

IPI MISSION REPORT:



# PRESS FREEDOM IN BOTSWANA

2022

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## ABOUT THIS REPORT

This report reflects findings from a press freedom mission to Botswana conducted by the International Press Institute (IPI) in August 2022. During this mission, a high-level IPI delegation led by former IPI Executive Board Chair Markus Spillmann, met with a range of stakeholders, including government, media, journalists, diplomats, and civil society, to assess the challenges faced by the media and to support independent journalism in the country.

The mission was carried out as part of IPI's Africa programme, which aims to defend press freedom and the safety of journalists in Africa. It was facilitated with support from KAS Media Africa, the Media Programme for Sub-Saharan Africa of the Konrad-Adenauer-Stiftung.

## ABOUT IPI

Founded in 1950, the International Press Institute (IPI) is a global network of editors, media executives and leading journalists who share a common dedication to quality, independent journalism. Together, IPI promotes the conditions that allow journalism to fulfill its public function, the most important of which is the media's ability to operate free from interference and without fear of retaliation. IPI's mission is to defend media freedom and the free flow of news wherever they are threatened.



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# INTRODUCTION: MEDIA ENVIRONMENT IN BOTSWANA FACES KEY RISKS AND CHALLENGES

The independent media environment in Botswana, while healthier than in several other countries in southern Africa, faces key risks and challenges that require close monitoring. Key reforms should be introduced to shore up protections for independent media. That is the overarching conclusion of a three-day fact-finding visit to Botswana carried out by the International Press Institute (IPI) from August 22 to 24, 2022.

The purpose of this mission was to learn more about the country's media environment and the challenges that journalists in Botswana face in being able to do their work freely, independently, and safely. During our visit, the IPI delegation engaged in a substantive dialogue with a range of stakeholders that included journalists, civil society, government, political parties, and members of the diplomatic community.

Botswana is widely regarded as a model for democracy in the region, and by comparison to other countries in the region, Botswana's post-independence period has been peaceful. The country ranked 30th on The Economist's 2021 Democracy Index<sup>1</sup>, higher than any other country in sub-Saharan Africa after Mauritius. Civil liberties are, in general, better protected in Botswana than in many neighboring countries. It is one of just seven African countries to be considered "free" by Freedom House's Freedom in the World report<sup>2</sup>. Botswana is one of just four countries in Africa to be members of the global Media Freedom Coalition<sup>3</sup>, and in 2020 it co-hosted with Canada the second Global Conference for Media Freedom.

While Botswana performs relatively well on certain democracy indicators, the country has been governed by the same ruling party for more than 50 years. The Botswana Democratic Party has been in power since 1966, the year Botswana gained independence from Britain. The party's influence over the country's democratic institutions is extensive and the media sector is no exception. State media in Botswana – which are the principal source of news for many people in the country, especially in rural areas – largely operate as mouthpieces for the party. And the BDP has outsized influence over the media market through its instrumentalization of publicly funded advertising.

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<sup>1</sup> [Democracy Index - Wikipedia](#)

<sup>2</sup> <https://freedomhouse.org/countries/freedom-world/scores?sort=asc&order=Country>

<sup>3</sup> [Media Freedom Coalition: an overview - GOV.UK](#)

There is space for critical media and independent journalism in Botswana. In addition, the newly passed Media Practitioners Association Act (MPAA), which regulates the media sector, has been positively received by the media community. The new law was drafted in consultation with members of the media community, for which the government should be commended. While the MPAA does not foresee a pure self-regulatory system, it does create safeguards for the independence of the media regulator, whose members will be selected from the media community and civil society. The legislation is a clear improvement over a 2008 version, which was rejected by stakeholders for facilitating government interference in the media sector and never implemented.

However, the IPI mission showed clearly that further reforms and improvements are needed in order to strengthen the environment for press freedom and ensure that all media in the country are able to operate free of political and government interference.

Botswana continues to lack a freedom of information law. The government says that it intends to introduce FOI legislation, which officials confirmed to IPI during the mission. Officials later reportedly indicated they hope to pass such legislation before Botswana's 2024 general election. While this is a welcome development, we strongly urge the government to develop this important legislation in full consultation with domestic and international stakeholders to ensure it can be effectively implemented and reflects established international access to information standards.

Many in the media community anticipated an improvement in press freedom under the government of current President Mokgweetsi Masisi, who took office in April 2018, given the often hostile attitude toward the press of former President Ian Khama. However, the media freedom record of the Masisi administration has been mixed.

There are serious concerns about the growth of the surveillance state in Botswana. Even after the government rolled back controversial provisions of the 2022 Criminal Procedures and Evidence Act that allowed for warrantless surveillance,<sup>4</sup> stakeholders [continue to voice credible concerns](#) over the expansive and unchecked powers of the government's intelligence agency, Directorate of Intelligence and Security Services (DISS), and the potential for government overreach and abuse.<sup>5</sup>

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<sup>4</sup> [Botswana pushes warrantless surveillance bill, threatening press freedom - International Press Institute](#)

<sup>5</sup> [DISS, MASISI UNDERMINE BASIC HUMAN RIGHTS – UN REPORT](#)

Stakeholders also reported numerous forms of harassment of private media in the country. This includes reports that police and intelligence agencies routinely seize reporters' equipment - including mobile phones, cameras, and laptops - without any legal basis or a warrant. Vexatious lawsuits against the media in the form of SLAPPs are on the rise and risk worsening the private media's already precarious financial situation. Botswana criminal law includes several provisions, including sedition, that have been or could be used against the press. Journalists continue to be harassed and detained by authorities under the Masisi administration.

These and other issues, combined with the government's interference in the media market, including through the instrumentalization of publicly funded advertising, result in challenging conditions for watchdog journalism in Botswana.

Botswana is proud of its democratic institutions, which are among the strongest on the African continent. However, we remind the government that a free, independent, and diverse media is essential to upholding a system of democratic institutions with robust checks and balances. Botswana's government should affirm its stated commitment to press freedom by shoring up protections for independent journalism in the country.

We also recognize that establishing the ideal legal, regulatory, and market conditions that enable independent media to thrive is especially challenging in today's media environment. IPI therefore stands ready to work with all stakeholders in Botswana to help ensure that media are able to operate freely and independently.

## KEY FINDINGS

The following summarizes the main findings from IPI's discussions with a range of stakeholders, including government, media, journalists, diplomats, and civil society to assess the challenges faced by the media and to support independent journalism in Botswana.

### 1. LEGAL AND REGULATORY ENVIRONMENT: KEY GAPS AND WEAKNESSES

While the constitution of Botswana protects freedom of expression, the right to access information, and the right to privacy,<sup>6</sup> there are key gaps and weaknesses that require strengthening in order to ensure full legal press freedom protections for journalists, in alignment with international standards and commitments.

Notably, Section 12(2) of the constitution specifies restrictions to freedom of expression in the areas of national defense, public security, public order, public morality, and public health. According to international human rights frameworks, freedom of expression is not an absolute right, limitations are regarded as justifiable so long as they are necessary, proportionate, and narrowly provided by law.

In the case of Botswana, regional experts have indicated that the vague reference to “public order” could be expansively interpreted and lead to a chilling effect on the media and impede the ability of whistleblowers and the press to shed light on illegal conduct, including cases of corruption, which is essential in a democracy.<sup>7</sup> This provision could therefore have a disproportionate chilling effect on the media, and impede the ability of whistleblowers and the press to shed light on illegal conduct, including cases of corruption, which is essential in a democracy.

<sup>6</sup> Section 12(1) of the constitution protects the freedom of expression; Section 3 guarantees fundamental human rights including the right to access to information; and section 8 protects the right to privacy; sections 9(1) protects privacy including protection from unlawful search and seizure. See: [Botswana's Constitution of 1966 with Amendments through 2016](#)

<sup>7</sup> *Botswana, Media Law Handbook for Southern Africa*, Volume 2, Konrad-Adenauer-Stiftung (KAS), 2022.

## 1.1 Media regulation

In addition, the media in Botswana have for decades operated with some regulatory uncertainty. The 2008 Media Practitioners Act established a statutory media regulator and mandated the registration of all media workers and outlets - including websites and blogs - with violations punishable by a fine or imprisonment. This law was passed but was broadly rejected by media stakeholders for restricting press freedom and never implemented.<sup>8</sup>

After years of calls by the media community and civil society, lawmakers last year introduced the 2022 Media Practitioners' Association Act (MPAA), which repeals the 2008 version. The 2022 MPAA establishes the Media Practitioners' Association, the mandate of which is to protect the freedom and independence of the media, to protect and maintain professional journalism standards, and to handle the registration of media and journalists.<sup>9</sup>

The 2022 draft was developed in consultation with many stakeholders, including editors and journalists, and in general is regarded as an improvement over the 2008 law.<sup>10</sup> We note that the new law establishes a regulatory body that includes representatives of professional journalist associations and representatives from academia. While not purely self-regulatory, the new system is nevertheless an improvement on the previous law and helps assuage concerns about government interference in media regulation present in the 2008 law.

However key concerns remain in a number of areas, including mandatory registration of media outlets and journalists.<sup>11</sup> The law requires journalists to be registered with the Media Practitioners' Association, which in turn requires becoming a member of one of Botswana's professional journalism bodies - the Botswana Chapter of the Media Institute of Southern Africa, the Botswana Editor's Forum, the Botswana Media Council, and the Botswana Media and Allied Workers Union. To be eligible for membership in one of these bodies, a person must be an employee of a media outlet that has demonstrated knowledge of journalism practices.<sup>12</sup>

<sup>8</sup> Pressure mounts on Masisi to repeal draconian Media Practitioners' Act | Guardian Sun

<sup>9</sup> Analysis of the Botswana Media Practitioners' Association Bill, 2022 · Page 3 · Uwazi

<sup>10</sup> [https://data.misa.org/en/entity/ot69kr97wud?utm\\_source=Uwazi&page=4](https://data.misa.org/en/entity/ot69kr97wud?utm_source=Uwazi&page=4)

<sup>11</sup> Pressure mounts on Masisi to repeal draconian Media Practitioners' Act | Guardian Sun

<sup>12</sup> Section 37 of the 2022 MPAA



Representatives of civil society told IPI that this new registration system excludes non-traditional journalists, community media, and bloggers, and will likely have the effect of restricting the critical work that smaller, local non-profit and community media in Botswana do, especially outside Gaborone. In addition, some expressed concern that the law is also unclear about what happens if one reports on the news but is not a registered journalist.

In our assessment, these new registration processes could undermine freedom of the press and are incompatible with international standards. Mandatory licensing and registration requirements are regarded as a disproportionate and unnecessary interference of freedom of expression and freedom of the press.<sup>13</sup> Under international human rights law, states do not have the right to define who is a journalist and who may practice journalism, as everyone has the right “to receive and impart information”. Registration requirements for journalists should therefore be voluntary and should only afford those registered with clearly defined extra protections under the law.

## *1.2 Freedom of information*

Freedom of information is formally guaranteed in Botswana's constitution.<sup>14</sup> But the process of establishing a robust legal framework protecting access to public information in practice in Botswana has been an ongoing challenge. Civil society groups and journalists for decades have been pushing for a discrete freedom of information law that ensures timely access to publicly held information. A strong legal foundation guaranteeing access to publicly held information is critical for government transparency and accountability, which are essential in healthy democratic systems.

Our delegation spoke with numerous stakeholders in the media and civil society communities who said that the lack of a robust freedom of information law is a significant impediment to their work and their ability to produce strong investigative reports particularly on issues pertaining to government corruption and national security.

<sup>13</sup> International standards: Regulation of media workers - ARTICLE 19

<sup>14</sup> Section 12(1) of the Botswana Constitution, <https://www.parliament.gov.bw/images/constitution.pdf>

Efforts to introduce a freedom of information law have failed on numerous occasions, including in 2013,<sup>15</sup> largely due to partisan politics and lack of political will. The attorney general's office told IPI that they are in the process of drafting a freedom of information law and assured our delegation that this process would be conducted in full consultation with domestic and international stakeholders and experts.

We strongly urge the government to uphold its stated commitment to develop this legislation in consultation with domestic and international stakeholders to ensure it can be effectively implemented and that the legislation reflects established international access to information standards.<sup>16</sup>

### *1.3 Additional laws that restrict press freedom*

In addition to the gaps and weaknesses described above, our delegation is concerned about additional laws, including measures in the criminal code, that directly threaten or undermine freedom of expression and press freedom in Botswana.

These concerns were also detailed in the UN Human Rights Committee's 2021 Universal Periodic Review for Botswana, which cited provisions in the National Security Act, the Cybercrime and Related Crimes Act, and the Penal Code, that may unduly restrict freedom of expression and access to information.<sup>17</sup>

For instance, Section 59 of the Penal Code criminalizes the publication of "any false statement, rumor or report which is likely to cause fear and alarm to the public or to disturb the public peace".<sup>18</sup> Violations may result in a punishment of imprisonment for up to two years, a fine, or both.

The Penal Code also includes criminal penalties for defamation, which can have a disproportionate chilling effect on freedom of expression, especially when punishments include imprisonment.<sup>19</sup> Stakeholders in the media community with whom we met said that Botswana's defamation laws are often used to silence critical media in ways that restrict critical coverage of the government and business elites (see *section on Strategic Lawsuits Against Public Participation "SLAPPS" below*).

<sup>15</sup> The death of the Right to Information Bill in Botswana - Emmanuel Kopang Botlhale, Kaelo Molefhe, 2013

<sup>16</sup> See "The Right to Access Information" in *Global toolkit for judicial actors: international legal standards on freedom of expression, access to information and safety of journalists*

<sup>17</sup> Concluding observations on the second periodic report of Botswana, November 2021, <https://digitallibrary.un.org/record/3949818?ln=en>

<sup>18</sup> *Laws of Botswana*

<sup>19</sup> *Penal Code*, Sections 192 to 199 describe rules related to criminal defamation.

International human rights courts, UN agencies, special rapporteurs, and civil society organizations have repeatedly called for the decriminalization of defamation given its significant chilling effect on freedom of expression.<sup>20</sup> African courts on multiple occasions have ruled that criminal penalties for defamation violate freedom of expression guarantees in international human rights law and in the African Charter on Human and Peoples' Rights.<sup>21</sup>

Journalists and civil society groups also expressed concern over provisions in the penal code prohibiting sedition. The law defines sedition as any act, speech or publication that intentionally causes hatred, contempt or "disaffection" toward the president or the government. Those found guilty of sedition can be punished with up to three years in prison.

Although cases of journalists being charged with sedition are rare, stakeholders said that existence of these provisions has a strong chilling effect on the media in Botswana and limits critical reporting on government officials and about government actions.

In 2017, Sunday Standard editor Outsa Mokone stood trial for sedition for a report he published in 2014 - which ran with the headline "President hit in car accident while driving alone at night" - about a car accident involving then President Ian Khama, who was driving through Gaborone alone at night and failed to report the incident.<sup>22</sup>

In 2018, an appeals court eventually cleared the charges on grounds that his original arrest was unlawful and the state dropped the case. Unfortunately, the court also declined to rule on the constitutional legality of sedition<sup>23</sup>. However, journalists and editors told IPI that this case had a significant chilling effect on the media in Botswana. When IPI raised this case with the Attorney General's office, that office said that Botswana's laws are fully in line with international standards.

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<sup>20</sup> The "misuse" of the judicial system to attack freedom of expression, UNESCO <https://unesdoc.unesco.org/ark:/48223/pf0000383832?posInSet=12&queryId=9c8fa4b5-ae-cf-4c9a-8975-73eb4d6b3220>

<sup>21</sup> Lohé Issa Konaté v. Burkina Faso (2014); Agnes Uwimana-Nkusi and Saiditi Mukakibibi v. Rwanda (2019); National Media Ltd v Bogoshi; Joint Law Report 2020 - African Court on Human and Peoples' Rights, Joint Law Report 2020 - African Court on Human and Peoples' Rights

<sup>22</sup> Editor charged with sedition for publishing story of Botswana President's car crash | Ink Journalism

<sup>23</sup> Mokone v Attorney General 2018 All Bots 186 (CA)

## 2. STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPPS)

Editors and journalists in Botswana also reported an increase in vexatious lawsuits against the media, commonly known as SLAPPs (strategic lawsuits against public participation). SLAPP lawsuits are brought against media outlets as a way of punishing and stifling critical journalism and have a deeply corrosive effect on press freedom. SLAPP cases are typically characterized as groundless legal cases that are not necessarily designed to be won in court, but rather to harass the defendant, in particular through the threat of endless litigation, legal fees, disproportionate fines or damages, and the loss of reputation. This harassment can lead to self-censorship and/or resource drain as journalists are forced to devote time and energy to fighting baseless legal claims instead of carrying out reporting. In extreme cases, SLAPPs can force the closure of media outlets due to the financial strain.

Botswana media representatives described facing the threat of high damages from legal cases and highlighted examples of abusive litigation by wealthy plaintiffs, including one case in which an investor filed seven lawsuits against one story. Journalists in Botswana face a heightened threat from SLAPPs due to the existing financial precarity in the media sector. “It’s very easy for a rich individual to target media houses for closure. Media houses are very weak and when there are many lawsuits, it does not matter if the cases are genuine because in the end the media house will not survive”, Spencer Mogapi of the Botswana Editors Forum said.

IPI raised the issue of SLAPPs with Botswana’s attorney general, who said that there were no major cases of wealthy people using the law against journalists. He also criticized what he said were a lot of “inaccuracies” in the media about individuals as well as a “lack of professionalism” in the media.

While most interview partners said that Botswana’s judiciary remains relatively independent, the threat from SLAPPs requires legal reform to prevent such cases from casting a chilling effect on the press. Botswana should adopt concrete mechanisms for preventing these types of lawsuits, such as an early dismissal mechanism or sanctions for those who bring vexatious litigation.

### 3. LACK OF MEDIA PLURALISM, GOVERNMENT CAPTURE OF MEDIA ENVIRONMENT

Botswana, a country of just under 2.5 million people, has a relatively small media market. State-controlled media, led by Botswana Television (BTV) and Radio Botswana (RBI), are dominant in the broadcasting sector, especially in rural parts of the country. While independent private radio stations do exist, their reach outside of major population centres is low.

State-owned media in Botswana do not meet the standards of public-service broadcasting. They are not independent and in practice serve as a mouthpiece for the ruling Botswana Democratic Party (BDP). Past studies have suggested that state media devote more than 80 percent of their airtime to the ruling party, with the opposition hardly receiving any coverage<sup>24</sup>. While government control over state media negatively affects media pluralism in many countries, in Botswana the problem is compounded by the country's small media market and limited competition. As a result, a large portion of the public mainly or even exclusively receives news from government sources.

Botswana has no legal framework establishing standards for state-owned media, which are also not subject to the Botswana Communications Regulatory Authority (BOCRA), the body responsible for monitoring adherence to broadcasting regulations. Previous efforts to transform state media into a true public service broadcaster have not been unsuccessful.

Strong reforms are necessary in order to ensure the country's public media can operate free of government and political interference, in accordance with international freedom of expression standards guaranteeing the public's right to receive diverse and independent news and information.

Community radio does not exist in Botswana. The government has refused calls in the past to introduce a legal framework that would allow for the licensing of community radio, arguing that community radio would be divisive. However, it is also clear that community radio would challenge the monopoly of state-owned media, especially in rural areas, thereby contributing to greater pluralism.

The newspaper sector is more diverse, though print media - many of which also operate online - face significant financial challenges. These stem both from wider industry trends as well as the government's use of advertising as a tool to reward or punish media depending on their coverage of the government, a corrosive system that risks encouraging self-censorship. The financial vulnerability of private media is seen as a clear challenge to their ability to perform their watchdog role.

<sup>24</sup> [The state of press freedom in Southern Africa 2020-2021](#)

### 3.1 Misuse of government advertising

As in many media markets, many private media in Botswana rely on advertising revenue for survival. State-funded advertising is particularly influential given the country's small market. However, numerous stakeholders highlighted that publicly funded advertising in Botswana is misused as a tool of influence and control.

Botswana has no regulations governing publicly funded advertising to the media. There are no objective criteria for the distribution of this advertising nor is there transparency on processes or spending outcomes. While stakeholders met by the mission noted that Botswana does have rules on public procurement, media advertising typically falls below this threshold and is not subject to scrutiny.

Multiple stakeholders told IPI that distribution of public advertising is, at best, arbitrary; at worst, it is misused to reward friendly coverage and punish critical reporting. In the past, the government has instituted advertising bans on critical media outlets. For example, in 2014, the government of former President Ian Khama reportedly issued a initially "secret" directive<sup>25</sup> blacklisting private media outlets critical of the government from receiving public ads, including the Sunday Standard, Mmegi, Botswana Guardian, Weekend Post and the Patriot on Sunday. The government later confirmed the directive, and claimed that the ban was related to cost-cutting measures.<sup>26</sup>

Media and rights groups noted at the time that the Botswana High Court had ruled in 2001 that the government's advertising ban on two private newspapers was unconstitutional and violated the newspapers' right to freedom of expression.<sup>27</sup>

The government's policy of starving media of advertising funds has a serious corrosive effect on Botswana's independent media sector. On the one hand, advertising bans further damage the already vulnerable financial situation of many newspapers in the country, many of which rely on public-sector advertising given Botswana's small market. On the other hand, the reward-and-punish method of distribution advertising spending raises the risk of self-censorship for media that depend on such spending for their survival.

The government should take concrete steps to enable fair market conditions for private media, including by ensuring that public advertising is allocated transparently and according to clear and objective criteria.

<sup>25</sup> [Govt bans advertising on critical media houses | Sunday Standard](#)

<sup>26</sup> [Advertising ban on private media is draconian! - Weekend Post](#)

<sup>27</sup> [MISA Botswana statement on advertising bans](#)

## 4. HARASSMENT, ARRESTS, SURVEILLANCE

Many in the media community told IPI that the general climate for press freedom in Botswana has slightly improved since 2018 when President Mokgweetsi Masisi took office as leader of the ruling Botswana Democratic Party. This is in contrast to the previous administration of President Ian Khama (2008 to 2018), when the harassment, detention, and surveillance of journalists was more prevalent.

However, IPI remains concerned by reports from many stakeholders about the continuing pattern of harassment and intimidation of journalists - and of private media in particular - by law enforcement and Botswana's security agency, the Directorate of Intelligence and Security Services (DISS), under the Masisi administration.<sup>28</sup>

In 2020, there were reports of multiple journalists with the Weekend Post being arrested by the DISS. In June 2020, Weekend Post journalists David Baaitse and Kenneth Mosekiemang were arrested and charged with making a "common nuisance".<sup>29</sup> Journalist Tshepo Sethibe was arrested in July 2022 and charged under Penal Code section 59 that bars "alarming publications".<sup>30</sup> After Sethibe's arrest, police also seized equipment from Moeladilotlhoko News Boiler's offices in the town of Kumakwane. Sethibe was charged for posting a news article on Facebook about a missing 6-year-old child.<sup>31</sup>

Editors and journalists told IPI that police and intelligence agencies routinely seize reporters' equipment - including mobile phones, cameras, and laptops - without any legal basis or a warrant, despite the fact that the constitution protects against the seizure of personal property without a court order.<sup>32</sup> For example, in 2019 security officers raided the house of journalist Tsaone Basimanebotlhe, who worked for the news outlet Mmegi, and confiscated her phone.<sup>33</sup>

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<sup>28</sup> [President Masisi and the illusion of change | Ink Journalism](#)

<sup>29</sup> [Journalists arrested, charged with 'nuisance' in Botswana](#)

<sup>30</sup> [Human Rights Report on Botswana](#)

<sup>31</sup> [Botswana journalist Tshepo Sethibe criminally charged over 'alarming publications'](#)

<sup>32</sup> [Section 8, Botswana's Constitution of 1966 with Amendments through 2016.](#)

<sup>33</sup> [Botswana Police Use Israeli Cellebrite Tech to Search Another Journalist's Phone - CPJ](#)

#### *4.1 Expansive government intelligence apparatus and powers*

There are serious concerns about the growth of the surveillance state in Botswana. Despite constitutional protections for the right to privacy, there have been widespread reports about violations of these rights by the state security agency, which has dramatically expanded its surveillance capacities in recent years.<sup>34</sup>

Under the Khama administration, there were reports that the government had purchased state of the art surveillance equipment from Israeli and German companies, and had used spyware to track opposition politicians and journalists.<sup>35</sup>

The Masisi government in early 2022 attempted to pass a sweeping law, the 2022 Criminal Procedures and Evidence Act, enabling warrantless surveillance, which drew sharp criticism from domestic and regional press freedom groups. Even after the government rolled back controversial provisions of this law, after intense pressure from domestic and international civil society groups,<sup>36</sup> stakeholders continue to voice credible concerns over the expansive and unchecked powers of the government's intelligence agency, the Directorate of Intelligence and Security Services (DISS), and the potential for government overreach and abuse.<sup>37</sup>

<sup>34</sup> Section 8 and 9(1) protects privacy, See: [Botswana's Constitution of 1966 with Amendments through 2016](#).

<sup>35</sup> [Botswana Digital Rights and Inclusion Report | Paradigm Initiative](#)

<sup>36</sup> [Botswana pushes warrantless surveillance bill, threatening press freedom - International Press Institute](#)

<sup>37</sup> [DISS, MASISI UNDERMINE BASIC HUMAN RIGHTS – UN REPORT](#)



## RECOMMENDATIONS

While the environment for independent journalism in Botswana is healthier than in several other countries in southern Africa, key reforms should be introduced to shore up protections for press freedom and access to information and to ensure that journalists' rights are protected.

The following recommendations have been developed by IPI following discussions with a wide range of stakeholders that included journalists, civil society, government, political parties, and members of the diplomatic community.

- 1. Shore up weaknesses and gaps in the legal framework protecting press freedom in Botswana by:**
  - **Strengthening the regulatory framework.** The government should work together with stakeholders to modify key provisions of the 2022 Media Practitioners Association Act to ensure full alignment with international press freedom standards. This includes revising registration restrictions on those who can practice journalism, in accordance with international law. State media also should be made subject to the MPAA to promote accountability for Botswana's taxpayer-funded media outlets.
  - **Enabling access to information.** The right to access information held by public authorities is vital for the media to carry out its essential watchdog role. We strongly urge the government to prioritize the development of freedom of information legislation in full consultation with domestic and international stakeholders to ensure it can be effectively implemented and reflects established international standards.
  - **Reforming criminal laws restricting press freedom.** Botswana should work to bring its criminal laws in line with international standards on freedom of expression and ensure that journalists do not face criminal prosecution for their work. This includes repealing provisions in the penal code, such as provisions on defamation and sedition, that can be used to unduly restrict freedom of expression and the press, in line with international human rights commitments and frameworks.
- 2. Protect journalists from vexatious lawsuits.** Botswana should adopt concrete mechanisms for preventing vexatious lawsuits against journalists and media outlets, such as an early dismissal mechanism and sanctions for those who bring vexatious litigation.

3. **Ensure independence of the public broadcaster.** Botswana should pass legislation to transform the country's state media into genuine public service broadcasters. This legislation must include guarantees of independence and protections against government interference, and should be drafted in close coordination with local and international experts and should reflect international standards in the area of public-service broadcasting.
4. **Ensure fair and transparent allocation of state advertising.** Botswana must commit to the fair and accountable distribution of publicly funded advertising. Parliament should pass legislation establishing regulations on the distribution of advertising to media at all funding levels. These regulations must include clear and objective criteria for advertising allocation as well as full transparency regarding spending. Advertising bans on private media must be lifted.
5. **Ensure that journalists can report on topics related to corruption and the allocation of public resources without arrest, harassment, or intimidation.** As a member of the Media Freedom Coalition, Botswana should lead by example in the region by adhering to its [commitments to protect and support media freedom](#). The government should strengthen accountability mechanisms and processes for reported cases of harassment and intimidation of journalists.
6. **Enact strong legal safeguards protecting journalists and civil society from state surveillance.** Botswana should adopt rigorous human rights safeguards protecting journalists and civil society from unlawful or arbitrary government surveillance. The government must ensure that the surveillance of communications by state agencies and law enforcement is permitted only in the most exceptional cases. These cases must have a clear legal basis and approval of an independent judicial authority, and be carried out in accordance with the [human rights principles](#) of lawfulness, legitimacy, necessity, and proportionality. The government must also refrain from the purchase and use of commercial surveillance tools and technologies.

