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## GENERAL NOTICE

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### NOTICE 129 OF 2015

#### DRAFT NATIONAL DISABILITY RIGHTS POLICY

#### CALL FOR COMMENTS ON THE DRAFT NATIONAL DISABILITY RIGHTS POLICY

I, Bathabile Olive Dlamini, Minister of Social Development, hereby publish the Draft National Disability Rights Policy for public comment.

Interested persons or organisations are hereby invited to submit written comments on the draft Policy by **12:00 on 27 February 2015**. Comments must be forwarded for the attention of Ms Lidia Pretorius, by:

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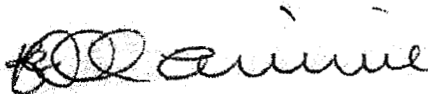
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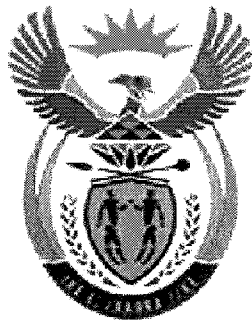
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134 Pretorius Street  
Pretoria

(c) **Fax to:**  
+27 (0) 86 2637 659; and

(d) **By email to:**  
[DisabilityRights@dsd.gov.za](mailto:DisabilityRights@dsd.gov.za)

A handwritten signature in black ink, appearing to read 'B. Dlamini', with a stylized flourish at the end.

**Ms BO DLAMINI, MP**  
**MINISTER OF SOCIAL DEVELOPMENT**



**social development**

Department:  
Social Development  
**REPUBLIC OF SOUTH AFRICA**

**DRAFT WHITE PAPER ON  
THE MAINSTREAMING OF THE  
RIGHT OF PERSONS WITH DISABILITIES  
TO EQUALITY AND DIGNITY**

**(National Disability Rights Policy)**

November 2014



**“Everyone is equal before the law  
and has the right to equal protection and benefit of the law.**

**Equality includes the full and equal enjoyment of all rights and freedoms.**

**To promote the achievement of equality, legislative and other measures  
designed to protect or advance persons, or categories of persons,  
disadvantaged by unfair discrimination may be taken.”**

*South African Constitution, 1996*

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## EXECUTIVE SUMMARY

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### Introduction

The draft White Paper on the Mainstreaming of the Right of Persons with Disabilities to Equality and Dignity, hereafter referred to as The National Disability Rights Policy (NDRP), once approved by Cabinet, will update the White Paper on an Integrated National Disability Strategy (INDS), and will integrate the obligations contained in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) as well as the provisions of the Continental Plan of Action for the African Decade of Persons with Disabilities with South African legislation and policy frameworks and the National Development Plan 2030.

It therefore constitutes the first cross-cutting step towards domesticating the UNCRPD and will inform a major legislative and policy review across all government departments and municipalities, as well as the development of transversal disability rights legislation.

It is important to note that the National Disability Rights Policy (NDRP) does not propose a policy shift, but that it merely deepens the mainstreaming trajectory for the promotion of the rights of persons with disabilities adopted in 1994.

The NDRP will therefore not replace any sectoral policies, but provides guidelines for the review of all existing and development of new sectoral policies, programmes, budgets and reporting systems to bring these in line with both Constitutional and international treaty obligations.

It places the responsibility for disability equity with duty bearers, but also allocates responsibilities to rights holders. The vision of the NDRP is aligned to the vision of the National Development Plan - ***South Africa, an empowered and inclusive society that upholds the rights of persons with disabilities to equality, dignity and self-reliance.***

It as such commits duty bearers to changing the lives of persons with disabilities by

- Taking action to ensure that their rights as equal citizens are upheld;
- Removing discriminatory barriers to access and participation;
- Ensuring that universal design access informs the planning, budgeting and service delivery value chain
- Recognising the right to self-representation
- Acknowledging that not all persons with disabilities are alike, and that personal circumstances, gender, age, sexuality, cultural backgrounds, geographical location, requires different responses
- Embedding the obligations contained in the UN Convention on the Rights of Persons with Disabilities in legislation, policy and service delivery

The NDRP as such

- provides guidelines and norms and standards for the removal of discriminatory barriers through universal design access, including disability-specific measures that perpetuate the exclusion and segregation of persons with disabilities;
- Provides a broad outline of responsibilities and accountabilities of the various stakeholders in ensuring the provision of barrier-free, appropriate, effective, efficient and coordinated service delivery to persons with disabilities;
- Provides guidance for self-representation by persons with disabilities.

The NDRP is built on seven strategic objectives:

- *Breaking Access and Participation Barriers* - Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 5 (Equality and non-discrimination); 9 (Accessibility); 21 (Freedom of Expression and opinion and access to information) and 30 (Participation in cultural life, recreation, leisure and sport). It cuts across all service delivery and developmental programmes.
- *Reducing Compounded Marginalisation* – Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 5 (Equality and non-discrimination); 5 (Equality and Non-Discrimination); 6 (Women with Disabilities); 7 (Children with Disabilities); 8 (Awareness Raising); 10 (Right to life); 12 (Equal recognition before the law); 13 (Access to justice); 15 (Freedom from torture or cruel, inhuman or degrading treatment or punishment); 16 (Freedom from exploitation, violence and abuse) and 17 (Protecting the integrity of the person)
- *Empowering Persons with Disabilities* - Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 5 (Equality and non-discrimination); 24 (Education); 26 (Habilitation and rehabilitation); 27 (Work and employment); 28 (Adequate standard of living and social protection); and 29 (Participation in political and public life)
- *Sustainable Independent Living in the Community* - Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 5 (Equality and non-discrimination); 8 (Accessibility); 9 (Awareness raising); 19 (Living independently and being included in the community); 20 (Personal mobility); 23 (Respect for and the family); 25 (Health); 26 (Habilitation and rehabilitation); 28 (Adequate standard of living and social protection) and 30 (Participation in cultural life, recreation, leisure and sport)
- *Strengthening the Representative Voice of Persons with Disabilities* - Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 29 (Participation in political and public life); and 33 (National Implementation and Monitoring)

- *Building a Disability Rights-Responsive Public Service* - Relevant articles of the UNCRPD include Articles 3 (General principles); 4 (General obligations); 5 (Equality and non-discrimination); 31 (Statistics and data collection); 33 (National implementation and monitoring); 35 (Reports by States Parties);
- *International Cooperation* - Relevant articles of the UNCRPD include Articles 40 (Conference of States Parties); 32 (International cooperation).

### **Consultative Process**

The NDRP was developed over a period of time in consultation with organisations of and for persons with disabilities, government departments, municipalities, public entities, the private sector and civil society at large, as well as the South African Human Rights Commission. It incorporates submissions received through, among others, the following processes:

- Comments on the Draft National Disability Policy, released for public comment towards the beginning of 2011, including comments received from NEDLAC;
- Comments and submissions received on the draft Baseline Country Report to the Convention on the Rights of Persons with Disabilities, released at the end of 2012 for comment;
- Deliberations of the 2012 National Disability Summit and the 2012 Presidential Disability Summit, as well as a series of sector-strategic workshops over the past three years;
- Comments received on the Discussion Document towards the finalisation of a National Policy Framework to Uphold, Promote and Protect the Rights of Persons with Disabilities, released for public comment in September 2013, requesting comments on a number of policy options on proposed pillars and strategic objectives for the NDRP; and
- Extensive discussions on the draft White Paper in the forums provided by the National Disability Rights Machinery (NDRM) between March and September 2014, including the Disability Sector forum, the Inter-Provincial Forum, as well as the NDRM plenary, with participation by all national government departments, provinces, metropolitan municipalities, SALGA, nineteen national disability organisations, the SA Human Rights Commission and the Commission on Gender Equality.

### **Approach followed**

The development of the draft NDRP followed the *Guidelines for the Implementation of the Regulatory Impact Analysis/Assessment (RIA) Process in South Africa*, released by The Presidency in 2012, as it is envisaged that cross-cutting disability legislation will flow from the NDRP, once approved. This allowed the team to, among others:

- Systematically assess the significant impacts, both positive and negative, of a National Disability Rights Policy;
- Ensure that all stakeholders are given a platform to provide their inputs to be considered in the policy-making process;
- Encourage stakeholder consultation in identification and measure, and quantification of benefits and costs of the proposed policy/ legislation;
- Encourage good governance in the policy-making process;
- Ensuring that the adopted course of policy development is proportionate to the identified problem;
- Provide a comprehensive picture of the socio- economic impact of the proposed policy.

### **Policy Directives**

The policy directives tasks duty-bearers with the responsibility of eradicating on-going systemic discrimination and exclusion experienced by persons with disabilities.

#### ***Policy Directive 1: Definitions***

All government departments and entities, municipalities as well as private sector institutions should review statutory documents defining disability to bring it in line with this definition.

*Disability* is imposed by society when a person with a long-term physical, psychosocial, cognitive, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments.

*Persons with disabilities* are therefore persons who – as a result of a temporary or permanent impairment – are unable to either gain access to equal opportunities to all aspects of life enjoyed by any other person, or when obstacles are placed to the achievement of such equal opportunities.

#### ***Policy Directive 2: Disability Terminology***

- The following rules should guide the use of disability terminology for use in official documents as well as the media:
  - Use people-first, disability-friendly terminology that does not promote out-dated, insulting or patronizing views of disability and persons with disabilities;
  - Avoid referring to persons with disabilities as PWDs, wheelchair-bound, handicapped, sick, crippled, afflicted with, suffering from, victims of, lame, sickly etc.
  - Use persons/women/children with disabilities rather than disabled persons/ women/children;
  - Use persons with disabilities rather than people with disabilities;

- Terminology to describe persons with disabilities within a human rights context should be developed for all official languages of South Africa.
- Government departments and entities and municipalities should review and correct harmful and negative terminology contained in legislation and policy documents, and all public and private institutions should review public information pamphlets.

### ***Policy Directive 3: Disability Statistics***

Statistics South Africa should establish a Disability Statistics Advisory Group on Disability to guide the research, development, testing, validity and analysis of disability question(s) and responses to provide acceptable disability data for inclusion in the national Census, household, labour and other socio-economic surveys;

The Washington Group type of questions should be utilised for population surveys and census, and the *International Classification of Functioning, Disability and Health* (ICF) should be utilised for the classification of impairment, activity limitations and participation restrictions.

Impairments should be categorised under the following broad groups for purposes of data and statistics management:

- Physical impairments
- Sensory impairments
- Psychosocial impairments
- Neurological impairments
- Cognitive impairments

### ***Policy Directive 4: Prevention of Impairment and Disability***

All legislation, policies, programmes and services aimed at preventing injury and disease should be reviewed to ensure that they comply with the UNCRPD, as well as with Section 9(c) of the Promotion of Equality and Prevention of Unfair Discrimination Act, which require:

- The removal of barriers and obstacles to ensure the full and equal participation and access to opportunities to be enjoyed by persons with disabilities; and
- Taking positive steps to ensure full and equal access to the full range of life opportunities.

Provincial, district and local municipal disaster plans require review to ensure that they incorporate 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 to prevent injury during evacuations which might result

in primary or secondary impairments. A specific Universal Design Access Plan for such situations must be developed.

The mental health of persons with disabilities should be promoted and protected by ensuring that pro-active steps are taken by government institutions at all levels to ensure that persons with disabilities are not exposed to inhumane, degrading and cruel treatment by people, services and systems due to the persistent attitudinal, physical and communication barriers existing in society.

#### ***Policy Directive 5: Compliance Audits***

All legislation across all government departments require review to determine whether it complies with

- (i) obligations contained in the UNCRPD;
- (ii) obligations contained in PEPUDA;
- (ii) the definitions and contained in this Policy, and
- (iii) whether regulations allow for enforcement of infringements.

#### ***Policy Directive 6: Breaking Access and Participation Barriers***

##### **6.1 Universal Design Access Compliance**

- The South African Bureau of Standards should strengthen its internal capacity to accelerate finalisation of Universal Design Access Standards for the country and to finalize a Code as contemplated in PEPUDA 9(b) on Environmental Access;
- All public and private institutions should develop, promulgate and monitor the implementation of Universal Design Access Plans, including minimum standards and guidelines for the accessibility of facilities and services open or provided to the public, including those rendered by operators/contractors;
- All tender documents should include a universal design access requirement;
- All public and private institutions should conduct built environment, operational, staff and managerial audits of existing infrastructure and services against (a) existing minimum norms and standards and (b) broader universal design standards, and the outcomes of these audits should be costed and budgeted for;
- Media agencies, including the public broadcaster, will develop and promulgate action plans as to how they will ensure that persons with disabilities have equal access to their services.

## 6.2 Universal Design Access to Public and Private Services

- All public and private institutions should provide reasonable accommodation support measures, including appropriate forms of assistance and support, public signage in Braille, easy-to-read-and-understand forms, forms of live assistance and intermediaries, including guides, readers, augmentative and alternative communication and professional sign language interpreters, and wheelchair accessibility to facilitate accessibility to buildings and other facilities open to the public and in all official interactions.
- All public and private institutions should promote access for persons with disabilities to new information and communications technologies and systems, including the Internet, through the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost;
- All steps should be taken to ensure access to print for persons with print disabilities, including ratification of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*.
- Regulations shall be promulgated within PEPUDA aimed at strengthening Section 9 of the Act as well as the provisions of this Policy;

## 6.3 Universal Design Access Capacity Development

- All pre-graduate as well as post-graduate training should have compulsory modules on universal design access and disability equity and those pre-graduate and post-graduate training that directly impacts on universal design access and disability equity must design further courses in this regard;
- All public and private institutions should provide training for decision-makers and employees on universal design access, including the removal of barriers experienced by persons with disabilities and reasonable accommodation support measures;
- SAQA accredited training courses on universal design access should be developed to allow for differentiated accreditation for access advocates, professional categories. Where Continuing Professional Development (CPD) is required as part of professional training, professionals shall be required to undertake at least one universal design access or disability equity course annually.

## 6.4 Universal Design Access Institutional Arrangements



- A South African Sign Language Authority should be established as a statutory agency to coordinate and facilitate the development and recognition of South African Sign Language, as well as the training and accreditation of South African Sign Language interpreters for all official languages recognised in the Constitution of the Republic of South Africa;
- A South African Braille Authority should be established as a statutory agency responsible for the development of Braille, as well as monitoring of the implementation of the National Braille Development and Production Strategy.
- A Universal Design Access Authority should be established as a statutory agency to coordinate the institutionalisation of universal design access in South Africa. This Authority will be responsible for
  - overseeing those agencies directly responsible for Part-S of the National Building Regulations Compliance;
  - Act as an authority with oversight, influence and technical expertise;
  - Regulate the Access Auditor industry and profession in South Africa and in so doing providing a group of expert policy makers, decision makers, planners, designers and other with influence over design, environments, systems etc. who are familiar with the intent and practical application of UDA.
  - Undertake industry-and-market-related research, innovation and research in the area of universal design access
  - Develop universal design access principle-based guiding documents;
  - Develop current, comprehensive and user-friendly technical criteria to ensure appropriate and consistent application of UDA requirements.

### ***Policy Directive 7: Reducing Compounded Marginalisation***

#### **7.1 Legislative Reform**

- All legislation detracting from the right to equal recognition before the law for persons with psychosocial and/or intellectual disabilities should be reviewed to bring it in line with the obligations contained in the UNCRPD;
- The development of supported decision-making legislation and services, in particular for persons with intellectual, psychosocial and severe communication disabilities, should coincide with the abolition of substitute decision-making regimes
- Specific regulations will be promulgated to extend the scope of unfair discrimination in PEPUDA for persons with psychosocial and/or intellectual disabilities.

#### **7.2 Empowerment and Affirmative Action**

- All public and private institutions should develop costed action plans to ensure that persons with disabilities experiencing compounded marginalisation as a result of environmental and/or personal factors, e.g. gender, race, impairment, where people live, socio-economic status, age, qualification levels, cultural beliefs, health status are affirmed, have equal access to all programmes and services, and enjoy specific protection against disease, abuse and human rights violations. Actions should be taken, as per PEPUDA, to ensure that there is a positive approach and response to ensuring that all persons are able to access equal opportunities. Priority should be given to providing technical and financial support to programmes targeting women with disabilities, children with disabilities, persons with psychosocial and intellectual disabilities living in impoverished and/or rural communities.
- All policies, programmes and campaigns aimed at fostering social cohesion should prioritise educating the public about the rights of persons with disabilities and how these should be realised, with representative organisations of persons with disabilities playing a central role.

### 7.3 Capacity Building

- All public and private institutions should provide training for personnel responsible for design and planning, budgeting, service delivery and monitoring and evaluation on strategies and measures to reduce vulnerability and human rights violations.

### 7.4 Inequality and poverty

- Actionable measures will need to be taken to address the compounded effects of disability and inequality. All public and private institutions should have specifically trained individuals who are able to link persons with disabilities living in situations compounded with inequality and poverty, to opportunities that will address the systematic discrimination that has occurred.

## ***Policy Directive 8: Empowering Persons with Disabilities***

### 8.1 Access to Disability Specific Services

- Persons with disabilities should have access to a basket of minimum, affordable services aimed at supporting independent living in their communities, including access to relevant general and specialised health care at community level; access to relevant rehabilitation services, assistive devices and independent living support services. Such services should take into account the specific needs of the different impairment groups, and should include the development of a National Disability

Quality Framework with a National Quality Assurance system for disability services;

- Persons with disabilities will have access to affordable, qualitative rehabilitation services immediately after onset of disability, and periodically as their independence levels improve. This will include prevention of secondary disabilities due to lack of independence training and medical rehabilitation, as well as the provisioning of independence-related assistive devices
- Early intervention programmes will constitute a core component of early childhood development packages for children with disabilities
- Subsidisation of disability-specific services will be congruent with the actual cost of the cost of services;
- A Disability Services Act will be developed as an outflow of the National Disability Rights Policy to determine minimum norms and standards for disability services across the service delivery spheres.

## 8.2 Peer Support and Empowerment

- Peer empowerment services for parents of children with disabilities, as well as children and adults with disabilities will be available at community level to strengthen their right to self-representation and individual advocacy. These programmes will be managed by parents organisations and representative organisations of persons with disabilities.

## 8.3 Access to Socio-Economic Opportunities and Development

- Children and adult with disabilities will have equal access to lifelong education, skills development and economic empowerment and employment programmes in inclusive settings through the removal of barriers to participation and making adequate support and reasonable accommodation measures available timeously across the value chain.
- Social protection for persons with disabilities will be reviewed to align social grants with the actual cost of disability, and to encourage grant recipients to transition to sustainable livelihoods and decent work;
- Employment equity and preferential procurement targets will be determined by taking into consideration demographics as well as redress requirements to ensure equality of outcome by 2030;
- Persons with disabilities will have access to affordable vocational rehabilitation, skills development, job retention and return-to-work programmes after onset of disability;

- Subsidisation of disability-specific services aimed at economic empowerment of persons with disabilities will be congruent with the actual cost of the cost of services;
- Systems will be put in place to strengthen articulation from early childhood development to basic education; from basic and further education to post school education and training, and from post school education and training to formal employment/sustainable self-employment for persons with disabilities.

#### 8.4 Cost of Disability

- Measures will be put in place to mediate the disability-related costs to households and SMMEs owned by persons with disabilities to ensure equality of outcome.

### ***Policy Directive 9: Supporting Sustainable Independent Living in the Community***

#### 9.1 Spatial Planning and Human Settlement Design

- Human settlement design should ensure that persons with disabilities are able to move about freely with their families and choose where and with whom they live. This requires a review of current spatial and human settlement planning design approaches, as well as retrospective upgrading of existing human settlement design to improve accessibility;

#### 9.2 Personal Assistance Services

- Persons with disabilities requiring assisted independent living should have access to relevant integrated support services that enables them to live in the community;
- Persons with disabilities currently residing in institutional care facilities should be reintegrated into their communities through support services, which could include transformation of care facilities into community living programmes;
- Subsidisation of disability-specific services will be congruent with the actual cost of the cost of services;

#### 9.3 Integrated Development Planning

- Municipalities should ensure that all Integrated Development Plans (IDPs) and budgets make provision for coordinated and integrated independent living support plans;

#### 9.4 Accessible transport

- Public and private transport systems should be designed and retrofitted to enable persons with disabilities to utilise the entire transport value chain without barriers;

#### 9.5 Access to Information

- Persons with disabilities and their families should have timeous access to information on impairments, disability services, reasonable accommodation, independent living support services as well as recourse mechanisms should their rights be infringed upon.

### ***Policy Directive 10: Strengthening the Representative Voice of Persons with Disabilities***

#### 10.1 The Right to Self-representation

- Representative organisations of persons with disabilities should represent their constituencies in the development and review of all laws, policies, projects and services which impact on the lives of persons with disabilities;
- Government institutions at all levels and contexts of governance are required to consult representative organisations of persons with disabilities in the design, budgeting, implementation and monitoring of legislation, programmes and services to the public in general, as well as services and programmes designed specifically for persons with disabilities.
- Representative organisations of persons with disabilities should be reimbursed by all public sector institutions for participation costs in policy development and review processes, as well as monitoring and evaluation processes, at all levels of governance;
- Persons with disabilities should be represented on all governing bodies of institutions impacting on the lives of persons with disabilities through nomination by relevant representative organisations of persons with disabilities. This will require review of legislation and policies governing the composition of governing structures;

#### 10.2 Funding of Representative Organisations of Persons with Disabilities

- Representative organisations of persons with disabilities should receive state funding for evidence-based research to inform advocacy and support monitoring and evaluation;

#### 10.3 Recognition of Representative Organisations of Persons with Disabilities

- The designated national disability rights focal point will develop enforceable minimum norms and standards for consultation with representative organisations of persons with disabilities;
- Representative organisations of persons with disabilities will apply for recognition to the designated national disability rights focal point for purposes of participation in the national disability rights machinery, as well as sectoral policy development and review and monitor and evaluation processes. The designated national disability rights focal point will in turn inform national departments and public entities, provincial administrations, as well as municipalities of the relevant DPOs which should be included in public participation platforms for purposes of policy development and review and monitoring and evaluation.

#### 10.4 Public Participation and Consultation Programmes

- All government institutions will ensure that public participation and consultation processes are accessible to persons with disabilities. This will include making use solely of venues that are fully accessible, and ensuring that reasonable accommodation measures such as sign language interpretation, sub-texting, alternative print formats are available on demand;

### ***Policy Directive 11: Building a Disability Rights-Responsive Public Service***

#### 11.1 Disability Responsive Planning, Budgeting, Implementation and Monitoring

- All public institutions will include in their Annual Performance Plans/ Integrated Development Plans, a funded Universal Design Access Plan which will ensure that:
  - Persons with disabilities have the same opportunities as other people to access the services, programmes and any events organised by such an institution aligned with the requirements of the UNCRPD and PEPUDA
  - Persons with disabilities have the same opportunities as other people to access the buildings and other facilities of the institution;
  - Persons with disabilities receive information in a format that will enable them to access the information as readily as other people are able to access it;
  - Persons with disabilities receive the same level and quality of service from the staff of the institution as other people receive from the staff of that institution;

- Persons with disabilities have the same opportunities as other people to make complaints to the institution;
- Persons with disabilities have the same opportunities as other people to participate in any public consultation by the institution.
- All public institutions will report on quarterly and annual basis about the implementation of the Universal Design Access Plan. Such plans will be built into Annual Performance Plans, MTEF phasing and longer planning phasing.

## 11.2 National Disability Rights Machinery

- The President of the Republic of South Africa will designate the national disability rights focal point, which will be responsible for overall coordination of the national disability rights programme of action in government, and which will serve as secretariat of the National Disability Rights Machinery;
- Organisational design for disability rights focal points will be institutionalised across the public service, and all public institutions will appoint/designate a disability rights focal point to
  - Conduct an analysis and alignment of all legislation, policies, programmes and services of government institutions to ensure effective mainstreaming of disability considerations and implementation of the NDRP;
  - Facilitate capacity development to ensure that government institutions are able to account for disability responsive planning and budgeting;
  - Guide and support government institutions to ensure that they are able to provide accurate and timeous information for purposes of international treaty reporting;
  - Facilitate that performance agreements of senior managers reflects the departmental obligations;
  - Provide guidance and support to units within government institutions, the private sector and civil society to achieve the above;
  - Report on implementation of the institutional Universal Design Access Plan
- The National Disability Rights Machinery will oversee the development and implementation of the National Disability Rights Programme of Action, will be supported with an independent secretariat, and will consist of:
  - Government
  - National disability organisations
  - Institutions promoting human rights and democracy, i.e.

- The private sector
- Research institutions
- Government-wide machineries shall be constituted at:
  - *Intra-departmental level*, responsible for providing strategic direction and technical support in the delivery of equality and elimination of discrimination against persons with disabilities;
  - *Inter-departmental level (national and provincial)*, providing strategic direction and technical support in the delivery of equality and elimination of discrimination against persons with disabilities;
  - *Inter-provincial level*, responsible for the oversight, management, co-ordination of the implementation of programmes for persons with disabilities in all provinces in order to ensure standards are maintained across provinces;
  - *District level*, responsible for coordination of action and sharing of experiences between local municipalities in a district;
  - *Local level*, providing support to ward committees to drive local action aimed at promoting and protecting the rights of persons with disabilities;
  - *Government-Civil Society Interface* - Provision should be made for full participation of civil society structures at national, provincial and local level, particularly in issue-based working groups.

### 11.3 National Research Agenda

- The designated national disability rights focal point will at five year intervals coordinate the development of the National Disability Research Agenda to articulate national priorities, focus and direction for disability rights related research in South Africa with the aim of providing sound evidence for future policy and practice decisions that will ultimately lead to improved outcomes for South Africans with disabilities.

### ***Policy Directive 12: International Cooperation***

- All bilateral and national agreements will mainstream disability considerations, with a particular focus on
- Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices government-to-government; business-to-business and NGO-to-NGO;
- Facilitating cooperation in research and access to scientific and technical knowledge;



- Providing technical and economic assistance in the fields of accessible and assistive technologies.
- South Africa will honour its international disability rights treaty reporting obligations by ensuring that its periodic reports are timeously deposited with the UN and AU respectively;
- South Africa will participate in the annual Conference of States Parties to the CRPD and biennial Conference of African Ministers of Social Development/Disability.

### **Monitoring and Evaluation of the NDRP**

The designated national disability focal point will publish an annual report on progress being made in the implementation of the NDRP, and will conduct an evaluation on the impact of implementation of the NDRP at five year intervals.

An independent monitoring mechanism will be established through the passing of regulations for the South African Human Rights Act, taking into account the Paris Principles, and with an adjustment to the SAHRC budget to enable it to establish the required institutional mechanisms and programmes. The independent monitoring mechanism will be convened by the South African Human Rights Commission.

### **Implementation of the NDRP**

The Implementation Guidelines for the National Disability Rights Policy will consist of An implementation matrix, with outcome and performance indicators for every policy directive, as well as allocation of responsibilities.

The National Programme of Action to Promote and Protect the Rights of Persons with Disabilities for Medium Term Strategic Framework 2014-2019.

### **Conclusion**

Bilateral engagements with key government departments explored synergies in socio-economic policies impacting on the lives of persons with disabilities and also identified both sectoral as well as cross-cutting policy gaps against the obligations contained in the UNCRPD. This has already resulted in a number of sectoral initiatives to review and strengthen existing policies.

The draft White Paper on the Mainstreaming of the Rights of Persons with Disabilities to Equality and Dignity (NDRP) is released to the FOSAD system for consultation with all national departments. It is envisaged that it will, once approved by the FOSAD clusters, proceed to Cabinet for approval for release for public comment, including consultation at NEDLAC level, and for final approval of Cabinet towards November 2014.

The Department of Women, Children and People with Disabilities (DWCPD) would like to express its appreciation to the UN Partnership to Promote the Rights of Persons with Disabilities (UNPRPD), which, through its Multi-Party Fund, rendered significant financial and technical support to the policy development process. This enabled the country to, among others, finalise research into a number of the key policy options considered in the NDRP.

The programme has also enabled the SA/UNPRPD Project to commission research into the cost and economics of disability, which will culminate in a disability-responsive budgeting approach, as well as the development and piloting of a tool that will include the age group 0-4 years in household and census surveys. These projects are both a work-in-progress. The SA/UNPRPD project will also enable the DWCPD to roll-out a policy implementation capacitation programme across government and civil society, but also in particular for representative organisations of persons with disabilities.

**“Due to various barriers, many people with disabilities are not able to develop to their full potential.**

They are often viewed as being unproductive and a burden, but this need not be the case. For most adults, work is a fundamental component of life, which confers status and economic security and opens up social networks.

**The most notable barriers to people with disabilities accessing work are:**

- 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 may also prevent students with disabilities from interacting fully with their peers who do not have disabilities.
- Attitudinal barriers, which may lead to assumptions about the capabilities of persons with disabilities, and whether it is wise to commit resources to their education. This can lead to people with disabilities receiving substandard education – or even being denied access to education – a problem that especially affects girls and women with disabilities.”

*National Development Plan Vision 2030*

## ABBREVIATIONS

|         |   |
|---------|---|
| ABET    | Adult Basic Education and Training  |
| CBR     | Community-based Rehabilitation  |
| CGE     | Commission on Gender Equality   |
| CPoA    | AU Continental Plan of Action for the African Decade of Persons with Disabilities |
| 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/ Disabled People's Organisations        |
| DPSA    | Disabled People South Africa  |
| DPW     | Department of Public Works  |
| DWCPD   | Department of Women, Children and People with Disabilities                        |
| ECD     | Early Childhood Development   |
| GCIS    | Government Communications and Information System                                  |
| GHS     | General Household Survey  |
| GWM&E   | Government-wide Monitoring and Evaluation System                                  |
| ICT     | Information and Communications Technology   |
| INDS    | Integrated National Disability Strategy   |
| MTSF    | Medium Term Strategic Framework   |
| NCPPDSA | National Council for Persons with Physical Disabilities in South Africa           |
| NDP     | National Development Plan 2030  |
| NDRM    | National Disability Rights Machinery  |
| NDRP    | National Disability Rights Policy   |
| NEDLAC  | National Economic Development and Labour Council                                  |
| NGO     | Non-governmental Organisation   |
| NPAC    | National Plan of Action for Children  |
| OSDP    | Office on the Status of Disabled Persons  |
| PFMA    | Public Finance Management Act   |
| 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   |
| SANCB   | South African National Council for the Blind  |
| SAPS    | South African Police Services   |
| SASL    | South African Sign Language   |
| SASSA   | South African Social Security Agency  |
| SRSA    | Sport Recreation South Africa   |
| StatsSA | Statistics South Africa   |
| UNCEDAW | United Nations Convention on the Elimination of All Forms of Discrimination Against Women |
| UNCRC   | United Nations Convention on the Rights of the Child                                      |
| UNCRPD  | United Nations Convention on the Rights of Persons with Disabilities                      |

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# PART ONE

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1 | Draft White Paper on a National Disability Rights Policy (Nov 2014)

## CHAPTER 1: INTRODUCTION

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### 1.1 Introduction to the National Disability Rights Policy

The National Disability Rights Policy updates the White Paper on an Integrated National Disability Strategy (INDS) and integrates the obligations contained in the UN Convention on the Rights of Persons with Disabilities (UNCRPD), as well as the recommendations of the Continental Plan of Action for the African Decade of Persons with Disabilities with South African legislation and policy frameworks and the National Development Plan 2030.

It constitutes the first cross-cutting step towards domesticating the UNCRPD and will inform a major legislative and policy review across all government departments and municipalities, as well as the development of transversal disability rights legislation. The National Disability Rights Policy (NDRP) will not replace any sectoral policies, but provides guidelines for all existing and new sectoral policies, programmes, budgets and reporting systems to bring these in line with both Constitutional and international treaty obligations.

### 1.2 Problem Statement

Progressive realisation of the rights of South Africans with disabilities to equality as guaranteed in the South African Constitution, Act 108 of 1996, has, despite the release of the White Paper on an Integrated National Disability Strategy in 1997, and ratification of the United Nations Convention on the Rights of Persons with Disabilities and its protocol in 2007, not yielded the results intended.

An analysis of the causal factors of the slow progress, points towards, among others,

- Continued discriminatory and stereotypical beliefs towards persons with disabilities which detracts from the mainstreaming of disability considerations in planning, service delivery and monitoring processes across all sectors at all levels;
- Lack of a coordinated disability awareness raising strategy and programme;
- Hostile existing built environment and communication systems which continue to exclude persons with disabilities from mainstream society;
- Lack of capacity within the disability sector, and in particular organisations of persons with disabilities, to effectively advocate for the rights of persons with disabilities, as well as provide expert advice at all levels of governance.

### 1.3 Purpose

The purpose of the NDRP is to establish a high level transversal policy framework that gives coherence to, as well as guide government activity across mainstream and disability-strategic areas of public policy and programmes for the domestication of the obligations contained in the Convention on the Rights of Persons with Disabilities and other international and regional obligations.

It does this by promoting a uniform and coordinated approach by all government departments and institutions in the mainstreaming of disability across all planning, design, budgeting, implementation and monitoring of services and development programmes.

It envisages an outcome of universal and equal access to services and opportunities for persons with disabilities through the development of targeted interventions that barriers and apply the principles of universal design.

### 1.4 Scope of Application

The NDRP will apply to all public sector institutions, public entities, the private sector as well as organs of civil society receiving state funding and support.

### 1.5 Historical Overview: The First Twenty Years of Democracy

*"Among the yardsticks by which to measure a society's respect for human rights, to evaluate the level of its maturity and its generosity of spirit, is by looking at the status that it accords to those members of society who are most vulnerable, disabled people, the senior citizens and its children."*

Integrated National Disability Strategy, 1997

The new democratic government in 1994 inherited a society that understood disability to be a personal tragedy which required a health and welfare response to 'fix' the person and situation. Programs designed by Government pre-1994 to meet the needs of persons with disabilities, were based on a value system of segregated development as expressed through apartheid policies on the one hand, and the need to segregate and 'fix' persons with disabilities on the other, thereby further entrenching violation of human rights and dignity. The majority of children with disabilities enrolled in school were found in segregated special schools, and the

majority of adults with disabilities at best found sustainable livelihoods in sheltered employment with no opportunities for career choices or career advancement.

There was very little official statistics available on disability to inform the new democratic government on what constitutes disability, and what the socio-economic status of persons with disabilities was. The first attempts to measure disability prevalence since 1996 demonstrated the challenges in measuring disability, as it brings to the fore that disability is a social construct, perceived through the lived experiences of persons with disabilities within a racially biased South African context.

The proactive work done by Disabled People South Africa (DPSA) as the national disability rights movement affiliated to Disabled Peoples' International (DPI) between 1990 and 1994, entrenched the right of persons with disabilities to represent themselves in all institutions and processes affecting their lives in the new democratic order, and placed the rights of persons with disabilities centre stage on the national reconstruction and development agenda. These efforts culminated in the inclusion of disability in the non-discrimination and equality clause (section 9) in the Constitution of SA of 1996, bringing recognition of persons with disabilities as equal citizens of the country.

The Office on the Status of Disabled Persons (OSDP), took position at the highest level in the Presidency, within the Reconstruction and Development Programme, with the aim of influencing the transformation agenda. One of the main aims of OSDP was to ensure the mainstreaming of disability across the public sector as well as in civil society.

The Presidency released the White Paper on an Integrated National Disability Strategy (INDS) in 1997. The main vision of the INDS was *"a society for all, one in which people with disabilities are actively involved in the process of transformation"*. Informed by the United Nations Standard Rules for the Equalization of Opportunities for Persons with Disabilities and the Disability Rights Charter developed by Disabled People South Africa through a widely consulted process in the early nineties, the INDS became the critical benchmark for all future policy and legislation in South Africa.

South Africa 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.

South Africa ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol without reservation in 2007, thereby committing the country to respect and implement the rights of persons with disabilities as documented in the various Articles.

Persons with disabilities speak with one voice when they summarise the most important impact of the past 20 years of democracy on their lives being (re)gaining their **dignity**, irrespective of race, gender, impairment, geographical location, age or sexual orientation.

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.”*

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.”*

The failure of South Africa to enforce existing accessibility legislation and develop minimum norms and standards for universal design is perhaps the single most important failure over the past 20 years. As the roll-out of infrastructure and ICTs in particular gain momentum, this failure could push persons with disabilities even further to the margins of society, perpetuating the need for special segregated services and social protection support, and infringing on the constitutional right to dignity and equality.

Whilst significant progress has been made in mainstreaming disability considerations into sector policies and programmes over the past 19 years, it has often not been sustainable, as it relied more on the attitude of individuals rather than planned and coordinated interventions.

The Baseline Country Report to the UNCRPD, approved by Cabinet in April 2013, acknowledges 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 UNCRPD. The continued vulnerability of persons with disabilities, particularly children with disabilities as well as persons with psychosocial disabilities, residing in rural villages, requires more vigorous and better co-ordinated and targeted intervention”*.

The Baseline Report recommends that government accelerates the country's national agenda for the progressive realisation of rights of persons with disabilities by, among others:

- Strengthening baseline information for every article of the UNCRPD;
- Strengthening the implementation of 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.

## 1.6 Disability and Development

While the Millennium Development Goals (MDGs) represent a concerted effort to address global poverty, there is a striking gap in the current MDGs and their inclusion of persons with disabilities. Persons with disabilities as a result remain excluded from equitable access to resources such as education, employment, healthcare and social and legal support systems, and as a result experience disproportionately high rates of poverty.

The United Nations General Assembly held a High-Level Meeting on Disability and Development with the overarching theme *“The way forward: a disability inclusive development agenda towards 2015 and beyond”* on 23 September 2013. The draft resolution tabled to the meeting for adoption, *“stress the importance of ensuring accessibility for and inclusion of persons with disabilities in all aspects of*

*development and of giving due consideration to all persons with disabilities in the emerging post-2015 United Nations development agenda”.*

**(a) Disability and Poverty**

The INDS acknowledges that there is “*a strong relationship between disability and poverty. Poverty makes people more vulnerable to disability and disability reinforces and deepens poverty.*”

The National Development Plan acknowledges that “*disability and poverty operate in a vicious circle. Disability often leads to poverty and poverty, in turn, often results in disability*”.

A World Bank study in Uganda found that households with a person with a disability were 38% more likely to be poor, and the Poverty Reduction Strategy Paper from Serbia-Montenegro reports that 70% of persons with disabilities are poor.

As the whole family is affected by the direct and the indirect cost caused by participation restrictions the proportion of people affected is much higher than disability prevalence figure indicates. For instance, in China a study found that while about 5% of the population had a disability, about 20% of people lived in households where someone had a disability.

**(b) Disability and Gender**

Article 6 of UNCPRD requires of States Parties to recognise that women and girls with disabilities are subject to multiple discrimination, and to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms, as well as to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the Convention.

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.

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.

**(c) Disability and Age**

Children, young people, as well as older persons with disabilities have very distinct age-dependent situations and needs that should be taken into consideration when programmes are designed.

*Children with Disabilities*

Section 28 of the Constitution of the Republic of South Africa protects the rights of all children. These rights underlie all decision making with regard to legislation, policies and programmes in South Africa.

Article 7 of the UNCPRD requires of States Parties to take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children, to ensure that the best interests of the child be a primary consideration in all actions concerning children with disabilities, and that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right.

The National Plan of Action for Children (NPAC) 2012-2017, which constitutes the cross-cutting plan for implementation of the Convention on the Rights of the Child, mainstreams the rights of children with disabilities as an integral part of the NPAC.

The National Development Plan 2030 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”*.

The Children’s Act, 2005 calls, among others, for an enabling environment to respond to the special needs of children with disabilities, and 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.”*

Children with disabilities living in impoverished homes and communities, especially the former homelands as well as informal settlements, experience multiple deprivations.

*Young Persons with Disabilities*

Young people make up the largest and fastest growing proportion of Africa’s general population.

The African Union's Youth Charter, released in 2006, prioritises non-discrimination, development, participation, policy and education and skills development as strategies to counteract historical influences. Most importantly Article 14 recognises the right of young people to a standard of living adequate to their holistic development.

Young persons with disabilities are particularly vulnerable of 'early retirement' due to articulation challenges between school, higher education and work.

#### *Older Persons with Disabilities*

Older persons with disabilities, and in particular with dementia, are vulnerable to exploitation, neglect and abuse. The rights of older persons with disabilities are protected through, among others, The Older Persons Act, 2006. The Act regulates community-based programmes, home-based care programmes and residential facilities for frail older persons.

## **1.7 Key Conceptual Definitions**

### **(a) *The Social Model of Disability***

The social model focuses on the abilities of persons with disabilities rather than on their inabilities. It assesses the impact that the socio-economic environment has on the full participation, inclusion and acceptance of persons with disabilities as part of mainstream society. The social model emphasises the need for broader systemic and attitude changes in society; the provision of accessible services and activities; and the mainstreaming of disability to ensure full inclusion of persons with disabilities as equals. The model further dictates that persons with disabilities must actively participate in transformation processes that impact on their lives. The key features of the social model are:

- Acknowledging that the social context within which persons with disabilities live impacts on their full participation, inclusion and acceptance into mainstream society.
- Focussing on the abilities of persons with disabilities; respecting their inabilities and aiming to address the social barriers that result in discrimination.
- Promoting broader systemic and attitude changes in society.
- Promoting mainstreaming of disability.
- Reinforcing the importance of persons with disabilities being part of transformation processes to improve the quality of their lives.

**(b) *The Human Rights-Based Approach***

In South Africa, a rights-based approach refers to the provision of all human and socio-economic rights enshrined in the Constitution.

The rights-based approach provides a set of performance standards against which governments and other actors can be held accountable. It reinforces commitment, participation and mainstreaming of human rights as the central core in the formulation, implementation, review and monitoring and evaluation of policies and programmes.

The rights based approach emphasizes social justice, a minimum standard of living, equitable access, equal opportunity to services and benefits, and a commitment to meeting the needs of all South Africans with a special emphasis on the needs of the most disadvantaged.

This approach is supported by the principles of universality, inalienability, indivisibility, equality and non-discrimination and requires using a human rights lens in drafting and implementing policies and programmes.

While protecting and promoting the human rights of persons with disabilities is an underlying principle in all the Articles of the Convention on the Rights of Persons with Disabilities, Article 4 unambiguously commits States Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind, on the basis of disability, and to protect all persons against violation of their human rights.

**(c) *Defining Disability***

Disability is a complex concept, and as yet there is no definition of disability that has achieved international consensus.

The struggle to define disability which accurately and realistically encompasses the lived experience of persons with disabilities is a historical one, characteristic of power dynamics, prejudice and social exclusion of those who do not 'belong'. This struggle is best described by Soudien and Baxen, 2006 (*Disability and Social Change – a South African Agenda, Chapter 12*):

*"...each definition is embedded within the broader constructs of how society works, who is in and who is out, and under what conditions decisions are made. How definitions work to frame, organize and create policies and the*

*social practices that flow from them, is nowhere clearer than in the field of education. It is crucial, therefore, that these definitions be understood as emergent from particular histories and discursive formations”*

At the heart of the struggle lies the search for an identity and a sense of belonging by persons with disabilities. If the early understanding of disability, which was based on a limiting medical definition and equated with a deficiency, influenced measures that resulted in policies and practices that excluded persons with disabilities in mainstream society for decades, then the instrumental use of a definition, based on human rights and developmental model has the potential to catalyse change. Even if disability was understood differently, measured differently and therefore provided for in different ways since 1994, it becomes evident that its ‘evolving’ nature mirrors the context and society within which persons with disabilities live.

The presence of impairment is a critical *component* of defining disability. The challenge however has been in defining the contexts in which barriers limit participation, access and detract from equity and equality.

The UNCRPD does not attempt to define disability per se, but rather recognises disability as an evolving concept which results from the interaction between persons with impairments and attitudinal and environmental barriers. It recognises persons with disabilities as those persons who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

Cabinet approved the following definition for ‘*disability*’ in 2005 for the purpose of social security: “the loss or elimination of opportunities to take part in the life of the community equitably with others, that is encountered by persons having physical, sensory, psychological, developmental, learning, neurological or other impairments which may be permanent, temporary or episodic in nature, thereby causing activity limitations and participation restriction with the mainstream society. These barriers may be due to economic, physical, social, attitudinal and/or cultural factors.”

The following definitions for ‘disability’ and ‘persons with disabilities’ are adopted for all official purposes in South Africa:

- **Disability** is imposed by society when a person with a long-term physical, psychosocial, cognitive, neurological and/or sensory impairment is denied

access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments.

- ***Persons with disabilities*** include those who have long-term physical, psychosocial, cognitive, neurological and/or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

This definition requires a degree of self-definition, where the individual determines whether he/she is disabled or not, based on environmental factors and contexts. Declaration of disability should be linked to access to reasonable accommodation measures.

**(d) *Disability Discrimination***

Discrimination on the basis of disability means any distinction, exclusion or restriction of persons on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, on all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It encompasses all forms of unfair discrimination, whether direct or indirect, including denial of reasonable accommodation. (Promotion of Equality and Prevention of Unfair Discrimination Act, 2000)

**(e) *Duty-bearers***

Duty-bearers in human rights law include governments, national and local authorities, public officials and service providers.

**(f) *Rights-holders***

Citizens are rights-holders.

**(g) *Reasonable Accommodation***

Reasonable Accommodation refers to necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.



**(h) Universal Access**

Universal access means the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens. The absence of accessibility or the denial of access is the loss of opportunities to take part in the community on an equal basis with others.

**(i) Universal Design**

Universal design is the design of products, environments, programmes and services to be usable by all persons to the greatest extent possible without the need for adaptation or specialised design.

Assistive devices and technologies for particular groups of persons with disabilities where these are needed, should also respond to the principles of universal design. Universal design is therefore the most important tool to achieve universal access.

**(j) Communication**

Article 2 of the UNCRPD includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology, under the concept 'communication'.

**(k) Early Childhood Development (ECD)**

Early childhood development (ECD) requires the promotion of planned and safe pregnancy, delivery and postnatal care; nutritional support for pregnant women and young children; social protection to enable families to care for a young child; preparation for and assistance with parenting; childcare for working parents and other families needing help; opportunities for young children to learn at home and with other children in the company of supportive adults, and preparation for formal schooling.

**(l) Community-Based Rehabilitation (CBR)**

Community-based rehabilitation (CBR) is defined as a strategy within general community development for rehabilitation, equalisation of opportunities, poverty reduction, and social inclusion of people with disabilities. CBR is implemented through the combined efforts of people with disabilities themselves, their families, organizations, and communities, and relevant

governmental and non-governmental health, education, vocational, social, and other services. (World Report on Disability, 2011)

It is therefore a strategy aimed at enhancing the quality of life of persons with disabilities by improving service-delivery, by providing more equitable opportunities and by promoting and protecting the rights of persons with disabilities.

**(m) *Organisations OF Persons with Disabilities (DPOs)***

A DPO is defined as a membership-based organisation that is led and controlled by persons with disabilities, and which constitutes the representative voice of persons with disabilities based on their membership demographics. In their function of representatives of persons with disabilities, DPOs mostly see their role as raising awareness in society and advocating for equal rights as citizens.

DPOs support the development of persons with disabilities' capacities by providing them with a common platform to exchange and share their experiences and build a common voice. They often engage in the provision of information on disability for their members (on their rights, but also existing services, facilities and provisions). They sometimes also get involved in direct service delivery.

*Self-Help Groups (SHG)* of persons with disabilities are mostly founded to share common experiences, situations or problems and to offer their members the unique perspective of peers and/ or families who have experienced a similar situation. SHG are run by and for group members to improve their lives, both socially and economically. They usually function as a peer support group and often do not have a formal structure or status. SHG of persons with disabilities are often members also of DPOs and (through election of the board/executive committee) hand over the mandate to represent their interests to the DPO. As they evolve and get involved in wider scale activities, these SHG may need to become formal entities and 'transform' into DPOs.

*Federations of DPOs* - When different DPOs decide to form a network with common goals and objectives or cross-disability alliances. If the network of DPOs is more structured and establishes itself with yet another level of representation, a cross-disability federation emerges. A federation of DPOs (at national or regional level) usually has a well-defined structure and is a membership organisation with a legal status. In the majority of cases, several

federations coexist in a given country and represent the interests of a strategic group (e.g. federation of deaf associations), whilst a national umbrella organisation of all federations aims to serve as unique interlocutor on behalf of all persons with disabilities. This huge responsibility emphasises the importance of having transparent structures through which persons with disabilities can feel adequately represented. The key role of a cross-disability federation is indeed to embody the alliance and common voice of all persons with disabilities in a given country and interact with decision-makers at the highest level. While some community level DPOs engage in service delivery, it is important that national-level, cross-disability federations of DPOs focus only on their function of representation.

**(n) *Disability Services Organisations***

Disability services organisations are not membership-based organisations and their core mandate is to deliver services (rehabilitation, counselling, training, employment support etc) to persons with disabilities. They are usually controlled by service providers, but can also be controlled by persons with disabilities themselves.

**(o) *Inclusion***

Inclusion is regarded as a universal human right and aims at embracing all people irrespective of race, gender, disability, medical or other need. It is about giving equal access and opportunities and getting rid of discrimination and intolerance. It is about a sense of belonging: feeling respected, valued for who you are; feeling a level of supportive energy and commitment from others so that you can do your best work.

**(p) *Social Cohesion***

Social cohesion is the degree of social integration and inclusion in communities and society at large, and the extent to which mutual solidarity finds expression among individuals and communities. A community or society is cohesive to the extent that the inequalities, exclusions and disparities based on ethnicity, gender, class, nationality, age, disability or any other distinctions which engender divisions, distrust and conflict are reduced and/or eliminated in a planned and sustained manner. Community members and citizens are therefore active participants, working together for the attainment of shared goals, designed and agreed upon to improve the living conditions for all.

**(q) *Mainstreaming***

Mainstreaming is, within the context of a rights discourse and sustainable development, about dignity, self-worth, autonomy and self-determination. It is a strategy for making the concerns and experiences of persons with disabilities an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that persons with disabilities benefit on an equitable basis.

Persons with disabilities are automatically listed as one of the target groups of any policy or programme within a mainstreaming approach. All direct and indirect aspects as well as the causes and effects of disability are addressed allowing for the development of long-term holistic and more sustainable solutions.

Mainstreaming of disability occurs on two inter-related levels. One is ensuring that the disability element is inherent in a programme or project and persons with disabilities are included as one of the beneficiaries or target group. The other is ensuring that budget allocations provide for any reasonable accommodation measures that have to be provided when delivering universal services.

The approach further locates disability as a norm rather than an exception in all policies, programmes and budgets. Mainstreaming fundamentally changes prejudicial mind-sets and applies the concept of universal design technologies and equipment.

***Pillars for Mainstreaming***

There are four pillars that inform and guide the mainstreaming agenda for persons with disabilities. These include:

- *Rights Pillar* - requires that processes, procedures, policies, programmes and actions be centred on economic, social, civil and political rights enshrined in the Constitution. This applies to all stakeholders and spheres of life. The rights-based approach regards universal access to be central to realising the rights in respect of access. This access refers to amongst other elements, access to buildings, products and environments for all, including persons with disabilities. Integral to access are the barriers experienced by persons with disabilities in participating in mainstream society. These barriers include physical, informational, economic and social to name a few. The consequence of these barriers is the lack of access to

services including education, health care, employment, transportation and justice.

- *Empowerment Pillar* - refers to processes, procedures and actions aimed at affording access, equal treatment, inclusion, participation, accountability and efficiencies. It takes into account structural inequalities that affect entire social groups rather than focus only on individual characteristics. In a sociological context, empowerment often addresses members of groups that social discrimination processes have excluded from decision making process through, for example, discrimination based on disability, gender, race, ethnicity or religion. The empowerment approach is, therefore, identified as a core pillar for enabling persons with disabilities to avail of and access those opportunities that exist. It also includes encouraging, and developing the skills for self-sufficiency, with a focus on eliminating the need for charity or welfare in the individuals of the group.
- *Equality Pillar* – equality is the opportunities and life chances that are available to persons with disabilities. This pillar encompasses the right of persons with disabilities to equality of outcome. Measurements of equality might address changes in the outcomes of a particular policy, programme or activity or changes in the status or situation of persons with disabilities, such as levels of poverty or participation. The equality indicators must be responsive to age, disability and gender apart from focusing on race and income difference. Equality indicators can be used to hold institutions accountable for their commitments. Indicators and data can make visible the gaps between the commitments many governments and other institutions have made and their implementation and impact. Examples would be the collection of data on the implementation of the Convention on the UN Convention on the Rights of Persons with Disabilities and other international and regional treaty instruments.
- *Results Pillar* – the outcomes-based approach directs processes, procedures, policies and programmes and actions to be centred on results with desired impacts. Results based planning involves the articulation of strategic choices in light of past performance and includes information on how an organisation intends to deliver on its priorities and achieve associated results.

The NDRP adopts the disability rights mainstreaming definition contained in the World Disability Report (2011):

“The process by which governments and other stakeholders ensure that persons with disabilities participate equally with others in any activity and service intended for the general public, such as education, health, employment, and social services. Barriers to participation need to be identified and removed, possibly requiring changes to laws, policies, institutions, and environments.

Mainstreaming requires a commitment at all levels, and needs to be considered across all sectors and built into new and existing legislation, standards, policies, strategies, and plans.

Adopting universal design and implementing reasonable accommodations are two important strategies.

Mainstreaming also requires effective planning, adequate human resources, and sufficient financial investment – accompanied by specific measures such as targeted programmes and services to ensure that the diverse needs of people with disabilities are adequately met”.

## **1.8 Policy Directive 1: Definitions**

All government departments and entities, municipalities as well as private sector institutions should review statutory documents defining disability to bring it in line with this definition.

## **1.9 Disability Terminology**

*“Words reflect as well as influence the way people think”*

Article 8 of the UNCRPD obliges States Parties to adopt immediate, effective and appropriate measures that will foster respect for the rights and dignity of persons with disabilities, and that will combat stereotypes, prejudices and harmful practices relating to persons with disabilities.

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, outlaws hate speech on, among others, the basis of disability. Section 10, dealing with prohibition of hate speech, states that it is prohibited to publish, propagate, advocate or communicate words against any person that could reasonably be construed to demonstrate a clear intention to be hurtful, be harmful or to incite harm, or to promote or propagate hatred.

In recent years persons with disabilities have claimed individual and collective rights and sought to change their circumstances in part by changing the words used to describe them. Negative words and stereotypes are a barrier to understanding the reality of disability. Misguided language and many prevailing attitudes promote out-dated beliefs that people with disabilities are sick, disadvantaged, needy, and, in general, not like "us".

The following terminology is therefore preferred:

- *Blind vs. visually impaired, sight-impaired* - Very few people have absolutely no sight. Calling a blind person sight-impaired implies lack of acceptance of the disability.
- *Deaf or Hard of Hearing vs. deaf-mute, hearing-impaired* - Deafness ranges from profound to mild. Most people hear certain decibels of sound or very loud sounds but they cannot discriminate speech or hear most of the sounds around them. Deaf people are not "mute" or "dumb".
- Hard-of-hearing and late-deafened people view hearing loss in various ways. Some late-deafened people view the changes in hearing ability as an impairment or they might adjust completely with the changes, relying on sign language and adaptive equipment to communicate.
- *Deaf Culture* attributes misunderstandings about deafness to the "hearing" culture. Deaf, Hard-of-Hearing people that are not sensitive to Deaf Culture and Deaf Awareness are described by many deaf persons as "Hearing-in-the Head." Most deaf people are proud of their deafness (cultural status) which explains why Deaf and Deaf Culture are written as proper names. None of these guidelines and preferences is meant to segregate, but rather to promote deafness as a fact, not as a tragedy or as an illness.
- *Psychosocial disabilities vs mental illness or psychiatric disabilities* – The word psychosocial refers to the interaction between psychological and social/cultural components of our disability.

The psychological component refers to ways of thinking and processing our experiences and our perception of the world around us.

The social/cultural component refers to societal and cultural limits for behaviour that interact with those psychological differences as well as the stigma that the society attaches to labelling persons with psychosocial disabilities as disabled.

The World Network of Users and Survivors of Psychiatry agreed to the use of the term 'mental impairment' in the UNCRPD, but advocates for the use of 'psychosocial disability' rather than 'mental impairment'.

- *Cognitive Disabilities* - Cognitive disabilities refers to a wide variety of people include people with learning disabilities, brain injury, and intellectual disabilities. Not all people with cognitive disabilities have the same type of disability. It is easier to address the disability in terms of learning style. Everyone can learn; we simply learn at different speeds and in different styles. People with cognitive disabilities should not be labelled according to behaviour and symptoms.

Not everyone will agree on every term but there is a need to develop consensus on general guidelines with regards terminology to be used in official documents, as well as pertaining terminology which should be considered as hate speech. This is particularly relevant for terminology used in official languages other than English in South Africa.

### 1.10 Policy Directive 2: Disability Terminology

The following rules should guide the use of disability terminology for use in official documents as well as the media:

- Use people-first, disability-friendly terminology that does not promote outdated, insulting or patronizing views of disability and persons with disabilities;
- Avoid referring to persons with disabilities as PWDs, wheelchair-bound, handicapped, sick, crippled, afflicted with, suffering from, victims of, lame, sickly etc.;
- Use persons/women/children with disabilities rather than disabled persons/women/children;
- Use persons with disabilities rather than people with disabilities;
- Terminology to describe persons with disabilities within a human rights context should be developed for all official languages of South Africa.
- Government departments and entities and municipalities should review and correct harmful and negative terminology contained in legislation and policy documents, and all public and private institutions should review public information pamphlets.



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## CHAPTER 2: SITUATION ANALYSIS

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### 2.1 Disability Statistics

*“To make people count, we have to count people right”*

Reliable disability statistics play a crucial role in the development of policies and legislation aimed at improving the lives of people with disabilities, as well as in monitoring progress and evaluating programmes addressing the needs of persons with disabilities. Article 31 of the UNCRPD on Statistics and Data Collection requires of States Parties to collect appropriate information, including statistical and research data that

- will enable government to formulate and implement policies to give effect to the UNCRPD,
- information collected be disaggregated,
- identifies and addresses the barriers faced by persons with disabilities in exercising their rights,
- is disseminated and accessible to persons with disabilities.

Measurement of disability is complex, and varies according to the purpose and application of the data, the conceptualisation of disability, the aspects of disability (impairment, barriers or the interaction between these two aspects) being examined, definitions, question design and data collection methods, among others. A primary goal of collecting population data on persons with disabilities should be to identify strategies to improve their well-being and to track trends in changes over time.

The World Report on Disability acknowledges that *“impairment data are not an adequate proxy for disability information”*, and that *“broad ‘groupings’ of different ‘types of disability’ have become part of the language of disability”*. So, *“often, ‘types of disability’ are defined using only one aspect of disability, such as impairments – sensory, physical, mental, intellectual – and at other times they conflate health conditions with disability”*.

Whilst South Africa might need information on impairments for purposes of designing specific services, it is important to acknowledge that the usefulness of such data is limited, as the resulting prevalence rates are (i) not indicative of the entire extent of disability and (ii) diverse health, social, rehabilitation, education and support responses might be required depending on the age, gender, geographical location,

culture etc. of the individuals. Persons with the same impairments can experience very different degrees and types of restrictions and barriers to participation depending on the context.

Persons with disabilities are increasingly constructing their self-identity not by their impairments, but rather independent of it, whereby they accept impairment as a reality that they live with without losing a sense of self.

Disaggregation of categories of disability/impairments data further by for example gender, age, income, occupation, is therefore important to uncover patterns, trends, and other information about 'sub-groups' of persons with disabilities.

## 2.2 Disability Measurement Tools

### *Different purposes require different kinds of disability data*

The main criticism against available data and statistics on disability stems from the failure to match disability questions with the purpose for collection of information, resulting in unusable statistics that becomes a waste of public expenditure.

There are three types of disability-related data:

- *Impairment data* – collection of information about the prevalence of physiological or psychological functions.
- *Activity limitation data* – collection of information about the capacity of a population to perform daily activities such as mobility, communication, self-care, and interpersonal relations.
- *Participation restriction data* – collection of information about what members of a population actually are able to do in their lives, and, in particular, what features of their physical, built, interpersonal, or social environment help or hinder them

Impairment information alone, though obviously relevant to disability statistics, is inadequate for three main reasons:

- *Impairment information is only a partial picture of disability* - the effects of health conditions on people's lives can differ radically depending on the kinds of impairments, the effect of these impairments on a person's capacity to act, and most importantly, personal factors particular to the individual and the overall environmental context including social expectations about 'normality'.
- *Impairment data are inadequate proxies for disability* - At the population level, though a few severe impairments can serve as proxies for a fairly large proportion of the overall prevalence of disability, without information about how

these impairments play out in people's lives, policy makers would have no idea about the relative seriousness, or cost, of the disability associated with these impairments.

- *Impairments are not predictors of the lived experience of disability* - People with the same impairments experience different kinds and degrees of incapacity and vastly different restrictions on what actually happens in their lives. Disability is the complete lived experience of non-fatal health outcomes, not merely body level decrements in functioning.

The set of disability questions developed by the Washington Group (WG), although still inadequate to measure impairment and participation across the entire spectrum, currently utilised by Statistics South Africa, is generally regarded as a new and improved approach of measuring disability-based on activity limitations and restrictions in social participation, with the aim of producing prevalence measures that are internationally comparable.

The World Health Organization's (WHO) International Classification of Functioning, Disability, and Health (ICF) is both a classification system and a model of the complete experience of disability. As a classification system, the ICF provides a common language, which guarantees the comparability of disability data between sectors within a country, and between countries. As a model of disability, the ICF offers a conceptual framework for structuring disability data.

## 2.3 Policy Directive 3: Disability Statistics

Statistics South Africa should establish a Disability Statistics Advisory Group on Disability to guide the research, development, testing, validity and analysis of disability question(s) and responses to provide acceptable disability data for inclusion in the national Census, household, labour and other socio-economic surveys;

The following classification system should be used for purposes of data and statistics management, e.g. employment equity statistics, statistics on access to services:

- Physical impairments
- Sensory impairments
- Psychosocial impairments
- Neurological Impairments
- Cognitive Impairments

## 2.4 South Africa 'Disability' Prevalence

Impairment or activity limitation prevalence in South Africa is currently measured through predominantly national census and household surveys (Statistics South Africa), as well as sample surveys (universities and research institutions, as well as, to a limited extent, disability organisations).

The 2011 National Census, using the Washington Group Model estimates an impairment prevalence of **7,5%** in South Africa. This figure however excludes, among others children between 0-4 years, statistics of persons with disabilities in residential care and school boarding facilities and persons with psychosocial, neurological and/or emotional disabilities. 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. regarding difficulties experienced as a result of psychosocial, impairments.

Percentage distribution of population aged five years and older by type and degree of impairment:

- *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.
- *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.
- *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.
- *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.

- *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.
- *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.

The 2011 General Household Survey, also using the Washington Group classification system, found that

- 5,2% of South Africans aged five years and older were classified as disabled. Women (5,4%) were slightly more likely to be disabled than men (5,0%). Provincially, Northern Cape (10,2%), North West (7,7%) and Free State (6,7%) presented the highest rates of disability in the country.
- Based on the sample of the 2011 GHS, of the total of 45,345,000 South Africans aged five 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.
  - 271,000 made use of spectacles/contact lenses;
  - 110,000 used hearing aids;
  - 347,000 made use of walking sticks/walking frames;
  - 83,000 used wheelchairs; and
  - 24,000 used other assistive devices.

## 2.5 Prevention

In line with the UNCRPD, the National Disability Rights Policy focuses on the rights of persons who are disabled, and not on broad disability prevention, as the latter is

sufficiently covered in sector legislation and policies such as health, HIV and AIDS, transport, mining, labour etc.

A number of articles in the UNCRPD oblige States Parties to take measures that will protect persons with disabilities against further impairment and disability:

- *Article 9* – access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems;
- *Article 11* - protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters;
- *Article 15* - effective legislative, administrative, judicial or other measures to prevent persons with disabilities, from being subjected to torture or cruel, inhuman or degrading treatment or punishment;
- *Article 16* - access to physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services;
- *Article 17* - right to respect for his or her physical and mental integrity on an equal basis with others;
- *Article 21* – access to information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- *Article 25* – Equal access to free or affordable health care and programmes; access to disability-specific health services, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities;
- *Article 26* – organise, strengthen and extend comprehensive rehabilitation services and programmes and promote availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities;
- *Article 27* – prohibition of discrimination on the basis of disability with regard to safe and healthy working conditions; protecting the rights of persons with disabilities, on an equal basis with others, to safe and healthy working conditions, including protection from harassment, and the redress of grievances;

- *Article 28* – equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs; access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes.

Lack of access to a safe physical environments, 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, are major barriers to access to health services for persons with disabilities, placing them at high risk of developing secondary impairments.

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 National Strategic Plan for HIV and AIDS, STIs and TB, 2012-2016, has subsequently recognised 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.

## 2.6 Policy Directive 4: Prevention of Impairment and Disability

All legislation, policies, programmes and services aimed at preventing injury and disease should be reviewed to ensure that they comply with the UNCRPD, as well as with Section 9(c) of the Promotion of Equality and Prevention of Unfair Discrimination Act, which require:

- The removal of barriers and obstacles to ensure the full and equal participation and access to opportunities to be enjoyed by persons with disabilities; and
- Taking positive steps to ensure full and equal access to the full range of life opportunities.

Provincial, district and local municipal disaster plans require review to ensure that they incorporate 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 to prevent injury during evacuations which might result

in primary or secondary impairments. A specific Universal Design Access Plan for such situations must be developed.

The mental health of persons with disabilities should be promoted and protected by ensuring that pro-active steps are taken by government institutions at all levels to ensure that persons with disabilities are not exposed to inhumane, degrading and cruel treatment by people, services and systems due to the persistent attitudinal, physical and communication barriers existing in society.

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## CHAPTER 3: THE LEGAL AND POLICY MANDATE

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### 3.1 National Legislation

The South African government took a decision in 1994 to mainstream the rights of persons with disabilities across all legislation, policies, programmes and services.

The Constitution of the Republic of South Africa (Act 108 of 1996), guarantees the right of persons with disabilities to equality, non-discrimination and dignity. It also provides for the recognition of South African Sign Language as the first language of Deaf South Africans.

The Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4 of 2000) gives effect to section 9, read with item 23(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, so as to prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; and to prevent and prohibit hate speech.

The Act defines, among others, '*discrimination*' as "any act or omission, including a policy, law, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds".

'*Equality*' under the Act includes "the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes".

'*Harassment*' is defined as "unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences".



‘*Prohibited grounds*’ for harassment include disability, language and culture among others, as well as “any other ground where discrimination based on that other ground causes or perpetuates systemic disadvantage; undermines human dignity; or adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination”.

The Act furthermore requires of the State to develop *codes of practice* as contemplated in the Act in order to promote equality, and to develop guidelines, including codes in respect of reasonable accommodation.

Laws which provide for affirmative action and measures to promote the right of persons with disabilities to redress include, among others:

- The Preferential Procurement Policy Framework Act (Act 5 of 2000);
- The Broad-based Black Economic Empowerment Act (Act 53 of 2003); and
- The Employment Equity Act (Act 55 of 1998), read with the Code of Good Practice: Key Aspects on the Employment of Persons with Disabilities

Laws developed specifically to promote and protect of the rights of persons with disabilities include:

- Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993);
- Mental Health Care Act (Act 17 of 2002)
- Social Assistance Act (Act 13 of 2004)
- Social Assistance Amendment Act (Act 6 of 2008)
- South African Library for the Blind Act (Act 91 of 1998)
- The SANS 10400-S document, published in 2011, linked to the National Building Regulations and Building Standards Act (Act 103 of 1977)

It should be noted that the majority of legislation passed since 1994, including the above, requires review to bring the statutes in compliance with the UNCRPD.

### 3.2 National Policies

The White Paper on an Integrated National Disability Strategy, released in 1997, represented Government’s thinking on its contribution to the development of persons with disabilities and to the promotion and protection of their rights post 1994. The ratification of the UNCRPD in 2007 requires review of a range of national policies across sectors. The NDRP is both informed by and provides guidance for this process. Policies to be reviewed include, among others:

- Department of Education. 2001. *Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System*.
- Department of Education. 2001. *White Paper on Early Childhood Education*.
- Department of Education. 2007. *National Policy Framework for Teacher Education*.
- Department of Basic Education. 2010. *National Policy for an equitable Provision of an Enabling School Physical Teaching and Learning Environment*.
- Department of Communications. 2008. *Broadcasting Digital Migration Policy*.
- Department of Communications. 2010. *National Broadband Policy*.
- Department of Correctional Services. *National Integrated Strategy of Offenders and Policy Procedures of Offenders*.
- Department of Health. 2006. *National Rehabilitation Policy*.
- Department of Health. *Human Genetics Policy Guidelines for the Management and Prevention of Genetic Disorders, Birth Defects and Disabilities*.
- Department of Higher Education and Training. 2012. *National Skills Development Strategy III*.
- Department of Provincial and Local Government. 2009. *Disability Framework for Local Government: 2009-2014*.
- Department of Social Development. 1997. *White Paper on Social Welfare*.
- Department of Social Development. 2009. *National Policy Guidelines for Victim Empowerment*.
- Department of Social Development. 2009. *National Strategy towards the Integration of Services to Children with Disabilities*.
- Department of Sport and Recreation South Africa. 2008. *SRSA Funding Policy*.
- Department of Sport and Recreation. 2008. *Norms and Standards for Sport and Recreation Infrastructure Provision and Management*.
- Department of Transport. 2007. *Public Transport Strategy*.
- Department of Women, Children and People with Disabilities. 2012. *National Policy Framework for Children, the draft National Plan of Action for Children: 2012-2017*.
- Independent Communication Authority of South Africa (ICASA). 2009. *Code on Persons with Disabilities*.

### 3.3 The National Development Plan: 2030 Vision

The National Development Plan (NDP 2030), approved in 2012, reconfirms the founding statement of the Freedom Charter, namely that South Africa belongs to all

who live in it. The National Development Plan envisages a country by 2030 which has eliminated poverty and has reduced inequality, a “*country wherein all citizens have the capabilities to grasp the ever-broadening opportunities available.*”

We therefore seek to create a non-sexist, discrimination-free, equitable and inclusive society that protects and develops the human potential of its children, a society for all where persons with disabilities enjoy the same rights as their fellow citizens, and where all citizens and institutions share equal responsibility of creating such a society.

The NDP:2030 acknowledges that many persons with disabilities are not able to develop to their full potential due to a range of barriers, resulting in them often being viewed as being unproductive and a burden.

*Accessibility* lies at the heart of the right dignity – being able to live as an equal citizen in one’s community, being accorded respect for your personal space, having the right to equal opportunities and negotiating one’s life unhindered by man-made barriers. The NDP:2030, highlights the following barriers that needs to be broken down:

- *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. These barriers may also prevent students with disabilities from interacting fully with their peers who do not have disabilities.
- *Attitudinal barriers*, which may lead to assumptions about the capabilities of persons with disabilities, and whether it is wise to commit resources to their education. This can lead to people with disabilities receiving sub-standard education – or even being denied access to education – a problem that especially affects girls and women with disabilities.

### **3.4 International and Regional Instruments**

The National Disability Rights Policy is informed by a range of international and regional treaties and protocols. These include:

| Instrument   | Signature | Ratification | Accession |
|--|-----------|--------------|-----------|
| <b>International Bill of Human Rights</b>  |           |              |           |
| International Covenant on Economic, Social and Cultural Rights   | 1994      |              |           |
| International Covenant on Civil and Political Rights   | 1994      | 1998         |           |
| Optional Protocol to the International Covenant on Civil and Political Rights                                    |           |              | 2002      |
| <b>Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities</b>      |           |              |           |
| International Convention on the Elimination of All Forms of Racial Discrimination                                | 1994      | 1998         |           |
| <b>Women's Human Rights</b>  |           |              |           |
| Convention on the Elimination of All Forms of Discrimination against Women                                       | 1993      | 1995         |           |
| Optional Protocol to the Convention on the Elimination of Discrimination against Women                           |           | 2005         |           |
| <b>Protection from Torture, Ill-Treatment and Disappearance</b>  |           |              |           |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment                         | 1993      | 1998         |           |
| <b>Rights of the Child</b>   |           |              |           |
| Convention on the Rights of the Child  | 1993      | 1995         |           |
| Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts | 2002      |              |           |
| <b>Freedom of Association</b>  |           |              |           |
| Freedom of Association and Protection of the Right to Organise Convention  |           | 1996         |           |
| <b>Employment and Forced Labour</b>  |           |              |           |
| Equal Remuneration Convention  |           | 2000         |           |
| Discrimination (Employment and Occupation) Convention  |           | 1997         |           |
| <b>Education</b>   |           |              |           |
| Convention against Discrimination in Education   |           | 2000         |           |
| <b>Refugees and Asylum</b>   |           |              |           |
| Convention relating to the Status of Refugees  |           |              | 1996      |
| Protocol Relating to the Status of Refugees  |           |              | 1996      |
| <b>African Regional Conventions</b>  |           |              |           |
| African [Banjul] Charter on Human and Peoples' Rights  | 1986      | 1996         |           |
| Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa                    |           | 2004         |           |
| African Charter on the Rights and Welfare of the Child   | 1997      | 2000         |           |
| SADC Protocol on Gender and Development  | 2008      |              |           |

Other international and regional instruments which has informed the development of the National Disability Rights Policy, but which do not have treaty status, include:

- Beijing Declaration and Platform of Action;
- Universal Periodic Review (UPR);
- Millennium Development Goals;
- African Peer Review Mechanism (APRM);
- SADC Charter of Fundamental Social Rights;
- Declaration on Employment and Poverty Alleviation in Africa
- African Union Continental Plan of Action for the Decade of Persons with Disabilities

### **3.5 Policy Directive 5: UNCRPD Compliance Audits**

All legislation across all government departments require review to determine whether it complies with

- (iv) obligations contained in the UNCRPD;
- (v) obligations contained in PEPUDA;
- (ii) the definitions and contained in this Policy, and
- (vi) whether regulations allow for enforcement of infringements.

# PART TWO

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## CHAPTER 4: THE NDRP FRAMEWORK

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### 2.1 Vision

South Africa, an empowered and inclusive society that upholds the rights of persons with disabilities to equality, dignity and self-reliance.

The vision for the National Disability Rights Policy is aligned with Vision2030 of the National Development Plan. It focuses on eliminating poverty and reducing inequality by 2030 by uniting South Africans, unleashing the energies of all its citizens, growing an inclusive economy, building capabilities, enhancing the capability of the state, with leaders working together to solve complex problems.

### 4.2 Mission – An Inclusive and Shared Agenda

A collective national effort is needed to effect the changes required to transform the experiences of persons with disabilities by removing discrimination embedded in planning, budgeting and service delivery.

Recognition of the diversity of experiences of persons with disabilities underpins the pillars and strategic objectives of the NDRP, by acknowledging that not all persons with disabilities are alike, and that personal circumstances, gender, age, sexuality, cultural backgrounds, geographical location, as well as strategic reasonable accommodation and support needs linked to strategic impairments, require different responses within a human rights oriented framework.

Whilst setting a national disability rights agenda, the NDRP builds on existing efforts by all spheres of government, the private sector and civil society. It as such ensures that all organs of the state retain the flexibility to respond to the unique characteristics, priorities and challenges of their respective jurisdictions in coordinated action, with one shared result – equality of outcome for persons with disabilities.

### 4.3 Objectives

The NDRP offers strategic direction and operational guidance for both the public and private sector to collectively respond to, as well as prevent exclusion and



discrimination against persons with disabilities, thereby improving results and outcomes of service delivery interventions.

The objectives of the NDRP are:

- To provide guidelines and norms and standards for the removal of discriminatory barriers through universal design and disability-specific measures that perpetuate the exclusion and segregation of persons with disabilities;
- To provide a broad outline of responsibilities and accountabilities of the various stakeholders in ensuring the provision of barrier-free, appropriate, effective, efficient and coordinated service delivery to persons with disabilities;
- To provide guidance for the improvement of current, and development of future service models and procedures that are responsive to reasonable accommodation requirements for persons with disabilities;
- To provide guidance for self-representation by persons with disabilities.

#### 4.4 Target Group

The main target of national disability rights policy framework are duty-bearers, including oversight institutions, government institutions, the judiciary, the private sector, the media, law and policy makers, public servants, frontline staff, as well as representative organisations of persons with disabilities, non-governmental organisations.

The main beneficiaries of the successful implementation of the National Disability Rights Policy will be persons with disabilities.

#### 4.5 Principles

The principles set out in Article 3 of the UNCPRD, aligned with the principles contained in the Bill of Rights inform the NDRP:

- *Respect for the inherent dignity and individual autonomy*- this includes the freedom to make one's own choices, and the independence of persons. When the dignity of persons with disabilities is respected, their experiences and opinions are valued and are formed without fear of physical, psychological or emotional harm. Respect for individual autonomy means that persons with disabilities have, on an equal basis with others, reasonable life choices, are subject to minimum interference with their private life and can make their own decisions, with adequate support if required;

- *Non-discrimination-* Non-discrimination encompasses not only prohibiting discriminatory acts, but also taking steps to protect against potential future discrimination and hidden discrimination and promoting equality;
- *Full and effective participation and inclusion in society-* Participation goes beyond consultation and includes meaningful involvement in activities and decision-making processes, the possibility to voice opinions, to influence and to complain when participation is denied. Inclusion requires an accessible, barrier-free physical and social environment. This requires that society, both in its public and in its private dimensions, is organised so as to enable all people to take part fully;
- *Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity-* Respect for difference involves accepting and appreciating persons with disabilities for who they are, rather than pitying them or seeing them as a problem that needs to be fixed;
- *Equality of opportunity-* Equality of opportunity refers to a situation where society and the environment are made available to all, including persons with disabilities. Equality of opportunity does not always mean that the exact same opportunities are made available to all, as treating everyone the same might result in inequalities. Rather it recognises difference between people and ensures that, despite this difference, everyone has the same opportunity to enjoy rights;
- *Accessibility-* Accessibility enables persons with disabilities to live independently and to participate fully in all aspects of life. It requires the dismantling of barriers that hinder the effective enjoyment of human rights by persons with disabilities;
- *Equality between men and women-* Despite the overlap with the principle of non-discrimination, the reiteration of equality between men and women is expressly included because there are still many prejudices preventing its full application. The same rights should be expressly recognised for men and women on an equal footing, and suitable measures should be taken to ensure that women have the opportunity to exercise their rights;
- *Respect for the evolving capacities of children with disabilities and for their right to preserve their identities-* Respect for the evolving capacities of children should be seen as a positive and enabling process that supports the child's maturation, autonomy and self-expression. Through this process, children progressively acquire knowledge, competences and understanding, including about their rights. Their participation in decision-making processes that affect them, including their right to preserve their identities, should be expanded over time in step with this evolution.

## 4.6 Strategic Objectives

The NDRP consists of 7 strategic objectives:

- Breaking Access and Participation Barriers
- Reducing Compounded Marginalisation
- Empowering Persons with Disabilities
- Sustainable Independent Living in the Community
- Strengthening the Representative Voice of Persons with Disabilities
- Building a Disability Rights-Responsive Public Service
- International Cooperation

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# CHAPTER 5: BREAKING ACCESS AND PARTICIPATION BARRIERS

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## 5.1 Introduction

The Preamble to the Constitution commits South Africa to the attainment of social justice and the improvement of the quality of life for everyone, declaring the founding values of our society to be “*human dignity, the achievement of equality and the advancement of human rights and freedoms*”.

The Bill of Rights guarantees the right to equality to all South Africans, and outlaws discrimination on the basis of, among others, disability.

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000 interprets barrier-free environments from an equality and non-discrimination perspective:

- Section 9 prohibits unfair discrimination on the basis of disability;
- Section 26 which assigns responsibility to any persons contracting with the State or exercising public power to promote equality to adopt, enforce, monitor and report on plans, codes, regulatory mechanisms and measures that promote equality;

- Section 27 commits all persons, non-governmental organisations, community-based organisations and traditional institutions to promote equality in their relationships with other bodies and in their public activities;
- Section 27 also empowers any Minister to develop regulations in relation to PEPUDA as well as other Acts which require companies, closed corporations, partnerships, clubs, sports organisations, corporate entities and associations to promote and report on measures to promote equity.

The NDP: 2030 acknowledges that many persons with disabilities are not able to develop to their full potential due to a range of barriers, resulting in them often being viewed as being unproductive and a burden.

**Accessibility** lies at the heart of the right dignity – being able to live as an equal citizen in one's community, being accorded respect for your personal space, having the right to equal opportunities and negotiating one's life unhindered by man-made barriers. The NDP: 2030, highlights the following barriers that need to be broken down:

- **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. These barriers may also prevent students with disabilities from interacting fully with their peers who do not have disabilities.
- **Attitudinal barriers**, which may lead to assumptions about the capabilities of persons with disabilities, and whether it is wise to commit resources to their education. This can lead to people with disabilities receiving sub-standard education – or even being denied access to education – a problem that especially affects girls and women with disabilities.

Article 9 of the Convention on the Rights of Persons with Disabilities (UNCRPD) places accessibility at the heart of the equality of outcome. It requires of States Parties to take appropriate measures to ensure to persons with disabilities are able to access, on an equal basis with others, the physical environment, transportation, information and communications and other facilities and services open or provided to the public, both in urban and in rural areas. Article 9 of the UNCRPD therefore:

- Grounds accessibility in a human rights framework by clarifying the obligations and responsibilities of duty-bearers to protect, promote and fulfil;
- Impresses upon State Parties the fact that they have legal obligations to ensure accessibility to persons with disabilities;
- Ensures that services and information are tailored to the needs of persons with disabilities by requiring the participation and inclusion of persons with disabilities;
- Draws attention to the most neglected groups within the spectrum of disability;
- Promotes the development and implementation of national laws and policies that advance accessibility.

Article 21 of the UNCPRD on Freedom of Expression and opinion and access to information requires of States Parties to take appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Article 30 - Participation in cultural life, recreation, leisure and sport requires of States Parties to take measures, among others, to ensure the right of persons with disabilities to take part on an equal basis with others in cultural life, including enjoying access to cultural materials and access to television programmes, films, theatre and other cultural activities, in accessible formats, as well as taking appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials, and that persons with disabilities are entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and Deaf culture.

## 5.2 Problem Statement

The 2030 vision and objectives of the National Development Plan cannot be realised if persons with disabilities do not enjoy equal access to the built environment to participate in community life, to actively seek opportunities and to contribute to the economy and development of the country.

The Baseline Country Report on the Rights of Persons with Disabilities acknowledges that

- South Africa currently does not have a regulatory framework that governs universal design access and that 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.

- Historically there has been inadequate compliance with the current regulatory framework 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.
- The 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.
- Policy-makers, regulatory bodies, service providers and training institutions lack capacity and do not have sufficient access to guidance and support with regards creating a barrier-free built environment.
- Inaccessible public and private systems across the travel value chain are a major barrier to the right to equality for persons with disabilities. Women with disabilities are particularly vulnerable when using inaccessible transport systems. Current legislation, policies, programmes and systems regulating the travel value chain is not fully compliant with either international treaty obligations or constitutional imperatives, as it does not facilitate or enforce universal and equitable access to private, public and community transport.
- The majority of persons with sensory, intellectual and, to a degree psychosocial disabilities, do not have equal access to information or freedom of expression due to lack of access to relevant technologies, the lack of recognition of South African Sign Language as an official language, and lack of access to augmentative and alternative communication training and technology.
- The development and recognition of South African Sign Language as an official language, as well as the availability of qualified Sign Language interpreters, remains a challenge.
- Access to copyright documents in alternative formats such as braille and large print remains a challenge.

### **5.3 Description**

Universal access is the ability of users to have equal opportunity and access to services, products, systems and environments, regardless of economic situation, social situation, religious or cultural background, gender or functional limitation. Accessibility, then, can be viewed as “the ability to access” and the functionality or benefit of some system, environment, product, service or entity.

Universal Design, also referred to as lifespan design, is the most important tool to achieve universal access, and ensures that all citizens, irrespective of age, size, ability, gender, etc. benefit from accessible places and products at many stages in the passage from childhood to old age. The fundamental premise of Universal Design is the recognition of human diversity as opposed to the concept of the 'average man', and is therefore also central to strengthening social cohesion.

There are two aspects to Universal Access:

- Direct Access, which is strongly related to Universal Design and refers to direct adaptations to products, environments, services or system designs that significantly improve their accessibility;
- Indirect Access, which uses assistive technology such as wheelchairs, screen readers etc., and refers to product, environment, service or system interfaces that enable an add-on assistive technology to provide the user with full access;

The 'Universal Accessibility' approach places the responsibility on the community to adjust environments, products and systems to accommodate the individual rather than the individual working around these environments, products and systems i.e. the key lies in the integration of Universal Access into the design and planning process. A universally accessible facility, environment, product, system or service will accommodate a wide variety of groups of society appropriately, safely, and with dignity, as well as optimizing their functionality in the system or environment in which they operate.

Universal Design principles are:

- *Equitable use* - The design is useful and marketable to people with diverse abilities.
- *Flexibility in Use* - The design accommodates a wide range of individual preferences and abilities.
- *Simple and intuitive* - Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.
- *Perceptible information* - The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.
- *Tolerance for error*. The design minimizes hazards and the adverse consequences of accidental or unintended actions.
- *Low physical effort*. The design can be used efficiently, comfortably, and with a minimum of fatigue.

- *Size and space for approach and use.* Appropriate size and space is provided for approach, reach, manipulation, and use regardless of the user's body size, posture, or mobility.

The creation of barrier-free environments require collective and concurrent action by law and policy makers, service providers, regulatory bodies, the private sector as well as organisations of and for persons with disabilities.

#### **5.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- New and existing legislation, standards, policies, strategies, plans and budgets should incorporate principles of universal design and reasonable accommodation provisioning.
- Persons with disabilities have a right to participate equally with others in any activity and service intended for the general public. This requires that barriers to participation are identified and removed, possibly requiring changes to laws, policies, institutions and environments.
- Targeted programmes and services aimed at redress and/or to ensure that the diverse needs of persons with disabilities are adequately met must be underpinned by effective planning, adequate allocation of human resources and sufficient financial investment.
- Representative organisations of persons with disabilities (DPOs) should be consulted throughout the design-planning-implementation-monitoring-evaluation-regulation value chain.
- Persons with disabilities must be consulted on selecting appropriate reasonable accommodation measures, assistive technology and personal support.
- The obligations contained in the Convention on the Rights of Persons with Disabilities cuts across virtually all legislation, which will require review to ensure compliance.

#### **5.5 Desired Outcomes and Indicators**

The desired 2030 outcome result: Persons with disabilities live, learn, work and play in accessible and well-designed communities with opportunity for full participation, access to information and inclusion in social, economic, sporting and cultural life.



Key evaluation questions to obtain qualitative information will include:

- What barriers were experienced regarding access to public transport?
- How often has the design and layout of your home made it difficult to do what you want or need to do?
- How often has the design and layout of buildings and places you use in your community made it difficult to do what you want or need to do?
- How often have other people's attitudes towards you been a problem at home?
- How often have other people's attitudes towards you been a problem in the community?
- How did you experience prejudice or discrimination?
- What are the person centred barriers created by people with disabilities regarding physical or any other activities?
- How often has the information you wanted or needed not been available in a format you can use or understand?
- How often has the lack of computer technology been a problem for you?

The desired 2020 outcome results include:

- Reduced physical barriers in the school environment.

Indicators to measure progress are:

- Percentage of Backlogs in the building of accessible infrastructure eradicated;
- Number of special schools meeting the minimum standards and norms with regards to accessibility for all learners
- Number of schools with a barrier-free environment for children with disabilities.
- Number of public facilities and play areas in municipalities that are accessible and safe for children with disabilities
- Percentage and number of schools with a suitable, safe and learning-enabling physical infrastructure and environment that is accessible to all children (including children with disabilities)

- Increased access to public places for people with disabilities.

Indicators to measure progress are:

- Number of persons with disabilities who are mobile in their communities.
- Percentage of public health care institutions that comply with nationally determined physical infrastructure standards
- Percentage of public mental health care institutions that comply with nationally determined physical infrastructure standards
- Percentage of facilities accessible to sports persons with disabilities
- Percentage of tourist facilities accessible to persons with disabilities

- Percentage of police stations that comply with nationally determined physical infrastructure standards
- Percentage of public/private buildings that comply with nationally determined physical infrastructure standards
- Percentage of customised reasonable accommodation measures provided to employees with disabilities in public/private sector
- Reduced incidents of exclusion of people with disabilities due to physical barriers.  
Indicator to measure progress:
  - Proportions of persons with disabilities using assistive devices to reduced physical barriers (urban/rural)
- Increased access to a public transport system that is based on universal design principles is developed and implemented.  
Indicators to measure progress:
  - Proportion of persons with disabilities using public transport
  - Proportion of persons with disabilities that benefit from workable urban transit solutions and incentives for public-transport
- Improved access to public transportation for persons with disabilities.  
Indicator to measure progress:
  - Percentage of persons with disabilities in rural areas with access to public transport
- Attitudinal barriers for persons with disabilities, including children with disabilities, are removed.  
Indicators to measure progress:
  - Proportion of children with disabilities experiencing negative attitudes from peers in school
  - Proportion of policy makers displaying negative attitudes towards persons with disabilities, including children with disabilities
  - Proportion of persons with disabilities experiencing acts of social obstacles of discrimination, prejudice and stereotyping
- Increased access to family preservation programmes and support for families that have children, you or adults with disabilities.  
Indicators to measure progress:
  - Proportion of persons with disabilities with access to ICT
  - Proportion of persons with disabilities with access to telephone line
  - Proportion of persons with disabilities with a mobile telephone subscription
  - Proportion of persons with disabilities using the internet

- Increased access to assisted devices for telecommunications.

Indicators to measure progress:

- Percentage of persons with disabilities using cognitive assistance, including computer or electrical assistive devices, having access to such
- Percentage of persons with disabilities using computer software and hardware, such as voice recognition programs, screen readers, and screen enlargement applications, having access to such
- Percentage of persons with disabilities using assistive devices, such as automatic page-turners, book holders, and adapted pencil grips, allow learners with disabilities to participate in educational activities, having access to such
- Percentage of persons with disabilities using closed captioning allows people with hearing impairments to enjoy movies and television programs, having access to such.

- Increased access by persons with disabilities to the broad range information infrastructure.

Indicators to measure progress:

- Percentage of persons with disabilities with access to ICT
- Percentage of persons with disabilities with access to broadband on an equal basis with the rest of the population.

## 5.6 Policy Directive 6: Breaking Access and Participation Barriers

### 6.1 Universal Design Access Compliance

- The South African Bureau of Standards should strengthen its internal capacity to accelerate finalisation of Universal Design Access Standards for the country and to finalize a Code as contemplated in PEPUDA 9(b) on Environmental Access;
- All public and private institutions should develop, promulgate and monitor the implementation of Universal Design Access Plans, including minimum standards and guidelines for the accessibility of facilities and services open or provided to the public, including those rendered by operators/contractors;
- All tender documents should include a universal design access requirement;
- All public and private institutions should conduct built environment, operational, staff and managerial audits of existing infrastructure and services against (a) existing minimum norms and standards and (b) broader universal design standards, and the outcomes of these audits should be costed and budgeted for;

- Media agencies, including the public broadcaster, will develop and promulgate action plans as to how they will ensure that persons with disabilities have equal access to their services.

## **6.2 Universal Design Access to Public and Private Services**

- All public and private institutions should provide reasonable accommodation support measures, including appropriate forms of assistance and support, public signage in Braille, easy-to-read-and-understand forms, forms of live assistance and intermediaries, including guides, readers, augmentative and alternative communication and professional sign language interpreters, and wheelchair accessibility to facilitate accessibility to buildings and other facilities open to the public and in all official interactions.
- All public and private institutions should promote access for persons with disabilities to new information and communications technologies and systems, including the Internet, through the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost;
- All steps should be taken to ensure access to print for persons with print disabilities, including ratification of the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*.
- Regulations shall be promulgated within PEPUDA aimed at strengthening Section 9 of the Act as well as the provisions of this Policy;

## **6.3 Universal Design Access Capacity Development**

- All pre-graduate as well as post-graduate training should have compulsory modules on universal design access and disability equity and those pre-graduate and post-graduate training that directly impacts on universal design access and disability equity must design further courses in this regard;
- All public and private institutions should provide training for decision-makers and employees on universal design access, including the removal of barriers experienced by persons with disabilities and reasonable accommodation support measures;
- SAQA accredited training courses on universal design access should be developed to allow for differentiated accreditation for access advocates, professional categories. Where Continuing Professional Development (CPD) is required as part of professional training, professionals shall be required to



undertake at least one universal design access or disability equity course annually.

#### **6.4 Universal Design Access Institutional Arrangements**

- A South African Sign Language Authority should be established as a statutory agency to coordinate and facilitate the development and recognition of South African Sign Language, as well as the training and accreditation of South African Sign Language interpreters for all official languages recognised in the Constitution of the Republic of South Africa;
- A South African Braille Authority should be established as a statutory agency responsible for the development of Braille, as well as monitoring of the implementation of the National Braille Development and Production Strategy.
- A Universal Design Access Authority should be established as a statutory agency to coordinate the institutionalisation of universal design access in South Africa. This Authority will be responsible for
  - overseeing those agencies directly responsible for Part-S of the National Building Regulations Compliance;
  - Act as an authority with oversight, influence and technical expertise;
  - Regulate the Access Auditor industry and profession in South Africa and in so doing providing a group of expert policy makers, decision makers, planners, designers and other with influence over design, environments, systems etc. who are familiar with the intent and practical application of UDA.
  - Undertake industry-and-market-related research, innovation and research in the area of universal design access
  - Develop universal design access principle-based guiding documents;
  - Develop current, comprehensive and user-friendly technical criteria to ensure appropriate and consistent application of UDA requirements.

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## CHAPTER 6: REDUCING COMPOUNDED MARGINALISATION

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### 6.1 Introduction

*“Prior to 2006 when the UNCRPD was adopted by the United Nations General Assembly, laws by and large approached people with disabilities assuming that they had no legal capacity. Following adoption of the Convention, laws now are required to be crafted with the basic assumption that persons with disabilities have legal capacity.*

*Possession of rights without legal capacity is impossible: being declared incompetent to manage one’s personal affairs means that an individual no longer has the legal right either to make any personal decisions or to participate in activities otherwise taken for granted. Depriving someone of legal capacity often also deprives them of the legal right to enter into contracts, instruct a lawyer, to vote or own property, to marry or even to bring up children. If you are deemed legally incapable then your legal “personhood” is stripped away – your destiny is placed in the hands of others: you are dead.” (Adv Lawrence Mute in the Equal Rights Review, Vol. Nine (2012))*

The rights of persons with disabilities as provided for in the UNCRPD find resonance in the Bill of Rights of the Constitution of the Republic of South Africa, 1996, which enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. 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.

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000, outlaws hate speech on, among others, the basis of disability. Section 10, dealing with Prohibition of hate speech, prohibits the publication, propagation, advocacy or communication of words based on one or more of the prohibited grounds, against any person, that could reasonably be construed to demonstrate a clear intention to be hurtful, harmful or to incite harm or to promote or propagate

hatred. It furthermore allows for the Equality Court to refer any case dealing with the publication, advocacy, propagation or communication of hate speech to the Director of Public Prosecutions for the institution of criminal proceedings in terms of the common law or relevant legislation.

The NDP 2030 vision and trajectory focuses on fostering social cohesion –

*“In 2030, South Africans will be more conscious of the things they have in common than their differences. Their lived experiences will progressively undermine and cut across the divisions of race, gender, space and class. The nation will be more accepting of peoples’ multiple identities. In this South Africa there will be:*

- Broad-based knowledge about and support for a set of values shared by all South Africans including the values contained in the Constitution.*
- An inclusive society and economy. This means tackling the factors that sustain inequality of opportunity and outcomes by building capabilities and redressing the wrongs of the past.*
- Increased interaction between South Africans from different social and racial groups.*
- Strong leadership across society and a mobilised, active and responsible citizenry.”*

Persons with disabilities in South Africa should therefore, twenty years into democracy, enjoy access to these rights in equal measure to their able-bodied peers, or alternatively have had access to recourse to justice where these rights have been violated. The Baseline Country Report to the UNCRPD however highlights systemic inequalities and violation of rights experienced on daily basis by persons with disabilities and their families. Very little evidence can be found that these violations are as a rule reported to either the South African Human Rights Commission, or referred to the Equality or Labour Courts.

## 6.2 Problem Statement

Environmental as well as personal contexts can lead to compounded marginalisation and human rights violations for persons with disabilities. These contexts could range from gender, race, impairment, where people live, socio-economic status, age, qualification levels, cultural beliefs, health status, etc.

Harmful and negative attitudes and stereotypes associated with disability continue to segregate persons with disabilities from community life.

Persons with disabilities – and women and children with disabilities in particular - as well as 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.

Persons with psychosocial and severe intellectual disabilities experience significant challenges not only in society, but even within the disability sector, in accessing their right to self-representation, self-determination, equality before the law and non-discrimination.

Not all legislation currently in force in South Africa is compliant with the obligations contained in the UNCRPD, and therefore requires review. The denial of legal capacity under the existence of current guardianship laws is not in compliance with the obligations contained in the UNCRPD, and requires urgent review.

### **6.3 Description**

The following UNCRPD articles, among others, oblige States Parties to put measures in place that reduce marginalisation and human rights violations experienced by persons with disabilities:

- Article 5 – Equality and Non-Discrimination
- Article 6 – Women with Disabilities
- Article 7 – Children with Disabilities
- Article 8 – Awareness Raising
- Article 10 - Right to life
- Article 12 - Equal recognition before the law
- Article 13 - Access to justice
- Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment
- Article 16 - Freedom from exploitation, violence and abuse
- Article 17 - Protecting the integrity of the person

Effective access to justice for persons with disabilities on an equal basis with others requires appropriate strategies, including assistive devices, equipment and personal assistance, to facilitate their effective participation in all legal proceedings. Greater awareness is needed by the judiciary, legal professionals and court staff of disability issues. Based on evidence, it is generally accepted that persons with disabilities in particular women and children with disabilities, are more vulnerable to violence,



exploitation and neglect. Persons with disabilities fare worse in institutional contexts where violence may be more common.

Legislation and policies should recognise and enable the right of persons with psychosocial and intellectual disabilities to equal recognition before the law. Equality before the law is a basic general principle of human rights protection and is indispensable for the exercise of other human rights. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights specifically guarantee the right to equality before the law. Article 12 of the Convention affirms that all persons with disabilities have full legal capacity. Persons with disabilities remain the group whose legal capacity is most commonly denied in legal systems worldwide. The right to equal recognition before the law implies that legal capacity is a universal attribute inherent in all persons by virtue of their humanity and must be upheld for persons with disabilities on an equal basis with others. Legal capacity is indispensable for the exercise of economic, social and cultural rights. It acquires a special significance for persons with disabilities when they have to make fundamental decisions regarding their health, education and work.

Legal capacity and mental capacity are distinct concepts. Legal capacity is the ability to hold rights and duties (legal standing) and to exercise these rights and duties (legal agency). It is the key to accessing meaningful participation in society. Mental capacity refers to the decision-making skills of a person, which naturally vary from one person to another and may be different for a given person depending on many factors, including environmental and social factors. Under article 12 of the Convention, perceived or actual deficits in mental capacity must not be used as justification for denying legal capacity.

Substitute decision-making regimes can be defined as systems where legal capacity is removed from a person, even if this is just in respect of a single decision; where a substitute decision-maker can be appointed by someone other than the person concerned, and this can be done against his or her will; and any decision made by a substitute decision-maker is based on what is believed to be in the objective “best interests” of the person concerned, as opposed to being based on the person’s own will and preferences.

Supported decision-making regimes in contrast comprise various support options which give primacy to a person’s will and preferences and respect human rights norms. It should provide protection for all rights, including those related to autonomy (right to legal capacity, right to equal recognition before the law, right to choose where to live, etc.) and rights related to freedom from abuse and ill-treatment (right to life, right to physical integrity, etc.).

This Chapter focuses on specific interventions that should be put in place to reduce marginalisation and vulnerability to human rights violations, to strengthen social cohesion and inclusion of persons with disabilities, and to strengthen access to recourse when rights have been violated.

Building social cohesion where persons with disabilities are recognised as equal citizens with the right to play, develop, work and learn in their own communities, is a national priority. This requires a coordinated, all-inclusive and participatory disability rights awareness campaign where every institution and citizen take responsibility to confront discriminatory attitudes and to raise awareness of the right of persons with disabilities to be included through enabling mechanisms.

#### **6.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- Persons with disabilities have a right to participate equally with others in any activity and service intended for the general public. This requires that barriers to participation are identified and removed.
- Policies, programmes, budgets and services should acknowledge compounded vulnerability and exclusion based on gender, race, impairment, where people live, socio-economic status, age, qualification levels, cultural beliefs, health status, and should reflect specific measures to reduce these vulnerabilities.
- Targeted programmes and services aimed at redress and/or to ensure that the diverse needs of persons with disabilities are adequately met must be underpinned by effective planning, adequate allocation of human resources and sufficient financial investment.
- Representative organisations of persons with disabilities (DPOs) should be consulted throughout the design-planning-implementation-monitoring-evaluation-regulation value chain.
- Representative organisations of persons with disabilities are the most effective change agents and advocates, and should be central in any social compact aimed at fostering social cohesion on national priorities;
- Persons with disabilities must be consulted on selecting appropriate reasonable accommodation measures, assistive technology and personal support.
- The responsibility for changing attitudes and responses to disability belongs to everyone, and all institutions should therefore plan and allocate resources for it;

- The obligations contained in the Convention on the Rights of Persons with Disabilities cuts across all legislation aimed at protecting and promoting human rights and equality.

## 6.5 Desired Outcomes and Indicators

In 2030, South Africans will be more conscious of the things they have in common than their differences. Their lived experiences will progressively undermine and cut across the divisions of race, gender, space, class and disability.

Persons with disabilities – and in particular those who, due to personal and environmental factors experience compounded vulnerability to human rights violations and exclusion, have their rights promoted, upheld and protected, and are able to seek redress if their rights have been violated.

Key evaluation questions to obtain qualitative information will include:

- What are the key barriers to protection and care for persons with disabilities?
- How often has the availability of protection and care services been a problem for persons with disabilities?
- What are the barriers associated to the cost and availability of protection and care services for persons with disabilities?
- What are the barriers regarding those providing protection and care services for persons with disabilities?
- How do social contexts (e.g., segregated versus integrated) and social/community-based interventions and programming influence these outcomes?
- To what extent do legislative mandates to support the right to least restrictive, integrated community living and participation, and the provision of environmental supports to do so, impact over time on long-term community living and health outcomes?

The desired 2020 outcome results include:

- Protection of the rights of persons with disabilities to equality and non-discrimination, in order to reduce marginalisation and to mitigate the impact of HIV and AIDS

Indicators to measure progress:

- HIV/AIDS Prevalence among persons with disabilities
- Number of persons with disabilities receiving HIV related prevention, treatment, care and accessible and appropriate support services

- Proportion of persons with disabilities living with HIV and/or AIDS have equal access to treatment leading to prolonged/ improved quality of life
- Proportion of persons with disabilities with limited access to and ability to prepare healthy food
- Increased protection and care of children with disabilities:

Indicators to measure progress:

- Prevalence of children with disabilities that are underweight (moderate and severe)
- Under-five mortality rate among children with disabilities
- Number of children with disabilities cared for by both primary caregivers.
- Number of children with disabilities cared for by mother only.
- Number of children cared for by father only
- Number of children with disabilities that are orphaned
- Number and percentage of eligible children with disabilities receiving the child support grant.
- Number of children with disabilities that are removed from the care of the parents.
- Number of children with disabilities in foster care placements.
- Number of children with disabilities in cluster foster care.
- Number of child headed households that care and support children with disabilities
- Eliminate incidence of physical, violence against children and adults with disabilities

Indicators to measure progress:

- Number of children with disabilities abused (disaggregated data by age, sex, location and type of abuse).
- Number of children with disabilities found in need of care and protection as contemplated in the Children's Act (38 of 2005).
- Comprehensiveness of surveillance mechanisms for preventing and detecting children at risk of abuse, neglect and violence.
- Number of persons with disabilities who are victims of violent crimes, by type of crime.
- Eliminate all forms of sexual violence and exploitation against women and children with disabilities

Indicators to measure progress:

- Prevalence of violence against women and girls with disabilities

- Number of children with disabilities who were victims of sexual exploitation (by sex, location, and age).
  - Number and type of accessible services available to children with disabilities who are victims of sexual exploitation and trafficking.
  - Number of prevention and early-intervention programmes to address the sexual exploitation and trafficking of children with disabilities
  - Number of women with disabilities who were victims of sexual exploitation (by sex, location, and age).
  - Number and type of accessible services available to women with disabilities who are victims of sexual exploitation and trafficking.
  - Number of prevention and early-intervention programmes to address the sexual exploitation and trafficking of women with disabilities
- Reduced children's exposure to harm by accelerating actions that strengthen the protective environment for children in all settings

Indicators to measure progress:

- Number of children with disabilities involved in child labour per year, per category of labour, by age and sex.
  - Number of children with disabilities involved in the worst forms of child labour per year, per category of labour, by age and sex.
  - Number of children with disabilities used by adults to commit crimes
- Increased access to persons with disabilities to safety institutional mechanisms
- Indicators to measure progress:
- Number of cases of abuse and exploitation of persons with disabilities reported to have access to safety institutional mechanisms and services.
  - Conviction rate with respect to incidence of exploitation and violence against persons with disabilities

- Persons with intellectual and psychosocial disabilities have access to supported decision-making

Indicators to measure progress:

- Number of persons with intellectual and psychosocial disabilities denied their right to vote, the right to marry (or establish a civil partnership) and found a family, reproductive rights, parental rights, the right to give consent for intimate relationships and medical treatment, and the right to liberty;
- Number of persons with intellectual and psychosocial disabilities accessing support in the exercise of legal capacity;

- Compliance with court judgements

Indicators to measure progress:

- Number of court judgements relating to the rights of persons with disabilities
- Percentage of court judgements not complied with within the required time-frames;
- Percentage of court judgements not complied with within the target set

## 6.6 Policy Directive 7: Reducing Compounded Marginalisation

### 7.1 *Legislative Reform*

- All legislation detracting from the right to equal recognition before the law for persons with psychosocial and/or intellectual disabilities should be reviewed to bring it in line with the obligations contained in the UNCRPD;
- The development of supported decision-making legislation and services, in particular for persons with intellectual, psychosocial and severe communication disabilities, should coincide with the abolition of substitute decision-making regimes
- Specific regulations will be promulgated to extend the scope of unfair discrimination in PEPUDA for persons with psychosocial and/or intellectual disabilities.

### 7.2 *Empowerment and Affirmative Action*

- All public and private institutions should develop costed action plans to ensure that persons with disabilities experiencing compounded marginalisation as a result of environmental and/or personal factors, e.g. gender, race, impairment, where people live, socio-economic status, age, qualification levels, cultural beliefs, health status are affirmed, have equal access to all programmes and services, and enjoy specific protection against disease, abuse and human rights violations. Actions should be taken, as per PEPUDA, to ensure that there is a positive approach and response to ensuring that all persons are able to access equal opportunities. Priority should be given to providing technical and financial support to programmes targeting women with disabilities, children with disabilities, persons with psychosocial and intellectual disabilities living in impoverished and/or rural communities.
- All policies, programmes and campaigns aimed at fostering social cohesion should prioritise educating the public about the rights of persons with disabilities

and how these should be realised, with representative organisations of persons with disabilities playing a central role.

### **7.3 Capacity Building**

- All public and private institutions should provide training for personnel responsible for design and planning, budgeting, service delivery and monitoring and evaluation on strategies and measures to reduce vulnerability and human rights violations.

### **7.4 Inequality and poverty**

- Actionable measures will need to be taken to address the compounded effects of disability and inequality. All public and private institutions should have specifically trained individuals who are able to link persons with disabilities living in situations compounded with inequality and poverty, to opportunities that will address the systematic discrimination that has occurred.

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## **CHAPTER 7: EMPOWERING PERSONS WITH DISABILITIES**

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### **7.1 Introduction**

*'Human dignity cannot be fully valued or respected unless individuals are able to develop their 'humanness' to the full extent of its potential. Each human being is uniquely talented. Part of the dignity of every human being is the fact and awareness of this uniqueness. An individual's human dignity cannot be fully respected or valued unless the individual is permitted to develop his or her talents optimally.'*

*Constitutional Court*

The human rights based approach to development aims both at strengthening the capacity of duty-bearers and at empowering the rights-holders. Participation is a key component of rights-based approach to development and a key component to achieve people's empowerment.



Empowering persons with disabilities for purposes of the NDRP is defined as processes whereby individuals achieve increasing control of various aspects of their lives and participate in the community with dignity.

Successful implementation of the UNCPRD is premised on the meaningful participation and progressive empowerment of persons with disabilities as rights-holders.

Factors which contribute to dependency and disempowerment among persons with disabilities include:

- *Social isolation* – For most of the people with disabilities, their social isolation began early in life. It is experienced at home, at school, at work and in the community. Escaping social isolation is therefore a major step on the road to empowerment.
- *Unresponsive services and systems* – barriers to access to opportunities and services available to the general population, inappropriate or unavailable disability-specific interventions, combined with the additional cost of accessing services, contribute to disempowerment of persons with disabilities and keep them in a state of prolonged dependency.
- *Poverty* – dependency on others for survival contributes to high disempowerment levels among persons with disabilities
- *Abuse* – Persons with disabilities – and children and women in particular – experience high levels of vulnerability to abuse.

*"Hope is what keeps us going. It's what keeps us striving for the lives we deserve. I have hope for myself, but I also have hope for all other children with disabilities. I hope that my actions as an ability activist will leave the world more accepting and more accommodating for all people and not just people with disabilities, because we are all different and we all have the need to be accepted regardless of having a disability or not."*

*Chaeli Mycroft*

Persons with disabilities are often disadvantaged compared to their able-bodied peers as far as their access to decent work opportunities is concerned. This is partly attributed to limited formal education and skills. Persons with disabilities as a result tend to have worse labour market outcomes - unemployment, partial employment or full employment at lower wages than non-disabled persons.



The employment rate is more commonly used as an indicator of the labour market status of persons with disabilities due to the high incidence of discouraged job-seekers among persons with disabilities.

Persons with disabilities often face greater direct costs than other people because of additional expenses with transport, personal and health care, special diets and communications requirements. The World Disability Report (2011) notes that studies in the United Kingdom estimates the extra disability-related cost to be between 11% and 69% of income, whilst the Australian estimate is between 29% and 37% of income, and Bosnia and Herzegovina around 14%. Factors such as degree of severity disability (impairment and environmental barriers) account for the wide range.

Work is essential to an individual's economic security and is important to achieving social inclusion. Employment contributes to physical and mental health, personal wellbeing and a sense of identity. Income from employment increases financial independence and raises living standards.

Economic security and social protection for persons with disabilities requires a complex web of inter-related interventions.

## **7.2 Problem Statement**

Young children with disabilities remain extremely vulnerable to exclusion and lack of access to early childhood development opportunities due to stubborn negative attitudes, lack of accessible information by parents of children with disabilities, lack of seamless referral systems between government departments and disability organisations, and lack of inclusive community-based early childhood development programmes, among others. 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.

Significant barriers to access to lifelong learning for persons with disabilities continue to detract from their development and participation. The curricula of post-school education and training do not equip professionals and service providers with the requisite skills to practice their professions in a non-discriminatory and inclusive manner which takes cognisance of the need to design, plan, implement, budget and

monitor in manner which removes barriers and provides access to persons with disabilities.

Insufficient progress has been made in translating and affirmative and enabling legislative framework for the economic empowerment of persons with disabilities, into economic independence of persons with disabilities due to, among others:

- the lack of access to the built environment and public transport,
- the inter-relatedness between poverty and disability,
- persistent attitudinal and communication barriers,
- the high cost of disability;
- lack of effective enforcement.

Persons with disabilities therefore remain disproportionately poorer than their able-bodied counterparts, with women with disabilities, persons with intellectual and psychosocial disabilities, and persons residing in deep rural communities, in particular affected.

### **7.3 Description**

Early childhood development services and programmes provide ideal opportunities for the prevention, early identification and timely provision of assistance for children with disabilities and children requiring additional support for health, development and social problems. Access to relevant information, early identification and community-based intervention services across government departments, and inclusive early childhood development opportunities, is required to unlock children with disabilities' potential.

Persons with disabilities have access to inclusive learning opportunities throughout their lives where they learn with able-bodied peers in barrier-free settings.

Reducing inequality in economic security by persons with disabilities and their families will require a concerted and coordinated effort by all government departments, municipalities, employers, labour unions, financial institutions, statistical bodies, education and research institutions, organisations of and for persons with disabilities, skills development agencies, regulatory bodies, institutions promoting democracy, as well as international development agencies to synergise legislation, policies, systems, programmes, services, and monitoring and regulatory mechanisms aimed at the creation of decent work, employment schemes, skills development, social protection, environmental accessibility and the reduction of inequality.

#### **7.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- Barriers to participation need to be identified and removed, possibility requiring changes to laws; policies, institutions, and environments.
- New and existing legislation, standards, policies, strategies, plans and budgets need to incorporate principles of universal design and reasonable accommodation provisioning.
- Children with disabilities have a right to participate equally with others in any activity and service intended for the general public.
- International treaty obligations require that departments develop a seamless referral system for early identification and intervention services for children and adults with disabilities. Such systems should be developed in partnership with parents and disability organisations, and should incorporate, among others, parent empowerment programmes, information about services in accessible format, in particular for families living in rural communities as well as community-based rehabilitation;
- Persons with disabilities have a right to participate equally with others in any activity and service intended for the general public. This requires that barriers to participation be identified and removed, possibility requiring changes to laws, policies, institutions, environments, as well as design of programmes.
- Representative organisations of persons with disabilities, including parents organisations (DPOs) should be consulted throughout the design-planning-implementation-monitoring-evaluation value chain.
- Targeted programmes and services to ensure that the diverse needs of children and adults with disabilities are adequately met must be underpinned by effective planning, adequate allocation of human resources and sufficient financial investment.
- Persons with disabilities have a right to participate equally with others in any activity and service intended for the general public, including basic education, further education and training, post school education and skills programmes.
- Barriers to participation need to be identified and removed, possibility requiring changes to laws, policies, institutions, and environments.
- New and existing legislation, standards, policies, strategies, plans and budgets need to incorporate principles of universal design and reasonable accommodation provisioning.

- Targeted programmes and services to ensure that the diverse needs of persons with disabilities are adequately met must be underpinned by effective planning, adequate allocation of human resources and sufficient financial investment.

## 6.7 Desired Outcomes and Indicators

Persons with disabilities are accorded the rights and freedoms described in the United Nations Convention on the Rights of Persons with Disabilities and other relevant United Nations human rights treaties and are able to make decisions that affect their lives, or where necessary are supported in making those decisions. They achieve their full potential through their participation in an inclusive, quality education and post school training system that is responsive to their needs, and have opportunities to continue learning throughout their lives. They are able to seek, access and create socio-economic and self-representation opportunities, and contribute to the development of their communities as equal citizens.

Persons with disabilities and their families have economic security, enabling them to plan for the future and exercise choice and control over their lives.

Children with disabilities – and in particular those living in impoverished communities- feel safe and confident and have access to community-based early childhood development opportunities, therefore are able to reach their full potential.

## 6.8 Policy Directive 8: Empowering Persons with Disabilities

### 8.1 Access to Disability Specific Services

- Persons with disabilities should have access to a basket of minimum, affordable services aimed at supporting independent living in their communities, including access to relevant general and specialised health care at community level; access to relevant rehabilitation services, assistive devices and independent living support services. Such services should take into account the specific needs of the different impairment groups, and should include the development of a National Disability Quality Framework with a National Quality Assurance system for disability services;
- Persons with disabilities will have access to affordable, qualitative rehabilitation services immediately after onset of disability, and periodically as their independence levels improve. This will include prevention of secondary disabilities due to lack of independence training and medical rehabilitation, as well as the provisioning of independence-related assistive devices

- Early intervention programmes will constitute a core component of early childhood development packages for children with disabilities
- Subsidisation of disability-specific services will be congruent with the actual cost of the cost of services;
- A Disability Services Act will be developed as an outflow of the National Disability Rights Policy to determine minimum norms and standards for disability services across the service delivery spheres.

## **8.2 Peer Support and Empowerment**

- Peer empowerment services for parents of children with disabilities, as well as children and adults with disabilities will be available at community level to strengthen their right to self-representation and individual advocacy. These programmes will be managed by parents organisations and representative organisations of persons with disabilities.

## **8.3 Access to Socio-Economic Opportunities and Development**

- Children and adult with disabilities will have equal access to lifelong education, skills development and economic empowerment and employment programmes in inclusive settings through the removal of barriers to participation and making adequate support and reasonable accommodation measures available timeously across the value chain.
- Social protection for persons with disabilities will be reviewed to align social grants with the actual cost of disability, and to encourage grant recipients to transition to sustainable livelihoods and decent work;
- Employment equity and preferential procurement targets will be determined by taking into consideration demographics as well as redress requirements to ensure equality of outcome by 2030;
- Persons with disabilities will have access to affordable vocational rehabilitation, skills development, job retention and return-to-work programmes after onset of disability;
- Subsidisation of disability-specific services aimed at economic empowerment of persons with disabilities will be congruent with the actual cost of the cost of services;
- Systems will be put in place to strengthen articulation from early childhood development to basic education; from basic and further education to post

school education and training, and from post school education and training to formal employment/sustainable self-employment for persons with disabilities.

#### **8.4 Cost of Disability**

- Measures will be put in place to mediate the disability-related costs to households and SMMEs owned by persons with disabilities to ensure equality of outcome.

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## **CHAPTER 8: SUPPORTING SUSTAINABLE INDEPENDENT LIVING IN THE COMMUNITY**

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### **8.1 Introduction**

*"Independent Living does not mean that we want to do everything by ourselves, do not need anybody or like to live in isolation. Independent Living means that we demand the same choices and control in our every-day lives that our non-disabled brothers and sisters, neighbors and friends take for granted.*

*We want to grow up in our families, go to the neighborhood school, use the same bus as our neighbors, work in jobs that are in line with our education and interests, and raise families of our own. We are profoundly ordinary people sharing the same need to feel included, recognized and loved."*

Dr. Adolf Ratzka

Persons with disabilities have an equal right to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.

The National Development Plan 2030 envisages community spaces that are liveable, equitable, sustainable, resilient and efficient, and support economic opportunities and social cohesion.

Enabling persons with disabilities to live in their communities in barrier-free environments, and providing those requiring support to participate in community life,



will therefore contribute towards the achievement of the NDP 2030 vision for social cohesion.

A number of articles in the Convention on the Rights of Persons with Disabilities identify obligations and measures to be taken to enable persons with disabilities to live independently in the community:

- Article 8: Accessibility – Awareness raising
- Article 9: Accessibility
- Article 19: Living independently and being included in the community
- Article 20: Personal mobility
- Article 23: Respect for and the family
- Article 25: Health
- Article 26: Habilitation and rehabilitation
- Article 28 - Adequate standard of living and social protection
- Article 30 - Participation in cultural life, recreation, leisure and sport

## 8.2 Problem Statement

The right of persons with disabilities to participate fully in community life remains severely constrained by the lack of access to the built environment, transport systems as well as information. The ability of the majority of persons with disabilities to live independently in their communities is furthermore severely constrained by the lack of an agreed upon and costed basket of services promoting independent living, as well as the lack of coordination in social services provisioning at community level. Municipalities are currently not taking responsibility for ensuring that community living is accessible to persons with disabilities.

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. Access to affordable and relevant rehabilitation services remains a challenge for persons with disabilities in particular in rural areas. 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. Community-Based Rehabilitation (CBR), which

should constitute a key pillar of any independent living programme, is still predominantly NGO-driven and often controlled by service providers, not representative organisations of persons with disabilities.

### **8.3 Description**

The development of a sustainable disability support system which is person-centred and self-directed, maximising opportunities for independence and participation in the economic, social and cultural life of the community, and which is responsive to the particular needs and circumstances of persons with complex and high needs for support is required to facilitate independent living in the community.

Improving provision of accessible and well-designed housing and neighbourhoods with choice for persons with disabilities about where they live, and move about the community, and making communication and information systems accessible, will contribute significantly to improving the independent living status of persons with disabilities.

To enable persons with disabilities to live independently in the community requires coordination of a number of entitlements and services at community level, among others:

- Persons with disabilities should be able to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;
- Persons with disabilities should have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- Community services and facilities for the general population should be accessible on an equal basis to persons with disabilities and should be responsive to their needs;
- Persons with disabilities should have access to adequate financial resources to cover the additional cost of living associated with disability.
- The built environment, transport systems and information systems should be fully accessible for use by persons with disabilities.



#### **8.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- Persons with disabilities have a right to live as equal members of their communities by participating equally with others in any activity and service intended for the general public. This requires that barriers to participation be identified and removed, possibly requiring changes to laws, policies, institutions, and environments.
- New and existing legislation, standards, policies, strategies, plans and budgets need to incorporate principles of universal design and reasonable accommodation provisioning.
- Targeted programmes and services to ensure that the diverse needs of persons with disabilities are adequately met must be underpinned by effective planning, adequate allocation of human resources and sufficient financial investment, and above all, coordination.
- Representative organisations of persons with disabilities (DPOs) should be consulted throughout the design-planning-implementation-monitoring-evaluation value chain.

#### **8.5 Desired Outcomes and Indicators**

Persons with disabilities live in accessible and well-designed communities with services and opportunity for full inclusion in social, economic, sporting and cultural life.

#### **8.6 Policy Directive 9: Sustainable Independent Living in the Community**

##### **9.1 *Spatial Planning and Human Settlement Design***

- Human settlement design should ensure that persons with disabilities are able to move about freely with their families and choose where and with whom they live. This requires a review of current spatial and human settlement planning design approaches, as well as retrospective upgrading of existing human settlement design to improve accessibility;

**9.2 Personal Assistance Services**

- Persons with disabilities requiring assisted independent living should have access to relevant integrated support services that enables them to live in the community;
- Persons with disabilities currently residing in institutional care facilities should be reintegrated into their communities through support services, which could include transformation of care facilities into community living programmes;
- Subsidisation of disability-specific services will be congruent with the actual cost of the cost of services;

**9.3 Integrated Development Planning**

- Municipalities should ensure that all Integrated Development Plans (IDPs) and budgets make provision for coordinated and integrated independent living support plans;

**9.4 Accessible transport**

- Public and private transport systems should be designed and retrofitted to enable persons with disabilities to utilise the entire transport value chain without barriers;

**9.5 Access to Information**

- Persons with disabilities and their families should have timeous access to information on impairments, disability services, reasonable accommodation, independent living support services as well as recourse mechanisms should their rights be infringed upon.

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## CHAPTER 9: STRENGTHENING THE REPRESENTATIVE VOICE OF PERSONS WITH DISABILITIES

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### 9.1 Introduction

Being able to take decisions that affect one's standard of living – where you go to school, where you live, with whom you live, who you form relationships with, where you work and what work you do – is an unknown concept for many persons with disabilities. The principle of self-representation is therefore paramount in ensuring an adequate standard of living, and goes hand in hand with the concepts of empowerment, participation and independent living.

Strong organisations of persons with disabilities are central to this empowerment and participation process. Organisations of persons with disabilities, popularly known as disabled people's organisations or DPOs, and acknowledged as representative organisations of persons with disabilities in the UNCRPD, are controlled by persons with disabilities themselves constitute a majority of the overall staff and board, and are well-represented in all levels of the organisation. It includes organisations of parents of children with disabilities where a primary aim of these organisations is empowerment and the growth of self-advocacy of persons with disabilities.

Strengthening the representative voice of persons with disabilities is a prerequisite for inclusion of the voice of persons with disabilities in two of the five long-term nation building goals of the NDP 2030 -

- *Promoting active citizenry and broad-based leadership* – The NDP notes that citizen participation has an important role to play in bringing about transformation, as citizens need to help shape the development process and hold the government to account for the quality of services it delivers. The White Paper on Local Government (1998) encourages municipalities to find ways of structuring participation to enhance, rather than impede the delivery process. While formal, generalised structures of participation were established through legislation, municipalities are also encouraged to develop their own mechanisms to enable the mayoral executive, municipal management, the local council, ward committees and communities to participate together in decision-making. Active citizenship requires inspirational leadership at all levels of society.
- *Achieving a social compact that will lay the basis for equity, inclusion and prosperity for all* – The NDP notes that meaningful social contracts are required

to help propel South Africa onto a higher developmental trajectory as well as to build a more cohesive and equitable society. The foundation of these partnerships must be buy-in by all stakeholders to a clearly articulated vision. The stakeholders must have a shared analysis of constraints and be committed to finding solutions. The contract/partnership must offer attractive (indeed compelling) benefits to each party and all parties should believe that the necessary sacrifices are relatively equitably shared amongst all participants.

## **9.2 Problem Statement**

South Africa currently does not have a system to register representative organisations of persons with disabilities for purposes of self-advocacy and to set standards for consultation with these organisations on all matters impacting on the lives of persons with disabilities.

There is also currently no National Federation of DPOs which can act as a clearing house for advocacy and monitoring efforts.

Children, young persons and women with disabilities, as well as persons with psychosocial, cognitive and/or neurological impairments do not have strong national representative organisations through which they can self-advocate.

## **9.3 Description**

DPOs should be empowered through legislation and financial support to do evidence-based advocacy for the rights of persons with disabilities at national, provincial and local level, and to participate in the monitoring of the implementation of the National Disability Rights Policy, sector policies and programmes as well as the domestication of international treaties.

## **9.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- Persons with disabilities have a right to be represented through DPOs in all matters and processes impacting on their lives;
- Disability rights advocacy should be free from conflict of interest and independent from the broader service system that provides support to persons with disabilities;
- Funding of disability advocacy should be transparent, equitable and accountable and should give preference to DPOs;

- Disability rights advocacy promotes the interests and wellbeing of persons with disabilities and promotes their full and valued inclusion as contributing and participating members of the community;
- Disability rights advocacy seeks to influence positive systemic changes in legislation, policy and service practice and works towards promoting inclusive communities and awareness of disability issues;
- Disability rights advocacy promotes leadership and capacity building by persons with disabilities;
- Disability rights recognises and respects the diversity of persons with disabilities;
- Disability rights advocacy fosters effective strategic alliances to develop capacity to identify and respond to the needs of persons with disabilities;

## 9.5 Desired Outcomes and Indicators

Persons with disabilities participate as equal citizens in all aspects of community life, stand for election as public representatives, provide leadership to their communities, and represent themselves on issues affecting their lives.

## 9.6 Policy Directive 10: Strengthening the Representative Voice of Persons with Disabilities

### 10.1 *The Right to Self-representation*

- Representative organisations of persons with disabilities should represent their constituencies in the development and review of all laws, policies, projects and services which impact on the lives of persons with disabilities;
- Government institutions at all levels and contexts of governance are required to consult representative organisations of persons with disabilities in the design, budgeting, implementation and monitoring of legislation, programmes and services to the public in general, as well as services and programmes designed specifically for persons with disabilities.
- Representative organisations of persons with disabilities should be reimbursed by all public sector institutions for participation costs in policy development and review processes, as well as monitoring and evaluation processes, at all levels of governance;
- Persons with disabilities should be represented on all governing bodies of institutions impacting on the lives of persons with disabilities through nomination by relevant representative organisations of persons with



disabilities. This will require review of legislation and policies governing the composition of governing structures;

#### **10.2 Funding of Representative Organisations of Persons with Disabilities**

- Representative organisations of persons with disabilities should receive state funding for evidence-based research to inform advocacy and support monitoring and evaluation;

#### **10.3 Recognition of Representative Organisations of Persons with Disabilities**

- The designated national disability rights focal point will develop enforceable minimum norms and standards for consultation with representative organisations of persons with disabilities;
- Representative organisations of persons with disabilities will apply for recognition to the designated national disability rights focal point for purposes of participation in the national disability rights machinery, as well as sectoral policy development and review and monitor and evaluation processes. The designated national disability rights focal point will in turn inform national departments and public entities, provincial administrations, as well as municipalities of the relevant DPOs which should be included in public participation platforms for purposes of policy development and review and monitoring and evaluation.

#### **10.4 Public Participation and Consultation Programmes**

- All government institutions will ensure that public participation and consultation processes are accessible to persons with disabilities. This will include making use solely of venues that are fully accessible, and ensuring that reasonable accommodation measures such as sign language interpretation, sub-texting, alternative print formats are available on demand;

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## CHAPTER 10: BUILDING A DISABILITY RIGHTS-RESPONSIVE PUBLIC SERVICE

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### 10.1 Introduction

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.

An efficient, effective and development oriented public service that delivers services to its citizens in an equitable manner is an essential element of a capable and developmental state.

The NDP 2030 notes that "*Disability must be integrated into all facets of planning, recognising that there is no one-size-fits-all approach*".

Mainstreaming disability considerations across the government-wide planning system requires consensus on priorities, indicators as well as targets.

Municipalities adopt five year Integrated Development Plans (IDPs) which direct all public sector spending within their area of jurisdiction. The Local Government Municipal Systems Act (MSA) 32 of 2000 mandates municipalities to consult and facilitate the participation of local communities in identifying their development needs and priorities when developing Integrated Development Plans (IDPs). The Act compels municipalities to take into account the specific needs of persons with disabilities and other disadvantaged groups. The IDP is therefore an important tool in synergising and coordinating sector plans aimed at removing barriers and providing services to persons with disabilities at community level.

The Government Wide Monitoring and Evaluation System is an over-arching policy strategy for monitoring and evaluation of South Africa's development and institutional initiatives (inclusive of all spheres of government and state owned enterprises). It is aimed at providing an integrated, inclusive strategy of monitoring and evaluation principles, practices and standards to be used by government and its institutions at national, provincial and local level. The overall objective of the government-wide monitoring and evaluation framework is to improve the effectiveness of government so that greater development impact can be achieved.

## 10.2 Problem Statement

The mainstreaming of disability considerations across all government planning, budgeting, implementation and monitoring processes remains a challenge 20 years after the onset of democracy, 17 years after the release of the White Paper on an Integrated National Disability Strategy and 7 years after the ratification of the UNCRPD.

Current planning and budgeting processes often do not take into consideration the design requirements that will ensure that persons with disabilities have equal access to services targeting the general population. Services designed specifically for persons with disabilities furthermore often isolate rather than integrate persons with disabilities in opportunities and activities of their communities.

Monitoring and evaluation of implementation of government plans therefore often do not focus on the impact services and development programmes have had on the lives of persons with disabilities, and to what extent government spend has reduced inequalities between able-bodied South Africans and citizens with disabilities.

Policy review and design of programmes and services often lack evidence-based research on the exclusion and/or successful inclusion of persons with disabilities, as disability-related research is currently in the main not directed to inform the national disability rights agenda, but is to a large extent still conducted within the medical model approach (impairment-deficit focus), and lack a system of informing government planning.

## 10.3 Description

An efficient, effective and development oriented public service that delivers services to its citizens in an equitable manner is an essential element of a capable and developmental state. Disability responsive planning and budgeting is about ensuring that government plans and budgets mainstream disability considerations so that persons with disabilities have equal access to services and opportunities compared to their able-bodied peers.

This requires that disability considerations be mainstreamed in all planning processes, with a particular focus on (i) equality of outcomes; (ii) universal design; (iii) the removal of barriers; (iv) reasonable accommodation measures and (v) redress, and that a monitoring and evaluation system be put in place which provides an assessment of the impact of the implementation of policies, programmes, services and public sector spend on the lives of persons with disabilities.



Equitable service delivery requires well-run and effectively coordinated state institutions with skilled and accountable public servants, as well as functional institutional mechanisms to facilitate effective and efficient cooperative governance. Public institutions therefore need to ensure that they develop in-house capacity to mainstream disability considerations effectively across all programmes and services-

- In-depth understanding, knowledge and experience of mainstreaming of disability considerations, including infusing universal design principles across the planning-implementation-monitoring value chain of all programmes, and putting in place reasonable accommodation measures aimed at removing barriers to participation of persons with disabilities;
- In-depth understanding, knowledge and experience of universal design;
- In-depth knowledge of the obligations contained in the Convention on the Rights of Persons with Disabilities and other international and regional rights instruments;
- Experience of working with organs of civil society;
- Experience and knowledge in coordinating advocacy campaigns, monitoring and evaluation and institutional support.

#### **10.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- All citizens should have equal access to all public services;
- All citizens should benefit equally from public services;
- Persons with disabilities that require reasonable accommodation measures be put in place across the service delivery value chain to achieve equality of outcome;
- It is the responsibility of every public servant to equip themselves with the required knowledge and skills to serve all citizens equally.

#### **10.5 Desired Outcomes and Indicators**

An efficient, effective and development oriented public service that delivers services to its citizens in an equitable manner, and which complies to international and national human rights obligations.

## 10.6 Policy Directive 11: Building a Disability Rights Responsive Public Service

### **11.1 Disability Responsive Planning, Budgeting, Implementation and Monitoring**

All public institutions will include in their Annual Performance Plans/ Integrated Development Plans, a funded Universal Design Access Plan which will ensure that:

- Persons with disabilities have the same opportunities as other people to access the services, programmes and any events organised by such an institution aligned with the requirements of the UNCRPD and PEPUDA
- Persons with disabilities have the same opportunities as other people to access the buildings and other facilities of the institution;
- Persons with disabilities receive information in a format that will enable them to access the information as readily as other people are able to access it;
- Persons with disabilities receive the same level and quality of service from the staff of the institution as other people receive from the staff of that institution;
- Persons with disabilities have the same opportunities as other people to make complaints to the institution;
- Persons with disabilities have the same opportunities as other people to participate in any public consultation by the institution.
- All public institutions will report on quarterly and annual basis about the implementation of the Universal Design Access Plan. Such plans will be built into Annual Performance Plans, MTEF phasing and longer planning phasing.

### **11.2 National Disability Rights Machinery**

The President of the Republic of South Africa will designate the national disability rights focal point, which will be responsible for overall coordination of the national disability rights programme of action in government, and which will serve as secretariat of the National Disability Rights Machinery;

Organisational design for disability rights focal points will be institutionalised across the public service, and all public institutions will appoint/designate a disability rights focal point to

- Conduct an analysis and alignment of all legislation, policies, programmes and services of government institutions to ensure effective mainstreaming of disability considerations and implementation of the NDRP;

- Facilitate capacity development to ensure that government institutions are able to account for disability responsive planning and budgeting;
- Guide and support government institutions to ensure that they are able to provide accurate and timeous information for purposes of international treaty reporting;
- Facilitate that performance agreements of senior managers reflects the departmental obligations;
- Provide guidance and support to units within government institutions, the private sector and civil society to achieve the above;
- Report on implementation of the institutional Universal Design Access Plan

The National Disability Rights Machinery will oversee the development and implementation of the National Disability Rights Programme of Action, will be supported with an independent secretariat, and will consist of:

- Government
- National disability organisations
- Institutions promoting human rights and democracy, i.e.
- The private sector
- Research institutions

Government-wide machineries shall be constituted at:

- *Intra-departmental level*, responsible for providing strategic direction and technical support in the delivery of equality and elimination of discrimination against persons with disabilities;
- *Inter-departmental level (national and provincial)*, providing strategic direction and technical support in the delivery of equality and elimination of discrimination against persons with disabilities;
- *Inter-provincial level*, responsible for the oversight, management, co-ordination of the implementation of programmes for persons with disabilities in all provinces in order to ensure standards are maintained across provinces;
- *District level*, responsible for coordination of action and sharing of experiences between local municipalities in a district;
- *Local level*, providing support to ward committees to drive local action aimed at promoting and protecting the rights of persons with disabilities;
- *Government-Civil Society Interface* - Provision should be made for full participation of civil society structures at national, provincial and local level, particularly in issue-based working groups.



**11.3 National Research Agenda**

- The designated national disability rights focal point will at five year intervals coordinate the development of the National Disability Research Agenda to articulate national priorities, focus and direction for disability rights related research in South Africa with the aim of providing sound evidence for future policy and practice decisions that will ultimately lead to improved outcomes for South Africans with disabilities.

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**CHAPTER 11: INTERNATIONAL COOPERATION**

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**11.1 Introduction**

Article 32 of the UNCRPD requires that States Parties, in recognition of the importance of international cooperation and its promotion, and in support of national efforts for the realisation of the purpose and objectives of the present Convention, will undertake appropriate and effective measures to promote international cooperation.

Article 35 of the UNCRPD requires of States Parties to submit to the Committee on the Rights of Persons with Disabilities, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned, and subsequent reports at least every four years or whenever the Committee requests intermittent reports. The Article emphasises the importance of preparing reports in an open and transparent process and to give due consideration to the participation of representative organisations of persons with disabilities.

Article 40 of the UNCRPD requires of States Parties to participate in the annual Conference of States Parties to the UNCRPD to share good practice and monitor implementation of the UNCRPD at country level.

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).

South Africa is a member of the WHO, the ILO, Rehabilitation International and others, and has contributed technical expertise through these channels.

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

## **11.2 Problem Statement**

South Africa has not paid enough attention to mainstreaming disability in country-to-country bilateral agreements signed since ratification of the UNCRPD in 2007, particularly in south-south cooperation.

Similarly, insufficient attention has been given to mainstreaming disability considerations into South Africa's missions abroad, either through self-representation of persons with disabilities in the diplomatic corps, or by showcasing South Africa's disability agenda to the outside world.

## **11.3 Description**

South Africa plays an important role in influencing the international disability rights agenda, and the mainstreaming of disability considerations in all bilateral and multi-lateral agreements should therefore be prioritised.

The country needs to ensure that it cooperates with other countries and international development agencies with the knowledge that it is compliant with its international treaty reporting obligations.

## **11.4 Principles informing Coordination of Services, Budgeting and Resource Allocation**

- All international cooperation, including international development programmes, should be inclusive of and accessible to persons with disabilities;
- South Africa is committed to honour its international treaty obligations.

### 11.5 Desired Outcomes and Indicators

Persons with disabilities benefit equally from international cooperation and development programmes such as the Post 2015 Development Agenda and bilateral and multi-lateral agreements.

Development outcomes are strengthened as South Africa learns from international good practice and share its own achievements with the international community.

South Africa is compliant to its international treaty obligations.

### 11.6 Policy Directive 12: International Cooperation

- All bilateral and national agreements will mainstream disability considerations, with a particular focus on
- Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices government-to-government; business-to-business and NGO-to-NGO;
- Facilitating cooperation in research and access to scientific and technical knowledge;
- Providing technical and economic assistance in the fields of accessible and assistive technologies.
- South Africa will honour its international disability rights treaty reporting obligations by ensuring that its periodic reports are timeously deposited with the UN and AU respectively;
- South Africa will participate in the annual Conference of States Parties to the CRPD and biennial Conference of African Ministers of Social Development/Disability.



# PART THREE

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## CHAPTER 12: MONITORING AND EVALUATION OF THE NDRP

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### 12.1 Introduction

Monitoring progress in the promotion and protection of the rights of persons with disabilities and mainstreaming of disability considerations, and therefore implementation of the NDRP, will draw from three data terrains, each of which is the subject of a dedicated policy describing what is required for them to be fully functional.

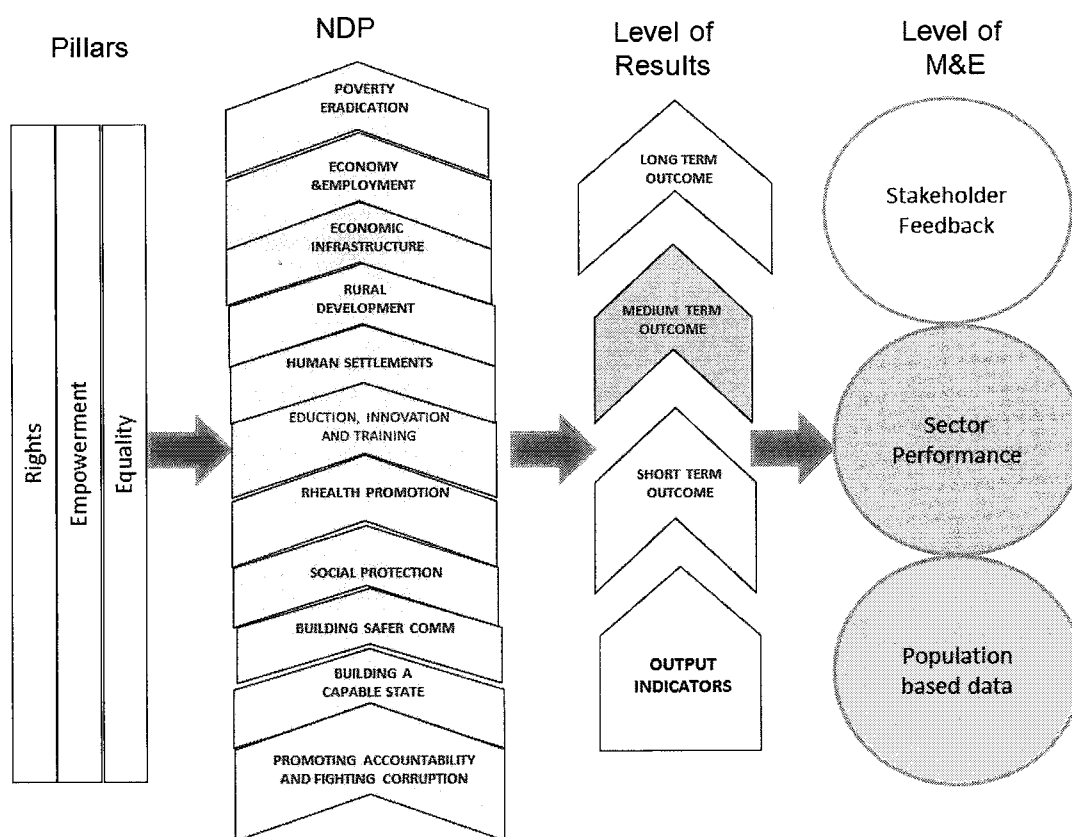
### 12.2 Principles for Monitoring and Evaluation

Principles include:

- i. **Consistency*** – where possible a consistent approach should be adopted to ensure economies of scale, share services and encourage benchmarking. This does not necessarily mean that the nature of the measures will be identical, but rather that a baseline set of measures are applied consistently.
- ii. **Transparency*** – information disclosure regarding the results, process, substantive measures when developing the system and realignment following monitoring and evaluation will be critical.
- iii. **Relevance*** – any number of measurement processes can be established, however, measurement and evaluation should bear direct relevance to the overall strategic objectives and priorities of (i.e. there must be a good reason and this reason should be easily understood.).
- iv. **Flexibility*** - Appropriate mechanisms to ensure matching forms of measurement should be sought in order to ensure that like comparisons are made and that the organisational context is adequately recognized.
- v. **Manageability*** – monitoring and evaluation processes have the potential to be overly complicated. A sequenced and practical approach should be adopted that aligns organizational resources and needs.

- vi. Timeous** – data should be collected timeously in order to ensure that it bears relevance to the current context. However, periodic, in addition to continuous, data should be defined in order to reduce the complexity of the system.

### 12.3 Conceptual Framework



### 12.4 M&E Pillars

Three pillars were considered for monitoring and evaluation of the NDRP. These include:

- **Rights Pillar-** A 'rights-based pillar essentially argues that all people are entitled to universal human rights and development should be oriented to meeting those rights. With a rights-based approach, effective action for development moves from the optional realm of charity into the mandatory realm of law, with identifiable rights, obligations, claim-holders and duty-holders. What is more, adopting a rights-based approach opens the door for the use of a rich and

growing pool of *information, analysis and jurisprudence* developed in recent years on the requirements of adequate housing, health, food, childhood development, the rule of law, and virtually all other elements of sustainable human development

The rights-based approach regards universal access to be central to realizing the rights in respect of access. This access refers to amongst other elements, access to buildings, products and environments for all, people with disabilities. Integral to access are barriers experienced by people with disabilities in participating in mainstream society. These barriers include physical, informational, economic and social to name a few. The consequence of these barriers is the lack of access to services including education, health care, employment, transportation and justice.

- **Empowerment Pillar-** Empowerment is a term widely used in different contexts. It has different meanings in different socio-cultural and political contexts. Most definitions of the concept focus on issues of gaining power and control over decisions and resources that determine the quality of one's life. Most also take into account structural inequalities that affect entire social groups rather than focus only on individual characteristics. In a sociological context, empowerment often addresses members of groups that social discrimination processes have excluded from decision making process through, for example, discrimination based on disability, gender, race, ethnicity or religion. Persons with disabilities specifically have been excluded in terms of gender, access, ability and other forms. The empowerment approach is therefore identified as a core pillar for enabling this targeted group to avail of and access those opportunities that exist. It also includes encouraging, and developing the skills for self-sufficiency, with a focus on eliminating need for charity or welfare in the individuals of the group.
- **Equality Pillar -** The aim of equality is the opportunities and life chances that are available to persons with disabilities. It signifies an aspiration to work towards a society in which persons with disabilities are able to live equally fulfilling lives and to equally contribute to designing the society they want. Measurements of equality might address changes in the outcomes of a particular policy, programme or activity or changes in the status or situation of people with disabilities, such as levels of poverty or participation. The equality indicators improve planning and programming. They can be used to evaluate the outcomes of service delivery for people with disabilities and mainstream interventions and policies and help reveal barriers to achieving success. They can provide vital information for adjusting programmes and activities so that they improve the achievement of goals and do not create unintended adverse impacts.

Equality indicators for persons with disabilities can be used to hold institutions accountable for their commitments. Indicators and data can make visible the gaps between the commitments many governments and other institutions have made and their implementation and impact. Indicators can be used to hold political leaders and implementation agencies accountable for their actions, or lack of action. The equality indicators for persons with disabilities can help to stimulate change through the data collection processes. For example, discussions in focus groups or in individual interviews can help raise awareness of particular issues. They can stimulate discussion and inspire recognition amongst participants of common experiences related to disability.

## 12.5 M&E Indicators

The development and presentations of the indicators has been drawn from the outcomes linked to the National Development Plan and is detailed under each of the Strategic Objectives. The indicators were tested for:

- **Reliability:** the indicator should be accurate enough for its intended use and respond to changes in the level of performance.
- **Well-defined:** the indicator needs to have a clear, unambiguous definition so that data will be collected consistently, and be easy to understand and use.
- **Verifiable:** it must be possible to validate the processes and systems that produce the indicator.
- **Appropriate:** the indicator must avoid unintended consequences and encourage service delivery improvements, and not give managers incentives to carry out activities simply to meet a particular target.
- **Relevant:** the indicator must relate logically and directly to an aspect of the institution's mandate, and the realisation of strategic goals and objectives.

## 12.6 M&E Domains

The NDRP will be monitored against three domains:

- *Tracking Statistical Trends* - The tracking of trends (current and evolving features and issues over time) in relation to the rights of persons with disabilities.

This data stream shall comprise statistical data on the status of persons with disabilities and related rights issues. Data will be obtained primarily from the

existing data sets; data produced by other government departments and parastatals, such as StatsSA, CSIR and the HSRC; and data gleaned from academic research institutes e.g. The National Income Dynamic Study (NIDS) conducted by University of Cape Town).

- *Programmatic Performance* - Performance focuses on the interventions that ensure that outcomes are being met in an effective and efficient manner.

This data stream ensures that there is evidence that persons with disabilities are considered and integrated into government programmes and policies. This stream will encompass a largely quantitative evidence base. The data for this stream will be primarily sourced through government's existing performance monitoring frameworks.

- *Stakeholder Feedback*

This participatory approach is important to the qualitative M&E of human rights, and empowerment of marginalised people, whose voices are often not included in high level documents. It will facilitate the incorporation of qualitative data and evaluation ensuring that stakeholder groups are involved in the system.

## 12.7 Reporting

The designated national disability focal point will publish an annual report on progress being made in the implementation of the NDRP, and will conduct an evaluation on the impact of implementation of the NDRP at five year intervals.

An independent monitoring mechanism will be established through the passing of regulations for Section 5 of the South African Human Rights Act, taking into account the Paris Principles, and with an adjustment to the SAHRC budget to enable it to establish the required institutional mechanisms and programmes. The independent monitoring mechanism will be convened by the South African Human Rights Commission, and will be responsible for, among others:

- Reporting on human rights matters as it affects persons with disabilities;
- Contributing to periodic reporting to United Nations treaty bodies and committees, as well as the Africa Commission on Human and People's Rights and its relevant committees;
- Making recommendations to Government with regards the harmonisation of national legislation, regulations and practices with international human rights standards;

- Participating in national advocacy campaigns promoting the rights of persons with disabilities;
- Consider and process complaints about human rights violations and discrimination perpetrated against persons with disabilities.

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## CHAPTER 10: IMPLEMENTATION GUIDELINES

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The Implementation Guidelines for the National Disability Rights Policy consists of

- An implementation matrix, with outcome and performance indicators for every policy directive, as well as allocation of responsibilities.
- The National Programme of Action to Promote and Protect the Rights of Persons with Disabilities for Medium Term Strategic Framework 2014-2019.

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## CONCLUSION

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Promoting and protecting the rights of persons with disabilities by breaking barriers to access and participation, making available reasonable accommodation measures to strengthen participation, reducing compounded marginalisation, empowering persons with disabilities, supporting them to live independently as equal members of their communities and ensuring that they can exercise their right to represent themselves in all matters affecting their lives is the responsibility of every public representative, civil servant, policy-maker, researcher, company owner, community leader and citizen.

Substantive equality for persons with disabilities will only be achieved if we all make it our business to equip ourselves with the right attitude, knowledge and skills.

This however also requires that representative organisations of persons with disabilities take responsibility to put in place measures that will strengthen their capacity to empower their constituencies with courage, knowledge and skills that will enable them to advocate and participate in policy development and monitoring the implementation outcomes of these policies at all spheres of governance, but in particular at local level.

This requires a social pact between rights-holders and duty-bearers. It also requires that persons with disabilities as rights-holders have recourse if duty-bearers fail in their responsibilities. The NDRP will therefore form the foundation for the development of disability specific legislation to facilitate enforcement of the policy directives contained in the NDRP against minimum norms and standards.

National Disability Rights Policy will form the basis for the development of Disability specific legislation.

The Department of Social Development thank all our partners and stakeholders for your invaluable contributions towards finalising national disability rights policy. We in particular express appreciation to the United Nations Partnership to Promote the Rights of Persons with Disabilities (PRPD) which financial contribution, through the Multi-Party Fund, has enabled the Department to expedite and deepen the process of participatory policy development.





# PART FOUR

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## CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

### **Preamble The States Parties to the present Convention,**

(a) Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

(b) Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

(c) Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination,

(d) Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

(e) Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others,

(f) Recognizing the importance of the principles and policy guidelines contained in the World Programme of Action concerning Disabled Persons and in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities in influencing the promotion, formulation and evaluation of the policies, plans, programmes and actions at the national, regional and international levels to further equalize opportunities for persons with disabilities,

(g) Emphasizing the importance of mainstreaming disability issues as an integral part of relevant strategies of sustainable development,

- (h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person,
- (i) Recognizing further the diversity of persons with disabilities,
- (j) Recognizing the need to promote and protect the human rights of all persons with disabilities, including those who require more intensive support,
- (k) Concerned that, despite these various instruments and undertakings, persons with disabilities continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,
- (l) Recognizing the importance of international cooperation for improving the living conditions of persons with disabilities in every country, particularly in developing countries,
- (m) Recognizing the valued existing and potential contributions made by persons with disabilities to the overall well-being and diversity of their communities, and that the promotion of the full enjoyment by persons with disabilities of their human rights and fundamental freedoms and of full participation by persons with disabilities will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,
- (n) Recognizing the importance for persons with disabilities of their individual autonomy and independence, including the freedom to make their own choices,
- (o) Considering that persons with disabilities should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them,
- (p) Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,
- (q) Recognizing that women and girls with disabilities are often at greater risk, both within and outside the of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation,
- (r) Recognizing that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling

obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

(s) Emphasizing the need to incorporate a gender perspective in all efforts to promote the full enjoyment of human rights and fundamental freedoms by persons with disabilities,

(t) Highlighting the fact that the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities,

(u) Bearing in mind that conditions of peace and security based on full respect for the purposes and principles contained in the Charter of the United Nations and observance of applicable human rights instruments are indispensable for the full protection of persons with disabilities, in particular during armed conflicts and foreign occupation,

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

(w) Realizing that the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights,

(x) Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities,

(y) Convinced that a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities will make a significant contribution to redressing the profound social disadvantage of persons with disabilities and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Have agreed as follows:

## **Article 1 - Purpose**

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

## **Article 2 - Definitions**

For the purposes of the present Convention:

"Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

"Language" includes spoken and signed languages and other forms of non-spoken languages;

"Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

## **Article 3 - General principles**

The principles of the present Convention shall be:

- (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination;
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

#### **Article 4 - General obligations**

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;



(f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;

(i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

#### **Article 5 - Equality and non-discrimination**

1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.

2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.

4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

#### **Article 6 - Women with disabilities**

1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.

2. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.

#### **Article 7 - Children with disabilities**

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.

3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in

accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

#### **Article 8 - Awareness-raising**

1. States Parties undertake to adopt immediate, effective and appropriate measures:

(a) To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;

(b) To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;

(c) To promote awareness of the capabilities and contributions of persons with disabilities.

2. Measures to this end include:

(a) Initiating and maintaining effective public awareness campaigns designed:

(i) To nurture receptiveness to the rights of persons with disabilities;

(ii) To promote positive perceptions and greater social awareness towards persons with disabilities;

(iii) To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;

(b) Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;

(c) Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;

(d) Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

#### **Article 9 - Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons

with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

**Article 10 - Right to life**

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

**Article 11 - Situations of risk and humanitarian emergencies**

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

**Article 12 - Equal recognition before the law**

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
5. Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.

**Article 13 - Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

**Article 14 - Liberty and security of the person**

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

**Article 15 - Freedom from torture or cruel, inhuman or degrading treatment or punishment**

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

**Article 16 - Freedom from exploitation, violence and abuse**

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

**Article 17 - Protecting the integrity of the person**

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

**Article 18 - Liberty of movement and nationality**

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others, including by ensuring that persons with disabilities:

(a) Have the right to acquire and change a nationality and are not deprived of their nationality arbitrarily or on the basis of disability;

(b) Are not deprived, on the basis of disability, of their ability to obtain, possess and utilize documentation of their nationality or other documentation of identification, or to utilize relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right to liberty of movement;

(c) Are free to leave any country, including their own;

(d) Are not deprived, arbitrarily or on the basis of disability, of the right to enter their own country.

2. Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.

#### **Article 19 - Living independently and being included in the community**

States Parties to this Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

(a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

(b) Persons with disabilities have access to a range of in-, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

(c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

#### **Article 20 Personal mobility**

States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by:



- (a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost;
- (b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost;
- (c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities;
- (d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities.

#### **Article 21 - Freedom of expression and opinion, and access to information**

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- (b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

#### **Article 22 - Respect for privacy**

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her

privacy, family, or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

### **Article 23 - Respect for and the family**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:

(a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized;

(b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided;

(c) Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such

separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

#### **Article 24 - Education**

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and life long learning directed to:

(a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

(c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

(a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;

(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;

(c) Reasonable accommodation of the individual's requirements is provided;

(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;

(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;

(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

#### **Article 25 - Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;
- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

#### **Article 26 - Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
- (b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

#### **Article 27 - Work and employment**

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;

(g) Employ persons with disabilities in the public sector;

(h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;

(j) Promote the acquisition by persons with disabilities of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

#### **Article 28 - Adequate standard of living and social protection**

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

- (d) To ensure access by persons with disabilities to public housing programmes;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programmes.

#### **Article 29 - Participation in political and public life**

States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:

(a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

- (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- (ii) Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;
- (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;

(b) Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:

- (i) Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;
- (ii) Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels.



**Article 30 - Participation in cultural life, recreation, leisure and sport**

1. States Parties recognize the right of persons with disabilities to take part on an equal basis with others in cultural life, and shall take all appropriate measures to ensure that persons with disabilities:

(a) Enjoy access to cultural materials in accessible formats;

(b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats;

(c) Enjoy access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoy access to monuments and sites of national cultural importance.

2. States Parties shall take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society.

3. States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

4. Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

(a) To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;

(b) To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;

(c) To ensure that persons with disabilities have access to sporting, recreational and tourism venues;

(d) To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

#### **Article 31 - Statistics and data collection**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

#### **Article 32 - International cooperation**

1. States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

(a) Ensuring that international cooperation, including international development programmes, is inclusive of and accessible to persons with disabilities;

(b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices;

(c) Facilitating cooperation in research and access to scientific and technical knowledge;

(d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

### **Article 33 - National implementation and monitoring**

1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.

2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.

### **Article 34 - Committee on the Rights of Persons with Disabilities**

1. There shall be established a Committee on the Rights of Persons with Disabilities (hereafter referred to as "the Committee"), which shall carry out the functions hereinafter provided.

2. The Committee shall consist, at the time of entry into force of the present Convention, of twelve experts. After an additional sixty ratifications or accessions to the Convention, the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members.

3. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence and experience in the field covered by the present Convention. When nominating their candidates, States Parties are invited to give due consideration to the provision set out in article 4.3 of the present Convention.

4. The members of the Committee shall be elected by States Parties, consideration being given to equitable geographical distribution, representation of the different forms of civilization and of the principal legal systems, balanced gender representation and participation of experts with disabilities.

5. The members of the Committee shall be elected by secret ballot from a list of persons nominated by the States Parties from among their nationals at meetings of the Conference of States Parties. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The initial election shall be held no later than six months after the date of entry into force of the present Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit the nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

7. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in paragraph 5 of this article.

8. The election of the six additional members of the Committee shall be held on the occasion of regular elections, in accordance with the relevant provisions of this article.

9. If a member of the Committee dies or resigns or declares that for any other cause she or he can no longer perform her or his duties, the State Party which nominated the member shall appoint another expert possessing the qualifications and meeting the requirements set out in the relevant provisions of this article, to serve for the remainder of the term.

10. The Committee shall establish its own rules of procedure.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention, and shall convene its initial meeting.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

13. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### **Article 35 - Reports by States Parties**

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a comprehensive report on measures taken to give effect to its obligations under the present Convention and on the progress made in that regard, within two years after the entry into force of the present Convention for the State Party concerned.

2. Thereafter, States Parties shall submit subsequent reports at least every four years and further whenever the Committee so requests.

3. The Committee shall decide any guidelines applicable to the content of the reports.

4. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports, repeat information previously provided. When preparing reports to the Committee, States Parties are invited to consider doing so in an open and transparent process and to give due consideration to the provision set out in article 4.3 of the present Convention.

5. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

#### **Article 36 - Consideration of reports**

1. Each report shall be considered by the Committee, which shall make such suggestions and general recommendations on the report as it may consider

appropriate and shall forward these to the State Party concerned. The State Party may respond with any information it chooses to the Committee. The Committee may request further information from States Parties relevant to the implementation of the present Convention.

2. If a State Party is significantly overdue in the submission of a report, the Committee may notify the State Party concerned of the need to examine the implementation of the present Convention in that State Party, on the basis of reliable information available to the Committee, if the relevant report is not submitted within three months following the notification. The Committee shall invite the State Party concerned to participate in such examination. Should the State Party respond by submitting the relevant report, the provisions of paragraph 1 of this article will apply.

3. The Secretary-General of the United Nations shall make available the reports to all States Parties.

4. States Parties shall make their reports widely available to the public in their own countries and facilitate access to the suggestions and general recommendations relating to these reports.

5. The Committee shall transmit, as it may consider appropriate, to the specialized agencies, funds and programmes of the United Nations, and other competent bodies, reports from States Parties in order to address a request or indication of a need for technical advice or assistance contained therein, along with the Committee's observations and recommendations, if any, on these requests or indications.

#### **Article 37 - Cooperation between States Parties and the Committee**

1. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate.

2. In its relationship with States Parties, the Committee shall give due consideration to ways and means of enhancing national capacities for the implementation of the present Convention, including through international cooperation.

#### **Article 38 - Relationship of the Committee with other bodies**

In order to foster the effective implementation of the present Convention and to encourage international cooperation in the field covered by the present Convention:

(a) The specialized agencies and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite specialized agencies and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee, as it discharges its mandate, shall consult, as appropriate, other relevant bodies instituted by international human rights treaties, with a view to ensuring the consistency of their respective reporting guidelines, suggestions and general recommendations, and avoiding duplication and overlap in the performance of their functions.

#### **Article 39 - Report of the Committee**

The Committee shall report every two years to the General Assembly and to the Economic and Social Council on its activities, and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

#### **Article 40 - Conference of States Parties**

1. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the present Convention.
2. No later than six months after the entry into force of the present Convention, the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

#### **Article 41 - Depositary**

The Secretary-General of the United Nations shall be the depositary of the present Convention.

**Article 42 - Signature**

The present Convention shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of 30 March 2007.

**Article 43 - Consent to be bound**

The present Convention shall be subject to ratification by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the Convention.

**Article 44 - Regional integration organizations**

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by this Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 45, paragraph 1, and article 47, paragraphs 2 and 3, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

**Article 45 - Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the



Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

#### **Article 46 - Reservations**

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.
2. Reservations may be withdrawn at any time.

#### **Article 47 - Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.
3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of this article which relates exclusively to articles 34, 38, 39 and 40 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

**Article 48 - Denunciation**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

**Article 49 - Accessible format**

The text of the present Convention shall be made available in accessible formats.

**Article 50 - Authentic texts**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

## **OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

The States Parties to the present Protocol have agreed as follows :

### **Article 1**

1. A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Rights of Persons with Disabilities ("the Committee") to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

2. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

### **Article 2**

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;
- (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (d) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (e) It is manifestly ill-founded or not sufficiently substantiated; or when
- (f) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

### **Article 3**

Subject to the provisions of article 2 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the State

Party. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

#### **Article 4**

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

2. Where the Committee exercises its discretion under paragraph 1 of this article, this does not imply a determination on admissibility or on the merits of the communication.

#### **Article 5**

The Committee shall hold closed meetings when examining communications under the present Protocol. After examining a communication, the Committee shall forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.

#### **Article 6**

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

#### **Article 7**

1. The Committee may invite the State Party concerned to include in its report under article 35 of the Convention details of any measures taken in response to an inquiry conducted under article 6 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 6.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

#### **Article 8**

Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 6 and 7.

#### **Article 9**

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

#### **Article 10**

The present Protocol shall be open for signature by signatory States and regional integration organizations of the Convention at United Nations Headquarters in New York as of 30 March 2007.

#### **Article 11**

The present Protocol shall be subject to ratification by signatory States of this Protocol which have ratified or acceded to the Convention. It shall be subject to formal confirmation by signatory regional integration organizations of this Protocol which have formally confirmed or acceded to the Convention. It shall be open for accession by any State or regional integration organization which has ratified,

formally confirmed or acceded to the Convention and which has not signed the Protocol.

#### **Article 12**

1. "Regional integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by the Convention and this Protocol. Such organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the Convention and this Protocol. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to "States Parties" in the present Protocol shall apply to such organizations within the limits of their competence.

3. For the purposes of article 13, paragraph 1, and article 15, paragraph 2, any instrument deposited by a regional integration organization shall not be counted.

4. Regional integration organizations, in matters within their competence, may exercise their right to vote in the meeting of States Parties, with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

#### **Article 13**

1. Subject to the entry into force of the Convention, the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth day after the deposit of its own such instrument.

#### **Article 14**

1. Reservations incompatible with the object and purpose of the present Protocol shall not be permitted.

2. Reservations may be withdrawn at any time.

**Article 15**

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

**Article 16**

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

**Article 17**

The text of the present Protocol shall be made available in accessible formats.

**Article 18**

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

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