

BOTSWANA

*Thuto Hlalele**
*Romola Adeola***
*Adebayo Okeowo****
*Daba Bacha Muleta*****
*Lucius Batty Njiti******

1 Population indicators

1.1 What is the total population of Botswana?

According to the 2001 Population and Housing Census the total population of Botswana was 1 680 863.¹ According to the 2011 Population and Housing Census, the total population of Botswana is 2 024 904 people.²

1.2 Describe the methodology used to obtain the statistical data on the prevalence of disability in Botswana. What criteria are used to determine who falls within the class of persons with disabilities in Botswana?

Desktop research was used and reliance was placed on statistical data from 2001 and 2011 Population and Housing Census.³ As pertinent information related to this research from the 2011 census was not yet available, the information was obtained through a telephonic enquiry made to the Central Statistics Office of Botswana.

* Academic Associate, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa.

** LLD Candidate, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa.

*** LLM Student, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa.

**** LLM Student, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa.

***** LLM Student, Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa.

1 Republic of Botswana '2011 Population & Housing Census: Preliminary Results Brief' (2011) <http://ecastats.uneca.org/aicmd/Portals/0/Census%202011%20Preliminary%20Brief%20Sept%2029%202011.pdf> (accessed 16 April 2014).

2 M Mmatli et al 'Analysis of disability population and housing census 2011' 3 (on file with authors).

3 See 'Decent work country programme for Botswana 2011-2015' Report of the Republic of Botswana (2011) 12 (Decent work country programme for Botswana 2011-2015) <http://www.ilo.org/public/english/bureau/program/dwcp/download/botswana.pdf> (accessed 16 April 2014); 'Revised national population policy: Improving the quality of life' Report of the National Council on Population Development, Ministry of Finance and Development Planning, Botswana (2010) 21 (National Council on Population Development Report) [http://botswana.unfpa.org/drive/RevisedNationalPopulationPolicyBotswana\(FINAL\).pdf](http://botswana.unfpa.org/drive/RevisedNationalPopulationPolicyBotswana(FINAL).pdf) (accessed 16 April 2014).

1.3 What is the total number and percentage of people with disabilities in Botswana?

In the light of the 2001 Population and Housing Census, there were 58 976 persons with disabilities (PWDs) in Botswana.⁴ About 66 per cent of these persons lived in rural areas.⁵ According to the 2011 Population and Housing Census, there are 59 103 PWDs of the total population of 2 024 904.⁶ This figure accounts for 2,92 per cent of the total population of Botswana.

1.4 What is the total number and percentage of women with disabilities in Botswana?

Of a total of 1 035 776 females in Botswana, 29 592 are disabled.⁷ In other words, 2,9 per cent of the total population of females in Botswana are disabled.⁸ In comparison, there are 29 511 males with disabilities out of a total population of 989 128 males in Botswana accounting for 3 per cent of the population of males in Botswana.⁹

1.5 What is the total number and percentage of children with disabilities in Botswana?

While the total number of children with disabilities was not ascertained, information on the number and percentage of children with disabilities within the school attending range of ages 5-17 was obtained.¹⁰ These figures can be split into three categories: children with disabilities still at school; those who have left school and those who never attended school. The total population of children with disabilities still in school is 8 264. The number of those who have left school is 747, while the total number of those who never attended school is 2 285.¹¹

1.6 What are the most prevalent forms of disability and/or peculiarities to disability in Botswana?

The most prevalent forms of disabilities are:

- Sight/visual impairment (407 per cent)
- Hearing impairment (17 per cent)
- Speech impairment (9,9 per cent)
- Impairment of leg(s) (11,7 per cent)
- Intellectual impairment (3,3 per cent)
- Mental health disorder (7,8 per cent)
- Impairment of arm(s) (6,3 per cent)
- Inability to use the whole body (2,5 per cent)¹²

4 Decent work country programme for Botswana 2011-2015 (n 3 above) 12.

5 As above.

6 Decent work country programme for Botswana 2011-2015 (n 3 above) 3.

7 Decent work country programme for Botswana 2011-2015 (n 3 above) 5

8 As above.

9 As above.

10 As above.

11 Decent work country programme for Botswana 2011-2015 (n 3 above) 18.

12 Decent work country programme for Botswana 2011-2015 (n 3 above) 6.

2 Botswana's international obligations

2.1 What is the status of the United Nation's Convention on the Rights of Persons with Disabilities (CRPD) in Botswana? Did Botswana sign and ratify the CRPD? Provide the date(s).

Botswana has neither signed nor ratified the CRPD and its Optional Protocol.

2.2 If Botswana has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Botswana submit its report? If so, and if the report has been considered, indicate if there was a domestic effect of this reporting process. If not, what reasons does the relevant government department give for the delay?

- Botswana has neither signed nor ratified the CRPD and the Optional Protocol to CRPD.
- If Botswana had signed and ratified the CRPD and the Optional Protocol the Office of the President would be responsible for submitting the report.¹³
- Though Botswana is not a state party to the CRPD, a voluntary report is underway.¹⁴

2.3 While reporting under various other United Nation's instruments, or under the African Charter on Human and Peoples' Rights, or the African Charter on the Rights and Welfare of the Child, did Botswana also report specifically on the rights of persons with disabilities in its most recent reports? If so, were relevant 'concluding observations' adopted? If relevant, were these observations given effect to? Was mention made of disability rights in your state's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations/recommendations?

• African Charter on Human and Peoples' Rights

In its 2008 report to the African Commission on Human and Peoples' Rights, Botswana mentioned that the Ministry of Education and Skills Development had developed an equal opportunity policy to ensure the realisation of rights of 'learning students, staff and community in aspects of institutional or professional life' so as to ensure that they are not discriminated against on any ground including disability. However, Botswana did not make further mention of the rights of PWDs in the report.¹⁵ In its concluding observation, the African Commission on Human and Peoples' Rights did not make mention of the rights of persons with disabilities.¹⁶

13 See Republic of Botswana 'Office of the President (OP)' <http://www.gov.bw/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Divisions/Office-of-People-with-Disabilities/> (accessed 16 April 2014).

14 Child Rights International Network 'Botswana: Children's rights references in the universal periodic review (second cycle)' (2012) <http://crin.org/en/library/publications/botswana-childrens-rights-references-universal-periodic-review-second-cycle> (accessed 16 April 2014).

• **International Covenant on Civil and Political Rights**

Similarly in its 2007 report to the Human Rights Committee, Botswana mentioned that the Ministry of Education has developed an 'equal opportunity policy for learning students, staff and community to ensure that they are not discriminated against on any ground including disability. It does not make any mention of the rights of persons with disabilities.¹⁷ In its concluding observation, the Human Rights Committee does also not make mention of the rights of persons with disabilities.¹⁸

• **Convention on the Elimination of All Forms of Discrimination against Women**

In its report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee), Botswana made mention of disability three times.¹⁹ The first mention of disability in its report was a restatement of section 15(3) of the Botswana Constitution. The second mention of disability was with reference to a study on the Socio-Economic Implications of Violence against Women in Botswana which documented the effect of violence on women. In its third mention of disability, Botswana emphasised that the Ministry of Education was preparing an Equal Opportunities Policy to ensure equal learning opportunities and that no one is discriminated against on any ground including disability. Though disability was mentioned three times, there was nothing in the report on the rights of PWDs. In its concluding observations, the CEDAW Committee urged Botswana to ratify the CRPD and give special attention to data collation on disabled women.²⁰

2.4 Was there any domestic effect on Botswana's legal system after ratifying the international or regional instruments in 2.3 above? Does the international or regional instrument that has been ratified require Botswana's legislature to incorporate it into the legal system before the instrument can have force in Botswana's domestic law? Have Botswana's courts ever considered this question? If so, cite the case(s).

Botswana is a dualist state hence, domestication of international instruments is required prior to application. Through the Children's Act of 2009, it domesticated the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child.²¹ However, it has not domesticated the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on the Elimination of Racial Discrimination and the

15 Republic of Botswana 'First periodic report to the African Commission on Human and Peoples' Rights: Implementation of the African Charter on Human and Peoples' Rights' (2008) 93 http://www.achpr.org/files/sessions/46th/state-reports/1st-1966-2007/staterep1_botswana_2008_eng.pdf (accessed 16 April 2014).

16 'Concluding observations and recommendations on the initial periodic report of the Republic of Botswana' 47th Ordinary Session, Banjul, The Gambia (12-26 May 2010) http://www.achpr.org/files/sessions/47th/conc-obs/1st-1966-2007/achpr47_conc_staterep1_botswana_2010_eng.pdf (accessed 30 April 2014).

17 Human Rights Committee 'Initial report of state parties due in 2001: Botswana' (2007) 26 UN Doc CCPR/C/BWA/1.

18 Human Rights Committee 'Concluding observation of the Human Rights Committee: Botswana' (2008) UN Doc CCPR/C/BWA/CO/1.

19 'Combined initial, second and third periodic reports of states parties: Botswana' (2008) UN Doc CEDAW/C/BOT/3.

20 'Concluding observations of the Committee on the Elimination of Discrimination against Women: Botswana' (2010) 11 UN Doc CEDAW/C/BOT/CO/3.

21 See 'Universal periodic review (second cycle): Botswana stakeholder report – Submitted 9 July 2012' (2012) 2 http://lib.ohchr.org/HRBodies/UPR/Documents/Session15/BW/JS1_UPR_BWA_S15_2012_JointSubmission1_E.pdf (accessed 20 June 2014).

Convention Against Torture (CAT).²² However, it has a Constitution which provides for fundamental human rights.

- **Case law**

In protecting human rights, the courts often refer to the rights in the Constitution. This judicial culture resonates in the statement of the Court of Appeal in the case of *State v Marapo* where the Court emphasised that 'Botswana is one of the countries in Africa where liberal democracy has taken root ... and international human rights norms should receive expression in the constitutional guarantees of this country'.²³ In *Attorney-General v Dow* Botswana Court of Appeal emphasised that:²⁴

Botswana is a member of the community of civilised states ... it would be wrong for its courts to interpret its legislation in a manner which conflicts with the international obligations Botswana has undertaken.

Conceding that the dualist nature of the Constitution requires domestication of international treaties, the Court of Appeal has, nonetheless, emphasised that international obligations that are not domesticated should serve as an interpretative source.²⁵

2.5 With reference to 2.4 above, has the United Nation's CRPD or any other ratified international instrument been domesticated? Provide details.

While Botswana has domesticated the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child through the Children's Act of 2009,²⁶ it has neither signed nor ratified the CRPD. As a dualist state, it requires treaties to be domesticated before they can have the force of law. As the CRPD has not been domesticated, it has no force of law.

3 Constitution

3.1 Does the Constitution of Botswana contain provisions that directly address disability? If so, list the provision, and explain how each provision addresses disability.

The Constitution of Botswana has no provision that directly addresses disability rights.²⁷

²² As above.

²³ (2002) AHRLR 58 (BwCA 2002) para 22.

²⁴ (2001) AHRLR 99 (BwCA 1992) para 109.

²⁵ *Dow* (n 24 above) para 108.

²⁶ Universal periodic review (second cycle): Botswana stakeholder report (n 21 above).

²⁷ The 1966 Constitution of Botswana contains a Bill of Rights which covers civil and political rights.

3.2 Does the Constitution of Botswana contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability.

The Constitution of Botswana has provisions relating to non-discrimination and the right to equality enshrined in section 15(2). This indirectly safeguards PWDs from any form of discrimination.

4 Legislation

4.1 Does Botswana have legislation that directly addresses issues relating to disability? If so, list the legislation and explain how the legislation addresses disability.

There is a Building Control (Amendment) Regulation of 2009²⁸ developed in light of the 1990 and 2007 Building Control Acts of Botswana. The regulation requires that for the construction of non-domestic buildings and apartments, a Disability Access Certificate should be obtained from the local building authority. This certificate serves to confirm that the design of the proposed structure caters for the accessibility needs of PWDs. The Early Childhood Care and Education policy of 2001 also addresses disability directly.

4.2 Does Botswana have legislation that indirectly addresses issues relating to disability? If so, list the main legislation and explain how the legislation relates to disability.

• **Employment Act**

The Employment Act, 1982²⁹ provides for the rights and obligations of employers and employees. Though it is silent on the rights of PWDs, section 125 of the Convention empowers the Minister 'to make regulations in relation to employment of infirm or handicapped persons.'³⁰

• **Workers Compensation Act**

The Workers Compensation Act 23 of 1998³¹ provides that where a worker becomes permanently disabled, no deduction shall be made to compensation given to such person in certain circumstances arising from occupational injuries and diseases.

28 Building Control (Amendment) Regulations 2009. <http://www.environ.ie/en/Legislation/DevelopmentandHousing/BuildingStandards/FileDownload,21091,en.pdf> (accessed 29 April 2014).

29 Employment Act of Botswana (1982), available at <http://www.elaw.co.za/african%20legislation/Botswana/Employment%20Act%20of%201982.pdf> (accessed 16 April 2014).

30 As above.

31 Worker's Compensation Act 23 of 1998: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_125673.pdf (accessed 16 April 2014).

5 Decisions of courts and tribunals

5.1 Have the courts (or tribunals) in Botswana ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases with the facts, the decision(s) and the reasoning.

Although the Botswana Court of Appeal in the cases of *Attorney General of Botswana v Dow*³² and *Makuto v The State*³³ concluded that discrimination on account of disability falls within the scope of the right to non-discrimination within the Constitution of Botswana, these cases did not specifically centre on the rights of PWDs.

However, in *JNG Express (PTY) Ltd v Botswana Insurance Co Ltd*, the High Court of Botswana decided on a case touching on the termination of an employee who allegedly suffered an epileptic fit. The employee in this case suffered a seizure following a prank by a co-worker who 'leapt from behind a bush with a mighty roar' at a game camp. When the employee later recuperated and resumed work, a letter of termination was given to her. This letter was based on the alleged conclusion that the employee suffered an epileptic fit. The court held that the termination of the employee who had allegedly suffered what seemed to be an epileptic fit was 'both substantively and procedurally unfair'.³⁴ Relying on the earlier decision of the Botswana High Court in *Moseki v Johnson Crane Hire (Botswana) (Pty)(Ltd)* – where the Botswana High Court set out the principles for termination on employment due to ill-health – the court held that³⁵

[i]ncapacity arising from ill health or injury can ... be a legitimate reason for terminating a contract of employment if it is fairly done ... the employer is obliged to establish the nature and extent of the disability through meaningful consultation with the employee, either with or without the intervention of a medical doctor.

The court further stated that '[i]f the incapacity is serious or permanent, the employer should consider alternative employment or adapting the employee's work to accommodate such disability'.³⁶

6 Policies and programmes

6.1 Does Botswana have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.

Botswana has a disability policy called the 1996 National Policy on Care for People with Disabilities (1996 Disability Policy). The policy document was drafted in

32 n 24 above.

33 2000 (2) BLR 130 (CA).

34 *JNG Express (PTY) Ltd v Botswana Insurance Co Ltd* (2006) 1 BLR 421 (HC) <http://www.elaws.gov.bw/displaylrpage.php?id=58&dsp=2> (accessed 29 April 2014).

35 As above.

36 As above.

consideration of the guidelines for the national development plan of the country, the United Nations World Programme of Action Concerning Disabled Persons and also by taking cognisance of human rights in line with the country's Constitution.³⁷ The Disability Policy has nine principles which cut across human rights protection, inclusion, participation, empowerment, inclusive education, integration, continuous societal involvement in care for PWDs, needs-specific equality and effective coordination of care for PWDs.³⁸

The policy also provides guidelines and establishes responsibilities for the various bodies involved in the care PWDs. In line with the policy, the state is mandated to: prevent the social, emotional and physical deprivation of PWDs; to maintain a system of care for people with disabilities; to ensure that the welfare of people with disabilities has its rightful place in development programmes in the broad education, health, social, physical and economic spheres; and to ensure that people with disabilities are not disadvantaged in securing employment whenever possible.³⁹

The role of society in implementing the Disability Policy is also mentioned.⁴⁰ The policy stipulates that the community, organisations and individuals should contribute to provide effective care of people with disabilities. It further obliges the business community to support programmes for PWDs.

Though the 1996 Disability Policy details protection for PWDs, there is a Draft Policy underway which seeks to align the protection of PWDs with the CRPD.⁴¹

6.2 Does Botswana have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.

There is an Inclusive Education Policy which seeks to ensure accessible and equitable education for all including PWDs. According to the Assistant Minister of Education and Skills Development the Inclusive Education Policy seeks to:⁴²

Achieve an inclusive education system which provides children, young people and adults with access to relevant, high quality education which enables them to learn effectively, whatever their gender, age, life circumstances, health, disability, stage of development, capacity to learn or socio-economic circumstances.

There is also a Science and Technology Policy (STP) which was approved by parliament in 1998. The STP seeks to 'develop adequate human resource capacity with an optimum mix of capabilities to generate and apply Science and Technology [S&T] based on the needs of industry and the society'.⁴³ As part of the strategies for realising this objective, the policy requires the state to '[c]reate opportunities for the

37 See The National Policy on Care for People with Disabilities (1996) (1996 Disability Policy) <http://www.gov.bw/en/Citizens/Sub-Audiences/People-with-Disabilities-/National-Policy-on-Care-for-People-with-Disabilities/> (accessed 30 April 2014).

38 Art 1.

39 Art 4.2.

40 Art 4.3.1.

41 See BR Dinokopila 'The rights of persons with disabilities in Botswana: Policy and institutional framework' in I Grobbelaar-du Plessis & T van Reenan *Aspects of disability law in Africa* (2011) 269-271.

42 'MOE launches inclusive education policy' *The Voice* 1 March 2013 <http://www.thevoicebw.com/2013/03/01/moe-launches-inclusive-education-policy/> (accessed 30 April 2014).

43 Science and Technology Policy (1998) http://www.ub.bw/ip/documents/1998_Science%20and%20Technology%20Policy%20for%20Botswana.pdf (accessed 30 April 2014).

disabled in S&T education and training by increasing enrolment',⁴⁴ and '[c]onduct research on medical technologies for use by disabled persons'.⁴⁵

7 Disability bodies

7.1 Other than the ordinary courts and tribunals, does Botswana have any official body that specifically addresses violations of the rights of people with disabilities? If so, describe the body, its functions and its powers.

Yes. There is a Coordinating Office for People with Disabilities (CPWD) within the Office of the President. The CPWD is charged with the responsibility to 'develop and coordinate the implementation of policies, strategies and programs through mainstreaming them into development agenda to empower people with disabilities'.⁴⁶

It is noteworthy to mention that under the Office of the President, there is a memorial fund known as the Sir Seretse Khama Memorial Fund (SSKMF) which was established by statutory instrument in 1981 in Botswana with the core mandate to assist people with disabilities with various assistive devices.⁴⁷ These assistive devices could be walking frames, wheelchairs, hearing aids, walking sticks and the like. The fund is supervised by the CPWD.

7.2 Other than the ordinary courts or tribunals, does Botswana have any official body that though not established to specifically address violations of the rights of persons with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.

The Ministry of Education and Skills Development, the Ministry of Health, the Ministry of Labour and Home Affairs and the Ministry of Local Government are four relevant government departments involved in protecting PWDs through their thematic mandates.

Created to facilitate quality education in order to stimulate economic growth, the Ministry of Education and Skills Development has a Special Education Division⁴⁸ which is charged with ensuring that PWDs have access to education taking into account the different types of disability.⁴⁹ Within the Ministry of Health, there is a Rehabilitation Services Division which caters for PWDs.⁵⁰

44 5.3.3(h).

45 5.3.3(j).

46 See Office of the president of Botswana: <http://www.gov.bw/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Divisions/Office-of-People-with-Disabilities/> (accessed 16 April 2014).

47 Republic of Botswana 'Sir Seretse Khama Memorial Fund' (2012) <http://www.gov.bw/en/News/Sir-Seretse-Khama-Memorial-Fund-Appeal/> (accessed 16 April 2014).

48 Dinokopila (n 41 above) 274; Ministry of Education and Skills Development <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Education-MoE/Tools--Services/Ministry-Directory/?FromPageID=2329&FromPageType=1&pid=1&ClearSearch=true> (accessed 29 April 2014).

49 See OC Abosi 'Trends and issues in special education in Botswana' (2000) 34 *Journal of Special Education* 48.

50 National Policy on Care for People with Disabilities: <http://www.gov.bw/en/Citizens/Sub-Audiences/People-with-Disabilities-/National-Policy-on-Care-for-People-with-Disabilities/> (accessed 29 April 2014).

The Ministry of Labour and Home Affairs (MLHA) as 'a provider of essential services that are important for social and economic development'⁵¹ is mandated to promote labour standards, ensure social security, promote gender equality and handle issues of immigration. Though without specific mandates to protect PWDs, the MLHA is tasked with ensuring that policies on social welfare are created taking into account the needs of PWDs.⁵² Further, there is a Division of Culture and Social Welfare within the MLHA that gives 'advice on employment placement and recreation needs'⁵³ and as such provides special services for PWDs. Within the Ministry of Local Government, there is the Social and Community Development Department which helps with welfare needs and also provides welfare services to PWDs.

8 National human rights institutions, Human Rights Commission, Ombudsman or Public Protector

8.1 Does Botswana have a Human Rights Commission or an Ombudsman or Public Protector? If so, does its remit include the promotion and protection of the rights of people with disabilities? If your answer is yes, also indicate whether the Human Rights Commission or the Ombudsman or Public Protector of Botswana has ever addressed issues relating to the rights of persons with disabilities.

Botswana does not have a Human Rights Commission. However, efforts are underway for the formation of one. In line with this, a draft memorandum has been submitted for consideration on the subject.⁵⁴

Botswana, however, has an Office of the Ombudsman which was established in 1995 by an act of parliament⁵⁵ and officially commenced its work in December 1997.⁵⁶ Its main role is to investigate any action taken by or on behalf of a government department or other authority to which the Act applies, action taken in the exercise of administrative functions of that department or authority. The Act does not bestow the Ombudsman with an express human rights mandate.

51 Ministry of Labour and Home Affairs 'Ministry functions': <http://www.gov.bw/en/Ministries--Authorities/Ministries/Ministry-of-Labour--Home-Affairs-MLHA/About-the-MLHA/Functions/> (accessed 29 April 2014).

52 Dinokopila (n 41 above) 274.

53 Empowering People with Disabilities: <http://www.gov.bw/tn/Citizens/Sub-audience/People-with-Disabilities-/Empowering-People-with-Disabilities/#DownloadFiles> (accessed 30 April 2014).

54 Human Rights Commission: <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Office-of-the-President/Divisions/Human-Rights-Commissions1/> (accessed 16 April 2014).

55 Ombudsman Act Cap 2 (1995), available at <http://www.apcof.org/files/OmbudsmanWord1.doc> (accessed 16 April 2014).

56 Office of the Ombudsman: <http://www.gov.bw/en/Ministries--Authorities/Ministries/Office-of-the-Ombudsman-of-Botswana/> (accessed 16 April 2014).

9 Disabled peoples organisations (DPOs) and other civil society organisations

9.1 Does Botswana have organisations that represent and advocate for the rights and welfare of persons with disabilities? If so, list each organisation and describe its activities.

Some of the civil society organisations involved in advocating for the rights of PWDs in Botswana are:

- The Botswana Council for the Disabled, which is an umbrella body which coordinates and manages all other nongovernmental organisations in Botswana, it also lobbies government on issues relating disability.
- Ditshwanelo Centre for Human Rights advocates for the rights of all marginalised people within Botswana
- Botswana Society of People with Disabilities and Leonard Cheshire Disability. Leonard Cheshire Disability has a Young Voices project which brings together young disabled persons from 21 countries around the world. The Young Voices has done commendable work in highlighting some of the challenges faced by PWDs in various countries across Africa including Uganda, Mauritius, Zimbabwe and Botswana.⁵⁷
- The Botswana Society of People with Disabilities which aims at developing an effective and united disability movement in Botswana.

9.2 In the countries in Botswana's region (Southern Africa) are DPOs organised/coordinated at national and/or regional level?

DPOs in Southern Africa are coordinated and organised on a national level.⁵⁸ In Botswana, there is the Botswana Council for the Disabled which is the umbrella body overseeing the activities of 30 civil society organisations within the country.

9.3 If Botswana has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?

Botswana is yet to ratify the CRPD.

9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?

This is not applicable as there is no CRPD to pursue for implementation.

57 'Reality (Botswana) - Leonard Cheshire Disability Young Voices' *LCD Young Voices* 27 July 2009 <https://www.youtube.com/watch?v=U4pz53-3qdo> (accessed 17 June 2014); Young Voices, Leonard Cheshire 'Where': <http://youngvoices.leonardcheshire.org/about/about-young-voices/> (accessed 17 June 2014).

58 See R Ntinda 'Namibia' in *African Disability Rights Yearbook* (2013) 261 269; see also I Grobbelaar-du Plessis & C Grobler 'South Africa' (2013) *African Disability Rights Yearbook* 307 331.

9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?

As the CRPD has not been ratified, these barriers cannot be assessed.

9.6 Are there specific instances that provide 'best-practice models' for ensuring proper involvement of DPOs?

None were identified.

9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities that resulted from the engagement of DPOs in the implementation process?

There have been instances of interventions made by civil society organisations in other areas of human rights protection in Botswana, for instance the rights of children and indigenous peoples. There has however not been such parallel experience in relation to PWDs.

9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?

Civil society organisations in Botswana need to engage the government more from a legislative aspect. This is lacking and partly explains the reason why the country is yet to sign the CRPD.

9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?

Civil society organisations in Botswana need capacity building when it comes to reporting on the rights of PWDs within the country. During the preparation of this report, it was difficult to come across information on disability rights within Botswana. There were instances when we reached out to organisations in Botswana in a bid to conduct interviews but they did not respond.

9.10 Are there specific research institutes in the region where Botswana is situated (Southern Africa) that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?

There is a regional research and advocacy civil society organisation named the Disability, HIV and AIDS Trust (DHAT) based in Botswana. This organisation plays an important role in that it educates the public, disabled people's organisations and government on the link between HIV/AIDS and disability. This

organisation also conducts research and formulates practical guidelines and interventions in this field.⁵⁹

10 Government departments

10.1 Does Botswana have a government department or departments that is/are specifically responsible for promoting and protecting the rights and welfare of persons with disabilities? If so, describe the activities of the department(s).

There is the CPWD under the Office of the President. The CPWD is mandated to create and coordinate the implementation of policies geared towards protecting PWDs in Botswana.

11 Main human rights concerns of people with disabilities in Botswana

11.1 Contemporary challenges of persons with disabilities in Botswana (for example, in some parts of Africa ritual killing of certain classes of PWDs, such as people with albinism, occurs).

The already difficult situation faced by PWDs in Botswana is unfortunately further complicated by the superstitious belief some hold regarding PWDs. A 2006 analysis of the Disable policy succinctly captured this stating that⁶⁰

[m]any disabled people live in isolation and shame behind closed doors because of their condition. Some are suffering additional emotional pains arising from embarrassment due to the inability to accept their conditions... Many people link disability with superstition and revenge for the commission of crimes. The resultant attitudes then force the disabled to hide and shy away from seeking help even when it is available.

11.2 Describe the contemporary challenges of persons with disabilities, and the legal responses thereto, and assess the adequacy of these responses to:

- **Access and accommodation**

Although the state has a National Policy on Disability, challenges with accessibility and reasonable accommodation still exist for PWDs. One area in which this resonates is in access to buildings. Although the state has developed a building

59 H Kotzé 'Country profiles report: Southern Africa Disability Rights and Law School project' (2012) http://www.osisa.org/sites/default/files/disability_open_learning_-_country_reports_final.pdf (accessed 16 April 2014).

60 'Botswana: Disabled policy comes under review' *Integrated Regional Information Networks (IRIN)* 1 November 2006 http://www.irinnews.org/report.asp?ReportID=56144&SelectRegion=Southern_Africa&SelectCountry=BOTSWANA (accessed 16 April 2014).

regulation which seeks to ensure that PWDs have access to buildings, gaps still exist in implementation.

Acknowledging this challenge, Thomas Motingwa (the Coordinator of the CPWD) has noted that 'a lot of ... buses have no ramps or the option of level entrance'. As such, PWDs face difficulties accessing transport systems.⁶¹ Besides from this problem, the attitude of society towards these persons has also been a significant challenge. According to Motingwa, PWDs are 'shown attitudes' when trying to access transport systems.⁶²

- **Access to social security**

There is no statutory disability benefit but cash benefits are provided to PWDs under the certain schemes such as the destitute programme.⁶³

- **Access to public buildings and public transport**

PWDs still face numerous challenges with respect to accessing major public facilities such as the transport system, worship centres, and major shopping centres. In addressing this challenge, the CPWD has engaged in sensitising the Ministry of Infrastructure, Science and Technology on the need for accessibility.⁶⁴

- **Access to education**

The shortage of learning assistive devices for PWDs has been highlighted as a challenge with regards to access to education in Botswana. It has been noted that 'direct funding is not allotted to primary schools for buying equipment and structural modifications to support students with disabilities'.⁶⁵ However, it is noteworthy to mention that the Ministry of Education and Skills Development has developed an Inclusive Education Policy which seeks to address the challenges of learners with disabilities.⁶⁶ To ensure that the objective of providing inclusive education is realised irrespective of considerations such as disability,⁶⁷ it is recommended that adequate resources be earmarked for its implementation.

- **Access to vocational training**

In response to the need to ensure vocational training for PWDs, the Ministry of Education has proposed vocational training for PWDs between the ages of 31 and 40.⁶⁸

- **Access to employment**

Access to employment for PWDs still remains a challenge in Botswana.⁶⁹ However, in response to this issue, the government has taken affirmative action

61 E Amogelang 'Mutingwa fights for people with disabilities' *The Patriots on Sunday* 18 February 2013 <http://www.thepatriotsonunday.co.bw/mutingwa-fights-for-people-with-disabilities/> (accessed 30 April 2014).

62 As above.

63 UNDP International Poverty Centre 'Poverty status report for Botswana: Incidence, trends, and dynamics' (2005) 69 <http://www.ipc-undp.org/publications/reports/Botswana.pdf> (accessed 30 April 2014); Social Security Administration, United States of America *Social security programs throughout the world: Africa, 2011* (2011) 37-38.

64 Z Kajevu 'Botswana must address issues concerning people with disabilities' *Sunday Standard* 11 August 2013 <http://www.sundaystandard.info/article.php?NewsID=17541&GroupID=2> (accessed 16 April 2014).

65 S Mukhopadhyay et al 'Inclusive education for learners with disabilities in Botswana primary schools' (2012) *SAGE Open* 1 6.

66 R Belpaire 'Inclusive education policy and implementation plan' http://eeas.europa.eu/delegations/botswana/documents/speeches/inclusive_education_en.pdf (accessed 29 April 2014); M Otukile-Mongwaketse & S Mukhopadhyay 'Botswana PGDE Student Teachers' attitude towards inclusive education: Implication for teacher education' (2013) 2 *Turkish Journal of Teacher Education* 36.

67 'MOE launches inclusive education policy' (n 42 above).

68 Amogelang (n 61 above).

69 State of the Nation Address by His Excellency Lt Gen Seretse Khama Ian Khama, President of the

significantly with regards to graduates with disabilities. According to Ruth Radibe, the Director of the Department of Social Protection within the Ministry of Local Government and Rural Development, '[s]ince April 2013, 62 per cent of graduates with disabilities have been placed in the various sectors in the Public services for permanent employment.'⁷⁰

- **Access to recreation and sport**

Although PWDs participate in sport and recreational activities, the Coordinator of CPWD has emphasised the need of affording opportunities to PWDs so that they can realise their potential in sports and recreational activities.⁷¹

- **Access to justice**

Although the Constitution of Botswana guarantees access to justice, there is a need for institutional safeguards to protect PWDs. The judiciary and law enforcement authorities need to be properly trained so as to create an enabling environment for PWDs to access justice.⁷²

11.3 Do people with disabilities have a right to participation in political life (political representation and leadership) in Botswana?

Generally, PWDs are perceived to have political participation. However section 6 (1)(c) of the Electoral Act provides that⁷³

[n]o person shall be qualified to be registered a voter who ... is a person certified to be [insane] or otherwise adjudged or declared to be of unsound mind under any law for the time being in force in Botswana' is disqualified from registering as a voter.

The problem with this provision is that neither the Electoral Act nor the Mental Disorders Act defines who an insane person or someone of 'unsound mind' is. It is problematic because exclusion on the grounds of disability – perceived or actual – denies persons with intellectual disabilities the right to participate in political life on an equal basis with others, without any exception regarding their alleged capacity.⁷⁴

11.4 Are people with disabilities' socio-economic rights, including the right to health, education and other social services protected and realised in Botswana?

- **Right to health**

Although the right to health is not expressly provided for under the Constitution of Botswana, its Disability Policy mandates the Ministry of Health to support rehabilitation centres for PWDs and support civil society organisations advancing

Republic of Botswana to the fifth session of the tenth parliament (2013) 51 <http://www.gov.bw/Documents/Nation%20Address/STATEOFTHEMATIONADDRESS.pdf> (accessed 30 April 2014).

70 Statement by Ruth Moedi Radibe, Director Department of Social Protection, Ministry of Local Government and Rural Development of the Republic of Botswana during the 52nd United Nations Commission for Social Development held in New York, United States of America, 12 February 2014 <http://papersmart.unmeetings.org/media2/1731818/botswana.pdf> (accessed 30 April 2014).

71 M Mokganele 'Official calls for more sponsorships for disability sport' *Mmegi Online* 18 October 2010 <http://www.mmegi.bw/index.php?sid=8&aid=5689&dir=2010/October/Monday18> (accessed 30 April 2014).

72 'March 2014 Judicial Colloquium Gaborone, Botswana' <http://pinkanatomybw.com/2014/04/01/march-2014-judicial-colloquium-gaborone-botswana/> (accessed 29 April 2014).

73 The Electoral Act (1968), sec 6(1)(c) <http://www.constitutionnet.org/files/Botswana-Electoral%20Act%201968.pdf> (accessed 17 June 2014).

74 M Dingake 'Electoral law reform – The need to enfranchise people with disabilities' *The Botswana Gazette* 10 October 2013 <http://www.gazettebw.com/?p=5396> (accessed 16 April 2014).

care to PWDs.⁷⁵ Within the Ministry of Health, there is a Rehabilitation Services Division which caters for PWDs.⁷⁶ Through its institutions and norms, Botswana appears to be on the right path towards realising the right to health for PWDs, not least, through its vision 2016 which seeks to ensure access to quality health care facilities for all Batswana.⁷⁷

- **Right to education**

Although the right to education is not contained in the Constitution, Botswana has taken strides to ensure the right to education for PWDs. Aside from its Disability Policy which mandates the Ministry of Education to ensure that special education for PWDs is actualised, Botswana has developed an Inclusive Education Policy which seeks to ensure inclusive education for all persons including PWDs.⁷⁸

- **Right to social security**

Although social security is not recognised as a human right in the Constitution of Botswana, the state provides cash benefits to PWDs under the destitute programme.

11.5 Specific categories experiencing particular issues/vulnerability:

- **Women with disabilities**

Aside from unemployment and gender-based violence,⁷⁹ one of the challenges faced by women with disabilities is forced sterilisation. According to a newspaper report, '[w]omen with disabilities are sometimes sterilized without their consent because the health workers think they are creating unnecessary burdens for their families'.⁸⁰

- **Children with disabilities**

The greatest challenge faced by children with disabilities is the problem encountered with their education. Even though Botswana tries to practice an inclusive model of education, there is still a shortage of aid materials and teachers for the few disabled children who attend school.⁸¹

- **Other (for example, indigenous peoples)**

Indigenous peoples already face denial of rights inclusive amongst which are disenfranchisements and land seizures.⁸² Owing to the fact that indigenous peoples

75 1996 Disability Policy (n 37 above) sec 4.3.1.3.

76 UNDP International Poverty Centre (n 63 above) 94.

77 Vision 2016 Botswana: FAQ <http://www.vision2016.co.bw/vision-faq.php#toggleView%28q1%29> (accessed 30 April 2014).

78 'MOE launches inclusive education policy' (n 42 above).

79 Report of the Regional Conference of Disabled Women in Lilongwe, Malawi, that was organised by DPI in Collaboration with SAFOD, PAFOD and FEDOMA from 11-15 September 2007 quoted in 'Demand of women with disabilities for their human right to life' http://www.diwa.ws/index.php?option=com_phocadownload&view=category&download=26:demand-of-african-women-with-disabilities&id=1:download&Itemid=65 (accessed 30 April 2014).

80 C Baputaki 'HIV/AIDS: People with disabilities cry foul' *Mmegi* 5 December 2008 <http://www.genderlinks.org.za/article/hiv-aids-people-with-disabilities-cry-foul--mmegi-botswana-2008-12-05> (accessed 30 April 2014).

81 See Mukhopadhyay et al (n 65 above) 4.

82 According to the African Commission on Human and Peoples' Rights, there are certain criteria for identifying indigenous Peoples, namely, attachment to land, cultural distinctiveness from the rest of society, and socio-political marginalisation due to vulnerability to the more dominant society. In light of these criteria, indigenous Peoples are culturally distinct groups who face socio-political marginalisation and whose livelihood capabilities are dependent on the territories they occupy. See African Commission on Human and Peoples' Rights 'Indigenous Peoples in Africa: The forgotten peoples? The African Commission's work on indigenous peoples in Africa' (2006) 10 http://www.achpr.org/files/special-mechanisms/indigenous-populations/achpr_wgip_report_summary_version_eng.pdf (accessed 17 June 2014).

are already a marginalised group in Botswana, indigenous peoples with disabilities are most probably prone to further marginalisation in view of their disabilities.

12 Future perspective

12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in your country at the moment?

The need to have a legislation tailored towards disability rights has been a recurrent theme in Botswana because this will create the pathway towards solving some of the very knotty issues such as accessibility being faced by PWDs in Botswana.

12.2 What legal reforms are being raised? Which legal reforms would you like to see in your country? Why?

The 1996 Disability Policy which is under review is a notable legal reform. However, it is recommended that Botswana should ratify and domesticate the CRPD and enact a law that mirrors the CRPD. For this purpose, it is recommended that civil society organisations should engage in lobbying the government and ensure that Botswana ratifies the CRPD.