

DITSHWANELO ANNUAL REPORT

1999



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Preface

There was much activity in the various Programmes during the year. The major activity, which cut across all the programmes, was the case of DITSHWANELO, Maauwe and Motswetla vs The State. This challenge to the death penalty was manifested in different ways, including in a drama performance (**Education Programme**); research of cases of those sentenced to death (**Research Programme**); debates, pamphlets, press statements and advertorials outlining the position of DITSHWANELO (**Information Programme**); preparation for the case (**Activism Programme and Kasane Pilot Project**) etc.

The death penalty case brought together various strands of work embarked upon by DITSHWANELO over the past six (6) years of its existence. These were the rights of indigenous peoples, access to land, torture, poverty; legal representation and access to justice.

Some of these aspects are to be further explored in 2000.

Mission Statement

DITSHWANELO - The Botswana Centre for Human Rights, is an advocacy organisation that plays a key role in the promotion and protection of Human Rights in the Botswana Society.

The Centre seeks to affirm human dignity and equality of all before the law irrespective of sex, ethnicity, religion, sexual orientation, social status and political convictions.

In pursuit of this mission, the Centre strives to inform, educate, train, counsel, mediate and research on issues of Human Rights, with specific reference to the marginalised and the disempowered in Botswana.

However, due to the indivisible nature of Human Rights, DITSHWANELO's mission extends to regional and international levels.

Background Information

With the assistance of the Danish Centre for Human Rights in Copenhagen, Denmark, discussions between NGOs and Departments of the University of Botswana led to the formation of a Board comprising representatives of certain non-governmental organisations involved in human rights related activities. The Board members are:

Board Members*

Patron:	His Grace, Archbishop Walter Khotso Makhulu
M. Madisa (Chairperson) (Ms)	Emang Basadi:
K. Machangana) (Ms)	Emang Basadi
E. Ndlovu (Deputy Chairperson) (Ms)	YWCA (Young Women's Christian Association)
D. Modiega (Mr)	Botswana Christian Council
S. Magowe (Father)	Botswana Christian Council
B. Monthe (Ms)	CHILDLINE
P. Letshwiti (Ms)	CHILDLINE
The Coordinator	CORDE (Cooperation for Research Development and Education)
J. Andersen (Ms)	Individual
R. Khan (Mr)	HURABO
M. Mothobi (Mr)	UB Legal Clinic
R. Molefhe (Mr)	Individual
D. Inger (Mr)	Individual

* The Board comprises institutional members and members in their personal capacity.

Board Meetings were held during 1999

Staff

Secretariat

Alice Mogwe	Director
Anneke Visser	Programmes Coordinator/Deputy Director
Kenny Magano	Bookkeeper
Linda Bareki	Receptionist
Donald Nnoto	Driver
Cynthia Mooketsi	Office Attendant
Mothusi Ntwaagae	Gardner

Activism Programme

Alice Mogwe	Programme Coordinator
Maureen Akena	Programme Assistant
Ingrid Melville-Cordner	Activism Consultant
Keletso Mokwena	Activism Consultant

Kasane Pilot Project Office - (coordinated by Activism Programme)
Richard Kashweeka Consultant Pilot Coordinator

Human Rights Education Programme (HUREP)

VACANT Programme Coordinator
Naomi Kelesitse Programme Assistant (up to 31 March 1999)
Muthoki Makau Consultant Programme Assistant (1 April -31
December 1999)

Paralegal Programme

VACANT Programme Coordinator
Bokgatlhamang Tumelo Programme Assistant

Information Programme

Peter Tshukudu Consultant Programme Coordinator
VACANT Programme Assistant/Resource Centre Assistant

Research Programme

VACANT Programme Coordinator
VACANT Programme Assistant

SAHRINGON

(Southern Africa Human Rights NGO Network)

Christina Sintala Botswana Chapter Coordinator

Volunteers/Interns

UB Volunteer Group University of Botswana
UB student interns University of Botswana

External Consultants

Father R. Chance Rapporteur of Death Penalty Case Hearing 4-8
October 1999
Ms J. Hermans Rapporteur of Death Penalty Case Hearing 4-8
October 1999

Main Donors*

Bishop of Oxford
Damish Centre for Human Rights
EZE
HIVOS
Maru-a-Pula Amnesty Group
Missions Abroad
Norwegian Church Aid
Norwegian Human Rights Fund
Oslo College – Norway
Survival International
Swedish NGO Foundation
SIDA

* For more on the financial situation, see Financial Report

General Human Rights Context

Botswana has been described as a multi-party democracy. It is considered to be a functioning democracy because the three arms of governance, the legislature, the parliament and the executive are generally perceived to be independent. The first and second generation of rights (civil and political) are considered observed. In comparison with most other African countries, Botswana is commonly referred to as the 'shining example of democracy in Africa'.

In reality, 47% of the population live in poverty. The lower House, the House of Chiefs represents only what are described in the Constitution as the 'eight main tribes' in Botswana. So-called 'minority tribes' have no direct representation. Instead, the paramount Chiefs of the main tribes are the representatives of all the peoples of Botswana. Rights of social, cultural, economic, development etc. are not recognized in the Constitution. Following the Vienna World Conference on Human Rights, it was accepted globally that all rights are interdependent.

DITSHWANELO maintains that the human rights situation in Botswana needs to be looked at from an holistic perspective – this encompasses all categories of rights. Issues of major human rights interest during the year are raised below.

Major human rights issues during 1999

Death Penalty

Since Botswana's independence in 1966, there have been 26 people executed by hanging. Botswana has not ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights (ICCPR) or the Optional Protocol on the ICCPR. Ratification without reservations would mean that the retention of the death penalty and corporal punishment would need to be reviewed. According to articles in the media; reports of the Law Reform Commission from their nation-wide consultative meetings, etc. the public appears to be mainly retentionist. **(For more information about the Death Penalty case see Death Penalty Project**

Refugees

Following unrest in the Caprivi area of Namibia in December 1998, several asylum seekers fled to Botswana. Those who fled to Botswana sought refuge as members of the secessionist movement led by Muyongo. While refugee status was granted to some of the asylum seekers, several were detained in prisons.

Children

The Government of Botswana initiated a review of the Children's Act of 1981 in response to concerns raised about to what extent the Act can effectively protect the rights of children. The report is expected in 2000.

Land Rights of Basarwa

Following the removal of residents from the Central Kalahari Game Reserve (CKGR) in March 1997, there have been those former residents who have voluntarily returned to the Game Reserve. The Negotiating Team continued in its work to ensure that the challenge of the Government that the Negotiating Team did not have a mandate, was met. Intensive research was conducted to determine the rights of those

Director's Report

The focus of the Centre for 1999 was the Death Penalty Case. Several of the activities in most of the Programmes were focused around this general theme. DITSHWANELO's involvement in the DITSHWANELO, Maauwe and Motswetla case was endorsed by the Board at its February 1999 Board Meeting. The Board also directed that the death

penalty, as an issue, ought to be incorporated in all the programmes of the Centre. In keeping with the decision of the Board, all programme staff were engaged in the anti-death penalty campaign in various ways, in addition to their programme-specific work plans and activities. The Activism Programme was responsible for the co-ordination of the Death Penalty project.

The case was a landmark event for the following reasons:

1. It was the first time that people on death row, whose clemency had been refused by The State President, were 'saved from the gallows' and not executed
2. It was the first time that legal process occurred after the appeal process had been completed in a capital case
3. It was the first time that a non-governmental organisation was granted 'locus standi' or the right to take a matter to court albeit within a rather strict interpretation of the concept.

The case facilitated the beginning of a national debate by the Parliamentary Law Reform Commission holding meetings around the country to obtain the views of the Botswana people concerning the retention or abolition of the death penalty. The outcome of this exercise, albeit superficial, was the reassertion of abolitionist view that the death penalty be retained as a deterrent within Botswana society.

We believe that DITSHWANELO has contributed in some small measure to bring the issue to the debating table. We intend to continue with our campaign 'Who Has The Rights to Kill?' for years to come.

PROGRAMME REPORTS

I SECRETARIAT REPORT 1999

The Secretariat forms the core of DITSHWANELO'S management structure, under which the following programmes currently function at three locations:

- Education
- Activism
- Paralegal (operates from the Centre and in Old Naledi - a low income area)
- Information
- Kasane Pilot Office (located in the Northern part of Botswana)
- Research

In addition to these programmes, DITSHWANELO hosts the following networks:

- SAHRINGON (Southern African Human Rights NGO Network) Botswana Secretariat (one part-time staff member (50%))
- Botswana Network on HIV, ETHICS and LAW (BONELA)

The Secretariat provides the focal point for all the programmes. It also ensures that the individual programmes within DITSHWANELO are provided with appropriate physical facilities, equipment, staff, and financial management through which to administer their specific projects.

The Secretariat has to satisfy the reporting and other administrative requirements of a minimum of ten (10) current financial partners (during 1999). This excludes the time we spend in meetings with prospective partners.

Programme Aims

The aim of the Secretariat is to provide Botswana with a strong focal point for human rights projects, to be recognized as such by all involved organizations and by the donor community, and to establish positive and permanent contact with regional and international human rights networks.

Programme Objectives

Objectives aimed at strengthening the programme

- Ensure the attainment of financial sustainability for the Centre.
- Ensure that the various programmes with the Centre, are supported via the development of staff policies and procedures.
- Ensure the recruitment of high-calibre long-term staff.
- Provide leadership for future development through the direction of the Director and Programme Co-ordinator/ Deputy Director(See also the Activism and Research Programme descriptions).
- Provide a link to both the Board members and the Botswana community.

II HUMAN RIGHTS EDUCATION PROGRAMME (HUREP) REPORT 1999

This programme aims to raise awareness through Human rights education activities. It is a crucial component in the development of a human rights culture.

The HUREP annual Essay/ Poetry Competition

In keeping with the death penalty work of the Centre, the theme for the 1999 was: *Who has the right to kill?* Advertisements were placed in the local press and on radio in June. HUREP paid for the prizes. Certificates, t-shirts and cheques were given to the winners in November 1999. The winners were Magdeline Modipang (P200.00), Obonye Mmereki (P100.00) and Matshedisio Moyo (P50.00).

Production of training materials

HUREP collaborated with the Activism Programme and produced an educational pamphlet on the death penalty. This pamphlet was distributed widely among the general population but also specifically to Maru a Pula School, Dukwi CJSS (who came to the Centre) and Mmanaana CJSS in Moshupa. A draft version of the Activity Booklet for Human Rights Clubs in Schools was produced by the end of the year.

The University of Botswana (UB) DITSHWANELO Volunteer Group

The UB Volunteer group hosted the *Who has the right to kill?* debate held at UB in February. The panelists were Ms Kokorwe (MP), Kgosi Masunga (Member of the House

of Chiefs), Rev Macheng (UB lecturer and Roman Catholic priest), Mr Modimo (lawyer), and Pastor Mtweta (Pentecostal Protestant Church). The debate was chaired by UB lecturer, Dr Selolwane.

In September 1999, an orientation session was held for first year students of the UB Volunteer group. They were trained on running/maintaining human rights clubs and were given the mandate to monitor the human rights clubs in the various schools for the coming year and render assistance where necessary.

Build links with national, regional and international Human Rights NGOs

Information exchange occurred between DITSHWANELO and local as well as international NGOs. HUREP received a request from Human Rights Watch to conduct research on landmines in Botswana for the Monitor Report for 2000. This research was ongoing at the end of 1999. HUREP also enlisted with a child-protection organisation based in Australia dealing with discussions on child abuse.

Internal links continued to be developed within the country. These were with Mmanaana Community Junior Secondary School (CJSS) in Moshupa; requests concerning children's rights from individuals in Orapa; distribution of DITSHWANELO publications continued to visitors to the Centre Ke Tsa Rona, HIV/AIDS and Human Rights, and the LeGaBiBo Charter. Opportunities were identified for collaboration with the newly established Human Rights Education Programmes of CHILDLINE (which is a Board member NGO of DITSHWANELO).

HUREP communicated the concerns of DITSHWANELO at the very low level of support from other NGOs concerning the DITSHWANELO, Maauwe and Motswetla death penalty case.

Internationally, contacts were made and renewed with various organisations these included SARDC (Southern Africa Research and Documentation Centre), Action without Borders, Malawi Human Rights Commission, Human Rights Watch and Zimbabwe Fact Finding Mission on Corruption (meeting was held with Paralegal Programme and SAHRINGON).

Conduct community sensitisation workshops in the rural areas as well as promoting DITSHWANELO

HUREP organised six (6) public debates in Gaborone and surrounding areas and held one workshop with the UB volunteer group at the University in February. The topic for these discussions was the death penalty.

In June and July, consultative meetings were held with Metlhaetsile Drama group on a play based on the theme "Who has the Right to Kill?" The play was performed for DITSHWANELO on a Saturday morning (24 July) at the Main Mall, Gaborone. Brochures of the Centre were distributed to the public. DITSHWANELO was contacted by a local artist from a village in the North, who had done some paintings on the death penalty, but due to lack of funds we could not buy the paintings. HUREP and the Death Penalty Project presented a skit and a presentation on the death penalty at a Maru a Pula school assembly.

Six (6) presentations were done on the following:

- i) *Human Rights and Capital Punishment* at Sir Seretse Khama CJSS
- ii) *Peace Education* at Sekgele CJSS (Thamaga)
- iii) Collaborative production of material (with CHILDLINE, UNICEF and Action Trust) to Mmegi supplement *Bokamoso*
- iv) *Death Penalty* presentation in collaboration with Activism Programme
- v) *Human Rights, HIV/AIDS and Child Abuse* with Dukwi CJSS at DITSHWANELO
- vi) Discussion with Mmanaana CJSS PTA (Parent Teacher Association) in collaboration with UB Volunteer Group concerning the role of DITSHWANELO and Children's rights.

Promotion of DITSHWANELO

DITSHWANELO released a press statement on - The Day of The African Child. HUREP collaborated with CHILDLINE, UNICEF, and Aids Action Trust in the preparation and production of an insert which appeared in the educational insert of the Mmegi-BOKAMOSO on the Day of the African Child (16 June).

In August, twelve (12) students from Dukwi CJSS visited DITSHWANELO. The discussion was on human rights in general, the Universal Declaration of Human Rights and abuse to which children are subjected. They also watched a video entitled *Karate Kid - Anyone can get AIDS. So we must all protect ourselves and protect our friends*.

A death penalty pamphlet was produced in collaboration with the Activism Programme.

SAHRINGON

HUREP conducted administrative tasks towards the establishment of the Botswana Chapter of SAHRINGON (Southern African Human Rights NGO Network) and the employment of the National Coordinator in September 1999. Most of the administrative work entailed HUREP being the contact point for SAHRINGON Regional and National, communicating with Afronet (which is the current host of the Regional SAHRINGON

Secretariat) in Zambia and coordinating the Botswana Chapter prior to the employment of the National Coordinator.

Tsa Bana

HUREP continued to supply Tsa Bana (DITSHWANELO publication which was placed on the prescribed reading list for Junior Secondary Schools in 1998) on request. Bookshops which sold Tsa Bana during 1999 were the Botswana Book Centre (Gaborone), Dye and Afford (Gaborone), Botsala (Gaborone), Lexus (Francistown) and Inter-Computer (Francistown).

Children's Act

In September 1999 comments on the Children's Act of 1981 were drafted (This Act is currently under review). This was in response to a letter from the Ministry of Local Government informing us of the review and of four consultants who were due to visit the Centre to seek our input. Consultations were not held with DITSHWANELO during 1999.

NGO/CBO Policy Conference

As the Coordinator of the Human Rights Sector of BOCONGO (Botswana Council for NGOs), DITSHWANELO assisted in the hosting of this conference in July 1999. HUREP coordinated the participation of the Human Rights Sector NGOs. These are:

- i) Women's NGO Coalition
- ii) Botswana Christian Council
- iii) FONSAG (Forum on Sustainable Agriculture)
- iv) BOCOBONET (Botswana Council of Community Based NGOs)
- v) Botswana Council for the Disabled
- vi) Botswana National Youth Council
- vii) BOCONGO

Volunteers/Interns

HUREP had two volunteers during the period June-July. They were University of Botswana social work students on their internship with DITSHWANELO.

Tasks undertaken include:

- . photocopying and binding newspaper clippings
- . identifying appropriate newspaper articles and filing them.
- . initiating research on orphans in Botswana with specific reference to those infected/affected by HIV/AIDS.

II HUMAN RIGHTS ACTION RESEARCH PROGRAMME REPORT 1999

The Research Programme has been an integral part of DITSHWANELO since its beginnings in January 1993. Its main aim is to examine problems identified through the organisation's work. The policy has been to engage researchers for specific areas which are deemed to be important to the work of the Centre. Action Research is the methodology utilised. During 1999, the death penalty case required specific research to be conducted. The research activity in this case was twofold. Field research was conducted by the Pilot Office at Kasane and an analysis was done of all murder cases in Botswana between 1987 and 1997 to obtain local precedents in support of our arguments against the retention of the death penalty in Botswana.

Field Research

General Research for the death penalty case

The pilot office assisted in gathering socio-economic and related data which was used by the legal team in support of the case. DITSHWANELO Pilot Office facilitated the visit by the senior legal representatives to the villages of Moseitse and Manxotai - the homes of Mr Maauwe and Mr Motswetla. The Pilot Office spent approximately 12 weeks on this research activity.

Research on Murder Cases in Botswana for the Period 1987 to 1997

The research project on the death penalty lasted from 27 September 1999-November 1999. It should be noted that other aspects of research for the case had been continually been done by the Information Programme, the Activism Programme and the Kasane pilot office. The information was placed in the four (4) following categories:

1. *murder with extenuating circumstances*
2. *cases in which the accused had been sentenced to death in the High Court but whose sentence was then reversed on appeal*
3. *cases where the accused was sentenced to death and subsequently executed and*
4. *cases where the accused was charge with murder and found guilty of*

manslaughter.

In the Court of Appeal Registry, we completed work on the eleven (11) cases which we were told were relevant for the period and subject to review. We have also completed work on all records of murder cases which were physically stored in the High Court Registry. In the High Court Registry we reviewed more than 100 cases but only 71 were relevant. The balance of cases are stored in a shed which is scheduled to be demolished soon and we experienced reluctance on the part of the staff at the High Court to accompany us to this shed. There is no cataloguing system at the High Court and the research was thus very time consuming.

Observations

Our research work has far reaching implications as a basis for lobbying for greater access to justice and also our work in arguing for changes in the system of justice. One of our concerns is that there are insufficient safeguards to protect against inefficiencies in the present justice system, persons on trial for capital offences. Since there is no recorded data on this subject specific to Botswana, we intend to compile and publish these findings during 2000-2001.

Volunteers/Interns

Father Trevor Mwamba
Father Richard Chance
Ms Shelagh Willet
Mr Alec Campbell

IV A. HUMAN RIGHTS ACTIVISM PROGRAMME REPORT 1999

The Activism Programme deals with matters issues which require urgent attention and/or are not being dealt with by existing programmes. This programme ensures that the 'watchdog role' of DITSHWANELO is carried out. It also identifies and works on areas for law reform through lobbying, test cases, etc. The bulk of activities in the Activism Programme were linked to the Death Penalty Project as the case was co-ordinated by this Programme. Several of the objectives and activities included in the Activism work plan were indirectly achieved through the death penalty project.

These included:

1. **Advocating for less privileged and marginalised communities** - in particular advocating for and providing support for the Basarwa communities in Botswana -

The two men who were to be hanged are from the Basarwa/San Community from Manxotai village. Research work conducted in Manxotai provided information about the socio-economic and human rights situation of the Basarwa people living there.

Work continued in a 'gay-rights' case with which the Centre has been engaged since 1995. DITSHWANELO continued to look for a lawyer who would be prepared to take up case and act on behalf of the accused for no or little fee. The accused had been reporting weekly to a police station in accordance with the bail conditions set in 1995. DITSHWANELO sought to challenge the fact that the matter had not been heard since 1995. At the end of 1999, the matter was still being dealt with.

Judgement was delivered in a case for which DITSHWANELO had enlisted the services of a lawyer. The complainant had been injured in the Mochudi Civil Unrest of February 1995. The claim had been for P 60 000.00 for pain, suffering and contumelia. The court granted the complainant P 50 000.00

Contacted by the family of a torture survivor who had subsequently died after being shot. It was not clear whether it was suicide, murder or culpable homicide. The family had already contacted a lawyer, but were concerned that they may 'run out of' money at a later stage. DITSHWANELO contacted the lawyer to make sure that the case would not be dropped due to lack of funds.

2. **Collaboration with NGOs in the promotion of human rights** this was done through constant briefings by DITSHWANELO on the anti-death penalty campaign at various fora. These included the Human Rights Sector meetings; SAHRINGON meetings; Women's NGO Coalition meetings; BOCONGO Executive Committee meeting, etc. Information provided also sought to raise awareness about issues such as the *locus standi* of NGOs. Unfortunately there was not much support for our anti-death penalty campaign from most NGOs. It seemed as though some of the NGOs were reluctant to take a public position on such a controversial issue which hitherto had never been raised as an issue in Botswana by a local NGO.

DITSHWANELO participated with Metlhaetsile Women's Information Centre, and Women and Law in Southern Africa in a meeting with the Attorney General and Ms Kokorwe in preparation for the tabling of the Private Members' Bill on the Protection from Domestic Violence. The preparatory work had been done by Metlhaetsile under the auspices of the Violence Against Women Working Group of The Women's NGO Coalition. DITSHWANELO is a member of the Working Group. It is coordinated by Metlhaetsile. The Bill was successfully tabled in July 1999.

3. **Strengthening of Regional and Worldwide partnerships** with Human Rights Organisations by sharing of information on our death penalty case and responding to calls for support from other Organisations also challenging the death penalty in other countries, e.g. from Zimrights in Zimbabwe and Amnesty International concerning executions in the United States of America.
4. Providing professional services at a fee in conducting consultancies through the carrying out of research on various topics for different organisations and persons who have approached the Centre requiring our expertise and because we are 'on the ground'. We usually ask the parties to meet the expenses incurred in availing this information.
5. Strengthening of regional and worldwide partnerships with human rights organisations through the establishment of a National Chapter of SAHRINGON with a National Representative hosted by DITSHWANELO. DITSHWANELO is also a member of the Regional Board of SAHRINGON. Other activities aimed at regional support included the issuing of solidarity press statements eg. the arrest of Mandaza and Kwinjeh by Zimbabwean authorities. Enquiries were made with the British High Commission concerning the NATO bombing of Kosovo in May 1999 in reaction to concerns raised by a Yugoslav national;
6. Continuing to advocate for and provide support for the Basarwa communities in Botswana by participating as a non-voting member of the Central Kalahari Game Reserve (CKGR) Negotiating Team which is attempting to prevent the 'forced' relocation of Basarwa and Bakgalagadi communities from the Game Reserve to settlements outside the Game Reserve. The other members of the Negotiating Team are:
 - i) The Negotiating Committee which comprises fourteen (14) members of the original seven (7) communities resident in the Game Reserve
 - ii) First People of the Kalahari (FPK) Coordinator of the Negotiating Team
 - iii) Kuru Development Trust
 - iv) Working Group on Indigenous Minorities in Southern Africa (WIMSA)
 - v) Botswana Christian Council (BCC)

Note that neither the BCC nor DITSHWANELO have voting right on the Negotiating Team as unlike the other NGOs in the Team, neither is Basarwa (San) based.

Support work was done together with First People of the Kalahari in relation to a case in which some Basarwa were injured while being driven to Gantsi by police who were under the impression that they had hunted illegally.

7. Promoting DITSHWANELO through press interviews and various meetings at which we described the work of DITSHWANELO, its structure and areas of focus. These included interviews with BBC Focus on Africa, Norwegian students, De Beers, SABC, University of Tokyo, etc. Press statements issued during 1999 addressed the issues of right to life; right of condemned prisoners to consult their lawyers in private; right to fair hearing; freedom of the press; right to counsel of choice; and the *locus standi* of NGOs.
8. Acting as a mediator in Human Rights issues in collaboration with the Paralegal Programme. Several times we were called upon to mediate in matters in which there was a concern about human rights violations or where the victims did not have access to justice. We worked with refugees from the Caprivi with whom we held regular meetings in an effort to establish dialogue between them and the President of Namibia. These efforts are to continue in 2000.
9. Monitoring Government adherence to International Treaties by lobbying for the Government of Botswana to ratify the Rome Statute for the establishment of an International Criminal Court.
10. Taking DITSHWANELO to the rural areas through the pilot project in Kasane, in terms of its work with communities in CKGR, Pandamatenga, Diphuduhudu, Saikarawe and Gantsi. As there are a number of NGOs active in the Southern part of the Country, it was considered appropriate that a presence of some kind in Northern Botswana would be pertinent.

Volunteers/Interns

There were no volunteers in the programme during 1999

IV B. DEATH PENALTY PROJECT REPORT 1999

Basis

DITSHWANELO's Strategic Plan 1997- 2001 has as one of its strategic objectives, the taking up of test cases to challenge existing laws and/or to advocate for law reform.

The death penalty project is based on activities of the Paralegal Programme when they started to make inquiries with the Commissioner of Prisons about this case in 1998. Campaigns by Amnesty International (London) requesting clemency from the President were also started in 1998. In January 1999, the Activism Programme engaged in urgent

action to prevent the execution of two Basarwa Tlhabologang Maauwe and Brown Gwara Motswetla. An interim stay of execution was granted on 15 January 1999. The two were to be hanged on 16 January 2000. In October 1999, the Court ruled that the two men had not had a fair trial and ordered a re-trial, leaving it to the discretion of the State on whether or not to press fresh charges.

Achievements

The achievements from this case include the establishment of new ground i.e. setting of precedents in the following instances:-

- obtaining an interim stay of execution after conviction and after appeal and clemency have been unsuccessful
- declaration of a mistrial after conviction and after appeal and clemency have been unsuccessful
- increasing access to death row prisoners i.e. allowing for consultations with legal representatives to be within sight but out of hearing of prison officials. Prior to the court ruling in DITSHWANELO, Maauwe and Motswetla, condemned prisoners (those on death row) had no access to private consultations with anyone other than a priest.
- recognition of *locus standi* of NGOs, even though it was narrowly defined in this case
- critique of the pro deo system of representation where the State pays private lawyers a minimal amount (US\$ 120.00 per hour and US\$ 500.00 per court attendance are normal fees compared with US\$ 75.00 paid by the State for each court attendance. The State does not pay by the hour), to represent persons accused of capital offences
- challenging the death penalty (Constitutionally) from a socio-economic angle
- Highlighting of the link between due process of law and the administrative process. There was a letter from Maauwe and Motswetla to the Registrar of the High Court in which they complained of the lack of consultation by their State-appointed legal representatives and of the fact that they were unable to communicate with them (they lawyers were both from Zimbabwe) which did not reach the Court of Appeal. This letter formed the basis for the judgement in October 1999 in which Justice Reynolds declared that the two men had not had a fair trial.
- raising awareness on lack of transparency of the clemency process . The processes and procedures of the Clemency Committee are not known.

Regionally, the case has been significant in the setting of precedents of Human Rights Standards in the region, especially as Roman-Dutch law (used in Botswana) is also used in majority of countries in the Southern African Region.

Methods used

1. Throughout the year, we collated a wealth of information by means of research, affidavits, books and articles to provide background support for the legal arguments in the case. We also embarked on a public awareness campaign to enlighten members of the public as to the intricacies and implications involved in the carrying out of the death penalty. Areas raised included the possibility of the innocence of the person executed, the non-existence of any humane form of execution and the importance of the right to life. As part of our lobbying strategy, we took steps to initiate discussion on the death penalty both in Parliament and in the House of Chiefs.
2. We were of the opinion that besides the actual case, it was also important to give a human face to the condemned men by locating their families and portraying them against their socio-economic environment.

Lessons learnt

We have been looking at and will continue to look into how we may promote an equal and fair system of justice. We trust that the lessons learnt by us throughout the project can be used by other Organisations when taking up test cases.

Much time was used on fund-raising for the case. Those on the original list of supporters who, in support of the Amnesty International Urgent Action Campaign of 1998, had written letters to former President Masire and the current President Mogae, requesting clemency, were approached for financial support. These comprised people from Australia, Austria, Belgium, Canada, England, Finland, France, Germany, Israel, Northern Ireland, Norway, Spain, Sweden, The Netherlands, The United Kingdom and The United States of America. Some funds were received from local donors. However, because of the issue which was being supported, they preferred to be anonymous and not to be publicly acknowledged.

Local support for our action was expressed by Kuru Development Trust, WIMSA and First People of the Kalahari (FPK) - all of these NGOs are Basarwa (San) - based organisations whose members attended the court hearings. Other support was shown by BOCONGO (The Botswana Council for NGOs).

Volunteers/Interns

They worked as part of the Action Research Programme. The research conducted was for the death penalty case.

V. NATIONAL PARALEGAL PROGRAMME

The Paralegal Programme's aim is to provide legal advice and information to the marginalised or disempowered people within Botswana Society in an empowering way. This is done through education and legal knowledge. The means test applied limits our assistance to those who earn P600 or less per month. As there is no State-funded Legal Aid Scheme, the poor are particularly vulnerable to being excluded from the dominant judicial systems.

Target Groups

The Paralegal Programme targets clients earning less than 600 Botswana Pula a month. Advice given on a daily basis, to those who satisfy the means test. Advice is given on a daily basis at both the main DITSHWANELO office and the Old Naledi office (the latter is in a low-income suburb of Gaborone). The Paralegal Programme also facilitates the Domestic Workers project.

Types of cases dealt with during the period January - December 1999

These included the following:

1. Access to justice of disabled person
2. Corruption test case
3. Ill-treatment of awaiting-trial prisoner
4. Successful obtaining of severance benefits for sixteen (16) domestic workers through cooperation with officials of the Department of Labour, Ministry of Labour and Home Affairs
5. Citizenship case
6. Obtaining care for children in terms of the Destitute Policy
7. Domestic Violence by employer against employee
8. Domestic Workers' concerns
9. Election monitoring. The Paralegal Programme obtained accreditation. DITSHWANELO trained monitors who monitored elections in Gaborone, Maun and Kasane during the General Elections
10. Gender disaggregation of cases was as follows:

Labour	83 (male)	53 (female)
Immigration	4 (male)	1 (female)
Violence/Torture	5 (male)	26 (female)
Criminal/Referral	11 (male)	8 (female)
Land	8 (male)	2 (female)
Inheritance	2 (male)	26 (female)
Marital/cohab/maint *	11(male)	72 (female)

*marital/cohabitation/maintenance

Workshops

1. Training of Trainers Workshop held on 6- 7 September 1999.
The Paralegal programme conducted a 'Training of Trainers' Workshop on Civil Society Monitoring of Elections in 1999. DITSHWANELO invited other NGOs to train as election monitors. The following NGOs participated in the workshop:
 - DITSHWANELO UB Volunteer Group
 - First People of the Kalahari (FPK)
 - Metlhaetsile Women Information Centre
 - Emang Basadi
 - Botswana National Youth Council
 - Botswana Council for Disabled
 - Botswana Federation of Trade Unions
 - World View Botswana

The 'Training of Trainers' Workshop was conducted by CORE (South Africa) and the Paralegal Programme. The workshop was very successful. This workshop was conducted after DITSHWANELO had been accredited as monitors by the Independent Electoral Commission. The trained monitors in turn monitored the 1999 elections.

The Election Monitoring Training of Trainers Workshop was also conducted in Kasane on the 25-26 September 1999. These trained monitors also monitored the 1999 general elections in Kasane.

2. Friedrich Naumann Foundation - SALAN

Workshops attended by Ms Tumelo (Paralegal Programme) in 1999

Namibia	3 - 6 May
Johannesburg	9 to 12 November

Southern Africa Legal Aid Network - SALAN has got projects which are being implemented by its members, e.g. landmines and maintenance. SALAN has also an internship programme for Lawyers and Paralegals. It also has a Newsletter comprising articles based on reports from its members.

Volunteers/Interns

There were two Law students and one social worker student from the University of Botswana.

VI INFORMATION PROGRAMME

A consultant was employed from September 1998 to June 1999. He preferred to be engaged on a consultancy basis because he intended to pursue further studies. He had been a long-time member of the DITSHWANELO University of Botswana (UB) Volunteer Group.

The main activities of the Programme were, in accordance with its objectives, aimed at supporting the other Programmes of the Centre through provision of information about human rights; liaise with the media; supervising the Documentation Centre and ensuring that the work being done in all the Programmes is publicly known.

1. **To provide access to information for Centre's professional staff** information provided included material about the Convention on the Rights of the Child; Role of the Office of the Ombudsman; Children's Rights and their abuse, etc.
2. **To raise public awareness** information was provided to various sectors of the public. These included:
 - i) Gaborone Secondary School students
 - ii) Kgale Secondary School students
 - iii) Boston University researcher working on Democracy
 - iv) Human Rights Research and Documentation Trust of Southern Africa on anti-corruption mechanisms in Southern Africa
 - v) Molepolole College of Education student conducting research on Parents and those operating 'in loco parentis' ought to respect children's rights'
 - vi) Thamaga Public Library received death penalty stickers and brochures
 - vii) Sekgele Community Junior Secondary School received death penalty stickers and brochures
 - viii) Printed 20 000 death penalty inserts for Mmegi and Botswana Guardian newspapers
 - ix) Participated in a radio debate on the Right to Homosexuality
3. **To promote DITSHWANELO nationally and internationally** - written articles produced and on Homosexuality (Botswana Press Agency) and Children's Rights (The Voice); coordinated the upgrading of the newspaper cuttings. Additional topics include:
 - Children's Rights
 - Farm Workers' Rights
 - Racism
 - Poverty
 - Law/The Judicial System

- Labour
- Abortion
- Customary Law
- Consumer Rights

Volunteers/Interns

There were no volunteers or interns during 1999.

VII KASANE PILOT PROJECT

Main objective

The Strategic Plan 1997-2001 identified the expansion of DITSHWANELO's activities to the rural areas within the planning period. In November 1998, a Fact Finding Mission was undertaken to the rural areas in order to assess Human Rights issues specific to the Basarwa communities living outside the Central Kalahari Game Reserve (CKGR). The following areas were identified based upon previous contact made with the communities during the 1993 Second Regional Conference on Development for San Populations. The areas visited were Pandamatenga, Saikarawe, Khekhenye, Diphuduhudu and Letlakane.

Background

Following the Fact Finding Mission, It was decided that the Kasane Pilot Project be started. In January 1999, DITSHWANELO bought a porta-cabin which is located on a temporary site. The office has a second-hand four wheel drive, one computer, furniture, a small fridge and a new photocopier.

This is a summary of the work carried out by the DITSHWANELO Pilot Office in outline form in the period ending 31 December 1999. The details of the work have been covered in the Draft Pilot Project End Report and the Annual Report to the Danish Center.

The work of the Pilot Office was mainly aimed at consulting stakeholders in Northern Botswana with a view to assessing the situation of human rights in the area. Its work was also to implement at least three of the recommendations of the DITSHWANELO 1998 Fact Finding Mission which covered Chobe, Kweneng, and Ngamiland / Okavango

districts. However, some substantial time was also spent on other activities of urgency such as the DITSHWANELO, Maauwe and Motswetla Case.

Activities undertaken

1. Consultations

- a) 11 Introductory meetings held with individual local authorities;
- b) 8 Kgotla meetings addressed;
- c) 7 x 1 day Human Rights workshops conducted for teachers in 8 schools;
- d) 1 x 2 days Feedback workshop on the 1998 Fact Finding Mission conducted at Pandamatenga;
- e) 2 x 2 days Children's rights workshops conducted involving representatives from 8 schools
- f) 2 x 2 days workshops conducted for local authorities from 8 communities;
- g) Facilitated at 3 reconciliatory meetings with key stakeholders at Pandamatenga.
- h) Represented DITSHWANELO in fora organised by local institutions in the Chobe and used such fora to introduce the work of DITSHWANELO;

2. Community Networking

An exchange visit including skills training between Pandamatenga and D'Kar Basarwa communities was undertaken.

3. Fact Finding Missions were conducted at the following places:

Kukamane concerned a water dispute;
Qooshe concerned a water dispute;
Shaikarawe and Mohembo East visit was a follow-up visit to 1997/8 Fact Finding Mission

4. Death Penalty Case activities concerned participation in:

- i) Socio-economic data gathering exercises;
- ii) Mobilisation of parents of Motswetla and Maauwe to attend consultations with the Legal Team and to attend Court Hearings (Francistown and Lobatse respectively);
- iii) Assistance with the compilation and commissioning of Affidavits(Manxotai, Tutume, Moseitse, Goshwe, Nata, Pandamatenga, Lesoma and Francistown);

- iv) Facts verification field visit with Advocate Brian Spilg to Manxotai, Lebati and Kaundisha;
- v) Translation of related documentation including Press Releases from English to Setswana;

5. Open Door Policy was decided upon to ensure maximum access to the public

Received and assisted thirty-seven (37) clients in collaboration with the Activism and Paralegal Programmes at the Gaborone Office on issues relating to: domestic violence, torture by police, labour, marital conflicts over property, consumer rights, perceived unfair trials by Customary Courts / Customary Court of Appeal, land, etc.

6. Collaborative work with the Paralegal Programme

A workshop for twenty-two (22) people was conducted jointly with the Paralegal Programme (Gaborone Office) on how to prepare, conduct and evaluate elections in a free and fair manner; of the twenty-two (22) trained, fourteen (14) Monitors were fielded to monitor the October National Elections in the Chobe District as a result of the above workshop;

7. Activities Organised by the Head Office in Gaborone

- i) Participated in a programme plan review meeting;
- ii) Participated in one thematic Human Rights Conferences on HIV/AIDS, the Law and Human Rights in Botswana organised jointly by DITSHWANELO and the Botswana Business Coalition

8. Liaison with Head Office

Contact with Head Office and all DITSHWANELO Programmes maintained throughout the year.

9. DITSHWANELO Materials Distribution

During 1999, the following materials were distributed at meetings, in workshops and during field trips:

- a) Know Your Law Series:
 460 Copies of Land Rights Booklets and 180 Related Stickers (English & Setswana);
 138 Copies of Customary Law booklets;
 142 Copies of Labour Law booklets;
 75 Copies of Criminal Law booklets;
 143 Maintenance booklets;
- b) Pamphlets and other materials
 39 Copies of the Children's Rights Package;
 7 Copies of Tsa Bana! Human Rights Modules for Secondary School Teachers;
 58 Copies of Ke Tsa Rona! A participative Human Rights Education Training Manual For Youth and Non-Formal Sectors;
 10 Copies of the Constitution of Botswana;
 150 Photocopies of the African Charter;
 360 Photocopies of the Convention on the Rights of the Child;
 280 Photocopies of the Universal Declaration on Human Rights;
 350 Copies of the Background to DITSHWANELO pamphlets;
 245 Copies of the HUREP pamphlets;
 260 Copies of WHO HAS THE RIGHT TO KILL pamphlet;
 176 Stickers of WHO HAS THE RIGHT TO KILL (English and Setswana)

9. Planning and Reporting

Provided Head Office with quarterly plans, budgets and quarterly progress reports;
 Interim Annual Report presented and discussed at the programme review meeting;
 An Annual report prepared and submitted to the Danish Centre for Human Rights through Head Office.

Conferences/Workshops

1. DFID Land Tenure Workshop, 16-19 February 1999 held in the United Kingdom. Paper Presented. Attended by Richard Kashweeka, (Kasane Pilot Office)
2. Friedrich Naumann Foundation Southern African Legal Aid and Advice Centres Network Workshop on 3-6- May 1999 held in Windhoek, Namibia. Attended by Bokgatlhamang Tumelo (Paralegal) and Rahim Khan (Board)
3. Royal College of Nursing Conference on HIV/AIDS, 27 June - 1 July 1999 held in London, U.K. Attended by Ms Nomagugu Oagile of the University of Botswana Careers and Counselling Centre on behalf of DITSHWANELO. Paper presented **Confidentiality - Disclosure of HIV/AIDS Related Information.**
4. Advanced Negotiation Skills Training Workshop by Dennis Lewis, 19-21 May 1999 held in Johannesburg, South Africa. Attended by Alice Mogwe (Secretariat)
5. Office of the Ombudsman Workshop on *Towards a Better Understanding of the Institution of Ombudsman in Botswana*, held 8-10 June 1999 in Gaborone. Paper presented **Perspectives on the Ombudsman and other oversight institutions a human rights view.** Attended by Alice Mogwe (Secretariat)
5. Life and Peace Research Institute, Board Meeting June 1999 held in Norway. Attended by Alice Mogwe (Secretariat)
6. National Conference on *Citizen Economic Empowerment* 5-7- July 1999 held in Gaborone. Attended by Joyce Andersen (Board)
7. BOCONGO NGO/CBO Policy Workshop, 30 July 1999 held in Gaborone. As Coordinator of Human Rights Sector of BOCONGO, participated in the preparation of the workshop. Attended by Muthoki Makau (HUREP)
8. Department of Culture and Youth (Ministry of Labour and Home Affairs) Workshop on *Crime and Youth*, August 1999 held in Gaborone. Attended by Muthoki Makau (HUREP)
9. DITSHWANELO Paralegal Programme Workshop on *Election Monitoring* September 1999 held in Gaborone. Attended by Muthoki Makau (HUREP).
10. Transparency International Conference on *Anti-Corruption*, October 1999 held in Durban, South Africa. Attended by Muthoki Makau (HUREP) and Maureen Akena (Activism)

11. Swedish NGO Foundation Conference on *Economic, Social and Cultural Rights* November 1999 held in Stockholm, Sweden. Attended by Maureen Akena (Activism).
12. SALAN - Southern African Legal Aid and Advice Centres Network Conference November 1999 held in Johannesburg, South Africa. Attended by Muthoki Makau (HUREP)
13. Friedrich Ebert Foundation Workshop, 9-12 November 1999 held in Johannesburg, South Africa. Attended by Bokgatlhamang Tumelo (Paralegal) and Rahim Khan (Board)
14. DITSHWANELO Secretariat and Botswana Business Coalition co-organised Seminar on *HIV/AIDS and the Law* December 1999 held in Gaborone. Attended by Richard Kashweeka (Kasane Pilot Office); Ingrid Melville (Research Programme) and Anneke Visser (Secretariat)

Visitors to DITSHWANELO

During 1999, there were a number of visitors interested in learning more about the activities of DITSHWANELO. They included:

1. Ms Rose-Marie Asker and Ms Anita Klum (General Secretary), Swedish NGO Foundation for Human Rights; Sweden
2. Ms Lis Dhundale, The Danish Centre for Human Rights; Denmark
3. Mr Ole Lunde, Mr Tove Gustafsson, Norwegian Church Aid; Norway
4. Ms Fiona Watson, Survival International; UK
5. Ms Muuba and Ms Mhlanga, Afronet/SAHRINGON; Zambia
6. Mr Job van Melle, DOG; The Netherlands
7. Ms Nobuntu Mbelle, Human Tights Committee; South Africa
8. Katherine McKenzie, Gun Free South Africa; South Africa
9. Mr Mitsagi Endo; Japan
10. Mr Christoph Emminghaus, University of Hamburg; Germany and Mr Antonie Nord; Namibia
11. Mr Kury Cobham; Swaziland
12. Mr Marmix de Bruyne, Amnesty International; The Netherlands
13. Ms Muzi Masuku, Council of Churches; Swaziland
14. Mr Joshua Mzizi, University of Swaziland; Swaziland
15. Ms Leya Chatta-Chipepa; Zimbabwe
16. P. Webner; UK
17. Mr Benjamin Segobetso; Botswana
18. M. Leshomo and O.D. Mpotokwane, Emang Basadi; Mahalapye, Botswana
19. Students, Dukwi Community Junior Sec. School; Botswana

Financial Report 1999

Audit Report by PriceWaterhouseCoopers