

**STATUS OF HUMAN RIGHTS IN THE REPUBLIC OF BOTSWANA
FOR THE 43RD SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organization dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Republic of Botswana (Botswana) for the 43rd Session of the Universal Periodic Review (UPR).

Background

2. Botswana is located in Southern Africa and has an estimated population of 2.4 million people.¹ The country is predominately Christian, with approximately 79.1% of the population identifying as Christian, 4.1% as Badimo, 15.2% as none, 1.4% as other, and 0.3% as unspecified.²

3. Botswana's previous UPR was held on January 17, 2018.³ As a result of the review, Botswana received 207 recommendations, 93 of which it accepted.⁴ One recommendation made by the Republic of Korea, and supported by Botswana, was that the government "[t]ake concrete measures to prevent human trafficking and exploitation, especially of women and children."⁵ It was also recommended by the Maldives, and supported by Botswana, that the government "[c]ontinue to strengthen measures to combat human trafficking by providing training to service providers and stakeholders working with victims of human trafficking."⁶ There were no recommendations made regarding religious freedom.⁷

Legal Framework

4. Under Article 6 of the Constitution of Botswana, "[n]o person shall be held in slavery or servitude. No person shall be required to perform forced labour."⁸ Furthermore, under Article 8 of the International Covenant on Civil and Political Rights (ICCPR), to which Botswana is a party, "[n]o one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. No one shall be held in servitude."⁹

5. Botswana is also a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.¹⁰ Article 9 of the Protocol requires States Parties to create policies and programs in order to "prevent and combat trafficking in persons; and [t]o protect victims of trafficking in persons, especially women and children, from revictimization."¹¹ Consistent with this obligation, under paragraph 9 of Botswana's Anti-Human Trafficking Act, 2014:

Any person who recruits, transports, transfers, harbours or receives another person by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of that person commits an offence of trafficking in persons and is

liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding 25 years, or to both.¹²

This Act also provides for funding to establish victim centers¹³ and provide assistance to the victims of human trafficking.¹⁴ The act was amended in 2018 to add new terms and definitions. The amendment also added a new section dedicated to the smuggling of persons and the penalties for this offence.¹⁵

Human Trafficking

6. Botswana serves as “source, transit and destination country for women, men and children subjected to forced labour and sex trafficking.”¹⁶ Botswana Deputy Manager in the Ministry of Justice and Security explained that “cases of human trafficking are often difficult to trace since the victims do not know they are being trafficked.”¹⁷ The Deputy Manager explained that the nation needs to be educated on how to prevent and avoid human trafficking, which is included in Botswana’s anti-trafficking action plan.¹⁸ He believes that “[t]he remedy for human trafficking is to educate, develop and implement communication strategies so that people can be cautious and avoid to be affected by human trafficking.”¹⁹ This includes educating the public on dangerous practices such as slavery and marriage of children. It also includes evaluating the needs of various people groups, ensuring monitoring, and reviewing different communication strategies.²⁰ The Deputy Manager also noted that people need to be careful on social media because traffickers use it as a primary tool for human trafficking.²¹ Those most susceptible are unemployed women and children from rural areas.²² In 2020, the unemployment rate for women was at 21.76%, which makes it easy for traffickers to target desperate women with false promises of employment.

7. For example, one victim shared her tragic story of how she was lured to Canada by another woman who had promised her employment opportunities.²³ However, when she arrived in Canada she was told there were no jobs.²⁴ With help from a church she was able to secure a ticket back to Botswana.²⁵ When she returned to Botswana, she realized the full extent of the scam.²⁶ As she shared:

I guess I signed documents that I did not understand which led to the sale of the house, but the most traumatizing news was that this trafficker was in the process of also selling my children. Had I not found my way back home it would have been a different story. I am now working towards building a new life. I have gone through counselling and we are coping. But the sad reality is the woman who did all this to me still walks the streets, scott free and continues to traffic more people as we speak.²⁷

8. Another victim shared her experience of being trafficked from Botswana to South Africa to work as a maid for a rich family.²⁸ According to her, she was approached by a woman she knew about a job opportunity in Johannesburg, South Africa.²⁹ After arriving in Johannesburg, the lady insisted on keeping hold of the victim’s passport.³⁰ For two weeks the victim stayed at the woman’s house in Johannesburg and when the victim asked about a job, she was told to wait.³¹ Thankfully, the victim was alerted by a neighbor about the suspicious activity that had previously taken place at the trafficker’s house.³² The victim was chased away by the captor when she asked for her passport back. However, the neighbor housed the victim and gave her money to return back to Botswana.³³

9. Traffickers not only use Botswana as a source country, they also transport victims through Botswana to be exploited in other countries.³⁴ For example, in December 2021, a

Zimbabwean man was arrested in Botswana for trafficking seven minors to South Africa through Botswana.³⁵

10. Children from poor families are also trafficked in Botswana for forced labor and domestic service. It is a common practice for poor families to send their children to stay with their affluent relatives in order to receive an education. In reality, it is all too common for the relative to exploit the child for free labor while denying the child of the promised education. Sadly, according to Botswana Department of Trafficking in Persons, this type of behavior is viewed as natural, and the Botswana people rarely report such instances.

11. In 2018, four years after its passage, the government successfully prosecuted its first ever trafficker under the 2014 Anti-Human Trafficking Act.³⁶ The suspect was sentenced to 18 months in prison, with nine of the months being suspended.³⁷ Since that first case, Botswana has continued its progress prosecuting trafficking, and as of January 2022, Botswana has registered twenty cases of human trafficking before the courts and has secured four convictions since the Anti-Human Trafficking Act was enacted.³⁸ Botswana has acknowledged its short comings when it comes to prosecuting human trafficking cases. It has recognized that the key areas of contention of the original Act were related to allowing fines instead of imprisonment, lax penalties for human trafficking in relation to other serious crimes, and allowing the suspension of prison sentences for traffickers.³⁹ However, the acting Secretary of the Ministry of Defense, Justice, and Security has assured the public that the government has not turned a blind eye to human trafficking. The government is committed to recovering from the effects that COVID-19 has had on efforts to combat human trafficking.⁴⁰

12. Botswana has also increased funding for victim protection services from \$41,930 in 2017 to \$346,100 in 2019. Botswana has prioritized training focused on human trafficking and victim care for investigators, prosecutors, magistrates, and judges.⁴¹ Further, the National Assembly has begun discussing the drafting of the Anti-Human Trafficking (Amendment) Bill of 2022 in order to further bolster Botswana's efforts to combat human trafficking.⁴² Specific details of this draft are unknown at this time.

Recommendations

13. Consistent with its international obligations, Botswana has taken commendable steps to combat human trafficking; its increase in funding from 2017 to 2019 is significant. Further, Botswana has begun providing specialized training for investigators, prosecutors, and judges which is a crucial step to identify victims and prosecute traffickers. It has also recognized the need to educate its people on prevention and avoidance of human trafficking. However, it is crucial that this need is not only recognized but also implemented. Unfortunately, there is still much to be done, as it took four years for Botswana to prosecute its first trafficking case, and although there have been twenty cases before the court, Botswana has only secured four convictions since 2014. When it comes to efficiently prosecuting traffickers, we ask that Botswana amend its Anti-Human Trafficking Law to require a harsher minimum prison sentence for human traffickers instead of allowing the court to choose between imprisonment or payment of a fine.

¹ Botswana, WORLD FACTBOOK (Aug. 23, 2022), <https://www.cia.gov/the-world-factbook/countries/botswana/>.

² *Id.*

³ *Universal Periodic Review – Botswana*, OHCHR, <https://www.ohchr.org/en/hr-bodies/upr/bw-index>.

⁴ Botswana, OHCHR, <https://www.ohchr.org/sites/default/files/lib->

[docs/HRBodies/UPR/Documents/Session29/BW/BOTSWANA_Infographic_29th.pdf](https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/BW/BOTSWANA_Infographic_29th.pdf).

⁵ *UPR of Botswana – Thematic List of Recommendations A/HRC/38/8* – Para. 127, OHCHR, <https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session29/BW/MatriceRecommendationsBotswana.docx>.

⁶ *Id.*

⁷ *Id.*

⁸ Constitution of Botswana art. 6, https://www.constituteproject.org/constitution/Botswana_2016.pdf?lang=en.

⁹ International Covenant on Civil and Political Rights art. 8, 999 U.N.T.S. 171, (Dec. 16, 1966).

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2237 UNTS 319, (Nov. 15, 2000), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en.

¹¹ *Id.* art. 9.

¹² Anti-Human Trafficking Act, 2014 § 9, <http://www.osall.org.za/docs/2011/03/Botswana-Anti-Human-Trafficking-Act-32-of-2014.pdf>.

¹³ *Id.* § 16.

¹⁴ *Id.* § 27.

¹⁵ Anti-Human Trafficking (Amendment) Act, 2018, <https://botswanalaws.com/Botswana2018Pdf/13of2018.pdf>.

¹⁶ Oratile Otsetswe, *Human Trafficking Hits Botswana*, SUNDAY STANDARD (Apr. 1, 2019), <https://www.sundaystandard.info/human-trafficking-hits-botswana/>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Human Trafficking a Growing Scourge*, PATRIOT (Jan. 1, 2021), <https://thepatriot.co.bw/human-trafficking-a-growing-scourge/>.

²³ *Human Traffickers Roam the Streets in Botswana*, BOTSWANA GAZETTE (Apr. 4, 2019), <https://www.thegazette.news/news/human-traffickers-roam-the-streets-in-botswana/>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Human Trafficking a “Grave Concern” in SADC Region*, PANAPRESS (Feb. 1, 2019, 5:54 PM), https://www.panapress.com/Human-trafficking-a-grave-concer-a_630572620-lang2-free_news.html.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Otsetswe, *supra* note 16.

³⁵ Mandipa Masenyama, *Botswana: A Man Arrested Smuggling 7 Zim Kids Into SA*, ALLAFRICA (Dec. 9, 2021), <https://allafrica.com/stories/202112090196.html>.

³⁶ *Human Trafficking a Growing Scourge*, *supra* note 22.

³⁷ *Id.*

³⁸ Katlego Isaacs, *Gov’t crackdowns on human trafficking*, MMEGI (Mar. 25, 2022), <https://www.mmegi.bw/news/govt-crackdowns-on-human-trafficking/news>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Botswana Declares Zero Tolerance for Human Trafficking*, NEW TIMES (Aug. 3, 2018), <https://www.newtimes.co.rw/africa/botswana--human-trafficking>.

⁴² Isaacs, *supra* note 38.