

Botswana's Compliance with the International Covenant on Civil and Political Rights:

**Freedom of Expression and Access to Information,
Right of Peaceful Assembly and
Non-Discrimination and Equal Protection of the Law**

**Submitted by Community Media Foundation (COMEF),
DITSHWANELO – The Botswana Centre for Human Rights and
TANE KO TEEMAHANE WOMEN'S FOUNDATION**

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Community Media foundation (COMEF) is non-profit making and was established in 2015 to advocate for freedom of expression, access to information and community journalism. It runs the Community Files outlet to provide platform to issues that are marginalised in the mainstream media.

DITSHWANELO – The Botswana Centre for Human Rights was established in 1993 and since then has remained the only organisation in Botswana dealing with varied aspects of human rights. We work to advocate for changes in laws, policies and practices, and to raise public awareness of rights and responsibilities.

TANE KO TEEMAHANE WOMEN'S FOUNDATION was formed by a group of young women in Khwai village to empower indigenous women through culture and traditional knowledge. It also covers issues of human rights to teach the community about the rights of indigenous people how these are implemented by doing some trainings and workshops. We also look at issues of San children where our aim is to change the mind set of our children especially a girl child to know the importance of education. Finally, we also look at issues of community natural resource management, how we are part of this and how we can survive by natural resources.

With the support of:

I. FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

Section 12 of the Constitution of Botswana protects freedom of expression and states that: “No person shall be hindered in the enjoyment of his or her *freedom of expression*, that is to say, freedom to hold opinions without interference, freedom to *receive ideas and information* without interference, freedom to communicate ideas and information without interference (whether the Copyright Government of Botswana communication be to the public generally or to any person or class of persons) and freedom from interference with his or her correspondence”.

However, in practice there are limitations to the exercise of freedom of expression and access to information in Botswana in the following ways:

1. Lack of a specific law protecting arbitrary interference in the exercise of access to Information

In 2010, the State through the ruling party rejected a Private Member’s bill on Freedom of Information, which would have ensured the right of the public and the media to have access to information held by public authorities at all levels.¹ The ruling party promised to table a Freedom of Information bill, itself. This has not happened. Instead, there have been laws passed which inhibit access to information. These include the Public Service Act (Act No. 30 of 2008) (Cap. 26:01) and the Emergency Powers Act (Statutory Instrument No. 61 of 2020) which was operationalised under the State of Public Emergency declared in April 2020 at the start of the COVID-19 pandemic in Botswana and which lapsed after 3 renewals, on 30 September 2021².

Section 30 of the Emergency Powers Act criminalised journalism and social media posts which report on COVID information using sources outside government and restricts the flow of information³. The offence carried a fine of up to P100 000 (US\$10 000) or up to five years imprisonment or both. A number of citizen journalists, including a teacher and members of the opposition, were arrested for posting information about COVID -19 on Facebook.⁴

2. Restrictions to freedom of expression online

Laws such as the Cyber Crime and Computer Related Offences Act (No. 18 of 2018) have been widely used to curb genuine and harmless expression online. In April 2020 the police, through a press

¹ Regonamanye, 2016 in Molomo, Mpho G. and Wilford Molefe (). *Freedom of information: Batswana back private communication, public accountability*. Afrobarometer Dispatch No. 172. 21 November 2017.

² The first State of Emergency was declared on 2 April 2020. It was then extended on 29 September 2020. The third State of Emergency was declared on 1 April 2021 and ended in September 2021.

³ <https://monitor.civicus.org/updates/2020/06/30/authorities-accused-abusing-covid-19-restrictions-stifle-expression-despite-improved-ranking/>

⁴ Mawarire, Teldah (2020). *Things will never be the same again - COVID-19 Effects on Freedom of Expression in Southern Africa*. 2020 Research Report. Advancing Rights in Southern Africa, 8. A school teacher, Rakkie Kelesamile, was arrested after challenging a claim by government that a social worker who had screened law makers in parliament had tested positive for the virus. Justice Motlhabane, spokesperson of opposition party Botswana Patriotic Front was arrested and charged under the Penal Code for “degrading and maligning the leadership” after suggesting on a Facebook post that the president had declared a lengthy state of emergency “so that he could deal with his political rivals and business competitors.”

<https://monitor.civicus.org/updates/2020/06/30/authorities-accused-abusing-covid-19-restrictions-stifle-expression-despite-improved-ranking/>. Accessed 10 October 2021.

statement, warned the public against ‘publishing statements against government and degrading and maligning the leadership of the country⁵.’

3. Arrests, detentions and excessive use of force of the police

There has been an increase in freedom of expression-related arrests and detentions. These have involved journalists, artists, random youth, and protesters. In some cases, charges were not brought against the victims, a clear sign of harassment just to quell expression.

On 17 July 2019 the house of *Mmegi* newspaper journalist, Tsaone Basimanebotlhe was raided by the police and officials from the Directorate of Security Services (DIS). Her phone was confiscated after conducting a property search.⁶

4. Community broadcasting not recognised

The Botswana Communication Regulation Authority Act (BOCRA) (19 of 2012) which regulates broadcasting does not mention community broadcasting. This has led to a belief that such broadcasting is outlawed even though there are community radios operating in the country.

5. State Broadcaster

The BOCRA Act does not relate to the State broadcaster as it has been left out of the Regulations in section 31 of the BOCRA Act. This is despite the fact that one of the state radios (Radio Botswana) is still regarded as a state broadcaster. This means it operates outside the ambit of the Regulations of the Act. It is housed under the Office of The President.

II. RIGHT OF PEACEFUL ASSEMBLY

According to section 7 of the Constitution of Botswana, no persons shall be subjected to torture or to inhuman or degrading punishment or other treatment. In its Second Periodic Report to the Human Rights Committee, Botswana describes the training regularly provided to law enforcement and security officers in the field of human rights⁷. Botswana responded that law enforcement training emphasises the non-use of force and firearms unless in exceptional circumstances where the culprits are suspected or known to be carrying firearms.

However, the police have sometimes dispersed peaceful protests using excessive force. There are still complaints and even court cases in which members of the public or suspects complain of police brutality, which sometimes leaves victims in hospital beds⁸. These include cases of people such as Justice Motlhabane in 2020, Atlasaone Molemogi ‘ATI’ in 2020 and Pastor Thuso Tiego in 2021.

Oratile Dikologang was naked when police officers pulled a black plastic over his head during his detention in April 2020.⁹ He was questioned after writing articles which were critical of the

⁵ <https://www.facebook.com/kabo.motswagole/posts/10222694988391637>. Accessed 11 October 2021

⁶ <https://monitor.civicus.org/updates/2020/06/30/authorities-accused-abusing-covid-19-restrictions-stifle-expression-despite-improved-ranking/>. Accessed 10 October 2021.

⁷ Human Rights Committee (2018). List of issues prior to submission of the second periodic report of Botswana. CCPR/C/BWA/QPR/2. 25 April 2018, Para.14, pg. 3

⁸ <https://www.mmegi.bw/news/police-officers-and-corruption/news> Accessed 7 October 2021

⁹ He is the digital editor and co-founder of the Botswana People’s Daily News website. <https://gijn.org/2021/05/19/how-botswana-police-use-us-and-israeli-technology-to-identify-press-sources/>. Accessed 11 October 2021.

government. His phone was searched after he provided the police with his password. Information was reportedly extracted using a 'Universal Forensic Extraction Device (UFED) sold by Israel-based Cellebrite and a Forensic Toolkit (FTK) from US-based Access Data, according to the affidavit from the Botswana Police Service Digital Forensics Laboratory...'.¹⁰

In January 2020, an artist known as 'ATI' was arrested for hosting demonstrations together with some of the people who supported him¹¹. In April 2020, Botswana Patriotic Front spokesperson, Justice Motlhabane was arrested, tortured and charged for publishing a story on Covid-19¹². In September 2021, the police attacked and arrested some of the people who were protesting with Pastor Thuso Tiego at the Main Mall. Some of the people were harshly treated¹³.

Police interaction with student protesters¹⁴ has led to the rights of protesters being violated with impunity. In 2019, Botswana International University of Science and Technology students were sprayed with tear gas, beaten and arrested without probable cause when they protested for allowance increase¹⁵. Clearly, freedom of expression, freedom of association and the right to assembly, protests and petition are in danger as it is difficult to exercise these without risking arrest by the police.

While it is expected that police permits are obtained prior to marches¹⁶, it is not clear whether these permits are evidence of a pre-existing constitutional right being recognised for a march to take place or are evidence of the granting of a right by the police for individuals or groups to march.

III. NON-DISCRIMINATION AND EQUAL PROTECTION OF THE LAW

Section 15 of the Constitution of Botswana states that no law shall make any provision that is discriminatory either of itself or in its effect. The effects of the COVID-19 pandemic have shone a light on pre-existing socio-economic inequalities. These were exacerbated in the application of COVID-19 policies. Key vulnerable groups are those of undocumented migrants, persons with disabilities and indigenous peoples.

1. Discrimination in terms of access to Covid-19 vaccination by undocumented migrants

Undocumented migrants in Botswana do not have access to the Covid-19 vaccination even though it has been stated that it is available for all persons¹⁷. The mandatory pre-registration form for access to the vaccination requires information about the applicant's identification documents (national if one is a citizen and a passport if one is not a citizen) as well as proof of residence. This makes it difficult for undocumented migrants to complete the mandatory registration process due to their lack of

¹⁰ <https://gijn.org/2021/05/19/how-botswana-police-use-us-and-israeli-technology-to-identify-press-sources/>. Accessed 11 October 2021.

¹¹ <https://m.facebook.com/TheGazettebw/posts/10157790183412620> Accessed 7 October 2021

¹² <https://www.pressreader.com/botswana/the-voice-botswana/20200424/page/2/textview> Accessed 7 October 2021

¹³ <https://www.facebook.com/121039846823/posts/10158471194281824/> Accessed 7 October 2021

¹⁴ <https://www.facebook.com/ink24media/videos/295212335775223/> Accessed 11 October 2021

¹⁵ <https://www.facebook.com/254898011338526/posts/police-arrest-students-for-inciting-violence-at-botswana-international-universit/1650965498398430/> Accessed 7 October 2021

¹⁶ Public Order (Act 6, 1967) (Chapter 22:02) Contains provisions concerning the preservation of public order on the occasion of public meetings and processions. Provides penalties for disobeying a direction or violating the conditions of a permit. States when public meetings and processions are unlawful.

¹⁷ <https://www.voanews.com/a/covid-19-pandemic-botswana-assures-unauthorized-immigrants-covid-19-vaccinations/6210087.html> Accessed 7 October 2021

requisite documentation. In spite of Botswana's laudable principled position articulated by the Chief Public Relations Officer (Ministry of Health and Wellness), Dr Christopher Nyanga, its practical implementation remains an issue¹⁸. The government should arrange for all undocumented migrants to be vaccinated regardless of their legal status and documentation. Undocumented migrants have not been assured that they will not be returned home when it is determined that they do not have the requisite immigration documents. A potential consequence of the mandatory requirement may be that fear of expulsion and forcible return to their countries may discourage them from being vaccinated. The effect of this will be increased vulnerability for all, to the COVID-19 virus.

2. Discrimination against Persons with Disabilities

We welcome Botswana's recent ratification of the Convention on the Rights of Persons with Disabilities on 11 August 2021. There is need for a clear timeframe for the domestication of the Convention, in accordance with the domestic legal system of Botswana including through the participation of civil society organisations. Issues which require attention include the following:

- Persons with disabilities are faced with challenges especially in the education, employment and transport sector. Some schools do not have structures such as ramps to enable effective access to schools for those students in wheelchairs.
- Public transport does not easily accommodate persons with disabilities, especially those with physical disabilities requiring the use of wheel chair. This limits their freedom of movement.
- The road traffic lights also do not cater for people with visibility disabilities as they are unable to independently know whether or not the robot has given them access to cross the road.

In its third cycle of the Universal Periodic Review (UPR)¹⁹ Botswana accepted a recommendation to take measures to prevent and combat all forms of discrimination, especially against women, persons with disabilities and other vulnerable groups. To this date, there has been no implementation.

There is also no specific non-discrimination law to ensure that people are protected from discrimination.

3. Discrimination against indigenous peoples

- **Children are separated from their parents and taken to hostels**, from as early as five (5) years of age (because there are no schools in their communities) through the Remote Area Development Programme (RADP). There have been reports over the years, of children absconding from school and attempting to return home by walking several kilometres, with fatal results. The most recent incident was of 9 children - aged 10 and 11 years old - who had

¹⁸ https://www.voanews.com/a/covid-19-pandemic_botswana-assures-unauthorized-immigrants-covid-19-vaccinations/6210087.html Accessed 7 October 2021

¹⁹ Report of the Working Group on the Universal Periodic Review, Botswana, 11 April 2018. UN Document A/HRC/38/8, Paragraph 127.26 Take measures to prevent and combat all forms of discrimination, especially against women, persons with disabilities and other vulnerable groups (Italy).

'escaped from the hostels on September 26 and tried to scale the 70 km distance between the school and their remote home settlement of Qangwa'.²⁰

Reasons for absconding from schools include use of corporal punishment, cultural conflict including the use against them of insulting language, language barriers, and unsupervised school hostels,²¹ distance to school, separation from parents for a long time, and the language of instruction,²² discrimination (bullying and teachers picking on them), rape, teenage pregnancies, shortage of food ration supplies and theft of belongings.

- **Limited access to information and exclusion from effective participation in decision-making.** San are at an automatic disadvantage with regards to governance and decision-making as they are formally excluded from the national chieftaincy system which is the basis of rural government, consultation and participation.
- **Exclusion of San women and limited access to information** due to the cultural understanding men are considered to be the breadwinners, heads of their households and decision makers, who have the right to own and control women. Girls are taught through initiation rites to be quiet and submissive to men. We have several cases in the eastern Delta where the government took decisions affecting the community without involving the community. Indigenous women are claiming their rights to be involved in decisions about land, natural resources, tourism and community development.

²⁰ Botswana Daily News of 4 October 2021, page 5.

²¹ Mokibelo, E. (2014). Why We Drop Out of School: Voices of San School Dropouts in Botswana. *Australian Journal of Indigenous Education*, 43(2), 185–194.

²² Allison, C. (1981). *The Economics of Household Demand for Children's Schooling: A Study of Kweneng District, Botswana*. Unpublished Ph.D Thesis, University of London, London; Kann, U., D. Mapolelo, & P. Nleya (1989). *The Missing Children: Achieving Universal Basic Education in Botswana – The Barriers and Some Suggestions to Overcome Them*. Ministry of Education, Gaborone. et al., Tshireletso, L. (1997). "They are government's children": School and community relations in a remote (Basarwa) settlement in Kweneng district, Botswana. *International Journal of Educational Development*, 17 (2): 173-188 1997.