

# SOUTH AFRICA

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## 1 Population indicators

### 1.1 What is the total population of South Africa?

According to the 2001 Census the total population of South Africa was 50 586 757.<sup>1</sup> Data of the 2011 Census is not yet available. According to the General Household Survey of 2011 the total population of South Africa was 51 770 560.<sup>2</sup>

### 1.2 The methodology used to obtain the statistical data on the prevalence of disability in South Africa, and the criteria used to determine who falls within the class of persons with disabilities in South Africa.

A National Census is used to obtain data on the prevalence of disability in South Africa:

- In the 2001 Census, measurement of disability was based on the definition from the 1980 WHO International Classification of Impairments, Disabilities and Handicaps (ICIDH).<sup>3</sup>

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1 Statistics South Africa *Mid-year population estimates (2011)* <http://www.statssa.gov.za/publications/P0302/P03022011.pdf> (accessed 26 September 2013).

2 Statistics South Africa *Census 2011: Methodology and highlights of key results* [http://www.statssa.gov.za/Census2011/Products/Census\\_2011\\_Methodology\\_and\\_Highlights\\_of\\_key\\_results.pdf](http://www.statssa.gov.za/Census2011/Products/Census_2011_Methodology_and_Highlights_of_key_results.pdf) (accessed 26 September 2013).

3 Statistics South Africa *Census 2011* <http://www.statssa.gov.za/Publications/P03014/P030142011.pdf> (accessed 26 September 2013). The ICIDH defined 'disability' as a physical or mental handicap which has lasted for six months or more, or is expected to last at least six months, which prevents the person from carrying out daily activities independently, or from participating fully in education, economic or social activities. The 2001 Census therefore used the terminology of 'disabled' and the data gathered reflects the prevalence of certain disabilities.

- The 2011 Census used a set of disability questions developed by the Washington Group,<sup>4</sup> which measured the type and degree of difficulties experienced by people in South Africa. The definition of disability in the 2011 Census was broader than that of the previous 2001 Census.<sup>5</sup>
- The data from the 2001 Census and 2011 Census are not comparable due to the change in approach in the disability-related questions.

### 1.3 What is the total number and percentage of people, women and children with disabilities in South Africa?

According to the 2001 Census, 2 255 982 (approximately 2.3 million people, therefore 5 per cent of the South African population) were reported to have a serious disability.<sup>6</sup>

- 52 per cent of the total number of persons with disabilities in South Africa, were women (1 173 939 women with a disability).
- 8,5 per cent of the total number of persons with disabilities, were children between the ages 0 to 9 years old, and 13,6 per cent of persons with disabilities were youth between the ages 10-19 years that are living with a disability.<sup>7</sup>

According to the 2011 Census, which used the new classification system (see 1.2 above), 2 339 000 people in South Africa, therefore 5,2 per cent of the population (aged 5 years and older) are classified as people with a disability:

- 1 260 000 women are reported to be living with a disability, therefore 5,4 per cent of the women in South Africa are women living with a disability.<sup>8</sup>

### 1.4 What are the most prevalent forms of disability in South Africa?

According to the 2001 Census of the total percentage of persons with disabilities, the following was recorded:

- Visual impairment – 32,1 per cent;
- Hearing impairment – 20,1 per cent;
- Communication impairment – 6,5 per cent;
- Physical impairment – 29,6%;
- Intellectual impairment – 12,4%; and
- Emotional impairment – 15,7%.

Based on the sample of the 2011 General Household Survey, of the total of 45 345 000 South Africans aged 5 years and older who reported some degree of impairment or difficulty with carrying out activities:<sup>9</sup>

- 3 001 000 had sight impairments;

4 This was first introduced in the 2009 General Household Survey questionnaire. These questions relate to the 'difficulties' that people have in executing a series of activities such as seeing, hearing, walking, communicating, self-care, remembering and concentrating. Therefore not only severe disabilities are measured with these questions.

5 Disability is defined as difficulties encountered in functioning due to body impairment or activity limitation, with or without the use of assistive devices.

6 Statistics South Africa *Census 2001: Prevalence of disability in South Africa* <http://www.statssa.gov.za/Publications/Report-03-02-44/Report-03-02-44.pdf> (accessed 26 September 2013).

7 As above.

8 Department of Women, Children & People with Disabilities *First Draft Country Report to the United Nations on the implementation of the Convention on the Rights of Persons with Disabilities: For Public Comment* (26 November 2012) <http://www.info.gov.za/view/DownloadFileAction?id=179901> (accessed 26 September 2013) (First Draft Country Report for Public Comment).

9 As above.

- 840 000 had hearing impairments;
- 1 028 000 experienced difficulty walking;
- 1 107 000 reported challenges remembering and concentrating;
- 1 564 000 reported challenges with self-care;
- 364 000 experienced difficulties with communication;
- 4 271 000 made use of spectacles or contact lenses;
- 110 000 used hearing aids;
- 347 000 made use of walking sticks or walking frames;
- 83 000 used wheelchairs; and
- 24 000 used other assistive devices.

## 2 International obligations

### 2.1 What is the status of the United Nation's Convention on the Rights of People with Disabilities (CRPD) in South Africa? The South African position with regard to signing and ratifying the CRPD and its Optional Protocol is.

South Africa signed the CRPD and its Optional Protocol on 30 March 2007, and subsequently ratified both on 30 November 2007. The Convention entered into force on 3 May 2008.<sup>10</sup>

### 2.2 If South Africa has signed and ratified the CRPD, when is/was its country report due? Which government department is responsible for the submission of the report? Has South Africa submitted its report? If not, what reason does the relevant government department give for the delay?

- The Country Report was due two years after the CRPD was entered into force; therefore it was due by 3 May 2010.
- The Department of Women, Children and People with Disabilities (DWCPD) is currently responsible for submitting the report.
- The First Draft Country Report to the UN on the implementation of the CRPD was released on 26 November 2012 for public comment, and the aim is to complete and deposit the final First Country Report during 2013.
- The reason for the delay is mentioned as being due to changes in organisational arrangements with the transition from the Office on Status of Disabled People to the DWCPD.<sup>11</sup>

<sup>10</sup> Landmark UN treaty on rights of persons with disabilities enters into force (2008) <http://www.un.org/apps/news/story.asp>? (accessed 2 October 2013).

<sup>11</sup> First Draft Country Report for Public Comment 1; and (n 10 above).

- 2.3 If South Africa has submitted the report in 2.2 and if the Committee on the Rights of Persons with Disabilities has reviewed the report, indicate if the Committee made any concluding observations and recommendations to South Africa's report. Was there a domestic effect in South Africa on disability issues due to the reporting process?**

South Africa's country report has not been submitted. This means no observation or recommendations were made by the Committee on the Rights of Persons with Disabilities, and consequently there is no domestic effect on disability issues due to the reporting process.

- 2.4 While reporting under various other United Nation's instruments, the African Charter on Human and Peoples' Rights or the African Charter on the Rights and Welfare of the Child, has South Africa also reported specifically on the rights of persons with disabilities in its most recent reports? If so, have concluding observations adopted by the treaty bodies, addressed disability? If relevant, were these observations given effect to? Was mention made of disability rights in South Africa's UN Universal Periodic Review (UPR)? If so, what was the effect of these observations or recommendations?**

#### UN Instruments

• **Convention on the Rights of the Child (CRC)**<sup>12</sup>

In 1999 South Africa submitted a State Report, and in 2000 Concluding Observations were adopted. In the Concluding Observations of the Committee on the Rights of the Child,<sup>13</sup> the Committee mentioned in several instances the rights of children with disabilities, and mention was made of the positive aspect of 'Curriculum 2005'.<sup>14</sup> The Committee raised concerns with regard to the data collection mechanism, which was insufficient to afford a systematic and comprehensive collection of disaggregated quantitative and qualitative data for all areas covered by the Convention in relation to all groups of children in order to monitor and evaluate progress achieved, and assess the impact of policies adopted with respect to children. The Committee recommended that the system of data collection must be reviewed with a view to incorporate all the areas covered by the Convention.<sup>15</sup> Furthermore, the Committee raised the point that the principle of non-discrimination, in article 2 of the CRC, is reflected in the Constitution of the Republic of South Africa, 1996 (the Constitution) and South African legislation, but raised their concern that insufficient measures were in place to ensure that all children are guaranteed access to education, health and other social services.<sup>16</sup> Lastly, the Committee raised the concern that the legal protection, facilities, and

<sup>12</sup> South Africa has signed and in 1995 ratified the CRC.

<sup>13</sup> CRC/C/15/Add.122.

<sup>14</sup> Curriculum 2005 aims at facilitating a more inclusive school environment, including programmes to encourage non-discrimination, especially of children with disabilities.

<sup>15</sup> Such a system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, which includes, amongst others, children with disabilities.

<sup>16</sup> Of particular concern were certain vulnerable groups of children such as children with disabilities, especially those with learning disabilities. The recommendation made by the Committee was that South Africa must increase her efforts to ensure the proper implementation of the non-discrimination article.

services for children with disabilities, and in particularly mental disabilities, are insufficient and made the following recommendations:<sup>17</sup>

- South Africa should reinforce its early identification programmes to prevent disabilities;
- establish special education programmes for children with disabilities; and
- further encourage their inclusion in society and seek technical cooperation for the training of professional staff working with and for children with disabilities from, *inter alia*, UNICEF and WHO.

These observations and recommendations have been given effect to, however some remain a challenge. Data collection and the disaggregation of disability-related statistics remain a challenge, but the DWCPD is trying to finalise a monitoring and evaluation framework to facilitate the standardisation of disaggregating data.<sup>18</sup> The National Strategy on Screening, Identification, Assessment and Support (SIAS) of 2008 has been developed in response to the inclusive education policy's call for an overhaul of the process of identifying, assessing and enrolling of learners in special schools and to curb the unnecessary placement of learners in special schools. The strategy is also responding to the enhancement of the nature and quality of support that has to be provided to learners who require additional support.<sup>19</sup> The Children's Act 38 of 2005 specifically recognises the special needs of children with disabilities.<sup>20</sup>

• **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>21</sup>**

South Africa's latest Country Report was submitted in 2010. According to the Country Report, black women and women with disabilities are affected the most by the unequal legacy of South Africa.<sup>22</sup> The report specifically made mention of women with disabilities in the workplace. The *Public Service Handbook on Reasonable Accommodation for People with Disabilities in the Workplace*, and the *Job Access Strategic Framework on the Recruitment, Employment and Retention of Persons with Disabilities in the Public Service*, aim at ensuring that the Public Service meets its minimum 2 per cent target for the employment of people with disabilities in the workplace, as well as the minimum 2 per cent representation of women with disabilities in senior management levels in the Public Service.<sup>23</sup> According to the Report the South African Government has established the mainstreaming of the 1997 Integrated National Disability Strategy White Paper and guidelines through the former *Office on the Status of Disabled Persons* in the Presidency.<sup>24</sup>

17 Claiming Human Rights – In South Africa <http://www.claiminghumanrights.org/southafrica.html> (accessed 26 September 2013).

18 First Draft Country Report for Public Comment, 62. The SIAS strategy provides guidelines for early identification and support, how to determine the nature and level of support required by learners and how to determine the best learning site for the support. The strategy also provides guidelines on the central role that parents and teachers play in implementing the strategy as well as on the alignment of services by various government sectors.

19 First Draft Country Report for Public Comment, 28.

20 See section 4 on South African Legislation for a further discussion on domestic legislation.

21 South Africa ratified the CEDAW in 1995.

22 Report to the CEDAW Committee on South Africa's implementation of CEDAW 1998-2008 (2010) (CEDAW Report) [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CGE\\_SouthAfrica48.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/CGE_SouthAfrica48.pdf) (accessed 2 October 2012) 21.

23 CEDAW Report (n 22 above) 48.

24 This policy enables a multi-faceted approach to advance the rights of people with disabilities in all areas. Targeted assistance, programmes and support in addressing inequities and health needs are very important. Barriers, such as environmental barriers and attitudes, often hinder participation in society for people with disabilities and impairments. The Report further mentioned that these disabilities often cause social segregation. CEDAW Report (n 22 above) 117.

## Regional Instruments

### • African Charter on Human and Peoples' Rights<sup>25</sup>

According to article 18 of the African Charter on Human and Peoples' Rights the aged and persons with disabilities shall have the right to special measures of protection in keeping with their physical needs. In the First Periodic Report it was mentioned that South Africa had attempted to comply with article 18 of the Charter:

- Mention was made of sub-programmes responsible for subsidising workshops for the blind and work centres for people with disabilities.
- Various policy guidelines that affect the lives of people with disabilities have been developed.<sup>26</sup>

The report serves as a framework within which rehabilitation services can be provided, and further serves as a vehicle to mobilise resources for the establishment and provision of medical rehabilitation services. *Standardisation of Provision of Assistive Devices (Technology)*<sup>27</sup> in South Africa was highlighted in the report, which can play a role in ensuring equitable distribution of assistive devices in the country. The report further stated that three booklets on disability prevention were being field-tested. Sign language training for primary health care workers,<sup>28</sup> along with the audiotapes with HIV/AIDS messages,<sup>29</sup> and assistive devices<sup>30</sup> have been provided in order to comply with article 18. Furthermore the accessibility of health facilities has been prioritised.<sup>31</sup>

## UN Universal Periodic Review (UPR)

South Africa was last reviewed by UPR on 31 May 2012. During this session none of the 29 recommendations, made by the recommending states, mentioned disability rights.<sup>32</sup>

### 2.5 Was there any domestic effect on South Africa's legal system after ratifying the international or regional instrument in 2.4 above?

According to the Constitution it is clear that South Africa follows a dualistic approach and requires the incorporation of an international instrument unless it is

25 Since ratifying the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000, the government has not yet submitted any report to the African Committee of Experts on the Rights and Welfare of the Child.

26 For example the *National Rehabilitation Policy* was launched in August 2001.

27 Printed 2003.

28 Since 1998, training sessions have been held for health workers to learn sign language. The purpose is to give health workers the opportunity to learn basic sign language so that they can communicate with deaf patients who visit health facilities. It was not intended to make trainees fluent in sign language. It was recorded that to date 72 health workers have been trained.

29 Audiotapes have been produced carrying selected HIV/AIDS messages to create awareness among blind people. These tapes were launched on 6 September 2001 in Polokwane. To date 20 000 copies have been produced and distributed throughout the country, catering for all 11 official languages.

30 Provision of assistive devices countrywide is prioritised, with a particular focus on rural areas, children and women. Donor funds have also been used to reduce the backlog. On the maintenance side, wheelchair repair centres have been established in the nine provinces. These centres are mainly run by people with disabilities and take the repair service to the people.

31 A project has been initiated to encourage health facility managers to make their facilities accessible to people with disabilities. Facilities were then assessed and those who meet the set criteria are awarded certificates in Bronze, Silver or Gold (Gold the highest grading), as appropriate.

32 UPR Info *Statistics of UPR recommendations* [http://www.upr-info.org/database/statistics/index\\_sur.php](http://www.upr-info.org/database/statistics/index_sur.php) (accessed 26 September 2013).

'self-executing'.<sup>33</sup> The Constitution includes provisions on the role of international law with regard to the interpretation of the Bill of Rights and statutory interpretation:

- Section 39(1) of the Constitution provides that when interpreting the Bill of Rights a court, tribunal or forum: a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; b) *must* consider *international law*; and c) may consider foreign law.
- Section 231(1) of the Constitution provides that the negotiating and signing of all international agreements is the responsibility of the national executive. According to section 231(2) an international agreement binds the Republic only after it has been approved by resolution in Parliament by both the National Assembly and the National Council of Provinces.<sup>34</sup>
- Section 231(4) of the Constitution provides that any international agreement becomes law in the Republic when it is enacted into law by national legislation.<sup>35</sup>
- Section 233 of the Constitution further provides that when interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law, over any alternative interpretation that is inconsistent with international law.

Applying the above duties and obligations specifically to the international instruments (mentioned in 2.4 above) by ratifying CEDAW, South Africa committed herself to undertake a series of measures to end discrimination against women in all forms.<sup>36</sup> In order to ratify CEDAW, the General Law Fourth Amendment 132 of 1993 was enacted, which removed all traces of legislative discrimination against women.

Legislation that specifically deals with equality in South Africa reflects deliberate endeavours to incorporate the objectives and specific provisions of CEDAW in South African domestic law. In this regard the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; the Recognition of Customary Marriages Act 120 of 1998 and customary law of succession were enacted. Other relevant laws include the Preferential Procurement Policy Framework Act 5 of 2000 and the Broad-Based Black Economic Empowerment Act 53 of 2003.<sup>37</sup> The objectives of CEDAW and its specific provisions have also been incorporated into the *South African National Policy Framework for Women's Empowerment and Gender Equality* and other transformation policies. This includes the National Skills Development Strategy, Codes of Good Practice on Black Economic Empowerment, local government policies, and policies relating to gender parity in integrated development plans and processes.<sup>38</sup>

33 However, in *Government of RSA & Others v Grootboom & Others* 2001 1 SA 46 (CC) para 26, the Court stated that: 'where the relevant principle of international law binds South Africa, it may be directly applicable'.

34 Section 231(3) provides that an international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

35 Section 231(4) determines that a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. Section 231(5) further provides that the Republic is bound by international agreements, which were binding on the Republic when the Constitution took effect.

36 This includes incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws and adopting appropriate ones prohibiting discrimination against women; and establishing tribunals and other public institutions to ensure the effective protection of women against discrimination.

37 See question 4 on legislation.

38 CEDAW Report (n 22 above).

States parties to the CRC are obliged to develop and undertake all actions and policies in the light of the best interests of the child.<sup>39</sup> The Constitution makes provision in section 28 for the rights of the child and clearly reflects the CRC. South Africa has recently adopted a comprehensive law with the enactment of the Children's Act 38 of 2005.<sup>40</sup> This act is in part fulfilment of the obligations set out in the CRC and the ACRWC.<sup>41</sup>

**2.6 Do ratified international treaties automatically become domestic law under your legal system? If so, are there any cases where the courts applied international treaty provisions directly?**

See question 2.5.

**2.7 With reference to 2.4 above, has the United Nations CRPD, or any other ratified international instrument, or parts thereof, been incorporated verbatim in national legislation? Provide details.**

National legislation regarding, for example, the rights of children (as mentioned above), often reflects international treaties, such as the CRC, and in a way they incorporate treaty provisions. This form of indirect domestication is evident in acts such as the Children's Act (see question 2.4). Furthermore, the Promotion of Equality and Prevention of Unfair Discrimination Act, provides that any person interpreting the Act may be 'mindful' of international law (which will include the CRPD), and the Act reflects the objects of CEDAW. The Labour Relations Act 66 of 1995 proclaims as one of the primary objects of the Act 'to give effect to the obligations incurred by the Republic as a member state of the International Labour Organization' and requires the Act to be interpreted in compliance with the public international law obligations of the Republic, this includes the obligations in CEDAW (and also the later ratified CRPD).

## 3 Constitution

**3.1 Does the South African Constitution contain provisions that directly address disability? If so, list the provisions and explain how each provision addresses disability.**

- Section 9(1) of the Constitution provides for equal protection and benefit of the law, and a right to non-discrimination to everyone. Section 9 provides for a vertically-applicable right in section 9(3) in providing that *the state* may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, conscience, belief, culture, language and birth.

39 UNICEF *Convention on the Rights of the Child* <http://www.unicef.org/crc/> (accessed 26 September 2013).

40 This Act sets out principles relating to the care and protection of children, defines parental responsibilities and rights and makes provision for matters such as children's courts, adoption, child abduction and surrogate motherhood. The principles call for the prioritisation of the best interests of the child, the right to the child being able to participate in any matter concerning that child, children living with disability or chronic illness and a child's right of access to court.

41 UNICEF Innocenti Research Centre *Reforming child law in South Africa: Budgeting and implementation planning* (2007) [http://www.unicef-irc.org/publications/pdf/reformingchildlaw\\_reprint.pdf](http://www.unicef-irc.org/publications/pdf/reformingchildlaw_reprint.pdf) (accessed 26 September 2013).

- Section 9 furthermore provides for a horizontally-applicable right to non-discrimination in section 9(4) when providing that *no person* may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, conscience, belief, culture, language and birth. Section 9(3) and 9(4) are the only sections which directly addresses disability in the Constitution.

### 3.2 Does the South African Constitution contain provisions that indirectly address disability? If so, list the provisions and explain how each provision indirectly addresses disability

The South African Bill of Rights, contained in chapter 2 of the Constitution, deals with most of the substantive constraints on public power, and therefore instructs the state to use the power that the Constitution gives in ways that do not violate fundamental rights, and to promote and fulfil those rights contained in the Bill of Rights. Although the Constitution is mostly concerned with state power and with the law, there are a number of provisions in the Bill of Rights that place, in certain circumstances, duties on private individuals (such as section 9(4) as discussed in 3.1 above). Most of the rights contained in the Bill of Rights apply to 'everyone' and therefore most of these rights would also be applicable to and include persons with disabilities. These rights contained in the Bill of Rights that are indirectly applicable to persons with disabilities are listed and captured in the footnote.<sup>42</sup>

## 4 Legislation

### 4.1 Does South Africa have legislation that directly addresses disability? If so, list the legislation and explain how the legislation addresses disability.

South Africa does not have comprehensive disability legislation that deals exclusively with matters relating to disability or with persons with disabilities. However, South Africa has enacted different pieces of legislation that mention people with disabilities or deal with issues relating to disabilities in the legislation. The following sets out the most significant legislation that mentions or refers to disability related issues:

- **Broad-Based Black Economic Empowerment Act 53 of 2003**

This Act deals with economic empowerment of black women and men and *persons with disabilities*. The Act gives priority to issues such as employment equity and equalising opportunities.<sup>43</sup>

- **Child Justice Act 75 of 2008**

Deals with the crimes mentioned in sections 23 to 26 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, listing it as a Schedule 3 offence when dealing with child offenders.

<sup>42</sup> Sec 10 (Human dignity); sec 11 (Life); sec 12 (Freedom and security of the person); sec 22 (Freedom of trade, occupation and profession); sec 23 (Labour relations); sec 27 (Health care, food, water and social security); sec 28 (Children); sec 29 (Education).

<sup>43</sup> It aims to do this through human resources development, preferential procurement and state asset restructuring.

- **Children's Act 53 of 2003**

The Children's Act is there to provide the necessary care and assistance to children, where section 11 deals specifically with matters concerning children with disabilities or chronic illnesses. In section 6(2)(d) and (f) the Act states that all proceedings, actions or decisions in a matter concerning a child must protect the child from unfair discrimination on any ground, including on the grounds of the health status or disability of the child or a family member of the child and recognise a child's disability and create an enabling environment to respond to the special needs that the child has.

- **Co-operatives Act 14 of 2005**

Amongst others one of the objectives of this act is to facilitate the provision of support programmes that target emerging co-operatives, specifically those co-operatives that consist of black persons, women, youth, *disabled persons* or persons in the rural areas and that promote equity and greater participation by its members.

- **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007**

This Act deals with legal aspects of or relating to sexual offences. Specifically, it enacts comprehensive provisions dealing with the creation of certain new, expanded or amended sexual offences against children and *persons who are mentally disabled*.<sup>44</sup>

- **Criminal Procedure Act 51 of 1977**

The Criminal Procedure Act deals with, *inter alia*, an accused's competency to stand trial. Section 194 provides that no person appearing or proved to be afflicted with mental illness or to be labouring under any imbecility of mind due to intoxication or drugs or the like, and who is thereby deprived of the proper use of his reason, shall be competent to give evidence while so afflicted or disabled.

- **Domestic Violence Act 116 of 1998**

This Act prohibits any forms of violence within domestic relationships. Domestic relationships include between family members or caregivers and *persons with disabilities*.

- **Electoral Act 73 of 1998**

This Act provides that voters with *disabilities* should be assisted by a person of their choice where necessary, and *persons with disabilities* can be registered as special voters. This allows them to vote on a predetermined day before election day either at the voting station or at their residence (See sections 33 and 39 of the Act).

- **Electronic Communications Act 36 of 2005**

Section 2(s)(iii) determines that the primary object of this Act is to provide for the regulation of electronic communications in the Republic in the public interest and for that purpose according to section 2(s) ensure that broadcasting services, viewed collectively (iii) cater for a broad range of services and specifically for the programming needs of children, women, the youth and the disabled.

44 The offences including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography, despite some of the offences being similar to offences created in respect of adults as the creation of these offences aims to address the particular vulnerability of children and *persons who are mentally disabled* in respect of sexual abuse or exploitation. Furthermore this Act creates a duty to report sexual offences committed with or against children or *persons who are mentally disabled*. See secs 23 to 26, 54 and 57 of the Act.

- **Electronic Communications and Transactions Act 25 of 2002**

Section 1(l) states the objects of this Act are to enable and facilitate electronic communications and transactions in the public interest, and for that purpose to ensure that, in relation to the provision of electronic transactions services, the special needs of particular communities, areas and the disabled are duly taken into account.

- **Employment Equity Act 55 of 1998**

This Act seeks to promote and achieve equity in the workplace. This Act specifically prohibits the unfair discrimination of employees on the ground of disability. Furthermore chapter 3 deals with the employer's duties regarding affirmative action, ensuring that persons from designated groups have equal job opportunities. People with disabilities form one of these designated groups.

- **Labour Relations Act 66 of 1995**

This Act regulates the right to fair labour practices entrenched in section 27 of the Constitution. No person may be unfairly discriminated against on an arbitrary ground such as disability.

- **Mental Health Care Act 17 of 2002**

This Act aims at regulating and providing mental health care, treatment and rehabilitation services available for everyone and specifically regulates the manner in which the property of persons with mental illness, and persons with severe or profound intellectual disability may be dealt with by a court of law (see section 3 of the Act for the objectives).

- **National Building Regulations and Building Standards Act 103 of 1977**

This Act is currently under review, proposed amendments (in 2008) have undergone radical changes with respect to the section on providing facilities for people with disabilities. The requirements which should be met include: People with disabilities should be able to safely enter the building and be able to safely use all the facilities within it, specifically toilets. Furthermore lifts in buildings must be able to serve the needs of persons with disabilities. This means that there must be no obstacles/barriers that will prevent people with disabilities from accessing facilities within the building such as the lifts. The regulations refer specifically to people with impaired vision, but also relate to wheelchair users, or people who have trouble walking without assistance. Buildings that incorporate halls or auditoriums for public use are obliged to ensure that a reasonable percentage of space is available for wheelchair users or other 'assistive devices'.

For any building used by the public to meet the standards and measurements contained in the 'SANS 10400-S document'. The application of the National Building Regulations Part S: Facilities for persons with disabilities.

- **National Education Policy Act 27 of 1996**

This Act's aim, amongst others, is to ensure that no person is denied the opportunity to receive an education, to the maximum of his or her ability as a result of physical disability.

- **National Health Act 61 of 2003 and the Sterilisation Act 44 of 1998**

These Acts prohibits forced sterilisation of persons with disabilities. The National Health Act stipulates that all persons, including persons with disabilities, have a right to reproductive health services including family planning.

- **National Land and Transport Act 5 of 2009**

The Minister may make regulations for the requirements and time-frames for vehicles and facilities to be made accessible to persons with disabilities, including

principles for accommodating such persons in the public transport system (Section 8 of the Act).

- **National Road Traffic Act 93 of 1996**

This Act, amongst others, states which disabilities or illnesses disqualify a person from obtaining or holding a learner's or driver's licence.<sup>45</sup>

- **Postal Services Act 124 of 1998**

Section 2(h) of this Act specifically states that one of the objects of the Act is to ensure that the needs of persons with disabilities are taken into account in the provision of postal services.

- **Preferential Procurement Policy Framework Act 5 of 2000**

This Act seeks to provide a framework for preferential treatment of women of all races, black people and persons with disabilities in procurement transactions, as a means of addressing historical imbalances, to accelerate de facto equality.<sup>46</sup>

- **Promotion of Equality and Prevention of Unfair Discrimination Act**

This Act promotes the prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution. This specifically includes discrimination against people with disabilities.

- **Skills Development Act 97 of 1998 and Skills Development Levies Act 9 of 1999**

These Acts sets out a framework for managing skills development. The implementation of the Employment Equity Act requires synergy with that of the Skills Development Framework. Furthermore, the Skills Development Strategy sets out skills development targets for women of all races (54 per cent); black people, including women, and *persons with disabilities*.

- **Social Assistance Act 13 of 2004**

This Act regulates the eligibility of social assistance (section 5 of the Act) and section 9 specifically deals with the condition or requirements in respect of *disability grants*.

- **South African Library for the Blind Act 91 of 1998**

To provide for the South African Library for the Blind; for library and information services to blind and print-handicapped readers; and for matters connected therewith.

- **South African Schools Act 84 of 1996**

The purpose of this Act is to provide uniform education for 'everyone'. The Schools Act states that as far as is reasonably possible education should be provided for students with special education needs. Measures should be taken to try and provide physical facilities at public schools for it to be accessible to disabled people.

45 The Act, clearly states that the test centre can issue a licence if they are satisfied that all the requirements have been met and in the case of an applicant is found to be competent to drive with the aid of spectacles or contact lenses, an artificial limb or other physical aid, endorse the licence accordingly; and in the case where the applicant is a physically disabled person who has to drive a vehicle adapted for physically disabled persons, or a vehicle adapted specifically for that physically disabled applicant, endorse the licence accordingly.

46 The Act introduces a point system for adjudicating state tenders or contracts. The framework includes preferential points for black women and men, white women and persons with disabilities.

**4.2 Does your country have legislation that indirectly addresses disability? If so, list the main legislation and explain how the legislation relates to disability.**

- **South African Citizenship Act 88 of 1995**

This Act provides for the acquisition, loss and resumption of South African citizenship, and for matters incidental thereto. This includes and ensures the rights of persons with disabilities to have equal access to nationality.

## 5 Decisions of courts and tribunals

**5.1 Have the courts (or tribunals) in South Africa ever decided on an issue(s) relating to disability? If so, list the cases and provide a summary for each of the cases indicating what the facts, the decision(s), the reasoning and impact (if any) the cases have had.**

The Constitutional Court determined in 1997 in *Prinsloo v Van der Linde*<sup>47</sup> that human dignity constitutes a criterion to determine unfair discrimination. The Court endorsed the view that:

At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.

The Promotion of Equality and Prevention of Unfair Discrimination Act provides for the establishment of Equality Courts in all magisterial districts, which in principle should provide easy access to persons who believe they have been discriminated against on, amongst others, the basis of disability.

The importance of human dignity was emphasised in *WH Bosch v The Minister of Safety and Security & Minister of Public Works*<sup>48</sup> when the Equality Court in Port Elizabeth held that:

There is no price that can be attached to dignity or a threat to that dignity. There is no justification for the violation or potential violation of the disabled person's right to equality and maintenance of his dignity that was tendered or averred by the respondent. The court therefore found the discrimination to have been unfair.

The judgment directed that all South African Police Services (SAPS) stations be made accessible to persons with disabilities.

In another Equality Court case in Germiston, *Esthé Muller v Minister of Justice & Minister of Public Works*,<sup>49</sup> an out-of-court settlement in 2004 created precedence by directing that all court buildings be made accessible to persons with disabilities. *Bosch* and *Muller* resulted in the creation of a dedicated programme within the Department of Public Works to renovate existing public services buildings.

47 1997 3 SA 1012 (CC) para 32.

48 Case no 25/2005 (9).

49 Case no 01/2003.

Similarly, the Equality Court ruled in favour of Lettie Oortman against the St Thomas Aquinas private school (*Lettie Hazel Oortman v St Thomas Aquinas Private School & Bernard Langton*)<sup>50</sup> when the court directed that not only was the school obliged to re-admit Chelsea Oortman, but that the school had to take reasonable steps to remove all obstacles to enable Chelsea to have access to all the classrooms and the toilets allocated to her by using a wheelchair. The SAHRC (see question 8) had assisted Oortman and addressed the issues relating to the rights of persons with disabilities in Mpumalanga's Equality Court. The court found that the school had not taken all the reasonable steps to accommodate Oortman and the school had to remove all obstacles for the learner in order to enable her to have access to the classroom, washbasin and toilet allocated to the learner by using her wheelchair.

In the *Standard Bank of South Africa v Commission for Conciliation, Mediation and Arbitration & Others*,<sup>51</sup> an employee was dismissed after being injured in a car accident. The Bank failed to accommodate the employee, which rendered the dismissal 'automatically unfair' in terms of labour practice. The Bank had not complied with the Code of Good Practice on Dismissal. The Court noted that the underlying constitutional rights are the right to equality, the right to human dignity, the right to choose an occupation, and the right to fair labour practice. Judge Pillay noted that marginalisation of persons with disabilities in a workplace is not because of their ability to work, but because the disability is seen as an abnormality or flaw; that integration and inclusion in mainstream society aims not only to achieve equality, but also to restore the dignity of persons with disabilities.

## 6 Policies and programmes

### 6.1 Does South Africa have policies or programmes that directly address disability? If so, list each policy and explain how the policy addresses disability.

- **National Disability Strategy**

The White Paper on an Integrated National Disability Strategy of 1997<sup>52</sup> facilitates the promotion and protection of the rights of people with disabilities.

- It provides guidance for disability considerations in policy and legislative reform.
- The policy aims at integration of disability issues in all government development strategies, planning and programmes.<sup>53</sup>

- **Raising awareness**

The majority of disability awareness work targets the public at large. Initiatives include:

50 Equality Court Case 1/2010 (December 2010).

51 [2008] 4 BLLR (LC) 356-390.

52 The INDS is currently under review, with the aim of strengthening institutional mechanisms, the monitoring and evaluation framework, national priorities and targets for the next 10 to 15 years, ensuring full alignment of the CRPD.

53 Office of the Deputy President *Integrated National Disability Strategy White Paper* (November 1997) <http://www.info.gov.za/whitepapers/1997/disability.htm> (accessed 26 September 2013). There must be an integrated and co-ordinated management system for planning, implementation and monitoring at all spheres of government, and, to complement the process, there must be capacity building and wide public education.

- Government's political outreach programmes, including 'Taking Parliament to the People' (quarterly) and the 'Izimbizo' programme, where Members of Parliament and Provincial Legislatures as well as Cabinet Ministers and Mayors, provide a monthly platform for communities, particularly in deep rural areas, to engage their leadership directly on issues of human rights, development and service delivery. The guidelines for these public meetings require that persons with disabilities and their organisations be targeted as participants, and that it be ensured that all venues are accessible and sign language interpreters are available. Responses to public questions with regard to disability are based on the CRPD. These events also coincide with bringing services closer to remote communities, with mobile services from the Departments of Home Affairs, Health and Labour, the South African Social Security Agency and the National Youth Development Agency present on site for ease of access to those who would normally find it difficult to access these services.
  - The former Office on the Status of Disabled Persons developed and distributed policy guidelines for portraying disability in the media to media practitioners. The aim of the policy guidelines was to encourage frequent and positive portrayals of people with disability in mass media. The Department of Social Development conducted 64 community advocacy and awareness programmes that benefited 20 000 people.
  - The Department of Basic Education (DBE) in collaboration with the Government Communication and Information Service produced and broadcast awareness raising programmes on national television and subsequently distributed DVDs on the right of children with disabilities to schools in the communities. The DBE website also has the Thutong Education Portal that raises awareness on an on-going basis. A number of departments conduct media campaigns to raise awareness on the portrayal of persons with disabilities in a manner consistent with the principles of the CRPD.
- **Accessibility**
    - Accessibility in schools – the *National School Infrastructure Norms* include specifications for universal design with regard to new school buildings.
    - National Accessibility Programme: The National Accessibility Programme is a large, multi-year research and innovation project that addresses the marginalisation of persons with disabilities from mainstream society and the economy, ensuring their participation and inclusion at all levels of society through the use of Information and Communication Technology (ICT).<sup>54</sup>
    - Broadcasting Digital Migration Policy and Broadband Policy: Digital broadcasting must contribute significantly to accelerating the building of social cohesion and achieving national identity in South Africa through the dissemination of appropriate content that adequately reflects the country's cultures. Digital broadcasting provides services for persons with disabilities with closed captioning embedded in the television signal, which becomes visible when a special decoder is used. The South African decoder will, as a matter of policy, enable viewers to see captions, which assist them to read what is being said in that particular programme.<sup>55</sup> The Independent Communications Authority of South Africa, the regulatory body, developed a Code on Persons with Disabilities as required by section 70 of the Electronic Communications Act 36 of 2005, as well as section 2(h) of the Postal Services Act.<sup>56</sup>

54 National Accessibility Programme <http://www.napsa.org.za/> (accessed 26 September 2013); and First Draft Country Report for Public Comment, 25.

55 Broadcasting Digital Migration Policy <http://www.info.gov.za/view/DownloadFileAction?id=88342> (accessed 26 September 2013).

56 This Code provides and regulates key aspects of access to ICT services for persons with disabilities and compels ICT service providers to comply with its requirements. These include: All service providers are required to meet specific targets in respect of the rights of access for persons with disabilities, including access to postal services and the built environment, as an integral component of their licences; annual awareness programmes on the rights of persons with disabilities to universal access to ICT services are coordinated through ICASA and the Code has been made available in different formats across all nine provinces; and awareness programmes through the use of community radio stations in local languages.

- A disability portal, the National Accessibility Programme, was launched in 2008 as a partnership project between government, the African Advanced Institute for Information and Communication Technology and the disability sector, and is positioned as an integrated service provider to the disability community and industry offering accessible technology services, communication services, data synthesis services and other commercial services.<sup>57</sup>
  - Policy on the Provision of Reasonable Accommodation and Assistive Devices in the Public Service (2012): This policy seeks to assist government departments in planning for and implementing reasonable accommodation measures for employees with disabilities.
- **Accessible transport**
    - Standard design guidelines (Universal accessibility standards) to address accessibility in the passenger rail environment commenced in 2005, and culminated in the adoption of such universal guidelines in March 2008 by the Passenger Rail Agency of South Africa (PRASA) and the Department of Transport. PRASA is currently updating the guidelines and policy in consultation with organisations of persons with disabilities to strengthen universal access on its trains and stations as an integral component of its programme, which will upgrade 134 core stations by 2014.
    - The Airport Companies of South Africa (ACSA) has worked with the disability sector to improve services on passenger assistance units (PAUs) by increasing the number of units available at ACSA airports, as well as training PAU personnel. DPOs periodically report on isolated instances where people with physical disabilities are discriminated against in terms of boarding flights. These are usually resolved through intervention by, amongst others, the Civil Aviation Authority, the Department of Transport, as well as the Department of Women, Children and Persons with disabilities (DWCPD).
    - The Department of Transport is furthermore finalising norms and standards for accessible scholar transport and specifications for accessible school buses have been developed.
    - The Integrated Transport System, which provides universal accessibility on municipal bus services, is currently rolled out in metropolitan and larger local municipalities.
  - **Education**
    - Guidelines for Inclusive Teaching and Learning of 2009.
    - National Strategy on Screening, Identification, Assessment and Support (SIAS) of 2008. The aim of introducing the SIAS strategy in the education system is to overhaul the process of identifying, assessing and providing programmes for all learners requiring additional support to enhance participation and inclusion. One of the key objectives of the strategy is to provide clear guidelines on enrolling learners in special schools and settings.<sup>58</sup>
    - Education White Paper 6 on Special Needs Education: This policy supports inclusive education. The Education White Paper outlines six strategies to be implemented to try and achieve the goal of inclusive education.<sup>59</sup>
    - Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres of 2007: The aim of these guidelines is to ensure that special schools function well and offer appropriate, quality education to learners.<sup>60</sup>
    - Guidelines for Full-Service or Inclusive Schools of 2010: These guidelines form part of the Schooling 2025 Plan of the Department of Basic Education to strengthen the implementation of Inclusive Education, and to ensure greater access for all learners. The guidelines provide criteria or minimum standards that a school or institution

57 National Accessibility Programme (n 54 above).

58 SIAS Book <http://www.thutong.doe.gov.za/inclusiveeducation//Policy//Policies/tabid/3261/Default.aspx> (accessed 26 September 2013).

59 As above.

60 SNE Guidelines 1 <http://www.thutong.doe.gov.za/inclusiveeducation//Policy//Policies/tabid/3261/Default.aspx> (accessed 26 September 2013).

must comply with to be considered an inclusive or a full service school or institution.<sup>61</sup>

- Guidelines for Responding to Learner Diversity in classrooms through National Curriculum Statement of 2011. These guidelines are intended to provide teachers, principals, subject advisors, administrators, school governors and other personnel, parameters and strategies on how to respond to learner diversity in the classrooms through the curriculum. One of the most significant barriers to learning is the school curriculum. Barriers to learning arise from the different aspects of the curriculum such as the content, the language, classroom organisation, teaching methodologies, pace of teaching and time available to complete the curriculum, teaching and learning support materials and assessment.<sup>62</sup> In responding to the diversity of learner needs in the classroom, it is imperative to ensure differentiation in curriculum delivery to enable access to learning for all learners. All schools are required to offer the same curriculum to learners while simultaneously ensuring variations in mode of delivery and assessment processes to accommodate all learners. Respecting diversity implies a belief that all learners have the potential to learn.<sup>63</sup>
- National Protocol on Assessment of 2011: The *National Protocol for Assessment Grades R - 12* standardises the recording and reporting processes for Grades R – 12 within the framework of the *National Curriculum Statement Grades R – 12*. With respect to persons with disabilities the national policy on assessment is also contained herein and must comply with the prescriptions set out in the *Education White Paper 6 on Special Needs Education*.<sup>64</sup>
- **Liberty and security of a person with a disability**
  - The Department of Correctional Services separates offenders with disabilities who are housed in a secure detention unit to ensure that they are not exposed to any danger, in particular within the context of the current over-crowding in the majority of correctional facilities.
  - Monitoring and evaluation is done by means of Statistical tool G388-form, which has been reviewed and mainstreamed to accommodate offenders with disabilities.<sup>65</sup>
  - The White Paper 8 on Corrections in South Africa: Correctional institutions should be designed to cater for the needs of offenders with disabilities and should be consistent with the national policy framework on persons with disabilities. The policy should reflect both the equality of rights of disabled offenders and the particular needs that offenders with disabilities have. The provision of appropriate facilities must not be limited to the physical accommodation needs, but must include the provision of appropriate facilities for the enhancement of rehabilitation amongst these offenders. The White Paper further states that 'the courts need to make a greater commitment to consider the individual circumstances of each offender, and in this instance, the courts should consider imposing non-custodial sentences for offenders with disabilities'.<sup>66</sup>

61 Education White Paper: 2.2. Guidelines for Full-service/inclusive schools 2 <http://www.thutong.doe.gov.za/inclusiveeducation//Policy//Guidelines/tabid/3262/Default.aspx> (accessed 26 September 2013).

62 Department of Education, *Education White Paper 6: Special needs education: building and inclusive education and training system* (2001) 19.

63 Guidelines for Responding to Learner Diversity in Classrooms through National Curriculum Statement 2 <http://www.thutong.doe.gov.za/inclusiveeducation//Policy//Guidelines/tabid/3262/Default.aspx> (accessed 26 September).

64 National Policy for Assessment 34 <http://www.education.gov.za/LinkClick.aspx?fileticket=nynQZ8rrq0c%3D&tabid=419&mid=1840> (accessed 26 September 2013).

65 Statistical analysis to monitor trends in the prisoners with disabilities population is done monthly through reporting on the Management Information System (MIS), which reports on location, type of disability, age, gender and racial group.

66 White Paper on Corrections in South Africa 80 <http://www.info.gov.za/view/DownloadFileAction?id=68870> (accessed 26 September 2013). According to the White Paper the Department should also use the system of ongoing assessment to consider referrals, depending on the nature of the crime, to court for conversion of sentences of disabled offenders to correctional supervision and community service. To ensure that offenders with disabilities are treated in an appropriate manner, it will be important that members of staff are well educated and trained in the management of disabled offenders.

- **Living independently and being included in the community**
  - The Department of Social Development has developed policy guidelines on residential facilities and minimum norms and standards for residential facilities, which have given effect to providing guidelines, minimum norms and standards to the transformation and improvement of the quality of life for persons with disabilities in residential facilities. Supported/assisted living and independent living programmes constitute a move towards units/homes that are more open and smaller and within the community to facilitate de-institutionalisation. These are suitable for people who do not require 24 hour care and have some degree of independence.
- **Personal mobility/health/habilitation and rehabilitation**
  - The National Rehabilitation Policy of 2006's objectives includes facilitating human resource development, which takes into account the needs of both the service providers and the consumers as well as the appropriate allocation of funding, such as funding for assistive devices. The policy aims at securing the rights of all persons to have equal access to healthcare, which includes mental health and rehabilitation services. This Policy further aims to assist people with disabilities to attain maximum independence and full inclusion in all aspects of life.<sup>67</sup>
- **Participation in cultural life, recreation, leisure and sport**
  - Sport and Recreation South Africa (SRSA) must, in accordance with its funding policy in terms of section 10(1)(d) of the National Sports and Recreational Act 18 of 2007, increase the profile and financial assistance to volunteers, women, senior citizens, neglected rural areas and persons with disabilities, in sport and recreation. The SRSA Funding Policy of 2008 states that preference will be given to those clients (National Federations) whose activities clearly impact on government priorities and one of them is the 'advancement of women and persons with a disability'.
  - The Performing Art Policy ensures that 5 per cent of performers contracted for celebration and/or commemoration of national days constitute performers with disabilities.<sup>68</sup>

**6.2 Does South Africa have policies and programmes that indirectly address disability? If so, list each policy and describe how the policy indirectly addresses disability.**

- The Proximity of Courts Programme: This service provides periodic courts to rural and remote communities that would otherwise not have access to courts. Furthermore Legal Aid provides legal assistance at the expense of the state.
- The Expanded Public Works Programme (EPWP): This programme is aimed at providing poverty and income relief through temporary work for the unemployed to carry out socially useful activities.<sup>69</sup>
- The Community Work Programme (CWP) (2009): This programme provides an employment safety net by giving participants a minimum number of regular days off work.

67 National Rehabilitation Policy <http://www.doh.gov.za/docs/policy/2000/rehabpolicy.pdf> (accessed 26 September 2013); and First Draft Country Report for Public Comment 24,39 and 43.

68 First Country Report for Public Comment 58.

69 First Draft Country Report for Public Comment 51.

- The National Policy Framework for Teacher Education and Development (2006): The overriding aim of the policy is to equip teachers to undertake their essential and demanding tasks, to enable them to continually enhance their professional competence and performance, and to raise the esteem in which they are held by the people of South Africa. This includes addressing inclusive education and being able to comply with the policies on disabilities.<sup>70</sup>

## 7 Disability bodies

- 7.1 Other than ordinary courts or tribunals, does your country have any official body that specifically addresses the violation of the rights of people with disabilities? If so, describe the body, its functions and its powers.**

There are no bodies other than courts that specifically address the violation of rights of people with disabilities.

- 7.2 Other than ordinary courts or tribunals, does your country have any official body that though not established to specifically address the violation of the rights of people with disabilities, can nonetheless do so? If so, describe the body, its functions and its powers.**

The only other bodies addressing the violation of rights of people with disabilities are the National Human Rights Institutions discussed in question 8 below.

## 8 National human rights institutions

- 8.1 What is South Africa's position with regard to a Human Rights Commission or an Ombudsman or Public Protector? Does its remit include the promotion and protection of the rights of people with disabilities? If your answer is yes, also indicate whether the Human Rights Commission or the Ombudsman or the Public Protector of South Africa has ever addressed issues relating to the rights of persons with disabilities.**

South Africa has a South African Human Rights Commission (SAHRC) and a Public Protector, which were both established in terms of chapter 8 of the Constitution.<sup>71</sup> Both these institutions are required to be independent and subject only to the Constitution and the law.

<sup>70</sup> The National Policy Framework for Teacher Education and Development in South Africa (2006) <http://www.pmg.org.za/files/gazettes/061023educ-teachers.pdf> (accessed 26 September 2013).

<sup>71</sup> According to the founding provisions of the Constitution, South Africa is one sovereign, democratic state founded on various values. In order to comply with the founding requirements, the Constitution establishes certain important institutions designed to provide and support the envisaged system of constitutional democracy and open government.

• **South African Human Rights Commission (SAHRC)**<sup>72</sup>

The mandate of the SAHRC is contained in section 184 of the Constitution, which determines that the SAHRC must promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic. Section 184(2) provides for the powers, as regulated by the national legislation,<sup>73</sup> necessary to perform its functions, including the power to investigate and report on the observance of human rights; take steps and secure appropriate redress where human rights have been violated; carry out research; and educate. Furthermore, according to section 184(3), the SAHRC must yearly require the relevant organs of state, to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, healthcare, food, water, social security, education and the environment.

The SAHRC has to promote respect for the human rights of persons with disabilities, and promote the protection, development and attainment of human rights of persons with disabilities (See question 3 above). In this regard, the SAHRC has recently assisted and addressed the issues relating to the rights of persons with disabilities in *Oortman* and *Muller* (in this regard see question 5.1 above).

In terms of article 33(2) of the CRPD: '[s]tates should designate or establish one or more independent mechanisms to promote, protect and monitor the implementation of the Convention taking into account the Paris Principles.' The SAHRC is a status National Human Rights Institution, and constitute the independent monitoring mechanism envisaged in article 33 of the CRPD.<sup>74</sup>

In advocating on issues relating to older persons and persons with disabilities, the SAHRC has created a *Section 5 Committee on Disability and Older Persons*.<sup>75</sup> The *Section 5 Committee on Disability and Older Persons* has a sub-committee, which convenes once or twice a year with various departments. The sub-committee engages in the monitoring and observing process of the rights of people with disabilities with regard to the implementation of the CRPD.<sup>76</sup>

• **Public Protector**<sup>77</sup>

Section 182 of the Constitution determines that the Public Protector has the power, as regulated by national legislation<sup>78</sup> to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action. The Public Protector may not investigate court decisions, must be accessible to all persons and communities and any report issued by the Public Protector must be open to the public, unless exceptional circumstances, to be determined in terms of national legislation,

72 SAHRC website: <http://www.sahrc.org.za>.

73 Human Rights Commission Act 54 of 1994.

74 Section 14(1)(b)(vi) of the South African Human Rights Commission Bill of 2013; SAHRC *Submission to the United Nations High Commissioner for Human Rights: Human Rights of Persons with Disabilities: Human Rights Council Resolution 16/15 (31 August 2011)* <http://www.ohchr.org/Documents/Issues/Disability/PoliticalParticipation/NHRIs/ResponseNHRISouthAfrica.doc> (accessed 26 September 2013).

75 Members of the Committee on Disability and Older Persons represent a range of organisations, including many South African DPOs such as, and including, the Western Cape Cerebral Palsy Association, Down Syndrome South Africa, the QuadPara Association of South Africa and the South African Disability Alliance as well as the Cape Mental Health Society.

76 SAHRC 'Overview of SAHRC Activities on CRPD' <http://nhri.ohchr.org/EN/ICC/AnnualMeeting/25/Statementspresentations/Monitoring%20under%20CRPD%20-%20South%20Africa.doc> (accessed 26 September 2013).

77 Public Protector website: <http://www.pprotect.org>.

78 Public Protector Act 23 of 1994.

require that a report be kept confidential. According to section 182 the Public Protector has the additional powers and functions prescribed by national legislation.<sup>79</sup>

The Public Protector's mandate includes the promotion and protection of the rights of people with disabilities and recently, in November 2010, addressed the problem in a report on the investigation into the alleged failure by the Western Cape Department of Health to provide proper health care to a person with a disability. In this report the complainant's son had suffered serious injuries, including a disabling brain injury after an accident. The son, Mr Lobi (Jnr) was in need of long-term nursing care and a wheelchair. Mr Lobi (Jnr) had been lying on his back for 2 years and could not afford care and a wheelchair. The complainant was not informed timeously that his son could be reclassified as a state patient and therefore be provided with the necessary wheelchair. The Public Protector, amongst others, found that there is a serious backlog in the supply of wheelchairs and other assistive devices and confirmed that the supply of this is a constitutional right in terms of section 27 of the Constitution. The Public Protector stated that certain remedial actions should be taken and that urgent steps should be taken to provide Mr Lobi (Jnr) with a wheelchair. Furthermore the Department should introduce adequate measures to try and address this problem and that the budget and use of funds should be revisited.<sup>80</sup>

## 9 Disabled peoples organisations (DPOs) and other civil society organisations

### 9.1 Do you have organisations that represent and advocate for the rights and welfare of persons with disabilities in your country? If so, list each organisation and describe its activities.

#### Organisations that advocate for all disabilities<sup>81</sup>

- **Disabled People South Africa (DPSA)**  
Ensures development and integration of people with disabilities in all spheres of life in SA.<sup>82</sup>
- **African Disabled Refugees Organisation**  
Advocacy and support for African Refugees.
- **Alexandra Disability Movement**  
Programme areas include: advocacy, disability, job creation, and welfare.
- **Association for and of Persons with Disabilities**  
Assists in the needs of people with disabilities in the community and offers advice and assistance.

<sup>79</sup> As above.

<sup>80</sup> The full report is available on the public protector's website (n 77 above).

<sup>81</sup> Disability Allsorts *A directory of organisations and resources for people with disabilities in South Africa* [http://www.unisa.ac.za/contents/management/arcswid/docs/Disability\\_directory\\_allsorts09.pdf](http://www.unisa.ac.za/contents/management/arcswid/docs/Disability_directory_allsorts09.pdf) (accessed 26 September 2013).

<sup>82</sup> Disabled People South Africa website: <http://www.dpsa.org.za/> (accessed 26 September 2013).

- **Association for Persons with Disabilities**

The Association includes: residential facilities, learning centres, a school support programme, a youth empowerment programme, leadership camps, sports clubs, an entrepreneurship programme, a rehabilitation programme, skills development, and a job creation programme.

- **Association for Persons with Physical Disabilities**

The Association includes: community development, protective workshops, training in work skills, access, awareness, placement, sport and the continual fight for equality for physically challenged people.

- **Association for the Physically Disabled**

Development of communities to enable them to provide services to their own people with disabilities in that specific community.

- **Association for the Rehabilitation of People with Disability**

Works with the community and individuals to ensure the highest level of achievement especially for those with disabilities.

- **Centre for Rehabilitation Studies – African Policy on Disability and Development (A-PODD) Project**

This project is aimed at gathering and analysing research based evidence about whether persons with disabilities engage in national and international policy initiatives that target poverty reduction.

- **Children’s Assessment and Therapy Centre**

Which focuses on providing evaluation for early learning difficulties as well as behavioural and remedial difficulties in children.

- **Children’s Disability Centre**

Early childhood development: medical, developmental assessments of disabled children; therapy; support to children and caregivers; training and skills development in the management of disabled children; gathering and publishing of statistics; resource and consultancy centre networking with other organisations and government authorities.

- **CREATE – CBR Education and Training for Empowerment**

Training and education of community-based rehabilitation workers as well as, amongst others, introductory workshops and courses in disability and rehabilitation.

- **Curamus Association**

For members of the South African Security Services or their dependents who have a disability and those with disabilities caused by war.

- **Disability Action Research Team**

Which conducts research and shares information relating to disability, including information that demystifies disability and empowers persons with disabilities.

- **Disability Alliance (Formerly South African Federal Council on Disability)**

A platform for discussion, joint planning, collaboration and consensus seeking amongst key role players within the disability sector.

- **Disability Connexion**

Part of African Enterprise, an international, interdenominational Christian organisation, connecting people with disabilities to others and the church.

- **Disability Empowerment Concerns Trust**

A broad-based BEE investment vehicle established by the seven largest South African disability NGO's for their benefit.

- **Disability Info and Care**

Specialised training of care-workers, placement of care-workers, personal development programmes for people with disabilities, employment placement, personal consultation, enquiries on all disability issues.

- **The Disability Help-Line – Networking on Disability Issues**

Supports people with disability through networking on disability issues, a telephone help-line, assessments of the accessibility of existing buildings and facilities.

- **Disability Options**

An independent organisation working with people with mobility challenges and other physical, vision, hearing, speech and mental disabilities.

- **Disabled Children's Action Group**

Affiliated to DPSA and promotes the rights of children with disabilities and their development and participation in society. Aims to raise awareness of disability and challenge stereotypes and perceptions of people with disabilities in South Africa.

- **Disabled Care Group**

A support group for people with disabilities or chronically ill persons, or persons who are looking after people with disabilities or chronically ill spouse(s).

- **Disabled Youth South Africa**

Aims to develop a programme to campaign for equal rights for youth with disabilities and awaken the awareness of youth with disabilities about health care, especially AIDS.

- **Gauteng North Services to People with Disabilities**

Promotes the rights and welfare of persons with disabilities in Gauteng North through a variety of activities and services.

- **Health Professions Council of South Africa**

Established to protect consumers of health care services, guide practitioners on educational, professional and ethical issues, and co-ordinate the 12 professional boards in setting health care standards for training and discipline in the professions registered with the Council, ensuring on-going professional competence and fostering compliance with those standards.

- **Hospice Palliative Care Association of South Africa**

Palliative care or pain relief for people with terminal illnesses; support given to their families.

- **Johannesburg Council for the Disabled**

Holistic service for people with various disabilities – welfare, counselling, life skills, education, sports and recreation, skilling and training, workshops, creation of employment opportunities, hydroponic farming.

- **National Council for Persons with Physical Disabilities in South Africa**

A proactive forum for the advancement of persons with physical disabilities, to enable them to achieve maximum independence and integration into the community.<sup>83</sup>

- **Lowveld Association for People with Disabilities**

Whose mission is to strive to meet the social needs of persons with disabilities in the Lowveld region of South Africa, including improving their quality of life by providing services they need

- **Orion Organisation**

Dedicated to caring and providing for the educational, training and therapeutic needs of children, youth and adults with physical, intellectual and/or mental disabilities; includes group homes, a special day care centre, a semi-frail care facility, workshop and job creation initiatives.

- **OR Tambo Disabled People's Organisation**

Concerned mainly with advocacy and capacity building; also supports programmes for children with disabilities, youth development, home-based care and HIV/AIDS.

- **Parents for Children with Special Educational Needs.**

- **People for Awareness of Disability Issues (PADI)**

PADI is a group of people – both people with disabilities and non-disabled - who since 1987 have been committed to education and awareness on disability issues in both the academic and business worlds.

- **Reach for a Dream**

Fulfilling the dreams of children of any race, colour or creed between the ages of 3 and 18 with life-threatening illnesses.

- **Restoration of Human Abilities Association**

Provides therapeutic, community and educational services to restore abilities lost through mental illness, disability and neglect.

- **Social Aspects of HIV/AIDS Research Alliance.**

- **South African Disability Institute.**

- **South African Sport Association for the Physically Disabled.**

- **Trans Oranje Institute for Special Education**

Sponsoring body for five schools – Transoranje (for deaf learners), Sonitus (for the hearing-impaired), Prinshof (for the blind), Martie du Plessis (for learners with cerebral palsy) and Transvalia (for learners with epilepsy).

- **Western Cape Network on Disability**

Lobbies government to institute various services for people with disabilities on behalf of disability-related NGOs in the Western Cape.

83 National Council for Persons with Physical Disabilities in South Africa website: <http://www.ncppdsa.org.za/> (accessed 26 September 2013).

- **Wheelchair Users Forum South Africa.**
- **Zanempilo Trust.**

**Disability specific organisations include:**<sup>84</sup>

- The Deaf Federation of South Africa (DEAFSA);<sup>85</sup>
- The South African Blind Worker Organisation of South Africa (SABWO);
- The National Organisation of the Blind in South Africa (NOBSA);
- The South African Federation for Mental Health (SAFMH);<sup>86</sup>
- The Quadriplegic Association of South Africa (QUASA);
- The Down Syndrome Forum of South Africa;
- The South African Epilepsy League;
- South African National Council for the Blind (SANCB);<sup>87</sup> and
- Dementia South Africa.

**9.2 In the countries in your region, are DPOs organised or coordinated at a national and/or regional level?**

The paradigm shift, from the medical to the social model, has come about largely through the development of strong DPOs. Central to the concept of the social model of disability is the principle of self-representation by people with disabilities through DPOs.

The South African Disability Alliance (SADA) is a body comprising of the 13 national organisations representing disability issues in South Africa. This body, which was formerly known as the South African Federal Council on Disability, has been reconstituted to be a body of consensus, and the voice of the disability sector in South Africa.<sup>88</sup> In South Africa DPOs are organised on a national level under umbrella organisations, but there are many organisations that further co-ordinate the DPOs on a regional/provincial level.

**9.3 If your country has ratified the CRPD, how has it ensured the involvement of DPOs in the implementation process?**

In order to ensure public participation, the DWCPD has established a close and working relationship with the disability sector through its civil society structures, such as the South African Disability Alliance and Disabled People South Africa. The Disability sector participates in the National Disability Machinery, which is a non-statutory consultative forum between government and, organisations of persons with disabilities, business and institutions of higher learning. All national government departments, provincial administrations as well as district and local municipalities are required to appoint/designate a disability focal person/unit to coordinate the mainstreaming of disability considerations within each of these institutions. These focal points converge in the National Disability Machinery,

84 Disability Allsorts (n 81 above).

85 DEAFSA website: <http://www.deafsa.co.za/> (accessed 26 September 2013).

86 SA Federation for Mental Health website: <http://www.safmh.org.za/> (accessed 26 September 2013).

87 South African National Council for the Blind website: <http://www.sanccb.org.za> (accessed 26 September 2013).

88 A list of the members of SADA can be found at <http://www.dpsa.org.za/partnerships/>. SADA will be registered as a non-profit organisation, and thereafter, it will exist as a legal entity.

which is constituted by, amongst others, the Inter-Departmental Coordinating Committee, the Provincial Coordinating Forum, and the National Disability Forum, which brings civil society on board.<sup>89</sup>

#### 9.4 What types of actions have DPOs themselves taken to ensure that they are fully embedded in the process of implementation?

It is difficult to ascertain which organisations in South Africa specifically monitor the implementation of the CRPD. The Secretariat of the African Decade of Persons with Disabilities (SADPD) is one such organisation. In September 2009, the SADPD hosted an annual disability workshop on Human Rights Monitoring and the CRPD in Cape Town. Participants from over eleven African countries, including experts on disability issues from civil society, academia, governments and the UN, attended this event. Most participants came from countries that have ratified the CRPD. Among the issues discussed at the workshop were the challenges faced by African States in implementing the CRPD.<sup>90</sup>

CREATE (Community Based Rehabilitation Education and Training for Empowerment), a non-profit organisation based in KwaZulu-Natal, drafted a shadow report and drew from the experiences of members of the Umgungundlovu Disability forum (a network of disability organisations). The report was read by the UN Special Rapporteur on Disability, S Chalklen, and sent to the Conference of State Parties in New York in September 2010.

Except for the actions taken to ensure the implementation of the CRPD in general, the DPOs each have their own achievements with regards to advocating the rights of people with disabilities and implementing the CRPD. CREATE has listed their achievements as follows:<sup>91</sup>

- Translation of the CRPD into isiZulu;
- Development of a picture version of the CRPD for people who are illiterate;
- Developed the skills of people with disabilities in 8 of KwaZulu-Natal's 11 districts to advocate for their rights and engage with service providers;
- Many local improvements have happened due to CREATE's advocacy work, for example, a disabled people's organisation receiving seeds and agricultural implements from the Department of Agriculture and people with disabilities being taken to participate in national sports events by their municipality;
- Development of a comic in English and isiZulu on the CRPD for use with youth and children;
- Production of a DVD on CREATE's advocacy work; and
- Initiated the process and authored a shadow report from the Umgungundlovu Disability Forum to the CRPD in Geneva.

In a study done on the role and effectiveness of disability legislation in South Africa (Disability Knowledge and Research programme) by AK Dube (March 2005) it was stated that where successful implementation of policies and legislation, necessary to implement the CRPD, has occurred, it has largely been due to political support by the ministers and senior civil servants in charge of departments, and/or

89 First Draft Country Report for Public Comment, 63.

90 Early in 2011, the SADPD hosted a workshop on the possibility of developing an African Protocol on Disability. The workshop was convened in order that the disability partners of Africa could be informed and deliberate upon the African Disability Protocol that was in the process of being drafted by the Working Group on Older Persons and persons with disabilities in Africa. This idea is still under discussion.

91 CREATE *Advocacy for disability rights* [http://www.create-cbr.co.za/index.php?option=com\\_content&view=article&id=12&Itemid=16](http://www.create-cbr.co.za/index.php?option=com_content&view=article&id=12&Itemid=16) (accessed 26 September 2013).

the sustained commitment and on-going advocacy by the disability sector, led by DPSA.<sup>92</sup>

**9.5 What, if any, are the barriers DPOs have faced in engaging with implementation?**

Problems associated with the implementation include a lack of resources and funding for the DPOs. DPOs only receive part-subsidisation from the state. Procedural bottlenecks have been identified as one of the main causes of 'policy evaporation' within the South African context, and raising awareness about disability issues has to be addressed on an on-going basis.<sup>93</sup> With regards to the National Disability Machinery many challenges face DPOs, which include mandate, capacity, functionality and the impact of disability focal points and coordinating structures across all three spheres of government.<sup>94</sup>

**9.6 Are there specific instances that provide 'best-practice models' for ensuring proper involvement of DPOs?**

It is difficult to ascertain at this stage if a 'best-practice models' for ensuring proper involvement of DPOs are in place. The South African government recognises the role that the disability sector, and DPOs in particular, continue to play in promoting and adopting a rights based approach for persons with disabilities and their families during the drafting process of their first draft country report.<sup>95</sup>

**9.7 Are there any specific outcomes regarding successful implementation and/or improved recognition of the rights of persons with disabilities that resulted from the engagement of DPOs in the implementation process?**

See question 9.4 for the achievements of CREATE.

**According to DPSA, the achievement resulting from DPSA's advocacy can be summarised in the following way:**<sup>96</sup>

- The Constitution outlaws discrimination against people on the grounds of disability.
- Disability is no longer seen as a charity/welfare issue, but as a human rights and development issue.
- The former Office on the Status of Disabled Persons had been established with the responsibility of implementing the Integrated National Disability Strategy.
- People with disabilities have been placed in key Commissions established by the government as part of the transformation process, for example, Human Rights, Gender, Youth, Special Needs Education and Public Service Commissions.
- People with disabilities are represented on the Boards of SATOUR, National Skills Authority (NSA), NTSIKA Enterprise Development Promotion Agency (NEPA), South African Qualifications Authority (SAQA), National Board for Further Education and Training (NBFET) and the SABC.

92 AK Dube 'The role and effectiveness of disability legislation in South Africa' Disability Knowledge & Research (KaR) Programme [http://tugsa63.org/documents/additional%20documents/PolicyProject\\_legislation\\_sa.pdf](http://tugsa63.org/documents/additional%20documents/PolicyProject_legislation_sa.pdf) (accessed 26 September 2013).

93 As above.

94 First Draft Country Report for Public Comment 64.

95 First Draft Country Report for Public Comment 2.

96 DPSA *Achievements* <http://www.dpsa.org.za/achievements/>.

**9.8 Has your research shown areas for capacity building and support (particularly in relation to research) for DPOs with respect to their engagement with the implementation process?**

- Government acknowledged during the drafting of their First Country Report for Public Comment that capacity and resource constraints limited the extent to which DPOs and disability service organisations were able to participate in the development of the Country Report. This will be an area for capacity building and support with respect to DPO's engagement with the implementation process in future.
- The contributions by the South African National Council for the Blind, the National Council for Persons with Physical Disabilities in South Africa and the South African Federation on Mental Health were appreciated in the First Country Report for Public Comment by the South African government.

**9.9 Are there recommendations that come out of your research as to how DPOs might be more comprehensively empowered to take a leading role in the implementation processes of international or regional instruments?**

See question 9.8 above.

**9.10 Are there specific research institutes in South Africa that work on the rights of persons with disabilities and that have facilitated the involvement of DPOs in the process, including in research?**

There are currently no specific research institutes in South Africa that work on the rights of persons with disabilities, which have facilitated the involvement of DPOs in the process.

## 10 Government departments

**10.1 Does South Africa have government departments that are specifically responsible for promoting and protecting the rights and welfare of person with disabilities? If so, describe the activities of the departments.**

- South Africa has the DWCPD,<sup>97</sup> which was established in May 2009, and incorporates the former Office on the Status of Disabled Persons.
- This Department, amongst others, is responsible for the equity, equality and empowerment agenda in terms of those living with disabilities.<sup>98</sup>
- To achieve this, programmes for persons with disabilities are being implemented and their empowerment will be promoted. The Ministry will also promote the protection of the rights of persons with disabilities and will guide, monitor, evaluate, co-ordinate and facilitate mainstreaming of issues relating to this sector, in terms of national priorities.<sup>99</sup>

97 DWCPD website: <http://www.dwcpd.gov.za> (accessed 26 September 2013).

## 11 Main human rights concerns of people with disabilities

- 11.1 What are the contemporary challenges of persons with disabilities in South Africa? (For example, in some parts of Africa ritual killing of certain classes of PWDs such as people with albinism occurs. Tanzania has been in the headlines in this regard. We should have a way of interrogating customary practices that discriminate, injure and kill persons with disabilities).**

The myth that having sexual intercourse with a virgin will cure a person of HIV, that often includes young girls and women with disabilities, is not limited to South Africa, but is a prevalent problem in Africa. Individuals with disabilities are presumably at risk both because they are, incorrectly, often assumed to be sexually inactive, hence virgins, and because they might be easy targets.<sup>100</sup>

- 11.2 How does South Africa respond to the needs of persons with disabilities with regard to the areas listed below?**

- **Access and accommodation**

People receiving less than R 3 500 income a month are eligible for government housing subsidies. The normal subsidies are supplemented with additional funding to provide for the specific needs of a person with a disability.<sup>101</sup> The Social Housing Policy (2003) identifies people with disabilities who are able to live independently as one of the target groups for social housing.<sup>102</sup>

98 The DWCPD is specifically responsible for providing and protecting the rights and welfare of persons with disabilities, but many of the other government departments also deal with issues relating to persons with disabilities. They include the Department of Health, providing assistive devices such as wheelchairs to people in need of them; the Department of Justice and Constitutional Development, dealing with the lodging of complaints in the Equality Courts based on discrimination because of disability and access to courts; the Department of Transport, striving for quality and affordable transport for all; the Department of Basic Education, aiming at an Inclusive Education system; the Department of Labour, dealing with elimination of inequality at the work place and protecting human rights; the Department of Social Development, management and oversight over social security, encompassing social assistance and social insurance policies that aim to prevent and alleviate poverty in the event of life cycle risks such as loss of income due to disability; the Department of Communications and Department of Arts and Culture who both have to address the issue of the use of sign language for people with hearing disabilities; and any of the other departments also deal with the welfare and protecting of the rights of persons with disabilities to a lesser extent.

99 The DWCPD core functions include to: facilitate policy implementation towards the empowerment, advancement and socio-economic development of persons with disabilities; mainstream disability considerations into government policies, governance processes and programmes; facilitate, coordinate, oversee and report on the national rights of persons with disabilities programme - as well as those programmes part of South African regional, continental and international initiatives.

100 NE Groce & R Trasi 'Rape of individuals with disability: AIDS and the folk belief of virgin cleansing' (2004) 363 *The Lancet* 1663.

101 First Draft Country Report for Public Comment, 52.

102 L Chenwi & K Tissington *Engaging meaningfully with government over socio-economic rights* (2010) [http://www.dhs.gov.za/Content/legislation\\_policies/Social%20Housing%20Policy.pdf](http://www.dhs.gov.za/Content/legislation_policies/Social%20Housing%20Policy.pdf) (accessed 3 October 2013).

- **Access to social security**

The Social Security Act 13 of 2004, provides for amongst others, an additional grant-in-aid for disability grant recipients who require full-time attendance by another person owing to his/her physical or mental disabilities.<sup>103</sup> There is a range of social assistance for care dependency grants, child support grants, grant-in-aid and disability grants.<sup>104</sup>

- **Access to public buildings**

The Department of Public Works identified buildings for reconstruction in order to facilitate accessibility for people with disabilities.<sup>105</sup>

- **Access to public transport**

According to the Department of Transport the Programme of Action on Accessible Public Transport is an internal working document, which developed the Accessible Public Transport Strategy into a series of programmes that would be implemented over time.

Suggested remedies:<sup>106</sup>

- Integrated transport and settlement planning;
- Integrated upgrading of roads;
- Implementation of Part S of the building regulations 2011, upgrading through PRASA's programme;
- Alter Taxi rank classification under the building regulation; and
- Change accessible bus specifications.

- **Access to education**

An integrated strategy and programme of action for the provision of educational support to learners with severe and profound disabilities is currently in development following the November 2010 judgment against the Government of the Republic of South Africa and the Government of the Province of the Western Cape.<sup>107</sup> A process has been initiated by the Department of Basic Education to track individual learners, including learners with disabilities, with the introduction of the Learner Unit Record Information Tracking System in 2008.<sup>108</sup>

- The National Strategy on Screening, Identification, Assessment and Support is currently being finalised in a response to inclusive education.<sup>109</sup>
- Negotiations are underway with the publishing industry to make prescribed works and textbooks available in digital format.<sup>110</sup>

103 First Draft Country Report for Public Comment, 23.

104 First Draft Country Report for Public Comment, 50.

105 First Country Report for Public Comment, 10; Department of Public Works website: <http://www.publicworks.gov.za> (accessed 26 September 2013); *Bosch* (see question 5) has also influenced and set a precedent for the accessibility of South African Police Services stations ensuring that in the future disabled persons will have access to all police stations.

106 Parliamentary Monitoring Group *Department of Transport & DWCPD response to hearings on implementation of UN Convention on Rights of Persons with Disabilities* (5 September 2012) <http://www.pmg.org.za/report/20120905-responses-issues-raised-submissions-public-hearings-implementation-un> (accessed 26 September 2013).

107 First Draft Country Report for Public Comment, 29; the Western Cape Forum for Intellectual Disability petitioned for the right to education for children with severe and profound intellectual disabilities to be recognised by the Department of Education.

108 It should be noted that the quality of the data is not in all cases reliable and up to date, and mostly tracks learners who are in special needs schools. First Draft Country Report for Public Comment, 29.

109 First Draft Country Report for Public Comment, 32.

110 First Draft Country Report for Public Comment, 33.

- Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System of 2001 is not fully implemented.<sup>111</sup>

- **Access to vocational training**

The Department of Basic Education in 2011 introduced the process of developing a skills and vocational orientated exit level qualification at Grade 9 level for learners with intellectual disabilities.<sup>112</sup>

- **Access to employment**

- The Department of Social Development finalised policy guidelines on the management and transformation of protective workshops aimed at providing decent work and wages, strengthening skills development in these centres and improving employability of persons with disabilities in the open labour market.<sup>113</sup>
- The Department of Social Development is responsible for the subsidisation of 293 protective workshops in 2012, providing an income for 14 212 persons with disabilities.<sup>114</sup>

- **Access to recreation and sport**

- The Department of Arts and Culture supports a number of initiatives to promote arts and culture among persons with disabilities.<sup>115</sup>
- The Annual Zwakala DeafTV National Championships, in partnership with the South African Public Broadcaster, the Pan South African Language Board, reaches approximately 300 deaf children.
- The Afrika Sinakho 'In the Blood' national touring production showcases performing arts abilities of persons with disabilities in a cast of 80 persons with both persons with disabilities (sight, physical and mentally disabled) and non-disabled artists.
- The Market Theatre's 'Listen with your Eyes' Festival in 2010, produced two plays that were aimed at both the deaf and hearing community.
- The South African Library for the Blind, established under the South African Library for the Blind Act 91 of 1998 receives an annual grant.
- The Strategic Plan for Sport and Recreation (2011-2015) states that one of the aims is to promote sport through programmes specifically aimed at marginalised and discriminated groups such as people with disabilities.<sup>116</sup>

- **Access to justice**

Some initiatives have included the creation of special courts, including sexual offences courts, family courts, labour courts and equality courts. Although full accessibility of the justice system has not yet been achieved, government has created a range of institutions and mechanisms for facilitating equal access to justice. Among these institutions and programmes is Legal Aid, providing legal assistance at the expense of the state especially to impoverished persons. With regard to access to courts by persons with disabilities in rural areas, the Proximity of Courts Programme is noteworthy. This service provides periodic courts to rural and remote communities that would otherwise have no access.<sup>117</sup>

111 Department of Education *Implementing inclusive education in South Africa: True stories we can learn from* (November 2002) <http://www.thutong.doe.gov.za/ResourceDownload.aspx?id=37391&userid=-1> (accessed 26 September 2013).

112 First Draft Country Report for Public Comment, 35.

113 A training manual to give effect to the guidelines was developed and has been implemented nationally and in all nine provinces, targeting government officials, national organisations for persons with disabilities, DPOs and representatives from protective workshops; First Draft Country Report for Public Comment, 48.

114 First Draft Country Report for Public Comment, 47.

115 First Draft Country Report for Public Comment, 58.

116 Department of Sport & Recreation Strategic Plan for Sport and Recreation 2011-2015 (2011) <http://www.srsa.gov.za/pebble.asp?reliid=807> (accessed 3 October 2013).

117 First Draft Country Report for Public Comment, 16-17.

### 11.3 Does South Africa provide for disability grants or other income support measures for persons with disabilities?

- Persons with disabilities who are indigent qualify for a range of social assistance grants, including disability grants (USD150 per month in 2012); child support grants (children aged 0-14 years, USD35 per month in 2012), care dependency grants (children with disabilities requiring 24 hour care, USD150 per month in 2012), grant-in-aid (persons who require regular attendance by other persons, USD35 per month in 2012), foster care grant (USD96.25 per month in 2012), war veterans grant (USD152.50 per month in 2012) and older persons grants (USD150 per month plus USD2.500 per annum for those over 75 years in 2012).
- Workers are furthermore protected through unemployment insurance benefits as well as compensation for injury on duty.

### 11.4 Do people with disabilities have a right to participation in political life (for example, political representation and leadership) in South Africa?

Where political rights<sup>118</sup> are concerned, a number of specific factors impact on the rights of persons with disabilities to vote and be elected.<sup>119</sup>

- Physical barriers exist such as accessible transportation and access to polling stations.<sup>120</sup>
- Accessible information regarding voting times, dates, candidates and the accessibility,<sup>121</sup> bearing in mind that television and radio remain preferred sources of information.<sup>122</sup>
- Electoral staff that understand and respect the needs of persons with disabilities.<sup>123</sup>

118 SAHRC (n 76 above).

119 Disabled People South Africa (DPSA), interview with F Hassiem (11 August 2011) see <http://www.dpsa.org.za/> (accessed 26 September 2013). Prior to the local government elections held in early 2011, DPSA, a local NGO that advocates on behalf of persons with disabilities, and IEC representatives formed part of the Disability Reference group of the Western Cape, which consulted with various stakeholders in the disability sector on how voting can be facilitated to include persons with disabilities. The following restrictions were identified: Voter education needs to happen on an on-going basis and Reasonable Accommodation (RA) should be a priority. RA means, *inter alia*, documents in Braille or large print, information in audio, sign language interpretation, introduction of Electronic Voting Machines; Secondly, venue accessibility was cited as a concern, including the need for ramps, assistance, and ballot papers themselves in large print or Braille. The IEC concurred that one of the biggest restrictions to vote and be elected is the issue of access, as well as the issue of whether there are special arrangements made during elections for persons with disabilities. The reference group noted that special voting education must be undertaken so that persons with disabilities, especially those in far outlying or rural areas, understand their rights with regard to applying for special voting procedures.

120 Health Sciences Research Council *IEC Voter Participation Survey 2010/11: An Overview of Results* (14 April 2011). In the 2011 Human Sciences Research Council (HSRC) Survey on Voter Participation (conducted in collaboration with the IEC), about 3 per cent of the participants found that facilities to register and vote were inaccessible.

121 Media Statement issued by the Ministry for Women, Children and People with Disabilities 'People with disabilities can vote at home' 17 April 2011 [http://www.wcpd.gov.za/images/uploads/Disability\\_elections.doc](http://www.wcpd.gov.za/images/uploads/Disability_elections.doc) (accessed 2 October 2013). In 2011, the IEC announced that it had procured the necessary equipment to make ballot papers available in Braille at all polling stations. This would enable persons with visual impairments to vote in secret during local and general elections for the first time. However, the Commission noted that the needs of persons with intellectual and psycho-social disabilities been largely overlooked. The Commission thus concluded it must be ensured that they are included in the voting process and are given the opportunity to participate fully in public life: SAHRC (n 76 above).

122 *IEC Voter Participation Survey 2010/11* (n 120 above) 12.

123 IEC 'Findings of IEC voter participation survey' 14 April 2011 <http://www.elections.org.za/content/new.aspx?id=1799> (accessed 27 September 2013).

### 11.5 Specific categories experiencing particular issues or vulnerabilities

- **Women and children with disabilities**<sup>124</sup>
  - Black women with disabilities, in particular, bear the brunt of inequality based on race, disability, gender, socio-economic status and class.
  - A major concern with regard to disability and gender is the persisting violence against and victimisation of women and children, and in particular women and girls with disabilities. Estimates of the extent of violence vary, as there under-reporting.<sup>125</sup>

## 12 Future perspective

### 12.1 Are there any specific measures with regard to persons with disabilities being debated or considered in South Africa at the moment?

The First Draft Country Report was open for public comment during 2013, before the intended deposit thereof to the UN's Committee on the Rights of Persons with Disabilities.

### 12.2 What legal reforms are being raised? What legal reforms would you like to see in your country? Why?

List of future measures and reforms:

- Effort to mainstream disability into Millennium Development Goals (MDGs) since this issue was highlighted at the second Conference of States Parties.<sup>126</sup>
- The South African Law Reform Commission is concluding a lengthy participatory process of reviewing legislation with regard to assisted decision-making for adults with impaired decision-making capacity. The review of legislation seeks to address the inadequacies of the current curatorship system.<sup>127</sup>
- The Department of Public Services and Administration is currently costing the draft policy on reasonable accommodation in the public service, which will bring uniformity across the public service in the provisioning of assistive devices, personal assistance services and technology for disabled public servants.<sup>128</sup>
- The Department of Arts and Culture has just completed an investigation into national braille production needs and related braille policy matters with the aim of developing a braille production strategy for the country.<sup>129</sup>

<sup>124</sup> First Draft Country Report for Public Comment 59.

<sup>125</sup> Disaggregated statistics for violence against women and children with disabilities are not available. Women with communication and/or intellectual and/or psychiatric disabilities experience particular difficulties in accessing justice when their rights have been violated.

<sup>126</sup> South Africa has not, effectively built the inclusive MDGs into its planning frameworks in terms of the alignment and harmonisation of programs. There is a lack of coherent data to measure progress. South Africa will ensure a stronger focus on poverty reduction and the improvement of health for persons with disabilities as well as children. First Draft Country Report for Public Comment, 1.

<sup>127</sup> First Draft Country Report for Public Comment, 16.

<sup>128</sup> The South African Police Services (SAPS) have for example procured an extensive range of personal assistive devices for employees with disabilities, including manual and motorised wheelchairs, prosthesis, white canes, vehicle adaptations, as well as a range of technological equipment, to promote independence and productivity during the period 2008-2011. First Draft Country Report for Public Comment, 24-25.

<sup>129</sup> First Draft Country Report for Public Comment, 25.

- The Department of Social Development is in the process of finalising a strategy for orphans in order to provide them with places of safety if the immediate family is unable to care for a child with a disability.<sup>130</sup>
- Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System (2001) outlines government's strategy to transform the current education system to make it more efficient, more equitable and more just, recognising the right of all learners to attend their local neighbourhood school and to receive the necessary support.<sup>131</sup>
- Steps have been taken to develop specifications for accessible school buses in KwaZulu- Natal Province.<sup>132</sup>
- A Curriculum for South African Sign Language is currently being drafted by a Ministerial Task Team.<sup>133</sup>
- The White Paper on an Integrated National Disability Strategy (INDS), released in 1997, is currently under review with the aim of strengthening, among others, institutional mechanisms, the monitoring and evaluation framework, national priorities and targets for the next 10 to 15 years, ensuring full alignment with the CRPD.<sup>134</sup>
- The draft Fitness Industry Bill makes provision that a fitness establishment must, amongst others, have at least a defibrillator and a first aid kit for persons with disabilities; and a sufficient number of staff that is specifically trained to assist persons with disabilities.<sup>135</sup>
- The Deaf Federation of South Africa has approached the Constitutional Review Committee to recognised Sign Language as the twelfth official language of South Africa.<sup>136</sup>

130 First Draft Country Report for Public Comment, 22-25.

131 The policy embodies the principles of art 24 of the CRPD.

132 The scholar transport policy which is being developed will incorporate norms for accessibility. Mobile ramps have been procured by the national Department of Education for selected schools to ensure that mini bus taxis can be made accessible. First Draft Country Report for Public Comment, 30; The Department of Transport *Final draft: National scholar transport policy* (February 2009) [http://www.fedsas.org.za/downloads/10\\_52\\_24\\_National%20Scholar%20Transport%20Policy.pdf](http://www.fedsas.org.za/downloads/10_52_24_National%20Scholar%20Transport%20Policy.pdf) (accessed 27 September 2013).

133 For introduction into the system during 2013. Once this curriculum is completed Higher Education Institutions will be encouraged to increase the number of teacher training courses for teachers using Sign Language as a medium of instruction across subject fields. Currently there are only 3 teacher training programmes, namely at Free State University, the University of the Witwatersrand and UNISA. First Draft Country Report for Public Comment, 34.

134 First Draft Country Report for Public Comment, 5; SAHRC Report November 2002, 20.

135 First Draft Country Report for Public Comment, 56.

136 Affording sign language with official language status would help deaf people to be recognised by all the sectors to accommodate them and to enable them to have full access: Parliamentary Monitoring Group 'Recognition of South African Sign Language as Official Language: Briefing by Deaf Federation of South Africa' 16 February 2007 <http://www.pmg.org.za/minutes/20070215-recognition-south-african-sign-language-official-language-briefing-deaf-federation> (accessed 27 September 2013).