

## *Dissing (dis)ability: Human rights for people with disability in the context of employment*

### **Summary**

This policy brief focuses on the introduction and maintenance of human rights for people with disability (PWD) in the context of employment, namely the right to have access to work and rights in the workplace. Employment equity targets for PWD above 1% are hard to maintain for several reasons. In light of this, we make four policy recommendations to government:

- (1) Enact a PWD Act to protect their rights in a targeted way, and in the meantime emphasise that policies and Acts apply to all economic sectors irrespective of sectoral ownership.
- (2) Increase and improve awareness campaigns through targeted programmes to ensure that the workplace is PWD friendly at all times.
- (3) Better monitor and evaluate the position of PWD in the workplace and give the Department of Labour and Commission for Employment Equity (CCE) the authority to make organisations account for poor performance.
- (4) Improve the awareness of disability policy researchers and identify why

only a handful of companies has been able to exceed the target of 2%.

### **Introduction**

In 2011, more than a billion people or 15% of the global population were reported to have some form of disability (WHO & WB 2011). In the same year, the South African Census showed that 7.5% of the population were PWD (Stats SA 2012). Five years later, the Community Survey 2016 indicated that this figure had increased slightly to 7.7% (Stats SA 2016). In the interim, Statistics South Africa (Stats SA) suggested that these figures actually under-represented the situation in South Africa and estimated the national figure at about 12% (DSD 2015b). There is a general trend for people to under-represent the seriousness or even existence of a disability, sometimes due to fear of stereotyping but also due to denial, feelings of shame and even unawareness of their circumstances. Under-reporting results in skewed data, suggesting lower figures in the case of PWD.

Increasing engagements and relationships between and among the

major stakeholders involved in the management of issues surrounding disability (such as the government, the PWD rights movement and international organisations) have assisted in clarifying and providing broader and more accurate definitions of disability. These have led to improvements in research approaches to the question of disability, such as more appropriately formulated questions and enhanced sensitivity towards disability in national surveys. However, there is still a long road to travel and a major challenge is that some impairments remain largely “invisible”. These impairments are not immediately apparent and include the broad spectrum of psychosocial, intellectual, neurological, and mild to profound hearing and visual impairments with which many people live. Particularly, in terms of the Employment Equity Act 55 of 1998 (EEA) and other Acts relating to PWD, the challenge is that PWD are not compelled to disclose the nature or degree of their impairment. This clearly puts pressure on any organisation trying to identify PWD suitable for employment. Given this context, what has happened in terms of policy in the two decades since 1997? What tangible results do we see and what gaps remain? In this policy brief, we examine progress to date and make further recommendations for improving the implementation of policy affecting PWD in the context of employment.

## **Acknowledging PWD in South Africa**

“Nothing about us without us” is the human rights slogan of the international PWD movement, which includes PWD, representative organisations and family members who support them. In South Africa, the movement has spent decades fighting to ensure that the rights of all PWD are acknowledged, considered and respected. It has traversed common stereotypical boundaries such as race, gender, age, culture and religion. The

movement has made great inroads since 1994. The Constitution of South Africa, 1996 (especially the Bill of Rights) firmly entrenches rights and this has cascaded down to legislation such as the EEA and the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA). However, unlike countries such as Kenya, Australia and the United Kingdom, South Africa does not have a specific PWD Act. This means that South Africa does not have the necessary legislation or a framework to monitor, intervene and provide justice for PWD when necessary (Sibanda 2015).

In addition to the gains mentioned above, the movement has taken great strides forward in lobbying government and society to recognise the wide range of forms of disability in the country. Disability is generally equated with a physical impairment (such as confinement to a wheelchair and the loss of limbs or their usage), but it also includes sensory, cognitive, mental, developmental and emotional impairments, or a combination thereof.

However, while the different forms of disability noted above are included in the numerous pieces of legislation, policy researchers are grappling with the complexity of the challenges embedded in these diverse forms of disability. Although the phrasing of questions in surveys has become more respectful, they remain narrow – especially those included in Stats SA surveys. The 2016 Community Survey indicates the diversity of disabilities of South Africans. More than 10% are visually impaired and just under 4% are hearing impaired. Almost 2% have communication impairment and close to 3% have difficulty with self-care. Slightly less than 4.5% have difficulty remembering and almost 5.5% have walking or mobility impairment. These figures confirm that an individual can have one or more impairments that result in disability. Similarly, the presence of impairment

may increase the chance of another occurring, for example a person with autism is more likely to suffer epileptic episodes than a person without autism. However, the weakness in these statistics is that they do not clearly illustrate mental health concerns such as the broad spectrum of neurological and psychosocial disabilities. So, even among policy researchers, more education, awareness and understanding of disability is necessary and mainstreaming is required if they are to conduct improved policy research about PWD.

## **The improving policy context**

The policy context has improved through better understanding of various models and the inclusion of new ones for engaging with the questions of disability. The welfare and medical models remain relevant for understanding and supporting some PWD. However, they have serious challenges. The medical model emphasises the impairment as the cause of inequality and the solution is to view PWD as patients and to prescribe or impose medical treatment. The welfare model considers PWD passive objects requiring welfare support, as if they are incapable of self-care or decision making about their wellbeing. While some aspects of these models are important to recognise and have in place, caution should be exercised in terms of how they project PWD. There remains a tendency to be patronising, offensive and disrespectful of individual human rights and to reinforce the entrenchment of inequality created by society through ignorance. The result is the inability or unwillingness on the part of society to accommodate differences between PWD and those without disability and to grasp diversity within the broader PWD cohort. Tolerance and respect for otherness are missing. In contrast, the models based on social and human rights propose that the barriers

that create inequality and reinforce the negative experience of disability encountered by PWD are a result of society and its limited understanding of impairment. The realisation that disability is a complex interaction of the individual with social and environmental factors has ensured that the approach based on social and human rights is becoming embedded in policy, strategy and legislation across most sectors.

The rights-based approach recognises that PWD are empowered and capable individuals whose right to participate meaningfully in social, cultural, economic and political life in society and their own development must be acknowledged, entrenched and protected. Socially and legally created barriers must be removed and the right to protection, accommodation and freedom from discrimination must be embedded in policies, legislation and strategies. A brief review of South African policy documents relating to PWD and their positioning within various government departments before and after 1994 illustrates how essential the social and human rights models are. Yet many people still consider disability simply a medical or welfare matter. Furthermore, they overlook the contributions of PWD to the economy and their workplace. The National Development Plan (NDP) is a high-level example of the omission of disability, despite decades of lobbying and improved legislation and policy.

The Department of Social Development (DSD) is the state organ that currently

provides oversight over many policies relating to PWD and informs other departments on how to mainstream PWD into their policies and legislation. The DSD and the PWD movement took umbrage at the omission of disability in the *National Development Plan 2030: Our future – make it work* on the grounds that “the task of mainstreaming disability becomes substantially difficult if there are no adequate strategies and resources for disability inclusion” (DSD 2015a). A rejoinder to the NDP was compiled in 2015 that more thoroughly formulates and mainstreams targets which ensure that PWD benefit from the NDP outcomes (DSD 2015a). These targets are incorporated into the 2015 White Paper on the Rights of PWD.

Despite changing policy contexts for the better, many challenges remain over the conceptualisation, implementation and enforcement of the rights of PWD across many areas of society. The implementation of rights includes the social, cultural, political, economic and environmental (built and natural) sectors, as well as the public and private sectors, where PWD find themselves denied access to buildings, information, and goods and services due to the ignorance or intolerance of others. While we cannot cover all these aspects in this policy brief, we take the example of employment as an indicator of economic independence and one in which PWD are most disadvantaged. We focus particularly on some of the challenges in implementing and reaching the PWD targets of the EEA. This Act is a good example, as various

policies and strategies exist which are regularly upgraded to assist in implementing the Act and apply to both the public and private sectors. Examples are the Technical Assistance Guidelines, Code of Good Practice and Handbook on Reasonable Accommodation. The CEE was established as a statutory oversight body in this regard.

## Employment of PWD

Despite the fact that the rights to equality and dignity are protected in sections 9 and 10 of the Constitution, PWD struggle to find employment and – if employed – are not given appropriate support in the workplace. PEPUDA prohibits unfair discrimination against any person on the grounds of disability, including sub-para (c) of section 9 which prohibits conduct that “fails to eliminate obstacles that unfairly limit or restrict PWD from enjoying equal opportunities or fails to take steps to reasonably accommodate the needs of PWD”.

For two decades, employment equity targets for PWD have been set at 2% of a company’s workforce. The 2015 White Paper on the Rights of People with Disability proposes extending this to 7% and then 10% by 2030. Some government departments have proposed raising the existing target to 3% until 2019 with the intention of reaching 7% by 2030. The reality is that few departments or private companies currently even get close to 2%, with many hovering around 1%. In Table 1, we reflect upon attempts to reach the existing target of 2% using biennial data from 2002 until 2016. What we see is that nationally, the employment of PWD has never reached the 2% level. More disconcerting is the fact that the present share of employed PWD in the workplace, despite an initial and gradual increase, has suddenly dropped to that of 2002 (see Table 1). Since reaching an all-time high of 1.5% in 2014, the share of PWD as members of the workforce dropped to 1.2% in 2015 (not shown)

**Table 1:** PWD as a share of the South African workforce from 2002 to 2016

Year	2002	2004	2006	2008	2010	2012	2014	2016
<b>PWD as a share of the workforce in South Africa</b>	1.0%	0.6%	0.7%	0.7%	0.8%	1.4%	1.5%	1.0%

Source: Authors’ combination of figures provided in the CEE Annual Report 2016–2017 (2017) and DSD’s *National Development Plan 2030: Persons with Disabilities as Equal Citizens* (2015)<sup>1</sup>

and 1% in 2016 – indicating that the employment of PWD is following a downward trend, returning to 2002 levels. This trend is disquieting in the context of increased national poverty and unemployment, and much energy is needed to meet proposed targets.

Why are we unable to meet these targets? Various public reports as well as our own interviews with government officials and informants within the sector suggest several reasons.

- Many organisations claim that they cannot find employable PWD within their sector (i.e. with the necessary skills, experience and/or qualification) to meet the basic target of 2%.
- Money is often considered a key factor as those provincial and national departments controlling the respective budgets tend to do better in achieving this target, with some reaching 3%. However, only a few private sector companies have ever achieved 3% and most struggle like the government departments in their sector. Where private sector companies have reached or excelled in their targets, they are usually in the financial sector.
- Many of the strategies and policies of the Department of Labour and DSD give the impression that they apply simply to the public service. However, the EEA and other Acts of Parliament are clear that Acts, policies, codes and guidelines apply equally to all employees and employers irrespective of sector.

## Conclusion

While it is likely that 12% of South Africans are PWD, it seems that employment targets above 1% are hard to achieve and difficult to maintain. PWD is probably the smallest and most marginal group in South Africa out of the key designated groupings, and this is further exacerbated when intersecting

with race, class and gender. The inability of the country to meet the target of employing PWD as 2% of its personnel is an important challenge which must be addressed. A few reasons for this inability stand out: failure to understand disability as a complex interaction of the individual with social and environmental factors; failure to acknowledge the contributions of PWD and what they can achieve; widespread lack of targeted programmes to embrace disability over the long term, beyond simple legal compliance through employment alone; the impression that the private sector is not bound to legislation; the failure of people to disclose a disability; and the disempowerment of organisations, their operational plans and their personnel through simply ignoring legislation and committing to the bare minimum required. This situation inadvertently *disables* any reasonable attempt at monitoring and evaluating the employment and personal career development of PWD in places of employment. This is contrary to rights-based approaches to engaging with PWD. In light of this, the following four policy actions are necessary.

- (1) *Enact a People with Disability Rights Act based on the 2015 White Paper on Persons with Disabilities (DSD 2015b).* There is sufficient documentation available to do this fairly rapidly. In the interim, there is a need to re-emphasise that policies and Acts apply to all economic sectors irrespective of whether they are public, private or non-profit, and monitor implementation.
- (2) *Create greater awareness about disability, its diversity and its position in the workplace.* It is very important that PWD targets are reached, but simply targeting and employing PWD is in itself inadequate. To reach targets and retain them by protecting the rights of PWD, the workplace must be made more PWD friendly. This can be achieved through targeted programmes that

create organisation-wide awareness of PWD diversity, legislation rights and responsibilities; ensure flexible career paths; and avail peer support through forums or the employment of PWD as disability rights managers to protect the rights of PWD employees. Resources must be set aside to achieve such mainstreaming.

- (3) *Improve the monitoring and evaluation of the position of PWD within the workplace rather than simply accepting excuses that suitable candidates are not available in some sectors.* This can be done by revising the equity plan template, demanding that clear targeted plans be attached and demanding annual updates on implementation. This would necessitate the Department of Labour and CEE having greater authority to ensure organisations account for poor performance.
- (4) *Improve policy researchers' awareness of PWD and when commissioning research, identify what makes a workplace conducive to employing and retaining employees with disabilities.* In this regard, it is also necessary to understand how to get an employee or potential employee to willingly see the benefit of disclosing his or her impairment.

Failure to address these recommendations will mean that South Africa has numerous well-meaning and well-intended policies and laws, but that they make no impact on the lived daily experiences of PWD. In such a case, further development of policies would seem purposeless.

## References

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## Endnotes

1. The CEE uses administrative data provided by the Department of Labour. The DSD used the same administrative data for their report from 2002 to 2012, drawing directly on information published in the annual CEE reports. To arrive at the figures for 2014, 2015 (not shown in the table but discussed) and 2016, we developed the mean of the sum of employed PWD for each year across the six levels of employment (top management to unskilled) in the CEE report of 2016 provided on pages 56 to 63. We rounded off the percentages in the table. The actual percentages are 1.46% for 2014, 1.15% for 2015 and 0.95% for 2016.

## Acknowledgement

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## POLICY BRIEF AUTHORS

**Tim Hart**, Senior Research Project Manager:  
Economic Performance and Development,  
HSRC

**Narnia Bohler-Muller**, Executive Director:  
Democracy, Governance and Service Delivery,  
HSRC

**Gerard Hagg**, Chief Research Specialist:  
Democracy, Governance and Service Delivery,  
HSRC

Enquiries to  
Tim Hart: [thart@hsrc.ac.za](mailto:thart@hsrc.ac.za)