

PART 6: STRATEGIC PILLARS FOR REALISING THE RIGHTS OF PERSONS WITH DISABILITIES

6.1 Pillar 1 – Removing Barriers to Access and Participation

"The new South Africa should be accessible and open to everyone. We must see that we remove the obstacles... Only then will the rights of disabled persons to equal opportunities become a reality".

Nelson Rolihlahla Mandela, 1995

The creation of barrier-free environments requires 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.

Accessibility lies at the heart of the right to human dignity – being able to live as an equal resident 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. A number of articles in the UNCRPD requires State Parties to take appropriate measures to ensure that persons with disabilities are able to access, on an equal basis with others, the physical environment, transportation, information and communications as well as other facilities and services open or provided to the public, both in urban and in rural areas. The Table below reflects the specific Articles of the UNCRDP that speak to removing barriers to access and participation.

RELEVANT UNCRDP ARTICLES
<p>Article 9: Accessibility This article emphasises that State Parties have legal obligations to ensure accessibility to persons with disabilities. In this vein, the development and implementation of national laws and policies that advance accessibility must be promoted. Accessibility can also be achieved by ensuring that services and information are tailored to the needs of persons with disabilities; by requiring the participation and inclusion of persons with disabilities; and by drawing attention to the most neglected groups within the spectrum of disability.</p>
<p>Article 11: Situations of risk and humanitarian emergencies This article deals with removing barriers to access in situations of risk and humanitarian emergencies and states that measures should be taken to ensure the protection and safety of persons with disabilities in situations of risk.</p>
<p>Article 20: Personal Mobility This article recognises personal mobility as an important element of access and states that measures must be taken to ensure that persons with disabilities enjoy personal mobility with the greatest possible independence in the manner and at the time of their choice, and at affordable cost.</p>

Article 21: Freedom of Expression and opinion and access to information

This article foregrounds accessibility in terms of expression, opinions and information. It states that appropriate measures should be taken 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

This article speaks to the accessibility in terms of social life. It states that measures must be taken 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.

Other relevant articles include:

- Article 3: General principles;
- Article 4: General obligations;
- Article 5: Equality and non-discrimination;
- Article 8: Awareness Raising

6.1.1 Focus Areas

The following six dimensions have to be addressed in order to remove barriers to access and participation:

- Changing attitudes and behaviour;
- Access to the built environment;
- Access to transport;
- Access to information and communication;
- Universal design and access; and
- Reasonable accommodation measures.

Addressing all the focus areas in their own right and as a holistic solution requires collective and concurrent action by law and policy makers, service providers, regulatory bodies, the private sector as well as rights holders and/or their representative organisations.

6.1.1.1 Changing Attitudes and Behaviour

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

The INDS, 1997 acknowledges the centrality the changing of attitudes and behaviour plays in the promotion and protection of the rights of persons with disabilities. It states that,

"One of the greatest hurdles disabled people face when trying to access mainstream programmes are negative attitudes. It is these attitudes that lead to the social exclusion and marginalisation of persons with disabilities"; and that,

"The changing of attitudes is not something that happens automatically or spontaneously. Attitude changing is a complex process which involves moving, in a series of stages, from one set of attitudes to another."

DIRECTIVES	DESCRIPTION
Develop and implement a Disability Rights Awareness and Plan	The Plan must be centred on an ongoing campaign across all sectors of society. It must be implemented by all social partners, and multi-dimensional while ensuring integration. Campaigns must be branded and targeted with themes that address the negative attitudes and beliefs about disability that influences people's behaviour in a way that is harmful to persons with disabilities and associates unfounded stigmas with disability. It must also broaden society's understanding and knowledge of perceived or actual impairments, how environmental aspects disable persons with impairments, and how attitudes influence behaviour and vice versa. Public awareness campaigns must also address harmful traditional beliefs associated with disabilities.
Develop and implement new human rights based disability related terminology	The development and implementation of new disability related and sensitive terminology based on human rights must be managed at a national level. The new terminology must be introduced and included in all the official languages of South Africa, as well as South African Sign Language. All government policies and legislation that get amended or revised and any new policies and legislation must incorporate and utilise the new terminology.
Integrate disability awareness into the curriculum of educational	Disability rights awareness training programmes must be integrated into the curricula of all education and training programmes. This must include training in all forms of alternate communication. For example the teaching of South

programmes	African Sign Language and the availability of Braille at schools, post school education and training institutions and at work places.
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6.1.1.2 Access to the Built Environment

The built environment includes all man-made surroundings that provide the setting for human activity, ranging from the large-scale civic surroundings to personal places.

Current legislation regulating the built environment is not fully compliant with either international treaty obligations or constitutional imperatives, as it does not facilitate or enforce the concept of universal design that will enable equitable access to the built environment.

The National Building Regulations and Building Standards Act, 1977, as well as the National Guidelines for Accessibility currently constitute the regulatory framework for accessibility to the built environment. For any building used by the public to conform to the requirements of the National Building Regulations, its facilities must meet the standards and measurements contained in the SANS 10400-S document published in 2011.

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

DIRECTIVES	DESCRIPTION
Conduct universal design audits of all existing infrastructure to establish the degree of compliance with the SABS minimum norms and standards for the use of people with disabilities.	The disability access of the built environment must include all public and private sector institutions and shared spaces. Quantified and costed plans must be developed to address the outcomes of the audits and the budget must be provided for implementation of the plan.
Develop a financing plan to retrofit	The plan must focus on raising the finances required to retrofit all public and privately owned buildings rendering

existing infrastructure	services to the public. The retrofitting must comply with the SABS minimum norms and standards.
Appoint and train infrastructure accessibility liaison officers	Infrastructure accessibility liaison officers must be provided with appropriate accredited training. These officers must be deployed and/or appointed as part of all infrastructure development project management teams. The trained officers must also advise on, and if necessary, develop built environment regulations and/or amendments to existing legislation to ensure that the concepts of universal design and barrier-free access are adhered to in terms of all built environment infrastructure.
Provide incentives for universally designed barrier-free infrastructure and built-environments	State and private sector provided incentives and reward systems must be initiated and developed towards promoting universally designed and accessible built-environments that meet regulated norms and standards. These incentives must be aimed at transforming the attitude of built-environment professionals towards designing barrier-free spaces and facilities.
Operationalise regulatory framework for accessibility to the built-environment	The regulatory framework for accessibility to the built-environment must be extended and integrated into land use management and town planning schemes and the overall design of landscapes, public open spaces and streets.

6.1.1.3 Access to Transport

Inaccessible public and private systems across the travel value chain are a major barrier to the right to equality for persons with disabilities. Women and learners with disabilities are particularly vulnerable when using inaccessible public transport systems.

Adequate, efficient, safe and accessible transport is required to support productivity and assist South Africans to access basic services, especially in impoverished and rural communities.

The ability to move around the community underpins all aspects of life for persons with disabilities and is essential to achieving all the policy outcomes of the White Paper on the Rights of Persons with Disabilities - from learning and skills, to employment and to the general enjoyment of rights.

The link between the home and transportation, the link from the transportation to the workplace or social services is essentially frequently overlooked. It is important that access to transport be viewed across the entire travel value chain:

- Planning a trip – having relevant information available in accessible format;
- Getting to the pick-up point – being able to negotiate footpaths, cycle paths etc.;
- Getting onto the transport mode of choice – including being able to transfer between different modes of transport;
- Making the journey;
- Getting out of the transport mode of choice;
- Getting to the destination; and
- Providing feedback on the trip – monitoring system.

There is therefore a need for a continuous accessible path of travel for persons with disabilities to connect public transport nodes with local services and accessible housing.

DIRECTIVES	DESCRIPTION
Incorporate the concept of universal design and access in all transport licenses and permits	All transport-related licences and permits for all modes of transport must include universal access and design requirements.
Conduct transport access audits	All public and private transport operators must conduct operational, staff and managerial audits of existing infrastructure, fleet and programmes against legislated minimum norms and standards. A quantified and costed plan must be developed to implement the outcomes of the audit. Implementation of the plan must be budgeted for.

6.1.1.4 Access to Information and Communication

When information and communication platforms and technology are available, affordable and accessible, they significantly improve the inclusion of persons with disabilities in all aspects of society.

Deaf persons use South African Sign Language as their first language, and therefore require that they have access to SASL training, in particular for Deaf children and their parents. They require access to SASL interpreters, as well as note-takers, captioning and sub-texting to facilitate access to information and communication.

Persons who are hearing impaired and/or acquire deafness later in life, might however never utilise SASL as their language of choice. They require access to lip readers, note-takers, loop systems, captioning and sub-texting for access to information and communication.

Persons with severe speech impairments often require alternative and augmentative communication to communicate and access information. This includes non-speaking autistic persons who may also need alternative and augmentative communication (AAC).

Persons with visual and print disabilities often require that text be made available in alternative formats such as Braille, large print, descriptions of graphs and pictures, as well as in audio.

It should furthermore be taking into consideration that literacy levels among persons with disabilities are often low due to exclusion from education in the past, and that information must be made available in accessible official languages.

The importance of ICTs for persons with disabilities lies in the leverage they provide to open up a wide range of services, transform existing services and create greater demand for access to information and knowledge. Web services constitute the access technology with the greatest impact in promoting the inclusion of persons with disabilities. This contribution is closely followed by mobile phones, which, despite being one of the newest technologies from the ICTs assessed, constitute the second-most valued ICT with regard to its contribution for persons with disabilities. In particular, the use of mobile phones is instrumental in allowing the independent living of persons with disabilities. Television is also an important source of information, but requires sub-titling, close captioning and audio-descriptions to ensure equal access.

The cost of assistive technologies (ATs), which is comprised of the cost of the technology as well as the cost of AT assessment, training and support services, detracts from full access to healthcare services, benefitting at all educational levels, being competitive on the labour market and living independently.

At the same time, this WPRPD acknowledges that some persons with disabilities, for example people living with intellectual and/or psychosocial impairments, may not be able to use the technological and IT related devices for meeting their information and

communication needs. These persons with disabilities require human support to meet their needs and require tailored and innovative information and communication interventions and support services such as easy to read materials.

DIRECTIVES	DESCRIPTION
Promote access for persons with disabilities to new information and communications technologies and systems	All public and private institutions must promote access to new information and communications technologies and systems, including the Internet. This can be done 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 available at minimum cost.
Provide captioning on all television programmes	This must be done by all public and private television channels
Ensure equal access to information and communication platforms	All electronic media, broadcasting and print media platforms of all public and private media institutions and agencies must incorporate universal design principles, meet minimum norms and standards regulatory requirements, and government agencies regulating them must publish annual compliance reports.
Promote South African Sign Language (SASL) and train SASL Interpreters	A costed plan must be developed for promoting SASL through a number of interventions. The strategy and plan must include the training of SASL interpreters. Adequate budget must be provided for implementation of the plan.
Develop and regulate braille standards	A costed plan must be developed for the continuous development, production and regulation of braille standards. Adequate budget must be provided for implementation of the plan.
Provide access to print mediums for persons with print disabilities	All steps must be taken to ensure access to print for persons with print disabilities. One of the steps must be ratification of the <i>Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled</i> .
Provide accessible emergency and disaster management information	All emergency and disaster management and occupational health and safety procedures must include a protocol to ensure that persons with disabilities have access to an equitable degree of information and safety as persons without disabilities using the same service.

6.1.1.5 Universal Access and Design

Universal access is the ability of users to have equal opportunity and access to services, products, systems and environments; regardless of their social and/or economic situation, religious or cultural background, gender or functional limitation. Accessibility can thus be described as “the ability to access” as well as the functionality 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. It ensures that all residents, irrespective of age, size, ability, gender, etc. benefit from accessible places and products throughout their lives. The fundamental premise of Universal Design is the recognition of human diversity as opposed to the concept of the ‘average man’.

There are two aspects to Universal Access:

- **Direct Access.** This 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.** The use of assistive devices and technology such as wheelchairs, screen readers etc., and refers to product, environment (rural and urban), 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 society 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 for learning should for example include multiple modes of representation, multiple modes of action and expression, and multiple modes of engagement.

DIRECTIVES	DESCRIPTION
Develop universal design standards for the country	<p>The South African Bureau of Standards must accelerate development of universal design access standards for the country across all standards setting that impact on the lives of persons with disabilities. The standards must reflect the key principles of the concept of universal design which are:</p> <ul style="list-style-type: none"> • <i>Equitable use</i> - The design is useful and marketable to people with diverse abilities. • <i>Flexibility in Use</i> - The design accommodates a wide range of individual preferences and abilities. • <i>Simple and intuitive</i> - Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level. • <i>Perceptible information</i> - The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities. • <i>Tolerance for error</i>. The design minimizes hazards and the adverse consequences of accidental or unintended actions. • <i>Low physical effort</i>. The design can be used efficiently, comfortably, and with a minimum of fatigue. • <i>Size and space for approach and use</i>. Appropriate size and space is provided for approach, reach, manipulation, and use regardless of the user's body size, posture, or mobility.
Develop and implement universal design minimum standards and guidelines	<p>This must be done by all public and private sector institutions. The institutions must also monitor implementation of the strategy, compliance with the minimum standards and utilisation of the guidelines. The standards and guidelines must include all facilities and services open or provided to the public, including those rendered by operators/contractors.</p>
Provide education and training	<p>(i) <i>Provide tertiary level education on universal design</i> - All pre-graduate as well as post-graduate training must have compulsory modules on universal design access and disability equity. Pre-graduate and post-graduate training that directly impacts on universal design access and disability equity must design further courses in this regard.</p> <p>(ii) <i>Train decision-makers and implementers on universal</i></p>

design and access - All public and private institutions must 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.

(iii) *Develop Accredited Universal Design and Access Training Courses* - These courses must be SAQA accredited. They must allow for differentiated accreditation for access advocates and professional categories. Where Continuing Professional Development (CPD) is required as part of professional training, professionals must be required to undertake at least one universal design access or disability equity course annually.

Ensure service licences require full access

All service licenses issued must require that service providers provide a service which is fully accessible to persons with disabilities.

Ensure service licences require universal design access, in particular for persons with disabilities

All service licenses issued must require that service providers provide a service which incorporates universal design access principles and is fully accessible to persons with disabilities.

6.1.1.6 Reasonable Accommodation Measures

Reasonable accommodation ensures that persons with disabilities enjoy, on an equal basis with others, all human rights and fundamental freedoms. The PEPUA includes 'denial of reasonable accommodation' as a form of unfair discrimination.

Reasonable accommodation support tends to be individual and impairment specific, and includes measures to:

- Make the physical environment accessible;
- Provide persons with disabilities with access to information and communication;
- Redress stress factors in the environment;
- Accommodate specific sensory requirements such as those relating to light, noise and spatial stimuli;
- Improve independence and mobility of persons with disabilities;
- Guarantee participation and supported decision-making by persons with disabilities; and
- Provide access and participation to quality education and work.

Reasonable accommodation measures are therefore inclusive of assistive devices, assistive technology, personal assistance, adaptations of the built environ, signage, captioning, text available in audio, loop systems, FM systems, alerting/alarm systems for evacuation procedures, dedicated sms lines to all emergency service call centres, adaptation of (for example) work arrangements and the implementation of flexibility within the workplace to accommodate persons with disabilities.

DIRECTIVES	DESCRIPTION
Develop minimum norms and standards for reasonable accommodation	National minimum norms and standards for reasonable accommodation support measures aimed at providing equal access and participation must be developed and promulgated.
All public and private institutions must ensure equitable access to and participation in programmes and services	This includes the development and publication of reasonable accommodation measures in service charters and standards across the full spectrum of services.

6.2 Pillar 2 – Protecting the Rights of Persons at risk of Compounded Marginalisation

Persons with disabilities do not constitute a homogeneous group, and as with all other constituencies, experience inequality, discrimination and poverty differently, depending on the contexts.

Girls, boys, men and women with different disabilities, from different age groups, living in different geographical and socio-economic settings, with different sexual orientations, require specific measures to ensure that their rights to life; citizenship; dignity; integrity; equality before the law; access to justice; freedom from torture or cruel, inhumane or degrading treatment or punishment; and freedom from exploitation, violence and abuse, are protected.

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.

Whilst all women with disabilities bear the brunt of inequality, black African women with disabilities are particularly affected by compounded marginalisation caused by the inter-connectedness of race, disability, gender, socio-economic status and class.

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

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.

Similarly, Article 7 of the UNCRPD 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,
- ensure that the best interests of the child be a primary consideration in all actions concerning children with disabilities,
- 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
- 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 individual 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.*”

RELEVANT UNCRPD ARTICLES

Article 1 articulates the purpose of the Convention, focuses on the promotion, protection and realisation of the full and equal enjoyment of *all* human rights and fundamental freedoms by *all* persons with disabilities.

Articles 3, 4 and 5 provide the General Principles, General Obligations and on Equality and Non-discrimination respectively, which are applicable to all persons with disabilities including women, children and older persons.

Articles 3, 6, 16 and 28 specifically recognise that women and girls with disabilities are subject to multiple discrimination. It states that measures must be taken to their full and equal enjoyment of all their human rights and fundamental freedoms; and

to ensure the full development, advancement and empowerment of women to enjoy and exercise these rights.

Articles 3, 4, 6, 7, 8, 16, 18, 23, 24, 25, 28 and 30 specifically recognise the rights of children to full human rights and fundamental freedoms and states that the best interests of the child must be of primary consideration; and that they should have the right to express their views freely on all matters that affect them. Children must be provided with disability and age-appropriate assistance to realize this right.

All the other Articles of the Convention are application to women, children and older persons with disabilities.

Articles which guarantee specific protection include:

- Articles 25, 28: Older persons with disabilities
- Article 10: Right to life;
- Article 12: Equal recognition before the law;
- Article 13: Access to justice;
- Article 14 - Liberty and security of the person;
- 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; and
- Article 21: Freedom of expression and opinion, and access to information.

Article 23 of the Convention on the Rights of the Child provides for specific measures to be taken to protect the rights of children with disabilities. The UN Committee on the Rights of the Child, in their 2000 Concluding Observations, expressed concern that the legal protection, facilities, and services for children with disabilities, and particularly mental disabilities, were insufficient.

Article 18 of the African Charter on Human and Peoples' Rights guarantees the right to special measures of protection in keeping with the physical or moral needs of older persons and persons with disabilities.

6.2.1 Focus Areas

The following four (4) focus areas require specific protective measures to ensure that the rights of persons at risk of compounded marginalisation are protected and upheld:

- The right to life,
- Equal recognition before the law,
- Access to justice, and

- Freedom from torture or cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse.

6.2.1.1 The right to life

Section 11 of the Constitution of the Republic of South Africa guarantees that everyone has the right to life.

Persons with disabilities who are particularly at risk and who requires specific measures to protect this right, include, among others:

- Older persons and children with disabilities who live in particular cultural and/or religious communities where disability is associated with evil, punishment, etc.;
- Children and adults with disabilities who require urgent life-saving resources and medical interventions, but are moved lower on waiting lists as their lives are perceived to have less value;
- Persons with disabilities who are unable to access regular and costly health care due to transport barriers, unaffordability of these interventions, or unavailability of specialised interventions due to geographical location and lack of specialised health personnel;
- Persons with disabilities in emergency and/or disaster situations requiring specific measures to ensure that they have access to timeous and accessible emergency services and evacuation procedures and facilities;
- Persons with disabilities with psychosocial disabilities who do not have access to reliable, timeous and appropriate mental health services and/or may be subject to harmful cultural practices;
- Displaced persons with disabilities, including refugees, asylum-seekers and migrants with disabilities; and
- Persons with disabilities who are homeless.

DIRECTIVES

DESCRIPTION

Strengthen mechanisms to protect the lives of persons with disabilities

All legislation, policies and programmes aimed at protecting life must be reviewed to include specific measures, including putting in place reasonable accommodation measures which will provide equitable protection against loss of life.

Monitor loss of life of persons with disabilities due to insufficient measures having been taken

A monitoring system to track loss of life due to insufficient measures taken to protect the lives of persons with disabilities must be developed.

6.2.1.2 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, the ICCPR, and the UNCRPD each specify that the right to equal recognition before the law is operative 'everywhere'; in other words there are no circumstances permissible under international human rights law where a person may be deprived of the right to recognition as a person before the law, or in which this right may be limited. This is reinforced by the terms of Article 4(2) of the ICCPR, which provides that no derogation of this right is permissible even in circumstances of public emergency.

The right to equality before the law is also reflected in other core international and regional human rights treaties. Article 15 of the Convention on the Elimination of Discrimination against Women (CEDAW) also guarantees women equality before the law and requires the recognition of women's legal capacity on an equal basis with men, including the legal capacity to enter contracts, administer property and exercise their rights in the justice system. Article 3 of the African Charter of Human and Peoples Rights (ACHPR) enumerates the right to be equal before the law and enjoy equal protection of the law.

Persons with psychosocial, intellectual and/or neurological disabilities are particularly vulnerable of being denied the right to equal recognition before the law. Historically, they have been denied their right to legal capacity in many areas via substitute decision-making regimes such as guardianship, conservatorship, involuntary admission, etc., often without any clinical and legal determination of their legal capacity, and often as a permanent arrangement.

This is further exacerbated if they live within rural and/or impoverished communities and families, if they are homeless or if they are displaced or refugees, as they are less likely to be able to access information on their rights, as well as supported decision-making services.

Recognition of legal capacity is inextricably linked to the enjoyment of many other human rights contained in the CRPD. Without the recognition of the individual as a person before the law, the ability to assert, exercise, and enforce many of the UNCRPD rights, is significantly compromised.

DIRECTIVES	DESCRIPTION
Review all relevant legislation to ensure equal recognition before the law for access	All legislation detracting from the right to equal recognition before the law for persons with psychosocial and/or intellectual disabilities must be reviewed to prevent indiscriminatory and indefinite denial of legal capacity. This should also include focus on informing and empowering persons with disabilities about their rights and how to access

to persons with disabilities	recourse should these be infringed upon.
Develop supported decision-making legislation	The development of supported decision-making legislation, in particular for persons with intellectual, psychosocial and neurological disabilities, must coincide with the review of substitute decision-making regimes.

6.2.1.3 Access to justice

'Access to justice' is inclusive of people's effective access to the systems, procedures, information, and locations used in the administration of justice. The ability to access justice is of critical importance in the enjoyment of all other human rights. The enjoyment of other human rights can positively or negatively impact the ability of people with disabilities to enjoy access to justice.

To be fully included in society, people with disabilities need access to justice. As long as they face barriers to their participation in the justice system, they will be unable to assume their full responsibilities as members of society or experience their rights and to enjoy the equal opportunity to perform their duties as witnesses, jurors, lawyers, judges, arbitrators, and other participants in the administration of justice.

The concept of access to justice must however also include a variety of other means of doing justice, including alternative dispute resolution, participation in social movement politics, democratic representation, and civic education for the respect of rights. The empowerment of persons with disabilities and their families require that;

- they understand what their rights and entitlements are, know what recourse mechanisms are available should they experience discrimination or exclusion, and know how to access these recourse mechanisms; and
- recourse mechanisms are affordable and easily accessible, even in rural communities.

Barriers hindering persons with disabilities from either using the justice system when they feel wronged or mistreated, or limiting their contributions to the administration of justice, include:

- Poverty;
- Geographic location of adjudication institutions;
- Physical inaccessibility of adjudication institutions;
- Lack of knowledge of legal rights, whereby individuals do not realise that their problem has a legal element and potential remedy;
- Inappropriate dispute resolution institutions and mechanisms (e.g. costs related to accessing the High Courts);

- Procedural hurdles; and
- Delays in the resolution of disputes.

Persons with sensory, intellectual, neurological and/or psychosocial disabilities often experience additional barriers, including;

- Difficulties with organisation, which may make it difficult to prioritise their legal problem and keep appointments with legal service providers;
- Being overwhelmed, and therefore too frightened, or lack the motivation, to seek legal assistance;
- Being mistrustful or frightened of divulging personal information to legal service providers;
- Communication challenges, which can hinder a solicitor in assisting their client effectively;
- The formality of the court room and the stress of initiating or continuing with legal proceedings can be overwhelming and prohibitive;
- Police personnel often lack the skills to serve persons with disabilities and are not comfortable with opening cases of sexual abuse or assault where the complainants have visual, psychosocial and/or intellectual disabilities; and
- The high instance of undiagnosed intellectual, neurological and psychosocial disabilities in impoverished and rural communities.

Further compounding the lack of access to justice across the value chain of the justice system is the communication barrier between appointed South African Sign Language interpreters and Deaf persons who do not have sufficient proficiency in South African Sign Language.

Justice system failures often result in infringement of the right to liberty and security of the person when persons with disabilities are arbitrarily detained due to communication barriers or a lack of distinction between intellectual disability and criminal capacity.

Children with disabilities as well as adults with intellectual, neurological and/or psychosocial disabilities require procedural and age-appropriate accommodations across the justice value chain.

DIRECTIVES

DESCRIPTION

Strengthen recourse mechanisms

- Recourse mechanisms include
- strengthening enforcement of existing legislation;
 - improving access to courts;
 - improving equitable access to service delivery and consumer complaint mechanisms and institutions;
 - strengthening the capacity of Chapter 9 institutions

such as the SAHRC, CGE, Commission for Promotion and Protection of Rights of Cultural, Religious and Linguistic Communities to respond to disability related issues and complaints; and

- strengthening the capacity of NGOs, CBOs and FBOs, and in particular DPOs, to support persons with disabilities in accessing justice.

This must include making available the full spectrum of reasonable accommodation support measures, access to the built environment, as well as procedural and age-appropriate accommodations within the police services, legal aid services and court procedures.

Strengthen monitoring systems to track access to the justice system for people with disabilities

A system to ensure barrier free access to justice must be put in place. Specific attention is required to other barriers faced by persons with intellectual and psychosocial disabilities and their resulting discrimination due to decision-making or legal capacity, lack of assessments and other relevant issues.

Develop a national action plan to inform and empower persons with disabilities and their families of their rights

This should include what the judicial rights are, as well as how to access recourse should these be infringed upon.

6.2.1.4. Freedom from torture or cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse

The enjoyment of the right of persons with disabilities to be free from torture and other forms of violence is also related to the enjoyment of other human rights.

Torture is one of the most serious violations of human rights. The right to be free from torture and other forms of physical and mental ill-treatment is absolute, and may not be suspended or restricted under any circumstances.

Persons with disabilities are particularly at risk for exposure to torture and other forms of cruel, inhuman, or degrading treatment or punishment.

Torture is furthermore a frequent cause of disability, and when torture is inflicted on a person with a disability, it may lead to secondary disabilities or the onset of a serious medical condition. In addition, the failure of an interrogator to recognise a person's disability could be mistaken for non-cooperation.

Contexts which contribute to the vulnerability of persons with disabilities to torture, cruel, inhuman or degrading treatment and punishment, and which regards specific measures to safeguard persons with disabilities, include;

- Persons with disabilities are often segregated from society in institutions, including prisons, social care centres, orphanages and mental health institutions. They are deprived of their liberty for long periods of time including what may amount to a lifelong experience, either against their will or without their free and informed consent. Inside these institutions, persons with disabilities are frequently subjected to indignities, neglect, poor living conditions (including inadequate food, water, medical care and clothing), severe forms of restraint and seclusion, as well as physical, mental and sexual violence. The lack of reasonable accommodation and the phenomena associated with segregation/isolation in detention facilities may increase the risk of exposure to neglect, violence, abuse, torture and ill-treatment;
- Persons with disabilities are exposed to medical experimentation and intrusive and irreversible medical treatments without their consent (e.g. sterilisation, abortion and interventions aiming to correct or alleviate a disability);
- The belief that persons with disabilities should conform their thinking and/or behaviour to what is considered by others as “in their best interests” can lead to persons with disabilities being forced or coerced into using medications or undergoing “treatments” that may amount to torture and or/and ill-treatment;
- Persons with disabilities, and girls and women with disabilities in particular, are especially vulnerable to violence and abuse, including sexual abuse and torture, inside the home, at the hands of family members, caregivers, health professionals and members of the community;
- Perceived or actual impairments associated with harmful traditional beliefs, such as albinism, are often associated with hate speech, ostracisation and even human trafficking and murder; and
- Such practices, in many instances, remain invisible or are being justified, and are not recognised as torture or other cruel, inhuman or degrading treatment or punishment.

Sexual exploitation and abuse is a widespread phenomenon among persons with disabilities, particularly women and girls, although men and boys with disabilities also experience sexual violence, exploitation, and abuse. Most instances of abuse go unreported and, therefore, remain unaddressed. Persons with intellectual and psychosocial disabilities are in particular at risk of not accessing justice when reporting incidents of sexual exploitation and abuse.

Sexual violence, exploitation and abuse have long-lasting harmful effects on persons with disabilities. Where such abuses occur in isolated settings, the chances of accessing the assistance needed for recovery may be slim. Moreover, such

traumatic experiences may increase disability-related functional limitations or create secondary disabilities. Programs and services that do address sexual violence and abuse in the community, particularly those targeting women and girls, very often do not reach out to persons with disabilities.

Children with intellectual and communication disabilities in particular are vulnerable to exploitation by criminals to participate in criminal activities, as it is generally believed that their testimony will not be acceptable in a court of law.

The Convention against Torture places an obligation on the state to criminalise acts of torture, prosecute perpetrators, impose penalties appropriate to the gravity of the offence and provide reparation to victims. By recognising and reframing violence and abuse perpetrated against persons with disabilities as torture or other cruel, inhuman or degrading treatment or punishment, victims and advocates can be afforded stronger legal protection and redress for violations of human rights. For an act against or an omission with respect to persons with disabilities to constitute torture, the four elements of the Convention definition — severe pain or suffering, intent, purpose and state involvement — need to be present. Acts falling short of this definition may constitute cruel, inhuman or degrading treatment or punishment under article 16 of the Convention against Torture.

Article 17 (Protecting the Integrity of the Person) and Article 22 (Respect for privacy) requires that specific measures be taken to protect the rights of persons with disabilities who require personal assistance. Personal assistants often have easy access to a wide variety of personal information such as identification numbers and financial information, and often work in close physical contact with persons with disabilities they are assisting.

Among the many causes of violations of the rights to respect for privacy and personal integrity are the attitudes and beliefs of other people, especially with regard to persons with intellectual or psychosocial disabilities. The belief by some that such persons with disabilities are “not capable” of taking care of their own private information may lead to people withholding that information or giving it to people with whom the person with disabilities would not choose to share that information. Additionally some people believe that it is permissible to violate the privacy or the physical or mental integrity of a person with a disability if they are not aware that it is happening.

DIRECTIVES

DESCRIPTION

Develop and implement quality assurance programmes and strengthen monitoring systems for all types of institutions and facilities for persons with disabilities

These programmes must be benchmarked against international best practice

Develop measures to protect the mental health of persons with disabilities	The measures must include pro-active steps to promote, protect and 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.
Strengthen human rights monitoring mechanisms for older persons and others at risk	Measures must be put in place to strengthen human rights monitoring mechanisms for older persons with disabilities who have been institutionalised/reside in group residential care facilities.
Develop integrated multi-focus areas strategies and plans for other categories at risk	The strategy and plan must protect refugees, displaced persons with disabilities, homeless persons with disabilities and prisoners with disabilities from inhumane, degrading and cruel treatment and have access to disability-related services and benefits. This means reasonable accommodation measures must be put in place to ensure that these groups have equal access and participation to all programmes offered to the general population.

6.3 Pillar 3 – Supporting Sustainable Integrated Community Life

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

We want to grow up in our families, go to the neighbourhood school, use the same bus as our neighbours, and 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 (Adapted)

Persons with disabilities have an equal right to live in the community, with choices equal to others. This requires that government, across all three spheres, 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.

Women and girls tend to carry the responsibility of caring and providing for children with disabilities and adults with severe disabilities where personal assistance and accessible child-care facilities are not available, making them less likely to develop careers, find partners and access training and educational opportunities.

Older persons with disabilities, and in particular with dementia, are vulnerable to exploitation, neglect, abuse and homelessness. Facilities catering for older persons are often not accessible to older persons with disabilities, and residential care facilities for persons with disabilities often do not have frail care facilities for those requiring these. This leaves older persons with disabilities requiring frail care support with little or no access to safe shelter. This constitutes a violation of the rights to dignity and security of the person, as per SAHRC report. 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.

RELEVANT UNCRDP ARTICLES

Article 8 deals with Awareness Raising and states that effective and appropriate measures that will raise awareness throughout society 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 must be adopted immediately.

Article 11 which deals with Situations of risk and humanitarian emergencies states that government must ensure 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 19 on Living independently and being included in the community requires that State Parties to recognise the right of persons with disabilities to live in the community, with choices equal to others, and therefore to take measures that will realise this right. Such measures should include:

- Ensuring that 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;
- Ensuring that persons with disabilities should 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; and
- Ensuring that 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 advocates for personal mobility, with the greatest possible independence for persons with disabilities be ensured, including by facilitating the

personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost.

Article 23 deals with Respect for the family and states that effective and appropriate measures are taken to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others. This includes:

- protecting 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;
- the right 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 recognised, and the means necessary to enable them to exercise these rights are provided; and
- the right of persons with disabilities to retain their fertility on an equal basis with others.

Article 30 which deals with Participation in cultural life, recreation, leisure and sport states that measures to ensure the right of persons with disabilities to take part on an equal basis with others in cultural life, should include, among others, enjoying access to places for cultural performances or services, such as theatres, museums, cinemas, libraries and tourism services, and, as far as possible, enjoying access to monuments and sites of national cultural importance. It also states that State Parties to enable persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities.

6.3.1 Focus Areas

The following focus areas require focused intervention to improve community living outcomes for persons with disabilities and their families:

- Building socially cohesive communities and neighbourhoods;
- Building and supporting families;
- Accessible human settlements/neighbourhoods;
- Access to community-based services supporting independent living; and
- Protection during situations of risk and disaster.

6.3.1.1 Building socially cohesive communities and neighbourhoods

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. Thus improving access to integrated community, sport and leisure facilities and opportunities for persons with disabilities is an important pillar in building social cohesion.

The existence of multiple disabilities may increase the risk of marginalisation for the person where services are structured according to single impairment-specific interventions.

Displaced persons with disabilities, including refugees, asylum-seekers and migrants with disabilities form an integral part of communities. In the building of socially cohesive communities, it is important that their presence be acknowledged and that they are included in neighbourhood structures.

This requires that society rejects the manifestations of discrimination, exclusion and marginalisation of persons with disabilities experience, and inclusively navigate the changes needed that enhance the rights and freedom of all persons with disabilities.

Particular attention must be paid to ensure that these dimensions are integrated in all programmes and messages focusing on, among others, reducing inequality, building a united South Africa, moral regeneration, social cohesion and universal access.

Improving access to integrated community, sport and leisure facilities and opportunities is another important element in building social cohesion.

DIRECTIVES	DESCRIPTION
Include the rights of persons with disabilities in all social cohesion and human rights promotion programmes and messages	The rights of persons with disabilities must be integrated into all programmes and messages focusing on, among others, reducing inequality, building a united South Africa, moral regeneration, social cohesion and universal access to services
Ensure that all community development programmes and community facilities are accessible to persons with disabilities	This includes all social, economic, religious, cultural, sport and leisure facilities and programmes
Ensure access to residential facilities, day care and other programmes to older persons with disabilities	Residential facilities, day care and other programmes targeting older persons in general, must be made accessible to older persons with disabilities.
Provide subsidies for sport and leisure development for persons	Subsidies and sponsorships for all sport and leisure development must include a disability mainstreaming

with disabilities

component.

Address violence against women/girls/boys and the LGBTI community with disabilities

Appropriate measures must be taken to ensure that women, girls and boys with disabilities are and feel safe living in their communities.

6.3.1.2 Building and Supporting Families

"It is within the family environment that an individual's physical, emotional and psychological development should occur. It is from our family that we may learn unconditional love, we understand right from wrong, and we gain empathy, respect and self-regulation. These qualities enable us to engage positively at school, at work and in society in general"

Centre for Social Justice (2010), *Green Paper on the Family*

Persons with disabilities in general, and children with disabilities in particular, are often deprived of family life due to the lack of community-based support services and educational opportunities available to them and their families, and due to persistent stereotypical thinking that they are better off in segregated facilities.

Being removed from the family on either a temporary or permanent basis often deprives them from the physical resources such as food, clothing and shelter, as well as love, support and encouragement of family members.

Disability does not only affect individuals, but also impacts on family members. Parents and primary care-givers in particular are often required to take life-changing decisions on what would constitute 'the best interest' of their children with disabilities, and can do this only when they are provided with timeous, relevant and accessible information on the full range of options available, and if they have access to peer and parent support and empowerment programmes. Disability service organisations as well as parents' organisations currently carry almost sole responsibility for the provisioning of family support and empowerment programmes, often without any state support.

Women carry the brunt of care responsibilities in families, and caring for children and dependent adults with disabilities, even if only intermittently, where community-based personal assistance support services are not available or insufficient, often detract from their empowerment as women. This requires that they have access to empowerment services which enable them to develop alternative sustainable livelihood streams.

Family function	Ways each function benefits to	
	Individual family members	Society
Membership & family formation	<ul style="list-style-type: none"> • Provides a sense of belonging • Provides personal and social identity • Provides meaning and direction in life 	<ul style="list-style-type: none"> • Controls reproductive function • Assures continuation of the species
Economic support	<ul style="list-style-type: none"> • Provides for basic needs of food, shelter, and clothing and other resources to enhance human development 	<ul style="list-style-type: none"> • Contributes to healthy development of members who contribute to society (and who need fewer public resources)
Nurturance, support and socialisation	<ul style="list-style-type: none"> • Provides for the physical, psychological, social and spiritual development of children and adults • Instils social values and norms 	<ul style="list-style-type: none"> • Prepares and socialises children for productive adult roles. • Supports adults in being productive members of society • Controls antisocial behaviour and protects society from harm
Protection of vulnerable members	<ul style="list-style-type: none"> • Provides care and support for young, ill, disabled or otherwise vulnerable members 	<ul style="list-style-type: none"> • Minimizes public responsibility for care of vulnerable, dependent individuals

Source: Adapted from Patterson, J.M. (2002). Understanding family resilience, *Journal of Clinical Psychology*, Vol. 58 (3): 233-246

The White Paper on Families (2012) therefore recommends that economic and non-economic measures, such as personal income tax relief, care subsidies, and affordable and accessible child, community care and afterschool school care services to mitigate families' responsibilities of caring for, among others, persons with disabilities, be provided.

DIRECTIVES

DESCRIPTION

Develop a plan for mitigating family responsibilities in terms of caring and support for persons with disabilities

The plan must be integrated and multi-sectoral. The Plan must contain both economic and non-economic support measures at household and community level. These services must be standardised, expanded and fully subsidised if provided by NGOs, CBOs and FBOs.

Provide information on available services

Parents and/or care-givers of children with disabilities must have access to integrated disability information,

to all parents and care-givers of children with disabilities

including information on parental counselling and peer-support services, respite care services, therapeutic, educational and economic programmes, as well as the establishment of a disability service and information portal that provides access to the information.

6.3.1.3 Accessible Human Settlements/Neighbourhoods

Accessible and well-designed housing and neighbourhoods contribute significantly to improving the living status of persons with disabilities, as it provides persons with disabilities and their families with choice about living arrangements and moving about the community.

This requires that universal design principles are applied across the human settlement planning and design value chain.

The built environment, transport systems and information systems must be fully accessible for use by persons with disabilities.

The impact of inadequate living conditions is particularly negative for children with disabilities. Children with disabilities living in impoverished homes and communities, especially the former homelands as well as informal settlements, experience multiple deprivations. According to Stats SA's Community Survey 2007, children with disabilities are less likely to have access to adequate housing, water and sanitation than their non-disabled peers. Children with disabilities are more likely to live in traditional dwellings and informal settlements than their non-disabled counterparts. Overcrowded living conditions and outside toilets place enormous stresses on children with disabilities and their families.

DIRECTIVES

DESCRIPTION

Include supported community living plans in all Integrated Developments Plans (IDPs)

The plans and budgets must make provision for coordinated and integrated community living support plans, focusing in particular on access to the built environment, integration of transport nodes and human settlement spatial design.

Ensure all modes of transport are accessible to persons with disabilities

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

Provide access to subsidised housing support

Persons with disabilities and single mothers of children with disabilities must have equitable access to the full range of subsidised housing support provided by the state.

Incorporate the concept of universal design in infrastructure grants and tax rebate programmes

All infrastructure and neighbourhood development grants and tax rebate programmes must incorporate a universal design requirement. Small site-specific and ad hoc improvement of urban and rural dwellings, facilities, services and open spaces must be prioritised for dwellings inhabited by persons with disabilities.

6.3.1.4 Access to community-based services supporting independent living

Persons with disabilities must 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 must 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.

Persons with disabilities living in rural and impoverished settlements, and on farms and traditional communities in particular, are less likely to access basic and social services, including early identification of disability, health, rehabilitation and habilitation and access to justice services, as well as education and training

Community services and facilities for the general population must be accessible on an equal basis to persons with disabilities and must be responsive to their needs.

DIRECTIVES

DESCRIPTION

Develop a sustainable community-based system for personal assistance to support independent living within the community for persons with disabilities

The system must be:

- person-centred and self-directed;
- maximise opportunities for independence and participation in the economic, social and cultural life of the community;
- be responsive to the particular needs and circumstances of persons with complex and high needs for support;
- provide persons with disabilities requiring personal assistance with choice of where they live and with whom they live, and
- provide access to relevant integrated community and home-based support services for persons requiring independent living. The system must be subsidised.

6.3.1.5 Protection during situations of risk and disaster

Persons with disabilities, when compared to the general population, face higher risks in emergency situations and are disproportionately affected by natural and other disasters.

Humans are emotional beings; their mental health and psychosocial well-being play key roles in resilience, recovery and reconstruction. Integration of mental health and psychosocial well-being makes disaster risk reduction more effective, resilient and robust. Persons with psychosocial disabilities may require additional support services.

Persons with disabilities and their families requiring assistance during situations of risk and disaster must be prioritised for evaluation and disaster management procedures. This requires that all emergency and disaster management services be staffed with personnel who have immediate access to the required reasonable accommodation support systems and who have been trained in assisting persons with disabilities.

Persons with disabilities and their families are a unique resource of knowledge and experience, which is often overlooked, and should therefore be included in actions aimed at reducing the risk of disasters, building resilient communities and finding solutions during situations of disasters and emergencies.

DIRECTIVES	DESCRIPTION
Review Disaster Management Plans	The plans must ensure that persons with disabilities requiring assistance during evacuation and disaster warning systems have prioritised access to disaster management services.
Provide accessible disaster relief services	National and provincial disaster management centres must ensure that psychosocial support service personnel that have the capacity to assist persons with disabilities, are available for deployment during disasters and that evacuation centres are accessible.
Provide accessible emergency services	Municipal emergency services must put in place reasonable accommodation support systems and trained emergency personnel to ensure equitable and immediate access to these services for persons with disabilities.

6.4 Pillar 4 – Promoting and Supporting Empowerment of Persons with Disabilities

"The failure by commission or omission to presume all individuals to be capable and willing to learn and assert themselves in the world restricts adversely their ability to participate equitably within their societies".

Douglas Biklen, Interview, 2012

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

The normal life cycle of persons with disabilities is often interrupted due to, among others,

- Barriers which exclude them from accessing socio-economic opportunities created in the various stages of their life cycle;
- Lack of effective articulation and alignment between different services offered by different departments targeting the same target group;
- Lack of access to appropriate and timeous information and support;
- Lack of access to essential disability and other support services in particular in more rural contexts;
- Poor enforcement of existing enabling legislation; and
- The high cost associated with disability which deprives persons with disabilities and their families from taking up opportunity.

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.

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

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

RELEVANT UNCRDP ARTICLES

Article 24 requires that States Parties to ensure that children with disabilities are able to access an inclusive, quality and free primary and compulsory education and secondary education on an equal basis with others in the communities in which they live; and that persons with disabilities are not excluded from the general education.

Article 25 states that Persons with disabilities have the right to the highest attainable standard of health, and requires that measures are taken to ensure accessibility and affordability of health care services, including the provisioning of reasonable accommodation measures.

Article 26 deals with Habilitation and Rehabilitation services and recognises the rights of persons with disabilities to access rehabilitation services aimed at improving their independence and social integration.

Article 23 on Children with Disabilities requires that State Parties to recognise the rights of children with disabilities to specific assistance to ensure their effective access to health care services and rehabilitation services directed towards social inclusion and individual development.

Article 4 on General Obligations, states amongst others that accessible information must be provided to persons with disabilities about assistive devices and technologies, as well as other forms of assistance, support services and facilities.

Article 13 requires that persons with disabilities are provided with access to justice on an equal basis with others. It also requires 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.

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 and further education and work.

6.4.1 Focus Areas

The following six (6) focus areas aim to strengthen access to economic independence and a life of dignity for persons with disabilities through empowerment support:

- Early childhood development;
- Lifelong education and training;
- Social integration support;
- Access to lifestyle support;
- Supported decision-making; and
- Strengthening recourse mechanisms.

6.4.1.1 Early Childhood Development

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

There are a number of reasons that support inclusion of children with disabilities at ECD level:

- Inclusion provides a platform for learning opportunities that do not exist in settings where there are only children with disabilities;
- There are opportunities for observational learning and interactions with peers without disabilities;
- Children with disabilities tend to engage in higher levels of play when they are with children without disabilities;
- Inclusion at preschool level has been found to increase social contact between children with and without disabilities and has the potential to impact on the attitudes of children without disabilities towards their peers with disabilities. The experience of being together provides the opportunity to learn important life skills, including dealing with difference and recognition that in different respects we are all dependent on one another; and
- Early identification and appropriate referral and access to intervention enhances optimal development.

DIRECTIVES	DESCRIPTION
Children with disabilities must have equitable access to all ECD Programmes and Facilities	This requires that mainstream ECD programmes and facilities are made accessible for children with disabilities, i.e. that infrastructure; attitudes, equipment and activities do not hinder the participation of children with disabilities. Thus building plans, playgrounds, equipment, toys and ECD practitioner training comply with universal design norms and standards.
Develop disability specific intervention and support services	The services must focus on individual developmental programmes, language and communication development, assistive devices and technology and therapy to improve independence and social integration, as well as parent empowerment and support programmes.
Develop a national integrated referral and tracking system	<p>The seamless system must:</p> <ul style="list-style-type: none"> • Identify children at high risk of, or with developmental delays and/or disabilities through Road-to-Health health screening programmes and refer them to relevant accessible services; • Register all children between the ages of 0-18 years on a centralised database; • Ensure that children with disabilities on the database are assessed and have access to an individualised developmental support and treatment programme and social assistance benefits; • To ensure that children with disabilities remain on this programme until the age of 18 years; • Ensure that all children with disabilities are enrolled in appropriate ECD and compulsory education programmes; and • Ensure that parents receive timeous, appropriate and accessible information to enable them to take decisions in the best interest of their children.

6.4.1.2 Life-long Education and Training

"The education system will play a greater role in building an inclusive society, providing equal opportunities and helping all South Africans to realise their full potential, in particular those previously disadvantaged by apartheid policies, namely black people, women and people with disabilities. It furthermore advocates the provision of inclusive education that enables everyone to participate effectively in a free society. Education provides knowledge and skills that people with disabilities can

use to exercise a range of other human rights, such as the right to political participation, the right to work, the right to live independently and contribute to the community, the right to participate in cultural life, and the right to raise a family. Ensuring that all children with disabilities have access to quality education will help South Africa meet its employment equity goals in the long run"

NDP, Chapter 9

Exclusion from education reflects a complex, progressive and sustained social process of 'being excluded'. Children who are excluded from education, are often also excluded from development benefits in general:

- Some children already experience exclusion within their family and communities in which they live;
- Some children are excluded at the school level where schools do not have inclusive policies, cultures and practices that make everyone feel welcome with the assurance that they will be able to develop to their full potential; and
- The last link in the web of exclusion can be national education policies.

Statistics show that children and adults with disabilities tend to have less access to education at any level compared to their peers without disabilities. The correlations for both children and adults between low educational outcomes and having a disability is often stronger than the correlations between low educational outcome and other characteristics such as gender, rural residence, and low economic status. For many years, disability remained one of the key reasons for the exclusion of learners from receiving an education in ordinary schools. Children with disabilities were sent to special schools, often far away from their homes, and often in environments which were not safe, and did not necessarily provide access to the curriculum or quality education.

Persons with disabilities must have access to inclusive learning opportunities throughout their lives where they learn with peers without disabilities in barrier-free settings. Specific focus areas to realise this must include:

- Provision of reasonable accommodation of the individual's requirements;
- Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
- Effective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion; and
- Enabling 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.

Specific measures that must be taken include:

- 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;
- Facilitating the learning of South African Sign Language and the promotion of the linguistic identity of the Deaf community;
- Ensuring that the education of persons, and in particular children, who are blind, deaf, hearing impaired, non-speaking autistic or deaf-blind 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;
- Employing teachers, including teachers with disabilities, who are qualified in South African 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; and
- Ensuring 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 by, among others ensuring that reasonable accommodation is provided to persons with disabilities.

DIRECTIVES**DESCRIPTION****Provide accessible education facilities**

This applies to all existing and future developed public and private education institutions and campuses.

Provide educational support and reasonable accommodation at all institutions of learning

This involves the timeous availability of adequate support and reasonable accommodation measures across the value chain at all public and private education and training facilities and programmes to persons with disabilities. It includes providing students with disabilities group sport, recreation and peer support opportunities within the education institutions where they are enrolled.

Enforce enrolment of children with disabilities of compulsory school-going age

This includes the abolishment of all waiting lists at schools and immediate reporting of all children with disabilities who have been refused access to schools to the SAHRC. It also includes access to schooling, education and stimulation programmes for children with severe to profound intellectual disabilities.

Integrate disability rights

Disability rights awareness training programmes

awareness discourse into the curriculum of educational programmes must be integrated into the curricula of all education and training programmes.

6.4.1.3 Social Integration Support

Whilst all persons with disabilities are at risk of compounded marginalisation, it should be noted that there are groups which currently experience increased risk due to their actual or perceived impairment.

Communication difficulties, which compound the opportunities for persons to speak out, provide testimony; represent themselves effectively and in general, to be heard and to engage. Persons with communication difficulties require assistive technology and/or intermediaries to facilitate communication, which is often not available.

Persons with disabilities require, in addition to enabling environments and access to services available to the general population, a range of disability specific services to attain and maintain maximum independence, full physical, mental, social and vocational ability, and therefore full inclusion and participation in all aspects of life. These services include;

- Screening, early identification and assessment services to determine individualised support programmes;
- Specialised and community-based rehabilitation, habilitation and psychosocial support services;
- Assistive device and technology support services; and
- Peer and family counselling and empowerment support services.

The lack of rehabilitation services beyond hospital level during the initial phases of onset and/or diagnosis of disability (and for only a limited range of impairments) focusing on prevention of primary and secondary disabilities, is a major contributory factor to the slow uptake of affirmative action opportunities for adults with disabilities in economic empowerment and employment programmes.

Very few rehabilitation and habilitation services and programmes are available to facilitate effective social integration into community life, work and education after onset of disability, and families living in smaller towns and rural areas have virtually no access to these services, which are available mainly in metropolitan and larger secondary cities. 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.

Access to community-based peer and parent counselling and support programmes is central to the empowerment process of children, young persons and adults with disabilities. These programmes, preferably managed and provided by organisations of persons with disabilities and parents of children with disabilities, contribute significantly to reducing a culture of dependency and promoting true empowerment and active citizenship.

Adequate resource allocation for the establishment of psychosocial rehabilitation and habilitation services at community level and resource allocation for the improvement of quality of existing services, in all provinces, is required to facilitate the empowering of persons with psychosocial disability.

Community-based residential and stimulation programmes for persons with intellectual disability form an important function for participation within the community and allow the development and obtainment of various skills, for participation in income-generation projects.

Access to appropriate and affordable assistive devices and technologies for persons across the impairment spectrum ensures increased independence, participation and improved health, and should be available for use at home, at school, at work and during leisure activities.

NGOs, CBOs, FBOs, and in particular DSOs, provide a significant portion of social integration support services, often without sufficient state subsidisation, which detracts from both the quality and expansion of these services.

DIRECTIVES	DESCRIPTION
Establish integrated, multi-sectoral provincial rehabilitation and habilitation centres	These must provide and prioritise multi-sectoral screening, early identification and assessment services to determine individualised support programmes and social assistance requirements; a range of specialised independent living and social integration services to all persons with disabilities, irrespective of impairment; an assistive device and technology service, as well as coordination service for community-based personal assistance, peer and parent/family counselling, psychosocial and vocational rehabilitation habilitation and rehabilitation habilitation support services.
Subsidise peer and parent empowerment support	Peer support empowerment programs for children, youth and adults with disabilities, as well as parents of children with disabilities, must be subsidised and available at community level to strengthen their right to self-representation and advocacy. These programmes must preferably be managed

programmes	by parents' organisations and representative organisations of persons with disabilities.
Subsidise disability-specific services	Subsidisation of any disability-specific services rendered on behalf of government must be congruent with the actual cost of services. Representative organisations of persons with disabilities must be contracted as a central component of trainers.

6.4.1.4 Access to Healthcare and Lifestyle Support

Health as a human rights issue is framed in terms of the "highest attainable standard of health." In other words, persons have a right to the conditions and resources that promote and facilitate a healthy life.

Access to healthcare for persons with disabilities extends well beyond physical access. Persons with disabilities often experience further disadvantage due to the impact of social determinants of health. Health and social services must be accessible, affordable and relevant to persons with disabilities across all impairment and environmental dimensions.

It is important to enhance the capacity of persons with disabilities to access the healthcare system, to ensure that information on available services is easily accessible and affordable, that healthcare workers treat persons with disabilities and their families with dignity and respect, and that the system is able to respond in an appropriate and timely manner to the needs of persons with disabilities.

Affordability of healthcare (including the cost of transport, rehabilitation and assistive devices, consumables and maintenance of devices) is a major deterrent for persons with disabilities receiving social assistance to seek employment.

Persons with disabilities as victims and/or survivors of disability-related and gender-based violence and crime, often struggle to gain access to victim empowerment support services and the broader justice system for victims due to attitudinal, physical, communication and information barriers. This requires that these barriers to mainstream services be removed, and reasonable accommodation support measures be provided where these are required.

Persons with disabilities are often at more risk of contracting HIV due to access barriers to prevention and treatment programmes. Persons with disabilities who have contracted HIV often experience double-discrimination on the basis of disability and their HIV status. Likewise persons with disabilities who are lesbian, gay, bisexual, transgender and intersex (LGBTI) face additional discrimination, persecution and violence simply for expressing who they are, and who they choose to love.

Similarly, access to community sport and recreation facilities and programmes, as discussed in the previous pillar, will contribute significantly to the general health status of persons with disabilities.

DIRECTIVES	DESCRIPTION
Provide access to affordable healthcare services	Integrated and holistic basket of accessible and affordable healthcare services at a district and community level, as well as access to higher levels of care, must be provided to all persons with disabilities.
Provide access to victim empowerment and recourse programmes	All persons with disabilities, and in particular women and girls with disabilities as well as older persons with disabilities, who are victims and/or survivors of disability-related and gender-based violence and crime, must have access to affordable victim empowerment and recourse programmes.
Ensure all HIV and AIDS prevention and treatment programmes are accessible to persons with disabilities	This must include family planning, sexuality/sex education programmes. If it is not possible to remove all access and participation barriers, then accessible disability-specific services must be provided.
Develop and Implement a National Disability Services Quality Framework with a National Quality Assurance system, as well as legislation.	These must determine and provide determined minimum norms and standards for disability services.

6.4.1.5 Supported Decision-Making

Choice and control are key defining aspects of human dignity. This is also relevant for persons with psychosocial, neurological and intellectual disabilities, who are often denied the right to control decisions over aspects of their lives.

Legislation and policies must recognise and enable the right of persons with psychosocial, neurological 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.

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 in making fundamental decisions regarding their health, education and work.

Legal capacity should always be assumed unless evidence, which must include a range of principled and practical checks and balances, proves the contrary. In such cases, safeguards should be proportionate to the person's circumstances, and to how far the measures affect the person's rights and interests. Additionally, such measures should apply for the shortest time possible, and should be subject to regular review by an independent or judicial body.

Supported decision-making regimes comprise various support options which give primacy to a person's will and preferences and respect human rights norms. It must 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 and mental integrity, etc.).

The development of supported decision-making legislation and services, in particular for persons with intellectual, psychosocial, neurological and severe communication disabilities, must coincide with the review of substitute decision-making regimes.

DIRECTIVES	DESCRIPTION
Develop supported decision-making services	<p>The development of supported decision-making support services, in particular for persons with intellectual, psychosocial and neurological disabilities, must coincide with the review of substitute decision-making regimes.</p> <p>This must include the development of mechanisms to protect persons with disabilities from undue influence, coercion, exploitation and/or neglect in situations where their decisions, choices and preferences are substituted with those of others.</p>

6.4.1.6 Strengthening recourse mechanisms

The empowerment of persons with disabilities and their families require that:

- they understand what their rights and entitlements are, know what recourse mechanisms are available should they experience discrimination or exclusion, and know how to access these recourse mechanisms; and

- recourse mechanisms are affordable and easily accessible, even in rural communities.

Recourse mechanisms include strengthening enforcement of existing legislation, development of new disability-specific legislation, service delivery and consumer complaint mechanisms and institutions, Chapter 9 institutions such as the SAHRC, CGE, Commission for Promotion and Protection of Rights of Cultural, Religious and Linguistic Communities, NGOs, CBOs, FBOs and the courts.

DIRECTIVES	DESCRIPTION
Develop a national action plan to inform and empower persons with disabilities of their rights	A national plan should include what the rights of persons with disabilities are, as well as how to access recourse should these be infringed upon.

6.5 Pillar 5 – Reducing Economic Vulnerability and Releasing Human Capital

Poverty is a multi-dimensional concept determined by, among other things, a household's access to health, education and employment. Barriers that prevent persons with disabilities from improving their livelihoods are related to limited access to services such as health and education, negative attitudes from staff and community members, lack of reasonable accommodation and resources as well as increased costs related to health care, transportation, assistive devices and personal assistance. A lack of or insufficient education is often highlighted as a key element and cause of poverty in persons with disabilities. Poverty and disability are related in adulthood and this is associated with a lack of access to education during childhood – if children with disabilities have access to education (schooling) it reduces the likelihood that they will live in poverty as adults.

Reduced earning capacity is often associated with functional limitations, often-substantial costs of accommodating these limitations, high susceptibility to certain financial shocks, lack of financial reserves and extremely limited earning potential, result in them living below or near the poverty line.

However, such vulnerability also has profound implications for persons with disabilities who are financially more secure, but whose resources are limited and whose expenses are extraordinary. Failure to maintain financial stability may therefore trigger a downward spiral resulting in, among others, bankruptcy, diminished physical and mental health, financial dependence on family and friends, and even homelessness or institutionalisation if insufficient family support and resources are available.

The International Labour Organisation (ILO) estimated in 2009 that South Africa loses about 7% of its annual GDP due to exclusion of persons with disabilities from the workplace and the subsequent productivity loss.

Economic security and social protection for persons with disabilities requires a complex web of inter-related interventions. Persons with disabilities must have access to adequate financial resources to cover the additional cost of living associated with disability.

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.

Persons with disabilities living in rural and impoverished settlements, and on farms and traditional communities are less likely to access employment opportunities due to (i) the lack of accessible and affordable public transport; and (ii) lack of accessible and affordable specialised services and opportunities in these areas. Traditional communities are also more likely to associate disability with traditional beliefs and practices.

RELEVANT UNCRDP ARTICLES

Article 27: Work and Employment

The right of persons with disabilities to work, on an equal basis with others, inclusive of 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. To achieve this, specific measures must be taken, including:

- The prohibition of discrimination on the basis of disability across the employment value chain;
- Protecting the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work;
- Enabling persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
- Promoting 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;

- Promoting opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
- Employing persons with disabilities in the public sector;
- Promoting 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;
- Ensuring that reasonable accommodation is provided to persons with disabilities in the workplace;
- Promoting the acquisition by persons with disabilities of work experience in the open labour market; and
- Promoting vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities.

Article 28: Adequate standard of living and social protection

- Access to social protection programmes and poverty reduction programmes are guaranteed through assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance; access to public housing programmes.

6.5.1 Focus Areas

The following four (4) focus areas aim to accelerate reducing the economic vulnerability of persons with disabilities and their families and fostering economic self-reliance:

- Disability, poverty, development and human rights;
- Access to decent work and work opportunities;
- Persons with disabilities as owners of the economy; and
- Reducing the cost of disability for persons with disabilities and their families.

6.5.1.1 Disability, Poverty, Development and Human Rights

While the Millennium Development Goals (MDGs) represented a concerted effort to address global poverty, the MDGs did not address the interface between poverty and disability, and persons with disabilities found themselves invisible in goal-oriented programmes. As a result, persons with disabilities remain excluded from equitable access to resources such as education, employment, healthcare and social and legal support systems, and consequently experience disproportionately high rates of poverty.

This omission is currently receiving attention as the world moves towards finalisation of the Post-2015 Development Agenda, and Catalina Devandas Aguilar, UN Special

Rapporteur on the Rights of Persons with Disabilities, is on record stating that “*The inclusion of persons with disabilities in the Sustainable Development Goals is fundamental if we are to achieve sustainable development that is genuinely rights-based*”.

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*”.

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.

A pilot study conducted in 2014 on *Elements of the Financial and Economic Costs of Disability to Households in South Africa* highlighted that some households, such as those of women with disabilities, persons with severe disabilities and those of children with disabilities are still disproportionately economically disadvantaged and vulnerable. The study identifies seven key areas for intervention to reduce economic vulnerability of households of persons with disabilities.

The White Paper for Social Welfare, 1996 provides that social security covers a wide variety of public and private measures that provide cash or in kind benefits or both. The provision of these measures takes place, first, in the event of an individual's earning power permanently ceasing, being interrupted, never developing or being exercised only at unacceptable cost and such person being unable to avoid poverty. The White Paper further defines social security as policies which ensure that all people have adequate economic and social protection during unemployment, ill health, maternity, child - rearing, widowhood, disability and old age, by means of contributory and non-contributory schemes for providing for their basic needs.

While uptake of social assistance grants has increased significantly over the past 15 years, medium and long-term emphasis has been on providing social grant beneficiaries with alternative income sources through gainful work and training, among others, through public employment programmes.

Workers are protected through unemployment insurance benefits as well as compensation for injury on duty.

Significant challenges exist in the private insurance industry with placement of benefit limitations and/or total exclusion of persons with disabilities from insurance benefits. A shift is required to reflect the social model paradigm, where insurance aims to enable a person acquiring a disability to maintain lifestyle and employment, rather than the current practice of compensating them for loss of income due to loss of employment.

DIRECTIVES	DESCRIPTION
Align social assistance with cost of disability	Social assistance must be aligned with the actual cost of disability, and must be structured in a way that encourages social assistance beneficiaries with disabilities to transition to sustainable livelihoods and decent work.
Review all insurance benefits to include equitable access to persons with disabilities	Insurance benefits must be reviewed to remove all discriminatory practices on the basis of disability, and to expand benefits for persons with disabilities and their families.
Develop and/or strengthen and broaden the geographic reach of programmes and projects designed to reduce poverty amongst persons with disabilities	<p>The programmes and projects must focus on the following 7 areas:</p> <ul style="list-style-type: none"> • Access to education; • Support for caregivers of children with disabilities and those for adults with severe disabilities; • Accessible and affordable transport; • Increasing household income through employment and work opportunities; • Provision of accessible transport to health care facilities; • Affordable assistive devices and support, including accessibility of information and communication technology; and • The inclusion of persons with disabilities in the design of key developmental areas such as housing and transport.

6.5.1.2 Access to decent work and employment opportunities

Persons with disabilities must be treated as an asset rather than an expense item, and every effort should be taken, whether formally or informally, to develop skills and abilities and to provide opportunities for people to maximise their contribution.

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.

Persons with disabilities are disadvantaged compared to their peers without disabilities 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 persons without disabilities. The Employment Equity Act, 1997 has not resulted in a significant improvement in

the employment status of persons with disabilities, with very minimal year-on-year improvements reported by the Commission on Employment Equity. Equity targets have been set well below the national disability prevalence by both the public and private sector, and those benefiting from this affirmative action legislation tend to be white and male and often do not require significant reasonable accommodation support measures.

Invisible disabilities (psychosocial, neurological, hearing and intellectual disabilities) often lead to persons with these disabilities not having access to affirmative action, social security and assistance benefits as they are not easily identifiable. These persons are therefore required to present additional proof of impairment.

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.

The following range of supported/subsidised employment placement and support options are currently available in predominantly urban centres, largely due to the high general unemployment rate in South Africa:

- Sheltered work - People working in sheltered settings retain their social welfare benefits, typically a disability grant and usually receive a small discretionary additional weekly payment from the work provider. A weakness in the subsidised supported employment environment has been the lack of financial support for organisations of persons with disabilities who offer income-generating opportunities to their members;
- Integrative enterprises - sheltered workshops paying normal wages;
- Supported employment - a system of support for persons with disabilities in respect of on-going employment in integrated settings, including job coaching; and
- The open labour market.

A higher rate of investment must create employment opportunities for persons with disabilities, and a labour market that is more responsive to economic opportunity should take into account the need to ensure that persons with disabilities are included without discrimination on the basis of disability, race, geographical location or gender. Labour market strategies should embed disability at each level of the value chain, particularly with regards to ensuring that persons with disabilities benefit from reviewed regulations and standards for small and medium enterprises by addressing public sector labour relations; strengthening the application of minimum standards on the employment of persons with disabilities among employers ensuring that innovative recruitment processes target persons with disabilities; strengthening compliance with disability components of active labour market policies.

DIRECTIVES	DESCRIPTION
Determine disability related economic affirmative action targets that are cognisant of disability population demographics	The targets must take into consideration disability population demographics as well as redress requirements to facilitate equality of outcome by 2030.
Provide affordable vocational rehabilitation and related programmes	Employees with disabilities must have access to affordable vocational rehabilitation, skills development, job retention and return-to-work programmes after onset of disability.
Integrate socio-economic development programmes provided to persons with disabilities on the national employment services database	These programmes include social assistance, rehabilitation and habilitation, skills development, entrepreneurial and employment support programmes (e.g. mentorship for start-up business owners, job coaching and placement support). The aim is utilise the national employment support services database for job-seekers to link persons with disabilities to job opportunities.

6.5.1.3 Persons with disabilities as owners of the economy

Persons with disabilities can and should be active players in building the economy, and must therefore be enabled to access opportunities aimed at ownership of the economy. Measures should include:

- Ensuring that persons with disabilities are actively participating in key NDP economic sectors such as mining, construction, mid-skill manufacturing, agriculture and agro-processing, higher education, tourism and business services;
- Persons with disabilities benefit from infrastructure projects that contribute to growth and job creation. There is a need to ensure inclusive planning that guarantees equal business opportunities and access to key services such as commercial transport, energy, telecommunications and water, while ensuring their long-term affordability and sustainability;
- Persons with disabilities must be part of all strategies to reduce the cost of living for low-income and working-class households. Such strategies should take into account the diversified needs of different segments within the population of persons with disabilities;
- Reduced cost of regulatory compliance should be extended to businesses that are owned and managed by persons with disabilities and their families;

- A larger, more effective innovation system should ensure that skills development and businesses owned by persons with disabilities are included and supported;
- Support for small businesses that are owned and managed by persons with disabilities, must be strengthened;
- An expanded skills base that achieves the current target of 4% set in the National Skills Development Strategy, and progressively increase this to 15% by 2030 in line with the increasing number of persons with disabilities, must be supported;
- Strengthened financial services to bring down cost and improve access for small- and medium-sized businesses must be available to persons with disabilities and their business enterprises on an equitable basis;
- The commitment to public and private procurement that fosters the growth of disability empowered business and those owned/managed by persons with disabilities, must be translated into practice and reported on;
- Enhanced commercial diplomatic services should position disability as an integral component of investment and foreign policy; and
- The public procurement system is an important transformation tool, and must include a minimum requirement that all goods and services procured through the public purse, comply with the principles of universal design and disability equity.

DIRECTIVES**DESCRIPTION**

Adopt and implement a target of 7% procurement and economic opportunities for emerging SMEs owned by persons with disabilities

Steps must be taken to ensure that at least 7% of all public and private procurement for bids under R30 000 are allocated to business entities owned by persons with disabilities.

At least 7% of all opportunities in the various economic sectors must be allocated to business entities owned by persons with disabilities. This should include interventions so that farmers with disabilities access, own and cultivate land.

Strengthen access to, and participation in, SME support programmes

This must include strengthening all support programmes for entry level SMEs owned by persons with disabilities by implementing affirmative action targets and ensuring that reasonable accommodation support is available across the SME support services value chain.

Ensure that BBBEE benefits persons with disabilities

BBBEE creates access and equal opportunities for the economic empowerment of persons with disabilities by eliminating discrimination of all forms. As an example it facilitates access to the labour market by mandating and

rewarding organisations to hire and upskill persons with disabilities. Persons with disabilities must be included in all the BBEE legislation and related regulatory framework mandates. Specific directives include the following:

- Persons with disabilities to have representation in all Sector Charters.
- Amendments of BBEE codes to allocate specific targets for all elements of the codes to benefit persons with disabilities, in negotiation with the disability sector.

Set affirmative action targets for women with disabilities

Proposed targets are:

- 50% of all affirmative action opportunities targeting persons with disabilities.
- 7% of affirmative action opportunities targeting women empowerment.

6.5.1.4 Reducing the cost of disability for persons with disabilities and their families

The extra-ordinary costs of living associated with the high cost of personal assistance services (sign language interpreters, attendant care, reader and note-taking services), assistive devices and technology and transport for some groups, as well as healthcare-related expenses, significantly detract from equality of outcomes despite the availability of affirmative action programmes.

In addition to the direct disability-related expenses noted above, persons with disabilities and their families might need to incur additional costs.

According to data from Stats SA's Community Survey 2007, children with disabilities are more likely to be orphaned than their peers without disabilities. One in four children with disabilities nationwide has lost one or both parents, compared to one in five among children without disabilities.

Taxpayers with disabilities or with disabled dependants, enjoy a significant range of tax rebates for all medical scheme contributions and out-of-pocket medical expenses. These include, among others:

- attendant-care expenses (home, school and work);
- travel and other related expenses (including transport costs specifically incurred in respect of a learner with a disability who attends a specialised school);
- acquisition, insurance and maintenance of assistive devices, artificial limbs and technology required to enable persons with disabilities to perform daily activities

(including computer or other electronic equipment required in order to convert printed material or image files into text, braille, speech or any other accessible format, including peripheral equipment such as scanners, braille printers, speakers and headphones for the personal use by or for a person with a disability); and

- service animals, alterations or modifications to assets acquired or to be acquired.

The challenge with the current taxation system in South Africa is that it is linked to the tax bracket of the individual, rather than on an equitable rebate for the actual expense of the disability-related cost incurred.

DIRECTIVES	DESCRIPTION
Review disability related tax benefits	Disability-related tax benefits must be reviewed to ensure equity in the recovery of disability-related costs.
Measures must be put in place to mediate the disability-related costs to SMMEs owned by persons with disabilities	Adjudication of bids must exclude the disability-related costs associated with reasonable accommodation measures required to run the business to ensure equitable adjudication on price.

6.6 Pillar 6 – Strengthening the Representative Voice of Persons with Disabilities

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.

The first level of self-representation, at individual level, has been covered under the Pillar on Supporting Empowerment of Persons with Disabilities. This Pillar focuses on strengthening the collective representative voice of persons with disabilities.

RELEVANT UNCRPD ARTICLES
<p>Article 4: General obligations</p> <p>Consultation and active involvement of persons with disabilities, including children with disabilities, through their representative organisations in the development and implementation of legislation and policies to implement the present Convention and</p>

in other decision-making processes concerning issues relating to persons with disabilities.

Article 29: Participation in political and public life

Measures to actively promote 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 forming and joining organisations of persons with disabilities to represent persons with disabilities at national, regional and local levels.

Article 33: National implementation and monitoring

Civil society, in particular persons with disabilities and their representative organisations, be engaged and participate fully in monitoring processes.

6.6.1 Focus Areas

The following five (5) focus areas require attention in order to strengthen the representative voice of persons with disabilities:

- Strengthening access and participation through self-representation;
- Recognition of representative organisations of persons with disabilities (inclusive of parents organisations);
- Strengthening the diversity and capacity of DPOs and self-advocacy programmes
- Public participation and consultation; and
- Self-representation in public life.

6.6.1.1 Strengthening Access and Participation through Self-Representation

Organisations of persons with disabilities, popularly known as disabled people's organisations or DPOs, are controlled by persons with disabilities themselves. This means that persons with disabilities constitute a majority of the overall staff and board, and are well-represented in all levels of the organisation, and this right is protected in the constitution 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.

Self-advocacy groups, which often constitute important programmes of disability service organisations, are constituted by persons with disabilities who, as a result of their impairments, might find it difficult to run and manage their own organisations independently. They should however enjoy guarantees of having an independent voice when it comes to advocacy matters; in other words, have the right to express

themselves as a group without interference. These under-represented groups require specific measures to ensure that their voices are heard during advocacy and monitoring processes.

Beneficiaries and participants of disability specific programmes must enjoy self-representation rights on the management committees and governance structures of organisations and/or institutions delivering services to them.

DIRECTIVES	DESCRIPTION
Include persons with disabilities in all design, planning, implementation and monitoring of policies and programmes	Government institutions at all levels and contexts of governance must consult relevant representative organisations of persons with disabilities (inclusive of parents organisations) 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.
Ensure private entities provide accessible services	Private entities providing services to the public must be encouraged to involve representative organisations of persons with disabilities in developing and assessing the accessibility of their services.

6.6.1.2 Recognition of Representative Organisations of persons with disabilities (inclusive of parents' organisations)

Representing others requires a process of obtaining mandates from the constituency whose viewpoints are being expressed. The right to represent others, to be recognised as a *representative voice*, therefore comes with responsibilities. It requires of representative organisations to put in place, among others,

- Membership management systems, which enables the organisation to account for the constituency it represents (also in terms of race, gender, age, geographical location, sexual orientation, impairment group etc.);
- Empowerment programmes for members;
- Advocacy and monitoring programmes; and
- Internal consultation and accountability mechanisms which enables them to obtain mandates from their membership.

Recognition of representative organisations furthermore requires of duty-bearers to put in place systems that regulates self-representation for purposes of consultation during policy and programme development, implementation and M&E processes in order to ensure the collective representative voice of persons with disabilities.

DIRECTIVES	DESCRIPTION
Develop minimum norms and standards for consultation of persons with disabilities	Minimum norms and standards for consultation with representative organisations of persons with disabilities at all levels of governance must be developed and regulated.
DPOs must register with their respective co-ordinating bodies at national, provincial and local level	Representative organisations of persons with disabilities must register with the designated national, provincial, district and local disability rights coordinating mechanisms for purposes of participation in policy development, implementation support, monitoring and evaluation processes.

6.6.1.3 Strengthening the Diversity and Capacity of DPOs and Self-advocacy Programmes

The UNCRPD requires of states parties to contribute towards the strengthening of the representative voice of persons with disabilities. This requires that state funding is made available to support disability organisations in establishing and maintaining self-advocacy and participatory monitoring activities at all levels of governance.

Particular attention is required for funding of self-advocacy programmes that will strengthen the collective voice of under-represented groups, as discussed in the pillar on persons experiencing compounded marginalisation.

DIRECTIVES	DESCRIPTION
Provide funding to DPOs and self-advocacy groups for rights-based advocacy and research programmes	<p>DPOs and self-advocacy groups must be empowered through legislation and financial support to:</p> <ul style="list-style-type: none"> • Do rights-based advocacy and research for the promotion of the rights of persons with disabilities at national, provincial and local level; • Participate in the monitoring of the implementation of the White Paper on the Rights of Persons with Disabilities, sector policies and programmes as well as the domestication of international treaties; and • Monitor the rights of persons with disabilities through the independent monitoring mechanism.
Provide accessible	Persons with disabilities who experience barriers in

consultative platforms and support for self-representation	representing themselves or organising themselves into representative organisations, must be provided with consultative platforms and support to represent themselves.
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6.6.1.4 Public Participation and Consultation

It is important to distinguish between participation and consultation when it comes to the provision of platforms for self-representation.

Public participation constitutes access and full participation by persons with disabilities in community meetings and processes. This requires that reasonable accommodation measures are put in place to ensure that persons with disabilities know about the platforms, are able to get to these meetings, are able to get into and move around in the buildings where the meetings are held, have their specific sensory requirements taken into account (e.g. lighting, noise levels etc.), have accessible ablution facilities, have access to the full range of interpreter services and other assistive technology which provides access to information and communication, and are able to present their viewpoints.

Consultation constitutes a more structured process of self-representation whereby persons with disabilities are provided with access to policy and programme development processes and can participate in M&E processes on issues affecting their lives. This requires that representative organisations/structures of persons with disabilities who are affected by a specific area of focus, apply for recognition with the relevant institutions for purposes of consultation, and that the outcomes of such consultations are shared with management and governance structures.

It is furthermore important that a distinction is made between advocacy (advice on what is required) and expertise (how this should be done) when consulting disability organisations. All participation-related expenditure incurred by disability organisations in state-initiated advocacy and monitoring activities must be covered by the relevant institution, and not by organisations. Expertise should not be provided free of charge, but should be procured through normal supply chain management processes.

DIRECTIVES	DESCRIPTION
All public participation programmes must be fully accessible to persons with disabilities	This will include making use only of venues that are fully accessible, and ensuring that reasonable accommodation measures are taken to ensure access to information and communication.

6.6.1.5 Self-representation in public life

It is important that persons with disabilities enjoy direct representation in legislative bodies as well as governance structures of public institutions whose mandates impact on the lives of persons with disabilities.

This includes, among others, that persons with disabilities are enabled to stand for election as public representatives at all levels of governance, that all legislatures have a public representation of persons with disabilities congruent with the disability prevalence percentage, and that their right to self-representation in public institutions is secured through legislation.

DIRECTIVES	DESCRIPTION
Legislate the rights of persons to be represented on legislative bodies	<p>Legislation must be developed to secure the right of persons with disabilities to represent themselves in legislative bodies as well as governance structures of public institutions.</p> <p>Persons with disabilities must be represented on all legislative bodies as well as governing bodies of national, provincial, district and community institutions impacting on the lives of persons with disabilities through nomination by relevant representative organisations of persons with disabilities (inclusive of parents organisations). This will require review of legislation and policies governing the composition of governing structures and eligibility of political party lists for elections.</p> <p>Children with disabilities must be enabled to represent themselves. This can take the form of providing support and platforms to enable them to represent themselves.</p>

6.7 Pillar 7 – Building a Disability Equitable State Machinery

“Disability must be integrated into all facets of planning, recognising that there is no one-size-fits-all approach”.

National Development Plan, 2012

Efficient, effective and development-oriented state machinery that delivers services in an equitable manner is an essential element of a capable and developmental state that pursues a ‘substantive’ rather than ‘formal’ approach to equality, in other words,

that the circumstances of people are taken into account and focus is on ensuring equality of outcomes.

The state machinery includes the legislative, executive across all three spheres of government.

RELEVANT UNCRDP ARTICLES

Article 4: General obligations

- Appropriate legislative, administrative and other measures are taken to ensure implementation of the rights.
- The promotion of training of professionals and staff working with persons with disabilities to enable them to give effect to the rights. The need for training is amplified throughout the articles.

Article 31: Statistics and data collection

- States Parties to collect relevant information, which should include statistical and research data, for the formulation and implementation of policies that will give effect to the Convention.
- The process of collecting and maintaining information collected comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities,
- Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics. Appropriate disaggregation is required to assess progress being made with implementation of States Parties' obligations, as well as to identify and address barriers faced by persons with disabilities in exercising their rights.
- States Parties to take responsibility for the dissemination of these statistics and ensure their accessibility to the general public, and persons with disabilities in particular.

Article 33: National Implementation and Monitoring

- The maintenance, strengthening, designation or establishment of a framework, to promote, protect and monitor implementation of the UNCRPD, in accordance with the government's legal and administrative systems. This framework might include one or more independent mechanisms, as appropriate.
- The participation of civil society, in particular persons with disabilities and their representative organisations, to be involved and participate fully in the monitoring process.

Article 35: Reports by States Parties

- Governments which have ratified the UNCRPD to submit periodic reports on progress made with implementation of the obligations contained in the UNCRPD.

Other Relevant Articles include:

Article 9 (Accessibility)

Article 13 (Access to Justice)

Article 20 (Personal Mobility)

Article 24 (Education)

Article 25 (Health)

Article 26 (Rehabilitation)

6.7.1 Focus Areas

Disability must be mainstreamed across the following five focus areas:

- Disability equitable planning, budgeting and service delivery;
- Disability equitable evidence informing policy and programme development (Monitoring, evaluation, reporting, research, data and statistics);
- Public procurement and regulation;
- Capacity building and training; and
- Strengthening accountability.

6.7.1.1 Disability Equitable Planning, Budgeting and Service Delivery

An efficient, effective and development oriented public service that delivers services in an equitable manner is an essential element of a capable and developmental state. Disability equitable 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 peers without disabilities.

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 M&E 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.

Principles informing coordination of services, budgeting and resource allocation include:

- Persons with disabilities have a right to participate equally with others in any activity and service intended for the general public;

- Principles of universal design and reasonable accommodation provisioning must inform all new and existing legislation, standards, policies, strategies, plans and budgets;
- Targeted programmes and services aimed at redressing 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;
- Persons with disabilities must be consulted on selecting appropriate reasonable accommodation measures, assistive technology and personal support; and
- Representative organisations of persons with disabilities (inclusive of parents' organisations) must be consulted throughout the design-planning-implementation-monitoring-evaluation-regulation value chain.

The development of Universal Design Access Plans at institutional level will ensure that:

- Persons with disabilities have equality of opportunity 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 equality of opportunity as other people to access the buildings and other facilities of the institution;
- Persons with disabilities receive information in a format or means that will enable them to access the information as readily as other people are able to access it;
- Persons with disabilities receive equitable levels and quality of service from the staff of the institution as other people receive from the staff of that institution;
- Persons with disabilities have equality of opportunity as other people to make complaints to the institution; and
- Persons with disabilities have equality of opportunity as other people to participate in any public consultation by the institution.

Disability equitable budgeting includes the re-prioritisation of existing budgets to accommodate reasonable accommodation support required to facilitate equality of outcome for persons with disabilities, as well as budgeting for disability-specific services required by persons with disabilities to promote human dignity, empowerment and self-reliance. It also requires that all conditional grants in the division of revenue include a requirement that all infrastructure, technology and programme development complies with the principles of universal design.

DIRECTIVES	DESCRIPTION
Develop disability rights and equity commitment statements	All public institutions must include a commitment statement on disability equity, highlighting the relevant UNCRPD obligations to the respective institution, in their strategic plans.
Implement a disability equitable budgeting model	A disability equitable budgeting model must be developed to ensure that state budgets and expenditure take into account the equality of outcome as it pertains to persons with disabilities.
Develop and implement funded Universal Design Access Plans	All public institutions must include a funded Universal Design Access Plan as an integral component of their annual performance plans and/or Integrated Development Plans. This requires that public institutions are able to illustrate how universal design principles are transforming planning and designing, and what reasonable accommodation support measures are funded.
Incorporate universal design principles in procurement of goods, services and construction of infrastructure	All state grant funding must incorporate a minimum requirement that universal design principles are included in the procurement of goods and services and construction of infrastructure. All service level agreements with state owned enterprises must include a disability dimension that contributes towards equitable outcomes for persons with disabilities.
Review all programmes targeting children for access to children with disabilities	The review must be conducted on all public and private sector programmes. It must include all child-centred services and must focus on the elements of equal access and participation.
Provide top-up budgets for service delivery in deep rural and isolated communities	Subsidies for services delivered in deep rural communities must take into account the additional cost of delivering qualitative services in these communities. There must be specific programmes and micro-scale projects, prioritised for portions of rural areas where persons with disabilities reside, aimed at providing immediate basic services, infrastructure and enabling environments.

6.7.1.2 Disability Equitable Evidence informing Policy and Programme

Development

Evidence that informs, among others, disability equitable policy and programme development on the one hand, and strengthening accountability on the other, is derived through effective monitoring and improvement processes, research and statistics and data management as described below:

- *Monitoring and Evaluation:* All M&E processes must incorporate the disability dimension, and disability organisations and persons with disabilities must be part of all citizen-based monitoring programmes;
- *Evaluation Feedback and Improvement:* Mechanisms for interpreting and extrapolating feedback gathered from evaluations must be in place. These mechanisms should be aimed at making use of the feedback to ensure on-going improvement of policies and programmes. *Research:* 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. Improved coordination of disability rights-based research that articulates national priorities, and which provides sound evidence for future policy and practice decisions, will ultimately lead to improved outcomes for South Africans with disabilities; and
- *Disability Data and Statistics Management:* Reliable disability statistics play a crucial role in the development of policies and legislation aimed at improving the lives of persons with disabilities, as well as in monitoring progress and evaluating programmes addressing the needs of persons with disabilities.

Participation in monitoring and evaluation processes, as required by the UNCRPD, must be approached, among others, within the context of the Framework for Strengthening Citizen-Government Partnerships for Monitoring Frontline Service Delivery (2013), which emphasises the active participation of citizenry in order to provide key perspectives on service delivery that is vital to responsiveness of government.

Monitoring and evaluation of the rights of persons with disabilities is done within the broader context of the Government-Wide M&E System (GWMES), which encompasses the Policy Framework on the GWMES; National Treasury's Framework for Managing Programme Performance Information (FMPPi); Statistics South Africa's South African Statistical Quality Assessment Framework (SASQAF); and the 2011 National Evaluation Policy Framework (NEPF) produced by DPME.

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 must 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 and habilitation, education and support responses might be required depending on the age, gender, geographical location, culture etc. of the individuals in question. Persons with similar 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. 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; and
- Impairments are not predictors of the lived experience of disability - Persons with similar 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.

Measuring child disability is inherently much more difficult than measuring disability in adults. While adults have relatively stable characteristics, children go through a natural development process as they grow, learning how to talk, walk, read and write. Their evolving characteristics complicate the task of assessing function and distinguishing significant limitations from variations in normal developmental processes.

DPOs must be an integral part of statistical and data analysis and all disability-related data and statistics must be fully accessible to persons with disabilities.

The set of disability questions developed by the Washington Group (WG), currently utilised by Statistics South Africa for purposes of surveys and census, is generally regarded as a new and improved approach of measuring disability-based on activity limitations and restrictions in social participation. This data collection method is aimed at producing prevalence measures that are internationally comparable even though it is, still inadequate to measure impairment and participation across the entire spectrum.

The World Health Organization's (WHO) International Classification of Functioning (ICF), Disability, and Health 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.

DIRECTIVES

DESCRIPTION

Standardise disability data and statistics

All public and private institutions must review their data and statistics management systems with the view of incorporating disability disaggregation where relevant. The disability dimension must be included

in all national census, household, labour and other socio-economic surveys. All research focusing on the general population within the focus areas covered in this WPRPD, must be disability disaggregated.

Develop and implement a national research agenda

A national disability research agenda for purposes of policy and programme development and tracking the reduction of inequality, must be developed at five year intervals to coincide with the MTSF.

Strengthen reporting systems to include disability related reports

Systems must be strengthened to ensure that all periodic reporting on ratified international treaties of the United Nations, African Union and SADC include with the disability-related obligations and dimensions of the UNCRPD.

Disaggregate disability data to reflect gender statistics

All disability-disaggregated data and statistics must be disaggregated according to gender; and all gender-related data and statistics must be disaggregated according to disability.

6.7.1.3 Public Procurement and Regulation

The public procurement system is an important transformation tool, and must include a minimum requirement that all goods and services procured through the public purse, comply with the principles of universal design and disability equity.

The regulatory environment for licensing mining rights, telecommunications, etc. must furthermore ensure that persons with disabilities benefit equally from the social investment requirements attached to such licenses.

INTERVENTIONS

DESCRIPTION

All public procurement and tender documents and processes must comply with the concept of universal design

Public procurement policies must include dispositions requiring that when public agents purchase products and services with public funds, the agent must purchase the product that best meets accessibility requirements as defined by international standards.

Persons with disabilities must benefit equitably from the social investment requirements attached to the licensing regulatory

Licensing regulations must ensure that social investment requirements prioritise the provisions for persons with disabilities and develop means to ensure persons with disabilities attain sustainable benefits.

environment

State enterprises to include a disability dimension All service level agreements with state owned enterprises must include a disability dimension that contributes towards equitable outcomes for persons with disabilities.

6.7.1.4 Capacity Building and Training

The UNCRPD places a high premium on the investment that should be made in building the capacity of the state machinery to implement the obligations of the UNCRPD.

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. This requires that they develop strategies to ensure that the institutions have an in-depth understanding, knowledge and experience of, among others:

- 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;
- obligations contained in the Convention on the Rights of Persons with Disabilities and other international and regional rights instruments; and
- working with organs of civil society.

The above must be achieved through a coordinated programme for accredited and non-accredited training across all levels and components of the state machinery. Disability rights mainstreaming must be integrated into all aspects of pre-graduate training, orientation and training offered to personnel of the state machinery, accreditation of disability rights mainstreaming courses must be strengthened, and persons with disabilities must be empowered to participate as trainers.

Whilst employers are responsible for ensuring that they capacitate employees to deliver disability equitable services, it is also the responsibility of every employee to ensure that they equip themselves with the required knowledge and skills to serve all customers equitably.

DIRECTIVES	DESCRIPTION
Train personnel on providing services to persons with	All public and private institutions must ensure that personnel responsible for frontline service delivery, design and planning, budgeting, service delivery, administration of

disabilities	justice and M&E undergo on-going training on strategies and measures to ensure equality of outcome for persons with disabilities in their programmes. Additionally, disability equity and service delivery improvement training must be included in the annual continuous development programmes of all professional staff that render services to persons with disabilities.
Include modules on disability in all education materials and courses	All education materials across the learning spectrum must include modules on inclusion and disability equity. All disability equity training courses must include persons with disabilities (inclusive of parents) as part of the trainer component.

6.7.1.5 Strengthening Accountability

The onus of ensuring that disability-equitable planning, budgeting, service delivery and M&E becomes the norm in South Africa, rests with the state, and not rights-holders. Duty-bearers must therefore be regarded as having intentionally discriminated on the basis of disability if they cannot illustrate that they:

- Have acknowledged that persons with disabilities experience marginalisation and exclusion (attitude);
- Have identified the barriers/sources of exclusion and marginalisation (baseline);
- Have identified the enablers to remove the barriers (intent);
- Have budgeted to remove the barriers (commitment);
- Can report on results/impact of implementation (accountability); and
- Can demonstrate by taking actions that they are improving (responsibility).

Enforcing compliance with the obligations contained in the UNCRPD as well as Constitution of the Republic of South Africa by both the public and private sector, requires strengthening of disability rights mainstreaming in existing legislation, as well as the development of new disability-specific legislation, with particular attention paid to enforcement mechanisms that are accessible to rights-holders.

DIRECTIVES	DESCRIPTION
Include disability outcomes in performance contracts of senior managers across the state machinery	All performance contracts of state machinery senior managers must articulate appropriate disability equity requirements.
Develop and implement new disability specific	New disability specific legislation to strengthen implementation of the WPRPD must be developed

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legislation	following finalisation of a gap analysis.
Review existing legislation	Existing legislation must be reviewed to ensure compliance with UNCRPD obligations.

6.8 Pillar 8 – Promoting International Co-operation

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).

RELEVANT UNCRDP ARTICLES

Article 32: International Cooperation

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 40: Conference of States Parties

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 is a member of, among others the WHO, the ILO, WIPO and continues to share technical expertise through these channels.

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

South Africa is obliged through a number of ratified treaties to ensure that the rights of asylum-seekers, refugees and displaced persons with disabilities are protected whilst they are in South Africa, and during repatriation processes.

DIRECTIVES	DESCRIPTION
Include disability in all international engagements and agreements	All multi-lateral, bilateral and national engagements, agreements and other bilateral-multi-lateral funding instruments must include a disability dimension and implement their disability inclusive policies in South Africa. Persons with disabilities from South Africa trained and

	recruited to play a significant role in international diplomacy, government-to-government relations and in social/economic bodies.
	Disability mainstreamed in South Africa's international development cooperation, trade and other agreements.
Support disability mainstreaming and strengthening participation in the Pan African Parliament, AU, SADC and other such organisations	SA must support disability rights mainstreaming and strengthening participation in the Pan African Parliament, the African Union and its organs, the Southern African Development Commission (SADC) and other international/intergovernmental bodies based in and outside South Africa.
	South African policies harmonised with international policy instruments.
	South Africa is to play a role globally and through the civil society sector in revitalising the civil society sector by exchanging information through international organisations.
	South Africa is to exchange information bilaterally through partnership agreements with countries on the African Continent.
Develop and implement a national disability agenda on international cooperation	A national disability agenda for purposes of international cooperation and knowledge exchange must be determined at five year intervals to enhance MTSF planning and implementation.

6.9 Pillar 9 – Monitoring and Evaluation

The monitoring process involves collecting, analysing, and reporting data on inputs, activities, outputs, outcomes and impacts as well as external factors, in a way that supports effective management of implementation of the WPRPD.

Evaluations will assess relevance, efficiency, effectiveness, impact and sustainability, and thereby provide credible and useful information to answer specific questions to guide decision making by staff, managers and policy makers on accelerating the implementation of the WPRPD.

Impact evaluations will examine whether underlying theories and assumptions were valid, what worked, what did not and why.

Government performance information will triangulate with the tracking of statistical and financial information and citizen's voices.

6.9.1 Data terrains and the Disability Inequality Index

6.9.1.1 Data terrains

Monitoring implementation of this WPRPD will draw from three (3) data terrains as explained in the table below.

Tracking Statistical Trends	This involves 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 their 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 will ensure 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 from government's existing performance monitoring frameworks.
Stakeholder Feedback	This participatory data stream and approach is important for the qualitative monitoring and evaluation 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.

6.9.1.2 Disability Inequality Index (DII)

In order to realise the outcomes of the National Development Plan Vision 2030 and beyond, it is important that inequalities between persons with disabilities and persons without disabilities be reduced. Policy improvement cannot bear fruit without systematic and consistent measurement of the inequality gap.

The DII is an index for measurement of inequality between persons with disabilities and persons without disabilities with a gender dimension. The index provides a high level quick scan of the level of inequality with the explicit purpose of managing

government performance more inclusively. This index will be calculated and reviewed annually.

The DII is not a substitute for the disability rights monitoring and evaluation framework that will be embedded in the government-wide monitoring and evaluation system.

Although the DII is new, it operates within the context of the Human Development Index, the Gender Inequality Index and the Development Indicators. The domains include access and participation; the labour market and empowerment.

6.9.2 Key Principles

M & E of disability rights will be underpinned by the following key principles:

- *Disability-disaggregation* of all monitoring and evaluation information where it can be used to inform responsive planning, budgeting, implementation and reporting. The aim is to report on meaningful inclusion of persons with disabilities in all government policies and programmes;
- *Involvement of rights-holders* – ensuring the full participation of persons with in the conceptualisation, planning, development, implementation and monitoring of all government policies and programmes that directly or indirectly impact on their lives; and
- *Comparability* requires comparisons to be made between levels of implementation over time. Such comparisons can be made only if monitoring is carried out on an on-going basis. In order to achieve this longitudinal comparison it is necessary to establish baseline measurements of the current situation. Effective monitoring of equality will require comparisons to be drawn between the service delivery to persons with disabilities and persons without disabilities. This is to ensure that persons with disabilities are able to enjoy their human rights on an equal basis with others. Such comparative information can best be obtained through the use of mainstream or generic data collection directed at the general population (i.e. where persons with disabilities are identified by relevant variables in the survey design).

As a point of departure, it is important to reflect on mainstreaming the Medium Term Strategic Framework (MTSF) outcomes in line with the disability-disaggregated National Development Plan.

The existing indicators that are already in the M&E system must be disaggregated to build a baseline for disability-disaggregation data, for example, where data is being collected on children and women.

6.9.3 Stakeholder coordination

M & E requires a significant measure of independent and impartial views, and is therefore best managed and conducted by a multi-disciplinary and multi-stakeholder team of people that account and report to the national disability rights coordinating mechanism on the processes engaged in, and the findings of the process. However, the national disability rights coordinating mechanism remains responsible for leading and ensuring that monitoring and evaluation is implemented.

Collaboration and co-operative M & E by all three spheres of government, the private sector and disabled peoples organisations will be facilitated by the national disability rights coordinating mechanism. The provincial and local spheres of government will be supported to set up M & E systems that are aligned and feed into the national system.

The national disability rights coordinating mechanism will establish the necessary co-ordination structures, mechanisms, processes and systems to fulfill its M&E responsibility.

The national disability rights coordinating mechanism and the Department of Planning, Monitoring and Evaluation will ensure alignment between their M&E systems, and that all information gathered through monitoring the implementation of the WPRPD informs government-wide planning and service delivery.

6.9.4 Reporting

The designated national disability rights coordinating mechanism will publish an annual report on progress being made in the implementation of the WPRPD, against the targets set in the Implementation Matrix.

South Africa is obliged, as a signatory to international human rights treaties, to submit periodic reports to the UN and AU respectively. Article 35 of the UNCRPD requires States Parties to submit reports at four yearly intervals.

A participatory impact assessment on implementation of the WPRPD will be conducted at four year intervals to inform national MTSF planning and international treaty reporting.

6.9.5 Enforcement mechanisms

Persons with disabilities whose rights have been violated currently have access to recourse through a number of existing mechanisms, including:

- The SAHRC, which can, among others, investigate, report and secure appropriate redress where human rights have been violated;

- The Public Protector, which can, among others, investigate complaints on the conduct of a government official which interferes with the enjoyment of economic and social rights;
- The Public Service Commission, which can, among others, investigate complaints against public administration practices;
- The Courts, which play a very important role in the interpretation and enforcement of economic and social rights; and
- Other mechanisms such as the National Consumer Commission.

South Africa also ratified the Optional Protocol to the UNCRPD without reservation in 2007. This provides persons with disabilities with direct access to the UN Committee on the Rights of Persons with Disabilities if persons with disabilities believe that persons with disabilities are victims of a violation of the provisions of the UNCRPD, and where persons with disabilities have exhausted all available domestic remedies such as the Constitutional, Labour and/or Equality Courts.

6.9.6 Outcomes and Long term indicators

The outcome indicators contained in the WPRPD represent high level measurement of the impact of each of the 8 WPRPD pillars on the lives of persons with disabilities. The maintenance of the output, input and process indicator matrix, aligned to the UNCRPD obligations, and which feeds into these high level indicators will be coordinated by the national disability rights coordinating mechanism in government in partnership with all relevant role-players.

The following outcome statements correlate with the focus of pillars in order to streamline the disability rights monitoring and evaluation framework.

The following table reflects some of the high level broad measures that will be used to track outcome improvements for persons with disabilities.

Outcomes	High Level Indicators
<p>Persons with disabilities are accorded and enjoy their full political, human, social and economic rights on par with all other people in South Africa.</p>	<ul style="list-style-type: none"> • Compliance with international treaty obligations. • Percentage of public and private facilities with institutionalised social cohesion and disability sensitivity programmes. • Percentage of post school education and training courses which have a mandatory module on universal design. • Percentage of public and private transport systems complying with universal design principles. • Percentage of newly constructed public and private sector building fully compliant with built environment

Outcomes	High Level Indicators
	<p>accessibility legislation.</p> <ul style="list-style-type: none"> • Percentage of existing public and private sector building retrofitted to in compliance to the built-environment accessibility norms and standards. • Percentage of websites of public and private sector which complies with universal design principles. • Percentage of television programmes which provide closed captioning and sign language interpretation.
<p>All persons with disabilities; irrespective of their age, gender, type of disability, race and economic status; are participating fully and equally in mainstream social and economic life</p>	<ul style="list-style-type: none"> • Compliance with international treaty obligations. • Percentage of emergency services with accessible call centres for persons with hearing disabilities in particular. • Percentage of provincial and disaster management centres with operational plans for evacuation of persons with disabilities requiring assistance during such procedures. • Number of persons with disabilities denied their right to equality before the law. • Number of cases lodged by persons with disabilities and their families to access recourse following violation of their rights. • Percentage of police stations and courts with the full reasonable accommodation support spectrum available when required. • Percentage of victim empowerment services and facilities with the full reasonable accommodation support spectrum available when required. • Number of persons with disabilities subjected to arbitrary detention and wrongful criminal convictions due to lack of reasonable accommodation support available at any point in the justice value chain. • Number of persons with disabilities subjected to torture or cruel, inhuman or degrading treatment or punishment, exploitation, violence and abuse.
<p>The rights of all persons with disabilities to live and work in safe and accessible environments, free from discrimination,</p>	<ul style="list-style-type: none"> • Compliance with international treaty obligations. • Percentage of persons with disabilities having timeous access to assistive devices and technology and personal assistance. • Number of persons on waiting lists for assistive devices and technology and personal assistance.