



UN Office of the High Commissioner

Human Rights of Persons with Disabilities – Human Rights Council Resolution 19/11

31 July 2012

The South African Human Rights Commission (SAHRC) is recognised by the International Coordinating Committee (ICC) as an “A” status national human rights institution (NHRI).

1. The situation of persons with disabilities in the field of employment, including relevant data and statistics. Do you have information on persons with disabilities working in the informal sector?

Persons with disabilities lag significantly behind non-disabled persons in terms of participation in the Economically Active Population (EAP)¹, according to the 2010-2011 Commission for Employment Equity (CEE) Report.²

The CEE found that people with disabilities accounted for approximately 0.83% of the total number of employees reported by all employers³ and that this figure has remained fairly stable over the last couple of years.⁴ Their representation is more likely to be concentrated at the lower occupational levels, as more than 60% of the 43 913 people with disabilities reported by employers occupy semi-skilled, unskilled and temporary positions.⁵

According to Statistics SA there are 357 472 persons with disabilities who are unemployed and 942 204 who are not economically active.⁶ However, these statistics are dated and there is a critical need for more comprehensive data gathering and statistics on the situation of persons with disabilities in South Africa.

¹ The EAP includes people from 15 to 64 years of age who are either employed or unemployed and seeking employment.

² Department of Labour, *11th Commission for Employment Equity Annual Report, 2010-2011*, p.5.

³ *Id.*, p.21.

⁴ *Id.* The representation of people with disabilities across all occupational levels was 0.7% in 2006, 0.7% in 2008 and 0.8% in 2010.

⁵ *Id.* p.20.

⁶ *Id.*, p.41.

TABLE 1: Employee population distribution for people with disabilities in terms of race and gender employed at various skill levels⁷

OCCUPATIONAL LEVELS	MALE				FEMALE				FOREIGN NATIONAL		TOTAL
	A	C	I	W	A	C	I	W	MALE	FEMALE	
Top Management	63	10	43	384	19	6	6	73	4	2	610
	10.3%	1.6%	7.0%	63.0%	3.1%	1.0%	1.0%	12.0%	0.7%	0.3%	100.0%
Senior Management	146	62	98	531	56	20	25	233	25	6	1 202
	12.1%	5.2%	8.2%	44.2%	4.7%	1.7%	2.1%	19.4%	2.1%	0.5%	100.0%
Professionally qualified and experienced specialists and mid-management	628	173	168	1 490	516	121	73	682	39	11	3 901
	16.1%	4.4%	4.3%	38.2%	13.2%	3.1%	1.9%	17.5%	1.0%	0.3%	100.0%
Skilled technical and academically qualified workers, junior management, supervisors, foremen and superintendents	2 769	677	513	3 011	1 344	484	245	1 776	99	18	10 936
	25.3%	6.2%	4.7%	27.5%	12.3%	4.4%	2.2%	16.2%	0.9%	0.2%	100.0%
Semi-skilled and discretionary decision making	6 299	1 115	463	1 316	2 986	1 010	290	1 335	194	18	15 026
	41.9%	7.4%	3.1%	8.8%	19.9%	6.7%	1.9%	8.9%	1.3%	0.1%	100.0%
Unskilled and defined decision making	5 476	631	127	294	1 738	347	34	181	815	10	9 653
	56.7%	6.5%	1.3%	3.0%	18.0%	3.6%	0.4%	1.9%	8.4%	0.1%	100.0%
Total Permanent Employees	15 381	2 668	1 412	7 026	6 659	1 988	673	4 280	1 176	65	41 328
	37.2%	6.5%	3.4%	17.0%	16.1%	4.8%	1.6%	10.4%	2.8%	0.2%	100.0%
Total Temporary Employees	984	199	27	113	900	170	31	144	14	3	2 585
	38.1%	7.7%	1.0%	4.4%	34.8%	6.6%	1.2%	5.6%	0.5%	0.1%	100.0%
GRAND TOTAL	16 365	2 867	1 439	7 139	7 559	2 158	704	4 424	1 190	68	43 913

⁷ Statistics taken from the 11th CEE Annual Report: 2010-2011 published by the Department of Labour of the Republic of South Africa

KEY: A = African
C = Coloured
I = Indian
W = White

2. Has the legislative and policy framework of your country been developed in conformity with article 27 of the Convention on the rights of persons with Disabilities (CRPD) on work and employment? Can any gaps be identified in legislation and policies related to work and employment of persons with disabilities?

On 30 November 2007, South Africa became the eighth country to ratify the CRPD and its Optional Protocol. South Africa currently has in place several key pieces of legislation that conform to the CRPD, but it is still in the process of ensuring full compliance. The Parliamentary Portfolio Committee on Women, Children and People with Disabilities hosted public hearings in July 2012 to discuss the implementation of the CRPD in South Africa. These public hearings allowed members of civil society to raise the concrete issues related to the implementation of the CRPD. The hearings highlighted the challenges and obstacles facing persons with disabilities in South Africa from realising their full potential. The issue of unavailability of employment opportunities was one of the dominant themes at the public hearing.

Protection of the rights of persons with disabilities is built into the laws that make up South Africa's human rights framework. The Constitution explicitly protects persons with disabilities from discrimination, listing disability as one of several categories that may be scrutinized for unfairness. Section 9(3) provides that,

"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."⁸

Similarly, the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (PEPUDA) lists disability as one of the 'prohibited grounds' for discrimination⁹ and specifically addresses discrimination against persons with disabilities in the following provision:

"[N]o person may unfairly discriminate against any person on the ground of disability, including

- (a) denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;
- (b) contravening the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility;
- (c) 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."¹⁰

With respect to employment, the Employment Equity Act, No. 55 of 1998 (EEA) protects persons with disabilities against unfair discrimination in the workplace. Section 6 (1) states the following:

⁸ Constitution of the Republic of South Africa, 1996, §9(3).

⁹ Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000, §1.

¹⁰ *Id.* §9 Pepuda.

"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, HIV status, conscience, belief, political opinion, culture, language and birth."¹¹

The Department of Labour has supplemented EEA with the *Code of Good Practice on key aspects on the Employment of People with Disabilities*.¹² This code serves as a guide for employers and employees on the rights of persons with disabilities in the workplace. Although it is not law, the code must be considered by courts and tribunals when interpreting and applying the EEA. The Department of Labour also published the *Technical Assistance Guidelines on the Employment of People with Disabilities* (TAG) to complement the Code and provide assistance with the practical implementation of the policy.¹³

3. Implementation of national legislation and policies, in particular related to progress made and obstacles preventing persons with disabilities, or specific groups of persons with disabilities (for example young persons with disabilities, women with disabilities, or persons with intellectual/psychosocial disabilities), from enjoying the right to work on an equal basis with others.

The Department of Women, Children and People with Disabilities (DWCPD) is responsible for the implementation of the legislation and policies affecting persons with disabilities. Established in 2009, DWCPD merged three agencies which were the Office on the Status of Disabled Persons, Office on the Status of Women and Office on the Rights of the Child. These three offices now constitute the Department of Women, Children and People with Disabilities (DWCPD).

The DWCPD recently reiterated a previously set target for the employment of persons with disabilities in both the public and private sectors. The Department requested that two per cent of all public and private-sector positions be filled by persons with disabilities by 31 March 2013.¹⁴ This target has however been in existence for a while and it is thus important that the 2% target is fulfilled by 2013.

4. Involvement of persons with disabilities and their representative organizations in the development, implementation and monitoring of legislation and policies to promote and protect the right of persons with disabilities to work.

¹¹ Employment Equity Act, No. 55 of 1998, §6(1).

¹² *Government Gazette* 23702, GN 1345, 19 August 2002.

¹³ *Technical Assistance Guidelines on the Employment of People with Disabilities*. Published for the Chief Directorate of Labour Relations, 2003.

¹⁴ Xingwana, Lulu. 11 May 2012. *Budget Vote 2012/13 Speech*. Speech was presented on behalf of The Department of Women, Children, and people with disabilities. Available at http://www.peopletoparliament.org.za/focus-areas/children-rights/campaigns/Children_disabilities.

There is an increasing awareness towards the importance of involving persons with disabilities in the development of legislation and policies that affect them. However, much more awareness is needed to ensure the increase in participation of persons with disabilities and their representative organizations.

There are several civil society organizations dedicated to increasing the involvement of persons with disabilities in government. The South African Disability Alliance (SADA), is a body comprising of and representing the interests of thirteen national disability organisations. SADA will aim to serve as 'the voice of the disability sector in South Africa'. Currently, SADA is the only umbrella organization unifying the efforts of these different national organizations.

Some disability advocacy groups have made considerable inroads to changing government policy. Earlier this year, the Quadriplegic Association of South Africa (QASA) joined forces with other civil society groups to challenge a government initiative that would increase the amount of tolls paid by persons driving cars on the highways of Gauteng. QASA joined the Opposition to Urban Tolling Alliance (OUTA) to stop an initiative proposed by the South African National Roads Association Limited (SANRAL) and the Department of Transport that would require all drivers in Gauteng to get an electronic tag (e-tag) for their vehicle or pay up to three times more in tolls than registered e-tag holders.¹⁵ QASA and OUTA successfully challenged the E Tolling Programme in the North Gauteng High Court. QASA argued that the E Tolling Programme was designed without consulting with the disability sector and that the initiative would disproportionately affect persons with disabilities, as public transportation in the province is inaccessible for most persons with disabilities who must rely on private means of transportation. This position was supported by SADA.

5. International cooperation programmes related to the promotion of work and employment opportunities for persons with disabilities. Is your organization involved in any such programmes?

South Africa is represented in many international programmes that focus on the promotion of work and employment opportunities for persons with disabilities. Notably, the UN Special Rapporteur on Disability, Shuaib Chaulken, is a South African who has attended and participated in a few SAHRC events in his personal capacity.

African Decade of Disabled Persons

South Africa has taken a leadership role in the African Decade of Disabled Persons (ADDP), an initiative proposed by the African Union. At its 22nd Ordinary session held in Windhoek, Namibia in April 1999, the

¹⁵ Clark, Jeannette. "How e-toll tariffs work." Moneyweb.com.
<http://www.moneyweb.co.za/mw/view/mw/en/page295023?oid=566945&sn=2009+Detail>

African Union Labour and Social Affairs Commission recommended that the period 1999 – 2009 be proclaimed the African Decade of Disabled Persons. The recommendation, which is contained in the Secretary – General report CM/2112 (LXX), was adopted by the 23rd Session of the Labour and Social Affairs Commission in Algiers, Algeria in April 2000, and endorsed by the 72nd Session of the African Union Council of Ministers and 36th Assembly of Heads of State and Government respectively, in Loma, Togo in July 2000. The adoption of the ADDP placed responsibility on African States to implement the Decade’s Programme of activities. On 31 October 2008, Ministers in Charge of Social Development adopted Resolution 6, which extends the Continental Decade of Persons with Disabilities for the period 2010-2019. The SAHRC interacts regularly with the African Decade and attends events hosted in South Africa.

South African Human Rights Commission

The Commission hosted the 8th Biennial Conference of the Network of African National Human Rights Institutions (NANHRI) in Cape Town from 19 – 21 October 2011. The theme of the event was ‘Advancing the human rights of older persons and persons with disabilities: the role of National Human Rights Institutions’. Article 33 of the CRPD requires States Parties to establish an independent monitoring mechanism, and NHRIs have been identified as the ideal bodies to perform this role. The conference concluded with the unanimous adoption of the *Cape Town Declaration*, which sets out the roles and responsibilities of African NHRIs in giving effect to their promotion and protection mandate in respect of persons with disabilities.

6. Any additional information.

The South African Human Rights Commission has a Commissioner who focuses specifically on disability issues. The Commission hosts regular Section 5 disability committee meetings.¹⁶ These meetings seek to bring various civil society organisations and academics together bi-annually to discuss pertinent disability issues with the Commission. The Committee plays an advisory role to the Commission in respect to how the Commission can best fulfil its protection and promotion mandate in respect to persons with disabilities.

The Commission embarks on various activities aimed at ensuring that disability is mainstreamed in South Africa. The Commission has also developed a CRPD disability toolkit which serves to assist SAHRC provincial offices, civil society, employers and caregivers in dealing with disability related matters. The toolkit focuses on the CRPD, inclusive education, disability and the workplace and training on CRPD for caregivers in institutional care facilities. The SAHRC is currently exploring with local partners as to how this toolkit could

¹⁶ Section 5 of the Human Rights Commission Act 54 of 1994 allows the Commission to formally set up and appoint these committees which serves to advise the Commission on specific areas of interest. The committee is comprised of experts, academics and civil society organizations.

be rolled out within the employment sector in a manner which specifically targets employers and sensitise them in order to create more work opportunities for persons with disabilities and inclusive workplaces.