

**STATEMENT ON BOTSWANA'S 4<sup>th</sup> UPR REVIEW CYCLE**  
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**Introduction**

Cybersmart Botswana and Small Media Foundation welcome the opportunity to contribute to Botswana's fourth review cycle.

My submission today examines the right to freedom of expression, access to information, freedom of the media and digital rights in general.

Specifically, the submission raises concerns regarding: restrictive legislation hindering online expression, the use of digital forensics technology to extra information against journalists, lack of a freedom of information act.

Ladies and Gentleman, Botswana is considered one of the most stable democracies in Africa, although it has been dominated by a single party since independence in 1966. The rule of law is generally respected in Botswana, with a clearly defined separation of powers in the constitution and an independent judiciary.

However, over the past years, Botswana has seen a decline as regards their press rankings. Currently, under the 2022 global rankings, Botswana is rated 95th out of 180 countries, a significant decline from the 38th position in 2021.

In this previous third cycle, Botswana received 213 recommendations, where 93 were supported and 120 were noted. One recommendation was made on digital rights, on refraining using criminal charges to obstruct freedom of information and expression. The recommendation was not supported.

**International, regional and domestic human rights obligations**

Botswana has ratified (6) six of the (9) nine core international human rights instruments and two optional protocols.

At the regional level, Botswana has ratified two key African Union human rights treaties; the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child.

Botswana's Constitution guarantees freedom of expression. However, media freedom remains under threat with harassment of journalists and activists on social media under the current administration. Surveillance of journalists has been reported and there have been limitations on government advertising on media outlets deemed negative to the state.

The country's Penal Code Act has several provisions that adversely affect freedom of expression, including 59 that provides for false publications, sedition and defamation under sections 50 and 192 respectively.

### **Updates Since the Previous Review**

As part of the fight against the COVID-19 Pandemic in 2020, the government of Botswana enacted the Emergency Powers Act to give the president usurping powers to make decisions on what he deemed appropriate for the country's response to the pandemic. The law bared the public from publishing any statements, through any medium, including social media, with the intention to deceive any other person about COVID-19 and any measure taken by the Government to address COVID-19.

The Emergency Powers Act was described by advocates as repressive and a violation to freedom of expression. This law was used to arrest and charge journalists accused of spreading misinformation about the government's response to COVID-19. The state of emergency remained in force until September 2021.

In the build-up to the 2019 Botswana General Election, and as part of their electoral manifestos, all the contesting parties, including the ruling Botswana Democratic Party promised to institute a constitutional review, to reform the 1966 constitution. Following his party's victory, President Mokgweetsi Masisi kick-started the process for the country's first comprehensive constitutional review by appointing a Presidential Commission of Inquiry to undertake a nationwide consultative exercise on the review of the constitution.

The 2022 constitutional review exercise followed mounting concerns over limitations to comprehensive protection of human rights as well as widespread inequalities in the Botswana society.

The Botswana constitution has however, had several amendments over the years, which some quarters, such as opposition political parties and civil society, criticised as a sign of lack of commitment to constitutional reforms and abuse of power by the leadership. They complained that periodic constitutional amendments only served the interests of the ruling party rather than the entire nation.

### **Freedom of Expression and Opinion**

Despite constitutional guarantees for the enjoyment of expression, there are laws that contradict this provision such as the Penal Code, Cybercrime and Computer Related Crimes Act, and the Communications and Regulatory Authority Act.

Following a fact finding mission to Botswana in 2022, the International Press Institute, (IPI) decried that the independent media environment in Botswana faced key risks and challenges that required close monitoring, urging the government to affirm its stated commitment to press freedom by shoring up protections for independent journalism in the country.

Following his ascendancy to power in 2018, President Mokgweetsi Masisi expressed commitment to upholding media freedom. He committed to repealing the rejected Media Practitioners Act and allowing for self-regulation by the media.

In June 2022, Parliament passed the Media Practitioners' Association Bill, which has replaced the Media Act of 2008 once signed into law. Media practitioners have welcomed the proposed law especially that it provides for the establishment of an Association to enforce the Act in an independent manner, separate from the government and without any political interference or influence. Since it prescribes the registration of all practicing journalists, It is not clear if this requirement will extend to citizen journalists and ordinary members of society sharing news online. If this is the case, the new law will certainly threaten digital rights and freedom of expression in online platforms.

State-run media outlets dominate the broadcasting sector and have exhibited pro government bias. Opposition political parties have accused state media of heavily favouring the ruling party in their coverage. These government- owned outlets include the Botswana Press Agency, Daily News, two state-operated FM radio stations and a national television station.

Another problematic law is the Penal Code. Several offences are listed therein which adversely affect freedom of expression on and offline. The International Press Institute has voiced concerns about the use of provisions in the Penal Code, including sedition and unlawful seizure of journalists' equipment without any legal basis or a warrant.

These clauses are considered restrictive to freedom of expression by civil society, media freedom and human rights advocates.

Several journalists, including citizen journalists have been arrested under these laws.

A study by Gender links on the prevalence of online gender based violence in Botswana and 8 other Southern African countries found that many women and girls suffer gender based violence online. The report revealed that cyber bullying, cyber stalking and harassment, body shaming, trolling, and homophobia were rampant in Botswana. The report pointed out that the legislative framework was inadequate to address online violence, and that there was also a slow uptake, not only in the reportage on OGBV crimes, but also in prosecution rates.

### **Access to Internet**

The Botswana government has not restricted access nor shut down the internet in the past.

### **Access to Information**

Article 12 of the constitution guarantees access to information. Despite President Mokgweetsi Masisi committing to promulgating a Freedom of Information Act in 2020, Botswana remains without a law guaranteeing the right to access to information.

### **The Right to Privacy**

Online privacy is not a protected right in the Botswana constitution, however, privacy of the home and property is protected under Articles 3 and 9 of the constitution.

**The Criminal Procedure and Evidence Act of 2022** was enacted following a controversial bill, initially seen as giving law enforcement powers to conduct warrantless surveillance, tapping of phones and intercepting people's private conversations. The original law offered law enforcement access to communications by "any means" without a warrant.

Following a public uproar from opposition groups and politicians, the government receded and revised the bill to allow inception only with a court warrant.

Botswana authorities have not yet enforced a **Data Protection Act**. Enacted in 2018, the Data Protection Act seeks to protect the personal rights of individuals with regard to their personal data by regulating the production, processing and handling of such data..

The Information and Data Protection Commissioner was appointed in 2022 to set up a Data Protection Commission, which is tasked with enforcing the law. In August 2022, the grace period was extended by another year to allow for the development of regulations and the establishment of the commission first.

The country's Information and Data Commissioner Kapaletswe Somolekae was quoted saying there were "serious gaps" in the Data Protection Act, including that the legislation does not cover the processing of personal data " and lacks detail regarding the processing of data for national security, defence or public safety.

**Cybercrime and Computer Related Crimes Act** was passed in 2018 and contains offenses on violations of privacy and other rights. It was passed to curb crime and abuse committed through computers, the internet and other forms of digital technology. Provisions under the law are largely vague and imprecise.

In October 2021, the UN Human Rights Committee (OHCHR) expressed concern over an increase in the "scale and scope" of intrusive surveillance methods used against Botswana by the authorities in recent years.

It's difficult to use a phone anonymously in Botswana, SIM card registration has been required since 2009 – something journalists have been concerned about for years. Customers are required to produce a national ID or passport to purchase a SIM card.

## **Recommendations**

In light of Botswana's deteriorating record on freedom of expression, freedom of the press, the right to privacy and digital rights, we, the submitting organisations call on States to propose the following recommendations to Botswana:

1. Revise legislation and repeal provisions in the Penal Code, Media Practitioners Act (2008), Cyber Crimes Act and Related Crimes Act that arbitrarily interfere with the exercise of free expression, both online and offline. In particular:

- Consider decriminalising sedition, defamation and false news laws under the Penal Code in line with international standards.
2. End intimidation and harassment of journalists and others exercising their right to free expression both online and offline and hold to account those that violate journalists' rights
  3. Uphold journalists rights and safety by halting the surveillance and harassment of journalists by state security and intelligence agents; Desist from following up with warrantless arrests and searches
  4. Enact a comprehensive Freedom of Information law inline with Botswana's constitutional and international legal obligations