

DISABILITY LESOTHO



From the Editor

Dear Partner,

Welcome once again to the edition of Disability Lesotho, the monthly email newsletter from Lesotho National Federation of the Disabled. The edition will cover news for the Month of July, 2020

Its been very hard these days because mostly we do not accessing the right information on Covid-19. People with disabilities have not yet received any support from the government regarding this difficult time of Corona Virus. People with disabilities are dying with hunger, no food packages for them, there is no disability grant or any support to people with disabilities. It is also hard for learners, as all technologies that are being used are very expensive, people are not able to afford data, so that can access internet for their studies. This is depressing!

If you would like to contribute to the next issue or have received this newsletter from a third party and wish to be included on the mailing list please contact Pascalina Letsau on (+266) 5905 5406 or pletsau@gmail.com

If missed any edition please visit www.lnfod.org.ls
We welcome any feedback that may improve the quality and content of this free service.

Best regards,



A handwritten signature in black ink, appearing to be 'Pletsau'.

The Editor

DIRECTOR'S CORNER

Basotho with disabilities and national COVID-19 measures

By: Nkhasi Sefuthi

This corner provides the social, economic and political situation of persons with disabilities in Lesotho during the COVID-19 era.

It analyses the steps which the government take to prevent the spread of COVID-19 and the extent to which they include persons with disabilities and their representative organisations as required by the article 4(3) of the UN Convention on the rights of persons with disabilities. The article concludes by outlining the recommendations which can be implemented to change the situation of persons with disabilities in Lesotho.

It is my contention that the current COVID-19 measures are not inclusive and accessible to persons with disabilities thereby perpetuating inequalities and discrimination against Basotho with disabilities.

Background

On the 29th March 2020, Lesotho went for a complete shutdown of services in preparation of the fight against COVID-19 which was already ravaging the neighboring countries including the Republic of South Africa. Lesotho spent a month in lockdown without registering any case until the 13th May 2020 when the first case was registered. The lockdown measures were eased by the end of April allowing people to go back to their work since there was no case registered during the lockdown, and everyone believed that government has prepared to fight the pandemic.

Prior to the lockdown, government established the national command centre to coordinate and manage COVID-19 measures aiming at

preventing it from spreading in the country.

It is upon this time when LNFOD started advocacy on the self-representation of persons with disabilities in the national command centre to ensure that government efforts undertaken to prevent the spread of COVID-19 are inclusive and accessible to persons with disabilities. However, the command centre did not see the importance of the self-representation of persons with disabilities in the centre, and therefore did not honour the request advanced by LNFOD. The decision to exclude persons with disabilities in the command centre deepened inequalities experienced by persons with disabilities on a daily basis as the health COVID-19 information could not reach the vast majority of persons with disabilities because it was not produced in accessible formats. The Public health regulations COVID-19 were not accessible to the vast majority of persons with disabilities since they were not produced in accessible formats, thereby increasing the risk of contracting COVID-19 among persons with disabilities, particularly blind persons, deafblind and the deaf including persons with physical disabilities who most of the time rely on physical support to conduct daily activities.

The personal assistance service provided to persons with disabilities was tempered with on a regular basis by the police who were charged with enforcing the COVID-19 regulations demanding physical distancing between persons

with disabilities and their assistants even where it is impossible to do so due to lack of awareness about the needs of persons with disabilities.

In denying persons with disabilities an opportunity to represent people with disabilities in the command centre, Lesotho has failed to discharge its obligation of protecting the rights of persons with disabilities and denied them their constitutional right to participate in the public affairs through their representative organisations or on an individual capacity.

Evidence emerged that persons with disabilities are disproportionately affected by the pandemic and government should take inclusive emergence measures to protect the dignity of persons with disabilities and prevent loss of income. As a result, government of Lesotho announced several social reliefs aimed at supporting the vulnerable groups during the COVID-19 including persons with disabilities. However, the social relief intended for persons with disabilities was never communicated further by the government and was never implemented, thereby, increasing social inequalities experienced by persons with disabilities.

LNFOOD in partnership with its members had a meeting with the Deputy Prime Minister of the Kingdom of Lesotho in May 2020 in which a position letter indicating the needs and concerns of persons with disabilities was handed to him with the understanding that the revised COVID-19 structure would ensure self-representation and incorporate concerns of persons with disabilities.

However, all was in vain since the new coordinating structure has been established without consultation and participation of persons with disabilities despite

the pledge made by the Deputy Prime Minister that, the new COVID-19 structure would be inclusive of persons with disabilities.

To date Lesotho's statistics are rapidly increasing and they are currently at seven hundred and eighteen thereby increasing the chances of persons with disabilities to contract the disease since no education has been done to raise awareness about this deadly disease to persons with disabilities.

In conclusion, Lesotho should understand that it will not be able to reach the SDGS if it continues to live persons with disabilities behind in humanitarian crisis and global public health emergency such as COVID-19.

From the foregoing, LNFOOD urges government of Lesotho to protect persons with disabilities from this deadly pandemic by allowing their participation in the COVID-19 decision making bodies to ensure that no one is left behind.

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LNFOOD urges the development partners to consider supporting organisations of persons with disabilities in the fight against COVID-19 through provision of funding which will enable DPOS to assist in reaching out to persons with disabilities about COVID-19 health related messages.

ADVOCACY ASPECT

Lessons from Koali Moshoesshoe v DPP and Others' case

By: Makatleho Molotsi

Judicial activism is a philosophy that in order to meaningfully protect and advance human rights, the superior courts should interpret the law beyond the actual letter of such law. It directs that where the letter of the law or constitution does not specifically or sufficiently protect human rights of the concerned individual or group, the courts should read the progressive provisions usually taken from the international instruments in to such law.

Pursuant to this philosophy, the superior courts usually make new developments in laws subject to which the human rights restraint laws are either quashed or improved. This phyllophyte works best in common **law jurisdictions** because of the principle of **hierarchy of courts**. This simply means that the decision made by superior courts are binding the lower courts thus become the applicable common law. **In a nut-shell** the superior courts make new developments on laws as a result, if the courts in common- laws jurisdictions observe judicial activism, they are better placed to progressively protect the rights of minority groups including those with disabilities who have suffered human rights in justices for quite a long time.

However, the case of **Koali Moshoesshoe v the DPP and Others** proved that even if the superior courts can observe judicial activism and herald human rights progressive decisions, minority groups might still not benefit from such decisions if the executive lack the will power to implement

such decisions. Another lesson that one can draw from the decision is that people may lose trust in human rights progressive courts if the decision of such courts do not initiate the requisite positive change of laws, their application as well as human rights unfriendly practices by state and non0 state actors.

This is the case in which the plaintiff, a mentally disabled male challenged the constitutionality of section 219 of the Criminal Procedure and Evidence Act 1981. He contended that by restricting people with mental disabilities to adduce evidence in the courts of laws, this provision of the law, restricted a number of human his rights enshrined in the constitution of Lesotho. These include the Right to fair trial under Section 12 of the Constitution, Freedom from discrimination under section 18, the right to equality before the law under section 19 as well as the right to seek redress for human rights injustices under section 21 of the constitution. Sitting as the Constitutional Court, the High Court of Lesotho in this matter observed judicial activism and held that the contested section was indeed unconstitutional.

Because Lesotho is a common law jurisdiction, owing to the principle of the hierarchy of courts, the High Court in this case made a new human rights progressive development, which is binding to both state and non- state actors acting in the administration of justice. It required the initiations of modifications in the judicial justice sector to accommodate witnesses with disabilities.

For an example, it invested the state with the duty to disseminate the judgement in order to empower people with mental disability to report human rights injustices and thus seek redress as well as making all stakeholders in judicial justice of this new development. It also required the adoption of modifications that will enable people with mental disabilities to report cases and effectively adduce evidence.

These include the training and employment of accommodation providers by the state. These are experts who would support people with mental disabilities when giving evidence throughout the judicial justice process. Included is also the fact that the actors in judicial justice such as police, prosecutors and the presiding officers must be sensitised of and be equipped with skills to handle people with disabilities. Of course, the judgement also implies that the court rules relating to giving of evidence must be reviewed in order to accommodate witnesses with disabilities.

The disability community in Lesotho regarded this judgement as a positive stride towards protecting and promoting the disability rights. This was especially so in the absence of the disability rights specific legislation whose bill is pending since 2012. Regrettable, despite the fact that it is positive, this judgement has not yet practically impacted on people with mental disabilities.

This is because the state has not yet made any initiative to implement this judgement. Although judicial activism is so recommended, in the absence of the political will to promote the rights of people with disabilities, this philosophy is somewhat futile in Lesotho. LNFOD therefore appeals to the government of Lesotho to put promotion of the rights of the long oppressed people with disability as one of the national authority. It therefore calls the government to implement the judgement of **Koali Moshoeshoe's case**, and give disability grant as stipulated in the National Social Protection strategy. Persons with Disabilities Equity Bill have been pending for too long. LNFOD strongly recommends that the Bill be enacted in to law speedily to end the injustices against the disabled community in Lesotho



GENERAL NEWS

Gender Sensitive Inclusive Education for Persons with Disabilities

By: Mekananelo Ramoholi

The Convention on the Rights of Persons with Disabilities (CRPD) protects the right of persons with disabilities to education, free from discrimination and on the basis of equal opportunity. In particular State Parties are obliged to ensure inclusive education system at all levels. Learners with disabilities should be able to participate in general mainstream schools to ensure lifelong learning that is characterized by quality, continuity and relevance. However, in Lesotho like most states which have ratified the Convention, the trend is that children with disabilities are either out of school, in special education schools or are in general mainstream schools that are hardly inclusive. Where they are confronted with mainstream schools the tendency for a majority is for them to drop out due to lack of provision of accommodations.

Whereas significant strides have been made in Lesotho towards the promotion of inclusive education such as the adoption of the Inclusive Education Policy in 2018, the gender perspective remains a crucial aspect that cannot be overlooked throughout qualification this journey. That is, what are the inherent underlying societal norms and cultural biases around gender and disabilities that are likely to affect either boys or girls and men or women in the education system? The implications of gender and disability negatively affect the learning outcomes for boys and girls with disabilities.

The educational attainment among the disabled persons as disaggregated by sex in Lesotho indicates that there is a larger proportion of men as compared to women who neither never attended school nor had any (The Population Housing Census, 2016). However, it cannot be disputed that girls with disabilities are among the most marginalized and disadvantaged group in our society. The United Nations Girl's Education Initiative has pointed out that there has been evidence of greater numbers of girls with disabilities who are enrolled and retained in school, yet on the other hand there is also consistent reference to girls with disabilities dropping out of school more than boys and often due to gender related challenges. For example; issues such as gender based violence, early pregnancy and lack of adequate WASH facilities for menstruation disproportionately affect girls with disabilities. The 2017 baseline survey by LNFOD indicates amongst others that comparatively there is higher proportion of males with disabilities who had gone beyond high school than the females with disabilities.

For this reasons the long-term social status of girls with disabilities is affected as lack of access to education in turn implies that they are also likely to be excluded from employment opportunities. LNFOD is accordingly implementing a program on gender and disability rights in practice that will see the mainstreaming of gender across its programs and its overall structure. The project will touch on areas such as gender based violence, inclusive education and economic empowerment to promote gender equality and women empowerment in the disability sector in Lesotho.

GENERAL NEWS

Negative Impact of COVID- 19 on Persons with Disabilities in this country.

By: Pascalina Letsau



LNFOOD played a major role to go around the world to seek funding in order to contribute the betterment of the lives of persons with disabilities in this country, whereas the country has a negative effect to livelihoods of Persons with disabilities.

I got financial support from LNFOOD to start my small business by providing start-up of M3, 000. I started a business enterprise of buying and selling clothes and bottles for Vaseline and many more. I used to buy clothes from South Africa and sell them house to house around my neighbouring villages. My business was growing fast; some customers would even come to my house and buy. There were signs that my business would go far, before the advent of COVID-19 pandemic hit globe. The infections kept on growing until they spread to African continent and Lesotho as well, and negatively impacted livelihoods of persons with disabilities (PWDs)

Countries started enforce Lockdown in order to manage the spread and to equip health sector. Borders were closed. This means movement between Lesotho and South Africa was suspended. That is where miserable started to my business, all goods bought abroad got finished. I suddenly stopped to go to South Africa to buy stock I used to sell. I had come up with a new business idea. I thought of selling small things that will be easily available in the markets locally such as; sweets, snacks, cigarettes and airtime. Then with remaining money tried to pay for basic needs that my family needed most during this hard times of lockdown. Small things that I started to sell were not as available as the original business I had. My family needs on the other side kept on growing and it knocks my business down as my life too is depended on it. The social assistance programmes were not provided to persons with disabilities by the government.

I am very scared because if the thread of this pandemic takes too a long time that most people especially those with disabilities going to die not by the disease but hunger. I wonder as even now cannot move from districts as most people are buying those airtime, cigarettes and snacks in bulk mostly in Maseru district. So if the law says we have to do everything in those districts we are living in, the situation is going to be worse.

I would like to advise decision makers to review things so that we all can live even in these situations. I am worried if cannot allowed to move between districts, persons with disabilities are going to face tripled poverty compared to other people. There is no disability grant, no support from the government to PWDs even at this hard times, no sanitizers, no masks, there is nothing to help us cope with this Corona thing. The situation depresses, and I am afraid that people are going to be killed by hunger instead of Covid-19.

ADVOCACY WORK



LNFOD

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