

Face Equality International (FEI) Research Project

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South Africa

No.	Question		Answer
1.	<p>a. Do people with facial disfigurements (marks, scars, etc.) have any legal protection against discrimination?</p> <p>b. Which law relates or mentions the legal protections?</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<p>South Africa ratified the UN Convention on the Rights of Persons with Disability (“UNCRPD”) and the Optional Protocol on 30 November 2007. The UNCRPD imposes general obligations to prohibit discrimination on the basis of disability and requires adhering parties to take steps to ensure that reasonable accommodation is provided to disabled persons. The UNCRPD also requires adhering parties to promote equality and eliminate discrimination. These protections prohibit, amongst other things, discrimination in the workplace, in education and in health and provide for equal recognition before the law and equal access to justice.</p> <p>While there is no single legal definition of “disability”, the UNCRPD defines disability as persons who have long term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis. Therefore, those with facial disfigurements could avail themselves of the legal protections outlined under the UNCRPD provided they can show that they face barriers that hinder their full and effective participation in society as a result of their facial difference.</p> <p>Under the Constitution of South Africa, discrimination on any grounds including disability is prohibited. The constitution also provides that everyone has the right to have their dignity respected and protected. This prohibition was reflected in national law, notably under the Promotion of Equality and Prevention of Unfair Discrimination Act (the “Equality Act”). Under this prohibition, no person, including the State and private companies, may unfairly discriminate against persons with a disability. The Equality Act provides for measures to be taken to promote equality and remove obstacles that limit or restrict disabled persons access to equal opportunities.</p> <p><u>Section 9 of the Equality Act - Prohibition of unfair discrimination on ground of disability</u> <i>Subject to section 6 no person may unfairly discriminate against any person on the ground of disability, including—</i></p>

			<ul style="list-style-type: none"> • <i>denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;</i> • <i>contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;</i> • <i>failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such person</i> <p>In addition, the Employment Equity Act 1998 (the “EEA”) as amended by the Employment Equity Amendment Act 2022 (the “EEAA”) also prohibits discrimination on the grounds of disability, among other things.</p> <p>However, the word ‘disability’ itself is not defined under the Constitution or the EEAA so it is unclear whether facial disfigurement would be protected under the EEAA.</p> <p>Laws that mention these legal protections:</p> <p>Section 9(3) and 10 of the Constitution of South Africa Promotion of Equality and Prevention of Unfair Discrimination Act 2000 African Charter on Human and People’s Rights Employment Equity Act 1998 Employment Equity Amendment Act 2022 UN Convention on Rights of Persons with Disability Labour Relations Act 1995 National Education Policy Act 1996</p> <p>Sources:</p> <ul style="list-style-type: none"> • Human Rights and Persons with Disabilities – South African Human Rights Commission • UNCRCPD Articles 5, 12, 24 and 25 • Employment Equity Act 1998 • Employment Equity Amendment Act 2022 • Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 • Country Report 2013 (as amended by 2019 report) written by Ilze Grobbelaar-du Plessis Chazanne Grobler and published by the Repository on Disability Rights in Africa. • Constitution of South Africa
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<p>2.</p>	<p>a. What is this country's legal definition of disability?</p> <p>b. When do people with a facial disfigurement fit within that definition?</p> <p>c. How does being excluded from that definition affect the protection of their rights?</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>a) There does not seem to be one 'country specific' definition for 'disability' in South Africa. The definitions are quite broad and there is reference to such being 'a physical impairment' which could 'substantially limit their prospects of entry into employment'. Several laws seem to collectively determine the definition of disability in South Africa including the Equality Act, the EEAA and the UNCRPD.</p> <p>For example, the definition for people with disabilities under the EEAA -</p> <p><i>“people with disabilities” includes people who have a long-term or recurring physical [or], mental, intellectual or sensory impairment which, in interaction with various barriers, may substantially [limits] limit their prospects of entry into, or advancement in, employment, and ‘persons with disabilities’ has a corresponding meaning;”</i></p> <p>Additionally, Chapter Two of the Constitution of South Africa contains the Bill of Rights and explicitly prohibits unfair discrimination against people on the basis of disability or health status.</p> <p>As aforementioned, South Africa has ratified the UNCRPD, which states that persons with disabilities include <i>“those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”</i>. This is very similar to that under the EEAA above. This is a social definition of “disability” rather than a medical definition i.e. it is defined by reference to the lived experiences of those who have a disability rather than by reference to a specific medical condition. It seems that those with a facial disfigurement therefore could fit into this definition under the UNCRPD, when considering how one’s facial difference impacts their effective interaction with society. However, as the UNCRPD does not clearly define the term “disability” nor does it expressly refer to facial disfigurement this creates a gap of uncertainty, and vulnerability for those individuals.</p> <p>b) If individuals do not meet the definition of “disability” they will not have the legal protections outlined in these laws. This would mean that they would have no basis on which to take legal action if they experienced discrimination because of their facial difference.</p> <p>Sources</p> <ul style="list-style-type: none"> • Article 1 of UN Convention on Rights of Persons with Disabilities 2007 • Article 2 of UN Convention on Rights of Persons with Disabilities 2007 • Face Equality Factsheet – UN Convention on Rights of Persons with Disabilities 2007 • Employment Equity Amendment Act 2022
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3.	<p>Are there aspects of disability and/or disfigurement law that ensure a legal right to healthcare, education or employment?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>South Africa offers comprehensive legislation to protect the rights of persons with disabilities and ensure they have rights to healthcare, education and employment.</p> <p>The Employment Services Act 4 of 2014 (the “ESA”) is a significant piece of legislation as it “recognizes people with disabilities as one of the target groups for the purposes of skills development and advancement in the workplace”. This Act empowers people with disabilities to participate in learnership programmes and thus creates the opportunity of skills development and possible employment.</p> <ul style="list-style-type: none"> • This Act established Supported Employment Enterprises as a national government component to promote work and employment opportunities for persons with disabilities (Chapter 6). • Chapter 6 of the ESA provides that “<i>The functions of Supported Employment Enterprises are to—</i> <ul style="list-style-type: none"> a) <i>facilitate supported employment;</i> b) <i>provide work opportunities for persons with disabilities;</i> c) <i>develop and implement programmes that promote the employability of persons with disabilities, including persons with permanent disablement as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), in the light of their evolving needs in a changing economy; and</i> d) <i>perform any other function as may be prescribed by the Minister</i>” <p>Persons with disabilities are a designated group in terms of the EEAA. The purpose of this Act is to remove unfair discrimination and to promote equity in the workplace. This Act protects persons with disabilities and others against unfair discrimination and, as a previously disadvantaged group, disabled persons are eligible to benefit from affirmative action programmes.</p> <p>The UNCRPD also protects against discrimination in access to healthcare, education and employment (amongst other things). If there is a violation of an individual’s rights under the UNCRPD, an individual in South Africa could make a complaint to the UN Committee on the Rights of Persons with Disabilities (the “Committee”) as South Africa has ratified the Optional Protocol. The Committee would assess the merits of the complaint, formulate its views and make recommendations. Any recommendations would be forwarded to South Africa for further consideration.</p>

			<p>The Constitution of South Africa guarantees the right to access healthcare services. Section 27(1)(a) states that “everyone has the right to have access to healthcare services, including reproductive healthcare.”</p> <p>The National Health Amendment Act 12 of 2013 (the “NHA”) sets out the principles and guidelines for the provision of healthcare services in South Africa. This addresses the rights of persons with disabilities and provides that healthcare services should be accessible to all, including those with disabilities.</p> <p>Sources</p> <ul style="list-style-type: none"> • Employment Services Act • Face Equality International report on Interpreting disability Legislation to assist people with Facial Disfigurements. • Constitution of South Africa • National Health Amendment Act
4.	<p>a. How effective are the legal protections? Please describe evidence available of the effect of the legal protections.</p> <p>b. What are deficiencies or areas for improvement in these legal protection measures as they apply and affect people with facial disfigurement?</p> <p>c. What evidence exists to prove that the information and resources guaranteed by law are actually available to disabled persons?</p>		<p>a) <u>Implementing the legal protections</u> The Committee oversees compliance with the UNCRPD by examining reports submitted by adhering parties and by dealing with complaints made by individuals. While the broad definition of “disability” under the UNCRPD makes it more likely that a person with a facial disfigurement may qualify for the protections it provides, in reality, it lacks detailed protections and is aspirational in nature. Adhering parties are required to implement it into national law and there is no meaningful enforcement mechanism; while an individual may complain to the Committee about an alleged violation, they are dependent on the national authorities taking action to reflect the Committee’s decision, which may be challenging and daunting for the individual.</p> <p>South Africa has established two institutions to protect and promote the rights of disabled individuals, namely, the South African Human Rights Commission (SAHRC) and the Public Protector. Both of these institutions have powers to investigate and report on alleged breaches of human rights and may take action to secure redress for individuals that are the victims of such breaches. The Public Protector for example, has addressed issues previously in relation to discrimination against disabled persons in the health system and in the area of housing.</p> <p>The Equality Courts also have a crucial role to play in implementing the Equality Act. These courts are designated to hear matters relating to unfair discrimination, hate speech and harassment. The Department of Justice and Constitutional Development has designated all Magistrates’ Courts to serve as Equality Courts in all 9 provinces.</p>

			<p>One does not need to have legal representation to institute proceedings in the Equality Courts. The complainant also does not have to pay any court fees in order to institute proceedings. Proceedings may be instituted by:</p> <ul style="list-style-type: none"> • Any person acting in his/her own interest; • Any person acting on behalf of another person who cannot act in his/her own name; • Any person acting as a member of, or in the interest of a group or class of persons; • Any person acting in the interest of the public; • Any association or organization or body acting in the interest of its members; or • The SAHRC or the Commission for Gender Equality (CGE) <p>b) <u>Deficiencies or areas for improvement in these legal protection measures</u> A journal published in the National Library of Medicine explored barriers to the employability of those with disabilities in the South African public service.</p> <p>The study found, among others, that there are conceptual, infrastructural, managerial and organisational factors affecting the employability of persons with disabilities in mainstream public service.</p> <p>It also found that in order for there to be successful inclusion of persons with disabilities, there needs to be both an internal and external focus:</p> <p>Internally, this involves eliminating barriers, removing bureaucracy, initiating management development for disability matters, introducing appropriate talent development measures, and implementing collaborative management of persons with disabilities.</p> <p>External or society-wide measures include campaigns to demystify disability and change attitudes, engage society structures, and improve societal knowledge of disability.</p> <p>This journal also flags the difficulty that comes with there not being one central definition for 'disability'.</p> <p><i>“As there is no ‘country-specific’ definition of the term ‘disability’ in South Africa, this has an implication on how persons with disabilities can be identified in the workplace. Moreover, the lack of clarity may have serious implications for employers, as it limits their ability to provide the necessary support and resources to staff with disabilities, thereby limiting their potential to succeed.”</i></p>
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