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## OHCHR REGISTRY

- 9 OCT. 2009

9 October 2009

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**Re: Request for Information**

Dear Ms. Lavagnoli

Your request for information is welcome and I hope that you have noted that the Coordinator: Human Rights and Disability has circulated your request amongst the disability sector, government and Independent Electoral Commission such that they will respond directly to your office.

In terms of the South African Human Rights Commission's (SAHRC) input the following are responses to relevant questions:

1. **The existence, structure and mandate of focal points within government appointed with responsibility for matters related to the implementation of the Convention;**
- What focal points within the government are in place and at what level to deal with matters related to implementation of the Convention? What is their mandate and how was it established?

The establishment of the Ministry for Women, Children and Persons with Disabilities was announced in May 2009. However, it is currently motivating for infrastructure, budget and personnel that will conceivably be realized only in the new financial year commencing April 2010.

Prior to this announcement, the oversight for the disability mandate was centrally placed within the Presidency as the Office on the Status of Persons with Disabilities (OSDP). This office was established in 1997. It convened the Inter-departmental Disability Committee (IDDC) that comprised of the disability focal points within all Government Departments. This function in all probability will now reside in the new Ministry.



Furthermore, it established the National Disability Machinery (NDM) in 2007. The membership for this new structure was the IDDC members, the national disabled people's organizations (DPOs) representing the disability sector, unions, business, civil society, the Secretariat for the African Decade on Persons with Disabilities and the SAHRC. This body has only met twice. This body is intended to play an oversight advisory role on implementation and monitoring of inclusion of disability.

- What resources are available to such focal points, in terms of human and financial resources, etc.?

It is clear from the Public Hearings on Economic and Social Rights that the SAHRC held recently that the human and financial resources are inadequate to achieve the mainstreaming of disability in the near future. Accessible transport, inclusive education, accessible housing, employment, access to justice and quality healthcare to greater extent still eludes people with disabilities.

The level of focal points vary in each Government Department. Whilst some are represented on Senior Management Structures others are still peripheral, which makes access to funding or decision-making challenging.

The Ministry for Women, Children and Persons with Disabilities has been established to elevate the importance of mainstreaming, reporting and monitoring of vulnerable groups. However, it will be interesting to see how it will engage with other Government Departments at the highest level in the light of resource allocation. Also, having grouped the most vulnerable groups into one Ministry might encourage tensions over limited resources, whilst asserting a win-win scenario. It is also a structure within government, it is therefore far too early to understand how government will monitor itself through this additional structure.

- Do government departments /focal points work on the basis of work plans? What are their reporting obligations?

From engagement with the former OSDP, it was challenging to extract reports from Government Departments on Disability. It is therefore, not clear whether there are integrated work plans or strategy. However, the extent of visible service delivery for people with disabilities would indicate otherwise.

- What mechanisms are in place to ensure consultation with persons with disabilities?

The NDM has representation from the disability sector. The National DPOs have organized themselves into the South African Disability Alliance (SADA), which is a structure that can engage with government directly. There needs to be certainty that the voices of DPOs that are not affiliated with SADA are also heard.

**2. The existence, structure and mandate of coordination mechanisms within the government to facilitate action related to the implementation of the Convention;**

- Has a coordination mechanism at government level been established or designated to facilitate action related to the Convention? How does this mechanism coordinate different sectors and government levels? What is its composition, and what resources are available?

There is a Parliamentary Joint Monitoring Committee on the Improvement of Quality of Life and Status of Youth, Children and Persons with Disabilities that looks at the mainstreaming of persons with disabilities as a part of its work. However, it is not exclusively tasked with the implementation of the UNCRPD.

The IDDC is better placed to implement the UNCRPD, provided that it receives the necessary political and financial support within the respective Government Departments.

The SAHRC has a primary role in monitoring service delivery of Government Departments, therefore the mainstreaming and special provision for people with disabilities is key to this task.

However, the structure proposed by the UNCRPD has not been established.

- Has the country adopted a national action plan for the implementation of the Convention or is there any other comprehensive and agreed plan? How has the implementation of the Convention been included in the mandate of such framework?

Currently, there is no national action plan.

**3. The existence, structure and mandate of national frameworks tasked with promoting, protecting and monitoring implementation of the Convention, with particular reference to the role and functions of national human rights institutions in such frameworks;**

- What framework is in place tasked with promoting, protecting and monitoring implementation of the Convention? What is the mandate and how was it established?

The South African Human Rights Commission (SAHRC) is a national human rights institution established in terms of Section 184 of the Constitution of the Republic of South Africa, Act 108 of 1996( Constitution). The Commission's mandate is to promote, protect and monitor observance of human rights. This mandate therefore includes the promotion and protection of the rights of vulnerable groups in our society such as persons with disabilities.

There is a disability focal point. Currently, all work is aligned with the monitoring of the UNCRPD.

- How does this framework differ from the focal points/coordination mechanism tasked with implementation?

The SAHRC is independent of government, although it is represented on the NDM. It primarily has a human rights focus and observes the Paris principles in all aspects of its work. There is a focal point on disability that looks at equality and non-discrimination on the basis of disability. The Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA) is a key legislation in ensuring compliance. There is also a complaints handling process that allows the SAHRC to investigate discrimination matters. The disability focal point engages in research, training, policy review, stakeholder engagement, advocacy and mediation.

The SAHRC monitors the implementation and is not involved in actual implementation. The Treaty Body Monitoring Unit is also located within the SAHRC. This unit has established a Section 5 Committee on the UNCRPD that comprises SADA representatives and an international subject expert. The SAHRC Legislation allows for the creation of Section 5 Committees on areas where experts in particular fields can advise the SAHRC. This unit has also developed a disability toolkit on the UNCRPD.

- Have these monitoring/protections and promotion functions been assigned to existing entities or have other structures been created? In both cases, what human and financial resources are available and what additional resources have been made available where functions have been made attributed to existing bodies?

The SAHRC will be seeking clarity on its role in promoting, protecting and monitoring of the UNCRPD. The SAHRC is currently responsible for monitoring all other international treaties that have been ratified by South Africa. It is envisaged that this role will reside within the SAHRC.

- How does civil society and in particular persons with disabilities and their representative organizations are involved and participate in the framework?

The SAHRC works with SADA. It also has a Section 5 Committee on the UNCRPD that has representation from the disability sector. There is a complaints handling process that persons with disabilities can access when their rights are violated. There are ongoing opportunities for the SAHRC and the disability sector to interact. The SAHRC is a public entity and can therefore be freely accessed.

- What are the reporting responsibilities of the framework? Has the framework adopted any strategic plan or is there any work programme? How does dialogue between government authorities and framework take place?

The Government Departments engage with the SAHRC through submitting reports and making presentations on service delivery at Public Hearings. There is also direct engagement with Government Departments relating to policy review and implementation, complaints or urgent issues identified.

The SAHRC is represented on the NDM.

**4. The existence, structure and mandate of national authorities tasked with monitoring facilities and programmes designed to serve persons with disabilities to prevent exploitation, violence and abuse.**

- Is there a link between this independent authorities and national preventive mechanisms established under the Optional Protocol to the Convention against Torture?

This link is being explored through the SAHRC's internal programmes. The International Treaty Body Monitoring is responsible for all ratified international obligations and therefore, this link would be in the ambit of their work.

I hope that all relevant stakeholders in South Africa will contribute to painting a bigger picture of the status of the implementation of the UNCRPD. The questions that have been omitted in this response are not pertinent to the South African context currently or still requires clarity. It would also be useful to note that the Commission is exploring the possibility of working closely with the UN Special Rapporteur on Disability, Mr. Shuaib Chaulken.

Should you require further information or clarity, kindly contact the National Coordinator: Human Rights and disability, Ms. Simmi Pillay at tel. 011 484 8300 or fax. 011 484 7146 or [spillay@sahrc.org.za](mailto:spillay@sahrc.org.za) / [simmi@polka.co.za](mailto:simmi@polka.co.za).

Kind regards



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