



BOTSWANA

National Overview 2017
by MISA Botswana

In the eyes of many—within Africa and beyond—Botswana is a glowing example of good governance, development and economic prosperity. It has changed its national political leadership in a manner that has attracted minimal controversy and criticism.

While the Botswana Democratic Party (BDP) is the dominant political party that has enjoyed power since independence in 1966, the country's leadership has surreptitiously changed a trend that many hail as the hallmark of democracy

The role model façade is also understandable when you consider the socio-economic performance of this mostly desert southern African country. It has remained largely stable, without the upheavals that mark most sub-Saharan African countries. Its economy, anchored on diamonds, is still performing well in comparison to the majority of countries across the continent.

For this and other reasons, it is tempting to hail Botswana as a democratic role model. Its successive governments have made remarkable political statements regarding African misrule. Botswana bravely stood out and loudly rapped former Zimbabwean president, Robert Mugabe, for holding onto power for too long and ruling with an iron fist in the process. It has also condemned the tendency on the continent to create political strife by resisting handing over the reins of power.

But in calling out leaders in the region for tenaciously hanging onto power, Botswana's President General Ian Khama failed to see the irony of his bluntness. Those with more discerning eyes and ears question the gap between Botswana's reputation and the reality on the

ground vis a vis democracy and good governance.

"A scratch beneath the surface of this much vaunted success story will reveal, not the much touted liberal democracy, but a top-down presidentialism, an emasculated parliament, and corruption and massive poverty in the midst of plenty."¹

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FREEDOM OF EXPRESSION

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¹ *Botswana at 50: democratic deficit, elite corruption and poverty in the midst of plenty* – Monageng Mogalakwe and Francis Nyamnjoh

At the 69th World News Media Congress and the 24th World Editors Forum in Durban, South Africa in June 2017 the Board of the World Association of Newspapers and News Publishers (WAN-IFRA) issued a statement calling for solidarity with “the Botswana press in the wake of attacks and the hardening government stance against independent, free media.”

Reference was made to the on-going campaign by the Botswana government to attack and “intimidate the press as a means of silencing criticism and marginalising opposition voices.” Mention was also made of the “assault on the media through security agencies under the pretext of national security, nationalism and patriotism, as well as the dearth of political will to introduce legislative reform that would enable access to information and protection of journalists’ rights.”

From the onset President Khama has been clear about his disdain for the media.

In his speech at a graduation ceremony at the then Botswana Institute of Administration and Commerce (when he was still Vice-President), he admitted to the audience, made up mainly of students and their parents, that he did not read local newspapers because - according to him - their reportage dwelt on the negative.

During one of his first speeches as the incoming President, he referred to the 4Ds that were part of his election manifesto - democracy, discipline, dignity and development. As he added the fifth D – discipline - he went on to mention the deficiencies of the media. He highlighted the social problems in society that needed to be addressed as a nation and made reference to the use of abusive language in public discourse and

defamation, slander and purportedly false statements in the media.

The gradual shrinking of media freedom, freedom of expression and lack of access to information was subtle and languid and comes down to the concentration of power in the Executive.

But the first chink in the armour of good governance can be traced back to when President Khama established the Directorate of Intelligence and Security Services (DISS) in 2008 through the passing of the Intelligence and Security Services Act, 2007. Even before its enactment, the Bill was dogged with controversy as opposition members walked out of Parliament during its debate.

When President Khama transferred oversight authority of DISS and the Directorate on Corruption and Economic Crime (DCEC) from the Ministry of Justice, Defence and Security to the Office of the President it raised issues about the consolidation of power in the executive branch.

The manner in which the two entities have operated over ensuing years endorses the perception that these agencies were created “to protect members of the Botswana Democratic Party (BDP) elite to protect their own partisan interests.”² Furthermore, instead of acting as separate entities, the two agencies seem to have acted in concert to suppress some of the high profile cases involving political elites.

The suppression of information surrounding some of these cases has been a contentious and sticky point between the State and the media. Investigations by journalists into some of these cases

² *A Critical Evaluation of the Intelligence Oversight Regime in Botswana* - Lesego Tsholofelo

has resulted in intimidation, threats and litigation.

On 19 April, the Court of Appeal upheld an earlier decision by the High Court and turned down the application of a teacher who had challenged his dismissal from employment on the grounds that it violated his constitutional right to freedom of expression.

The teacher was dismissed after he published an opinion piece in a newspaper in May 2011 on the country's political situation, following a national strike by public sector employees. In February 2012, a disciplinary hearing had found the teacher guilty of contravening section 34(a) of the Public Service Act.³

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It is against this background that 2015, as the year that spelt doom for MISA Botswana in terms of funds and funding, cast a long shadow of apathy among media practitioners, much to the joy of the enemies of freedom of expression.

PRINT MEDIA

One of the most prominent cases in 2017 was that of the popularly known 'Sedition Case' against the editor of the *Sunday Standard* newspaper, Outsa Mokone. He was first arrested in September 2014 on charges of sedition arising from a story carried in the newspaper's edition of 13 August 2014 titled 'President hit in car accident while driving alone at night.' The story also carried a statement by government spokesman Jeff Ramsay denying that the President had been in the car but confirming that a presidential vehicle was involved. The

case dragged on through the courts and was still pending at the end of 2017.

It has been reported that before Mokone was arrested, the Attorney General had issued a letter labelled "Top Secret" demanding that the *Sunday Standard* retract the story and publish an apology in its next edition or criminal proceedings would be instituted against the newspaper, its editor and the journalist under whose name the article had appeared.

The newspaper was given five days within which to retract and apologise for the story, but the police had already obtained a warrant of arrest against Mokone on the day that the demand for the retraction and the apology had been requested. Mokone was arrested on 8 September upon his return from South Africa where he had gone to visit his family.

Mokone's lawyers subsequently sought their client's release before the High Court where proceedings gave rise to constitutional issues on three grounds that 1. Mokone had been unlawfully arrested. 2. He had been denied access to his lawyers during his detention. 3. As a criminal offence, sedition violated Section 12 of the Constitution of Botswana that protects freedom of expression, and by extension, of the media.

The difficulty with this matter is that while it was certainly the most positive turn of events since 2014, Mokone's could be a temporary respite in that he gained his escape only on the technical grounds that the Penal Code required the State to charge him within six months and was unlikely to proceed with the matter because the stipulated period had lapsed.

Significantly, the court did not deal with the crucial matter of whether se-

³ Amnesty International Report 2017/2018

dition laws violate the Constitution. It also found that the Station Commander had not been unreasonable when he refused the lawyers access to Mokone when they returned from buying him food. The court therefore dismissed the claim that legal representation was refused on the basis that although access to his lawyers was delayed (by no less than 24 hours, according to Mokone) he was nonetheless granted permission to see them. Pointedly, the court agreed with the uncontested evidence of the Commissioner of Police that the *Sunday Standard* story was defamatory.



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In this saga, not least significant is the fact that the author of the story, Edgar Tsimane, remains in exile in South Africa where he has been granted temporary asylum.

It is for these reasons that in the opinion of a lawyer who works closely with MISA Botswana, the judgment of Justice Brand of the Court of Appeal, which was

delivered on 2 February this year, constitutes “an injudicious and unwarranted attack on the *Sunday Standard* and its Editor Outsia Mokone”.

As only the second person to be prosecuted under sedition laws in the history of Botswana (the first was a *Radio Botswana* journalist named Samuel Mbaiwa in the 1980s), there is an assumption that the authorities’ harassment of Mokone is politically motivated. The charges followed the *Sunday Standard’s* involvement in a number of investigative articles revealing the government’s complicity in corrupt activities.

Quoting Mokone, the *Civics State of Civil Society Report 2018* clarifies:

A lot of money had been siphoned off through the Intelligence Services. They simply do not have to account for it. They were giving tenders to themselves and friends and family. We ran a number of stories. Around the same time the Directorate on Corruption and Economic Crime (DCEC) was investigating the head of the Intelligence and we were able to get hold of the docket and started running the investigation. The DCEC went to court to stop us (...).

In a separate incident, the Organised Crime and Corruption Reporting (OCCRP) project in March 2017 in a statement detail how the Botswana Intelligence Service “briefly detained three journalists as they were heading to one of President Ian Khama’s private residences to determine whether or not he was using public funds for renovations”.

The journalists - Ntibinyane Ntibinyane, Joel Konopo and Kaombona Kanani - were following the lead on a story that the president was using military and

state funds to renovate his private estate. During their brief detention, the journalists' phones were confiscated. And the security agents also searched and seized the journalists' equipment, including cameras. The journalists reported that the intelligence operatives threatened them, stating that if the journalists returned to the president's residence, "we will not negotiate; we will shoot you on sight".

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BROADCASTING

Positive

In the year under review, the most significantly positive development for broadcasting was an Ombudsman's report of August 2017 that recognised long-held complaints by a broad section of society that both state-owned *Radio Botswana* and *Botswana Television* were extremely skewed and exceptionally partial to the ruling Botswana Democratic Party

in their coverage of political parties and issues. The report is notable in that the content reflects the first official acknowledgement of this discrepancy that is par for the course for this far reaching medium. The report was followed by the lodging of complaints with the Ombudsman by the opposition Botswana Congress Party.

Negative

However, the practice continues unabated and it is by design that this is so primarily because in Botswana, state media are departments under the Ministry of State President and are run directly from the Office of the President.

Another negative state of affairs that still obtained in the year past was BOCRA, the regressive Botswana Communications Regulatory Authority that repealed the Broadcasting Act of 1998. The law is regressive in that it omits provision for a public broadcasting service to which *Radio Botswana* and *Btv* would belong, as well as community radio stations that would allow for diversity.

With regard to community radio stations, the government has pushed the notion that these would encourage tribalism and presents the Rwanda genocide of the 1990s as an example.

The reality is that present-day Rwanda is pushing through with advances in every aspect of life and enjoys a plurality of community radio stations.

Under BOCRA, the minister appoints the CEO and the board of the regulatory body but also has the authority to overturn decisions of the board. For the government, BOCRA's most far-reaching achievement must be how the law removes both *Radio Botswana* and *Btv*

from any obligation of common sense and fair play, especially in matters of contest among political parties.

Fired

One of the more blatant setbacks for free speech in broadcasting occurred when popular *Gabz FM* anchor Reginald Richardson and his producer Keikantse Shumba were fired by the radio station's management under duress from the BDP government early in the year under review.

Their firing followed the airing of the secret recording of a conversation between leading members of the ruling party 'poaching' from the opposition Botswana Congress Party with promises of considerable largesse. Their exit from the airwaves was the culmination of years of an acrimonious stance adopted by the government towards the station, especially a popular interactive call-in morning programme run by the two that was often scrambled by suspected agents of Botswana's notorious secret service, the Directorate of Intelligence and Security Services (DISS).

ACCESS TO INFORMATION

The Government of Botswana has a raft of laws that it can tap into to impede free flow of information or use to punish 'errant' journalists in the event that information deemed 'protected' by these laws was published. The unwanted laws include the National Security Act, the Media Practitioners Act 1998, the Sedition Act, the Protected Areas Act and the Cybercrimes and Computer Related Act 2007, as well as the laws establishing the DISS and the Directorate on Corruption and Economic Crimes.

While the Media Practitioners Act (MPA) remains in abeyance because the Law

Society of Botswana has ignored a requirement to second three of its members to a committee prescribed under this Act, the law hangs like an albatross on the neck of the body politic of media workers.



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Its most obnoxious incursion into media freedom is found in Section 6 where it sought to have journalists registered by an Executive Committee. The law also seeks to enforce the right of reply that should be published not later than two subsequent editions after the 'offending' article and to the same degree of prominence as the original article.

The difficulty with this is that it takes away the Editor's authority and autonomy to decide what to publish, when to publish it and where to place it in the newspaper. This is an invaluable right

that cannot be seized. But the essential criticism of this law is that while the National Assembly reigns supreme in the enactment of laws for the peace, order and governance of the country, the National Assembly could never hold supreme in flouting the Constitution of the republic.

To underscore this point, attorney Gosego Lekgowe wrote in an analysis of the law published in *Mmegi* in March 2009 that although civil liberties are not ranked in the country's Constitution, it is widely understood in Botswana that media freedom is among "the most precious of all protected freedoms (because) it lies at the very foundation of a democratic society and must be jealously guarded by the courts". He emphasized the point that unhindered expression of opinion is the mark of democracy "even if those opinions disturb and offend".

Another contentious requirement of the MPA's concerns professionalism of journalism. In his analysis of the MPA attorney Lekgowe concludes that the MPA seeks to impose professionalism in order to restrict access to journalism and maintain a stranglehold on journalists. "Parliament does not have a constitutional mandate to impel professionalism on journalists," Legowe wrote. "Only a court wrapped with executive-minded judges (would) hold otherwise."

While deployment of public relations officers to all departments of state was hailed as a welcome development several years ago, there is a serious snag in that these characters act more like 'public prevention officers' because they are either too ignorant to be of any use or impede access to people with the information sought. At best, they demand written questions even though complying is no guarantee that

the questions will be answered. The result is that in the continued absence of freedom of information legislation, the right to know is compromised because nothing can be done to compel PROs to act appropriately.

LOOKING FORWARD TO 2018

This is difficult to assess. The next president, who will assume office on 1 April this year, has the appearance of a liberal and has been consulting robustly with stakeholders, including the trade unions. However, this could be misleading because Vice President Mokgweetsi Masisi has also been at the forefront of marginalising the political opposition by almost any means necessary. He has also been heard in leaked secret recordings plotting against the private media. Even so, the large body of opinion is that his should be a much better administration, if only because all he will have to do is reverse some of his predecessor's insufferable policies.

BOTSWANA MEDIA FREEDOM VIOLATIONS AND VICTORIES



8 March 2017 **THREATENED AND DETAINED**

INK journalists Joel Konopo, Ntibinyane Ntibinyane and Kaomboni Kanani were accosted, harassed and briefly detained by an armed patrol of the Botswana Defence Force near Mosu Village in the Central District where President Ian Khama was having a holiday home built allegedly at taxpayers' expense. Their notebooks and cameras were seized. Upon being released, they were told never again to set foot in the area.



July 2017 **VIOLATIONS OF PUBLIC FREEDOM OF EXPRESSION**

An incident that occurred within the Botswana Democratic Party involved the Member of Parliament for Tati East who is also a member of the Central Committee of the BDP, Samson Moyo Guma. Guma shared his frustrations about the BDP with a Central Committee WhatsApp group some time during the last quarter of 2017. He commented that the current BDP government was the most unresponsive and the worst since Independence. He also questioned the propriety of one of President's Khama's secretaries sitting in on meetings of the Central Committee. President Khama was offended by these comments and ordered Guma to explain what he meant by them in writing.