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# South Africa's policies of lip-service disrespect people with disabilities

By Tim Hart, Alex Msitshana and Narnia Bohler-Muller • 25 November 2020

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*Most South African private and public sector enterprises, state departments, science councils and universities seem to fail in reaching the minimum 2% employment of persons with disabilities as stipulated, say the writers. (Photo by Gallo Images / Fani Mahuntsi) Less*

South Africa has progressive legislation when it comes to the rights of persons with disabilities, but as these writers point out, reasonable accommodation continues to be overlooked in the workplace, socially and in terms of universal design of buildings — both public and private — including state housing for persons with disabilities.

Like all fellow South Africans, we as disabled persons welcomed South Africa's 1996 Constitution and subsequent legislation, including the [Basic Conditions of Employment Act 75 of 1997](#) (and the [amendment of 2020](#)), the [Employment Equity Act 55 of 1998](#) and the [Promotion of Equality and Prevention of Discrimination Act 4 of 2000](#) (PEPUDA). The legislative developments were based on South Africa's ratification of the Convention on the Rights of Persons with Disabilities (CRPD), an

international treaty intended to protect the rights and dignity of persons with disabilities, and its Optional Protocol, in 2007.

The inclusion of the rights of persons with disabilities in various acts was a first for South Africa and culminated in the 2016 White Paper on the Rights of Persons with Disabilities ([WPRD](#)). Yet it would seem that reasonable accommodation continues to be overlooked in the workplace, socially and in terms of universal design of buildings — both public and private — including state housing for persons with disabilities.

Such oversights, exclusion, ignorance and ineffective enforcement of legislation is actually the cause of disability and not the physical sensory, mobility or psychosocial and neurological challenges that people might have. WPRD is fundamentally clear that it is the *social and physical* barriers that greatly exacerbate the impairment. Yet government does little to enforce legislation or attempt to overcome these barriers in its implementation of policies and legislation.

At least [12% and possibly as much as 20% of South Africa's population](#) experience activity limitation. This covers a spectrum from complete or partial immobility, restricted communication, sensory deprivation, and psychosocial and neurological complications. Some people may have more than one challenge, increasing their inability to function optimally in society. This is compounded by unfriendly and unaccommodating sociocultural and physical environments. This situation probably reflects the lack of will to enforce the rights of persons with disabilities and to listen to their voices.

Most South African private and public sector enterprises, state departments, science councils and universities seem to fail in reaching the minimum 2% employment of persons with disabilities as stipulated. The 2015 commentary of the [National Development Plan 2030: Persons with Disabilities as Equal Citizens](#) set the target for 2020 at 7% and 10% by 2030.

In addition to not meeting quotas, little is done to reasonably accommodate individuals once they are employed. Reasonable accommodation [seems to be a dream](#) with few employers making use of the [Technical Assistance Guidelines](#) and other documents that address [reasonable accommodation](#). It is simply a box to tick and this ticking is not done well as nationally, across all sectors, the employment of persons with disabilities has declined since the 2014 peak of 1.5% and remained stagnant at 1%.

We can only anticipate that this situation will worsen as South Africa's [unemployment level](#) has now risen to almost 31%. The responsible departments of Employment and Labour, Social Development and Women, Youth and Persons with disabilities seem powerless to enforce the laws and policies they have spent so much of the fiscus in tabling.

### **Persons with disabilities as a share of the South African workforce 2002-2019**

Year	2002	2004	2006	2008	2010	2012	2014	2016	2018	2019
<b>PWD as a share of the workforce in South Africa</b>	<b>1.0%</b>	<b>0.6%</b>	<b>0.7%</b>	<b>0.7%</b>	<b>0.8%</b>	<b>1.4%</b>	<b>1.5%</b>	<b>1.0%</b>	<b>1.0%</b>	<b>1.1%</b>



Source: Authors' own calculations of figures provided in the CEE Annual Report 2016–2017 (2017), 2018-2019 (2019), 2019-2020 (2020) and DSD's National Development Plan 2030: Persons with Disabilities as Equal Citizens (2015).

Why the government cannot implement and enforce rights-based policies, thereby protecting human rights, is something that we personally fail to grasp. Some cases have to be taken to the Constitutional Court to ensure that basic rights are enforced. This means that the individual or organisational applicants must have sufficient financial resources to travel the long road from the High Courts to the SCA or even the Constitutional Court directly to enforce basic human rights. Needless to say, most worthy cases are not contested, and life goes on, while rights are ignored.

PEPUDA clearly calls for the protection and promotion of the rights of all vulnerable and marginalised persons within South Africa. In accordance with section 2(c) of PEPUDA, there is a need for women and persons with disabilities (PWD) to be brought into the equation, so that all forms of designated disadvantaged groups are effectively dealt with in a more structured and strategic manner, so that we are not merely paying lip service to socioeconomic empowerment, the acknowledgement and acceptance of diversity and the attainment of social cohesion.

In South Africa, we have a month-long commemoration of disability rights during National Disability Rights Awareness Month ([DRAM](#)), from 3 November to 3 December, which is the International Day of Persons with Disabilities. This awareness campaign was approved by [Cabinet in 2013](#) and is the highlight of the disability rights movements whereby the government gets involved more deeply with the sector. Business and disability support organisations collaborate to raise funds specifically for persons with disabilities so as to improve their circumstances. It is a time to rejoice and embrace the diversity of all persons with disabilities.

Unfortunately, there is a general misassumption that persons with disabilities form a unanimous and homogeneous sector and that each person experiences a similar impairment in the same way and requires the same reasonable accommodation.

For example, based on our own personal experiences, there is the misassumption that all moderately or profoundly hearing-impaired people simply require a hearing assistive device (hearing aid) or visually impaired people merely need stronger spectacles. Furthermore, there is a misconception that all deaf people (no hearing at all) are able to converse in or at least understand South African sign language (SASL).

These assumptions overlook the fact that it is largely only those who are born deaf and who are generally from a subculture that can understand and use SASL. For those who become deaf later in life, sign language is a challenge, and they are largely excluded from the deaf “subculture”.

Like many other policy weaknesses and the failure to recognise diversity, this difference amongst those with moderate, profound and total hearing loss has become glaringly apparent during the Covid-19 pandemic and lockdown.

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Since March 2020, President Cyril Ramaphosa has addressed the nation at least eight times to update the nation about Covid-19, the safety measures in place and ways in which South African residents can avoid and mitigate the spread of the virus. While a SASL interpreter is always present during his addresses on television, closed captions of his speech are conspicuously absent, despite the WPRD [stipulating](#) this must be achieved for all news broadcasts and disaster communication by 2019.

This lack of implementation actively excludes those who cannot afford expensive hearing assistive devices, television sound boosters and who do not understand SASL. It would be sensible to cater for the increasing number of people with hearing impairments — including the aged — by including closed captions on key news and State of the Nation broadcasts.

In 2007 the Independent Communications Authority of South Africa (Icasa) promulgated a code of regulations for all licensees to include persons with disabilities ([Electronic Communications Act \(36/2005\): Regulations for all licensees in Chapter 3 of the ECA on a code on people with disabilities](#)). Section 3 sets out the basic standards for broadcasting service licensees. Sub-section 3.1 focuses on improving accessibility for persons with disability and paragraph 3.1(a) states “Broadcasting licensees *must* ensure that their services are made available and accessible to people with disabilities”. Paragraph 3.1(b) states that, “Options for making broadcasting services more accessible may include the following: 3.1b(i) improve and increase subtitles and sign language”.

While sign language has been strongly promoted on most television news transmissions subtitles, have been completely overlooked. In March 2014 Icasa submitted [Draft Regulation 37486](#) for comment to increase support for people with disabilities by prescribing a code that should be adhered to by Electronic Communication Service and Broadcasting Service. This was due to the clear failure of broadcasting services to implement the regulations promulgated in 2007.

After many inputs from the disability sector and other stakeholders, as well as provincial workshops, a more terminology accurate and focused [Draft Regulation 38211](#) was disseminated in November 2014 for comment, noting that the final regulations would be published on 1 April 2015. And then there was silence until June 2020.

On 12 June, during the national lockdown, Icasa again sent out a call for “Further Public Comments” on a Draft Code for Persons with Disabilities Regulations

([Regulation 43418](#)). This document again promotes accessibility and states in section 3.1 that a television broadcasting service licensee must implement the following: “Accessibility Services on Applicable Channels: (a) Audio Description; (b) Sign Language; (c) Subtitles; and (d) Closed Captioning.”

Not only was nothing tangible achieved in the previous five years, but this submission reduces the minimum amount of Audio Description, Subtitles and Closed Captions required after three years to no more than 6%, 30% and 10%. Furthermore, it distinguishes between public, commercial free to air, subscription and community broadcasting services with the emphasis placed on public broadcasters, an already financially embattled SABC, while commercial, subscription and community broadcasters are expected to achieve much lower compliance targets.

One of us sent a letter to Icasa asking them to ensure that the president’s national address on the update of the coronavirus pandemic on 11 November would provide closed captioning or subtitles. This plea indicated that the “[WPRPD Implementation Matrix](#) stated the deadline for ensuring that 100% of all news content of local television stations have captioning by 2019 and Icasa tasked with this mandate. This deadline has not been met and the result has been that people with hearing impairment have been denied access to information. We have felt the brunt of this delay prior to and throughout the Covid-19 period where we missed critical information during all the public briefings by the President and Ministers”.

The response from the Icasa Chairperson was “*Currently as things stand, the 2007 Regulations require the broadcasters to consider subtitles for Persons with Disabilities. The proposal that this can be achieved prior to the next announcement by the President will not be feasible as the 2007 Regulations was not mandatory in its wording as it states that the broadcasting licensee’s ‘may’ instead of ‘must’. However, the proposed 2020 draft Regulations have a provision that the licensee ‘must’ provide subtitles. This will be the case once the regulations are in place and if there are no objections from broadcasting licensee’s raising technical issues for an example*”.

This response suggests just how out of touch Icasa is with its own documents and draft regulations on the matter, as well as the WPRD Policy Directive 1.4.2 that places them as the responsible department. As noted above the Icasa 2007 document clearly stipulated *must* and suggested that *options may* include various measures.

In response to a similar request, SABC responded that they would not be able to provide the technology to caption a live speech, yet according to new draft regulations they have the highest targets in this respect. MultiChoice was equally unaccommodating, but noted that they would sensitise the editors of various channels. The [Department of Women, Youth and Persons with Disabilities](#) and the [Government Communication and Information System](#) both failed to respond to the plea.

This lack of accommodation by the public sector broadcaster (SABC), the various private sector broadcasters, such as DStv, eTV, TOP-TV and the various local television stations, many of which are state subsidised, in 2016 seems to sound the death knell for any real substance to policy implementation.

Sadly, the current lack of reasonable accommodation and recognition has occurred during the National Disability Rights Awareness Month.

In his broadcast on 11 November the president made no mention about the plight of persons with disabilities during the coronavirus pandemic. Even when he spoke about the need to remember those who had died because of Gender-Based Violence, he failed to recognise that many of these victims are women and female children with disabilities — collectively recognised as one of the most vulnerable groups in South African society.

What is left is another long waiting period for Icasa's amendments to be introduced, as long as broadcaster licensees do not object on technical grounds. If this happens, we are due for another long series of High Court and Constitutional Court battles. An alternative is the concerted effort by the state to acknowledge that all South Africans have rights and that these must be enforced, irrespective of race, gender and disability. Again, resolving technical issues that broadcasters might have would surely create more employment and contribute to the ERRP while simultaneously acting on the principle of inclusiveness where nobody in South Africa gets left behind. **DM/MC**

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