a clinic, and a specialized nurse provided basic health care, while critical cases were referred to the Francistown city hospital.

The government considered the FCII to be a transit center for refugees, but acknowledged it was not ideal for longer term detention. There were reports of refugees who spent several years there while awaiting review of their cases. Although in 2019 the government moved remaining long-term residents to the nearby Dukwi Refugee Camp, there was no protocol in place to prevent arrivals from spending long periods in FCII while their cases were processed. International refugee groups reported that an average of 50 to 60 persons were held in the FCII at any given time while awaiting refugee processing.

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

Section 3. Freedom to Participate in the Political Process

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

Elections and Political Participation

Recent Elections: The Botswana Democratic Party (BDP) won a majority in the

2019 parliamentary elections, returning President Mokgweetsi Masisi to office for a full five-year term and continuing the party's control of the government dating from independence in 1966. Outside observers generally considered the vote credible; however, opposition parties challenged some of the election results in court, citing primarily irregularities with voter registrations. The Court of Appeals dismissed all claims and ordered the opposition parties and petitioners to pay court costs. Some losing opposition candidates had to sell personal property to cover court fees.

Using COVID-19 state of emergency powers, the government postponed indefinitely 11 special elections, scheduled from 2019 onwards, for district council seats to replace lawmakers who died. These elections took place in December.

Political Parties and Political Participation: In July 2020 the National Assembly suspended the leader of the opposition (an officially designated position), Dumelang Saleshando, for one week for accusing members of President Masisi's family of improperly manipulating the government tendering process. The speaker of the National Assembly, who was appointed by the president, called for the suspension vote. In August the High Court ruled that the speaker's actions were irrational and unprocedural because he violated Saleshando's constitutional rights to freedom of expression and speech as a duly elected representative of the people. The only BDP member of parliament to vote against Saleshando's suspension during the year left the party to join the opposition.

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

While the constitution formally recognizes eight principal tribes of the Tswana nation, amendments to the constitution also allow minority tribes to be represented

in the House of Chiefs. The law provides that members from all groups enjoy equal rights. Outside observers noted many tribes were unrecognized or unrepresented, and women were underrepresented in the traditional chieftaincy system.

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

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally sought to implement these laws effectively. Officials tasked with enforcement lacked adequate training and resources, however. Media reports of government corruption continued. During the year there were numerous reports of government corruption, including allegations tied to tenders issued by local governments for COVID-19 projects, such as renovating public facilities so that they complied with virus prevention measures, as well as in the acquisition of personal protective equipment. A 2019 poll by Transparency International found that 7 percent of those polled had paid bribes to government officials, an increase from the 1 percent who reported paying bribes in a 2015 poll.

Corruption: In July 2020 former permanent secretary to presidents Khama and Masisi, Carter Morupisi, and his wife stood trial on charges of abuse of office, money laundering, and receiving bribes. A decision remained pending at year's end. An embezzlement case against the former chief of DISS, Isaac Kgosi, ended in November 2020 when the Gaborone High Court dismissed the case for lack of evidence. On August 23, a court also dismissed a case against Welheminah Mphoeng Maswabi, a former DISS agent accused of facilitating a \$10 billion theft of bonds from the Bank of Botswana by Kgosi and former president Ian Khama. Neither was charged in the case, although government court filings in the agent's

case implicated the pair. Khama responded by filing a formal complaint in April against government investigators, alleging they committed perjury by naming him in the agent's case.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human Rights

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

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

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: The law criminalizes rape without specifying gender but does not recognize spousal rape as a crime. By law formal courts try all rape cases. Authorities effectively enforced laws against rape when victims pressed charges, although police noted victims often declined to press charges against perpetrators. In 2019 the BPS Commissioner announced BPS would no longer allow the withdrawal of gender-based violence cases waiting to be heard by magistrate court. In October 2020 President Masisi announced the BPS would establish standard operating procedures for dealing with gender-based violence, including establishing dedicated units to handle such cases, establishing a special hotline for victims, and requiring victims to be interviewed in private spaces. In November 2020 the government introduced special courts to hear gender-based violence cases. By law the minimum sentence for conviction of rape is 10 years'

imprisonment; the sentence increases to 15 years with corporal punishment if the offender was unaware of being HIV-positive; and increases to 20 years with corporal punishment if the offender was aware of being HIV-positive. A person convicted of rape is required to undergo an HIV test before sentencing.

The law prohibits domestic and other violence, whether against women or men, but domestic violence remained a serious problem. Although statistics were unavailable, media widely reported on cases of violence against women, including several high-profile murder cases. For example, over the Independence Day weekend in October, authorities reported six women were killed in domestic violence incidents.

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

In April 2020 shelter operators and civil society groups reported a significant increase in victims of gender-based violence at the start of the seven-week COVID-19 lockdown. The shelter operators noted the situation has since stabilized but was still significantly higher than before COVID-19 emerged. The government made statements to discourage such violence but did not devote extra resources to address the issue or help shelters overwhelmed by the influx of victims.

Sexual Harassment: The law prohibits sexual harassment in both the private and public sectors. Sexual harassment committed by a public officer is considered misconduct and punishable by termination, potentially with forfeiture of all retirement benefits, suspension with loss of pay and benefits for up to three months, reduction in rank or pay, deferment or stoppage of a pay raise, or reprimand. Nonetheless, sexual harassment, particularly by men in positions of authority, including teachers, was widespread.

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

Couples and individuals have the right to decide the number, spacing, and timing of their children; and to manage their reproductive health. They had the information and means to do so, free from discrimination, coercion, and violence.

A 2018 study of family planning found that 98 percent of women knew of at least one family-planning method. The major factors hindering greater contraceptive prevalence rates included a shortage of supplies, provider biases, inadequately skilled health-care workers, HIV status, culture, religion, and popularly accepted myths and misconceptions. Access to health care during pregnancy and childbirth was widespread, with 95 percent of the population living within an average of five miles from the nearest health facility.

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

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

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

Systemic Racial or Ethnic Violence and Discrimination

The eight tribes of the Tswana group, who speak mutually intelligible dialects of Setswana, have been politically dominant since independence, are officially recognized by law, and were granted permanent membership in the House of Chiefs. Constitutional amendments subsequently enabled the recognition of tribes from other groups.

Indigenous Peoples

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

An estimated 50,000 to 60,000 persons belong to one of the many scattered, diverse tribal groups known collectively as Basarwa or San. The Basarwa constituted approximately 3 percent of the population and are culturally and linguistically distinct from most other residents. The law prohibits discrimination against the Basarwa in employment, housing, health services, or because of cultural practices. The Basarwa, however, remained marginalized economically and politically and generally did not have access to their traditional land. The Basarwa continued to be geographically isolated, had limited access to education, and lacked adequate political representation. Some members were not fully aware of their civil rights. During the year there were no reported threats to the Basarwa from business or commercial interests.

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

Government officials maintained the resettlement programs for Basarwa were voluntary and necessary to facilitate the delivery of public services, provide socioeconomic development opportunities to the Basarwa, and minimize human impact on wildlife. In 2012 the UN Permanent Forum on Indigenous Issues approved a set of nine draft recommendations addressing the impact of land seizures and disenfranchisement of indigenous persons. In 2013 attorneys for the Basarwa filed a High Court case in which the original complainants from the 2006 CKGR case appealed to the government for unrestricted access (i.e., without permits) to the CKGR for their children and relatives. There has been no ruling in the case to date.

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

Children

Birth Registration: In general, citizenship is derived from one's parents, although

there are limited circumstances in which citizenship may be derived from birth within the country's territory. The government generally registered births promptly. Unregistered children may be denied some government services, including enrollment in secondary schools and national exams.

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

Human rights organizations and minority tribes criticized the policy that designates English and Setswana as the only officially recognized languages, thereby forcing some children to learn in a nonnative language. In 2018 the UN special rapporteur on minority issues noted that the lack of mother tongue education or failure to incorporate minority languages into the school curriculum may constitute discrimination and encouraged the government to review its language policy regarding education. In July the government announced the final draft of an education language policy to provide guidance on implementation of mother tongue teaching in schools. The government proposed to implement 11 languages for Phase 1 beginning January 2022.

Child Abuse: The law penalizes neglect and mistreatment of children. There was reportedly widespread abuse of children. Child abuse was reported to police in cases of physical harm to a child. Police referred children and, depending on the level of abuse, their alleged abuser(s) to counseling in the Department of Social Services within the Ministry of Local Government and Rural Development as well as to local NGOs. Police referred some cases to the Attorney General's Office for prosecution.

The deputy opposition whip, Pono Moatlhodi, was charged in 2020 with assault for allegedly setting a dog on a boy age 12 he suspected of stealing mangoes. The lawmaker offered the boy 40,000 pula (\$3,480) in compensation, but government prosecutors rejected the offer and pursued an assault case against him. The case began May, but there was no verdict as of the end of the year.

Child, Early, and Forced Marriage: Child marriage occurred infrequently and

was largely limited to certain tribes. The government does not recognize marriages that occur when either party is younger than the minimum legal age of 18.

Sexual Exploitation of Children: The law prohibits child sex trafficking and sexual abuse of children. Conviction of sex with a child younger than 18 constitutes defilement (statutory rape) and is punishable by a minimum of 10 years' incarceration. The penalty for conviction of not reporting incidents of child sexual exploitation ranges from a substantial monetary fine to imprisonment for no less than two years but no greater than three years, or both. Perpetrators who engage in sexual exploitation of children are punished, if convicted, with a substantial monetary fine, imprisonment for no less than five years but no longer than 15 years, or both. The law further requires the government to develop programs to prevent the sexual exploitation of children. In 2019 member of parliament Polson Majaga was charged with defilement of a minor and was subsequently suspended by the BDP from party activities but retained his seat in the legislature. In March Majaga was acquitted of defilement.

Child advocacy groups reported increases in sexual abuse of children during COVID-19 lockdowns. For example, in April 2020 UNICEF reported 23 cases of defilement and 22 rape cases during the first seven days of the national lockdown.

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

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

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

Anti-Semitism

There was a very small Jewish population, and there were no reports of anti-

Semitic acts.

Trafficking in Persons

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

Persons with Disabilities

Persons with disabilities could not always access education, health services, public buildings on an equal basis with others. The government's policy provides for integrating the needs of persons with disabilities into all aspects of policymaking. It mandates access to public buildings and transportation, but access for persons with disabilities was limited. Although newer government buildings were constructed to provide access for persons with disabilities, older government office buildings remained largely inaccessible. Most new privately owned commercial and apartment buildings provided access for persons with disabilities. The government at times provided government information and communication in accessible formats. President Masisi, however, gave several national addresses on COVID-19 and other issues during the year that did not include a Botswana Television-provided sign language interpreter.

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

The law prohibits discrimination against persons with disabilities, but there is no specific disability act. Children with disabilities attended school, although human rights NGOs raised concerns the law does not stipulate inclusive education for children with disabilities. Children with disabilities attended both public schools and segregated schools, depending on resource availability and the wishes of parents. In 2018 the UN special rapporteur on minority issues observed that most teachers were not trained in sign language or in teaching methods adapted to the educational needs of deaf persons. The special rapporteur also noted that the absence of sign language interpreters in the health-care sector inhibited the dissemination of information. The Independent Electoral Commission made some accommodations during elections to enable persons with disabilities to vote,

including providing ballots in braille and installing temporary ramps at polling places that were not accessible to disabled persons.

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

HIV and AIDS Social Stigma

According to 2020 UNAIDS data, the HIV prevalence rate for persons 15 to 49 years of age was 20.9 percent. According to the UN Population Fund, limited access to sexual and reproductive health information and youth-friendly services, as well as gender-based violence, contributed to high HIV rates. The government funded community organizations that ran antidiscrimination and public awareness programs.

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

There were incidents of violence, societal harassment, and discrimination based on sexual orientation or gender identity, and no reported cases of authorities investigating abuses against LGBTQI+ persons. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally because of overt official intimidation.

The penal code previously included language that was interpreted as criminalizing some aspects of same-sex sexual activity between consenting adults. In 2019 the High Court found this language unconstitutional, thereby decriminalizing consensual same-sex sexual conduct in the country. While the ruling party welcomed the decision, the government appealed the judgment. In November the Court of Appeals ruled to officially decriminalize same-sex sexual activity.

Security forces generally did not enforce the laws that previously forbade same-sex sexual activity; there were no reports during the year that police targeted persons suspected of same-sex sexual activity.

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

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

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

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

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

The law imposes several substantive requirements on the constitutions and rules of trade unions and federations of trade unions. An association must have more than 30 worker members to be a union. The law also authorizes the registrar to inspect

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

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

The law prohibits employees who provide “essential services” from striking. The law limits its definition of essential services to aviation, health, electrical, water and sanitation, fire, and air traffic control services.

The law empowers two officials within the Ministry of Employment, Labor Productivity, and Skills Development (the minister and the commissioner of labor) to refer a dispute in essential services to arbitration or to the Industrial Court for determination.

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

Workers who are members of registered unions may not be terminated for legal union-related activities. Dismissals may be appealed to civil courts or labor officers, which have rarely ordered payment of more than two months' severance pay. The law does not provide for reinstatement of workers, but a judge may order reinstatement if the termination is deemed to be related to union activities. The law does not provide protection to public employees' organizations from acts of interference by public authorities in their establishment or administration.

The government enforced some labor laws but did not protect the freedom of association for workers. In addition, the government placed significant barriers to union organizing and operations, and there were some restrictions on the right to collective bargaining. The government has not acted to revive the Public Sector Bargaining Council. Workers exercised the right to form and join unions, and employers generally did not use hiring practices to avoid hiring workers with bargaining rights. Legal penalties for violations of laws governing freedom of association were commensurate with those for other laws involving denials of civil rights.

The law severely restricts the right to strike, and strikes were rare. When unions followed legal requirements, exhausted arbitration, and notified the government in advance of a planned strike, the government permitted strikes and did not use force on strikers. Due to strike requirements, however, many strikes were ruled illegal, and striking workers often risked dismissal. The law prohibits sympathy strikes. Compulsory arbitration was rare and only applied in cases involving a group dispute of workers in essential services. The law prohibits an employer from hiring workers to replace striking or locked-out workers and prohibits workers from picketing only if the parties have an agreement on the provision of minimum services or, if no such agreement has been made, within 14 days of the commencement of the strike. The Botswana Federation of Trade Unions reported to the International Confederation of Trade Unions that employers dismissed union members in the mining sector for union activity.

b. Prohibition of Forced or Compulsory Labor

The constitution and law prohibit and criminalize all forms of forced and compulsory labor, including by children, with an exception for compulsory labor

as part of a prison sentence for civil and political offenses.

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

Apart from this exception, labor inspectors from the Ministry of Employment, Labor, Productivity and Skills referred cases of forced labor to the BPS for prosecution. The government did not effectively enforce the law, particularly in remote areas, and compulsory and forced labor occurred in several sectors. There were no prosecutions for forced labor during the year. Members of the San community, including children, were sometimes subjected to forced labor conditions on farms and ranches in the Ghanzi District. The law prescribed penalties that were not commensurate with comparable serious crimes.

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

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the worst forms of child labor but does not criminalize all the worst forms of child labor.

The minimum age for work is 15, but children as young as 14 may be employed in light work that is “not harmful to (their) health and development” and is approved

by a parent or guardian. The law, however, does not define the types of permitted light work activities. The law provides that work shall not exceed six hours per day when a child is not in school and five hours when a child is in school, but only on vacation days between the hours of 6:00 a.m. and 4:00 p.m. Although the law prohibits night work and hazardous underground work for children, it does not cover hazardous activities, such as the use of dangerous machinery, tools, and equipment. In addition, the law establishes the right of children to be protected from commercial sexual exploitation, including child sex trafficking and the production of pornography (see section 6).

The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing child labor laws and policies in all sectors, but its resources were too limited for effective enforcement in remote areas. District and municipal councils have child welfare divisions, which are also responsible for enforcing child labor laws. Other involved government entities included offices within the Ministry of Basic Education and the Ministry of Local Government and Rural Development. Government officials continued to publicly caution against the worst forms of child labor.

The government did not effectively enforce the law, particularly in remote areas, and child labor occurred in several sectors. Officials prosecuted three individuals for forced labor and continued prosecutions against 11 alleged traffickers from previous years. The government did not convict any traffickers, contrasted with conviction of five traffickers in two cases in 2020. The law continued to allow fines in lieu of imprisonment during the reporting period. Penalties were not criminal nor commensurate with those for comparable serious crimes.

There were anecdotal reports of forced child labor in cattle herding and in domestic servitude. Child labor occurred mostly on small-scale cattle posts or farms, where employees lived with their children in family units, particularly in the Ghanzi District. Child labor also occurred in domestic work and street vending. Civil society representatives noted in such cases where it was likely to exist, child labor resulted from a lack of awareness of the law among their parents and employers.

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

d. Discrimination with Respect to Employment and Occupation

Labor laws prohibit discrimination based on race, color, tribe, place of origin, including national origin, social origin, sex, disability, language, sexual orientation or gender identity, HIV status, marital status, religion, creed, or social status. The law does not address discrimination based on age. The government generally enforced these regulations in the public and formal sectors. Penalties were not commensurate with those for comparable violations.

e. Acceptable Conditions of Work

Wage and Hour Laws: According to the Ministry of Employment, Labor Productivity, and Skills Development, the minimum hourly wage for full-time labor in the private sector was determined by sector. The minimum wage for all sectors was higher than the official estimate of the poverty income level. Formal-sector jobs generally paid well above minimum wage.

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

Occupational Safety and Health: There were limited occupational safety and health (OSH) requirements. The government's ability to enforce OSH legislation remained limited due to inadequate staffing and lack of clear ministerial jurisdictions. Inspectors did have authority to conduct unannounced inspections and could demand that an employer suspend the use of hazardous materials or equipment. Inspectors could not initiate sanctions on their own but could require employers to meet in a public office to discuss matters. The government curtailed inspections because of the pandemic and health restrictions on movement to the pandemic.

The law provides protection against termination for workers who verbally complain regarding hazardous conditions, but no specific provisions in the law allow workers to remove themselves from situations that endanger their health or

safety without jeopardizing their employment. There were no figures available on the number of industrial accidents during the year that caused the death or serious injury of workers. The Ministry of Employment, Labor Productivity, and Skills Development is responsible for enforcing wage, hour, and OSH standards, but the number of inspectors was not sufficient to effectively enforce the law. Penalties were not commensurate with those for similar crimes.

Informal Sector: The August 2020 *National Informal Sector Recovery Plan* estimated that the country had approximately 190,000 informal workers who contributed approximately 5.3 percent of all economic activity. Informal work sectors included wholesale and retail trade (45 percent), manufacturing (15 percent), and construction of buildings (12 percent). More women and young persons worked in the informal sector. Some workers in the informal sector received only housing and food, particularly in the agricultural and domestic service areas. Wages in the informal sector were frequently below the minimum wage. Informal-sector workers generally were covered by the same legal protections available to formal-sector workers, but enforcement in the informal sector was rare.

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