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Submission to the United Nations (UN) Universal Periodic Review (UPR)  
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## **Submitted by the Namibia Media Trust (NMT)**

The Namibia Media Trust (NMT) is a non-profit trust established in 1985 and registered as a Trust in terms of Namibian law (T128/2013). Its primary objective is to further the principles of media freedom, freedom of expression as well as access to information. The NMT foundation addresses the following thematic issues in Namibia and further afield:

- Promotion of Media Freedom, Freedom of Expression and Access to Information
- Promotion of Excellence in Journalism
- Promotion of Media Ethics and Professionalism
- Promotion of Media Literacy
- Building the Capacity of Journalists and Media Professionals

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## INTRODUCTION

This submission by the Namibia Media Trust (NMT) provides additional information to a number of issues in the report prepared by Namibia's Ministry of Justice on the Universal Declaration of Human Rights. It highlights matters to be raised during review dialogue with Namibia. This submission focuses primarily on the section dealing with **Media Freedom, Freedom of Expression and Access to Information**.

The Namibian UPR states the following with regards to media and press freedom:

### *Media and press freedom*

28. *Media and freedom of expression is guaranteed under Article 21 of the Namibian Constitution. The Government recognizes the importance of media and press freedom to promote and expose civil, political and other human rights violations in the country. In this regard the Government supported the establishment of the office of the Media Ombudsman in 2009. The office of the Media Ombudsman forms part of a self-regulating system as guided by the AU Declaration of Principles on Freedom of Expression. Government is further committed to enact access to information legislation.*
29. *Namibia's media environment has received positive ratings from the Freedom House and Reporters Without Borders for the past two years. Reporters Without Borders World Press Freedom Index of 2015, ranked Namibia the 17<sup>th</sup> out of 180 countries in the world in the range of criteria that include media pluralism and independence, respect for the safety and freedom of journalists and the legislative, institutional and infrastructural environment in which the media operates.*

## SUBMISSIONS

The submission is made with three distinct sub-headings: **Media Freedom, Freedom of Expression and Access to Information**.

### **Media Freedom**

1. The Namibian Constitution guarantees media freedom and freedom of expression as a fundamental human right. Namibia has also ratified international instruments that support these rights.
2. It is, however, unfortunate that no legislation has been passed since Independence in 1990 to protect and promote media freedom, the safety of media workers and freedom of expression, and that some pre-independence laws<sup>1</sup> that curtail media freedom and

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<sup>1</sup> Protection of Information Act (Act 84 of 1982), National Key Points Act (Act No. 102 of 1980) and certain provisions of the Criminal Procedures Act.

freedom of expression have not been repealed. There is always the fear that government institutions would use these laws to undermine media freedom and freedom of expression. This was recently demonstrated when the Namibian Central Intelligence Service used the Protection of Information Act (Act 84 of 1982) in an effort to prevent a newspaper from publishing information on possible corruption in the Intelligence Services<sup>2</sup>. However in this case, the Supreme Court came out strongly in favour of media freedom and freedom of expression and stated the following:

*“The notion that the court must simply interdict because the State assigns something the label of national security is not consonant with the values of an open and democratic society.”* and

*“The notion that matters of national security are beyond curial scrutiny is not consonant with the values of an open and democratic society based on the rule of law and legality. That is not to suggest that secrecy has no place in the affairs of a democratic State. If a proper case is made out for protection of secret governmental information, the courts will be duty bound to suppress publication”.*

3. The Namibian Broadcasting Corporation (NBC) has since Independence not been transformed into an autonomous public broadcaster in line with best-practice guidelines articulated in the African Charter on Broadcasting<sup>3</sup>, and remains subject to political interference that undermines its independence to broadcast in the public interest. The African Charter on Broadcasting followed the seminal Windhoek Declaration on an Independent and Pluralistic African Press, and responded to the need to liberalise the airwaves. The Minister of Information and Broadcasting is mandated to appoint the NBC board instead of Parliament.
4. The Communication Regulatory Authority of Namibia (CRAN)<sup>4</sup>, which is responsible for regulating the issuing of broadcasting and communication licences is also not independent from political interference since the Minister responsible for Information and Communication Technology appoints the CRAN Board without public involvement. Thus, there is no public oversight or transparency in the process.
5. Although Namibia has received positive ratings in the *Reporters Without Borders World Press Freedom Index* and presently heads Africa rankings,, there are however other independent assessments which do not rate the media landscape as so conducive. These highlight particularly the lack of transformation in the broadcasting industry.<sup>5</sup>

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<sup>2</sup> Director-General of the Namibian Central Intelligence Service and Another vs Mathias Haufiku and Others (CASE NO.: SA 33/2018)

<sup>3</sup>[https://web.archive.unesco.org/20161112181732/http://portal.unesco.org/ci/en/files/5628/10343523830african\\_charter.pdf/african%2Bcharter.pdf](https://web.archive.unesco.org/20161112181732/http://portal.unesco.org/ci/en/files/5628/10343523830african_charter.pdf/african%2Bcharter.pdf)

<sup>4</sup> Established in terms of the Communications Act (No.8 of 2009)

<sup>5</sup> African Media Barometer, Namibia 2018 (Media Institute of Southern Africa and FES Media, 2019)

## Freedom of Expression

6. The Whistleblower Protection Act (Act 10 of 2017) and Witness Protection Act (Act 11 of 2017) were signed into law in October 2017 but has not come into force yet. The Whistleblower Protection Act establishes procedures for making disclosures of improper conduct, provides for the investigation of disclosures of improper conduct and protection of whistleblowers and is seen as a major step to enhance the investigative work of journalists and to combat corruption. There is no legitimate reason why the Act cannot come into operation since corruption in Namibia is endemic and whistle blowers need protection. In fact, the biggest corruption scandal to be exposed by media since independence, termed the “Fishrot” case in which two Ministers (Justice & Fisheries) are facing corruption charges for allegedly eliciting payments for the allocation of fish quotas, is the result of information disclosed by a whistle blower who would under present circumstances not be protected in Namibia should that person’s presence be required in-person for related investigations and court proceedings.
7. Globally communication surveillance has begun to replace censorship as the weapon of choice for both democracies and repressive regimes intent on silencing and intimidating critical voices. It undermines critical and investigative reporting, which requires confidential communication with sources and, occasionally, the anonymity of authors. In the context of Namibia this matter was flagged in the 2016 UPR Working Group report which raised concerns that there was evidence that the country’s engagement in surveillance was shrouded in illegality, making it guilty of violating constitutionally enshrined human rights, specifically freedom of expression and the right to privacy, among others. There is no evidence that this matter has been attended to by Namibia.
8. Freedom of expression is guaranteed in terms of Article 21 of the Constitution and citizens use the media and social media to express themselves freely. There are however, intermittent threats from parliamentarians to regulate social media platforms. Despite sometimes vigorous public criticism of government on Twitter and Facebook, and use of these platforms to organise protests, among others against lack of official action on gender-based violence, under the hashtags #ShutItAllDown and #ShutItAllDownNamibia, to date no steps have been taken by the authorities to silence these voices.
9. In 2004, the Government passed the Research Science and Technology Act 23 of 2004 and in 2011 the Research, Science and Technology Regulations<sup>6</sup> were implemented. The Act and Regulations placed severe restrictions on the rights of citizens and institutions to conduct and publish research on any topic in Namibia without registering with or obtaining prior permission from the government-appointed National Commission of Research, Science and Technology. Failure to gain such permission could result in a fine of N\$20,000 or five years imprisonment. Civil society organisations are challenging the Act and Regulations as an interference on

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<sup>6</sup> Government Notice 208 of 2011

freedom of expression and the matter is still pending in the High Court of Namibia.

10. Crimen injuria and criminal defamation are crimes under the Namibian common law and are defined to be the act of “unlawfully, intentionally and seriously impairing the dignity of another.” Although journalists have not been prosecuted for this offence, it could potentially be used to curtail media freedom and freedom of expression and the government is urged to pass a law that excludes bona fide reporting by journalists from this definition.

### **Access to information**

11. Namibia does not have a specific law guaranteeing the right to access of information or that promotes the right to access public information. The Access to Information Bill was tabled in the National Assembly on 17 June 2020, but has not been passed into law yet. The Bill, which aims to increase the transparency and accountability of largely public institutions by creating a process for citizens to request information from public entities is long overdue and is welcomed by citizens and the media.
12. The Bill, brought into being by civil society efforts under the banner of the Action Namibia coalition, working closely with the Ministry of Information and Communication Technology, and which is primarily based on the African Union (AU) Model Law is welcomed, but has been criticized for its exemptions which pose challenges to achieve its purpose. This Bill in its current form, does not apply to - (a) information relating to - (i) proceedings and decisions of Cabinet and its committees; (ii) judicial functions of a court, a tribunal or investigating unit established under any law; and (iii) the nomination, selection and appointment of a judicial officer or any other person exercising a judicial or quasi-judicial function in terms of any law; (b) published materials or published materials available for purchase by the public; and (c) library or museum materials preserved solely for public use, reference or exhibition purposes<sup>7</sup>.
13. Most notable is the blanket and permanent exemption of “proceedings and decisions of Cabinet and its committees” and “the nomination, selection and appointment of judicial officers or any other person exercising a judicial or quasi-judicial function...” Although Cabinet meetings and proceedings should be confidential and classified, it is argued that these objectives can be achieved by applying time limits and more specific categories of confidentiality. But a permanent, blanket confidentiality is not necessary.<sup>8</sup> The appointment of judicial officers is also controversial, since many progressive countries have adopted procedures that make the appointment of judicial officers more transparent and open to public scrutiny.

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<sup>7</sup> Section 2 of the Access to Information Bill

<sup>8</sup> Pro Bono: Cabinet Confidentiality (The Namibian Newspaper 1 July 2020)

## Recommendations

14. Thus, the Namibia Media Trust makes the following recommendations:
  - 14.1 All laws that infringe or potentially infringe on Media Freedom, Freedom of Expression and Access to Information should be repealed in a consultative process with the involvement of civil society and media practitioners. In this respect, the repeal of the Protection of Information Act (Act 84 of 1982) should be a priority as it allows room for pre-publication censorship.
  - 14.2 Namibia should adhere to international instruments that promote Media Freedom, Freedom of Expression and Access to Information. New policies and legislation should be adopted and passed for the protection of journalists, enhance the participation of marginalised groups in community and digital media and freedom of expression in a democratic state.
  - 14.3 In the context of elections, Namibia should adhere to the Guidelines on Access to Information and Elections in Africa of the African Commission for Human and Peoples' Rights, mindful that for elections to be free, fair and credible, the electorate must have access to information at all stages of the electoral process.
  - 14.4 The public broadcaster and other government-owned media entities and regulators, such as the NBC and CRAN should be controlled by independent governing boards that are answerable to Parliament.
  - 14.5 The Whistleblower Protection Act (Act 10 of 2017) and Witness Protection Act (Act 11 of 2017) should be implemented without delay.
  - 14.6 The Research Science and Technology and the Research, Science and Technology Regulations should be amended to remove the draconian provisions that undermines freedom of expression.
  - 14.7 Namibia should disclose its surveillance capacity, technologies and operations of its interception centres and ensure that sufficient judicial authorisation, transparency, oversight, and regulations on intelligence sharing are effected.