



DISABILITY RIGHTS HANDBOOK

First edition - 2025

A practical guide for community practitioners and family members

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Preamble

The Disability Rights Handbook is divided into nine chapters. Chapter 1 is an introduction to the Disability Rights Handbook as well as an elaboration of the evolution of disability models and the current situation of people with disabilities.

Chapters 2 to 9 explores specific rights for persons with disabilities as stipulated in the United Nations Convention on the Rights for Persons with Disabilities (UNCRPD). Botswana Policy and legal framework meant to promote, protect and uphold the same rights will be evaluated against UNCRPD to identify policy strength, weakness and compliance. Chapters within these sections mirrors the life of a person with disability across the life span, from childhood to old age. Services are analysed in the frame of existing guidelines, policies and laws, covering early detection and intervention of disabling conditions, early-stage education and access to mandatory primary and secondary education. Adult services and programs that promote independent living and encourages participation in livelihoods are evaluated against the existing policy framework.

The handbook explores the depth of policy provisions and implementation, highlighting where progressive actions and bold moves have been taken by government to mainstream disability. At the same time, policy limitations and implementation challenges have been extensively analysed, taking into consideration cultural, attitudinal, professional and systematic barriers. Advocacy and lobbying strategies are incorporated in the text to challenge the reader's conceptual understanding of disability rights and how to identify incidences of discrimination and violations of rights.

Different policies and laws meant to promote, protect and fulfil human rights have noticeable limitations when it comes to promoting rights for Persons with disabilities. There are several reasons why individuals with disabilities may feel left out, discouraged and sometimes angry at government and mainstream society. This could be from the perceptions of not being listened to and not treated justly by the society to personal experiences of stigmatization, discrimination and historic evidence of lack of prioritisation of services and programmes meant to rehabilitate and empower Persons with disabilities. All this reasons in one way or the other falls within the following broader societal failures to understand measures needed to be put in place to promote disability inclusion:

- Lack of appreciation of diversity in disabilities – Persons with Disabilities are unique individuals with different impairments, varying levels of body function, and have different supports needs. A one size fits all social policy will not adequately serve the needs of all Persons with disabilities in our communities. It is common for service providers to cluster persons with disabilities as a homogeneous group, which then limits their program design.
- Failure to provide reasonable accommodations – confirming and acknowledging the presence of disability by itself should translate to acceptance that there is need for adjustments, adaptations or a different way of doing things to compensate for the challenge presented by the disability. Inability to provide reasonable accommodations through comprehensive guidelines and resources result in developing policy documents that are not inclusive and at most discriminatory.
- Being detached from matters affecting Persons with disabilities – there are individuals who find it acceptable to detach, and stay indifferent to matters related to self-

determination, social justice and exclusion experienced by some sections of society. In an instance whereby majority of the population, including decision makers, consciously or unconsciously subscribe to this doctrine, societal response to challenges experienced by persons with disabilities always lack urgency, and that innate motivation to inspire and seek justice for all.

The Disability Rights Handbook attempts to highlight the rights of persons with disabilities from the moment a child is born through all developmental stages until old age. Societies have organised systems of managing social behaviours and economic activities, through laws and policies. Such laws are also meant to promote, protect and contribute to the fulfilment of rights of citizens across different ages. Chronological age is matched by social roles and expectations; hence different rights are emphasised for different stages in relation to what is appropriate for a particular stage. For example, the right to education is emphasized when discussing children whereas issues of employment and independent living is discussed in the context of youth and adults' services. Persons with disabilities, just like the rest of citizenry, should enjoy these rights without compromise, second thought or debate. Article 1 of the Universal Declaration of Human Rights (1948), read as follows "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Persons with Disabilities have the same rights and fundamental freedoms that every member of the human family has as proclaimed in the Universal declaration of human rights. However, individuals with disabilities continue to be sidelined, deprived of opportunities to work and thrive, despite various instruments and undertakings meant to promote rights and freedoms for all. Persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights continues in all parts of the world. The Convention on the Rights for Persons with disabilities does not bring in new rights for persons with disabilities. It gives universal recognition to the dignity of persons with disabilities and provides a disability specific monitoring and coordination platform that is responsible for holding state parties and various stakeholders accountable.

1. Introduction to Disability rights handbook

The Disability Rights Handbook serves as a key resource for family, care givers and diverse professionals, aiming to promote and implement the rights of persons with disabilities as stipulated by various policies, national and international laws. It is designed to help stakeholders learn about the legal requirements, resources available and ensure Persons with Disabilities' rights are protected to the maximum extent of the law. Moreover, it allows one to jump from rights into areas of interest, to applications and programmes. It shares insights on concepts on human rights framing, enabling protocols, policies and legal framework.

1.1 Disability rights handbook objectives

- To provide comprehensive information and instrumental guidance on policies, laws.
- To empower and create awareness to Persons with Disabilities, their families, care givers and the public about their rights and services.
- To guide implementation of associated programmes enshrined in the legal framework and pronouncement.

1.2 Disability Models

Models of disability provide a reference for society as programs and services, laws, regulations and structures are developed and are interpreted as favouring different responses to disability. Disability models are useful for understanding disagreements over disability policy, providing disability-responsive health care, and articulating the life experiences of Persons with Disabilities. Each model addresses the perceived causes of disability, appropriate responses, and deeper meanings. However, claims about the causal justification of disadvantage do not always yield straightforward prescriptions for their remediation (Wasserman 2001; Samaha 2007; Barclay 2018). Moreover, definitions of disability primarily focused on developing and interpreting legal and regulatory definition needed to implement disability policy heavily influenced by “anatomy”—impairment and social response.

1.2.1 Charity

The Charity Model of disability focuses on the individual as vulnerable and passive victims, in need of pity and care, with impairment being the main identifier (Retief, 2018). Persons with Disabilities are viewed as reliant on tasks performed by others, recipients and beneficiaries of services. The model depicts PWDs as helpless, depressed and dependent contributing to the preservation of stereotypes and misconceptions (Seale, 2006).

1.2.2 Medical

The Medical Model (Degener, 2016) regards disability as an impairment that needs to be treated, cured, fixed or at least rehabilitated. Exclusion of people with disabilities from society is regarded as an individual problem and the reasons for exclusion are seen in the impairment. Disability according to the medical model remains the exclusive realm of helping and medical disciplines.

1.2.3 Social

The Social Model explains disability as a social construct through discrimination and oppression. Its focus is on society rather than on the individual. Disability is regarded as a mere difference within the continuum of human variations. The social model differentiates between impairment and disability. While the first relates to a condition of the body or the

mind, the second is the result of the way environment and society respond to that impairment. Exclusion from society is politically analysed as the result of barriers and discrimination. It has been developed as a powerful tool to analyse discriminatory and oppressive structures of society. The social model of disability acknowledges the importance of rights and has often been associated with the rights-based approach to disability as opposed to needs based or welfare approach to disability policy. The social model of disability served as a stepping-stone in struggles for civil rights reform and anti-discrimination laws in many countries.

1.2.4 Human rights

With the United Nations Convention on the Rights of Persons with Disability (CRPD), as the new one of human rights model of disability emerged. It encompasses the values for disability policy that acknowledges the human dignity of persons with disabilities. It is the only one that explain why human rights do not require absence of impairment. Moreover, it defies the presumption that impairment may hinder human rights capacity. Furthermore, it is more comprehensive and encompasses civil and political as well as economic, social and cultural rights

1.3 The current situation of people with disabilities

It has been proven the world over that disability does not necessary imply limited well-being and poverty (Rohwerder, 2015). Yet, there is growing evidence that disability and poverty are highly correlated, especially multi-dimensional poverty (Groce et al., 2011). The irony is that disability is both a cause and consequence of poverty, and poverty and disability reinforce each other, contributing to increased vulnerability and exclusion (DFID, 2000; Trani & Loeb, 2012).

Evidence shows that Individuals with Disabilities in low- and middle-income countries are poorer than their nondisabled peers in terms of access to education, healthcare, employment, income, justice, social support and civic involvement (Groce, 2011). Persons with Disabilities are more likely to experience multiple deprivations, encounter inaccessible transport, infrastructure and digital technology (WHO & World Bank, 2011; DESA, 2013). Children and adults with disabilities are at higher risk of physical, sexual and other forms of violence.

1.3.1 Diverse experiences of disability

There are pointers to the fact that disability is experienced differently among individuals with disabilities with intersecting inequalities, disadvantages and personal factors exacerbating the situation:

- i) Women with disabilities often experience double discrimination that can extend to all areas of life;
- ii) Children with disabilities are amongst the most marginalised and discriminated against children in the world;
- iii) Older people with disabilities are disproportionately poor;
- iv) People who experience mental health conditions or intellectual impairments appear to be more disadvantaged in many settings than those who experience physical or sensory impairments.
- v) People with invisible disabilities often face significant discrimination.

1.4 Disability inclusion

Disability inclusion is a goal to ensure that Persons with Disabilities have equal access to basic services, both in developed, developing or humanitarian contexts. It is a human rights advocates for PWDs to be included in everyday activities and giving them roles like their peers without disabilities. Moreover, it seeks to ensure the full participation of Persons with Disabilities as empowered self-advocates in development processes and emergency responses as well as address the barriers that deter their access. Besides, it strides and transcends:

- i) being accepted and recognised as an individual beyond the disability.
- ii) having personal relationships with family, friends and acquaintances.
- iii) being involved in recreation and social activities.
- iv) having appropriate living accommodation.
- v) having employment and
- vi) having appropriate formal and informal support

1.4.1 Barriers to disability inclusion

The evidence confirms that these inequalities are a result of barriers, rather than any inherent limitations of Persons with disabilities. Barriers to disability inclusion are attitudinal, environmental, institutional, ‘internalised’ and lack of participation. Attitudinal barriers are the greatest obstacles to achieving equality of opportunity and social integration.

1.4.2 Disability inclusive development

Disability-inclusive development is critical in ensuring that developmental processes are all-encompassing and accessible to Persons with disabilities cementing attainment of their rights (Publications, 2022). It actively seeks to ensure the full participation of individuals with disabilities as empowered self-advocates in all development processes and emergency responses. Moreover, it calls for Persons with Disabilities to be afforded among others equal access to education, health care services, work and employment, and social protection.

The disability and poverty twin dichotomy mandates integration of disability in development agenda as critical for the elimination of poverty, achievement of social inclusion and equitable, fair and sustainable development (Mitra, 2013). Mainstreaming, the ‘twin track approach’, raising awareness, participation, comprehensive accessibility and universal design, reasonable accommodation, rights-based initiatives, community-based rehabilitation and inclusive

2 Independent living

Independent living is based on the idea that Persons with Disabilities have the right to live with autonomy, dignity and control over their own lives just like people without disabilities. Self-determination, equal opportunity, empowerment and peer support form the core principles for independent living. Moreover, independent living calls for participation that emphasizes being included, empowered, and respected as an equal member of the society.

Participation entails decision making, building relationships, community involvement, self-advocacy, skills development for independence and access to resources. To crown it, independent living and participation is enabled or hindered by severity of the disability or impairment, accessibility (or lack thereof) of the surroundings, availability of assistive technologies and devices, fostering social inclusion and integration in the area and degree of support from their family and overall community.

2.1 Enabling framework for independent living

Article 19 of the UN CRPD recognizes the right of persons with disabilities to live independently and to participate in the community. The same is buttressed by Article 30 that recognizes participation in cultural life, recreation, leisure and sport. In Botswana, the National Disability Policy, 2021 and Disability Act, 2024 builds on existing frameworks and international human rights obligations and contributes to building a more equitable society enabling Persons with Disabilities to fully participate in social, economic, and cultural life. In addition, the Revised National Policy on Destitute Persons provides support to various vulnerable groups, including individuals with disabilities, aiming to reduce poverty and improve the quality of life for those in need. Moreover, the Economic Inclusion Act, 2021 ensures economic empowerment and inclusion for all sectors of the population, including PWDs through fostering access to economic opportunities, social development, and financial inclusion.

2.1.1 National Disability Policy

In 2021, the government of Botswana revised the Disability Policy of 1996 on Care for Persons with Disabilities. The current policy takes a “rights based” approach to disability and represents a shift away from a “charity” model which focuses on PWDs as recipients of welfare or handouts. It recognizes the importance of disability rights and dignity for all individuals. Furthermore, it focuses on accessibility to education, health facilities and inclusion in the employment sector. It aligns with Botswana's commitment to ensuring the rights and inclusion of people with disabilities, and it seeks to ensure that persons with disabilities can participate fully in society on an equal basis with others.

The primary focus of the National Disability Policy, 2021 is to create a more inclusive and accessible society for people with disabilities by addressing systemic barriers, promoting equal rights, and ensuring that people with disabilities can access the same opportunities as others. The key goals and objectives of the policy are promotion of equality and non-discrimination, access to education and healthcare services, employment and economic inclusion, accessibility and infrastructure, social protection and support services, advocacy and awareness, data collection and research.

The National Disability Policy, 2021 represents a significant step towards ensuring that people with disabilities in Botswana enjoy equal rights and opportunities. However,

successful implementation will depend on sustained government commitment, adequate funding, and a shift in social attitudes toward disability

2.1.2 Persons with Disability Act

Following the approval of the National Disability Policy, the government passed The Persons with Disability Act in 2024. The Act encompasses, embraces and aligns with major/core articles of UNCRPD and the National Disability Policy.

The Disability Act, 2024 represent a significant step toward achieving a more inclusive and accessible society for people with disabilities. It builds on existing frameworks and international human rights obligations. By addressing barriers to access, education, employment, healthcare, and social inclusion, the Act contribute to building a more equitable society enabling Persons with Disabilities to fully participate in social, economic, and cultural life.

2.1.3 Revised National Policy on Destitute Persons

The Revised National Policy on Destitute Persons provides support to various vulnerable groups, including individuals with disabilities, aiming to reduce poverty and improve the quality of life for those in need. The policy is designed to aid and ensure that the basic needs of vulnerable groups are met by providing targeted support. It recognizes that disabilities can create barriers to employment, education, and access to basic services, leading to higher rates of poverty among individuals with disabilities.

Individuals with disabilities are eligible for a variety of financial, social and health support services and measures offered to improve their well-being. Financial assistance is provided in the form of cash transfers, food aid to ensure access to proper nutrition, shelter for those homeless and access to health care to meet the special medical needs.

It does not only focus on providing immediate relief but also on promoting long-term solutions that empower vulnerable individuals and reduce poverty. Moreover, it emphasizes providing opportunities for self-reliance, skills development, vocational training, and education to reduce their dependence on social assistance.

2.1.4 Economic Inclusion Act

The Economic Inclusion Act, 2021 is a significant piece of legislation in Botswana aimed at ensuring economic empowerment and inclusion for all sectors of the population, including people with disabilities. This Act focuses on promoting the participation of previously marginalized and disadvantaged groups in the economy, with particular emphasis on fostering access to economic opportunities, social development, and financial inclusion.

The Economic Inclusion Act, 2021 recognizes the importance of including people with disabilities in the economic activities of the country. It aims to address barriers to economic participation and create opportunities for people with disabilities to engage in business, employment, and economic development on an equal footing with others.

In conclusion, the Economic Inclusion Act, 2021 plays a crucial role in advancing the inclusion of people with disabilities in Botswana's economy. By addressing barriers to access, providing economic opportunities, and offering support to disabled entrepreneurs and workers, the Act helps ensure that people with disabilities can fully participate in economic development. However, successful implementation will require concerted

efforts from government agencies, businesses, and society at large to create a truly inclusive and accessible environment for all.

2.1.5 National Vision 2036

National Vision 2036 is a long-term transformational development framework that envisions a prosperous, inclusive, and sustainable future for the country by 2036. It aims to transform Botswana into a high-income economy, with a focus on achieving sustainable growth, reducing poverty, and ensuring equality for all citizens. Moreover, it acts as a compass that directs, weigh competing alternative choices, make strategic choices, prioritise and manage trade-offs in Sustainable Economic Development, Human and Social Development, Sustainable Environment, Governance, Peace and Security.

A key component of this vision is social inclusivity, which emphasizes ensuring that all members of society, including those with disabilities, are empowered and have equal opportunities to contribute to the country's development. The Human and Social Development Pillar presents social inclusion and equality as a platform that enables people with disabilities to have equal access to services and socio-economic opportunities. By focusing on inclusive policies, accessibility, education, employment, and social protection, it ensures that PWDs are empowered to lead independent, productive lives. However, realizing this vision will require sustained efforts to address the challenges and gaps in current systems and policies related to disability inclusion.

2.2 Social Protection Programmes

Evidence the world over has shown that a large majority of people with disabilities are either not employed, under-employed or earn lower wages with limited assets. (Groce et al., 2011, p. 1499; WHO & World Bank, 2011, p. 235; Heymann et al., 2014, pp. 4-5; Mitra, 2014, p. 269). Efforts to improve the livelihoods of PWDs have involved their inclusion in social protection programmes and the labour market (Rimmerman, 2013, pp. 82-82). Similarly, Botswana has social protection programmes that are guided by National Disability Policy, Revised National Policy on Destitute Persons and Home-Based Care Programme, Disability Act and various directives in improving the livelihood for people with disabilities. People with disabilities are acknowledged and given safety nets, the programme is means tested. To be enrolled in the programme, one must be assessed by Social Workers to qualify and benefit. The programmes are:

2.2.1 Destitution Programme

The programme caters for an individual who due to disabilities or chronic health condition, is unable to engage in sustainable economic activities and has insufficient assets and income sources” due to:

- (i) Old age or
- (ii) Mental or physical disability as determined by a health practitioner, recognising that disability does not necessarily mean inability or
- (iii) Emotional or psychological disability, as determined by a social worker

The Destitute Programme offer monthly food basket, cash allowance, shelter, funeral cover, medical care and transportation in case of need, clothing and bedding.

2.2.1.1 Needy students

Needy students with disabilities are provided with toiletry, uniform, school fees exemption and transport to school. In case of admission to vocational and tertiary institutions, the students are facilitated to qualify for through a special dispensation that enables them to have reduced qualification grades.

2.2.1.2 Children in need of protection

The Destitution Program is extended to children who need protection including children with disabilities are assisted through this program.

2.2.2 Home Based Care Programme

The Botswana Home-Based Care Programme is a government-led initiative established in response to the HIV/AIDS epidemic. Over time, the programme has advanced to address a wider range of chronic and life-limiting illnesses, including disabilities.

The programme involves medical care (basic nursing, monitoring, and referrals), psychosocial and nutrition support, training of family and caregivers and collaboration with NGOs and community volunteers. It provides services to Persons with Disabilities who are unable to access or afford regular institutional care. The services are among others physical care, emotional support, and sometimes assistive devices, depending on availability.

2.2.3 Orphan Care Programme

The Botswana Orphan Care Programme is part of the social protection framework intended to tackle the needs of vulnerable children including orphans and those with disabilities. Orphans with disabilities are catered for through the programme without any assessment.

The key components of the programme are:

- i. **Basic Needs Support**
 - Monthly food rations (through the Orphan Food Basket).
 - Clothing and school uniforms.
 - Bedding and toiletries.
 - Transport
 - Shelter
- ii. **Education Support**
 - Assistance with school fees, uniforms, and materials.
 - Support for vocational training or secondary/tertiary education in some cases.
In case of admission to vocational and tertiary institutions, the students qualify for a special dispensation that enables them to have reduced qualification grades. Affirmative action
- iii. **Health Care Access**
 - Free medical services in government health facilities.
 - Referral for HIV testing and treatment if needed.
- iv. **Psychosocial Support**

- Counselling through social workers or school-based programs.
- Encouragement of community-based foster care rather than institutionalization.

v. Community Involvement

- Care is community-driven—local councils and village development committees help monitor orphans and vulnerable children.
- Encouragement of extended family care.

2.2.4 Disability Cash Transfer

It is social protection program, aimed at supporting citizens with severe and profound disabilities requiring 24hr care and assistance with activities for daily living. All these programmes are means tested. A life declaration form is required every six months.

There are however challenges associated with the disability cash transfer as it is limited to those with severe and profound conditions. Life challenges pertaining to issues of access and inclusion make living in Botswana with disability is very expensive and unaffordable. Therefore, such requires Persons with Disabilities need to be cushioned and supported financially even though they are not severe and profound as per the guidelines. For example, mobility from one point to the other forces one to incur undue expenses as public transport is not both accessible and accommodative. It requires one to hire private transport for convenience and speed. Moreover, Persons with Disabilities are not employed due to non-inclusive practices and reasonable accommodation in the workplace.

2.3 Economic Empowerment and Affirmative Action

Sustainable Development Goals notes that more than 80 per cent of Persons with Disabilities live in poverty, which puts them at the centre of poverty eradication throughout the agenda (Lockwood, 2015). A large majority of PWDs are either not employed, under-employed or earn lower wages (Groce et al., 2011). Those with intellectual, mental illnesses and multiple disabilities have been found to be less likely to access the labour market compared to other disabilities (Groce et al., 2011).

Botswana has enacted several acts, policies and directives for affirmative action in pursuit to empower citizens inclusive of people with disabilities. Persons with Disability Act, Economic Inclusion Act and National Disability Policy has enhanced quick-wins and exemptions extended to Persons with Disabilities, youth and women as part of affirmative action. Such includes the following:

Tender documents

Youth Companies to acquire tender documents at a charge of 50% of selling price. (Presidential Directive CAB 14 (B) 2015).

Reservation on Micro Procurement

All Ministries and Independent Departments to set aside a 20% quota reservation for youth, women and people with disabilities. (Local Procurement Scheme Presidential Directive CAB 19 (B) 2013).

Reservation on Maintenance

All Ministries and Independent Departments to set aside 15% quota for youth on maintenance of Government facilities. (Permanent Secretary, MIST Savingram – MIST 2/76/1 VI (71) of 7 May 2014);

Price Preference

All Ministries and Independent Departments TO apply a 15% price preference margin in open tender. (Local Procurement Scheme Presidential Directive CAB 19 (B) 2013).

Increase participation of locals (including Persons with Disabilities and Youth) in the economy; Mandatory subcontracting to citizen (including Persons with Disabilities and Youth) owned companies (30%).

Promote equitable distribution of resources

- o Price Preference of up to 6% for Foreign owned contractors (more favourable) Price Preference of up to 4% for Joint Venture partnership.
- o Promote a friendly and a conducive business environment where FDIs can be comfortable to form Joint Ventures with citizen (including Persons with Disabilities and Youth) business mature enterprises.
- o Equip citizens (including Persons with Disabilities and Youth) with sector specific skills through subcontracting arrangements

a) Lease Fees – Land Boards

Youth Businesses should be granted a 5-year grace period without paying lease fees. Youth businesses will not pay lease fees for fields, farms, commercial plots etc. for the first 5 years following allocation of such land. Land authorities will grant such businesses a waiver for the first 5 years. (Presidential Directive CAB 14 (B)/ 2015).

b) Land for youth Projects

- i. Youth who bid and win tenders for commercial plots will be allowed to pay-off the price in instalments as agreed with the appropriate authority instead of a once-off lump sum (2-3 instalments instead of a once-off lump sum payment). (Presidential Directive CAB 14 (B)/ 2015).
- ii. The Ministry of Youth, Sport and Culture in collaboration with Ministry of Lands and Housing will identify and set aside Land Banks across the country for allocation

c) Tender documents

Youth companies should acquire tender documents at a charge of 50% of the selling price to accord them the opportunity to bid for a wide spectrum of products and services. (Presidential Directive CAB 14 (B)/ 2015).

d) PPADB registration

- i. PPADB registration charges applicable to works category should be revised to allow youth to re-register or upgrade for 50% of the set charge. (Presidential Directive CAB 14 (B)/2015).

ii. PPADB registration for youth companies, including both standard and express registration, should be charged at 50% of the set charge and done within 14 days (Presidential Directive CAB 14 (B)/ 2015).

3. Right to work and employment

Article 27 of the UNCRPD establishes the right of Persons with Disabilities to work on an equal basis with others, including the opportunity to earn a living through freely chosen or accepted work in a labour market and work environment that is open, inclusive, and accessible. It safeguards economic empowerment and inclusion for Persons with Disabilities, help to dismantle systemic barriers in the labour market and promote full participation in society.

The Article mandates States Parties to acknowledge the right of Persons with Disabilities to work and to take appropriate steps to protect and promote this right, including

- Non-discrimination in employment
- Equal access
- Inclusive work environment
- Safe and healthy work conditions
- Support for employment
- Special Protection

3.1 Employment Act

In line with the standard laid down under Article 27 of the UNCRPD, the Employment Act (Cap. 47:01 of 2008) provides comprehensive guidance on matters pertaining employment. While the Employment Act does not explicitly address disability in detail, section 23, 120 and 139 makes mention of such. It contains provisions that have implications for Persons with Disabilities especially concerning non-discrimination, reasonable accommodation, and equal opportunities in employment. There are significant gaps in terms of explicit provisions on disability rights and amending the Act should ensure disability-inclusive employment practices offering equal opportunities to participate in the workforce.

3.2 Workers Compensation Act

The Workers' Compensation Act (Cap. 48:01 of 2001) provides compensation to workers who suffer from injuries or diseases arising out of or in the course of their employment. The Act ensures that employees who are injured or become ill because of their work receive adequate compensation for medical treatment, loss of income, and other related benefits. It primarily applies to workers in various industries and covers accidents, injuries, and diseases contracted at work.

Workers' Compensation Act and disability connect on compensation for work-related injuries or disabilities, temporary and permanent disability, medical expenses and rehabilitation, psychological and mental health disabilities, assessing disability and compensation levels. The relationship continues in access to workers' compensation benefits, occupational diseases and disability. While the Workers' Compensation Act provides valuable support to workers with disabilities resulting from workplace injuries, there are some challenges and gaps related to limited coverage for non-physical disabilities, accessibility of benefits, lack of specific disability-inclusive provisions, underrepresentation of workers with disabilities in the workforce, inadequate rehabilitation and support:

While the Act provides compensation for injuries and disabilities, there are barriers of returning to work, supported and gainful employment. Moreover, although the Act includes provisions for medical treatment and rehabilitation, there is insufficient focus on long-term vocational rehabilitation to help regain the skills needed to return to work or find new types of employment.

The Workers' Compensation Act (Cap. 48:01 of 2001) of Botswana provides essential compensation for workers who suffer from injuries or disabilities resulting from their employment. While it offers significant support for work-related injuries, the Act could be improved to better address the specific needs of workers with disabilities, particularly in terms of mental health, workplace accommodations, and vocational rehabilitation. Enhancing the accessibility of benefits and ensuring that the compensation system is fully inclusive will ensure that workers with disabilities are supported in returning to work and leading fulfilling lives post-injury

3.3 Public Service Act

Article 27(1)(g) of the UNCRPD directs the States parties to employ Persons with Disabilities in the public sector. In Botswana, matters relating to appointment of people to the public sector are governed by the provisions of the Public Service Act. The Public Service Act (Act No. 30 of 2008) regulates the administration and functioning of the public service. It outlines the processes for employment, promotions and discipline. Furthermore, it provides public service principles and standards, collective bargaining, termination of appointments and retirement.

The Act itself does not specifically address disability in detail, but allows for benefits from its provisions, particularly in the context of employment rights, accessibility, and reasonable accommodations. Moreover, the employers should take proactive steps to create accessible and supportive workplaces that enables equal access to recruitment, training, career advancement, and benefits.

4. Right to family

Article 23 of The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) underscores the rights of persons with disabilities to marry, have a family, and make decisions related to reproduction on an equal basis with others. It bestows equal rights in family life, as parents, protection of children from separation and alternative care.

Equal Rights in Family Life

UNCRPD calls on states parties to put in place effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood, and relationships on an equal basis with others, to ensure that:

- the right of all persons with disabilities who are of marriageable age to marry and find a family based on free and full consent.
- the rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children, and access to age-appropriate reproductive and family planning education and the means necessary to enable them to exercise these rights.
- the rights of persons with disabilities to retain their fertility on an equal basis with others.

Rights as Parents

Persons with Disabilities have equal rights and responsibilities regarding guardianship, wardship, trusteeship, and adoption of children. The best interests of the child are always the paramount consideration. In addition, appropriate assistance must be provided to persons with disabilities in the performance of their child-rearing responsibilities.

Protection of Children from Separation

Article 23 provides that children should not be separated from their parents against their will, except when necessary for the best interests of the child (as determined by competent authorities). Moreover, a child should not be separated from parents based on the disability of either the child or one or both parents.

Alternative Care

Instances where immediate family is unable to care for a child with a disability, every effort must be made to provide alternative care within the wider family, and failing that, within the community in a family setting.

In Botswana, Children's, Adoption, Marriage, Citizenship and Immigration Acts provides for Persons with Disabilities to marry, adopt, have children, be granted citizenship and ability to enter, stay, and exit the country.

4.1 Children's Act

Botswana enacted Children's Act in 2009 as a requisite for states to protect the rights of children as per the United Nations Convention on the Rights of Child (UNCRC) and also by the United Nations Convention on the Rights of Persons with Disabilities requisite for States parties to ensure that children with disabilities enjoy rights on an equal foundation

with other children, and should promote the best interests of the child at all material times. These international instruments help strengthen the legal framework for children with disabilities in Botswana, encouraging policies that promote inclusion, non-discrimination, and equal opportunities for children with disabilities.

The Children's Act provides a legal framework that aims to protect and promote the rights of all children, including those with disabilities. Although the Act does not have extensive provisions dedicated to disabilities, it contains key principles that uphold their rights and welfare, ensuring they are treated with dignity, provided access to education, and protected from discrimination.

Disability provisions in Children's Act relate to non-discrimination and equal rights, child welfare and best interests of the child, access to education and health, protection from harm, inclusion in social services, role of guardians and caregivers, adoption and guardianship. While Children's Act provides important protections, there are however challenges related to its application especially access to specialized services and inclusion in mainstream society. Provision of specialized services specifically education and healthcare are scarce or underdeveloped. Moreover, societal attitudes and infrastructure are a hindrance to full participation in all aspects of life, including education, recreation, and employment.

In conclusion, while the Children's Act provides a broad framework for child welfare, its provisions for children with disabilities focus on ensuring their inclusion and protection, though there are still challenges in implementing these principles fully. Continued attention and resources are necessary to ensure that the rights of children with disabilities are upheld in every aspect of their lives. In a nutshell, the Children's Act does cover the provisions of a child in line with the UNCRDP. Botswana can still do more in offering specific services for children with disabilities.

4.2 Adoption Act

The Adoption of Children Act in Botswana does not explicitly address the adoption of children with disabilities. However, it includes provisions that may indirectly impact the adoption of children with disabilities.

Eligibility of Adoptive Parents: The Act permits various individuals and couples to adopt children, including married couples, single individuals, and those separated from their spouses due to mental illness lasting over seven years. Notably, a married person whose spouse has been mentally disordered or defective for at least seven years can adopt a child alone, provided the condition is likely to be permanent.

4.3 The Marriage Act

The Botswana Marriage Act seeks to balance traditional practices with formal legal requirements, ensuring that both civil and customary marriages are legally protected. The Act recognizes both civil marriages and customary marriages. Civil marriages are formal, registered marriages conducted under the Marriage Act, while customary marriages are based on the customs of different ethnic groups in Botswana.

The Marriage Act and the rights of individuals with disabilities intersect in several important ways, among others marriage capacity and consent, legal protections against discrimination, assistance and accommodations, customary versus civil marriages,

marriage dissolution, disability and family rights. People with disabilities cannot be excluded from marriage based on their disability and have the right to marry. Moreover, Persons with Disabilities can choose a spouse, establish a family, become a parent or have custody of children. In addition, sign language interpreters may be required for individuals who are deaf or have hearing impairments as well as accessible venues for those with physical disabilities for marriage registration and solemnisation.

The Botswana Marriage Act provides a framework for marriage, but the rights of people with disabilities must also be respected, ensuring they have the legal capacity to marry and enjoy the same rights and protections as others. Ensuring accessibility, legal capacity, and non-discrimination is key to protecting the rights of individuals with disabilities in the context of marriage.

5. Liberty of movement and nationality

Article 18 of UNCRPD affirms that Persons with Disabilities have the same rights as others when it comes to movement, residence, and nationality. It further stipulates that children with disabilities have rights to be officially recognized and documented through births registration, a name and acquire nationality.

It stipulates that Persons with Disabilities have equal rights to liberty of movement and freedom to choose their residence on an equal basis with others. In addition, Individuals with Disabilities are free to enter, leave and stay in any country, including their own. This means Persons with Disabilities are allowed to obtain, possess, and use documentation of their nationality including passports and identity documents.

5.1 Citizenship Act

In Botswana, the Citizenship Act governs the granting and loss of citizenship in the country. It outlines the various pathways for acquiring citizenship, such as by birth, descent, marriage, or naturalization, and it sets out the requirements and conditions for becoming a citizen of Botswana. While the Citizenship Act does not explicitly focus on individuals with disabilities, certain provisions within it may be relevant to people with disabilities in ensuring that they are treated fairly and inclusively in the process of acquiring citizenship.

The Citizenship Act does not specifically address the rights and needs of people with disabilities in its provisions. However, in line with Botswana's commitment to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), it is essential that people with disabilities are treated equally and equitably in the citizenship process. This includes ensuring that the application process is accessible, non-discriminatory, and that people with disabilities have equal rights and opportunities as citizens. Implementing these changes will promote a more inclusive society and ensure that all citizens, regardless of disability, can fully participate in Botswana's social, economic, and political life.

5.2 Immigration Act

The Immigration Act (Cap. 25:02) of Botswana primarily governs the regulation of immigration into the country, setting forth rules for the entry, stay, and exit of individuals, as well as the conditions under which people can work or reside in Botswana. The Act covers various categories of people, such as tourists, students, workers, and permanent residents. However, while the Immigration Act does not specifically focus on individuals with disabilities, certain provisions within it can be relevant in ensuring that people with disabilities are treated equitably within the context of immigration procedures and policies.

The Immigration Act (Cap. 25:02) in Botswana does not have specific provisions addressing individuals with disabilities. However, considering Botswana's commitments under international frameworks such as the CRPD, it is important that the immigration system be inclusive and accessible to all, regardless of disability status. Ensuring that people with disabilities are not discriminated against in the immigration process, are provided with necessary accommodations, and have equal access to services will improve their ability to engage in life in Botswana, whether as visitors, workers, residents, or refugees.

6. Rights in Legal and Civic Participation

Articles 9 to 16 of the UNCRPD collectively form a comprehensive framework aimed at safeguarding the fundamental rights and freedoms of persons with disabilities. These articles address numerous aspects of life, ensuring that Persons with Disabilities live independently, participate fully in society, protected from exploitation, violence, and abuse.

Articles 9–16 of the UNCRPD lay out a unified framework that provides both benefits and opportunities for persons with disabilities to live with dignity, equality, and autonomy. These articles create benefits for equal participation and integration, legal empowerment, protection of life, liberty, physical and communication accessibility, resilience in crises, support systems and safeguards.

Admittedly, Persons with Disabilities are guaranteed access to public spaces (Article 9), justice systems (Article 13), and protection during emergencies (Article 11) ensuring their inclusion in all areas of public life—social, legal, political, and economic. Importantly, protection from arbitrary detention (Article 14), torture (Article 15), and abuse (Article 16) ensures physical and mental well-being. The right to life (Article 10) confirms that all lives are equally valuable. Similarly, Article 12 promotes dignity while preventing exploitation or coercion. Likewise, systems must ensure rehabilitation and reintegration of abuse victims (Article 16).

Collectively, Articles 9–16 move societies toward universal design, inclusive governance, and human rights-based approaches to disability. They transition disability policy from charity or medical models to social and rights-based models, offering systemic change. In Botswana, the Constitution, Penal Code, National Disability Policy and Disability Act collectively provides a legal and policy framework for upholding the rights of access, justice and freedoms of citizens including PWDs.

6.1 The Constitution of Botswana

The Constitution is central to this discourse as it embodies political and civil rights and is devoid of socio-economic rights. However, there is no specific reference to Persons with Disabilities or by inference, but Sections 3 to 15 of the Constitution of Botswana provide for fundamental human rights. Upon interpretation, human rights may be used to promote the right to access to inclusive and effective justice by Persons with Disabilities. Moreover, the Constitution enshrines fundamental rights and freedoms that can be interpreted to protect individuals with disabilities. The linkages with disability on equality, protection from discrimination and right to personal liberty.

Without mention and reference of Persons with Disabilities, the Constitution provides for positive interpretation with respect to access to justice, the right to protection of the law, to life, and not to be subjected to inhuman and degrading treatment. However, the said provisions are subject to limitation as section 15(3) prohibits discrimination and explains that the expression ‘discriminatory’ means affording different treatment to different persons, attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages, which are not accorded to persons of another such description

6.2 The Penal Code

The Penal Code primarily focuses on the criminal laws and procedures that govern the country's legal system. It doesn't specifically address issues related to disability in a comprehensive or standalone way but is part of the broader legal system that intersect with the rights and treatment of individuals with disabilities, especially in relation to discrimination, violence, and vulnerability.

The Penal Code and disability is connected through aspects of crimes involving discrimination or violence, legal protection, abuse and neglect, sexual offenses against Persons with Disabilities, capacity and legal responsibility, incapacity and criminal responsibility, assistive measures in court, mental health and legal procedures. Botswana's Penal Code It provides protection related to mental illness or lack of mental capacity, which might apply if the accused individual has a cognitive or intellectual disability. In addition, individuals with mental disorders and/or health conditions may not be held criminally liable if they cannot understand the nature of their actions and may not fully comprehend the consequences of their behaviour.

Section 10 of the Constitution provides that there is a presumption of sanity until proven otherwise. Section 11 and 148 of the Penal Code refers to persons with intellectual disability as 'idiots' and 'imbeciles'. The law provides some safeguards for people with disabilities, particularly those who are vulnerable, but there is still a need for more specific laws or provisions related to disability rights, discrimination, and accessibility within the broader legal framework. The establishment of stronger protections for individuals with disabilities. Specific amendments to the Penal Code or complementary legislation like the Disability Act, would be beneficial for improving the legal rights and protections as well as access justice on an equal basis with others.

6.3 Criminal Procedure and Evidence Act

In Botswana, the Criminal Procedure and Evidence Act (CP&EA) and the Penal Code contain provisions that intersect with the rights and treatment of persons with disabilities, particularly those with intellectual or psychosocial disabilities. These legal frameworks have implications for access to justice, competency to testify, and the treatment of individuals within the criminal justice system.

The Act outlines procedures related to the competency of witnesses and the treatment of accused persons with mental and/or psychosocial disabilities. Section 216 of the Act on Witness Competency and Section 11 and 148 of the Penal Code on Criminal Responsibility use derogatory and outdated words like "idiocy," "lunacy," and "imbecility" which stigmatises PWDs and affect their treatment within the justice system. Equally, Sections 157–17 on Accused Persons' Mental Fitness act as barriers to participating effectively in legal proceedings due to obsolete competency standards and lack of procedural accommodations. Moreover, if an accused is found to be of unsound mind and incapable of making a defence, proceedings may be postponed, and the individual may be confined in a place of safe custody.

6.4 Mental Disorders Act

Botswana's Mental Disorders Act of 1969 (Cap. 63:02) served as the primary legislation for the reception, detention, treatment, and protection of individuals with mental disorders. However, the Act has been widely criticized for its outdated approach and insufficient

alignment with contemporary human rights standards. By today's standards, it failed to adequately protect the rights of individuals with mental health conditions. Its outdated terminology, lack of explicit rights protections, and intersection with other discriminatory laws highlighted the need for reform.

Recognizing the shortcomings of the Mental Disorders Act, Botswana enacted the Mental Health Act of 2023, which aims to provide a more rights-based and patient-centred approach to mental health care. The Mental Health Act is aligned to international human rights standards especially Articles 1, 12, 13, 19 and 25 of UNCRPD to better protect the rights and dignity of individuals with mental health conditions.

6.5 Mental Health Act

Botswana's Mental Health Act, enacted as Act No. 20 of 2023, represents a significant advancement in the legal framework governing mental health care and treatment. The Act provides inclusive mental health services while protecting the rights of individuals with mental health conditions. It further focuses on mental health care and intersects with broader disability rights.

The Act marks a progressive step towards aligning and integration of mental health care with human rights standards. While challenges in implementation persist, the Act provides a foundation for promoting the well-being and dignity of individuals with mental health conditions.

6.6 Legal Aid Act

The Legal Aid Act of 2013 established Legal Aid Botswana (LAB) a primary statutory body to provide legal assistance to needy individuals. While LAB offers a range of services, including family law, land disputes, labour issues, damage claims, contractual matters, and criminal legal aid for minors. It does not explicitly mention services tailored for PWDs in its publicly available resources.

Eligibility for legal aid is determined based on financial need, and PWDs who meet the means test are entitled to the same legal services. This includes legal advice, representation, and public education on legal matters. For instance, there is no provision for reasonable accommodations to facilitate effective participation in legal proceedings. The Legal Aid Act need to be amended to align the framework with Article 13 of UNCRPD which emphasizes the need for effective access to justice for PWDs.

7 Inclusive sports and recreation

Article 30, 5 (b) of UNCRPD obliges State parties to recognise the rights of Persons with Disabilities to participate equally in cultural life, recreation, leisure and sports. It calls for equal opportunity to participate and have access to mainstream recreational, leisure, and sporting activities. Sports have been found to promote physical health, foster social inclusion, acquisition of vital skills, and mental well-being. In the process PWDs become independent, empowered agents of change, communicate effectively, and become greater team players.

The Botswana National Sports Commission (BNSC) Act of 2014 established the BNSC to oversee and promote sports development in the country. The Act emphasis inclusivity as well as promotion of PWDs in sport. It effectively mandates BNSC to actively work towards integrating PWDs into all levels of sports participation

In Botswana disability sport is advanced through Paralympic Association of Botswana (PASSOBO) and Special Olympics Botswana. PASSOBO established in 2000, serves as the national governing body for sports for PWDs in Botswana. It is affiliated with the International Paralympic Committee (IPC), the African Sports Confederation of Disabled (ASCOD), and the BNSC. With 37 affiliates across the country, it organizes competitions and promotes awareness to empower individuals with disabilities through sports.

Special Olympics Botswana was founded in 1981 and accredited by Special Olympics, Inc. in 1985. It provides year-round sports training and athletic competition for children and adults with intellectual disabilities. The organization aims to develop physical fitness, demonstrate courage, experience joy, and foster a sense of community among participants

Recreational and sporting facilities in Botswana are not accessible for people with disabilities. Only a few sporting codes accommodate people with disabilities, but facilities are not inclusive and accessible. Moreover, there are limited trained coaches and facilities, funding and policy gaps in disability sports.

8. Education for persons with disabilities

8.1 Special Education

The Revised National Policy on Education (RNPE) that was approved by Parliament on the 7th of April 1994, is the major Policy document that provide structured provisions for special education in Botswana. The RNPE captured a list of recommendations made by the commission, which when implemented over time would improve access, equity and quality of education provided to learners with disabilities. The recommendations are as follows:

- a) To ensure that all citizens of Botswana including those with special needs have equality of educational opportunities.
- b) To prepare children with special educational needs for special integration by integrating them as far as possible with their peers in ordinary schools.
- c) To ensure a comprehensive assessment that is based on the child`s learning needs, and not on group norms, and which is followed by individualized instruction.
- d) to promote the early identification and intervention which will ensure the maximum success of the rehabilitation process.
- e) To ensure the support and active participation of the children`s parents and community through an education and information campaign.
- f) The Ministry of Education makes urgent and effective efforts to identify the true numbers and categories of disabled children of school age who need special education.
- g) The Ministry of Health and the Ministry of Local Government Lands and Housing should cooperate fully in these efforts.
- h) The proposed School Health Programme is set up as soon as possible and that its remit should include the early identification, treatment and referral of children with disabilities to the Central Resource Centre.
- i) The Central Resource Centre should be strengthened so that it can further assess cases referred to it by the School Health Programme, by parents, teachers, or the school Intervention Teams.
- j) The Central Resource Centre (CRC) should be responsible for establishing and maintaining a register of disabled children. Because of the large number involved and the lack of staff at the CRC, the diagnoses of other professionals in the field should be accepted until the staff establishment of the CRC has been increased
- k) The Government should develop standards for the construction of all educational buildings to make them to make them accessible to disabled persons.
- l) Existing Primary and Community Junior Secondary (CJSS) must be modified (e.g by

installing ramps) to allow access for disabled pupils. However, in order to reduce costs, where two or three schools serve one community only one of them need be so modified, thus, reducing the percentage of schools needing modification to 60% for primary and 90% for CJSS.

- m) Disabled children should receive effective treatment, technical aids and prostheses free of charge immediately following assessment.
- n) transport is provided by the Government to take children who are registered as disabled to and from school.
- o) At least one senior experienced teacher in each school should be appointed to be responsible for children with disabilities in each school. This teacher should ideally be a member of the School Intervention Team and should organise special remedial tuition for children with specific learning needs. In time, these posts should be filled by trained special education teachers.
- p) More special education units should be built onto existing schools, and as part of all new schools, at the rate of one per school with a maximum capacity of 20, with boarding facilities in selected cases. Provision should be made for specialization e.g blind or deaf at a few selected schools. In determining the need to construct special education units as part of the development of new schools, consideration should be given to the existence of units in neighbouring schools to take account of economies of scale.
- q) The education of the most severely disabled children should continue to be managed by the non-governmental organizations as they have the necessary experience and expertise.
- r) Early childhood basic training for disabled 2–5-year-olds should also continue to be managed by non-governmental organizations as they already have the experience and expertise.
- s) Those non-governmental organizations which care for the severely disabled children and those which provide early childhood basic training for the disabled should be encouraged to expand by Government assistance with:
 - i) payment of staff salaries
 - ii) a per capita allowance for pupils and staff
 - iii) costs of training for their staff, with NGOs deciding their own training needs.

This non-exhaustive list of recommendations provided a blueprint for introduction and expansion of special education in the public education system. It is imperative for disability rights advocates to have a comprehensive understanding of policy goals and principles to fully monitor government efforts when it comes to equalizing opportunities for learners with disabilities to attain education. Several recommendations from the list have been

successfully implemented, and this include increasing the number of special education units across the country and training of teachers in special education. The government is also funding NGO's providing education to learners with extensive supports needs and those who need specialised institutions such as those providing education to the deaf learners and those who are blind and partially sighted.

However more still needs to be done in-terms of resourcing the special education units, opening more units across the country, and implementing the inclusive education policy of 2011.

8.2 Inclusive Education in Botswana

Botswana government introduced Inclusive Education Policy in 2011, with the overall goal being to achieve an inclusive education system which provides children, young people and adults with access to relevant, high quality education, which enables them to learn effectively, whatever their gender, age, life circumstances, health, disability, stage of development, capacity to learn or socio-economic circumstances.

The Inclusive education has five goals which have been expanded through ten commitment statements which are listed below:

1. **Commitment Statement 1** - Action will be taken to include children of school age who have never been enrolled in school.
2. **Commitment Statement 2** - Action will be taken to decrease the number of children of school age who drop out before completing their basic education.
3. **Commitment Statement 3** - Action will be taken to change the education of children who are attending school, but not benefitting from what is currently provided, including children who are at significant risk of failing to complete their basic education or of failing to succeed in maximising their potential.
4. **Commitment Statement 4** - Action will be taken to improve the skills development and vocational training for young people and adults for whom the current system of vocational training is unsuitable.
5. **Commitment Statement 5** - Action will be taken to ensure that teachers will be more effective in enabling children to learn.
6. **Commitment Statement 6** - Action will be taken to improve schools' access to a wide range of good quality teaching aides and learning resources, appropriate to the number of children being taught and to the specific needs of children with disabilities.
7. **Commitment Statement 7** - Children, young people and adults who have never been to school or not completed their basic education will be encouraged to do so.
8. **Commitment Statement 8** - Children, particularly those with special educational needs, will be encouraged and supported to attend school and benefit from their attendance.
9. **Commitment Statement 9** - Actions will be taken to ensure that schools are supportive and humane establishments which embrace and support all their learners and value their achievements.
10. **Commitment Statement 10** - Mechanisms will be put in place to harmonise relevant planning, policymaking, development and delivery of services so that the Government of Botswana can deliver an inclusive education service that meets national requirements and is in line with international best practices.

Through the Inclusive Education Policy, Botswana government was being intentional in pursuing its commitments to ten-year basic education and making sure that no one falls through the cracks. The policy provisions are comprehensive to protect learners coming from disadvantaged backgrounds to miss of opportunities for getting education. It is intentional in bring back those who may have quit school for different reasons, in promoting the education for learners with disabilities by making school environments more accessible and providing assistive technologies needed for learning.

Inclusive Education policy is another policy document that provides guidance to educationists and human rights defenders on what to expect from government and provides pointers for monitoring the of quality education provided for all learners, including special provisions for learners with disabilities.

9. Health

9.1 Early years of life – Rights of children

Children with disabilities have the same rights as their counterparts without disabilities. These rights should be protected and promoted across settings, from family to services, including health care, education and recreation. Part 3, of the children's Act stipulate children's rights. The act list 16 rights, which include right to life, right to a name, right to nationality, right to parental care, right to health, right to education and many others as per the bill of Child rights.

Children with disabilities in our society experience violation of their rights in many ways. The extent of violations differs depending on psycho-social and socio-cultural reasons. For example, psycho-social experiences could be situations where a parent after delivery at the maternity ward notices that the child is born with a certain visible disability that then brings shock and emotional distress, which may temporarily lead to feelings of despair, regret, blame and failure to accept the newborn child. While a parent is still in that state of shock, denial and grieving for 'loss of dream child' she may be tempted to give the newborn child a name that expresses her state of mind at the time. In most cases the names given to children with disability while their parents haven't yet accepted the reality of having a child who looks different to the one hoped for, will be names that shows disappointment, expresses emotions of pain, and in some instances portrays some negativity because the names are meant to define or explain the situation at hand, in which the parent does not have control over. However, through the Registrar of Birth and Death, in the Ministry of Labour and Home Affairs, Parents are usually guided and advised on giving children names that do not stigmatises nor demeans the dignity of the child as stated in article 11, under the bill of Child Rights, the Children's Act.

Violations of children rights due to socio-cultural practices may include instances where children with disabilities are denied opportunities to access education because they are considered misfits or in need of care that cannot be provided if enrolled in mainstream schools. Such excuses that a publicly accepted and considered fair to exclude children with disabilities from mainstream education simple because they have disability and in need of supports, are actual a violation of the right of the child to access education. According to children's Act, part 3, article 18, "every child has a right to free basic education and a parent or guardian who, without reasonable excuse, denies a child the opportunity of going to school shall be guilty of an offence". The above clause emphasises the right to education for every child, inclusive of children with disabilities.

There are other cultural practices, also associated with religion that may contribute to children acquiring disabilities, such as denial for children to take immunizations or undergo medical surgeries because they are considered intrusive. However, it is in the best interest of the child to access health care interventions that will nourish the child, prevent the child from acquiring disabling conditions such as polio and other childhood illness.

9.2 Health Services

9.2.1 Prevention of childhood illness and disabilities

The Government of Botswana through the Ministry of Health and wellness is committed to the Expanded Programme on Immunization (EPI), including Poliomyelitis Eradication, Measles and Neonatal Tetanus elimination initiatives, as a pillar for child survival, growth

and development. Botswana government introduced under 5 years National Immunization Program in 1969 and the Expanded Program on Immunization was initiated in 1979.

EPI policy state that to ensure equity and social justice in accordance with the National Health Policy, immunizations will be provided to all target populations irrespective of ethnicity, gender, cultural, political, religious affiliation or geographical location. The policy also states that vaccinations will be availed through local public clinics, mobile stops and private clinics in-order to reach all the target population.

9.2.2 The client has the right to:

- Receive adequate information on immunisations and its benefits as well as possible side effects
- Receive all vaccinations according to the EPI vaccination schedule
- Receive vaccinations at any health facility
- Privacy
- Be informed about possible Adverse Events Following Immunization (AEFI) and when to return
- Vaccination status documented
- Receive documentation of vaccination received
- Submit suggestions or complaints with regards to their visit to the health facility

Responsibilities and obligations of clients and communities

- Parents/caregivers have the responsibility and obligation to ensure that all eligible children receive immunisations according to the EPI schedule.
- To ensure that communities and clients take responsibility of their own health.

Summary

It is important for pregnant mothers to attend and honour their monthly antenatal health check-ups at their local health facility to get the necessary health checks and medical intervention. This is critical to establish that both the expectant mother and the foetus are healthy throughout the pregnancy to minimise chances of the child being born with some health conditions and cases of maternal mortality. Health conditions that may lead to disability later in life may begin during pregnancy and become more visible in the early years of life.

It is equally important to take the newborn child for monthly medical check-ups where developmental milestones are monitored and any variation to standard growth is assessed and appropriate medical intervention instituted. Early detection of disabilities is important because appropriate rehabilitative interventions can be started early, increasing success of habilitation and rehabilitation programmes.

Article 25, (b) of the UNCRPD states that “States parties shall provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons”. It is therefore the obligation of government to make sure that health services are provided in such a way that children with disabilities have specific targeted health services meant to address their health needs.

9.3 Rehabilitation services

Botswana government has outlined health interventions that the government is committed to providing and making accessible to the entire population through the Essential Health Services Package (EHSP) policy of 2010. The EHSP is defined as a set of Health Interventions - promotive, preventive, curative, and rehabilitative, that are to be available to the entire population of a country.

EHSP provides the basic minimum service standards that the country has committed to providing to all its population. In this chapter we will focus on community based rehabilitative services and community level Home based care as outlined in the policy, and highlight services that government pledged to its population, specifically those needed by Persons with disabilities.

9.3.1 Community based Rehabilitation Program

The government of Botswana through the Ministry of Health developed norms and standards for different health services package offered to the public by the Ministry of Health in 2010. According to the EHSP, Community Based Rehabilitation (CBR) is defined as a health care model that promotes active participation of persons with disabilities and family members in developing of a vision for their lives within the society in which they live, identifying the needs and resources of people with disabilities within the community, planning and implementing the vision and monitoring and evaluating its implementation. Botswana adopted CBR approach in the early 1980's and it has been an integral part of the primary health care services offered through clinics and primary hospitals.

The norms and standards for the community-based Rehabilitation program, as stipulated in the Essential Health services package are as follows:

- i. Medical and surgical supplies and assistive devices are accessed from the nearest health facility.
- ii. Day care takers Basic training in early education and can carry out a basic rehabilitation programme under the guidance of a therapist or therapy assistant
- iii. Districts have a community-based level of service for rehabilitation, which is provided in partnership with people with disabilities and their caregivers
- iv. DHMT representatives at these levels participate in, and actively promote, the shared governance structures, in an empowering way, putting the leadership into the hands of the people with disabilities.
- v. The Health Sector gives technical support to shared governance structures and community-based services.

Health services, including preventative services, curative services and rehabilitation services are provided across all health facilities, and packages differ from the small unit of health services provision, which is the health post, to tertiary comprehensive health services provided by referral hospitals. Basic commodities such as axillary rubbers, rubber ferrules, cane tips, crutches, walking frames and wheelchairs are availed to clients at their respective health facilities through the CBR program and/or Home-Based Care program coordinators.

The way health care services are structured, curative services dominate the health care delivery system, and this leaves little budget for preventative and rehabilitative services.

Disability practitioners, advocates and carers need to advocate for provision of rehabilitative services on an equal basis with other health services. Assistive technologies are critical to the improvement of the quality of life for persons with disabilities and they need to be listed as priority items just like medicines.

10 Summary

The Disability Rights Handbook has made provisions for users to go on a journey of disability rights in Botswana as enshrined in the legal framework with a benchmark on the United Nations Convention on the Rights of People with Disabilities (UNCRPD). The rights of PWDs as spelt out in UNCRPD were matched and compared with the provisions of the policies and laws of Botswana. Furthermore, the journey has elaborated on the evolution of disability models and concluded with the human rights one as it encompasses the values and acknowledges the human dignity of persons with disabilities.

The concept of independent living has been outlined with the knowledge that PWDs have the right to live with autonomy, dignity and control over their own lives. It calls for participation that emphasizes being included, empowered, and respected as an equal member of the society. Enabling legislative frameworks recognised among others social protection programmes as bestowing dignity, improving the quality of life and enabling full participation in social, economic, and cultural life.

The Employment Act provides comprehensive guidance on matters pertaining employment and contains provisions on non-discrimination, reasonable accommodation, and equal opportunities. The Workers' Compensation Act offers compensation and significant support for work-related injuries. However, there are barriers of returning to work and workplace accommodations. Although the Act has provisions for medical treatment and rehabilitation, there is insufficient focus on long-term vocational rehabilitation to help regain the skills needed to return to work or find new types of employment.

Article 23 of The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) underscores the rights of persons with disabilities to marry, have a family, and make decisions related to reproduction on an equal basis with others. It bestows equal rights in family life, as parents, protection of children from separation and alternative care. The Children's Act provides a legal framework that aims to protect and promote the rights of all children, including those with disabilities.

The Marriage Act has provisions that indicate that PWDs cannot be excluded from marriage based on their disability and have the right to marry. Moreover, they can choose a spouse, establish a family, become a parent or have custody of children. Ensuring accessibility, legal capacity, and non-discrimination is key to protecting the rights of individuals with disabilities in the context of marriage.

Articles 9–16 of the UNCRPD lay out a unified and comprehensive framework that provides both benefits and opportunities for persons with disabilities to live with dignity, equality, and autonomy. These articles create benefits for equal participation and integration, legal empowerment, protection of life, liberty, physical and communication accessibility, resilience in crises, support systems and safeguards.

The Constitution is central to the rights discourse as it embodies political and civil rights and is devoid of socio-economic rights. Similarly, the Penal Code and disability are connected through provision of protection related to mental disorders and health conditions capacity.

Section 10 of the Constitution provides that there is a presumption of sanity until proven otherwise. Section 11 and 148 of the Penal Code refers to persons with intellectual

disability as ‘idiots’ and ‘imbeciles’. The law provides some safeguards for people with disabilities, particularly those who are vulnerable, but there is still a need for more specific laws or provisions related to disability rights, discrimination, and accessibility within the broader legal framework. The establishment of stronger protections for individuals with disabilities. Specific amendments to the Penal Code or complementary legislation like the Disability Act, would be beneficial for improving the legal rights and protections as well as access justice on an equal basis with others.

Recognizing the shortcomings of the Mental Disorders Act, Botswana enacted the Mental Health Act of 2023, which aims to provide a more rights-based and patient-centered approach to mental health care. The Mental Health Act marks a progressive step towards aligning and integration of mental health care with human rights standards. While challenges in implementation persist, the Act provides a foundation for promoting the well-being and dignity of individuals with mental health conditions.

Article 30, 5 (b) of UNCRPD obliges State parties to recognise the rights of PWDs to participate equally in cultural life, recreation, leisure and sports. Sports have been found to promote physical health, foster social inclusion, acquisition of vital skills, and mental well-being. The Botswana National Sports Commission (BNSC) Act of 2014 established the BNSC to oversee and promote inclusive sports development. However, recreational and sporting facilities are not accessible and accommodative.

The Revised National Policy on Education provides a blueprint for introduction and expansion of special education in the public education system. The Inclusive Education policy provides for an inclusive education system for all learners, regardless of their abilities, backgrounds, and circumstances.

The Ministry of Health has committed to the Expanded Programme on Immunization including Poliomyelitis Eradication, Measles and Neonatal Tetanus elimination initiatives, as a pillar for child survival, growth and development. Through the Essential Health Services Package the government is committed to providing and making accessible health interventions that are promotive, preventive, curative, and rehabilitative.

The policy, legal frameworks and programmes as designed by the government are almost adequate and inclusive to uphold the rights of people with disabilities. However, the biggest challenge lies in access and implementation of the enabling programmes to ensure that PWDs have quality lives.

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