3. Media Health

3.1 Status of the laws regarding rights and access to information

The 1998 Broadcasting Act liberalised the airwaves allowing for the licensing of community and commercial broadcast media. Although the press in Botswana is relatively free, there are a number of laws, like the National Security Act, that restrict free access to information. The government has been reluctant to pass the Freedom of Information Act, although it is provided for in a number of government policies – including the national strategic vision – Vision 2016: The Long Term Vision for Botswana (Presidential Task Force for a Long Term Vision for Botswana, 1997). This document not only provides for a Freedom of Information Act by the year 2016, but it also recognises the importance of free access to information, information technology and of developing efficient information systems and networks for the support of research, education, development and communication with the rest of the world.

Balule and Maripe (2000) have written a 62-page inventory of media ‘unfriendly’ laws and practices in Botswana. On the whole, the statutory limitations to freedom of expression are manifest in two parts, namely: i) through limitations imposed by government, and, ii) those under general law. For example, Section 4 of the National Security Act of 1986 prohibits the publication or communication of any information relating to the defence or security of the state. Section 5 of the National Security Act prohibits publication of any classified material without authority.

The constitution does not include any special statute that provides for public support for media pluralism and autonomy. In the eyes of many commentators, the lack of a Freedom of Information Act means Botswana’s citizens are unable to participate fully and pro-actively in the development and democracy of the country.

Government determines which material is classified, giving it extensive and unlimited powers over the media. Any material that is in the public interest can be said to be classified simply because it may portray the government in poor light. Nothing illustrates this point better than the controversial Mass Media Communications Bill 2001, passed by cabinet, but yet to be tabled in parliament. According to the government (Ministry of Finance and Development Planning, 2003), the Mass Media Communications Bill will be used “to publicise Botswana outside its borders… and to regulate the print media”. The law will be expected to complement the 1998 Broadcasting Act.
Although freedom of expression is enshrined in the Botswana constitution and the government welcomes the variety of media that have emerged from the public sector, the government has been known to clamp down on journalists who do not toe the line. For example, in 2001, various government departments and parastatals stopped advertising in the *Botswana Guardian* and *Midweek Sun*, ostensibly to punish them for publishing articles and pictures showing the head of state and his deputy in bad light. The papers took the government to court over this and won the case. The Lobatse High Court judge, Justice Lesetedi, lifted the ban, which he stated was interfering with the constitutionally guaranteed freedom of expression (Media Publishing vs Attorney General of Botswana, MISCA 229/2001 Law Reports of Botswana – forthcoming).

According to various media activists, such as the Botswana chapter of the Media Institute for Southern Africa, if the government adopts the Draft Mass Media Communication Bill (1997) in its original form, it will deprive journalists even of the limited rights they currently have. This bill, which will soon be brought before parliament, gives the Minister sweeping and unlimited powers, and is in direct contravention of the constitution and the ideals enshrined in Vision 2016. The delay in bringing it before parliament has been due partly to the media outcry about the infringement of media rights. Briefly, the bill in its original form gives the Minister the powers to:

- register or deregister all newspapers;
- search media premises if and when the Minister deems it necessary; and,
- appoint a chairperson for a press council that would draw up a code of ethics and be responsible for ensuring compliance with them.

In addition, members of the press council would preside over any disciplinary measures against the media and their personnel, and proceedings would be filmed.

The intention of the new media law is to set up a statutory media council (a media complaints committee established by the state under an Act of Parliament). Journalists in Botswana have vigorously opposed the 1997 draft and, in 2004, established a voluntary press council (the Press Council of Botswana). Despite this, the government has not withdrawn its draft legislation for a statutory council and has recently invited “counter proposals” to the draft law from the public. The Press Council of Botswana has commissioned a special consultancy for this purpose. Some counter proposals have been put forward by the Botswana chapter of the Media Institute of Southern Africa; these were elaborated on in the 62-page inventory by Balule and Maripe, mentioned above.

Despite all this, Francis Nyamnjoh has observed that the Botswana media “… enjoys a degree of tolerance from government that is rare in Southern Africa, and has earned credibility for its critical and investigative journalism over the years. This does not imply the absence of legislation and practices by government aimed at curbing press freedom” (Nyamnjoh, 2002, p. 757).
That the Botswanan government is relatively more tolerant towards the press than its counterparts in the rest of the sub-region has been demonstrated by the fact that, compared to countries such as Zimbabwe, Malawi, Mozambique and even South Africa, fewer alerts on infringement of press freedom have been issued by the Media Institute of Southern Africa (MISA) in Botswana over the past five years. These violations are monitored and reported internationally on a daily basis by the Windhoek-based, MISA.

According to Minnie (2005): “In the context of the SADC region, Botswana is regarded as having a largely open freedom of expression environment. Few action alerts emanate from this country and the small sample recorded by MISA in 2003 is representative of the general kinds of media freedom violations that occur here. These include civil defamation charges against newspapers, one or two assaults of journalists during a year – not by state agencies or officials but by opposition party politicians, offended sports stars, adrenaline-charged students during protests, and so on – and a few instances of censorship in the state-owned national broadcaster by cancelling live radio panel discussions and public phone-in programmes” (Minnie, 2005).

The various government ministers responsible for the media have vigorously denied that these cancellations constitute censorship, arguing that programme presenters lack political expertise and judgement, which results in unbalanced political discussions. Should this indeed be the case, Minnie says the remedy does not lie in the censorship that has been taking place but in training such personnel, and public scrutiny through an independent and voluntary media complaints committee based on ethical codes of conduct formulated by the media industry itself without state interference.

It is in the legislative and media policy area that Botswana is more problematic. Its statutes contain a number of anti-media freedom laws that are rarely used, but which the government so far refuses to repeal. It can therefore be concluded that the state is shoring them up in case a situation arises in which they would want to exercise them (Minnie, 2005, p. 5).

### 3.2 Status of the laws regarding criminal defamation and insult

Botswana has laws on criminal defamation and insult. The government has already defended their presence in the statute book by stating that these are part of Botswanan culture and etiquette.

Minnie found that:

> Both criminal and civil defamation laws exist in (Botswana). The former are in principle acceptable, as long as onerous financial rewards for damages that threaten the existence of the media are not made. Journalists in Botswana, however, are concerned that the high financial penalties awarded by courts or alternatively negotiated in private settlements in the last few years are moving in that direction, and concerns in this regard are also now being expressed in a number of other SADC countries, particularly in Lesotho and Tanzania. Criminal defamation, however, is completely unacceptable from a freedom of expression point of view.

(Minnie, 2005, p. 7)
Minnie continues:

“Criminal defamation charges are laid by the state (not a private person) against a journalist or person, and, if found guilty, journalists can be fined and/or jailed. They also acquire a criminal record. The origins of criminal defamation arise from the rule of kings in medieval times in Europe, in which it was a crime to criticise any aspect of their rule or person. It is based on a value system that is the antithesis of democracy and the rule of the people. It also significantly inhibits the public scrutiny of officials and the state by the media and other critics.”

(Minnie, 2005, p. 7).

Sections 90, 91 and 93 of Botswana’s Penal Code contain various provisions on “insult” laws that limit public scrutiny of officials. These provisions are in the box below.

### Section 90
(1) Any person who in a public place or at a public gathering uses threatening, abusive or insulting words or behaviour is guilty of an offence and is liable to imprisonment for a term not exceeding six months.

(2) In this section, “public gatherings” means any meeting, gathering or concourse, whether in a public place or otherwise, which the public or any section of the public or more than 15 persons are permitted to attend, whether on payment or otherwise, and includes a procession to or from a public place.

### Section 91
Any person who does any act or utters any words or publishes any writing with intent to insult or to bring into contempt or ridicule:

(a) the Arms or Ensigns Armorial of Botswana;

(b) the National Flag of Botswana;

(c) the Standard of the President of Botswana;

(d) the National Anthem of Botswana;

is guilty of an offence and liable to a fine not exceeding P500.

### Section 93
(1) Any person who in a public place or at a public gathering uses abusive, obscene or insulting language in relation to the President, any other member of the National Assembly or any public officer is guilty of an offence and liable to a fine not exceeding P400.

(Government of Botswana, 1964)
3.3 Status of the laws that exist to enable media regulatory bodies to function independently

According to the Broadcasting Act of 1998, the National Broadcasting Board (NBB) is charged with the allocation of available frequency spectrum resources to broadcasting services and to ensure the widest possible diversity of programming (Government of Botswana, 2006).

Since 1999, the NBB has been run and managed from the newly formed Ministry of Communications, Science and Technology instead of the Office of the President from which it operated previously. The current functions of the Botswana Telecommunications Authority (BTA) are to serve as the Secretariat and adviser to the NBB on various technical telecommunications issues.

The BTA was established in 1996 and is responsible for regulating and monitoring all the airwaves. In addition, it is responsible for monitoring radio transmissions, issuing licences to companies that operate cellular/mobile phones, data, two-way radios and paging services. The only landline telephone provider, the Botswana Telecommunications Corporation, has recently restructured its engineering department to provide more payphones, data service and leased lines.

3.4 Current provisions that aim to secure the independence of publicly-owned media

The Botswanan government has no intention of loosening its grip on the state media, although there has long been talk (mainly by directors but not government ministers) of turning state media outlets into parastatal outfits. For example, in February 2006, the Minister of Communications, Science and Technology visited the offices of the government media where she lambasted the journalists for poor reporting standards, and reminded them that her office would compel them to abide by the government’s general code of conduct, their departments’ professional codes of conduct and the code of conduct of the Press Council of Botswana.

3.5 Current provisions to support community or alternative media

Although the 2003 broadcasting policy, drafted by the National Broadcasting Board provides for community radio stations and other commercial broadcasters, it is yet to be adopted by government and brought to parliament. What is also noticeable is that except for the Ngami Times, which is based in the tourist town of Maun, Botswana has few local and no regional newspapers. Presently, government dominates the broadcasting sector and there are no licensed or unlicensed community radio stations.

3.6 Regulatory obligations for public or state broadcasters to fulfil a public-service broadcasting remit

As indicated above, the Botswanan government has for six years, promised to establish a statutory media council and produced the Draft Mass Media Communications Bill of 1997 for this purpose. This is also planned for in the latest National Development Plan for the country. According to Minnie (2005, p. 8), “Statutory media councils are regarded as instruments of state control over the media by freedom of expression supporters internationally.”

The state has also not yielded to the African Charter on Broadcasting, adopted by the African Commission on People’s and Human Rights, which calls for statutory regulatory bodies nominated by the public to award public, private and community broadcasting licences independently from the influence of the state and political parties.
3.7 Regulatory obligations for private or independent broadcasters to fulfil a public-service broadcasting remit

Provisions of the draft Broadcasting Policy drawn up by the National Broadcasting Board oblige private broadcasters to fulfil a public-service broadcasting remit. The draft policy is yet to be adopted by the government.

3.8 Journalism

Currently, practising journalists are not registered or licensed. There is no reliable information on the numbers of journalists practising in the country today and how many of these are men or women. This is likely to change if the Botswanan government adopts the Draft Mass Media Communication Bill (1997) in its original form. This draft law also requires that media houses be registered and monitored by the minister responsible for the press in the country. The bill was delayed by the drafting of principles to guide the legislation agreed between media stakeholders in the country. These principles have since been sanctioned by cabinet, and the bill is now being drafted by the Attorney General’s Chambers.

Most professional press associations in Botswana, such as the Botswana Journalists’ Association (BOJA), Press Club and others have either collapsed or have not been active in the past five years. There are plans to set up a trade union for journalists. The only active professional body at the moment is the Botswana Editors’ Forum (BEF), which is affiliated to the Southern African Editors’ Forum (SAEF) and, by extension, the newly founded continental African Editors’ Forum (TAEF). The other media organisations, including the relatively new Botswana Media Women’s Association, have not been very active in the past two years.

According to Rantao (1996), journalists in Botswana display a lot of inadequacies in terms of alertness, being current, reliability and performance in public policy debates, interpretation and analysis of issues. But in an interview with the Botswana Guardian chief editor, Mike Mothibi, he revealed that this situation has since improved for the better.² According to Minnie, there is a connection between low standards of journalism and the reluctance of governments to bring about reforms in media freedom (Minnie, 2005). Governments, often as an excuse, argue that they need to retain control of the media to combat poor-quality or “irresponsible” journalism. But, one can argue they can still ensure that standards are maintained by allowing independent and voluntary media councils (or media complaints commissions) to be set up as well as independent associations of journalists and editors, which can formulate their own codes of ethics.

Minnie suggests that the government’s excuses not to allow free and independent media are politically motivated because it does not want to introduce reforms that could result in a democratic challenge to its power. However, finding systems that could improve journalists’ skills would help, as there are too many instances of journalists being charged with criminal defamation and other forms of “insult laws” (all are media freedom violations), or even with civil defamation (not a media freedom violation unless the financial penalties are too onerous), who are partly guilty of professional misconduct (Minnie, 2005).

Low standards of journalism have also been found in national state broadcasters – deficiencies that can be attributed to poor training as well as state control (Minnie, 2006). These journalists cannot work according to generally accepted codes of conduct controlling media ethics or standards because the state imposes a propaganda role on them. In Botswana, journalists in these institutions are regarded as civil servants by definition and by law, and have been transferred to other government departments if they do not comply with

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² Personal interview with Mike Mothibi, Chief Editor, Botswana Guardian and Midweek Sun, June 20, 2006.
the policies and instructions of the state. This happened, for example, with the present Director of Broadcasting Services, Bapasi Mphusu, when he was moved to the Ministry of Commerce and Industry in the late 1990s, and before he was returned to the Department of Information and Broadcasting as Chief Information Officer. The same also happened with the former editor of the Daily News, Paul Rantao, and he later left the profession to enter opposition politics.

The low standard of journalistic practice is compounded by the limited number of training institutions. The only school of journalism, the Media Studies Department in the Humanities Faculty of the University of Botswana, was only set up four years ago and its first crop of undergraduates will have qualified in May 2006 (see Figure 5). The Media Studies Department is responsible for training journalists.

South Africa’s proximity to Botswana has opened doors for Botswana students to study at South Africa’s long-established journalism schools. In addition, various media houses in Botswana provide in-service training for their staff.

![Figure 5: Number of Journalism Training Institutes](source: Author’s personal research, 2006)

The majority of managerial positions in the various media organisations are held by men. Most female managers are found in the state broadcasting stations. Only one newspaper, The Voice, is edited by a woman.

**Key findings**

- Botswana has no community radio stations.
- Men dominate the managerial positions in the various media houses. Most women managers are to be found in the state broadcasting stations.
- Only one weekly newspaper, The Voice, is edited by a woman.
- There are few local and no regional newspapers.
- Standards of journalism tend to be low to average.
- There is only one school of journalism.
- No known figures exist on the number of journalists working in Botswana or how many are women.