

LESOTHO

*Itumeleng Shale**

1 Population indicators

1.1 What is the total population of Lesotho?

Lesotho's last population and housing census was in 2006 and reflected a population of 1 880 661.¹ By the end of 2014 the population was estimated at 2 074 465 people.²

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

Statistical data on the prevalence of disability in Lesotho is reflected in the 2006 Housing and Population Census conducted by the Bureau of Statistics. The data was obtained through scientific data collection where enumerators went from house to house asking questions related to education, sex, age, disability, household characteristics, housing amenities and others.³

Similar tools were used in 2010 in the study on the living conditions of persons with disabilities:

- Households were screened in order to identify households in which there are persons with disabilities (PWDs).
- Face-to-face interviews were conducted in selected households with both PWDs and non-disabled members of the households.

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1 Lesotho Bureau of Statistics (BOS) www.bos.gov.ls (accessed 24 November 2014).

2 Available on <http://countryeconomy.com/demography/population/lesotho> (accessed 16 February 2015). See also World Population Review 2014 'Lesotho population 2014' www.worldpopulationreview.com/countries/lesotho-population (accessed 16 February 2015).

3 BOS (n 1 above).

- Questionnaires were administered. There were specific questions designed for PWDs and there were also those designed for PWDs' household members as well as those for households where there were no PWDs.⁴
- The criteria used in the living conditions study to determine who falls within the class of PWDs in Lesotho were based on the International Classification of Impairments, Disabilities and Handicaps (ICIDH).⁵
- There were six disability types (that is, core domains) registered in the study. These were vision, mobility, hearing, remembering, self-care and communicating.⁶
- The selection also considered an impairment that may be physical, cognitive, mental, sensory, emotional, developmental, or some combination of these, whether present from birth, or occurring during a person's lifetime

1.3 What is the total number and percentage of persons with disabilities in Lesotho?

According to the Ministry of Health and Social Welfare's (which is currently divided into two separate individual ministries) National Disability and Rehabilitation Policy (NDRP) 2011,⁷ Lesotho has a very limited coordinated disability database to provide statistics of persons with disabilities.⁸

Several institutions such as the Ministry of Education and Training and Ministry of Development Planning undertook studies in the early 2000s to estimate the population of people with disabilities in Lesotho. The two ministries estimated the population of people with disabilities at 4,2 per cent (Bureau of Statistics, 2002) and 5,2 per cent (Ministry of Health and Social Welfare, 2008).⁹

For the first time in census history the Bureau of Statistics (BOS) included questions on disabilities during the 2006 Population and Housing Census. The results of the census were presented for the first time to stakeholders in December 2009 and they indicate that 3,7 per cent of the total population of Lesotho has some form of disability of which 2,1 per cent constitute males and 1,6 per cent females.

The methodology used in obtaining this data is as reflected in 1.2 above.

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

The total number of women with disabilities (WWDs) is estimated at 33 191 which is 1,6 per cent of total population.¹⁰

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

Reliable estimates could not be ascertained due to lack of statistics, but the Ministry of Education and Training database shows that out of the total enrolment of 424

4 Y Kamaleri & AH Eide 'Living conditions among people with disabilities in Lesotho: A national representative study' (Living Conditions Study) *SINTEF Technology and Society Global Health and Welfare* (2011) 27.

5 Living Conditions Study (n 4 above). See also International Classification of Impairments, Disabilities and Handicaps (ICIDH) (1999) www.who.ch/icidad (accessed 26 May 2015).

6 Living Conditions Study (n 4 above) 27.

7 Government of Lesotho, Ministry of Health and Social Welfare National Disability and Rehabilitation Policy (NDRP) (2011) <http://www.gov.ls/social> (accessed 22 September 2015).

8 As above.

9 BOS (n 1 above).

10 Lesotho Demographic Survey 2006.

855 pupils, a staggering 5,2 per cent (22 233) had a disability of one form or another.¹¹

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

The most prevalent forms of disabilities in Lesotho are visual, hearing, mobility, remembering, self-care and communication impairments.¹²

2 Lesotho's international obligations

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

Lesotho ratified the CRPD on 2 December 2008.

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

Lesotho's first country report was due in 2010. The Human Rights Unit in the Ministry of Law and Constitutional Affairs in collaboration with other ministries including the Ministry of Social Development and Ministry of Foreign Affairs are responsible for submission of the report. Lesotho has not yet submitted its initial report. Reasons advanced for failure to submit the reports on time include lack of financial and technical resources.¹³

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

Lesotho is a state party to several international human rights instruments under both the UN and AU auspices. The majority if not all the treaties to which Lesotho

11 C Chitereka 'People with disabilities and the role of social workers in Lesotho' (2010) 8 *Social Work and Society International Online Journal* <http://www.socwork.net/sws/article/view/25/69> (accessed 23 March 2015).

12 Living Conditions Study (n 4 above).

13 Interview with Ms Polo Chabane, Head of Human Rights Unit conducted on 23 February 2015.

is a party require states parties to submit periodic reports. The same is required by other UN and AU human rights implementation mechanisms such the Universal Periodic Review of the UN and the African Peer Review Mechanism of the AU. Whilst the extensive ratification of international human rights instruments by Lesotho is highly commended, regrettably almost all Lesotho's reports which would reflect the extent to which Lesotho has implemented the human rights contained in these instruments are overdue. As far as disability is concerned, Lesotho's reports reflect the following:

• **Lesotho's reports to the UN treaty bodies**

As far as the international human rights instruments adopted by the UN are concerned, Lesotho's latest reports are:

- Initial report to Human Rights Committee (HRC) which oversees implementation of International Covenant on Civil and Political Rights (ICCPR) 1966 which was due in 1993 but submitted in 1998; this report does not mention disability even in the paragraph where it reports on measures that the country has taken to implement the non-discrimination provisions of the ICCPR.
- Fourteenth periodic report to Committee on the Elimination of Racial Discrimination (CERD) submitted in 1998: the report does not make reference to disability.
- Initial Report to the Committee on the Rights of the Child (CRC) which was due in 1994 but was submitted in 1998: Part IV (A) of the report is specific on the measures taken in relation to children with disabilities. It makes reference to section 33 of the Constitution of Lesotho 1993 which provides for rehabilitation, training and social resettlement of PWDs. It also refers to the efforts of the government towards enactment of the disability legislation.¹⁴
- Combination of initial to fourth report to Committee on Elimination of all forms of Discrimination against Women (CEDAW) which was submitted in 2010: This report refers to disability when reporting on the administrative measures that Lesotho has taken to implement CEDAW. It states that Lesotho has adopted the Gender and Development Policy 2003,¹⁵ the aim of which is to ensure that Lesotho builds 'a nation that perceives women, men, girls and boys as equal partners based upon the principle of equal participation in development'. The report links this policy with the principle of gender equality as contained in the Constitution of Lesotho as well as the National Vision 2020,¹⁶ which specifically states that 'men, women and people with disabilities will be equal before the law'.¹⁷ Reference is also made to the National Reproductive Health Policy 2008,¹⁸ which considers special needs of different target populations and the need to abide by conventions guarding against discrimination on the basis of several grounds including disability.¹⁹ Lesotho also reported its activism strategies including commemoration of the International Day for Persons with Disabilities.²⁰

• **Universal Periodic Review (UPR)**

Lesotho submitted to its first UN Universal Periodic Review (UPR) on 22 February 2010 and the same was considered by the working group on UPR between 1 and 14 May 2010.

14 Lesotho Initial Report to Committee on the Rights of the Child (CRC), UN Doc CRC/C/11/Add.20 (27 April 1998) paras 147-164.

15 Government of Lesotho, Ministry of Gender, Youth and Sports '2003 Gender and Development Policy' <http://www.gov.ls/gender> (accessed 26 May 2015).

16 Government of Lesotho, Ministry of Finance and Development Planning '2000 National Vision 2020' <http://www.gov.ls> (accessed 26 May 2015).

17 Combined initial to fourth periodic reports of states parties: Lesotho, UN Doc CEDAW/C/LSO/14 paras 30, 71, 78.

18 Government of Lesotho, Ministry of Health and Social Welfare '2008 National Reproductive Health Policy'.

19 Lesotho report to CEDAW (n 14 above) para 192.

20 Lesotho report to CEDAW (n 14 above) para 90.

- The report mentioned disability rights under the caption 'elimination of discrimination against vulnerable groups'. It indicated that the government of Lesotho has adopted several measures to cater for the needs of PWDs. These measures include establishment of a Rehabilitation Unit in the Ministry of Health and Social Welfare whose main aim is empowerment and rehabilitation of PWDs; establishment of Special Education Unit in the Ministry of Education; and adoption of a Community Based Rehabilitation Programme. The report also indicates that the government has adopted measures for inclusion of PWDs by sponsoring their sporting activities as well as using and encouraging the use of disability inclusive Information Communication Technology.
- Argentina and Spain recommended that Lesotho ratifies the Optional Protocol to CRPD (CRPD-OP). These recommendations were noted by Lesotho. Lesotho's response in this regard was that she will consider ratification of this Optional Protocol after consultation with relevant stakeholders. However she will not be bound in respect of this recommendation.²¹

Following this first cycle of the UPR, Lesotho adopted the National Disability and Rehabilitation Policy 2011²² which focuses on disability as a human rights issue and recognises that PWDs should have equal access to education, training, employment, health and other human rights. The Children's Protection and Welfare Act 2011²³ which has extensive provisions on protection of children with disabilities in line with the CRPD was also enacted.

Lesotho's second UPR report was reviewed on January 2015. As far as disability is concerned, Lesotho reported on transformation of the Department of Social Welfare which was within the Ministry of Health and Social Welfare into an independent Ministry of Social Development.

- According to the report, this new ministry 'focuses on the protection of the rights of PWDs, orphans and other vulnerable groups through self-sufficiency initiatives as opposed to social welfare approach which was residual and remedial hence resulting in dependency and stigma among beneficiaries'.²⁴ Within the Ministry of Social Development, there is the Department of Disability Services which is tasked with dealing with issues relating to PWDs.
 - The report also highlights advocacy efforts that Lesotho has taken in order to disseminate information on disability and the rights of PWDs.²⁵
 - Amongst the recommendations made, Libya recommended that Lesotho should incorporate the provisions of the CRPD into the national legal framework and ensure equal work opportunities for PWDs. This recommendation has been accepted by Lesotho.
 - Benin's recommendation that Lesotho ratify the OP-CRPD has been deferred.
- **Lesotho's reports under other African Human Rights mechanisms**
 - (1) First periodic report to the African Commission on Human and Peoples' Rights (1991 – 2000) submitted on 1 August 2000: Paragraph 1.11(a) reports on measures that Lesotho has take to 'improve [the] disabled'. The state reported that the government has 'declared its policy on disabled children through the [then] department of Social Welfare's NDRP 2008'.²⁶ The quoted aims of the policy include reduction of dependency of PWDs on others, promotion of self-reliance, rehabilitation services for PWDs with special needs, expansion of skills training

21 Report of the Working Group on the UPR: Lesotho UN Doc A/HRC/15/7/add.1 (15 September 2010) para 5.

22 NDRP (n 7 above).

23 Children's Protection and Welfare Act (CPWA) No 7 of 2011.

24 UPR Report (n 21 above) para 18.

25 UPR Report (n 21 above) para 19.

26 NDRP (n 7 above).

services, integration of PWDs into education, training and employment programmes alongside other non-disabled persons.²⁷

- (2) First Periodic Report to the African Committee of Experts on the Rights of the Child submitted in 2014: Efforts to obtain copy of the report were unsuccessful.

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

As a dualist country, international human rights instruments have to be incorporated into domestic laws before they can have the force of law in Lesotho. This question has been considered by the courts of law in a number of cases. The earliest case was one shortly after independence, *Joe Molefi v Legal Advisor and Others*²⁸ in which the appellant sought an order declaring that he is a refugee as contemplated by the UN Convention Relating to the Status of Refugees. The Convention had been ratified by the United Kingdom during the time when Lesotho was its protectorate and was also extended to Lesotho. One of the questions raised in this case was whether that Convention could be regarded as part of the municipal law and therefore applicable to the Petitioner as contemplated by section 38 of the Aliens Control Act on which the Petitioner relied. The Court held that the Petitioner could not rely on the Convention since it was not domesticated.

Similarly, in *Basotho National Party and Another v Government of Lesotho and Others*,²⁹ the applicants, a political party that had just lost the 2002 general elections, sought an order that the court direct the Government of Lesotho to

take necessary steps, in accordance with its constitutional processes, to adopt such legislative and other measures necessary to give effect to the rights recognised in international conventions such as the Universal Declaration 1948, African Charter and others.

The Court explicitly stated that these Conventions cannot form part of the laws of Lesotho until they are incorporated into municipal law by legislative enactment. It stressed that:

The court cannot usurp the functions assigned the executive and the legislature under the Constitution and it cannot even require the executive to indirectly introduce a particular legislation or the legislature to pass it or assume itself a supervisory function over the law-making activities of the executive and the legislature.

The two cases cited above illustrate a strict dualist approach in that the courts rejected reliance on international human rights instruments and insisted on domestic legislation. However, the other cases of *Molefi Tsepe v IEC & Others*,³⁰ *Fuma v Commander LDF and Others*,³¹ and *Senate Gabasheane Masupha v Senior*

27 Lesotho's First Periodic Report to the ACHPR para 1.11 http://www.achpr.org/files/sessions/31st/state-reports/1st-1991-2000/achpr31_staterep_lesotho_2002_eng.pdf (accessed 30 September 2015).

28 *Joe Molefi v Legal Advisor & Others* [1970] 3 ALL ER 724.

29 *Basotho National Party & Another v Government of Lesotho & Others* Constitutional Case No 5/2000 [2003] LSHC 6 (BNP).

30 *Tsepe v Independent Electoral Commission & Other* [2005] LSHC 96.

31 *Fuma v Commander LDF & Others (Const/8/2011)* [2013] LSHC 68

Resident Magistrate for the District of Berea and Others,³² present a totally different approach that the same High Court of Lesotho and Court of Appeal (both sitting in their constitutional jurisdiction) took to applicability of undomesticated international human rights instruments in Lesotho.

In the *Molefo Tsepe* case, the Court was called on to declare the Local Government Elections Act 1998 (as amended by an Amendment Act of 2005), which reserved one third quota of all Local Government seats for women, discriminatory and unconstitutional. The Court held that there was no discrimination in the Act and relied on articles 3 and 26 of ICCPR, General Comment 18 of the Human Rights Committee, articles 3 and 4 of CEDAW, article 18(3) and (4) of African Charter as well as the SADC Declaration on Gender Equality. The Court stated that:

If regard be had to Lesotho's international law obligations, these, if anything, reinforce the interpretation of section 18(4)(e) of the Constitution and require equality which is substantive and not merely formal and restitutionary in its reach.³³

In *Fuma v Commander LDF & Others*, the applicant was a former member of the army who lodged a case in the High Court of Lesotho sitting in its constitutional jurisdiction. The Applicant's case was that after he became visually impaired, the medical board of the army recommended that he be retired on medical grounds. He challenged this retirement on the ground that he was not given a chance to make presentations before the board prior to its decision and also that it was not his visual impairment that informed the decision of the medical board but the fact that he was HIV positive. He illustrated that there are members of the army whom after being visually impaired were not retired but were given other duties that suited their condition. He asserted that the difference with him was that he had become visually impaired as a result of the HIV and that it is on the basis of his HIV status that the board retired him.

The Court held that the retirement was discriminatory and violated both the constitution of Lesotho and Lesotho's international human rights obligations. In holding that Lesotho has an international human rights obligation not to discriminate, the Court sought guidance from the South African case of *AZAPO & Others v President of South Africa*,³⁴ where it was considered that municipal law should be interpreted to avoid a conflict with a state's international treaty obligations.³⁵ On this basis, the court concluded that Lesotho is bound by provisions of the CRPD, though it has not yet been domesticated.

In the *Masupha* case, a daughter of a late principal chief challenged constitutionality of section 10 of the Chieftainship Act 1968 which limits the right to succession to office of chief to first born male children. Amongst other grounds, she relied on non-discrimination provisions of ICCPR, CEDAW, African Charter and African Women's Protocol. The Court held that:

These instruments, it is clear, are aids to interpretation not the source of rights enforceable by Lesotho citizens. In the present matter, there's no aspect of the process if interpreting section 10 of the [Chieftainship] Act which leaves its meaning exposed to any uncertainty, to the resolution of which the instruments in question could contribute further than the considerations which have already been taken into account.

32 *Senate Gabasheane Masupha v Senior Resident Magistrate for the district of Berea & Others* C of A (CIV) 29/2013 [2014] LSCA (*Masupha*).

33 *Tsepe* (n 30 above).

34 *AZAPO & Others v President of South Africa* 1996 (4) SA 672 (CC).

35 *Fuma* (n 31 above) para 22.

After ratification of the CRPD in 2008, Lesotho adopted policies and laws aimed at incorporating the human rights principles enunciated in the international instruments referred to above. These include amongst others: National Disability and Rehabilitation Policy of 2011,³⁶ Education Act of 2010³⁷ and Children's Protection and Welfare Act 2011.³⁸

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

The CRPD has not yet been domesticated. A Disability Equality Bill³⁹ has been tabled before parliament and is yet to be debated for it to be passed into law. LNFOD is holding consultative meetings, workshops and research in order to lobby the government to pass this Bill into an Act.⁴⁰

3 Constitution

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

The 1993 Constitution of Lesotho has only one provision that addresses disability directly. This is section 33 which provides for rehabilitation, training and social resettlement of persons with disabilities. It provides in particular that Lesotho shall adopt policies designed to 'provide for training facilities, including specialized institutions, public or private and place disabled persons in employment and encourage employers to admit disabled persons to employment'.

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

Sections 4 and 18 of the Constitution provide for freedom from discrimination in enjoyment of the rights provided for in the Constitution. Both sections list prohibited grounds of discrimination. Disability is not listed as a prohibited ground of discrimination. However, since the list is open ended in that it prohibits discrimination on the basis of 'other status', this indirectly addresses disability in that no one may be discriminated on the basis of 'other status' including his or her disability.

36 NDRP (n 7 above).

37 Education Act 3 of 2010.

38 CPWA (n 23 above).

39 Government of Lesotho 2014 Disability Equality Bill 2014 (Zero draft).

40 N Sefuthi 'Director's corner' (March 2015) Issue 4 vol 2 *Disability Lesotho*.

4 Legislation

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

- **Buildings Control Act 1995**

Section 19 provides for physical access for PWD's, in all public buildings. In terms of this section, the Minister may publish a notice in the Government Gazette which directs any person making a plan or specification of any proposed building to provide physical access for persons with physical disabilities.

The challenge with this Act is that the Minister may publish that notice only if he shall so wish; this is not a mandatory process. The provisions of this act are not complied with in regard to some key public buildings. One clear example of this non-compliance is the Maseru based Government Buildings Complex.

- **Sexual Offences Act 2003**

Section 3 provides that anyone who engages in sexual intercourse with a PWD who does not have the capacity to consent to such an act commits an offence.⁴¹ It further provides that, anyone who engages in sexual intercourse in the presence of a person with a disability commits an offence.⁴² In as much as the rationale behind this section is described as protection of PWDs from sexual assault and exploitation, the section has been viewed as prohibiting PWDs from consensual sexual relations thereby reinforcing the stereotype that PWDs are asexual.

- **Youth Council Act 2008**

The Act establishes the Youth Council as the appointed youth structure which will administer youth development in Lesotho. Section 5 provides that youth with disabilities shall be nominated by the disability federation into the council for the representation of the youth with disabilities. Lesotho National Federation of Organisations of the Disabled (LNFOD) nominated a representative of all youth with disabilities into the council in 2010.

- **National Assembly Electoral Amendment Act 2011**

Section 30 provides that all political parties registered under the electoral commission must facilitate the participation of persons with disabilities in all aspects of political participation. Political parties must ensure that, persons with disabilities have access to the political venues and the communication rights of PWD's are respected in the political domain.

- **Children's Protection and Welfare Act 2011**

The Act promotes the protection and promotion of rights of children living in Lesotho, including the rights of children with disabilities. The non-discrimination clause of the Act (Principle II clause 6) states that, children with disabilities shall not be discriminated against on the basis of their disabilities. Section 13 provides that a child with disability has a right to dignity, special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation. The Act states that the education and training should be specifically aimed to help the child with

41 Sexual Offences Act 3 of 2003, sec 3(1) read with sec 2(f).

42 Sexual Offences Act (n 41 above) sec 3.

a disability to enjoy a full and decent life and achieve the highest degree of self-reliance and social integration.⁴³

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

• **Penal Code Act 2010**

The Penal Code Act provides that any person who does an act that brings about premature termination of pregnancy in a female person commits an offence of abortion.⁴⁴ The Act however provides that it shall be a defence where the act has been committed by a medical practitioner:

In order to prevent the birth of a child who will be seriously physically or mentally handicapped, and the person performing the act has obtained in advance from another registered medical practitioner a certificate to the effect that the termination of the pregnancy is necessary to avoid the birth of a seriously physically or mentally handicapped child ...⁴⁵

This provision has met a lot of criticism from organisations of persons with disabilities who before the Act was passed, brought to the attention of the Ministry of Law, Constitutional Affairs and Human Rights that the provision contravenes the CRPD.⁴⁶ The Act was however passed and the provisions complained about remains the law in Lesotho.

5 Decisions of courts and tribunals

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

The Courts had an occasion to address the issues of disability, in particular the status of CRPD in the laws of Lesotho, albeit briefly, in only one case of *Fuma v LDF & Others*,⁴⁷ the facts of which are stipulated in 2.4 above. Having declared that the applicant had been discriminated against on the basis of disability as well as his HIV status, the court held that:

[The court] primarily takes a view that the unreservedly ratified United Nations Convention on the Rights of Persons with Disabilities stands not only as an aspirational instrument in the matter but that by default, it technically assumes the effect of municipal law in the country.⁴⁸

43 CPWA (n 23 above) sec13.

44 Penal Code Act 2010, sec 45(1).

45 Penal Code Act 2010, sec 45(2)(b).

46 N Sefuthi 'Director's Corner Game changer for people with disabilities: Adoption of the CRPD' (November 2014) Issue 30 *Disability Lesotho* http://www.lnfpd.org.ls/uploads/1/2/2/5/12251792/disability_lesotho_November_2014pdf (accessed 26 May 2015).

47 *Fuma* (n 31 above).

48 *Fuma* (n 31 above) para 22.

6 Policies and programmes

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

- **National Disability and Rehabilitation Policy (NDRP) 2011**⁴⁹

The NDRP is aimed at guiding the government in designing the disability specific programmes and interventions. The purpose of this policy is to create an environment in which PWDs can realise their full potential. The objective of the policy is to ensure meaningful inclusion of PWDs in mainstream society. It is intended to guide all the government ministries in designing inclusive and disability-specific programmes. It promotes inclusion of people with disabilities in education, health, accessibility, employment, and social services to mention but a few. It calls upon every ministry of the government to implement the policy while the disability focal ministry coordinates the implementation of the policy.

- **National Strategic Development Plan (NSDP) 2012/13-2016/17**⁵⁰

Disability has been adopted as a cross cutting issue in the NSDP. It requires the government to adopt strategies that promote the welfare of people with disabilities in a variety of ways including: ensuring that people with disabilities access quality health services; preventing disability through provision of quality health services; increasing the number of teachers who are equipped in the education of children with disabilities; ensuring PWDs' access to formal and non-formal education; improving employment opportunities for PWDs; ensuring accessibility of public buildings, roads and other social services; and lastly reviewing the disability grant policy for purposes of enhancing the lives of the beneficiaries.⁵¹

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

- **Gender and Development Policy (GDP) 2003**⁵²

The aim of the GDP is to ensure that Lesotho builds a nation that perceives women, men, girls and boys as equal partners based upon the principle of equal participation in development. It is therefore indirectly addresses equality of women and girls with disabilities.

- **National Vision 2020**⁵³

This is national poverty reduction strategy which was adopted after a national dialogue. PWDs were amongst the stakeholders consulted before the strategy was adopted.⁵⁴ It provides that one of the aims is to make sure that by the year 2020, 'there will be no gender disparities. Men, women and people with disabilities will be equal before the law and will be afforded equal opportunities in all aspects of

49 NDRP (n 7 above).

50 Government of Lesotho '2012 National Strategic Development Plan (NSDP): Growth and development strategic framework 2012/13-2016/17' www.gov.ls (accessed 24 December 2014).

51 NSDP 2012/2013-2016/17, sec 6.3.

52 GDP (n 15 above).

53 National Vision 202 (n 16 above).

54 National Vision 2020(n 16 above) para 1.2.2.

life'.⁵⁵ In relation to health, the strategy provides that by the year 2020 Basotho (a term used to refer to people of Lesotho) shall be a healthy nation; the country will have a good quality health system with facilities and infrastructure accessible and affordable to all Basotho, irrespective of their disabilities.⁵⁶ Promotion of special education programmes for PWDs with the involvement of DPOs is listed as one of strategic actions in this strategic document.⁵⁷

- **National Reproductive Health Policy 2008**⁵⁸

It considers special needs of different target populations and the need to abide by conventions guarding against discrimination on the basis of disability.⁵⁹

- **National Strategic Plan on Vulnerable Children April 2012-March 2017**⁶⁰

It states that one of its aims is to implement the NDRP 2011.⁶¹ It notes as one of the key achievements, government's establishment of bursary schemes for vulnerable children including children with disabilities attending secondary schools.⁶² The strategies devised in order to protect the rights of vulnerable children include advocacy work by government working together civil society organisations, care, support and rehabilitation of children with disabilities. Adolescent sexual and reproductive health of all children is also included in the services that will be provided for all children.⁶³

- **National Social Protection Strategy 2014/15-2018/19**⁶⁴

This strategy is aimed at ensuring the well-being of all citizens, in particular of the most vulnerable. It proposes undertaking research to get a better understanding of the actual situation of disability and chronic illnesses in Lesotho and to map the existing initiatives to improve it and to work with LNFOD to publicise the National Disability Mainstreaming Plan. It also provides for a disability grant of two hundred and fifty Maloti (M250.00)⁶⁵ per person per month, phased in over four years, to all those with severe disabilities with the transfer value indexed to inflation.

7 Disability bodies

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

Lesotho does not have an official body that specifically addresses violation of the rights of persons with disabilities. However, one of the proposals made in the

55 National Vision 2020 (n 16 above) para 2.3.1.

56 National Vision 2020 (n 16 above) para 2.3.4.

57 National Vision 2020 (n 16 above) 38.

58 National Reproductive Health Policy (n 18 above).

59 National Reproductive Health Policy (n 18 above).

60 Government of Lesotho Ministry of Social Development '2012 National Strategic Plan (NSP) on Vulnerable Children' (April 2012 to March 2017)

61 NSP on Vulnerable Children (n 60 above) 16.

62 NSP on Vulnerable Children (n 60 above) 26.

63 NSP on Vulnerable Children (n 60 above) 28.

64 Government of Lesotho, Ministry of Social Development 'National Social Protection Strategy 2014/15 to 2018/19' (2014).

65 An equivalent of 21US Dollars.

Disability Equality Bill is the establishment of a Disability Council, which will amongst others address violations of the rights of persons with disabilities.⁶⁶

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

Lesotho has the Office of the Ombudsman whose overall mandate is to investigate or inquire either on complaint or upon own initiative where there are allegations of infringement of fundamental rights and freedoms.⁶⁷ That is, this office can address violations of the rights of persons with disabilities

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

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

Lesotho does not have a NHRI yet. The Constitution has been amended to provide for the establishment of a Human Rights Commission.⁶⁸ However the enabling legislation is still in a Bill form, Human Rights Commission Bill 2012 and has not been passed into law yet.

As indicated above, there is an Office of the Ombudsman whose overall mandate includes investigation of allegations of human rights violations.

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

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

Lesotho National Federation of the Disabled (LNFOD) is the umbrella body of disabled peoples' organizations (DPOs). The mission of LNFOD is to protect the rights of persons with disabilities in Lesotho by providing support to DPOs and

⁶⁶ Disability Equality Bill (n 39 above) Preamble.

⁶⁷ Constitution of Lesotho 1993, sec 132. See also Ombudsman Act 1996.

⁶⁸ Sixth amendment to the 1993 Constitution of Lesotho.

empowering their members with life skills, financial and material resources and representing their needs to government, development partners and the wider society.

The Disabled Peoples Organisations (DPOs) in Lesotho are:

• **Lesotho National Association of Physically Disabled (LNAPD)**

LNAPD is an association of people with physical disabilities which seeks to address their needs and aspirations through leadership and competence training strategies and self-advocacy. It promotes and supports all activities that are pertinent to human rights and social development. LNAPD is also the founder and operator of the Itjareng Vocational Training Centre for the disabled. LNAPD'S mandate as a DPO is to advocate for the socio-economic rights of the people with physical disabilities. It ensures that people with physical disabilities access public services on an equal basis with their able bodied counterparts through lobbying and advocacy to the service providers. LNAPD implements a Human Rights Programme and a Community Based Rehabilitation Programme for the physically disabled in two districts of Leribe and Mafeteng out of the ten districts of Lesotho.

• **Intellectual Disability Association of Lesotho (IDAL)**

IDAL was formerly named Lesotho Society of Mentally Handicapped Persons. It was founded in 1992 by parents of children with intellectual disabilities. It aims to represent and protect the rights of children with disabilities (including severe or multiple disabilities) and individuals of all ages with intellectual disability through the empowerment of parents and such youth.⁶⁹ IDAL operates in 21 branches in 8 districts of the country with a membership of 2 000 individuals. IDAL uses a community based approach to provide parents, care-givers and individuals with the support, training and knowledge needed to live and engage in their own communities. IDAL advocacy work is on the four key areas of education, health, protection and employment. IDAL also runs a programme in which youth with intellectual disabilities are trained on rights contained in the Convention on the Rights of the Child (CRC) as well as Convention on the Rights of Persons with Disabilities (CRPD).⁷⁰

• **Lesotho National League of the Visually Impaired Persons (LNLVIP)**

This is an organisation of the visually impaired persons of Lesotho which was established in 1986. Some of those reasons that led to establishment of LNLVIP are: to advocate for the rights of the visually impaired persons in Lesotho; to ensure that visually impaired persons get access to education like any other able bodied persons; to create a vocational centre where the visually impaired trainees are taught life skills; and to facilitate placement and employment of the visually impaired persons in Lesotho.⁷¹

• **National Association of the Deaf in Lesotho (NADL)**

NADL's mandate is to assist the deaf community in Lesotho to access their human rights. NADL aims to fulfil this mandate by primarily focusing on the promotion of sign language in the public and private sector so that the deaf community can receive quality services on an equal basis with others. NADL is also charged with training Sign Language Interpreters. It promotes knowledge of Lesotho Sign Language amongst its members and to the service providers. This has been done by producing learning materials such as the Lesotho Sign Language Dictionary, and the Lesotho Sign Language DVD for beginners. These materials help new learners and persons who have contact through services with the deaf community to

69 Information available at <http://www.idal.org.ls> (accessed 26 May 2015).

70 As above.

71 Information about the organization available at <http://www.lnlvip.org.ls> (accessed 26 March 2015).

familiarise themselves with the basics of the language. NADL's Core Activities include: promotion and advocacy for the human rights of deaf people in Lesotho in all walks of life; raising awareness on the importance of sign language and inviting all people to learn it; advocating for the mainstreaming of deaf issues into the national agenda as well as in all the sectors of the society; empowering young deaf people on issues of education, human rights, HIV/AIDS, life skills and ensuring provision of inclusive social services for deaf people in community councils within jurisdiction where deaf people live.⁷²

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

In several countries in Southern Africa, DPOs are organised at both sub-regional and regional levels.

- At the sub-regional level, there is Southern Africa Federation of the Disabled (SAFOD) which is a leading southern African disability-focused network engaged in coordination of activities of DPOs in the Southern African Development Community (SADC) region. SAFOD was formed in 1986. To date there are 10 countries which are affiliated to SAFOD through National Federations of Disabled People Organisations (NFDPOs).⁷³ Lesotho affiliates to SAFOD through LNFOD.
- At the regional level there is Africa Disability Forum (ADF) whose aim is to unify and amplify the voice of Africans with disabilities, their families, and their organisations in advocating for their rights and inclusion in all aspects of development and society at Pan African, sub-regional and national levels.⁷⁴

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

Lesotho has ensured involvement of DPOs in the process of implementation of CRPD.

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

LNFOD, as the umbrella body of DPOs in Lesotho, works very closely with the Ministry of Social Development, the Parliamentary Council as well as various parliamentary committees to ensure that the Disability Equality Bill is passed into law. In all the lobbying and advocacy efforts, LNFOD involves representatives of all DPOs and always reports back to the entire membership on progress of the implementation process. For instance, when LNFOD designed its Advocacy Action Plan, DPO's were involved from the beginning stage to ensure that issues for people with disabilities were well reflected in the program design and objectives.⁷⁵

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

- Lack of statistical data regarding disability;

72 Information about the association available at <http://www.nadl.org.ls> (accessed 26 May 2015).

73 Information about SAFOD and its activities available at <http://safod.net> (accessed 26 May 2015).

74 As above.

75 Interview with Ms Maja Matsoha-Makhoali, LNFOD's human rights and advocacy officer.

- Poor monitoring of programmes implemented by DPOs in the communities; and
- Resource constraints, in particular lack of financial and human resources as well as technical knowledge on strategies which DPOs can engage in order to be part of and follow-up implementation efforts.

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

Although not yet passed into law, the establishment of a Disability Advisory Council in terms of Disability Equity Bill, 2014, will provide a platform for DPOs to be meaningfully involved in the formulation and implementation of laws, policies and programmes that relate to or affect persons with disabilities.

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

Through LNFOD’s advocacy programmes, the government in collaboration with LNFOD and its development partners drafted a Disability Equality Bill and National Disability Mainstreaming Plan which are awaiting approval.⁷⁶

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

Capacity building in relation to research is needed. Areas that need further research include a review of the laws of Lesotho in order to ascertain their compliance with the CRPD, particularly in the areas of access to justice as well as criminal law: how rules of criminal law, criminal procedure and evidence affect PWDs as victims, witnesses or perpetrators of crime. Capacity building is also needed for skilled human resource, coordination, advocacy and project management skills. As far as human resources is concerned, the main problem is that currently LNFOD has very limited human resources. However, with the limited human resources that it has, LNFOD has made considerable strides in ensuring adoption of policies and programmes within the Ministry of Social Development and to have the current Disability Equality Bill. More personnel with skills in advocacy, lobbying and follow-up strategies would help to ensure that the policies are effectively implemented and that the Bill is finally passed into law.

In relation to data collection, there are many statistical data gaps on disability in Lesotho. It is therefore highly recommended that, DPOs be assisted with data collection and analysis so that they can assess the suitability of government services, policies and programmes to PWDs in the areas of welfare, employment, health services and education. This would also empower DPOs to lobby for specific laws, policies and programmes that are geared towards implementation of CRPD.

With respect to collaboration, DPOs should work closely with government ministries and departments as well as other CSOs whose mandate is not exclusively on disability but on human rights in general or specific to women’s rights, children’s rights or access to socio-economic rights such as water, as there are

76 As above.

PWDs within these groups and concerted efforts may help in implementation of specific provisions of CPRD which affects the groups concerned.

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

- **Coordination:** In this respect, it is suggested that, DPO's be equipped with coordination, advocacy and project management skills which include practical varied examples of how DPOs in other jurisdictions engage with governments ministries and departments in the implementation process including disability mainstreaming.
- **Data collection:** There are lots of statistical data gaps as far as disability in Lesotho is concerned. It is therefore highly recommended that DPOs be in a position to collect and analyse their own data so that they can assess the suitability of government services, policies and programmes to PWDs in the areas of welfare, employment, health services and education. This would also empower DPOs to lobby for specific laws, policies and programmes that are geared towards implementation.
- **Collaboration:** DPOs should work closely with other CSOs whose mandate is not exclusively on disability but on human rights in general or specific on women's rights, children's rights or access to socio-economic rights such as water, as there are PWDs within these groups and concerted efforts may help in implementation of specific provisions of CPRD which affects the groups concerned.

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

There are none. However Open Society Initiative for Southern Africa (OSISA) works with LNFOD and involves DPOs in research initiatives such as a study to review the existing laws and policies in Lesotho to determine their harmony with the CRPD.

10 Government departments

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

The Department of Disability Services in the Ministry of Social Development.

11 Main human rights concerns of people with disabilities in Lesotho

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

- **Lack of Social support and respite care facilities for children with severe disabilities**

For many parents who have children with severe disabilities, raising them becomes a full time task since there are no respite care facilities for children with severe disabilities in Lesotho. Consequently parents, especially mothers, have to leave employment and care for their children on a full time basis. Since there is no government financial support in this regard, parents are left destitute and dependant on relatives, friends and neighbours for basic commodities such as food, clothing and medical care.⁷⁷

- **Unemployment**

The rate of unemployment in Lesotho is very high. According to the Living Conditions Study, the rate is twice as high, at about 70 per cent for PWDs.⁷⁸ Currently there are no legal responses to this challenge. However, LNFO and its partners are lobbying government and advocating for affirmative action employment policies as well as financial assistance to PWDs to start businesses so as to create self-employment.

- **Denial of access to justice**

CRPD addresses a full spectrum of issues related to disability and offers guidance to governments on how to protect the rights of PWDs. Non-domestication of CRPD has therefore resulted in being a barrier to PWDs access to justice. This injustice is made even worse by section 2 of the Constitution on the basis of which courts have rejected reliance on non-domesticated international human rights instruments.

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

The National Assembly Electoral Amendment Act of 2011 ensures participation of PWDs in the political life in Lesotho. Section 30 provides that all political parties registered under the electoral commission must facilitate the participation of persons with disabilities in all aspects of political participation. Political parties must ensure that, persons with disabilities have access to the political venues and that the communication rights of PWD's are respected in the political domain. However, in the latest February 2015 elections only one political party, All Basotho Convention (ABC), had a sign language interpreter in its rallies. Furthermore, one of the members of the Senate, which is the Upper House of Parliament has a physical disability and that has not hindered his right to participate in the political life of the country.

⁷⁷ Information available at www.infod.org.ls (accessed 23 March 2015).

⁷⁸ Living Conditions Study (n 4 above).

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

There is no disability specific law in Lesotho. Although there are laws and policies which, to a limited extent cater for persons with disabilities, they are not efficiently implemented. Furthermore, almost all socio-economic rights are categorised as directive principles of state policy in the Constitution, and in terms of section 25 of the Constitution, such are not justiciable in the courts of law. This leads to gross violations of socio-economic rights of PWDs with impunity.

Furthermore, in comparison with other non-disabled members of the society, PWDs do not have equal access to health, education and other social services. This results from infrastructure that is not disability friendly. For instance, public roads and buildings do not accommodate wheelchair users, have obstacles that inhibit visually impaired persons to move independently and service providers do not understand sign language thus creating barriers for people with hearing impairments.

11.4 Case studies of specific vulnerable groups

- **Women with disabilities**

Women in Lesotho generally face discrimination on the basis of sex. Such discrimination is often justified on the grounds of custom and culture as stipulation in section 18(4)(e) of the Constitution of Lesotho. Since PWDs also suffer discrimination because of the attitudinal and institutional barriers that prevent them from accessing human rights, women with disabilities suffer double the scourge because of their status as women and because of their disabilities. The discrimination leads to denial of sexual and reproductive rights, unemployment, lack of access to education and limited participation in politics.

- **Children with disabilities.**

A feasibility study undertaken by the Ministry of Education in 1993 reflected that there are many children with special needs in regular primary schools in Lesotho. The children with special needs include children with different disabilities such as visual, hearing and physical impairments, epilepsy and psychosocial disabilities. The challenges identified include enrolling children in specialised schools instead of integrating their needs into the mainstream schools which in turn disrupt such children's family life.⁷⁹ Although the study was conducted two decades ago, this challenge still exists. The other challenge identified in a LNFOD Newsletter is restrictive environments in mainstream schools such as inaccessible ablution rooms which results in children, mainly girls, with physical disabilities dropping out of school.⁸⁰

79 Ministry of Education Feasibility Study 1993.

80 P Letsau 'Commemorating women's day' (March 2015) Issue 4 vol 2 *Disability Lesotho* www.lnfod.org.ls (accessed 27 May 2015).

12 Future perspective

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

- Drafting of the National Disability Mainstreaming Plan: Currently with the financial assistance of one of LNFOD partners, Communities of Practice in Disability Advocacy for Mainstreaming (COPDAM), the Ministry of Social Development has engaged a consultant to assist the ministry to draft a National Disability Mainstreaming Policy/Plan.
 - Enactment of Disability Equality Law. As stated earlier, a Disability Equality Bill has been draft and its pending debate in parliament in order for it to be passed into law.

12.2 What legal reforms would you like to see in Lesotho? Why?

- Enactment of a disability-specific law: there are a number of laws that make reference to disability but they are not specific and are seldom adhered to. A disability specific law would thus provide a synergy of all laws that apply to disability and also repeal all laws that are not CRPD compliant. This law would also ensure PWDs access to justice in that it would be a commitment by government on the basis of which the government would be held accountable.
- Inclusion of disability as a prohibited ground of discrimination in all the laws, particularly in the Constitution.
- Repeal of discriminatory sections in the laws and review and revision of other laws so that the language used clearly includes persons with disabilities in accordance with CRPD.