

JANUARY 2020

ASSEMBLY AND ASSOCIATION FOR YOUTH IN BOTSWANA

A BRIEF ON THE LEGISLATIVE
ASPECTS OF ORGANISING

Success Capital Organisation

www.successcapitalngo.com

ABOUT SUCCESS CAPITAL

We are a youth led, managed and serving organisation based in Tlokweng, Botswana. Our overarching aim is to shift LGBTIQ+ Youth from Survival to Success. We believe this can be achieved through strengthening and safeguarding youth agency in all aspects of their lives; from health, economic participation, civic engagement, research, workplace, spiritual refuge, governance and beyond binaries. Linking grassroots to global mechanisms: we link human rights with sustainable development through our work.

ACKNOWLEDGEMENTS

This report would not have been possible without the efforts of Dumiso Gatsha, Bakang Ndaba and the generous youth who contributed their ideas, time and insight to the short project. Through kind support of USD 1000, we managed to convene, simulate, debate and perform art geared at better understanding Freedom of Association and Assembly within our context. A great thanks to the African Center for Human Rights Studies and the PANAF PROJECT: CSOs' contribution to a strong and independent African Human Rights System; a collaborative funded by the European Commission and implemented by The International Commission of Jurists (ICJ), The African Centre for Democracy and Human Rights Studies (ACDHRS), The Norwegian Refugee Council (NRC), and The Kenyan Branch of The International Commission of Jurists (ICJ - Kenya)

01

INTRODUCTION

Several African Commonwealth countries have had challenges in the registering or regulation of civil society organisation (CSO)s. The civic space is further compromised with limited resources, ambiguous regulation and the ability for young people to exercise their agency within this context. Botswana participated in the United Nations (UN) High Level Political Forum and the General Assembly despite not submitting any Voluntary National Review. This virtually excluded civil society from formally participating in the processes at UN level. However, there are opportunities for engagement with civil society with more recent submissions and engagements on the UN Committee on the Elimination of Discrimination Against Women and the African Commission on Human and People's Rights. In addition, joining the African Peer Review Mechanism signals a shift in increased potential for engagement with civil society both domestically and regionally. Observed as narrow (1), civic space for young people in Botswana is possible.

02

FRAMEWORK & DEVELOPMENTS

Section 13 of Botswana's Constitution guarantees protection of freedom of assembly and association (FoAA). This is reflected articles 10 and 11 of the African Charter on Human and People's Rights, Article 8 of the African Charter on the Rights and Welfare of the Child and the Southern African Development Community (SADC) Principles for Conducting Democratic Elections. Despite this, there have been growing concerns on freedom of the press (2) and public protest (3), notably for young people.

The Public Order Act requires applications to be made before law enforcement for approval (4) and in some instances, safety. The National Registrar of Societies mandated with registering civil society organisations through the Botswana Societies Act, has previously denied the ability for groups to register (5). This reflected how administration action can impede freedom of association. Previous heads of state have warned against workers unions being political (6), however history reflects that workers issues are political. This reflects the nuances of association in variant forms.

03

FRAMEWORK & DEVELOPMENTS

Other nuances of association working on taboo or criminalized issues have had challenges to registering to become formal organisations (7).

This reflects a conflict between administrative and constitutional law in interpretation. From a regional perspective, articles 11 and 67 of the Guidelines on Freedom of Association and Assembly in Africa clearly state that there is no need for formal registration or other recognition to associate. The gap between law and reality remains a challenge for civic space in Africa (8).

The Employment Act, the Trade Unions and Employers' Organisations Act, the Trade Disputes Act and the Public Service Act all govern the freedom of association. Marking a significant framework for unions to organize and engage with the government and other stakeholders. Civil society remains lacking. In part, it could be because the state recognizes FoAA as social rights (9). This is despite socioeconomic rights being non-justiciable in Botswana. Thus, reflecting why constitutional and criminal law on FoAA are at risk of compromise under executive orders or bureaucratic processes.

04

FRAMEWORK & DEVELOPMENTS

Botswana remains an example, whether through courts or at least in the law; for the safeguarding of FoAA. Its regional peers, however, remain questionable. Ranging from arbitrary arrests in Tanzania, law enforcement raids in Uganda and limits to dissent in Zambia. There is a wide array to civic freedoms in civic assembly and association in variant forms. These are viewed as deteriorating across the African continent (10).

05

CONCLUSION

There aren't many regional level youth led movements that operate beyond limited social causes, sub-regional jurisdiction, linguistic organizing or specific funding parameters. The same can be stated for Botswana. The challenges are no longer limited to government restrictions, but more with development framing, resource availability and a narrow civic space. This leaves a wide opportunity for bridging different youth movements, organisations and groups towards collective assembly and association. Furthermore, there is a need to better review the nuances and underlying influences of FoAA in an era where legally; there seems to be an enabling environment. The need to understand how best to articulate progress or regression within the existing legal framework is critical to safeguarding and promoting FoAA. An independent mechanism or platform for dialogue on FoAA is needed to consistently strengthen FoAA standards in Africa.

REFERENCES

- [1] 'BOTSWANA: 'Anti-rights groups are emerging in reaction to progressive gains'
<https://civicus.org/index.php/media-resources/news/interviews/4005-botswana-anti-right-groups-are-emerging-in-reaction-to-progressive-gains> (accessed: 15 September 2019); 'Narrow & occupied: views on a shrinking civic space'
<https://nextstrategy.amnesty.org/2019/08/27/narrow-occupied-views-on-a-shrinking-civic-space/> (accessed: 15 September 2019)
- [2] WAN-IFRA Board Press Freedom Resolution - Botswana, June 2017 <https://www.wan-ifra.org/articles/2017/06/02/wan-ifra-board-press-freedom-resolution-botswana-june-2017> (accessed: 12 December 2019)
- [3] Freedom of expression vis-a-vis public order: when is public order, public order, when is it a farce?
<http://www.mmegi.bw/index.php?aid=62521&dir=2016/august/24> (accessed: 12 December 2019); United States Department of State, 2016 Country Reports on Human Rights Practices - Botswana, 3 March 2017
<https://www.refworld.org/docid/58ec8a6713.html> (accessed: 02 January 2020)
- [4] I did not humiliate Khama -Morupisi
<https://www.thepatriot.co.bw/analysis-opinions/item/6270-i-did-not-humiliate-khama-morupisi.html> (accessed: 20 September 2019)

REFERENCES

- [5] Botswana: Highest Court Rules Government Must Register Gay Rights Advocacy Group
<https://www.loc.gov/law/foreign-news/article/botswana-highest-court-rules-government-must-register-gay-rights-advocacy-group/> (accessed: 30 September 2019)
- [6] Trade unions defend political activism
<https://www.sundaystandard.info/trade-unions-defend-political-activism/> (accessed: 30 November 2019)
- [7] These men and women are “not persons”
<https://www.sundaystandard.info/these-men-and-women-are-not-persons/> (accessed: 30 November 2019)
- [8] East Africa: Spotlight On East Africa Crackdown On Rights, Freedoms
<https://allafrica.com/stories/202001190210.html> (accessed: 05 January 2020)
- [9] Botswana’s Second and Third report to the African Commission on Human and People’s Rights pp 19
- [10] Human Freedom Waning in Many Countries
<https://www.cato.org/blog/human-freedom-waning-many-countries> (accessed: 20 January 2020)