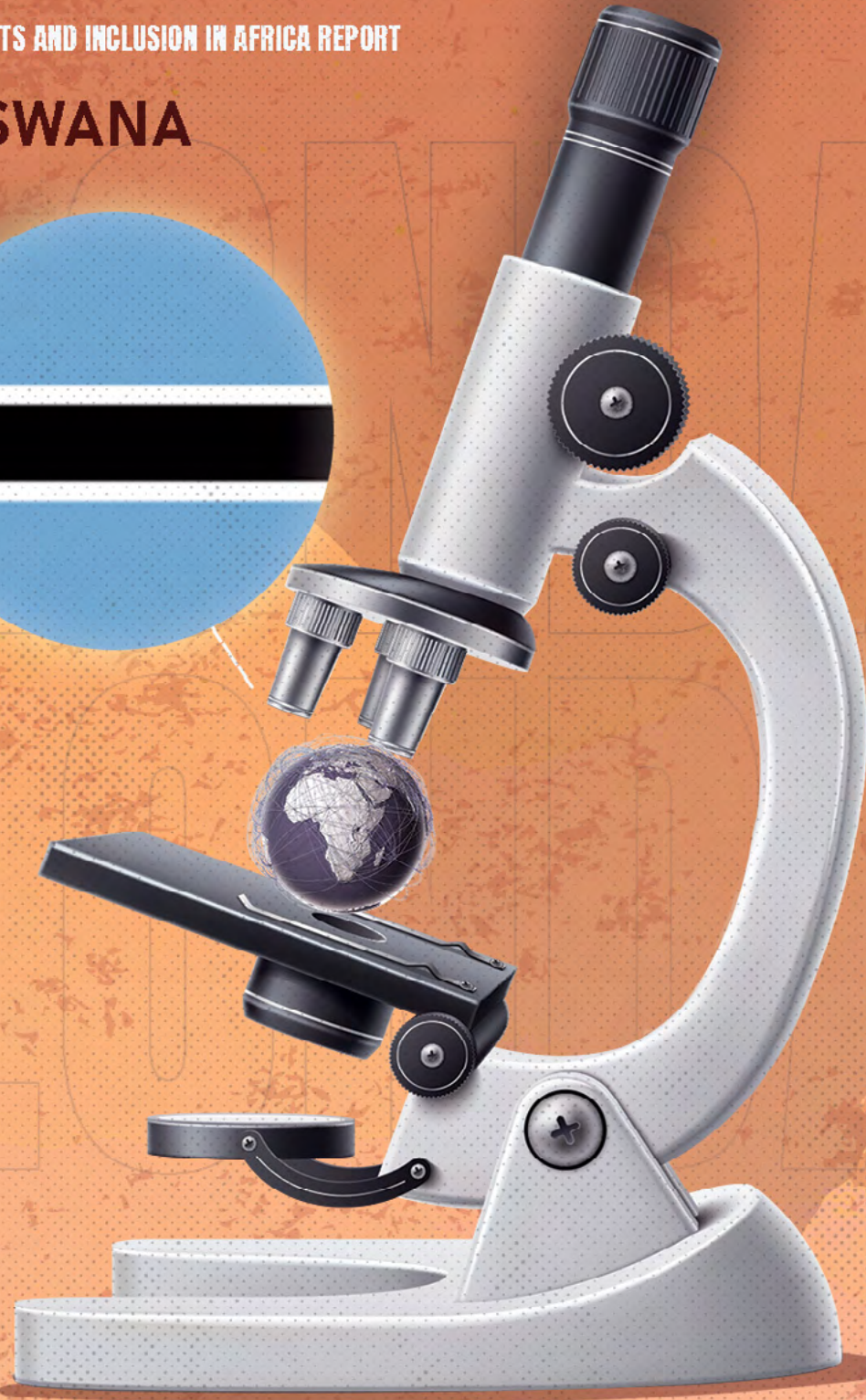
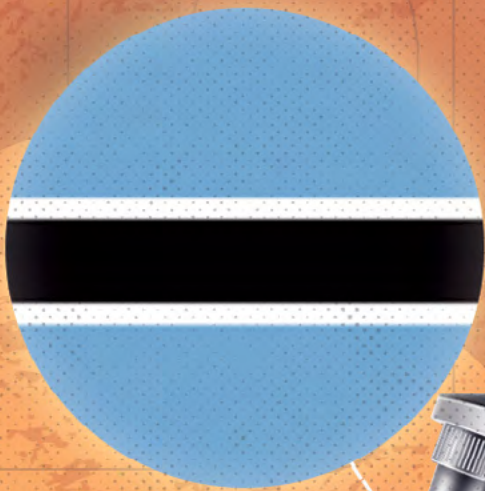


LONDA

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

BOTSWANA



2022

LONDA

Digital Rights and Inclusion in Africa Report 2022

Published by Paradigm Initiative
374 Borno Way, Yaba, Lagos, Nigeria
Email: media@paradigmhq.org
www.paradigmhq.org

Published in April 2023

Report produced by Paradigm Initiative
Design & Layout by Kenneth Oyeniyi

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ISBN: 978-978-797-8980-8

Botswana



▶ Executive Summary

Although Botswana registered limited progress in digital rights and internet freedoms, significant progress has been made in expanding internet access and promoting the development of information and communications technology (ICT). The government has also established a Universal Access Fund (UAF) to support the deployment of broadband networks and other infrastructure projects in 2022, and has implemented a number of initiatives to increase digital literacy and online skills. There is also a burgeoning digital ID industry which demonstrates the diverse interests underpinning the expansion of digital identification systems. However, concerns still persist in aspects such as the development of ICTs and emerging technologies, digital inequality, internet freedom, data governance, government censorship, media self-censorship, and the proliferation of online hate speech and harassment. This study also reveals that Botswana is one of Africa's leading consumers of digital surveillance technologies. The absence of a strict regulatory framework, capacity building, transparency stakeholder engagement and extensive digital rights education exacerbates public surveillance.

Power imbalances amongst sectors continue to foster inequality and cooperation among stakeholders is inadequate. A strong intersectional foundation is also lacking. To address these issues, it is important for the government to adopt the relevant framework to promote and protect digital rights. Such laws should protect media freedom, promote free speech and guarantee online safety. Additionally, it is crucial for the country to establish a robust data protection framework and to also develop a secure and transparent national digital identity system. Prioritising internet freedom, data governance, and the development of ICTs can enhance public participation and inclusion in the digital economy and enjoyment of the benefits of technologies.

The report highlights concerns about governance, due process, exclusion, privacy, surveillance, and equity in relation to the use of technology in Botswana. It suggests that while the country has made progress in expanding internet access and promoting the development of ICTs, there are still significant concerns about how technology is being governed and used, including power imbalances and lack of cooperation among stakeholders. The report calls for stronger legal and regulatory frameworks to promote and protect digital rights and inclusion in the country.



Introduction

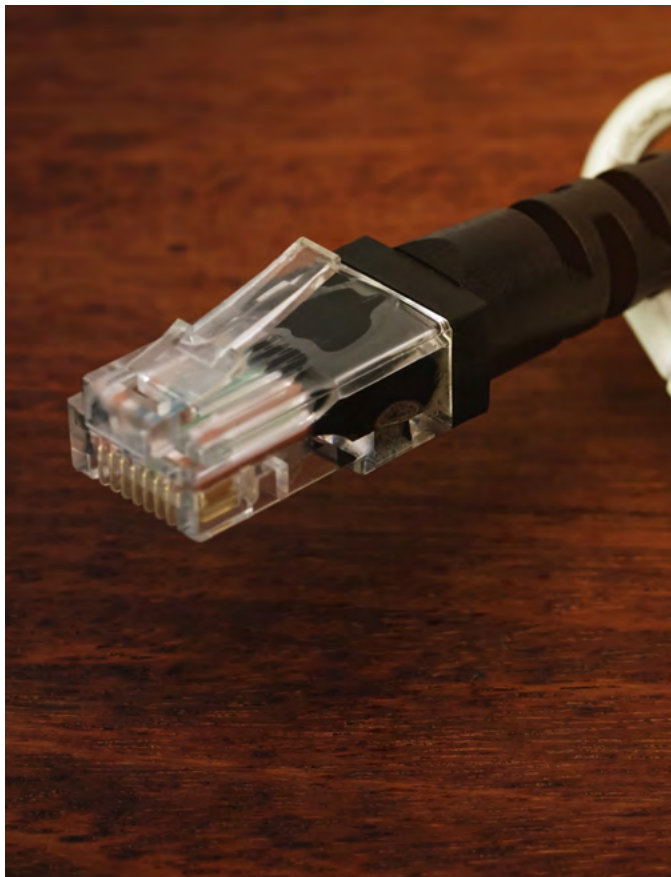
The Covid-19 epidemic highlighted the need for Botswana to enhance intersectional approaches to data governance and digital rights advocacy. Interventions such as lockdowns and social distancing used to restrict the spread of the virus complemented information sharing, while allegations of infringement of human rights were exacerbated by digital technologies and deepening inequality. The goal is to continue to forge cross-sectoral collaborations while exploring intersectional alliances between the government, private sector, social justice movements, and digital rights communities in order to address the growing digital rights issues and inequities. It is also pertinent to investigate the various ways in which digital technologies can be used for societal benefit and to promote meaningful enjoyment of human rights.

However, acknowledging and understanding the disruptive effects of digital technologies in Botswana is critical in ensuring the continued protection of the rights upon which societies are built. Citizens are increasingly wondering if and how the government can protect their rights in the digital age and whether existing policies and legal safeguards are fit for purpose. Digital rights and internet freedom are critical issues in Botswana, as they have the potential to shape the country's socio-economic and political development. In recent years, there has been growing concern about the impact of digital technologies on human rights, including the right to privacy, freedom of expression, and access to information online and offline.

Overall, digital rights and internet freedom are complex and multifaceted issues in Botswana, with a range of stakeholders and interests at play. As the country continues to develop and evolve in the digital age, it is important to address the challenges and opportunities presented by digital technologies in a way that protects and promotes human rights and democratic values.

Country Analysis

INTERNET FREEDOM



INTERNET ACCESS AND DISRUPTIONS

Botswana has a reasonably high internet penetration rate, with approximately 61 per cent of the population having access to the internet. In 2021, the internet penetration rate was 47 per cent. Overall, the number of registered internet users has been increasing.¹ Residential fixed wireless broadband subscribers increased by 95 per cent, from 27,676 in June 2020 to 54,032 in June 2021. This considerable surge can be attributed to the trend of working from home during the Covid-19 pandemic, as well as increased demand for high-speed internet. Furthermore,

from 3,292 customers in June 2020 to 4,560 subscribers in June 2021, commercial fixed wireless subscriptions increased by 39 per cent.² This expansion can be credited in part to the high demand for communication services and remote work transition. However, there are significant disparities in terms of internet access and usage, with urban areas generally having higher levels of connectivity than rural areas.

In Botswana, there are disparities in internet access and usage between urban and rural areas, with urban areas having higher connectivity. Factors include a lack of infrastructure, high costs, and limited access to electricity in rural areas. Additionally, there is a significant gender discrepancy in internet usage with men being more likely to have access to and utilise the internet. This disparity can be attributed to low levels of education, digital illiteracy skills and societal and cultural attitudes towards women's access to technology. People with disabilities and underserved communities also face significant barriers to accessing and using the internet, including lack of accessible infrastructure, digital literacy skills, and affordability of assistive devices.

Despite commodity costs growing, the cost of data and internet consumption is becoming increasingly important, necessitating a price reduction paradigm. The price reductions on mobile broadband by public telecommunications operators, underpinned by increased demand and the need to address affordable connectivity, requires a further review. According to the 2022 Research ICT Africa Mobile Pricing (RAMP) Index, the leading mobile operator, Mascom, by market share charged \$5.47 for 1GB in Quarter 3 of 2022.³

1 Statista "Internet penetration rate in Botswana from 2017 to 2022" (2022) <https://www.statista.com/statistics/1155039/internet-penetration-rate-botswana/> (accessed on 21 December 2022).

2 Botswana Communications Regulatory Authority (BOCRA) "Broadband Facts and Figures" (2021) <https://www.bocra.org.bw/sites/default/files/documents/Broadband-Facts-and-Figures-2021-FINAL-DRAFT-21-Dec-21.pdf> (accessed on 25 January 2023)

3 Research ICT Africa "Cheapest price for 1GB basket by country's operator" (2022) <https://researchictafrica.net/>

This was a further decrease from the cost of \$6.03 in the first quarter of 2022. This appears to be backed by data price reductions enforced by the Botswana Communications Regulatory Authority (BOCRA) in 2020 as part of a drive to lower broadband prices to improve service affordability.

In comparison to other network operators, 1GB of data at Orange cost \$6.37 and Botswana Telecommunications Corporation cost \$6.92 in the first quarter of 2021.⁴ During the Covid-19 pandemic, mobile data and service consumption increased substantially, in keeping with global trends toward rising demand for mobile data and services. Botswana's data pricing remains prohibitively high as compared to other African countries. In addition, the 2022 study conducted by Cable.co.uk ranks Botswana 228th out of 233 surveyed countries in terms of mobile data affordability.⁵ Botswana is among the countries with the most expensive mobile data globally.

Regarding internet disruptions, the government of Botswana has generally taken a pro-internet freedom stance, with a focus on promoting the benefits of the internet for economic development and social inclusion. In 2022 there were no credible reports of the government blocking or disrupting internet access or censoring online content, nor were there instances of internet censorship including the blocking of websites and social media platforms, and the use of digital technologies for political repression and social control.

REVIEW OF THE UNIVERSAL SERVICE FUND

The Botswana Communications Regulatory Authority (BOCRA or the Authority) is mandated under the Communications Regulatory Authority Act No. 19 of 2012 (CRA Act) to promote and provide universal access

to communication services in Botswana. BOCRA established the Universal Access and Service Fund Trust (UASF or the Fund) in April 2014 through a Notarial Deed of Trust to operationalise this objective. The Fund is maintained administratively by BOCRA as its Secretariat and is governed by an independent Board of Trustees (UASF Board).⁶

The UASF subsidy scheme was started in 2017 with the purpose of increasing mobile broadband access in Botswana's underserved areas. The project focused on updating existing networks and establishing new infrastructure in villages in Kgalagadi, Mabutsane Sub-District, and Ghanzi District. As a result of the project, 68 primary schools and nine secondary schools now have dedicated internet connectivity at 5Mbps. The UASF also intends to continue the project by connecting three schools with 10 Mbps dedicated internet and upgrading three



[research-ict-africa-ramp-index-2/](#) (accessed on 21 December 2022)

4 Ibid

5 Existent Ltd "Worldwide mobile data pricing 2022, The cost of 1GB of mobile data in 233 countries" (2022) <https://www.cable.co.uk/mobiles/worldwide-data-pricing/#pricing> (accessed on 19 December 2022)

6 Botswana Communications Regulatory Authority "Universal Access and Service Fund Manual of Operating Procedures" (2021) <https://www.bocra.org.bw/sites/default/files/documents/UASF-OPERATING-MANUAL-2021.pdf> (accessed on 03 December 2022).

further communities in the Mabutsane area to 4G access. To complement this project, the Fund also hired 68 Information Technology (IT) Officers to work in elementary schools that have broadband internet access. Secondary schools, in contrast, have IT officers appointed by the government.⁷

In 2022, the government unveiled its plans to invest \$12.7 million to connect 500 villages to the internet. These funds will be utilised to improve connection in rural areas and public schools. As part of the SmartBots programme run by BOCRA, which maintains the UASF, all communities with a population of at least 5,000 will have a 4G signal.⁸

UASF has announced plans for the 2022/23 fiscal year, which aims to expand mobile broadband networks in three districts in Botswana: Kweneng, Northwest and Southern Districts. The initiative will cover a total of 159 villages, with Orange Botswana providing connectivity to 91 primary schools and 23 junior secondary schools in the Kweneng District, with a targeted bandwidth of 10Mbps for primary schools and 20Mbps for junior secondary schools.⁹

In other countries, there have been allegations about the universal service fund (USF) scheme being exploited through corruption, misuse, and mismanagement.¹⁰ While these issues have never been a cause for concern in Botswana, there is a need for strong internal controls and transparency about how the funds are used for public benefit. Overall, information about the USF's effectiveness and success is based on the SmartBots initiative, and there appears to be no major developments in 2022.

FREE SPEECH AND ONLINE SAFETY

Botswana has a relatively good record on freedom of expression and including press freedom, and the government generally respects these rights. The Constitution of Botswana, 1966 (the Constitution) and law provides for freedom of speech and press. Despite constitutional guarantees for freedom of expression, there have been instances of government censorship and media self-censorship.¹¹ According to some members of the press, the government has occasionally



censored news in State-run media that it deemed unfavourable. In certain cases, government journalists engaged in self-censorship and smear campaigns against dissidents.¹²

7 Notable achievements on the achievements on UASF (Pg 18-19) Botswana Communications Regulatory Authority (BOCRA) "Broadband Facts and Figures" (2021) <https://www.bocra.org.bw/sites/default/files/documents/Broadband-Facts-and-Figures-2021-FINAL-DRAFT-21-Dec-21.pdf> (accessed on 25 January 2023).

8 SmartBots "Digital Connectivity Standards for Villages in Botswana" (2021) https://smartbots.gov.bw/sites/default/files/2021-10/Digital_Connectivity_Standards_V4_2021.pdf (accessed on 26 December 2022).

9 ibis

10 Universal Service and Access Fund Annual Report https://static.pmg.org.za/USAF_Annual_Report_2015-2016_converted.pdf (accessed on 10 December 2022).

11 Joel Konopo "Botswana: Censorship is not the cure for Covid-19" (2020) <https://www.dailymaverick.co.za/article/2020-04-30-botswana-censorship-is-not-the-cure-for-covid-19/> (accessed on 10 December 2022)

12 Joel Konopo "Botswana's Media is in Crisis" (2020) <https://mg.co.za/article/2020-01-29-botswanas-media-is-in->

In 2022, Tshepo Sethibe, a journalist in Botswana, was criminally accused of publishing “alarming” content. The charges originate from a Facebook post on July 8, 2022, by *Moeladilotlhoko News Boiler*, a privately held source with whom Sethibe purportedly works, in which a story about a missing six-year-old child was posted.¹³ The issue with this matter is the criminal accusation of a journalist for publishing content considered “alarming” on a Facebook post. The charges raise concerns about freedom of speech and the rights of journalists to report on news without fear of legal retaliation.

ICTs play an important role in Botswana’s digital economy. Furthermore, the use of ICTs allows for increased access to information and knowledge, empowering citizens to make informed decisions. However, in order for citizens to fully engage and benefit from the digital economy, digital rights such as freedom of expression, access to information, privacy, and non-discrimination must be safeguarded and promoted. Of the greatest threats to internet freedom is the pervasive presence and impact of online-driven harassment and violence which compromises online safety. Women, and other minoritised genders, are harassed every day without consequences. Online harassment and violence is a significant issue and a threat to internet freedom in Botswana. It affects the safety and well-being of individuals, particularly women and other minoritised genders, who are disproportionately targeted on social media platforms.

This type of harassment and violence often take many forms such as cyberstalking, doxxing, and trolling.¹⁴ It can have severe consequences, including mental and emotional distress, loss of employment or educational

opportunities, and even physical harm. Despite this, online harassment and violence often goes unchecked and unpunished, with little being done to hold perpetrators accountable. Botswana’s Constitution, Gender Policy Mainstream Council, National Gender Policy¹⁵, and National Gender-Based Violence Strategy¹⁶ all establish the foundation for tackling issues of online violence and harassment against women and other marginalised genders in the country. While the existing regulations in Botswana address non-consensual sharing of intimate images, these regulations, however, are not specific or robust enough to address the numerous forms of online harassment and violence that exist in the country. As a result, there is a lack of accountability, which endangers the values of internet freedom and people’s capacity to express themselves freely without fear of retaliation.

Online risks are an increasing cause for concern for children and other vulnerable groups such as older persons and persons with disabilities (PWDs) in Botswana. These groups are at a higher risk of being targeted by online predators, cyberbullies, and scammers, as well as being exposed to inappropriate or harmful content. More awareness initiatives and education on online risks and threats is crucial in ensuring that internet users, particularly children, older persons, and PWDs, understand online protection. Such initiatives can empower users to make informed decisions about their online activities, and to raise awareness of the potential dangers that can be encountered online. Under the Cyber4Dev Program, BOCRA established a Communications Incident Response Team (COMM-CIRT) to coordinate and support the response to computer security incidents in the communication sector.¹⁷ This initiative is critical in managing online risks

[crisis/](#) (accessed on 10 December 2022)

13 Committee to Protect Journalists “Botswana journalist Tshepo Sethibe criminally charged over ‘alarming publications” (2022) <https://cpj.org/2022/07/botswana-journalist-tshepo-sethibe-criminally-charged-over-alarming-publications/> (accessed on 24 January 2023)

14 Pierluigi Paganini “Trolling, Doxing & Cyberstalking: Cybercrime & The Law” (2017) <https://securityaffairs.co/56841/laws-and-regulations/trolling-doxing-cyberstalking-cybercrime-law.html> (accessed on 25 January 2023)

15 Gender Links “Botswana Strategy 2016 to 2020” (2015) https://genderlinks.org.za/wp-content/uploads/2016/03/BOTSWANA-Strategy2016to2020_ahgrmf_271015.pdf (accessed on 25 January 2023)

16 UN Women “National Gender-Based Violence Strategy 2015–2020” (2015) <https://evaw-global-database.unwomen.org/en/countries/africa/botswana/2015/national-gender-based-violence-strategy-2015-2020> (accessed on 25 January 2023)

17 <https://www.cirt.org.bw>

and threats, particularly for vulnerable groups. Having a dedicated team that monitors and responds to cyber threats can assist to reduce the impact of security incidents on these vulnerable groups and guarantee that their online activities are safe and secure.

MEDIA FREEDOM

The Media Practitioners' Association (MPA) Bill of 2022,¹⁸ gives the government greater control over the media, which can potentially have a negative impact on freedom of the press and freedom of expression in Botswana. The Bill repeals the existing Media Practitioners Act, 2008 (Act No. 29 of 2008), and the Media Council, and replaces it with the Media Practitioners Association. The fact that the Bill sailed through Parliament without debate is also concerning, as it suggests that there may not have been adequate opportunity for public scrutiny and input.

After it sailed through Parliament without debate, on June 21, 2022, the Media Practitioners' Association (MPA) Bill of 2022, was gazetted.¹⁹ While this Act regulates journalists' conduct and establishes a database of media practitioners and organisations, this contentious move appears to have repercussions for press freedom and independence.²⁰

That the government owns and operates the Botswana Press Agency (BOPA) and its subsidiary, the *Daily News*, which dominates the print media and two State-owned radio stations, raises concerns about state control of the media and potential for political interference. This does not ensure independence of the media as prescribed in Principle 11 of the ACHPR Declaration of Principles on Freedom

of Expression and Access to Information in Africa, that states should ensure that public media are independent and pluralistic and that private media are free from political, economic and other forms of control.²¹

However, during the period under review, there were reports of intimidation and harassment of journalists in the current administration under President Mokgweetsi Masisi. Tshepo Sethibe and Michelle Teise, journalists from the news site *Moeladilothoko News Boiler*, were detained together with three others on January 28, 2022, by the Botswana Police Service (BPS) in Phitshane. Police confiscated their phones and charged them with criminal trespass after they entered two houses while gathering information on the disappearance of a local man, Obakeng Badubi. On April 15, 2022, authorities dismissed the case.²²

CYBERCRIME AND COMPUTER RELATED CRIMES ACT, 2018

The Cybercrime and Computer Related Crimes Act in Botswana, which was enacted in 2018, provides a legal framework for addressing various forms of cybercrime, including cyber harassment, cyber stalking, offensive electronic communication, distribution of child pornography, revenge porn, and racist and xenophobic material.²³ The Act criminalises these activities and provides for penalties, including fines and imprisonment, for individuals found guilty of committing these crimes.

The Act also establishes the Cybercrime Unit within the Botswana Police Service, which is responsible for investigating and enforcing the

18 Media Practitioners' Association Bill, 2022 https://data.misa.org/en/entity/ot69kr97wud?utm_source=Uwazi&page=7

19 Media Institute of Southern Africa "Analysis of the Botswana Media Practitioners' Association Bill, 2022" (2022) <https://misa.org/blog/analysis-of-the-botswana-media-practitioners-association-bill-2022/> (accessed on 01 December 2022)

20 Anton Harber "Botswana Media Practitioner Act is a threat to freedom of the media" (2022) <https://www.dailymaverick.co.za/article/2022-09-28-botswana-media-practitioner-act-is-a-threat-to-freedom-of-the-media/> (accessed on 10 December 2022)

21 Declaration of Principles of Freedom of Expression and Access to Information in Africa (the Declaration) https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf (accessed on 03 December 2022)

22 Committee to Protect Journalists "Botswana journalist Tshepo Sethibe criminally charged over 'alarming publications'" (2022) <https://cpj.org/2022/07/botswana-journalist-tshepo-sethibe-criminally-charged-over-alarming-publications/> (accessed on 21 December 2022)

23 Cybercrime and Computer Related Crimes Act, 2018 <https://www.bocra.org.bw/sites/default/files/documents/18%20Act%2029-06-2018%20Cybercrime%20and%20Computer%20Related%20Crimes.pdf>

provisions of the Act.²⁴ The Unit is empowered to work closely with other law enforcement agencies, including Interpol and the FBI, to combat cybercrime. However, Section 16 is a problematic section of the Act as it uses vague and overly broad terms like “obscene, lewd, lascivious or indecent,” to criminalise a broad range of content, and is a potential threat to freedom of expression going against international standards of limiting rights. Additionally, Section 19(2) addresses child pornography, which is an important issue as it ensures child safety in the digital age.

PRIVACY AND SURVEILLANCE

Botswana does not have a general law that governs the use of surveillance systems. Instead, two laws from two separate acts allow for surveillance activities. One provision comes from the Counter-Terrorism Act (Act 24, 2014)²⁵, and the other from the Intelligence and Security Services Act, 2007 (ISSA).²⁶ More specifically, the Intelligence and Security Services Act, 2007 (ISSA) under Section 25 states that “the Director General or an officer authorised by the Director General in writing, may apply to a Magistrate’s Court or the High Court for an order in writing authorising the Director General or an officer authorised by the Director General in writing, as the case may be, to intercept any communication for the purpose of obtaining such information as may be necessary for the purpose of protecting the national security, or for the purpose of preventing or detecting crime.” Offences related to terrorism, and financing terrorism can result in an interception order. An investigating officer from the Botswana Police Service, Botswana Defence Force, or Directorate of Intelligence and Security (DIS) must request an interception order.²⁷ The clause applies to targeted surveillance when

an act of infraction is being investigated.

There have been reports in the past that the State used the Directorate of Intelligence and



Security (DIS) to monitor the activities of opposition members, government critics, and human rights advocates. In 2021, the Citizen Lab report discussed the Israeli supply of cyber weapons to Botswana.²⁸ These are being used to spy on citizens. Following this, the Committee to Protect Journalists (CPJ) reported on Botswana police’s deployment of Cellebrite’s Universal Forensic Extraction Device which reportedly collects data from journalists’ phones.²⁹ This is part of the onslaught that the media and journalism fraternity have to

24 Tlotlo Mabaso “New Police Lab to help fight cybercrime ” (2019) <https://guardiansun.co.bw/News/new-police-lab-to-help-fight-cybercrime> (accessed on 25 January 2023)

25 Counter-Terrorism Act (Act 24, 2014) <https://issafrica.org/ctafrica/uploads/Botswana%20Counter-terrorism%20Act%202014.pdf>

26 Intelligence and Security Services Act, 2007 (ISSA)

27 Innocent Selatlhwa “Academic calls for law on communications interception” (2022) <https://www.mmegi.bw/news/academic-calls-for-law-on-communications-interception/news> (accessed 29 January 2022)

28 Suraya Dadoo “Israel helping African governments to place us all under surveillance” (2020) <https://www.timeslive.co.za/ideas/2020-12-18-opinion-israel-helping-african-governments-to-place-us-all-under-surveillance/> (accessed on 09 December 2022).

29 Jonathan Rozen “Botswana police use Israeli Cellebrite tech to search another journalist’s phone” (2021) <https://cpj.org>

contend with. The same security agency (DIS), was accused of contracting an Israeli firm to supply it with spyware that is capable of spying on internet-based communication such as emails, Facebook and Twitter.³⁰

The government tabled the Criminal Procedures and Evidence (Controlled Investigations) Bill on February 4, 2022. The fast-tracked Bill added privacy safeguards and control of police monitoring, interceptions, and seizures.³¹ A coalition of Botswana press freedom organisations condemned the Bill, arguing that it had the potential to “criminalise journalism and freedom of expression.”³² This Bill may impede online freedom of expression and access to information. Furthermore, it allows for unwarranted surveillance of citizens or criminalisation of journalism and freedom of expression. Within days, the government revised the Bill, creating a judge-led panel to monitor covert law enforcement operations and outlawing unwarranted surveillance. This includes ensuring that any surveillance or interception of communications is done with a warrant or court order, and is done in a transparent and accountable manner. This approach is consistent with the ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa, notably principle 41 on adequate the need for oversight measures in conducting surveillance.

In addition to oversight mechanisms for controlled investigations and undercover operations, it is also important to consider whether the Bill includes sufficient protections for privacy in the digital age. This includes ensuring that any surveillance or interception of communications is done with a warrant

or court order, and is done in a transparent and accountable manner. While these issues are important, it should be a key priority that this Bill includes explicit guidelines on the collection, storage, and use of personal data, along with robust mechanisms to ensure accountability and transparency, both of which are clearly lacking. This can involve regular audits, independent oversight, and severe penalties for privacy rights violations.

The level of awareness and advocacy regarding the right to privacy is also an important factor to consider. In Botswana, there is a need for more awareness initiatives and education to ensure that internet users understand the risks and threats to their privacy, as well as applicable effective preventive measures. This is particularly important for children, who are often more vulnerable to online risks and need additional protections for their privacy. Furthermore, ensuring the implementation of Botswana’s Data Protection Act³³ and regional standards, such as the African Union Convention on Cyber Security and Personal Data Protection,³⁴ will help to protect privacy rights.

DATA GOVERNANCE

DATA PROTECTION ACT

The Data Protection Act - Act No. 32 of 2018 (the DPA)³⁵ was passed by Parliament on August 3, 2018, and went into effect on October 15, 2021. The Data Commissioner has also been appointed. The Act was meant to come into force when the grace period ended on October 15, 2022. However, this grace period was extended for another year. The Data Commissioner acknowledged that

[org/2021/07/botswana-cellebrite-search-journalists-phone/](https://www.sundaystandard.info/kapinga-moves-to-stop-occriminal-behaviouroco-of-tapping-phones/) (accessed on 11 December 2022)

30 Sunday Standard “Kapinga moves to stop “criminal behaviour” of tapping phones” (2016) <https://www.sundaystandard.info/kapinga-moves-to-stop-occriminal-behaviouroco-of-tapping-phones/> (accessed on 8 December 2022)

31 Thapelo Ndlovu “Botswana civil society organisations rebuff criminal procedures bill” (2022) <https://www.apc.org/en/news/botswana-civil-society-organisations-rebuff-criminal-procedures-bill> (accessed on 25 January 2023)

32 African Press Agency “ Botswana media bodies slam proposed surveillance law” (2022) <http://japanews.net/en/news/botswana-journalists-up-in-arms-against-proposed-surveillance-law> (accessed on 29 November 2022)

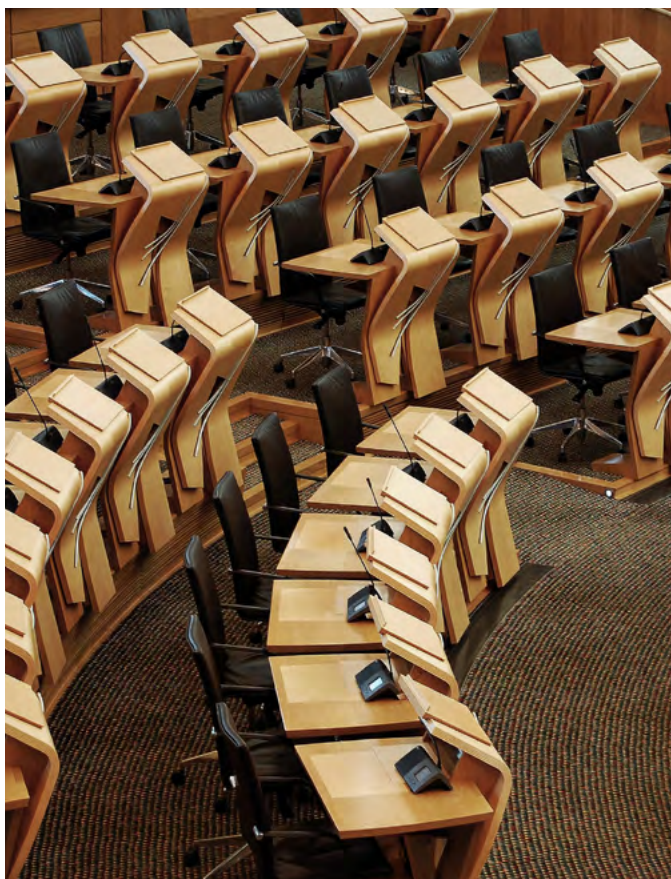
33 Data Protection Act, 2018 <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>

34 African Union Convention on Cyber Security and Personal Data Protection https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf (accessed on 25 January 2023)

35 Data Protection Act - Act No. 32 of 2018 <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>

the office required more time to enforce the Act.³⁶ This extension may be interpreted as an opportunity for many businesses to prepare and guarantee their compliance.

There are notable shortcomings in the Act. For instance, Section 29 of the DPA on data collected from other sources does not explicitly



address the “protection for privacy of home and other property” in the course of a purely personal or household activity as provided in Section 9 of the Bill of Rights. Although the Act outlines guidelines for processing information, there are challenges in implementing these guidelines in a transparent and institutional manner.³⁷ This makes it difficult to balance the need to protect citizens’ personal information with the requirement to use that information

for national security and public safety purposes. This exclusion may imply that personal data collected, processed, or shared in the course of certain activities is not protected to the same extent as data collected, processed, or shared in other contexts. It reduces the Act’s protection for people who use technology and the internet for personal and home purposes. Overall, this may fall short of international requirements, such as the EU’s General Data Protection Regulation (GDPR),³⁸ which applies to all personal data processing activities, independent of context.

There are prominent issues flagged within the Act. Section 48(1) makes it illegal to transfer personal information outside of Botswana while Section 48(2) provides for only an authorised nation list, which has been published.³⁹ There are also additional exclusions that allow for a transfer if a country is not on the list. The concern with this exclusionary approach is that it raises questions about the criteria used to qualify countries for the list, as well as the ramifications for data privacy and the digital economy in terms of cross-border data transfers. One potential solution to the issues flagged within the section on cross-border data transfer would be to adopt a more principle-based approach. This could involve establishing clear and transparent criteria for determining when personal information can be transferred outside of the country, based on factors such as the level of protection for personal data in the receiving country and the rights and freedoms of individuals affected by the transfer. Botswana should consider joining the African Union Convention on Cyber Security and Personal Data Protection, which aims to promote the protection of personal data and the right to privacy in Africa and establish a framework for cross-border data flows. This would allow Botswana to align its

36 Andrew Maramwidze “Back to the drawing board ... glaring gaps in Botswana’s Data Protection Act” (2022) <https://itweb.africa/content/LPp6V7rB1Kg7DKQz> (accessed on 21 December 2022)

37 Part IV Data Protection Act, 2018

38 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1 <https://op.europa.eu/en/publication-detail/-/publication/3e485e15-11bd-11e6-ba9a-01aa75ed71a1> (hereafter, ‘GDPR’).

39 See authorised list of countries here: <https://www.michalsons.com/wp-content/uploads/2022/10/Botswana-Transfer-of-Personal-Data-Order-2022.pdf>

data protection laws with those of other African countries and benefit from the collective expertise and experience of the continent.

Considering the relationship between the right to privacy and Section 12(1) of the Constitution of Botswana on protection of freedom of expression "[*Freedom to receive ideas and information without interference...*]" guarantees the right to access information, notwithstanding the Act's limited guidance on the subject on this issue.⁴⁰ In order to guarantee the right to access information as outlined in the Constitution, it is necessary to provide clear guidance on the duties and responsibilities of the Data Protection Commissioner. This will ensure that the general public is aware of which body to approach in specific situations and improve their understanding of the process for accessing information. By clarifying the roles and responsibilities of the Commissioner, the public's right to access information will be better protected and exercised. on how the duties and responsibilities of the Data Protection Commissioner should be reconciled.

Botswana is yet to ratify the Malabo Convention. The Malabo Convention has not yet entered into force, and it is still open for ratification by all African Union Member States. The Data Protection Act is the primary statute that oversees personal data protection in Botswana. However, there are additional laws and regulations in the country that protect personal information as well. The Cybercrime and Computer Related Crimes Act was passed in 2018, and criminalises various cybercrimes, including unauthorised access to personal data. It also provides protection for personal

information and key information infrastructure.

DIGITAL IDENTITY DOCUMENTS

The Botswana government acknowledges and values national identity management and civil registrations systems as critical for good governance and accountability for long-term socioeconomic development, including the right to a name, citizenship, nationality, voting, and other associated rights. The right to identity and nationality is included in the Universal Declaration of Human Rights and the Convention on the Rights of the Child Resolution 44/25, both of which were adopted on November 20, 1989.⁴¹ The African Union Agenda 2063 strategy includes a specific action plan for African digital identity development.⁴² The purpose of this strategy is to create a framework for the development, deployment, and use of digital identity systems in Africa. Through the use of digital identification systems for a variety of purposes, including financial inclusion, e-commerce, and access to government services. This will help facilitate the implementation of the digital identity action plan, which the African Union has already developed through the African Digital Identity Ecosystem (ADIE).

Botswana became the first country in Southern Africa to issue electronic passports in 2020, after extending its procurement in 2021 with a German company called Veridos for ICAO-compliant passports with embedded biometrics.⁴³ Later in 2022, the Southern African Development Community (SADC) Secretariat reached an agreement with the government of Botswana to start manufacturing biometric passports utilizing its technological equipment and facilities.⁴⁴

40 The Botswana Data Protection Act establishes the Office of the Data Protection Commissioner, which is responsible for enforcing the Act and ensuring the protection of individuals' personal data. The Commissioner is appointed by the President and is independent in the exercise of their functions. The Commissioner's mandate includes promoting public awareness of data protection, monitoring and enforcing compliance with the Act, and investigating and resolving complaints. It is not clear if the office of the Commissioner has been fully established, however, the act is meant to be enforced by the office of the commissioner and it is important that this office is established and adequately resourced for its mandate to be effectively carried out.

41 United Nations Human Rights Commission (UNHCR) <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed on 11 November 2022)

42 African Union's Agenda 2063 https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf (accessed 25 January 2023)

43 Biometrics Research Group, Inc. "Veridos receives further order for biometric passports from Botswana" (2020) <https://www.biometricupdate.com/202012/veridos-receives-further-order-for-biometric-passports-from-botswana> (accessed on 19 December 2022)

44 Andrew Maramwidze "Botswana pens biometric passport deal with SADC" (2022) <https://itweb.africa/content/>

The Digital Covid Certificate in Botswana is another example of a digital ID system used to register eligible Covid-19 vaccine beneficiaries. The government increasingly adopted this technology as a way to combat the Covid-19 pandemic and to protect the health and safety of its citizens. In response to the pandemic, the Presidential Covid-19 Task Force mandated every citizen to apply for a Movement Permit during the state of emergency to enable travel between zones. The Movement Permit was issued through an online registration platform.⁴⁵ The use of digital surveillance tools and technologies have faced public resistance and lawsuits because they had the potential to exclude or otherwise harm vulnerable people and communities.⁴⁶ Furthermore, there have been questions about the long-term impact of these digital surveillance measures on civil liberties, privacy and human rights, as well as the potential for them to be used beyond the Covid-19 pandemic.

While acknowledging efforts by the government to provide healthcare services during the pandemic, it is important to note that reliance on digital technologies meant that pre-existing gaps in digital access and of this platform's utilisation were exacerbated among already disadvantaged and underserved areas and communities. The drive supporting digital IDs is the result of long-standing governmental and monetary interests colliding with the enormous economic benefits driving technological breakthroughs such as biometrics and cloud computing.

Key concerns about Digital IDs include: "function creep" and mandatory enrolment; systemic exclusion; data breaches and privacy threats; increased police and state surveillance power; and the preference for corporate solutions over community-based solutions. Yet a growing body of critical scholarship and public advocacy has drawn attention to

these issues, and to date, there have been no definite allegations of misuse by state actors. What is important to note is the absence of accountability or oversight mechanisms to oversee the functioning of Digital ID systems.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

AI STRATEGIES

Botswana does not have a clear national AI strategy, however there are fragmented AI initiatives embedded in key government policies and strategies. The SmartBots digitisation strategy is a case in point. It is aimed



at accelerating digital transformation in the business and government sectors. One of the key areas of focus is the development of data-driven services and products that use digital technology such as artificial intelligence.⁴⁷ This

[JBwEr7n3NRAM6Db2](#) (accessed on 19 December 2022)

45 See Botswana's COVID 19 Vaccination Self-Registration link: <https://fenyacovid.gov.bw/armready/>

46 Mpho Mokwape "Presidential Covid-19 Task Team in court over BSafe app " (2020) <https://www.mmegi.bw/news/presidential-covid-19-task-team-in-court-over-bsafe-app/news> (accessed on 9 December 2022).

47 Douglas Letsholathebe "Industry 4.0 for inclusive development" (2022) https://unctad.org/system/files/non-official-document/ecn162022_industry_s02_botswana_DLetsholathebe_en.pdf (accessed on 20 December 2022).

approach provides an economic development model aimed at technology improvements associated with the fourth industrial revolution. It is also critical to address the implications for individuals' rights and privacy, along with the possibility of exclusion and inequality in access to these new technologies. Furthermore, bridging the digital divide and ensuring that all communities have equal access to these technologies is important to maximising the full benefits of the fourth industrial revolution. Focusing on the governance, ethics, and cultural aspects of the internet and emerging technologies is beneficial for enabling policy environments and also for ensuring ethical and transparent usage of these new technologies.

The National Planning Commission released the National Development Plan: Vision for 2036 (NDP 11), which intends to develop information and communication technologies (ICTs) by the year 2036.⁴⁸ A component of the strategy is to improve ICTs through a national e-Government strategy that places Botswana on a global stage with multilateral organisations like the Information Telecommunications Union (ITU) and World Trade Organization (WTO).

In August 2022, the Botswana Institute for Technology Research and Innovation (BITRI) hosted the national forum on the Fourth Industrial Revolution (4IR). The forum's goal was to provide a platform for the public and private sectors to understand the local, regional, and global perspectives of the 4IR. With respect to the country's progress towards Vision 2036 aspirations in the designated key areas and its readiness for 4IR, it is still uncertain what the country hopes to achieve with its long-term strategy in the AI field.

However, it is possible that some sectors of the economy, notably private companies, are still in the early stages of adopting and using AI technology for business automation. The Botswana government, in contrast, has recognized the potential of 4IR in stimulating the country's economic growth and is developing a strategy for the adoption and

integration of these technologies into the country's economy and society. To ensure that the country fully benefits from emerging technology, the government and private sector must invest in research and development, as well as education and training.

48 National Planning Commission <https://www.vision2036.org/bw/npc>

Conclusion and Recommendations

There is a need for the establishment of a network of actors in Botswana to advocate for digital rights and internet freedom and to better understand and identify knowledge gaps in the field. Research is needed to understand the dichotomy between aspects such as national security and internet freedom. It is also important to build a knowledge base driven on practice and lessons learned, including through the aggregation of existing data and the development of new analytical tools to map trends and progress. The following recommendations serve as a guide for enhancing the current status of digital rights in Botswana.

GOVERNMENT	COMMS REGULATORY	CIVIL SOCIETY
<p>The government should:</p> <ul style="list-style-type: none"> Develop national AI strategies that implement economic and technological development mirroring democratic values, with input from relevant stakeholders such as industry, academics, and civil society. Such policies should be grounded in democratic values, including transparency, accountability, and the protection of human rights. These policies should address issues such as data privacy, bias and discrimination, and the potential impact of AI on employment and other areas of society. Create policies and programs that support gender equality and empower women and girls. This can 	<p>The Botswana Communications Regulatory Authority should:</p> <ul style="list-style-type: none"> Focus on expanding access to affordable and reliable internet connectivity in economically deprived and marginalised communities, while also ensuring the reliability and sustainability of its initiatives to expand broadband network deployment across the country. Consider collaborating with more private sector companies and local entrepreneurs, to optimise the impact of its activities. 	<p>The civil society in Botswana should</p> <ul style="list-style-type: none"> Prioritise advocating for media independence, freedom of the press and expression, and privacy rights in the digital age. This can be achieved by the following: <ul style="list-style-type: none"> Monitoring the implementation and impact of the Media Practitioners' Association (MPA) Bill of 2022 to ensure that it does not undermine freedom of expression and the press. Calling for transparency and accountability in the use of surveillance systems and for the protection of privacy rights in the digital age through robust data protection mechanisms.

GOVERNMENT	DATA PROTECTION	ACADEMIA
<p>involve implementing initiatives that boost the participation and representation of women in the digital sector, as well as tackling online gender-based violence and discrimination through digital rights legislation and measures to enhance online safety for children in general.</p> <ul style="list-style-type: none"> • Adopt and enforce strong laws and policies that protect these rights to improve media freedom, free speech, and online safety. This could include legislation that prohibits the government from censoring or restricting the media, as well as measures to prevent online harassment and hate speech. • Adopt measures to promote a culture of respect for free speech and media freedom by educating the public about the importance of these rights and the role of the media in a democratic society. • Implement robust data protection laws and regulations to enhance data protection and the proper utilisation of digital identities in Botswana. This should encompass legislation that holds companies accountable for 	<p>The Data Protection Commissioner should take the following actions:</p> <ul style="list-style-type: none"> • Collaborate with other regulatory authorities and various sectors to ensure the safety of personal data in various sectors, for example, the Commissioner could collaborate with regulatory authorities such as the Botswana Communications Regulatory Authority (BOCRA) and the Botswana Financial Intelligence Agency (BFIA) to ensure the safety of personal data in their respective industries. • Ratify the African Union Convention on Cyber Security and Personal Data Protection to align with international standards. • Adopt a principle-based approach for trans-border flow of personal data. The Commissioner should consider adopting a principle-based approach for trans-border flow of personal data rather than an exclusionary approach. This could involve establishing clear and transparent criteria 	<p>The academia should:</p> <ul style="list-style-type: none"> • Encourage interdisciplinary collaboration between fields to tackle complex digital rights and internet freedom issues in Botswana. • Conduct research on AI to assist the government in its response to the ethical use of AI and emerging technologies.

GOVERNMENT	DATA PROTECTION	ACADEMIA
<p>securing personal data and clearly outlining their policies for data collection, usage, and sharing.</p> <ul style="list-style-type: none"> Consider amending both the Gender and Development Policy of 2015 and the National GBV Strategy and Plan of Action (2016 – 2021) to address concerns of online child safety, digital rights and gender equality towards data protection and digital identity in the country. 	<p>for determining when personal information can be transferred outside of the country.</p>	



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