



Commission for Gender Equality  
A society free from gender oppression and inequality

## **SOUTH AFRICAN LAW REFORM COMMISSION DISCUSSION PAPER 163**

### **PROJECT 148 - DOMESTICATION OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

*Commission for Gender Equality Comments*

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## 1. Introduction

The Commission for Gender Equality ('CGE') wishes to express its gratitude for the opportunity to make written representations on the South African Law Reform Commission's Discussion Paper 163 on the Domestication of the United Nations Convention on the Rights of Persons with Disabilities.

The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa Act, 1996 (the Constitution), is mandated to promote and protect gender equality in government, civil society, and the private sector.

The Commission for Gender Equality Act 39 of 1996 ('the CGE Act') gives the Commission the power to:

- Monitor and evaluate policies and practices of organs of the State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

The CGE welcomes the opportunity to make submissions on the discussion paper and endorses the introduction of the proposed Bill to incorporate the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into South African legislation. Despite South Africa's extensive legislation safeguarding the rights of individuals with disabilities, notable deficiencies in execution and societal attitudes remain. This Bill signifies a chance to shift towards a paradigm centered on human rights, prioritizing dignity, inclusiveness, and equal rights for those with disabilities.

Notwithstanding progress achieved since 1994 in recognizing and abolishing discriminatory laws, South Africa's legal structure remains inadequate in meeting international human rights standards. Discrimination endures in the interpretation, enforcement, and oversight of legislation, highlighting systemic issues. The Constitution guarantees the rights of individuals with disabilities; however, the lack of targeted legislation has sustained disparities, worsened by inadequate revisions to current laws like the Employment Equity Act 55 of 1998 (EEA) and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).

The CGE asserts that the proposed Bill presents a crucial chance to synchronize South Africa's legislative framework with CRPD stipulations. Nonetheless, the inquiry persists: will the legislation effectuate significant transformation in the lives of individuals with disabilities, or will it succumb to the identical institutional obstacles that have impeded prior policies?

## **2. Legislative Structure and Discrimination**

The CGE endorses the proposed Bill to incorporate the United Nations Convention on the Rights of Persons with Disabilities (CRPD) into South African law, recognizing the ongoing necessity for a transformation in the perspective of disabilities. A significant need persists for a paradigm change towards a human rights-centered strategy that prioritizes dignity, inclusion, and equal rights for individuals with disabilities. The perception of disability is a crucial concept that influences both the well-being of individuals with disabilities and the ethical standards of society. Negative perceptions of disability undermine individuals with disabilities, resulting in their social exclusion and isolation. Conversely, a healthy society fosters affirmative attitudes towards those with disabilities and advocates for social inclusion. Historically, disability has been perceived as a deficiency, leading to the marginalization of individuals with disabilities by society.

Examining South Africa's history and the anticipated impact of this proposed Bill on the protection of individuals with disabilities, there is optimism that effective enforcement of the legislation, if enacted, will contribute to eliminating the exclusion of persons with disabilities. Furthermore, several new laws and amendments include provisions that directly or indirectly result in discrimination against individuals with disabilities. Consequently, significant portions of South Africa's legislative framework continue to fall short of international human rights norms and principles concerning the rights of those with disabilities.

A primary reason legislative discrimination persists is that it is not always apparent from the text of a statute. Issues frequently emerge upon the application of the law or statute. This is seen in the formulation of regulations pertaining to specific actions and via the manner in which statutes and/or their restrictions are enforced. Thirdly, the erroneous and/or uninformed interpretation of the law, and finally, the widespread issue of inadequate enforcement of the law also contributes to this. Despite the constitutional protection of the rights of individuals with impairments, there is currently no legislation specifically addressing disabilities.

### **3. Conformity with the standards of the Convention on the Rights of Persons with Disabilities**

The CGE recognizes that South Africa's current legislation only partially conforms to standards of the Convention on the Rights of Persons with Disabilities (CRPD). The proposed Bill is a crucial chance to rectify these deficiencies and guarantee adherence to international human rights norms.

The EEA and PEPUDA necessitate revisions for complete compliance. Furthermore, the CGE considers the integration of the CRPD into South African legislation essential. It is necessary to enquire whether, despite the country

possessing some of the most extensive legislation and policies safeguarding and advancing the rights of those with disabilities globally, these individuals are engaged at all levels of government. Will this law enhance the efficacy of the current legislative and policy framework, and will it lead to tangible improvements in the lives of those with disabilities? Will this new legislation enhance the effectiveness of implementing existing laws and regulations, or will it merely dissipate once it approaches the grassroots level?

#### **4. Challenges in Policy Implementation**

The issue of implementation is especially pertinent when examining the government's initiatives to enhance access to services for individuals with disabilities through the enactment of policies and inclusive legislation, and whether this new, distinct disability legislation will serve as a catalyst for improvement.

It is widely acknowledged that, although support for the formulation and approval of policy has been exemplary, the execution of this policy continues to pose challenges. It is noteworthy that capacity restrictions at the programmatic level hinder the efficient implementation of policies. Policy implementation challenges are inconsistently addressed across various levels of government for multiple reasons. The reasons encompass low conceptual comprehension, insufficient advocacy, inadequate or unsuitable institutional frameworks, and an overall deficiency in capacity.

Two additional factors contributing to the inadequate implementation of legislation and policies are the insufficient review and articulation of the definition and nature of disabled individuals' participation, and the inadequate linkage of policy requirements for disability mainstreaming to performance management, which undermines commitment to implementation. Furthermore, legislation and programs remain unimplemented due to insufficient assigned fiscal resources and lack of

commitment. An illustrative example is the Policy on Inclusive Education; the White Paper was published in 2001, although its implementation continues to be scattered.

The successful implementation has primarily resulted from political backing by ministers and senior civil servants overseeing agencies, and/or the persistent dedication and advocacy from the disability sector, spearheaded by Disabled People South Africa (DPSA).

Evidence indicates that the national government has effectively established a conducive environment for policy creation in the realm of disability. Nonetheless, as previously mentioned, although support for the formulation and acceptance of policy has been commendable, the execution of that policy continues to pose challenges. It is noteworthy that capacity restrictions at the programmatic level hinder the efficient implementation of policies. Policy implementation challenges are inconsistently addressed across various governmental levels for multiple reasons. The reasons encompass insufficient conceptual comprehension, ineffective advocacy, inadequate or unsuitable institutional frameworks, and an overall deficiency in competence. Two additional factors contributing to the inadequate implementation of legislation and policies are the insufficient review and articulation of the definition and nature of disabled individuals' participation, and the inadequate linkage of policy requirements for disability mainstreaming to performance management, which undermines commitment to implementation. The CGE endorses section 38 of the proposed Bill, contingent upon the comprehensive enforcement of penalties associated with its implementation.

Often draft legislation and policies are not fully enacted due to insufficient allotted fiscal resources, as well as a lack of commitment. It is therefore imperative to ensure that these same issues do not become the cause of

inadequate implementation of the Bill once it is enacted as legislation. Otherwise, the existing issues will endure.

The CGE asserts that the meticulous and effective execution of this Bill would establish distinct opportunities for individuals with disabilities to tackle issues including poverty, elevated unemployment rates, education for children and youth with disabilities, access to social security and assistive devices, housing, public health services, and transportation.

## **5. Intersectional Vulnerabilities**

This is especially significant for barriers to accessibility, particularly for women with disabilities, and especially black women. South African society remains predominantly patriarchal and discriminatory. Despite evolving perspectives, women continue to be perceived as second-class citizens, subordinate to men and requiring protection. Their societal function is predominantly characterized by motherhood and domestic responsibilities.

Women with disabilities encounter compounded discrimination, intensified by patriarchal cultural norms. They frequently face exclusion from social and economic possibilities, resulting in elevated rates of poverty, hunger, illiteracy, and social isolation. The intersectionality must guide the Bill's provisions to provide focused interventions for this at-risk group.

Over 80% of black children with disabilities in South Africa reside in poverty, facing restricted access to healthcare and education. Societal stigma further marginalizes these youngsters, perceiving them as liabilities instead of potential assets. The proposed legislation must establish a framework for early intervention, inclusive education, and sufficient support services.

Section 35 of the draft Bill creates an Equal Opportunities Office to deal with complaints from persons with disabilities. The CGE endorses this idea of



institutional support through an independent monitoring body and designated government focal points for implementation. Nonetheless, with the creation of a transdisciplinary and multisectoral frameworks within government, such as a national commission or, in this instance, an Equal Opportunities Office, it is essential to emphasize that sufficient staffing and budgetary allocation must be a primary focus to facilitate an effective transitional solution for expediting the attainment of equal opportunities for persons with disabilities.

## 6. **Conclusion**

The proposed Bill signifies a substantial advancement in eliminating structural obstacles and advocating for the rights of those with disabilities in South Africa. Nonetheless, its effectiveness depends on effective implementation, sufficient resources, and a dedication to tackling intersectional vulnerabilities. The CGE unequivocally endorses the Bill's objectives and implores policymakers to prioritize its proper implementation to guarantee substantial enhancements in the lives of individuals with disabilities.