



Towards a barrier-free society



SAHRC Report
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Contents

| | |
|--|-----------|
| Foreword | 3 |
| Acknowledgements | 4 |
| Executive Summary | 5 |
| Introduction | 6 |
| Accessibility and built environments | 7 |
| Universal access | 8 |
| Disability defined | 9 |
| The social model of disability | 9 |
| A note on terminology | 10 |
| Disability in South Africa | 11 |
| Self-representation | 12 |
| Prevalence of disability | 12 |
| Vulnerable groups | 13 |
| Economic and social rights | 14 |
| Civil and political rights | 15 |
| Challenging barriers | 16 |
| Legislation and policy | 17 |
| United Nations Standard Rules on the Equalisation of Opportunities for People with Disabilities (1993) | 18 |
| The Constitution of the Republic of South Africa (1996) | 19 |
| White Paper on an Integrated National Disability Strategy (1997) | 20 |
| The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) | 21 |
| The Employment Equity Act (1998) | 22 |
| The Code of Good Practice on Employment of People with Disabilities (2002) | 23 |
| White Paper 6 on Special Needs Education (2001) | 24 |
| Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002) | 25 |
| Accessibility and the built environment legislative review | 26 |
| South African legislation governing accessibility and the built environment | 27 |
| Review of the current legislation | 28 |
| A comparative view – American, British and Australian building regulations | 31 |
| Summary of proposed legislative revisions and recommendations | 34 |
| Conclusion | 35 |
| References | 36 |
| Glossary | 37 |
| List of abbreviations | 38 |
| Appendix 1: The role of the Commission | 39 |
| Appendix 2: Summary of the Bill of Rights | 40 |
| Appendix 3: The Disability Rights Charter of South Africa | 41 |
| Appendix 4: Breaking down language barriers | 43 |
| Appendix 5: Organisation contact list | 45 |



Foreword

The ushering in of our new democracy in 1994 was billed as a miracle. For the majority of South Africans it was the first time for them to cast ballots for a government of their choice. This exercise of political franchise brought hope, pride and huge expectations. But for millions of people with disabilities this miracle is marred by inequality, discrimination, torture, abuse, segregation, exclusion and deprivation. While much has been achieved in making human rights central to our democracy, we still have a long way to go to make the rights real for all our people.

Today a democratic constitution is in place, with the Bill of Rights equally guaranteeing freedoms to all South Africans. Apartheid laws have been scrapped and a volume of progressive, developmental legislation is being introduced. Many of the pre-1994 apartheid barriers have been broken down. But many barriers remain, particularly for people with disabilities. It is clear that the breaking down of many of these barriers requires more than just laws. It requires attitudinal shifts.

It is to this end that the South African Human Rights Commission is faced with challenges to ensure that the rights entrenched in our Constitution are enjoyed and that redress is sought if they are transgressed. Furthermore, our mandate requires us to monitor organs of state in the execution of their Constitutional obligations, as well as to educate people about their rights. This is a mammoth task and we recognise that the Commission cannot do it alone. We therefore see this report as an important piece of work to assist South Africans, disabled and non-disabled, in breaking down the barriers and creating a culture in which we recognise difference, celebrate diversity and ensure equality.

We see this report contributing towards the development of a more accessible society for us all. It highlights the scope of the legislative frameworks we have. It sheds light on rights of people with disabilities by analysing the relevant instruments supporting equality and accessibility. I believe that this report gives us a sense of the intersections between our legal and moral obligations, and presents some critical knowledge in the field of the rights of people with disabilities. The messages in this report are simple and people from all walks of life can understand them. In essence, the provisions of our Constitution must become a living reality for all.

This report comes as a response to the Commission's concern to make the rights in our Constitution a reality. It has been produced in accordance with the Commission's mandate to uphold constitutional democracy. The Commission welcomes further reflection and commits itself to further strengthening normative action towards a barrier-free society. Educating people about human rights is an important part of this process.

Charlotte Vuyiswa McClain
Commissioner



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The review of legislation concerning accessibility and the built environment was initiated by the South African Human Rights Commission (SAHRC) and the South African Federal Council on Disability (SAFCD). SAHRC commissioner at the time, Jerry Nkeli, and the SAFCD's executive director, Philip Thompson, were instrumental in this process.

Production of this report was overseen by SAHRC commissioner Charlotte McClain and the SAHRC's head of advocacy, Pat Lawrence. Thiloshini Naidoo, Bronwynne Pereira and Phillip Molekoa of the advocacy unit provided vital assistance and input in its production.

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Executive Summary

People with disabilities in South Africa continue to face barriers that prevent them from enjoying their full civil, political, economic, social, cultural and development rights. This is largely due to widespread ignorance and prejudice in our society. It is also because some legislation fails to protect the rights of people with disabilities, and to meet the standards and principles of international human rights instruments.

An anti-discrimination clause in the Constitution specifically mentions disability, but we have yet to make the letter and spirit of our Constitution concrete realities for our citizens with disabilities. Legislation alone cannot improve our society or guarantee human rights in practice, but it does provide a vital framework and structure to set us in the right direction.

If we understand the ways in which people with disabilities are denied their rights, then attitudes and practices can change, and barriers can fall.

This document summarises the report of a project to investigate the adequacy of laws governing accessibility and built environments. The project was initiated by the South African Human Rights Commission¹ and the South African Federal Council on Disability. It was prompted by the many physical barriers which stop people with disabilities from using built environments in our society as freely as other citizens do. There are many other barriers which people with disabilities experience in our society, such as those which prevent them from accessing information and technology. These will be the subject of a future investigation by the Commission.

Physical barriers to access are often the result of thoughtless construction. They are promoted and reinforced by social and cultural factors. For this reason, the report begins by briefly placing disability in the current South African context and within a human rights framework. The introduction outlines some key disability rights issues. The first section provides an overview of current legislation and policy that relate to disability in South Africa. The second section summarises the findings and recommendations of the Accessibility and Built Environments Legislative Review Project. Finally, a list of organisations is provided to facilitate access to critical resources in the disability rights field and to encourage further exploration of disability rights issues.

When all South Africans are given equal access to all of their rights and responsibilities, a better future is possible for all our people.

Major steps have been taken since 1994 to ensure that people with disabilities will not continue to be subjected to the discrimination, inequities and exclusion of the past. An enormous task remains, however, in transforming the institutions, attitudes, practices, buildings, facilities and environments that continue to deny people with disabilities their rights to dignity, equality and freedom. The South African Human Rights Commission has a responsibility to participate in and drive this process.

¹ The South African Human Rights Commission is, at times, referred to in this report as "the Commission". Its role and mandate are described in Appendix 1.



Introduction

This report is for all South Africans who may become impaired through ageing, accident or illness, or give birth to a child with an impairment. It is for all our citizens with disabilities and special needs, who every day face barriers that deny them their rights. This report is for all of us.

We all need to understand how cultural, social, physical and other barriers continue to prevent people with disabilities in South Africa from enjoying their constitutional rights to equality, freedom and human dignity. We need to understand why and how these barriers must be removed.

In our emerging democracy, South Africans need to rethink the nature and experience of disability in our society. Concepts of disability have traditionally been defined in medical and welfare terms. However, during the past two decades – and in South Africa particularly during the 1990's - disability has been reframed as an issue of human rights, social entitlement and economic opportunity.

The majority of people with disabilities can live independent and productive lives, particularly if they have access to opportunities, resources, environments and technical aids that allow them independence, dignity, self-sufficiency and responsibility.

Since 1994 concrete steps have been taken to address the ways in which people with disabilities are excluded from mainstream society. Government policies and legislation now reflect the need to promote the rights of persons with disabilities. Laws are a vital component in broader mechanisms to redress the systemic inequalities and unfair discrimination that remain deeply embedded in social structures, practices, attitudes and environments. For this reason, there is a particular and urgent need to revise outdated legislation. This includes laws governing accessibility and the built environment.

The accessibility of built environments concerns how easily, safely and equally people with special needs or impairments can use buildings, facilities and constructed spaces. Physical and other barriers discriminate against some people by not allowing them to move freely and independently within their built surroundings.

This report supports a broader effort by people with disabilities themselves to raise public awareness of their rights, to challenge stereotypes, and to remove false perceptions of disability. Members of the public and government officials must be equipped with appropriate skills and knowledge to ensure the rights of people with disabilities, and to remove the barriers that deny them their rights. We must also remember that people with disabilities have the right to represent themselves in all matters concerning them.

The key disability issues raised in this introduction are by no means comprehensive. Readers are encouraged to use them as a basis for greater understanding of the complex, dynamic and multifaceted ways in which people with disabilities are excluded from full an equal participation in society. In particular, the ways in which people with *different* disabilities are discriminated against should be considered and rectified. The benefits of this process will accrue to all citizens in our constitutional democracy.



Accessibility ² and built environments

When buildings, facilities and built spaces are inaccessible to people with special needs, it means these individuals are denied opportunities, services and normal community life.

When government officials, employers, architects, property developers and other members of the public are not sensitive to disability issues, discrimination against people with disabilities is perpetuated, often overtly, perhaps unintentionally.

Inaccessible environments deny people with disabilities their rights to equality, dignity and freedom, amongst other fundamental human rights. Lack of physical access, both to and within built environments, is a major factor contributing to the ongoing exclusion of people with disabilities from mainstream society.

Accessibility for persons with disabilities means the opportunity to obtain an education, a job and housing; to form a family; and to contribute to society as equal partners.

The inaccessibility of built environments is evidence of widespread ignorance of disability rights and prejudice against people with disabilities.

² The accessibility of built environments is the extent to which buildings, facilities and built spaces in society can be equally, easily, safely and appropriately used or reached by people with special needs or impairments.



Universal access

Universal access for people with disabilities is the ultimate goal of the disability rights movement.

It means the removal of cultural, physical, social and other barriers that prevent people with disabilities from entering, using or benefiting from the various systems of society that are available to other citizens.

The absence of accessibility or the denial of access is the loss of opportunities to take part in the community on an equal level with others.

Universal access is the only way individuals with disabilities can enjoy equal opportunities and benefits, and to mainstream with their families and friends into society. It is the key to exercising civil, political, economic, social, religious and cultural rights in society.

Are they accessible to all?

Activities
Buildings
Communication
Design
Education
Facilities
Gatherings
Housing
Information
Jobs
Kerbs
Language
News
Opportunities
Parking
Quality
Resources
Services
Transport
Utilities
Voting
Workplaces
Emergency Exits
Youth groups
Zebra-crossings



Disability defined

A person with a disability is limited in one or more functional activity. This may be in seeing, hearing, communicating, moving, learning or other intellectual and emotional activities.

The impairment may be permanent, recurring or transitory. It may sensory, physical, cognitive or psychological. However, people who have very different impairments experience similar barriers and discrimination in society.

The extent and experience of disability is largely determined by how much the person's environment prevents her or him from taking part in community life on an equal level with others.

Disability is imposed by society when a person with an impairment is denied access to full economic and social participation. *Society fails*, physically or culturally, to accommodate the rights and needs of individuals with impairments.

Society disables people with impairments by failing to take into account their rights and needs, as groups or individuals.

The social model of disability

Disability is defined in different ways, depending on the 'model' that is used as a basis. The terms of definition may range from bio-medical and philanthropic, to sociological, social or economic ³.

It is now generally accepted around the globe that *disability is a social construct and most of its effects are inflicted on people by the social environment*. A person is disabled if the world at large will not take into account their physical, sensory or mental differences. Most of the day-to-day problems that people with disabilities face are caused by the fact that they live in a hostile, disabling world which is largely designed to suit able-bodied people.

By drawing attention to the barriers in society, the social model offers a wider range of rights-based solutions than others which try to change, cure or 'take care of' individuals with impairments.

The social model of disability recognises that people's activities are limited because of the way society is organised. Discriminatory aspects of society disable people.

³ A description of these various models is given in Disabled People South Africa's online "pocket guide" to disability, <http://www.dpsa.org.za>.



A note on terminology ⁴

Language reflects the values and attitudes of the social context in which it is used. It is important to understand the effect of words we use and choose if we are to break down barriers and participate in building a better society for all.

Disabled Peoples International (DPI), the international assembly of disabled persons, has noted that in an ideal world, there would be no need to classify people with disabilities. However, for such purposes as legislation, service provision, development programmes and advocacy campaigns, the term “people with disabilities” is helpful in addressing the common problems experienced by this diverse group of persons.

People with disabilities are particularly vulnerable to the misuse of language and terminology that labels and stereotypes them. Negative terminology ultimately creates a culture of non-acceptance of diversity. Words that emphasise the inabilities of people inadvertently lead to categorisation, stigmatisation and discrimination. They result in people with disabilities being seen as different, abnormal or inadequate members of a separate group.

Importantly, says DPI, *any classification of people with disabilities or their situation should be made in a social and not individual context*. Also, it is the right of the individual to decide whether he or she is disabled or not. No one should be ‘forced’ to belong to the group of citizens known as ‘people with disabilities’.

**Terminology can reinforce discrimination
against particular groups in society,
but language can also be used as a powerful tool
to facilitate change
and bring about social integration.
*Disabled People South Africa***

⁴ A guide to the disability rights movement’s preferred use of language concerning people with disabilities is included in Appendix 4 of this report. More information is available on Disabled People South Africa’s website, <http://www.dpsa.org.za>



Disability in South Africa

The vast majority of people with disabilities in South Africa have historically been excluded from education, housing, transport, employment, information and community life. They have been prevented from exercising fundamental political, economic, social, cultural and development rights.

These injustices were reinforced by the inequalities of the apartheid system. Laws have supported the cumulative disadvantages and social isolation of people with disabilities. The injustices have been and continue to be perpetuated by attitudes, prejudices and stereotypes that see people with disabilities as dependent and in need of care.

South Africa's progressive Constitution of 1996 reflects the struggles of the majority of our citizens and is founded on the values of human dignity, equality and freedom. The Bill of Rights specifically mentions equality and non-discrimination for persons with disabilities, and this is largely due to the organised efforts of people with disabilities in their continuing struggle to end the oppression of people with disabilities.

The disability rights movement in South Africa emerged during the 1980s as part of the broader liberation struggle against apartheid. Disabled People South Africa (DPSA) spearheaded the strategy to mobilise and organise people with disabilities to resist oppression on the bases of both race and disability. This built a political foundation for the disability rights movement and a strong cadre of disabled activists. The liberation movement spread to include people with disabilities living in the rural and impoverished peri-urban townships of South Africa, and their frustrations, aspirations and ideals.

Fundamental to DPSA's negotiations with the African National Congress (ANC) during the early 1990s was self-representation - the right of disabled people to speak for themselves. The organisation's insistence on integration and full participation was allied to the ANC's objective of nation building.

"Nothing about us without us" *The disability rights movement*

DPSA also advocated human rights as predominantly a "cross-disability" issue, while service delivery was primarily a "disability-specific" issue. This means that all persons with disabilities have the same rights as all people, but their needs must be met by considering their particular impairments.

DPSA's negotiations with the ANC led to the deployment of disability rights activists in key government positions after the party came into power in 1994. It ultimately ensured that disability was included in policy with a human rights, social and development perspective, rather than from a welfarist approach. A strong cadre of disabled activists was also deployed into strategic positions in the new political order, including the Office on the Status of Disabled Persons⁵, Parliament, the National Council of Provinces, the Provincial Legislatures, the South African Human Rights Commission, the Commission on Gender Equality, the National Youth Commission, the South African Broadcasting Corporation, the National Development Agency, the Public Service Commission, and the National Economic Development and Labour Council.

⁵ The Office on the Status of Disabled Persons (OSDP) was originally located in the Deputy President's office, but is now in the Presidency. There are also OSDPs in the offices of the provincial Premiers.



Self-representation

It is essential to include people with disabilities in policy, planning and decision-making processes.

The ways in which people with disabilities are denied access to information, physical environments, opportunities and rights are not always obvious to able-bodied people. The needs of people with disabilities cannot and must not be interpreted by people whose knowledge and awareness of disability is limited. Decision-makers who fail to consult people with disabilities reinforce the false perception that all people with disabilities are individuals 'in need of care'.

People with disabilities have the right to represent themselves in all matters that affect them in any way.

Prevalence of disability

Internationally, it has been suggested that one in every 10 people in the world lives with a disability. In South Africa, estimates from a range of sources suggest that more than seven percent of the total population, or over three million people, have a moderate or severe disability.

Disability affects the lives of almost all South Africans at some stage or in some way. This is because disability does not only affect the disabled individual, but it also touches this person's family, friends and fellow community members.

The proportion of people with disabilities in the population varies in different age groups and older people are significantly more likely to have a disability. There is a disproportionately high incidence of disability amongst poor people. Men have a slightly greater likelihood of being disabled than women.

Statistics and information on the nature and occurrence of disability in South Africa are scant and usually unreliable, for various reasons. These include:

- o Different or inadequate definitions of disability
- o Various or inappropriate research methodologies and techniques
- o Failure to collect data from remote and underdeveloped areas
- o Lack of prioritisation of the needs of people with disabilities in social and economic planning

Statistics South Africa paid more attention to disability issues in Census 2001 and enumerators received special training to record information from disabled respondents. This data will be released in 2003.

More than 20% percent of the South Africa population may either have a disability or live in a household with a person who has a disability.



Vulnerable groups

Some categories of people with disabilities are particularly vulnerable to discrimination, abuse and barriers to participation in society. Specific attention must therefore be paid to the rights of:

- o women, children, youths and elderly people with disabilities
- o people with disabilities who are poor, live in remote rural areas or who have been displaced by violence and war
- o people with severe intellectual or mental disabilities, and
- o people living with HIV/AIDS

South Africa's legacy of apartheid means that black people with disabilities in these categories are, for various reasons, more likely to be excluded from mainstream society and community life than their white counterparts.

The impact of a disability on the life of a child can be extremely high. Children with disabilities have lower school attendance rates than those without disabilities, and they ultimately experience greater barriers to independent living and participation in their communities.

The negative experiences of women with disabilities in a patriarchal society are exacerbated for those who cannot perform the traditional roles of motherhood and homemaking. Superstition, fear and prejudice in some communities, means that mothers of disabled children may be scorned and rejected.

Women with disabilities
Children with disabilities
Youths with disabilities
Elderly people with disabilities
Poor people with disabilities
People with disabilities living in remote rural areas
People with severe intellectual and mental disabilities
People living with HIV/AIDS



Economic and social rights

education, water, adequate food, housing, health care and social security - should be enjoyed by all citizens.

to these rights affects an individual's likelihood of having a disability.

Disability leads to a high proportion of people with disabilities being poor. Poverty is a major conflict, higher risk of accidents and lack of access to information. An individual with a disability may be further disadvantaged by poverty, class, gender, age and geographic location.

disabilities, resulting in disproportionate poverty, lack of education, unemployment and dependence on meagre social security benefits amongst people with disabilities.

ment and social security still prevent people with disabilities from accessing the benefits of social and economic development in the way that other South Africans are able to.

In a vicious cycle, poverty causes disability and disability causes poverty.



Civil and political rights

The right to vote is the principal mechanism for citizen participation in the South African additional guarantee of the respect for other human rights.

Laws and procedures must ensure that the right to vote can be freely exercised by all citizens entitled to vote from exercising their rights. They must also indicate how the secrecy, security and validity of the voting process are guaranteed. This means that any assisted persons must be provided with the necessary support to ensure the fulfilment of these guarantees.

Registration and voting information should be accessible to voters with disabilities. Specific attention should be given to voters with disabilities to ensure that they have the information on which to base their choice.

Voting stations must be accessible for people with disabilities, elderly persons and other persons. Alternate means of casting a ballot on the day of the election must be provided.

The needs of people with different impairments must be considered. For example, voting systems for people with visual impairments are not simple, particularly as many blind people are not Braille literate. To enable blind people to cast a vote, systems can allow the individual to be assisted, usually by two

The right to vote must be supported by measures and procedures for equal access to systems, information and polling stations.



Challenging barriers

Increasingly, people with disabilities are asserting their rights and using the channels available to them in seeking redress when their rights are abused. This is illustrated by a complaint lodged with the South African Human Rights Commission against an airline company that refused to board and transport a person with a disability on a domestic passenger flight. The court has not yet made a ruling on this matter and the complainant will therefore be referred to as “Ms L.”

Ms L vs Airline Company

The complainant, a person with a disability, had booked a flight to Durban with a South African airline through her travel agent. The agent had indicated on the booking request that Ms L required assistance. When the booking was not confirmed in time, the travel agent called the airline. The agent was told the airline did not fly passengers with disabilities at all, notwithstanding Ms L is a frequent flyer and holds a frequent flyer medical card.

What the law says

The airline’s condition of carriage and its conduct may be measured against the Bill of Rights and other legislation.

- o Section 9(3) of the Constitution prohibits unfair discrimination on various grounds, including disability
- o Section 9(4) extends this prohibition against unfair discrimination on the grounds of disability to apply to a private party, such as an airline
- o Section 9(4) contains additional provision, which states that national legislation must be enacted to make unfair discrimination illegal
- o The Promotion of Equality and the Prevention of Unfair Discrimination Act rules that the promotion of equality is the responsibility of the persons operating in the public and private domains. The Act defines as discriminatory any practice that disadvantages, withholds benefits from, undermines the human dignity of, or adversely affects the rights or freedoms of a person on the grounds of disability.

The South African courts recognise that legitimate commercial considerations are relevant in an enquiry into unfairness. However, they accept that stereotyping and prejudice should not be permitted under the guise of commercial interests.

The powers of the court

Section 38 of the Constitution empowers courts to “grant appropriate relief, including a declaration of rights”. Section 39(2) of the Constitution provides that in interpreting any legislation, courts must promote the spirit and objects of the Bill of Rights. According to Section 172(1)(b), courts are afforded powers to make an order that is “just and equitable”, including an order “limiting the retrospective effect of the declaration of invalidity”. An order may also suspend the declaration of invalidity “for any period and on any conditions to allow the competent authority to correct the defect”.

The outcome of this case therefore has significant implications for the rights of people with disabilities.

“There is a need for rapid progress in developing a public transport that is flexible and accessible. Without this, people with disabilities will continue to remain largely ‘invisible’ and unable to contribute to, or benefit from, the services and commercial activities available to most of their fellow citizens”.

The White Paper on an Integrated National Disability Strategy



Legislation and policy

Legislation concerning disability rights and accessibility must be considered within its historical, political and social context.

In 1992, after a lengthy process of consultation with disabled individuals and their organisations, the Disability Rights Charter of South Africa was launched by Disabled People South Africa and Lawyers for Human Rights⁶. The Charter asserts the rights of all people with disabilities to live independently, in a safe environment and in a society free from all forms of discrimination, exploitation and abuse.

Charters have also been developed by the various disability-specific sectors, reflecting the particular needs and concerns of people with certain types of impairments. Together they highlight the heterogeneity of disability, which is key to a comprehensive understanding of and integrated approach to redressing the many ways in which people with disabilities experience human rights abuses.

In 2000, the South African Declaration on the United Nations African Decade for Disabled Persons noted with concern that the majority of South Africans with disabilities continue to live in conditions of extreme poverty and do not enjoy equal access to their economic and social rights. It also reaffirmed the importance of self-representation by people with disabilities in effective transformation towards an inclusive society that recognises the diverse needs and priorities of people with disabilities.

The 1996 Constitution, as the supreme law of the Republic of South Africa, protects the rights of people with disabilities. Further enabling legislation needs to be developed and discriminatory legislation from the past must be amended to ensure that these rights are upheld and enforced in all areas of governance and society.

The basis for progressively redressing the situation of people with disabilities in South Africa lies in the Constitution, which upholds the values of human dignity, equality, freedom and social justice in a united society where all may flourish. Decisions of the Constitutional Court have affirmed these principles. They are reaffirmed by South Africa's international obligations under binding treaties and customary international law in the field of human rights, which also promote equality and prohibit unfair discrimination.

“[The rights to] equality and dignity are enshrined in the Constitution. However ... these principles must be met through the enactment of legislation, the scrutiny and, where necessary, amendment of existing legislation and the monitoring of constitutional and legislative provisions.”
The White Paper on an Integrated National Disability Strategy

⁶ The Disability Rights Charter of South Africa is included, for reference purposes, in Appendix 3 of this report.



United Nations Standard Rules on the Equalisation of Opportunities for People with Disabilities (1993)⁷

As a member country of the United Nations, South Africa is a signatory to the United Nations' Standard Rules on the Equalisation of Opportunities for People with Disabilities.

The South African Human Rights Commission, South African law- and policy-makers, and organisations of people with disabilities are guided by these rules outlining the minimum requirements United Nations member states need to meet in fulfilling their responsibilities to disabled persons.

“The principle of equal rights implies that the needs of each and every individual are of equal importance, that those needs must be made the basis for the planning for societies and that all resources must be employed ... to ensure that every individual has equal opportunity for participation.”

The political and moral foundations of the Rules lie in the following human rights instruments:

- o The International Bill of Rights, comprising the Universal Declaration of Human Rights (1948)
- o The International Covenant of Economic, Social and Cultural Rights (1966)
- o The International Covenant on Civil and Political Rights (1966)
- o The Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- o The Convention on the Rights of the Child (1989), and
- o The World Programme of Action Concerning Disabled Persons (adopted for the UN Decade of Disabled Persons 1983 – 1993)

To provide a framework for action to create equal opportunities, the Rules state in their introduction:

(15)“The purpose of the Rules is to ensure that girls, boys, women and men with disabilities, as members of their societies, may exercise the same rights and obligations as others. In all societies ... there are still obstacles preventing persons with disabilities from exercising their rights and freedoms and making it difficult for them to participate fully in the activities of their societies. It is the responsibility of States to take appropriate action to remove such obstacles. Persons with disabilities and their organisations should play an active role as partners in this process. The equalisation of opportunities for persons with disabilities is an essential contribution in the general and worldwide effort to mobilise human resources ...”

In August 2002, a United Nations ad hoc committee met for the first time to discuss the Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities. This initiative to develop a new and specific disability rights instrument is being supported by the South African government.

⁷ The Standard Rules on the Equalisation of Opportunities for People with Disabilities were adopted by the United Nations General Assembly at its 48th session on 20 December 1993 (Resolution 48/96).



The Constitution of the Republic of South Africa (1996)

The Constitution (Act No. 108 of 1996) is the supreme law of the Republic and “the obligations imposed by it must be fulfilled”. The state is mandated to “respect, protect, promote and fulfil the rights of all people in the Bill of Rights”. The Constitution applies to natural and juristic persons, as well as all law. It binds the legislature, the executive, the judiciary and all organs of state.

The Bill of Rights (Chapter 2) specifically prohibits direct and indirect discrimination, by the state or an individual, against anyone on the basis of disability. By implication, therefore, the denial of any other Constitutional right on the basis of disability, constitutes a violation of a disabled person’s right.

The Constitution accepts that discrimination against a person on the basis of that individual’s disability is *automatically* unfair, unless a case can be proved by the body or individual concerned that the discrimination was fair. *The onus to prove unfair discrimination does not lie with the disabled person.*

Provision is made in the Constitution for affirmative action concerning people with disabilities, in that it allows for positive measures to be taken to promote the achievement of equality for categories of persons disadvantaged by unfair discrimination.

**“We, the people of South Africa, ... adopt this Constitution so as to –
Heal the divisions of the past and establish a society based on
democratic values, social justice and fundamental human rights; ...
Improve the quality of life of all citizens
and free the potential of each person ...”**
Preamble to the Constitution of the Republic of South Africa



White Paper on an Integrated National Disability Strategy (1997)

The White Paper on an Integrated National Disability Strategy (INDS) was introduced in November 1997, after an extensive, consultative and participatory policy formulation process. This progressive and comprehensive document provides a framework from which integrated and coherent policy can be developed across all spheres of government to address the social, economic and political inequities that marginalise people with disabilities from mainstream society in South Africa.

The paper advocates a paradigm shift in the approach on issues of people with disabilities; from the medical and welfare model to a human rights and equitable development model. It envisions "a society for all"; one that encompasses human diversity and the development of all human potential.

The document also explains the ways in which people with disabilities have been marginalised and disempowered. If policy-makers and legislators understand how the needs and rights of people with disabilities are systematically excluded from governance structures and processes, sustainable transformation can begin.

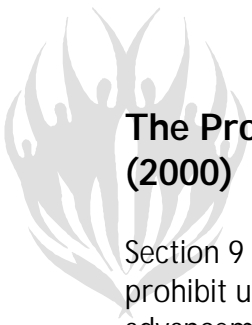
The INDS outlines the following key concepts to guide government policy on people with disabilities:

- o Disability has generally been viewed in a medical or welfare framework that assumes disabled persons are sick and in need of support and help. Instead, disability should be viewed as a human rights issue.
- o Society must be altered so that it responds to the needs of disabled persons.
- o Disability issues must therefore be integrated into all government departments, development plans and programmes.

The goal must be full enjoyment of the right of people with disabilities to fully participate in society.

The Office on the Status of Disabled Persons (OSDP) was established in the Office of the Deputy President in 1997 to coordinate, monitor and facilitate implementation of the INDS. It has since been relocated to the Presidency, which shows the importance government places on disability equity. The function of the OSDP and its provincial disability units is to advance the equality of people with disabilities in South Africa by co-ordinating the tasks of mainstreaming disability considerations in policies and programmes.

Implementation of the INDS by government has been disappointingly slow. For this reason, the OSDP initiated in May 2000 an Inter-Departmental Collaboration Committee (IDCC) of government nominated representatives to facilitate this effort. A report on progress in implementing the INDS across national government departments is expected to be released shortly.



The Promotion of Equality and Prevention of Unfair Discrimination Act (2000)

Section 9 of the Constitution provides for the enactment of national legislation to prevent or prohibit unfair discrimination and to promote the achievement of equality. This implies the advancement, by special legal and other measures, of people with disabilities as a historically disadvantaged group.

The Promotion of Equality and Prevention of Unfair Discrimination Act (Act No. 4 of 2000) has met this provision, expanding on the Constitutional provisions prohibiting unfair discrimination and guaranteeing equality before the law. It gives effect to the letter and spirit of the Constitution, in particular to the principles of equality, fairness, social progress, justice, human dignity and freedom.

Chapter 5 of the Act, dealing with the promotion of equality, rules that it is the general duty of the state to promote equality. Significantly, the Act also rules that the promotion of equality is the responsibility of persons operating in the public *and* private domains. This means all of us!

The Act provides for positive measures to eradicate systemic discrimination and to promote equality with regard to race, gender and disability. This includes the involvement of the South African Human Rights Commission and the obligation of state departments to implement anti-discrimination policy and practice within all state structures and programmes.

Discrimination, according to the definition in the Act, means any act or omission, including a policy, law, rule, practice, condition or situation which

- (a) imposes burdens, obligations or disadvantages on; or**
- (b) withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, which include disability and any other ground that might disadvantage a person, undermines human dignity or adversely affects an individual's rights and freedoms.**



The Employment Equity Act (1998)

In terms of the Employment Equity Act, disabled persons qualify for affirmative employment opportunities within the public and private sectors.

The Act recognises that, as a result of discriminatory laws and practices, there are inequalities in employment, occupation and income within the national labour market. These disparities create explicit disadvantages for certain groups of people that cannot be redressed simply by repealing discriminatory laws.

The Act therefore:

- o promotes the Constitutional right of equality and the exercise of true democracy
- o eliminates unfair discrimination in employment
- o ensures the implementation of employment equity to redress the effects of discrimination
- o aims to achieve a diverse workforce broadly representative of our people
- o promotes economic development and efficiency in the workforce
- o gives effect to the obligations of South Africa as a member of the International Labour Organisation

The Act acknowledges that people with disabilities are unfairly discriminated against in society and in employment, because of widespread ignorance, fear and stereotypes. As a result, people with disabilities experience high unemployment levels and, if they are employed, often remain in low status jobs and earn lower than average remuneration.

In terms of the Act, all legal entities that employ more than 50 people must submit Employment Equity Plans to the Department of Labour, showing how many people with disabilities are employees and what positions they hold.

People with disabilities can equally contribute their skills and abilities to the economy and society, if employers remove discriminatory barriers to their employment and make reasonable accommodation for their needs.



The Code of Good Practice on Employment of People with Disabilities (2002)

On the advice of the Commission for Employment Equity (CEE), the Minister of Labour introduced a Code of Good Practice on the Key Aspects of Disability in the Workplace in August 2002.

This document provides a definition of disability and clarifies what 'reasonable accommodation for people with disabilities' means. It explains how unfair discrimination can be avoided and employment equity achieved, from recruitment to termination of employment.

The Code is not an authoritative summary of the law, nor does it create additional rights and obligations. Failure to observe the Code does not, in itself, render a person liable in any proceedings. However, courts and tribunals must consider it when interpreting and applying the Employment Equity Act.

The Code is intentionally general because every person and situation is unique and departures from its standards may be justified in appropriate circumstances. However, there are many unfounded assumptions about the abilities and performance of job applicants and employees with disabilities.

Employers often set selection criteria that exclude people with disabilities; workplaces and training facilities are often inaccessible and inappropriate for people with disabilities.

Employees who become disabled are often dismissed for poor performance or incapacity, or they resign unnecessarily. They are often encouraged or forced to apply for disability benefits and they tend to retire earlier than other employees do, when reasonable accommodation of their needs would allow them to continue working as productive employees.

Employers, employees and their organisations should use the Code of Good Practice to develop, implement and refine disability equity policies and programmes to suit the needs of their own workplaces.



White Paper 6 on Special Needs Education (2001)

The White Paper on Special Needs Education provides a framework for government's long-term goal to achieve an inclusive education and training system. This process will investigate and address barriers to learning, and recognise and accommodate the diverse range of learning needs. It is part of a twenty-year programme that aims to build an open, lifelong and high quality education and training system for all citizens, including those with disabilities.

Government's short- to medium-term goals will focus on addressing the weaknesses and deficiencies of the current system and on expanding access for children of compulsory school-going age who are not accommodated within the present education and training system.

The inclusive system envisaged by government includes a range of institutions, from schools and resource centres meeting special needs to designated full service and other schools, public adult learning centres, and further and higher education institutions. The White Paper proposes that schools for children with special needs will be strengthened rather than abolished. Given the considerable expertise and resources that are invested in special schools, their facilities will be made available to neighbourhood schools, especially full-service schools and colleges.

Following the completion of an audit of special schools, plans will be made to develop and improve the quality of education across all of them. Learners with severe disabilities will be accommodated in these special schools, as part of the inclusive system.

The process of identifying, assessing and enrolling learners in special schools will be overhauled and replaced by structures that acknowledge the central role played by teachers, lecturers and parents. Implementation of the policy on inclusive education and training will necessarily involve people with disabilities, organisations of people with disabilities, and parents of disabled learners.

Inclusive education aims to address the learning needs of all children, youths and adults, with a specific focus on those who are vulnerable to exclusion. It holds that educational institutions should strive to accommodate all learners regardless of their physical, intellectual, social, emotional, linguistic or other conditions.



Report of the Committee of Inquiry into a Comprehensive System of Social Security for South Africa (2002)

The inquiry into a comprehensive system of social security for South Africa was commissioned by the Minister of Social Development. The process included representation by people with disabilities and consultation with their representative organisations. The committee's report, titled "Transforming the Present – Protecting the Future", includes an entire chapter on disability.

In addressing the full spectrum of social protection policy, the committee paid considerable attention to matters concerning the health, retirement, unemployment, constitutional and legal requirements of people with disabilities.

The report expresses the view that if disabled citizens benefit from economic and social rights, they will be enabled to enjoy their democratic rights and, potentially, to contribute to the development of this country.

It finds that current definitions of disability that underpin social security provisions are problematic. In particular, they undermine policy to maximise employment opportunities for people with disabilities and disregard social, environmental and labour market barriers that prevent participation in community life and the workplace.

As a matter of urgency, the report suggests, government must improve access to support, services and effective adjudication when rights to social security are denied to people with disabilities. An integrated process must take into account the diverse needs and circumstances of people with disabilities. Even people with similar disability types may have different social, financial and physical environments.

The committee also identified fragmented, sometimes contradictory legislation regarding the various social security schemes, and gaps in social security provisioning for people with disabilities. Guidelines set out in policies are not achieved, nor enforced, through current legislation and regulations.

The report stresses that social security systems for people with disabilities are not merely safety nets and poverty alleviation measures; they also play an important role in promoting their dignity, self-sufficiency and independence. Thus benefits should not be defined according to the disability or medical diagnosis, but should rather be determined in response to need. A social security package could therefore include relevant training and (re)integration measures to enable the disabled individual to find employment.

Social security systems should be part of society's efforts to ensure the full development, equality and participation of persons with disabilities.



Accessibility and the built environment legislative review

The review of legislation concerning the built environment was initiated by the South African Human Rights Commission and the South African Federal Council on Disability to determine the extent to which people with disabilities and special needs⁸ are currently assured access to buildings and other facilities. The project has highlighted specific legislative deficiencies and weaknesses in enforcement mechanisms, and indicates how the laws will need to be changed to protect the rights of these vulnerable groups in our society.

The South African Constitution in 1996 and further progressive legislation based on its values, have implications for the outdated laws dealing with the planning and development of our built environment. The existing laws around accessibility must be updated because people with special needs have the right to be equitably integrated into all aspects of society. This means, briefly, that they must be able to use public buildings and other facilities with as much ease, safety and convenience as other citizens.

The Accessibility and Built Environment Legislative Project Report (IDC, 2002), is summarised in this section to provide stakeholders with a common reference point from which to take the legislative reform process forward. The project report covers the South African Federal Council on Disability's Guidelines for the Built Environment and includes concerns raised by various stakeholders at a seminar convened by the Commission. It provides a detailed evaluation of existing built environment legislation and policies, including:

- o The National Building Regulations
- o The Building Standards Act (1977)
- o The South African Bureau of Standards (SABS) 0400 Code of Practice for the Application of the National Building Regulations (1990)

A comparative analysis of three of the world's most progressive sets of regulations for accessibility and the built environment are presented in the project report. These are:

- o The Americans with Disabilities Act Access Guidelines
- o The British Building Regulations – Access & Facilities for Disabled People
- o The Australian Standard Design for Access and Mobility

The proposed regulatory framework to ensure access for users with disabilities and special needs reflects the letter and spirit of the Constitution, thereby promoting a more inclusive and equitable society.

**Safe, healthy, barrier-free built environments
must be the expected standard,
not the exception.**

⁸Special need users are defined as people who are permanently or temporarily disabled, elderly, or using prams and pushchairs. Disabled users would include persons who are blind, partially sighted, deaf or speech impaired, and those using wheelchairs or crutches.



South African legislation governing accessibility and the built environment

The legislative framework governing the built environment in South Africa has three interdependent mechanisms: The National Building Regulations; the Building Standards Act; and the South African Bureau of Standards (SABS) 0400 Code of Practice.

- o The **Building Standards Act** (Act 103 of 1977), last amended in 1989, is the enabling Act under which the National Building Regulations are made. It provides a framework within which the Regulations can be administered, monitored and enforced. The Act and Regulations must therefore be read together.
- o The **National Building Regulations**, made by the Minister of Public Works in terms of Section 17(1) of the Building Standards Act, aim to ensure that buildings are designed and built to be safe, healthy and convenient for users.
- o The **SABS 0400 Code of Practice** is a non-statutory set of guidelines giving technical information for the practical application of the National Building Regulations. The legislation governing accessibility of the built environment has primarily relied on the application of one aspect of the Regulations, Part S, which was introduced in 1985 to address the needs of people with disabilities.

Regulations for the built environment cannot remain static. They must not only respond to legislative and policy changes, but also allow for innovation in the construction and building industries.

People with disabilities and those with special needs now have constitutional rights to equality and human dignity. Laws concerning the built environment must be updated to reflect this. Discriminatory architectural barriers to equitable participation in mainstream society must be removed.



Review of the current legislation

The Accessibility and Built Environment Legislative Project Report has identified deficiencies in the current regulatory framework for accessibility and the built environment. These include:

- o Insufficient definition of disability to meet the specific requirements of various disabled user groups ⁹
- o A loophole for property developers and building professionals to evade or ignore accessibility requirements, because the non-statutory guidelines of the SABS Code of Practice are not legally enforceable
- o Lack of enforcement of Part S of the National Building Regulations by building control officers throughout the country, with the result that the majority of public buildings in South Africa are inaccessible
- o Failure to cross-reference Part S with other sections of the National Building Regulations, resulting in further loopholes, anomalies and misconceptions in the application of regulations

The legislative shortcomings have serious implications in that they continue to reinforce the physical and social barriers faced by citizens with special needs. Unless people with various kinds of disabilities can use built environments, they will not be able to equitably participate in society and fully enjoy their rights.

The following section summarises the legislative review project's evaluation of legislation governing accessibility and the built environment.

⁹Part S of the National Building Regulations primarily provides for disabled users in wheelchairs. Approximately 25% of people with disabilities have impaired mobility (StatsSA, 1996). Hence 75% of people with disabilities have not been sufficiently accommodated under the current regulation.



The Building Standards Act (Act 103 of 1997)

The stated purpose of the Act is: "To provide for the promotion of uniformity in the law relating to the erection of buildings in the areas of jurisdiction of local authorities; for the prescribing of building standards; and for matters connected therewith."

Deficiencies identified in the Act and its enforcement mechanisms include:

- o No reference to the Constitutional rights to equality and dignity which require accessibility for users with disabilities and special needs
- o Exemption of the State and owners of National Key Points or "prohibited space" from the building plan scrutiny process
- o Imprecise definition of "the State" with respect to erected buildings and the inclusion or exclusion of statutory bodies and other institutions
- o Inadequate measures for safety, health and accessibility in the built environment
- o No assurance that the rights of all users of a building are upheld when Ministerial amendment of any National Building Regulations is made
- o No assurance that the rights of all users of a building are upheld when new by-laws and regulations are created by local authorities, subject to approval by the Minister
- o Limited legal enforcement of the SABS Code of Practice for the application of National Building Regulations
- o Insufficient definition of laws to meet the specific requirements and ensure the rights of people with different kinds of disabilities

No reference is made in the Act to the constitutional rights which require accessibility for special needs users, nor is there sufficient definition to ensure the rights of people with different kinds of disabilities.



The National Building Regulations and the South African Bureau of Standards 0400 Code of Practice

The National Building Regulations were originally introduced as a long-term anti-inflationary measure, which would not increase the cost of building. Regulations were kept to a minimum and, as far as possible, were only concerned with the health and safety of persons in a building.

Technical regulatory aspects are covered by the functional regulations of the SABS 0400 Code and aim to assist, rather than impede, the use of innovative building systems and designs. Prescriptive provisions in the Code attempt to satisfy the technical requirements of the National Building Standards by setting out possible ways of complying with functional regulations. Where considered necessary, illustrations and commentary amplify these provisions to promote better understanding.

In its commentary on the regulations in Part S, "Facilities for Disabled Persons", the Code states: "Where provision is made at the design stage for the necessary facilities within the building, any increase in cost should be minimal"; and "some of these facilities can also be of benefit to many who would not generally be regarded as disabled persons".

The Legislative Project has identified problems in 16 of the 22 Parts of in the National Building Regulations and SABS guidelines, including Part S. In particular it cites:

- o Inadequate administrative enforcement mechanisms for the approval of public building plans that have resulted in the majority of public buildings being in contravention of regulations
- o Deficient regulatory measures that fail to ensure public safety and fire protection for persons with disabilities ¹⁰
- o Insufficient definition of the specific requirements for particular disabled user groups ¹¹. Provisions are primarily for disabled users in wheelchairs and those for other users with disabilities are frequently ignored and seldom enforced by Local Authorities
- o International symbols must be clearly exhibited to indicate the existence of and directions to facilities for users with disabilities
- o Potential misinterpretation of the terms "suitable" and "sufficient" in certain sections
- o Ambiguity in specifications and the absence of cross referencing Part S with other sections, resulting in inconsistencies and misinterpretation

The Legislative Project also recommends that some of the technical specifications for building accessibility in SABS Code 0246 be incorporated into SABS Code 0400, as the former does not form part of the legislature governing the built environment.

The SABS Code 0400 is a non-statutory document and therefore not legally enforceable. This is a serious shortcoming. Mandatory compliance should be required of local authorities to promote enforcement of its specifications.

¹⁰ Emergency escape routes must accommodate wheelchair users; deaf people require visual emergency signals, while blind people need audible ones. Alarm activators, mobile fire extinguishers and escape route bolts must be accessible to wheelchair users and short people.

¹¹ For example, tactile surfaces and cane detection areas assist blind people in independent movement within built environments.



A comparative view – American, British and Australian building regulations and standards

The regulatory systems of the United States of America, Britain and Australia were selected for comparison with South Africa, as they have relatively progressive legislation governing accessibility and the built environment.

The comparative study shows the American with Disabilities Act (ADA) Guidelines to be the most comprehensive, providing detailed standards for the accessibility of public use areas. It is also the most easily enforceable system.

The British and Australian systems have introduced categories to meet the differing needs of various disabled user groups, but both require further development.

Part M of the British Building Regulations is not easily enforceable and does not supply sufficient technical information for the erection of accessible facilities to ensure users with disabilities enjoy the same level of access as other users.

The Australian system, currently under review, is making some progressive provisions, but is expected to fall short of the American standards when the new sections are implemented.

**In comparison to these international standards and regulations,
South African legislation is clearly deficient.
Only minimal provision for access by users with disabilities is made
and some basic safety and access issues require attention.**

To meet South Africa's human rights requirements, further legislation must surpass the current international standards for accessibility.

The following tables give, firstly, a brief description of each of these foreign regulatory systems, and then a summarised comparison of their key features with the South African system.



| Americans with Disabilities Act & Accessibility Guidelines | British Building Regulations Act & British Building Regulations | Australian Building Code & Australian Standard 1428 |
|---|---|--|
| <p>The legislation has three mechanisms, collectively known as the ADA Standards:</p> <ul style="list-style-type: none"> o ADA (Act) o ADAAG Review (Scoping Requirements) o ADAAG Appendix B (Scoping & Technical Requirements) <p>These building regulations are comprehensive, have been developed in a legal framework and are enforceable as part of the general American building regulations.</p> <p>The United States Architecture and Transportation Barriers Compliance Board monitors application and enforcement of the legislation.</p> | <p>Similar to the South African legislative mechanisms, Part M of the British Building Regulations governs accessibility and the built environment.</p> <p>The British system divides disabled users into three main groups:</p> <ul style="list-style-type: none"> o Mobility impaired o Visually impaired o Communication impaired <p>With these distinctions legislation can be developed to meet the varying requirements of disabled users.</p> | <p>The Building Code provides general building regulations on accessibility.</p> <p>The Standard provides detailed guidelines for the Code's practical application.</p> <p>The Standard has four sections:</p> <ul style="list-style-type: none"> o New Building Work o Enhanced and additional requirements o Requirements for children and adolescents with physical disabilities o Tactile ground surface indicators for orientation by people with visual impairments <p>To date only the first section (AS 1428.1) has been implemented and the others are under consideration.</p> |

Table 1: Basic descriptions of regulatory systems for accessibility and built environments in the United States, Britain and Australia



| Americans with Disabilities Act (ADA) & Accessibility Guidelines (ADAAG) | British Building Regulations Act & British Building Regulations | Australian Building Code & Australian Standard 1428 | South African Building Standards Act, National Building Regulations & SABS Code 0400 |
|--|--|---|--|
| <p>✓ denotes positive features of the system ✗ indicates where there is room for improvement</p> | | | |
| <ul style="list-style-type: none"> ✓ The most comprehensive of the four sets of legislation, providing a detailed level of accessibility into most typical public use areas. ✓ Set in a legal framework that facilitates enforcement and is the most progressive in this regard. ✗ Deficient in several areas and will require further development. | <ul style="list-style-type: none"> ✓ Categorisation of disabled users into three groups (mobility, visually and communication impaired users) allows for various disability access requirements. ✗ Basic access provision for various groups of disabled users, but not at the same level of accessibility as typical users. ✗ Not easily enforceable. ✗ Several areas in which legislation is deficient and should be developed. ✗ Some regulatory sections do not provide sufficient detail for building accessible facilities. | <ul style="list-style-type: none"> ✓ Categorisation of disabled users into three groups (mobility, visually and communication impaired users) allows for various disability access requirements. ✓ Progressive provisions are being developed for blind, partially sighted, child and adolescent disabled users. ✗ The legislature is currently being overhauled, but will still fall short and need further development when the new sections are introduced. | <ul style="list-style-type: none"> ✗ In comparison to the international standards, legislation is clearly deficient. ✗ Only minimal access provision for disabled users. ✗ Important issues around basic safety and access must be addressed. ✗ Legislative deficiencies must be corrected, and regulations must be developed even further than in other countries to ensure equal access and safety for disabled users. |

Table 2: Summary of comparative findings between regulatory systems for accessibility and built environments in the United States, Britain, Australia and South Africa



Summary of proposed legislative revisions and recommendations

Legislation governing the accessibility of built environments must focus on:

- (a) improving the preconditions for equal participation and dignity;**
- (b) providing mechanisms for governance, administration and enforcement.**

The South African legislative framework for accessibility and the built environment needs to be revised as a matter of urgency. It must be updated to reflect Constitutional rights; ensure safe, healthy and convenient use for all; and include international standards for universal access. The rights and needs of people with disabilities as equal citizens must be understood so the quality of our built environment can be improved for all users.

Current legislation is fragmented, incomplete and sometimes contradictory. It must be broadened to ensure that consistent guidelines, embodying fundamental principles, are set out, achieved and directly enforced. The new legislation must be clear on the repercussions of non-compliance, regularly updated, and strictly monitored and imposed.

New or amended legislation, with regulations and guidelines for its practical application, must be developed through an integrated process that includes all stakeholders and legal counsel. Organisations of people with disabilities must be afforded practical ways to participate in the processes of developing, implementing and enforcing the legislation.

People with disabilities are not a homogenous group. They have a wide range of needs and circumstances that affect the ways in which their rights and equal access to social and economic opportunities can be enjoyed. This must be recognised when legislation is revised to meet their requirements as citizens with measures to promote rights to equality and dignity.

Provisions for disabled users' access must be incorporated from inception into the design and planning of buildings. They must apply to the accessibility of new built areas, and those under renovation, alteration and extension. To accommodate the specific requirements of various user groups with disabilities, new legislation could use similar categorisation to that used in Britain and Australia.

Local authorities must strictly scrutinise and evaluate the accessibility of proposed buildings, alterations and additions. Accessibility evaluations and approvals by local authorities could be done in a similar way to those for fire, health and structural requirements. Mandatory workshops and seminars on the revisions and amendments, would ensure building inspectors, property developers, architects and other building professionals can apply the new regulations. Education and training must reinforce accessibility as a basic requirement for planning and construction.



Conclusion

South Africa has one of the most progressive, rights-based constitutions in the world. Yet our citizens with disabilities are daily confronted by barriers that prevent them from fully participating in society. People with disabilities continue to be systematically denied equitable access to their rights. Their situation in life becomes even more difficult due to societal neglect, discriminatory attitudes and barriers in their communities.

The legislative review of accessibility and built environments has focused on the physical barriers people with disabilities face in our society. The Commission acknowledges that there is also a need for a full investigation into other discriminatory areas, including communication, information and technology.

Government's Integrated National Disability Strategy is a landmark policy document in the struggle to create a just and equitable South African society. It needs to be supported by legislation that guarantees the rights of people with disabilities, covers all aspects of their lives, and opens up equal opportunities for them to realise their social and productive potential as citizens.

This report has highlighted the fragmented nature of existing legislation to protect the rights of persons with disabilities. The various and disjointed laws and regulations with codes, standards, sections and guidelines make enforcement and monitoring difficult.

An alternative to further piecemeal amendment of the current legislative framework is to create one comprehensive South African disability act. In this way, the rights of people with disabilities may be promoted in a more streamlined and mainstreamed way.

Legislation and policy provide vital tools for creating a just and equitable society, and giving full effect to our Constitutional values. However, legislation alone will not cure inherent and deeply entrenched social disorders. We must all be committed to explicitly and equitably including people with disabilities in all our plans and activities. In all sectors, planning and budgeting processes must accommodate the needs and rights of people with disabilities. The process of developing new strategies, laws and regulations must necessarily include people with disabilities as equal partners.

All decision makers - government officials, legislators, employers, architects, property developers and others – have a constitutionally mandated responsibility to remove barriers that prevent individuals with disabilities from enjoying their rights.

It is hoped that this report will add value and impetus to the process of making our society more inclusive of people with diverse abilities and needs. The Commission intends taking developments forward with ongoing investigation, monitoring and collaborative forums. By respecting the rights of the most vulnerable and marginalised members of society, the lives of all South Africans will be enhanced.



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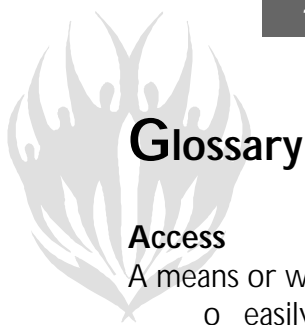
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Glossary

Access

A means or way to:

- o easily and safely approach, reach, enter, use and benefit from a physical space, building, facility or service
- o locate, retrieve, understand and appropriately use information
- o participate in economic, social, cultural and political activities
- o enjoy and exercise rights and responsibilities

Accessibility

The extent to which aspects of society can be equally, easily, safely, and appropriately used or reached by people with special needs or impairments. These aspects include buildings, facilities, constructed spaces, transport, information, equipment, services, activities, resources, utilities, language, communication and technology.

Barriers

Obstacles and impediments that prevent people from free movement, decision-making, association and participation. They may be environmental (physical) or created by attitudes and systems.

Built environments

Buildings, spaces and facilities that have been designed and constructed.

Cadre

A nucleus of key people in a liberation movement.

Disability

The disadvantage or restriction of activity caused by a society which takes little or no account of people who have impairments and thus excludes them from mainstream activity. (British Council of Organisations of Disabled People, cited on the DPSA website.)

Discrimination

Treating people who are different in an unfair, biased or prejudicial way. According to the Promotion of Equality and Prevention of Unfair Discrimination Act, discrimination may be an act, omission, policy, law, rule, practice, condition or situation which imposes burdens, obligations or disadvantages on; or withholds benefits, opportunities or advantages from, any person on the grounds of disability (amongst other grounds). It might disadvantage a person, undermine human dignity or adversely affect an individual's rights and freedoms.

Exclusion

To be prevented by social systems from participating or benefiting; being shut out or left out because society is unable to accommodate different or special needs.

Heterogeneity

Being composed of different kinds.

Homogenous

All the same; having the same nature and characteristics.



Inequity

Lack of equality; treated differently, unfairly, unjustly and inadequately.

Legislation

Laws that are passed or made by a law-making authority. For national laws in south Africa, the authority to change bills into acts of law (statutes) lies in the National Assembly (Parliament). The term also refers to the law-making process.

Mandatory

Compulsory; must be done; commanded or ordered to act.

Perception

Sensing or perceiving something through the senses; influenced by our values and attitudes.

Policy

A framework for a course of action or system of administration for government. It is not a law and therefore not enforceable.

Prejudice

Judgement or opinion that is formed without proper understanding or investigation, in a way that is biased, unfair, hurtful, discriminatory.

Regulation

A rule or order prescribed by the minister of a government department.

Stereotype

To characterise or categorise people too simplistically and readily; unoriginal and often incorrect images that are not based on reality.

Stigmatise

To mark or categorise people as inadequate, inferior or deficient.

Vulnerable

People who can more easily be disadvantaged, hurt, discriminated against or excluded than others.

List of abbreviations

| | |
|-------|---|
| DPI | Disabled Peoples International |
| DPSA | Disabled People South Africa |
| INDS | White Paper on an Integrated National Disability Strategy |
| OSDP | Office on the Status of Disabled Persons |
| SABS | South African Bureau of Standards |
| SAFCD | South African Federal Council on Disability |
| SAHRC | South African Human Rights Commission (also referred to in the Report as "the Commission") |



Appendix 1: The role of the Commission

The South African Human Rights Commission was established by the Human Rights Commission Act of 1994 to protect and promote human rights in this country.

The Commission derives its powers from the Constitution and plays a central role in interpreting the Bill of Rights, particularly in relation to vulnerable groups of people.

The Commission consults with other organisations and structures. Together, they develop and implement measures to remove factors that violate the rights of certain groups.

The constitutional mandate of the South African Human Rights Commission is to:

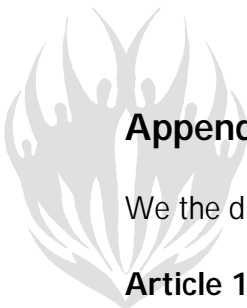
- **Develop a culture of human rights in South Africa**
- **Educate South Africans about human rights**
- **Investigate human rights violations and find ways of correcting them**
- **Conduct research on human rights**
- **Advise government on human rights and check how government promotes and protects these rights**
- **Monitor laws in all spheres of government to ensure their observance of human rights**
- **Monitor government's provision of citizen's access to economic and social rights (environment, housing, healthcare, food, water, social security and education)**



Appendix 2: Summary of the Bill of Rights

- o **Equality:** You cannot be discriminated against. But affirmative action and fair discrimination are allowed.
- o **Human Dignity:** Your dignity must be respected and protected.
- o **Life:** You have the right to life.
- o **Freedom and security of the person:** You cannot be detained without trial, tortured or punished cruelly. Domestic violence is not allowed.
- o **Slavery, servitude and forced labour:** Slavery and forced labour are not allowed.
- o **Privacy:** You cannot be searched or have your home or possessions searched.
- o **Freedom of religion, belief and opinion:** You can believe and think whatever you want and can follow the religion of your choice.
- o **Freedom of expression:** All people (including the press) can say whatever they want.
- o **Assembly, demonstration, picket and petition:** You can hold a demonstration, picket and present a petition. But you must do this peacefully.
- o **Freedom of association:** You can associate with whomever you want to.
- o **Political rights:** You can support the political party of your choice. If you are a citizen, and at least 18 years old, you can vote.
- o **Citizenship:** Your citizenship cannot be taken away from you.
- o **Freedom of movement and residence:** You can go and live anywhere in South Africa.
- o **Freedom of trade, occupation and profession:** You can do whatever work you choose.
- o **Labour relations:** You may join trade unions and go on strike.
- o **Environment:** You have the right to a healthy environment.
- o **Property:** Your property can only be taken away from you if the proper rules are followed.
- o **Housing:** The government must make sure people get access to proper housing.
- o **Health care, food, water and social security:** The government must make sure you have access to food and water; health care and social security.
- o **Children:** Children under the age of 18 have special rights, like the right not to be abused.
- o **Education:** You have the right to basic education, including adult basic education, in your own language (if this is possible).
- o **Language and culture:** You can use the language you want to and follow the culture that you choose.
- o **Cultural, religious and linguistic communities:** Communities can enjoy their own culture; practice their own religion; and use their own language.
- o **Access to information:** You have the right to any information, which the government has.
- o **Just administrative action:** Actions by the government must be fair.
- o **Access to courts:** You can have a legal problem decided by a court, or a similar structure.
- o **Arrested, detained and accused persons:** This right protects people who have been arrested, imprisoned or accused.

NOTE: All these rights can be limited if it would be fair to do so
A full version of the Bill of Rights in the 1996 Constitution is online at
<http://www.polity.org.za/govdocs/constitution/saconst.html>



Appendix 3: The Disability Rights Charter of South Africa

We the disabled people of South Africa demand that:

Article 1. NON-DISCRIMINATION

There shall be no discrimination against disabled people and they shall enjoy equal opportunities in all spheres of life and they shall be protected against exploitation and all treatment of an abusive or degrading nature.

Article 2. SELF-REPRESENTATION

Disabled people shall be entitled to represent themselves on all matters affecting them and resources shall be made available to enable them to fulfil this role.

Article 3. HEALTH AND REHABILITATION

Health and rehabilitation services shall be effective, accessible and affordable to all disabled people in South Africa.

Article 4. EDUCATION

- a) Disabled people shall have the right to mainstream education with personal assistance where necessary, appropriate assistive technology and specialised teaching.
- b) Parents of disabled children shall have the right to participate in the planning and provision of their children's education.

Article 5. EMPLOYMENT

- a) All disabled people shall have the right to employment in the open labour market and appropriate measures, such as quota systems and training programmes, shall be implemented by government and employers to ensure that opportunities are created in the workplace which allow for the full enjoyment of this right.
- b) The state shall provide incentives to employers, such as tax concessions, to encourage them to employ disabled people.
- c) State assistance shall be provided to disabled people to encourage them to engage in income generation through workshops and self-help projects.

Article 6. SPORT AND RECREATION

Disabled people shall have the right to engage in sport and recreational activities and resources, such as sports facilities and financial assistance, as well as opportunities for participation, shall be made available to support this initiative in this regard.

Article 7. SOCIAL SECURITY

The state shall provide security to disabled people who are without adequate income and all measures used to determine the adequacy of such income shall take into account additional costs incurred by them as a result of their disability.

Article 8. HOUSING

The state shall embark on a programme aimed at ensuring adequate, accessible and affordable housing for all disabled people.

Article 9. TRANSPORT

Affordable and adequate transport shall be made available to disabled people.



Article 10. BUILT ENVIRONMENT

All new environments shall be accessible and safe to disabled people and all reasonable steps shall be taken to make existing built environments accessible and safe.

Article 11. DISABLED CHILDREN

- a) Disabled children shall have the right to be treated with respect and dignity and shall be provided with equal opportunities to enable them to reach their full potential in life.
- b) The state shall ensure that all disabled children are properly cared for with adequate support. All forms of abuse of disabled children shall be prohibited and severe penalties imposed for such abuse.

Article 12. DISABLED WOMEN

All disabled women shall be treated with respect and dignity. They shall be free to make their own decisions and shall be protected from all forms of abuse which undermine their integrity in any way.

Article 13. INDEPENDENT LIVING

Disabled people shall be entitled, encouraged and assisted to live independently in their communities and to develop the skills necessary to enable them to live in the broader society and they shall be provided with adequate and appropriate support systems to do so.

Article 14. COMMUNICATION

Disabled people shall have the right to communicate freely and measures designed to ensure the full enjoyment of this right shall include the provision of Braille and/or audio recorded material for blind people, the recognitions and use of sign language for people with hearing and/or speech disabilities and mentors/advocates for mentally disabled people.

Article 15. PARTICIPATION ON SOCIAL LIFE

Disabled people shall have the right to make their own decisions in all areas of social life and this shall include freedom to engage in sexual relationships and to have a family.

Article 16. PREVENTION

All effective and appropriate steps shall be taken by the state and society at large to prevent disability.

Article 17. POSITIVE ACTION

Positive action shall be applied to address existing discriminatory practices and disadvantageous conditions facing disabled people, giving special attention to the situation of under-represented groups such as disabled women and children, deaf people, mentally disabled people, people with albinism and disabled people living in underdeveloped areas.

Article 18. ENFORCEMENT

Appropriate and effective policies and legislation as well as accountable services shall be developed and enforced to provide all disabled people with opportunities for the full enjoyment of all these rights.



Appendix 4: Breaking down language barriers

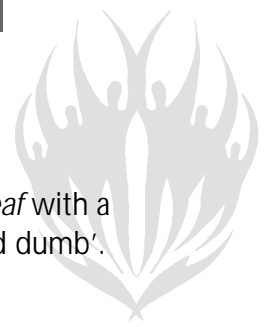
The following table gives a guide to terminology that is preferred by the disability rights movement ¹².

| ✓ ACCEPTABLE | ✗ UNACCEPTABLE |
|---|--|
| ✓ people with disabilities | ✗ the disabled or the handicapped |
| ✓ person with a disability | ✗ crippled, deformed or handicapped; suffers from, afflicted by or victim of; invalid or any medical labels; physically/mentally challenged or differently-abled |
| ✓ disability or impairment | ✗ handicap, deformity or defect |
| ✓ uses a wheelchair or wheelchair user | ✗ wheelchair bound or confined to a wheelchair |
| ✓ able-bodied or person without a disability | ✗ normal |
| ✓ person with an intellectual or psychiatric disability | ✗ mentally retarded/deficient, insane, brain damaged, learning disabled and slow learner |
| ✓ person with cerebral palsy/epilepsy/paraplegia/quadruplegia/hemiplegia/post-polio paralysis/Downs Syndrome/albinism ¹³ / etc | ✗ cerebral palsied and spastic/epileptic/paraplegic/quadruplegic/cripple/Mongol or Mongoloid/albino |
| ✓ person of short stature | ✗ dwarf and midget |
| ✓ accessible parking, parking for people with disabilities, accessible toilet, toilet for people with disabilities | ✗ disabled parking, disabled toilet, handicapped toilet |

Generally, ensure that the *person* comes first, not the disability. Thus, *people with disabilities* is preferable to *disabled people*, and definitely not “*the disabled*”.

¹² With acknowledgement to Patricia Digh of the RealWork Group and Disabled People South Africa.

¹³ Albinism is a condition, not a disability, but many people with albinism identify with people with disabilities because of the discrimination they experience in society. Also people with albinism may have poor sight.



Further notes on terminology ¹⁴ :

- o People who consider themselves part of Deaf culture refer to themselves as *Deaf* with a capital "D"; 'deaf' refers to hearing status. **Never** use 'deaf-mute' and 'deaf and dumb'. People who are not born deaf may become deafened later in life.
- o South African sign language is considered South Africa's 12th official language (although not officially so). It is not a 'code' and has many different dialects.
- o For people with visual disabilities, loss of sight may be total (a person with blindness) or partial (as in people with low vision or a limited range of sight).
- o Mental disabilities include cognitive, psychiatric and learning disabilities, as well as physical head trauma.
- o People with intellectual disabilities find it difficult to learn and retain new information and often to adapt to new situations.
- o People living with psychiatric or mental illness often experience difficulties in perceiving or interpreting reality, coping with some aspects of daily life, forming and maintaining relationships, coping with difficult feelings fears and anxieties, or may see and hear things that do not exist.
- o *Multiple disabilities* means having two or more disabilities, for example persons who have deafness and blindness.
- o *Persons with disabilities are not to be pitied*. They don't want sympathy, but rather respect for their humanity and recognition of their rights to equal participation in society.
- o *The word 'handicap' is detested by most people with disabilities* as it derives from the phrase 'cap in hand', referring to a beggar. Most people with disabilities do not want to be passive recipients of welfare and charity, but rather full participants in society and the economy.
- o Most disabilities are not illnesses or diseases. For those that are by legal definition considered disabilities, avoid imagery of victimisation (eg say *person living with AIDS*, not *AIDS victim*) or defining a person by the disease (eg say *woman with diabetes* not *she is a diabetic*).
- o Assistive devices and technology, augmentative and alternative communication strategies, accessible built environments, accessible information and other enabling mechanisms play an important role in removing barriers to participation of disabled people in society.

Prejudice remains the greatest disability

¹⁴ Again, credit to Disabled People of South Africa.



Appendix 5: Organisation contact list ¹⁵

Disability network

Autism South Africa (ASA)

PO Box 84209, Greenside, 2043

Tel: 011 486 3696

Fax: 011 486 2619

E-mail: autismsa@iafrica.com

Cancer Association of South Africa (CANSA)

PO Box 25943, Monument Park, 0105

Tel: 012 347 2625

Fax: 012 347 6248

E-mail: flepita@cansa.org.za or rpotter@cansa.org.za

Deaf Federation of South Africa (DEAFSA)

Private Bag X04, Westhoven, 2142

Tel: 011 482 1610

Fax: 011 726 5873

E-mail: deafsa@deafsa.co.za

Website: <http://www.deafsa.co.za>

Disabled Children's Action Group (DICAG)

16 Broad Road, Wynberg, 7800

Tel: 021 797 5977

Fax: 021 797 5077

E-mail: dicag@iafrica.com

Disabled People South Africa (DPSA)

Room 705, 7th Floor Dumbarton House,

1 Church St, Cape Town, 8001

Tel: 021-422 0357

Fax: 021-422 0389

E-mail: sg@dpsa.org.za

Website: <http://www.dpsa.org.za>

Down Syndrome South Africa (DSSA)

P O Box 16677, Lyttelton, 0140

Tel: 012 345 4581

Fax: 012 345 4581

E-mail: dssaoffice@icon.co.za

Website: <http://www.downsyndrome.org.za>

Epilepsy South Africa (ESA)

PO Box 73, Observatory, 7935

Tel: 021 447 3014

Fax: 021 448 5053

E-mail: felicity@epilepsy.org.za

Website: <http://www.epilepsy.org.za>

¹⁵ This list is not complete, but should provide a starting point for further exploration of disability issues.



Leonard Cheshire South Africa (Cheshire Homes)

PO Box 234, Newlands, 7720

Tel: 021 685 6169

Fax: 021 685 6066

National Council for Persons with Physical Disabilities South Africa (NCPDOSA)

4 Lancaster Road, Westdene,

Tel: 011 726 8040

Fax: 011 726 5705

E-mail: apdnk@iafrica.com

Office on the Status of Disabled Persons (OSDP)

Office of the President

Private Bag X911, Pretoria, 0001

Tel: 012 337 5222

Fax: 012 326 4176

E-mail: sebenzile@po.gov.za

Quadriplegic Association of South Africa (QASA)

PO Box 48756, Roosevelt Park, 2129

Tel: 011 679 2857

Fax: 011 679 3865

E-mail: natquads@icon.co.za

South African Federal Council on Disability (SAFCD)

40 Campground Road, Rosebank, Cape Town, 7700

Tel: 021 685 4211/3/6

Fax: 021 685 4215

E-Mail: safcd@iafrica.com

Website: <http://www.ability.org.za>

South African National Council for the Aged (SANCA)

PO Box 2335, Cape Town, 8000

Tel: 021 419 5831

Fax: 021 418 2145

South African National Council for the Blind (SANCB)

PO Box 31149, Hatfield, 0028

Tel: 012 346 1171

Fax: 012 346 1177

E-mail: rowland@sancb.org.za or jenny@sancb.org.za

Website: <http://www.sancb.org.za>

South African National Federation for Mental Health (SAFMH)

Private Bag X46, Braamfontein, 2017

Tel: 011) 242 9600

Tel: 021 685-4216



Commissions

Commission for Conciliation, Mediation and Arbitration

Private Bag X94, Marshalltown, 2107
Tel: 011 377 6625
Fax: 011 377 6658/78/80
Website: <http://www.ccma.org.za>

Commission for Gender Equality

P O Box 32175, Braamfontein, 2017
Tel: 011 403 7182
Fax: 011 403 7188
E-mail: cgeinfo@cge.org.za
Website: <http://www.cge.org.za>

Independent Complaints Directorate

Private Bag X463 Pretoria, 0001
Tel: 012 320 0431
Fax: 012 320 3116
Website: <http://www.icd.gov.za>

Independent Electoral Commission

P O Box 7943, Pretoria, 0001
Tel: 012 428-5700
Fax: 012 341 5292
E-mail: iec@elections.org.za
Website: <http://www.elections.org.za>

National Youth Commission

Private Bag X938, Pretoria, 0001
Tel: 012 325-3702
Fax: 012 324 4759
E-mail: mkalipim@nyc.pwv.gov.za
Website: <http://www.nyc.gov.za>

South African Human Rights Commission

Private Bag 2700, Houghton, 2041
Tel: 011 484 8300
Fax: 011 484 1360
E-mail: sahrcinfo@sahrc.org.za
Website: <http://www.sahrc.org.za>

Others

South African Bureau of Standards

Tel: 012 428 6666
Fax: 012 428 6928
E-mail: info@sabs.co.za
Website: <http://www.sabs.co.za>

The Public Protector

Private Bag X677 Pretoria, 0001
Tel: 012 - 322 2916 or Toll free: 0800 1120 40
Fax: 012 322 5093
Website: <http://www.gov.za/structure/protector.htm>

