

Executive summary
The role and effectiveness
of disability legislation in
South Africa

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March 2005

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Executive summary

South Africa occupies 1,227,200 sq km at the southern tip of Africa. It has nine provinces: Eastern Cape, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Limpopo, North West, Free State and Western Cape.

The country has some of the most comprehensive legislation and policy protecting and promoting the rights of disabled people in the world, and disabled people are involved at all levels of government. This small-scale research was commissioned to study the extent to which policies and legislation have been implemented. The two key questions are:

- How effective has this legislative and policy environment been in making real changes to the lives of disabled people?
- Are policies being implemented and acted on, or do they 'evaporate' the closer one gets to the grass roots?

The main purpose of the research was to identify and analyse key features of the government's efforts to provide better access to government services for people with disabilities through the implementation of policies and inclusive legislation. There is no separate disability legislation in South Africa.

Methodology

Samaita Associates was contracted by the Disability Knowledge & Research (KaR) Programme to conduct this small-scale research in South Africa.

Research questionnaires were prepared, and interviews with key respondents in government departments were carried out in four provinces (Gauteng, KwaZulu/Natal, Eastern Cape, and Western Cape) in order to determine the extent to which these departments have implemented disability strategies. These provinces were chosen due to the need to achieve a balance between urban (represented by Western Cape and Gauteng) and rural areas (KwaZulu/Natal and Eastern Cape Provinces).

Extensive desk research and literature review was conducted in order to identify key information relating to the delivery of services to disabled people through implementation of policies and legislation.

Findings

Available statistical data on the prevalence of disability in South Africa is not comprehensive or accurate. Estimates of the number of persons with disabilities in South Africa vary from 5.9 per cent¹ to 12 per cent.²

The 2001 census found that the total number of disabled people had decreased between 1996 and 2001. Stats SA recorded 2,657,714 disabled people in 1996 compared to 2,255,973 in 2001. This decrease might reflect the sampling methods used, or the fact that there is widespread confusion on the definition of disability, or other factors.

During the period 1994–2004, legislation, policies, interventions, and programmes were formulated with the aim of influencing the environment for addressing equity goals over the medium- to long-term, and also for addressing immediate goals in ensuring that more people with disabilities could access government services.

Implementing policies

¹ CASE (1997)

² Department of Health, in DPSA (1996)

Overall, the national government has been successful in creating an enabling environment for policy development work in the field of disability.

Some of the achievements linked to the development of new legislation and policy are:

- developing and adopting the *White Paper on Disability on an Integrated National Disability Strategy*, known as INDS.³ A recent development at provincial level has been the formulation of a provincial version of the INDS, termed, in some provinces, the Integrated Provincial Disability Strategies (IPDS)
- determining employment-equity quotas that apply to the private and public sector regarding the employment of disabled people through the Employment Equity Act (EEA) of 1998
- increasing the basic disability grant and the extension of its provisions to a wider sector of people through the Social Assistance Act
- introduction of policy on inclusive education through the *White Paper on Special Needs Education*⁴
- actively participating in continental and international initiatives on improving the lives of disabled people, such as the Africa Decade of People with Disabilities, and participating in the development of the United Nations Convention on the rights of disabled people
- providing free primary health care to disabled people affected by poverty
- establishing the Equity Court
- establishing the Office on the Status of Disabled People in the Presidency, and at provincial levels
- establishing Disability Desks and Units in many line departments within all spheres of government.

While support for the formulation and adoption of policy has been excellent, policy implementation remains a challenge. Of particular note is the fact that there are capacity constraints at programmatic level that limit the effective implementation of policy. Policy implementation issues are not addressed consistently, for various reasons, at different levels of government. These reasons include limited conceptual understanding, poor championing, inadequate or inappropriate institutional arrangements, and a general lack of capacity.

Two other factors that have contributed to the poor implementation of legislation and policies are that the definition and nature of disabled people's participation have not been adequately reviewed and articulated, and that the policy requirements for disability mainstreaming are not adequately linked to performance management, thereby undermining commitment to implementation.

In addition, legislation and policies are not implemented, due to a lack of allocated fiscal resources and commitment. A pertinent example is the Policy on Inclusive Education – the White Paper was released in 2001⁵ and yet implementation remains fragmented.

Where successful implementation has occurred, it has largely been due to political support by the ministers and senior civil servants in charge of departments, and/or the sustained commitment and ongoing advocacy by the disability sector, led by Disabled People South Africa (DPSA).

Concerning the implementation of the Employment Equity Act (EEA), and based on information submitted by national departments and provincial administrations for 797,750

³ Government of South Africa (1997)

⁴ Department of Education (2001)

⁵ *Ibid.*

employees in the public service,⁶ it was found that there are 2,007 disabled people in the public service. This represents an average of 0.25 per cent – a figure that falls far short of the 2 per cent that needed to be achieved by 2005.

In the national departments, there are 1,062 disabled people – equivalent to 0.47 per cent of employees. In the six provincial administrations that responded, the employment of disabled people averaged 0.16 per cent. This represents 945 employees out of a total of 572,856.⁷

In its report for 2002/03, the Commission for Employment Equity (CEE) reported some improvements in the employment of disabled people by all employers – both government and the private sector. According to CEE, altogether employers reported a total of 26,539 employees with disabilities in 2002. This represents 1 per cent of all employees included in the 2002 employment equity reports.⁸

Out of a total of 26,539 (100 per cent) of employees with disabilities in various occupational categories, 14,045 (52.9 per cent) were African, 3,578 (13.5 per cent) were coloured, 1,138 (4.3 per cent) were Indian and 7,778 (29.3 per cent) were white.⁹

The distribution of employees with disabilities by race and gender is provided in Annex C.

In terms of recruitment, the total number of disabled people recruited for the 2002/03 reporting cycle was 3,350 (see Table 2). Of these, 1,751 (52.3 per cent) were African, 609 (18.2 per cent) coloured, 140 (4.2 per cent) Indian and 850 (25.4 per cent) white. The total number of disabled people (3,350) recruited amounted to 1.13 per cent of all employees (297,610) that were recruited for the period.

In the field of skills development, the Skills Development Act (SDA) was enacted in order to implement structures and processes to transform skills development in South Africa. One of the purposes of the Act is to improve the employment prospects of people previously disadvantaged by unfair discrimination, and to redress those disadvantages through training and education. In this regard, persons with disabilities in particular, among other disadvantaged groups, are targeted. In order to achieve the targets set in the SDA, a National Skills Development Strategy (NSDS) was designed, with the current version covering 2005–10. The targets state that the beneficiaries of the strategy should be 85 per cent black, 54 per cent female, and 4 per cent disabled people.

Table 3 shows that progress was more advanced in relation to the target of 85 per cent of black people receiving training, with a 78 per cent achievement during 2002/03. As a percentage of the total, the number of women (20.43 per cent) and disabled people (0.04 per cent) achieving Level One of the National Qualifications Framework (NQF) is still significantly under target.¹⁰

By comparison, in 2003/04, in total, 87 per cent of those who participated in NQF Level One learning programmes during this period were black, 33 per cent were female, and 0.1 per cent were disabled. Thus there was a marked improvement in the number of workers who

⁶ *Report on Disability Equity in the South African Public*, cited in OSPD (2002)
The figure of 797,750 is broken down as follows: national departments – 224,894; provincial administrations – 572,856.

⁷ *Ibid.*

⁸ Commission for Employment Equity (2003)

⁹ *Ibid.*

¹⁰ Commission of Social Security (2003)

achieved NQF Level One.¹¹ Part of the reason for this increase could be increased awareness of the SDA and NSDS, by employers and employees alike.

However, achieving equity targets continues to be a challenge for the implementers of the NSDS. In particular, the disability targets are currently being met only in six of the provinces, as shown in Table 9.

The Government of South Africa has enacted other pieces of legislation relating to disability. These are:

- **Preferential Procurement Policy Framework Act 2000** This states that an organ of the state must determine its preferential procurement policy, and implement it within a set framework.¹² The framework includes a points system and specific goals that may include contracting with people, or categories of people, historically disadvantaged by unfair discrimination on the basis of race, gender or disability. No data was available on the implementation of this Act.
- **AgriBEE (Broad-Based Black Economic Empowerment Framework for Agriculture)** This is a broad-based strategy that promotes the economic empowerment of black people, including women, workers, young people, disabled people and people living in rural areas, through diverse but integrated social or economic strategies, such as managing, owning, and controlling enterprises and productive assets; co-operatives and other collective enterprises; equitable representation in agricultural professions and levels in the workforce; preferential procurement; and investment in enterprises that are owned or managed by black people.
- **South African Schools Act 1996** This provides for the inclusion of learners with special educational needs. Public schools are required by law to admit all learners and provide the necessary educational requirements without discrimination.
- **The Promotion of Equality and Prevention of Unfair Discrimination Act 2000** This Act deals with the prevention, prohibition and elimination of unfair discrimination, hate speech and harassment. The Act states that neither the state nor any person may unfairly discriminate against any person on the ground of disability, including:
 - denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society
 - contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility
 - failing to eliminate obstacles that unfairly limit or restrict people with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such people.

Key conclusions

The positive policy environment in South Africa presents unique opportunities for disabled people to address issues such as:

- poverty
- high levels of unemployment
- education of children and young people with disabilities
- access to social security and assistive devices
- access to housing, public health services and transport.

¹¹ Commission of Social Security (2004)

¹² Government of South Africa (2000a)

The current legislation, in the form of the Employment Equity Act, Social Assistance Act, Skills Development Act and Skills Development Levy Act and others, has helped create a new sense of awareness of the needs of disabled people. However, with the exception of a few policies such as the Social Assistance Act, the implementation of these policies has had marginal impact on the lives of a majority of disabled people in South Africa. Problems associated with the lack of budgetary allocations, the ignorance of civil servants charged with the responsibility of implementing these policies, and procedural bottlenecks, among other things, have been identified as some of the main causes of 'policy evaporation' within the South African context.

Research shows that approximately 71.7 per cent of the non-disabled population live in households where the average annual per capita income is below R10,000 (US\$1,518) and where the maximum educational level is below Standard 10.¹³ This compares to 79.4 per cent in the same group of disabled people. A possible conclusion from these results is that disability increases the chance of living in extreme poverty by approximately 10 per cent. A disabled person with no education has a 60 per cent likelihood of being in the lowest income category, versus 44 per cent for people with no disability.

Generally, the development of disability policies within government departments at both national and provincial levels is in its infancy, with the majority of departments having only draft policies. Such policies are generally not backed up by funded strategies, hence no meaningful implementation of these policies has taken place.

¹³ CASE (1999)