



EXECUTIVE SUMMARY - BOTSWANA

***/The intersection of the right to freedom of expression and protection of personal information.**

This report examines the intersection of the right to freedom of expression and protection of personal information in Botswana. In doing this, the report is divided into four major sections. The first section considers the right to freedom of expression, the laws and various incidents that have impacted on the right especially within the online space. The second part focuses on the protection of personal information, the laws and the major incidents that have shaped the enjoyment of the right. The third and last part considers the intersection of both rights and concludes respectively.

The 1966 Constitution of Botswana provides for both the right to freedom of expression and the right to privacy. As noted in the report, the constitutional provision for the right to privacy can be applied to the protection of personal information. Besides the Constitution, Botswana has also ratified international instruments like the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (the African Charter).

With respect to the first part of the report, Botswana has challenges with respect to problematic laws that pose threats to the right to freedom of expression particularly as it is exercised online. Despite the constitutional provisions of section 12 on the right to freedom of expression, provisions of the law like sections 59(1) and 93 of the *Penal Code* on alarming publications and criminalisation of insulting language pose threats to the right to freedom of expression under international human rights standards.

In addition to this, section 18 of the *Cybercrime and Computer Related Crimes Act of 2018* which provides for offensive communications is overboard with respect to international standards on free expression. In addition to this, various provisions of the *Media Practitioners Act of 2008* including the one which requires media practitioners including website bloggers to be registered may be in violation of internationally set standards on the right to freedom of expression in Botswana. These laws, coupled with



other allegations of arbitrary use of surveillance equipment by government agencies pose threats not only to the right to freedom of expression but also the freedom of the press.

On the second section of the report, while there are no specific constitutional provisions with respect to protection of personal information in Botswana, the *Data Protection Act* which was enacted in 2018 but is not yet force is the most comprehensive law on the subject. With similar provisions with some provisions of the *Cybercrime and Computer Related Crimes Act of 2018*, the *Data Protection Act* provides more elaborate legal provisions especially with respect to handling of personal data. There are also provisions within the *Financial Intelligence Act* that requires that due process is ensure in the handling of personal data.

The third section focuses on the intersection of the right to freedom of expression and protection of personal information; the report finds two major issues in Botswana. The first is the 'right to be forgotten' which is provided for under section 30(1)(e) of the *Data Protection Act* which empowers the data subject to erase information about them in the hands of a data controller. The second is on encryption which the report finds that no law in Botswana expressly protects. However, it noted that despite the fact that no law provides for it, it can be enjoyed based on internationally set standards on encryption.

In summary, the final section of the report notes that while the right to freedom of expression online in Botswana is relatively protected, there is need to activate and implement the *Data Protection Act* in order to safeguard protection of personal information. The report also noted that while both rights are required to be protected as stand-alone rights, they also require rights-respecting laws and policies when both are combined like in the case of the 'right to be forgotten' and encryption in Botswana.