

LONDA 2023

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT



BOTSWANA

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Botswana

EXECUTIVE SUMMARY

Through a multifaceted approach combining empirical investigations and desk research methods, our study delves into thematic areas such as Privacy and Surveillance, the Universal Service Fund (USF), and Developments in ICT and Emerging Technologies. Key findings reveal commendable strides in expanding internet access and fostering ICT development, mixed with privacy, surveillance, and digital inequality concerns. Key takeaways include establishing the Universal Access and Service Fund (UASF) as a catalyst for bridging the digital divide alongside challenges in regulatory frameworks and privacy protections. Strategic recommendations, detailed in the body of the report, emphasise the need to refine surveillance laws, enhance transparency in UASF operations, and foster collaboration among stakeholders. This report is a foundation for informed

discourse and action, paving the way for Botswana's more inclusive and rights-centric digital future.

Introduction

In the dynamic realm of digital rights and internet freedoms, Botswana’s progress since the 2022 report reflects a transformative path marked by both growth and persistent challenges.⁷⁵ In exploring the digital rights landscape of 2023, the nuanced interplay between progress and unresolved issues becomes evident. While the nation demonstrates commendable progress in expanding internet access and fostering ICT development, concerns linger regarding privacy, surveillance, and digital inequality. Amid intensified efforts in digital inclusion and infrastructure deployment, the evolving landscape underscores the pressing need for regulatory frameworks and stakeholder engagement recalibration.

⁷⁵ O, Mudongo ‘Londa 2022 -Botswana Digital Rights and Inclusion Report’ https://paradigmhq.org/sdm_downloads/londa-2022-botswana/ (accessed 13 February 2024)

► Country Analysis

Privacy and Surveillance

The Constitution firmly established the right to privacy in Botswana in 1966, which explicitly prohibits unreasonable searches and seizures of property and persons without a warrant (Section 9). Complementing this constitutional protection, the country has enacted the Data Protection Act, 2018 (DPA) (Act No. 32 of 2018),⁷⁶ designed to regulate the processing of personal data and safeguard individuals' privacy concerning their personal information (Part III). While Botswana has taken steps to safeguard privacy rights through various measures, including the Data Protection Act, there remains a gap in the legal framework concerning surveillance practices by law enforcement agencies.

Developments in 2022 saw the introduction of the Criminal Procedure And Evidence (Controlled Investigations) Bill, 2022,⁷⁷ which, while addressing some aspects of digital communication surveillance for law enforcement purposes, may not fully encompass the comprehensive legal framework needed to regulate all aspects of surveillance practices in Botswana.⁷⁸ Critics argue that the Bill falls short in providing sufficient procedural safeguards, raising concerns about potential violations of fundamental rights, particularly the right to privacy.⁷⁹ Upon analysis, it appears the Act lacks sufficient procedural safeguards to protect the right to privacy. The absence of robust safeguards raises concerns about the potential for abuse and violations of digital rights, including unlawful surveillance practices by law enforcement agencies. As such, there is a pressing need to review and amend the Bill to strengthen protections for digital rights, ensuring that any surveillance activities are conducted within a framework that upholds privacy rights and maintains due process. In response to these challenges, various organisations in Botswana actively advocate for privacy and digital rights. One of the notable entities includes the Media Institute of Southern Africa (MISA) which has conducted training workshops and seminars as part of a digital rights awareness project within the country.⁸⁰

At the international level, Botswana has demonstrated its commitment to protecting privacy and human rights by ratifying significant treaties, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.⁸¹ These ratifications signify Botswana's commitment to global standards and principles aimed at safeguarding individual liberties and respecting human dignity. The country's dedication to these principles has been evaluated by the Freedom House's Freedom on the Net report, which assigned Botswana a score

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76 Data Protection Act, 2018 (Act No. 32 of 2018): <https://www.bocra.org.bw/sites/default/files/documents/DataProtectionAct.pdf>.

77 Criminal Procedure And Evidence (Controlled Investigations) Bill, 2022: <https://cpj.org/wp-content/uploads/2022/01/Botswana-Criminal-Procedure-and-Evidence-Bill.pdf>

78 R, Wanjohi 'Digital age dilemmas: Navigating human rights threats in Botswana's online realm' (2023) <https://advox.global-voices.org/2023/10/03/digital-age-dilemmas-navigating-human-rights-threats-in-botswanas-online-realm/> (accessed on 12 January 2024).

79 T, Bulule "Surveillance within the Law: A Critique of the Legal Framework for Surveillance of Digital Communications by Law Enforcement Authorities in Botswana" (2023) https://www.researchgate.net/publication/371570996_Surveillance_within_the_Law_A_Critique_of_the_Legal_Framework_for_Surveillance_of_Digital_Communications_by_Law_Enforcement_Authorities_in_Botswana (accessed on 15 January 2024).

80 The Patriot 'MISA Botswana Conducts Awareness Workshop on Digital Rights' (2024) <https://thepatriot.co.bw/misa-botswana-conducts-awareness-workshops-on-digital-rights/> (accessed on 12 January 2024).

81 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information (the Declaration) <https://achpr.au.int/en/node/902> (accessed on 11 January 2024).

of 72 out of 100 (with 0 indicating the least free and 100 the most free).⁸² Despite progress, ongoing scrutiny and advocacy efforts underline the importance of addressing potential shortcomings in privacy protection within Botswana’s legal framework.

Universal Access and Service Fund (UASF)

The Universal Access and Service Fund (UASF) was established in 2014 as per Section 5 (c) of the Communications Regulatory Authority (CRA) Act, 2012 (Act No. 19 of 2012) and the Notarial Deed of Trust.⁸³ As of the latest financial statement for 2022, the UASF’s total asset value stands at Pula 573,165,960.⁸⁴ Transparency regarding the Fund’s financial status has been published to ensure accountability and effective utilisation of funds. Its primary objective is to ensure that all Batswana have affordable access to basic yet essential communications services. Oversight of the Fund is entrusted to an independent Board of Trustees, representing both public and private sectors, with the Communications Regulator (BOCRA) serving as the Secretariat.⁸⁵ The UASF demonstrably impacted Botswana’s communication landscape through diverse projects, including promoting access, developing ICT infrastructure, and developing ‘grassroots level’ skills to exploit the benefits of ICTs and ensure wider accessibility across the nation.⁸⁶ One notable project funded by the UASF was the Botswana Digital Project for Village Connectivity, which was launched to improve internet access and digital connectivity in rural areas.⁸⁷ This initiative aims to bring essential digital services to underserved communities, empowering residents with access to information, education, and economic opportunities.

Beyond these developments, the UASF champions education by implementing school connectivity initiatives. By bridging the digital divide in educational institutions, they equip students with the tools needed to thrive in the modern digital world.⁸⁸ This plan emphasises the UASF’s role in addressing issues such as the lack of broadband internet and low bandwidth capacity in government schools nationwide. In collaboration with BOCRA, the UASF progressed further by deploying Wi-Fi hotspots nationwide. This strategic partnership expands affordable internet access, fostering innovation and entrepreneurship within local communities.⁸⁹ The UASF has established itself as a key player in driving Botswana’s digital transformation through these comprehensive efforts.

Recognising the UASF’s significance in bridging the digital divide and ensuring universal access, the government of Botswana incorporated it into the National Development Plan 11 covering the years 2017-2023.⁹⁰ The positive impact of the UASF is demonstrated through the substantial increase in mobile subscriptions, which has exhibited steady growth. Currently, the number of mobile

82 Freedom House ‘Freedom on the Net 2023: Botswana’ (2023) <https://freedomhouse.org/country/botswana/freedom-world/2023> (accessed on 11 December 2024).

83 Universal Access Service Fund <http://www.uasf.org/bw/wp-content/uploads/2016/10/UASF-deed-of-trust.pdf> (accessed on 29 January 2024).

84 UASF, ‘2022 Annual Report’ <https://www.uasf.org/bw/wp-content/uploads/2023/07/UASF-2022-AR-web.pdf> (accessed 13 February 2024)

85 BOCRA ‘Universal Access Service Fund Strategic Plan 2019 - 2024’ <https://www.bocra.org/bw/sites/default/files/documents/Final-Draft-UASF-Strategy-2019-2024-for-consultation.pdf> (accessed on 20 January 2024)

86 UASF ‘BCRA through the UASF employs Sixty-Eight (68) IT Officers’ <https://www.uasf.org/bw/bocra-through-the-uasf-employs-sixty-eight-68-it-officers-2/> (accessed on 2024)

87 teleSUR ‘Botswana: Digital Project for Village Connectivity Launched’ (2023) <https://www.telesurenglish.net/news/Botswana-Digital-Project-for-Village-Connectivity-Launched-20231019-0012.html> (accessed on 12 February 2024)

88 Huawei ‘Connecting Schools for Better Opportunities in Botswana’ (2018) <https://www.huawei.com/en/huaweitech/industry-insights/outlook/mobile-broadband/wireless-for-sustainability/cases/connecting-schools-better-opportunities-botswana> (accessed on 19 January 2024)

89 African Wireless Communication ‘Botswana launches a US\$12.7m project to get 500 villages online’ (2022) <https://www.africanwirelesscomms.com/news-details?itemid=4597#> (accessed on 29 January 2024)

90 United Nations Botswana ‘UN Development Plan 11’ <https://botswana.un.org/sites/default/files/2020-10/NDP%2011%20full%202017.pdf> (accessed on 12 January 2024)

subscriptions has reached a peak of approximately 165.3 for every 100 people in the country.⁹¹ This upward trajectory underscores the effectiveness of the UASF initiatives in significantly expanding mobile access and fostering connectivity among the population.

Recent developments highlight the dynamic role of the UASF in Botswana. In November 2020, the UASF signed a Memorandum of Agreement (MoA) between the Ministries of Transport and Communications (MTC), Basic Education (MoBE) as well as Local Government and Rural Development (MLGRD) to provide ICT equipment and internet connectivity to schools in the Kweneng district. Additionally, in 2019, the School Connectivity Project was launched in Mabutsane sub-district, aiming to provide broadband internet and low bandwidth capacity to government schools across the country.⁹² As for the School Connectivity Project, recent data from Project Connect 1 indicates that as of January 2024, Botswana, including the Mabutsane sub-district, has achieved a 53.06% real-time connectivity rate in schools.⁹³ This figure suggests a degree of advancement in delivering broadband internet and low bandwidth capacity to government schools nationwide since the project's inception in 2019. The government's recognition of its role in bridging the digital divide and recent collaborative initiatives highlight its ongoing positive impact on universal access and service in the country.

Developments in ICT and Emerging Technologies

Digital technologies are key drivers to Botswana's pursuit of economic diversification and its embrace of the Fourth Industrial Revolution (4IR). The recently introduced Digital Transformation/4IR Strategy, named SmartBots, prioritises universal connectivity as one of its four key pillars, aiming to ensure inclusivity and equality.⁹⁴ The nation's strategic focus on leveraging emerging technologies such as artificial intelligence (AI) is rooted in its commitment to economic diversification and its proactive approach to addressing the challenges and opportunities posed by the 4IR. Amongst these challenges is the digital divide between urban and rural areas, including the high cost of data.⁹⁵

The Ministry of Communications, Knowledge and Technology (MCKT), as a pivotal driver of the digital transformation strategy, introduced SmartBots as a transformative initiative. In this landscape, the Botswana Communications Regulatory Authority (BOCRA) emerges as a crucial entity capable of shaping and streamlining the regulatory environment associated with digital technologies. Concurrently, the Botswana Fibre Networks (BOFINET) is well-positioned to bolster the government's digital infrastructure and connectivity objectives. The recalibrated focus of the Botswana Digital and Innovation Hub (BDIH) on digital technologies and e-Government marks a strategic shift, positioning it as a key player in the country's expanding digital ecosystem.⁹⁶ However, amid these developments, the role of the Ministry in implementing SmartBots requires clarity, especially following the government's restructuring that amalgamated the Research, Science, Technology, and Innovation (RSTI) with digital transformation and digital technology areas. As evidenced by both the Technology and Innovation Policy⁹⁷ and the country's

91 Statista 'Number of mobile cellular subscriptions per 100 inhabitants in Botswana from 2000 to 2022' (2023) <https://www.statista.com/statistics/501956/mobile-cellular-subscriptions-per-100-inhabitants-in-botswana/> (accessed on 20 January 2024)

92 UASF 'MoBE, MTC and MLGRD Sign MoA for ICT Equipment and Internet Connectivity in Kweneng Schools' <https://www.uasf.org.bw/mobe-mtc-and-mlgrd-sign-moa-for-ict-equipment-and-internet-connectivity-in-kweneng-schools/> (accessed on 15 January 2024)

93 UNICEF "Project Connect" <https://projectconnect.unicef.org/country-progress> (accessed on 10 February 2024)

94 See <https://smartbots.gov.bw/>

95 O Mudongo 'Botswana's quest for Fourth Industrial Revolution, a delusion of grandeur?' (2020) <https://researchictafrica.net/2020/01/21/botswanas-quest-for-fourth-industrial-revolution-4ir-a-delusion-of-grandeur/> (2020) accessed on 29 January 2024

96 A Maramwidze 'Botswana intensifies SmartBots digitisation strategy' (2021) <https://itweb.africa/content/lwrKxq3K-jPAqmg1o> (accessed on 05 December 2023)

97 United Nations 'Botswana Science, Technology & Innovation Policy Review' (2023) <https://unctad.org/system/files/>

National ICT policy reviews e-commerce strategy.⁹⁸ This comprehensive approach aims to foster growth in export markets, spur private-sector development, empower citizens, create job opportunities, and enhance productive capacity. Reflecting this momentum, the ICT sector has made a noteworthy contribution of 2.5% to the total GDP in Q4 2022.⁹⁹

Recognising the transformative potential inherent in emerging technologies, Botswana is considering the implementation of regulations, including the proposed Botswana SmartBots Lab Governance Framework.¹⁰⁰ This regulatory initiative aims to ensure the successful management, performance and risk management of ICT systems within the country. Despite this progressive step, there are notable gaps in Botswana's commitment to regional standards, exemplified by its yet-to-be-ratified status of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).¹⁰¹ The complacency to ratify this treaty, underscores the nation's current lack of commitment to ensuring the security, reliability, and efficiency of ICT systems.

Recognising the transformative potential of AI, the Botswana government has placed it at the forefront of its national agenda. The recent developments in the nation underscore an unwavering commitment to harnessing emerging technologies, with AI playing a pivotal role in driving economic diversification and fostering innovation.¹⁰² While recent developments underscore the nation's commitment to leveraging emerging technologies such as AI.¹⁰³ However, amidst these initiatives, the implications of new regulations such as the EU AI Act on Botswana's regulatory and policy approaches to AI technology remain uncertain.¹⁰⁴ Acknowledging the UNESCO Recommendation on the Ethics of Artificial Intelligence as a valuable reference point, it's essential to note that while it lacks the binding force of a treaty, its guidelines provide valuable insights for shaping AI policy and governance frameworks. In the context of Botswana, where AI regulation is still evolving, policymakers may consider drawing inspiration from the UNESCO recommendation to inform the development of ethical AI principles and standards.¹⁰⁵ By incorporating ethical considerations into AI policy formulation, Botswana can ensure that its approach to AI technology aligns with global best practices and fosters responsible innovation.

This nuanced interplay between domestic regulatory initiatives and international standards reveals regulatory gaps in Botswana's quest to foster a responsible and innovative ICT landscape. As the country continues to adopt digital technology, these measures, though foundational, also highlight areas requiring attention and refinement to ensure sustainable growth and development within the evolving ICT sector.

official-document/dtltikd2023d1_en.pdf (accessed on 01 January 2024)

98 UNCTAD 'UNCTAD ICT Policy Review and National E-commerce Strategy for Botswana' (2021) <https://www.un-ilibrary.org/content/books/9789210058636> (Accessed on 29 November 2023)

99 Statistic Botswana 'Botswana Information & Communication Technology Stats Brief Q4, 2022' (2022) <https://statsbots.org.bw/sites/default/files/publications/Botswana%20Information%20%20Communication%20Technology%20Stats%20Brief%20Q4%202022.pdf> (access on 02 December 2023)

100 UNCTAD 'Botswana-SmartBots Governance Framework- Botswana Lab Report Executive Summary, 2023' <https://www.uneca.org/sites/default/files/TCND/Smart%20Botswana%20Lab%20Report%20Executive%20Summary.pdf> (accessed on 10 January 2024)

101 AUC 'African Union Convention on Cyber Security and Personal Data Protection' <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection> (accessed on 08 January 2024)

102 Xinhua 'Botswanan official says country ready to embrace artificial intelligence' (2023) <https://english.news.cn/africa/20230512/925c7f5dc5ae4a70a3248e1932020e08/c.html> (accessed on February 2024)

103 Andrew Maramwidze 'AI gets government support in Botswana' (2023) <https://itweb.africa/content/LPp6V7rBPBY7DKQz> (accessed 10 February 2024)

104 European Parliament 'EU AI Act: first regulation on artificial intelligence' <https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence> (accessed on 01 January 2024)

105 UNESCO 'Recommendation on the Ethics of Artificial Intelligence' <https://en.unesco.org/about-us/legal-affairs/recommendation-ethics-artificial-intelligence> (accessed on 11 February 2024)

▶ Conclusion & Recommendations

Conclusion

In conclusion, Botswana's digital landscape presents a complex interplay of advancements and challenges. While strides are being made in privacy protection through the DPA and digital inclusion through initiatives like the UASF and the SmartBots strategy, gaps persist, particularly in surveillance regulation and ethical considerations in emerging technologies. Despite a strong constitutional foundation and international commitments, ongoing scrutiny highlights the need for continual improvement. Clarity in regulatory frameworks, enhanced collaboration, and a deeper recognition of ethical values are essential for fostering a responsible and innovative ICT landscape in Botswana.

Moving forward, Botswana must prioritise refining surveillance laws to ensure adequate procedural safeguards, enhancing transparency in USF operations, and aligning policy measures with global ethical standards, as highlighted by the UNESCO Recommendation on the Ethics of Artificial Intelligence. Strengthening partnerships between regulatory bodies, civil society, and academia can foster a more holistic approach to digital governance, ensuring that technological advancements are harnessed for the benefit of all citizens. By addressing these challenges and leveraging domestic and international best practices, Botswana can chart a course towards a more inclusive, rights-centric, and sustainable digital future.

Recommendations

Private Sector: » Private sector entities involved in developing and deploying AI technologies should actively engage with and collaborate with the proposed Botswana SmartBots Lab Governance Framework, ensuring the ethical and responsible use of AI.

Media: » Media organisations should collaborate with civil society organisations (CSOs) to conduct surveys and focus group discussions to gauge the public's awareness and perception of digital rights issues. This collaboration will help foster informed public discourse and ensure that media coverage accurately reflects the concerns and priorities of the community.

Academia: » They must contribute to developing ethical AI regulations by providing research and expertise to support the implementation of the proposed Botswana SmartBots Lab Governance Framework.

» They should lead in conducting long-term studies to evaluate the impact of the SmartBots strategy on digital inclusion, economic growth, and societal development.

Government:

- » It is strongly recommended that the government prioritises the ratification of the Malabo Convention and the development of a comprehensive AI policy.
- » Government agencies responsible for legislation should prioritise the development of comprehensive laws addressing the surveillance of private communications, incorporating clear procedural safeguards. Specifically, lawmakers should consider introducing provisions that require transparency and accountability in surveillance practices, such as mandatory reporting requirements and regular audits of surveillance activities.
- » Policymakers should actively contribute to the strengthening of the Data Protection Act, ensuring it provides robust safeguards for personal data and empowers individuals with control over their information. Specifically, they should consider amendments that strengthen provisions related to data security standards and breach notification requirements.

Civil Society:

- » They should advocate for comprehensive laws addressing the surveillance of private communications, emphasising the importance of procedural safeguards to protect individual rights.
 - » They must raise awareness and advocate for the expedited ratification of international treaties, such as the African Union Convention on Cyber Security and Personal Data Protection.
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