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Department of Social Development: Domesticating the United Nations Convention on the Rights of Persons with Disabilities

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1. Introduction

The Portfolio and Select Committee on Women, Children and People with Disabilities held public hearings on the implementation of the United Convention on the Rights of Persons with Disabilities during July 2012. Several issues of concern emerged during the public hearings that pertain to education. To this end, the Portfolio Committee on Women, Children and People with Disabilities invited the Department of Social Development to respond to issues raised in submissions at the public hearings on the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). Moreover, the Committee will also be interested in the budgetary allocation to give effect to the various programmes and services rendered by the Department that would benefit persons with disabilities. It would thus be imperative for the Department to give an account of how it has given effect to the UNCRPD since South Africa has ratified and become a signatory.

This brief is intended to provide Members with a synopsis of the key issues that emerged at the public hearings and that arose out of the written submissions that pertain to higher education and training. In addition, the relevant articles in the UNCRPD are referred to and related to the mandate of the Department.

2. Key issues

Herewith a summary of the key issues that emerged at the public hearings and from the written submissions:

- **Access to sign language interpreters:** Deaf persons are often disadvantaged when trying to access social services as the availability of sign language interpreters is limited or absent.
- **Multiple levels of discrimination:** Persons with intellectual disabilities, profound and or multiple disabilities have very few options beyond formal schooling to obtain additional skills in institutions of higher learning.
- **Negative attitudes and stereotypes:** The discrimination and negative attitudes experienced by persons with disabilities and even their caregivers were perpetrated by various segments in society; Government officials, civil society and the corporate sector. There is a need to change perceptions in the way that communities, families and society at large engage with persons with disabilities.
- **Accessibility:** People with disabilities have experienced, and continue to experience, major challenges with regards to access e.g. physical access; access to information the media, to employment, to education/healthcare/criminal justice system; to assistive technology etc. Moreover, participants at the public hearings indicated that unless there are



significant changes to the way settlements and transport are planned and designed, we will not reach the goals of inclusive employment, education, health, recreations and the other desired outcomes for persons with disabilities.

- **Need for strategies and integrated plan:** Submissions indicated a need for strategies and integrated plans that considers and includes the needs of persons with disabilities. In addition it is imperative that persons with disabilities are included in the planning and implementation of these strategies and plans.
- **Inter-sectoral and Inter-Departmental Collaboration:** Numerous submissions highlighted that when it came to addressing the needs of persons with disabilities, departments operated in silos and that there is an urgent need for better collaboration and synergy between them.
- **Poverty:** The negative impact of poverty on persons with disabilities and their families within low socio-economic households was a consistent theme that emerged at the public hearings and within written submissions. Persons with disabilities living within impoverished communities were considered to be the poorest of the poor.
- **Sexual abuse, neglect and maltreatment:** Children with disabilities, women with disabilities, persons with intellectual disabilities and profound disabilities are particularly vulnerable to being sexually abused, maltreated and neglected. The public hearings revealed a dire need for psycho-social services to victims of abuse particularly persons with disabilities who face multiple challenges and forms of discrimination. Moreover, it was also revealed that victims of abuse are often subject to being discriminated against within the family, community and by service providers. Victims were also known to be abused more than once and face intimidation by the perpetrator and the family for reporting.
- **Social security:** The grants

3. Mandate of Department of Social Development

Given the aforementioned challenges that were identified, it would be important to understand these within context as it relates to the Department's mandate. The Department of Social Development derives its core mandate from the Constitution of the Republic of South Africa (Act 108 of 1996) as cited below:

- Section 27 (1) (c) of the Constitution provides for the right of access to appropriate social assistance to those unable support themselves and their dependants.
- In addition, Section 28 (1) of the Constitution sets out the rights of children with regard to appropriate care (basic nutrition, shelter, health care services and social services) and detention.
- Schedule 4 of the Constitution further identifies welfare services, population development and disaster management as functional areas of concurrent national and provincial legislative competence.

Thus as a duty bearer of the UNCRPD, what specific obligations would the Department then need to fulfil to give effect to such a treaty? The following section highlights some of the



general Articles that bear relevance for the Department as well as more specific ones that relate to its mandate.

4. Articles in UNCRPD

4.1 General Articles

The following Articles 5, 8, 9 and 21 apply to most duty bearers the Executive included. As such, the obligation rests with the duty bearer to put measures in place that would give effect to these provisions. Each Article is listed followed by questions for consideration that can be posed to the Department by Members.

Article 5 - Equality and non-discrimination

1. States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.
4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.

Questions for consideration

- How does the Department ensure that persons with disabilities are not discriminated against within the social services arena? What measures are in place in this regard?
- What complaint mechanisms are in place in the event that a person with a disability that is discriminated against can seek recourse?
- What policies and procedures has the Department implemented to ensure that persons with disabilities within the Department are reasonably accommodated?
- What is the status of the 2% disability equity target within the Department? Stipulate levels of employment and sex.

Article 8 - Awareness-raising

1. States Parties undertake to adopt immediate, effective and appropriate measures:
 - a. To raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities;



- b. To combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life;
- c. To promote awareness of the capabilities and contributions of persons with disabilities.

Measures to this end include:

- a. Initiating and maintaining effective public awareness campaigns designed:
 - i. To nurture receptiveness to the rights of persons with disabilities;
 - ii. To promote positive perceptions and greater social awareness towards persons with disabilities;
 - iii. To promote recognition of the skills, merits and abilities of persons with disabilities, and of their contributions to the workplace and the labour market;
- b. Fostering at all levels of the education system, including in all children from an early age, an attitude of respect for the rights of persons with disabilities;
- c. Encouraging all organs of the media to portray persons with disabilities in a manner consistent with the purpose of the present Convention;
- d. Promoting awareness-training programmes regarding persons with disabilities and the rights of persons with disabilities.

Questions for consideration:

- What initiatives has the Department implemented to raise awareness about disability? If not why not
- Has the Department implemented any initiatives to promote positive perceptions towards persons with disabilities? If not why not. If so list.

Article 9 - Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a. Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b. Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- a. Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;



- b. Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- c. Provide training for stakeholders on accessibility issues facing persons with disabilities;
- d. Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- e. Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- f. Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- g. Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- h. Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Questions for consideration

- What measures has the Department implemented to ensure physical accessibility to social services buildings for persons with disabilities?
- What measures are in place to ensure that persons with visual impairments and blind persons are to access material developed by the Department?
- How does the Department ensure that the information it develops is produced in a manner that persons with disabilities can easily access?

Article 21 - Freedom of expression and opinion, and access to information

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- a. Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;
- b. Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- c. Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;



- d. Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- e. Recognising and promoting the use of sign languages.

Questions for consideration

- What is the Department's policy insofar as the promotion of sign language in terms of the services it renders? Does the Department employ sign language interpreters if so how many if not why?
- How does the Department ensure that the information it develops is produced in a manner that persons with disabilities can easily access via internet, promotional pamphlets etc?

4.2 Specific Articles

Article 12, 16, 26 and 28 have particular relevance to the Department. The provision of the Article is first listed followed by questions for consideration.

Article 12 - Equal recognition before the law

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

Article 16 - Freedom from exploitation, violence and abuse

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender- and age-sensitive



assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programmes designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 26 - Habilitation and rehabilitation

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

- a. Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;
- b. Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.



Questions for consideration

- What has the Department done to facilitate the development of support groups for persons with disabilities and parents/caregivers of children with disabilities?
- What is the nature of the relationship between the Department and health care professionals in the Department of Health insofar as providing rehabilitation services?
- What type of social services does the Department render to persons with disabilities? What are the key challenges in this regard?

Article 28 - Adequate standard of living and social protection

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- a. To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- b. To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;
- c. To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- d. To ensure access by persons with disabilities to public housing programmes;
- e. To ensure equal access by persons with disabilities to retirement benefits and programmes.

Questions for consideration

- How many persons with disabilities are currently accessing social security benefits e.g. care dependency grants, disability grants? What are the key challenges in this regard? How much has been allocated in the past financial year?
- How many special care centres are there for children and youth with disabilities? What is the caregiver patient ratio? How much has been allocated to fund such facilities?



- What are the current challenges faced by the Department in terms of mainstreaming disability into the services it renders?
- What measures are in place to ensure that the intended grant beneficiary actually receives it?
- What mechanisms are in place in terms to ensure that persons with disabilities are not discriminated against when applying for social security benefits?

5. References

Department of Higher Education and Training (2010) Strategic Plan 2010/11 to 2014/15 and Operational Plans for the 2010/11 Financial Year, Accessed: [Internet: <http://www.info.gov.za/view/DownloadFileAction?id=122494>] (15 August 2012)

