



*Southern African Catholic Bishops' Conference*  
**PARLIAMENTARY LIAISON OFFICE**



## **SUBMISSION**

**to the**

**South African Law Reform Commission**

**On**

**PROJECT 148: DOMESTICATION OF THE UN  
CONVENTION ON THE RIGHTS OF PERSONS  
WITH DISABILITIES**

## 1. Introduction

The SACBC Parliamentary Liaison Office welcomes this opportunity to engage with the SALRC on this important matter regarding the human rights and dignity of those living with disability. The Republic of South Africa became a signatory to the *United Nations Convention on the Rights of Persons with Disabilities* (the CRPD) and its Optional Protocol on 30<sup>th</sup> November 2007, and the domestication thereof is timeous: ratification of the CRPD created an obligation for South Africa to domesticate the *Convention*. We note that Professor Arlene S. Kanter, a disability law scholar at Syracuse University, USA, has pointed out that “most ratifying States will have to enact new laws or amend current laws to give effect to the Convention... More typically, a country will have strong legal protections, but the implementation of such laws remains inadequate”.<sup>1</sup>

It is a basic principle of international law that a state party to an international treaty must ensure that its own domestic law and practice are consistent with what is required by the treaty. South Africa is obliged to do so. We agree that “the CRPD is the springboard for the international movement towards identifying people in terms of their ability, without discounting their disability”.<sup>2</sup>

## 2. Catholic Social Teaching and Living with Disability

We would like to set out the developments in the modern social teaching of the Catholic Church regarding disability, which emphasises the need for the mainstreaming of disability. Disability considerations intersect with the work of providing basic education, primary health care, the provision of shelter and facilities, humanitarian relief, and social support and protection. Disability can be regarded as a ‘cross-cutting’ issue.<sup>3</sup> Modern Catholic social teaching, rooted in Scripture and articulated through a tradition of written documents, has evolved over time in response to the challenges of the day. The cornerstone of Catholic social teaching is the fundamental dignity of the human person. Pope St John Paul II reminds us, “the disabled are not different from other people, which is why, in recognising and promoting their dignity and rights, we recognise and promote our own dignity and rights and those of each one of us”.<sup>4</sup>

The principles of Catholic social teaching remind us all that as a matter of human justice there is work to be done to remedy unjust situations, and central to this is the recognition of human dignity in all human beings.<sup>5</sup> As the US Catholic Bishops note, “human dignity defines the fundamental and basic orientation each must take towards another: Human personhood must be respected with a reverence that is religious. When we deal with each other, we should do so with the sense of awe that arises in the presence of something holy and sacred. For that is what human beings are: we are created in the image of God”.<sup>6</sup>

Catholic social teaching includes people with disabilities as a fundamental part of society. The *Compendium of the Social Teaching of the Church* “insists on the full integration of persons with disabilities. And they are to be helped to participate in every dimension of family and social life at every level accessible to them and according to their possibilities”.<sup>7</sup> The Catholic tradition understands every human life to be equal, inherently sacred, and worthy of dignity and respect as the bedrock of a just society. This is not a passive teaching, however, but is instead a call to

create communities and social systems that reflect the underlying love and divinity of each person. It is from that perspective that the Church criticises systems, values and structures that exclude, discriminate, hide or otherwise diminish people living with disabilities – it offends their human dignity and so is also a symptom of an unjust society. “A just society stands with (solidarity) people with disabilities and offers them the same opportunities and respects their equality with all people, it allows them to make their own decisions in relation to their own needs, relationships and communities and does not unduly delegate their decision-making power to higher authorities and governing bodies. In a just society people with disabilities are not pushed to the margins and impoverished, but are integrated and fully a part of social life, and so recognised as a valuable part of the human family”.<sup>8</sup>

On the occasion of the 2000 Jubilee Year the Church declared that it “should promote a large scale social movement to remove all physical barriers and obstacles which impede access to communication and information, beginning from within the Church herself: this entails not only removing [architectural] barriers in churches, but also the diffusion of suitable means to allow every person with disabilities to live the life of the Church (translations in Braille; handbooks specially prepared for persons with learning difficulties; celebrations accompanied by interpreters for the deaf and the use of a suitable terminology in the ambit of ecclesial information bodies. In particular, the Church should ensure maximum accessibility to her immense artistic heritage and numerous structures of accommodation for pilgrims including the people with disabilities”.<sup>9</sup>

A 2019 research paper published in the *Journal of Catholic Social Thought* explores both the way in which the experiences of people with disabilities can enrich our understanding of Catholic social teaching, as well as the way in which that teaching contributes to a deeper theology of disability. Moreover, insights from this teaching demonstrate that people with disabilities contribute significantly and positively to society and to interpersonal relationships.<sup>10</sup>

In his encyclical *Fratelli Tutti (All Brothers and Sisters)*, Pope Francis denounced discrimination against disabled persons as a feature of the throwaway culture and condemned “the culture of rejection towards persons with disabilities [and] the idea that the lives of persons with disabilities are worth less than others”.<sup>11</sup> In a speech delivered on 3<sup>rd</sup> December 2021, the celebration of the U.N.’s International Day of Persons with Disabilities, Pope Francis pointed out that unfortunately, “many people with disabilities are treated as foreign bodies in society... you can feel that [you] exist without belonging and without participating and that much still prevents [you] from being fully enfranchised. Discrimination continues to be all too present at various levels of society; it feeds on prejudice, ignorance, and a culture that finds it hard to appreciate the inestimable value of each person. The continuing tendency to regard disabilities as a kind of disease contributes to keeping lives separate and stigmatizing you”.<sup>12</sup> There is an urgent need to move away from a medical model of disability to one that embraces inclusivity. Moreover, social integration is the key measure by which one can assess whether people with disabilities enjoy their full rights and are treated equally to all other citizens.

### **3. Persons with Disabilities**

The dignity of those living with disability has been violated by harassment and violence, by social inequalities and by isolation, by inadequacies and poor accessibility in healthcare. This discrimination is entrenched in the way in which society sees the very lives of people with disabilities.<sup>13</sup> Therefore we welcome the use of the term *persons with disabilities*. Nancy Eiesland in her book, *The disabled God: toward a liberatory theology of disability*, writes that “euphemisms for persons with disabilities have abounded in recent years, including ‘differently abled’, ‘physically challenged’, and ‘hand capable’... Although different individuals may design themselves with terms, the current phrase acceptable to most persons with disabilities is just that, ‘persons with disabilities’”.<sup>14</sup> This usage underscores the conviction that an individual's disability is just one of many personal characteristics, rather than being synonymous or coextensive with that person's self.<sup>15</sup> It also points to the mainstreaming of disability. Disability is socially constructed. There is an interrelation between the impairment and the social and physical environments which prevents many of those living with disability from enjoying life to the full.<sup>16</sup> “It follows that we can respond by trying to build social and physical structures that might better mediate grace, facilitating life to the full for all of us.”<sup>17</sup>

#### **4. Single Statute**

We agree with the SALRC proposal for “new legislation that would take the form of a framework statute to be followed in due course with bespoke sectoral laws to regulate pragmatically for differences. Crafting a single statute would better ensure comprehensive compliance with the CRPD. It would minimize the risks of not only omitting to adopt any article but also of generating conflicting ad hoc or piecemeal amendments of a plethora of legislation”.<sup>18</sup> We think that this should fall under the competence of the Department of Women, Youth and Persons with Disability rather than the suggestion of the Department of Justice, as this might result in the fragmentation of responsibility.

#### **5. Definitions**

We welcome the definitions of ‘accessibility’ and ‘barriers’ as they provide a broad and comprehensive understanding of disability and the necessity for suitable built environments and appropriate assistive devices for a range of disabilities.

We agree with the definition ‘persons with disabilities’ as those “who have long term or recurring physical mental, intellectual or sensory impairments which, in interaction with various barriers hinder their full and effective participation and substantially limit their ability to function and advance in society on an equal basis with others”.<sup>19</sup>

We are concerned regarding the term ‘undue hardship’ which “means modifications, adjustments and practices that will impose a disproportionate burden to provide reasonable accommodation to persons with disabilities”. Disproportionate to whom? Failure to provide these would place undue hardship on those with disabilities. The state and any person who has the duty to provide reasonable accommodation bears the burden of proving justification for refusing to provide reasonable accommodation.

We welcome the establishment of the Conflict Administration Unit as well the establishment of the Equal Opportunities Office, as they will provide an oversight function and can intervene in disputes and seek resolution thereof.

## 6. Conclusion

The SALRC is to be commended on the Draft Bill, which represents a rights-based approach.<sup>20</sup> The Bill points to the mainstreaming of disability and to the realization of the constitutional rights of those with disability.

We wish the Commission well in your deliberations in this important matter.

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