

Universal Periodic review (UPR) COMEF contribution

Freedom of Expression

1. Community broadcasting outlawed

While the country's constitution guarantees freedom of Expression and Access to Information (Section 12), in practice a significant size of the population is excluded in the national discourse. The media landscape consists of the state and private owned only, both in print and broadcasting. As a result, plurality and diversity of ideas and opinions is heavily compromised.

The current Botswana Communications Regulatory Authority (BOCRA) act of 2012 only recognises commercial broadcasting and state broadcasting, leaving out community broadcasting. This is a regressive move considering that the repealed National Broadcasting Board Act of 1998 was more inclusive, albeit with other limitations. The last time the issue of community radio was debated in Parliament was in 2013 when members of the ruling party insisted that community radios divide the nation while the pro community radio felt its exclusion disenfranchises communities.

International Standard

Universal Declaration of Human rights

Article 19

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Recommendations

- Amend BOCRA Act to explicitly allow licensing of community broadcasters during the 12th parliament session (2018)
- Convene a national symposium in the early 2018 about community radios

2. Unregulated State broadcaster

The other observation with the new BOCRA law is its exclusion of the state broadcasting from regulation, Section 31 (2), BOCRA Act. This effectively allows possible interference and abuse of the state broadcaster with impunity. State broadcasting, both radio and print have the largest reach compared to the private media. This gives whoever nearer the editorial decision, the government in this regard, an advantage in leading and shaping public opinion and setting partisan agenda. Civil society, including trade unions and opposition parties have registered complaints, crying foul play by the ruling government.

International Standard

Article 19

Access to the airwaves: Principles on Freedom of Expression and broadcast regulation

Model public service broadcasting law

Recommendation

- Amend BOCRA Act to allow regulation of state broadcaster by the BOCRA
- Transform state broadcaster into true public broadcaster

3. Persecution of journalists and whistle blowers

Since 2015 there has been about six journalists detained over stories they carried in their publications. In some instances, the Directorate on Corruption and Economic Crimes (DCEC) section 44 was used to stop coverage on ongoing investigations. There is a pending case of the editor of Sunday Standard, Outsa Mokone who was charged with an archaic Sedition law for a story on President Khama, whose writer has since gone into exile in South Africa.

Two non-journalists and public servants have also faced the wrath of the state. One was accused of stealing documents and handing them to journalist, a case of whistle blowing. He was detained together with the journalist and subsequently faced disciplinary action, pending expulsion. Another case involved a teacher who was expelled from work using the Public Service Act for a letter to the editor he penned criticising President Khama.

International law

2016 Report of UN special rapporteur on freedom of expression:

Report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression

Recommendations

- Amend the national constitution to insert explicit freedom of the media and whistle blowers (sources) clause
- Repeal the sedition act and other archaic laws of similar spirit

4. Secret deportations and VISA requirements

Botswana has deported several foreigners and blocked some by requiring VISAs from them despite coming from exempted countries. The government does not give reasons for these expulsions except to say it is a presidential directive. It is however apparent that some of the victims have previously called on government for human rights violations or like Julius Malema of South Africa simply criticised the government. These are therefore partly freedom of expression issues.

International standard

Rome Statute (ICC)

Article 7

Crime against humanity: persecution against any identifiable group or collective on political, racial, national, ethnic, religious, gender as defined in paragraph 3, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the court.

International Covenant on Civil and Political rights

Article 13

An alien lawfully in the territory of a state party to the present covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Recommendation

- Amend immigration laws to allow for transparent judicial processes before taking such actions

5. Assault and Arrest of protesters

Protest marches are stifled in the country. In addition to denial of protest march permits by the police in 2015, Unemployment Movement youthful protesters were lashed and beaten by the police when they picked by the Parliament building. The same treatment was accorded students at the University of Botswana and Botho University who were also assaulted by the state security agents, including the police.

International standard

International Covenant on civil and political rights

Article 9: everyone has the right to liberty of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with procedures as are established by law

Recommendation

- o Amend the constitution to explicitly protect the right to protest