Ref: MM/ED/NM

30 June 2016

Office of the High Commissioner for Human Rights

Palais Des Nations

1211 Geneva 10

Switzerland

**BY EMAIL**: [registry@ohchr.org](mailto:registry@ohchr.org)

**RE: THE RIGHT OF PERSONS WITH DISABILITIES**

**ARTICLE 5 EQUALITY AND NON-DISCRIMINATION QUESTIONNAIRE**

1. We refer to your invitation to provide input to the study on Article 5 (equality and non-discrimination) of the Convention on the Rights of Persons with Disabilities. We hereby submit our inputs to the study and trust that they will be favourably received. We are grateful for, and welcome this opportunity to contribute to the study.

**INTRODUCTION TO THE LEGAL RESOURCES CENTRE (“LRC”)**

1. The LRC is a national public interest, non-profit law clinic in South Africa that was founded in 1979. Since inception, the LRC has shown a commitment to work towards a fully democratic society underpinned by respect for the rule of law and constitutional democracy. The LRC uses the law as an instrument of justice to facilitate the vulnerable and marginalised to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; as well as to contribute to the development of human rights jurisprudence and to the social and economic transformation of society.
2. The LRC, through its Equality and Non-Discrimination project (“the project”), focuses on empowering marginalised and vulnerable groups by utilising creative and effective solutions to achieve its aims. These include using a range of strategies including impact litigation, law reform initiatives, participation in development processes, education and networking within and outside of South Africa. Within the arena of equality and non-discrimination, the LRC has viewed the rights of vulnerable and marginalised persons including persons with disabilities, sexual minorities, women, children, refugees and sex workers as being integral to the pursuit of social justice.
3. It is in this context that we seek to ensure that the existing legal apparatus available and in development are appropriately cognisant of the rights and realities of vulnerable and marginalised groups. We believe that this will ensure that their experiences of discrimination and prejudice are reduced and eventually diminished. Furthermore, we believe that the national, regional and international laws are collaboratively an instrumental tool in securing substantive equality for vulnerable individuals.

**RESPONSES TO THE QUESTIONNAIRE ON THE RIGHTS OF PERSONS WITH DISABILITIES**

**Question 1:**

*Has your country adopted legislation, establishing disability as a prohibited ground of discrimination, including denial of reasonable accommodation as discrimination? Please provide details on any related legal reforms.*

**Disability as a prohibited ground of discrimination**

***The Constitution of the Republic of South Africa read together with The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000*** (hereafter ‘PEPUDA’)

1. The Constitution is the supreme law of the Republic of South Africa and any law or conduct inconsistent with it is invalid. Section 9(3) and (4) of the Constitution states that the state and/or non-state actors may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including disability. In terms of section 9(5), discrimination on one or more of those grounds“*is unfair unless it is established that the discrimination is fair.*”
2. Section 9(4) of the Constitution of South Africa mandates the enactment of national legislation to prevent or prohibit unfair discrimination.[[1]](#footnote-1) PEPUDA was accordingly enacted. For the purpose of this submission, we wish to note the following key provisions in PEPUDA pertaining to disability as a ground for discrimination:
   1. Disability is listed as one of the prohibited grounds for discrimination.[[2]](#footnote-2)
   2. In the application of PEPUDA, the existence of systemic discrimination and inequalities in respect of disabilities and other related grounds in all spheres of life that existed as a result of past and present unfair discrimination because of colonialism, apartheid and patriarchy must always be noted. As such it is imperative to take steps to ensure that such discrimination is eliminated.[[3]](#footnote-3)
   3. Section 9 of PEPUDA specifically prohibits unfair discrimination against any person on the ground of disability, including—
3. *“denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;*
4. *contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;*
5. *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.”*
   1. Section 28 of PEPUDA provides for special measures to promote equality with regard to race, gender and disability including prosecution of crimes motivated by unfair discrimination. The state, institutions performing public functions and all persons have a duty and responsibility, in particular to eliminate discrimination on the grounds of race, gender and disability.

*Employment Equity Act (hereafter ‘EEA’)*

1. The EEA mandates employers to strive to achieve employment equity in order to diversify their workforce, which includes employing suitably qualified persons with disabilities.[[4]](#footnote-4) As such section 6(1) of the EEA provides following:

*No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, .. disability, ..*.

1. In terms of PEPUDA, Equality Courts were established to give effect to the Constitutional right to equality. An equality court may adjudicate on issues of unfair discrimination and may make an appropriate order including; a declaratory order, an order making a settlement between parties, an order for the payment of damages, an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, an order for the implementation of special measures to address the unfair discrimination and an order directing the reasonable accommodation of a group or class of persons.[[5]](#footnote-5)
2. Within the South African context, the rights to equality and access to justice are often not realisable without accessibility being provided to persons with disabilities. This is also a principle that the Committee on the Rights of Persons with Disabilities has emphasised. In the case *WH Bosch v The Minister of Safety and Security*[[6]](#footnote-6) the Equality Court ordered that all South African Police Service stations be made accessible to persons with disabilities. The *Bosch* case resulted in the creation of a dedicated programme within the Department of Public Works to renovate existing public service buildings in order to make them accommodating to persons with disabilities. Therefore, the *Bosch* case gives effect to the requirements of accessibility in the CRPD, which includes, *inter alia* that the state provides appropriate measures to ensure that persons with disabilities can access, on an equal basis with others, facilities and services open or provided to the public.[[7]](#footnote-7)
3. In the case *Esthe Muller v Minister of Justice*[[8]](#footnote-8) it was directed that all court buildings be made accessible to persons with disabilities based on a similar basis of equality in access.

Denial of reasonable accommodation as discrimination

1. In this section we will discuss the legal framework pertaining to 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 persons with disabilities.
2. Reasonable accommodation is a constitutional principle and a tool to achieve substantive equality.[[9]](#footnote-9) It flows from section 9(2) of the Constitution, which provides that “[e*]quality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken*.”[[10]](#footnote-10)
3. In *MEC for Education, KwaZulu Natal vs Pillay[[11]](#footnote-11)* the Constitutional Court stated that persons with disabilities are often unable to access or participate in public or private life because the means to do so are designed for able-bodied people. The result is that persons with disabilities can, without positive action, easily be pushed to the margins of society. Therefore the prohibition of discrimination against persons with disabilities cannot be understood in negative terms only. It also includes a positive obligation to take steps to reasonably accommodate the needs of person with disabilities. Thus, reasonable accommodation must be provided to ensure equal opportunities on account of not only *disability*, but also other grounds for discrimination such as *age* and *sex*.
4. Although the EEA does not define discrimination, it recognises that unfair discrimination is perpetuated in several ways. Members of designated groups enjoy enhanced protection in the form of affirmative action; and dismissal on a prohibited ground of discrimination is automatically unfair. Our courts have held that implicit in the duty to reasonably accommodate employees is the employer’s obligation to prevent discrimination.[[12]](#footnote-12)
5. Section 15(2)(c) of the EEA requires that the ‘*affirmative action measures implemented by a designated employer...include reasonable accommodation for persons with disabilities.*’[[13]](#footnote-13) In terms of section 1 of the EEA, reasonable accommodation *'means any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment*'.[[14]](#footnote-14) The concept of reasonable accommodation in the context of disability has not yet been adequately tested in our labour courts, and it remains unclear as to what it precisely entails.[[15]](#footnote-15)
6. Nevertheless, the Code of Good Practice on Employment of Persons with Disabilities[[16]](#footnote-16) (“The Disability Code”) lists several examples which 'constitute' reasonable accommodation, this includes adapting existing facilities to make them accessible, adapting existing equipment or acquiring new equipment including computer hardware and software, re-organising work stations, changing training and assessment materials and systems, restructuring jobs so that non-essential functions are re-assigned, adjusting working time and leave, providing readers, sign language interpreters, and providing specialised supervision, training and support. The Disability Code is not an authoritative summary of the law, nor does it create additional rights and obligations. However, it obligates employers with the responsibility to affirm the rights of persons with disabilities in the workplace, and serves as a guide for any Court or tribunal to consider when interpreting or applying the EEA.[[17]](#footnote-17)
7. The employer would be required to adapt his or her workplace in order to assist the employee with disabilities to perform his or her duties. This might even lead to the employer having to make changes in his or her workplace to accommodate the employee concerned. It would seem that the employer has 'a duty to consult with the employee and explore ways in which the disability may be accommodated', including acquiring the services of technical experts to establish appropriate mechanisms to accommodate the employee, where reasonable.
8. 'Reasonable accommodation depends upon the employer being aware of the applicant's or the employee's disability or impairment'.[[18]](#footnote-18) However, section 6(4) of the Code states that the obligation to make reasonable accommodation may arise when an applicant or employee voluntarily discloses a disability-related accommodation need or when such a need is reasonably self-evident to the employer.
9. In the case *Oortman v St. Thomas Aquinas Private School*[[19]](#footnote-19) the court ordered a school to re-admit a learner with a physical disability, in an effort to ensure that denial of reasonable accommodation does not limit the learner’s rights to equality and education. . The court also ordered the school to take reasonable steps to remove all obstacles to enable the learner to have access to all the classrooms and the toilet allocated to her when using her wheelchair. The reasonable steps that were to be taken included building ramps to enable the learner to access the classroom and the bathroom and the installation of a build a washbasin for persons with disabilities in the bathroom.
10. In the case *Standard Bank of South Africa v CCMA*[[20]](#footnote-20) an employee was dismissed after an accident which resulted in her inability to cope with travelling. Her employment was eventually terminated on the grounds of incapacity. Applying the requirement of the Employment Equity Act, the Labour Relations Act and the applicable Codes, the Labour Court held that the bank failed to investigate properly the nature and extent of the employee’s disability. As a result, the bank could not properly exercise its duty to consult the employee. The Court held that by failing to make reasonable efforts to accommodate the employee, the bank had discriminated against her, and had dismissed her in bad faith.
11. Prior to the local government elections held in early 2011, a local NGO that advocates on behalf of persons with disabilities, and Independent Electoral Commission (IEC) representatives formed part of the Disability Reference group of the Western Cape, which consulted with various stakeholders in the disability sector on how voting can be facilitated to include persons with disabilities and promote equality. The following restrictions were identified:
    1. Voter education needs to happen on an on-going basis and
    2. Reasonable accommodation should be a priority including the provision of documents in Braille or large print, information in audio, sign language interpretation, introduction of Electronic Voting Machines;
    3. Venue accessibility was cited as a concern, including the need for ramps, assistance, and ballot papers themselves in large print or Braille.
12. All of the above are key measures that ensure that persons with disabilities can vote and failure to reasonably accommodate the needs of persons with disability in this context is an infringement of the rights to equality, among others.

**Question 2:**

*Does your country apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate? If so, please describe the tests and their different elements (500 words).*

1. South Africa does apply an objective test to determine if an accommodation requested by a person with disability is undue or disproportionate. This test is set out in section 14 of PEPUDA which states as follows:

*(1) It is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.*

*(2) In determining whether the respondent has proved that the discrimination is fair, the following must be taken into account:*

*(a) The context;*

*(b) the factors referred to in subsection (3);*

*(c) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.*

*(3) The factors referred to in subsection (2) (b) include the following:*

*(a) Whether the discrimination impairs or is likely to impair human dignity;*

*(b) the impact or likely impact of the discrimination on the complainant;*

*(c) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;*

*(d) the nature and extent of the discrimination;*

*(e) whether the discrimination is systemic in nature;*

*(f) whether the discrimination has a legitimate purpose;*

*(g) whether and to what extent the discrimination achieves its purpose;*

*(h) whether there are less restrictive and less disadvantageous means to achieve the purpose;*

*(i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to-*

*(i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or*

*(ii) accommodate diversity.*

1. The Disability Code explains 'unjustifiable hardship' as an action that requires significant or considerable difficulty or expense. This involves considering, amongst other things, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.[[21]](#footnote-21) This concept requires an objective analysis and therefore an employer may not necessarily be required to accommodate a qualified applicant or an employee with a disability if this would impose an unjustifiable hardship on the business of the employer.
2. As part of this objective analysis of ‘unjustifiable harm’ one has to look at various aspects such as the effectiveness of the accommodation, the impact of providing or failure to provide accommodation to the employee, the systemic patterns of inequality in society as well as the objectives of the Act and the Constitution.[[22]](#footnote-22) Unjustifiable hardship means “more than mere negligible effort”. Just as the notion of reasonable accommodation imports a proportionality test, so too does the concept of unjustifiable hardship.[[23]](#footnote-23)
3. Determining the reasonableness of a proposed accommodation depends on a fair balancing of competing considerations, such as the nature of the risk involved, the extent of the duties that have to be reassigned, the effect of reassignment on the normal operations of the business and the performance of the other jobs, and the impact on other employees who will be assigned different or additional duties against the aspirations and interests of the excluding party. This means that the employer has to look at all the circumstances and not only at the affected employees[[24]](#footnote-24) to determine whether an accommodation is undue or disproportionate.
4. No hard and fast rule can be set as to what constitutes undue hardship because the determination of unjustifiable hardship must be done on a case by case basis. . This requires an individualised assessment of the nature and cost of accommodation in light of the employer’s financial resources, workplace structures and environmental and business operations.[[25]](#footnote-25) Where there is no undue and unjustifiable hardship, a disabled employee who seeks reassignment as a reasonable accommodation, if otherwise qualified for a position, should receive the position. It is a balancing exercise.[[26]](#footnote-26)

**Question 3:**

*Does your country apply affirmative actions for combating structural discrimination against persons with disabilities? If so, please describe how are these measures applied and enforced (500 words).*

1. Yes, South Africa does apply affirmative actions for the purposes of combating structural discrimination against persons with disabilities. This is done in the workplace setting. The EEA protects people with disabilities and others against unfair discrimination and, as a previously disadvantaged group, disabled people are eligible to benefit from affirmative action programmes. The designated groups who are beneficiaries under affirmative action measures are black people, women and people with disabilities. The aim is to ensure that qualified designated groups have equal employment opportunities and that they are equitably represented in all job categories and levels within the workplace environment.
2. Practically this is reflected in the workplace because an employer is obligated to create an action plan, which is proportionately representative of all designated groups of people including disabled persons. This includes the top levels of management. Employers with 50 or more workers, or whose annual income is more than the amount specified in Schedule 4 of the EEA must apply affirmative action. The Act recommends that at least 2 per cent of all employees in companies which have more than 50 workers, should be people with disabilities. It also applies to organs of state, municipalities, employers ordered to comply by a bargaining council agreement and any employers who volunteer to comply.
3. The measures put in place by the employer include consulting with employees, preparing an employment equity plan, conducting an analysis and producing a report to the Director-General on progress made in the implementation of the plan. Section 15(2) of the EEA specifies that affirmative action measures implemented by a designated employer must include the identification and removal of barriers with an adverse impact on designated groups. It also requires the promotion of measures, which promote diversity, making reasonable accommodation for people from designated groups, retention, development and training of designated groups including skills development.
4. Employers must submit annual reports of their equity figures and they must conduct studies to identify equity issues. It is recommended that employers consult a labour law expert for guidance on how to approach employment equity within the workspace. If an employer does not comply with affirmative action under the EEA, the Department of Labour may impose fines and may also prosecute. Affirmative action is implemented through the EEA, which regulates the meaning and the implementation of affirmative action plans. Thus the EEA has a profound impact on how employers are expected to implement employment equity activities, including reasonable accommodation. It also outlines what must be included in these measures and the accountability of enforcement through frequent reports and the consequences of non-compliance.

**Question 4:**

*Does your country have laws, policies and strategies for combating discrimination against women and children with disabilities? Please describe how these policies are reflected in legislation and policy frameworks (500 words).*

1. As abovementioned in question one, section 9(3) of the Constitution provides that no person(s) may be unfairly discriminated on by the state on the basis of age, gender and disability. This is a general law of application binding all persons and entities within South Africa. Section 9(4) further states that no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of the abovementioned sections and national legislation must be enacted to prevent or prohibit unfair discrimination. PEPUDA provides that no person may unfairly discriminate against any person on the grounds of disability.Moreover the EEA states that no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice on certain grounds including gender and disability.
2. The Children’s Act gives effect to the rights of children contained in the Constitution and it provides that in any matter concerning a child with disabilities due consideration must be given to:[[27]](#footnote-27)
3. providing the child with parental care, family care or special care as and when appropriate;
4. making it possible for the child to participate in social, cultural, religious and educational activities, recognising the special needs that the child may have;
5. providing the child with conditions that ensure dignity, promote self–reliance and facilitate active participation in the community; and
6. providing the child and the child’s care-giver with the necessary support services.
7. Moreover, section 11(3) of the Children’s Act states that a child with a disability or chronic illnes has the right not to be subjected to medical, social, cultural or religious practices that are detrimental to his or her health, well-being and dignity.
8. Although the rights of people with disabilities are enshrined in the Constitution, there is, as yet, no disability specific legislation focusing on disabled women and children. The aforementioned laws therefore have general application affecting all policy formulations made with respect to the workplace environment, education sector, health sector and other areas that affect women and children with disabilities.
9. Section 12(5) of the South African Schools Act states that the government must undertake “*all reasonable measures to ensure that the physical facilities at public schools are accessible to disabled persons*”.[[28]](#footnote-28) In 2001 the Department of Education launched the Education White Paper 6 on Special Needs Education. This paper outlines strategies to be implemented to achieve the goal of inclusive education by 2021. This paper is premised on the understanding that establishing an inclusive education and training system will require changes to mainstream education so that learners are provided with appropriate support according to their needs.[[29]](#footnote-29) Despite this, studies have shown that investment in inclusive or general education for children with disabilities continues to be low or erratic in provinces most affected by historical under-investment.[[30]](#footnote-30)
10. The White Paper on the Rights of Persons with Disabilities (“WPRPD”) was approved by Cabinet on 9 December 2015. This paper does not replace any sectoral policies, but provides guidelines for the review of all existing policies and the development of new sectoral policies, programmes, budgets and reporting systems to bring these in line with constitutional and international treaty obligations.[[31]](#footnote-31) Pillar 2 of the WPRPD protects the rights of persons at risk of compounded marginalisation. It recognises that black African women with disabilities are particularly affected by compounded marginalisation caused by the inter-connectedness of race, disability, gender, socio-economic status and class.[[32]](#footnote-32)

**Question 5:**

*Is your country monitoring and collecting disaggregated data on discrimination against persons with disabilities, including gender, age and impairment disaggregation?*

1. Yes, the last national census was conducted in 2011 by Statistics South Africa (StatsSA)[[33]](#footnote-33). This report is the most comprehensive report available regarding data in relation to persons with disabilities in South Africa. According to the 2011 census, 2 870 130 persons were disabled in South Africa in 2011, which leads to a national disability prevalence rate of 7,5%.
2. Some other statistics relating to persons with disabilities in South Africa concluded that 5.6% of the population in South Africa had disabilities but the NGO Disabled People South Africa (DPSA) thought it was closer to 10% and if the broader definition of disability was used, that included those unable to care for themselves or used assistive devices, the number could be as high as 19%.[[34]](#footnote-34)
3. That being said, it was reported that disability is more prevalent among females at 8,3% compared to males at 6,5%.[[35]](#footnote-35) The degree of difficulty measure showed that females had the highest percentage of persons experiencing mild and severe difficulties across all types of difficulties except for communication, where both males and females had the same proportion of persons who had experienced mild difficulties.[[36]](#footnote-36)
4. Moreover, disability prevalence by population group showed that black Africans had the highest proportion of persons with disabilities at 7,8%, followed by the white population group at 6,5%.[[37]](#footnote-37) Looking at the prevalence of disability by age, the results illustrated that disability positively correlates with age. More than 50% of persons aged 85 and above reported having a disability.[[38]](#footnote-38)
5. The results further show slightly high rates in the 5–9 year-old age group and it is submitted that these results should be interpreted with caution because some parents might have misunderstood or unintentionally misrepresented the their child’s case by categorising them as either 'unable to do' and/or 'having a lot of difficulty to perform certain functions' when it could be part of the child's level of development rather than an impairment.[[39]](#footnote-39)
6. It is worth noting that South Africa’s Initial Country Report to the United Nations on the Implementation of The Convention on the Rights of Persons with Disabilities 2008 – 2012 noted that “*the lack of adequate, reliable, relevant and recent information on the nature and prevalence of disability in South Africa remains a challenge. The last national census was conducted in 2011. Annual general household surveys and the more elaborate community survey, conducted in 2007, are sample surveys and use of disability data emanating from these surveys should therefore be treated with circumspection.*” *[[40]](#footnote-40)*

**Conclusion**

1. We trust that you will find the submission useful to the study relating to Article 5 of the CRPD. Should you have any queries, please do not hesitate to contact the writers of this submission.

*ENDS*

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1. Item 23(1) of Schedule 6 mandated the enactment of legislation envisaged in section 9(4) within 3 years of the date on which the new Constitution took effect. [↑](#footnote-ref-1)
2. Section 1 of PEPUDA [↑](#footnote-ref-2)
3. Section 4(2) of PEPUDA [↑](#footnote-ref-3)
4. Marumoagae, M. C.‘Disability Discrimination and the Right of Disabled Persons to Access the Labour Market’ at p 349 [↑](#footnote-ref-4)
5. Section 21 of the Promotion of Equality and Prevention of Unfair Discrimination Act [↑](#footnote-ref-5)
6. *WH Bosch v Minister of Safety and Security* (EqC) unreported case number 25/2005 Port Elizabeth [↑](#footnote-ref-6)
7. W Holness and S Rule, Barriers to Advocacy and Litigation in the Equality Courts for Persons with Disabilities, PER / PELJ 2014(17)5 available at <http://www.saflii.org/za/journals/PER/2014/54.pdf> [Accessed on 9 June 2016] [↑](#footnote-ref-7)
8. *E Muller v Department of Justice and Department of Public Works* (EqC) unreported case number 01/2003. [↑](#footnote-ref-8)
9. Hurling, D. N., ‘Disability Discrimination and Reasonable Accommodation in the South Africa Workplace’ Available at: <http://etd.uwc.ac.za/xmlui/bitstream/handle/11394/2735/Hurling_LLM_2008.pdf?sequence=1> [Accessed 10 May 2016] at p 81. [↑](#footnote-ref-9)
10. Section 9(2) of the Constitution of the Republic of South Africa 1996 [↑](#footnote-ref-10)
11. 2008 (1) SA 474 (CC) [↑](#footnote-ref-11)
12. *Standard Bank of South Africa v CCMA & Others* [2008] 4 BLLR 356 (LC) at par. 79 [↑](#footnote-ref-12)
13. Employment Equity Act of 55 of 1998 [↑](#footnote-ref-13)
14. Section 1 of Employment Equity Act 55 of 1998 [↑](#footnote-ref-14)
15. Ibid [↑](#footnote-ref-15)
16. GN 1085 of 9 November 2015:  Code of Good Practice on Employment of Persons with Disabilities [↑](#footnote-ref-16)
17. Section 3(1) of the Disability Code [↑](#footnote-ref-17)
18. Ibid [↑](#footnote-ref-18)
19. *LH Oortman v St Thomas Aquinas Private School* (EqC) unreported case number 1/2010 Witbank [↑](#footnote-ref-19)
20. *Standard Bank of South Africa v CCMA & Others* [2008] 4 BLLR 356 (LC) [↑](#footnote-ref-20)
21. Item 6.12 of the Disability Code [↑](#footnote-ref-21)
22. ‘South Africa in the *Code of Good Practice on Disability in the Workplace* by the Department of Labour’ Available at: <http://www.labour.gov.za/DOL/legislation/codes-of-good-ractise/employment-equity/code-of-good-practice-on-disability-in-the-workplace> [Accessed 10 May 2016] [↑](#footnote-ref-22)
23. *Standard Bank of South Africa v CCMA & Other*s [2008] 4 BLLR 356 (LC) at par. 98 [↑](#footnote-ref-23)
24. Nxumalo, L. G., Disability Discrimination and Undie Hardship withint the Working Environment: A Critical Analysis’ Available at: <http://uir.unisa.ac.za/bitstream/handle/10500/19171/dissertation_nxumalo_lg.pdf?sequence=2> at p 27. [↑](#footnote-ref-24)
25. Ibid at p 34 [↑](#footnote-ref-25)
26. Ibid [↑](#footnote-ref-26)
27. Children’s Act of 38 of 2005, Section 11(3)(a-d) [↑](#footnote-ref-27)
28. Section 12(5) of the South African Schools Act 84 of 1996 [↑](#footnote-ref-28)
29. Item 2.1.2 Education White Paper 6 [↑](#footnote-ref-29)
30. Human Rights Watch: “Complicit in Exclusion” South Africa’s Failure to Guarantee an Inclusive Education for Children with Disabilities at pg 77 [↑](#footnote-ref-30)
31. White Paper on the Rights of Persons with Disabilities at pg iv [↑](#footnote-ref-31)
32. Ibid at pg. 56 [↑](#footnote-ref-32)
33. ‘CENSUS 2011: Profile of persons with disabilities in South Africa’ Available at: <http://www.statssa.gov.za/publications/Report-03-01-59/Report-03-01-592011.pdf> [Accessed 12 May 2016] [↑](#footnote-ref-33)
34. # ‘Disabled People South Africa briefing on education, employment & accessibility challenges’ Available at: <https://pmg.org.za/committee-meeting/15509/> [Accessed 12 May 2016].

    [↑](#footnote-ref-34)
35. Initial Country Report to the United Nations on the Implementation of The Convention on the Rights of Persons with Disabilities 2008 – 2012 at vi [↑](#footnote-ref-35)
36. Ibid [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. Ibid at vii [↑](#footnote-ref-38)
39. Ibid at vii [↑](#footnote-ref-39)
40. Ibid at vi [↑](#footnote-ref-40)