

# SWAZILAND

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## 1 Population indicators

### 1.1 What is the total population of Swaziland?

According to the 2007 Population and Housing Census there are 481 428 males and 537 021 females which puts the total number of the population in Swaziland at 1 018 449.<sup>1</sup>

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

Qualitative data was sought from the 1986, 1997 and 2007 National Census, through the Central Statistics Office (CSO).<sup>2</sup> The 2007 Census categorises the types of disability in the following terms: seeing,<sup>3</sup> hearing, speaking, walking or climbing, remembering or concentrating, and other.<sup>5</sup>

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

People with disabilities in Swaziland are estimated to be at 171 347.<sup>4</sup> Accordingly,<sup>5</sup> people with disabilities accounts for 16,8 per cent of the country's population.

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1 Central Statistical Office *Population and Housing Survey (2007)* 1. See also the Central Statistical Office (CSO) [Swaziland], and Macro International Inc *Swaziland Demographic and Health Survey 2006-2007 (2008)* 2.

2 Government of Swaziland: Central Statistics Office (CSO) 2007 *Population and housing census: Fertility, nuptiality, disability & mortality (2010)* 4.

3 CSO as above 40. See also the Deputy Prime Minister's Office (DPMO), *Swaziland Disability Profile (2011)* 6.

4 CSO (n 2 above) 41-42; DPMO *Swaziland Disability Profile* as above 8.

5 As above.

Of note is that the prevalence of disability in Swaziland is higher than the average found in other developing countries (which is at 10 per cent of the total population).<sup>6</sup> The prevalence of disability is much higher in rural areas. Eighty-two per cent of people with disabilities live in rural areas whilst the remaining 18 per cent live in urban areas.<sup>7</sup>

#### **1.4 What is the total number and percentage of women with disabilities in Swaziland?**

Out of the total population (117 347) with disabilities 58 per cent (98 902) when disaggregated by sex are women with disabilities and 42 per cent (72 445) are men with disabilities.<sup>8</sup>

#### **1.5 What is the total number and percentage of children with disabilities in Swaziland?**

The Census of 2007 disaggregate incidence of disability by age and for the age group of 0-4 there were 4238 children with disabilities; for the age group 5-9 there 8457 children with disability; for the age group 10-14, there were 10424 children with disabilities and for the age group 15-19 there were 9323 children with disabilities.<sup>9</sup> The incidence of disability is greatest amongst children, especially between 5 and 14 years, suggesting a strong link between the conditions in which the majority of young children live and the incidence of disability.

According to the 2007 Census, the population of children with disability within the age range of 0-19 is 32442 (19 per cent).

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

The most prevalent form of disability in Swaziland is seeing disabilities followed by people with other disabilities.<sup>10</sup> Out of the 171347 people with disabilities in Swaziland, 78 083 (46 per cent) have seeing disabilities followed by a group classified as other forms of disabilities at 47 691 (28 per cent).<sup>11</sup> People with hearing disabilities are 18 389 (11 per cent), while people having remembering/concentrating disabilities are 6 832 (4 per cent).<sup>12</sup> People with walking/climbing disabilities are 17 486 (10 per cent) and those with speaking disabilities are only 2 666 (2 per cent).<sup>13</sup>

6 DPMO *Swaziland Disability Profile* (n 3 above) 8.

7 CSO (n 2 above).

8 CSO (n 2 above). See also DPMO *Swaziland Disability Profile* (n 3 above) 9.

9 CSO (n 2 above).

10 DPMO *Swaziland Disability Profile* (n 3 above) 13.

11 CSO (n 2 above). See also DPMO *Swaziland Disability Profile* (n 3 above) 13.

12 As above.

13 As above.

## 2 Swaziland's international obligations

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

The Kingdom of Swaziland became a signatory in 2007 and ratified the Convention on 24 September 2012. Swaziland has also ratified the treaty's Optional Protocol which permits the filing of individual complaints under the treaty by its residents.<sup>14</sup>

### 2.2 If Swaziland has signed and ratified the CRPD, when was its country report due? Which government department is responsible for submission of the report? Did Swaziland 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?

The country's initial report under the CRPD according to the official website was due in October 2014. The Deputy Prime Minister's Office houses the Disability Unit which is under the social welfare department. However, according to the Disability Unit Programmes Manager,<sup>15</sup> the country is not engaged in the process of drafting the state party report due to the fact that they have not received from the treaty body an invitation to write and present the state report.

### 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 Swaziland 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?

In the UN Universal Periodic Review on 12 December 2011<sup>16</sup> Swaziland reported signing the Convention on the Rights of Persons with Disabilities. Further, The Ministry of Foreign Affairs and International Cooperation revealed that his office conducted training for members of Parliament on, amongst other instruments, the CRPD, and that instrument has been tabled before Parliament for ratification.

14 See the United Nations Treaty Collection Website [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en) (accessed 25 March 2015).

15 Interview with Disability Unit Programmes Manager Ms Sindi Dube, held in Mbabane, 15 January 2015.

16 Human Rights Council 'Report of the Working Group on the Universal Periodic Review-Swaziland' A/HRC/19/6 (2011).

Further, the Government is considering becoming party to all outstanding international human rights treaties.<sup>17</sup>

Lesotho commended the country's determination to address the rights of persons with disabilities and stated that the policies of Swaziland in this regard were appreciated. Uganda noted with appreciation that the most vulnerable, such as the elderly and persons with disabilities, were exempt from paying hospital charges.<sup>18</sup>

Spain, Portugal and Argentina recommended that Swaziland conclude the process of ratification of the Convention on the Rights of Persons with Disabilities,<sup>19</sup> the country has ratified accordingly. Ghana recommended that Swaziland must take further action to remove societal discrimination against children with disabilities, street children and children living in rural areas.<sup>20</sup>

Swaziland has not been reporting diligently under international as well as regional treaty bodies. In 2011 at the UN UPR, Swaziland acknowledged that the state had not met its reporting obligations under the international human rights instruments. For that reason, Swaziland requested technical assistance and capacity-building in the areas of treaty body reporting and following up on concluding observations and recommendations of special procedures and mechanisms of the United Nations, including national monitoring of the implementation of international human rights instruments.<sup>21</sup>

On the state report submitted to the Convention on the Rights of the Child (CRC) Committee in 2006, the following was observed on the rights and welfare of children with disabilities:

Children with disabilities are not mainstreamed and there are few special schools inadequately meeting the needs of such children. Even those schools offering integrated education are physically unfriendly to children with disabilities, with no ramps and other facilities for physically disabled children. Sensory impaired children require urgent attention as there are no Braille facilities in schools and few individuals are trained in sign-language. This also hinders speech and hearing impaired children from accessing health services. Children with hearing disabilities are excluded from the education system from the secondary level. Children who are blind are excluded from tertiary institutions as these lack facilities catering to their needs.<sup>22</sup>

The Committee also raised concerns over the fact that there is no integrated policy for children with disabilities, including those which relate to the provision of health, education and sporting facilities and the physical environment. This results in discrimination and limits the opportunities available to disabled children.<sup>23</sup> The Committee further noted that inadequate allocation of resources for the specialised needs of disabled children excludes them from health and educational facilities.<sup>24</sup>

Swaziland is yet to report under the African Charter on the Rights and Welfare of the Child.

17 Human Rights Council (n 16 above) para 24.

18 Human Rights Council (n 16 above) para 60.

19 Human Rights Council (n 16 above) para 76.3 & 76.4.

20 Human Rights Council (n 16 above) para 76.22.

21 Human Rights Council (n 16 above) para 8.

22 Committee on the Rights of the Child 'Consideration of Reports Submitted by States Parties under article 44 of the Convention initial report of States parties due in 1997 Swaziland' CRC/C/SWZ/1 (2006) para 111.

23 CRC Committee (n 22 above) para 96.

24 CRC Committee (n 22 above) para 104.

**2.4 Was there any domestic effect on Swaziland'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 Swaziland's legislature to incorporate it into the legal system before the instrument can have force in Swaziland's domestic law? Have Swaziland's courts ever considered this question? If so, cite the case(s).**

Swaziland follows the dualist approach to the acceptance of international laws into municipal law. For international instruments to be domesticated in Swaziland parliament's endorsement is required according to section 238 of the Constitution. Section 238 provides as follows:

- (2) An international agreement executed by or under the authority of the Government shall be subject to ratification and become binding on the government by -
  - (a) an Act of Parliament; or
  - (b) a resolution of at least two-thirds of the members at a joint sitting of the two Chambers of Parliament.

The parliament of Swaziland in July 2013 adopted the CRPD and courts are now in a position to make reference to the CRPD.

• **Case Law**

No case law on the protection of the rights of persons with disabilities has as yet come before the courts of Swaziland.

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

Subsequent to the ratification of the CRPD, the country adopted the National Policy on Disability and it has been followed by the drafting of the Persons with Disability Bill of 2014 which is awaiting enactment into an Act.<sup>25</sup>

### 3 Constitution

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

The Constitution of Swaziland<sup>26</sup> contains provisions that directly address disability. Section 14, a clause on the fundamental rights and freedoms of the individual, provides for disability in 14(1)(e) and 14(3). The provisions prohibit discrimination on the basis of disability.

Similarly section 20 provides for equality before the law.

Section 30 provides for the rights of persons with disabilities as follows:

<sup>25</sup> S Ngwenya 'King orders Parly to ratify 28 international conventions' *Times of Swaziland* 18 September 2012 <http://www.times.co.sz/News/79799.html> (accessed 25 March 2015).

<sup>26</sup> The Constitution of the Kingdom of Swaziland 0001 of 2005, which came into force in February 2006.

30. (1) Persons with disabilities have a right to respect and human dignity and the Government and society shall take appropriate measures to ensure that those persons realise their full mental and physical potential.
- (2) Parliament shall enact laws for the protection of persons with disabilities so as to enable those persons to enjoy productive and fulfilling lives.

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

The Constitution addresses the issue of marginalised groups. In this regard see section 60(4) and 95(2)(a) and (b).

## 4 Legislation

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

There are important legislation which the government of Swaziland has enacted or is in the process of enacting which address disability and are as follows:

- (i) The Persons with Disabilities Bill, 2014 which caters for the general well-being of persons with disabilities.<sup>27</sup> The Bill proposes the establishment of a National Committee for Persons with Disabilities. The objectives of the Committee are:
  - (a) improve the socio-economic status of men and women, girls and boys with disabilities;
  - (b) ensure that all persons with disabilities have equal access and opportunities to education, health and other services at all levels;
  - (c) ensure that all buildings and infrastructure are accessible to persons with disabilities;
  - (d) promote inclusiveness and ensure that all institutions provide services to persons with disabilities in the same manner as they provide to the non-disabled except where necessary;
  - (e) ensure that policies in general do not have a negative impact on the status of persons with disabilities, and in particular vulnerable groups.

The Bill further covers registration of organisations of persons with disabilities as well as registration of a person with disability, who will then be issued with a Disability Card.<sup>28</sup> The Bill further makes provision for the right to assistance in situation of risk and humanitarian emergencies, including armed conflicts and the occurrence of natural disasters as well as, access to public facilities, amenities and services and buildings for persons with disabilities.<sup>29</sup> The Bill further provide persons with disabilities with the right to access to and use of transport facilities as well as the right to the enjoyment of health on an equal basis with persons without disabilities.<sup>30</sup>

<sup>27</sup> It must be noted that the provisions of the draft Bill stated here are likely to be varied as it not yet at the final stages.

<sup>28</sup> See secs 21 to 27 of the 2014 Persons with Disability Bill.

<sup>29</sup> Secs 30 & 31.

<sup>30</sup> Secs 32 & 33.

- (i) Children's Protection and Welfare Act of 2012 in part 2, section 4 provides that 'a child shall not be discriminated against on the grounds of ... disability ...' Furthermore, section 11 states that:  
a child with disability has a right to special care, medical treatment, rehabilitation, family and personal integrity, sports and recreation, education and training to help him enjoy a full and decent life and dignity and achieve the greatest degree of self-actualization, self-reliance and social integration possible.

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

The Employment Act of 1980 as amended provides for the prohibition of the termination of employment of an employee unfairly and according to section 35(3)(e) and (f); an employer is prohibited from terminating an employee's services due to an accident or injury arising out of his employment.

## 5 Decisions of courts and tribunals

**5.1 Have the courts (or tribunals) in Swaziland 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 and Tribunals in the country as yet have not decided on issues of disability rights.

## 6 Policies and programmes

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

There are several policy frameworks which the government of Swaziland has put in place to address disability and they are:

- National Development Strategy (NDS) August 1999;
- National population policy framework for Swaziland 2002;
- National Education Policy 1999; and
- National Disability Policy June 2013.

The National Development Strategy (NDS) in 4.8.2.1 includes persons with disabilities amongst the disadvantaged groups and the government of Swaziland has adopted strategies in addressing issues of PWDs Swaziland. The strategy recommends measures to improve the situation of PWDs as follows:

- Integration and Awareness: The policy aims to integrate PWDs into economic and social activities; ensure the integration of programmes for persons with disabilities

into mainstream education; provide infra-structure for rehabilitation for those who cannot be integrated. Institutions catering for disable people (for example, school for the blind, deaf and vocational training) must be expanded to cater for the existing and expected demand; create institutional and policy mechanisms through which persons with disabilities can be rehabilitated and integrated effectively with the rest of society; and raise awareness on how to prevent the various forms of disabilities.

- Equity: The NDS further calls for the enactment of legislation to protect the disadvantaged groups from abuse and discrimination; ensuring that all infra-structural designs are inclusive of the needs of persons with disabilities; introducing measures that will support the operations of NGOs to help specific groups; and enacting legislation to ensure equal opportunities for persons with disabilities.

The Population Policy in thematic area six and eight<sup>31</sup> adopts strategies for the addressing issues of PWDs Swaziland. These include, the establishment of a National Unit/framework to deal with issues of persons with disabilities; strengthening and expansion of activities to integrate persons with disabilities into mainstream society; developing a national programme to deal with issues of disability, including improving the capacity for testing and early detection of disabilities and the rehabilitation of persons with disabilities; improving the enforcement of laws and regulations on safety standards; discouraging cultural practices that discriminate against persons with disabilities; improving access to social and public services including transport for persons with disabilities; sensitising the public on issues concerning persons with disabilities; and empowering communities and extended families to care for persons with disabilities.

The 1999 National Education Policy is the official policy of the Ministry of Education and is based on the overall objective of

the provision of opportunities for all pupils of school-going age and adults to develop themselves in order to improve the quality of their own lives and the standard of living of their communities.

Section 5 of the Education Policy specifically addresses special needs. The policy aims at including children with disabilities in the mainstream school system. Section 5.3 of the policy states that:

The Ministry of Education shall facilitate access to education for all learners with disabilities by improving the infrastructure to make it user-friendly from basic through tertiary level [and] shall support the integration and inclusion of children with special learning needs in the Education System.

The 2013 National Disability Policy's vision envisages a Swaziland where persons with disabilities have equal opportunities to participate freely as equal partners in society and be empowered to realise their full potential in all spheres of life without discrimination. The policy's goal is to promote and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities. The National Disability Policy adopts the following objectives:

- To improve the socio-economic status of men and women, boys and girls with disabilities.
- To ensure that all persons with disability have equal access and opportunities to education and health services at all levels.
- To ensure that all buildings and infrastructure are accessible to persons with disabilities.

31 National population policy framework for Swaziland 2002, 45, 4.5.16.



- To promote inclusiveness and ensure that all institutions provide services to persons with disabilities in the same manner as they provide to the non-disabled except where necessary.

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

The National Youth Policy<sup>32</sup> serves as a guideline for government's engagement with the youth in the country and one of its objectives is to

provide an enabling environment for the youths development so as to enhance sustainable development by ensuring that young people have access to adequate and appropriate programmes and services regardless of their geographic location, race, gender, level of disability and social, religious and economic circumstances.

The Swaziland National Sports Policy provides for the promotion and identification of persons with disabilities in sports, 'all sports and recreational facilities shall ensure that they meet disability standards' and 'all sports associations must have disability sections within each of their sporting codes'.

Other national policy documents alluding to the rights and recognition of persons with disabilities include the National Social Development Policy, the National Children's policy.

## 7 Disability bodies

**7.1 Other than the ordinary courts and tribunals, does Swaziland 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.**

In Swaziland there is as yet no body that specifically addresses violation of the rights of persons with disabilities.

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

The 2005 Constitution provides for the establishment of the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA). Since its establishment the Commission for Human Rights has not been functional due to lack of funding. The Commission on Human Rights and Public

32 Government of Swaziland – Ministry of Sports, Culture and Youth Affairs 'The Swaziland National Youth Policy' 2009.

Administration/Integrity (SCHRPA)'s adopted its first Strategic Plan for the year 2013-2017 in 2012.<sup>33</sup>

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

- 8.1 Does Swaziland 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 Swaziland has ever addressed issues relating to the rights of persons with disabilities.**

Part 2 of the 2005 Constitution provides for the establishment of the Commission on Human Rights and Public Administration (SCHRPA). The functions of SCHRPA as set out in the Constitution, include the duty to investigate complaints of violations of fundamental human rights and freedoms, injustice, corruption, abuse of power and unfair treatment of any person by a public official in the exercise of his duties.<sup>34</sup> The SCHRPA also has the duty to take appropriate action for the remedying, correction or reversal of violation of human rights; publicising the findings and recommendations. Furthermore, SCHRPA has the duty to promote fair, efficient and good governance in public affairs and to promote and foster strict adherence to the rule of law and principles of natural justice in public administration.

It must be noted that though the mandate of the Commission on Human Rights and Public Administration does not explicitly include addressing violation of disability rights, it is inferred that human rights cut across the board and therefore complaints of violation of disability rights will be addressed by the Commission once it is operational.

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

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

There are a number of non-governmental organisations (NGOs) that represent and advocate for the rights and welfare of persons with disabilities and are as follows:

<sup>33</sup> See the Swaziland Commission on Human Rights and Public Administration/Integrity Strategic Plan 2013-2017 [http://www.sz.undp.org/content/dam/swaziland/docs/publications/UNDP\\_SZ\\_Governance\\_SwazilandCommissionOnHumanRightsAndPublicAdministrationAndIntegrityStrategicPlan2013to2017.pdf](http://www.sz.undp.org/content/dam/swaziland/docs/publications/UNDP_SZ_Governance_SwazilandCommissionOnHumanRightsAndPublicAdministrationAndIntegrityStrategicPlan2013to2017.pdf) (accessed 1 June 2015).

<sup>34</sup> The functions of the commission are set out in section 164 of the Constitution.

- (a) The Coordinating Assembly of Non-Governmental Organisations in Swaziland (CANGO) which is an umbrella body for all NGOs, including those with disabilities initiatives;
- (b) The Federation of organisations of the Disabled in Swaziland (FODSWA) is a human- rights oriented coordinating body of DPOs. It was formed in 1993 by organisations of people with disabilities in Swaziland due to lack of coordination of their activities;
- (c) Save the Children, an organisation which advocates for the promotion of all children's rights, including those with disabilities;
- (d) Cheshire Homes of Swaziland which focuses on the rehabilitation of persons with physical disabilities;
- (e) St Joseph's Catholic Mission which houses Ekululameni Training Centre – an initiative that provides vocational training to persons with disabilities over 18 years; and
- (f) Organisations of persons with disabilities – they offer advocacy and development work aimed at empowering persons with disabilities. They are as follows:
  - Swaziland National Association of the Deaf (SNAD);
  - Swaziland Association of Visually Impaired Persons (SAVIP);
  - Parents of Children with Disabilities in Swaziland (PCDSWA); and
  - Swaziland National Association of the Physically Disabled Persons (SNAPDPe).

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

In the Southern Africa region, DPOs are organised at national level as there are established bodies known as Federations of Persons with Disabilities and at regional level through the Southern Africa Federation of the Disabled (SAFOD).

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

The Kingdom of Swaziland ratified the CRPD on 24 September 2012 which is fairly recent, however, if the drafting of the Disability Policy of 2013 is anything to go by, it can be said that DPOs will in future participate in the implementation of the CRPD. The process adopted for drafting the Disability Policy was participatory, with the Deputy Prime Minister's Office seeking collaboration from other line government ministries, NGOs, the private sector (culminating in a consultative workshop at the Happy Valley Resort at Ezulwini from 24-28 September 2012).<sup>35</sup> The views and representations of all those who participated and contributed in any way were taken into consideration in the formulation of the policy.<sup>36</sup> A similar process was adopted in the drafting of the Persons with Disability Bill of 2014 where DPOs were playing an advisory role – working in collaboration with the Disability Unit to craft the Draft Bill.<sup>37</sup>

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

DPOs have been instrumental in calling government to ratify the CRPD; it is believed that the NGOs in Swaziland have been lobbying government to enact the

<sup>35</sup> See the DPMO, Swaziland Disability Policy of June 2013 14-15.

<sup>36</sup> As above.

<sup>37</sup> n 15 above, and interview with the President of FODSWA, Mr Mandla Methula, held in Mbabane on 15 January 2015.

law on the rights of persons with disabilities since the Swaziland Constitution of 2005 came into force. Their efforts forced government to look into the issue and as a result there is the first draft of the Persons with Disabilities Bill of 2014.

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

The main challenge is that DPOs must work in collaboration with government as most of the laws and policies oblige and/or recommend strategies for government's implementation in addressing issues of people with disabilities in Swaziland and yet government is seen to lack sufficient political will and/or resources when it comes to implementation of laws, policies and domestication of international instruments.<sup>38</sup>

Another point is lack of funding and technical skills on the part of DPOs which is necessary for a robust activism on their part.

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

Since the ratification of the Convention in 2012, the DPOs in Swaziland have collaborated with the government in matters of common interest while maintaining their individuality in matters where there is limited consensus. That can be viewed as a best practice as government needs DPOs expertise in certain matters and DPOs need government's intervention in matters dealing with legislation hence the need for a good working relationship between the two.

**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?**

The evidence shows full participation and/or collaboration between DPOs and government in the implementation of the Convention of Persons with Disabilities in the country. The collaboration resulted in the finalisation of the 2013 Disability Policy which provides guidelines for the improvement of programmes addressing the rights and welfare of disabled persons and the Persons with Disabilities Bill of 2014 which is now with Cabinet. There are consultations currently underway between the Disability Unit and DPOs on the drafting of the National Plan of Action (which is expected to be finalised in 2015) meant for the effective implementation of the Disability Policy.

**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?**

People with disabilities in Swaziland have over the years been at the receiving end of government developmental processes and service delivery, hence it is necessary that persons with disabilities be emancipated enough to be agents of their own course. DPOs have to contribute to the implementation of the Convention as well

38 AH Elde & B Jele 'Living conditions of persons with disabilities in Swaziland – A national representative study' (2011).

as the legislation that will promote their rights, hence there is a need to train DPOs on disability rights and human rights programming.

**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?**

- DPOs need technical expertise on disability issues, hence DPOs require intensive education on the provisions of the international, regional and national legal framework protecting and promoting their rights.
- A majority of DPOs would benefit from training on the implementation processes, the monitoring, and the preparation of country reports and or shadow reports; as well as on the role DPOs have to play.
- FODSWA recommended that simplified copies of the relevant legal framework on the promotion and protection of disability rights should be made available to facilitate easy reading and understanding.<sup>39</sup>
- DPOs lack financial support for their programmes and have limited human resources hence, it is recommended that DPOs be supported financially by funding entities both locally and internationally.
- Since disability is a highly technical and dynamic field which requires the necessary expertise for it to be adequately addressed; it is recommended that tertiary institutions like the University of Swaziland and the Government department spearheading issues of disability in the country establish a research centre that will conduct in-depth research into disability issues so as to build evidence necessary for future programmes.

**9.10 Are there specific research institutes in the region where Swaziland 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?**

The research has revealed that two research projects have been carried out locally to promote the rights of PWDs. For instance, the Federation of Persons with Disability in Swaziland (FODSWA) revealed that in 2011 they had collaborated with Southern Africa Federation of the Disabled (SAFOD) at regional level in conducting a research on 'Living conditions among people with disabilities in Swaziland – A national representative study'.<sup>40</sup> UNICEF assisted the government in conducting the 'Situation assessment of children and young persons with disabilities in Swaziland: Key findings' (December 2010).<sup>41</sup>

Also, the research has led to two other research projects done by international institutions on Swaziland and these are:

The Leonard Cheshire Disability and Inclusive Development Centre University College London conducted a study in 2008 on the topic, 'Disability policy audit in Namibia, Swaziland, Malawi and Mozambique'.

The Secretariat of the African Decade of Persons with Disabilities (SADPD) conducted a study in 2012 on the topic 'Study on education for children with disabilities in Southern Africa'.

<sup>39</sup> n 37 above.

<sup>40</sup> As above.

<sup>41</sup> Deputy Prime Minister's Office (DPMO) *A situation assessment of children and young persons with disabilities in Swaziland: Key findings* (2010).

## 10 Government departments

### 10.1 Does Swaziland 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).

A Community-Based Rehabilitation Programme was established in 1990 which was later upgraded to a National Disability Unit in 2000. The National Disability Unit was first housed by the Ministry of Health and Social Welfare.<sup>42</sup> In 2008, the Unit was transferred to the Deputy Prime Minister's Office under the Department of Social Welfare.<sup>43</sup> The mission statement of the Disability Unit is: '[T]o champion significant improvement in the quality of life for persons with disabilities'.

Some of the Unit's core activities include:

- Awareness raising on disabilities;
- Policy development;
- Advocacy for political commitment; and
- Review of discriminatory legislation, amongst others.

## 11 Main human rights concerns of people with disabilities in Swaziland

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

#### • Challenges

Some Swazis still hold the general belief that those who have a disability are bewitched or inflicted by bad spirits.<sup>44</sup> Many believe that being around people with disabilities can bring bad luck. As a result, many people with disabilities are hidden in their homesteads and are not given an opportunity to participate and contribute to society. The Swaziland National Census of 2007 also recognises that the majority of people with disabilities are poor and marginalised with little to no access to services such as public transport, employment and education. People with disabilities are also especially vulnerable to abuse and HIV and AIDS.<sup>45</sup>

42 Deputy Prime Minister's Office (DPMO) *Swaziland National Disability Policy* (2013) 18.

43 As above.

44 R. Lang 'Disability policy audit in Namibia, Swaziland, Malawi And Mozambique: Final report' (2008) 11.

45 *Swaziland Demographic and Health Survey 2006-2007* (n 2 above).

• **Education**

Even though rhetorically the country promotes education as a basic human right and ensures that males and females receive equal treatment and benefits at all levels,<sup>46</sup> the integration of persons with disabilities into the mainstream of the education system has not been realised so far. A situation assessment of children and young persons with disabilities conducted by the Deputy Prime Minister's (DPMs) office in 2010, reported that the net school attendance ratio was 92 per cent for primary school level and 15 per cent for secondary school level (this refers to the percentage of primary school children with disabilities aged 6-12 years and secondary school children with disabilities aged 13-17 years that are attending school).<sup>47</sup> However, the government's National Children's Coordination Unit (NCCU) responsible for launching the National Plan of Action for Children, reported that 50 per cent of disabled children 10 years and older had no access to education, 33 per cent had some form of primary education and only 15 per cent had post primary education.<sup>48</sup> In the 2007 Census 26 per cent of the disabled people reached secondary-level education; however, only 3,5 per cent gained access to colleges, and 2 per cent to University.<sup>49</sup> The provision of education for people with disabilities has been limited.<sup>50</sup> There are no equal opportunities for the blind and deaf; as a result they are being left behind. Even though this situation may not be intentional there are insufficient trained personnel such as teachers to ensure disabled persons with visual and hearing impairments progress in the education system.

This is despite the fact that the 2005 Constitution guarantees the right to free primary education for every Swazi child. The Constitution provides as follows:

Every Swazi child shall within three years of the commencement of this Constitution have the right to free education in public schools at least up to the end of primary school, beginning with the first grade.<sup>51</sup>

According to Methula,<sup>52</sup> when it comes to education for persons with disabilities, there is still room for improvement as the blind and deaf are being left behind. The dire need for trained personnel is evidenced by the fact that all school for the deaf students who sat for the National Junior certificate failed the exam. The entire class of 2014 failed.<sup>53</sup>

Education is a corner stone of development hence there is a need to vigorously lobby government to do something in ensuring that learners with disabilities achieve a 100 per cent pass rate in the future. Without the much needed education and PWDs will continue to be marginalised.

46 The National Development Strategy (NDS) 1999.

47 DPMO (n 41 above).

48 The Swaziland National Plan of Action for Children, 2012-2015.

49 CSO (n 2 above) 45.

50 As above.

51 Sec 29(6) of the 2005 Constitution.

52 n 37 above.

53 S Sukati 'School for the deaf records 100% fail rate' *Times of Swaziland* 5 January 2012 <http://www.times.co.sz/News/36257.html> (accessed 25 March 2015). See also, A Zwane 'Deaf schools jump off exam wagon' *Swazi Observer* 10 January 2015 <http://www.observer.org.sz/news/69288-deaf-schools-jump-off-exam-wagon.html> (accessed 25 March 2015).

• **Health**

The Constitution of Swaziland provides for the right to health under social objectives found in the directive principles of state in section 60. It provides as follows:

(8) Without compromising quality the State shall promote free and compulsory basic education for all and shall take all practical measures to ensure the provision of basic health care services to the population.

This entails that the state will take progressive steps to ensure that health facilities, goods and services have to be accessible to everyone without unfair discrimination. This includes physical accessibility (affordability and information accessibility).<sup>54</sup>

Access to health care by people with disabilities is available but is associated with challenges. For example according to the 2010 situation assessment of children and young persons with disabilities in Swaziland report, 27 per cent of young people with disabilities who needed treatment, were receiving it, yet 58 per cent reported that they required treatment but were not receiving it.<sup>55</sup>

The hospitals (particularly government hospitals) in Swaziland are found in urban areas, making it difficult for those in rural areas to access them. The hospitals are also not well equipped to attend to those with visual and hearing impairments. The nurses are not adequately trained to address the health needs of people with disabilities.<sup>56</sup> Most health centres have not made appropriate adjustments that would allow access to people with physical disabilities. In some cases where adjustments have been made the work undertaken was inadequate. Similarly, the public transportation system of the country does not cater for those in wheelchairs or crutches.

It must be noted that the Department of Social Welfare administers a public assistance programme, which provides means-tested benefits to the needy or destitute in the country.<sup>57</sup> Those who benefit are mainly the elderly, widows, persons with disabilities and those who are terminally ill. Assistance ranges from E40.00 to E65.00<sup>58</sup> per month and is usually paid out on a quarterly basis. Social workers estimate that about 40 per cent of the population is needy and yet less than 10 per cent are eligible to access this programme.<sup>59</sup>

However, according to the President of Federation of Persons with Disabilities in Swaziland (FODSWA), Mr Methula, the hospitals in Swaziland are not well equipped to attend to those who visual and hearing impairments. Nursing personnel are not trained to address the health needs of the disabled in this regards hence there is need on the part of DPOs to advocate that government train them in consultation with the DPOs.

All is not well when it comes to the issue of packaging medicine and/or pills for the visually impaired as they cannot be differentiated by touch exposing them to the danger of taking the wrong doses of medication.

Wheelchair users or those who use crutches do not have easy access to health centres as most of them have staircases and for the centres that have off ramps, the

54 Committee on Economic, Social and Cultural Rights (CESCR), General Comment No 14 'The right to the highest attainable standard of health' E/C.12/2000/4 (11 August 2000) para 12.

55 See DPMO (n 41 above) and DPMO (n 3 above).

56 As above.

57 CRC Committee (n 22 above) para 263.

58 Approximately US\$ 4 to 6.50.

59 n 15 above.



ramps are usually built inaccurately as some are really steep to afford a wheelchair easy and safe passage.

- **Employment**

The country provides for citizens employment in the Constitution under the economic objectives. It provides as follows:

The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Swaziland and to provide adequate means of livelihood and suitable employment and public assistance to the needy.<sup>60</sup>

Access to employment for PWDs is severely curtailed, with a reported 83,7 per cent being economically inactive; 4 per cent unemployed, and 12,3 per cent employed.<sup>61</sup> People with sight- and hearing-related disabilities face obstacles related to labour market participation. There is a perception that a person who cannot talk or see cannot work.<sup>62</sup> However, as indicated above PWDs do obtain employment particularly in the private sector.

It was reported that the public service employs around 1,1 per cent of the disabled persons<sup>63</sup> whereas; the private sector employs 16,2 per cent. However, 39,5 per cent of the disabled are reported to be employed in family farm/business; whereas, 10,2 per cent are self-employed and 33 per cent are employers.<sup>64</sup> Due to the fact that the disabled are under employed, disabled persons in the country suffer more poverty than the rest of the marginalised groups.

Mr Methula was of the idea that those with visual and hearing impairments have little access to employment as there are perceptions in the country to the effect that a person who cannot talk or see cannot work, yet there are many vacancies out there which do not require talking or seeing to be executed. Those confined to wheelchairs are unable to work due to the perception that disabled people cannot do anything as well as places of employment do not have the requisite ramps necessary for their independent movement. Due to the fact that the disabled are under employed, disabled persons, in the country suffer more poverty than the rest of the marginalised groups.

The Department of Social Welfare also administers a public assistance programme which provides a means-tested benefit to the needy or destitute in the country.<sup>65</sup> Those who benefit are mainly the elderly, and those who pass the means-test within the category of widows, PWDs and those who are terminally ill.<sup>66</sup> It must be noted though that having a disability does not automatically qualifies one to have access to social security and a many disabled persons are not beneficiaries.

- **Access to justice**

The right of access to justice is accorded to everyone living in Swaziland, however, when the visually and the hearing impaired want to vindicate their rights you find that communication is a barrier. Currently the government has employed two sign

60 Sec 59(1) of the 2005 Constitution.

61 CSO (n 2 above) 47.

62 As above.

63 CSO (n 2 above) 48.

64 As above.

65 CRC Committee (n 22 above) para 263.

66 As above.

language interpreters to service the courts in the country and they are based in Mbabane.<sup>67</sup> Clearly this is not enough. Additionally, the laws of the country require that a victim positively identifies a suspect through identification parades and insists on the ascertainment of bodily features of the accused and clothes.<sup>68</sup> These are permitted also under the common-law principles which receive evidence to the effect that a witness who identifies the accused in court has also identified him on a previous occasion.<sup>69</sup> This does not cater for the visually impaired and as such the laws need to be reviewed to cater for other forms of identification other than sight.

Another point is that to access justice one needs a lawyer and lawyers' services are not cheap in Swaziland; hence there is a need for a legal aid scheme to look at PWDs access to justice when they need to vindicate their rights in court.

When it comes to the Human Rights Commission of Swaziland, FODSWA have heard about it but there is not much interaction between the Commission and DPOs. There is no information passed to DPOs about it and on how they can assist persons with disabilities.

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

The 2005 Constitution guarantees the right to vote and to be voted for all persons without discrimination in section 85. Persons with disability have the right to participate in politics. However, accessing this right is often hampered by society's perceptions or attitudes towards persons with disabilities. Over the years voters have shown little confidence in persons with disabilities, hence there have been very few persons with disability serving in top decision making positions. In the parliamentary term of 2008-2013, parliament appointed Mr Tom Mndzebele (a visually impaired Swazi) to be senator. In addition, in the 2013-2017 parliament a man from Kukhanyeni Inkhundla, with a disability, was elected to parliament. The political system in Swaziland does not support positive discrimination in favour of persons with disabilities through a quota system.<sup>70</sup> Running for political office is based on merit and the individual with more votes will represent that community either in the portfolio of Member of Parliament or Indvuna yenkhundla or Bucopho. In the 2013 elections, for the portfolio of Indvuna yenkhundla four PWDs won and are now serving as constituency developers.

### **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?**

See 11.1 above.

### **11.4 Case studies of specific vulnerable groups**

The Constitution of Swaziland in section 84 provides for representation of marginalised groups within the Swazi society as follows:

67 n 15 above.

68 Section 342 of the Criminal Procedure and Evidence Act 67 of 1938, as amended.

69 LH Hoffmann & DT Zeffertt *The South African Law of Evidence* (4ed, 1988) 122.

70 Sec 30 of the 2005 Constitution.

(2) Without derogating from the generality of the foregoing subsection, the women of Swaziland and other marginalized groups have a right to equitable representation in Parliament and other public structures.

However, women and children are marginalised. It is desirable that these groups of people receive adequate protection from the law. In the case of Swaziland three categories of people are given special protection in the constitution and are women, children and disabled persons.

- **Women**

As alluded to in 11.1 living with a disability in Swaziland presents significant challenges particularly for women. There is a general belief that those who have a disability are bewitched or inflicted by bad spirits also apply in case of women with disabilities. Many believe that being around people with disabilities can bring bad luck.<sup>71</sup> As a result, many people with disabilities are hidden in their homesteads and are not given an opportunity to participate and contribute to society. Women and girls with disabilities face dual discrimination and are often worse off than men. They are particularly vulnerable to sexual violence and there have been reported cases of forced sterilisation. According to a 2008 study, Women with disabilities described experiences of sexual exploitation and abuse, which was perceived to be higher amongst disabled women than their non-disabled peers; they felt this was because disabled women were perceived to be 'free' from the HIV virus by non-disabled men.<sup>72</sup>

- **Children**

Children with disabilities have been historically marginalised and have not been able to access education opportunities to the same extent as their non-disabled peers, rendering them continually vulnerable to those factors such as poverty that limit or restrict access to education.<sup>73</sup> This is despite the fact that Swaziland has sought to explicitly define and explain inclusive education in the policy frameworks.<sup>74</sup>

## 12 Future perspective

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

Yes, currently the Disability Unit under the Deputy Prime Minister's Office is spearheading the collection of DPOs, NGOs, and FBOs views to be included in the draft Persons with Disability Bill of 2014. Organisations have been given the opportunity to debate the issues to be included in the Bill as well as debate the strategic plans for its operationalisation in the country.

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

The legal reforms that are necessary to advance the rights of persons with disabilities would be based on the speedy passing by parliament of the Persons with

71 Lang (n 44 above).

72 As above.

73 The Secretariat of the African Decade of Persons with Disabilities 'Study on education for children with disabilities in Southern Africa' (2012).

74 As above.

Disability Bill into an Act of Parliament. The Act will make available the legal tool that will ensure that persons with disabilities are able to lead their lives as full citizens who can make valuable contributions to society if given the same opportunities as others. The Act purports to bring in important provisions on equity, and mindful of the fact that, states are obliged to consult with persons with disabilities, through their representative organisations, when developing and implementing legislation and policies to effectuate the Convention, and on all other policy matters that will affect the lives of persons with disabilities. With regards to receiving an education: the education policy should make provisions for all children living with special needs. That primary education for the disabled be made compulsory under the free universal primary education programme. To avoid setbacks such as failure of entire class of students with disability (as was witnessed in 2014) due to lack of trained personnel, it is recommended that persons with disability themselves be recruited into the education system as assistant teachers; as they have learned sign language and Braille from primary to high school, they are better placed to impart that knowledge. While government's effort to train teachers in the use of sign language and Braille is commendable, it is not sustainable in that it is near impossible to master a language in a period of two years; hence the need to bring in former students as assistant teachers is more appealing.

- Transport and access to buildings: The law of the country should lay down that all public buildings such as courts, hospitals, government offices, transport, roads and overhead bridges have got ramps that allow persons confined in wheelchairs free movement without assistance. The construction of the off ramps should be done in consultation with DPOs so that they are constructed correctly and are not too steep as is witnessed with current ramps. While government is commended for putting in place traffic lights designed to cater for persons who are visually impaired, this initiative should be effected in all the towns both big and small. The traffic lights will only be accessible to persons with disability if there are properly built walkways/ ramps leading to the traffic lights.
- Living independently in the community: The law should stipulate that persons with disabilities should be afforded equal opportunities with the rest of the community. Those who hide children with disabilities, forcing them not to access immunisation from diseases, not to access education and recreational platforms should be prosecuted for treating children with disabilities with cruelty.
- Employment, even when not well qualified: There should be an adaptation of best practices from other countries; for instance, in the employment law of the country there must be affirmative action in favour of persons with disabilities through a quota system, for example, a 3 per cent quota in employment establishments of all the sectors should be occupied by persons living with disabilities.
- Accessing to information: It must be provided in the law that all educational programmes and awareness raising programmes are interpreted in the sign language, particularly on TV. For example HIV/AIDS was declared a national disaster but awareness programmes mostly consist of posters and radio programmes which mean the blind and deaf miss out on valuable information. There is currently the threat of Ebola and there are no programmes on awareness targeting disabled persons at the moment.
- Access to health care: Currently persons with disabilities receive free treatment in public hospitals, while this practice is commendable, it must put into law so that it is protected and guaranteed. The health policy should look into packaging medication for persons with disability as the current envelopes comes with no easy way for the disabled to tell them apart.
- Right to political participation – Exercising political rights, such as voting: It must be law that persons with disabilities are catered for in the election process. Where needs be, ballot papers should also be made available in Braille. To ensure that persons with disabilities are also in top decision making bodies in the country, deserving members of DPOs should be appointed through the use of quota systems into decision making positions.