



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

**Consideration of reports submitted by States
parties under article 35 of the Convention**

Initial reports of State parties due in 2009

South Africa* **

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* The present document is being issued without formal editing.

** The annexes to the present report are on file with the Secretariat and are available for consultation.



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Abbreviations

ACSA	Airports Company of South Africa
CBR	Community-based Rehabilitation
CGE	Commission on Gender Equality
CRPD	Convention on the Rights of Persons with Disabilities
CWP	Community Works Programme
DBE	Department of Basic Education
DEAFSA	Deaf Federation of South Africa
DHET	Department of Higher Education and Training
DICAG	Disabled Children Action Group
DOT	Department of Transport
DPO	Organisation of Persons with Disabilities
DPSA	Disabled People South Africa
DPW	Department of Public Works
DRPI	Disability Rights Promotion International
DWCPD	Department of Women, Children and People with Disabilities
ECA	Electronic Communications Act, 2005
EPWP	Expanded Public Works Programme
FOTIM	Foundation of Tertiary Institutions of the Northern Metropolis
GCIS	Government Communications and Information System
GHS	General Household Survey
HEDSA	Higher Education Disability South Africa
HSRC	Human Sciences Research Council
ICASA	Independent Communications Authority of South Africa
ICT	Information and Communications Technology
IEC	Independent Electoral Commission
INDS	Integrated National Disability Strategy
MDGs	Millennium Development Goals
MODE	Medunsa Organisation of Disabled Entrepreneurs
MQA	Mining Qualifications Authority
NCPPDSA	National Council for Persons with Physical Disabilities in South Africa
NDM	National Disability Machinery
NDP	National Development Plan, 2012
NEDLAC	National Economic Development and Labour Council

NGO	Non-governmental Organisation
NSFAS	National Student Finance Scheme
OSDP	Office of the Status of Disabled Persons
PACSEN	Parents for Children with Special Educational Needs
PAU	Personal Assistance Unit
PFMA	Public Finance Management Act
PRASA	Passenger Rail Agency of South Africa
PSC	Public Service Commission
SABC	South African Broadcasting Corporation
SABS	South African Bureau of Standards
SADA	South African Disability Alliance
SADDT	South African Disability Development Trust
SAHRC	South African Human Rights Commission
SANAC	South African National Aids Council
SANCB	South African National Council for the Blind
SAPS	South African Police Services
SASL	South African Sign Language
SASSA	South African Social Security Agency
SIAS	National Strategy on Screening, Identification, Assessment and Support
SRSA	Sport Recreation South Africa
StatsSA	Statistics South Africa
UBT	Universal Ballot Template
WSU	Walter Sisulu University

Disability statistics

1. The lack of adequate, reliable, relevant and recent information on the nature and prevalence of disability in South Africa remains a challenge. The last national census was conducted in 2011. Annual general household surveys and the more elaborate community survey, conducted in 2007, are sample surveys and use of disability data emanating from these surveys should therefore be treated with circumspection.

2. Statistics South Africa (StatsSA) collected data on disability status in the population censuses of 1996 and 2001 and in the large scale community survey, conducted in February 2007, using similar questions. In the three data points, measurement of disability was based on the definition from the 1980 World Health Organization (WHO) International Classification of Impairments, Disabilities and Handicaps (ICIDH), which defined it as a physical or mental handicap which had lasted for six months or more, or was expected to last at least six months, which prevented the person from carrying out daily activities independently, or from participating fully in educational, economic or social activities.

3. Two studies were conducted in preparation for Census 2011 to test the applicability in South Africa of the Washington Group Short Set of Questions on Disability:

- Testing a disability schedule for Census 2011, outsourced to the Human Sciences Research Council (2007). This was a qualitative research where 26 focus group discussions were held nationwide;
- Census content research on disability schedule (2006), conducted by the Research and Methodology component in StatsSA. Six thousand households were surveyed.

4. Results from both studies showed that use of the Washington Group questions led to far higher disability estimates compared with the traditional question: “Do you have any serious disability that prevents your full participation in life activities?”

5. In both studies the term “difficulty” instead of “disabled” appeared to be more acceptable among persons with impairments that did not prevent them from participating in life activities. Some were unwilling to identify themselves as being disabled if the question: “Are you/is your child disabled?” was asked. Both studies recommended use of the Washington Group questions for Census 2011.

6. As a result of changes in the approach to asking disability questions, the Census 2011 data cannot be compared with previous censuses. It should furthermore be noted that the population sizes used in the 2011 General Household Survey (GHS) and Census 2011 differed. Population figures used by the GHS are based on pre-census 2011 mid-year population estimates. Populations used in sample surveys will be re-weighted towards the middle of 2013 based on modified mid-year population estimates that include the results of Census 2011. Although percentage estimates remain comparable, absolute numbers might not be.

2011 National census

7. Questions on disability were replaced by general health and functioning questions, and due to a change in the questions, 2011 results cannot be compared with the previous censuses of 1996 and 2001. The question on health and functioning was phrased as:

Does (name) have difficulty in the following:

A = Seeing even when using glasses?

B = Hearing even when using a hearing aid?

C = Communicating in his/her language (i.e. understanding others or being understood by others)?

D = Walking or climbing steps?

E = Remembering or concentrating?

F = With self-care such as washing all over, dressing or feeding?

1 = No difficulty

2 = Some difficulty

3 = A lot of difficulty

4 = Cannot do at all

5 = Do not know

6 = Cannot be determined

8. Disability was defined as: “Difficulties encountered in functioning due to body impairments or activity limitation, with or without assistive devices”. Chronic medication was included under assistive devices. The definition used therefore does not comply either with the Convention on the Rights of Persons with Disabilities (CRPD), ratified by South African in 2007, or the White Paper on an Integrated National Disability Strategy (INDS).

9. Due to misreporting on general health and functioning questions for children younger than 5 years, data on this variable profiled only persons 5 years and older.

10. 2011 Census results indicate that most people (more than 90%) had no difficulty or limitation that prevented them from carrying out certain functions at the time of the census. It should, however, be noted that the question range does not provide evidence regarding difficulties experienced as a result of psychosocial, neurological and/or emotional impairments. This gives an impairment prevalence of 10,3% (5,334,905) for South Africa.

11. Percentage distribution of population aged 5 years and older by type and degree of impairment:

(1) Seeing impairments:

- 0,2% could not see at all;
- 1,5% experienced a lot of difficulty seeing;
- 9,4% experienced some difficulty seeing; and
- 88,9% experienced no difficulty at all.

(2) Hearing impairments:

- 0,1% could not hear at all;
- 0,5% experienced a lot of difficulty;
- 2,9% experienced some difficulty; and
- 96,4% experienced no difficulty at all.

(3) Communication impairments:

- 0,2% were unable to communicate at all;
- 0,3% experienced a lot of difficulty communicating;

- 1,1% experienced some difficulty; and
 - 98,5% experienced no difficulty at all.
- (4) Walking or Climbing Steps:
- 0,2% could not walk/climb steps at all;
 - 0,7% experienced a lot of difficulty walking/climbing steps;
 - 2,6% experienced minor difficulty; and
 - 96,5% experienced no difficulty at all.
- (5) Remembering/Concentrating
- 0,2% reported no ability to remember or concentrate;
 - 0,9% experienced a lot of difficulty;
 - 3,3% experienced minor difficulty; and
 - 95,7% experienced no difficulty at all.
- (6) Self-care
- 0,8% reported no ability to care for themselves;
 - 0,6% experienced a lot of difficulty;
 - 2% experienced minor difficulty; and
 - 96,6% experienced no difficulty at all.

12. StatsSA will conduct additional surveys during 2013 to determine the reliability of the responses for the 0-5 years age groups.

13. In addition to the question on general health and functioning, a further question was included in the Census to determine the extent to which the population accessed assistive devices to execute certain functions.

Does (name) use any of the following:

A = Glasses?

B = Hearing aid?

C = Walking stick or frame?

D = Wheelchair?

E = Chronic medication?

1 = Yes

2 = No

3 = Do not know

14. This question was not limited to persons who indicated having difficulties. Because of the poor response to this question, only persons aged 5 years and older were profiled:

- 14% indicated that they wear spectacles (glasses);
- 3,2% reported that they use a walking stick or frame;
- 2,8% reported using a hearing aid(s); and
- 2,3% reported making use of a wheelchair.

2011 General household survey

15. The questions on impairment were developed by the Washington Group and were first introduced in the 2009 General Household Survey questionnaire, and also used in the 2011 National Census.

16. These questions required each person in the household to rate their ability level in a range of activities such as seeing, hearing, walking a kilometre or climbing a flight of steps, remembering and concentrating, self-care, and communicating in their most commonly-used language, including Sign Language. During the analysis, individuals who experienced some difficulty with two or more of the activities or had a lot of difficulty/were unable to perform any one activity, were rated as disabled. The analysis was confined to individuals aged 5 years or older as children below the age of five are often mistakenly categorised as being unable to walk, remember, communicate or care for themselves when this is due to their level of development rather than any disabilities they might have.

17. Using this classification system, 5,2% of South Africans aged 5 years and older were classified as disabled. Women (5,4%) were slightly more likely to be disabled than men (5%). Provincially, Northern Cape (10,2%), North West (7,7%) and Free State (6,7%) presented the highest rates of disability in the country.

18. No clear patterns emerge when findings are compared with results from 2009 and 2010. While the percentage of disabled individuals over the age of 4 years nationally increased from 5,7% in 2009 to 6,3% in 2010, before declining again to 5,2% in 2011; different provincial patterns emerge. The impairment question used before 2009 shows similar provincial variations over time. This continued variation makes it very difficult to identify enduring patterns and inter-provincial differences, thus rendering analysis of probable reasons impossible.

19. Based on the sample of the 2011 GHS, of the total of 45,345,000 South Africans aged 5 years and older who reported some degree of impairment/difficulty with carrying out activities:

- 3,001,000 had sight impairments;
- 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; and
- 364,000 experienced difficulties with communication.
- 4,271,000 made use of spectacles/contact lenses;
- 110,00 used hearing aids;
- 347,000 made use of walking sticks/walking frames;
- 83,000 used wheelchairs; and
- 24,00 used other assistive devices.

2001 Census data

20. In Census 2001, disability measurement was based on impairment and severity as indicated in the census question:

“Does (the person) have any serious disability that prevents his/her full participation in life activities such as education, work, social life?”

0 = None

1 = Sight (blind/severe visual limitation)

2 = Hearing (deaf, profoundly hard of hearing)

3 = Communication (speech impairment)

4 = Physical (e.g. needs wheelchair, crutches or prosthesis, limb/hand usage limitations)

5 = Intellectual (serious difficulties in learning)

6 = Emotional (behavioural, psychological)

21. Based on this question, there were approximately 2,3 million people (estimated at 5% of the total population) reported to have an impairment that significantly hindered their full participation in life activities such as education, work and social life.

22. According to Census 2001, the prevalence of impairment according to race group was:

- African: 1,854,376 5,2%
- White: 191,693 4,5%
- Coloured: 168,678 4,2%
- Indian: 412,353 7%

23. The table below shows the prevalence of impairment in South Africa.

- Visual impairment: 577,000 1,3%
- Physical impairment: 558,000 1,2%
- Hearing impairment: 314,000 0,7%
- Emotional impairment: 269,000 0,6%
- Intellectual impairment: 206,000 0,5%
- Communication impairment: 75,000 0,2%
- Multiple impairments: 257,000 0,6%

24. StatsSA will conduct additional surveys early in 2013 to determine the reliability of the responses for the 0-5 years age group.

Introduction

1. The 1994 elections heralded a new era for South African society built on the principles of non-discrimination, democracy and equality for all, including persons with disabilities. The African National Congress (ANC), while preparing to govern, held extensive consultations with the Disability Rights Movement (DRM), represented by Disabled People South Africa (DPSA), to determine how the incoming government should approach protection and promotion of the rights of persons with disabilities. Consensus was reached that the principle of self-representation of persons with disabilities in all matters affecting their lives, as well as mainstreaming disability across government machinery, was non-negotiable. This consensus translated into, among other things:

(1) The establishment of the Disability Programme within the former Reconstruction and Development Programme (RDP) in the Presidency in 1995, evolving into the Office on the Status of Disabled Persons (OSDP) established in the Presidency in 1997, and eventually into the Department of Women, Children and People with Disabilities, established in 2009;

(2) Self-representation by persons with disabilities in Parliament, provincial legislatures, municipal councils, human rights instruments such as the SA Human Rights Commission (SAHRC), the Commission on Gender Equality, the Public Service Commission, as well as development agencies such as the former National Youth Commission, later restructured into the National Youth Development Agency, as well as the Office on the Status of Disabled Persons established in the Presidency and in the majority of provinces; and

(3) The release of the White Paper on an Integrated National Disability Strategy (INDS) in 1997, which was developed through a widely-consulted process applying the UN Standard Rules on the Equalization of Opportunities for Persons with Disabilities as well as the South African Disability Rights Charter. The INDS provided guidelines for mainstreaming of disability across all government departments as legislative and policy reform in the newly-established democratic South Africa took effect.

2. South Africa as such became a leading force in the campaign for, and eventual development of the UN Convention on the Rights of Person with Disabilities (CRPD) which, in its final format, embodies the principles of the South African process set in motion in 1994 to advance the progressive realisation of the rights of persons with disabilities as equal citizens. Implementation of the CRPD in South Africa therefore actually commenced in 1994 and not in 2007, when the Convention was officially ratified by South Africa, or in May 2008, when it came into force.

National Development Plan: Vision 2030

3. The interrelatedness of disability and poverty is articulated in South Africa's National Development Plan (NDP) adopted in 2012, which states that:

“Disability and poverty operate in a vicious circle. Disability often leads to poverty and poverty, in turn, often results in disability. People with disabilities face multiple discriminatory barriers. Disability must be integrated into all facets of planning, recognising that there is no one-size-fits-all approach.”

4. Impoverished families, for example, find it difficult or impossible to ensure adequate education and healthcare for children and adults with disabilities.

5. The NDP recognises that many persons with disabilities are not able to develop to their full potential due to a number of barriers that have to be addressed:

- Physical barriers, which may prevent persons with disabilities from accessing educational facilities;
- Information barriers, which may leave persons with disabilities without the use of essential educational materials;
- Communication barriers in educational settings, which may prevent persons with disabilities from accessing information and/or participating fully in the learning experience;
- Such barriers as may prevent students with disabilities from interacting fully with their non-disabled peers; and.
- Attitudinal barriers, which may lead to assumptions regarding the capabilities of persons with disabilities, and whether it is wise to commit resources to their education. This could lead to people with disabilities receiving substandard education — or even being denied access to education — a problem that especially affecting girls and women with disabilities.

6. The NDP therefore directs that “persons with disabilities must have enhanced access to quality education and employment. Efforts to ensure relevant and accessible skills development programmes for people with disabilities, coupled with equal opportunities for their productive and gainful employment, must be prioritised.”

7. It calls for accelerated efforts in integrating issues of disability into all facets of society, ensuring equitable service provision for persons with disabilities, and improving the safety of women, children and persons with disabilities, in particular those living in rural areas, which face the highest levels of unemployment and exclusion. The plan attempts to reduce hindrances to inclusion.

8. It furthermore directs that “any programme to attain social cohesion in society should narrow the inequality divide between men and women with measures in place to ensure that women, girls and people with disabilities and any other group at risk of discrimination, are able to enjoy their rights enshrined in the Constitution.”

Exchange rate

9. The exchange rate used for purposes of this report is South African Rand (ZAR) 8 = US Dollar (USD) 1 (April 2012 rate).

Reporting period

10. The First Country Report covers the period May 2008 to March 2012, unless stated otherwise.

Measures taken by the State to implement the outcomes of the UN Conferences, Summits and Reviews

11. The South African Government remains committed to implementing the outcomes of relevant UN conferences, summits and reviews.

12. South Africa participated in the first five Conferences of States Parties to the CRPD. Participation in the conferences received high-level support and was led by the respective ministers and/or deputy ministers of Women, Children and People with Disabilities in 2008, 2009, 2010, 2011 and 2012.

13. Progress in mainstreaming disability into the Millennium Development Goals (MDGs) through disaggregated data collection, following the discussions at the second Conference of States Parties, has to date been slow and remains a priority on the national disability rights agenda.

14. This baseline country report incorporates and consolidates all relevant recommendations made by the South African Human Rights Commission (SAHRC) to the public sector as they affects persons with disabilities.

Consultative process followed

15. This report was drafted over a period of just over 3 years. Finalisation was delayed due to changes in organisational arrangements resulting from the transition from the Office on the Status of Disabled Persons in the Presidency to the Department of Women, Children and People with Disabilities, which impacted negatively on Government's capacity in the short term to finalise and deposit the First Country Report on the CRPD within two years of ratification, as required by the Convention.

16. The drafting process involved, among others:

- All 33 national government departments (including their state-owned enterprises);
- All nine provincial government administrations;
- All 44 district municipalities and eight metropolitan councils;
- The National Economic Development and Labour Council (NEDLAC); and
- Organisations of and for persons with disabilities, including the South African Disability Alliance (SADA), which comprises representatives from 13 national affiliated organisations of and for persons with disabilities.

17. Verbal and oral submissions made to the Parliamentary Committees on Women, Children and People with Disabilities by research institutions, organisations for and of persons with disabilities, the SAHRC Commission and parents of children with disabilities and persons with disabilities themselves on the implementation of the CRPD during public hearings convened in July 2012, were also considered.

18. The draft report was released for public comment on 25 November 2012, following approval by Cabinet. The closing date for public comments was 25 January 2013:

- It was posted on the Government website under Documents for Public Comment
- It was also emailed to a total of 2190 stakeholders, consisting of:
 - 349 organisations of and for persons with disabilities at national, provincial and local level;
 - 288 individuals with disabilities;
 - 151 stakeholders attached to institutions of higher education;
 - 579 stakeholders working across all national government departments and public entities;
 - 229 stakeholders working in provincial government departments across all nine provinces;
 - 102 stakeholders at local government level;
 - 316 stakeholders in the private sector;

- 70 stakeholders attached to the organised labour sector; and
 - 106 stakeholders in general Non-Governmental Organisations.
19. A total of 54 submissions were received on the draft report, comprising:
- 19 submissions from Civil Society, including 10 submissions from national organisations of and for persons with disabilities;
 - 27 submissions from national and provincial government departments and public entities;
 - Two submissions from institutions promoting democracy, i.e. the SA Human Rights Commission and the Public Service Commission;
 - One submission from a private sector institution involved in disability services delivery; and
 - Five submissions from individuals.
20. The Government of South Africa acknowledges the valuable contributions made by government institutions across all three spheres of government, as well as organisations of and for persons with disabilities, and will work with these institutions over the next 12 months to strengthen the knowledge management systems required to report accurately and in detail on progress being made in the implementation of the CRPD.
21. Government recognises the role that the disability sector, and organisations of persons with disabilities (DPOs) in particular, continues to play in promoting and adopting a rights-based approach for persons with disabilities and their families. Government acknowledges 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. The voices of persons with disabilities living in rural areas, in residential and/or institutional care, persons with psychosocial disabilities, as well as children with disabilities, were similarly affected.
22. Government remains committed to working with the sector to bring about a more enabling environment for DPOs to realise their right to self-representation, conduct their advocacy work, capacitate their grassroots affiliates and participate in governance processes.

The State's alignment with the General provisions of the UNCRPD as outlined in Articles 1-4

I. Definition of disability

23. The South African Government acknowledges the need to repeal definitions based on medical conditions or types of impairments in national legislation, and recognises that the standardisation of the definition of disability is complex.
24. National legislation regulating, among other things, employment equity, social security, the built environment and civil aviation, currently defines disability based on medical conditions and/or impairments.
25. The country will undertake an extensive participatory process over the next 12 months to accelerate the review the White Paper on an INDS and to domesticate the Convention through the development of transversal national disability policy and legislation. The legislative audit will pay particular attention to finalisation of a national

definition for disability and discrimination on the basis of disability to include denial of reasonable accommodation in line with Article 2.

II. Implementation of the general principles and obligations

26. As mentioned before, the first democratic Government of South Africa took a conscious decision that disability be mainstreamed across all sectors post-1994 following extensive consultation with the disability sector in general and the disability rights movement in the country (DPSA) in particular.

27. The Constitution of the Republic of South Africa, adopted in 1996, ensures an environment conducive to full and equal participation of men, women and children with disabilities in society, including equal access to opportunities, accessibility and protection of the inherent dignity of the person. Chapter 2 subsection 9 specifically prohibits discrimination on the basis of disability:

“(3) 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.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.”

28. South Africa subsequently passed the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA) The Act defines “discrimination” as “any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly (a) poses burdens, obligations or disadvantage on; or (b) withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds.” “Equality” according to the definition of the Act includes equality in terms of outcomes. The South African Law Commission is currently reviewing all legislation which contravenes the equality clause in the Constitution. Section 28 (1) of the Act determines that should there be proof in the prosecution of any offender that unfair discrimination on the grounds of race, gender or disability played a part in the committing of the offence, this should be regarded as an aggravating circumstance for purposes of sentencing.

29. The Employment Equity Act, 1998, defines “reasonable accommodation” as “any modification or adjustment to a job or environment that will enable a person from a designated group to have access or to participate or advance in employment.” A Code of Good Practice: Key Aspects on the Employment of Persons with Disabilities was subsequently released to set standards for the employment of persons with disabilities in the workplace with accompanying Technical Assistance Guidelines on the Employment of Persons with Disabilities providing further guidelines for employers.

30. The Code of Good Practice defines “unjustified hardship” as action that requires significant or considerable difficulty or expense. This involves consideration of, among other things, the “effectiveness of the accommodation and the extent to which it would seriously disrupt the operations of the business.” To invoke unjustifiable hardship requires an objective process.

31. The interpretation of, among others, equality and non-discrimination as well as reasonable accommodation has been tested in a number of legal actions, and examples are discussed under the relevant articles.

32. South Africa endorses the general obligations stipulated in Article 4, and has progressively increased access to free assistive devices, independent living support and communication technologies for indigent persons with disabilities, as well as access to broader socio-economic rights, details of which are provided under relevant articles in the report.

33. As stated earlier, the White Paper on an Integrated National Strategy is currently under review with the aim of strengthening, among others, institutional mechanisms, monitoring and evaluation framework, national priorities and targets for the next 10–15 years and finally, ensuring full alignment with the CRPD.

III. Prioritisation of implementation of CRPD articles

34. As stated in paragraph 14, the transition from the Office on the Status of Disabled Persons, as a programme in the Presidency, and the delays in establishing a fully-fledged new Department of Women, Children and People with Disabilities in 2009, a year after the CRPD came into force, had unforeseen consequences for the co-ordination and consolidation of a clearly articulated national programme of action to domesticate the CRPD.

35. Emphasis fell more on popularising the Convention across government and civil society, without this process merging into a co-ordinated domestication programme of action with clear targets.

36. Priority areas for implementation of the CRPD for the period 2009-2014 were as incorporated into the national priorities of Government i.e. education, employment, health, safety and security as well as, to a lesser extent, rural development.

37. It is acknowledged that while significant time and resources were devoted to raising awareness of the need to prioritise universal access and design, to disaggregate statistics and data collection, to put participatory institutional arrangements in place, to build capacity of both Government and civil society and to conduct a legislative audit, the awareness created did not necessarily translate into access, partly due to the lack of an effective monitoring and evaluation system to track implementation of the CRPD in the country.

38. For example, the South African Local Government Association and the former Department of Provincial and Local Government released the Disability Framework for Local Government 2009-2014, aimed at enabling local government and other role players to mainstream disability considerations in the development programmes of municipalities, but implementation of the framework has regrettably lagged behind.

39. Implementation of the CRPD in rural areas has been particularly deficient due to the compounded impact of traditional beliefs, poverty, low literacy levels and lack of access to the built environment, ICT and transport infrastructure that persons with disabilities and their families living in rural areas have to endure on the one hand, and the tendency to prioritise the needs of those most vocal on the other.

40. The principle of self-representation, i.e. the right of persons with disabilities to participate in the development, implementation and evaluation of all legislation and policies through the recognised organisations of persons with disabilities, is well established in South Africa. Giving meaningful effect to this right across all three spheres of government and across all disability organisations, remains a challenge due to severe capacity constraints, as well as tensions within the disability sector as to who should be the voice of persons with disabilities.

41. The Department of Women, Children and People with Disabilities is now ready to introduce systems into the planning, monitoring and evaluation system to fast-track systematic implementation of the CRPD across all three spheres of Government through better monitoring, support and coordination.

Progress in implementation of specific CRPD articles

A. Article 5 – Equality and non-discrimination

42. South Africa pursues a “substantive” rather than “formal” approach to equality, in other words, the circumstances of people are taken into account and focus is on ensuring equality of outcomes. The Constitution of the Republic of South Africa, 1996 requires a focus on substance and on the purpose or effects of rules and conduct and not merely on their form. The real social and economic circumstances of groups or individuals are taken into consideration when determining whether the constitutional commitment to equality was achieved.

43. Various measures, over and above those of the Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000 have been taken to promote the establishment of a society in which all human being to guarantee legal protection against discrimination. Persons with disabilities have been included as a designated group in all affirmative action policies and programmes to redress past discrimination, for example in the White Paper on Affirmative Action in the Public Service, 1998, the Broad-Economic Empowerment Act, 2003 and the Employment Equity Act, 2003.

44. The Constitutional Court determined in *Prinsloo v. Van der Linde & Another* 1997(3) SA 1012 CC/1997 BCLR 759 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.”

45. The importance of human dignity was also emphasised in *W. H. Bosch v. The Minister of Safety and Security & Minister of Public Works*, Case no. 25/2005 (9) when the Equality Court in Port Elizabeth held that “there is no price that can be attached to 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.”

46. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, stipulates that all high courts are equality courts. Designation of magisterial courts as equality courts by the Minister of Justice and Constitutional Development takes place only once presiding officers and staff for such courts have received appropriate training. There are currently 386 equality courts in South Africa.

47. Equality Courts should in principle provide easy access to persons who believe they have been discriminated against, on among other things, the basis of disability. It is important to note that a complainant only needs to make out a prima facie case of discrimination after which the burden of proof shifts to the respondent, who must prove that such discrimination did not take place or, if it did, that it was not unfair.

48. The W H Bosch court judgment in 2005, which directed that all police stations be made accessible, and the Esthe Muller out-of-court settlement of 2004 which focused on

accessibility of court buildings, resulted in the creation of a dedicated programme within the Department of Public Works to renovate existing public service buildings. The SAHRC was directed to monitor the accessibility of courts following the out-of-court settlement.

49. Similarly, in Equality Court case 1/2010 *Lettie Hazel Oortman v. St Thomas Aquinas Private School and Bernard Langton*, it was 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 toilet allocated to her by using a wheelchair.”

50. Another example is the *Standard Bank Ltd v. CCMA*, 2008, 4 BLLR (LR) 356-390 case, where the Bank employee was dismissed after being injured in a car accident. The Bank failed to accommodate the employee which rendered dismissal “automatically unfair”. 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. Mr Justice Pillay noted that marginalisation of persons with disabilities in the workplace was not because of their inability to work BUT because the disability was regarded as an abnormality or flaw; that integration and inclusion in mainstream society aimed not only to achieve equality, but also to restore the dignity of persons with disabilities; that dignity for employees with disabilities was about being independent socially and most of all economically; about managing their normal day-to-day activities with minimum hardship for themselves and others and about contributing and participating in society; and that it is about self-respect and self-worth.

51. It is recognised that there is a persistent disjuncture between the theoretical framework and the lack of effective implementation of such rights. So while persons with disabilities are, in principle, able to harness the law to protect and pursue interests on an equal basis with others, a number of obstacles, including persistent harmful traditional beliefs, ingrained stigmatisation and consequent discrimination on the one hand, and the interrelatedness of disability and poverty on the other, the inability to afford legal fees, lack of information in the use of equality courts, accessibility of equality courts, communication barriers, lack of a disability-sensitive judiciary and court staff, inaccessible buildings and transport, detract from the equality provided for in law.

52. The court process as such has generally remained under-utilised, which can be seen in the dearth of disability-related legal judgments produced annually.

53. The South African Human Rights Commission (SAHRC) has a constitutional mandate as an independent body to promote, protect and monitor the rights of all South Africans. It is, however, acknowledged that capacity challenges within the commission cause significant delays in the effective investigation and finalisation of complaints.

54. The SAHRC is required by the Constitution of the Republic of South Africa and the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, to report on, among others, the state of equality in the country. The inaugural Equality Report released in 2012 includes two chapters on disability – in the first chapter it focuses on the types of barriers experienced by persons with disabilities which detract from their standing as equal citizens, and in the second chapter on disability it presents quantitative outcomes of a research project conducted to determine the equality challenges experienced by youth with disabilities compared to their able-bodied peers. The study found substantive inequality in outcomes between young persons with disabilities and their able-bodied peers in education, employment and livelihoods.

55. Persons with psycho-social disabilities in particular experience significant challenges not only in society, but even within the disability sector, in accessing their right to equality and non-discrimination.

56. As the consultative process highlighted, the right to equality and non-discrimination is not realised through intent, but rather through implementation of well-defined programmes. The first step is the finalisation of the legislative review of sector legislation by the South African Law Reform Commission to ensure compliance with the equality clause in the Constitution of the Republic of South Africa, which is currently underway.

B. Article 8 – Awareness-raising

57. The South African Government acknowledges that although awareness raising of the rights of persons with disabilities in general, and in particular the CRPD after ratification in 2007 featured high on the national agenda for the past 4 years, weaknesses in co-ordination, implementation and monitoring and evaluation have largely detracted from its effectiveness and impact.

58. A recent desktop study indicated that no scientific survey has to date been conducted to establish baselines on public perception and belief regarding disability and the rights of persons with disabilities.

59. South African society in general, unless directly affected by disability, remains largely ignorant of the rights of persons with disabilities, and in particular of the reasonable accommodation measures required give effect to these rights. This is mirrored in the public service across all three spheres of Government, where ignorance and stereotyping detract from public services in general being accessible and user-friendly for persons with disabilities.

60. Evidence on awareness campaigns of government institutions, independent institutions promoting democracy such as the SAHRC, the Public Service Commission and the Commission on Gender Equality, as well as organisations of and for persons with disabilities submitted during the consultative process was generally anecdotal, inconsistent and un-measurable.

61. Activity focused predominantly on extensive hosting of workshops for public servants as well as persons with disabilities, production of posters, DVDs and brochures, awareness campaigns linked to specific annual commemorative days, including Disability Rights Awareness Month in November and the International Day of Persons with Disabilities on December 3.

62. From 2008 to 2011 workshops and sessions to introduce the CRPD were conducted in all national and provincial government departments, with over 60 district and local municipalities in six provinces, as well as organisations of and for persons with disabilities. There is scant evidence that these workshops effectively targeted the participants. A high turnover of staff in the public sector furthermore reduced continuity and impact.

63. No evidence could be found that the rights of persons with disabilities, or the popularisation of the CRPD, was a consistent, planned aspect of Government's political outreach programmes, including Taking Parliament to the People and the Izimbizo programme (quarterly) which provide a monthly platform for communities, especially those in remote rural areas, in which members of Parliament and provincial legislatures as well as cabinet ministers and mayors, could engage directly on issues of human rights, development and service delivery. Although the guidelines for these public meetings require persons with disabilities and their organisations to be targeted as participants, and that all venues are accessible and Sign Language interpreters are available, this is often not the case.

64. The South African Broadcasting Corporation (SABC), as the public broadcaster, and eTV, a private non-subscription channel, introduced limited Sign Language interpretation

on targeted programmes such as peak-hour news broadcasts during the reporting period. The SABC runs a weekly actuality programme, DTV, targeting deaf viewers and raising awareness on the rights of deaf persons. The Department of Basic Education (DBE) in collaboration with the Government Communication and Information Service (GCIS) produced and broadcast awareness-raising programmes on national television and subsequently distributed DVDs on the rights of children with disabilities to attend school in the communities in which they live. Community radio stations, through predominantly local action by organisations of persons with disabilities, increasingly feature interviews and programmes aimed at raising awareness of the rights of persons with disabilities. This is an important development as it reaches marginalised rural communities where entrenched traditional beliefs isolate persons with disabilities from their communities and from opportunities.

65. Information on disability services and the rights of consumers with disabilities is available on government department websites. For instance, the departments of Social Development, Health, Labour, Home Affairs, and the Thutong Education Portal on the Department of Basic Education website provide online information, but these are often difficult to navigate and not always accessible to persons with visual impairments. Websites of organisations of and for persons with disabilities mainly contain impairment-specific information, information on the rights of persons with disabilities and the Convention, although not all are accessible for persons with visual impairments. Invaluable work is being done by these organisations with some commendables being undertaken, for example the Sponge Project, run by activists with disabilities as an SMS information service at extremely low operational cost.

66. The Departments of Health, Basic Education as well as Justice and Constitutional Development have developed braille public awareness and education materials on key legislation and policies as well as disability services related to, among others, the Children's Act, 2005, the Domestic Violence Act, 1998, and the Maintenance Act 1998.

67. Awareness campaigns peak during Disability Rights Awareness Month, which is launched on 3 November every year and culminating in the commemoration of the International Day of Persons with Disabilities on December 3. All organs of the State participate in the Disability Rights Awareness Month programme in collaboration with organisations of and for persons with disabilities. Steps will be taken this year to formalise these dates on South Africa's events calendar through a Cabinet resolution to elevate its prominence.

68. The South African Government, through the Department of Women, Children and People with Disabilities, is currently working towards a consolidation of awareness-raising efforts into a targeted, integrated and branded programme, which will be dealt with in the next periodic report.

C. Article 9 – Accessibility

69. The country currently does not have a regulatory framework that governs universal access and design. Focus to date has been predominantly on accessibility in the physical environment, mainly on access for persons with physical disabilities and to a lesser extent for persons with visual impairments although, as illustrated below, enforcement needs to be significantly improved.

70. The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000, subsection 9, stipulates that a lack of accessibility for persons with disabilities constitutes unfair discrimination:

- “(a) Subject to section 6 (Neither the State nor any person may unfairly discriminate against any person) on the ground of disability, including—
- (b) Contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility; and
- (c) Failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.”

Any person with a disability could therefore prosecute any organisation through the Equality Courts should that organisation’s building be non-compliant in terms of the National Building Regulations – Part S.

Physical environment

71. The SAHRC made a number of recommendations in its “Towards a Barrier-free Society Report” published in 2002. It noted that legislation governing the accessibility of built environments should focus on improving the preconditions for equal participation and dignity and providing mechanisms for governance, administration and enforcement. It also recommended an urgent review of the South African legislative framework for accessibility and the built environment in order to reflect constitutional rights, ensure safe, healthy and convenient use for all and include international standards for universal access.

72. The National Building Regulations and Building Standards Act, 1977, as well as the National Guidelines for Accessibility currently constitute the regulatory framework for accessibility to the built environment. For any building used by the public to conform to the requirements of the National Building Regulations, its facilities must meet the standards and measurements contained in the SANS 10400-S document, published in 2011. It should be noted that this document in its current form does not measure up to universal access principles.

73. Review of legislation governing access to the built environment has been an open-ended process, and it should be noted that the disability sector has raised concerns regarding both the pace and the extent of the review process.

74. Historically there has been inadequate compliance with the current regulatory framework, flawed as it is, due to, among other things, the lack of technical expertise, the lack of a regulatory framework which accredits accessibility advisors and auditors, and deficient monitoring and enforcement capacity.

75. Because of the above weaknesses, audits on existing infrastructure conducted by a number of government departments and entities across all spheres of government, in some instances with full participation of the disability sector, were not conducted within the framework of a comprehensive audit scheme with prescribed scope, methodologies and minimum norms and standards. Very little evidence could be found that audits conducted within this problematic environment, were ever costed or translated into a comprehensive, targeted programme of action.

76. In the *W. B. Bosch* court case a precedent was set to make all police stations accessible for persons with disabilities.

77. Government has prioritised revamping of public buildings to meet the diverse needs of persons with disabilities.

78. There are currently 40,486 complexes/buildings under the custodianship of the Department of Public Works, which include 709 police stations, 684 courts, 2,822 defence force buildings, 188 correctional services facilities and 3,521 office blocks. It should be

noted that the department is in the process of verifying immovable assets under its custodianship and the figure could change once the verification project has been completed.

79. A total of 249 buildings have been made accessible from 2008/09 to January 2012/13 at a cost of USD 63,5- million, and includes 159 police stations, 22 defence buildings, 51 correctional services centres, 13 offices, two training centres, and two courts. These buildings will be included in the current audit of all buildings under the custodianship of the Department of Public Works. It is anticipated that the audit will have been completed by June 2014. The auditing involves inspection of buildings to determine accessibility requirements as per SANS 10400-S.

80. Schools/educational facilities, hospitals/clinics and community centres are under the custodianship of provincial administrations and municipalities.

81. Discussions are underway with National Treasury to increase the fiscal allocation to ensure urgent remodelling of buildings where services are offered to the public, for example, buildings of the departments of Health, Education, Social Development and the South African Social Security Agency.

82. With regard to accessible schools, the “National Policy for an Equitable Provision of an Enabling School Physical Teaching and Learning Environment”, 2010 includes specifications for universal design so that all new schools being built are accessible. This has regrettably not translated into universal access being incorporated into the current draft Minimum Uniform Norms and Standards for Public School Infrastructure which was released for public comment in January 2013.

83. The gap between will and commitment, implementation and enforcement was clear with application of FIFA’s norms for accessibility during the 2010 World Cup, despite participation by organisations of and for persons with disabilities in the planning phases.

Information and Communication Technology (ICT)

84. The Electronic Communications Act, 2005 (ECA) constitutes umbrella legislation addressing the universality of accessibility and redress within the ICT sector in South Africa. As regulator for the South African electronic communications, broadcasting and postal services sector, the Independent Communications Authority of South Africa (ICASA), is mandated, through the ECA, to license operators and regulate activities in electronic communications and broadcasting services, and, by the Postal Services Act, 1998, to regulate postal services. Enabling legislation also empowers ICASA to monitor licensees’ compliance with licence terms and conditions; to develop regulations for the three sectors, to plan and manage the radio frequency spectrum as well as to protect consumers of these services. In terms of section 2(c) of the ECA, ICASA is required to promote the empowerment of historically-disadvantaged persons, with particular attention to the needs of women, opportunities for youth and persons with disabilities.

85. The principle of universal access has been mainstreamed across communications legislation, including the Postal Services Act, 1998, the Post Bank Limited Bank Act, 2010, the Independent Communications Authority Act, 2000, the ICT Charter (2011) and the Broadcasting Digital Migration Policy (2008) and the National Broadband Policy (2010), although insufficient attention has been paid to minimum norms and standards that will guarantee universal access for persons with visual, hearing and intellectual impairments.

86. ICASA released a Code on Persons with Disabilities (2009) as required by Section 70 of the ECA as well as section 2(h) of the Postal Services Act, 1998. 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 co-ordinated through ICASA and the Code is available in different formats across all nine provinces; and
- Awareness programmes on community radio stations in local languages.

87. The SABS subcommittee on ICT Accessibility Standards annually reviews standards as they relate to access for persons with disabilities.

88. The Department of Communications is currently finalising a Sector Strategy for Persons with Disabilities in consultation with organisations of persons with disabilities, experts, manufacturers of ICT equipment, regulators and standard-generating bodies.

89. A disability portal, the National Accessibility Programme (NAP), was launched in 2008 as a partnership project between Government, the African Advanced Institute for Information and Communication Technology and the disability sector, with the aim of positioning it as an integrated service provider to the disability community and industry offering accessible technology services, communication services, data synthesis services and other commercial services. NAP was thus targeted as a one-stop information, services and communications channel that will support everyone involved in the disability field – persons with disabilities, caregivers, the medical profession and those offering services in this domain. "The website can be accessed at www.napsa.org.za. The initiative has, however, not progressed as planned and is currently under review. Access for persons with sensory and intellectual impairments to websites of the public, private and disability sectors therefore remain challenging.

90. The SABC, as the national public broadcaster, is required to broadcast information accessible to all. Progress has been slow due to financial constraints, but selected daily television news bulletins have Sign Language-interpreting services as well as subtitling.

91. Blind SA receives an annual government grant to run a braille service for clients in South Africa and some African countries at affordable prices.

Accessible transport

92. Adequate, efficient and accessible transport is required to support productivity and assist South Africans to access basic services, especially in impoverished and rural communities. South Africa's 221,000 km of rural roads continue to pose major funding and management challenges in respect of accessible transport, as these roads are often difficult to negotiate by any type of vehicle, limiting access in general to and from rural settlements. The majority of rural people walk long distances to reach crop-marketing points, farm input supply centres, health clinics, schools, sources of water and firewood and other facilities or services that they essential in their daily lives. These challenges are intensified for persons with disabilities, confining them to their homes in poverty.

93. Public transport in general is poorly developed in the country and remains largely inaccessible and unaffordable to the majority of persons with disabilities. The most common forms of public transport are subsidised bus services, privately-operated minibus taxis as well as subsidised rail and air services. The country's public transport system does not comply with universal access principles and continues to marginalise persons with disabilities by denying them access not only to transport but, indirectly, precluding them from a variety of other rights.

94. The National Land Transport Act 2009, regulates the transformation and restructuring of the national land transport system, which was initiated by the National Land Transport Transition Act, 2000. The Act provides for the Minister, in consultation with members of the provincial executive councils responsible for transport, to publish regulations with regarding “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...” These regulations have not been finalised.

95. In March 2007, Cabinet approved significant road and rail transport initiatives on the implementation of the Public Transport Strategy and Action Plan as well as the Provision of Transport for the 2010 FIFA World Cup. Preparations for the 2010 FIFA World Cup were a catalyst for changes in the area of accessible transport, including the provision of relevant technical equipment and the assurance that all public transport operations contracts would be restructured to include accessibility as a major component.

96. The Department of Transport with its provincial counterparts, municipalities and agencies consulted the disability sector regarding the specifications during the design and planning phases of the 2010 FIFA World Cup. Because of time pressures in rolling out infrastructure, as well as the absence of on-site expertise and monitoring capacity, only some recommendations were implemented. The implementation of the Gautrain project, a public-private partnership providing a rapid rail service between Johannesburg, Pretoria and OR Tambo International Airport, experienced similar challenges despite consultation with the disability sector.

97. The Department of Transport is currently updating the 2007 Public Transport Strategy and Action Plan respectively through a consultative process with the disability sector. These updated documents, once finalised, will incorporate the principles of universal access by requiring all public transportation to accommodate persons with disabilities alongside elderly people, pregnant women, young children and persons accompanying children.

98. The Department of Transport has recently introduced a formal system through which larger municipalities will start to improve both rail and road-based transport to create an integrated and universally accessible transport network. The approach applies to the concept of the travel chain and performance-measurement criteria.

99. Grants are in place to improve road safety programmes and rural road development. Consultation on universal access in rural areas began in 2012, and a programme of action related to rural areas is being developed.

(1) The Public Transport Infrastructure and Systems (PTIS) Grant is used to prioritise new public transport projects and Integrated Public Transport Networks (IPTNS). Currently the IPTNS are being rolled out in twelve urban and six rural municipalities. All existing modes of public transport (for example rail, bus and minibus taxi) need to be upgraded to form part of this universally accessible IPTN. A key feature in the urban networks is the introduction of the bus rapid transport systems in urban centres. New public transport projects, are required to be universally accessible from the outset and an access consultant has to oversee such projects. So far two municipalities are running and extending their services (Cape Town and Johannesburg), with eThekweni, Tshwane and Rustenburg about to “go live”. Cape Town’s progress has been the most advanced. It has introduced acceptable universally-accessible standards for integration of modes, infrastructure (both stations and non-motorised transport), fare collection, vehicle design and provision of information. Consultation with the disability sector in selected municipalities takes place at municipal and not national level. This is because knowledge of the locality is required for these municipally-based projects;

(2) It should be noted that, similar to the World Cup 2010 and Gautrain initiatives, intent and process to ensure universal access has not in always translated into universal access on the bus rapid transport systems due to lack of technical expertise throughout the value chain. USD 625- million was allocated in the PTIS Grant to the 12 cities that were identified to implement the IPTNS for the current financial year ending on 31 March 2013. For the 2013/14 and 2014/15 financial years, USD 693,750,000 and USD 733,750,000 have been allocated respectively.

100. Despite not being one of those selected, the municipality of George, in the Western Cape, has positively chosen to develop a universally-accessible IPTN and is working directly with the disability sector on planning and implementation.

101. The Integrated Transport System, which provides universal accessibility on municipal bus services, is currently being rolled out in metropolitans and larger local municipalities. The Cape Town metropolitan is implementing a Dial-a-Ride door-to-door specialised transportation service for persons with disabilities. Sustainability of this service is currently under pressure due to the constant increase in the number of persons with disabilities requiring the service.

102. Performance standards on universally accessible buses for all users have been developed and are being circulated for consultation.

103. Municipalities are helped to select buses that are universally accessible and to raise performance standards from those currently in use. Both Cape Town and Johannesburg have improved their bus specifications, although there are still significant problems that have to be overcome for historic reasons. Other municipalities are able to apply improved performance standards from the outset.

104. Standards and guidelines have been developed for universal access in Integrated Rapid Public Transport Networks (IRPTNs). Infrastructure for the IRPTNS is being developed for buses, trains, minibus taxis and non-motorised transport. Work has begun on the development of universally-accessible pedestrian crossings. The Department of Transport in partnership with private businesses and the South African National Council for the Blind are finalising the process of developing tactile guidance surface indicators.

105. The minibus taxi industry provides the widest service network in the country but has been associated with unsafe modes of travel. If persons using wheelchairs are sufficiently mobile to use them, they are often required to pay an additional sum for the space the wheelchair takes up. The representatives of the minibus taxi industry have begun consultations with the Department of Transport to address universal access problems. The South African Taxi Association Council (SANTACO) and the Department of Transport have identified and are addressing the following problems:

(1) Minibus taxi ranks: Under building regulations, these were historically classified as parking garages and the classification has never been changed. The Department of Trade and Industry, through the National Regulator for Compulsory Specifications, has indicated its willingness to be approached by the Department of Transport and SANTACO to change the classification so that a suitable infrastructure standard, including the minimum standards for people with disabilities, can apply to taxi ranks;

(2) Vehicle design: The design of minibus taxis a problem as the vehicles are not accessible. Wider consultation within the Department of Transport and the industry is required;

(3) Service provision and customer care: SANTACO is considering the universal access design plan and is jointly working with the Department of Transport regarding its application to the taxi industry.

106. The National Council of Persons with Physical Disabilities (NCPDPSA) has been appointed as agent to issue parking discs for persons with physical disabilities. The system has not been institutionalised across the country as different discs with different criteria apply in different municipalities. Past attempts to develop a uniform system have failed. The NCPDPSA has also been contracted by the Department of Environmental Affairs to regulate access to beaches of 4X4 vehicles driven by persons with disabilities, through the issuing of certificates. To date, approximately 218 applicants have been successful.

107. The country has embarked on a comprehensive rail upgrade that seeks to place rail at the centre of freight and commuter movement by allocating over USD 5- billion for passenger rail infrastructure and services.

108. The South African Rail Commuter Corporation, the predecessor of the Passenger Rail Association of South Africa (PRASA) adopted a Special Needs Passenger Policy and Station Design Guidelines in 1998. This was updated by PRASA, which has completed a draft on the new Universal Access Policy, in consultation with the South African Disability Alliance (SADA), which is in line with the Convention.

109. A feasibility study has been conducted which indicates that the country requires 7,224 modern coaches to be purchased over 20 years. This will provide an opportunity for ensuring that rail services become universally accessible to commuters with disabilities.

(1) PRASA committed itself to the refurbishment of 700 coaches per annum between 2009 and 2012. These coaches were refurbished and delivered in the form of 10M3 Train Sets in Cape Town, 10M4 Train Sets in Gauteng and recently 10M5 Train Sets to all the regions except Eastern Cape. These coaches do not provide full universal access due to their design specifications. Existing station design and platform heights also remain a challenge. The on-going station upgrade, corridor modernisation programmes and the current procurement of new rolling stock will address these and other shortcomings;

(2) The procurement of universally-accessible trains is underway and the preferred bidder has been announced. These trains will come on stream as from 2015. Station upgrade and corridor modernisation is taking place on the proposed 134 stations and USD 898,4- million has been allocated for this purpose over the Medium Term Expenditure Framework period 2012/13-2014/15.

110. The Airport Companies of South Africa (ACSA) has over the past few years embarked on major upgrading of airports. In many cases the infrastructure standards applied have been below the minimum standards published by the SABS as they pertain to access for persons with disabilities. These are expensive to retrofit and consequently remain problematic.

111. 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. The South African Disability Alliance was in 2012 contracted to conduct training of all PAU personnel and is currently finalising the content for the programme.

112. Organisations of and for persons with disabilities acknowledge progress made and report that the isolated instances where people with physical disabilities are discriminated against in terms of boarding flights, are usually quickly resolved by the relevant authorities.

113. South Africa has few maritime services for the general public and they consist largely of cruise liners. The access to and from cruise liners is being improved as they are becoming integrated with the IRPTNs projects in Cape Town and Durban.

Banknotes

114. South Africa prides itself on the partnership between the Reserve Bank, responsible for producing banknotes and coins, and organisations of persons with disabilities, which has ensured that South African money can be identified by people with visual as well as intellectual disabilities through a range of specially-designed features.

115. The South African Government recognises that priority should be given to address the shortcomings identified in this report through the finalisation of a Universal Access and Design Framework. This should provide for an environment that adheres to minimum norms and standards for accessibility, the training of professionals in the infrastructure, transport, design and ICT sectors, funding mechanisms to redress existing infrastructure, accreditation of accessibility auditors, and to provide substance to the commitment contained in the National Development Plan (2012) which prioritises “the improvement of aesthetic and functional features of the built environment to create liveable, vibrant and valued places that allow for access and inclusion of people with disabilities”.

D. Article 10 – Right to life

116. The South African Constitution recognises and protects the right to life and survival of persons with disabilities on an equal basis with others.

117. The Choice on Termination of Pregnancy Act, 1996 provides for the choice to terminate pregnancy from the 13th up to and including the 20th week of the gestation period if there exists a substantial risk that the foetus would suffer from a severe physical or mental abnormality” and, after the 20th week of the gestation period, if “the continuation of the pregnancy would result in a severe malformation of the foetus.”

118. There is an on-going moral debate within South African society in general, including the disability sector, in respect of the counselling process on the choice to terminate disabled foetuses.

E. Article 11 – Situations of risk and humanitarian emergencies

119. The Disaster Management Act, 2002, provides for, among other things, “an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, and rapid and effective response to disasters and post-disaster recovery.” The Act requires amendments to bring it in line with Article 11 as it is currently silent on the need to ensure equitable access to disaster management services for persons with disabilities during emergencies. The result is that none of the provincial, district and local municipal disaster plans have incorporated provisions to map homes and/or institutions in which persons who might require special assistance during emergencies are living, training of disaster management personnel, and prevention of injury during evacuations which might result in primary or secondary impairments.

120. The Mental Health Care Act, 2002, supported by guidelines issued by the South African Mental Health Federation, directs that persons with severe mental illnesses or profound intellectual disabilities requiring the services of the South African Police Services to take them to hospital, be transported in a safe and decent manner.

F. Article 12 – Equal recognition before the law

121. Subsection 25(1) of the Constitution of the Republic of South Africa determines that “No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.”

122. Persons with disabilities in South Africa have the right to own or inherit property, to control their own financial affairs and have equal access to bank loans, mortgages and other forms of financial credit. They also have the right not to be arbitrarily deprived of their property, and have recourse through the courts, including the Equality Court, if this right is infringed upon on grounds of disability. Chapter VIII of the Mental Health Care Act, 2002 however provides for the appointment of a curator bonis or an administrator for persons with mental disabilities and/or persons with severe or profound mental disabilities.

123. South African law does not currently provide for enduring powers of attorney. Dementia South Africa notes in its submission that families of incapacitated persons are at present forced to incur considerable legal fees to establish curatorships to manage the financial affairs of incapacitated persons, as an individual who has for example recently been diagnosed with dementia, but who is currently still legally competent, is unable to prepare a Power of Attorney to name a trusted individual to handle financial matters once (if) he/she becomes legally incompetent.

124. The South African Law Reform Commission is currently concluding its extensive participatory investigation on the need for alternative and additional measures of supported decision making for adults with decision-making impairment. Organisations such as Dementia South Africa, Ubuntu Centre South Africa (an affiliate of the World Network of Users and Survivors of Psychiatry) and the SA Federation for Mental Health, among others, participated in the process.

125. As noted in A/HRC/10/48, the implementation of the obligations in article 12 requires a thorough review of both civil as well as criminal legislation containing elements of legal competence. In addition to the SA Law Reform Commission’s proposed Bill on Supported Decision-making, additional areas which will be considered in a review of civil and criminal legislation include:

- The common law test for legal capacity to, among other things, make a will or marry;
- The common law mechanism for appointment of a curator bonis or a curator personae by the High;
- The appointment of an administrator as provided for in Chapter VIII in the Mental Health Care Act, 2002; and
- An inquiry into an accused person’s criminal capacity in criminal proceedings.

At the same time, the notion of “informed consent”, which features in a number of laws-Choice on Termination of Pregnancy Act, 1996; Sterilisation Act, 1998; National Health Act, 2003; and Children’s Act, 2005, to name only a few – will have to be re-examined in the light of article 12(3) and the obligation of states parties to provide persons with disabilities with the support they require to exercise their decision making.

G. Article 13 – Access to justice

126. The Bill of Rights provides for equal access to justice through the right to access courts, the right to a fair trial, the right to appeal and the right to an interpreter during trial proceedings. South Africa had to address a number of challenges in realising the right,

especially for black South Africans, to access to justice in the post-apartheid era, because of a backlog of cases, delays in case proceedings and a shortage of trained professionals for both the judiciary and legal professions.

127. Some initiate steps taken have included the creation of special courts (including sexual offences courts, family courts, labour courts and equality courts). Although full accessibility to the judicial system has not yet been achieved, Government has created a range of institutions and mechanisms to improve access to justice. One of these is Legal Aid, which provides legal assistance for impoverished persons in predominantly criminal cases at State expense. Another initiative has been the Proximity of Courts Programme, which provides periodic courts to rural and remote communities that would otherwise have no access. The Domestic Violence Act, 1998 also provides for financial assistance by the State to victims of domestic violence who do not have the means to pay fees for any service rendered in terms of the Act.

128. The Children's Act, 2005 recognises the needs of children with disabilities as one of its main objectives. Section 6 of the Act calls for all proceedings, actions or decisions in matters concerning children, to protect the child from unfair discrimination on the grounds of the disability of the child or a family member of the child, and calls for an enabling environment to respond to the special needs the child might have. Section 52 of the Act calls for rules to be made to avoid adversarial procedure in children's court proceedings. These rules should include appropriate questioning techniques for children with intellectual, communication or psychosocial impairments. These rules have to date not been put in place. Section 8(d) expressly requires all Children's Courts to be made accessible to children with disabilities. For the purposes of this Act, every magistrate's court, as defined in the Magistrate's Court Act, 1944 is considered as a Children's Court. In South Africa there are 384 Children's Courts that adjudicate matters that deal with children's issues, which include the protection of children (including children with disabilities) from maltreatment, abuse, neglect, degradation or exploitation. Evidence produced by civil society during the consultative processes during the drafting of this report indicate that policy has largely not translated into implementation, and that very few children with disabilities, and in particular children with intellectual, communication and mental disabilities, have equal access to justice due to lack of reasonable accommodation measures.

129. With regard to age-appropriate accommodations, the Criminal Procedure Second Amendment Act, 1995, regulates the judicial processes and procedures associated with all crimes including those against children. It also provides for the use of intermediaries in cases where children have to give evidence in court. It should be noted that while a child with a disability under the age of 18 has the automatic right to give evidence via an intermediary, such a right is not automatic for an adult with an intellectual, psychosocial or communication impairment, and the prosecutor has to decide to make an application for evidence to be given in this manner. Such an application is usually supported by a medical expert's report, describing the "mental age" of the victim. Obtaining such a report is costly and can delay criminal proceedings, putting it beyond the reach of poor and rural communities.

130. The Criminal Procedure Second Amendment Act, 2001, amended section 170A of the Criminal Procedure Act, 1977 regulates the presentation of evidence through an intermediary. The Child Justice Act, 2008 established a criminal justice system for children, including children with disabilities, who are in conflict with the law. One of the objects of the Act is to prevent children from being exposed to adverse effects of the formal justice system by using measures, procedures and mechanisms better suited to the needs and vulnerability of children. The Act urges law enforcement officers to take into account the vulnerability of children in respect of arrest, placement and protection when in custody.

131. Further compounding the lack of access to justice is the high instance of undiagnosed intellectual impairment and mental illness in impoverished and rural communities. A system to avoid wrongful criminal convictions in the absence of assessment to distinguish between intellectual disability and criminal capacity, is urgently required.

The South African Police Services (SAPS) prioritised the training and sensitisation of SAPS personnel in the case of persons with disabilities. A total of 9,555 staff members attended 527 workshops between the period 2010-2011, and an additional 196 SAPS managers participated in 10 workshops during the same period. Over 17,571 persons took part in a total of 249 disability-related calendar events. The impact of this exposure and training has not been determined. Some police stations have taken the initiative to place community Sign Language interpreters on a voluntary on-call basis, but this practice has not been institutionalised within the SAPS.

132. The right to an appropriate Sign Language interpreter currently presents a major challenge for deaf persons within the judicial system because of low levels of education among deaf people and consequent lack of knowledge of official Sign Language by many of them. For many deaf persons, the different “dialects” of South African Sign Language (SASL), often related to the specific school that the person attended, create problems which are compounded by the general lack of awareness among frontline staff in police stations, investigating officers, prosecutors, court staff and defence lawyers of these subtleties. This means that witnesses/accused persons are not questioned before the proceedings about the variations of SASL they use so that an appropriate interpreter can be present. Deaf persons residing in outlying rural magisterial districts are particularly vulnerable in having no access to justice.

133. The Older Persons Act, 2006 provides a wide definition of a “frail older person” to include “an older person in need of 24-hour care due to a physical or mental condition which renders him or her incapable of caring for himself or herself.” This definition therefore extends legal protection and access to justice to older persons with disabilities.

134. It is acknowledged that, as so eloquently illustrated through numerous case studies and submissions presented during the consultative process in drafting this report, that laws and policies cannot, in and of themselves, change the lives of persons with disabilities, but that it requires co-ordinated planning, provisioning and enforcement by Government to ensure that persons with disabilities have access to the services that the law provides. This is particularly relevant in relation to equal access to justice for children with sensory, communication, intellectual and psychosocial disabilities from poor and/or rural households.

135. Specific areas of intervention will include review of existing legislation, structured training of officials across the judicial system on reasonable accommodation measures, as well as universal access to the physical environment and availability of communication systems.

H. Article 14 – Liberty and security of the person

136. The Mental Health Care Act, 2002 provides procedures for application for involuntary mental health care, including a 72-hour assessment following which the Mental Health Review Board refers such an application for involuntary mental health care for referral to the High Court for consideration. The Act furthermore provides for legal representation when admission is made or reviewed.

137. South Africa still has residential mental health care facilities and public and private residential institutions for persons with disabilities whose families cannot take care of them,

and where admission is voluntary. There is, however, a move towards community-based care where possible. Although there are norms and standards that govern the quality of care and governance matters, there is currently a need to improve the quality of monitoring of care and address the gap that exists in terms of management of private residential facilities.

138. Section 21 of the Older Persons Act, 2006 forbids direct and indirect discrimination against an older person applying for admission to a residential facility on grounds of, among other things, disability, and requires that a residential facility provide in writing reasons for such refusal. The Act furthermore requires consent by the affected older persons to a residential facility, “unless his or her mental condition renders him or her incapable of giving such consent, in which case a person authorised to give such consent in terms of any law or in terms of a court order may give the required consent. “The Act allows for consent to be given by the spouse or partner of the older person concerned or, in the absence of such spouse or partner, an adult child or sibling of the older person. Alternatively the Minister may give such consent, but only after a registered medical practitioner has certified that any delay in the admission of the older person might result in his or her death or irreversible damage to his or her health. The Act also requires that an older person who is “capable of understanding must be informed of the intended admission even if his or her mental condition renders him or her incapable of giving the required consent.”

139. South African legislation stipulates that mental disability should not be a ground for depriving persons of their liberty and has several legal articles in different laws to this effect. The Judicial Matters Amendment Act, 2002 amended the Criminal Procedure Act, 1977, in order to bring certain provisions of that Act in line with the Mental Health Care Act, 2002 to allow for involuntary admission of persons with psychosocial disabilities to healthcare facilities for treatment, in particular if a person is a danger to self or others.

140. The Gauteng Consumer Advocacy Movement supports involuntary admissions, and takes a view that “mental health organisations and facilities of treatment should not be seen as depriving people of their liberty but rather facilitating people to obtaining their liberty.” Their concerns centre around the capacity of police officers to assist with taking people with psychosocial disabilities to hospital for treatment where involuntary admission is required or considered. Ubuntu Centre South Africa, on the contrary, calls for a total ban on involuntary institutional care in line with the Convention.

141. The review of the Mental Health Care Act, 2002 and the Judicial Matters Amendment Act, 2002 will provide a platform for civil society to consult with Government on phasing out involuntary admissions in a responsible manner.

I. Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

142. The Constitution states that “Everyone has the right to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.”

143. South Africa signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) on 29 January 1993.

144. In ensuring compliance with the Constitution and the above Convention, Parliament has adopted the Prohibition of Torture Bill, still to be passed. It recognises the provisions of Article 15 of the CRPD, and has defined “torture” in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Prevention and Combating of Trafficking and in Persons Bill, currently before Parliament, includes

abuse of vulnerability as one of the means used in human trafficking. The definition of “abuse of vulnerability” in the Bill specifically includes disability.

145. It is acknowledged that persons with disabilities in general, but particularly those from poor and/or rural communities, as shown in the numerous testimonies, are still exposed to inhumane, degrading and cruel treatment by people, services and systems due to the persistent attitudinal, physical and communication barriers existing in society.

146. Of particular concern is poor effective monitoring of conditions and treatment of people in residential care, particularly in mental health institutions. Civil society stakeholders agree that the majority of Mental Health Review Boards appointed for all mental health hospitals as well as care and rehabilitation centres in all nine provinces are either dysfunctional or neglectful of carrying out their duties with regards monitoring human rights to ensure quality of care and in general do not respond to complaints with of ill treatment and torture which might occur.

147. Article 40(8) of the Mental Health Care Act, 2002 authorises the South African Police Services to “use such constraining measures as may be necessary and proportionate in the circumstances when apprehending a person mental illness or severe or profound intellectual disability. ”A training manual for law enforcement officers was published, detailing their role, responsibilities and the procedures to be followed when there is a request for intervention in the case of a person is deemed in danger to self or others, as well as procedures for handling reports of abuse. These provisions require review to ensure compliance with Article 15 of the Convention.

148. The South African Human Rights Commission (SAHRC) has conducted a number of investigations into allegations of human rights violations in mental health facilities over the past few years and has made recommendations in respect of both prevention of recurrence as well as improvement of conditions in general. The SAHRC monitors implementation of these recommendations.

149. The Department of Health is in the process of planning roll-out of the WHO Quality Rights Tool Kit in mental health care institutions.

J. Article 16 – Freedom from exploitation, violence and abuse

Freedom from Violence and Abuse

150. The Constitution of the Republic of South Africa, 1996 guarantees “the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause; not to be detained without trial; to be free from all forms of violence from either public or private sources; not to be tortured in any way; and not to be treated or punished in a cruel, inhuman or degrading way.”

151. However, persistent violence against women and girls, and rape and sexual abuse of girls and women with disabilities in particular, remains a major challenge in South Africa. A study conducted by Phasha & Nyokangi, 2012, “School-Based Sexual Violence among Female Learners with Mild Intellectual Disability in South Africa, Violence Against Women” (Sage), highlights the systematic failure of policies and programmes aimed at protecting women and children against sexual harassment, intimidation, coercive sex, rape (including child-on-child rape) and pornography. These systemic failures are manifested in, among others:

- Underreporting of sexual abuse of children with disabilities in South Africa;
- The capacity of children with disabilities to report sexual abuse and correctly recall and relay details of such abuse as witnesses, is not sufficiently recognised by State

systems; and in the majority of cases, there is no implementation of standardised psychological tests to assist the courts to determine such abilities;

- Information on any form of public assistance, support services or facilities provided by government departments is very difficult for persons with disabilities or families of children with disabilities to access;
- Police, health, social and justice services are largely disability insensitive; and
- Personnel in facilities such as places of safety, have not been trained how to care for children with disabilities and there is insufficient protection for such children, nor is there advocacy training within organisations dealing with child abuse.

152. Exploitation, violence and abuse of learners with disabilities in boarding facilities attached to special schools remain unacceptably high. Preliminary results of a follow-up survey of special schools after a 2002 audit by the Department of Education which revealed unacceptably high levels of abuse in special schools, indicate that interventions have mostly been sporadic, inadequate and not properly monitored. This despite the almost USD 125 million that was spent on improving conditions in 295 special schools.

153. The Cape Mental Health Society in the early 1990s established the Sexual Assault Victim Empowerment (SAVE) programme to provide assessment, support and court preparation services for persons with intellectual disabilities who have been the victims of sexual assault, by assisting them with investigation and evaluation of their competence to act as witnesses or their capacity to consent to sexual intercourse, compilation of court reports, and provision of expert evidence in court. The programme also trains members of the South African Police Services and public prosecutors to develop the skills they need to conduct interviews with complainants with intellectual disabilities with greater sensitivity and understanding of their special needs. It should be noted that this programme, which is by its nature “cost intensive” in terms of requiring specialised staff such as social workers and psychologists, is administered and funded (through fund-raising initiatives) by the Cape Mental Health Society.

154. Persons with severe physical, communication, intellectual and psychosocial disabilities who are resident in large overcrowded, under-resourced facilities or in homes or care centres where there is significant poverty and/or social disruption in the family or area of residence, are particularly vulnerable to deprivation and abuse.

155. The South African Government acknowledges that urgent, co-ordinated action is required to turn the above situation around even though there is statutory provision for significant protection.

156. The Children’s Act, 2005 provides for protective measures for children in residential care. The regulations to the Act require of the Minister of Social Development to conduct regular audits of such facilities to ensure that the minimum norms and standards prescribed by the regulations, are applied.

157. The Domestic Violence Act, 1998, legislates against any forms of violence within domestic relationships. This includes relationships between family members or caregivers and persons with disabilities and further allows for a person who has a material interest in the well-being of the survivor of domestic violence who has a mental impairment to apply for a court protection order on behalf of such person. By virtue of the mental disability status of the victim, the Act waives the requirement of the submission of written consent of the survivor or his/her participation in the court process.

158. Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 cites various offences against persons who have mental disabilities. These include sexual exploitation and sexual grooming of, exposure or display of or causing exposure or

display of child pornography to persons who have mental disabilities, using persons with mental disabilities for pornographic purposes or benefiting from such purposes. To ensure the prevention of sexual violence against persons with mental disabilities, chapter 6 of the Act has established a National Register for Sex Offenders in which particulars of sex offenders convicted of any sexual offence against a child or a person who is mentally disabled are recorded. The purpose of the register is not only to maintain a record of sex offenders in the country, but also to ensure that such convicted offenders are prevented from having access to persons who have mental disabilities, and are prevented from working in environments in which persons with mental disabilities are present.

159. The Older Persons Act, 2006 criminalises abuse of older persons and provides special measures to combat such abusive behaviour. In terms of this Act the frail older person is defined as “an older person who is in need of 24-hour care due to a physical or mental condition which renders such person incapable of caring for himself/ herself.” This Act further allows abused older persons access to legal remedies provided by the Domestic Violence Act, 1998 so that, in addition to the recourse outlined by the Older Persons Act, 2006 an abused older person may also apply for an order in terms of this Act.

160. The National Policy Guidelines for Victim Empowerment of 2009 prioritises persons with disabilities as a target group for intervention.

161. The National Prosecuting Authority has established 52 Thuthuzela Care Centres to provide support services for survivors of sexual offences and domestic violence. An audit pertaining to universal access for survivors with disabilities is awaited.

162. In line with the UN Secretary-General’s UNITE to End Violence against Women Campaign, the country is intensifying the dedicated, comprehensive and integrated programme on the 365 Days National Action Plan, including the 16 Days of Activism for No Violence against Women and Children campaign. Disability considerations have been mainstreamed in the action plan as well as the 16 Days Campaign, and the sector is represented on the Council against Gender-Based Violence, established to develop a more holistic and proactive response to the unacceptably high levels of gender-based violence.

163. The South African Human Rights Commission also monitors matters relating to exploitation, violence, abuse and violation of human rights in general, and functions as an independent monitoring body.

Freedom from exploitation

164. The Consumer Protection Act, 2008 prohibits a supplier taking advantage of the fact that “a consumer was substantially unable to protect the consumer’s own interests because of physical or mental disability, illiteracy, ignorance, inability to understand the language of an agreement.” Despite on-going intensive media campaigns by the National Consumer Commission in partnership with national and provincial government departments, very few persons with disabilities exercise their rights as consumers to appeal for protection under the Act.

165. Periodic reporting of exploitation and abuse of social grant recipients by families, especially of persons with intellectual and psychiatric disabilities, requires further investigation.

K. Article 17 – Protecting the integrity of the person

166. The forced sterilisation of persons with disabilities is prohibited by the Constitution and the National Health Act, 2003. The Sterilisation Act 1998 provides for non-consensual sterilisation if the person is deemed incompetent to consent owing to a mental disability,

and if the person is regarded as incapable of: “(i) making his or her own decision about contraception or sterilization; (ii) developing mentally to a sufficient degree to make an informed judgement about contraception or sterilization; and (iii) fulfilling the parental responsibility associated with giving birth” and, as such, requires review.

167. The conditions under which pregnancies might be terminated were outlined under Article 10, but it should be noted that forced termination of pregnancy is prohibited by law.

168. The Mental Health Care Act, 2002 allows for involuntary treatment and requires review to bring it in line with the Convention.

L. Article 18 – Liberty of movement and nationality

169. The Bill of Rights in Chapter 2, Section 21 (1-4) guarantees freedom of movement and residence. South Africa put in place measures, including promulgation of the South African Citizenship Act, 1995, and the Births and Deaths Registration Act, 1992, which respectively facilitate legislative or administrative measures to ensure the rights of persons with disabilities to equal access to a nationality, and provide for the registration of all newborn children within 30 days after birth.

M. Article 19 – Living independently and being included in the community

170. The definition for independent living contained in the White Paper on an Integrated National Disability Strategy, 1997 fully complies with Article 19. The transversal nature of support services and access provisions required to enable persons with disabilities, particularly in poor and rural communities, to live in the community, with choices equal to those of other persons, remains a challenge, as the services required are not sufficiently structured and co-ordinated at community level to create a conducive environment.

171. The Department of Social Development supports residential facilities mainly through subsidisation of approximately 149 NGO-managed residential facilities (101 urban, 19 peri-urban and 29 rural) with an estimated budget, for the period under review, of USD 4,575,125. These 149 facilities provide residential care for a total 7,982 persons with disabilities (6,416 persons in urban and 1,566 in rural areas). It should be noted that a number of NGOs have highlighted the increased vulnerability of residents due to late payment of subsidies as well as non-inflation-related adjustments to annual subsidies. A number of difficulties are receiving attention to improve the quality of care in these facilities, especially in rural and peri-urban areas.

172. Supported/assisted living and independent living programmes constitute a move towards units/homes that are more open, smaller and within the community to facilitate de-institutionalisation. State subsidisation of such units is presently limited. The Social Assistance Act, 2004 provides for an additional grant-in-aid for disability grant recipients who require full-time care by another person owing to their physical or mental disabilities.

173. The Road Accident Fund, which compensates victims of road accidents, provides for home visits by qualified staff to assess adaptations required and living conditions of clients who have become disabled as a result of vehicle accidents. Benefits include specialised assistive devices, adaptations to homes, as well as appointment of full-time or part-time personal assistants, if relevant.

174. Community-Based Rehabilitation (CBR), which should constitute a key pillar of any independent living programme, is still predominantly NGO-driven, with only two of the nine provincial governments providing CBR subsidies to organisations of disabled persons, and the Western Cape providing CBR services through a disability service organisation.

175. The Mental Health Care Act, 2002 provides for community-based care, treatment and rehabilitation services, and the regulations to the Act prescribe standards for residential and/or day care community-based mental health services. The Act needs to be reviewed to ensure compliance with the CRPD.

176. Strengthening co-ordination of support services and setting minimum norms and standards for independent living in the community will form a cornerstone of the National Disability Policy currently being developed.

N. Article 20 – Personal mobility

177. To give effect to the right of persons with disabilities to move freely and with independence, the National Rehabilitation Policy (2006) and Standardisation of Assistive Devices in South Africa: A Guideline for Use in the Public Sector, provide for funding of assistive devices. The latter states that “there shall be no discrimination against clients on the grounds of impairment, age, gender, social conditions, financial situation, disease, medical condition, or any other basis in the assessment for issuing an assistive device.” Assistive devices form part of the public sector health service package offered free of charge to qualifying members e.g. children under six and persons with disabilities qualifying for free health care. Issuing of augmentative and alternative communication devices take place only at the tertiary level of health care, thus placing these devices beyond outside the reach of the majority of persons with disabilities. Severe capacity constraints in the assessment and issuing of assistive devices and lack of state funding for orientation and mobility instructors are additional problems. Stringent safety measures are taken to make sure that the devices are of high quality and are user-friendly.

178. Provisioning of assistive devices is prioritised on rehabilitation budgets, although waiting periods between date of application and date of issue remain a challenge. Accurate and updated statistics are not available, but attention is being paid to include issuing of assistive devices on the District Health Information System.

179. The Western Cape Rehabilitation Centre is the only WHO-accredited/acknowledged training centre in wheelchair seating in South Africa. It is acknowledged that every province should have at least one such a centre.

180. The South African Disability Development Trust (SADDT), which receives part-funding through government subsidies, fills a critical gap by providing assistive devices that are vital to maintain or retain employment, whether in the open labour market or for self-employment purposes, but not in instances where the employer has an obligation to provide equipment for the workplace under reasonable accommodation, where these devices are available through the Department of Health policy or where medical aid schemes provide funding for the required devices. The SADDT for example assisted 30 employed persons with disabilities in 2009/10 with a range of assistive devices at a total cost of USD 48,750.

181. The Department of Public Services and Administration is at present finalising the Policy on Reasonable Accommodation and Assistive Devices in the public service, which will bring uniformity across the public service for provision of assistive devices, personal assistance services and technology for public servants with disabilities. From 2008 to 2011 the South African Police Services acquired an extensive range of personal assistive devices for employees with disabilities, including manual and motorised wheelchairs, prostheses, white canes, vehicle adaptations and a range of technological equipment, to promote independence and productivity.

182. It is acknowledged that the considerable challenges presented by public transport, discussed under Article 9, have a significant impact on the choices persons with disabilities

have regarding affordable mobility particularly in rural and poor communities, but to an increasing extent on urban freeways as well.

O. Article 21 – Freedom of expression and opinion, and access to information

183. Chapter 2, Section 16(1) and (2) of the Bill of Rights of the Constitution of the Republic of South Africa, 1996 guarantees freedom of expression and opinion. It is acknowledged that negative attitudes detract from the value afforded the opinions and ideas of people with intellectual and psychosocial disabilities and closer involvement of these user groups and the rest of Government must be brought about.

184. It is a fact that persons with disabilities do not have equal access to information intended for the general public in accessible formats because of the barriers discussed under Articles 6 and 7.

185. The Department of Arts and Culture recently completed an investigation into national braille production needs and related policy matters with the aim of developing a braille production strategy for the country.

186. Sign language is not recognised as one of South Africa's official languages. The South African Constitution has, however, given the Pan South African Language Board a mandate to promote the development, usage and recognition of Sign Language as the first language of deaf South Africans. The deaf community is represented on the Board, and the public entity employs deaf persons to help effect the mandate. The deaf community has voiced concern that Government measures are inadequate for any significant promotion of the linguistic identity of deaf persons, and this also means ensuring the availability of specific skills-training services for children, adults or teachers who require Sign Language to access their rights.

P. Article 22 – Respect for privacy

187. The Bill of Rights in Chapter 2, Section 14 (a-d) guarantees the right to privacy. The Older Persons Act, 2006 similarly provides for the right to privacy for older persons living in residential facilities.

188. Persons with disabilities enjoy the right to privacy of personal, health and rehabilitation information on an equal basis with others.

189. It is acknowledged that the right to privacy of persons in subsidised residential and care facilities is often compromised as people sometimes have to share rooms, and the right to privacy of persons whom have to use guides and/or interpreters can be infringed due to a lack of regulation and professionalisation of these roles.

190. The right to privacy of persons with psychosocial disabilities is frequently violated by the media, for example, when they are charged with criminal offences. Sensationalist reporting and inaction on the part of court officials contribute to the rules relating to confidentiality of medical records being flouted.

Q. Article 23 – Respect for home and the family

191. The interrelatedness between poverty, disability and inequality is clearly demonstrated, particularly under Article 23. Households with disabled members in poor communities on average spend more to access relevant information about disability-related

services (Article 8), to access disability-related social grants and services, including CBR, due to, among others, high transport costs in these areas (Article 9), inadequate specialised services (Articles 25 and 26), and inability to secure income due to the need to care for children with disabilities as well as older persons with disabilities. Coupled with the stigma still attached to disability in traditional communities, this often results in confining children with disabilities and their mothers to their homes, adding to the emotional burden the families carry. The lack of reasonable accommodation in community schools (Article 24) further adds to the burden, as children with disabilities often have to attend schools which are far away and families have to carry the cost of additional transport and/or accommodation. It should further be noted that this burden falls disproportionately on women.

192. State support to give effect to the right to family for children is guaranteed in Section 28(1)(b) of the Constitution of the Republic of South Africa, 1996 as well as Section 7 and Chapter 9 of the Children's Act, 2005, which prescribes considerations to be taken into account when acting in the best interest of the child, including when a decision has to be taken to remove a child from his/her family to be placed in temporary safe care.

193. The Social Assistance Act, 2004 provides for access to a care dependency grant for parents (including foster parents) and/or caregivers of children with permanent, severe disabilities between the ages of 0-18, on condition that these children are not permanently cared for in a state institution.

194. The Department of Social Development is finalising a strategy for orphans with disabilities to provide them with places of safety if the immediate family is unable to care for them. South Africa remains committed to make every effort to provide alternative care within the wider family and, failing that, within the community in a family setting.

195. The South African Human Rights Commission in its submission pointed out that families or caregivers of for a person who is predisposed to violence because of intellectual, psychosocial or neurological disability, often use the criminal justice system as a starting point to have them removed from family care in the absence enabling policy in this regard.

196. Section 12 (2) of the Constitution of the Republic of South Africa provides for the right to bodily and psychological integrity, including decisions about reproduction and control of one's own body. The National Health Act, 2003 stipulates that all persons including those with disabilities have a right to reproductive health services including family planning. The need to review the Sterilisation Act, 1998, was discussed in articles 12 and 17.

197. Section 3 of the Divorce Act, 1979 provides that a decree of divorce may be granted on grounds of mental illness or continuous unconsciousness of a spouse. The Act requires the court to hear the evidence of at least two psychiatrists, one of whom one shall have been appointed by the court, that the defendant is mentally ill and that there is no reasonable prospect that the defendant will be cured of his/ her mental illness. The SA Law Reform Commission, as part of its investigation into compliance of national legislation with the equality clause in the Bill of Rights, reviewed, among others, the Divorce Act, 1979, Discussion Paper 130 on Legislation Administered by the Department of Justice and Constitutional Development (family law and marriage), proposes an update of the Divorce Act, 1979, to eliminate out-dated references to the Mental Health Act, 1973 (repealed). It is, however, noted that a broader review of the Divorce Act, 1979, is required together with a review of the Mental Health Care Act, 2002, as mentioned under Article 19, to bring it in line with the CRPD.

R. Article 24 – Education

Legislative Framework

198. Section 29 of the Constitution of the Republic of South Africa, 1996 guarantees the right to basic education, including adult basic education, to everyone.

199. The South African Schools Act, 1996 regulates education for all children between the ages of 7 to 18. Section 3(2) provides for the Minister of Education to set out ages for compulsory school attendance for learners with special needs. This has not yet been done but will be addressed as part of the revision of the Act currently under way. It should be noted that this section refers only to admission of learners with special needs under the compulsory school going age of seven or older than the exit age of 18 years.

200. Section 12 of the South African Schools Act, 1996 obliges members of executive councils responsible for education at provincial level, to ensure that education for learners with special needs be provided, where reasonably practicable, at ordinary public schools. In determining the placement of a learner with special education needs, the head of department and principal must take into account the rights and wishes of the parents of such learners and uphold the principle of “what is in the best interest of the child” in any decision making.

201. Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System (2001) outlines the 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. The policy embodies the principles of Article 24 of the CRPD as it sees inclusive education as a means by which society can be transformed to promote tolerance and respect for diversity and the human rights of all people, specifically persons with disabilities who have been and are marginalised and largely excluded.

202. Education White Paper 6 did not make specific provision for children with severe or profound intellectual disabilities. The Western Cape High Court directed in the Cape Forum for Intellectually Disabled v Government of the Republic of South Africa 2011 (5) SA 87 (WCC) judgement, that the Cape education authorities take reasonable measures to give effect to the rights of the affected children and granted a structural interdict allowing Government 12 months to develop an intervention plan that would provide access to education for children with severe and profound intellectual disabilities. An extension was granted by the court allowing for development of an integrated strategy and programme of action for the provision of educational support to learners with severe and profound disabilities for submission to the High Court by April 2013. The integrated strategy and programme is being developed through a consultative process involving a number of government departments.

203. The National Development Plan of 2012 promotes accelerated roll-out of inclusive education which will enable everyone to participate effectively in a free society and acknowledges that education provides knowledge and skills that persons with disabilities can use to exercise a range of human rights, such as the right to political participation, the right to work, the right to live independently and contribute to the community, the right to participate in cultural life, and the right to raise a family.

Statistics

204. The significant challenges still experienced in capturing disability-related statistical data capturing and analysis, discussed in the preamble to this report and under Article 33, come to the fore in analysis of statistical data relating to education. This remains a highly contested terrain.

205. Not attending School:

- The Department of Basic Education (DBE) estimates that the number of children with disabilities of school-going age who are not at school, could be as high as 480,036, based on their own calculations and StatsSA 2010 General Household Survey data.

206. Enrolment in Ordinary Schools:

- DBE reports that 118,490 learners with disabilities were enrolled in ordinary schools in 2010 and 104,633 in special schools totalling of 223,123 learners with disabilities, approximately 1,7%;
- The General Household Survey of 2011 indicated that 6% (758,652) of children in the schooling system were children with disabilities. There is therefore a discrepancy of 535,524 learners for whom the system cannot account;
- According to the General Household Survey the percentage of learners with disabilities as a percentage of all learners attending school increased from at least 1% in 2002 to approximately 7% in 2010;
- Of the 124,559 learners admitted to ordinary schools in 2009, 17,6% were in separate classes. The drop in numbers can be ascribed to an inconsistency in data collection procedures;
- DBE, using its own calculations based on StatsSA General Household Survey data for 2010, estimates that 94% of seven to 15-year-old children with disabilities attended an educational institution in 2010, against 73% in 2002;
- DBE, using its own calculations based on StatsSA General Household Survey data for 2010, further reports that 68% of 16-18-year-old children with disabilities attended an educational institution in 2010, compared to the overall figure of 83% for all children in this age group. The participation of this age category of children with disabilities in educational institutions increased significantly from 51% in 2002 to 68% in 2010.

207. Enrolment in the reception year (5-year-olds):

- DBE, using its own calculations based on StatsSA General Household Survey data for 2010, estimates that 85% of 5-year-olds with disabilities attended an educational institution.

208. Enrolment in Special Schools:

- The DBE reports that the enrolment in public special schools was 104,633 in 2010;
- DBE further reports a gradual improvement in the number of learners in special schools who wrote matric between 2007 (727 learners), 2008 (804 learners), 2009 (872 learners), 2010 (942 learners), but the figure dropped to 847 in 2011;
- The pass rate for matriculants in special schools improved from 481 learners(2007), to 636 (2008), 697 (2009), 745 (2010), but dropped 697 in 2011;
- 63 special schools currently offer matric for their students, detracting significantly from employability of school-leavers accommodated in special schools.

209. Post-school qualifications/enrolment:

- Enrolment of students with disabilities at institutions of higher education (excluding Stellenbosch University) does not show any significant improvement, from 4,861 (2008), to 4,662 (2009) and 5,027 (2010);

- Figures for students with disabilities graduating at institutions of higher education (excluding Stellenbosch University) show a similar lack of improvement, having in fact dropped 995 (2008), to 904 (2009) and 801 (2010).

210. Adult education:

- The KhaRiGude Mass Adult Literacy Campaign, launched in 2008, has achieved exceptional results in terms of training adults with disabilities;
- 129,121 adults with disabilities enrolled between 2008 and 2011. A total of 43,135 (33%) had visual disabilities, 18,092 (14%) were deaf, 28,498 (22%) had physical disabilities, and 13,544 (0.1%) had disabilities not specified;
- 3,843 adults with disabilities were involved in the training programme as tutors and supervisors between 2008 and 2011.

211. The DBE introduced the Learner Unit Record Information Tracking System (LURITS) in 2008 to track individual learners (including learners with disabilities). It should be noted that the quality of the data is not always reliable and up-to-date and currently tracks only learners who are enrolled in special schools.

212. There is also no reliable system in place to track children with disabilities who are out of school and/or have been denied admission to school. This will receive urgent attention.

Implementation of Inclusive Education (Education White Paper 6)

213. The Constitution of the Republic of South Africa, 1996 stipulates that provision of basic education is a concurrent national and provincial function. Although the national policy framework promotes primary and secondary education of all children and youth (including those with disabilities) in one system, this is not always carried through at provincial level where new segregated special schools (in many cases with residential facilities) are still being built, which means that children with disabilities have to be separated from their families and communities. Criteria for eligibility for admission to special schools have been developed to ensure that these schools in the medium to long term cater only for learners with very high-level support needs and also serve a dual function as resource centres.

214. Legislative and policy barriers to the inclusion of children, youth and adults with disabilities in early childhood development, primary, secondary, post-secondary and adult education have to a large degree been removed but need to be further strengthened through regulations to strengthen provisioning and enforcement.

215. It is acknowledged that, although the policy framework exists, there are problems with implementation, with the result that a large percentage of children with disabilities are currently either completely excluded from compulsory education, or unable to effectively access the curriculum in either special school or ordinary school settings.

216. There are still significant challenges are still being experienced in respect of appropriate support to learners with disabilities in both special as well as ordinary school environments. The National Strategy on Screening, Identification, Assessment and Support (SIAS), currently being finalised, is a response to this and will stipulate that support is no longer organised according to the category of disability but according to the level and nature of support needs, and will steer the implementation of inclusive education policies. The strategy should be implemented by 2014. It will overhaul the process of identifying, assessing and enrolling learners in special schools and curb the unnecessary placement in special schools; improve the nature and quality of support that has to be provided to those learners who require additional support; promote early identification; and strengthen the

fundamental role that parents and teachers play in implementing the strategy, while streamlining services by various government sectors.

217. The curriculum offered at special schools is currently under review to ensure that more learners are encouraged to follow academic programmes which provide access to higher education learning opportunities. This positively impacts on the percentage of young adults who can enter the formal job market.

218. The support outlined in SIAS includes the following:

- Accommodation to assure physical access to the school and classroom, including accessible transport and other technical support. The measures are reinforced through norms and incremental increase in budgets dedicated to this purpose;
- Strengthening the capacity of school managers and districts in the acquisition, management and maintenance of assistive devices and technology especially with regard to assistive technologies for communication and other instructional purposes;
- Involvement of para-professionals or peers, on an ad hoc basis for implementation of individual support plans which outline the frequency and degree to which professionals, such as therapists and part-time learning support facilitators, should provide individual support in the face of the shortage of specialists in rural areas. A model has been developed for a peripatetic service;
- Appropriate provision of supports such as Sign Language interpretation, braille training and associated equipment and materials, and other individualised supports, is currently being addressed through short-term interventions and the development of a system for sustainable provision.

219. It is acknowledged that the incremental implementation of White Paper 6 over 20 years is not consistent with section 29 of the Constitution of the Republic of South Africa, which requires the State to implement measures and make budgetary allocations so that the right to education is a matter of priority and, as such, requires urgent revision.

220. It is furthermore acknowledged that the scale for the first stage of implementation of inclusive education was too gradual and the timeframe too extended to make a significant impact or ensure that all learners with disabilities have access to free education in an inclusive education system.

221. The absence of stronger legislative measures, weak monitoring systems and lack of funding norms to ensure that more dedicated funding would be redirected to mainstream education and support, means that the number of learners not necessarily requiring very specialised or high levels of support but being referred and admitted to special schools, has increased.

222. Despite several measures taken, there are still too few legal actions against ordinary schools which exclude learners with disabilities and refer them to segregated special education without any step having been taken to introduce reasonable accommodation. The Equality Court judgment in the Oortman case in 2010 therefore set an important legal precedent.

223. The implementation of the policy was significantly impeded by the fact that it was not regarded as a fundamental driving force of educational change, as had been intended. Support from various levels of the education system has been limited. This continues to contribute to the observed slow, poorly co-ordinated, unsystematic implementation of inclusion in most provinces. Up to 2012, inclusive education has not been mainstreamed in most of the intervention programmes and senior managers within departments have therefore not been held accountable for implementing the policy directives. This is of particular importance in the context of the significant challenges faced by the school

education system, with poor outcomes, a lack of culture of learning and teaching in large numbers of schools, large numbers of under-qualified teachers and poor infrastructure in many schools.

224. The introduction of the policy of inclusive education mainly targeted the general education band, and to a limited extent the reception year intake (part of Early Childhood Development, which are in more detail discussed under Article 7).

225. In the first stage of policy implementation (2002-2009) 30 of the 81 districts in the country were targeted for development, using predominantly donor funding:

- 30 ordinary schools were selected in the poorest parts of the country for conversion into full-service schools to serve as model sites of full inclusion;
- 34 special schools were selected for upgrading and conversion into resource centres;
- An extensive public advocacy campaign was launched as reported under Article 8;
- In all 30 districts transversal district-based support teams were established and trained to provide support services in an integrated way, thus maximising existing services through co-ordination and intersectoral collaboration.

226. A comprehensive audit of all special schools conducted in 2002 to determine where schools were dysfunctional, under-resourced, lacked training and needed upgrading or other interventions, including addressing abuse of learners, revealed major disparities in provision and quality between schools in urban and metropolitan areas and those in townships and especially rural areas.

- The audit found 135 special schools badly neglected and dysfunctional. This resulted in a high incidence of learner abuse, buildings — especially hostels — falling apart, ineffective teaching and little learning, no appropriate and meaningful support to learners and, in many instances, a total breakdown in the culture of learning;
- In 60% of districts in the country, there were no special schools at all. The National Treasury made additional funds available in 2006-2011 for the improvement of the most neglected special schools, training of teachers and provision of assistive devices and specialised equipment. As part of this programme, more new special schools were built;
- During this period attention was paid to up-scaling strategies for provincial implementation of inclusive education, increasing the number of ordinary schools to be converted into full-service schools from 30 to 513, strengthening transversal support structures at all levels such as district and school support teams through the creation of more specialist posts, training on inclusive education, screening, identification, assessment and support, curriculum differentiation, use of assistive technology and other areas of specialisation;
- 912 learners in 34 schools have received appropriate assistive devices that will enable them to access education and become integrated into society.

227. The South African Government reconfirmed its commitment to implementation of the policy by recognising inclusive education as a national priority area in education and allocating approximately USD 250 m over four years (2008-2012) for taking the system to scale.

228. At least 30% of the budget allocated by the National Treasury has been made available to raise standards of physical infrastructure and curriculum delivery to improve quality teaching and learning. Regrettably, more than 50% was spent in other priority areas at provincial level and only five of the nine provinces have used the funds available for the

expansion of inclusive education. As a consequence the impact of the programme was seriously compromised. Steps are currently being taken by the Department of Basic Education to improve accountability measures in provincial departments of education and to raise the level of awareness about the critical need to strengthen this sector.

229. The education and health authorities are rolling out an Integrated National School Health Programme which has conducted mass screening in the poorest schools in the country to identify disabilities and other developmental delays. Since the inception of the programme in 2010, more than 200,000 children have been screened. Once identified, they will be more fully assessed through the SIAS process to ensure that they obtain relevant support in their local schools.

230. The right to early identification and assessment is not yet universal and availability of support and services is limited due to a shortage of health professionals, especially in rural areas. Early childhood educators are being incrementally trained on strategies for early identification and intervention.

Reasonable accommodation and provision of effective individualised support measures

231. Section 29 of the Constitution of the Republic of South Africa guarantees the right to receive education in public educational institutions in the official language of choice. To ensure effective access to, and implementation of this right, the State must consider all reasonable educational alternatives, taking into account equity, practicability and the need to redress the results of past racially-discriminatory laws and practices. Subsection 2 requires education to be provided in a language that ensures effective and equitable access to that education, which may include Sign Language and braille.

232. Section 12 of the South African Schools Act, 1996 places an obligation on members of executive councils responsible for education at provincial level, to ensure that these learners be provided with the relevant support services and that reasonable measures should be taken to ensure that physical facilities at public schools are accessible to persons with disabilities. It is acknowledged that major disparities continue to exist between provinces, as well as between rural and urban areas:

- The Eastern Cape has 3 designated resource centres, 18 designated full-service schools, four accessible full-service schools, 23 functional district-based support teams, but a shortage of therapists employed at district level;
- Gauteng has 15 designated resource centres and 68 designated full service schools, but only seven accessible full-service schools. The province has 188 inclusive education officials employed at district level, as well as 15 functional district-based support teams;
- Limpopo has 6 designated resource centres and 11 accessible full-service schools; a further 11 schools have been designated as full-service schools, five inclusive education officials are employed at district level and there are no fully functional district based support teams;
- Free State Province has 87 inclusive education officials employed at district level and three functional district-based support teams; only three designated resource centres, two accessible full-service schools and has started to convert a further 26 designated full-service schools;
- Northern Cape has one accessible and four further designated full-service schools, as well as four designated resource centres. There are 37 inclusive education officials employed at district level. The province is appointing functional district-based support teams in five districts;

- Mpumalanga has 21 designated resource centres and 141 designated full-service schools of which only one is accessible. The province has 39 inclusive education officials employed at district level and is strengthening four district-based support teams;
- KwaZulu-Natal has 14 designated resource centres, 120 designated and 50 accessible full-service schools; and has 33 inclusive education officials employed at district level and 12 functional district-based support teams;
- Western Cape has 24 designated resource centres, 122 designated full-service schools of which 14 are accessible, 76 inclusive education officials employed at district level and eight functional district-based support teams;
- North West has eight designated resource centres, 224 designated full-service schools, 112 accessible full service schools, 47 inclusive education officials employed at district level and is strengthening four district-based support teams.

233. Several policy implementation guidelines have been made available to managers across the education system to develop a common understanding of the concept “reasonable accommodation” in education. These include the Guidelines for Inclusive Teaching and Learning (2009), the National Strategy on Screening, Identification, Assessment and Support (2008), the Guidelines to Ensure Quality Education and Support in Special Schools and Special School Resource Centres (2007), the Guidelines for Full-Service/Inclusive Schools (2010), and the Guidelines for Responding to Learner Diversity in the Classroom (2011).

234. A National Protocol on Assessment (2011) and the Policy on the Conduct of Assessment (now being reviewed) include chapters on adapted methods of assessment for system-wide implementation from Grade R to Grade 12. The policy not only addresses adaptations and concessions in final examinations but throughout the teaching and learning process and assessment is continuous.

235. There are no accurate statistics available on the percentage of schools that comply with norms for environmental accessibility. A survey of 25,156 ordinary schools conducted by the Department of Education across all nine provinces in 2006, revealed that 97,1% had no accessible toilets and 97,8% had no ramps.

236. A total of 202 ordinary schools were upgraded to improve physical access and to serve as model full-service/inclusive schools between 2006 and 2011. These schools were also supplied with a wide range of assistive technology and teachers were trained in basic principles and practices of inclusive education. Provinces have committed funds to convert a further 553 selected schools for conversion to full-service schools by 2014. An audit is to be conducted to determine to what extent the upgraded infrastructure complies with national building regulations.

237. The drafted Minimum Uniform Norms and Standards for Public School Infrastructure currently out for public consultation does not include universal design principles, and will be amended before approval.

238. Learners with physical disabilities who are unable to make use of ordinary minibus taxis or school buses are currently excluded from scholar transport provided for learners whose homes are more than four km from their nearest school. Accessible and affordable scholar transport poses a significant barrier to access to education, and the scholar transport policy being developed will incorporate norms and standards for accessibility.

239. The 2009 DBE audit of all 22 schools for learners with visual disabilities culminated in implementation of a strategy for improving quality of teaching and learning at these schools and introduction of support measures in ordinary schools.

- In 2011, training of school managers to improve quality of curriculum delivery in these schools;
- In 2012 the University of Pretoria developed a short course in the field for introduction which could be expanded to a full qualification at post-graduate level. The aim is to ensure that 700 out of 900 educators teaching in schools specialising in visual impairment have knowledge of braille by 2014;
- Changes in the curriculum resulted in a delay of issuing braille and large-print textbooks to learners with visual disabilities in both special and ordinary schools. Donor funding has been made available to expedite the adaptation and printing of the learner workbooks for grades R-9 in braille as well as textbooks and prescribed works. Progress has been delayed because of lack of capacity in the national braille printing facilities. The investigation into the status of braille production in the country reported on earlier, with a view to establish a national facility, should alleviate this situation. Negotiations are underway with the publishing industry to make prescribed works and textbooks available in digital format.

240. Children with disabilities who are also incontinent experience major challenges in both ordinary and special schools. The roll-out of incontinence clinics at special schools, initiated by the organisation Parents of Children with Special Education Needs (PACSEN) with private sector support, and subsequently followed through by a few provinces, demands greater attention.

241. A Curriculum for South African Sign Language is currently being drafted by a ministerial task team for introduction into the system in 2014. Once this curriculum has been completed, higher education institutions will be required to increase the number of training courses for educators using Sign Language as medium of instruction across subject fields as well as for the introduction of South African Sign Language as a subject within the National Curriculum Statement. Currently there are only three training programmes for Sign Language educators, namely at Free State University, the University of the Witwatersrand and UNISA.

242. The National Treasury is committed to prioritising funds to ensure that more accessible learning and teaching support materials are made available at ordinary and special schools that include learners with visual and hearing disabilities. No specific provision has as yet been made for learners who are deaf-blind.

243. It is anticipated that the initiatives mentioned above will improve availability of braille and educators' training in braille as well as in Sign Language. The Guidelines for Responding to Learner Diversity in the Classroom will help educators to create enabling learning environments and accessible teaching and learning materials. Appropriate augmentative and alternative communication devices and training for educators have been introduced and this training will be expanded to more schools over the next three years.

244. It should be noted that in the 2012/2013 financial year only USD 57,8- million of the USD 68,750- million budget for "inclusive education" by provincial government departments was allocated for the expansion of inclusive education. The balance was for special school financing.

245. Schools in the country are classified in terms of poverty. The methodology applied in determining the relative poverty of schools for the purpose of quintile placement (the geographical location of the school and the relative poverty of the surrounding community) is not suited to special schools because a sizable number of learners enrolled at special schools are from outside the surrounding community. Funding for special schools is therefore not differentiated in terms of poverty-related criteria. Possible poverty targeting of special schools with consequent possible differentiation in funding of special schools based

on this poverty targeting as well as consequent subsidisation of loss of income due to fee exemption, are aspects being considered in developing funding strategies applicable to special schools.

Educator and auxiliary staff development

246. The National Policy Framework for Teacher Education (2007) determines that the identification and addressing of barriers to learning should be a key component of all teacher education at pre-service and in-service levels. The Draft Policy on the Minimum Requirements for Teacher Education Qualifications (2010) emphasises the critical need for all educators to be conversant with the requirements of implementing inclusive education practice. The need has also been identified for reintroducing teacher education certificates with specialisation in areas such as education of learners with hearing and visual disabilities and learners with autistic spectrum disorders and intellectual impairment. The National Strategy for Continued Professional Teacher Development (CPTD) emphasises inclusive education as a priority area and the Minister of Basic Education has set the goal of ensuring that at least one educator in each of the 26,000 schools in the country will have been trained to screen and support learners who experience barriers to learning by 2014.

247. The Guidelines for Inclusive Teaching and Learning (2010) and the Guidelines for Responding to Learner Diversity through the National Curriculum Statement (2011) have been used as a manual for training educators undergoing orientation to implement the National Curriculum Statement Grades R-12. Inclusivity has been reconfirmed as a key principle of the National Curriculum Statement Grades R-12, completed in 2011. The programme aims at widening educators' understanding of the principles and practice of curriculum differentiation and inclusive classroom management.

248. Lack of qualified and skilled educators remains a challenge in both ordinary schools and special schools, but particularly in the latter.

- 59 special schools providing education for learners with visual and hearing disabilities have too few qualified educators;
- There are 781 educators with basic braille knowledge but without any qualification;
- 89 teachers educators of visually-impaired learners have no knowledge of braille at all;
- 985 educators teaching deaf learners know basic SASL but have no qualifications;
- 266 educators (21%) teaching deaf learners have no SASL knowledge at all.

249. From 2008 to 2011 more than 39,515 educators and 7,148 officials received in-service training on the key policy implementation guidelines listed above. These guidelines introduce radically new approaches to determine the measures for reasonable accommodation required by learners with disabilities and for making the curriculum accessible. In addition, 8,696 schools established school-based support teams and 16,672 team members, 1,415 learning support educators and 7,148 district officials were appointed and trained.

250. The national inclusive education advocacy strategy will be strengthened in order to mobilise communities to be inclusive and qualify parents, parent organisations and organisations of and for persons with disabilities to be key partners of government.

Post-school education

251. Section 29 of the Constitution of the Republic of South Africa, 1996 guarantees the right to further education, which the State, through reasonable measures, must make progressively available and accessible.

252. In 2011 the Department of Basic Education introduced the process of developing a skills and vocational-orientated exit level qualification at Grade 9 level for learners with intellectual disabilities which would enable them to enter the world of work or further vocational training programmes at further education and training level.

253. It is known that Further Education and Training (FET) colleges lag behind in creating barrier-free access and inclusive environments. This is receiving attention.

254. The research findings and recommendations contained in the 2011 Disability in Higher Education Report based on research commissioned by the now disbanded Disability in Higher Education Project, was mandated by the Foundation of Tertiary Institutions of the Northern Metropolis (FOTIM). The report was embraced by Higher Education Disability South Africa (HEDSA), representing disability units at universities and contributed significantly to policy development and implementation.

255. In 2012 the Department of Higher Education and Training (DHET) entered into consultations on the Green Paper for Post-school Education and Training, which states that: “The DHET will work towards developing a National Disability Policy and Strategic Framework which will seek to create an enabling and empowering environment across the system for staff and students with disabilities. Institutions may then customise the policy in line with their institutional plans as the policy will act as a benchmark for good practice”.

256. Support services are available through disability rights units at 11 higher education institutions for students with disabilities, albeit at various levels of development. A unit has been established in the DHET to extend these services to all universities and other higher education institutions, and the Department is in the process of establishing a task team to accelerate inclusive practices across this sector.

257. The DHET allocated USD 15,479- million for disability equity funding as part of the 2012/13-2013/14 infrastructure-funding allocation for institutions of higher education. It is noted that not all universities applied for funding to improve/expand facilities and infrastructure for students and staff with disabilities. All universities are required to provide a universal access infrastructure audit before 31 January 2014 to enable the DHET to consolidate and finalise the costing of a universal access infrastructure plan for universities.

258. In 2008 the former Department of Education (now DHET) introduced a bursary scheme for students with disabilities studying at one of the 23 public higher education institutions in 2008 to provide financial support for students with disabilities who are academically able but need financial aid. The bursary covers tuition, books and other study materials, accommodation – and important, transport as well as assistive devices or human support required. The scheme is administered by the National Student Finance Scheme (NSFAS), which annually publishes updated Guidelines for Students with Disabilities for the Department of Higher Education and Training Bursary Programme.

259. The Government of South Africa recognises the need to prioritise the unacceptable sustained high levels of abuse, especially of girls with disabilities occurring at special schools and will accelerate actions aimed at establishing a multi-sectoral programme to eradicate this scourge from our schools.

260. It further recognises the need to place inclusive education at the centre of education reform in South Africa. This requires that meaningful participation by organisations of and for persons with disabilities, and parents organisations in particular in the planning, implementation and monitoring impact of interventions and campaigns should be intensified. The DBE has therefore declared 2013 to be The Year of Inclusive Education.

S. Article 25 – Health

261. Section 27 of the Constitution guarantees the right of every South African to health care services, including reproductive health care.

262. The National Health Act, 2003, the Mental Health Care Act, 2002, the Sterilisation Act, 1998 and the Medical Schemes Act, 1998 and related policies and protocols regulate health care for South Africans.

263. The National Health Act, 2003 regulates national health and provides uniformity in respect of health services nationwide by establishing a national health system which encompasses both public and private providers of health services. Subsection 2(c)(iv) identifies persons with disabilities as a designated group whose constitutional right of access to health care services, including reproductive health care, to be protected, respected, promoted and fulfilled. Subsection 70(1) furthermore requires that research priorities include the health needs of persons with disabilities, and contribute to the prevention of disability (subsection 73(2)(a)).

264. The Medical Schemes Act, 1998 provides for registration and control of medical schemes and the protection of the interests of members of medical schemes. Section 24(2)(e) rules out unfair discrimination on the grounds of disability.

265. As discussed under Articles 12, 14, 15, 17, 19 and 23, both the Mental Health Care Act, 2002 and the Sterilisation Act, 1998 require review to be brought into line with the CRPD.

266. All health services (inclusive of rehabilitation) at the primary level of care (a home-based or community level) are free. Persons with disabilities who meet nationally determined criteria for eligibility based on household income, are able to access free health care and rehabilitation services at a hospital level in the public sector.

267. Health treatment is provided for persons with disabilities on the basis of their free and informed consent. The National Health Act, 2003, stresses the importance of obtaining the patient's consent to a health service and requires health care provider to take all reasonable steps to make sure that the patient makes an informed decision. The Act provides for informed consent by a person with legal capacity to do so, and invokes the Mental Health Care Act, 2002, when a person does not have legal capacity. Review of the Mental Health Care Act, 2002, will therefore bring the National Health Act, 2003 in line with the CRPD.

268. Various protocols have been developed to facilitate early detection to prevent and minimise the emergence of secondary disabilities. The Human Genetics Policy Guidelines for the Management and Prevention of Genetic Disorders, Birth Defects and Disabilities focuses both on prevention of disability through genetic counselling and management of disabilities once identified. While the policy requires urgent review to bring it in line with the CRPD, it should also be noted that these guidelines, as with other protocols, lack effective implementation due to lack of availability of appropriately-trained human resources, high turnover of specialised personnel within the public health sector and poor living conditions for people discharged from hospital. There is no system in place which tracks and refers persons, especially children, who have been identified, through the health system, as either at risk of acquiring a disability, or have been diagnosed with a disability to other services such as social security, skills development, education and ECD or to disability service organisations. The lack of such a system places a disproportionate emotional and financial responsibility on already over-burdened and impoverished families, lock persons with disabilities in a social security trap and often cause secondary disabilities.

269. As discussed under Article 9, accessibility to health facilities for persons with disabilities in general remain a major challenge. This is because of lack of access to the physical environment, lack of access to information in accessible formats, discriminatory and negative attitudes towards persons with disabilities displayed by health and support personnel, a lack of appropriately trained and skilled health personnel concerned with disability, a lack of effective appeal and reporting mechanisms in the health sector where a client's rights have been infringed, aggravated by challenges outside the health sector such as inaccessible and unaffordable transport, particularly in rural and impoverished communities.

270. Consistent reporting of violation of the rights of persons with psychosocial disabilities in mental health care facilities, and the, frequent unavailability of psychotropic medication at primary health care level, particularly in rural areas, will receive urgent attention.

271. Because of the significant challenges facing the health system and as an integral component of the planning of full-scale roll-out of national health insurance, a National Health Facility Baseline Audit of 4210 public health facilities(including clinics, community health centres and district, regional, specialised and tertiary hospitals) in all nine provinces was commissioned and is currently being finalised. The scope of the audit includes the range of health services provided, the state of the physical infrastructure in terms of condition, safety and compliance with building regulations, the degree of compliance of the values and attitudes of staff with national quality standards, the allocation and availability of human resources in the various categories of occupation and skills breakdown.

272. The National Health Amendment Bill, 2011, currently before Parliament will, once passed, provide for establishment of the Office of Standards Compliance. This is in line with the Government's commitment to improve the quality of healthcare in public health facilities and strengthens the effectiveness of health systems through enhanced accountability, by ensuring that complaints from healthcare users are independently investigated. It will also advise the Minister of Health on the development of standards, norms and quality management systems for the national health system, inspect and certify health establishments as compliant with prescribed norms and standards; and monitor indicators of risk as an early warning system relating to breaches of standards.

273. Weak to non-existent partnerships between the health system and organisations of and for persons with disabilities at all levels of service delivery, have detracted from the impact of efforts made to ensure that health promotion programmes and campaigns are accessible to persons with disabilities, and in particular to people with visual, hearing and intellectual disabilities through publication of information in braille, cartoons, audio, different official languages as well as subsidisation of organisations of and for persons with disabilities.

274. South Africa has one of highest HIV prevalence levels in the world. The activism of organisations of persons with disabilities over the past 10 years has raised awareness of not only the prevalence of HIV and AIDS among persons with disabilities, but also the challenges they experience in accessing preventative information and effective treatment as a result of attitudinal and communication barriers. The partnership between the disability sector through the South African Disability Alliance (SADA), the South African National AIDS Council (SANAC), the Office on Status of Disabled People (OSDP), and the Joint UN Programmes on HIV/AIDS (UNAIDS) culminated in the Report on HIV, AIDS and Disability in South Africa, published by the South African National Aids Council (SANAC) in 2008.

275. The National Strategic Plan for HIV and AIDS, STIs and TB, 2012-2016, recognises the relationship between disability and HIV, and provides for the removal of

communication, physical and attitudinal barriers which detract from equal access to prevention campaigns, counselling and treatment.

276. In the 2009 Report on the Public Inquiry on the Right to Health, the South African Human Rights Commission made a number of recommendations to ensure that all health care facilities should be physically accessible for persons with disabilities. The following progress has been recorded regarding these recommendations:

(1) *Budget and resource allocations to mental healthcare should be reviewed and addressed accordingly.* Due to the integrated nature of the budget it has been difficult to quantify expenditure for mental health services;

(2) *There should be substantial mental health research that clearly quantifies varying mental disabilities by region for resource allocation.* The Department collaborates with various research institutions on mental health research;

(3) *Mental healthcare facilities and services by trained staff should be available throughout the country at community level.* Community-based services are developed by provinces incrementally as recommended by mental health policy;

(4) *There should be incentives to train and retain psychiatric staff in the public sector.* The Minister of Health launched the Health Sector Human Resources Strategy 2012/13-2016/17 in October 2011. Training of mental health practitioners is a priority. The recently introduced “occupation specific dispensation” has improved retention of practitioners except in the case of psychiatric nurses, where there were problems with translation of the policy. This is being addressed through a review process;

(5) *There should be consistent access to prescribed medicine for persons with disabilities.* Chronic medication for those who need monthly supplies is pre-packed and distributed monthly. There is also prescribed minimum benefits expected from medical schemes that address chronic medication as well;

(6) *Nursing staff should be trained on sensitivities and symptoms of different disabilities.* Nurses’ training has incorporated a module on disability and nurses are placed in rehabilitation units during their training. There is on-going sensitivity training for health workers;

(7) *There should be awareness programmes at a community level which aim to eliminate discrimination and stigmatisation around mental health so that people with mental disabilities requiring treatment can access services.* The Department provides financial resources for advocacy and creating public awareness on mental health through a National Treasury approved grant to the South African Federation for Mental Health. All health care points also conduct public education campaigns on dedicated dates and in months indicated in the health calendar;

(8) *There should be relevant considerations for clients with disabilities when issuing wheelchairs rather than a one-size-fits-all approach.* All assistive devices in the Department are prescribed and fitted by appropriately-trained professionals. The Department also has seating specialists who train others on the science of seating. It is acknowledged, as discussed under Article 26, that significant challenges remain with regards equal access;

(9) *Healthcare facilities should be technologically advanced so that new technologies are introduced as they emerge to facilitate the highest quality of health.* The Department has embraced the use of technology in healthcare and many facilities have state of the art technology. For instance, more than 90% of all hearing aids issued as well as the diagnostic equipment is digital. Mayo Electrical Technology has been introduced for fitting artificial limbs in some larger centres in South Africa;

(10) *The code of conduct for healthcare staff should be monitored. The quality of services and implementation of policy should be monitored. The client feedback mechanism must be monitored.* The Office of Standards Compliance will review all service standards, including conduct of healthcare personnel. The Health Professionals Council of South Africa (HPCSA) and the SA Nursing Council are responsible for disciplining errant practitioners and the public has direct access to these bodies;

(11) *Guidelines for the treatment of vulnerable groups and individuals should be developed to ensure acceptable quality of treatment for all health care users.* As mentioned earlier, the guidelines are in place, but require review to ensure compliance with the CRPD and or strengthening their implementation and improving public access to them needs attention.

T. Article 26 – Habilitation and rehabilitation

277. Rehabilitation services in South Africa are provided by the Departments of Health, Education, Social Development and by organisations of and for persons with disabilities. Habilitation support is discussed under Article 19.

278. Poverty is a major barrier for persons with disabilities and their families in accessing rehabilitation services, even where these are available at community level, and in particular to specialised services are available only in major centres, due to the high cost and inaccessibility of public transport, lack of accessible information on what services are available and where, and poor referral services within the health sector, but also between the health sector, the social security system, social development services, the education system and employment and skills-development programmes.

279. The shortage of qualified rehabilitation practitioners in the public sector in general, and in rural districts and communities in particular, detracts from both rehabilitation outcomes and access to basic early identification and intervention:

(1) The number of qualified rehabilitation practitioners registered with the HPCSA as at March 2012, with those working in the public service in brackets, is:

- 3,816 (794) occupational therapists(OT),344 OT assistants, and 354 OT Technicians;
- 6,162 (1,040) physiotherapists and 270 physiotherapy assistants;
- 2,267 (403) audiologists/speech therapists and 22 community speech/hearing workers;
- 419 medical orthotists and prosthetists and 57 orthopaedic footwear technicians; and
- 369 psychologists;

(2) Unequal access to services between the public and private sector is still a major problem. As at August 2012:

- There was on average one occupational therapist per 14,500 of population, and one physiotherapist per 9,000 of population;
- In the public sector there was one occupational therapist per 53,000 of population, and one physiotherapist per 50,000 of population;

(3) In the private sector, there was one occupational therapist per 2,800 of population, and one physiotherapist per 600 of population;

(4) The Tshwane University of Technology (TUT) is currently the only institution in South Africa training medical orthotists/prosthetists. The intake of students

was capped at 25 per annum because of capacity problems but this is due to increase to 30 and grow on an annual basis. Walter Sisulu University (WSU) and the Durban University of Technology (DUT) are currently in the process of introducing new training programmes in medical orthotics/prosthetics. The WSU is in the process of obtaining accreditation from the HPCSA and the CHE;

(5) There are about sixty 60 orientation and mobility instructors practising in South Africa. Almost all are employed by NGOs which receive some funding from provincial health departments, but for the greater part of their funding rely on corporate donors. The Department of Health is working with the College of Orientation and Mobility, a programme of the SA Guide Dogs Association, to increase capacity to produce more instructors. The Department is also working with other stakeholders to clear the way for public sector employment by addressing accreditation issues with both the sector as well as the HPCSA.

280. Rehabilitation services offered by the Department of Health are guided by the National Rehabilitation Policy (2006). This policy adopts CBR as the philosophy underlying the provision of rehabilitation services.

281. All nine provinces have rehabilitation programmes within primary health care or related programmes. The availability and quality of rehabilitation services offered by the Department of Health varies significantly across provinces as well as between districts and health service points within provinces, with emphasis on the types of rehabilitation services varying greatly.

282. The National Integrated Strategy of Offenders and Policy Procedures of Offenders provides for the rehabilitation of offenders while in detention to strengthen re-integration after release. It is recognised that not all attitudinal, physical and communication barriers have been addressed to ensure that offenders with disabilities have equal access to such programmes.

283. Persistent long waiting lists and waiting periods for assistive devices, and poor access to maintenance services both in the health and educator sector are constantly being reported. There has been progress in building the capacity of therapists to provide more specialised seating services, especially for children with physical disabilities.

284. Public sector financial support for CBR services through the health authorities are currently restricted to three provinces, namely Mpumalanga, Eastern Cape and Western Cape, with Mpumalanga providing the most extensive programme through a contract with Disabled People South Africa (DPSA).

285. The Department of Social Development funds day-care centres and home-based care projects through financial subsidies to 91 organisations of and for persons with disabilities, benefiting 4,161 children with disabilities in day-care centres. Support for 41 home-based care projects benefits 1,134 persons.

286. The National Development Plan (2012) notes that the current model of shifting the burden of care, treatment and rehabilitation to the non-governmental sector and the poorest communities is not working, and that statutory services for, among others, children and adults with disabilities, require well-conceived state and community interventions.

287. Challenges exist with inter-sectoral funding of CBR services and this will be given priority attention to ensure equitable roll-out in all nine provinces over the next few years.

U. Article 27 – Work and employment

288. The Labour Relations Act, 1995, the Employment Equity Act, 1998, and the Broad-Based Black Economic Empowerment Act, 2003 give effect to the equality clause and the right to fair labour practices contained in the Constitution of the Republic of South Africa, and to international norms in respect of fair labour treatment of persons with disabilities. The Technical Assistance Guidelines on the Employment of People with Disabilities published by the Department of Labour, complements the Code of Good Practice on the Employment of People with Disabilities, 2002 to assist with the practical implementation of aspects of the Employment Equity Act, 1998 relating to employment of people with disabilities in the workplace. It builds on the Code to set out practical guidelines and examples for employers, employees and trade unions on how to promote equality, diversity and fair treatment in employment through the elimination of unfair discrimination.

289. It is recognised that, despite enabling legislation establishing reasonable accommodation mechanisms and targets for the economic empowerment of persons with disabilities, there has been insufficient progress in translating these into economic independence for persons with disabilities due to the lack of access to the built environment and public transport, the interrelatedness between poverty and disability, as well as persistent attitudinal and communication barriers. The particular challenges experienced by persons with psycho-social disabilities which flow from the stigma and ignorance pertaining to reasonable accommodation measures required, are also acknowledged.

Employment equity for persons with disabilities

290. The Employment Equity Act, 1998, requires of designated employers, i.e. employers employing more than 50 people, to develop and submit annual employment equity plans and reports to the Department of Labour. These plans should include self-determined targets for, among others, the employment of persons with disabilities, and such reasonable accommodation measures as will be undertaken.

- The Commission for Employment Equity Annual Report (2011/12), reporting on employment equity progress amongst designated employers (employers employing more than 150 people, notes the slow pace of improvement in the employment of persons with disabilities in both the public and private sectors over the past four years with 0,5% reported in 2007/08, 0,9%, reported in 2009/10 and 0,8% reported in 2011/12;
- Persons with disabilities accounted for approximately 0,8% (43,666) of the total number of employees by all employers in 2011/12, down from 0.83% (43,913) in 2010/11;
- more than 60% of employees with disabilities occupy semi-skilled, unskilled or temporary positions in 2011/12;
- persons with disabilities constitute 1,9% of top management against 1,4% in 2010/11;
- Persons with disabilities constituted 1,2% of senior management, the same as in 2010/11;
- Persons with disabilities in the professionally qualified category constituted 1% of the total work force, the same as in 2010/11; and
- Persons with disabilities constituted 0,8% of the skilled workforce, the same as in 2010/11.

291. The public sector, as a designated employer, set its employment equity target for 2005 at 2% of the total work force. It has had to extend this target annually due to the slow progress being made, with a final deadline for attainment of the 2% target set for March 2013:

- Disability representation within the public service improved from 0,16% in December 2005 to 0,32% in 2010/11 and 0,36% in 2011/12;
- 4,830 persons with disabilities out of a total workforce of 1,316,564 were employed in the public service by March 2012. Females workers numbered 1,955, accounting for 40,4% while 2,875 (59,6%) were male. This represented an increase of 427 persons with disabilities in the 12-month period (out of a total of 11,027 positions filled between April 2011 and March 2012);
- Senior managers with disabilities increased from 62 (0,7%) to 67 (0,8%) between April 2011 and March 2012, constituting five of the 386 (1,3%) vacancies filled at this level being filled by persons with disabilities;
- Middle managers with disabilities increased from 190 (0,9%) to 192 (0,9%), constituting two of the 250 (0,8%) vacancies at this level being filled by persons with disabilities;
- 102 national and provincial departments did not achieve the 2% target by March 2012;
- 16 (eight national and eight provincial) departments met the 2% target in 2011/12, compared with only 10 in 2010/11;
- 49 departments had disability representation of between 1-2% at the end of 2011/12 compared to 45 in 2010/11; and
- 81 (22 national and 59 provincial) departments had representation below 1% by March 2012, compared to 91 at the end of March 2011.

292. The slow progress reported above is of particular concern in the light of concerted efforts by Parliament and the Public Service Commission (PSC) as part of their administrative responsibilities despite inclusion of the target in President Zuma's 2012 State of the Nation Address, as well as efforts by the Department of Public Service Administration and the Department of Women, Children and People with Disabilities to strengthen, support and attain the 2% target. The PSC provided practical guidance with regard to steps that should be taken by national and provincial government departments in its 2006 Audit of Affirmative Action in the Public Service and 2008 Assessment on Disability Equity in the Public Service. These reports were handed to Parliament and provincial legislatures to support them in performing their monitoring role and all executive authorities and heads of departments in the Public Service also received copies.

293. Initiatives since 2008 to address policy compliance with regard to representation of persons with disabilities in the public sector have included:

(1) The JobACCESS Strategic Framework for the Recruitment, Employment and Retention of Persons with Disabilities in the Public Service Workplace (2009) was a baseline study to assess how the framework has been used by departments to guide their planning and programmes will be conducted in the next financial year;

(2) The Handbook on Reasonable Accommodation for People with Disabilities in the Public Service (2007). This will be reviewed to align it with the Policy on Reasonable Accommodation and Assistive Devices, once finalised, to incorporate the funding model for assistive devices.

(3) Capacity development – An accredited training course in Disability Management based on the Job ACCESS Strategic Framework was developed in 2011 by the Public Administration Leadership and Management Academy (PALAMA). The purpose of this training course is to provide officials with skills that would contribute to the inclusion of persons with disabilities in the workplace, and remove barriers preventing their successful participation in the job market. The pilot training started in October 2011 and will run until 31 March 2013. To date 574 officials have been trained;

(4) Targeted recruitment: The strategy also advocates the establishment of a database for persons with disabilities which is intended to assist in widening the pool from which to recruit persons with disabilities for employment in the Public Service. Departments are further encouraged, in their targeted recruitment drive, to establish partnerships with organisations of persons with disabilities;

(5) The Draft Policy on Reasonable Accommodation and Assistive Devices in the Public Service was widely consulted and is ready for submission Cabinet. This policy, once approved, will guide departments on planning and budgeting processes and requirements to improve reasonable accommodation measures. The draft policy gives guidelines on key barriers to employees with disabilities such as provision of transport for employees who may not otherwise be able to use public transport, leave for repairs of assistive devices, acquisition and disposal of assistive devices and provision of personal assistants and caregivers. The policy incorporates:

- Resolution 3 of 1999 Par X (2), which authorises an executive authority (Minister/MEC) to provide transport for an employee with disabilities from home to work subject to development of a departmental travel policy;
- Implementation of Resolution 1 of 2007, which made provision for leave of absence for persons with disabilities to repair assistive devices and training for guide dogs users (section 18 (1.2) and (1.3)).

294. In 2011 the Mining Qualifications Authority (MQA) developed and launched a Disability and Reasonable Accommodation Toolkit which assists companies in the mining and minerals sector to ensure that persons with disabilities are included in various learnerships.

295. The Department of Labour has awarded a total of USD 85,125 in annual subsidies to three organisations for persons with disabilities, viz NCPPDSA, DeafSA and the SANCB, to support the placement of persons with disabilities in the open labour market between 2008 and 2011. This subsidy was suspended at the end of the 2011/12 financial year and is currently under review in the context of the Employment Services Bill, 2012, currently before Parliament.

296. 598 persons with disabilities were placed in both the formal and informal sectors and were trained 2008/2009, while 812 were placed during 2009/2010. 271 persons with disabilities were trained in 2008/2009 in short-skills development programmes and 123 in 2009/2010. A total of 1,746 job-seekers with disabilities were registered in the employment register database in 2010/11, and 961 job-seekers with disabilities were placed during the same period.

Supported employment initiatives

297. A range of supported/subsidised employment placement options are available, largely due to the high general unemployment rate in South Africa:

- Sheltered work – i.e. work undertaken by persons with disabilities in workshops specifically established for that purpose. People working in sheltered workshops retain their social welfare benefits, typically a disability impairment allowance, and

usually receive a small discretionary additional weekly payment from the work provider;

- Integrative enterprises – sheltered workshops paying normal wages;
- Supported employment – a system of support for persons with disabilities in respect of ongoing employment in integrated settings; and
- The open labour market.

298. Sheltered employment factories were established more than 60 years ago with ownership vested in the State to provide employment and empowerment opportunities for persons with disabilities who could not compete in the open labour market. The Department of Labour currently subsidises twelve sheltered employment factories. There are currently 12 of these factories in Gauteng, Western Cape, North West, Eastern Cape, Northern Cape, Free State and KwaZulu Natal, all situated in urban centres, employing 926 persons with disabilities. State subsidies increased from USD 4,375,000 (2009) to USD 8,750,000 (2011).

299. The Department of Social Development subsidised 293 protective workshops, managed by organisations for persons with disabilities, in 2012, providing household income support for 14,212 persons with disabilities. This is a significant increase from the 260 workshops with a total of 6,585 beneficiaries subsidised in 2010. Expenditure for subsidisation of protective workshops since 2008 was USD 6,750,000. It should be noted that the majority of these facilities are situated in urban centres, despite the majority of persons with disabilities living in rural areas, which also have the poorest access to education, the poorest access to public transport, as well as the highest general unemployment rates:

- 141 urban and 34 peri-urban protective workshops provided income opportunities for 10,911 persons with disabilities; and
- 118 protective workshops in rural areas provided income opportunities for 3,301 persons with disabilities.

300. A lack of minimum norms and standards for management and subsidisation of protective workshops resulted in inconsistencies between provinces, impeded monitoring and evaluation and in some instances, lack of conducive environments for persons with disabilities employed in these workshops. The Department of Social Development has subsequently 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. 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 of and for persons with disabilities and representatives from protective workshops.

301. A weakness in the subsidised supported employment environment has been the lack of financial support for organisations of persons with disabilities who offer income-generating opportunities to their members.

Supporting entrepreneurship among persons with disabilities

302. The Preferential Procurement Policy Framework Act, 2000 recognises the economic rights of persons with disabilities to engage in entrepreneurial activities that promote self-reliance and independent living. Measures include access to opportunities within public sector procurement systems, whereby the supply chain management process aims to

empower historically-disadvantaged communities and a target of 5% access of all preferential procurement has been set aside for entrepreneurs with disabilities.

303. It is regrettably not possible to report on the extent to which this target has been achieved as the National Treasury information system did not disaggregate reporting on the basis of impairment by national departments and entities, provincial departments and entities as well as district and local municipalities and metropolitan councils. This gap will be addressed.

304. The Industrial Development Corporation (IDC) has set aside USD 6,250,000 for financing of enterprises specifically owned by persons with disabilities. Uptake has been slow and this is being addressed in consultation with the Department of Women, Children and People with Disabilities and the Department of Trade and Industry.

305. It is recognised that organisations of and for persons with disabilities play a major role in supporting persons with disabilities to become entrepreneurs. From 2004 to 2011 the Medunsa Organisation for Disabled Entrepreneurs (MODE) established 532 persons with disabilities in their own income-generating micro-enterprises, generating between USD 187 and USD 740 per month for the owners and their families. Approximately 900 jobs have been created through this initiative. The success rate is 74%, which for micro-enterprise development is very good.

Education and training

306. As reported in Article 23, the education system is currently not sufficiently skilling young persons with disabilities for the open labour market or as owners of economically viable small enterprises.

307. Almost 33% of the enrolled 4,977 students were students at institutions of higher education in 2010 were persons with visual disabilities, and this group constituted 44% of graduates. This is believed to be the group least likely to access decent work in the open labour market. A study conducted at the Nelson Mandela Metropolitan University in 2010 (published in 2011) highlighted a number of factors contributing to this low labour market absorption rate which need to be addressed.

308. The Sectoral Education and Training Authorities (SETAs) were established in terms of the Skills Development Act, 1998. The 21 SETAs are expected to direct and facilitate the delivery of sector-specific skills interventions that help achieve the goals of the National Skills Development Strategy and address employer demand for skilled labour. The National Skills Development Strategy III, 2012, acknowledges that previous programmes failed to achieve equal access for persons with disabilities, despite the 4% target, and re-commits to “significantly open up opportunities for skills training for people experiencing barriers to employment caused by various forms of physical and intellectual disabilities.”

309. A total of 5,133 out of 9,541 (54%) enrolled learners with disabilities registered in learning programmes across 15 SETAs for the reporting period successfully completed their learnerships, with 2,339 (45,6%) successfully gaining employment on completing their learnerships. Ten of the 15 reporting SETAs reached the 4% target, with two exceeding the target and the remaining three underperforming. The Services SETA introduced a reasonable accommodation subsidy for learners with disabilities requiring such support to improve participation in their learnership programmes in 2012.

310. Young people with disabilities who have been denied access to education up to matric (grade 12) level, find it difficult to access learnership programmes. There are, however, pockets of innovation where this barrier has been overcome.

311. One such example is the Athena Private Further Education and Training College, which provides a mobile service taking training, especially to rural communities and has,

since 2006, targeted persons with disabilities, particularly persons with disabilities from remote rural areas, persons with disabilities from social and economically-challenged communities, and persons with disabilities who have very few or no opportunities of receiving post-matric education.

312. Taking into account the generally low levels of formal education among persons with disabilities in rural town and villages, Athena uses the National Certificate: Business Administration NQF 2 level qualification as the entry level for learnerships for people who do not have matric, as this exposes these learners to a range of career environments which they can explore after completing the programme. They have also negotiated top-up subsidies with the Services SETA to improve turnaround times on the provision of reasonable accommodation measures to improve access to the learning and work environment.

313. Of an enrolment of 200 on a Services SETA programme, 103 accessed gainful employment, 73 remain unemployed, four learners died, 18 dropped out and two progressed to the Business Administration NQF level 4 qualification after completing the learnership.

V. Article 28 – Adequate standard of living and social protection

314. The focus of the South African Government's National Programme of Action aims to address the fundamental challenges of poverty, inequality and unemployment. While uptake of social assistance grants has increased significantly over the past 15 years, medium and long-term emphasis has been on providing social grant beneficiaries with alternative income sources through gainful work and training.

315. The National Development Plan (2012), recognises the continued need for social protection measures to “support those most in need, including children, people with disabilities and the elderly and promote active participation in the economy and society for those who are unemployed and under-employed through labour market activation measures, employment services, income support programmes and other services to sustain and improve quality of life”.

316. The Plan estimates that about 6% of the working-age population receives disability grants, and is aware that exclusion errors disproportionately affect the poorest, especially orphans and children, persons with disabilities and the aged, on farms, in remote rural areas and poorly accessible informal settlements. These are the groups which most need social protection most and it is vital to ensure that they can access it.

Social security

317. Persons with disabilities who are indigent qualify for a range of social assistance grants, including disability grants (USD 150 per month, 2012); child support grants (children aged 0-14 years, USD 35 per month, 2012), care dependency grants (children with disabilities requiring 24-hour care) (USD 150 per month, 2012), grants-in-aid (persons who require regular attendance by other persons, USD 35 per month, 2012), foster care grants (USD 96.25 per month, 2012), war veterans grants (USD 152.50 per month, 2012) and older persons grants (USD 150 per month plus USD 2,500 per annum for those over 75 years, 2012). Workers are further protected through unemployment insurance benefits as well as compensation for injury on duty.

318. 2011/12 uptake and expenditure rates on social assistance grants to persons with disabilities were:

- 1,198,131 persons received disability grants (permanent and temporary) at a cost of USD 155,5 million. This was a decrease of 218,079 compared to the 1,416,210 recipients in 2008/09 which followed a major anti-corruption clean-up of the social security system in 2010/11;
- 114,993 persons received care dependency grants at a cost of USD 4,7- million, compared to 107,065 recipients in 2008/09. It should be noted that there was a 44,3% growth rate between 1996/07 and 2008/09 in this grant;
- 536,747 persons received a grant-in-aid at a cost of USD 51,6- million in 2011/12 compared to 46,069 in 2008/09, an increase of 490,678 recipients; and.
- Disaggregation for older persons grants, war veteran grants, foster child grants and child support grants is not available.

319. The Compensation for Occupational Injuries and Diseases Act, 1993, regulates the rights of workers with occupation-related injuries or diseases to compensation. Compensation for the period 2008-2011 amounted to:

- USD 9,6- million for permanent disability and USD 11,4- million for temporary disability in 2008/09;
- USD 12,5- million for permanent disability and USD 15- million for temporary disability in 2009/10;
- USD 19,4- million for permanent disability and USD 13,9- million for temporary disability in 2010/11.

Tax benefits and deductions

320. For taxpayers 65 years and older and those with disabilities or with disabled dependants, all medical scheme contributions and out-of-pocket medical expenses are tax deductible.

321. The South African Revenue Services (SARS) Tax guide on the deduction of medical, physical impairment and disability expenses provides for an extensive list of disability-related expenses that can be claimed, including attendant-care expenses (home, school and work); travel and other related expenses (including transport costs specifically incurred in respect of a learner with a disability who attends a specialised school; acquisition, insurance and maintenance of assistive devices, artificial limbs and technology required to enable persons with disabilities to perform daily activities(including computer or other electronic equipment required in order to convert printed material or image files into text, braille, speech or any other accessible format, including peripheral equipment such as scanners, braille printers, speakers and headphones for the personal use by or for a person with a disability); service animals and alterations or modifications to assets acquired or to be acquired.

Household income support through useful work

322. The Expanded Public Works Programme (EPWP) is one of Government's flagship programmes aimed at providing poverty and income relief through temporary work for the unemployed to carry out socially-useful activities. All public bodies from all spheres of government (in terms of their normal mandates and budgets) and the non-state sector (supported by government incentives), are expected to optimise creation of work opportunities for unemployed and poor people in South Africa through delivery of public and community services.

323. Phase two of the EPWP was launched in April 2009 with the aim of creating 2 million full time equivalent jobs for poor and unemployed people in South Africa so as to

contribute to halving unemployment by 2014, through the delivery of public and community services. This would equate to 4,5 million (short and on-going) work opportunities. The average duration of employment is assumed to be 100 days. The Community Work Programme (CWP), launched in 2009, provides an employment safety net by giving participants a minimum number of regular days of work, typically two days a week or eight days a month, thus participants with a predictable income stream over a number of years. The programme targets 1,000,000 beneficiaries by 2014, bringing the overall total target for 2014 for the EPWP to 5,5 million direct beneficiaries.

324. The EPWP and the CWP have a set target of 2% of the opportunities in its programmes being directed to beneficiaries with disabilities, which equates to a total of 110,000 persons with disabilities for the period 2009-2014. The programme has consistently failed to achieve the 2% target, with 0,48% (2009/10), 0,45% (2010/11) and 0,19% (2011/12). The root causes that have to be remedied are being investigated. It is important to note that the non-state sector was able to meet the disability target due to a deliberate approach.

Food security

325. The Constitution of the Republic of South Africa provides that everyone has the right to have access to sufficient food and water. In the 2010/2011 financial year food security was re-emphasised as one of the top priorities for South African Government (State of the Nation address, 2010). This is in line with South Africa's MDG which aims to halve the proportion of people who go hungry over the period 1990 and 2015. Several government departments work in co-ordination to ensure food security in South Africa:

- The Department of Health runs the Integrated Nutrition Programme;
- The Department of Agriculture, Forestry and Fisheries develops and facilitates the implementation of agrarian reform policies and targeted programmes aimed at enhancing the contribution of subsistence and smallholder producers to food security;
- The Department of Social Development provides social support for those who are most vulnerable to food insecurity; and
- The school nutrition programme provides a daily basic meal for indigent learners.

326. Disaggregated statistics on the number of beneficiaries with disabilities and/or participants in food security programmes are not available.

Adequate housing and basic services

327. Persons with disabilities with an income of less than USD 438 per month (and who satisfy other relevant criteria as indicated in the National Housing Code) are eligible for government housing subsidies. The subsidies are additionally funded to provide for specific needs in relation to the impairment and the particular environmental barrier experienced.

328. Government and the disability sector are aware that many persons with disabilities living in informal settlements and in shacks are further disadvantaged by not having access to other basic amenities, including sanitation and clean water. Municipalities are therefore required to keep a register of persons with disabilities living in informal settlements for the purpose of accelerating housing provision for this group.

329. A total of 25,361 beneficiaries with disabilities applied and qualified for access to the housing subsidy between 2008 and March 2012. Progress has been slow, with 163 beneficiaries obtaining the additional amount to cover reasonable accommodation measures

in 2008/09, a total of 195 in 2009/2010, a total of 203 beneficiaries in 2010/11, and a total of 299 in 2011/2012.

(1) Seventy-three residential facilities providing accommodation for 2,304 residents with disabilities, received government subsidies in 2011/12. The total budget for 2011/12 was USD 4,575,126, which was insufficient to meet the national minimum norms and standards adopted for residential facilities. Training aimed at improving the quality of care in these facilities benefited 7,853 staff. It is acknowledged that inequalities between urban and rural facilities persist;

(2) The country remains committed to improve community-based supported housing for persons with disabilities through more constructive partnerships between the three spheres of government and organisations for and of persons with disabilities.

W. Article 29 – Participation in political and public life

330. The right to participate fully in political and public life for persons with disabilities has been evident in South Africa since the historic 1994 elections.

331. The content of the SAHRC, submission in August 2011 to the UN High Commissioner for Human Rights, viz Human Rights of Persons with Disabilities – Human Rights Council Resolution 16/15, has been noted and incorporated into the body of this report.

The right to vote

332. Section 19 of the Constitution of the Republic of South Africa guarantees the right of all citizens to make political choices, to form political parties, participate in the activities of political parties, to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret, and to stand for public office and, if elected, to hold office. In terms of Section 47(1) of the Constitution “Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except ... (d) anyone declared to be of unsound mind by a court of the Republic...” A corresponding provision relating to provincial legislatures is to be found in sec 106(d) of the Constitution.

333. The Electoral Act, 1998 and the Local Government Municipal Electoral Act, 2000 respectively regulate elections in South Africa. In terms of the former, a “voter” is a South African citizen who is 18 years or older and whose name appears on the national common voters’ roll. To enter their names on this voters’ roll, citizens are required to register as voters. The chief electoral officer, who is responsible for registering voters, may, however, not register persons who have been declared by the High Court to be “of unsound mind or mentally disordered” or have been detained under the Mental Health Act, 1973 (repealed and replaced by the Mental Health Care Act, 2002). The Electoral Act, 1998, provides for persons with disabilities to register as special voters, which allows them to vote on a pre-determined day before elections day either at the voting station or at their place of residence, and also for voters with disabilities to be assisted by a person of their choice where necessary.

334. The Independent Electoral Commission (IEC), established in terms of Chapter 9 of the Constitution, oversees all national, provincial and local elections in South Africa.

335. The numbers of voters with disabilities who participate in elections are not available given the constitutional imperative of maintaining the secrecy of the vote and the regulatory requirements on the details to be entered into the national common voters roll. The Electoral Commission does not record details of disabilities for registered voters.

336. The 2011 Human Sciences Research Council (HSRC) IEC Voter Participation Survey 2010/11: An Overview of Results, conducted in collaboration with the IEC, showed that:

- Persons with disabilities had a marginally higher “intention to vote” (81%) than those without disabilities (79%);
- Satisfaction with voting stations in the most recent local government elections was rated by 85% of respondents as “very or fairly satisfied” against a rating by 5% of respondents of “very/fairly dissatisfied”;
- 53% of those interviewed indicated that needs of special groups in electoral procedures and processes had been taken into account “to a great extent”;
- About 3% of participants found that facilities to register and vote were inaccessible;
- Persons with disabilities experienced more voting irregularities; and
- Overall, the findings of the IEC Voter Participation Survey in 2011 indicated “general agreement that the needs of women, youth, persons with disabilities and the elderly are being taken into account in electoral procedures.”

337. In preparation for the 2011 municipal elections, the IEC signed a memorandum of understanding with the SANCB which resulted in the introduction of a braille-based Universal Ballot Template (UBT) for visually-impaired voters who wished to vote without having to disclose their choice to anyone. The Electoral Commission has indicated that, due to positive feedback received on the UBT, its use will be extended to other categories of voters who are at risk of spoiling their votes due to, for example, unstable handwriting. The electoral legislation is being reviewed to make legal provision for use of the UBT in the voting process..

338. Specific initiatives aimed at levelling the playing field for voters with disabilities, were undertaken by the IEC at provincial level during past elections and included:

- The Western Cape provincial office is a member of the Western Cape Impairment Network, which serves as a platform to exchange election-related information between the sector and the IEC. In 2009 the provincial office printed a braille information pamphlet for blind and visually-impaired voters;
- Ten deaf voter education trainers were trained in Limpopo. These deaf trainers held nine workshops for deaf voters throughout the province. A workshop targeting visually-impaired voters was also held;
- The Mpumalanga Provincial Electoral Office hosted a weekly workshop targeting organisations of and for persons with disabilities before the 2009 and as 2011 elections respectively;
- Eight workshops were undertaken in KwaZulu Natal for deafblind persons ahead of the 2009 elections, and a further six deafblind workshops were conducted for these target groups before the 2011 elections;
- Twenty-four deaf voter education facilitators were trained ahead of the 2009 elections in Northern Cape, and a voter education workshop was conducted for deaf and blind voters ahead of the 2011 elections;
- Six workshops targeting organisations of persons with disabilities were held in North West ahead of the 2009 and 2011 elections respectively;
- Seven persons with disabilities were trained as voter education facilitators in each of the regions of Eastern Cape;

- Four civic and voter education workshops targeting organisations of persons with disabilities were conducted in Free State; and
- One provincial workshop targeting organisations of and for persons with disabilities in Gauteng Province was held before both the 2009 and 2011 elections.

339. A major challenge which remains is the physical inaccessibility of voting stations, particularly in rural areas, as well as the right of persons with psychosocial disabilities to participate in elections, as anecdotal evidence shows that persons in mental health institutions are excluded from voting, with the result that these institutions are often not included in voter education programmes or special voting procedures.

340. As mentioned earlier, both the Constitution of the Republic of South Africa and section 8(c) and (d) of the Electoral Act, 1998, exclude certain categories of persons with psycho-social disabilities from inclusion on the voters roll, and need to be reviewed to comply with the CRPD.

Holding public office

341. There have been considerable advances for persons with disabilities as candidates in elections. They have been included on the election lists of various political parties, particularly on the national, provincial and local proportional lists of the ANC. The 2012 figures for self-representation of persons with disabilities as public representatives are:

- Parliament (National Assembly and National Council of Provinces): 16;
- National Cabinet: 01 (Deputy Minister for Women, Children and People with Disabilities);
- Nine Provincial Legislatures: 8;
- Provincial Executive Councils: 3; and
- Municipalities (eight metropolitan councils, 226 local and 44 district councils): 72.

342. In addition, persons with disabilities represent the interests of the disability sector on a number of other public institutions such as the SAHRC, the CGE, the National Youth Development Agency, the Public Service Commission, the National Economic Development and Labour Council (NEDLAC), the National Lotteries Board and its Distributing Agencies, the UIF, the Commission on Employment Equity, the National Development Agency, the Pan South African Language Board, the National Skills Authority and the South African National Aids Council (SANAC).

Organisations of persons with disabilities

343. The South African Government recognises the right of persons with disabilities to be represented through organisations of persons with disabilities, as well as parents' organisations, rather than through organisations for persons with disabilities.

344. Financial support from government to organisations for and of persons with disabilities at national and provincial level is predominantly through subsidisation by the departments of Social Development, Health and Labour, with a strong bias at this stage towards organisations for persons with disabilities, rather than organisations of persons with disabilities. Organisations of persons with disabilities at local level currently receive virtually no direct financial support from Government, but have access to funds through the National Development Agency (funded by the Department of Social Development) as well as the National Lottery Distribution Trust Fund which distributed a total of USD 65,2 million between 2008 and 2011 to organisations of and for persons with disabilities. A

few local organisations have managed to get financial support through the Expanded Public Works Programmes non-government sector.

345. There is an urgent need to finalise a framework for the creation of an enabling environment for organisations of persons with disabilities to strengthen their capacity to advocate, empower and monitor the rights of persons with disabilities more effectively. A social contract with agreed minimum norms and standards for consultation and participation by organisations of and for persons with disabilities to regulate these processes both between Government and the disability sector, and the sector itself should also be developed.

X. Article 30 – Participation in cultural life, recreation, leisure and sport

346. Section 31 of the Constitution of the Republic of South Africa provides that all persons “belonging to a cultural, religious or linguistic community” should not be “denied the right, with other members of that community, to enjoy their culture, practise their religion and use their language; and to form, join and maintain cultural, religious and linguistic associations and other organs of civil society”.

347. Section 185 of the Constitution further provides for the establishment of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, mandated to promote respect for the rights of cultural, religious and linguistic communities, and to recommend the establishment and/or recognition of cultural councils in South Africa.

348. Noteworthy is that the Older Persons Act, 2006, includes establishment of recreational opportunities as well as spiritual, cultural, medical, civic and social services as components of community-based programmes.

Sport

349. Sport and Recreation South Africa (SRSA), in accordance with its funding policy in terms of section 10(1)(d) of the National Sport and Recreation Act, 1998 increase the profile of and financial assistance to volunteers, women, senior citizens, neglected rural areas and persons with disabilities, in sport and recreation. Section 10(3)(a)(ii) of the Act prohibits funding of national sport federations where these exclude persons from disadvantaged groups, particularly women and persons with disabilities, from participating at top level of sport.

350. The SRSA Funding Policy of 2008 gives preference to national federations whose activities clearly impact on government priorities, including the advancement of persons with disabilities.

351. The Norms and Standards for Sport and Recreation Infrastructure Provision and Management, Volume 1 stipulate that all sport and recreation centres must be designed to allow access to persons with disabilities. The draft safety regulations stemming from the Safety at Sports and Recreational Events Act, 2010 prescribe that stadiums and other venues in the Republic must have accessible accommodation and facilities, approved by the local authority, for use by spectators with disabilities at an event, setting minimum norms and standards for stadiums and venues. Although there are no accurate statistics regarding accessibility of sport and recreation facilities for persons with disabilities, these will be available on completion of a sports facility audit planned for the 2012/13 financial year.

352. The draft Fitness Industry Bill stipulates that a fitness establishment must at least a defibrillator and a first-aid kit for persons with disabilities; and sufficient staff specifically trained to assist persons with disabilities.

353. The National Sport and Recreation Plan (NSRP), approved in 2011, provides for the inclusion of special schools for children with disabilities in the Talent Identification and Development Programme through participation in the National Top School Games as well as the SA Youth Olympic Games.

354. Although there is no specific school sports policy for children with disabilities, the Memorandum of Understanding signed between the ministers of SRSA and Basic Education provides for inclusion in all programmes. This inclusion is also reflected the school sports policy that was published for public comment until 31 March 2012. This policy is now being finalised.

- Most mass sporting events organised at national and provincial level, involve learners with disabilities from ordinary and special schools;
- 10,632 children with disabilities took part in 2008/09;
- 10,410 children with disabilities took part in 2009/10;
- 8,999 children with disabilities took part in 2010/11;
- 7,854 children with disabilities took part 2010/11; and
- The number of schools participating increased from 74 (2009/10) to 105 (2010/11) and 268 (2011/12).

355. 307 athletes young athletes with disabilities — athletics, equestrian (para-dressage), judo (blind and visually-impaired), para-cycling, adaptive rowing, swimming, wheelchair tennis and table tennis) — have received scientific support services (scientific testing and interventions, medical interventions and medical team support) since 2009, with a total of twenty athletes being accommodated on the residential programme, where they receive a full sponsorship for their tuition, books, school uniforms (USD 23,125 annual allocation per athlete) and access to sporting facilities, coaching, accommodation and meals.

356. Additional financial support from SRSA over the past three years (2008-2011) has been made available through subsidisation of sport organisations of and for persons with disabilities:

- DeafSAsport federation received a grant of USD 75,749;
- SA Sports Association for Physically Disabled (SASAPD) received a grant of USD 46,581; and
- People with intellectual disabilities received a grant of USD 50,625.

357. Stakeholder engagement takes place in the form of attendance at annual general meetings of the relevant federations, annual consultation workshops with programme stakeholders such as SASAPD. Face-to-face meetings are held annually with SASAPD and all national federations, which include athletes with impairment, to plan services in the following year.

358. The South African sport sector agreed in November 2011 that the following indicators should be included in the Transformation Scorecard:

- Percentage of facilities accessible to sports persons with a disability;
- Percentage of managers with a disability at national and provincial levels;
- Percentage of participants with a disability at national and provincial levels.

359. The impact of South Africa's approach to and support for sport for persons with disabilities was confirmed at the 2008 and 2012 Olympic Games when swimmer Natalie du

Toit and athlete Oscar Pistorius qualified for both the South African Olympic and Paralympic teams.

Recreation and tourism

360. As reported under Article 9, significant progress has been made over the past few years in promoting accessibility to tourism facilities for persons with disabilities. Consultative workshops were held from 2010 to for universal access in the tourism industry, culminating in the develop norms and standards Universal Accessibility in Tourism Action Plan and the Universal Accessibility in Tourism Declaration in 2011.

361. The South African National Parks (SANPARKS), under whose authority major tourism attractions such as the Kruger National Park and Table Mountain fall, has progressively been working with disability organisations on improving accessibility for tourists with physical and visual disabilities. Its website www.sanparks.org.za is accessible to persons with visual disabilities and provides detailed accessibility information for each of its national parks.

362. Major tourism attraction facilities in South Africa will be audited during 2012/13 to assess compliance with universal access principles.

Arts and culture

363. In 2009 the Department of Education trained educators in respect of adaptation of the arts and culture curriculum in general education to accommodate learners with disabilities.

364. A SANS 10400-S compliance accessibility audit of facilities being administered by the Department of Arts and Culture (including 25 public entities) conducted in 2009, revealed that 92 facilities required upgrading at an estimated cost of USD 2,875,000. The Department budgets annually to address this shortcoming progressively.

365. The Performing Arts Policy ensures that 5% of performers contracted for celebration and/or commemoration of national days should be disabled.

366. The Department of Arts and Culture supports a number of initiatives to promote arts and culture among persons with disabilities:

- The annual DtvZwakala (Deaf TV) Poetry and Drama competition (in partnership with the SABC and the Pan South African Language Board) reaches approximately 300 deaf children;
- The African Sinakho-In the Blood national touring production showcases performing and artists with sight, physical and mental disabilities;
- The Market Theatre's "Listen with your Eyes" Festival in 2010, which produced two plays that were aimed at both the deaf and hearing community;
- Ad hoc financial support to various disability arts projects on request; and
- The South African Library for the Blind, established under the South African Library for the Blind Act, 1998, receives an annual grant.

Sign Language and deaf culture

367. As discussed under articles 8, 9, 21 and 24, the development and recognition of Sign Language as an official language, is a challenge and is receiving urgent attention.

368. The Bill of Rights guarantees all South Africans freedom of association, and prohibits discrimination that interferes with the right of South Africans to enjoy their

culture, or use their language, or to form, join or maintain cultural, religious and linguistic associations.

The specific situation of boys, girls and women with disabilities

Y. Article 6 – Women with disabilities

369. South Africa remains committed to the attainment of gender equity and equality as it pertains women and girls with disabilities and as illustrated in the country's extensive legislative and policy framework. South Africa ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), as well as the SADC Protocol on Gender and Development.

370. It is a fact that women and girls with disabilities still do not enjoy all human rights and fundamental freedoms on an equal basis with boys and men with disabilities. Black women with disabilities in particular bear the brunt of inequality based on race, disability, gender, socio-economic status and class.

371. A major concern with regard to disability and gender is the persistent violence against and victimisation of women and children, in particular women and girls with disabilities, as discussed under earlier articles.

(1) Estimates of the extent of violence vary, as there is widespread underreporting. Disaggregated statistics for violence against women and children with disabilities are not available, and as reported under Article 13, women with communication and/or intellectual and/or psychosocial disabilities experience particular difficulties in accessing justice when their rights have been violated. This lack of information in itself constitutes a potential threat to the realisation of the rights set out in the CRPD;

(2) A number of studies are currently under way to gather information on the extent of service delivery weaknesses in the justice value chain to accelerate a programme of action aimed to strengthen protection for women and girls with disabilities as well as to improve access to justice where abuse has occurred. One such study, which was started in January 2012 by the Centre for Disability Law and Policy (University of the Western Cape), in partnership with the Cape Mental Health Society and the Gender, Health and Justice Unit (University of Cape Town) aims to gain information on the barriers making the South African criminal justice system less accessible to women with disabilities experiencing gender-based violence, with specific reference to women with intellectual disabilities and with psychosocial disabilities, and to gather knowledge on examples of existing "good practices" in addressing these barriers. It aims to formulate recommendations on improving access to justice for disabled women experiencing gender-based violence in South Africa. The study will further assess the feasibility of extending the Cape Mental Health Society "SAVE" programme, discussed under Article 16, and which has developed protocols, training manuals and other material to facilitate expansion to other sites. The outcome of these studies and its impact on service delivery improvements will be discussed in the next periodic report.

372. Women with disabilities are represented on the Commission on Gender Equality (CGE), established in terms of Chapter 9 of the Constitution. It has a mandate to evaluate government policies, promote public education on gender issues, make recommendations to Government for law reform, investigate complaints and monitor Government's compliance with international conventions.

373. An example of good practice in economic empowerment is the Norad-funded Women's Entrepreneurship Development and Gender Equality (WEDGE-SA) project, co-ordinated by the ILO. The project has mainstreamed disability from the inception stage to ensure that the project benefits women entrepreneurs with disabilities. It encourages social dialogue and awareness-raising of the issues that face entrepreneurs with disabilities, and aims to reduce the stigma attached to disability through inclusion and demonstration of the abilities of entrepreneurs with disabilities. Efforts to include people with disabilities in all the project outcomes have included training two persons the disability sector in the Women's Entrepreneurship Development Programme and one person the Women's Entrepreneurship Development Programme which is part of Capacity and Building Tools, training 18 front-line staff and advisors of the Women's Small Enterprise Development Agency on mainstreaming disability considerations, and training two women from the disability sector in the Expand your Business Tool programme. As a result of the above, 5,72% of disabled growth-oriented women entrepreneurs were trained:

- 3,7% of trainees in "Expand your Business" were disabled;
- 6,01% of trainees in "Action my Business" were disabled;
- 0,97% of trainees in "Improve your Exhibition Skills" were disabled;
- 9,82% of business association members trained were disabled;
- 10,56% of business development service providers trained were disabled; and
- 5,18% of trainers trained in WEDGE tools were disabled.

Challenges in the inclusion of women with disabilities identified in the project reflect those cited in similar government programmes, i.e. a limited number of women entrepreneurs who meet the criteria for support and the limited capacity of disabled peoples organisations to engage consistently with the project management teams.

374. Women with disabilities are affirmed through a range of targeted programmes and events by a number of government departments, although it recognised that improved co-ordination and targeting of these efforts will significantly strengthen impact.

Z. Article 7 – Children with disabilities

375. Section 28 of the Constitution of the Republic of South Africa protects every child's right:

- To a name and a nationality from birth;
- To family care or parental care or to appropriate alternative care when removed from the family environment;
- To basic nutrition, shelter, basic health care services and social services;
- To be protected from maltreatment, neglect, abuse or degradation;
- To be protected from exploitative labour practices;
- Not to be required or permitted to perform work or provide services that are inappropriate for a person of that child's age, or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;
- Not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from

detained persons over the age of 18 years; and treated in a manner, and kept in conditions, that take account of the child's age; and

- To have a legal practitioner assigned to the child by the State, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and not to be used directly in armed conflict, and to be protected in times of armed conflict.”

It further states that “A child's best interests are of paramount importance in every matter concerning the child.” These rights underlie all decision making with regard to legislation, policies and programmes in South Africa.

376. The SAHRC in its submission, draws attention to the fact that “it is important to note that children have a priority claim on state resources. Their socio-economic rights, for example, are not subject to progressive realisation. This is especially true in the case of children that are particularly vulnerable. It is important to highlight these principles in explaining the commitment to realising the rights of disabled children and to highlight the sense of urgency in this regard.”

377. The Children's Act, 2005 mandates the State to respect, promote and fulfil the child's rights set out in the Bill of Rights.

(1) Subsection 6 of the Act calls for all proceedings, actions or decisions in a matter concerning a child, to protect the child from unfair discrimination on the grounds of the disability of the child or a family member of the child, and calls for an enabling environment to respond to the special needs of children with disabilities;

(2) Subsection 11 provides that in any matter concerning a child with a disability, due consideration must be given to providing the child with parental, family or special care when appropriate; enabling the child to participate in social, cultural, religious and educational activities, recognising the special needs of the child; facilitating conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and providing the child and the child's caregiver with necessary support services. It also prohibits the exposure of children with disabilities to “medical, social, cultural or religious practices that are detrimental to his or her health, well-being or dignity.”

378. As acknowledged and discussed throughout the report, South Africa's children with disabilities remain extremely vulnerable to exclusion, abuse and inequality, particularly in impoverished communities. This is because of failures in the service delivery system, persistent harmful traditional beliefs associated with disability, lack of access to relevant information by parents and families, lack of effective early identification and intervention across sectors for young children, lack of equal access to compulsory education, failure of the judicial system to protect children with disabilities, as well as failure to ensure justice where abuse has occurred, and inadequate training for caregivers working with children with moderate to severe intellectual and/or severe physical disabilities.

Measures taken to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children

379. Approximately 1,393,236 (27.5%) of the total population (5,063,500) of children between the ages 0-4 are children with disabilities. According to the Department of Basic Education, using its own calculations, only 665,247 children attend ECD facilities. (Source: StatsSA General Household Survey Interactive dataset, 2009-2010).

380. As discussed under Articles 24, 25 and 26, the early identification of children with disabilities, followed with effective intervention across state departments, requires urgent

attention. Stronger measures still need to be put in place to extend support for children aged 0-4 attending ECD facilities.

381. The significant role played by organisations for children with disabilities, particularly parents' organisations such as the Disabled Children Action Group (DICAG), to fill service delivery gaps for children with disabilities in general, and children in the 0-4 year age group living in impoverished and rural communities in particular, is acknowledged.

382. A national strategy or the integration of services to children with disabilities has been developed in consultation with approximately 2,500 stakeholders from national and provincial departments of Social Development, other key government departments and institutions, as well as stakeholders in the parents, children and disability sectors. The strategy aims to guide service providers in the implementation of the Children's Act, 2005 to ensure effective mainstreaming of impairment programmes focusing on ECD, basic education, health, sport, recreation and justice. The development of the strategy was based on research conducted in 2010 on the provision of services to children with disabilities by national departments. The strategy is being reviewed.

383. The disability sector and parents' organisations participated in the development of a range of guidelines and strategies focusing on, among others, a costing model and implementation plan for child abuse, neglect and exploitation, a strategy on child-headed households, ECD and partial care services, such as children and youth care facilities, the National Policy Framework for Children, the draft National Plan of Action for Children, 2012-2017 (currently being consulted) as well as inclusive education.

384. The Human Genetics Policy Guidelines for the Management and Prevention of Genetic Disorders, Birth Defects and Disabilities provides guidance for follow-up when impairment or birth defects have been identified, including referral services and information on rehabilitation services.

Self-representation by children with disabilities

385. Child participation principles require that children with disabilities be included in any consultation with children in general. It is acknowledged that at present activities across departments aimed at providing children with disabilities with an opportunity to represent themselves and participate in governance processes, are inadequate.

386. Some of the platforms which have been created include the annual Children's Parliament which coincides with International Mandela Day, the celebration of International as well as National Children's Day, Child Protection Week, as well as periodic thematic child participation workshops where children with disabilities are able to express their views on matters affecting them, for example the 5th World Summit on Media for Children (2007), youth and ICT Expos.

387. Although there are reasonable accommodation measures applied at such events, it is clear that not enough attention has been paid to giving children with severe communication or other intellectual disabilities a voice on issues affecting them.

388. In terms of the South African Schools Act, 1996, children with disabilities have the right to represent themselves on school governing bodies and learner representative councils. This right is protected in several other education policies which entrench the right of children to have a say in decisions affecting them.

389. The National Development Plan (2012) requires the Department of Social Development to systematise guidelines, norms and standards to ensure that they "take into account the needs of children with disabilities in all communities".

390. It is acknowledged that young African children with disabilities, living in impoverished homes and communities, especially the former homelands as well as informal settlements, experience multiple deprivations. This requires a combination of innovative and inter-sectoral approaches to close the equity gaps that they face and an effective monitoring and evaluation system to track both progress and failure in the system

Progress on the implementation of specific obligations

AA. Article 33 – Statistics and data collection

391. The South African Government of South Africa is aware of the importance of disaggregated appropriate information, including statistical and research data, in formulation of policies to give effect to the Convention, and the particular challenge posed by lack of a final definition of disability in all national legislation.

392. StatsSA, as the state agency responsible for the collection, production and dissemination of official and other statistics, including conducting of population census, and for co-ordination among producers of statistics, is fully compliant with internationally-accepted norms to protect human rights and fundamental freedoms and ethical principles in collection and use of statistics.

393. StatsSA has significantly remodelled its approach towards mainstreaming disability in its operations following ratification of the Convention and has aligned its annual household survey as well as census questionnaires with the Washington Group on Disability Statistics framework. As mentioned in the preamble, the agency has undertaken to conduct focused surveys on the situation of children with disabilities aged 0-5 years in 2013 because of the unreliability of information on this age group through the general census questionnaire.

394. Disaggregation of disability-related statistics and data across all government institutions remains problematic. This includes reliability of such data, where it exists.

395. Measures have been taken to mainstream disability into Government's various research and evaluation projects, the most recent being the national evaluation of ECD carried out in 2011/2012.

BB. Article 32 – International co-operation

396. The Constitution of the Republic of South Africa, 1996 expressly stipulates that in interpreting and applying the provisions in the Bill of Rights, particular attention should be given to relevant international laws, and that comparable international experiences should be taken into account.

397. South Africa has acceded to, or ratified, most of the African regional and international human rights instruments in the area of economic, social, cultural, civil and political rights. The African Union's adoption of the Declaration of the African Decade for Persons with Disabilities in 2000 places responsibilities on African states to implement Decade programme activities. South Africa supports and participates in the African Decade for Persons with Disabilities (2010-2019).

398. South Africa acknowledges the importance of international co-operation in support of national efforts towards the implementation of the CRPD. This co-operation should be inclusive of and accessible to persons with disabilities. The country regularly participates in

actions toward facilitating and supporting capacity building, through the exchange and sharing of information, experiences, training programmes and best practices.

399. The first stage of implementing an inclusive education and training system in South Africa was funded by Finland and Sweden. Mutual exchanges took place between the countries which benefited not only South Africa but also Finland, Sweden and other countries in Africa which have been part of the development aid networks of the Nordic countries.

400. South Africa is also an active participant in the Japan International Co-operation Agency (JICA) programmes focusing on empowerment of persons with disabilities and strengthening their mainstreaming.

401. South Africa acknowledges that not enough attention has been paid to mainstreaming disability in country-to-country bilateral agreements signed since 2008, particularly in south-south cooperation, and this is being addressed.

402. South Africa is a member of the WHO, the ILO, Rehabilitation International and others, and has contributed technical expertise through these channels, for example in developing guidelines for wheelchairs in less resourced settings, drafting both the new CBR manual and the rehabilitation section of the World Disability Report.

403. South Africa currently chairs the Network of African National Human Rights Institutions (NANHRI) and hosted the 8th Biennial Conference of NANHRI in 2011, of which the theme was “Advancing the human rights of older persons and persons with disabilities: the role of National Human Rights Institutions”.

404. The South African Public Service Commission has been at the forefront of establishing an Association of African Public Service Commissions’ Association which it presently chairs. The Association, which promotes sound public administration on the African continent, should, stemming from its priorities, be focusing on disability equity as a human resource management consideration.

405. National organisations of and for persons with disabilities participate actively in the leadership and programmes of their international and regional counterparts.

CC. Article 33 – National implementation and monitoring

406. As noted at the beginning of this report, the former Office on the Status of Disabled Persons (OSDP), located in the Presidency from 1997, was replaced with a fully-fledged national focal point when the Ministry of Women, Children and People with Disabilities was established in May 2009. This was intended to ensure that Government translates its constitutional, political and global commitments into measurable and meaningful programmes through improved co-ordination between government institutions across all three spheres of Government, as well as between Government, the private sector and civil society, and to strengthen monitoring of the advancement of the rights of persons with disabilities.

407. The establishment of the Department of Women, Children and People with Disabilities had the unintended consequence of slowing down the transformation agenda in the short term due to the time taken in establishing an administration in the Department as well as resourcing constraints within the Department.

408. All national government departments, provincial administrations as well as district and local municipalities are required to appoint/designate a disability focal person/unit to co-ordinate mainstreaming of impairment within each of these institutions. These focal points converge in the National Disability Rights Machinery, which is constituted by,

among others, the Inter-departmental Co-ordinating Committee, the Provincial Co-ordinating Forum, and the National Disability Rights Forum which brings civil society on board. A recent review of the National Disability Rights Machinery revealed significant challenges regarding mandate, capacity, functionality and impact of impairment focal points and co-ordinating structures across all three spheres of Government, and a significant overhaul of the machinery is underway.

409. The South African Human Rights Commission (SAHRC), established by sections 181 and 184 of the Constitution of the Republic of South Africa, has a constitutional mandate to protect and monitor human rights and to promote the culture of human rights in South Africa. This includes the promotion and protection of the rights of groups which are vulnerable to discrimination, exclusion and inequality. The SAHRC, as an “A” status national human rights institution, and in line with its constitutional mandate, has the potential to be part of the framework as an independent mechanism to promote, protect and monitor implementation of the Convention. Government will embark on a formal consultative process, which will include civil society, in establishing this monitoring framework as required by Article 33(2).

410. The Commission is enabled by Section 5 of the Human Rights Commission Act, 1994 to appoint expert panels to play an advisory role on key issues. A Section 5 Committee on the Rights of Persons with Disabilities has been established. The Committee has representatives from the disability sector and the academic world, both local and international. Some of the current members include representatives from the SADA, the Western Cape Cerebral Palsy Association, Down’s Syndrome South Africa, the QuadPara Association of South Africa, the University of the Western Cape Centre for Disability Law and Policy, the Cape Mental Health Society as well as the Harvard Law School Project on Disability.

411. The Commission notes in its August 2011 submission to the UN High Commissioner for Human Rights on Human Rights of Persons with Disabilities – Human Rights Council Resolution 16/15, that it discussed the implications of Article 33(2) on the work of the Committee briefly at one of the Commission’s Section 5 committee meetings but that there is a need for further internal engagement and dialogue within the Commission in respect of the implementation of Article 33(2). The Section 5 committee is convened once to twice per annum to give civil society and academic role players an opportunity to share their experiences and challenges regarding the implementation of the CRPD with the Commission. Issues raised are included in both the Commission’s work plan as well as engagements with Government.

412. The central role which organisations of and for persons with disabilities should play in monitoring implementation of the CRPD is accepted.

413. In 2012 the South African Disability Alliance (SADA), constituted by 13 national organisations of and for persons with disabilities, recognising the capacity constraints of the sector to monitor implementation of the CRPD systematically, launched a South African chapter of Disability Rights Promotion International (DRPI) in partnership with York University in Canada. Twenty-five candidates from four provinces participated in the first training session.

IV. Conclusion

414. It is acknowledged that weaknesses in the governance machinery of the State, and capacity constraints and lack of co-ordination within the disability sector, have detracted from a systematic approach to the implementation of the CRPD.

415. The continued vulnerability of persons with disabilities, particularly children and persons with disabilities as well as persons with psychosocial disabilities, residing in rural villages, requires more vigorous and better co-ordinated and targeted intervention.

416. South Africa remains committed to accelerating its national agenda for the progressive realisation of rights of persons with disabilities by, among others:

- Strengthening baseline information for every article of the CRPD;
- Strengthening its mainstreamed legislative and policy framework;
- Targeting interventions in a co-ordinated and integrated manner through transversal policy and legislation as well as monitoring mechanisms;
- Strengthening its national disability rights machinery, including creating more enabling environments for organisations of persons with disabilities;
- Strengthening accountability and monitoring through the introduction of disability rights-based indicators into the government-wide monitoring and evaluation system, and above all,
- Accelerating implementation of policies and programmes that aim to provide equal access to persons with disabilities, including disability-specific programmes aimed at addressing barriers to participation.

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