



Q&A on Disability Equity Act

Introduction: On 2nd December 2008 Lesotho became the 42nd country to ratify the UN Convention on the Rights of Persons with Disabilities – the first legally binding international agreement to protect the rights of persons with disabilities (PWDs). In Lesotho, in order for an international convention to be implemented it must first be translated into a local law in a process known as domestication. Since 2008 organisations such as the Lesotho National Federation of Organisations of the Disabled (LNFOOD) have been advocating for the development of a Disability Equity Act which will provide practical legal protection against discrimination for PWDs. The 2013 budget finally allocated M45 000 towards the development of the Disability Equity Act.

What is the Disability Equity Act?

- It is the legally binding expression of the UN CRPD and the first law in Lesotho to protect the rights of PWDs in various facets of life.
- The act will protect individuals from discrimination based on disability in several areas including employment, education and access to public services
- It will allow individuals to sue for access to human rights on an equal basis with others

Employment

What impact will the act have on employers and employees?

- Firstly, for the individual it means that employees will be protected from losing their jobs if they develop a disability. Employers will be expected to provide reasonable accommodation to help employees with disability maintain their employment
- By reasonable accommodation we mean that if you are a cleaner in a hotel for example and you become physically disabled and are no longer able to clean your employer should try to find you another role within the hotel.

What if your employer cannot find you another role? Can you sue them?

- If your employer can show that they made a reasonable effort to accommodate your disability but they could not find an acceptable option, they should not be able to be sued

Does this mean an employer will be sued for not employing a PWD?

- The act is not aimed at forcing PWDs on workplaces – only at giving them an equal opportunity to obtain employment e.g. employers will be expected to provide reasonable accommodation for employees or potential employees with a disability for example if a deaf person has been accepted for a job interview they should be allowed to bring a sign language interpreter to the interview

- If an organisation employs a PWD they should provide reasonable accommodation to help them do their job on an equal basis with others for example efforts should be made to ensure that a deaf employee receives the same information as everyone else
- We must also remember that the law is open to interpretation and in a court of law a judge will determine the ruling on a case by case basis

What is reasonable accommodation?

- Reasonable accommodation may be interpreted on a case by case basis – the principle is simply that the employer should do whatever is in their power to enable an individual with disability be employed within their organisation
- This may entail provision of relevant assistive devices or changing the environment to suit PWDs in a workplace set up e.g. installing ramps or purchasing software such as JAWS which enables blind people to use a computer
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Who should pay for this “reasonable accommodation?”

- The Disability Equity Act is not aimed at forcing businesses to accept PWDs as employees at their expense
- It will provide for incentives to help employers include PWDs in employment as well
- A consultant will discuss with employers to determine the most agreeable form of incentives

Education

How will the law impact on schools?

- The Act is aimed at ensuring that children with disability access education at all levels on an equal basis with others

Is this not currently happening with free and compulsory primary education?

- Although the Education Act 2010 states that primary education is free and compulsory for all Basotho students regardless of disability this does not mean that children with disability in practice are accessing education on equal basis with others
- Although in theory an inclusive education system does exist in practice there are no practical guidelines for how inclusive education should be implemented
- The Special Education Unit is solely responsible for ensuring implementation of education for children with disability and they are only a unit and not a department meaning they don't have enough decision making power to advocate for the policies which will make inclusive education really work
- At present, children with disability are put into mainstream schools without any support services e.g. partially sighted students are put into mainstream schools without access to glasses or other magnification devices which will allow them to read text books. So in practice whilst they are attending school they are not gaining the same quality of education as everyone else.

What changes would we expect to see in education as a result of implementation of the act?

- The implementation of the act will mean that all teachers receive the relevant training to deal with children with disabilities
- More individualized attention for children with special needs

- Revised curriculum which assesses outcomes based on individual ability
- We're expecting an increase in retention as a result of changed attitudes of teachers and therefore parents and students

Public services

How are PWDs currently NOT accessing public services on an equal basis with others?

- Inability to access public buildings e.g. postbanks, govt support services
- Inability to access health
- Public transport
- Govt communication channels

What changes would we expect to see?

- Modifications to existing buildings to accommodate PWDs
- PWDs should access healthcare on equal basis with others
- Sign language interpreters in gov't health service centers

Will the equity act mean the introduction of new government provided services?

- New programs will be accommodated in the provisions of the act although they will not be specifically stated e.g. early childhood identification and intervention services

So for example can PWD's sue gov't if public buildings are not wheelchair accessible?

- Yes they can sue

Does this mean PWDs can sue for money?

- If a PWD can prove that they have lost money as a result of not accessing the service they can sue for damages

Can it be backdated?

- No – the law is only applicable from the date the law is effective

Implementation

As there is no class action in Lesotho, how many individuals will realistically be able to sue for their rights?

- At present very few – but it will be up to DPOs and orgs such as LNFOD to be able to strategise how to use this law to change the situation and create precedents

Has LNFOD or its DPOs used litigation to advocate for the rights of PWDs successfully?

- No – our organisations do not currently have the capacity to litigate on behalf of members. However once this law is in place the situation will change and it will be up to civil society organisations such as ours to build our capacity to be able to help our members achieve change through litigation

How soon will PWDs be able to see changes as a result of implementation of the act?

- Change will not be immediate on certain aspects –
- We are hopeful that many orgs will accept the law and comply on their own accord
- Litigation is a final resort

What is the current status of the disability equity act?

- Social Development is the Ministry responsible for overseeing the domestication of the UNCRPD – by domestication we mean creating a national act to enable the UN Convention. Social Development has engaged several consulting partners including LNFOD and its DPOs.
- SD in partnership with LNFOD has developed terms of reference for the engagement of a consultant to create the law – at end of March-beginning April
- Expecting the funds to be released by April (beginning financial year)
- No funds released – slowing the progress of domestication and making the implementation of the disability equity act slower
- The situation in our country with relation to PWDs is so bad and desperate that we cannot afford to wait longer for this legal protection to be put in place
- It's like we have said all along, we are not asking for special treatment – only for the ability to fight for our rights