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# SAFETY OF JOURNALISTS SITUATION IN LESOTHO



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## **Safety of Journalists Situation in Lesotho**

## Introduction

The change of government in October 2022 brought hope that finally Lesotho could be turning the tide in terms of the safety of journalists. Prior to that, the political atmosphere in the Southern African country was always charged, with journalists often bearing the brunt of attacks by politicians, the security sector and politically exposed persons.

In 2021, Lesotho experienced a surge in attacks against journalists, raising the spectre that the attacks would escalate the following year, when elections were set to be held. Tensions were further raised when the government failed to enact the Omnibus Constitutional Bill, which contained some progressive media regulations. The initiative was part of the National Reforms Programme that was carried out by Lesotho.

Despite these setbacks, the year 2022 was a relatively good one for the media in Lesotho, as the country did not record any attacks against journalists. This progress is reflected in the Reporters Without Borders' World Press Freedom Index, where Lesotho's ranking improved from 88 in 2022 to 67 in 2023.

However, in May 2023, a broadcaster in Lesotho was shot dead as he left his workplace, with this serving as a reminder that the country can be a dangerous place for journalists. The suspects in the murder of Ralikonelo "Leqhashasha" Joki of Tšenolo FM have since been arrested and first appeared in court on June 26, 2023. Following Joki's death, other journalists have received threats that they would be killed in similar fashion. To further illustrate how dangerous Lesotho could be, four soldiers are on trial for attempted murder after they shot former Lesotho Times editor Lloyd Mutungamiri four times outside his home in 2016. The matter is yet to be concluded seven years on.

There seems to be a lack of will to implement media reforms that will improve the safety of journalists in the country, while perpetrators of crimes against journalists seem to have impunity. The law reform process seems to have gone off the tracks and this will make journalists even more vulnerable. Self-censorship seems to be the order of the day, with journalists often afraid to speak openly about threats against them, while stories that are considered "sensitive" often go unpublished. In such an environment, investigative journalism does not thrive, with cases on corruption often going unreported.

## Overview of legislative and policy environment with regards to media freedom

Section 14(1) of the Lesotho constitution guarantees freedom of expression. However, the guarantee is limited due to permissible grounds of limitations included in the constitution. The constitution permits limitations for "fundamental human rights and freedoms" in the "public interest", morality and health. However, some of these limitations are contrary to international and regional standards. Section 14(1) is generally considered to cover freedom of the media; freedom of the media is not explicitly guaranteed in the constitution and there are no additional laws that promote media freedom.

The African Media Barometer notes that: "Rather than legislation empowering people to express themselves freely, or the media to express itself, there are a plethora of laws that curtail freedom of expression. Amongst others, these include the Internal Security Act, the

Penal Code, the Sedition Proclamation, and the Official Secrets Act.”<sup>1</sup> The Penal Code, adopted in 2010, allows police officers to force journalists to reveal their source of news.

Over the years, Lesotho has added more laws that have the effect of infringing on media freedoms, while at the same time the law reform process has been moving at a snail’s pace. For instance, the country introduced the Communications Regulations of 2021, which require registration of many electronic devices with the government and allow for intrusion into private communications.<sup>2</sup> A parliamentary portfolio committee stopped this bill from being enacted, but the authorities have hinted that they want to forge ahead with the proposed legislation.<sup>3</sup>

In October 2020, the government of Lesotho announced its intention to promulgate the Lesotho Communications Authority Rules of 2020, designed to police and regulate free speech online. Under these regulations, individuals with more than 100 followers on social media will be considered internet broadcasters and are required to register with the LCA. The registration process requires the provision of identity documents and proof of residence, and agreement to comply with the LCA broadcasting rules.

The laws highlighted above portray a state where surveillance of citizens is state sanctioned and the right to privacy is undermined. Where the right to privacy is infringed upon, journalists may find it difficult to get sources of confidential information. This puts both the journalists and the sources of information at risk from state actors.

Another hallmark of the Lesotho legislative framework is the stalled reform process.

For more than a decade, the media in Lesotho fought for laws and policies that would guarantee freedom of expression and of the media, so they could carry out their journalist work, free of censorship, intimidation, harassment, and reprisals. Regardless of the pressure that successive governments faced, there was generally a lack of political will to adopt a national media policy and a national code of conduct, behaviour and practice, which were seen as necessary building blocks for an ethical and professional media sector that aligns with internationally accepted standards of conduct and practice, and guides the conduct and behaviour of journalists.

The National Media Policy and the National Code of Conduct, Behaviour and Practice became campaign tools for politicians and prospective ministers during election periods from as far back as 1998. However, once in power, the politicians forgot their pledges. With very little support from policy makers in the country, the Media Institute of Southern Africa (MISA) Lesotho led media practitioners in the fight for a free press.

After much delays and cutting down some elements of the policy, the National Assembly eventually adopted the National Media Policy and the National Code of Conduct, Behaviour and Practice in November 2021.

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<sup>1</sup> The African Media Barometer <https://library.fes.de/pdf-files/bueros/africa-media/12464.pdf>

<sup>2</sup> Lesotho: Authorities Should Withdraw Communications Regulations <https://freedomhouse.org/article/lesotho-authorities-should-withdraw-communications-regulations>

<sup>3</sup> Thumbs up for Parliament Portfolio Committee on Information! <https://lesotho.misa.org/2021/09/15/thumbs-up-for-parliament-portfolio-committee-on-information/>

Like the Media Policy, before being adopted, pieces of legislation like the Access and Receipt of Information Bill of 2000 have been gathering dust for over two decades. Journalists in Lesotho also await the passage of the media law, one of the pieces of legislation that will enable the enjoyment of freedom of expression in Lesotho, in alignment with tenets of a democratic state.

More recently, however, the government of Lesotho began a process to introduce repressive laws that seek to undermine democracy and efforts towards a free media that is able to inform citizens to make informed decisions and hold the government and those in positions of power accountable. The Computer Crimes and Cyber Security Bill was introduced in 2021, and while its essence was to combat cybercrimes, sections within it have been identified by legal analysis as threatening the freedom of the press and freedom of expression. These sections further seek to tighten the knot on access to information and criminalise defamation.<sup>4</sup>

Criminalising defamation goes against a May 2018 court judgement, where the Constitutional Court, in a unanimous judgement, declared the offence of criminal defamation unconstitutional with retrospective effect. The then Commander of the Lesotho Defence Force (LDF) had accused Basildon Peta, owner and publisher of weekly newspaper, Lesotho Times, of criminal defamation following the publication of a satirical column concerning the commander in 2016. The court maintained that criminalising defamation had repressive consequences on journalistic freedom of expression, resulting in self-censorship by journalists and left the public less informed.<sup>5</sup>

The Computer Crimes and Cyber Security Bill comes at the back of the government's concern over journalists' ability to access classified information, exposing wrongdoing, and holding those in positions of power accountable.

A survey by MNN Centre for Investigative Journalism in Lesotho; *Unpacking Potential Threats to Investigative Journalism in the era of Cybersecurity Laws: Lesotho Journalists demand the deletion of six specific clauses in the Computer Crime and Cybersecurity Bill, 2023* revealed how the passing of the Bill in its current form will be the final nail in the coffin in creating an environment where journalists will self-censor and not investigate and publish evidence-based exposés that help the public to make informed decisions.<sup>6</sup>

The bill has been deemed as draconian, lacking inclusive consultations, and aimed at criminalising investigative journalism, which is at the core of journalism. Furthermore, the Cyber Bill in its current form criminalises whistleblowing, meaning journalists and citizens alike, if found guilty, under this impending law will face jail time, a fine of M5 million (USD

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<sup>4</sup> Media Statement on Computer Crime and Cyber Security Bill <https://lesotho.misa.org/2021/07/08/media-statement-on-computer-crime-and-cyber-security-bill/>

<sup>5</sup> News Release: Lesotho Court declares offence of criminal defamation invalid <https://www.southernafricalitigationcentre.org/2018/05/22/press-release-lesotho-court-declares-offence-of-criminal-defamation-invalid/>

<sup>6</sup> Help Us Keep Power In Check & Fill Out Our Survey On Potential Threats To Media Freedom & Journalists <https://lescij.org/2023/05/09/help-us-keep-power-in-check-fill-out-our-survey-on-potential-threats-to-media-freedom-journalists/>

282,000) or both. This makes it even harder for journalists to hold the government accountable.

Much hope on freedom of the media hinged on a pledge by major parties in parliament in May 2022 to pass the Omnibus Constitutional Bill in June the same year. Journalists believed that the constraints to media freedom would be removed, and access to information regulations passed. The process was, however, interrupted when Lesotho's parliament was dissolved ahead of the October 2022 National Assembly elections.

The process of enacting the constitutional bill continues to drag on long after the 2022 elections, with political parties and the government now indifferent towards the Bill. In July 2023, a Southern African Development Community (SADC) Oversight Committee arrived in Lesotho led by the former President of Tanzania and chairman of the panel Jakaya Kikwete. The weeklong trip follows a progress meeting held in Lesotho in February 2023.

The Oversight Committee met with various stakeholders including King Letsie III, Prime Minister Samuel Matekane, Leadership of the National Reforms Transitional Office, Speaker of the National Assembly and President of the Senate as well as political parties in and outside parliament to further follow-up on Lesotho's progress on the reforms and their implementation.

## **Specific issues related to the safety of journalists in Lesotho**

Violence, threats, arbitrary arrests, intimidations and harassment of journalists by political activists and state security agents during the election cycles of the previous years have been omnipresent in Lesotho's body politic. Self-censorship remains a factor in the sector, as media organisations are loath to offend advertisers – in this case, the government. It has been revealed that 80% of advertising revenue comes from the government and this effectively means the media have to choose between holding the government to account and losing out on revenue or keeping quiet and remaining afloat.<sup>7</sup>

Towards the tail-end of 2021, Lesotho witnessed a spike in attacks against journalists, raising fears on the safety of journalists ahead of the 2022 elections. Traditionally, election years have been characterised by violence and attacks against journalists and the surge in violence against media workers in 2022 was ominous.

This triggered advocacy on the safety and security of journalists, with the executive being engaged and training for media workers being unrolled. Thanks to the programmes that were unveiled, Lesotho did not record any single violation against journalists in 2022, with the election period passing with no incident. However, Marafaele Mohloboli, editor of Africa Media Holdings, which publishes Lesotho Times and Sunday Express newspapers got a scare on 22 October 2022 when she was pursued by two men in a white car with no registration

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<sup>7</sup> The State of Media Freedom and Safety of Journalists in Africa [https://cipesa.org/wp-content/files/The\\_State\\_of\\_Media\\_Freedom\\_and\\_Safety\\_of\\_Journalists\\_in\\_Africa\\_Report.pdf](https://cipesa.org/wp-content/files/The_State_of_Media_Freedom_and_Safety_of_Journalists_in_Africa_Report.pdf)

plates in the streets of Maseru. However, the incident has never been directly linked with her job as a journalist.

Media advocacy group, MISA Lesotho and the MISA Regional Office attributed the general improved safety environment to the advocacy initiatives that had been rolled out throughout the year.

One such initiative was the signing of the pledge, where journalists, the Lesotho Communications Authority (LCA) and the Independent Electoral Commission developed a pledge on ethical and professional reporting. The pledge was signed by journalists, with the LCA developing campaign material promoting the pledge. The pledge was a commitment to build trust between journalists and the audience. Once journalists had the confidence of the audience, it was thought that this would help reduce attacks on media workers. The advocacy initiatives proved successful.<sup>8</sup>

However, this proved to be a false dawn, as in May 2023, a broadcaster was shot dead as he was leaving his place of work. Ralikonelo “Leqhashasha” Joki of Tšenolo FM was on May shot and killed for as yet unknown reasons, although speculation is rife that this had to do with his work at the broadcaster. MISA Lesotho described Joki’s killing as “an affront to our attainment of democracy that is couched on pillars of free speech and a free press”.<sup>9</sup>

Prior to Joki’s killing, a number of threats had been made on social media platform Facebook, but these were not taken seriously.<sup>10</sup>

Four people have since been arrested in connection with his death, with the matter still pending before the courts.

In similar fashion to Joki’s killing, in June 2023, a suspected fake Facebook account under the name Ramoriana Mphoto made death threats to radio presenters from People’s Choice Radio, Tšenolo FM, KEL Radio, ACL Radio, stating that they were next following Joki’s death a month earlier. The threats were chilling and sent shock within the media industry with journalists wondering who would be next as they exchanged texts in instant messaging groups.

However, despite the nature of the threats, no reports were made to the police. Interestingly, a radio presenter, who was threatened, Teboho Ratalane speculated that the social media threats were not necessarily a threat to him and his organisation, but rather a diversionary tactic by the people responsible for Joki’s death, who were trying to divert attention from real reasons that may have led to the broadcaster’s killing.

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<sup>8</sup> Lesotho journalists commit to professionalism <https://misa.org/blog/lesotho-journalists-commit-to-professionalism/>

<sup>9</sup> MISA-Lesotho Statement On The Killing Of Mr Ralikonelo ‘Leqhashasha’ Joki, A Presenter For The Tsenolo Fm Who Was Gunned Down In Cold Blood On The Night Of Sunday, 14 May 2023 [https://misa.org/blog/media\\_violations/misa-lesotho-statement-on-the-killing-of-mr-ralikonelo-leqhashasha-joki-a-presenter-for-the-tsenolo-fm-who-was-gunned-down-in-cold-blood-on-the-night-of-sunday-14-may-2023/](https://misa.org/blog/media_violations/misa-lesotho-statement-on-the-killing-of-mr-ralikonelo-leqhashasha-joki-a-presenter-for-the-tsenolo-fm-who-was-gunned-down-in-cold-blood-on-the-night-of-sunday-14-may-2023/)

<sup>10</sup> UNESCO Director-General condemns the killing of Lesotho broadcaster <https://misa.org/blog/unesco-director-general-condemns-the-killing-of-lesotho-broadcaster/>

Joki's killing was shocking and served as a reminder of how gunmen in the Southern African nation have targeted journalists. In July 2016, former Lesotho Times editor Lloyd Mutungamiri was shot four times by soldiers while entering the gate of his then home in Ha Thamae, in Maseru, a place, coincidentally, close to where Joki was murdered. His alleged attackers are awaiting trial in jail.

Following Joki's assassination, the government of Lesotho declared an indefinite curfew effective from May 16, restricting movement of people between 10pm and 4am to try and address gun violence in the country. The curfew was revoked 10 days later.

International media reported widely on the killing, with rights groups and media defence groups condemning the killing and calling for security services to investigate.

Journalists have previously fled the country for fear of their lives while others have previously had run-ins with the army and police over their published stories.

## Key examples press freedom incidents

The Lesotho chapter of the Media Institute of Southern Africa (MISA) in 2021 noted with grave concern a sharp decline in the freedom of expression environment, with a rise in incidents targeting media practitioners.<sup>11</sup>

In July 2023, One of Lesotho's weekly newspapers Public Eye was sued for M1.7 million (USD96,000) for defamation, with the Lesotho Communications Authority listed as the second respondent. The plaintiff, Phakiso Molise insists publication of an article in July 2021 was false and misleading and that the publication did not seek his side of the story before publishing. In the story, Public Eye mentions that it reached out to the plaintiff for comment before publishing and reportedly confirmed the authenticity of a letter that formed the basis of the story.<sup>12</sup>

In March 2022, the MNN Centre for Investigative Journalism was attacked while in pursuit of its mandate of holding power accountable and exposing wrongdoing. There were attempts to hack into the organisation's emails, and the managing director's emails. The attempts were blocked by security layers put in place to secure emails, safeguarding information and making communication both externally and internally confidential. Investigations into the security breach attempts were conducted internally.<sup>13</sup>

There have also been incidents of politicians "abusing" their power. On 18 November 2021, 357 FM licence was withdrawn for allegedly failing to comply with a directive of the Broadcasting Disputes and Resolution Panel to apologise to the leader of the opposition

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<sup>11</sup> Media violations escalate sharply in Lesotho <https://misa.org/blog/media-violations-escalate-sharply-in-lesotho/>

<sup>12</sup> Public Eye, LCA sued for M1.7 million in defamation case <https://www.newsdayonline.co.ls/public-eye-sued-for-m1-7-million-in-defamation-case/>

<sup>13</sup> MNN Centre under attack; <https://lescij.org/2022/03/30/mnn-centre-for-investigative-journalism-under-attack/>



Basotho Action Party (BAP), Professor Nqosa Mahao. Mahao accused the station of waging a campaign of character assassination and took the matter to the broadcasting regulator, the Lesotho Communications Authority (LCA). While 357 FM appealed to the Magistrate's Court, the matter was sent the case back to the regulator for determination.

On 17 November 2021, People's Choice Radio presenter Teboho Ratalane was questioned by police after they stormed the privately owned station. This was in connection with a report about missing police guns and the police wanted Ratalane to disclose the source of a police union press release that he had referred on air about the theft of 75 firearms, but he had refused to do so. No arrests were made but the incident was worrying and went against freedom of expression and media freedom.

Lesotho Times journalist, Mohalenyane Phakela, was barred from covering the courts on 15 November 2021 by Chief Justice Sakoane Sakoane for stories published by his paper in November 2021. The Chief Justice said Phakela would not be allowed to report on the courts until his editor apologised for the publication's satirical columnist, *Scrutator*, in her commentary that urged Sakoane to explain what is happening in the judiciary he leads. The editor apologised and Phakela went back to court reporting.

The same month, on 14 November 2021, 357 FM presenter Lebeso Molati, was detained and allegedly choked by police after he reported on alleged missing guns. The police who were accused of assaulting and torturing Molati are yet to be brought to book.

## **Status of investigations by the police of major attacks against journalists**

One of the most recent attacks against journalists in Lesotho was the assassination of Ralikonelo Joki, shortly after completing his current affairs.

- Law enforcement agencies swiftly worked to arrest the four suspects, who first appeared in court on 26 June 2023. So far, police investigations have not linked the assassination to his journalistic work. However, this has instilled fear in journalists.
- The soldiers who allegedly shot former Lesotho Times editor Lloyd Mutungamiri in 2016 are still awaiting trial.
- The police who were accused of assaulting and torturing Molati are yet to be brought to book.
- No arrests have been made in the case where Radio presenter Teboho Ratalane was questioned by police after they stormed the privately owned station.

## **Impact of the current state of safety of journalists on the enjoyment of freedom of expression in the country**

One of the issues that blights Lesotho's media environment is the high level of impunity for crimes against journalists. In Mutungamiri's case for example, the case is still yet to be finalised

more than seven years since he was shot. There does not seem to be any political will to deal with cases involving attacks against the media.

What further makes the situation worse for journalists in Lesotho is that the perpetrators of media violations are often security services such as the police and the army.

Self-censorship is the hallmark of journalism in Lesotho, as there are a number of unsolved cases involving personal attacks both physical and verbal on journalists by supporters of successive governments, the opposition and other politically exposed persons.

While Lesotho's position on the Reporters Without Borders' World Press Freedom Index, the situation for journalists remains very critical. In 2022, Lesotho was ranked 88 on the World Press Freedom Index and 67 in 2023, a sharp rise for a country beset with insecurity for journalists.<sup>14</sup> The rise could be attributed to a generally safe environment in 2022.

In the past few years, the general legislative environment in Southern Africa has been characterised by shrinking civil space and Lesotho is in the same boat. For example, the National Security Services Act empowers the minister to intercept communications without judicial oversight, raising the real risk of wholesale surveillance in the country. Such surveillance discourages whistleblowing, public participation and citizen engagement.

The lawsuit against the Public Eye raises the real possibility that strategic lawsuits against public participation or SLAPPs shall be a common feature in the future. The Public Eye was sued for M1,7 million (USD96,000), which is enough to cripple its operations and push it out of business.

Such lawsuits are meant to tarnish journalists' reputations, discourage publication of information exposing any wrongdoing and, in a pursuit, to bring media houses to their knees.

In similar cases, journalists have had to make out of court settlements because they could not afford long drawn-out court battles with giant companies and individuals. Nthabeleng Seithleko of *Moeletsi oa Basotho* newspaper had to settle out of court, out of her own pocket in 2021 when the CEO of an unnamed construction company claimed defamation over a land grab story she had written about him. Fearing losing her job, without any legal support, she paid a M4,000 (USD225) settlement.

Access to information remains a far distant dream in Lesotho. Whistleblowing has always been a challenge due to reprisals associated with it and sources have become reluctant to disclose information for fear of losing their jobs. With the freedom of the media shrinking and repressive laws being introduced, which will lead to fines and/or jail time, working conditions are bound to worsen.

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<sup>14</sup> Lesotho <https://rsf.org/en/country/lesotho>

## Recommendations to various stakeholders on improving the situation

- The government of Lesotho is encouraged to lead efforts to enable an environment that guarantees media freedom and the full enjoyment of freedom of expression by everyone
- The Minister of Communication and the National Assembly are encouraged to review the Computer Crimes and Cyber Security Bill 2022 and ensure its packaging does not threaten the freedom of the media, freedom of expression nor infringe on journalists' ability to hold those in power accountable and inform the public
- The government of Lesotho is encouraged to pass the Media Law and the Access and Receipt of Information Bill of 2000 to encourage freedom of expression
- Media reforms in the Omnibus Bill and those National Reforms Authority should be prioritised and implemented for Lesotho's media sector to meet international standards and achieve total freedom of expression
- The regulator, Lesotho Communications Authority needs to be independent in its operations so that it is not seen as being used as a weapon by politicians
- All stakeholders are encouraged to address all acts of harassment, intimidation, and violence, against journalists and media workers, to ensure that they are free to carry out their work without fear of violence or reprisals.
- The police are encouraged to conduct prompt investigations without political influence into allegations of threats or violence against journalists and ensure perpetrators face the full might of the law.



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