

STATEMENT UPR

UPR Pre-session on Botswana

Geneva, 3 April 2023

Delivered by: Hon Justice Dumisa Buhle Ntsebeza

[Start Presentation: Slide 1]

- I am Dumisa Ntsebeza. Thank you for the opportunity to take the floor. Among other things, I am a Judge of the African Court on Human and Peoples' Rights and I am delivering this statement on behalf of Omnia Strategy LLP.

[Change Slide: Slide 2 (Previous UPR Cycles)]

- In previous UPR cycles, Botswana has rightly supported recommendations to continue efforts to protect human rights and promote democracy. Regrettably, over Botswana's latest cycle, the country has endured a sustained deterioration of the rule of law.
- Once considered Africa's 'most stable democracy', the State is slipping towards an increasingly autocratic system of government - characterised by the suppression of free speech, repression of dissent and persecution of political opponents, arbitrary detention, and unanswered threats to the security of the person.
- In December 2021, the Civicus Monitor downgraded Botswana to "*obstructed*", indicating that civil liberties including freedom of expression, opinion, assembly, and the press are being undermined in the State.
- I will focus on three key issues of concern for the Fourth Cycle offering recommendations for Botswana's UPR. These are:
 - Freedom of expression, opinion and the press;
 - The right to peaceful assembly; and
 - Accountability and good governance.
- Taking these in turn.

[Change Slide: Slide 3 (Freedom of Expression and Opinion)]

First, freedom of expression and opinion and freedom of the press

- The Masisi Government has been denounced for intimidation, harassment, and misuse of criminal justice powers to silence political dissent and critical media reporting.
- As the Southern Africa Litigation Centre said last month, the Government's interference with civil and political rights – and I quote – "*is profoundly alarming, given that Botswana will in 2024 embark on an electoral process where a free debate of ideas should flourish*".
- Take, for instance the following:

- The treatment of former President Ian Khama. Khama's open criticism of President Masisi has been met with on-going reprisals, forcing him into exile following credible reports that the Government was complicit in attempts to have him assassinated. Khama's family has also been targeted.
- In March 2021, the 'UN Special Rapporteur on Extra-judicial, Arbitrary or Summary Executions' sent an Urgent Appeal to the Government, detailing threats to Khama's life by Government-linked groups. Dr Callamard – now Head of Amnesty International – called for Khama's security protection to be restored. Instead, the campaign to neutralise Khama reportedly continues.
- Repressive measures are extra-territorial with prominent South African businesswoman and Goodwill Ambassador for the Pan African Parliament, Bridgette Motsepe targeted by the State – a response to her links with members of the opposition.
- Government restrictions on the freedom of expression - often presented by the Government as a response to the COVID-19 pandemic - have far exceeded those permissible under international human rights law. *Reporters Sans Frontières* and multiple Botswanan civil society organisations say the Government took advantage of the pandemic to suppress critics and pursue political goals.

[Change Slide: Slide 4 (Freedom of the Press)]

- The last UPR cycle also saw growing concerns about journalists' freedom to work. For example, Civicus reported that three local journalists faced charges after publishing information about COVID-19 and local politics, and a newly established Media Board has raised serious concerns of politically-motivated censorship.

[Change Slide: Slide 5 (Freedom of the Press)]

Second, right to peaceful assembly

[Change Slide: Slide 6 (Right to Peaceful Assembly)]

- The last cycle has seen a concerning new trend: an increasing number of Botswanan citizens participating in peaceful demonstrations were arrested and charged under the Public Order Act. Reports indicate that protesters and journalists at opposition political events have been beaten by the police.
- For example, in September 2021, a number of citizens were arrested after holding peaceful assemblies calling for government accountability, an end to corruption, and fairer distribution of economic resources.

[Change Slide: Slide 7 (Accountability and Good Governance)]

Third, accountability and good governance

- In the previous cycle, Botswana pledged to improve public service efficiency, accountability, and transparency. Yet the Masisi Government has consolidated control over State agencies.
- Non-governmental organisations have also expressed concern on the Government's use of a controversial pressure group, AfriForum, as a proxy to silence its critics. This private organisation has been widely criticised as promoters of white nationalist ideology, and for

having advanced false claims about white genocide in post-Apartheid South Africa. Its CEO has said that Apartheid was not a crime against humanity.

[Change Slide: Slide 8 (AfriForum)]

- As a survivor of Apartheid, having campaigned against Apartheid, and having sat as a Commissioner in the Truth and Reconciliation Commission *after* Apartheid, I find it abhorrent that a State that was once a haven for many South Africans fleeing the Apartheid regime, would so closely associate itself with a discredited organisation that purveys such a toxic philosophy.

[Change Slide: Slide 9 (Recommendations)]

- I therefore urge States to recommend that Botswana:
 1. Ensure the rights to freedom of opinion and expression, peaceful assembly and association;
 2. Guarantee the protection of politicians, journalists and dissidents and fully investigate intimidation and harassment, arbitrary detention and threats against them;
 3. Eliminate from legislation all provisions that undermine freedom of the press and the independence of the media;
 4. Allow independent and transparent investigations of cases of extrajudicial arrests, unlawful detentions and arbitrary executions; and
 5. Ensure full accountability of members of State agencies and their commanding officers for all their actions.

Thank you.
