

The role and effectiveness of disability legislation in South Africa

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Abbreviations and acronyms

ANC	African National Congress
CASE	Community Agency for Social Enquiry
CBPWP	Community-based public works programme
CEE	Commission for Employment Equality
CDG	Child development grant
CRC	Convention on the Rights of the Child
CRSS	Committee for Restructuring of Social Security
CDG	Care Dependence Grant
CSG	Child Support Grant
DEAFSA	Deaf Federation South Africa
DFID	Department for International Development (UK)
DICAG	Disabled Children's Action Group
DISSA	Disability Sport South Africa
DPO	Disabled people's organisation
DPSA	Disabled People South Africa
DSI	Danish Council of Organisations of Disabled People
ECD	Early childhood development
EEA	Employment Equity Act
EECF	Employment Equity Consultative Forum
EEP	Employment Equity Plans
EMIS	Education Management Information System
HEDCOM	Heads of Education Committee
ICCD	Inter-departmental Co-ordinating Committee on Disability
ICT	Information and communication technology
IDASA	The Institute of Democracy in South Africa
IDT	Independent Development Trust
INDS	Integrated National Disability Strategy
IPDS	Integrated Provincial Disability Strategy
KaR	Knowledge and research
LSEN	Learners with special education needs
LHR	Lawyers for Human Rights
MPDP	Membership and Policy Development Programme
MTEF	Medium Term Expenditure Framework
MQA	Mining Qualifications Authority
NCCIE	National Co-ordinating Committee for Inclusive Education
NCCD	National Co-ordinating Committee on Disability
NCESS	National Committee on Educational Support Services
NCSNET	National Commission on Special Needs in Education and Training
NEDLAC	National Economic Development and Labour Council
NEMISA	National Electronic Media Institute of South Africa
NPA	National Plan of Action
NQF	National Qualifications Framework
NRF	National Research Foundation
NSDS	National Skills Development Strategy
NSF	National Skills Fund
NSFAS	National Student Financial Aid Scheme
NWC	National Working Committee
OSDP	Office on the Status of People with Disabilities
PANSALB	Pan South African Language Board
RDP	Reconstruction and Development Programme
SABC	South African Broadcasting Corporation
SAFCD	South African Federal Council on Disability
SAMDI	South African Management Development Institute

SAQA	National Qualifications Authority
SATOUR	South African Tourism
SA-PPA	South Africa Participatory Poverty Assessment
SAPS	South African Police Services
SDA	Skills Development Act
SMME	Small, micro and medium Enterprises
Y4EA	Youth for Environmental Accessibility Programme

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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 employees in the public service,⁶ it was found that there are 2,007 disabled people in the

³ Government of South Africa (1997)

⁴ Department of Education (2001)

⁵ *Ibid.*

⁶ *Report on Disability Equity in the South African Public*, cited in OSPD (2002)

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 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.

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)

¹¹ Commission of Social Security (2004)

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.

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

¹² Government of South Africa (2000a)

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)

1 Introduction

The main purpose of this research was to identify and analyse key features of the South African government's disability policies and legislation aimed at providing better access to government services for disabled people. The research investigated the extent to which government policy and legislation programmes post 1994 have provided greater access for ordinary disabled people. This research covers the work of national and provincial government departments for the period of 1994 to 2004.

Methodology

The research questionnaires were prepared and completed via telephone interviews with key respondents in government departments. This approach was chosen due to the limited time provided for this research and tight deadline ahead of the Christmas and New Year break.

Extensive desk research and review of literature was conducted in order to identify and analyse key information that relates to the delivery of services to disabled people. Information was gathered from reports, policy documents and Acts of Parliament, where applicable.

The researchers made contact with, and communicated with, key national government departments and institutions in order to collect and analyse relevant information and data.

Two focus-group discussions were held, with employed and out-of-work disabled people, on the subject of employment trends for disabled people.

2 South Africa: Key facts

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.

In accordance with the Constitution,¹⁴ each of the nine provinces has its own legislature consisting of between 30 and 80 members. The number of members is determined by a formula set out in national legislation. The members are elected by proportional representation. The executive council of a province consists of a premier and a number of members. The premier is elected by the provincial legislature.

The Constitution provides for several independent commissions that monitor developments in their respective purviews. These include:

- the Human Rights Commission
- the Commission for Gender Equality
- the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- the Pan South African Language Board
- the Independent Broadcasting Authority.

The 'public protector' (resembling the ombudsman in other democratic states) is empowered to investigate 'impropriety or prejudice' in any sphere of government, and to take appropriate remedial action.¹⁵

Poverty in South Africa

South Africa is characterised by extremes of wealth and inequality. Classified as a middle-income developing country, it is home to 'two nations': a small number of very wealthy people, and a large number of very poor.¹⁶

Despite this relative wealth, the experience of most South African households is of outright poverty or of continuing vulnerability to being poor. In addition, the distribution of income and wealth in South Africa is among the most unequal in the world, and many households still have unsatisfactory access to education, health care, energy and clean water. This situation is likely to affect not only the country's social and political stability, but also the development path it follows: countries with less equal distributions of income and wealth tend not to grow as rapidly as those with more equitable distributions.¹⁷

Approximately one third of all South African households (35.2 per cent, amounting to 18 million people) are living in poverty. Of these, African households and households in rural areas – particularly rural households headed by women – are the worst affected. Over half (54 per cent) of all South African children live in poverty.¹⁸

Extreme inequality in the distribution of income exists among racial groups and households. The poorest 40 per cent of households in South Africa earn less than 6 per cent of total national income, while the richest 10 per cent earn more than half of the national income.

Although South Africa has undergone a dramatic economic, social, and political transition in the past decade, many of the distortions and dynamics introduced by apartheid continue to reproduce poverty and perpetuate inequality. The correct identification of these, and the

¹⁴ Government of South Africa (1996)

¹⁵ Samaita Associates (2002)

¹⁶ Camerer (1997)

¹⁷ Samaita Associates (2002)

¹⁸ Tshalata (1999)

introduction of remedial policies, have been identified as priorities by both government and civil society. The importance of reducing poverty and inequality has been a consistent theme of the new government.

In March 1995, South Africa joined the nations of the world in pledging to work towards the eradication of poverty at the World Summit for Social Development in Copenhagen African Participatory Poverty Assessment.¹⁹

In the South African context, participants in the SA-PPA saw poverty as:

- **Alienation from the community** The poor are isolated from the institutions of kinship and community. Older people who do not have care from younger family members were seen as 'poor', even if they had a state pension that provided an income considered relatively high by local standards. Similarly, young single mothers without the support of older kin or the fathers of their children were perceived as 'poor'.
- **Food insecurity** Participants saw the inability to provide sufficient or good quality food for the family as an outcome of poverty. Households where children go hungry or are malnourished are seen as living in poverty.
- **Crowded homes** The poor were perceived to live in overcrowded conditions and in homes in need of maintenance. Having too many children was seen as a cause of poverty – not only by parents, but by grandparents and other family members who had to assume responsibility for the care of children.
- **Usage of basic forms of energy** The poor lack access to safe and efficient sources of energy. In rural communities, the poor, particularly women, walk long distances to gather firewood. Women reported that wood collection increases their vulnerability to physical attack and sexual assault.
- **Lack of adequately paid, secure jobs** The poor perceived lack of employment opportunities, low wages, and lack of job security as major factors contributing to their poverty.
- **Fragmentation of the family** Many poor households are characterised by absent fathers or children living apart from their parents. Households may be split over a number of sites as a survival strategy.

The approach adopted for poverty alleviation is based on breaking the forces that have perpetuated poverty while promoting income, wealth, and opportunity.

The report on *Budgeting for Child Socio-Economic Rights*²⁰ states that among the 18 million children of South Africa, an estimated 10.5 million are poor, and 3.8 million of these are under the age of seven years. However, it is not clear how many of these children, or South Africa's total number of children, are disabled.

Disability in South Africa – during and post apartheid

The apartheid government did not recognise the United Nation's 1981 International Year of Disabled Persons. Instead, 1986 was declared the National Year of the Disabled, and the government established a committee – largely made up of service providers – called the Inter-departmental Co-ordinating Committee on Disability (ICCD). The task of the ICCD was to advise the government on policy reform in response to the World Programme of Action Concerning Disabled Persons (1982).

The committee produced 37 volumes of information and recommendations on disability. Many felt the study was a waste of time and money, and that it failed to provide the information and insights that were needed to create equal opportunities for the majority of

¹⁹ Houston (1997); May (1996)

²⁰ Cassiem and Streak (2004)

disabled people. This was partly due to the fact that, as an initiative of the apartheid government, the study failed to acknowledge the fundamental role that the apartheid system played in creating the conditions of poverty and discrimination that disabled people experienced. Activist Michael Masutha explains why Disabled People South Africa (DPSA) had no choice but to reject this initiative:

“DPSA rejected the entire initiative purely because we felt that the apartheid system was repugnant to the notion of equality and equalisation of opportunities, principles that were central to the World Programme of Action. Furthermore, we did not believe that the apartheid state could promote equal opportunities when it was based on principles of inequality.”²¹

The rejection of this study on disability was not the only confrontation between DPSA and the government during this period. A number of activists argued that at every opportunity that existed, Disabled People South Africa (DPSA) raised its opposition to apartheid and highlighted the links between disability and the violence and poverty of the apartheid system.

However, the organisation also recognised that it had to engage strategically with the government to try to ensure that programmes became more relevant and that disabled people would be guaranteed some say in formulating policy. To this end, the organisation agreed in principle to participate in the activities of 1986 as the South African Year of the Disabled, and to accept a grant from the government.

William Rowland, who was Honorary President of DPSA and Chief Executive Officer of the Thabo Mbeki Development Trust for Disabled People, says that the organisation debated “very openly whether we should take the money or not ... [We decided] perhaps we should, provided there were no strings attached. That became our policy position... We desperately needed funds and certainly, perversely or strangely, the government provided the first money injection to get DPSA functioning.”²² Other than this grant, DPSA received no money from the government and was reliant on seeking other sources of funding.

Under apartheid, the experiences of disabled people were also the experiences of people living in a deeply divided and unequal society. The inequalities and divisions between people arose from a political, economic and social system that aimed to keep black people subservient to white people and deny them access to basic rights, and to ensure that they remained in conditions of poverty with limited opportunities to share in the country's wealth.²³ This meant that the lived experiences of black and white disabled people under apartheid were very different, and reflected the general inequalities between white and black people in South Africa.

For the majority of black disabled people, life was about struggling on a daily basis to cope with the poverty, deprivation and violence of the apartheid system. These inequalities were made worse by their disability.

However, it must also be recognised that under apartheid, all disabled people – black and white – were discriminated against and marginalised because of their disability. In particular, they had limited access to fundamental socio-economic rights such as employment, education and appropriate health and welfare services. This kind of discrimination and marginalisation occurred because disabled people in general were seen as people who were sick or in need of care, rather than as equal citizens with equal rights and responsibilities.²⁴

²¹ Howell and Chalklen (2003)

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

Post-apartheid South Africa

The years between 1990 and 1994 are probably regarded as the most significant in formally shaping the establishment of democracy in South Africa and removing, at least at a political level, the system of apartheid. In February 1990, the ban on the African National Congress (ANC) and other political organisations was removed, and this was soon followed by the release from prison of Nelson Mandela and other political prisoners. These events triggered a process of transformation in the country that culminated in the first democratic elections in April 1994.

In April 1994, more than 22 million South Africans went to the polls to exercise their right to vote. For the majority of these people, this was the first time in their lives that they had been able to exercise this right. In fact, it was the first time in South Africa's history that all adults aged 18 years or over could participate in the democratic process. For the majority of people in South Africa, the 1994 elections marked – at least on a symbolic level – the end of the system of apartheid where a white minority had sought to maintain political and economic dominance over the black majority.

When the ANC came to power in 1994 as the first democratically elected government, one of the first things it did was to establish a constitutional assembly to discuss and debate the cornerstones of democracy in South Africa. The culmination of the work of the constitutional assembly was the adoption of a new Constitution on 8 May 1996.²⁵ The Constitution drew strongly from the key principles and provisions of the interim Constitution that had been negotiated by the old apartheid government and the organisations of the liberation movement in the period following their un-banning in 1990.

The new legislative framework adopted in 1996 marked the culmination of two years of consultation and negotiation with the many diverse groups of people in the country. President Nelson Mandela, the first president of the new democracy, explained in his speech to Parliament on 8 May 1996 that the new constitution was important not only in what it said, but also because it reflected this input and the aspirations of so many different people throughout the country.²⁶

The new constitution was especially important because it extended basic human rights to all citizens for the first time in the history of South Africa. It gave all people the right to vote, and outlawed unfair discrimination against any person on a number of grounds. The constitution also provided for the creation of equity among all people in the country, by recognising the need to implement specific measures that would address the disadvantages that particular groups of people had experienced in the past. These provisions have since provided the basis for important legislative and policy changes.

The constitution states that one of the grounds on which unfair discrimination may take place is on the basis of disability. In this way, it acknowledges that disabled people have in the past, and may continue to be, discriminated against because of their disability. The inclusion of disability in the constitution in this way means that disability has become an important consideration in the new legislation, and in policy documents that make up South Africa's legal and policy framework. The inclusion of disability in the Constitution has impacted, either directly or indirectly, on the lives of disabled people in South Africa, and has created opportunities to address inequalities experienced in the past.

The new constitutional framework also marked an important milestone in the struggle of disabled people to overcome their previous exclusion from mainstream society. As an 'historical moment' in the history of the disability rights movement in South Africa, the

²⁵ Government of South Africa (1996)

²⁶ Howell and Chalklen (2003)

Constitution's recognition of disability reflects the struggle of disabled people to be treated equally to all other people.

It has also been a beginning point for new struggles. It has provided the basis from which new, and often more complex, struggles have been waged since 1994. These struggles have been directed towards overcoming the social and economic barriers that have resulted in conditions of widespread poverty and marginalisation of the majority of disabled people in South Africa.²⁷

Disability statistics

Available statistical data on the prevalence of disability in South Africa are neither comprehensive nor accurate. This report provides a brief analysis of two sets of statistical findings from Statistics SA 2001²⁸ and changes since 1996, and a study by the Community Agency for Social Enquiry (CASE).²⁹

Annex D contains a detailed analysis of the available statistics. Please note that estimates of the number of persons with disabilities in South Africa range from 6 per cent to 12 per cent.

According to the survey carried out by CASE in 1997, about 5.9 per cent of the population that participated in their national survey constituted disabled people. The 1996 census estimated that about 1,463,364 (55.06 per cent) of the total disabled population were women and 1,194,350 (44.94 per cent) men. 1996 statistics indicated that the highest number of disabled people was located in KwaZulu/Natal, followed by Gauteng, Eastern Cape, Limpopo Province, and North West respectively. An important point to note is the relationship that exists between high incidences of disability and poverty.

An interesting point highlighted by the 2001 census was that the total number of disabled people had decreased between 1996 and 2001. Statistics SA reported 2,657,714 disabled people in 1996 compared to 2,255,973 in 2001.³⁰ This could be explained by factors relating to the sampling method, or the widespread confusion over the definition of disability, or other issues.

²⁷ *Ibid.*

²⁸ Statistics SA (2001)

²⁹ CASE (1997)

³⁰ Statistics SA (2001)

3 Policies and Acts of Parliament

The period since the 1994 elections has been a time of significant change in South Africa's history. There is probably not one sector of society where some level of transformation has not taken place. Changes have been implemented at the policy and legislative level as well as at the level of service delivery and government accountability.

It is not possible to discuss in any depth the extensive array of activities that disability rights activists have been involved in during this period. However, it is important to recognise that the movement's strategic positioning through the establishment of the Office on the Status of People with Disabilities (OSDP), the parliamentary presence, the strengthening of a co-ordinated civil society interface with government and through representation on key bodies has opened up opportunities for disability issues to be raised and addressed in a number of key sectors.

While many gains have been made, each has required sustained commitment and ongoing struggles for the disability activists involved. Some of these struggles have been successful while others remain areas that require continued pressure, input, and monitoring by the disability sector.

In November 1997, the government of South Africa adopted the *White Paper on an Integrated National Disability Strategy*³¹, known as INDS, which is premised on the social model of disability. The White Paper represents a paradigm shift in the conceptualisation of disability from the medical or welfare model of disability, which views persons with disabilities as ill, different from their non-disabled peers, unable to be productive and in need of care. The INDS provides government and society as a whole with guidelines that will promote non-discriminatory development planning, programme implementation, and service delivery.

The INDS is not yet legislation. Government departments are, however, required to formulate their disability policies and strategies in line with the provisions of the INDS and the core business of the department concerned. Annex A briefly analyses attempts by national government departments and provincial administrations to implement some of the provisions of the INDS.

Apart from the INDS, the government has passed legislation that is aimed at enforcing the rights of persons with disabilities. Legislation and policies that integrate the needs of disabled people are either specific to the needs of disabled people (particularly in the field of training, employment creation, education, and social security) or general mainstream laws that could also be utilised by disabled people.

This section highlights legislation that includes disability components and provides brief comments on other pieces of legislation that disabled people could use to enforce their rights.

Essential policies/legislation with disability components include:

- The Employment Equity Act
- The Labour Relations Act
- Amendments to the Social Security Act
- *White Paper on Special Needs Education*³²
- Rehabilitation White Paper³³

³¹ Government of South Africa (1997)

³² Department of Education (2001)

³³ Government of South Africa [year?]

- Convention of the Rights of the Child.

These are described below:

The Employment Equity Act 1998

During 2002/03, South Africa had a working population of 27.98 million,³⁴ of which:

- 15.86 million were economically active
- 11 million were employed
- 4.8 million were unemployed.³⁵

Of the 12 million who were economically inactive:

- 4.9 million were full-time scholars
- 1.1 million were full-time homemakers
- 1.2 million were disabled people or chronically ill
- 0.2 million were retired.

Equal employment opportunities enable disabled people to participate actively in the economy. But it is estimated that as many as 99 per cent of South Africans with disabilities are not meaningfully employed.³⁶

The current positive policy and legislative environment has created unprecedented employment opportunities for disabled people as South African employers, for the first time, actively seek to employ disabled people.³⁷ Despite this positive policy environment, talented and qualified disabled people face unemployment. Until they gain access to meaningful career opportunities, they cannot truly become full participating members of our society.³⁸

Achieving the disability equity targets

The Employment Equity Act (EEA) has two principle purposes – namely:

- to implement positive measures to eliminate discrimination in employment
- to provide guidelines for companies to promote occupational equity by encouraging the equitable representation of employees in terms of race and gender, as well as of disabled people.

The EEA protects disabled people from unfair discrimination on the grounds of their disability and entitles them to affirmative action measures. Disabled people are defined as “people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment.”³⁹

In terms of the EEA, employers may not unfairly discriminate against employees or applicants for employment because the employer suspects or believes, whether the belief or suspicion is correct or not, that the applicant or employee has an impairment that amounts to a disability, or that they have been disabled, or they are, or have been, associated with other people who are, or have been, disabled. People in a relationship with, or in association with, or with responsibility for, a person with a disability, have, under the Act, rights to protection against unfair discrimination in term of Chapter 2 of the Act but not affirmative action protections as envisaged in Chapter 3 of the same Act.⁴⁰

³⁴ Statistics SA (2003)

³⁵ *Ibid.*

³⁶ Du Toit (2005)

³⁷ *Ibid.*

³⁸ Imparato (2001)

³⁹ *Ibid.*

⁴⁰ *Ibid.*

Employment equity cannot succeed without a national education and training system that supports the development of every individual in society. A critical look at how employers and training providers have provided education, training, and work experience in the past indicates that education and training provision for disabled people has not always been responsive to the demands of the economy nor has it always linked theory and practice.⁴¹

Employment equity centres on a ban on unfair discrimination of any kind in hiring, promotion, training, pay, benefits, and retrenchment, in line with constitutional requirements. In addition, employment equity entails introducing measures to encourage employers to undertake organisational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate training and promotion for individuals from historically disadvantaged groups.

Achieving employment equity objectives means confronting a legacy of unequal education, job reservation, racism and discrimination in the workplace. The Department of Labour estimates that only 1 per cent of people with disabilities are employed in the formal sector of the economy. The Act recommends that at least 2 per cent of all employees in companies, and more than 50 workers, should be people with disabilities.

In 2002, a final draft of the *Code of Good Practice for the Employment of Persons with Disabilities* was published⁴². In 2004, the *Technical Assistance Guide to the Employment of Persons with Disabilities* was released.⁴³ These codes aim to assist employers in the recruitment of disabled people.

Based on information submitted by national departments and provincial administrations in 2002 for 797,750 employees in the public service, it was found that out of these, there are 2,007 disabled people. This represents an average of 0.25 per cent – far short of the 2 per cent that was needed to be achieved by 2005. The figure of 797,750 is broken down as follows: 224,894 in national departments and 572,856 in provincial administrations.⁴⁴

In the national departments, 0.47 per cent are disabled – 1,062 people. In fact, all the provincial administrations under consideration attained less than 0.5 per cent employment of disabled people. Of the six provincial administrations that responded, the employment of disabled people averages 0.16 per cent. This represents 945 employees out of a total of 572,856.⁴⁵

Only three departments – education, sport and recreation, and the South African Management Development Institute (SAMDI) – have reached the target of 2 per cent. Of the six provinces surveyed by this study, none had reached the target of 2 per cent.

According to the Commission for Employment Equity (CEE),⁴⁶ when reporting on employees with disabilities, large employers are required to report the number of employees with disabilities in each occupational category and level, while small employers are only required to report the totals. According to CEE, all 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.

⁴¹ Commission for Employment Equity (2003)

⁴² [publisher] (2002)

⁴³ [publisher] (2004)

⁴⁴ Sangweni (2002)

⁴⁵ *Ibid.*

⁴⁶ Commission for Employment Equity (2003)

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 7778 (29.3 per cent) were white.⁴⁷

Data on the distribution of top management employees with disabilities by race and gender in Annex C shows the following:⁴⁸

- **Race** Blacks (Africans, coloureds, and Indians) account for 17.6 per cent and whites 82.3 per cent of all disabled people in top management positions. Africans account for 11.1 per cent (males 7.8 per cent and females 3.3 per cent), coloureds 3.9 per cent (males 3.9 per cent and females 0 per cent), Indians 2.6 per cent (males 1.3 per cent and females 1.3 per cent) and whites 82.3 per cent (males 77.1 per cent and females 5.2 per cent) of all disabled people in top management positions.
- **Gender** Females account for 9.8 per cent and males 90.1 per cent of all disabled people in top management positions. Among females, Africans account for 3.3 per cent, coloureds 0 per cent, Indians 1.3 per cent, and whites 5.2 per cent. Among males, Africans account for 7.8 per cent, coloureds 3.9 per cent, Indians 1.3 per cent, and whites 77.1 per cent. Black females (Africans, coloureds, and Indians) account for 4.6 per cent, whereas black males (Africans, coloureds, and Indians) account for 13 per cent of all disabled people in top management positions.

The distribution of senior management employees with disabilities by race and gender reveals the following:

- **Race:** Blacks (Africans, coloureds, and Indians) account for 17 per cent and whites 83 per cent of all disabled people in senior management positions. Africans account for 8.8 per cent (African males 5.8 per cent and females 3 per cent), coloureds 3.9 per cent (coloured males 2.4 per cent and females 1.5 per cent), Indians 4.3 per cent (Indian males 3.7 per cent and females 0.6 per cent), and whites 83 per cent (white males 72.3 per cent and females 10.7 per cent) of all disabled people in senior management positions.⁴⁹
- **Gender:** Females account for 15.8 per cent and males 84.2 per cent of all disabled people in senior management positions. Among females, Africans account for 3 per cent, coloureds 1.5 per cent, Indians 0.6 per cent, and whites 10.7 per cent. Among males, Africans account for 5.8 per cent, coloureds 2.4 per cent, Indians 3.7 per cent, and whites 72.3 per cent. Black females (Africans, coloureds, and Indians) account for 5.1 per cent, whereas black males (Africans, coloureds, and Indians) account for 11.9 per cent of all disabled people in senior management positions.⁵⁰

Annex C shows the distribution of professionally qualified employees with disabilities by race and gender with regard to:⁵¹

- **Race** Blacks (Africans, coloureds, and Indians) account for 14.8 per cent and whites 85.2 per cent of all disabled people in professionally qualified positions. Africans account for 7.8 per cent (African males 6.1 per cent and females 1.7 per cent), coloureds 3.2 per cent (coloured males 2.1 per cent and females 1.1 per cent), Indians 3.7 per cent (Indian males 2.9 per cent and females 0.8 per cent), and whites 85.2 per cent (white males

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* (also see Annex C.)

⁴⁹ *Ibid.* (Also see Annex C.)

⁵⁰ *Ibid.* (Also see Annex C.)

⁵¹ *Ibid.*

74.8 per cent and females 10.4 per cent) of all disabled people in professionally qualified positions.

- **Gender** Females account for 14 per cent and males 85.9 per cent of all disabled people in professionally qualified positions. Among females, Africans account for 1.7 per cent, coloureds 1.1 per cent, Indians 0.8 per cent, and whites 10.4 per cent. Among males, Africans account for 6.1 per cent, coloureds 2.1 per cent, Indians 2.9 per cent, and whites 74.8 per cent. Black females (Africans, coloureds, and Indians) account for 3.6 per cent, whereas black males (Africans, coloureds, and Indians) account for 11.1 per cent of all disabled people in professionally qualified positions.

The CEE concludes its annual report by expressing concern that during site visits it observed that not enough skills development interventions are being implemented to accelerate the development of designated groups for the purpose of promotion into senior and top management levels.⁵²

Qualitative data also suggest that inadequate attention is being paid to the transformation of the workplace. This should include strategies to eliminate unfair discrimination through training of management and all staff on attitude change and diversity management, and generally introducing workplace changes that are aimed at affirming human diversity.⁵³

Employer reports⁵⁴ and independent studies, such as the annual reports of the Commission for Employment Equity (CEE), suggest that there has been progress, albeit at a snail's pace, towards the achievement of the objectives of the Employment Equity Act. However, the Commission was concerned that: "... if we continue at this pace employment equity will become a challenge for decades."⁵⁵

If the workplace environment embraces the transformation agenda by combining their compliance with the Skills Development Act, the Broad Based Black Economic Empowerment Act and diversity management strategies, it is hoped that the pace of achieving employment equity will be accelerated significantly.

From the point of view of disabled people it is clear that the impact of the EEA has been minimal, except in cases where the employer only employed one employee with a disability and increased this by employing another employee with a disability. This would reflect a 100 per cent increase, though it represents only one additional employee.

Recruitment of disabled people

Table 2 presents the total number of employees with disabilities recruited during the reporting period, by occupational level, race, and gender (for large employers only).

Table 2: Total number of employees with disabilities recruited (large employers)

	African	Coloured	Indian	White	Total
Male	1,199	310	97	572	2,178
Female	552	299	43	287	1,172
Total	1,751	609	140	850	3,350
	52.3%	18.2%	4.2%	25.4%	100%
Percentage of all recruited	0.6%	0.2%	0.1%	0.3%	1.1%

Source: Commission for Employment Equity (2003)

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

Table 2 reveals that the total number of people with disabilities that were recruited for the 2002/2003 reporting cycle was 3 350 (100 per cent). 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 people with disabilities recruited (3,350) amounted to 1.13 per cent of all the employees (297,610) that were recruited for the period.

In addition, the percentage distribution of promotions in senior management positions by race and gender reflect the following scenario:

- **By race** Blacks (Africans, coloureds, and Indians) account for 29 per cent and whites 71 per cent of all promotions in senior management positions. Africans account for 15 per cent (African males 11 per cent and females 4 per cent), coloureds 6 per cent (coloured males 4 per cent and females 2 per cent), Indians 8 per cent (Indian males 6 per cent and females 2 per cent), and whites 71 per cent (white males 53 per cent and females 18 per cent) of all promotions in senior management positions.
- **By gender** Females account for 26 per cent and males 74 per cent of all promotions in senior management positions. Among females, Africans account for 4 per cent, coloureds 2 per cent, Indians 2 per cent, and whites 18 per cent. Among males, Africans account for 11 per cent, coloureds 4 per cent, Indians 6 per cent, and whites 53 per cent. Black females (Africans, coloureds, and Indians) account for 8 per cent, whereas black males (Africans, coloureds, and Indians) account for 21 per cent of all promotions in senior management positions.

In terms of termination of employment of disabled people (large employers only), data reveals that shows that the total number of disabled people whose employment was terminated for the 2002 reporting cycle was 6,820 (100 per cent). Of these, 3,927 (57.6 per cent) were African, 921 (13.5 per cent) coloured, 277 (4.1 per cent) Indian and 1,695 (24.9 per cent) white. The total number of disabled people (6,820) whose employment was terminated amounted to 2.2 per cent of all the employees (307,833) made redundant for the period.⁵⁶

Analysis of the work environment for disabled people

A small-scale research survey, using a small sample in the Eastern Cape, Gauteng, KwaZulu/Natal, and Western Cape, was conducted partly for this study to determine the nature of opportunities and barriers in the workplace for disabled people. The results of this survey are presented in Annex B.

The key findings⁵⁷ of this survey were as follows:

- From the information provided, 30 per cent of the participants were in some kind of leadership positions. only half of these (15 per cent) were managers. Of this total, four of the managers became managers before they became disabled. The remainder achieved this position while already being disabled.
- A large portion of respondents felt blocked by their lack of education, opportunities and reasonable accommodation which impeded an upward move, and by the inability of management to conceptualise people with disabilities performing any other tasks other than those at junior level.
- All nine hearing-impaired individuals highlighted similar problems. Their perception was that their actual work function is minimally affected – except for speaking and hearing on the telephone. Major problems arise in workshops, meetings, ‘hearing’ other languages

⁵⁶ *Ibid.*

⁵⁷ Samaita Associates/PMA Consulting (2005)

and accented English. Interviewees with physical disabilities seemed to feel competent in fulfilling their work requirements.

- The main perception on the part of people with disabilities is that able-bodied employees and managers frequently have a judgmental and rejecting attitude towards people with disabilities. Sixty per cent of the disabled people interviewed had not been integrated – after many years of service. As a result, feelings of anger and frustration emerge from their lack of acceptance as people first, and then people with disabilities. This in turn reinforces the sense of failure.
- The impression was given that people with disabilities have been able to change the environments to make them more accommodating. There is a sense of empowerment that comes through and a sense of acceptance of themselves, their disabilities, and their limitations. Adapting and being flexible seems to be the key here.
- With regard to reasonable accommodation, a number of employers have increasingly become aware of their obligations. While there are improvements in the accessibility of new public buildings, the minimum standards of compliance, rather than a comprehensive approach to accessibility, are adhered to.
- The need for clear career paths and advancement was highlighted. Suggested steps included encouraging facilitated consultative opportunities for people with disabilities to express their grievances, challenges and positive experiences via regional forums or intranet; offering practical disability awareness workshops to leadership and generic disability awareness sessions to management and staff; and creating a supported resource centre such as a 'Disability Desk' to deal with and advise on all disability-related enquiries.

When looking at what has hampered the employment of people with disabilities, it seems that organisations are business focused and, as a result, targeting and bottom lines has become essential with little thought to the process thereto. The perception prevails that employing people with disabilities would be a risk to this business-driven orientation.

When thinking about 'disability friendly positions' within organisational structures, managers were divided into two. The first group adopted a shoot-from-the-hip approach and listed the kind of jobs that they thought people with disabilities could do (these were mainly sedentary, administrative or telephone-based positions). The second group were more thoughtful, and seemed to believe that as long as the disabled person is able and competent in the job, then accommodation and accessibility should not stop them in whatever job function.

Disabled people remain at the lowest level of organisations, and for this situation to change there is need for a monitoring and genuine empowerment strategy, to ensure that disabled people are able to move through the ranks into more senior positions.

The Office on the Status of People with Disabilities (OSDP) is critical in ensuring that guidelines provided to departments give expression to changing the apparent trend. The role of the Department of Labour and South African Management Development Institute (SAMDI) becomes important in supporting this transformation.

The current situation allows management to easily justify the practice of placing disabled people at low levels, on the basis that finding skilled disabled people is difficult. Meaningful disability equity must thus be expressed at all levels of an organisation.

Skills Development Act 1998

The current legislation in the form of the Skills Development Act (No. 97 of 1998) has been enacted in order to implement structures and processes to transform skills development in

South Africa. One of the purposes of the Skills Development Act is to improve the employment prospects of persons previously disadvantaged by unfair discrimination, and to redress those disadvantages through training and education. In this regard, people with disabilities in particular, among other disadvantaged groups, will be targeted. The Act offers persons with disabilities various forms of assistance, namely:

- A more efficient and effective departmental employment service is offered, capable of informing disabled persons of the various support measures that are available. Expansion of the quality and reach of these services is planned.
- An expanded number and range of learnerships (courses and skills training), geared to meet the needs of community development as well as industry, are planned. Special measures will be in place to ensure that the most vulnerable have access to these opportunities. Some of these learnerships will be designed to help persons with disabilities find work in the formal sector. Others will aim to empower persons with disabilities to become self-employed and self-sufficient. A network of support measures will be established to address the needs of persons with disabilities after they have qualified, to give them a better chance to attain employment.
- By bringing learning and working opportunities closer to social and economic development needs, the divide between those with work and those without work will diminish. Everyone will have his or her skills recognised via the National Qualifications Framework and hence will be able to sell his or her skills and services in the same market place. People who are able to earn their own income will enjoy the self-respect that such independence brings as well as the sense of achievement that signifies true empowerment.

According to the *National Skills Development Strategy Implementation Report*,⁵⁸ equity targets underpin every objective of the National Skills Development Strategy (NSDS). These targets state that the beneficiaries of the strategy should be 85 per cent black, 54 per cent female, and 4 per cent people with disabilities. This is a very important aspect of the strategy, and is seen as fundamental to its overall success. Equity is an essential principle for the transformation of economic relations broadly, and education and training in particular. Addressing equity in skills development is critical to eliminating the skills constraints that are faced by the South African economy. Progress to date is summarised in Table 3, below:⁵⁹

Table 3: Equity targets, as per the National Skills Development Strategy

Equity target	Black (85%)	Women (54%)	People with disabilities (4%)
Progress	77.54%	20.43%	0.04%

In terms of the racial, gender and disability breakdown of workers participating in structured learning programmes against the NSDS equity target, the NSDS report highlights the fact that there has been 0.08 per cent progress for disabled people to date, as illustrated Table 4⁶⁰ below.

Table 4: Workers participating in structured learning programmes

Equity target	Black (85%)	Women (54%)	People with disabilities (4%)
Progress	54.49%	40.54%	0.08%

⁵⁸ Commission of Social Security (2004)

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

The Integrated National Disability Strategy highlights the fact that education has traditionally concentrated on years spent at school and, to a lesser degree, on tertiary education. Links with the world of work and training have been weak. Changes in educational policy are of particular importance to the future economic empowerment of people with disabilities.⁶¹

The implementation of the NSDS has not resulted in the achievement of set targets for disabled people. For instance, in 2003/04, a total of 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 people with disabilities. The disability figure was a slight increase compared to the 2002/03. Thus, although targets have not been met, there was a marked improvement in the number of workers who achieved NQF Level One.⁶²

Other achievements with regards to skills development are outlined in Annex D. The key points are as follows:

- There is still some lagging behind on the equity targets for those who have completed structured training, when considering percentages of total. Total figures are presented for 2002/03, with 54.49 per cent of the workers who completed structured learning being black, 40.54 per cent being women, and 0.08 per cent being disabled.
- The National Skills Fund (NSF) has taken a further step to consolidate its bursary scheme: bursaries for people with disabilities are being managed as of the 2004 academic year through the National Student Financial Aid Scheme (NSFAS) and National Research Foundation (NRF). A total amount of R18,272,600 (US\$2,685,353) was made available to the two institutions for awarding bursaries to people with disabilities for the 2004 academic year.⁶³
- The part of the NSF that deals with social development initiatives aims to fund training of unemployed or under-employed people so that they are equipped with working skills to facilitate their entry into self-employment or the labour market. The funds from this window are disbursed through the Department of Labour's provincial offices. It has an established delivery model based on evaluating social development project-linked training applications against set criteria. These criteria include considerations relating to whether the proposed project is part of the Provincial Skills Plan, Integrated Rural Development Strategy, Urban Renewal Strategy or Local Economic Development Strategy, and whether the beneficiaries will be placed in such projects once training is complete.⁶⁴
- During 2002/03, disability equity targets with regard to social development initiatives were met in six of the 10 provinces (Gauteng is divided into Gauteng South and Gauteng North). The highest attainment was in Limpopo, followed by North West, Mpumalanga and Northern Cape. The lowest attainment was in KwaZulu/Natal. The overall average attainment for all provinces was 2.81 per cent.⁶⁵
- During the year 2003/04, provinces collectively achieved only 1.27 per cent.⁶⁶ Part of the reason for this sharp decline could be the fact that no people with disabilities benefited from social development projects in KwaZulu/Natal; and both North West and Mpumalanga provinces recorded very low levels of attainment with regard to social development initiatives. The best performing provinces during 2003/04 were Eastern

⁶¹ Office of the Deputy President (1997)

⁶² Commission of Social Security (2003)

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

Cape, Gauteng, Limpopo, and Western Cape. During the same period, the least performing provinces were Mpumalanga, Northern Cape and KwaZulu/Natal.

- When comparing statistical data for the four years projected to the end of March 2005, it was noted that there was a substantial growth in the number of blacks, females, and people with disabilities entering learnership programmes. Data indicates that the numbers of blacks grew from 6 per cent to 59 per cent in 2004, the female numbers grew from 4 per cent in 2002 to 29 per cent in 2004, and the number of people with disabilities increased from 1 per cent in 2002 to 2 per cent in 2004. The equity targets have not yet been achieved, as shown in Annex D.⁶⁷

A facilitated focus group discussion as part of this research explored some of the reasons that government targets have largely remained unmet. The participants in the discussion identified the following factors:

- Disability unemployment is a function of low-level skills among disabled people.
- There is lack of initiative by the private and public sector.
- Negative employer attitudes exist towards disabled persons.
- Special and mainstreamed schools are in disarray, with learning standards dropping to unacceptable levels.
- Individual efforts by the disability sector are fragmented and ineffective.

An important issue is that the disability policies might not correlate with the disability reality.⁶⁸ The disability sector first ensured that disability was included in the Employment Equity Act, and thereafter also ensured a disability component in the learnership programmes. However, reality has shown that many disabled people might even not qualify for these learnerships, hence the need for a pre-learnership programme. Such a project is currently being developed and the plan is to present it directly to the Ministry of Labour.

Data from the Public Service Commission and the Commission for Employment Equality shows that the general trend is that disabled people tend to be employed at lower employment levels, with very few disabled people employed at management levels.

Promotion of Equality and Prevention of Unfair Discrimination Act 2000

One of the most important pieces of legislation for disabled people arising from this constitutional framework is the Promotion of Equality and Prevention of Unfair Discrimination Act 2000. This legislation is especially important in recognising the way in which discrimination is manifest in our society and, most importantly, the need to put in place concrete mechanisms to address discrimination and promote equality. Disabled People South Africa (DPSA) explains:

“[The Act] recognises the existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, as well as the need to take measures at all levels to eliminate such discrimination and inequalities.”⁶⁹

The Act deals with prevention, prohibition and elimination of unfair discrimination, hate speech and harassment, and 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

⁶⁷ *Ibid.*

⁶⁸ [Interview], Dr William Rowland, Chief Executive of Thabo Mbeki Development Trust for Disabled People

⁶⁹ DPSA (1998a)

- 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 those with disabilities from enjoying equal opportunities, or failing to take steps to reasonably accommodate their needs.

Under the Act, the South African Human Rights Commission and other relevant constitutional institutions may, in addition to any other obligation, in terms of the Constitution or any law, request any other component falling within the definition of the state or any person to supply information on any measures relating to the achievement of equality including, where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.

In addition to the powers and functions of the constitutional legal structures, these institutions are also competent to:⁷⁰

- assist complainants in instituting proceedings in an equality court – particularly complainants who are disadvantaged
- conduct investigations into cases and make recommendations as directed by the court regarding persistent contraventions of this Act or cases of unfair discrimination, hate speech or harassment referred to them by an equality court
- request from the Department, in the prescribed manner, regular reports regarding the number of cases and the nature and outcome thereof.

Special measures to promote equality with regard to race, gender and disability provide that:

- If it is proved in the prosecution of any offence that unfair discrimination on the grounds of race, gender or disability played a part in the commission of the offence, this must be regarded as an aggravating circumstance for purposes of sentence.
- The South African Human Rights Commission must, in its report referred to in section 15 of the Human Rights Commission Act, 1994 (Act No. 54 of 1994), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems.
- 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
 - promote equality in respect of race, gender and disability.

No data was available on the implementation of this Act.

AgriBEE Broad-Based Black Economic Empowerment Framework for Agriculture

Broad-based black economic empowerment (equitable access and participation) in agriculture means economic empowerment of all black people, including women, workers, youth, disabled people, and people living in rural areas, through diverse but integrated social or economic strategies that include, but are not limited to, the items listed below:

- increasing the number of black people that manage, own, and control enterprises and productive assets
- facilitating ownership and management of enterprises and productive assets by black communities, workers, cooperatives and other collective enterprises
- human resource and skills development of black people
- achieving equitable representation in all agricultural professions, occupational categories and levels in the workforce
- preferential procurement

⁷⁰ Government of South Africa (2000b)

- investment in enterprises that are owned or managed by black people
- increasing the extent to which black women, people living with disabilities and youth own and manage existing and new agricultural enterprises, increasing their access to economic activities, infrastructure and skills training
- empowering rural and local communities to have access to agricultural economic activities, land, agricultural infrastructure, ownership, and skills.

This policy is relatively new, and no implementation data/reports are available.

South African Schools Act 1996

The South African Schools Act of 1996 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. In 1999, the Department of Education published a White Paper entitled *Special Education: Building an inclusive education and training system*.⁷¹ The White Paper defines inclusive education and training as:

- acknowledging that all children and young people can learn, and that all children and youth need support
- enabling education structures, systems and learning methodologies to meet the needs of all learners
- acknowledging and respecting differences in learners, whether due to age, gender, ethnicity, language, class, disability, HIV/AIDS or other infectious diseases
- being broader than formal schooling and acknowledging that learning also occurs in the home and community, and within formal and informal settings and structures
- changing attitudes, behaviour, teaching methods, curricula and environment to meet the needs of all learners
- maximising the participation of all learners in the culture and curriculum of educational institutions, and uncovering and minimising barriers to learning.

At the level of implementation, these laws and policies have experienced many difficulties. The most apparent are the lack of financial and human resources – particularly in the form of trained educators. This has meant that children with disabilities are still not fully integrated into the public school system.

Low educational levels exacerbate unemployment among people with disabilities. The CASE study report⁷² was based on a series of eight focus groups and five life stories with disabled people, to provide qualitative information regarding the nature and cause of disability, the problems faced by disabled people and their felt needs, as well as providing some understanding of the availability and appropriateness of services. A pilot and full national survey of 10,000 households nationally covering all provinces, four race groups (African, coloured, Indian and white) as well as rural, urban and metropolitan areas, to provide an analysis of all disabilities in terms of sex, province, age, causes, felt needs and other key demographic variables. This information was used to determine the prevalence of disabilities as well as describe the disability experience as reported by disabled people or their proxy reporters. In addition, a series of interviews was held with service providers to obtain information on the amount and type of funding available for disability-related services and available resources and their location, as well indications of needs of service providers.

In the CASE study, the figures on school attendance indicate that primary school is the most accessible education level, with 79 per cent of respondents attending mainstream primary school and 12 per cent special school, and only 5 per cent not attending school at this level. Pre-school and high school are generally not accessed well, with only 40 per cent and 44

⁷¹ Department of Education (1999)

⁷² CASE (1999)

per cent of respondents attending mainstream schools at these levels respectively. A similar number of disabled children attended special schools for pre-school and high school as the number attending primary school (10 per cent and 9 per cent respectively).⁷³

Just because many disabled children attend primary school in the mainstream system does not in any way mean that inclusive education has been achieved, or that disabled children have been catered for. As pointed out by the National Commission on Special Needs in Education and Training (NCSNET) and the National Committee on Educational Support Services (NCESS), this inclusion is *ad hoc*, and does not deal with the issues of special educational needs or disability. It is simply that there are no other services and so disabled children are generally 'dumped' into mainstream schools by their parents or the education system.⁷⁴

The CASE report made a comparison between the percentage distribution of disabled and non-disabled people by income and by level of education, which showed the impact a disability has on income-earning ability. For instance, someone with a degree has only a 7 per cent likelihood of being in the lower income category if they have no disability. However, this increases to 22 per cent if they have a disability. A disabled person with no education has a 60 per cent likelihood of being in the lowest income category, versus 44 per cent if one has no disability.⁷⁵

A comparison between the overall incidence of disabilities and the number of learners accommodated in school reveals stark disparities – for example:⁷⁶

- Only 0.28 per cent of learners in the Eastern Cape are enrolled in special schools, yet the overall incidence of disabled persons (of all ages) is 17.39 per cent.
- This pattern is repeated across provinces, indicating that significant numbers of learners who – based on the traditional model – should be receiving educational support in special schools are not receiving this.
- While the national total incidence figure for disabilities (of all ages) is 6.55 per cent, the total number of learners in special schools is 0.52 per cent.

According to CASE, learners at high school level seem to experience a range of difficulties. Little or no provision exists at high school in South Africa for learners who are disabled, and the necessary support is not provided. Besides making life extremely difficult for learners with special educational needs, this situation places additional strain on teachers struggling to cope with large classes. A support system in high schools is imperative for disabled learners to engage in effective learning.

The high figures of non-attendance of school for children with communication or learning disabilities at high-school level (66 and 71 per cent respectively) could be a result of lack of support for learners who experience difficulties in learning at this level. The high percentage of non-attendance by intellectually disabled children (82 per cent) supports the notion that no support exists at this level. Learners who probably would have benefited from support in a mainstream high school seem to find themselves in special schools or not at school at all.⁷⁷

In Annex F, a detailed analysis of educational levels among disabled people is presented in Tables 15 and 16.

⁷³ CASE (1999)

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ Department of Education (2001)

⁷⁷ CASE (1999)

White Paper 6 on Special Needs Education

Special needs education is a sector where the ravages of apartheid remain most evident. Here, the segregation of learners on the basis of race was extended to incorporate segregation on the basis of disability. Apartheid special schools were thus organised according to two segregating criteria: race and disability. In accordance with apartheid policy, schools that accommodated white disabled learners were extremely well resourced, while the few schools for black disabled learners were systematically under-resourced.

Learners with disability experienced great difficulty in gaining access to education. Very few special schools existed, and they were limited to admitting learners according to rigidly applied categories. Learners who experienced learning difficulties because of severe poverty did not qualify for educational support. The categorisation system allowed only those learners with organic, medical disabilities access to support programmes.

The impact of this policy was that only 20 per cent of learners with disabilities were accommodated in special schools. The World Health Organization has calculated that between 2.2 per cent and 2.6 per cent of learners in any school system could be identified as disabled or impaired. An application of these percentages to the South African school population would project an upper limit of about 400,000 disabled or impaired learners. Current statistics show that in fact, only about 64,200 learners with disabilities or impairments are accommodated in about 380 special schools. This indicates that, potentially, 280,000 learners with disabilities or impairments are unaccounted for.⁷⁸

The results of decades of segregation and systematic under-resourcing are apparent in the imbalance between special schools that catered exclusively for white disabled learners and those that catered exclusively for black disabled learners. It is, therefore, imperative that the continuing inequalities in the special-schools sector are eradicated, and that the process through which the learner, educator and professional support services populations become representative of the South African population is accelerated.

The *White Paper 6 on Special Needs Education*⁷⁹ arose from the need for changes to be made to the provision of education and training to make it responsive and sensitive to the diverse range of learning needs. *Education White Paper 1 on Education and Training*⁸⁰ acknowledged the importance of providing an effective response to the unsatisfactory educational experiences of learners with special educational needs, including those within the mainstream whose educational needs were inadequately accommodated.

White Paper 6 outlines what an inclusive education and training system is, provides the framework for establishing such an education and training system, details a funding strategy, and lists the key steps to be taken in establishing an inclusive education and training system for South Africa.

The White Paper outlines the Ministry of Education's commitment to the provision of educational opportunities – in particular, for those learners who experience, or have experienced, barriers to learning and development, or who have dropped out of learning because of the inability of the education and training system to accommodate their learning needs.

The vision of an inclusive education and training system can only be developed over the long term, and the actions to be taken in the short to medium term must provide models for later system-wide application. The short- to medium-term actions will also provide further

⁷⁸ Department of Education (2001)

⁷⁹ *Ibid.*

⁸⁰ Department of Education (1995)

clarity on the capital, material and human resource development needed, and consequently the funding requirements, to build an inclusive education and training system.

Essentially, this White Paper says that current policy involves:

- systematically moving away from using segregation according to categories of disabilities as an organising principle for institutions
- basing the provision of education for learners with disabilities on the intensity of support needed to overcome the debilitating impact of those disabilities
- placing an emphasis on supporting learners through full-service schools that will have a bias towards particular disabilities depending on need and support
- directing how the initial facilities will be set up, and how the additional resources required will be accessed
- indicating how learners with disability will be identified, assessed and incorporated into special, full-service and ordinary schools in an incremental manner
- introducing strategies and interventions that will assist educators to cope with a diversity of learning and teaching needs to ensure transitory learning difficulties are ameliorated
- giving direction to the education support system.

Given the scale and complexity of the task of making the educational system fully inclusive, the Department of Education has decided to phase in the resourcing of inclusivity in several stages. Only the first two phases are decided upon as yet: the short-term pilot phase of trying out the model of resource schools and full-service schools (60 in all), and a medium-term phase of expanding to 500 schools and colleges.

The complexity of the process in terms of changing attitudes and behaviours; re-training educators, principals, administrators and teacher educators; the effects on learners, parents and communities; and, not least, resource and capacity implications all need to be researched, monitored and evaluated.

In order to address this concern within its commitment to an integrated and comprehensive approach to all areas of education, in October 1996 the Department of Education appointed a National Commission on Special Needs in Education and Training and a National Committee on Education Support Services.

A joint report on the findings of these two bodies was presented to the Minister in November 1997, and the final report was published in February 1998. The Ministry released a consultative paper,⁸¹ based to a large extent on the recommendations made to the Minister in this report.

The consultative paper advocates inclusion based on the principle that learning disabilities arise from the education system rather than the learner. However, it made use of terms such as 'learners with special education needs' and 'learners with mild to severe learning difficulties' that are part of the language of the approach that sees learning disabilities as arising from within the learner.

Barriers to learning exist primarily within the learning system, and the language in use in our policy papers. Accordingly, the White Paper adopts the use of the terminology 'barriers to learning and development'. It will retain the internationally acceptable terms of 'disability' and 'impairments' when referring specifically to those learners whose barriers to learning and development are rooted in organic/medical causes.⁸²

The distribution of special schools, learner enrolment, and individual learner expenditure across all provincial departments of education is shown in Annex G.

⁸¹ Department of Education (1999)

⁸² *Ibid.*

Analysis of the data⁸³ reveals the extent of the disparities in provision for learners with disabilities – for example:

- The incidence of disabilities in the Eastern Cape constitutes 17.39 per cent of the country's disabled population, yet the province has only 10.79 per cent of the total number of special schools.
- Gauteng has 17.14 per cent of the disabled population but has 25.26 per cent of the special schools.
- The Western Cape has 5.47 per cent of the disabled population but has 21.58 per cent of the special schools.

This mismatch between needs and provision is a direct result of previous apartheid policies that allocated facilities on a racial basis. These policies also centralised provision within the Western Cape and Gauteng so that today, the vast majority of learners attend residential special schools in a province other than their own, since no facilities are available in their province of residence.⁸⁴

Data further demonstrates that learner expenditure on learners with disabilities also varies significantly across provinces, ranging from R11,049 (US\$1,653) in Gauteng to R28,635 (US\$4,286) in the Western Cape and R22,627 (US\$3,387) in the Free State.⁸⁵ While this distribution of learner expenditure demonstrates inefficiency in the use of resources, it also demonstrates the absence of a uniform resourcing strategy and national provisioning norms for learners with disabilities.

In an inclusive education and training system, a wider spread of educational support services will be created in line with the requirements of learners with disabilities. This means that learners who require low-intensive support will receive this in ordinary schools, and those requiring moderate support will receive this in full-service schools. Learners who require high-intensive support will continue to receive such support in special schools.

Labour Relations Act 1998

The Labour Relations Act 1998 provides for the regulation of unfair treatment in the workplace via a provision on unfair labour practices. The provision in the previous act was very broadly defined. Consequently, courts had wide discretion to decide which treatment constituted an unfair labour practice. The new Act has moved away from broad definitions of unfair labour practices and instead, specifically lists the kinds of treatment that will be regarded as 'unfair'. The Act defines four kinds of such treatment. Most applicable to persons with disabilities are stipulations on unfair discrimination.

There was no information available to this research on cases or data of the implementation of the Labour Relations Act by disabled people.

Social Assistance Act No 59 1992

The Social Assistance Act 1992 provides for the rendering of social assistance to individuals, national councils and welfare organisations. The Act was amended in 1994 to further regulate the making of grants and financial awards to certain people and bodies. The Welfare Laws Amendment Act 1997 was amended the Social Assistance Act 1992 in order to:

- provide for uniformity of, equality of access to, and effective regulation of, social assistance throughout South Africa
- introduce the child-support grant
- do away with capitation grants

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

- abolish maintenance grants subject to the phasing out of existing maintenance grants over a period not exceeding three years
- provide for the delegation of certain powers
- extend the application of the provisions of the Act to all areas in the Republic.

Disabled people benefit through disability grants.

The number of people receiving social grants has rocketed from 2.9 million in April 2000 to 7.9 million in April 2005. It is anticipated that this number will increase by more than 20 per cent per annum.⁸⁶ The provincial administrations paid out R37.1 billion (US\$5.5 billion) in grants in 2004, and this is expected to rise to R54.4 billion (US\$8.1 billion) by 2007.

As a share of GDP (the total value of everything the country produces), grants will have risen from 2 per cent in 2000 to an estimated 3.4 per cent in 2007. This effectively eliminates the benefit of at least one full year of economic growth.⁸⁷

According to the National Treasury, since 2000/01, spending on disability grants has increased from R4.0 billion (US\$0.6 billion) to an estimated R10.3 billion (US\$1.5 billion) in 2003/04 – an overall increase of more than R6.3 billion (US\$ 0.9 billion) over the period. In all provinces except Northern Cape, where coverage was already exceptionally high at the beginning of the period, disability spending more than or nearly doubled between 2000/01 and 2003/04. Spending grew particularly rapidly in Free State and KwaZulu-Natal.⁸⁸

There is concern that this growth is not sustainable in the long term.

In addition to providing for rising beneficiary numbers, the Medium Term Expenditure Framework (MTEF) allocations provide for inflation-related adjustments to social grants. With effect from April 2005, the maximum old age, disability and care dependency grants will rise by R40 (US\$6) to R780 (US\$117) a month, foster care grants increase by R30 (US\$4) to R560 (US\$84) and the child support grant goes up by R10 (US\$1.5) to R180 (US\$27) a month.⁸⁹

In the CASE survey,⁹⁰ all respondents were asked whether they receive a state grant or pension (for example, a disability grant, care dependency grant, grant-in-aid or old age pension) or another pension (such as private insurance or workmen's compensation). If they received one, they were asked what they received, how long it took to start receiving it after applying for it, and what they mainly spent the money on. The following information emerged:

- Respondents with a hearing disability (33 per cent) and learning difficulties (37 per cent) were less likely to have applied for, and to have received, a grant than people with any other disability. This is likely to be partly due to the 'invisible' nature of their disability.
- Respondents with a physical disability were all more likely to have applied for a grant and they were also marginally more likely to be successful in their application, including movement-activity disability (63 per cent), moving around disability (63 per cent) and daily life activity disability (64 per cent). This is likely to be due to the 'visible' nature of their disabilities.
- Almost half of the respondents (46 per cent) said that they waited between three and 12 months for their disability grant. Twenty-seven per cent waited three months or less, and about 21 per cent of respondents waited longer than a year.

⁸⁶ National Treasury (2005)

⁸⁷ [author name?] 2004.

⁸⁸ National Treasury

⁸⁹ 'Budget Speech 2005' by Minister of Finance Trevor A Manuel, 23 February 2005

⁹⁰ CASE (1999)

- Respondents with more than one disability were more likely to have received a grant than the respondents with only one disability. Gender seems to have an effect. Males with a single disability were more likely than females with a single disability to receive a grant. However, generally respondents with multiple disabilities were more likely than respondents with a single disability to receive grants.

The Social Assistance Act is probably one of the most talked-about pieces of legislation in South Africa. The Act is administered by the Department of Social Development's social assistance programme and it provides the legislative framework for awarding the disability grant, dependency grant, and grant-in-aid. The disability grant is for adults from the age of 18 years who are unlikely to find employment because of their disability and have no, or limited sources of income. The care dependency grant is for disabled children, and the grant-in-aid is for disabled adults who might or might not be receiving a disability grant. In addition, the Department of Social Development gives a grant for social relief distress.

Disability grant

A person qualifies for a disability grant if:

“... he or she is a disabled person who has attained the age of 18 years and whose disability is confirmed by a medical report of a medical officer...; the degree of his or her disability makes him or her incapable of entering a labour market and he or she does not refuse to accept employment which is within his or her capabilities and from which he or she can generate income to provide fully or partially for his or her maintenance; he or she does not without good reason refuse to undergo the necessary medical or other treatment recommended by a medical officer, a medical pensions officer, medical practitioner, or psychiatrist...; he or she does not already receive a social grant.”⁹¹

In addition, the person must pass the means test, be resident in South Africa at the time of application, and be a South African citizen.

Care-dependency grant

Parents or foster parents are eligible for a care-dependency grant in respect of a care-dependent child provided that the medical report from a medical officer confirms that the child in question is a care-dependent child and the combined annual income of the family does not exceed R48,000 (US\$7,176). Problems associated with the care-dependency grant are discussed in Annex H.

Grant-in-aid

Severely disabled adults also require full- or part-time assistance, which places constraints on their families. If a person to whom a social grant is awarded requires full-time attendance by another person owing to his or her physical or mental condition, that person is eligible for a grant-in-aid.

Administration of the grant

According to the Committee for Restructuring of Social Security (CRSS), the current system of administration of the grant is not based on sound business processes, nor the necessary information systems. Some operations are computerised, while some are carried out manually. The present system involves too many steps in the processing of applications, which has the effect of unnecessarily increasing the workload.

There is presently no integrated approach between social security, social welfare services, and the human resource development of people with disabilities.

⁹¹ Government of South Africa (1992)

If all components of the social security system are to work effectively together to provide for the needs of people with disabilities, then criteria for establishing eligibility must look beyond a medical diagnosis to understanding the impact of disability on the person's life situation. This assessment must be coupled with an understanding of the purposes and objectives of the social security mechanism within the context of other support mechanisms and opportunities. People with disabilities face extra costs because of their disability.

Library for the Blind Act 91 1998

The South African Library for the Blind, declared under Section 1 of the State-aided Institutions Act, 1931 (Act 23 of 1931), continues to exist as a juristic body, notwithstanding the withdrawal of the notice by this Act.

The objective of the Library for the Blind is to provide a national library and information service to serve blind readers and other people whose disability does not enable them to read printed materials in South Africa. The functions of the Library for the Blind are to:

- build up a balanced and appropriate collection of South African and other documents for the use of blind and print-handicapped readers
- record its collections appropriately
- provide a bibliographic service to those readers
- provide access to documents nationally and internationally to those readers
- provide library and information services on a national basis to those readers
- co-ordinate and preserve the national audio and Braille literary heritage
- produce documents in special media, such as Braille and audio, as required by users.

The functions must be performed solely in respect of documents for the use of or relating to blind and print-handicapped readers.

Information on the usage of the library was not readily available within the timeframe of this research. However, the library provides an excellent service to visually impaired students, including an extensive inter-library loan facility, through which students can obtain material from a wide range of academic disciplines from audio and Braille libraries all over the world.⁹²

Convention on the Rights of the Child

The Convention on Right of the Child (CRC) was ratified by the South African Government in 1995, and pertains to all children including children with disabilities. The National Plan of Action (NPA) for children was drawn up to co-ordinate and implement the CRC.

The CRC has introduced and underlined the concept of children as people with rights, which in turn has begun transformation of public policy from one based on needs to one based on rights. However, its effect on children – particularly children with disabilities – has been limited. The Disabled Children's Action Group (DICAG) ensures that disabled children are also involved in the NPA. The government has drawn up national and provincial plans of action, using the world goals as guidelines. The NPA has been launched under the Department of Health involving, other departments.

Section 28(1) of the Constitution describes the right of children to basic nutrition, shelter, basic health care services, and social services. Section 28 (2) goes further: "A child's best interests are of paramount importance in every matter concerning the child."⁹³ Section 28 requires the state to take steps to ensure that children's rights are observed. Legislation and the common law impose obligations upon parents to care for their children.

⁹² Popplestone (2002)

⁹³ Government of South Africa (1996), Section 28 (1 & 2)

Apart from the general right to be heard, in the International Covenant on Civil and Political Rights and other regional human rights instruments, prior to the CRC there were only piecemeal references to the child's right to be heard in international law. These included Article 13 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction, Article 13 of the 1984 Inter American Convention on Conflict of Laws Concerning the Adoption of Minors and Rule 14.2 of the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice.⁹⁴

Article 12 of the CRC forms the core of one of the convention's pillars: namely, participation. The CRC is generally regarded as a human rights document that safeguards the three 'P's – protection, provision and participation – and that focuses on four general principles: non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6) and respect for views of the child (Article 12). Despite Article 12 being singled out as the provision focusing on child participation, a number of other articles in the convention inform, supplement, and confirm the child's right to express his or her views and be heard, such as articles 3, 9, 13, 37 and 40.⁹⁵

The CRC recognises certain vulnerable groups of children that need special care, such as refugee children (Article 22) and disabled children (Article 23).

The Law Commission asked the following questions of the children⁹⁶: "In your daily life and that of your friends, what are the situations in which you would like the law to make clear to everyone what the rights of children are?"

The children's responses related to various aspects of daily life as follows:

- In respect of schools, rights relating to corporal punishment and discrimination were identified.
- In respect of health rights, the children felt there was a need to educate parents about their obligations regarding the health of their children. The children also wanted the right of access to free medical care, and the right to confidentiality of hospital records. The status of children with HIV/ AIDS was an issue that the children felt should be clarified.
- Children felt that they should be protected against sexual harassment in the workplace.
- Some children also felt that disabled children have a right to have facilities adapted for their use, and the right to access free wheelchairs.

Other responses included the following:⁹⁷

"Another problem we have here is that the police do not do their job. They do not help us when we take our case to them, they dismiss us. We learnt that they do not have the right to do this just because we are disabled. They treat other people fine."

"We were taught about our rights – that parents should take care of us. There are parents who do not treat children well. Sometimes children go to school hungry. They get disability grants but the parents do not feed them. We learnt children have a right to food and to be clean."

⁹⁴ Community Law Centre (1999)

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

White Paper for Affirmative Action 1998

On its accession to power, the Government of National Unity inherited a society marked by deep social and economic inequalities, as well as by serious racial, political, and social divisions. Guided by the principle of national reconciliation, the new South African government adopted the Reconstruction and Development Programme (RDP) to reorient and reunite the country towards a common purpose: that of a socially coherent and economically equitable society.

The need for administrative transformation

In forging ahead with the processes of reconciliation, reconstruction, and development, the South African public service will have a major role to play as the executive arm of government. To fulfil this role effectively, the service will need to be transformed into a coherent, representative, competent, and democratic instrument for implementing government policies and meeting the needs of all South Africans.

The government took a first step in this direction with the introduction of the Public Service Act of 1994 (Procl. 103/1994). This Act created the basis for integrating the fragmented system of state administrations inherited from the apartheid era into a unified national public service. Much more needs to be done, however, to transform the public service into an agency that is coherent and representative, as well as capable of achieving the crucial goals set for it by the people and government of South Africa.

In countries that have tried to increase representation through strategies that have fallen short of affirmative action, three main steps have typically been taken:

- the introduction of laws outlawing discrimination on the basis of such factors as race, gender, and disability
- the introduction of reforms in the procedures for the recruitment, selection and promotion of staff to promote greater equal opportunity
- the promotion of attitudinal changes throughout the organisation, especially at management level, to ensure the necessary commitment for the success of such changes.

In South Africa, all three steps are being pursued, though not without problems. While the interim Constitution specifically prohibits discrimination in employment in any form, for example, there is evidence that subtle forms of discrimination still exist. The health requirements laid down by the 1994 Public Service Act and the Staff Code for appointment to the public service, for example, are potentially discriminating against disabled people, and require review. At the same time, while the criteria and procedures for recruitment, selection, and promotion are being improved, they are still based on a rather narrowly defined, culturally determined, and exclusive view of qualifications, experience, and achievement, rather than on a broader and more inclusive view of relevant competencies.

The need for affirmative action

The steps outlined above, therefore, are unlikely by themselves to lead to major changes in the representation of the public service, particularly at the managerial levels – especially in the short term. A more proactive approach is therefore vital, and this will predominantly take the form of affirmative action.

Affirmative action can be defined as “laws, programmes or activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, colour, gender, or disability”.⁹⁸

The targets proposed in the *White Paper on Affirmative Action*⁹⁹ are that within four years, all departmental establishments must endeavour to be at least 50 per cent black at

⁹⁸ Department of Public Service and Administration (1998)

management level. During the same period, at least 30 per cent of new recruits to the middle and senior management echelons should be women. Within 10 years, disabled people should comprise two per cent of public service personnel.

The *White Paper on Affirmative Action* proposes that departmental plans will need to include, among other things:

- an audit of the composition of departmental personnel according to race, gender and disability, at different levels and across occupational classes
- goals, objectives and measurable targets and outcomes for the affirmative action process
- strategies and time-frames for their achievement
- methods for the annual monitoring and evaluation of progress, including the production and use of accurate management information statistics
- the people and units designated as responsible within departments (including transformation units) for ensuring the effective implementation of affirmative action programmes
- training programmes to promote affirmative action
- introduction of new recruitment and promotion procedures based on non-discriminatory criteria of competency and performance rather than on formal qualifications and traditionally valued forms of experience
- awareness-raising and training strategies designed to promote a positive view of affirmative action, and to discourage tokenism and the stereotyping of beneficiaries.

⁹⁹ Department of Public Service and Administration (1998)

4 Conclusions

Departments within the social services spectrum play an important role in the development of persons with disabilities, and their programmes therefore are an essential requirement, more specifically for children with disabilities. The physical, psychological, social and economic development of people with disabilities is largely dependent on the services and programmes provided within these departments. Annex I provides a brief analysis of the key policies or legislation with disability components for each national government department with comments on status of planning and implementation.

The specific conclusions of this report are as follows:

- The positive policy environment in South Africa presents unique opportunities for disabled people to address issues such as:
 - poverty alleviation
 - high levels of unemployment
 - education of children and youth with disabilities
 - improved access to social security and assistive devices
 - access to housing, public health services and transport.
- The current legislation, in the form of the Employment Equity Act, Social Assistance Act, Skills Development 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, among other things, lack of budgetary allocations, ignorance of civil servants charged with the responsibility of implementing these policies, and procedural bottlenecks have been identified as some of the main causes of 'policy evaporation' within the South African context.
- It is clear that the impact of the Employment Equity Act has been minimal. In fact, national departments attained only 0.47 per cent against a target of a 2 per cent employment rate of disabled people in the public sector. All the provincial administrations under consideration attained less than 0.5 per cent employment of disabled people. In the case of the six provincial administrations that responded, the employment of disabled people averages 0.16 per cent. This represents 945 employees out of a total of 572,856.
- According to the Commission for Employment Equity,¹⁰⁰ when reporting on employees with disabilities, large employers are required to report the number of employees with disabilities in each occupational category and level while small employers are only required to report the totals. All 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.
- 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.¹⁰¹
- This study found that the employment of disabled people, apart from being confined to low levels, involving little decision-making and authority, tended to be biased towards males, thus further marginalising women.

¹⁰⁰ Commission for Employment Equity (2003)

¹⁰¹ *Ibid.*

- A critical look at how employers and training providers have provided education, training, and work experience in the past indicates that education and training provision for disabled persons has not always been responsive to the demands of the economy; nor has it always linked theory and practice.
- The vast majority of disabled people are often unskilled, with low levels of education.
- 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\$1,494), and where the maximum educational level is below Standard 10. This compares to 79.4 per cent 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 non-disabled people.
- A recent development at provincial level has been the establishment of a provincial version of the Integrated National Disability Strategy (INDS), referred to in some provinces as Integrated Provincial Disability Strategies (IPDS). Only the Western Cape, Mpumalanga, KwaZulu/Natal, Eastern Cape, and North West Provinces have designed their provincial strategies. No budgetary allocations were made, so there has been no significant implementation of the IPDS in any of the provinces.
- 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 occurred.

Annex A: Policy formulation in South Africa: analysis of historical factors

Introduction

The early 1990s marked a period of intense political activity in South Africa. The parameters and framework for a new democracy, including an interim Constitution, were negotiated between the old apartheid government and the new political players, the most important of these being the African National Congress (ANC).

As this process unfolded and took shape, Disabled People South Africa (DPSA), together with other allies in the disability rights movement, recognised the importance of ensuring that disability issues were integrated into the framework that would inform a new Constitution and the policies of the next government. For the disability rights movement, the integration of disability issues revolved around two central tenets:

- First, it was intent on ensuring that new legislation and policy prevented discrimination against disabled people and that their rights were protected in the same way as those of any other citizen.
- Second, it wanted measures that would recognise that disabled people had been discriminated against in the past, and would create opportunities for them to have equal access to basic services such as education, health, social security and transport.

The concern of the movement was about ensuring non-discrimination of disabled people and the creation of equity. It also argued, however, that fundamental to the achievement of these rights was respect and adherence to the principle of self-representation by disabled people. For the movement, addressing this latter concern was about negotiating how space would be created within the new government, for disabled people to represent themselves and ensure their full participation in decision-making processes.

Since 1994, there has been an enormous growth in the number of initiatives launched by the disability rights movement. These have laid a structural and ideological basis for the recognition of disability as a human rights and development issue and the creation of equal opportunities for disabled people.

However, while these initiatives have all been implemented since 1994, the gains made during this period, and the strategic thinking that has informed their implementation, has only been possible because of the strength and positioning that the disability rights movement – especially the DPSA – established over the previous ten years.

While these changes have been very significant for disabled people in South Africa, these gains have not come about without some costs to the movement.

Although this section, in looking at the key initiatives since 1994, notes some of the strengths and weaknesses of this period, the conclusion will look more closely at the challenges that this period has created for the disability rights movement – especially for its organisations in civil society.

According to Howell and Chalklen (2003, p 43), many of the initiatives that took place in the post-1994 period came about through careful planning and strategic thinking within DPSA and its allies, but there were also times when the movement responded to gaps and opportunities that arose through the broader transformation process taking place throughout the country. For many people in the disability rights movement, there is growing recognition that the process of transformation and reconstruction that has taken place in South Africa

since 1994 has created opportunities for addressing disability issues in a manner that would not have been possible outside of this climate of change.¹⁰²

While disabled people in other countries, such as Zimbabwe, were also able to put disability on the transformation agenda during times of change in their countries, few have been able to instigate the radical changes around disability issues seen in South Africa after 1994. Although many of the changes still have to be translated into actions that fundamentally change the lives of disabled people on the ground, in the area of disability rights, South Africa is now regarded as a leading player.

Era of the Disability Rights Charter Campaign

As DPSA's membership increased and it became known in the communities, more and more people began to approach the organisation with problems that required legal or para-legal assistance. Jerry Nkeli, who had been appointed the second National Development Officer of DPSA,¹⁰³ based at the Soweto office, explains, "As a development officer with a legal background, I found myself giving legal advice to disabled persons. I then proposed... that we should operate as an advice office as well."¹⁰⁴ This was the beginning of what became known in DPSA as the Discrimination Watch Programme. As the need for such a programme increased and more cases of discrimination were taken up, DPSA approached the Canadian Embassy for funding. The embassy explained that it had been funding a non-governmental organisation called Lawyers for Human Rights (LHR) for some time, and they felt this would be the appropriate organisation to provide legal advice for disabled people.

South African MP Michael Masutha explains that the Disability Rights Charter was the outcome of a "human rights advocacy campaign" that had as its central purpose "to mobilise opinion from disabled people themselves, based on their life experiences, to shape national policy and thinking on disability".¹⁰⁵ The Disability Rights Unit, making use of the developing DPSA infrastructure throughout the country, began to hold workshops with disabled people to hear and record their demands. Through this lengthy process of consultation, which took about a year to complete, a draft charter of demands was compiled. The official newsletter of DPSA, *disAbility*, reported at the beginning of 1993 on the process leading up to the Charter's final ratification in 1992:

"The development of a draft charter involved a lengthy process of consultation with organisations of disabled people throughout the country to collect demands. The draft charter formulated through this process was adopted in principal at the biennial congress of DPSA held in Durban in September 1992, subject to it undergoing a process of refinement. It was agreed that revisions to the charter would be undertaken in order to produce a final document. The Disability Rights Charter of South Africa is now completed and was ratified by the DPSA council in December 1992."¹⁰⁶

Reconstruction and Development Programme (RDP) and the establishment of the Offices on the Status of Disabled People (OSDP) (Presidency & Premiers Offices)

One of the most important tasks that the new democratic government undertook after its election in 1994 was setting up the Reconstruction and Development Programme (RDP). This programme, which was overseen by a minister appointed for this purpose, was situated in the President's Office. Its central location within this office meant that it was in a position

¹⁰² Howell and Chalklen (2003)

¹⁰³ The first National Development Officer was Elda Olifant, one of the early activists involved in setting up DPSA.

¹⁰⁴ Howell and Chalklen (2003)

¹⁰⁵ *Ibid.*

¹⁰⁶ DPSA (1993), p 11

to facilitate and monitor reconstruction and development initiatives across all line-function ministries, as well as setting up specific projects for this purpose.

While the office was responsible for general issues around reconstruction and development, it was also recognised at the time that particular groups in South Africa had experienced the most severe forms of marginalisation and therefore required particular attention in the transformation process. Vuyo Mahlati, one of the Founders of Disabled Children's Action Group-DICAG, explains this commitment more fully:

“The approach of the new democratic government was to specifically recognise the issues of the marginalised, including the disabled, women and children, and to place these as core issues within the Reconstruction and Development Programme within our country.”¹⁰⁷

Not long after the inception of the RDP, a Gender Desk and a Children's Desk were set up within the programme. The disability rights movement felt strongly that a similar Desk, focusing on disability issues, should be set up within the programme as well.

Historically, as already discussed, disability had been seen and addressed as a health and welfare issue. This medical model of disability was given more legitimacy through the location of the National Co-ordinating Committee on Disability (NCCD) Secretariat in the Department of Welfare, reinforcing the view that responsibility for addressing disability issues was the responsibility of the Department of Welfare, and not the other line function ministries as well.

For some time, in line with their assertion that disability was a human rights and development issue, the disability rights movement had been arguing that disability issues needed to be equally addressed by all line function ministries and integrated into all aspects of their planning and service delivery.

Thus the movement felt strongly that establishing a Disability Desk within the RDP would create a government structure to address disability issues that would 'cut across all ministries'.¹⁰⁸ They also felt strongly that since the RDP was concerned with reconstruction issues that involved structural changes, improving service delivery and addressing social and economic exclusion, it was the most appropriate area of government to address disability as a human rights and development issue. Activist Beatrice Ngcobo explains, “We did not want to go into an office which would inherit disability from the past and the RDP (as a new programme) could not inherit anybody.”¹⁰⁹

With this background in mind, and building on the alliance already established with the ANC before the elections, DPSA entered into negotiations with the then Minister responsible for the RDP, Jay Naidoo, in the latter part of 1994, about the establishment of a Disability Desk within the RDP office. At the time, the now late Maria Rantho explained, “While the two Desks, namely the Gender Desk and the Children's Desk had been established immediately after the 1994 elections, the establishment of the Disability Desk had been postponed.”¹¹⁰

Although DPSA had already identified Maria Rantho as the person who would be responsible for the Desk, the organisation was becoming extremely frustrated with the lack of progress towards setting it up, despite an agreement in principle to do so. It felt that the time had come for them to be more assertive in getting this initiative off the ground.¹¹¹ Maria

¹⁰⁷ Howell and Chalklen (2003)

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

Rancho explains what then happened: "Without being invited, and to the surprise of the advisor to the Minister, I went to the RDP office and insisted on establishing the Desk. Eventually, it was agreed that the Desk should be established."¹¹²

At the beginning of 1995, the Disability Desk was set up within the RDP in the President's Office. Initially, the Desk had a very small staff complement, consisting of Maria Rancho, who was responsible for running the Desk with assistance from Lidia Pretorius. In February 1995, Maria Rancho was deployed to Parliament, and Shuaib Chalklen took over the running of the Desk. At the beginning of 1996 the RDP was disbanded, and its various projects were moved to the different line-function ministries. However, the precedent for the Desk had now been established and the government agreed that together with the gender and children's desks, the Disability Desk would be moved and established as a programme in the office of the then Deputy President, Thabo Mbeki. In March 1996 the DPSA newsletter reported that:

"Negotiations are presently underway with the Deputy President on how the programme will be structured and function. The establishment of the Disability Programme in the President's office marks a very important step forward for disabled people in South Africa."¹¹³

Following these negotiations, the Office on the Status of Disabled Persons (OSDP) was officially established on 1 May 1997.¹¹⁴ With the new office came a larger staff complement, as well as funding to support the implementation of its key objectives. In 1999, after the second democratic elections, the OSDP was moved to the President's office, where it is presently located.

Although the OSDP programme has grown significantly since its establishment, its objectives essentially remain the same as the ones that were initially envisaged. Jerry Nkeli from DPSA explains the initial objectives of the Disability Desk in the following way:

"The objectives in setting up a desk were to ensure that the executive arm of government embraced disability as a major issue; that the various departments were mindful of and sensitive to the issues of disability; and that government programmes were disability-friendly, taking cognisance of the ideological issues of disabled people."¹¹⁵

Although the Desk was set up with these specific objectives in mind, at the time, Maria Rancho suggested that just having a voice at this level of government created enormous opportunities for the disability rights movement to take its struggle further. She explained that sometimes such opportunities were unplanned, and were often about taking advantage of unique situations that arose. She described one such situation that took place while she was on the Desk:

"I remember that the late Friday Mavuso and I attended a meeting of the premiers of the nine provinces in the Eastern Cape. I am not sure how we managed to place the issue of disability on the agenda, but we did, and were given an opportunity to make a presentation... Working with the programme was a fulfilling experience for me."¹¹⁶

Linked to the objective of influencing the policy process was a recognised need by the disability sector to develop the demands expressed in the Disability Rights Charter into an

¹¹² *Ibid.*

¹¹³ DPSA (1996)

¹¹⁴ OSDP (1999)

¹¹⁵ Interview, Jerry Nkeli, Johannesburg, August 2001

¹¹⁶ Howell and Chalklen (2003)

overarching and comprehensive policy document. This would provide a framework for the creation of equal opportunities for disabled people in South Africa. Such a policy would deepen the demands in the charter by providing clarity and guidance to all line-function ministries about addressing disability issues from a human rights and development perspective in their particular area of responsibility.

Although DPSA and its allies had already started to develop clear policy proposals that built on the demands in the charter before the Disability Desk was set up, the process towards synthesising these into a single policy framework began in earnest within the Disability Desk in 1995. As with other government policies, the first step was the development of a discussion document or Green Paper that would be circulated to all key stakeholders for discussion and debate. During the course of 1995 the Disability Desk, in consultation with all the key stakeholders in the disability sector, developed the *Framework for the Development of an Integrated National Disability Strategy*, which was published as a Green Paper by the new government in 1995.¹¹⁷ In early 1996, the DPSA newsletter explained:

“The main focus of the document moves away from the present welfare approach to disability and calls for the development of disabled people in a human rights context. To translate this important paradigm shift into tangible changes to the lives of disabled people in South Africa, the Strategy recommends key programmes on disability which involve a number of government departments. In outlining these programmes the document emphasises the role of different line function departments in addressing disability.”¹¹⁸

The publication of the Green Paper was followed by the holding of public hearings in all nine provinces. During this time, DPSA recognised that one of its key roles was to “assist with developing capacity (among disabled people and their organisations) to participate effectively in the public hearings.”¹¹⁹ Like the Disability Rights Charter Campaign, the public hearings process around the Green Paper provided an opportunity not only to hear and record people’s responses to the document, but to also raise awareness among disabled people, and government officials in particular, about what disabled people were saying.

Following the process of provincial public hearings, a national public hearing on the Green Paper was held in Parliament where a “number of organisations made presentations on a range of issues affecting disabled people.”¹²⁰ Once the public hearing process was completed, a small drafting team drawn from DPSA, the National Co-ordinating Committee on Disability (NCCD), the South African Federal Council on Disability (SAFCD) and the Disability Desk was set up within the Desk to collate the responses and develop the Green Paper into a White Paper, which could then be ratified as official government policy.

In November 1997, the *White Paper on an Integrated National Disability Strategy* (INDS) was published by the government.¹²¹ The then Deputy President, Thabo Mbeki, in his foreword to the document, emphasised that the government recognised disabled people as equal citizens having the “same rights as we do”. Moreover, the publication of the White Paper and the setting up of the OSDP in his office, demonstrated the government’s “unswerving commitment to the upliftment and improvement of the conditions of those members of our society who are disabled.”¹²²

¹¹⁷ (1995)

¹¹⁸ DPSA (1996)

¹¹⁹ DPSA (1997)

¹²⁰ *Ibid.*

¹²¹ Government of South Africa (1997)

¹²² Office of the Deputy President (1997)

One of the most important roles the OSDP has played since the publication of the INDS has been raising awareness and developing capacity within the government to understand and take forward the recommendations of the policy. Much of the work has involved working closely with government officials and influencing key policy processes and associated programmes.

A further role linked to this, and one that remains a key imperative of the office, is the ongoing monitoring of government policy and practices to ensure equitable and appropriate service delivery. As part of this monitoring and support role, the OSDP has set up management systems to ensure co-ordination and inter-sectoral collaboration on disability issues. Early in 2000, the OSDP commissioned an external consultant to undertake research. The research “sought to establish the extent to which government departments at national level subscribed to and implemented the objectives of the White Paper.”¹²³ In summarising their findings, the researchers argued that:

“The critical facts established by the research are a clear pointer that there is a great chasm between stated policy intentions and/or pronouncements and the actual policy implementation.”¹²⁴

Thus the capacity-building and monitoring role of the OSDP remains an ongoing and essential objective of its work.

The setting up of the OSDP and the publication of the INDS, like the formation of DPSA back in 1984, can be regarded as critical milestones in the history of the disability rights struggle in South Africa. OSDP has become one of the most important institutional mechanisms to bring about change for disabled people in South Africa, and because of its central and senior location in government it has the power to change the conditions of disabled people on the ground.

For many activists, looking back at the impact that the establishment of the OSDP has had on the disability rights struggle in South Africa, there is a strong agreement on the imperative that was set by placing the original Desk outside the traditional bounds of health and welfare. Hendriette Bogopane, now a Member of Parliament, describes this impact:

“The location of the office has given disabled people a sense of dignity, and has kept issues of disability alive. The greatest achievement is confirming that disability does not belong in health and welfare.”¹²⁵

The OSDP has not only had a strategic impact in putting disability on the government’s agenda, especially outside of the traditional parameters of health and welfare. Its presence has also increased government involvement in disability at an international level, particularly through the United Nations. This is very important, as previous international involvement and lobbying was effectively limited to NGO collaboration and networking across countries, such as the involvement of DPSA in its sister organisation in Denmark, the Danish Council of Organisations of Disabled People (DSI), as well as the participation of other disability service organisations in international structures.¹²⁶

While there is widespread agreement that the setting up of the OSDP reflects a major achievement for the disability rights struggle, it is also recognised that it may have weaknesses as well. These need to be acknowledged and recognised as challenges for the

¹²³ (2000)

¹²⁴ *Ibid.*

¹²⁵ Howell and Chalklen (2003)

¹²⁶ For example, South African participation in organisations such as the World Blind Union and Inclusion International.

future. Jerry Nkeli suggests that essentially the weakness of the OSPD: “is a structural one, as the unit can only influence policy... Once you are in a government institution, you are dictated to by the rules and regulations of government.”¹²⁷ In other words the OSDP can only influence and monitor policy in key areas such as education and employment, but it does not have direct responsibility for the implementation of this policy – this is the responsibility of each line-function department.

Another concern is that because of its location at the senior government level, the OSPD is not sufficiently in touch with the direct concerns of the majority of disabled people on the ground. Thulani Tshabalala expresses this concern: “The OSDP is far removed from disabled people at grassroots level... As it has now become part of government... the people at grassroots cannot identify with the Desk.”¹²⁸

Early DPSA activist Ruth Machobane shares this concern. She says that the OSDP’s weakness “seems to be a gap between the Office and organisations of the disabled.”¹²⁹

As the findings of the research report referred to above indicate, there are also enormous challenges for government in implementing the recommendations of the INDS. In many ways, these are challenges that relate to the implementation of the new policy so that it impacts directly on breaking down previous barriers and creating conditions for the equalisation of opportunities.

These problems in policy implementation are not limited to the INDS, and are evident in many areas where new policies have been developed that point to far-reaching changes for the country.

However, while recognising this, there is also recognition that the INDS as a policy document may also have weaknesses that may be impacting on effective implementation. Although all government departments may be ‘morally obliged’ to accept the social model of disability outlined in the INDS, a number of activists recognise that the policy document has gaps that affect its implementation: in particular, insufficient explanations and guidance in the policy about what the proposed changes actually mean in practice. Many of these implementation issues are at the heart of the challenges identified by the disability rights movement for the future.¹³⁰

The location of the OSDP in the Presidency also meant that it became the responsibility of the Minister in the Presidency, Minister Essop Pahad. The Minister has been centrally involved in ensuring that disabled people are appointed to key institutions in government and society. He also continues to play a vital role in linking and integrating disability issues in the ANC.

Early on in the Disability Desk’s existence, the sector recognised the need to ensure that capacity to support and influence government policy and service delivery was not restricted to the national level. It was recognised that it was essentially at the provincial and local levels of government that critical interventions needed to be made to bring about important changes.

However, these also needed to be driven from a central area of government, especially at the provincial level. So these provincial and local initiatives were based on the same principle that was set by locating the Desk in the Deputy-President’s office and in line with the recommendations of the INDS.

¹²⁷ Howell and Chalklen (2003)

¹²⁸ *Ibid.*

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

Negotiations began between disability activists in the provinces, the national OSDP, and the provincial governments to set up similar Desks in each of the offices of the nine provincial premiers. On 1 April 1997, the first provincial Disability Desk was set up in the Office of the Premier of Mpumalanga.¹³¹ Since this time, provincial Disability Desks have been established in the other eight provinces.

A parliamentary presence

Article 2 of the Disability Rights Charter stated that: “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.”¹³² It is evident from the history described thus far that this principle has been central to the strategies and tactics adopted by the movement since its inception. In the post-1994 period, this principle has been most clearly implemented through the placement of disabled people in key governance and decision-making forums throughout the country.

However, despite the ANC’s commitment to include disabled people in Parliament, as the late Maria Rantho explained, not only was she on her own but the parliamentary institution was an extremely difficult and challenging environment to take up the disability struggle. She said:

“When I went to Parliament, disability was not on the agenda of Parliament itself. The struggle I had to wage to have disability issues placed on the agenda was a lonely one, because people were not familiar with disability issues, and thought that disability was a welfare issue... Although I could not serve on all of the committees, I used every opportunity to raise disability issues in the committees on which I served, as a result of which disability soon gained prominence. Now, South Africa is viewed as a role model, as the government has placed disability issues high on its agenda. Credit must undoubtedly be given to the ANC for taking the lead for other political parties to follow.”¹³³

To support their parliamentary candidate, DPSA secured funding for a new programme from the Danish government through DSI. The Membership and Policy Development Programme (MPDP) was to be based in Parliament, and would provide research and policy support to its parliamentary candidate. In her 1997 report to the DPSA congress, the MPDP co-ordinator explained the type of support that the project had provided in its first year:

“This support took the form of co-ordinating inputs, liaising with consultants, reworking speeches and conducting relevant research. The project had also managed to provide information on disability to (other) parliamentarians in order for them to incorporate disability issues in their work.”¹³⁴

While the primary function of the programme was to support Maria Rantho in Parliament, the programme also provided broader support to DPSA structures throughout the country to assist them in impacting, particularly at a provincial level, on new policy and legislation being developed. To facilitate this component of the project, an advocacy/paralegal advisor was appointed in the programme and was based in the Gauteng office.

One of the important responsibilities of this staff member was to represent the disability sector in the newly established National Economic Development and Labour Council

¹³¹ Howell and Chalklen (2003)

¹³² Lawyers for Human Rights (1992)

¹³³ Howell and Chalklen (2003)

¹³⁴ DPSA (1999)

(NEDLAC), a key consultation and decision-making body with representation from government, organised labour, business, and civil society. As the programme developed and the need to impact on the policy progress increased, smaller policy units began to emerge in some of the provincial offices of DPSA.

Maria Rantho's presence in Parliament together with the support of the MPDP ensured that disability issues were placed firmly on the parliamentary agenda. In her report to the DPSA council in July 1997, Maria Rantho explained some of the tactics they employed to raise awareness and draw Parliament's attention to disability issues:

"We have secured the commitment from key Portfolio Committees to have presentations on disability on an ongoing basis. Many other disabled people will be called in to give presentations and participate in discussions. These are useful lobbying techniques and provide us with the opportunity to raise the consciousness of politicians concerning the rights and needs of disabled people ... Interpellations are also used to raise awareness around specific issues, be they positive or negative, and to facilitate action around specific key issues by obtaining political pressure through awareness and monitoring progress on key issues."¹³⁵

The impact that Maria Rantho's presence in Parliament had on the institution itself was most publicly evident in 1998 when the official opening of Parliament that year was organised to give a particular focus to disability. It was aimed at raising the "level of visibility of disabled people and also to celebrate the launch of the Integrated National Disability Strategy".¹³⁶ A civilian guard of honour, including representatives from a range of organisations within the disability sector, welcomed the President and parliamentarians into the National Assembly and, for the first time in Parliament's history, the President's 'State of the Nation' address was translated into sign language.

One of the most important events that took place during the first two years of the new democratic government's first term of office was the setting up of the Constitutional Assembly. This body of representatives from the different political parties was tasked with the responsibility of developing a new Constitution for South Africa. DPSA managed to secure the inclusion of disability as a basis for protection against discrimination in the Interim Constitution. However, as it reported in 1996, while the Interim Constitution "provided the basis for the right to life, freedom from discrimination, and dignity, how such broadly stated rights become reality in the lives of disabled people, will be determined by the New Constitution."¹³⁷

Recognising the importance of impacting on the deliberations of the Constitutional Assembly, DPSA, together with organisations such as the South African Federal Council on Disability (SAFCD), participated in a number of workshops with allies from various universities and NGOs, to develop submissions to the Constitutional Assembly. Michael Masutha sums up what was achieved through these interventions and its importance for the disability rights movement:

"We succeeded in ensuring that the current Constitution makes provision in the Bill of Rights for the protection of disabled people against discrimination. This has been a major achievement, as it has created a legal platform for disabled people to challenge discriminatory practices in legislation and policies. There have been a number of laws passed pursuant to that."¹³⁸

¹³⁵ Cited in DPSA (1999)

¹³⁶ DPSA (1998a)

¹³⁷ DPSA (1996)

¹³⁸ Howell and Chalklen (2003)

One of the most important pieces of legislation for disabled people arising from this constitutional framework is the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. The legislation is especially important in recognising the way in which discrimination is manifest in our society and, most importantly, the need to put in place concrete mechanisms to address discrimination and promote equality. DPSA explains:

“[The Act] recognises the existence of systemic discrimination and inequalities, particularly in respect of race, gender and disability in all spheres of life as a result of past and present unfair discrimination, as well as the need to take measures at all levels to eliminate such discrimination and inequalities.”¹³⁹

Although the general equality provisions of the constitution are especially important for all disabled people, the constitution has also been extremely important in providing a framework for the recognition of sign language in South Africa. More specifically, the Constitution recognises sign language as an official language for deaf South Africans. Similarly, the Constitution mentions sign language as one of the languages that the Pan South African Language Board (PANSALB) must “promote and create conditions for the development and use thereof”.¹⁴⁰

While much still needs to be done to create opportunities for the development of sign language in South Africa, including interpreter services, its location within the Constitution has been extremely important. It provides deaf activists with a basis to argue for its recognition and inclusion in important pieces of legislation and policy – particularly in the area of education. Sign language is now recognised as an official language for educational purposes, with the right of deaf learners to receive education in sign language protected through the South African Schools Act 1996.¹⁴¹

Local government

In the first democratic election, DPSA focused most of its attention on ensuring representation of disabled people at the national and provincial levels. However, the organisation also recognised that disabled people needed to be represented in local government structures – that is, the local and district councils throughout the country. It therefore began to raise awareness about the importance of disabled people preparing themselves for participation in the 2000 local government elections.

At the same time, at the national and provincial parliamentary levels, the DPSA representatives began to raise awareness within the ANC and the parliamentary structures about the importance of self-representation of disabled people at the local level. In a submission to Parliament on the White Paper on Local Government, the organisation stated:

“DPSA strongly supports the notion that political governance at local government level be representative, ie. that a system be developed whereby persons with disabilities are directly represented on all Councils.”¹⁴²

Following this, a statement of intent was sent to the ANC indicating DPSA’s wish to work with the ANC in placing disabled people in local and district councils.¹⁴³ At the DPSA Biennial Congress in October 2001, Mzolisi ka Toni, DPSA Secretary General, was able to report to the organisation that the local government campaign had been so successful that:

¹³⁹ DPSA (1998b)

¹⁴⁰ DPSA (1998a)

¹⁴¹ *Ibid.*

¹⁴² Submission by DPSA on White Paper on Local Government

¹⁴³ Howell and Chalklen (2003)

“More than 40 disabled people [were] elected as councillors throughout the country. Particularly successful amongst these were Northern Province (now Limpopo Province) with 20 and Free State with eight.”¹⁴⁴

Self-representation in statutory bodies

The disability rights movement’s ‘institutionalisation’ of the principle of self-representation was not restricted to parliamentary and local governance structures. It was also felt that the principle should be extended to ensure that the voice of disabled people was present in all relevant public bodies set up by the government or through the Constitution. Michael Masutha explains that:

“Since 1994, many important structures have been established to ensure that the interests of disabled persons are promoted by disabled people themselves. In addition, other structures now include disabled people in their composition to ensure that the voice of disabled people is present.”¹⁴⁵

Before looking at the extent to which this strategy has now been applied, it is important to note that during the discussions on how best to realise the principle of self-representation in the new political dispensation, much thought was given to the idea of lobbying for a Disability Commission. Initially, and in a submission made by the SAFCD to the Constitutional Assembly in 1996, it was felt that a commission similar to those being proposed in the gender and youth sectors should be provided for in the constitution. It was argued that such a commission “could provide for the long-term support for disability rights in South Africa.”¹⁴⁶

It is not possible within the scope of this document to go into the detailed debates that took place at the time about the pros and cons of a Disability Commission. However, the debates really revolved around whether disability issues, and the promotion and protection of the rights of disabled people, could be better addressed through a commission with a specific disability focus or through more of an ‘integration approach’. Those arguing for the integration approach said that disability issues needed to be addressed as part of broader human rights and development initiatives. Disabled people should therefore be placed within these ‘mainstream’ structures to champion the disability rights cause. This should be done rather than ‘isolating’ disability issues in a separate commission. While these debates took place in the disability sector, similar debates took place among women and youth groups at the time.¹⁴⁷

After much discussion and deliberations with senior ANC leaders, it was decided to follow the integration approach. This led to a number of key deployments of people who had come through the disability rights movement into important public bodies. Jerry Nkeli argues that one of the greatest breakthroughs and achievements of DPSA has been its ability “to deploy disabled persons in strategic positions.”¹⁴⁸

Jerry Nkeli himself was one of the first people to be deployed, when he was appointed as a commissioner in the South African Human Rights Commission. While he has a particular responsibility within the commission around the promotion and protection of disability rights, another person with a disability who is involved in the disability sector, Charlotte McClain, also serves as a commissioner. Over and above the Human Rights Commission, DPSA was also able to secure representation on the South African Youth Commission, Gender Commission, Commission on Gender Equality, National Youth Commission, Public Service

¹⁴⁴ DPSA (2001b)

¹⁴⁵ Howell and Chalklen (2003)

¹⁴⁶ DPSA (1996)

¹⁴⁷ Howell and Chalklen (2003)

¹⁴⁸ *Ibid.*

Commission, National Development Agency Board, Ntsika Enterprises Promotion Agency Board, National Training Board, and NEDLAC (Community Constituency).

A key structure in which DPSA continues to be represented is the National Economic Development and Labour Council (NEDLAC), where it forms part of the community constituency within the council. The community constituency is made up of representatives from the women, youth, civic and disability sectors. DPSA, as the representative organisation of disabled people in South Africa, fields the disability-sector representatives. Through DPSA's involvement in NEDLAC, Mzolisi ka Toni now sits as one of the community constituency representatives in the National Skills Authority, the statutory body set up under the National Skills Development Act 1998. One of its functions is to oversee the allocation of money collected through the Skills Levy for the promotion of skills development in South Africa – a critical need among disabled people. This Act ensures that one of the community constituency representatives on the National Skills Authority must come from the disability sector.¹⁴⁹

A number of disability activists from the movement have now also been deployed to take up positions as board members on other important public bodies. These include the boards of the South African Broadcasting Corporation (SABC), the South African Tourism (SATOUR), and the National Board for Further Education and Training.

The disability sector is also represented on a number of the national standard-generating bodies under the National Qualifications Authority (SAQA), as well as on the board of the Road Accident's Fund, the Film and Publications Review Board, Umsobomvu Youth Board, Independent Development Trust (IDT) and Proudly SA. Disability activists have also played key roles in particular transitional government commissions that have been set up, especially in specific sectors such as education, welfare and labour.

Although each of the activists who represents the disability sector in these bodies has a unique experience to relate, most appear to agree that while much has been achieved in securing such positions, raising awareness about disability issues in these structures is an ongoing struggle.¹⁵⁰ These struggles often require enormous commitment and dedication from the representatives who, in many cases, are operating in a climate in which at best there is little awareness of disability, and in some cases, there may even be reticence to address issues that are regarded as complicated and difficult. William Rowland, the disability sector representative on the board of the South African Broadcasting Corporation (SABC), recounts a particular experience during his first term:

"I made it a matter of principle from the very first meeting that I would, if possible, at every meeting at least raise disability once. I consulted at the time with the disability sector and made some valuable input and conceived some objectives. One of them, agreed with DEAFSA [Deaf Federation South Africa], was to get Sign Language initially on to a newscast every day. I think it was towards the end of the second year, I said to my colleagues, I would simply have to go public. I couldn't any longer defend that we weren't making progress because there was a resistance, there was always a cost factor."¹⁵¹

DPSA has recognised that it has an important role to play in supporting disability sector representatives in the various bodies and together with the OSDP has undertaken a number of initiatives to do this. One such initiative has been the setting up of the National Working Committee (NWC). This is a "forum for disabled activists who have been deployed into key institutions, or who are working for these institutions, to come together to debate issues that

¹⁴⁹ *Ibid.*

¹⁵⁰ Howell and Chalklen (2003)

¹⁵¹ *Ibid.*

impact on the lives of disabled people.”¹⁵² Dominique Souchon (at the time working for the Office on the Status of Disabled People) explained that these meetings were important as they provided individual activists with an opportunity to debate issues in a supportive environment without necessarily having to take their organisations’ positions.¹⁵³

In May 2001, the OSDP, together with DPSA, called a *legkotla* (consultative meeting). From the deliberations at this gathering, position papers on transport, education, economic empowerment, social security and access to justice were prepared, and campaigns proposed. This *legkotla* also addressed the strengthening of DPSA. The meeting re-affirmed that DPSA’s core business was advocacy, and that wherever disabled people were employed or deployed, they should facilitate the funding of advocacy work for the organisation. While these initiatives have been important in providing some support to individuals, with limited resources it is not always possible to provide the level of ongoing support that is needed.

Thus Jerry Nkeli, while recognising the breakthrough achieved through such strategic interventions, also cautions against the movement “placing people in high profile positions without the necessary support.”¹⁵⁴ He argues that people must be competent to represent the movement well, otherwise “it would be embarrassing to place a person who does not understand the issues, who cannot articulate the issues or represent disabled people with utmost dignity and pride. In the final analysis, it is not about numbers, but rather about quality representation.”¹⁵⁵ Although these are very real difficulties facing the movement at present, it should be recognised once again that similar problems are evident among other key interest groups in civil society and reflect some of the difficulties that organisations face in responding to the transformation process.

Conclusion

In this annex, the historical background to the policy formulation process has been discussed in detail. South Africa is recognised as having some of the most progressive legislation and policy in the world. In many respects it also leads the field in institutionalising the principle of self-representation through the participation of disabled people in all levels of governance in the country, as well as in a range of key statutory and non-statutory decision-making and advisory bodies.

¹⁵² DPSA (2001a)

¹⁵³ *Ibid.*

¹⁵⁴ Howell and Chalklen (2003)

¹⁵⁵ *Ibid.*

Annex B: Analysis of the work environment for disabled people in South Africa

The findings of this research have broadly been divided between the current establishment status and the reported experiences of the respondents (sample). The findings have been further categorised according to areas of focus which the questions posed by the interviewer were related to.

Positions held

From the information provided in the main report it would appear that 30 per cent of the participants were in some kind of leadership positions. Only half of these – in other words, 15 per cent, were managers. Of this total, four of the managers became managers before they were disabled. The remainder achieved this position with their disabilities. The average time period employed is 11.4 years. The question may be posed: why is it that in 11.4 years only four people with disabilities out of 46 have managed to reach management positions? It would appear from the information collated that some people with disabilities feel as though it is more stabilising for them to remain in a secure position that they know with minimal stress.

A large portion of people with disabilities felt blocked by:

- a lack of education on their part
- lack of opportunities on behalf of their organisations
- lack of being accommodated, which impedes an upward move
- the inability of management to conceptualise people with disabilities performing any other tasks than the ones they are already doing.

Race

It appears that during the previous dispensation, part of the aim of the parastatals¹⁵⁶ was to employ people who were loyal and could commit to staying until retirement age (one participant needed to have a signed medical opinion stating that he would be fit for duty until retirement age). Secondly, during this era, most government departments were more open than they are now to employing people with disabilities – particularly those who were white. The racial statistics of 14 white to six of other race seems to confirm this observation.

Gender

Those interviewed included 22 males and 24 females.

Effects of the disability on work function capacity and the work environment

All nine hearing-impaired individuals highlighted similar problems. Their perception was that their actual work function is minimally affected by their impairment – except for speaking and hearing on the telephone. Major problems also arise in workshops, meetings, ‘hearing’ other languages and accented English.

Interviewees with physical disabilities seemed to feel competent in fulfilling their work requirements. What affected them, though, was the inhospitable transport system, the inaccessible physical environment, and the inaccessible attitude of management.

Those with chronic disabilities were largely affected by change in their environment as well as anything that increases stress – for example, excess work, too much noise or their own emotions. When these factors came into play together, there was a negative impact on their work.

¹⁵⁶ A semi-autonomous, quasi-governmental, state-owned enterprise

Perception of others in the workplace

The main perception on the part of those with disabilities is that able-bodied employees and managers frequently have a judgmental and rejecting attitude towards people with disabilities. This leads to some people with disabilities feeling isolated and separate. Coping methods seem to include remaining with the feeling of isolation, moving to where they do feel accepted, or working harder in order to gain approval.

Sixty per cent of disabled people interviewed said that they had not been integrated – even after many years of service. As a result, feelings of anger and frustration emerged from their lack of acceptance as people first, and then people with disabilities. This in turn reinforces the sense of failure. As there seems to be little room for expression, participants seem either to avoid challenging or to become disconnected from the workplace. Depression is prevalent where a vent for the anger and frustration is not found. The cause of this depression may be ascribed not to the person's disability but to the lack of emotional connection and accommodation given to them at work.

The remainder of the participants seem to have reached a place of self-acceptance, either inspired by their work situation or their home life. This acceptance seems to affect others, increasing the chances of acceptance by the able-bodied community. It also seems as though acceptance is dependent on the accepting attitude or personality of the manager. It is safe to conclude that attitudinal barriers play a significant role within the workplace.

Effects of disability outside of work

People with disabilities appear to have been able to change their environments to make them more accommodating. A sense of empowerment comes through, as well as a sense of acceptance of themselves, their disabilities and their limitations. Adapting and being flexible seems to be the key here. A question that emerges here is how companies can manipulate the environment to make people with disabilities feel comfortable in the workplace.

Reasonable accommodation

With regard to reasonable accommodation, a number of employers have increasingly become aware of their obligations. While there are improvements in the accessibility of new public buildings, there is a tendency for the minimum standards of compliance to be adhered to, rather than a comprehensive approach to accessibility being made. It is significant to note the increasing awareness of using sign language to communicate with deaf people and the use of Braille in lifts in a limited number of buildings, both public and private. A small minority of individuals who participated in the interviews needed no accommodation whatsoever.

Physical accommodation

- 4.3 per cent of the people with disabilities interviewed organised their own accommodation. This was done to avoid having to ask for it, and to avoid red tape. 34 per cent were accommodated, once they had made their requests. 8.6 per cent were managers who all felt that they were accommodated because of the positions they held.
- 17.3 per cent of the participants needed accommodation, but had not considered applying for it. The majority of these participants were hearing impaired, and had a high feeling of isolation. This seemed to have affected their self-esteem and assertiveness with regards to requesting accommodation. All of these participants suffered the same challenges in meetings, workshops etc and yet all of them seemed unaware of what could assist them in these situations.
- 28.2 per cent of the participants had asked for specific accommodation and were either refused or never received a response resulting in impeded productivity and making individuals feel angry, frustrated and in some cases unable to do their work.
- 17.3 per cent of the participants noted that they did not require physical accommodation.

Assistive devices

Four participants spoke of the crippling cost of their medical equipment, such as hearing aids, prosthetic legs and medication. This has jeopardised their finances, affected families and also affected them in getting what they need. Some participants are coping with the bare necessities in terms of equipment so that they can function – for example, using one hearing aid instead of two as required. As a result, they are not fully functioning, and this seems to impact on their work.

Job function accommodation

On this issue, 6.5 per cent of the participants were of the view that the job function allocated did not support their respective disability and their individual needs.

Accessibility

In terms of building accessibility, 4.86 per cent of the participants stated that they had struggled. Maintenance of an accessible environment is also not prioritised by many employers.

The built environment needs to be generally accessible. Interviewees pointed out that accessibility needs of the different disability groups should also be addressed.

Participants said that employers are increasingly becoming aware of the importance of an accessible environment, as this augurs well for increased productivity, improved performance and reducing the risks of accidents at workplaces.

Emotional accommodation

People with disabilities reported not feeling accepted, and highlighted the need for motivation of inclusiveness and sensitisation, so that people with disabilities can feel worthy and valuable. It was noted that some employers are making concerted efforts to portray positive images of people with disabilities.

Career prospects

The need for clear career paths and advancement was highlighted. Suggested steps include:

- encouraging opportunities for people with disabilities to express their grievances, challenges and positive experiences via facilitated regional forums or intranet
- offering practical disability awareness workshops to leaders and generic disability awareness sessions to management and staff
- creating a supported resource centre such as a Disability Desk where all disability-related enquiries could be dealt with and advised on.

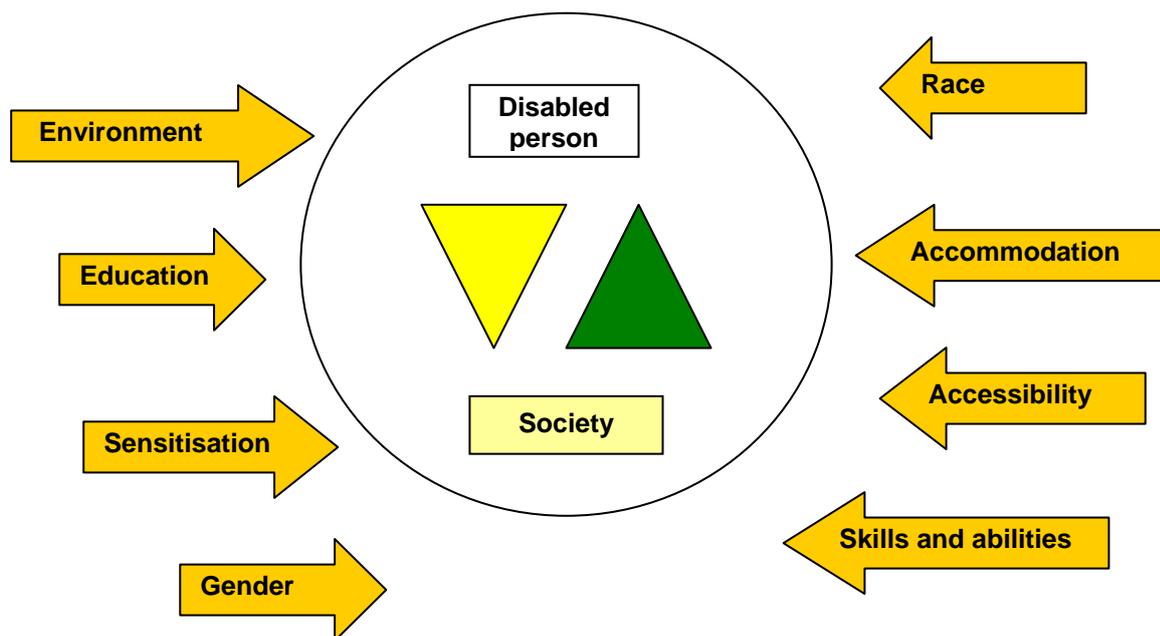
In conclusion, reasonable accommodation needs to be seen as an essential requirement of any person with a disability, in order for them to access their working environment and to perform the essential job function for which they have been employed.

Decision makers need to appreciate that this is a legal and, most often, a reasonable requirement, and that there is a need to facilitate the mechanism by which people with disabilities can request reasonable accommodations and ensure that these requests are dealt with speedily and maintained, as this will enhance their performance in the workplace.

A central office or department needs to take responsibility for disability-related issues in order to best ensure efficient standardised action and implementation, thus ensuring efficiency and cost saving. This central office could also encourage communication between people with disabilities and their employer – perhaps by way of the intranet or regional forums. This would encourage more disclosure and address many of the issues causing unhappiness to people with disabilities, positively influencing productivity and development of their career path.

An immediate review of requests for accommodations should be made and acted on in order to prevent unnecessary hardship and lack of productivity. Access audits should be carried out on those buildings and facilities not yet audited in order to ascertain where accessibility can be addressed or planned for. There is a need to explore how employees with disabilities can be best supported where there is a need for medical accommodation, such as hearing aids or medication for chronic conditions.

Figure 1: The mutual relationship and impact between a disabled person and society¹⁵⁷



¹⁵⁷ Author's own

Managers who have subordinates with disabilities

The main purpose of this part of the research was to elicit from people who occupy managerial positions their response to the disability environment. This response may reveal attitudes and responses to people with disabilities, both as employees and clients. It is important to note that the managers interviewed were not people with disabilities themselves.

One theme that emerged is the fact that a disabled person's personality and how it affects others is deemed significant. If a disabled person has an amiable personality then acceptance is high, but if they are not 'adapted' then antagonism is high. Some managers take the stance of cushioning disabled people from others, thereby assuming the role of 'protector'. This often results in the manager incurring the wrath, usually covertly, of other staff members, and the disabled person becoming isolated as a result. Alternatively, managers adopt a persecutory role and blame the disabled person for poor work performance, and for feeling that they are entitled to promotion or other benefits (as opposed to 'earning their way' up the corporate ladder). In both scenarios there is an element of judgment. The question that may be raised is whether this results from people with disabilities playing a victim role. The sample was too small to investigate this issue more comprehensively.

The issue of targets came up a number of times. If a person is working to full capacity and a target is still too high, the target needs to be looked at. This becomes part of 'reasonable accommodation' and avoids discrimination against a disabled person. For example, a person with a physical incapacity may work slower than their colleagues, and this needs to be taken into account.

Many people with disabilities seem to stay in the same job as a result of fear of failure and because they feel comfortable. Managers themselves seem to struggle with thinking about how to promote people with disabilities creatively. They often seem to become fixated on the disability and what the person cannot do. One of the most logical solutions seems to be that jobs should be devised around a disabled person's competencies or abilities.

When looking at what has hampered the employment of people with disabilities, it seems as though organisations have become very business focused. As a result, targets and bottom lines have become essential, with little thought of the process thereto. The perception prevails that the employment of people with disabilities would be a risk to this business-driven orientation. As a result of this perception, the employment of people with disabilities has not been on the agenda. Advertising process, assessment, placement and the retention of people with disabilities in the environment have not been strategically planned for. Preparation, in terms of accessibility (physical and emotional) needs to take place so that people with disabilities can be included in the business arena.

Managers made some creative suggestions as to how to make their organisations attractive to people with disabilities. There were many ideas, including talent spotting, advertising campaigns, and becoming accessible. Interestingly, some managers felt that change should be made in their organisations' value systems, through workshops and sensitisation, so that mind shifts could allow for the natural acceptance of people with disabilities. The sense was that the actual fibre of the organisations needed to be more integrative. When it came to clients with disabilities, the focus was mainly on physical accessibility and the negative impact that this may have on potential clients.

When thinking about 'disability-friendly positions', managers seemed to be divided. The first group seemed to 'shoot from the hip' and list the types of jobs that they felt people with disabilities could do. These were mainly sedentary, administrative or telephone-related positions. The second group was more thoughtful, and seemed to believe that as long as a

disabled person is able or competent in the job, then accommodation and accessibility should not stop them, whatever their job function.

When it comes to the impact that disabled people may have on the manager and his or her team, awareness raising about disability seems to have been a good starting point for many managers, as well as knowing that the disabled person can do the actual job. There seemed to be a clear division between those who felt as though the environment itself would be debilitating for disabled people, and those who felt their teams would be accepting and would take an integrative approach. There was also an acknowledgement that a certain amount of 'rescuing' (giving extra help to the disabled person) may be offered by the manager and the team workers alike. Again, the issue of the need for sensitisation emerged, as well as practical suggestions that could come from disabled people themselves.

In terms of expectations, managers felt that if reasonable accommodation were made and the disabled person was competent, then the expectations over job performance should be the same as for other employees. A few managers thought about individuality and coping skills. In terms of risk, it would seem as though any risk attached to employing a disabled person could be minimised by accommodation, accessibility and ensuring that the person is competent.

Some managers said they would feel motivated to employ people with disabilities as a means of redressing past inequities but also because it would raise awareness and lead to the integration of people with disabilities. Some managers were also aware that they may be 'missing something' in terms of what people with disabilities could bring to the organisation as a result of their disability and their experiences, for example, flexibility or creative thought. There was also a sense of the great untapped potential that people with disabilities could offer.

'Reasonable accommodation' was regarded as imperative, and was taken seriously. As one participant said: "Without it, the capacity and efficiency is lost, as well as the cost of employing them without the necessary equipment." Red tape and budgets seem to be an inhibitive factor, and best overcome when 'reasonable accommodation' is included in the budget strategy. It is also important that policies are devised so that managers can link up to an identified structure or unit, so that the disabled person is not dependent on the personality of the manager, or on the budget.

The definitions of disability were varied, but the main focus was on people with physical disabilities. This was interesting as many organisations involved employ a wide range of people with disabilities, and yet they chose to focus on the physical aspects of disability.

It is important to note that as the managers focused on disability in their interviews, they became part of a process of their own enlightenment, and the responses to the last question, which related to the organisation's role in the disability arena, were largely positive. It seems as though the interview process itself opened some doors and created a level of openness. The answers to this last question were so varied that it is hard to generalise. However, the responses were creative and dynamic, and there was a sense of readiness and wanting to do something in their respective organisations.

Annex C: Data on employees with disabilities

Table 1: Total number of employees with disabilities, by occupational level, race and gender (large employers)

Occupational levels	Male				Female				Total
	African	Coloured	Indian	White	African	Coloured	Indian	White	
Top management employees	12	6	2	118	5	0	2	8	153
	7.80%	3.90%	1.30%	77.10%	3.30%	0.00%	1.30%	5.20%	100%
Senior management	19	8	12	237	10	5	2	35	328
	5.80%	2.40%	3.70%	72.30%	3.00%	1.50%	0.60%	10.70%	100%
Professional and middle managers	137	47	64	1	675	39	25	233	2,239
	6.10%	2.10%	2.90%	74.80%	1.70%	1.10%	0.80%	10.40%	100%
Skilled technical and management	797	243	180	1,624	228	271	70	780	4,193
	19.00%	5.80%	4.30%	38.70%	5.40%	6.50%	1.70%	18.60%	100%
Semi-skilled	3,362	462	143	839	645	318	78	777	6,624
	50.80%	7.00%	2.20%	12.70%	9.70%	4.80%	1.20%	11.70%	100%
Unskilled	4,406	270	37	180	852	185	14	129	673
	72.60%	4.40%	0.60%	3.00%	14.00%	3.00%	0.20%	2.10%	100%
Total permanent employees	8,689	1,030	441	4,642	1,748	797	172	1,900	19,419
	44.70%	5.30%	2.30%	23.90%	9.00%	4.10%	0.90%	9.80%	100%
Non-permanent employees	484	65	19	186	156	20	9	54	993
	48.70%	6.50%	1.90%	18.70%	15.70%	2.00%	0.90%	5.40%	100%
Total	9,173	1,095	460	4,828	1,904	817	181	1,954	20,412

Source: Commission for Employment Equity (2003)

Annex D: Achievement of skills development targets for disabled people

Our research looked at the overview of progress on equity targets for the National Skills Development Strategy (NSDS) objectives, which deal with learner beneficiary numbers. The objectives below are part of the NSDS 2001–05.¹⁵⁸ A new version of the NSDS was launched more recently, but it was too late to include a detailed analysis in this report.

The NSDS for the period 2001 to 2005 had five objectives, 12 success indicators and three equity targets.¹⁵⁹ The equity targets span across all five objectives, and state that the beneficiaries of the strategy should be 85 per cent black, 54 per cent female, and 4 per cent people with disabilities.¹⁶⁰

The analysis below does not include all the objectives and indicators in the NSDS. Only a sample of indicators with disability data was selected. The numbering of objectives and indicators below is not structured according to the actual numbering in the NSDS implementation report.

Indicator 1: By March 2005, 70 per cent of all workers have at least a Level One qualification on the National Qualifications Framework (NQF).¹⁶¹

Table 5 illustrates the breakdown of workers who have achieved NQF Level One qualifications in relation to the equity targets. As can be seen, 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 total, the number of women and people with disabilities achieving NQF Level One is still significantly below target.¹⁶²

Table 5: Racial, gender and disability breakdown of workers achieving NQF Level One qualifications against NSDS equity target (2002/03)

Equity target	Black 85%	Women 54%	People with disabilities 4%
Progress	77.54	20.43	0.04

Source: Commission of Social Security (2003)

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 people with disabilities. Thus there was a marked improvement in the number of workers who achieved NQF Level One.¹⁶³

Indicator 2: By March 2005, a minimum of 15 per cent of workers to have embarked on a structured learning programme, of whom at least 50 per cent have completed their programmes satisfactorily¹⁶⁴

Progress in achieving equity among the beneficiaries of all structured learning programmes demonstrates poor performance in relation to population group and disability, but improvement in relation to gender. The participation of blacks in all workplace training is lower when compared to NQF Level One training. But this is to be expected, as black workers make up the vast majority of those with lower educational attainment in the workforce as a whole, and workers at this level seem to be getting less than those higher up. On the other hand, black workers should be more strongly represented in training

¹⁵⁸ [organisation] (year)

¹⁵⁹ Commission of Social Security (2003)

¹⁶⁰ Commission of Social Security (2004)

¹⁶¹ Commission of Social Security (2003)

¹⁶² *Ibid.*

¹⁶³ Commission of Social Security (2004)

¹⁶⁴ Commission of Social Security (2003)

programmes if they are to be supported in effective skill acquisition to support their chances of upward mobility.

Table 6 indicates that when considering percentages of total, there is still some lagging behind on the equity targets for those who have completed structured training. Total figures are presented for 2002/03, with 54.49 per cent of the workers who completed structured learning being black, 40.54 per cent being women, and 0.08 per cent being disabled.

Table 6: Racial, gender and disability breakdown of workers participating in structured learning programmes, against NSDS equity targets

Equity target	Black 85%	Women 54%	People with disabilities 4%
Progress	54.49	40.54	0.08

Source: Commission of Social Security (2003)

The National Skills Fund (NSF) has also taken a further step to consolidate its bursary scheme, in that as from the 2004 academic year bursaries for people with disabilities will also be managed through the National Student Financial Aid Scheme (NSFAS) and National Research Foundation (NRF). A total amount of R18,272,600 (US\$2,736,741) was made available to the two institutions for awarding bursaries to people with disabilities for the 2004 academic year.¹⁶⁵

Indicator 3: By March 2003, 100 per cent of National Skills Fund apportionment to social development is spent on viable development projects.

A total of 94,173 learners were trained using funds from the social development window of the NSF by March 2003.¹⁶⁶

During 2002/03, disability equity targets with regard to social development initiatives were met in six of the 10 provinces (Gauteng is divided into Gauteng South and Gauteng North). The highest attainment was in Limpopo, followed by North West, Mpumalanga and Northern Cape. The lowest attainment was in KwaZulu/Natal. The overall average attainment for all provinces was 2.81 per cent.¹⁶⁷

During the year 2003/04, provinces collectively achieved only 1.27 per cent, as reflected in Table 7, below¹⁶⁸ Part of the reason for this sharp decline could be the fact that no one with disabilities benefited from social development projects in KwaZulu/Natal, and both North West and Mpumalanga provinces recorded very low levels of attainment.

Table 7 shows that the best performing provinces during 2003/04 were Eastern Cape, Gauteng, Limpopo and Western Cape. During the same period, the least-performing provinces were Mpumalanga, Northern Cape, and KwaZulu/Natal.

¹⁶⁵ Commission of Social Security (2004)

¹⁶⁶ Commission of Social Security (2003)

¹⁶⁷ *Ibid.*

¹⁶⁸ Commission of Social Security (2003)

Table 7: Analysis of provincial performance

Province	Total	Age groups		Population groups		Gender		People with disabilities
		<35	>35	Black	White	M	F	
Western Cape	10,164	7,260	2,904	10,036	128	5,523	4,641	253
Eastern Cape	53,726	23,253	30,473	53,662	64	20,453	33,273	357
Northern Cape	3,245	1,971	1,274	3,231	14	1,540	1,705	84
Free State	7,206	4,198	3,008	7,183	23	2,943	4,263	155
KwaZulu Natal	13,744	8,242	5,502	13,740	4	6,058	7,686	0
North West	10,885	7,803	3,082	10,848	37	4,871	5,914	96
Gauteng	14,314	8,998	5,316	14,077	237	6,812	7,502	352
Mpumulanga	8,332	5,597	2,735	8,277	55	4,200	4,132	72
Limpopo	10,165	6,398	3,767	10,160	5	3,588	6,577	310
Total	131,781	73,720	58,061	131,214	567	55,988	75,693	[missing ?]
Percentages	[missing ?]	55.94%	44.06%	99.57%	0.43%	42.49%	57.44%	[missing ?]

Source: Commission of Social Security (2004)

The window of the NSF that deals with social development initiatives aims to fund training of unemployed or under-employed people so that they are equipped with working skills to facilitate their entry into self-employment or the labour market. The funds from this window are disbursed through the Department of Labour's provincial offices. They have an established delivery model based on evaluating social development project-linked training applications against set criteria. These criteria include considerations around whether the proposed project is part of the Provincial Skills Plan, Integrated Rural Development Strategy, Urban Renewal Strategy and Local Economic Development Strategy, and whether the beneficiaries will be placed in such projects once training is complete.¹⁶⁹

¹⁶⁹ Commission of Social Security (2004)

Table 8: Number of trained unemployed people receiving training, by age, population group and gender

Total	Age groups		Population groups		Gender		People with disabilities
	<35	>35	Black	White	Male	Female	
131,781							
	73,798	57,983	131,122	659	55,348	76,433	1,739
	56%	44%	99.5%	0.5%	42%	58%	1.32%

Source: Commission of Social Security (2004)

Annex E: Achievement of employment equity targets in government departments

Table 9: Employment figures for the national departments

National department	Total	Disabled	% Disabled
Agriculture	2,700	14	0.52
Arts and culture	44	6	1.3
Correctional services	32,794	123	0.37
Defence	16,875	98	0.58
Education	403	12	2.98
Environmental affairs and tourism	825	14	1.69
Foreign affairs	1,716	21	1.22
GCIS	311	3	0.96
Health	1,309	15	1.14
Home affairs	5,816	41	0.71
Housing	179	1	0.55
Independent Complaints Directorate	129	1	0.77
Justice and constitutional development	9,271	85	0.92
Land affairs	2,722	51	1.87
Minerals and energy	761	7	0.92
National Treasury	476	2	0.42
The Presidency	349	5	1.43
Public enterprises	97	0	0
Public service and administration	217	2	0.92
Public Service Commission	123	2	1.62
Public works	4,198	30	0.71
Provincial and local government	186	3	1.61
SAPS	118,529	436	0.36
SAMDI	86	2	2.35
Statistics South Africa	915	12	1.31
Social development	257	5	1.94
Sport and recreation	52	2	3.84
Trade and industry	962	7	0.72
Transport	242	1	0.41
Water affairs	21,951	61	0.27
Total employed in the national departments where figures are provided	224,894	1,062	0.47

Table 10: National departments that have attained 50 per cent of the employment target (1 per cent and above)

National department	Total employed	Disabled employed	% Disabled
Social Development	257	5	1.94
Land Affairs	2,722	51	1.87
Environmental Affairs and Tourism	825	14	1.69
Public Service Commission	123	2	1.62
Provincial and Local Government	186	3	1.61
The Presidency	349	5	1.43
Statistics South Africa	915	12	1.31
Arts and Culture	443	6	1.3
Foreign Affairs	1,716	21	1.22
Health	1,309	15	1.14
Total	8,845	134	

The ten national departments that have reached 50 per cent of the target at 2002 are likely to reach the other 50 per cent by the end of 2005. Their progress at current rates indicates that if these rates are maintained or increased, the 2005 target can be attained.

Collectively, these departments comprise 8,845 employees, of which 134 are disabled. It is of concern, however, that 17 (or 57 per cent) of the 30 national departments have failed to reach even half of the target or 2 per cent to date.

Table 11: National departments that have reached less than 25 per cent of the employment target (0.5 per cent and below)

National department	Total employed	Disabled employed	% Disabled
Public Enterprises	97	0	0
Water Affairs	21,951	61	0.27
South African Police Services	118,529	436	0.36
Correctional Services	32,794	123	0.37
Transport	242	1	0.41
National Treasury	476	2	0.42
Total	174,089	623	

The above category collectively comprises 174,089 employees, of which 623 are disabled people. This is the category in which the largest of the national departments are found (South African Police Service, Correctional Services, and Water Affairs).

While it may be argued that in such large departments the attainment of the percentages may be more difficult, it should also be noted that due to the sheer numbers in these departments, there is likely to be more staff turnover, and more opportunity to use these vacancies to employ disabled people. A concerted effort to improve the situation in these departments is required.

Gender disparities are also evident in the employment of disabled people at national level. The findings show that of the total number of disabled people employed, 67 per cent are

males, and only 33 per cent are females. This clearly depicts the double marginalisation of women with disabilities.

The data in Table 12, below, would seem to suggest that the EEA has had some impact on increasing disability equity in certain national departments.

Table 12: Impact of Employment Equity Act on national departments

National department	Employment figures before EEA	Employment figures after EEA	Percentage increase
Agriculture	15	15	0
Arts and Culture	3	3	0
Correctional Services	No stats	No stats	Not assessed
Defence	68	101	48
Education	16	17	6
Environmental Affairs and Tourism	11	15	36
Foreign Affairs	17	21	24
GCIS	3	3	0
Health	12	15	25
Home Affairs	54	No stats	Not assessed
Housing	1	1	0
Independent Complaints Directorate	0	1	1
Justice and Constitutional Development	No stats		Not assessed
Land Affairs	No stats before EEA	25	Not assessed
Minerals and Energy	8	7	Figures have decreased
National Treasury	1	2	100
The Presidency	5	5	0
Public Enterprises	0	0	0
Public Service and Administration	2	2	0
Public Service Commission	2	2	0
Public Works	30	30	0
Provincial and Local Government	3	3	0
SAPS	No stats	No stats	Figures have decreased
SAMDI	1	2	100
Statistics South Africa	10	12	20
Social Development	6	5	
Sport and Recreation	1	2	100
Trade and Industry	7	7	0
Transport	1	1	0
Water Affairs	62	61	Figures have decreased
Total	339	358	

Provincial analysis

Table 13, below, depicts the employment figures for the six provincial administrations that responded. The provincial administrations of North West, the Free State and Mpumalanga, in which less than 50 per cent of departments submitted information, are excluded from this analysis.

Table 13: Employment figures for the provincial administrations

Provincial administration	Total employed	Disabled employed	% Disabled
Eastern Cape	123,974	114	0.09
Gauteng	113,712	119	0.1
KwaZulu – Natal	143,691	170	0.11
Northern Cape	11,617	15	0.12
Limpopo Province	114,147	338	0.3
Western Cape	65,715	189	0.28
Total employed by provincial administration, where figures are provided	572,856	945	0.16

To date, none of the provincial administrations has reached the set target of 2 per cent employment of disabled people.

In fact, all the provincial administrations under consideration attained less than 0.5 per cent employment of disabled people. In respect of the six provincial administrations that have responded, the employment of disabled people averages 0.16 per cent. This represents 945 employees out of a total of 572,856. This compares unfavourably with 0.47 per cent, or 1,062 out of 224,894 employees, at the national level. This is especially of concern in that 70 per cent of the employees in the public service are located at the provincial level, and poor progress here impacts adversely on the national targets being met.

While the responses from the six provinces have skewed the figures, it is still abundantly clear that if the current practices continue, the public service will not meet its 2005 targets. Greater effort and more creative and innovative strategies need to be employed in order to accelerate progress on numeric targets. While the White Papers have been used as a methodological yardstick to track progress on targets, they point to the stated intention of government, enforceable through the Employment Equity Act (EEA). Non-compliance with government policies must be viewed as an indictment of public service leadership, as leaders remain the direct proponents to the implementation of such policy.

While comparisons between the national departments and provincial administrations may seem unfair, it is clear that progress in attaining disability equity in the provinces is important, but remains unsatisfactory. The poor performance may be ascribed to various factors, one of which is that with the varied nature of different departments being found within a provincial administration, it is difficult to administer a coherent programme.

Table 14, below, provides a comparison of progress in employing people in provincial administrations. It reflects the probable impact of the Employment Equity Act on provincial administrations by examining figures pre- and post- EEA.

Table 14: Impact of the Employment Equity Act on provincial administrations

National department	Employment figures before EEA	Employment figures after EEA	Percentage increase/decrease
Eastern Cape	Figures not provided	114	Not calculated
Gauteng	75	119	58%
KwaZulu – Natal	95	170	78%
Northern Cape	29	15	-52%
Limpopo Province	Figures not provided	338	Not calculated
Western Cape	116	189	63%
	315	945	

Source: Sangweni (2002)

In the case of the provincial administrations, it would appear that there has been a more significant increase in the number of disabled people employed after the Employment Equity Act. Of the six provincial administrations surveyed, three showed a significant increase (more than 50 per cent) in their figures post-EEA. These are:

- KwaZulu-Natal (78 per cent)
- Western Cape (63 per cent)
- Gauteng (58 per cent).

The EEA programmes within these provinces appear to be working well. It was not possible to perform such comparisons for the Eastern Cape, and Limpopo Province, in that pre-EEA figures were not kept. In the case of the Northern Cape, the number has dropped by 52 per cent.

When comparing the employment figures of disabled people before the enactment of the EEA with figures after the enactment of EEA, within the provinces, it would seem that the enactment of the Act in October 1998 has contributed to an increase. Although it is not possible to provide a definitive answer to the question, one can reasonably assume that the EEA has contributed to heightened awareness of employment equity, and at least brought the disability agenda to the fore.

Implementation of aspects of the INDS and EEA

Progress at the level of national departments

All national departments indicated that they have been exposed to, or are aware of, the INDS and EEA and their provisions. Some have used it to initiate interventions such as diversity management workshops, the drafting of departmental specific policies, and undertaking advocacy initiatives.

Of the national departments under study, only 20 per cent mentioned having a specific policy on disability. These were:

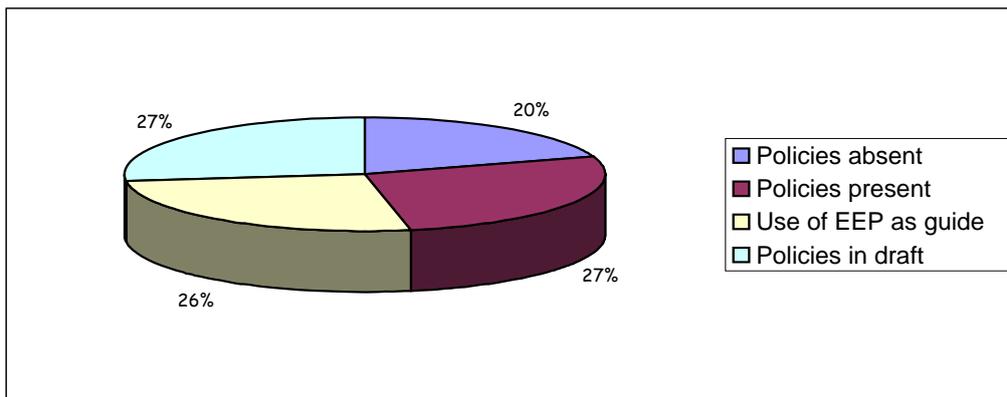
- Department of Art and Culture
- Correctional Services
- Education
- Environmental Affairs and Tourism
- Independent Complaints Directorate
- Land Affairs

- Provincial Affairs and Local Government
- Water Affairs and Forestry.

Other departments either make use of Employment Equity Plans (EEP) or Affirmative Action Plans as a policy framework to guide disability equity in the workplace.

Figure 2 indicates the progress with policy development for disability equity for the national departments. It can be seen that a fifth (20 per cent) stated that they have no policy guidelines, just over a quarter (26 per cent) use the EEP as a guide, while 27 per cent have policies in draft form. Only 27 per cent have completed policies at present.

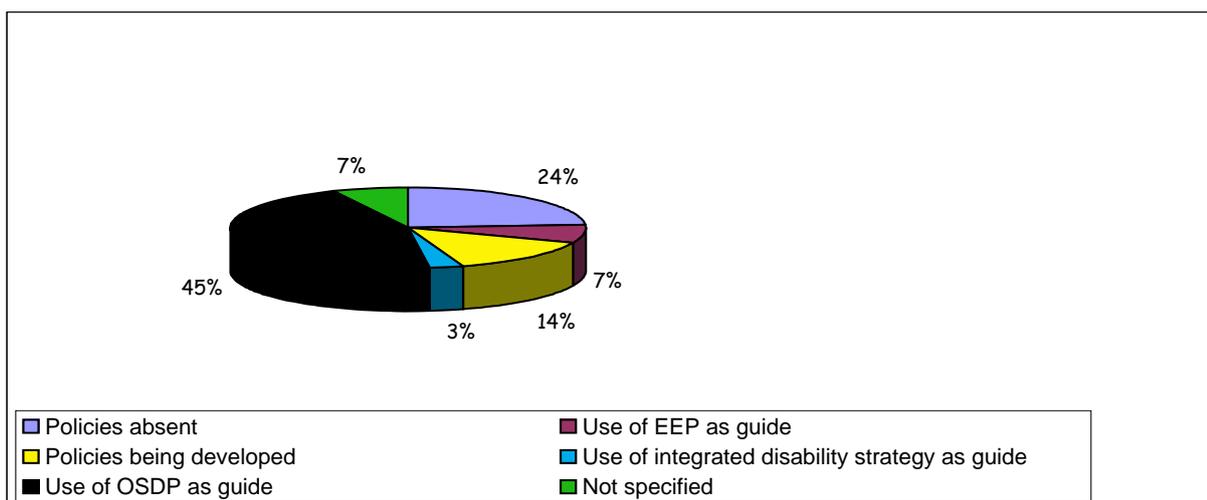
Figure 2: Departmental disability policies



Progress at the level of provincial administrations

A different picture regarding policy development emerges at the level of provincial administrations.

Figure 3: Disability policies of provincial administrations



It was found that 24 per cent of the provincial administrations had no specific policy on disability, against 27 per cent of the departments at the national level. Seven per cent make reference to EEA as a guideline for ensuring disability equity in the workplace. The mainstream view of the provinces is that a separate policy on disability is unnecessary, and that the extent and the scope of the EEA are sufficient to address disability.

Of note is a recent development at provincial level – the establishment of a provincial version of the INDS – termed the Integrated Provincial Disability Strategies (IPDS). Only the Western Cape, Mpumalanga, KwaZulu/Natal, Eastern Cape, and North West Provinces have designed their provincial strategies. No budgetary allocations were made, hence no implementation of the IPDS occurred in all the provinces.

However, a few departments (14 per cent) in the different provincial administrations state that they are in the process of drafting department specific disability policies. These include the Departments of Agriculture, Economic Affairs and Tourism, Sports Arts and Culture in the Limpopo Province, and the Department of Housing in KwaZulu-Natal. A small percentage of departments (3 per cent), states that the Provincial Offices on the Status of People with Disabilities (OSDPs) provide guidelines for disability equity, while 7 per cent state that they make use of the National Integrated Disability Strategy as a guide.

Approximately 85 per cent of the provincial administrations state that they have a focal person who specifically deals with disability. In most cases, the special programmes managers are used to fulfil the role of focal point for disability. However, the responsibilities of these individuals are not confined to issues of disability and often include gender, among other responsibilities. In a limited number of cases, disability was said to fall within the human resource management component.

Of those provincial administrations that are in the process of developing policies on disability equity, as well as those that have strategies and plans to implement employment equity, about 60 per cent do so in broad consultation with employees who are disabled, trade unions and workplace forums. Only a small percentage make reference to consultations with the OSDP and civil society organisations.

Policies and procedures are important management tools that provide guidance by operationalising government intentions. However, in the absence of strategic plans and leadership, they are sterile in transforming attitudes and organisational culture. Strategies and plans are effective tools for driving disability equity.

Annex F: An analysis of impact of educational levels among disabled people

Table 15 provides a comparison between the percentage distribution of disabled and non-disabled people by income and by level of education. It shows the impact a disability has on income earning ability. For instance, someone with a degree has only a 7 per cent likelihood of being in the lower income category if they have no disability. However, this increases to 22 per cent if there is a disability. A disabled person with no education has a 60 per cent likelihood of being in the lowest income category, versus 44 per cent if one has no disability.

Table 15: Distribution of non-disabled versus disabled population, by income and level of education attained

Annual income in Rands/Level of education	0–999	1,000–9,999	10,000–29,999	30,000–79,999	80,000	Total
No disability						
No schooling	11.0%	11.3%	2.1%	0.4%	0.3%	25.1%
Grade 1 to Grade 11	21.6%	27.8%	6.6%	1.3%	0.3%	57.6%
Grade 12	1.8%	3.9%	3.4%	1.6%	0.4%	11.1%
Diploma/certificate with Std 9 or lower	0.1%	0.2%	0.1%	0.1%	0.0%	0.5%
Diploma/certificate with Std 10	0.3%	0.8%	1.3%	0.7%	0.2%	3.3%
Degree	0.1%	0.2%	0.5%	0.6%	0.3%	1.7%
Other	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Unspecified	0.3%	0.3%	0.1%	0.0%	0.0%	0.7%
Total	35.2%	44.5%	14.1%	4.7%	1.5%	100.0%
With disability						
No schooling	15.8%	9.1%	1.1%	0.1%	0.2%	26.3%
Sub A to Std 9	29.7%	24.8%	5.8%	1.0%	0.1%	61.4%
Std 10	1.9%	2.7%	1.7%	0.9%	0.3%	7.5%
Diploma/certificate with Std 9 or lower	0.1%	0.2%	0.1%	0.0%	0.0%	0.4%
Diploma/certificate with Std 10	0.4%	0.6%	0.5%	0.5%	0.1%	2.1%
Degree	0.3%	0.3%	0.2%	0.3%	0.1%	1.2%
Other	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Unspecified	0.4%	0.5%	0.0%	0.1%	0.0%	1.0%
Total	48.6%	38.2%	9.4%	3.0%	0.8%	100.0%
No schooling	15.8%	9.1%	1.1%	0.1%	0.2%	26.3%

Source: Central Statistical Services

Note: 1 Rand = approx. US\$0.15

Table 16: The non-disabled versus disabled population, by income and education levels, expressed as a percentage of total by educational level

Annual income in Rands/Level of education	0–999	1,000–9,999	10,000–29,999	30,000–79,999	80,000	Total
No disability						
No schooling	43.9%	45.1%	8.3%	1.5%	1.2%	100.0%
Sub A to Std 9	37.4%	48.3%	11.5%	2.3%	0.5%	100.0%
Std 10	16.1%	35.1%	30.7%	14.1%	3.9%	100.0%
Diploma/certificate with Std 9 or lower	16.2%	35.0%	33.2%	12.2%	3.4%	100.0%
Diploma/certificate with Std 10	8.9%	24.6%	38.8%	20.6%	7.1%	100.0%
Degree	7.1%	10.7%	31.4%	34.6%	16.2%	100.0%
Other	3.0%	0.0%	63.1%	11.7%	22.1%	100.0%
Unspecified	36.8%	45.6%	10.2%	2.4%	5.0%	100.0%
Total	35.1%	44.5%	14.2%	4.6%	1.6%	100.0%
With disability						
No schooling	60.2%	34.5%	4.1%	0.5%	0.7%	100.0%
Sub A to Std 9	48.3%	40.3%	9.5%	1.7%	0.2%	100.0%
Std 10	26.1%	36.1%	22.2%	11.8%	3.9%	100.0%
Diploma/certificate with Std 9 or lower	17.0%	59.3%	18.2%	5.6%	0.0%	100.0%
Diploma/certificate with Std 10	19.8%	28.3%	22.6%	24.2%	5.2%	100.0%
Degree	22.0%	22.5%	17.3%	26.0%	12.3%	100.0%
Other	0.0%	0.0%	53.5%	19.6%	26.9%	100.0%
Unspecified	44.5%	45.3%	3.0%	7.0%	0.3%	100.0%
Total	48.7%	38.1%	9.4%	3.0%	0.9%	100.0%

Source: Central Statistical Services

The largest concentrations of disabled people are in the lowest income-earning households with the lowest educational levels. This suggests that programmes that attempt to shift people off the disability grant and into the labour market will have to address more than just disability.

Annex G: Early Childhood Development

The opportunities to formal early childhood development (ECD) programmes for children with disabilities differ in that the take-up rate of children with disabilities in these programmes is far lower. Children with disabilities are still denied access to mainstream ECD for various reasons.

Where parents of disabled children have initiated ECD programmes, most departments view these as 'care centres', despite the fact that early intervention and stimulation programmes are provided as a basis to increase the child's ability and opportunities to access formal ECD and schooling.

One example of the level of lack of ECD services for children with disabilities is demonstrated within Mpumalanga. Research of 2001 revealed that 80 per cent of children with disabilities in the province are not in any ECD programme.¹⁷⁰ The table below clearly demonstrates the poor uptake of children with disabilities in formal ECD:¹⁷¹

Table 17: Access to early childhood development services by children with disabilities

Region	Total enrolment	% of learners with disabilities in ECD sites
Eastern Cape	2,000	1.71
Free State	932	1.4
Gauteng	2,280	1.18
Kwazulu-Natal	1,803	0.99
Mpumalanga	294	0.62
Northern Cape	195	1.16
Limpopo Province	1,163	1.58
North West	781	1.7
Western Cape	2,331	1.9
Total	11,779	1.36

Source: Williams, Samuels *et al* in Biersteker (2001)

Opportunities for access to special schools is somewhat better for children with disabilities, again depending in which province the child is residing and the economic status of that province, as well as that of the child's family.

Within the provincial estimated expenditure for 2002 concerning public ordinary schools, the following table indicates the percentage of the provincial education budget as:

Table 18: Public ordinary schools, 2001/02 to 2004/05

R'000	2001/02 estimated actual expenditure	2002/03	2003/04	2004/05	Real change 2001/02-2002/03	Real change 2002/03-2004/05
Eastern Cape	5,811,133	6,745,126	7,142,415	7278829	9.0%	-2.1%
Free State	2,615,723	2,809,916	2,975,257	3,154,471	0.9%	1.8%
Gauteng	5,459,945	6,017,196	6,689,270	7,009,540	3.5%	5.7%
Kwazulu-	8,223,165	8,864,098	9,718,883	10,321,522	1.2%	5.6%

¹⁷⁰ [Interview], Milani Wolmarans, Director, Department of Health, Mpumalanga

¹⁷¹ Cassiem and Streak (2004)

Natal						
Mpumalanga	2,819,002	3,149,409	3,484,118	3,699,071	4.9%	6.5%
Northern Cape	871,021	919,230	976,345	1,036,063	-0.9%	2.2%
Limpopo Province	5,586,662	6,059,979	6,519,155	6,981,321	1.9%	4.5%
North West	3,484,112	3,520,667	3,515,792	3,570,248	-5.1%	-8.0%
Western Cape	3,468,825	3,608,391	3,796,386	3,964,754	-2.3%	-0.3%
Total	38,339,588	41,694,012	44,817,621	47,015,819	2.1%	2.3%

Source: Provincial estimates of expenditure, 2002

Within the stream of special education, a total of 280,000 learners with special needs are currently unaccounted for.¹⁷² The table above indicates the total provincial education budget expenditure for learners that are currently accessing services in special schools.

¹⁷² IDASA (2000)

Annex H: Problems associated with the Care Dependence Grant

The poor performance of the uptake rate within the CDG can be attributed to many factors. First, there are legislative limitations that are also contradictory in nature. Then there is the purpose of the CDG, which is not consistent with the real needs of children with disabilities. Theresa Guthrie of the Child Health Policy Institutes states the problems with the CDG as follows:

Problems with the purpose of the CDG

- The current purpose of the CDG to enable permanent home care, only for permanently disabled children, is limiting and inadequate, and open to different interpretations.
- The purpose of the CDG should not be poverty alleviation, but rather to meet the extra needs of the child due to the illness or disability. It should promote their survival, development, protection and participation.
- Eligibility criteria should be determined by the need resultant from the particular disability or illness, and not dependent on the nature or severity of the disability or illness.
- Attention should be paid to the family context of the child, to improving their environment.

Definitions are not clear

- There is a lack of clear definitions (disability, severe/moderate, permanent home care) in the current legislation. This has serious implications for inclusion/exclusion criteria and makes targeting extremely difficult.
- There is lack of clear definition between non-disabling or intermittent chronic illnesses and those that lead to disablement.
- The current definition is purely a medical definition of disability. Economic and social aspects are not considered, nor the 'cost', or burden on the family.

Eligibility criteria are limited

- Currently the CDG benefits only severely disabled children permanently at home, and does not cater for the many others with milder disabilities or those in day care facilities.
- There is no provisioning at all for children with chronic illnesses, including HIV/AIDS. These children have many additional needs and expenses and caring for them constitutes a large burden on the family's resources.
- It is extremely difficult for caregivers (non-parents and 'non-formal' foster parents) to access the grant. Access should be granted to this group of carers, and should include child-headed households, which will be more common in the future.
- There is a lack of clarity regarding the eligibility of children in day care centres or learners with special education needs (LSEN) schools for the CDG, and there exist differing practices among different provinces. Uniformity in definition and eligibility criteria is essential.
- There are many children who are not in receipt of the CDG and who attend state-subsidised special schools, yet require special home care after school hours and during the school vacation. There are no policy guidelines for special after care.
- There is a lack of clarity with regard to foster parents receiving a foster grant as well as receiving the CDG. Some provinces do allow receipt of both grants. Again, clarification and uniformity in practice are necessary.

It should be noted that the grants are for different purposes, and therefore these parents should be entitled to both. It would encourage people to foster children with disabilities and HIV/AIDS.

Targeting is problematic

- While means testing enables targeting of the poorest quintiles, in practice it is rarely used correctly, is administratively demanding, and has been reported as demeaning.

- Sometimes the extra expenses incurred by tighter targeting mechanisms cannot be justified and make the programmes unsustainable. The costs of administration could be channelled into providing a universal grant to more recipients.
- It is therefore suggested that eligibility criteria for a needs test that considers the extra needs and costs should determine social assistance incurred by the child due to his/her illness or disability. There could be a scale of benefits depending on the need.
- It is difficult to target expenditure within households, and thus to ensure that the child benefits from the social assistance. Provisioning to the primary caregiver is based on the assumption that if the household benefits, the child within the household should also benefit. Other forms of social assistance, such as vouchers and subsidies, would target the child more directly.

Unclear assessment procedures

- Due to the unclear eligibility criteria, the assessment test can be highly subjective and open to the personal interpretation of the Medical Officer.
- There is lack of training and guidelines in the assessment procedure.
- A child can only be assessed and qualify once they are one year old. This delay can cause suffering to newborn babies requiring extra care due to their disability or health condition.
- Currently the assessment is on purely medical grounds. It should also take into account the costs of the required medical treatment, the level of care required (hours and intensity), the costs of assistive devices, specialised clothing and nutritional needs, transport costs and the need for special schooling.
- There are problems identifying what constitutes 'permanent home care'. Perhaps this clause should be removed entirely, and eligibility determined by need.
- Reviewing of cases must also be examined.

Administrative problems common to all the grants

- Delays, inconsistencies, and confusion in assessments, demeaning attitudes of officials etc.
- Lack of awareness of the grants available.
- Current systems, delays, and frustrations are degrading and embarrassing for carers. Any new system must be streamlined for efficiency and must have due consideration and respect for human dignity.
- Attitudes of welfare officials contribute to the process being humiliating for the applicants. They remain disrespectful and inconsiderate towards recipients of grants.
- Delay and three-month limitation on back pay: given that applications invariably take at least four-to-five months to be processed.
- Problems with incorrect documentation.
- Lack of awareness of processing requirements and eligibility by welfare officials. This may be due to inadequate training of officials, and there needs to be standard and comprehensive training to facilitate a smooth processing procedure.
- There is need for uniform standards, assessment guidelines and procedures, with the possibility of one means test for eligibility to all the grants.
- Provincial budget allocation and administration must correlate to national standards and norms.
- Efforts must be made to educate the public on their rights, on the grants available and the procedures for accessing these.
- Lack of inter-sectoral collaboration. This is essential to the development of a holistic approach to the provision of social security. There must be the involvement of all the relevant departments, with perhaps one department to guide and co-ordinate the process.

The legislative framework that guides eligibility of the CDG excludes children with deafness, blindness, albinism, epilepsy, autism and, more especially, those with progressively disabling life-threatening genetically inherited diseases. The exclusion of these children from social security creates the impression that there are fewer children with disabilities in need of social assistance. Should these children be included within the system over the next three-year period, it will have a significant impact on the overall national Social Development Budget.

Annex I: Implementation of disability policies in national government departments

The table below provides a brief overview of the state of planning and implementation in each department. Note that there remains a tension between mainstreaming versus the specific targeting of disability. While the generic approach used by most departments suggests a leaning towards mainstreaming, there remains a danger that this is a convenient excuse to dilute the focus on disability as a measure of equity. Engagements with people in this field clearly indicate a need for creative ‘two-pronged’ approaches around policy development and implementation.

Table 19: Summary of implementation of disability policies in national government departments

Name of department	Title/description of policy/Act with disability components	Status of implementation/comments on key issues
Department of Education	<ul style="list-style-type: none"> • White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System • Guidelines document 	<ul style="list-style-type: none"> • During the year 2000, the Institute for Democracy in South Africa indicated that only 16%, of whom 4% were children with disabilities, accessed ECD services for this period. • Established the National Co-ordinating Committee for Inclusive Education in July 2001. • Two pilot projects called SCOPE are being conducted to ensure that Full Service Schools adequately include learners with disabilities who require moderate/high levels of support. • Transformation of Special Schools as Resource Centres
Department of Health	<ul style="list-style-type: none"> • White Paper for the Transformation of Health Services in South Africa 1997 • National Rehabilitation Policy 2000 • A Disability Policy is being developed by the department's Employment Equity Section • Wheelchair Survey – User Report – National Department of Health 	<ul style="list-style-type: none"> • At programme level, the department has, according the research outcomes of Research Dynamics South Africa in 2000, integrated disability within all the department programmes. • The Department has the following projects: <ul style="list-style-type: none"> – Assistive Device Project – Functional Sign Language Course – Accessibility Project – Development of Norms and Standards. – Eye care project – HIV/AIDS.

continued overleaf

Table 19 continued...

<p>Department of Social Development</p>	<ul style="list-style-type: none"> • Social Assistance Act • The White Paper for Social Welfare 	<ul style="list-style-type: none"> • Disability grant, dependency grant, and grant-in-aid. • Established assessment panels to evaluate information and determine eligibility for disability and care dependency grants. • The Department of Social Development has neither a comprehensive disability policy nor standalone strategy on disability. • The building of the Department is not accessible to disabled people. • Information dissemination has not been made accessible to disabled people.
<p>Department of Justice</p>	<ul style="list-style-type: none"> • Sexual Offences Amendment Bill 	<ul style="list-style-type: none"> • Area of childcare and protection. • Judicial protection of vulnerable persons. <p>In reality, at grassroots levels, provinces do not have the knowledge or the means to provide protection specifically aimed at people with disabilities.</p>
<p>Department of Transport</p>	<ul style="list-style-type: none"> • National Land Transport Transition Act 2000 • National Land Transport Strategic Framework • Moving South Africa Action Agenda, 1999 	<p>Capacity-building initiatives are important for all employees in the public service. This is necessary to align the new policy initiatives of government with the current skills base, which may not necessarily possess the requisite skills for meeting new political and service delivery imperatives.</p> <ul style="list-style-type: none"> • Formulated a disability strategy to address the needs of disabled passengers. • Key priority projects <ul style="list-style-type: none"> – Public Transport Subsidies – Taxi Recapitalisation – Rail safety and revival.
<p>Department of Arts and Culture</p>	<ul style="list-style-type: none"> • Does not have a finalised disability policy or a comprehensive Departmental Disability Integration Strategy. 	

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Table 19 continued...

<p>Department of Communications</p>	<ul style="list-style-type: none"> • Departmental Disability Integration Strategy • Intensive Benchmarking Study on Policy and Regulatory Disability Issues in South African Communications • Universal Access Strategy 	<ul style="list-style-type: none"> • Disability Committee has been established to influence other departmental committees and projects on disability integration issues. • Has established disability-specific as well as disability-inclusive programmes within the department. Other achievements: <ul style="list-style-type: none"> – Development of a human resource pool of skilled disabled people graduating from National Electronic Media Institute of South Africa (NEMISA), ISSA and E-learning programmes. – ICT sector representation of disabled people – Ownership and control of ICT business by disabled people. • Community radio stations produced disability-inclusive programmes incorporating disability, human rights and labour issues.
<p>Department of Defence</p>	<ul style="list-style-type: none"> • Policy Guidelines on the Prevention and Elimination of Unfair Discrimination towards People with Disabilities, approved on 20 May 2002 	<ul style="list-style-type: none"> • A Disability Section was established in January 2001 to provide comprehensive disability equality and equity planning and programming service to the department. • Spent R345,000 promoting employment equity in addition to the R1,596,551 previously reported. • Spent R72,000 on a Beginners and Intermediate Sign Language course at the Wits Language School for 11 employees • Set up a Departmental Forum for People with Disabilities.
<p>Department of Foreign Affairs</p>	<ul style="list-style-type: none"> • Employment Equity Plan • Draft Policy On Disability 	<p>Aims to achieve a target of at least 2% of the staff complement being disabled people by 2005. Relevant structures:</p> <ul style="list-style-type: none"> • The Departmental Disability Forum • Multi-Lateral Desks on Disability Rights and Social Development.
<p>Department of Environmental Affairs and Tourism</p>	<ul style="list-style-type: none"> • Draft Disability Integration Policy 	

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<p>Department of Housing</p>	<ul style="list-style-type: none"> • Draft Disability Integration Strategy • Housing Subsidy Implementation Manual and Housing Code • Human Settlement Policy and Integration 	<ul style="list-style-type: none"> • The department uses the Housing Subsidy System and Database to monitor subsidy allocations to disabled people. • The findings of the DFID-funded studies (<i>Enabled Environment: Reducing barriers for low-income disabled people</i> and <i>Enhanced Accessibility for Disabled People Living in Urban Areas: Transport</i>) are being integrated into this policy. • A target of 5% of housing subsidies has been set for disabled people. • Officials of the Sub-Directorate: Transformation attended a Disability and Equity Management Course by SAMDI.
<p>Independent Complaints Directorate</p>	<ul style="list-style-type: none"> • Has an approved Disability Policy. 	<p>It was found that most departments at the national and provincial levels do not have a specific policy on disability, with only a limited number of national departments indicating that they had departmental specific policies in place. A number of departments and provincial administrations, however, indicated that specific policies on disability were either in the process of being developed, or in draft form. The time frames for the completion of these were not mentioned.</p> <p>There are three focus areas of the strategy to implement the Disability Policy:</p> <ul style="list-style-type: none"> • to employ more disabled people • to revamp the National Office to provide easy access for disabled people and • to revise the current policy on disability
<p>Department of Labour</p>	<ul style="list-style-type: none"> • Employment Equity Act in 1998 • Code of Good Practice on the Employment of People with Disabilities • Technical Assistance Guidelines on the Employment of People with Disabilities • Skills Development Act 1998 • Skills Development Levies Act 1999 • National Skills 	<ul style="list-style-type: none"> • Short-term skills development programmes such as baking, sewing, chicken raising, coffin making are funded. • Bigger social development projects such as the Working for Water project are also funded under the Scheme and People with Disabilities can also find training and placement opportunities in these projects. • Learnership training through Sector Education and Training Authorities • The Bursary Scheme for People with Disabilities • Wage subsidy scheme • Subsidising of all the posts for placement officers

	Development Strategy	
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Department of Land Affairs	<ul style="list-style-type: none"> • Disability Policy of the department 	<ul style="list-style-type: none"> • Focuses on employment equity and removing unfair discrimination. • Four members of the Departmental Disability Forum attended the five modules of the INDS training with the Office on the Status of Disabled Persons in May and July 2002 (three of the four were disabled people).
The National Treasury	<ul style="list-style-type: none"> • The National Treasury does not have a Disability Policy, or a Departmental Disability Integration Strategy. 	<p>Two structures have been established:</p> <ul style="list-style-type: none"> • a Disability Task Team • a Disability Committee.
Department of Provincial and Local Government	<ul style="list-style-type: none"> • All stakeholders, including labour unions, adopted the Departmental Policy on Disabilities in 2001. • White Paper on Local Government: 'Developmental Local Government' • Employment Equity Plan 	<ul style="list-style-type: none"> • The department does not have an integrated disability strategy and no budget is reported for this exercise. • The department has developed a database of councillors with disabilities and their special needs. • The department produces progress reports. • Information is shared through internal newsletters and circulars.
Department of Public Enterprises	<ul style="list-style-type: none"> • A draft disability policy is in place 	<ul style="list-style-type: none"> • There is budget allocated for the implementation of disability programmes within the department and the Chief Director: Corporate Services approved this programme of action.
Department of Public Service and Administration	<ul style="list-style-type: none"> • Does not have a finalised disability policy, or a departmental Disability Integration Strategy. 	
Office of Public Service Commission	<ul style="list-style-type: none"> • Has a draft policy on the Employment of People with Disabilities 	<ul style="list-style-type: none"> • The department is in the process of constituting a task team to deal with disability issues. • The Special Programmes Officer is a member of the Interdepartmental Collaboration Committee on Disability (IDCC:D).

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<p>Department of Public Works</p>	<ul style="list-style-type: none"> • Guidelines for Environmental Accessibility in South Africa, 1999 • White Paper on Creating an Enabling Environment for Reconstruction, Growth and Development in the Reconstruction Industry, 1999 	<p>Specific policies, strategies and plans are useful to operationalise policies and legislation. The process of designing these have the effect of helping departments and administrations focus on what they need to do, in very practical terms, as well as be committed to its implementation.</p> <ul style="list-style-type: none"> • The Community Based Public Works Programme has set a target of employment of persons with disabilities at 1-3% of their staff complement. • Youth for Environmental Accessibility Programme (Y4EA) • Community Based Public Works Programme
<p>Sports and Recreation South Africa</p>	<ul style="list-style-type: none"> • Sport and Recreation Policy for People with Disabilities • The revised White Paper on sport and recreation is disability inclusive. 	<ul style="list-style-type: none"> • The department does not have a Departmental Disability Integration Strategy and no budget has been reported to facilitate this process. • Disability Sport South Africa (DISSA) was launched in June 2002 • The Paralympics Development Trust was created • In July 2002, South Africa sent a team to the Deaflympic Games for the first time.
<p>Department of Water Affairs and Forestry</p>	<ul style="list-style-type: none"> • A draft Disability Integration Policy was developed in 2001 	<ul style="list-style-type: none"> • The Employment Equity Consultative Forum (EECF) addresses disability issues. • Existing procedure manuals and guidelines for the enhancement of the implementation of INDS have been used. • A departmental Disability Action Plan has been developed.
<p>Department of Minerals and Energy</p>	<ul style="list-style-type: none"> • Mine Health and Safety Act • Mineral and Petroleum Resources Development Bill • National Small Scale Mining Framework 	<ul style="list-style-type: none"> • Less than 1% of its employees are disabled, whilst none are employed on managerial level. • External transformation by empowerment of disabled persons in mining and energy.

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