



**SOUTH AFRICA'S RESPONSES TO THE REPORT  
FROM SPECIAL RAPPORTEUR ON THE RIGHTS OF  
PERSONS WITH DISABILITIES**

**JUNE 2021**

**QUESTIONNAIRES TO INFORM THE THEMATIC REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHTS OF PERSONS WITH DISABILITIES ON ARMED CONFLICT, 76<sup>TH</sup> GENERAL ASSEMBLY – 2021**

**I. Context**

For his thematic report to the United National General Assembly, 76<sup>th</sup> session, the Special Rapporteur on the rights of persons with disabilities, Mr. Gerard Quinn, intends to focus on the protection of persons with disabilities in the context of armed conflict.

The Special Rapporteur intends to undertake innovative research related to the protection of persons with disabilities in the context of armed conflict. In the report, he aims to examine the current application of the specific obligations enumerated in Article 11 of the [United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#) and [United Nations Security Council Resolution 2475 \(2019\)](#) to ensure the protection and safety of persons with disabilities in the context of armed conflict.

The report will also seek to present good practices, emerging trends, existing challenges, and identified gaps in the interpretation, operationalization and engagement of the above obligations.

The Special Rapporteur hopes to further align the disability rights perspective with international humanitarian law by providing effective guidance on how to ensure persons with disabilities and their rights are respected on an equal basis with other civilians.

Toward this end, the Special Rapporteur transmits these Questionnaires which focus on policy (A: States), operationalization (B: Military authorities) and collective voice in the process (C: civil society).

**II. Questionnaire/s.**

**A. Questionnaire for States**

The purpose of this set of questions is to elicit information regarding how States apply and interpret Article 11 of the CRPD and Security Council Resolution 2475 (2019) as they pertain to armed conflicts to identify best practices and gaps.

These are policy-oriented questions and will be supplemented by more detailed operational questions directed at military authorities and engagement questions directed at civil society organizations, contained in the questionnaires as below.

Please attach links to official documents, policies, and/or legislation as appropriate.

## QUESTIONS

1. Please describe what obligations Article 11 of the CRPD establishes on a State in relation to the 'protection' of persons with disabilities in the context of armed conflict, conflict prevention, humanitarian action, and peacebuilding operations.
  - a. Have the above obligations been officially recognized? If so, please provide examples such as legislation, press releases, policy statements, official remarks, etc.

Answer: Yes, The Bill of Rights, as enshrined in the Constitution of the Republic of South Africa, states that everyone has a right to a safe and healthy environment, (with persons with disabilities included). The Constitution assigns concurrent functions to different spheres of government. Schedule 4A designates disaster management as a concurrent function of national and provincial competence.

The primary piece of legislation regulating disaster management is the Disaster Management Act (No. 57 of 2002). This Act, supported by the Municipal Systems Act (No. 32 of 2000) Section 10A, delegates the responsibility for disaster management to local government.

### **The Disaster Management Act, 2002 (Act no 57 of 2002)**

The Disaster Management Act, 2002 (Act no 57 of 2002) specifically provides for the protection of vulnerable communities and households. Vulnerability in the context of disaster management legislation means the conditions determined by physical, social, economic, and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards. This definition encompasses people with disability.

In accordance with the Disaster Management Act, 2002, Disaster Management Centres across the spheres of government are compelled to undertake risk assessments and implement prevention and mitigation measures including assessing the vulnerability of communities and households (*and persons with disabilities*) to disasters that may occur.

The Act also allows Disaster Management Centres across the spheres of government to give advice and guidance by disseminating information regarding disaster management in the

municipal area, especially to communities that are vulnerable to disasters (*including persons with disabilities*)

The requirements of Article 11 have been embedded into the White Paper on the Rights of Persons with Disabilities (WPRPD) which serve as an instruments to develop mechanism for domestication of the UN CRPD. South Africa is committed to meet its obligation to implement the objectives of Sendai Framework as adopted at the Global Framework held in Cancun, Mexico in 2017, by ensuring that the persons with disabilities are actively involved and participate not only as attendees, but also in providing meaningful inputs that are implemented across government. Furthermore, South Africa is currently in the process to develop the National Disability Rights Bill as part of domesticating the UN CRPD and other continental human rights treaty instruments.

- b. How broadly is 'protection' interpreted in regard to civilians with disabilities in the context of armed conflicts?

Answer: In South Africa, 'protection' is interpreted within the context of relevant legislations and policies which were promulgated and developed to promote and provides measures for safety of persons with disabilities during situations of armed conflict, national disasters, situations of risks and humanitarian emergencies. Armed conflict and humanitarian emergencies have a significant impact on the lives of persons with disabilities. Nevertheless, persons with disabilities often remain invisible in their endeavours to flee violence, to obtain and be involved in the planning and delivery of humanitarian support and assistance, and to secure their rights to employment and services such as education and health.

Article 11 of the Convention affirms that the Convention applies in situations of risk and humanitarian emergencies and calls for international humanitarian law to be interpreted in accordance with the social model and the human rights-based approach to reflected in the Convention. Article 11 stipulates that States parties shall take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters". The increased complexity and duration of conflict and the more frequent extreme weather events around the world demand comprehensive international frameworks and policy coherence among the peace and security, humanitarian and development sectors.

The Convention is one of the only human rights instruments to expressly note that human rights principles and international humanitarian law apply to civilians with disabilities during

armed conflict. The only other one that does so is the Convention on the Rights of the Child (art. 38). The Committee on the Rights of the Child urges States and humanitarian actors to give high priority to refugee and internally displaced children with disabilities for preventative assistance and access to adequate health and social services, including psychosocial recovery and social integration. South Africa is the signatory to these instruments.

The Committee on the Rights of Persons with Disabilities has also developed guidance and standards, including through its general comments and concluding observations on the reports of States parties, to underscore the importance of addressing risk affecting persons with disabilities during armed conflict and other humanitarian emergencies. The Committee calls for a more systematic human rights-based approach to disability in armed conflict and other humanitarian emergencies.

c. Have you made arrangements to give effect to UN Security Council Resolution 2475 (2019)?

Answer: The Security Council adopted its first-ever resolution calling upon Member States and parties to armed conflict to protect persons with disabilities in conflict situations and to ensure they have access to justice, basic services and unimpeded humanitarian assistance.

By the terms of resolution 2475 (2019), the 15-member Council called upon all parties to armed conflict to allow and facilitate safe, timely and unimpeded humanitarian access to all people in need of assistance. It further urged them to prevent violence and abuses against civilians in situations of armed conflict, including those involving in killing and maiming, abduction and torture, as well as rape and other forms of sexual violence in conflict and post-conflict situations. The Council emphasized the need for States to end impunity for criminal acts against civilians, including those with disabilities, and to ensure they have access to justice and effective remedies, and as appropriate, reparation. It called upon all parties to armed conflict to allow and facilitate safe, timely and unimpeded humanitarian access.

Further by the resolution, the Council urged Member States to take steps to eliminate discrimination and marginalization on the basis of disability in situations of armed conflict. It also urged States parties to comply with their obligations under the 2006 Convention on the Rights of Persons with Disabilities. The United Nations has established the International Strategy for Disaster Reduction (ISDR) with a vision to enable all member states and societies to become resilient to natural and human-induced hazards and disasters, in order to reduce human, economic and environmental losses to disasters, thereby contributing to enhancing sustainable development.

South Africa has made significant progress in implementing the UN Security Council Resolution 2475 (2019) through its legislative development and service delivery programmes. The WPRPD and its implementation matrix outlines key measures put in place by government to implement the resolution within the context of Article 11 of the UN CRPD. The National

Disaster Management Centre (NDMC) has been established in accordance with the Disaster Management Act, 2002 (Act no 57 of 2002) to promote, protect and ensure safety of persons with disabilities during conflict situations.

To this date since the resolution was adopted, South Africa has never had an armed conflict. However, measures have been put in place to manage and mitigate the risk of persons with disabilities in case an armed conflict arises. The NDMC has developed the National Disaster Risk Reduction Strategy which puts more emphasis on protection of vulnerable groups during the state of natural disasters and armed conflicts. All other aspects of the Security Council Resolutions have been considered on the strategy.

2. Please provide information on (1) the existence of any specific institution/government entity, such as a national committee on international humanitarian law (IHL), tasked with the responsibility of overseeing the implementation of IHL; and (2) how that body addresses persons with disabilities in the context of IHL implementation.

Answer: The National Disaster Management Centre (NDMC) has been established in accordance with the Disaster Management Act, 2002 (Act no 57 of 2002) to promote, protect and ensure safety of persons with disabilities during conflict situations, humanitarian emergencies and natural disasters. The NDMC implements the IHL and is also tasked to implement UN CRPD Article 11 by putting measures and strategies in place to promote safety and protection of persons with disabilities.

3. Please identify and provide information on the institution/government entity(s) tasked with overseeing the implementation of obligations under the CRPD (Article 33 framework).
  - a. Does that institution/government entity advise or interact with the military and security forces on how to implement Article 11 of the CRPD in their operations?

Answer: The National Department for Women, Youth and Persons with Disabilities (DWYPD) is responsible for the National Disability Rights Coordination Mechanisms which set an agenda to all spheres of Government on disability priorities. The department is also responsible for coordinating performance reports from all sectors of the society in compliance with national and international treaty obligations such as the White Paper on the Rights of Persons with Disabilities (WPRPD), the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities and United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in accordance with article 33 and 35.

The National Department of Cooperative Governance and the National Disaster Management Centre (NDMC) participate and provide progress reports on implementation of the UN CRPD Article 11 at the National Disability Rights Machinery Meetings. The National Department of Defence also participate in this platform to advise on matters related to military and security forces affecting persons with disabilities.

4. Please identify any domestic laws or statutes that seek to punish criminal acts that specifically target persons with disabilities.

The Disaster Management Act, 2002 (Act no 57 of 2002) and Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000 (Act no 4 of 2000).

- a. Do the laws or statutes apply to acts of violence against or abuse of persons with disabilities in the context of armed conflict, conflict prevention, humanitarian action, and/ or peacebuilding operations?

Answer: Yes

- b. Do the laws or statutes apply solely to government actors, individual actors, or both?

Answer: Apply to both

- c. Does the criminal code provide for the prosecution of crimes against humanity and if so, could disability-related crimes be prosecuted under such provision(s)?

Answer: Yes, PEPUDA serves as the criminal code and provide for the prosecution through equality courts.

5. Please provide information on any formal complaints, official investigations, and related jurisprudence arising from allegations of abuses and violence against persons with disabilities.

Answer:

6. Please identify and describe any efforts undertaken to build capacity across stakeholders—including military and civilian, peacekeeping personnel, and other field workers—who intervene in emergency situations, including armed conflict, regarding the rights of persons with disabilities.

Answer: The National Department of Defence and Military Veterans participate in the National Disability Rights Machinery consultative platforms to advise on matters related to military and security forces affecting persons with disabilities.

- a. How, if at all, are organizations of persons with disabilities (OPDs), involved in the process?

Answer: The National Department of Defence and Military Veterans have established internal and external consultative forums with organisations of persons with disabilities and military veterans with disabilities on mainstream and consult during state of national

disasters and situations of humanitarian emergencies. Vulnerable groups are always on the priority list for all intervention efforts.

7. Please provide information on relevant legislation and policies related to:

a. Whether persons with disabilities are excluded from serving in the armed forces on the basis of their disability.

Answer:

- *The Constitution of the Republic of South Africa*
- *Defence Act 42 of 2002*
- *The Disaster Management Act, 2002 (Act no 57 of 2002)*
- *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000 (Act no 4 of 2000).*
- *The White Paper on the Rights of Persons with Disabilities*
- *The UNCRPD*

b. The existence of policies or programs that allow persons serving in the armed forces to continue serving in cases where they acquire a disability.

Answer:

- *The Constitution of the Republic of South Africa*
- *Defence Act 42 of 2002*
- *The Disaster Management Act, 2002 (Act no 57 of 2002)*
- *Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA), 2000 (Act no 4 of 2000).*
- *The White Paper on the Rights of Persons with Disabilities*
- *The UNCRPD*

c. What supports are available to assist persons experiencing psycho-social trauma as a consequence of armed conflict (civilian, current military, or former military).

Answer: South Africa has put measures in place to assist persons experiencing psycho-social trauma as a consequence of armed conflict (civilian, current military, or former military). All persons with disabilities have access to primary health care and are always prioritised for psychosocial support services. This includes persons with disabilities who reside temporary and fully time at residential facilities.

d. The existence of differential obligations or services granted to veterans with disabilities on the one hand and civilians with disabilities on the other.

Answer: The National Department of Defence and Military Veterans have established internal and external consultative forums with organisations of persons with disabilities and military veterans with disabilities on mainstream and consult during state of



national disasters and situations of humanitarian emergencies. Vulnerable groups are always on the priority list for all intervention efforts

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## **B. Questionnaire for military authorities**

The purpose of this set of questions is to elicit information from national military and security authorities on how they operationalize Article 11 of the CRPD and UN Security Council Resolution 2475 (2019) into the overall imperative of protecting civilians in the context of armed conflict.

These are operationally-oriented questions and will be supplemented by more detailed policy questions directed at States (see A. above) and engagement questions directed at civil society organizations (see C. below).

Please attach links to military manuals, official policy statements and directives, and/or training materials as appropriate.

### QUESTIONS

1. How have 'protection' issues, as they relate to civilians with disabilities, been reflected in military doctrine, operational planning, and/or military training?

**Answer:**

The Minister of Defence and Military Veterans has under section 24(1) of the Military Veterans Act, 2011 (Act No. 18 of 2011), made the regulations in the Schedule for benefits of military veterans.

In 2016/17, the Department of Defence prioritised the Pretoria Air Defence Artillery Group for upgrades to improve access to members with disabilities. This construction was reported as completed in the Department's annual report.

South African Social Security Agency (SASSA) pays for social grant services in the form of War Veterans Grant. Military veterans with disabilities are beneficiaries to this grant and below is the qualifying criteria:

Applicants must meet the following requirements:

- The applicant must be a South African citizen / permanent resident.

- The applicant must be a resident in South Africa.
  - The applicant must be 60 years and over or must be disabled.
  - The applicant must have fought in the Second World War or the Korean War.
  - The applicant and spouse must meet the requirements of the means test.
  - The applicant must not be maintained or cared for in a State Institution.
  - The applicant must not be in receipt of another social grant in respect of himself or herself.
2. Please identify measures taken to ensure the inclusion of persons with disabilities within the framework for 'protecting civilians' from violence and abuse in the context of armed conflict.
- a. Do military manual(s) or policies refer to, or recognize, State obligations to ensure specific protection of persons with disabilities in armed conflict?  
*Answer: Yes, the Defence Act 42 of 2002 and The Disaster Management Act, 2002 (Act no 57 of 2002) makes explicit reference to persons with disabilities.*
- b. Do rules of engagement (ROEs) and standard operating procedures (SOPs) for military and security forces consider persons with disabilities?  
*Answer: Yes*
- i. What process of review exists to determine whether the ROEs and SOPs address human rights and specifically the rights of persons with disabilities?. *Answer: The Department of Defence and Military Veterans have issued a guidelines and standard operating procedures on engagement with civil society and disabled people's organizations. The guidelines and procedures outlines general provisions on priority matters such as security, safety and protection of persons with disabilities.*
- c. Do trainings on international humanitarian law (IHL) for military and security forces include a module on disability or otherwise address the protection of civilians with disabilities in the context of armed conflict?  
*Answer: yes, all training occur within the parameters of the Defence Act 42 of 2002 which also promote human rights education for military veterans with disabilities and civilian in general through annual military and defence expo event.*
3. Does the military engage with civil society organizations representing persons with disabilities (including organizations of veterans with disabilities), for example in discussions regarding the 'protection' of persons with disabilities during or after armed conflict?

a. Who initiated the engagement?

Answer : Disability Association Of South African National Military Veterans (DASANMVE). The association also participate as a member of National Disability Rights Machinery meetings.

b. What was the motivation, purpose, and outcome of these engagements?

Answer: The resolution of the DASANMVE National Executive Committee (NEC) in year 2016 was to come up with plans and a structure to empower military veterans with disabilities. The SANMVA leadership eventually engaged with military veterans with disabilities and finally agreed on the following:

- To co-opt one member to represent veterans living with disability at the SANMVA NEC. To allow veterans living with disability to create their own structure under SANMVA.
- To identify business empowerment opportunities

An interim structure has been put in place to look into how matters of veterans living with disability can be taken forward. Some work has already been done by the members in trying to align SANMVA programmes with government programmes.

c. Was Article 11 of the CRPD and/or UN Security Council Resolution 2475 (2019) discussed in these engagements?

Answer: Matters related to protection and safety of persons with disabilities during national state of disasters, armed conflicts, situations of humanitarian emergencies and benefits of military veterans with disabilities are always on the priority in the engagements platforms.

## **C : Civil Society**

The purpose of this set of questions is to ascertain whether and to what extent civil society has engaged with their respective governments and militaries on the implications of the CRPD and UN Security Council Resolution 2475 (2019) in relevant military operations (including peace keeping and peacebuilding operations) and what impact they can report from such engagement.

These are engagement-oriented questions and will be supplemented by more detailed policy questions directed at States (A: above) and operational questions directed at military authorities (B: above).

Please attach links to any relevant reports, trainings, press statements, or other documents.

## QUESTIONS

1. Please provide information on whether and how your organization engages on the protection of persons with disabilities under international humanitarian law.
2. Please provide information on the engagement of your organization with the government and/or military authorities relating to the protection of persons with disabilities in armed conflict.
  - a. Who initiated the engagement?
  - b. What was the motivation, purpose, and outcome of these engagements?
  - c. Was Article 11 of the CRPD and/or UN Security Council Resolution 2475 (2019) discussed in these engagements?
3. Please provide information on whether your organization engages with the government on laws or statutes that punish criminal acts that specifically target persons with disabilities.
4. Please provide information on relevant legislation and policies related to the following:
  - a. Are persons with disabilities excluded from serving in the armed forces on the basis of their disability? Do you engage with the government on this issue?
  - b. Do policies or programs exist that allow persons serving in the armed forces to continue serving in cases where they acquire a disability? Do you engage with the government on this issue?
  - c. What supports are available to assist persons experiencing psychosocial trauma as a consequence of armed conflict (civilian, current military, or former military)? Do you engage with the government on this issue?
  - d. Are there differential services granted to veterans with disabilities on the one hand and civilians with disabilities on the other? Do you engage with the government on this issue?
  - e. Are there veterans groups with disabilities and do they interact with organizations of persons with disabilities (OPDs) on protection or general disability rights issues?
5. Please provide information on how civil society, specifically OPDs, are involved in the process to identify and address discrimination and marginalization of persons with

disabilities in situations of armed conflict, conflict prevention, humanitarian action, and peacebuilding operations.