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The right to education for children with autism in Lesotho: A review of the legal and policy frameworks

Abstract

A child's access to equal educational opportunities is considered a basic human right, which extends even to children with disabilities. However, the realisation of international agreements protecting this right lies in individual countries' interpretation and implementation of such rights. This study examined how the right to education for children with autism is provided for, protected and promoted in Lesotho's existing legislation and policy frameworks. A critical policy analysis was employed to explore how explicit or implicit the language used in the legal and policy frameworks is to generate opportunities and/or social inequalities in realising this right for autistic children. Reviewed legislation and policies were purposively selected to address the phenomenon of the study. The documents selected were four legislations; the Constitution of Lesotho (Lesotho, 1993), Education Act, No.3 of 2010 (Lesotho, 2010), Children's Protection and Welfare Act 2011 (Lesotho, 2016b), Persons with Disability Equity Act of 2011 (Lesotho, 2021), and two policy documents; National Disability and Rehabilitation Policy of 2011 (Lesotho, 2011a), and Lesotho Inclusive Education Policy of 2018 (Lesotho, 2018). The findings revealed that while there are laws, including the Constitution of Lesotho (Lesotho, 1993), and policies that recognise the right of children with disabilities to education in Lesotho, there seemed to be no legal obligation to warrant the provision of this right for children with autism. Thus, this may have a negative impact on the provision and access to equitable education for these children and, in turn, the right to education for children with autism. Therefore, a legislation and policy review is recommended if this right is to be realised for children with autism.

Keywords: *autism, children, legal and policy framework, Lesotho, right to education*



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1. Introduction

Education as a right is a significant right anchored on equal educational opportunities and the development of not only some but all individual children's full potential (UNESCO, 2021). For children with disabilities, including those with autism, this right is acknowledged and protected in various international human rights protocols and other instruments, which are reflected in many countries' legislation and policy frameworks (UNESCO, 2015). Globally, while the development of these frameworks is at different levels and

varies widely, progress has been made in recent years in recognising and providing this right for children with autism (UNICEF, 2014). Research suggests that legislative frameworks such as the *Individuals with Disabilities Education Improvement Act of 2004* and the *Children and Families Act of 2014* have resulted in increased visibility of children with autism in regular schools (US Department of Education, 2021; El-Salahi, Khaki & Vohora, 2023; Education Committee, 2019). These frameworks challenge partialities and exclusions within society, particularly formal education as a whole. However, it is significant to note that the interpretation and implementation of such frameworks by various stakeholders in individual countries are important (UNICEF, 2014).

In Africa, countries such as South Africa have pronounced education as a right for children with disabilities in the *Constitution of the Republic of South Africa* (1996) and *White Paper 6* (DoE, 2001). Similarly, the Kenyan *Constitution* (Republic of Kenya, 2010), the Kenya National Special Needs Education Policy Framework (2009) and *Zimbabwe National Disability Policy* (Government of Zimbabwe, 2021) entitled all children to education. However, according to the *African Child Policy Forum* (2008), the legal and policy framework that exists in most African countries is, for the most part, in disharmony with the present knowledge and perceptions about providing education for all children, particularly those with neurodevelopmental impairments like autism. Autism spectrum disorder (ASD) is a developmental condition with impaired communication and social skills, as well as repetitive behaviours and limited interests (American Psychiatric Association, 2000). This multifaceted nature of ASD can contribute to significant difficulties for children with ASD to adapt to a new environment and easily interact with their peers and teachers which, in turn, can result in increased risk of behavioural and emotional problems, discrimination, bullying, exclusions and, ultimately, increased drop-out rate and poor school and adulthood outcomes (Wehman *et al.*, 2014). However, with comprehensive and individualised support programmes to help them mitigate difficulties inherent to inclusion in either special or mainstream primary schools, children with autism can successfully participate in education and have positive education outcomes.

The adoption and domestication of various human rights treaties, including *Conventions on the Rights of the Child* (CRC) (UN, 1989) and *Convention on the Rights of Persons with Disability* (CRPD) (UN, 2006) in Lesotho, have ensured the development and enactment of various national legal and policy frameworks that echo education as an essential human right for all children. The trajectory of these instruments can be traced back to the *Constitution of Lesotho* (1993) and the recently legislated *Persons with Disability Equity Act* (Lesotho, 2021). According to Tseeke (2021), these frameworks have, in particular, contributed towards improved access to education for children with disabilities, even within the regular education system. Lesotho has taken various initiatives to recognise the right to education for children with disabilities. Influenced by the *Special Education Policy Statement* in the 1990s (Lesotho 1989), the integrated education system was introduced within the education system, and this saw the enrolment of children with disabilities into the regular schooling system (Urwick & Elliot, 2010).

Additionally, to achieve the Dakar Framework for Action: Education for All Goal ii (UNESCO, 2000), Lesotho introduced free primary education in 2000 and legislated it as free and compulsory through the promulgation of the *Education Act of 2010* (Lesotho , 2000; Lesotho, 2010). Thus, the number of children with disabilities enrolled in schools has since increased in the regular schooling system, with the current prevalence rate reflecting a high enrolment rate of children with sensory disabilities across all three levels of schooling (Lesotho, 2020). The downside, however, is that the Ministry of Education and Training in Lesotho does not

have reliable data collection mechanisms to identify children with disabilities in schools, as information regarding students' disability is dependent on teachers who often do not have appropriate knowledge and skills about disabilities, in addition to the absence of screening and assessment tools to identify such disabilities (Mosia, 2019).

While these legislative and regulatory efforts by the government of Lesotho are commendable in realising all children's right to education, including those with disabilities, it appears little is known about the education of children with autism in Lesotho. Not only is there a lack of national estimates on the prevalence of ASD in Lesotho, but also a dearth of literature documenting the education and life of these children. This situation translates to too little attention being focused on ASD as a disability by various bodies in relevant fields which, in turn, contributes to the profiling and needs of children with autism – including the right to education – being neglected. In an interview with Lesotho Television on 2 April 2020 during World Autism Awareness Day, one of the parents of children with autism indicated that education as a right for children with autism in Lesotho is not practically recognised as they constantly experience rejection and prejudice from mainstream schools and society, as well as pressure on parents to enrol children with autism in special schools.

In Lesotho, mainstream schooling for children with disabilities is particularly limited to children with overt physical and sensory disabilities (Mosia & Tseeke, 2021). Children with invisible disabilities such as autism and other intellectual and developmental disabilities face significant challenges in accessing education in regular schools (Croydon, Remington & Kenny, 2019). According to the MoET (Lesotho, 2018), restricted human capacity, lack of clear guiding principles in coordinating special education activities, rigid curriculum and inappropriate infrastructure hamper implementing and providing equitable and quality education for students with disabilities in Lesotho. This study therefore aims to review how the existing legislation and policy frameworks in Lesotho define and interpret the right to education for children with autism, and which provisions as well as approaches are adopted by these frameworks to realise the right to education for these children. It is hoped that the assessment of these instruments will provide a background to how the right to education for children with autism is enshrined in and protected by the legislation and policy framework in Lesotho. Therefore, the study was guided by the research question: How do Lesotho's existing policy and legislation frameworks safeguard and promote the right to education for children with autism?

2. Overview of education provision for children with autism in Lesotho

Lesotho's formal education system recognises three types of schools: public, independent and special education (Lesotho, 2010). In addition to this categorisation, the Special Education Unit, as a Department within the Ministry of Education and Training (MoET), recognises three types of schools, namely regular, integrating [sic] and special schooling (Lesotho, 2018: 9), and for children with disabilities, education is available through integrated and special schooling, with high enrolment rates observable in special schools (Lesotho, 2018). According to the Ministry of Education and Training (Lesotho, 2018), children with disabilities are accommodated in eight primary schools, four integrated high schools, five special primary schools, and at three institutions of higher education learning. While this evidence seems to indicate that these children have access to education in Lesotho, there is minimal information on the prevalence of children with autism in these schools. There is a lack of more accurate and systematic data on how many children with autism are in special, integrated and regular schools. With no stipulations on the precise number of learners with autism, ASD is marginally

mentioned as an example of intellectual disability in MoET's 2022 enrolment statistical return forms. The statistics show intellectual disabilities as the highest type of disability present in both Early Childhood Care Development Centres (ECCD) and primary schools, with 104 out of 474 ECCD centres and primary schools accommodating students with intellectual disabilities. In these schools, 8 249 out of 14 537 students are classified as those with special education needs.

Pilane (2018) reports that there are no public schools in Lesotho that enrol children with autism; as such, some are enrolled in the few available special and private schools, some of which are too expensive to be accessed by children from low-income family backgrounds. Additionally, most of these schools are urban based, even though most children with disabilities live in rural areas. Moreover, Morai (2021) contends that most children with disabilities in Lesotho seem to have minimal chances to get enrolled and stay at a regular school for various reasons, which include prejudice by society, poverty, inaccessible schools and curriculum, lack of human resources, and accessible transport. The lack of specialist personnel and resources within the MoET also contributes to the apparent failure to conduct proper assessment and diagnosis routines to determine appropriate school placement and the level of support needed for children with ASD. Furthermore, financial difficulties in Lesotho's education system have led to a lack of dedicated special education needs services at regular schools for children with disabilities, including children with autism. Hence, there are limited educational opportunities for autistic children (Lesotho, 2018). Much of the work being done in Lesotho to develop and improve education for children with disabilities, including children with autism, is steered by Non-Governmental Organisations through funded projects, which cease to continue and are often not scaled up by the MoET after the initial support period (Mosia & Tseeke, 2021).

3. Methodology

The study used qualitative content analysis to review how the existing legislation and policy framework in Lesotho interprets and provides for education as a right for children with autism in the country. Content analysis was considered suitable, because the study seeks to provide descriptions and an understanding of the country's position and content within the specific legislation and policy context regarding the right to education for children with autism (Krippendorff, 2004). Further, this method enabled the researchers to compare various features of texts and narratives across multiple sources of social communication and reveal how the right to education for children with autism is valued and legitimised in the legislation and policy framework (Berg, 2004; Schreier, 2012). The researchers perceived these frameworks as documents containing words and narratives created and interpreted in a complex way to deliver particular ideologies and actions about the right to education. Therefore, through the deconstruction philosophical lens by closely reading the legislation and policy content, policymakers' values and views about the right to education for children with autism can be understood (Krippendorff, 2019; Young & Diem, 2017). Deconstruction was chosen as the philosophical lens, because Hendricks (2015: 2) argues that "deconstruction takes elements of the text apart, points out the behaviour and figurative language and interprets the sign in another way". As such, this philosophical lens enabled the reading of documents in a critical manner that allowed for deeper understanding of their stipulations.

The search, conducted between 5 July and 30 August 2023, focused on legislation and policy frameworks that directly and indirectly impact the endorsement and protection of the right to education for children with autism. The search focused on legislation and policy frameworks developed between 1993 and 2023 to obtain comprehensive data. The

search strategy involved three tasks. Firstly, the authors manually searched for printed policy and legislation documents that specifically addressed the right of children with autism to education. Because of the lack of results, the search was expanded to gather legislation and policy addressing the rights of children with disabilities. When that strategy produced limited data, the search included legislation and policies addressing all children's rights to education. Where original hard copies were not obtainable, reissues were requested from the ministries responsible with the aim to synchronise the relevant policy or legislation framework. Secondly, the Lesotho government websites were also searched to identify and review legislation and policy frameworks that addressed general issues of disability, education and children's rights. The third strategy included various search tools such as Google, Google Scholar, PubMed and academic databases using key terms and phrases such as 'autism', 'right to education', 'disabilities', 'disability policy', 'inclusive education', 'education legislation and policy', 'Lesotho education laws', 'autism in Lesotho', 'autism rights', 'autism and education in Lesotho'. The authors placed no language limit on the search, as the objective was to find as much relevant information as possible on policy and legislation frameworks in Lesotho.

3.1 Selection criteria

The criteria for the selection of documents was deemed relevant for the review of prioritised legislation and policies on disability rights. These included the *Constitution of Lesotho* (Lesotho, 1993), all gazetted legislation and policies that guide and inform education (a total of six documents), including disability rights, as well as education and disability policies that were specific to the rights of children with disabilities. A total of four law (*Constitution of Lesotho 1993*, *Education Act, No.3 of 2010*, *Children's Protection and Welfare Act 2011*, *Persons with Disability Equity Act of 2011*), and two policy documents (*National Disability and Rehabilitation Policy of 2011*, *Lesotho Inclusive Education Policy of 2018*) were identified. These frameworks were then examined to determine how they support and protect the education rights of children with autism in Lesotho. Documents focusing on informal education were excluded from the review.

3.2 Data analysis

The study used inductive content analysis and adopted a grounded theory approach to analyse the legal and policy framework (Schreier, 2012). This method was used to understand how the legislation and policy framework in Lesotho construes the right to education for children with autism. According to Hsieh and Shannon (2005), this method allows for text content interpretation. The analysis was an open process and took place in multiple stages. Firstly, the researchers closely read the content of each document, and emerging concepts from text units were identified and coded within the context in which they occurred (Creswell, 2014). As the coding process continued, more themes emerged, providing insight into the legislation and policymakers' interpretation of autistic children's right to education, and specifics and contexts upon which the right to education's perspectives was applied in the form of provisions and strategies (Schreier, 2012). The documents were re-checked, and with the emergence of new categories, the documents were once again re-checked to verify if the new category had not already been identified to ensure the presence of all categories and the emergence of new ones. The documents were compared using the constant comparative analysis strategy (Corbin & Strauss, 2015), and similar themes were combined. The unit of coding was a phrase, sentence, clause, and even the entire paragraph in some instances. To capture and understand the coding unit's background and context, sentences before and after the unit were also read.

4. Results and discussion

This study reviewed the existing legislation and policy frameworks that depict, endorse and safeguard the education rights of children with autism. It looked at the contents of these frameworks and their strengths and gaps in relation to children with autism. In addition, the study looked at the potential impact the representation would have on the provision and realisation of children's right to education. Despite not being specific to children with autism, the findings reveal that the existing laws and policy frameworks laid down in Lesotho denote the country's intention to realise the right to education for all children, including those with autism and disabilities.

4.1 The legal framework in Lesotho

The findings identified four legal documents, including the *Constitution of Lesotho* (Lesotho, 1993), the *Education Act* (Lesotho, 2010), the *Children's Protection and Welfare Act* (Lesotho, 2011), and *Persons with Disability Equity Act* (Lesotho, 2021), which are the pieces of legislation that have been developed by Lesotho. Besides the Constitution, these other laws (mentioned above) have, in some way, ratified the requirements for international human rights instruments adopted after ratifying the CRPD in 2008.

4.1.1 The Constitution of Lesotho, 1993

The *Constitution of Lesotho* perceives education as a directive principle of state policy, conditional on the financial and developmental limits of the country. The *Constitution of Lesotho* (1993, 42 Section 28(a) and (b), respectively), indicate that:

Lesotho shall endeavour to make education available to all and shall adopt policies aimed at securing that:

- a. Education is directed to the full development of human personality and sense of dignity and strengthening the respect for human rights and fundamental freedoms.
- b. Primary education is compulsory and available to all (Lesotho, 1993: Section 28(a)-(c); Lesotho, 1993: 42).

In addition, while there are no clear stipulations on children with autism, including those with disabilities, the *Constitution of Lesotho* (1993) makes provision against discrimination in the gratification of the rights as stipulated in Sections 4(1) and 18. In these sections, disabilities are not outlined as prohibited grounds of discrimination. Instead, they are indirectly covered based on "other status", since the list of prohibited grounds of discrimination is open-ended. More so, the *Constitution* (Lesotho, 1993: Section 26(2)) further specifies that,

In particular, the State shall take appropriate measures in order to promote equality of opportunity for the disadvantaged groups in the society to enable them to participate fully in all spheres of public life (Lesotho, 1993: 41).

The preceding excerpt can be interpreted as an attempt by the Lesotho government to strive for the inclusion of all citizens, including children with disabilities.

Conversely, it is imperative to note that in Lesotho, unlike in other countries, education is not necessarily a right. This is because the stipulations pertaining to education provision are catered for under the *Constitution of Lesotho* (1993: Chapter III, Section 25: Application of the principles of State policy), which stipulates,

The principles contained in this Chapter shall form part of the public policy of Lesotho. These principles shall not be enforceable by any court but, subject to the limits of the economic capacity and development of Lesotho, shall guide the authorities and agencies of Lesotho, and other public authorities, in the performance of their functions with a view to achieving progressively, by legislation or otherwise, the full realisation of these principles (Lesotho, 1993: 40).

The implication of the foregoing excerpt is that, while Lesotho seems to be striving to offer education for all, including for children with disabilities, it also absolves itself from any legal commitment towards making such education available. In this regard, Lesotho does not appear to be determined to obligate itself in providing education for disabled children as a right, but would just make efforts, where applicable, to cater for such children. Thus, this stance by the supreme law of the country sets the base on which all education matters are dealt with in Lesotho, including the provision of education for children with autism.

4.1.2 *Education Act, 2010*

The *Education Act* (Lesotho, 2010) promotes, protects and guarantees the right of all children to education and educational opportunities and facilities (Lesotho, 2010). This Act situates education within the international human rights instruments that advocate equal quality education. The Act's non-discrimination section (Lesotho, 2010: Section 4(2)(a) and (c)) indicates that all children shall have access to educational opportunities and shall not experience any form of discrimination. For children with disabilities, (Lesotho, 2010: Section 4(2)(b)) obligates relevant stakeholders such as school proprietors, principals and teachers to include all learners in the education system and to ensure "as soon as circumstances permit, that a learner who is physically, mentally or otherwise handicapped is given the special treatment, education and care required by his or her condition" (Lesotho, 2010: 164).

The preceding extract implies that all children, regardless of physical, mental, or other status, are included and catered for in the Lesotho education sector without prejudice. Conversely, the government of Lesotho (2010), through Section 4(2)(b), absolves itself from the obligation to provide education for children with disabilities by asserting that they can only implement such provisions in the case where circumstances permit, without saying how they will make the environment conducive. The stipulation by the *Education Act* (Lesotho, 2010) draws from the *Constitution of Lesotho* (1993) as it makes for provision of education under Chapter III, which are principles of state policy (Lesotho: Section 25: Application of the principles of State policy).

The implication is that in the event that the economic and developmental status of Lesotho is considered weak, the government, and in this case the MoET, can be absolved from the responsibility to offer education for the learners with autism.

4.1.3 *Children's Protection and Welfare Act, 2011*

The right to education for children with disabilities is further protected under the *Children's Protection and Welfare Act (CPWA) of 2011* (which is currently under review) (Lesotho, 2011a). The Act, through Section 11(3), establishes an education system that cannot discriminate against and deny children with disabilities the right to education on account of the category and level of their disability. In addition, CPWA (Lesotho, 2011a: Section 13) explicitly states, "The education and training provided to children with disabilities should help them enjoy a full and decent life and achieve the highest degree of reliance and social integration." (Lesotho, 2011(b):471). The preceding extract indicates the intentions of the Lesotho government regarding how it aims and aspires to provide for the needs of children with disabilities.

4.1.4 *Persons with Disability Equity Act, 2021*

The *Persons with Disability Equity Act* (2021) legislates the fundamental right to education for children with disabilities (Lesotho, 2021). Section 23(1)(a) makes provision for all learning institutions to be inclusive and indicates that learners with disabilities shall not be denied admission to any institution or subject they want to pursue on grounds of their disability. It further states that the needs of children with disabilities shall be recognised and accommodated as such (Lesotho: Section 23(1)(b)). In addition, this Act places an obligation on the MoET through the Special Education Unit to make provision for inclusive education for children with disabilities and to ensure that “training on the use of accessible format methods for persons living with disabilities is provided to enable teachers to accommodate learners with disabilities” (Lesotho, 2021: 9). These stipulations from the Act appear to promote inclusive schooling for all children in Lesotho, irrespective of their needs and abilities.

4.2 Policy frameworks

Lesotho has developed various policies that have integrated the values and requirements of different international and regional human rights instruments and, as such, acknowledges all children’s right to education, including children with disabilities. The policy frameworks reviewed include the *National Disability and Rehabilitation Policy* (Lesotho, 2011) and the *Lesotho Inclusive Education Policy (LIEP)* (Lesotho, 2018).

4.2.1 *National Disability and Rehabilitation Policy of 2011*

The Lesotho education sector’s commitment to cater for the rights of children with disabilities was further demonstrated through the adoption of the *National Disability and Rehabilitation Policy of 2011* (Lesotho, 2011), which aims to secure enjoyment and equal access to fundamental human rights for people with disabilities as protected in the *Constitution of Lesotho* (1993). This policy advocates the meaningful inclusion of people with disabilities in mainstream society, including the mainstream education system, through inclusive and specific programmes tailored for people with disabilities. Further, it endorses equal access for people with disabilities to inclusive education, availability and production of accessible teaching and learning methods and materials, and establishment of appropriate and accessible technologies and assistive devices. It also calls for the establishment of assessment and examination centres and training of specialist teachers to ensure appropriate modifications of the school environments, and support and accommodation of the educational needs of people with disabilities (Lesotho, 2011a).

The implication of the foregoing is that the *National Disability and Rehabilitation Policy* (Lesotho, 2011) advocates the advancement of inclusive education in Lesotho. The stipulations of the policy endorse accessibility of appropriate technologies and assistive devices for inclusive settings to operate or function appropriately.

4.2.2 *Lesotho Inclusive Education Policy (LIEP) of 2018*

Lesotho further adopted the LIEP (Lesotho, 2018). This policy aims to remedy exclusion and prejudice of children with disabilities within the mainstream education system. LIEP (Lesotho, 2018) affirms the right to education for all learners based on equal opportunity and access to common, regular, and inclusive education systems. Additionally, it advocates the screening, assessment and identification of special needs and educational barriers for appropriate school placement and provision of intervention services for learners with special education needs. Most importantly, the policy ensures the non-rejection of disabled learners in the

schooling system. Further, it acknowledges the significance of the role played by all education stakeholders in ensuring and enhancing education access, participation and achievement for children with disabilities (Lesotho, 2018).

LIEP (Lesotho, 2018) outlines six main strategies aimed towards the provision of inclusive education:

- To improve the schooling environment;
- To capacitate education providers to support learners with special education needs;
- To enhance partnership for the implementation of the LIEP;
- To adapt the national curriculum to embody inclusive education principles;
- To capacitate management and governance bodies in Inclusive education;
- To have laws and policies supporting inclusive education in Lesotho; and
- Establish the legal and policy framework promoting inclusive education (Lesotho, 2018: 13-15).

The strategies outlined above indicate the noble aspirations and intentions of the MoET to implement inclusive education to offer equitable and quality education for all Basotho. However, despite the noble stipulations of the legislation and policies reviewed in the preceding sections, it appears Lesotho is still lagging behind in realising the right to education for children with disabilities, as evidenced by the consequences associated with the seemingly poor implementation of LIEP 2018 (Rakolobe, 2023). More so, as Ralejoe (2019) states, some of the barriers that thwart the effective implementation of inclusive education in Lesotho are the hostile curriculum and the lack of appropriately trained teachers to deal with children with disabilities. Additionally, Mosia and Tseeke (2021) lament that the Ministry of Education and Training appears to lack the political will to support and ensure access to education for children with autism. Thus, this calls for concerted efforts from all stakeholders in the education sector to join hands in ensuring that inclusive education is realised in the Lesotho education system.

5. Conclusion and recommendations

The success and failure of any country's educational enterprise are primarily determined by how the legislation and policy are framed and implemented towards the enjoyment of fundamental human rights by all citizens. Despite varying degrees of clarity and the absence of autism-specific legislation and policy, Lesotho's legal and policy framework appears to contain, to some extent, statements that suggest a commitment towards the right to education for children with disabilities. However, unlike other African countries, like South Africa, which expressively legislate education as a justiciable right that the government is obligated to realise, the legislation in Lesotho distances the government from taking a clear and direct legal obligation of offering the right to education. Accordingly, legislation may be seen to permit and perpetuate the discrimination of marginalised groups, including children with autism, from thoroughly enjoying and exercising their right to education within the mainstream education system. If the government of Lesotho wishes to improve access to education and realise the right to education for children with autism, laws and policies should be promulgated and implemented to strengthen local interpretation and enactment, thus ensuring that these frameworks are not used as menus from which schools and administrators select appealing elements to suit policy desires.

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