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COI QUERY RESPONSE

BOTSWANA – INFORMATION ON STATE PROTECTION

Afrobarometer in July 2024 points out that: “While Botswana's stable democracy has won recognition the world over, critics say its media environment falls short of international standards for democratic media regulation (Konrad Adenauer-Stiftung, 2021). Article 12 of the country's Constitution protects freedom of expression, freedom of the media, and the right to freely receive communication (African Media Barometer, 2018). But despite these safeguards, the media sees its freedom as far from secure (Media Institute of Southern Africa, 2023). Botswana's police and intelligence agencies have repeatedly been accused of communication surveillance, confiscating journalists' cameras, laptops, mobile phones, and other equipment in order to extract information from these devices (International Press Institute, 2022). In 2019, a journalist for the newspaper Mmegi was ambushed by security personnel at her home and forced to hand over her cellphone (Rozen, 2021). In 2023, intelligence officers raided Mmegi's offices, detained an editor and senior reporter overnight, and seized their electronic devices - all without a warrant (Committee to Protect Journalists, 2023; Bartlett, 2023).”¹

This document further notes that: “Botswana's challenges in promoting and protecting press freedom are captured in Reporters Without Borders' (2024) World Press Freedom Index. In 2024, the country ranked 79th out of 180 countries in media freedom, a slide of 14 places since the previous year.”²

The *US Department of State* Trafficking in Persons Report in May 2024 states that: “The Government of Botswana does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared with the previous reporting period; therefore Botswana was upgraded to Tier 2. These efforts included amending the Anti-Human Trafficking Act to remove provisions that allowed fines in lieu of imprisonment for sex trafficking crimes, increasing investigations and prosecutions of traffickers, and

¹ Afrobarometer (12 July 2024) Botswana: Botswana Insist On Media Freedom, Favor Citizens' Right to Govt Information

² ibid



increasing funding for NGOs providing care for trafficking victims. The government increased screening for trafficking indicators among vulnerable populations. The government also adopted a new 2023-2028 NAP and allocated funding for its implementation. However, the government did not meet the minimum standards in several key areas. The government did not convict any traffickers for a second consecutive year. The government identified fewer trafficking victims and remained without formal procedures to identify and refer victims to care, hindering overall protection efforts. Government efforts to regulate labor recruitment agencies remained minimal, increasing Botswana migrant workers' vulnerability to trafficking. Despite reports of child forced labor in the agricultural sector, the government did not report efforts to increase inspections in this sector.”³

The *European Union* in May 2024 mentioned that: “Botswana has long had a reputation of a stable and well-established democracy with a legal framework and institutions designed to guarantee respect for human rights in the society. Human rights complaints are addressed by courts, with government accepting decisions and implementing respective rulings. While human rights and fundamental freedoms are generally respected, concerns remain as to the death penalty, gender inequality, women rights, women political representation, rights of the minorities and indigenous people and the rights of refugees and asylum seekers. There are moreover challenges with trust in law enforcement and police violence, corruption, and transparent and free media. Botswana has seen a decline in the most serious abuses against journalists in recent years but many obstacles still hinder their work. World Press Freedom Index noted trend with respect to their role in the society and upgrade Botswana's ranking from 95 in 2022 to 65 in 2023 (out of 180 countries). Government has control over the state owned TV and radio. The allocation of advertising is also managed by the Government and it is used to exert political pressure on privately owned media outlets. Botswana is yet to create an independent National Human Rights Institution, as it remains under the mandate of the Office of the Ombudsman, which, in turn, is under the mandate of the Office of the President. Elimination of gender based violence as well as advancement of rights of women and minorities continue to pose challenge for the country. Similar situation applies to the LGBTI rights: despite decriminalization, LGBTI people often continue to face discrimination in practice. Botswana remains part of a small group of countries in Africa and globally, which continue to retain death penalty in law and in practice.”⁴

Equality Now in May 2024 reported that: “Finally, Botswana has taken positive steps to combat violence against women, such as adopting the Domestic Violence Act 2008 to allow civil and customary courts to issue protection orders as well as the National Gender-Based Violence Strategy 2015-2020, a multisectoral approach to eradicating gender- based violence. In 2020, Botswana established special courts to increase the speed of the State's response to violence against women. In spite of these positive steps, it must be noted that rates of violence and abuse experienced by women remain far higher than the global average.”⁵

The document further mentioned that: “Marriage in Botswana remains reserved for heterosexual couples. Same-sex partners cannot conclude marriages, civil unions, or form permanent life partnerships. As a result, these partners do not enjoy equal protection of the law. However, the High Court in 2019 decriminalised same-sex sexual relations and the Court of Appeal confirmed this decision in 2021. Notably, the High Court held that the word "sex" in Section 3 of the Constitution should be interpreted to include sexual orientation, effectively creating a constitution imperative to protect persons from discrimination on the grounds of sexual orientation. The Botswana Democratic

³ US Department of State (24 June 2024) Trafficking in Persons Report 2024: Botswana

⁴ European EU Annual Report on Human Rights and Democracy in the World: 2023 Country Updates – Botswana Union (29 May 2024)

⁵ Equality Now (15 May 2024) Gender Inequality In Family Laws In Africa: An Overview Of Key Trends In Select Countries [Botswana excerpt]

Party, currently the ruling party, and the President of Botswana have expressed their support for this decision.”⁶

The *Media Institute of Southern Africa (MISA)* in April 2024 states that: “President Masisi, had promised that under his leadership, the DIS would embrace transparency while Peter Magosi, the director general of the DIS and successor to the founding director, had guaranteed that the intelligence organisation would shift away from its tendency to detain journalists. Two years later, DIS agents raided Mmegi, a local newspaper's offices, arrested its editor and a reporter while they were working on a story and seized their electronic equipment, including mobile phones. According to the outlet, one of the officers said: "I am a warrant (of arrest) myself", when asked for a warrant during the raid. The arrests of journalists on vague charges not only violates the principle of freedom of expression, but also risks worsening an already adversarial relationship between the government and the media.”⁷

The same document states that: “Section 12 of Botswana's constitution guarantees freedom of expression, but enshrines no specific protections of the media.”⁸

The *US Department of State Country Reports on Human Rights Practices* in April 2024 states that: “The constitution and law prohibited arbitrary arrest and detention and provided for the right of any person to challenge their detention in court. Overall, authorities generally respected these rights and legal requirements, although some complaints of violated rights arose related to DISS's exercise of its arrest powers.”⁹ The report further points out that: “The constitution and law provided for freedom of expression, including for the press and other media. With some exceptions, the government generally respected the rights of freedom of speech and press.”¹⁰ The report also mentioned that: “Authorities effectively enforced laws against rape when victims pressed charges, although police noted victims often declined to press charges against perpetrators. The law prohibited domestic and other violence against women, girls, or men, but domestic violence remained a serious problem during the year.”¹¹

The same report notes that: “The law penalized neglect and mistreatment of children. There was reportedly widespread abuse of children. Child abuse was reported to police in cases of physical harm to a child.”¹²

The report further states that: “Civil society reported incidents of violence, societal harassment, and discrimination based on sexual orientation or gender identity or expression; however, there were few reports of authorities investigating abuses against LGBTQI+ persons. The victims of such incidents seldom filed police reports, primarily due to stigma but occasionally because of intimidation. LeGaBiBo, a local LGBTQI+ human rights organization, reported no harassment by state actors during the year. In September, a well-known member of the LGBTQI+ community was attacked and repeatedly stabbed with a broken bottle in Maun due to his LGBTQI+ status. Police charged the assailant with assault but were unable to locate him.”¹³

⁶ ibid

⁷ Media Institute of Southern Africa (MISA) (29 April 2024) *The State of Press Freedom in Southern Africa 2023* [Botswana excerpt]

⁸ ibid

⁹ US Department of State (22 April 2024) *2023 Country Reports on Human Rights Practices: Botswana*

¹⁰ ibid

¹¹ ibid

¹² ibid

¹³ ibid

A report issued by *Freedom House* in February 2024 notes that: “Media freedom is threatened by hostile lawsuits against journalists and restrictive legislative provisions. The Indigenous San people, migrants, refugees, LGBT+ people, and people living with disabilities all face discrimination.”¹⁴

The same report further points out that: “Gender-based violence, including domestic violence and rape, is pervasive. Spousal rape is not considered a crime. Customary law restricts women's rights within a marriage. When husbands and wives separate, custody of any children is traditionally granted to the father. Child and forced marriages still occur under customary law. Perpetrators are rarely prosecuted.”¹⁵

The *US Overseas Security Advisory Council (OSAC)* in February 2024 points out that: “The law criminalizes rape without specifying gender but does not recognize spousal rape as a crime. By law, formal courts try all rape cases and the minimum sentence for conviction of rape is 10 years imprisonment; the sentence increases to 15 years with corporal punishment if the offender was unaware of being HIV-positive; and increases to 20 years with corporal punishment if the offender was aware of being HIV-positive. A person convicted of rape is required to undergo an HIV test before sentencings. Authorities effectively enforced laws against rape when victims pressed charges, although police noted victims often declined to press charges against perpetrators. The law prohibits sexual harassment in both the private and public sectors. Sexual harassment committed by a public officer is considered misconduct and is punishable by termination, potentially with forfeiture of all retirement benefits, suspension with loss of pay and benefits for up to three months, reduction in rank or pay, and deferment or stoppage of a pay raise or reprimand. Nonetheless, sexual harassment, particularly by men in positions of authority, including teachers, was widespread. Gender based violence (GBV) in Botswana is of concern to the Government of Botswana. Reporting suggests that over 65% of women in Botswana have experienced abuse. The Botswana Police Service has initiated a media campaign against GBV, bringing further attention to this matter.”¹⁶

The *US Embassy of Botswana* in December 2023 mentioned that: “Botswana, like many countries around the world, including the United States, has seen rising numbers of gender-based violence. In 2008, the Government of Botswana passed the Domestic Violence Act, with the aim of protecting gender-based violence survivors. The Act empowers courts, including customary courts, to pass restraining, interim, and tenancy orders, which protect survivors from further abuse. Despite the availability of these legislative protections, some survivors remain vulnerable to their abusers. In the most extreme cases this has led to the loss of life.” [...]”¹⁷

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