

**BOTSWANA (EXPERIENCES ON CYBERCRIME)**

**A discussion note by Kgosietsile Ngakaagae**

**Chief Prosecutions Counsel**

**Republic of Botswana**

1. Botswana has not been as exposed to the harsh effects of cyber crime as other nations have been. The incidence of cyber crime remains low but is on the rise. Perhaps that is on account of the fact that our economy is less digitalized. The country has however, in policy, embraced e-governance, a process, in terms of which the country hopes to integrate the different sectors of the local economy and further to make the nation friendlier to international e-commerce. Moreover, our government has stepped up efforts to make internet access more accessible to the general populace, with an all out and fully resourced program to equip even primary schools with information technologies and equipment. Other projects are on course to ensure greater internet accessibility by the populace. With this development, will undoubtedly come challenges including the global tide of cyber crime as have other nations around the world. The country efforts to position itself and an international financial services centre will among others, run headlong into these challenges.
2. By the above, I do not to say that Botswana has not experienced cyber crime or that the country has not had to grapple with cyber crime issues. Admittedly, our experience is limited, yet quite significant. Until recently, Botswana did not have legislation on cyber crime and the general criminal law framework was applied to cyber crime cases as far as circumstances allowed. This experience exposed our unguarded position. Happily however, the country now has functional legislation in place against cyber crime and other computer crimes.

3. Of the not so many cases we have dealt with on cyber crime the following has been an eye opener. In the year 2008, we experienced isolated incidences of internet fraud and in seeking to deal with it, we discovered how vulnerable we were in that regard.
4. Whereas there was a framework for mutual legal assistance (MLA) between Botswana and the countries involved, there were no clear lines of communication or service level agreements to make cooperation smooth and effective. The absence of clearly laid out expectations between parties did not conduce a speedy resolution of the cases. What was supposed to be a Mutual Legal Assistance issues to freeze, for example, the proceeds before dissipation, translated to a long and frustrating experiences between counterpart national law enforcement agencies. In one instance, we were advised that assistance could not be possible in the absence of an arrest warrant from our country for the suspects. Our Cyber crime Act was not yet in place and Botswana the traditional geographic territoriality of the criminal law held sway. We failed to get assistance as we could not obtain a warrant even from our very courts on account of the jurisdictional issue. Meanwhile, the suspects' bank would not withhold the proceeds of crime in the absence of a local warrant in their jurisdictions the obtaining of which was dependent upon our a local warrant from our country.
5. Often (save with fully advised institutions) in cyber transactions, as in the above example, contracts are concluded without clear fully advised contractual processes to ascertain both the identities of the parties, their bona fides, and the genuineness of the transactions. There is therefore a need for greater public awareness on cyber crime to enable the public to be more cautious with the use of cyberspace and specifically with e-commerce.
6. Our discovery was that we were exposed both on the legal and investigative aspects with respect to cyber crime. The following remain challenges;
  - a. Greater public education on the incidence of cyber crime.
  - b. Bilateral or multilateral protocols on service levels between jurisdictions (going beyond general treatise). It would be advisable for service levels to refer to the treaties or protocols for ease of reference by law enforcement. It would

be helpful to have a central reference source for the MLA requirements of jurisdictions to avoid delays occasioned by lack of clear expectations. It is on this vein that as a prime law office, we have and continue to make representations to our government in an effort to make it realise the need for accession to the European Convention on Cybercrime. We do hope that in the medium term, the political leadership will discover the merit of our position.

### **BOTSWANA'S MUTUAL LEGAL ASSISTANCE IN CYBERCRIME**

7. Botswana has a generous mutual legal assistance legislation which makes possible, assistance to any country with which Botswana has some reciprocal form of MLA arrangement. Regrettably, as already reflected, no agreement exists with the EU, and Botswana has not acceded to the EU convention on cyber crime. Our cyber crime legislation however is based on the EU model and borrows heavily (almost word for word) from the same. With the exception of the absence of a provision specifically enabling real time interception of traffic data there would appear to be little, if any, legal impediment to requirements for accession.
8. In Botswana, MLA issues, which form an important part of the fight against cyber-crime, are handled by the Directorate of Public Prosecutions and we have established a culture of giving priority to the same. The idea in so doing is to entrench cooperation and to assure other nations of our willingness to assist in cyber-crime matters. Of recent, our office has set up a specialised unit dedicated to extradition and mutual legal assistance which should be of any benefit to persons seeking our cooperation.

**Our office is contactable at;**

Directorate of Public Prosecutions

Private Bag 0356

Gaborone

Botswana

Tel (00267)3613689 / 3613881 / 3613891/

Email can be sent to [kngakaagae@gov.bw](mailto:kngakaagae@gov.bw)

