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**Employment of People with Disabilities:
The Impact of Legislation
(Southern Africa)**

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1. Introduction

Many countries throughout the world have, in recent years, adopted laws and policies aiming to promote the rights of people with disabilities and to ensure their full and equal participation in society. This has often been in response to the ILO Convention No. 159 concerning Vocational Rehabilitation and Employment of Disabled Persons (1983). Policy on employment opportunities for people with disabilities is frequently supported by legislation and implementation strategies as essential tools to promote integration and social inclusion.

Some countries in Africa have made progress in introducing disability-related legislation, but many of these laws have not yet been implemented. In other African countries, existing national laws need to be reviewed in order to achieve equalization of opportunities for persons with disabilities. Improving legislation and implementation strategies has been identified as one of the main issues to be tackled in the African Decade of Disabled Persons 1999-2009.

The effectiveness of laws in improving employment opportunities for disabled persons – whether they are vocational rehabilitation laws, quota legislation or anti-discrimination legislation – is central, not only in terms of the economic rights of disabled people, but also their broader social and political rights, which are closely linked to economic empowerment.

This country study for South Africa is part of the ILO programme component ‘*Employment of People with Disabilities – the Impact of Legislation*’. The first phase of the programme (2001-2004) aimed at enhancing the capacity of national governments in selected countries of East Africa and Asia¹ to implement effective legislation concerning the employment of people with disabilities. A knowledge base on laws and policies regarding people with disabilities was built and a Technical Consultation was held in Addis Ababa on 20-22 May 2002. Technical assistance was provided to selected national governments in implementing necessary improvements. Phase 2 of the programme (2004-2007) is extending coverage to several additional countries (Malawi, South Africa, Swaziland, Zambia in Africa and Viet Nam in Asia), with a broadened focus on provisions for vocational training and skills development. Support to countries that are in the process of improving their legislation will continue.

This country study outlines the main provisions of the laws and policies in place in South Africa concerning the employment and training of people with disabilities. An initial review of the implementation of the legislation is also provided. A concluding comment underlines the progress made in the country and points to areas that have been identified, by key stakeholders or in the literature, as in need of further improvement. It may be read in conjunction with the regional overview for this Consultation *Employment of People with Disabilities - The Impact of Legislation (East Africa), Technical Consultation Report, Addis Ababa, 20-22 May 2002, ILO 2002*.

¹ East Africa: Ethiopia, Kenya, Mauritius, Sudan, Sudan, Uganda and United Republic of Tanzania; and Asia and the Pacific: Australia, Cambodia, China, Fiji, Japan, India, Mongolia, Sri Lanka and Thailand.

2. Context

The Republic of South Africa is a country located at the southern tip of Africa; it is bordered by Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe. It has a population of 44,819,778 (2001), of which 57 per cent lives in urban areas. For decades, South Africa practiced racial segregation, followed by apartheid. The 1990s brought an end to apartheid. In 1994, the first democratic elections were held in South Africa. The African National Congress (ANC) gained the overwhelming majority and Nelson Mandela became the first Black African President of South Africa. South Africa is today a member of the Southern African Development Community (SADC).²

South Africa is classified as a country with a medium level of human development and is ranked 119 out of 177 countries on UNDP's Human Development Index (HDI) according to the UNDP Human Development Report of 2004.³ Key indicators measured to calculate the HDI are the following:

- Life expectancy at birth was 51.9 years for women and 46 for men;
- Gross enrolment ratio (combined for primary, secondary and tertiary education) was 78 per cent among boys and 77 per cent among girls;
- Per capita GDP was US\$10,070 in 2002; and
- The adult literacy rate was 86 per cent, with a slightly higher rate recorded for men (86.7 per cent) than women (85.3 per cent).

Income poverty in South Africa is much lower than in other sub-Saharan African countries. Seven per cent of the population lives under \$1 per day while 23 per cent live under \$2 per day.⁴ The official unemployment rate was 30.5 per cent in 2002, with higher figures for women (34.7 per cent) and extreme differences for different racial groups: as high as 50 per cent for Africans and as low as 6 per cent for White people.⁵ Official labour market participation rates were 63 per cent for men and 50.7 per cent for women. According to the National Human Development Report, access to jobs and level of income vary significantly with race, gender, age, and disability factors.⁶

South Africa is the country with the highest number of people living with HIV/AIDS in the world, 5.3 million, of which 2.9 million are women.⁷ About 96 per cent of the people infected with HIV/AIDS are of working age (15-65 years old) and it is estimated that 20

² SADC is a regional organization regrouping 12 Southern African countries that was originally created to reduce their dependency towards apartheid South Africa and that now promotes economic and social development.

³ UNDP, *Human Development Report 2004*, Washington, 2004. GDP is measured in purchasing-power parity (PPP) US dollars.

⁴ UNDP, *Human Development Report 2004*. UNDP uses purchasing-power parity (PPP) USD to calculate income poverty.

⁵ Data disaggregated by race corresponds to the expanded definition of employment and not the official one, in which the global unemployment rate is 41.6 per cent. See UNDP, *South Africa Human Development Report*, 2003, p.145.

⁶ UNDP, *South Africa Human Development Report*, 2003, p.20.

⁷ UNAIDS and WHO, *AIDS Epidemic Update December 2004*, Geneva, 2004, p.23.

per cent of the labour force is infected.⁸ By causing the illness and death of workers, the HIV/AIDS epidemic reduces the stock of skills and experience of the labour force, increasing the economic burden of the global population of men and women in the labour force, and the social burden of care and support of families.⁹ Moreover, the monthly income of AIDS-affected households — most of them already poor — fell by 66 per cent to 80 per cent due to coping with AIDS-related illness.¹⁰

2.1 Population of people with disabilities

2,255,982 persons (5 per cent of the population) declared they had a disability in the 2001 census. The question asked was “Does the person have any serious disability that prevents his/her full participation in life activities? None 0; Sight 1; Hearing 2; Communication 3; Physical 4; Intellectual 5; Emotional 6.”¹¹ Table 1 shows prevalence by race and gender; and we can see that prevalence is higher among Africans than other groups. Using the WHO estimates of 7 to 10 per cent, the population of disabled persons would be between 3.1 and 4.5 million.

Table 1. Prevalence of disability, by race and gender (2001)

Population group	No.			per cent		
	Male	Female	Total	Male	Female	Total
African	879 680	974 696	1 854 376	5.2	5.3	5.2
Coloured	88 583	80 095	168 678	4.6	3.9	4.2
Indian/Asian	21 550	19 685	41 235	4.0	3.5	3.7
White	92 230	99 463	191 693	4.4	4.5	4.5
Total	1 082 043	1 173 939	2 255 982	5.1	5.0	5.0

Source: Statistics South Africa (2005)

It is estimated that people with disabilities represent one per cent of the total workforce.¹² 18.6 per cent of disabled persons censused in 2001 are in employment, a proportion much lower than the 35 per cent for the total population. As seen in Table 2, the situation is much worse for women with disabilities than for men with disabilities, as it is much worse for non-disabled women than for non-disabled men.

Table 2. Employment of disabled and non-disabled people in South Africa (2001)

	Male	Female	Total
Disabled	22.0	15.2	18.6
Non-disabled	42.5	27.0	34.6
Total	41.3	26.8	33.7

Source: Statistics South Africa (2005)

⁸ UNDP, *South Africa Human Development Report*, p.148.

⁹ ILO, *HIV/AIDS and Work: Global estimates, impact and response*, Geneva, 2004, p. XI.

¹⁰ UNAIDS, *2004 Global Report on the AIDS Epidemic*, Geneva, 2004, p.45.

¹¹ According to the Population Census 2001. See Statistics South Africa, *Prevalence of Disability in South Africa*, Pretoria, 2005.

¹² Commission for Employment Equity, *Annual Report 2002-2003*, p. viii.

Table 3. People with disabilities aged 20 or older with no schooling (2001)

Population group	Male	Female	Total
African	35.3	41.8	38.8
Coloured	19.1	21.5	20.3
Indian/Asian	10.0	22.5	16.0
White	6.3	7.0	6.7
Total	30.5	36.7	33.8

Source: Statistics South Africa (2005)

Many people with disabilities live in areas where the infrastructure for the provision of basic services is the weakest. Hence, 78 per cent of disabled persons have access to piped water (compared to 85 per cent for non-disabled), and 62 per cent to electricity (compared to 70 per cent for the general population). People with disabilities have less access to education than non-disabled persons. Table 3 shows the proportion of people with disabilities with no schooling at all. Once again, the situation is much worse for women and Africans with disabilities. One disabled person out of three did not go to school, more than double the proportion in the total population (15 per cent).

Several initiatives have been undertaken by the Government since 1994 in an attempt to redress the problem of unemployment of persons with disabilities in a more comprehensive manner. Legislation was enacted, policy documents were issued and a code of good practice was developed. These are described in the following sections.

3. Legislative framework

Since the end of apartheid in 1994, South Africa has adopted several new laws dealing with disability issues. Anti-discrimination provisions can be found in the Constitution of the Republic of South Africa 1996 and in laws in the fields of employment (Labour Relations Act, 1995 and the Employment Equity Act, 1998) and education (the South African Schools Act, 1996 and the Higher Education Act, 1997). Comprehensive anti-discrimination legislation was enacted with the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. Other legislation addresses the issues of accessible buildings and disability grants.

3.1 Constitution of the Republic of South Africa, 1996

The Constitution of 1996 states that *“everyone is equal before the law and has the right to equal protection and benefit of the law”*. The Constitution contains a Bill of Rights (Chapter 2) that guarantees fundamental rights to all citizens, including the right to fair labour practices and the right to form and join a trade union, the right to basic and further education, *“the right to have access to health care services”*, the right *“not to be deprived of freedom arbitrarily or without just cause”*, freedom of expression and association, and the right to vote. This is qualified by a provision in Section 47 on eligibility for elections, which reads: *‘every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Assembly, except... (d) anyone declared to be of unsound mind by a court of the Republic...’*

An anti-discrimination clause is included in Section 9, on equality. It explicitly prohibits any form of unfair discrimination. Discrimination based on disability is specifically mentioned: *‘(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of [the preceding] subsection.’* The Constitution requires the enactment of national legislation to prevent or prohibit unfair discrimination. The *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* (see Section 3.2) gives effect to this provision.

The Constitution also provides for the Pan South African Language Board *“to promote and create conditions for the development and use of sign language”* (Section 6). This provisions should help foster language equity, even though it stops short of recognizing it as an official language.

3.2 Promotion of Equality and Prevention of Unfair Discrimination Act, 2000

The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 prohibits unfair discrimination on the grounds of disability, amongst other grounds, and aims at *‘providing for measures to facilitate the eradication of unfair discrimination, hate speech and harassment, particularly on the grounds of race, gender and disability’*. The Act applies to all and under all circumstances, except for matters falling under the Employment Equity Act, described in next section (Section 5).¹³

¹³ Section 5 explicitly says that in cases of conflict between the Act and any other law, except for the Constitution, provisions of this Act prevail.

According to the Act, no person may unfairly discriminate against someone on the grounds 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' (see Section 3.6);*
- *'failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons'.*

The burden of proof is placed on the person alleged to have committed a discriminatory act, thereby eliminating one of the greatest obstacles in fighting discrimination – having to prove one has been subject to discrimination, which is often difficult – sometimes impossible.¹⁴ The Act also states that affirmative action measures aimed at improving the situation of disadvantaged groups are not considered to be unfair discrimination.

The State and institutions performing public functions *"have a duty and responsibility to promote equality in respect of race, gender and disability"* and *"must audit laws, policies and practices... enact appropriate laws, develop progressive policies and initiate codes of practice [and] adopt viable action plans"* with the view to eliminate discrimination on the grounds of race, gender and disability. The Act requires all Ministers to implement measures *"within available resources"* to eliminate *"any forms of unfair discrimination or the perpetuation of inequality in any law, policy or practice for which those Ministers are responsible"* and to prepare and implement equality plans in that sense. Those plans *"must include a time frame for implementation"* and must be submitted to the South African Human Rights Commission (described below in Section 4.2.8) within two years after the commencement of the Act. The Human Rights Commission may request any State entity or 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"*.

The Act (Section 21) empowers equality courts to, notably, issue orders to *'make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question; for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question; directing the reasonable accommodation of a group or class of persons by the respondent'*. An equality court is any court of law where a magistrate has been designated by the Minister of Justice as presiding officer *"by reason of his or her training, experience, expertise and suitability in the field of equality and human rights"* (Sections 16 and 31).

3.3 Labour Laws

The **Employment Equity Act, 1998** (EEA) seeks to promote equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and to implement affirmative action measures to address the disadvantages in employment encountered by designated groups. The Act defines the designated groups as black people, women and persons with disabilities. It defines disabled persons 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'*

¹⁴ On this matter, see ILO, *Achieving Equal Employment Opportunities for People with Disabilities through Legislation*, Geneva, 2004, p.33.

The Act prohibits unfair discrimination in the workplace: *‘No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language and birth’*. Under the Act, harassment of an employee is viewed as a form of unfair discrimination. The anti-discrimination clause applies to job applicants just as much as to existing employees. The Act places the burden of proof upon the employer, thereby eliminating one of the greatest obstacles in fighting discrimination – having to prove one has been subject to discrimination, which is often difficult – sometimes impossible.¹⁵

In order to achieve employment equity, certain employers, referred to as “designated employers”, must implement affirmative action measures for people from amongst the designated groups. Designated employers are public employers and private employers identified under the Employment Equity Act on the basis of the number of employees employed (50 or more) or based on turnover thresholds if they have less than 50 employees.¹⁶ These affirmative action measures include measures to:

- *‘identify and eliminate employment barriers, including unfair discrimination;*
- *create diversity in the workplace based on equal dignity and respect of all people; and*
- *make ‘reasonable accommodation’ for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer...*
- *implement appropriate training measures, including measures... for skills development’*

In addition, the Employment Equity Act states that *‘the measures can be designed to ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels, and the training and development of people from designated groups. They can include preferential treatment and numerical goals, but cannot include quotas’*. Designated employers must also create an employment equity plan.

The Act also establishes (Chapter IV) the Commission for Employment Equity. The Commission advises the Minister of Labour on equity issues, including the development of codes of good practice and the implementation of the Act. It must submit an annual report to the Minister. It “may call for written representations by members of the public” and hold public hearings (Section 32) The Commission comprises 9 members, including two from organized labour and two from organized business.

A Code of Good Practice on the Employment of People with Disabilities, arising out of the Employment Equity Act, 1998, was officially launched in 2002. The Code is non-binding and provides guidelines to employers and employees on promoting equal opportunities and treatment for people with disabilities. The Code covers the definition of disability; reasonable accommodation for people with disabilities; avoiding unfair discrimination and achieving employment equity during the employment cycle from recruitment to termination as well as employment benefits and employment equity planning.

¹⁵ On this matter, see ILO, *Achieving Equal Employment Opportunities for People with Disabilities through Legislation*, Geneva, 2004, p.33.

¹⁶ Those thresholds are defined in Schedule 4 of the Act and vary by economic sector.

The **Labour Relations Act, 1995** addresses the issue of dismissal of employees and states that every employee has the right not to be unfairly dismissed or subjected to unfair labour practice. In Chapter 8, discrimination on the grounds of disability is included in the definition of unfair labour practice. According to the Act, a dismissal is automatically unfair, if the reason for the dismissal is *‘that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion...’* Despite the preceding clause, however, a dismissal is considered fair if it *“is based on an inherent requirement of a particular job”*, but the burden of proof is placed on the employer. If a dismissal is declared unfair by a Labour Court or an arbitrator, the latter may order the reinstatement of the employee or a compensation to be paid to that employee.

Schedule 8 of the Act contains a **Code of Good Conduct on Dismissals** that contains guidelines on dismissals of people who are injured, ill or acquire a disability. According to the Code, employers should try to find alternative employment for the person or adapt the duties or work environment to make it suitable for the person who acquired a disability, before considering dismissal.

The Code of Good Conduct may be used by an arbitrator or Labour Court when looking at an allegation of unfair dismissal. Section 188 (2) of the Act says that *“any person considering whether or not the reason for dismissal is a fair reason or whether or not the dismissal was effected in accordance with a fair procedure must take into account any relevant code of good practice issued in terms of this Act”*, with a footnote referring to the Code of Good Conduct contained in Schedule 8.

The **Public Service Act, 1994** regulates the South African public service, including the conditions of employment, terms of office, discipline, retirement and discharge of members of the public service. Section 10 and 11 of the Act discuss appointments to all departments of the Public Service. In filling vacancies, *“the evaluation of persons shall be based on training, skills, competence, knowledge and the need to redress the imbalances of the past to achieve a public service broadly representative of the South African people, including representation according to race, gender and disability.”* However, no one can be appointed unless *“in so far as his or her condition of health is concerned, complies with such requirements as may be prescribed.”*

The Compensation for Occupational Injuries and Diseases Act, 1993 provides for medical cover and compensation of occupational injuries or diseases in the workplace. The Act ensures that a worker is entitled to claim for loss of wages while temporarily disabled;¹⁷ medical expenses related to the occupational injury or disease, and compensation for any permanent disablement as a result of injury or diseases. In the case of permanent disablement, the Compensation Commissioner allocates a lump sum or a pension, calculated according to the degree of permanent disablement.

3.4 Skills training

The purposes of the **Skills Development Act, 1998** are: to develop the skills of the labour force in order to improve their productivity, prospects for employment and quality of life as well as to promote self-employment; to increase investment in education and training; to improve training and employment prospects of groups who were disadvantaged due to discrimination; and to encourage employers to provide training to their employees.

¹⁷ In this case, the employee would receive 75 per cent of his wage at the time of the accident for the period he/she is temporarily disabled.

The Act establishes the National Skills Authority (NSA) and provides for the establishment of Sector Education and Training Authorities (SETAs), described below in Section 4.2.2. The NSA has to advise the Minister of Labour on the elaboration of a National Skills Development Strategy that will elaborate measures to achieve the objectives of the legislation (see Section 4.1.6). The Act also establishes a National Skills Fund that shall be used for projects identified as national priorities in the National Skills Development Strategy. The Fund is administered by the Department of Labour and not more than two per cent of the levies collected can serve for administering the fund.

The **Skills Development Levies Act, 1999** requires all private employers to pay each month a levy of an amount equivalent to one per cent of the employer's monthly payroll. For employers falling within a SETA (see Section 4.2.2 for the list of SETAs), 80 per cent of the levy goes to the SETA while the remaining 20 per cent goes to the National Skills Fund. For employers not falling under the jurisdiction of a SETA, the full amount goes into the National Skills Fund. For the financial year 2000-2001, 180 million Rand were collected in levies.¹⁸

3.5 Education Laws

The **Higher Education Act, 1997** states that admission policies in higher education institutions “must provide for the redress of past inequalities and may not unfairly discriminate in any way”, although it does not define what the “past inequalities” are.¹⁹ The Act establishes the Council for Higher Education, whose membership must be, as much as possible, representative in terms of race, gender and disability.

The **South African Schools Act, 1996** requires regular public schools to provide, wherever reasonably possible, education and “relevant support services” for learners with special educational needs. Public schools are required by law to admit all learners and provide the necessary educational requirements without discrimination. School facilities must also be made physically accessible to people with disabilities. The Act grants sign language with the status of an official language in the public education system.

3.6 Building Regulations

The **National Building Regulations (1988)**²⁰ include provisions such as ramps, accessible toilets, wheelchair accommodations in auditoriums and access to buildings from parking areas. They apply to all new buildings and buildings undergoing alterations, except for residential buildings not equipped with lifts. The Regulations are complemented with the non-binding Code of Practice SABS 0400 of the South African Bureau of Standards that sets guidelines for the application of the regulations.

3.7 Social security laws

The **Social Assistance Act, 2004** provides for disability grants to people with disability over the age of 18 who are “*unfit to obtain by virtue of any service, employment or*

¹⁸ Department of Labour, National Skills Fund Annual Report 2000-2001.

¹⁹ These are better defined in the Education White Paper 3 (described in Section 4.1.4). People with disabilities, along with women and black students comprise the people victims of existing inequalities. In other pieces of legislation, “imbalances of the past” refer to discrimination based on the grounds of race, gender and disability.

²⁰ Government Gazette No. 11333, Notice No R. 1081 of 10 June 1988.

profession the means needed to enable him or her to provide for his or her maintenance”. It also provides care-dependency grants to parents of severely mentally or physically disabled children and grants-in-aid to people who require attendant care. These grants are distributed by the department of Social Development (see Section 4.2.3).

3.8 International commitments

South Africa has ratified all eight ILO Fundamental Conventions: the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); and the Worst Forms of Child Labour Convention, 1999 (No. 182). It has not yet ratified the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No 159). In a report to the ILO in 1998, the Government of South Africa mentioned that budgetary constraints and lack of personnel made it difficult to undertake actions in the areas provided for by Convention 159.²¹

²¹ ILO, *General survey on the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983*, Report submitted to the International Labour Conference, Geneva, 1998.

4. Implementation

4.1 Policy

In South Africa, official policy statements are made in the form of White Papers. White Papers on an Integrated National Disability Strategy (1997), Affirmative Action in the Public Service (1998), Social Welfare (1997) Special Needs Education (2001) and Higher Education (1997) have been formulated and adopted by the Government and they all contain provisions for people with disabilities. A National Skills Development Strategy 2001-2005 was also elaborated to achieve the objectives set out in the Skills Development Act described above (Section 3.4) and has just been replaced by a new strategy for the period 2005-2010.

4.1.1 White Paper on Integrated National Disability Strategy, 1997

This disability policy was drawn up in consultation with organizations of and for people with disabilities. The Office on the Status of Disabled Persons (OSPD), the main governmental body dealing with disability issues (see Section 4.2.1), coordinated the drafting of the strategy and is responsible for monitoring its implementation.

The Strategy recognizes that “disabled people should enjoy equal access to fundamental rights” and that DPOs must be involved in decision-making processes. The objectives of the Integrated National Disability Strategy are:

- To facilitate the integration of disabilities issues into government developmental strategies, planning and programmes;
- To develop an integrated management system for the coordination of disability planning, implementation and monitoring in the various line functions at all spheres of government;
- To develop capacity building strategies that will enhance Government’s ability at all levels to implement recommendations contained in the White Paper;
- To implement a programme of public education and awareness-raising aimed at changing fundamental prejudices in South Africa.

The White Paper contains policy guidelines concerning: prevention; public education and awareness raising; health care; rehabilitation; barrier free access; transport; communications; data, information and research; education; employment; human resources development; social welfare and community development; social security; housing; sport and recreation.

As regards employment, the White Paper aims at narrowing the unemployment gap between non-disabled and disabled job-seekers; creating conditions to broaden the range of employment options for disabled people so as to provide them with real possibilities of occupational choice; and facilitating the vocational integration of people with disabilities, whatever the origin, nature or degree of the disabilities. The White Paper acknowledges the potential of micro, small and medium sized enterprise (MSME) development for income generation for people with disabilities and mentions that special induction training needs to be arranged for personnel working in personnel/recruitment units of departments or agencies to ensure that they understand the options available in the placement and promotion of disabled job seekers and workers. It declares that “*employment opportunities within a sheltered environment should be available to people who, because of their disability, are unable to obtain or keep an ordinary job*” and recommends that sheltered workshops be subsidized according to their working conditions and performance in terms of placing workers into open employment. It adds

that sheltered employment “*should always aim to prepare workers for work in the open labour market*” and that working conditions should always be fair.

The policy advocates the inclusion of people with disabilities into mainstream vocational training and recommends that “*the Department of Labour, in consultation with the Department of Foreign Affairs, the Office on the Status of Disabled Persons, Office of the Deputy President, the South African Federal Council on Disability (SAFCD), National Economic Development Labour Council (NEDLAC), the National Training Board and other stakeholders, facilitate the urgent ratification of ILO Conventions Nos. 142 and 159, including the development of a national programme of action for vocational guidance, training and rehabilitation of people with disabilities.*”

The *Integrated National Strategy on Disability* states that CBR “*should form the basis of the national rehabilitation strategy*”.

4.1.2 White Paper on Affirmative Action in the Public Service, 1998

The White Paper was developed in parallel with the Employment Equity Act, following consultations with key stakeholders, including disability organizations and organized labour. It aims to address the issue of inequality in the public service for Black people, women and people with disabilities. It sets a target of 2 per cent of the public service jobs to be occupied by people with disabilities by 2005 (compared to a level of 0.02 per cent in 1997) and a long-term goal of 5 per cent.

The policy provides for the development of affirmative action programmes that include time-bound objectives and that clearly state the responsibility of each “key player” (such as line managers, human resources units) in achieving them. It mandates all departments to keep statistics disaggregated by race, gender and disability, notably on type of employment, hiring and promotion of employees, and skills training for employees. Departments must also undertake a review of their management practices to see whether any are conducive to or counteract affirmative action.

4.1.3 Education White Paper 6 on Special Needs Education: Building an Inclusive Education and Training System, 2001

This White Paper was elaborated following the publication in 1997 of the report of National Commission on Special Education and Training and National Committee on Education Support, drawing on the conclusions and recommendations of the report.

The White Paper identifies inclusive education and training as the official policy to be pursued by South Africa. 500 primary schools will gradually be converted into full-service schools, “that will be equipped and supported to provide for the full range of learning needs among all our learners”. Learners with low support needs will be accommodated in ordinary schools, learners with moderate support needs in full-services schools, while learners with high-intensive support needs will remain in special schools. District-based support teams will also be established to support neighbouring schools.

4.1.4 Education White Paper 3: A Programme for the Transformation of Higher Education, 1997

This policy document outlines South Africa’s vision of the modernization of its higher education system. It stresses the need for an “increased and broadened participation”, an “increased access for black, women, disabled and mature students”, the eradication of all forms of unfair discrimination and the generation of “new curricula and flexible models

of learning and teaching, including models of delivery, to accommodate a larger and more diverse student population.”

4.1.5 White Paper for Social Welfare, 1997

This White Paper recognizes that “disability in a family increases the impact of poverty” while poverty contributes to the incidence of illness and disability. It states that “Governmental and non-governmental organisations will create equal opportunities for people with disabilities. Appropriate programmes will be developed to enhance their independence and promote their integration into the mainstream of society.”²² On employment, the White Paper calls for special programmes to create protected employment for people who cannot work in the open labour market. These programmes would have to run parallel to other measures to create equal opportunities in the open labour market and would include capacity-building components “to facilitate the transition from employment in protective workshops to the open labour market for those persons who have the potential to do so.”²³ The document also advocates inclusive education and recognizes “the right of people with disabilities to represent themselves in all processes and structures of decision making which affect them”.

4.1.6 National Skills Development Strategy 2001-2005 and 2005-2010

The *National Skills Development Strategy 2001-2005* was drafted by the Department of Labour on the advice of the National Skills Authority, in conformity with the Skills Development Act (previously described in 3.4), and launched in 2001. Its objectives, in line with those of the Skills Development Act, are to: develop a culture of high quality life-long learning; foster skills development in the formal economy for productivity and employment growth; stimulate and support skills development in small businesses; promote skills development for employability and sustainable livelihoods through social development initiatives; assist new entrants into employment. The strategy comprises equity targets for disadvantaged groups: 85 per cent of the beneficiaries should be black; 54 per cent female; and 4 per cent people with disabilities.

In order to achieve these targets, social development projects are funded under the National Skills Fund. Social development projects are “government or community driven initiatives for the delivery of basic services, products and public infrastructure that can also provide employment for local communities.”²⁴ In the year 2003-2004, 1,679 people with disabilities, out of a total of more than 130,000 unemployed people, have benefited from these social development projects.²⁵ However, available data shows that equity targets – and in particular targets for people with disabilities – are so far not being met.²⁶

²² Section 28b.

²³ Section 117.

²⁴ Department of Labour, *National Skills Development Strategy Implementation Report 2002-2003*, p.35.

²⁵ Department of Labour, *Annual Report of the Department of Labour 1 April 2003-31 March 2004*, p.152.

²⁶ Department of Labour, *National Skills Development Strategy Implementation Report 2002-2003*, Chapter 8.

The Government has just launched a new NSDS for the period 2005-2010.²⁷ The Strategy is mostly an adjusted version of the 2001-2005 Strategy and the five objectives are slightly changed to: prioritising and communicating critical skills for sustainable growth, development and equity; promoting and accelerating quality training for all in the Workplace; promoting employability and sustainable livelihoods through skills development; assisting designated groups, including new entrants to participate in accredited work, integrated learning and work-based programmes to acquire critical skills to enter the labour market and self-employment; and improving the quality and relevance of provision.

It keeps the equity targets of the preceding one and, to accelerate their achievements, adds as a principle that *“learners with disabilities to be provided with reasonable accommodation such as assistive devices and access to learning and training material to enable them to have access to and participate in skills development”*, but does not elaborate further.

4.2 Institutional framework

4.2.1 The Office on the Status of Disabled Persons (OSDP)

The Office on the Status of Disabled Persons (OSDP) was created in 1997 in parallel with the development of the Integrated National Disability Strategy (White Paper, discussed above in Section 4.1.1). It is located in the President’s Office and has Disability Desks in all provinces, in the Premiers’ Offices. The function of the Office is to advise Government departments and provinces on policy development for disabled people, monitor the implementation of policies, establish and maintain a database on matters relating to disability and conduct public education and awareness campaigns. It is responsible for monitoring the implementation of the 1997 Integrated National Disability Strategy and to ensure that Departments implement the recommendations formulated in the White Paper.

4.2.2 The Department of Labour

The Department of Labour is in charge of public employment services, which are provided in labour centres. The labour centres register work seekers and employment vacancies. They assist people in finding employment, entering special education and training programmes, starting income-generating projects and participating in special employment programmes.

The Department of Labour assists disabled people to access support services, to gain interview skills, job search skills, and time-management and communication skills. Its approach is to emphasise the person’s abilities and to place work seekers with disabilities in the open market whenever possible. The Department also subsidizes the salaries of placement officers in the employment of the South African National Council for the Blind, the Deaf Federation of South Africa and the National Council for the Physically Disabled. The Department also subsidizes 13 sheltered employment facilities.²⁸

A Skills Development Planning Unit, within the Department of Labour, functions to analyse the labour market situation in order to determine skills needs in the country, to assist in the formulation in the national skills development strategy and sector skills

²⁷ The new Strategy begins on 1 April 2005, as the 2001-2005 Strategy was ending in March 2005.

²⁸ Department of Labour, Annual Report 2004, p.82.

plans, and to provide information on skills needs to the Minister, the NSA, SETAs, other state organs and training providers.²⁹

National Skills Authority

The National Skills Authority (NSA) was established by the Skills Development Act of 1998, described in Section 3.4. Its functions are to advise the Minister of Labour on a national skills development policy and strategy and to report on its implementation (the Skills Development Strategy is described in Section 4.1.6). The Authority may also advise the Minister on regulations to be made regarding skills training.

The Board consists of 25 voting members and five non-voting members. Of the voting members, there are five representatives of workers' organizations, five representatives of employers' organizations, a woman representing the interests of women, a person who represents the interests of the youth and one disabled person representing people with disabilities.³⁰

Sector Education and Training Authorities (SETAs)

The Sector Education and Training Authorities (SETAs) are training authorities with jurisdiction over a particular sector of the economy. There are 25 SETAs, all established in 2000, in the following sectors: banking; chemical industries; clothing, textile, footwear and leather; construction; diplomacy, intelligence, defence and trade and industry; education, training and development practices; energy; financial and accounting services; forest industry; food and beverage manufacturing; health and welfare; insurance; information systems and communication technologies; local government and water; media, advertising, publishing, printing and packaging; manufacturing, engineering and related; mining and minerals sector; primary agriculture; police, private security, legal and correctional services; public service sector; services; secondary agriculture; transport; tourism and hospitality; and wholesale and retail.

In setting up SETAs, the Minister had to take into account the organizational structure of workers' and employers' organizations in closely related sectors, as well as any consensus that exists between the two groups and the Government as to the definition of a sector. SETA members include only representatives of workers, employers, the Government and, if appropriate to the sector, professional lobbies and bargaining councils with jurisdiction in the sector.³¹ These constituencies must, however, make sure their representation in every SETA is representative in terms of race, gender and disability.³²

SETAs are required to develop and implement a sector skills plan in conformity with the National Skills Development Strategy. Their functions include the promotion of learnerships,³³ notably by identifying workplaces for practical work experience and

²⁹ Skills Development Act, Section 22.

³⁰ Skills Development Act, 1998, Section 6.

³¹ Skills Development Act, 1998, Sections 9 and 11.

³² Skills development Act, Section 13 (4).

³³ A learnership is a contract between a learner, a training provider and an employer. The learnership enables the learner to receive training and gain work experience.

supporting the development of learning material.³⁴ SETAs may also create learnerships that would include a training component and a work experience component. SETAs fund skill programmes that are in accordance with their sector skill development plan and the national skills development strategy by providing grants to firms that either enter a learnership programme or that develop a Workplace Skills Plan to improve the training of their employees.

Commission for Employment Equity

The Commission for Employment Equity is an advisory body established in 1999 following enactment of the Employment Equity Act of 1998. The Commission advises the Minister on equity issues, including the development of codes of good practice and the implementation of the Employment Equity Act. It must submit an annual report to the Minister. The Commission comprises nine members, including two from organized labour and two from organized business.

4.2.3 Department of Social Development

Persons with severe disabilities can be accommodated at sheltered workshops subsidized by the Department of Social Development.³⁵ In 1997, a total of 179 sheltered workshops as well as 111 homes for persons with disabilities were available countrywide.³⁶ The Department of Social Development, formally called the Department of Welfare, has initiated an interdepartmental consultative process for the transformation of sheltered workshops, aiming at a comprehensive model for the socio-economic integration of people with disabilities. The objective is to transform the sheltered workshops into viable and self-supporting ventures in line with the policy objectives contained in the Integrated National Disability Strategy and the White Paper for Social Welfare, described above in Sections 4.1.1 and 4.1.6. The transformation process has not yet been undertaken “due to lack of capacity”.³⁷ The Department also administers the disability grants, provided for in the Social Assistance Act (see Section 3.7).

4.2.4 The Department of Health

The Department is responsible for medical rehabilitation and prevention of disabilities. Free hospital services for people with disabilities were introduced in July 2003. The Department distributes assistive devices. More than 20,000 wheelchairs and 10,000 devices were given during the five-year period leading to 2004.

4.2.5 Department of Education

The Department of Education has a Directorate for Inclusive Education whose purpose is “to manage the development, evaluation and maintenance of policy, programmes and systems for learners with special learning needs”. Its functions are to “develop, evaluate and maintain policy, programmes and systems for ordinary learners, learners with special learning needs and, education auxiliary services”.

³⁴ Skills Development Act, 1998, Section 10.

³⁵ Sheltered employment factories do not operate under any legislation.

³⁶ South Africa Yearbook 1998, as quoted in <http://www.signgenius.com/info-statistics3.shtml>.

³⁷ Department of Social Development, Annual Report 2003-2004, p.54.

At the beginning of 1997, the National Commission on Special Needs in Education and Training (NCSNET) and National Committee for Education Support Services (NCESS) were set up by the Department of Education. These bodies were responsible for making policy recommendations to the Government on the inclusion of learners with special needs in education and training within a single equitable education system. Their report was published in 1997 and their recommendations were incorporated into a policy on special needs education contained in White Paper 6, described above in Section 4.1.3.

4.2.6 Colleges and Universities

The University of the Witwatersrand established the Disabled Students' Programme (DSP) in 1986 to address the academic and non-academic needs of people with disabilities. The services offered to persons with disabilities include: brailing; a reading service for blind students; sign language interpreters; a computer laboratory and computer training. The University's School of Education offers an Advanced Certificate in Education with specialisations in Deaf Education and in Learners with Special Education Needs, as well as a B. Ed. Diploma with the same specializations. Other universities offer Certificates and Degrees with specialization in Special Needs Education, as more and more qualified teachers are needed with the country moving towards inclusive education – the official policy pursued by the Government in accordance with White Paper 6 on Special Needs Education (see Section 4.1.3).

There are two special colleges for people with disabilities in South Africa.³⁸ The Access College is a business college that provides training and placement in employment for people with disabilities in South Africa, which was founded in 1983, in Johannesburg. Its task is to prepare disabled college students for the open labour market. More than 1000 people have graduated since 1983. Seventy per cent of the graduates are employed in the open labour market.³⁹

Optima College is a tertiary education institute for people with visual impairment. It offers various courses, including in computer training/programming, Braille reading and life skills. The College is located in Pretoria and run by the South African National Council for the Blind, described below in Section 4.5.3.

4.2.7 South African National AIDS Council

The South African National AIDS Council is the main advisory and advocacy body for all matters related to HIV/AIDS. It advises the Government on HIV/AIDS policy and monitors the implementation of the *HIV/AIDS/STD Strategic Plan for South Africa 2000-2005*. There are 16 civil society representatives on the Council, including one representative of each of the following: people with disabilities, women, youth, trade unions and "business".

³⁸ In writing this report, information was found on those two colleges, but there might be others.

³⁹ Fasset, *Fasset assists the disabled gain access to the labour market*, http://www.fasset.org.za/news/press_2003_12_08b.htm.

4.2.8 South African Human Rights Commission

The Commission was launched in 1996⁴⁰ and comprises 10 members, appointed by the President on recommendation of a multi-party Parliamentary committee and is independent from all organs of the State. The Commission promotes respect for human rights and monitors the human rights situation in the country. In this respect, it must submit to the President and the Parliament quarterly reports that notably 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.”⁴¹ It has the power to investigate and report on the observance of human rights and to “take steps to secure appropriate redress where human rights have been violated”.⁴² The Commission advises the Government on human rights matters.

4.3 Enforcement

The laws can be enforced through the courts or through the Human Rights Commission. Voluntary organizations report incidences of violation. There have not been many cases in which disabled people have used the legislation. Disabled people can receive legal aid from the State to pursue their case in court.

The Commission for Employment Equity is in charge of monitoring the implementation of the EEA. In its 2002 Annual Report, it says that “The reporting of data on employees with disabilities by employers is of a poor standard. Very few employers managed to report on flow data, such as recruitment and termination of employees with disabilities.” However, reports from employers identify “working environment and facilities “(i.e. access to buildings for people with disabilities, ablution facilities for employees with disabilities, work environment unsuitable for the employment of women) as the main barrier to employment equality. Some departments in the public service advertise vacancies within organizations of/for people with disabilities. Some also contact the OSDP.

4.4 Consultative mechanisms

The National Coordinating Committee on Disability (NCCD) was established in 1993 to serve as a coordinating advisory body to the Government on disability matters (in line with the UN Standard Rules for the Equalization of Opportunities for Disabled People). Membership of the NCCD consisted of key government departments, national disability service/welfare organizations and national DPOs.

The South African Federal Council on Disability (SAFCD) replaced the NCCD as the main disability advisory body for the Government, having been declared “the recognised structure interacting with Government on disability issues”.⁴³ The SAFCD, a non-State

⁴⁰ The Constitution of 1993 (Sections 115 to 118) provided for the establishment of the SAHRC. Following that, the Human Rights Commission Act, 1994 was adopted but the Commission only became into existence in 1996. Sections 181 and 184 of the Constitution of 1996 also discuss the SAHRC.

⁴¹ Promotion of Equality and Prevention of Unfair Discrimination Act 2000, No. 4 of 2000, Section 28.

⁴² Constitution of 1996, Section 184.

⁴³ Integrated National Disability Strategy, Chapter 1.

institution, brings together most national organizations of and for people with disabilities, including most of those described below in Section 4.5, to make a fully representative body of the non-governmental disability sector. It provides a consultative and advisory role to government and a coordinating role to member organizations.

DPOs, workers' and employers' organizations are all represented on South Africa's National Economic, Development and Labour Council (NEDLAC). Founded in 1995, the Council is the main social dialogue institution of South Africa and regroups four constituencies: Government (coordinated by the Department of Labour), employers, workers and community (youth, women and people with disabilities). The functions of NEDLAC are to: "strive to promote the goals of economic growth, participation in economic decision-making and social equity; seek to reach consensus and conclude agreements on matters pertaining to social and economic policy; consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament; consider all significant changes to social and economic policy before it is implemented or introduced in Parliament; encourage and promote the formulation of coordinated policy on social and economic matters".⁴⁴ Disabled People South Africa (DPSA) is on the Council, as well as the main federations of trade unions and the main employers' organizations.

4.5 Associations of /for Persons with Disabilities

4.5.1 Cross-disability

Disabled People South Africa (DPSA) was formed in 1984 by disabled persons who saw the need for a representative body to plan and implement programmes of benefit to disabled people. It has offices in every province. DPSA has nominated five disabled members in the ANC National Assembly list, who were then elected as Members of Parliament in the 1999 election.

DPSA operates the following programmes: Enterprise Development Programme; Membership and Policy Development Programme; Disabled Women's Development Programme; Disabled Youth South Africa and Computer Training Programme. The Enterprise Development Programme provides financial support to entrepreneurs with disabilities to support business development.

4.5.2 Persons with Hearing Disability

The Deaf Federation of South Africa (DEAFSA) is a coordinating, umbrella organization that promotes the interests of persons with hearing disabilities on a national level. Founded in 1929, DEAFSA currently has nine Deaf Provincial Federations affiliates throughout South Africa.

The Kwa Zulu Natal Deaf Association (KZNDA), founded in 1932, provides specialized services, literacy and life skills training to deaf people in the province of Kwa Zulu Natal.

4.5.3 Persons with Visual Disability

The South African National Council for the Blind, The Natal Society for the Blind, the National Organisation of the Blind in South Africa (NOBSA); The South African Blind Worker Organisation of South Africa (SABWO) and Tape Aids for the Blind provide support and services for persons with visual disability.

⁴⁴ NEDLAC Act, 1994, Section 5.

The South African National Council for the Blind (SANCB) provides rehabilitation, education and training services as well as assistive devices. It aims at furthering the participation of visually impaired persons in the social and economic development, and to participate in the prevention of blindness and the restoration of sight. SANCB runs Optima College, described earlier in Section 4.2.6, and some special schools for blind people.

The Natal Society for the Blind was formed in 1919 to assist blind and partially sighted throughout the province of KwaZulu-Natal. The Society provides services in: formal and informal employment including small business development; rehabilitation; education and skills training; accommodation and recreation. It provides care services to more than 150 people every month.

Blind SA, formally known as South African Blind Workers Organisation (SABWO), works on advocacy, study bursaries, loan facilities, Braille printing and consultancy, while its primary objective is to find suitable work for trained blind people; it also assists workers to retain employment and to gain promotion through training. It has branches in eight provinces.

Tape Aids for the Blind produces and provides recreational and educational books and magazines on tape for blind and print-handicapped people.

4.5.4 Persons with Mental health disability

The South African Federation for Mental Health runs an advocacy programme to develop the concept of self-representation by people with severe mental and/or intellectual disabilities. Other South African associations run projects for persons with mental disabilities, including the Down Syndrome Forum of South Africa and the Avril Elizabeth Home for the Mentally Handicapped.

4.5.5 Persons with Physical Disability

The National Council for Persons with Physical Disabilities provides training, information, social, medical, employment placement and rehabilitation services. It also coordinates several special schools and plays an important role in advocating equal opportunities for persons with physical disability. Services are provided by 90 Regional and Branch Offices at grassroots level.

The Quadriplegic Association of South Africa (QUASA) manages a Fund to finance education and training for disabled people, among other projects.

5. Concluding comment

South Africa is very well advanced in terms of anti-discrimination legislation, due in great part to its apartheid past and the desire to correct past inequalities. The Constitution and the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 provide for a general anti-discrimination framework while specific anti-discrimination provisions exist in labour and education legislation. Its accessibility legislation has been qualified as “deficient”, however, by the South African Human Rights Commission and it is not fully enforced, resulting in many inaccessible buildings; this legislation could be improved.⁴⁵ Even a lot of government buildings are reported to be inaccessible to disabled persons.⁴⁶

Disability issues have been mainstreamed into several policy documents, notably those concerning to skills training and social welfare while disability-specific policies and tools, such as the *White Paper on Integrated National Disability Strategy, 1997* and the *Code of Good Practice on the Employment of People with Disabilities* assure that disabled people’s specific needs are addressed. The main policy area where disability has not yet been mainstreamed is in HIV/AIDS policy, although people with disabilities are represented in the National AIDS Council. The need to specifically target people with disabilities in their HIV/AIDS campaigns has been highlighted by a recent study which has shown that people with disabilities are at least as likely - and probably more likely - to contract HIV than non-disabled persons.⁴⁷

Despite great progress in adopting laws and policies, the implementation is slow. People with disabilities constitute about 1 per cent of the total workforce, well below their share of the population, and reported figures suggest that terminations of employment is higher than recruitment of disabled persons.⁴⁸ The figure is even lower in the public service, where people with disabilities account for only 0.47 per cent of the labour force in national departments and 0.16 per cent in provincial administrations, well below the target of 2 per cent.⁴⁹ A report submitted to the OSPD in 2000 mentioned a “general lack of commitment by senior managers in Government departments to address disability issues” as a major challenge to be addressed for effective implementation.⁵⁰

A lot remains to be done in order to achieve equality, but South Africa has made tremendous progress in the past decade and could serve as a model for other African countries.

⁴⁵ South African Human Rights Commission, *Towards a barrier-free society*, 2002

⁴⁶ Research Dynamics South Africa, *Situation Analysis of Disability Integration in 18 National Government Departments*, Report for the Office on the Status of Disabled Persons, 2000, p.94.

⁴⁷ Nora Grace, *HIV/AIDS and Disability: Capturing Hidden Voices*, World Bank-Yale University Global Survey on HIV/AIDS and Disability, 2004.

⁴⁸ Department of Labour, *Commission for Employment Equity Annual Report 2002-2003*.

⁴⁹ Public Service Commission, *Report on Disability Equity in the South African Public Service*, Pretoria, 2002.

⁵⁰ Research Dynamics South Africa, *Situation Analysis of Disability Integration in 18 National Government Departments*, Report for the Office on the Status of Disabled Persons, 2000, p.92.