



# HUMAN RIGHTS AND PERSONS WITH DISABILITIES





# PERSONS WITH DISABILITIES AND HUMAN RIGHTS

The Constitution of the Republic of South Africa, 1996 protects the rights of all people in South Africa. Human rights are applicable to all people, therefore everyone in the country is entitled to human rights by virtue of being human. Section 9 of the Constitution provides that everyone is equal before the law and has equal protection and benefit of the law. No person, including the State and private companies may unfairly discriminate directly or indirectly on one or more grounds against any person on one or more grounds including race, gender, colour, age or **disability**. Section 10 of the Constitution further provides that everyone has the right to have their dignity respected and protected.

South Africa is party to international laws and agreements such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD) of 2006, which South Africa ratified in 2007 which means that the country accepts all the legal obligations that are imposed by this instrument. The CRPD seeks to promote, protect and ensure the full and equal enjoyment of all human rights by persons with disabilities.

The CRPD defines persons with disabilities to include those who have long term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society on an equal basis. This is a clear recognition that persons with disabilities are equal and valuable members of society and should be recognised in all aspects of life.

There is no single definition of disability that has achieved international consensus as the concept of disability is evolving. The concept has evolved from the initial charity or welfare approach that viewed persons with disability as objects of pity who required help; to the medical approach that sought to treat the disability; to the current social and human rights approach.

This current approach is progressive in that it is not only about providing disability-related services, but goes further in adopting measures to change attitudes and behaviours that stigmatise and marginalise persons with disabilities, eliminating the physical and social barriers that inhibit persons with disabilities from exercising their rights and ensuring that laws and policies support non-discrimination and guarantee rights of persons with disabilities to participate fully in society.

This information sheet adopts the last model, wherein disability refers to the consequence of the interaction of the individual with an environment that does not accommodate that individual's differences and limits or impedes the individual's participation in society.

The common categories of disabilities can be vision impairment, deaf or hearing impairment, mental health conditions, intellectual impairments, acquired brain injuries, autism spectrum disorders, physical impairments and progressive chronic conditions; and such disability can be permanent, temporary or episodic.


Statistics South Africa's **2011 Census Profile of Persons with Disabilities Report** provides the following data in relation to persons with disabilities in South Africa:




The national disability prevalence rate is 7, 5%;



Disability is more prevalent among females at 8, 3% compared to males at 6,5%;



Persons with disabilities increase with age, more than half 53,2% of persons above the age of 85 years reported having a disability;



The prevalence of a specific type of disability shows that 11% of persons aged 5 years and older had visual difficulties, 4,5% had cognitive (remembering/concentrating) difficulties, 3, 6% had hearing difficulties and about 2% had communication, self-care and walking difficulties.

Globally, the World Health Organisation and World Bank's **2011 World Report on Disability** notes the high estimates of prevalence as 15% of the world's population have a disability; that the numbers are growing due to ageing populations, increase in chronic diseases and forms of disasters and that disability disproportionately affects populations in vulnerable situations such as women, children and older persons.



## THE CHALLENGES FACING PERSONS WITH DISABILITIES

Persons with disabilities experience a number of interrelated challenges in accessing their rights, which include the following:

- Social barriers such as lack of awareness on the different types of disabilities amongst society, which results in lack of acceptance of persons with disabilities within communities; negative attitudes resulting from ignorance, misunderstanding and prejudice which keeps society from appreciating and experiencing the full potential persons with disabilities can achieve.
- Psychological barriers which are mainly informed by fears for their personal safety.
- Structural barriers such as accessibility to facilities and infrastructure, the lack of support services or technology, the lack of availability of information in accessible formats and the lack of reasonable accommodation in schools and work places.

The **World Report on Disability** further notes that as a result of these challenges, children with disabilities are more likely not to complete their education than children without disabilities; persons with disabilities are more likely to be unemployed and also likely to earn less and this worsens with the severity of the impairment; and that persons with disabilities often do not receive the much needed health care, which they are most likely not able to afford.

## PROMOTING AND PROTECTING THE RIGHTS OF PERSONS WITH DISABILITIES

The Constitution places a positive duty on the State to respect, promote, protect and fulfil the rights in the Bill of Rights, including the rights of persons with disabilities. It does so through the legal framework which creates primary responsibilities on key government departments to promote and protect the rights of persons with disabilities.

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 4 of 2000 promotes equality and provides for measures to facilitate the eradication of unfair discrimination, hate speech and harassment on the grounds of race, gender or disability, amongst others. With specific reference to disability, no person may unfairly discriminate against any person including:

- Denying or removing from any person who has a disability any supporting or enabling facility necessary for their functioning in society.
- Failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.



**The South African Human Rights Commission** (the SAHRC) is the national human rights institution in South Africa as designated by the Constitution. It has a constitutional and international obligation to promote, protect and monitor the observance of human rights in the Republic, including the rights of persons with disabilities. The SAHRC has a Commissioner with a dedicated focus on the area of persons with disabilities.

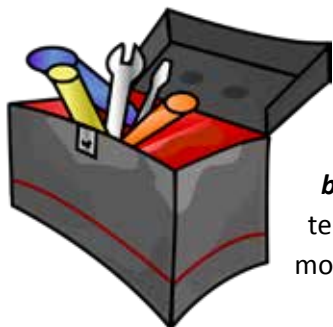
The SAHRC engages directly with members of the public, State Departments, the Office of the High Commissioner for Human Rights (OHCHR), persons with disabilities, civil society organisations and the private sector in order to raise awareness and protect the rights of persons with disabilities. Public education, outreach interventions, publication of educational material and disseminating information to enable the affected group to assert and enforce their rights, are some of the methods the SAHRC uses to improve awareness levels and integration of persons with disabilities as members of the larger society. The SAHRC has developed this information sheet for the general public to provide basic information on persons with disabilities.

Consultations between the SAHRC, the business sector, civil society organisations and persons with disabilities, recognised that the country's private sector has limited support in implementing the right to work of persons with disabilities. In a bid to address this issue and in line with its constitutional mandate, the SAHRC in 2015 developed a resource guide on ***“Promoting the Right to Work of Persons with Disabilities: A Toolkit and Monitoring Framework for the Private Sector (the Toolkit)”*** to raise awareness and support the private sector in the implementation of the right to work for persons with disabilities.





The Toolkit provides practical advice about disability and employment, is applicable to employers of all sizes and could be used across all sectors, whilst the monitoring framework measures and tracks progress in the implementation of the Toolkit.



The use of appropriate language and etiquette when communicating with or making reference to persons with disabilities is important, as it accords them dignity. The language that people use reflects their attitudes towards persons with disabilities and negative, stereotypical or derogatory terms devalue and discriminate against such persons. Sensitivity must be exercised in choosing words and also shows respect. When in doubt, ask persons with disabilities how they would like to be addressed or how they describe themselves instead of using terms that could be deemed offensive or derogatory to them.





In the Toolkit and in its 2002 report entitled “***Towards a barrier-free society: a report on accessibility and built environments***”, the SAHRC provides a guide to terminology that is preferred by the disability rights movement.

 <b>ACCEPTABLE</b>	 <b>UNACCEPTABLE</b>
Persons with disabilities Person with a disability	The disabled or the handicapped 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









 <b>ACCEPTABLE</b>	 <b>UNACCEPTABLE</b>
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 etc	Cerebral palsied and spastic/epileptic/ paraplegic / quadriplegic/cripple/ Mongol or Mongoloid/albino
Person of short stature	Dwarf and midget
Accessible parking, parking for persons with disabilities, accessible toilet, toilet for persons with disabilities	Disabled parking, disabled toilet, handicapped toilet

The SAHRC also aligns itself with the terminology below as put forward by the United Nations Office of the High Commissioner for Human Rights. The general rule is to ensure that the person comes first, not the disability. The SAHRC reiterates that the person being addressed is the individual and not the disability.

 <b>ACCEPTABLE</b>	 <b>UNACCEPTABLE</b>
Person with...	Victim of...
Person who has...	Suffering from...
Person with...	Afflicted by...
Person with disabilities	Invalid
Person with an intellectual or psychosocial disability	Mentally handicapped
Person with a mental or psychosocial disability	Mentally ill
Person who is bipolar	Manic depressive
Person with epilepsy	Epileptic
Person with cerebral palsy	Spastic
Person who is blind, person with sensory disability	The blind

The SAHRC Toolkit further provides some basic tips on disability etiquette, a summary of which is:

-  Avoid asking personal questions about someone's disability;
-  Be considerate of the extra time it might take for a person with a disability to do or say something;
-  Be polite and patient when offering assistance, and wait until your offer is accepted;
-  Listen or ask for specific instructions. Be prepared for your offer to be refused;
-  Relax, anyone can make mistakes. Offer an apology if you feel you have caused embarrassment;
-  Keep a sense of humour- most people with disabilities do- and are willing to communicate.

The SAHRC also monitors the observance of human rights in the Republic, mainly through research and publication of reports with specific recommendations. This includes reviewing legislation and examining the implementation of policy and measures to implement the Convention on the Rights of People with Disabilities. The SAHRC's 2017-2018 Equality Report found that government policy and conduct is failing persons with disabilities by not ensuring accessibility in the universal design of goods, services, equipment and facilities, and failing to reasonably accommodate persons with disabilities. The SAHRC recommends the adoption of a comprehensive approach that ensures that persons with disabilities are included in all aspects of society and the economy.

# EQUALITY REPORT

2017/18

## The Constitution

of the Republic of South Africa, 1996



south african  
**human  
rights**  
commission

The SAHRC has the power to conduct or cause to be conducted any investigation into any alleged violation of a fundamental right. A human rights violation is an abuse or violation of any of the rights found in the Constitution. Anyone either acting on their own interest, that of someone else or that of an organization can lodge a complaint with the SAHRC. A complaint may be lodged at any of the provincial offices of the SAHRC where the alleged violation of a fundamental right took place. A complaint can be lodged in person, by telephone, in writing or by completing the online complaint form.

### **Organisations of Persons with Disabilities and other entities**

There are a number of membership-based organisations, often referred to as Disabled People Organisations (DPOs) that are run and managed by persons with disabilities. These organisations constitute the representative voice of persons with disabilities and are based on the respective membership demographics. They support the development of persons with disabilities' capacities by providing them with a common platform to exchange and share their experiences and provide information on disability for their members on existing services, facilitate and provide such services.

**Disabled People of South Africa (DPSA)** is the overall non-profit cross disability body that mobilises and advocates for the rights and attainment of equal opportunities for persons with disabilities. The DPSA is recognised as the national assembly of persons with disabilities by Disabled People International, which has observer status at the United Nations.

There are also local non-governmental, faith or community-based organisations that are working to advance the rights of persons with disabilities. Examples of such organisations include, but are not limited to SECTION 27, Legal Resources Centre, Lawyers for Human Rights and law clinics at universities.



A landmark development is that in September 2018 following engagement and litigation, SECTION 27 facilitated a settlement agreement between the South African National Council for the Blind, the National Braille Authority and School Governing Bodies of Schools for Visually Impaired Learners and the Department of Basic Education compelling the State to provide braille textbooks for all visually impaired learners.

For a list of organizations working on the rights of persons with disabilities, you can visit: <https://www.disabilityemployment.co.za/sites/default/files/resource/DSD2015NatDisabilityOrganisations.pdf>. Any persons with disabilities who feel that any of their rights have been violated may also visit such organisations for assistance.

The SAHRC calls upon society at large to celebrate human diversity by respecting and supporting the rights of persons with disabilities.

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