

DITSHWANELO  
The Botswana Centre for Human Rights

# ANNUAL REPORT 2004

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## **AUDITED FINANCIAL STATEMENTS**

Separate pdf

The photographs from the Annual Report have been removed from this pdf and the financial statements are included as a separate file, to minimise the size of the file and allow online access.

Funding for this Annual Report has kindly been provided by HIVOS as part of their core funding for DITSHWANELO. We could not survive and continue to work for human rights in Botswana without core funding and we are extremely appreciative that HIVOS has provided such funding since 1996.

# I DIRECTOR'S MESSAGE

2004 proved to be a year in which DITSHWANELO continued to face considerable challenges. Due to the mid-income status of Botswana, many international donors no longer support non-governmental organisations in the country – leading to the closure of a number of them. For us, as well, a major challenge in 2004 was the severe lack of funding and consequential shortage of staff. With sufficient funding, we would have been better able to fulfil our responsibility within and towards the people in Botswana, the Southern African region and internationally.

Another major challenge was the continuous need to ensure that 'human rights' is understood to mean enabling *everyone* to live their daily lives as self respecting human beings. For this to become possible, the government needs to honour its responsibility to those living within its borders. The link between responsibilities and rights also has to be clearly understood. The rights-based approach to development which DITSHWANELO advocates illustrates the fact that rights, as needs-based entitlements, cannot and should not be viewed as being antithetical to the government or traditional culture. Vision 2016 provides a useful local articulation of international and regional human rights standards focused on ensuring that every one is able to live their lives with dignity. Throughout the year, DITSHWANELO's press statements linked the values inherent in Vision 2016 to human rights issues in the country, as part of our monitoring of the situation.

Our monitoring role has also meant that we were frequently requested for briefings on human rights in Botswana to regional and international diplomats; local, regional and international media; the United Nations and many others. Our Documentation Centre continues to be a useful resource for human rights material for students, researchers, journalists and other organisations.

An additional challenge during 2004 lies in the perceived success story of Botswana – 'the shining example of democracy on the continent of Africa'. As has often been said, peace is not merely the absence of war. For us, democracy, good governance and peace involve issues of equality, equity, participation, consultation, accountability and respect for human rights. Without these conditions, our democracy continues to be fragile.

Our now-annual Human Rights Film Festival is one of the ways we seek to raise the community's awareness of the range of human rights, in a way which also provides a considerable contribution to Gaborone's cultural life. We enjoyed another excellent Festival in 2004, with 12 films and for two of the films, having the honour of the film Director attending the screening and discussing the issues with the audience.

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Despite the challenges, during 2004, we continued to raise our voice for the protection of those from whom land has been unjustly or unlawfully taken; to ensure legal representation for those who are too poor to afford their own lawyers because there are no state funded legal services, save for those facing the possibility of the death penalty; for those who have fled to Botswana from economic and political unrest in their own countries; for children who are abused; and for those who are exploited in the workplace. We continued to strive for the recognition of the dignity inherent in everyone.

We look back at 2004 with pride at what we managed to achieve with few resources. However, core funding is the life-blood of DITSHWANELO. Without it, we may need to scale down our activities, despite all our achievements during our 11 years of existence. Sincere gratitude is to be expressed to all those who supported us in cash and in kind – including our exceptional staff and volunteers – over the past year. We are committed to finding ways for DITSHWANELO to continue to exist to enable us to achieve our overall objective of ‘the creation of a human rights culture in Botswana’.



**Alice Mogwe**  
**Director**

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## II THE WORK OF DITSHWANELO

### OVERVIEW

DITSHWANELO means 'rights' in Setswana. The Centre was established in January 1993 following recognition of the absence of a body able to deal with issues which affected Botswana's poor and vulnerable – those incapable of protecting themselves. In 2005 DITSHWANELO remains the only non-governmental organisation (NGO) in Botswana dealing comprehensively with human rights issues.

#### OUR MISSION

DITSHWANELO – The Botswana Centre for Human Rights is an advocacy organisation with a key role in the promotion and protection of human rights in Botswana society. The Centre seeks to affirm human dignity and equality irrespective of gender, ethnicity, religion, sexual orientation, social status or political convictions.

In pursuit of this mission, we seek to educate, research, counsel and mediate on issues of human rights, with specific reference to the marginalised and the disempowered. Furthermore, due to our commitment to the indivisible nature of human rights, this mission extends to regional and international levels.

DITSHWANELO's specific objectives are to strive to achieve a society in which:

- Everyone is equal before the law
- The general population is aware of what human rights are, and understands and supports the rights of those who are different from themselves
- The public hears about human rights violations and puts pressure on the government and/or perpetrators to redress the violation
- Everyone, understanding their rights, is aware of opportunities to address their legal matters
- Everyone has access to affordable legal assistance
- Everyone has the confidence and skills to be able to stand up for their rights

These objectives are achieved through the following, inter-dependent programmes and activities, which are detailed below.

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***Activism and Information Programme:***

- Lobby for the reform of laws that are discriminatory, the implementation of reforms and adherence to the principles and obligations to which Botswana is committed
- Advocate for specific changes – such as the abolition of the Death Penalty
- Where individual cases may have a significant impact on attitudes and set a precedent which could change key laws, DITSHWANELO seeks funding to provide legal representation and support the individuals involved in test cases (six have been supported over the last 12 years).
- Issue press statements
- Advocate for a rights-based development model
- Make a range of information available on our website and through many publications

***Paralegal and Research Programme:***

- Provide direct legal advice and mediation services to individuals earning less than P600 per month (the minimum wage).
- Monitoring human rights in Botswana
- Train community-based individuals to provide paralegal support to their community.

***Secretariat:***

- Participate in conferences, events, networks and a range of other opportunities to seek to incorporate human rights issues and approaches into decision-making
- Run an annual Human Rights Film Festival
- Run workshops, networks, etc., for community groups and individuals
- Make publicly available a well-stocked human rights Documentation Centre

DITSHWANELO operates from two offices, Gaborone and Kasane. Gaborone head office:

- houses the Secretariat, which provides the direction and support required to run all programmes and projects;
- runs the activism, information, research projects and the Documentation Centre; and
- manages the paralegal programme, providing the expertise to the outreach programme, such as when running paralegal training workshops.

In Kasane, DITSHWANELO is the only NGO (non-governmental organisation) supporting the community on any aspects of human rights issues. The Kasane office staff:

- provide day-to-day paralegal advice and mediation services
- manage DITSHWANELO's Land Rights Project
- represent a range of NGO issues through attending community events and meetings
- support the current death penalty work

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DITSHWANELO prioritises its efforts so that we support those most in need or least supported by other organisations. There are a number of key issues in Botswana which DITSHWANELO supports fully in principle, but recognises that others are providing substantial practical assistance. For issues such as gender equality, labour rights and HIV/AIDS, DITSHWANELO's approach is to (1) ensure that the related human rights principles are integrated in all our work and (2) focus specifically on the human rights matters. The latter focus is particularly required in the case of HIV/AIDS, where others are providing medical, social and awareness-raising support, but not necessarily addressing the human rights of people living with HIV/AIDS, such as the right not to be forced to disclose one's HIV status.

During 2004 DITSHWANELO supported gender equality, labour rights and HIV/AIDS by:

- incorporating these issues into our publications – for example, the 'Know your Law' booklet on inheritance rights, which is particularly relevant to women in Botswana, was produced jointly with the Women's NGO Coalition, and we worked towards the publication of a booklet specifically for youth on 'HIV/AIDS, the law and human rights in Botswana', which was supported by BONASO, ACHAP, BBCA and SIDA;
- working with organisations focused on the needs of these groups to ensure that their work has a rights-based approach, including being a member of the Kagisano Women's Shelter Project Committee and the Human Rights Sector of the National AIDS Council;
- participating in relevant workshops – for example the University of Botswana Gender Policy & Programme Committee workshop on the establishment of the Gender Study Centre at the university; and
- including films on these issues in our annual Human Rights Film Festival.

DITSHWANELO's priority focuses are:

- ◇ People living in poverty who are denied access to justice (addressed by our Paralegal Programme)
- ◇ Individuals and communities facing land rights issues
- ◇ Children
- ◇ Indigenous peoples and ethnic minority groups
- ◇ Domestic workers
- ◇ Lesbians, gays and bisexuals
- ◇ Immigrants, refugees and asylum seekers
- ◇ Death Penalty
- ◇ Regional Solidarity

Our work during 2004 to meet the needs of these groups is detailed in this Report.

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# SECRETARIAT

## Operations, Film Festival & Documentation Centre

DITSHWANELO's Secretariat has been supported by HIVOS since 1996. The Secretariat is essential for the operation of all DITSHWANELO's projects as it is directly responsible for the management and support of all programmes and projects. The Secretariat also runs the annual Film Festival and the Documentation Centre, and provides direction to all programmes and projects through DITSHWANELO's Director.

### THE WORK OF THE SECRETARIAT

- ◇ **Co-ordination and overview of all programme monitoring and reporting**, ensuring that activities are undertaken as planned and that they meet with donors' requirements.
- ◇ **Managing PR and awareness-raising campaigns** for the full range of the human rights issues which DITSHWANELO represents, including press relations, maintaining the website (funded by Bar Human Rights Committee of England and Wales), distributing publications, running our annual Human Rights Film Festival (details below) and other promotional activities.
- ◇ **Providing direct support to programmes**, especially those in the early stages and programmes requiring services such as marketing and document production, translation and logistical support, including for running workshops and conferences.
- ◇ **Representing Botswana human rights issues** at national, regional and international networks and events.
- ◇ **Hosting visitors to the Centre and giving presentations.**
- ◇ **Fundraising and financial management for programmes.**
- ◇ **Staff training and development**, in line with the needs of the programmes.
- ◇ **Managing the annual Human Rights Film Festival** – see below.
- ◇ **Documentation Centre** – see below.

**THE ANNUAL HUMAN RIGHTS FILM FESTIVAL** raises awareness of human rights through its promotion, as well as showing powerful stories to those who attend. Financially, it is run as a self-contained event. It has not yet become a source of generating funds for DITSHWANELO, although ticket sales have been rising. Nevertheless, all costs have been covered by specific donations. We are very grateful to the organisations below who sponsored the festival, and to the companies who supported us through group bookings for their staff.

In 2004, 12 films were screened, covering issues such as HIV/AIDS, personal stories of apartheid in South Africa, a Namibian story of the Himba threatened by the creation of a hydro-electric dam, the nature of democracy in Africa as learnt the Truth and

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Reconciliation Commission of South Africa, and a very well-received film about a Palestinian refugee camp, which was banned from screening in Israel.

The films all received a warm response from the audience. An audience satisfaction questionnaire was introduced at the 2004 Film Festival. Of 54 respondents:

- 74% rated the films as 'good' and 20% as 'satisfactory' (highest and second category respectively);
- 81% rated the theme of the films as 'relevant', 15% as 'satisfactory';
- 68% rated the films 'relevant' to the themes, 24% as 'satisfactory';
- 79% were attending for the first time, demonstrating the effectiveness of the marketing to attract new audiences; and
- 29% saw 1 film, 35% saw 2 films, 18% saw 3 films and 18% saw 4 or more films, strongly suggesting a high level of satisfaction with the films.

The film festival was made possible through generous sponsorship by:

Alliance Française	Grand Palm Hotel
Air Botswana	MultiChoice Africa
Basarwa Research Programme, University of Botswana	Red Stone (Pty) Ltd
British Airways	Richard Lyons
Cyberflex Africa	Shamshad Khan
Eve's Club	Shell Botswana
Flair Magazine	South African Express
Game Stores	Stardust Cinema
	Trevor Mwamba

**DITSHWANELO'S DOCUMENTATION CENTRE** is a non-lending facility, the main purpose of which is to provide members of the public, students, researchers, journalists and others with access to human rights material. The Centre includes newspaper cuttings, videos, journals, books, Botswana Government Gazettes and other publications. In addition, all England Law Reports are available via CD Rom.

Approximately 100 individuals used the Documentation Centre for research during 2004.

The Documentation Centre continues to be supported by The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, through its provision of human rights books. Other resources were funded from DITSHWANELO's reserves.

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The Centre holds the following categories of documents and journals.

African Union	Human Rights Education
Amnesty International	Human Rights General
Botswana Government Gazettes	Indigenous Peoples
Botswana Newspaper Clippings	Intellectual Property Rights
Botswana Law Reports	International Courts and Tribunals
Botswana Statute Law	Land issues and land rights
Children's Rights	Landmines
Conflict Resolution	Media and Human Rights
Conflicts	Minority Rights (including Ethnicity)
Death Penalty	NGO Development
Democracy and Good Governance (including Corruption)	Ombudsman
Directories	Policing and Human Rights
DITSHWANELO publications	Public International Law
Development and Human Rights	Refugee Rights
Environment	Reports
Freedom of Expression	Small Arms
Gender	South Africa Statute Law
Gay Rights	Socio-Economic Rights
General Reports	Torture
Group Rights	Trade, Labour and Human Rights
HIV/AIDS and Human Rights	UN, WHO and ILO
Human Rights (Africa)	Women's Rights
	Zimbabwe

#### **KEY SECRETARIAT ACHIEVEMENTS DURING 2004**

- ◇ Of those attending the 2004 Film Festival 94% rated the films as 'good' or 'satisfactory'.
- ◇ Several new publications were produced during 2004, including the Inheritance Rights booklet and the workshop report "Alternatives to the *pro deo* system". Sales of publications raised P1,800.
- ◇ Approximately 100 people used the Documentation Centre for research.
- ◇ Issued 20 press statements – see Activism and Information Programme for details
- ◇ Attended 35 events from Gaborone office, about a third of which were workshops drawing on DITSHWANELO's expertise and another third were meetings of organisations of which DITSHWANELO is a member. The Kasane office attended 11 meetings and events.
- ◇ P3.2 million was raised through fundraising, as detailed in the audited accounts.
- ◇ Four members of staff attended training courses.

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## **PLANS FOR 2005**

During 2005 the work of the Secretariat will continue in line with the strategy implemented during 2004. 2005 will be a critical year for DITSHWANELO's funding. Many international donors have withdrawn funding from civil society in Botswana due to the country's middle income status. DITSHWANELO is aiming to help address our fundraising challenges through the following:

- ◆ The involvement of a Skillshare International development worker as Fundraising and Communications Advisor.
- ◆ Seek funding for a Communication and Donor Coordinator who can take responsibility for all aspects of promotions and donor relations, including aspects such as heightening the profile of DITSHWANELO, increasing the distribution of publications, improving press management and producing a quarterly 'Update' for donors and other interested parties. This individual would also contribute substantially to the running of the annual Human Rights Film Festival.

## **ACTIVISM AND INFORMATION PROGRAMME**

The role of our Activism and Information Programme is two-fold. It advocates for changes in laws policies and practices, particularly by government which is in the position to achieve the most substantial improvements in human rights. Secondly, it seeks to educate the whole population about human rights by creating a strong public profile. In both objectives, the programme is supported by the Secretariat's involvement in conferences, running of the Human Rights Film Festival and press management.

The work of the Activism and Information Programme is funded by a number of donors, particularly The Saami Council (a Norwegian organisation for indigenous people), Denmark's International Work Group for Indigenous Affairs (IWGIA), the British High Commissioner and British Council, Norwegian Church Aid (NCA), Open Society Initiative for Southern Africa (OSISA), the Swedish NGO Foundation and Interights.

### **THE WORK OF THE ACTIVISM AND INFORMATION PROGRAMME**

- ◇ **Advocating to change specific laws and circumstances**, including:
  - Abolition of the death penalty in Botswana
  - Reform of the Constitution to remove its inherent discrimination against ethnic minorities
  - De-criminalisation of homosexual acts between consenting adults

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- ◇ **Supporting test cases.** Where individual cases may have a significant impact on attitudes and set a precedent which could change key laws, DITSHWANELO seeks funding to provide legal representation and support the individuals involved in test cases. Six cases have been supported over the last 12 years (see Box opposite). These cases have achieved considerable press coverage and have done much to raise public awareness of the wider issues, particularly the death penalty and the treatment and circumstances of the Basarwa / San.
  - ◇ **Advocating to encourage the government to sign, ratify and implement international instruments\***, ensuring that Botswana's laws, policies and practices are in accordance with the principles. DITSHWANELO applauds the fact that the Government of Botswana has committed herself to a number of international instruments relating to human rights. However, there are many to which Botswana has yet to commit. In addition, those signed have not yet been put into national law, or domesticated. This renders them mere tools for interpretation of law, as they cannot be fully relied upon in a court of law.
  - ◇ **Advocating for the provision of Legal Aid** or *pro bono* system by the government and legal profession (in addition to the existing *pro deo* system for trying capital cases).
  - ◇ **Working to reduce human rights abuses** by raising all citizens' awareness of their rights and responsibilities, and cases of abuses of those rights.
  - ◇ **Raising awareness of human rights abuses.** This is primarily achieved by issuing press releases, such as a June 2004 statement drawing attention to allegations of police brutality and torture, the lack of criminalisation or penalties for perpetrators of torture, the lack of compensation for victims and a number of other instances in Botswana law of cruel, inhuman and degrading punishment.
  - ◇ **Advocating against any incidences of corruption or lack of transparency or accountability, freedom of information and expression, or good governance,** for example:
    - Government efforts to act against media criticism.
    - During 2004 a Botswana Democratic Party (BDP) Billboard featured an NGO leader in a way which implied that everyone engaged in dealing with the HIV/AIDS issue is either a member or supporter of the BDP and that work done in this field has only been possible because of the BDP. DITSHWANELO issued a press statement on 8<sup>th</sup> September 2004 which supported the stand taken by a number of NGOs against this blurring of the distinction between Government and Party.
    - During 2004 we continued to monitor and support the Whistleblower case, reported in 2002/3.

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\* Including treaties, declarations, covenants, conventions, etc.

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## **ADVOCACY THROUGH TEST CASES**

The six cases in which DITSHWANELO has been involved over the last 12 years are summarised below.

### **DEATH PENALTY**

**1999-on:** Maauwe, Motswetla and DITSHWANELO vs State. In 1999 DITSHWANELO became the first NGO to ever be an official party to a human rights case. The case is ongoing, as outlined in our Death Penalty section.

**2001-2002:** The posthumous case of Mariette Bosch was a case against the Government of Botswana for violating African Charter provisions by hanging Ms Bosch despite being informed that official notification was coming from the African Commission to stop the execution. In this case the African Commission found that Botswana had not violated the Charter. DITSHWANELO helped identify the lawyer to take over this case after the initial attorney withdrew and made presentations to the African Commission about the case.

**2003:** In the case of Lehlohonolo Kobedi, DITSHWANELO helped provide legal support and disseminated information to relevant organisations elsewhere in Southern Africa. A communication (complaint) on this case is currently before the African Commission.

### **HOMOSEXUAL RIGHTS**

**1995-2003:** The case of Utjiwa Kanane, charged with "unnatural acts and indecent practices between males", was ultimately unsuccessful. However, the Court of Appeal found that "the time has not yet arrived to decriminalise homosexual practices", providing a glimmer of hope for the future. DITSHWANELO was involved in funding the legal defence, finding replacement lawyers as attorneys became unavailable for various reasons, and in 1999 has negotiated with the Attorney General's office to drop the charges, until, following a change of personnel, we were told this was not possible.

### **BASARWA / SAN**

**1996-present:** The Central Kalahari Game Reserve (CKGR) case is detailed in our section on Indigenous Peoples. DITSHWANELO has been a member of the Negotiating Team since 1998, particularly seeking an extra-judicial solution to the situation and lobbying for the protection of the Basarwa / San's basic human rights.

### **REFUGEES**

**2000-2:** In a case of 13 Namibian refugees challenging repatriation, all 13 admitted to being members of the United Democratic Party (UDP) and the lawyers argued that they would not be guaranteed a fair trial in Namibia due to reported violations against those suspected to be supporters of UDP. In December 2002 the High Court ruled in favour of the Namibians stating that the offences for which extradition was sought were of a political nature and therefore they could not be extradited under Botswana's Extradition Act, adding that they would be unlikely to receive a fair trial in Namibia. DITSHWANELO's involvement included monitoring the case and identifying a lawyer to represent the Namibians.

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## **KEY ACHIEVEMENTS DURING 2004**

- ◇ Issued 20 press statements, all of which were reported by the press. All the statements are available on our website. Key issues covered included:
  - Orphans disinherited through property grabbing
  - Land maladministration in Gaborone
  - The Central Kalahari Game Reserve court case
  - The situation in Zimbabwe
  - HIV/AIDS
  - Torture
- ◇ Participated in several radio interviews and on-air discussions with callers on topical issues ranging from the death penalty and discrimination, to beauty competitions.
- ◇ Continued to support the test case of two Basarwa men on Death Row by seeking funding for their legal representation and providing support to the two individuals, through our Kasane office. The case has raised considerable awareness of the Death Penalty and may set a legal precedent regarding the period of time within which a State appeal must be lodged.
- ◇ Held a workshop in November 2004 for judges, lawyers (private sector and government) and NGOs on "Alternatives to the Pro Deo System" which resulted in recommendations which were presented to the Office of the President, the Attorney General's Chambers, the Ombudsman, Lobatse and Francistown High Court Judges and Registrars, foreign embassies and involved NGOs. The workshop and report were funded by the British High Commission.
- ◇ As part of the "Up Front and Personal Exhibition" organised by the British Council and the British High Commission, DITSHWANELO was one of three partner organisations to host a panel discussion. Our event was a public debate on 23 March 2004, entitled "Do Stiffer Penalties = Justice?". It involved panellists speaking for and against the then recent call for stiffer penalties in Botswana for offences.
- ◇ Between 21 May and 4 June 2004 we participated in the Session of the African Commission on Human and Peoples' Rights and the associated meeting of the Coalition for an Effective African Court on Human and Peoples' Rights, as detailed in our Regional Solidarity section.
- ◇ DITSHWANELO participated in a government workshop from 29 November to 1 December 2004 for the preparation of State Party Report to the 2005 Committee on the Elimination of Racial Discrimination (CERD) review of Botswana's realisation of its commitments.
- ◇ Although DITSHWANELO can not claim complete responsibility for legislative or policy changes, we believe that our campaign contributed, at least in part, to The Abolition of Marital Power Bill\* (No. 34, 2004).

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\* The Bill came into power 1 May 2005.

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## PLANS FOR 2005

During 2005 we will continue to campaign and raise awareness of human rights issues. As noted in the Secretariat report, we will seek funding to recruit a Communication and Donor Manager who will contribute to the effectiveness of the Activism and Information Programme.

In addition we are seeking funding to undertake the following activities:

- ◆ Continue our contribution to the preparation of State Party Report to the United Nation's Committee on the Elimination of Racial Discrimination (CERD) review of Botswana's realisation of its commitments. The report is to be submitted in 2005. We will also prepare our own shadow report for submission to CERD in 2005.
- ◆ Continue to support the case of two Basarwa on death row.
- ◆ Through a workshop to gain the input of lawyers who have been involved with death penalty cases and/or attended the "Alternatives to *pro deo* system" workshop, we will conclude the production of a 'Know your law' booklet aimed specifically at providing information for lawyers handling death penalty cases. As the nature of the *pro deo* system means it is often young and inexperienced lawyers who are given these cases, this booklet will help improve the quality of support provided to all those accused of capital offences.

## PARALEGAL & RESEARCH PROGRAMME

There is a natural synergy between our Paralegal Programme and Research. Through the Paralegal Programme, DITSHWANELO is involved in hundreds of cases each year, contributing substantially to our research. Equally, research enables the Paralegal Programme to focus on empowering individuals and communities through knowledge.

During 2004 our Paralegal Programme was funded solely from DITSHWANELO's own reserves.

**THE RESEARCH PROGRAMME** informs both our own projects and activism work, and is made available to all those interested in human rights in Botswana, through our reports, publications and website. We have been conducting research since the creation of DITSHWANELO in 1993, although the findings have not yet been published in consistent format, such as an annual 'State of Human Rights Report'. We expect to receive funding for such a report in 2005-6 from the Open Society Initiative for Southern Africa (OSISA).

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**PARALEGAL TRAINING, ADVICE AND ADVOCACY PROGRAMME** operates from both Gaborone and Kasane offices. The key activities are:

- ◇ **Providing direct legal advice** and mediation services to those earning under P600 per month (the minimum wage), through both the Gaborone and Kasane offices.
- ◇ **Raising awareness of rights and improving the capacity to protect them**, both generally and focusing on specific groups, such as the Basarwa / San, children and domestic workers. This is achieved through:
  - production and dissemination of the 'Know your law' series of publications simplifying the law regarding key issues;
  - awareness-raising and capacity-building workshops and other events for local communities, run directly by our staff, or by paralegals we have trained; and
  - involvement in relevant events and seminars, and distribution of the results of such events, including to relevant NGOs and community leaders.
- ◇ **Training and supporting paralegals** to provide legal and mediation support within their local community and to educate their community about their rights and help build the community's capacity to exercise and protect their rights.
- ◇ **Contributing to the judiciary's understanding of human rights.** During 2004 we prepared a presentation for the SADC Chief Justices Conference on "Access to Justice in the context of Human Rights", regarding the judiciary, the rule of law and democratic governance (July 2004).
- ◇ **Contributing to the legal profession's understanding of human rights**, including by inviting lawyers to attend relevant workshops to which DITSHWANELO has been invited. During 2004 this included an International Litigation Workshop in Dakar, Senegal, run by the International Commission of Jurists' African Human Rights and Access to Justice Programme; and a workshop for Human Rights Defenders in Africa, held in Nairobi, Kenya, run by the Commonwealth Secretariat.

#### **KEY ACHIEVEMENTS DURING 2004**

- ◇ During 2004 we handled 626 cases, 317 in Kasane and 309 in Gaborone. The cases handled during 2004 focused on the following issues:

	<b>Kasane</b>	<b>Gaborone</b>
Criminal	7%	-
Family and Co-habitation	21%	47%
Immigration and Citizenship	8%	2%
Labour	14%	31%
Land Rights	35%	1%
Torture	6%	2%
<b>No. of cases</b>	<b>317</b>	<b>309</b>

The split between females and males seeking assistance is 62% and 38% respectively, in both Gaborone and Kasane.

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- ◇ As detailed in our Land Rights report, two awareness raising and capacity building workshops were run by the Kasane office, both specifically addressing land rights issues, one seeking to build the capacity of Land Overseers, the other to improve the community's understanding and capacity to address land problems.
  - ◇ Produced and launched a 'Know your Law' booklet on Inheritance Rights, raising awareness of legal rights and provide guidelines for making a Will. In Botswana inheritance issues are a major cause of conflict and violation of rights, particularly for orphaned children and women, especially those co-habiting or in polygamous marriages. The booklet was launched on 19 November 2004 and was produced jointly with the Women's NGO Coalition, funded by the US Embassy and the Women's Affairs Department.
  - ◇ Distributed 'Know your Law' booklets (a series of six publications covering land rights, customary law, maintenance, labour law, criminal law and inheritance rights), during workshops, events, visitors to the Centre, etc.

### **PLANS FOR 2005**

Providing paralegal support for individuals will continue to be a major focus of our work during 2005. In addition, funding is being sought to tailor the paralegal training programme for the Basarwa / San, piloting the approach in the Gantsi District. See the section on Indigenous Peoples for more detail.

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## **ACCESS TO JUSTICE: THE CHALLENGES**

Botswana has committed herself to the African Charter on Human and Peoples' Rights. The Government's Vision 2016 also aims for the attainment of a "compassionate, just and caring nation".

However, despite commitment to the Charter, Botswana has not yet submitted even her initial State Party Report. Botswana also has not yet committed herself to the African Court, which was established on the basis of a 1998 Protocol which provides for free legal representation where the interests of justice require this. Botswana provides no clear right to legal representation in her Constitution and continues to have no State-funded legal assistance for those unable to afford legal fees<sup>1</sup>. The government does provide legal assistance for those charged with capital offences, although, due largely to the low fees paid to lawyers, the quality of the legal support provided is typically poor. Beyond this *pro deo* representation, there is no support for the many cases in which individuals face lengthy sentences. Similarly, there is no support for the large number of circumstances in which individuals can not afford justice. With 44%<sup>2</sup> of the population living below the poverty line and legal representation unaffordable for many above it, there are many individuals who suffer injustice, whether being unable to defend themselves or unable to fight against violations of their rights.

In addition to affordability, many find it difficult to seek justice due to geographical isolation, lack of access to information, and inefficiencies and delays in the administration of justice. Lack of information is a critical issue, as ignorance of the law is not accepted as an excuse to justify not acting in accordance with the law.

In fact, 90% of civil cases and 85% of criminal cases in Botswana are heard or tried in Customary Law Courts, which do not allow a person to have legal representation, forcing individuals to make their own case. This means the understanding of the law or access to advice is essential in the majority of cases heard in Botswana.

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<sup>1</sup> Botswana does have a system of *in forma pauperis*, under which the Registrar will provide a lawyer for a litigant in the High Court who has no money – defined as total assets of less than P50. Even the Registrar has said that there is no one in Botswana with total assets of less than P50.

<sup>2</sup> The UNDP Human Development Report, 2003, states that 43.6% of Botswana's population lives below the poverty line.

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## **KASANE OFFICE – OUTREACH PROGRAMME**

DITSHWANELO's Outreach Programme makes our services more readily accessible to Botswana's remote districts. Kasane, in the far north of Botswana, was chosen as the office location due to the absence of any other NGOs providing support for human rights in this area. The region has the full range of needs experienced in Gaborone, with a particularly strong need for support on land issues. Land rights are reported separately.

The work of the Kasane office has been supported by Evangelischer Entwicklungsdienst e.V. (EED), Global Ministries and the Australian Agency for International Development (AusAID) since 2002.

It has proved to be difficult to recruit people to the office in Kasane, which has limited the scope of work undertaken during 2004. A Project Officer and a Receptionist started work in November and December 2004, respectively, and an Assistant Administrator and Paralegal Assistant are still to be recruited.

During 2004, the Kasane office staff:

- ◇ Provided day-to-day paralegal advice and mediation services for 317 cases, including the following range of issues:

Land Rights	35%
Co-habitation	21%
Labour	14%
Immigration and Citizenship	8%
Criminal	7%
Torture	6%

A particularly large number of cases were handled during 2004 due to the volume of needs which has accumulated in the absences of any such support.

- ◇ In addition to paralegal cases, the Kasane office provided support in the handling of specific local issues, such as:
  - advising the District Agricultural Office and Masedi small farmers in ways to work with large farmers to create a market for their produce; and
  - helping the Board of the KALEPA Community Trust to develop a plan and budget based on an understanding of the requirements of the Department of National Parks.

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- ◇ Sought to raise the community's understanding of human rights issues, through activities such as:
    - being a member of the panel at the World AIDS Day Commemoration event in Kachikau Village on 1 December 2004, organised by the Chobe District Multi-Sectoral AIDS Committee;
    - assisting with the planning for the Vision 2016 Awareness Month, in September 2004, and presenting a stand at the event (pictured on page 18);
    - giving human rights presentations at events, including the Commemoration of the Day of the African Child, 16 June 2004, at which DITSHWANELO presented on the Children's Act and laws relating to children; and
    - supporting democracy awareness-raising by attending Kgotla meetings of the Member of Parliament and the Deputy Speaker of the National Assembly (14 & 15 September).
  - ◇ Supported two prisoners on death row in Francistown, through quarterly visits.
  - ◇ Helped monitor the Botswana National Elections, on 30 October 2004, working with Emang Basadi under the Botswana Electoral Support Network initiative, to coordinate the National Election monitoring in the Chobe Constituency. The office supervised 27 Election Observers in the Constituency.

See also our Regional Solidarity section.

See Section III Land Rights report for further details of specific work and plans for 2005.

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## III PRIORITY FOCUSES

DITSHWANELO supports every individual in Botswana through raising awareness of human rights issues and campaigning to change laws. Our Paralegal Programme is also focused on all people living in poverty (earning below the minimum wage) who need legal support.

More targeted support is provided to key groups who are being denied their rights and for whom little other support is available. As detailed in this section of the Report, during 2004 DITSHWANELO's focus has been on:

1. Individuals and communities facing land rights issues
2. Children
3. Indigenous peoples and minority groups
4. Lesbians, gays and bisexuals
5. Domestic workers
6. Immigrants, refugees and asylum seekers
7. Death penalty
8. Regional solidarity, with a focus on Zimbabwe

### LAND RIGHTS

DITSHWANELO's Kasane office runs a Land Rights Project which is developing an inventory of land issues in the Chobe District. Findings during 2004 showed that issues include the following:

- Problems relating to 'land grabbing' and inheritance, especially for widows and orphans, and the property rights of children born from co-habitation relationships.
- Unfair treatment of members of ethnic minority groups by land administration institutions and non-adherence to the Tribal Land Act by some Land Boards.
- A rise in poverty among rural communities as a result of conflicts between subsistence agriculture and wildlife, such as the encroachment of wildlife conservation areas into cropping and grazing areas.
- Delays by Land Boards to respond to public needs – the majority of land use plans take many years to complete (one having taken more than 23 years), and disputes frequently take months to be dealt with.

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- Similar delays by Land Tribunal to hear appeals.
  - Illegal land dealings and land grabbing by economically and politically powerful individuals.
  - The need to improve the Land Overseers' services and ability to prevent corruption.
  - Lack of clarity regarding the boundaries of certain districts causing difficulties in land administration, and a need to clarify borders between State land and Tribal land in some areas.

This northern region of Botswana also faces a range of other issues relating to traditional user rights, unprotected borders, the capacity of the Land Tribunal, and prolonged delays in the review and adoption of policies such as the Community-Based Natural Resources Management and the Forest Policies.

Across the whole of Botswana DITSHWANELO is concerned about the fairness of land allocation by Land Boards. DITSHWANELO believes there is considerable evidence of misallocation and maladministration. This view was supported during 2004 by a Presidential Commission of Inquiry which investigated land allocation in Gaborone. DITSHWANELO believes the government needs to conduct similar inquiries across the country. We issued press statements about this matter on 29 June and 19 August 2004.

During 2004 the following key activities were undertaken to help address these issues.

1. **Provided legal and logistical support to those with land claims** – as part of our Paralegal programme.
  - 35% of the Kasane office's 317 cases (110 cases) during 2004 related to land rights. These cases have both been addressed and contributed to DITSHWANELO'S inventory of land rights issues. The vast majority of cases are brought by individuals, but three are in support of community land-use rights and DITSHWANELO is using the cases to help empower the community.
  - In Gaborone, 1.3% of cases (4 cases) related to land rights.
2. **Raised awareness of lands rights issues within the Kasane district**, through the capacity-building work detailed below, and following activities:
  - The Kasane office staff attended a number of meetings, workshops and other community events representing human rights, particularly land rights issues, in the Kasane District (see the Kasane Office report above for further details).
  - Publication and distribution our sixth 'Know your law' booklet, on Inheritance Rights, as detailed in the Paralegal report.
  - Distributed copies of the other 'Know Your Law' booklets, especially on Land Rights, including to the new Land Overseers appointed to liaise between the Land Boards and the Chiefs.

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3. **Developed the capacity of communities in and around Kasane to have access to and protect their land rights**, particularly by facilitating two “mobile discussions”, enabling the community to debate land rights issues and to identify opportunities to participate in land rights initiatives affecting them. Following the success of these discussions, other communities have invited the Project Office to conduct similar discussions in their locality.

The Office also worked with a number of individual communities and institutions to develop their capacity to ensure their rights regarding specific issues. For example, DITSHWANELO was a member of the Technical Advisory Team at the stakeholders’ workshop for the Chobe Enclave Conservation Trust, 23-25 November 2004, providing advice on matters such as ensuring fair leases with safari companies.

4. **The Kasane Office began an inventory of land rights issues** which will be used to produce a Land Rights Framework and policy papers to assist with campaigning.
5. **Improved the capacity of institutions and structures** dealing with land issues to deliver and uphold land rights both efficiently and with respect for all members of the community. There is a need to improve the level of information about how the land allocation works as Chiefs are less clear about their role now that there are Land Boards, and the Land Overseers who have been appointed to liaise between the Chiefs and the Land Boards are frequently individuals without any background knowledge of land issues.

In July 2004 the Kasane office facilitated a Land Board Workshop involving 37 participants from Chobe, Gantsi and Tawana Land Boards, including Land Overseers, Officials and a representative of the Land Tribunal. Its success has attracted interest from other Land Boards who would like DITSHWANELO to run similar workshops for them, as well as attracting support and respect in the areas covered.

6. **Campaigned for the development and implementation of clear regulations and procedures** governing land allocation and for legislation regulating environmental impact assessments. During 2004 we released two press statements relating to the Gaborone Commission of Inquiry, urging the same process to take place across the country and pushing for clarity and transparency in regulations and procedures.

## **PLANS FOR 2005**

DITSHWANELO’s Kasane office will continue to provide paralegal support to individuals, raise awareness of land rights and work to build the community and institution’s capacities. In addition, during 2005 the office plans to:

- ◆ Increase the number of ‘mobile discussions’ held between communities and institutions.
- ◆ Continue to develop the Inventory of Land Rights issues.
- ◆ Continue to support individual communities with specific land rights issues.

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## CHILDREN AND HUMAN RIGHTS

The Government of Botswana has recognised that laws and cultural and institutional arrangements in this country have not been focused on achieving children's well being. DITSHWANELO participated in a major review over several years, which reported in 2004, making 107 detailed recommendations for change. The review has been jointly run and funded by the Ministry of Local Government and UNICEF.

In traditional Botswana society, children are viewed as the property of their parents, not as rights holders. They are expected to obey their parents without question. As recognised by the review reference groups, the majority of Botswana mistake "children's rights" for freedoms which are perceived as a threat to cultural and customary law principles, such as respect for elders and parents. The reference groups stressed the importance of ensuring that "children's rights" are presented so as not to be seen as foreign or imposed on society from outside. Similarly, there is a need to place equal stress on duties and responsibilities, to ensure that children's rights are not perceived as a concept that may harm the cohesion of society.

A detailed Report of the Review was published in May 2004 and in September 2004 the Botswana State Party Report was presented to the UN Committee on the Rights of The Child. DITSHWANELO's involvement is outlined below.

During 2004 DITSHWANELO's work to achieve children's rights and ensure children develop an understanding of human rights was as follows.

1. **Provided legal and mediation support to young people and parents**, as part of the operation of our Paralegal programme. Children suffer a range of legal problems, particularly property-grabbing from orphans by relatives of the deceased parents; physical, sexual and emotional abuse; and child labour in situations such as remote farms, particularly involving Basarwa / San communities, resulting in children missing their schooling.

In Gaborone, 5.5% of cases (17 cases) were brought to DITSHWANELO by young people, mainly young women (14 cases). These cases included issues regarding inheritance, child abuse, compensation, court proceedings, family problems, labour and immigration.

2. **Raised children and young people's awareness of their rights.** This aim is principally achieved through the continued use of '*Tsa Bana!*' [*For the Children*] in junior secondary schools. '*Tsa Bana!*' is a human rights teaching resource which was produced by a collective of teachers working with DITSHWANELO in 1997. It was launched by the Minister of Education, and is on the Ministry of Education's prescribed reading list, but not examinable.

During 2004 DITSHWANELO gave talks to seven schools and a group of Girl Guides.

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3. **Reflecting the increasing number of inheritance cases** brought by children and young people, during 2004 we published our sixth 'Know your law' booklet: Inheritance Rights, as detailed in the Paralegal report.
  4. **Campaigned for a review of the laws relating to children** to ensure that the rights outlined in international treaties and conventions, to which Botswana is party, are harmonised with Botswana's laws. During 2004 DITSHWANELO:
    - was involved in the Multisectoral Reference Group for the Ministry of Local Government / UNICEF review of the Children's Act (1981), referred to above;
    - participated in the NGO delegation under the auspices of BOCONGO, funded by Save the Children Sweden, which provided an independent briefing on children's rights in Botswana to the UN Committee on the Rights of the Child (UNCRC); and
    - released a press statement on 16 June for the Day of the African Child, "Popularising the African Charter of the Rights and Welfare of the Child", which received national television and newspaper coverage.
  5. **Continued to support Human Rights Clubs in Junior Secondary Schools.**

## **PLANS FOR 2005**

We expect to receive funding from Save the Children Sweden for a Children's Rights Programme Officer who will lead a review of the whole programme, manage identified new projects and expand agreed existing projects. We are also planning to undertake the following projects during 2005:

- ◆ A consultant review to identify which activities would have most impact in raising children's awareness of human rights and their responsibilities, and helping them to achieve their rights. This may include projects such as:
  - Finalising and promoting a 'Starter Booklet' for students wishing to set up Human Rights Clubs in schools. This may be linked with a revision of '*Tsa Bana!*' to provide a comprehensive toolkit for schools.
  - Producing human rights materials to be used in primary schools which, like '*Tsa Bana!*', we would hope to be included on the Ministry of Education's recommended reading list for use in all primary schools. This material will include a particular focus on addressing HIV/AIDS issues in a holistic manner.
  - Hosting a poetry and/or essay competition during 2006 for junior secondary school students, to raise awareness of children's rights.
- ◆ The paralegal project in the Gantsi district for which we are seeking funding (see Indigenous Peoples) will seek to address child labour taking place on farms in this district.

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## **INDIGENOUS PEOPLES AND ETHNIC MINORITIES**

In March 2004, IRIN, a UN news agency, reported that the Basarwa / San live in conditions where rural poverty is endemic, where they remain the poorest of the poor, are exploited by farmers, plagued by alcoholism, perceived as backward and silent in politics. New !Xade is called by its residents "the place of death" because of the large number of Basarwa / San dying there, largely due to the prevalence of AIDS, from which their relative isolation in CKGR had previously protected them.

There are many cases showing that the Basarwa / San people of Botswana often fear for their livelihood and their future, and continue to face discrimination, eviction from ancestral lands, deprivation of inheritance rights, unfair dismissal, working conditions which equate to slavery, child labour depriving children of schooling, torture, and police mishandling, as well as HIV/AIDS-related and a range of other human rights abuses.

Basarwa / San children often find education difficult due to the national curriculum being taught in English and Setswana and being uniform across the country, without any modification to make it more relevant and motivating for Basarwa / San children. Cases of alcoholic and/or violent parents add to the relatively high rate of school drop-out and absenteeism.

There are approximately 50,000 Basarwa / San in Botswana; about half of the total population of San in Southern Africa. However, their isolation from each other helps deprive the communities from lobbying effectively for their rights. Many are unaware of the steps which they could take to protect and/or achieve their basic human rights.

The Government's policy to treat all Batswana as 'equal' is largely interpreted as meaning 'the same', resulting in pressure on minority groups to assimilate and the tendency to impose Tswana customs and culture on all the 40 or so ethnic groups in Botswana. Similarly, Constitutional amendments were proposed in 2004 which, in aiming to remove discrimination against ethnic groups, risk failing to recognise the differing needs of these individual groups.

The Government of Botswana also has not signed the International Labour Organisation (ILO) Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, which means that the Basarwa / San are prevented from being granted the right of ownership of the land they occupy traditionally and the right to remain on the land. Added difficulties arise because the concept of land ownership in Basarwa / San culture is very difficult as there is no written law and no written record of land ownership. Territories were simply recognised and respected by other Basarwa / San groups. The concept of personal ownership is very limited in Basarwa / San culture.

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DITSHWANELO continued to help address all these issues faced by Basarwa / San, through the following activities during 2004. In undertaking these activities, we were supported by the Saami Council, Norwegian Church Aid, Global Ministries and International Work Group for Indigenous Affairs (IWGIA).

1. **Provided legal and associated emergency humanitarian support for key Basarwa / San cases**, in particular:

- In the case of the forced relocation of the Basarwa / San from the Central Kalahari Game Reserve (CKGR) and the termination of Government services to those remaining in the CKGR, DITSHWANELO's support during 2004 included:
  - Raising funds to provide legal representation.
  - Raising awareness of the case, locally and internationally, by issuing press statements and presenting on the case at both BOCONGO's CKGR workshop and the CIVICUS workshop (see Regional Solidarity).
  - Providing briefings for regional and international diplomats, local regional and international media, academia, UNDP and the UN Office of the High Commissioner for Human Rights.
  - Providing background information for the court case.
  - Maintaining the CKGR Coalition's financial accounts and managing a portion of the funding; and providing logistical support such as obtaining permits for the team to enter the CKGR.
  - Providing water, food and toiletries for those Basarwa / San, whom the Government no longer supplies.
- We continued to raise funds to provide legal representation in the case of two Basarwa / San men on Death Row, and supported the individuals through visits from our Kasane office.

2. **Campaigned to reduce discrimination against the Basarwa / San**, both in the community and in Botswana's laws, policies and practices. Activities included:

- Issuing three press releases during 2004 regarding the CKGR case, above.
- Participating in the Stakeholders' Workshop on the preparation of the State Party Report to the Committee on the Elimination of Racial Discrimination (CERD), 29 Nov – 1 Dec 2004. The aim of the Committee is to ensure that the commitment which governments make when ratifying the Convention on the Elimination of Racial Discrimination are realised in their policies and practices, administratively, judicially and legislatively. The Report will be finalised and the Committee will deliberate on it in 2006.

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## **PLANS FOR 2005**

During 2005 the Centre plans to:

- Prepare a shadow report as input to the Committee on the Elimination of Racial Discrimination (CERD) review of Botswana's realisation of its commitments, in addition to being involved in the preparation of the State Party Report to CERD.
- Seek funding to establish up a Basarwa / San Paralegal Training and Advocacy Programme in the Gantsi District, working in partnership with the Kuru Family of Organisations and WIMSA. The partners will also seek funding from 2006 to develop this Paralegal programme specifically for Gantsi farm workers, 95% of whom are Basarwa / San, as part of a larger project led by Kuru to create a Gantsi Farm Workers' Union.
- As part of our planned review of our Children's Rights Programme (see under 'Children and Human Rights'), we will identify whether materials should be specifically tailored to make them more culturally relevant for the Basarwa / San.

## **LESBIANS, GAYS AND BISEXUALS**

Under Botswana's Penal Code, homosexual behaviour is deemed to be an illegal act, punishable by custodial sentences of up to seven years. An amendment in 1998 extended the criminalisation of same-sex behaviour to women.

There is also a high level of prejudice against lesbians, gays and bisexuals (LGBs), and often extreme hostility. Only a small number of people have publicly advocated tolerance, for example in letters to editors, and a few individuals have been prepared to stand up to tell their individual stories of living as homosexuals in Botswana.

In our last Annual Report we reported at length on a major case of homosexual behaviour which led to a rather ambiguous decision in which the Court of Appeal stated that the nation was not ready for the decriminalisation of homosexual acts, but did not make judgment on a key point about the Constitutionality of the Penal Code.

Access to HIV/AIDS care by LGBs is an additional issue, with some members of the medical and counselling profession needing education about the health needs of LGBs.

DITSHWANELO believes that it must be the LGB community itself which leads efforts to change the community's views. To this end in 1998 we set up a group called LeGaBiBo (Lesbians, Gays and Bisexuals in Botswana). The plan is for this group to take ownership of the campaign, to monitor and document human rights violations against LGBs and to develop a comprehensive strategic plan. The approach is likely to include running workshops for both members of the LGB community regarding safe sex practices, and for the medical and counselling profession to educate them about the health needs of LGBs.

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During 2004 DITSHWANELO facilitated the attendance of two members of LeGaBiBo at the "All African Symposium on HIV/AIDS", which was a conference in South Africa, beginning on 7 February 2004 and designed specifically for lesbian and gay groups. DITSHWANELO believes that it is important for members of LeGaBiBo to build networks with others in the region and be able to report back to other members of LeGaBiBo. One consequence of the workshop was that a participant undertook a small survey of lesbians in Botswana based on discussions during the workshop.

During 2005 we expect to support HIVOS in leading a conference on Minority Rights in Botswana, including a specific focus on sexual minorities. The conference would identify specific actions and responsibilities for the implementation.

## **DOMESTIC WORKERS**

It is estimated that there are about 110,000 households in Botswana which are sufficiently well-off to employ a domestic worker and are urban or peri-urban. On this basis, we assume that there are around 110,000 domestic workers (i.e. house helpers, child minders and other such workers). The majority are women.

Domestic workers are not covered fully by Botswana's labour laws, as parts of the Employment Act exclude domestic workers. Consequently:

- Employers are not required to pay the minimum wage or to pay overtime rates;
- Domestic workers can work for more than 10 hours in a day, although under the law, not for more than 240 hours in a month; and
- There are only four legally required public holidays for domestic workers, rather than the eight paid public holidays enjoyed by most workers.

Employment law does, however, provide domestic workers with entitlements, but both employers and domestic workers are poorly informed about their rights. Given the limited legal protection and knowledge, and the fact that domestic work is often seen – by both employers and employees – as a private matter rather than employment, many domestic workers suffer a number of violations of their human rights. Key among these are:

- Not receiving sufficient payment to live on – in fact many are paid 'in kind' with only clothing, food and/or shelter;
- Payment in kind in the form of accommodation being treated as reason to take on duties which have not been agreed, such as guarding the property or baby-sitting at all hours;
- Not receiving the legally-required severance pay if they leave employment after being employed for more than five years;
- Being treated as 'property' rather than as an employee;

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- Specifically or effectively being prevented from visiting family or friends due to working hours and expectations, or outright refusal to allow visitors;
  - Not being informed properly about dangers associated with appliances, chemicals, electricity or physical activities, such as lifting (and often not being able to read information due to illiteracy);
  - Being forced to be tested for HIV and/or to disclose test results; and
  - Being dismissed if they become pregnant.

To address these issues, DITSHWANELO undertook the following activities during 2004, kindly supported by African Women's Development Fund and Friedrich Ebert Stiftung [Foundation] (FES).

1. **Raised awareness of the rights of domestic workers**, among both domestic workers and their employers, by distributing copies of DITSHWANELO's education booklet "*Rights of Domestic Workers*", e.g. to the American Women's Association in Gaborone, whose members include many expatriate employers of domestic workers.
2. **Empowered domestic workers to take responsibility for achieving full rights** for all domestic workers by supporting the Domestic Workers' Foundation, which DITSHWANELO established in 1995 as a precursor to a possible future Domestic Workers' Union. The group includes about 200 domestic workers in Gaborone who meet monthly at the Centre for discussion and training, with the aim of understanding the issues, identifying concerns and developing constructive solutions.
3. **Supported the Domestic Workers Foundation** to develop a paper outlining the many labour and basic human rights which are frequently violated in the case of domestic workers. The paper was to be presented at the official May Day celebrations at the University of Botswana Stadium. Given lack of time, it was not read, but was presented directly to the President.

## **IMMIGRANTS, REFUGEES AND ASYLUM SEEKERS**

DITSHWANELO has a number of key concerns about immigrants, refugees and asylum seekers in Botswana:

1. Society's xenophobia and intolerance to foreigners, which appears to be rising and leading towards outright resentment.
2. The treatment of Zimbabweans by Government officials and police, which ranges from discrimination and unfair trials, to physical beatings.
3. Botswana's laws and policies regarding immigrants, particularly the President's potentially vast powers of discretion to declare any foreign resident or visitor a prohibited immigrant and have him/her deported.

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4. The detention and refoulement (forced repatriation to a country from which one has fled in fear) of undocumented migrants, especially the treatment of refugees and asylum seekers as though they are criminals, including being held in prison in the same cells as prisoners, and being held for considerably longer than allowed by law.

With internal challenges facing the Botswana Council for Refugees (BCR) and the UNHCR, DITSHWANELO has been drawn into providing time-consuming and costly emergency support for a few individual migrants. This is not DITSHWANELO's role and we are seeking to transfer responsibility to those organisations dedicated to supporting migrants. Instead, DITSHWANELO's priorities regarding immigrants, refugees and asylum seekers are as follows.

1. **Raising the public's awareness** of the rights and benefits of immigrants, refugees and asylum seekers. During 2004 we issued a press release for World Refugee Day "A place to call home: Rebuilding lives in safety and dignity", 18 June 2004, which outlined the value that refugees can provide to their host country if they are integrated rather than held in a refugee camp.
2. **Providing legal and mediation support to immigrants, refugees and asylum seekers**, as part of the operation of our Paralegal Programme. During 2004 we supported approximately 30 such cases, with issues including non-recognition of refugees by UNHCR, refoulement, inadequate security, denial of residence and work permits, location of lost relations, prolonged detention at the Illegal Immigrants Detention Centre and inadequate safeguards for their rights in refugee legislation.
3. **Representing immigration issues at the organisations with which DITSHWANELO works**, including UNHCR, Botswana Council for Refugees (BCR), the Office of the President, Ministry of Labour and Home Affairs.

## **PLANS FOR 2005**

During 2005 DITSHWANELO will seek to reduce its emergency support for individuals. We will continue to focus on awareness-raising, and have funding from the Open Society Initiative for Southern Africa (OSISA) to undertake an audit of Citizenship and Discrimination in Southern Africa, which will include a specific focus on immigrants, refugees and asylum seekers.

We will also seek funding during 2005-6 to produce a 'Know your law' booklet for undocumented migrants, refugees, asylum seekers and those who provide for them, addressing procedures and the law.

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## DEATH PENALTY

The death penalty is practised in Botswana and enshrined in the Statutes. Since Independence in 1966, 38 people have been executed, the most recent being in September 2003. However, there is no evidence that the death penalty is a deterrent, as was recognised by the Chief Justice himself at the opening of The Legal Year during February 2004.

For capital offences in the Penal Code, persons are tried in the High Court, with a right of appeal to the Court of Appeal. The Court is obliged to impose the death penalty unless extenuating circumstances exist, in which case there is no minimum sentence, the sentences ranging from 5 to 15 years. In the majority of cases extenuating circumstances are found. If there are no extenuating circumstances, the last resort is that the President has power under the Constitution to grant clemency to death row prisoners. It appears, however, that clemency has never been granted.

The Act does limit who can attend the execution, but does not preclude the Commissioner from informing relatives of the date and time. However, prisoners on death row are given only 24 hours notice of their execution and often their families are not informed in advance. This approach is unnecessarily cruel on the family, who are themselves innocent of the crime. Prisoners' access to visitors is also extremely limited, including access to potential support such as DITSHWANELO.

In many cases, the trials are also not conducted within a reasonable period of time after the crime.

The Government does have a *pro deo* system of legal support for individuals facing the death penalty. However, DITSHWANELO has a number of concerns about the system, particularly the poor quality or inexperience of the lawyers typically assigned to the cases, the lack of financial resources for the defence's case and, typically, very limited time for the defence case to be prepared.

DITSHWANELO also has a number of concerns about the Presidential clemency process, including conflicts of interest, lack of information available to the Advisory Committee of the Prerogative of Mercy, and lack of information provided to the accused and/or his/her family.

Similarly, DITSHWANELO believes that the criminal justice system does nothing to help the families of the victims of the crime. At present there is no support, such as counselling, often leaving the families angry and unable to cope with their loss.

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Given these concerns, during 2004 DITSHWANELO continued its campaign, "Who has the right to kill?", which began in 1999. Our fight to abolish the death penalty and address its consequences includes the following activities. This work was funded by Global Ministries, the British High Commission, Ms Ann Peacock, Mr Phillip Hudson and the Rowan Trust.

1. **Directly lobbying the government to abolish the death penalty**, including producing a folder for Members of Parliament, entitled "Access to Justice", which was distributed to all MPs following the October 2004 General Election. This was supported by the UK Government's Global Opportunities Fund.
2. **Raising public awareness of the issues**, particularly through the press, with the aim of generating public debate about the pros and cons of the death penalty and encourage individuals and groups such as church, student and youth groups, to urge Members of Parliament, Chiefs and local leaders to influence the State to abolish the death penalty.

During 2004 we also began documenting the process applied in the case of Maauwe and Motswetla, with the aim of producing a book. The book will be distributed to the Registrar of the High Court, the Botswana Police Force, the Department of Prisons, the Law Society of Botswana, the Judiciary, lawyers, parliamentarians, NGOs and the media, as there will be a number of recommendations specifically directed to each of these groups.

3. **Providing direct support to prisoners facing the death penalty** where they do not appear to be receiving a fair trial and funding can be obtained. During 2004 DITSHWANELO continued to support the case of Maauwe and Motswetla, using this case to illustrate the injustice of the death penalty and the limitations of the legal system.
4. **Campaigning for improvements to the provision of legal support to defendants: *pro deo* and the provision of some form of Legal Aid.** We conducted a seminar on "Alternatives to the *Pro Deo* System", on 18 November 2004, bringing together representatives from various parts of the legal system, NGOs, Members of Parliament, Attorney General's Chambers, UN representatives, the US Embassy and the British High Commission, who sponsored the project.

## **PLANS FOR 2005**

As detailed in our Activism and Information Programme 'Plans for 2005', we will continue to support the case of Maauwe and Motswetla and we will seek to complete the book about its process, depending on the progress of the case. We will also produce a 'Know your law' booklet to assist lawyers who are defending death penalty cases, involving conducting a workshop with lawyers who have previously been involved in such cases.

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## REGIONAL SOLIDARITY: FOCUS ON ZIMBABWE

Regional and international action can achieve much in terms of changing community attitudes and government laws and policies. Cross-border cooperation between NGOs can also enable knowledge and expertise to be shared and efficiencies to be achieved.

In addition to sharing experience regarding ongoing issues such as HIV/AIDS and the consequent increase in the number of orphans, the key regional need during 2004 has been the crisis in Zimbabwe. This crisis is generating huge humanitarian needs in Zimbabwe, including for food aid. As the country's economic difficulties have increased, many Zimbabweans are being forced into the growing black market, prompting a crackdown by the government.

The crisis is having profound effects on the rest of Southern Africa, potentially threatening economic stability and resulting in a spread of refugees and poverty. Consequential effects in Botswana include increased crime and a rise in xenophobia.

Zimbabwe's claims of democracy are being supported by the Government of Botswana and the Southern African Development Community (SADC), despite widespread evidence of intimidation of anyone who opposes President Robert Mugabe's ZANU-PF Party. It is therefore difficult for civil society organisations in Botswana and other Southern African countries to get a comprehensive view of what is really happening in Zimbabwe and, therefore, to know how best to respond.

For this reason, in addition to DITSHWANELO's support for Zimbabwean refugees and asylum seekers, detailed earlier, during 2004 we have focused on the following activities.

1. **Identifying and raising awareness of the truth about the situation in Zimbabwe.** Since the first farm deaths in Zimbabwe in 2000, DITSHWANELO has sought to share understanding of the true situation in Zimbabwe with diplomats, government officials, churches and civil society, providing an alternative voice to that of the Zimbabwean Government. During this period, in addition to specific discussions and briefings, DITSHWANELO has hosted or co-hosted four seminars/consultations to share a full understanding of the situation and develop strategies for addressing specific aspects. See also our plans for 2005.
2. Our Kasane office staff participated in the South African Council of Churches' and the Catholic Bishops' Conference on Minimum Standards for **Democratic Elections in Zimbabwe** (Pretoria, 4-5 October 2004).

We also participated in the Institute for Democracy in South Africa's workshop which involved key players in the organisation of Botswana's November 2004 elections.

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3. **Understanding the impact of the Zimbabwean situation in Botswana.** As coordinator of the Human Rights Sector of BOCONGO, DITSHWANELO continued with a survey begun in November 2003, funded by the Botswana Council of Churches, to identify the impact in Botswana of Zimbabwean crisis. We worked with members of the Human Rights Sector of BOCONGO, particularly the Media Institute of Southern Africa (MISA) and the Women's NGO Coalition which conducted interviews with Chiefs, police and a range of Batswana. A video was produced with the help of World View.
  4. **Showing solidarity with regional and international human rights issues.** DITSHWANELO issues press releases on a range of shared issues. During 2004 we issued statements regarding the Day of the African Child, World Refugee Day and the United Nations' International Day in Support of Victims of Torture.
  5. **Contributing to the work of regional and international organisations,** including:
    - Working with the **Southern African Human Rights NGO Network** (SAHRINGON) to conduct training for local organisations on monitoring, documenting and reporting incidences of torture and police brutality, including counselling and taking action, 21-25 April 2004 (see photo on page 34).
    - DITSHWANELO has observer status with the **African Commission on Human and Peoples' Rights** and between 21 May and 4 June 2004 participated in the Commission's Session and the associated NGO forum, in The Gambia. We contributed to a number of the NGO statements.

During this period, a meeting of the **Coalition for an Effective African Court on Human and Peoples' Rights** was held and DITSHWANELO represented Southern Africa. The Protocol establishing an African Court came into force on 25 January 2004 and the purpose of the Coalition is to advocate for a credible, effective and independent court. Botswana has signed, but not yet ratified, the Protocol, the latter requiring official acceptance of the treaty obligations and the depositing of the Instrument of Ratification with the African Union. DITSHWANELO advocated for the Government of Botswana to expedite the process of ratification of this important instrument of human rights in Africa.
    - Giving a presentation on conflict resolution, focusing on the Central Kalahari Game Reserve case, at the international '**CIVICUS World Assembly**' conference, 'Acting together for a just world', March 2004.

## **PLANS FOR 2005**

Prior to the Summit being held by the Southern African Development Community (SADC) in August 2005, DITSHWANELO plans to host a workshop on the situation in Zimbabwe with a range of representatives from civil society organisations, Government of Botswana and SADC officials and Diplomats. The intention is to share knowledge of the true situation in Zimbabwe, issuing a statement to SADC Heads of State with support from NGOs in Botswana and the region.

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## IV STAFF & SUPPORTERS

### GENEROUS SUPPORT FROM DONORS

Human rights will never be a self-funding enterprise. We rely absolutely on our very supportive donors, volunteers and other supporters. Our volunteers are un-paid staff and so are detailed under staffing. Their support is invaluable and has been of the highest quality.

**ASSISTANCE FOR THE ESTABLISHMENT OF DITSHWANELO** in 1993 was provided by the Danish Centre for Human Rights (DANIDA) in Copenhagen, Denmark, which continued to support DITSHWANELO until 1996.

**CORE FUNDING** has been provided by HIVOS since 1996. Core funding is essential for ensuring that DITSHWANELO continues to exist and has the management and resources to run our projects. Funding our secretariat means enabling us to:

- Provide direction, coordination, monitoring and direct support (such as marketing, publications and logistics) to all our programmes.
- Undertake all awareness-raising campaigns and publications, including press relations and our film festival, which we've run annually since 2002.
- Represent Botswana human rights issues at regional and international networks and events.
- Undertake the fundraising and financial management for programmes.
- Provide staff training and development, in line with the developing needs of the organisation and its projects.

**OUR PROJECTS** depend entirely on specific support from donors. During 2004 the following organisations and individuals have generously supported our work, in addition to the organisations and individuals who specifically supported our Film Festival (listed on page 8).

African Women's Development Fund  
(AWDF)

Amnesty International

Australian Agency for International  
Development (AusAID)

Bar Human Rights Committee of England  
and Wales

Botswana Network of Aids Service  
Organisations (BONASO)

British Council

British High Commissioner

CDC-BOTUSA

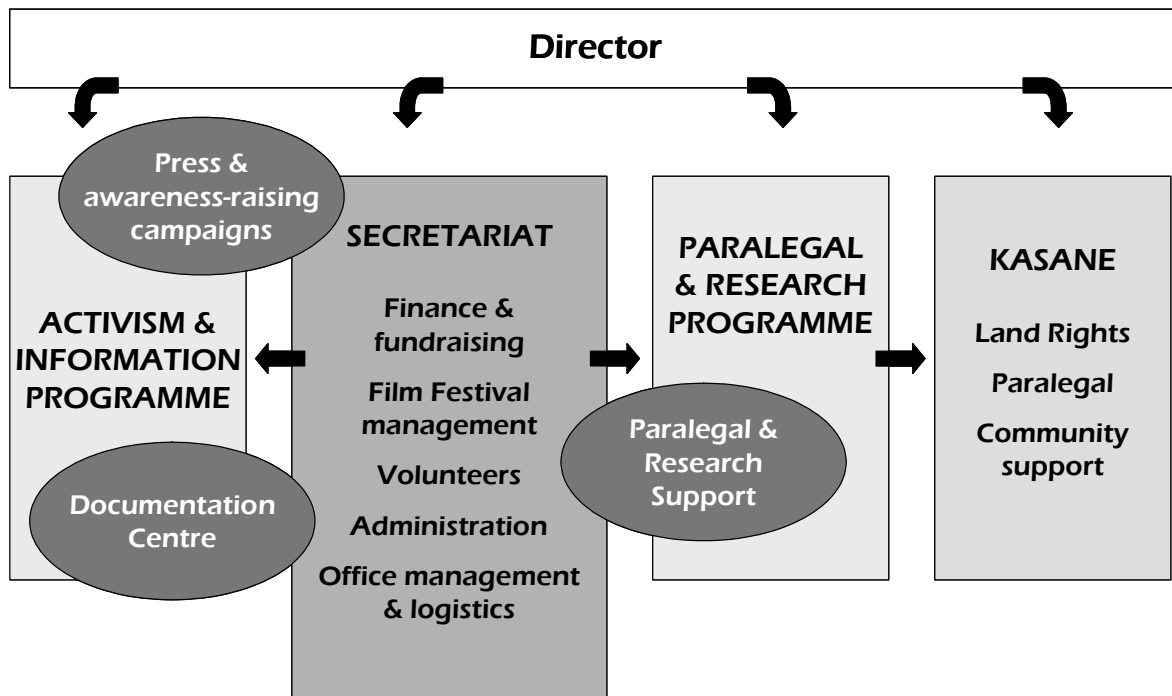
Evangelischer Entwicklungsdienst e.V.  
(EED)

Friedrich Ebert Stiftung [Foundation] (FES)  
 Global Ministries  
 HIVOS  
 Hudson, Phillip  
 International Work Group for Indigenous  
 Affairs (IWGIA)  
 Interights  
 Lawyers' Committee for Human Rights  
 (CHR) [now called Human Rights First]  
 Minority Rights Group  
 Norwegian Church Aid (NCA)

Open Society Initiative & the Open Society  
 Initiative for Southern Africa (OSISA)  
 Peacock, Ann  
 The Raoul Wallenberg Institute of Human  
 Rights and Humanitarian Law (through  
 provision of books and publications)  
 Rowan Trust  
 The Saami Council  
 Solway, Dr  
 Swedish International Development Agency  
 (SIDA)  
 Swedish NGO Foundation for Human Rights

## OUR PEOPLE

DITSHWANELO has a matrix structure, with most of the staff located within the Secretariat, supporting the key programme areas, as follows.



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DITSHWANELO has a low turnover of staff compared with many NGOs. The insecurity regarding continuing donor support for NGOs in Botswana has meant many organisations have lost experienced staff. By contrast, DITSHWANELO has retained staff and they have developed considerable experience and form an excellent team.

### **Gaborone**

Alice Mogwe	Director & Activism/Information Programme Coordinator
Andrew Matayataya	Finance and Administration
Maureen Akena	Activism/Information Programme Officer (study leave, Sept 2004 - August 2005)
Ingrid Melville	Paralegal/Action Research Programme Coordinator (until Sept 2004)
Boitumelo Ntwayamodimo	Paralegal/Action Research Programme Assistant
Florah Kedibonye	Secretary, Documentation Centre manager, Paralegal Support
Virginia Binang	Secretarial Assistant (Feb 2004 onwards)
Donald Nnoto	Driver/Messenger
Catherine Kaote	Office Attendant
Mothusi Ntwaagae	Gardener

### **Kasane**

Richard Kashweeka	Outreach and Land Rights Project Coordinator
Isreal Kgosidiile	Project Officer (from 11 October 2004 onwards)
Itumeleng Morapedi	Receptionist / cleaner (from December 2004 onwards)

## **BOARD**

Our Board members bring considerable expertise and experience in human rights issues and represents organisations with which DITSHWANELO works closely, as well as some members in their personal capacity.

<b>Patron:</b>	His Grace Archbishop Emeritus Walter Khotso Makhulu
<b>Chairperson:</b>	Ms E Ndlovu, YWCA (Young Women's Christian Association)
Mr D Modiega	BCC (Botswana Council of Churches)
Father S Magowe	BCC (Botswana Council of Churches)
Bishop T Mwamba	Individual
Ms P Letshwiti	CHILDLINE
Mr S Thage	The Coordinator, CORDE (Cooperation for Research Development and Education)
Ms J Anderson	Individual
Mr R Khan	HURABO (Human Rights Association of Botswana)
Mr M Mothobi	University of Botswana Legal Clinic
Mr R Molefhe	Individual

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## **VOLUNTEERS AND INTERNS**

### Secretariat

Theo Modise	Maru a Pula School	(Aug 04 to Nov 04)
Senwelo Motalaote	University of Botswana	(Sep 04 onwards)
Shirley Rahube	University of Botswana	(Oct 04 to Nov 04)
Sylvia Kavari	University of Botswana	(Oct 04 to Nov 04)
Martha Magosi	University of Botswana	(Oct 04 to Nov 04)
Sheila Camm	University of Botswana	(Oct 04 to Nov 04)
Masira Ntoroko	University of Botswana	(Oct 04 to Nov 04)
Oakantse Kebuamatse	University of Botswana	(Oct 04 to Nov 04)
Gonewamang Mosalakatane	Gaborone Technical College	(18 Oct 04 to 29 Oct 04)

### Activism

Nathan Penner	Mennonite Ministries	(Sep 2002 onwards)
Caitlin Lynch	Pitzer College	(Apr 04 to May 04)
Elisha Roberts	Pitzer College	(Apr 04 to May 04)
Thekiso Tladi	Damelin Management Sch	(Jun 04 to Aug 04)
Jeroen Lorist	The Netherlands	(Aug 04 onwards)
Lily Harvey	Pitzer College	(10 Aug 04 to 12 Aug 04)
Hannah Kane	Pitzer College	(10 Aug 04 to 12 Aug 04)
Maryanne Kalui	University of Botswana	(Aug 04 onwards)
Aone Mokaila	Botswana	(Sep 04 to Dec 04)
Indu Girish	India	(Nov 04 onwards)
Elizabeth Maxwell	University of Yale	(Oct 03 to Dec 04)

### Paralegal

Solly Molapo	University of North West	(August 04 to Dec 04)
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### External Consultants

Alan Fairbank (FAIA)	Financial Advisor	
Linda Siamanjiime	Assisted in organising "Alternatives to Pro Deo" Workshop	(Sep 04 to Nov 04)

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## MEMBERSHIPS AND NETWORKS

During 2004 DITSHWANELO has been a member of the following organisations:

Organisation	Role
BOCONGO (Botswana Council of Non-Governmental Organisations)	Member and Coordinator of Human Rights Sector* Ms Mogwe became Vice Chairperson on 23 June 2004
Community Advisory Board for HIV/AIDS Vaccine Trials of the Botswana Harvard Partnership for HIV/AIDS Research and Education	Member
Skillshare International	Member of the Policy Advisory Committee
Reference Group for the preparation of the State Report to the UN Committee on the Elimination of all forms of Racial Discrimination (CERD)	Member
Ministry of Local Government / UNICEF Reference Group on the incorporation of the Convention of the Rights of the Child (CRC) into Botswana's Children's Act	Member
Botswana-Harvard Partnership's Community Education Board	Member
SOS Children's Village	Member
Women's NGO Coalition	Member and Committee member of Violence Against Women Working Group
Women's Shelter Kagisano Project	Member of Management Committee
National Coalition to Abolish the Death Penalty (USA)	Affiliate Member

\* BOCONGO's Human Rights sector includes:

- Botswana Council of Churches (BCC)
- Media Institute of Southern Africa (MISA) – Botswana Chapter
- Women's NGO Coalition (WNGOC)
- Amnesty International – Botswana Chapter
- Botswana National Youth Council (BNYC)
- Transparency International – Botswana Chapter
- Botswana Council for the Disabled

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### **DITSHWANELO - The Botswana Centre for Human Rights**

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