



**Civil Society Preliminary Submission to the CRPD Committee Pre-Sessional Working Group for South Africa
January 31, 2018**

Partners: Women Enabled International; Cape Mental Health; Professor Helene Combrinck of North-West University; Centre for Human Rights, University of Pretoria; Lawyers for Human Rights.

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Women Enabled International; Cape Mental Health; Professor Helene Combrinck of North West University; the Centre for Human Rights, Disability Rights Unit at the University of Pretoria Faculty of Law; and Lawyers for Human Rights jointly submit this preliminary report for consideration during the Committee on the Convention on the Rights of Persons with Disabilities' (CRPD Committee's) pre-sessional working group and list of issues process for the state review of South Africa.

Women Enabled International (WEI) works at the intersection of women's rights and disability rights to advocate and educate for the human rights of all women and girls, emphasizing women and girls with disabilities, and works to include women and girls with disabilities in international resolutions, policies, and programmes addressing women's human rights and development, in collaboration with disabled women's rights and women's rights organizations worldwide.

Cape Mental Health (CMH) provides or facilitates comprehensive, proactive and enabling mental health services in the Western Cape. CMH is committed to challenging socially restrictive and discriminatory practices affecting the mental health of all people. CMH runs a unique awarding winning Sexual Abuse Victim Empowerment (SAVE) programme that empowers people with mental disability, who are complainants in sexual abuse cases, with access to justice.



Professor Helene Combrinck is an associate professor at the Faculty of Law, North-West University, South Africa, with a specific research interest in disability rights in African contexts.¹

The Centre for Human Rights at the University of Pretoria Faculty of Law, South Africa, is both an academic department and a non-governmental organisation. It works towards human rights education in Africa, a greater awareness of human rights, the wide dissemination of publications on human rights in Africa, and the improvement of the rights of disadvantaged or marginalised persons or groups across the continent. The Disability Rights Unit at the Centre for Human Rights works towards promoting disability rights awareness, education and scholarship in Africa.

Lawyers for Human Rights is an independent human rights organisation with a 38-year track record of human rights activism and public interest litigation in South Africa. LHR uses the law as a positive instrument for change and to deepen the democratisation of South African society. To this end, it provides free legal services to vulnerable, marginalised and indigent individuals and communities, both non-national and South African, who are victims of unlawful infringements of their constitutional rights.



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I. Introduction

Women and girls with disabilities² in South Africa face intersectional discrimination on the basis of both their gender and disability in various aspects of their lives. Women with disabilities are subjected to harmful stereotypes that undermine their dignity and erect barriers to their full inclusion in society. Gender-based violence constitutes one of the most pernicious manifestations of this discrimination. Although all women in South Africa face a high risk of gender-based violence,³ women with disabilities are at an even greater risk of such violence, particularly sexual violence.⁴ Furthermore, women with disabilities face unique forms of discrimination in healthcare settings, particularly when accessing sexual and reproductive health information and services, frequently finding that these services are unavailable, unaffordable, inaccessible, or discriminatory.

Under Article 6 of the Convention on the Rights of Persons with Disabilities (CRPD), States parties must recognize and take measures accordingly to respect, protect, and fulfill the rights of women with disabilities.⁵ As the Committee on the Rights of Persons with Disabilities (CRPD Committee) explained in General Comment No. 3, States parties must also ensure that third parties do not violate the rights of women with disabilities.⁶

South Africa has ratified all of the international human rights treaties, including the optional protocol to the CRPD and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷ In addition to these international human rights obligations, South Africa is a state party to the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa (Maputo Protocol).

This preliminary submission focuses on rights violations that disproportionately or uniquely affect women with disabilities in South Africa, with specific reference to access to safe and comprehensive support services, particularly relating to gender-based violence, sexual and reproductive health and rights information and services, and access to justice. It also addresses related aspects of statistics and data collection. Each section is followed by suggested questions for the CRPD Committee to pose to South Africa as part of its List of Issues. We intend to submit a more detailed submission for the review of South Africa in September 2018.

II. Freedom from Exploitation, Violence and Abuse for Women with Disabilities in South Africa (CRPD arts. 6, 9, 14, 16, 17, & 19)

Under the CRPD, South Africa has an obligation to ensure accessible community-based services for women with disabilities that are gender-, age-, and disability-sensitive. The CRPD



Committee has emphasized the duty of States parties to provide free or affordable gender-based violence services to women with disabilities—including shelters, counseling, legal advice, and healthcare—that recognize and address their specific needs and reduce the risk of violence and abuse.⁸ South Africa is failing to provide women with disabilities with these required support and community services.

Lack of Accessible Gender-Based Violence Services

South Africa acknowledges in its country report that there are deficiencies in violence-related service delivery to women with disabilities.⁹ Studies in South Africa have shown that gender-based violence services are widely unavailable to women with disabilities, especially women with intellectual disabilities¹⁰ and poor and rural women.¹¹ Barriers to accessing gender-based violence services for women with disabilities are numerous. For instance, according to a 2005 study by the Centre for the Study of Violence and Reconciliation in South Africa (CSVR), women with disabilities are frequently unable to access gender-based violence services by themselves.¹² This situation is problematic, especially for women with intellectual disabilities, because women with disabilities are particularly at risk of violence from family members or those close to the family (such as family friends and neighbors).¹³ If they also have to rely on abusive family members or those close to abusers to access services, this creates an often insurmountable barrier. Furthermore, many gender-based violence services and information are not accessible to or do not include women with disabilities. For instance, the 2005 study cited above found that there was a complete lack of shelters for women with developmental, psychosocial, and intellectual disabilities in South Africa.¹⁴ Cape Mental Health (CMH) has similarly found that in some shelters, only a woman is allowed to stay but not her adult child with an intellectual disability. Relatedly, a 2015 academic study on gender-based violence and women with intellectual disabilities found that mainstream advocacy and awareness raising campaigns addressing gender-based violence, access to services, and access to justice rarely included women with disabilities.¹⁵

In addition to these barriers, many women with disabilities in South Africa also experience attitudinal barriers to accessing gender-based violence services. The 2005 CSVR study found that the majority of service providers surveyed lacked any training or protocols for serving women with disabilities, which led to attitudinal and practical barriers for women with disabilities in accessing services,¹⁶ while the 2015 study, also cited above, found that service providers regularly expressed the belief that women with intellectual disabilities were not to be believed and were likely to make up stories and mimic behavior seen on TV.¹⁷ CMH has observed that this perception is still widely held and impacts prosecutions of such cases. The 2005 research also found that many providers did not view accessibility as inclusive of the needs of people with disabilities other than physical disabilities.¹⁸

That being said, the physical inaccessibility of gender-based violence services is still a significant problem in South Africa. The 2005 CSVR study found that, of the offices of ten gender-based violence service providers, the majority were relatively inaccessible to women with



physical disabilities, despite eight of the ten service providers believing their offices were accessible.¹⁹ When informed of the barriers present at their facilities, service providers expressed a willingness to address these barriers but cited lack of financial means to implement such necessary changes.²⁰

The lack of accessible gender-based violence services for women with disabilities is only likely to get worse as established and effective gender-based violence programmes like the Thuthuzela Care Centres face funding cuts rather than the allocation of additional funds necessary to make their services accessible for women with disabilities.²¹ CMH has found that accessibility of Thuthuzela Care Centres, especially in rural areas, is a huge problem. According to the State party report, an accessibility audit of the Centres is pending but no information is provided as to the status of this audit.²²

Lack of Services to Support Families and Safe Community-Based Services

Lack of services necessary to support families and/or independent living increases women with disabilities' risk of violence in South Africa.²³ Due to deaths related to HIV/AIDS, many families in South Africa are dependent on older women or minor children for their livelihoods and support.²⁴ As a result, a family member with a disability is often viewed as a substantial responsibility.²⁵ This view is exacerbated by the lack of services and supports for family members and people with disabilities, and in turn, resentment builds up towards the person with a disability.²⁶ This resentment can increase a woman's vulnerability to violence or lead to her being left at home without support on a regular basis, itself a form of violence identified by the CRPD Committee.²⁷ For instance, academic research in 2017 found that, because rural areas lack access to services generally for persons with disabilities, people in rural areas sometimes rely on misinformation and cultural practices to address a person's disability needs and any incidents of violence, which can result in further violations of the rights of women with disabilities.²⁸ Moreover, the researchers found that the disability grants women with disabilities receive can be essential contributions to the livelihood of some families, which if the violence is being perpetrated by a family member may prevent family members from reporting the violence.²⁹

Violence in Residential Care Facilities

The 2017 academic study cited above also showed that, as a result of lack of community-based support services and the prevalence of resentment towards women with disabilities, families sometimes choose to institutionalize women with disabilities to enable these families to "just get on with their lives."³⁰ Institutionalization in turn further increases women's vulnerability to violence while in the institution without any oversight from family members.³¹

Furthermore, women with disabilities also experience violence while receiving residential care.³² One notable example of this was the rape of a woman with disabilities at a community-based non-governmental residential care home following her transfer from the government-run institution of Life Esidimeni.³³ Testimony about the sexual assault was proffered as part of the



2017 hearings regarding the deaths of at least 140 people with disabilities due to negligent transfers from the institutional settings to un-licensed non-governmental service providers, which highlighted the grave deficiencies in service provision and oversight in South Africa.³⁴ Evidence presented at the hearings revealed that a similar incident had occurred as recently as 2016 and that the facility was unlicensed and ill-equipped to provide safe services to the number of people with disabilities to whom it was responsible for providing services.³⁵

Suggested Questions to South Africa for List of Issues

- How will South Africa ensure that disability is fully integrated into all aspects of the broad government response to gender-based violence (e.g. prevention programmes and service provision)?
- What steps is South Africa taking to develop accessible community-based services for women with disabilities who have experienced gender-based violence (e.g. shelters and counselling services)?
- What steps is South Africa taking to ensure the expansion of current gender-based violence services to include women with disabilities (e.g. Thuthuzela Care Centres)?
- What steps is South Africa taking to secure the safety of women with disabilities in both government and private institutions (e.g. complaints mechanisms and independent oversight)?

III. Sexual and Reproductive Health and Rights of Women with Disabilities in South Africa (CRPD arts. 5, 6, 9, 15, 23, 24, & 25)

The CRPD contains some of the strongest language of any human rights treaty on ensuring sexual and reproductive health and rights.³⁶ In General Comment No. 3, the CRPD Committee highlights sexual and reproductive health and rights violations as one of the main issues disproportionately affecting women with disabilities.³⁷ However, South Africa is failing to meet its obligation to ensure that women with disabilities are able to access the same range, quality and standard of free or affordable sexual and reproductive healthcare and programmes as women without disabilities.

A. Access to Sexual and Reproductive Health Information and Services (CRPD, arts. 5, 6, 9, 24 & 25)

South Africa is obligated to ensure that sexual and reproductive health services, such as comprehensive sexuality education,³⁸ are available, accessible, acceptable and of good quality for women with disabilities of all ages.³⁹ The CRPD Committee has recommended that States parties ensure the accessibility of health facilities, equipment, information (provided in accessible formats), and communications regarding sexual and reproductive healthcare,⁴⁰ including by ensuring a gender perspective⁴¹ and by collaborating with organizations of women with disabilities.⁴² The CRPD Committee has classified denial of these accommodations as a form of discrimination.⁴³



Lack of Comprehensive Sexuality Education

A 2016 academic literature review of research on comprehensive sexuality education (CSE) for people with intellectual disabilities in South Africa, found that people with disabilities were regularly denied access to sexuality education.⁴⁴ The researchers highlighted the findings from one 2015 study that found that where educators did provide learners with disabilities sexuality education, the content primarily focused on hygiene, abstinence, and self-respect rather than comprehensive sexuality education.⁴⁵ CSE should equip women with disabilities “with knowledge, skills, attitudes and values that will empower them to: realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and, understand and ensure the protection of their rights throughout their lives.”⁴⁶ Researchers concluded that there is an urgent need in South Africa for leadership around CSE for people with disabilities as educators expressed a lack of confidence, understanding, and resources necessary to provide the education required by women with disabilities in South Africa in line with the CRPD.⁴⁷

Another consequence of the lack of CSE described above is that women with disabilities are frequently dependent on family members to provide sexuality education. However, sexuality remains a taboo topic in much of South Africa, especially in the context of persons with disabilities.⁴⁸ Academic research from 2015 demonstrates that the infantilizing of women with disabilities is pervasive among caregivers, which results in a failure to provide sexuality education to women with disabilities as well as blocking access to available education.⁴⁹

Attitudes of Healthcare Providers

There is insufficient research in South Africa documenting the discrimination that women with disabilities face by healthcare providers while trying to access services.⁵⁰ A small-scale study, published in 2005, on the responses women with physical disabilities received from healthcare workers at family planning clinics, antenatal clinics and delivery rooms found that women were treated as asexual, asked invasive questions about their relationships, and examined in positions inappropriate for women with physical disabilities.⁵¹ These experiences left the women with physical disabilities concerned that their participation in reproduction was regarded as “illegitimate” and that services were not designed to accommodate them.⁵² These findings are in line with information provided in South Africa’s State report,⁵³ however, the State report does not propose concrete measures to address these shortcomings.

Suggested Questions to South Africa for List of Issues

- What steps is South Africa taking to improve access to comprehensive rights-based sexuality education for youth and adults with disabilities?
- What steps is South Africa taking to combat discrimination in healthcare settings against women with disabilities?
- What training does South Africa provide to healthcare workers about working with patients who are women or girls with disabilities and about their rights?



- What is the status of the accessibility measures referred to in South Africa’s country report (i.e. National Health Facility Baseline Audit,⁵⁴ Office of Standards Compliance⁵⁵)?

B. Reproductive Choices and Violations of the Right to Legal Capacity for Women with Disabilities in South Africa (CRPD arts. 12, 15, 17 & 23)

Women with disabilities in South Africa experience significant violations of their right to legal capacity under Article 12 of the CRPD. In General Comment No. 1, the CRPD Committee enumerated how the deprivations of legal capacity for persons with disabilities leads to violations of many of their rights, including their reproductive rights and their right to give consent to medical treatment.⁵⁶

South Africa acknowledges in its State party report that significant changes are required for implementation of Article 12, including the re-examination of the notion of “informed consent” as used in the Sterilisation Act, 1998 and the Choice on Termination of Pregnancy Act, 1996.⁵⁷ The State party report refers to the South African Law Reform Commission’s investigation into supported decision-making measures, but does not provide an update on this investigation.⁵⁸ The following are some unique ways deprivation of legal capacity impacts women with disabilities in South Africa, which must be considered and incorporated in South Africa’s overhaul of their current legislation.

Forced Sterilisation and Termination of Pregnancy

The current Sterilisation Act, 1998, allows for a substitute decision-maker to consent to the sterilisation of a woman with a disability over the age of eighteen who has been deemed incapable of consenting.⁵⁹ Additionally, sterilisation of a person under the age of eighteen is permitted with consent from a substitute decision-maker where “failure to do so would jeopardize the person’s life or seriously impair his or her health.”⁶⁰ The Choice on Termination of Pregnancy Act, 1996, contains a similar provision, permitting substitute decision-making under certain circumstances.⁶¹ In CMH’s experience, forced sterilisation and termination of pregnancies without the consent of women with disabilities continues to occur as the Acts do not ensure that the women herself is consulted, allowing professionals and substitute decision-makers to abuse this gap in legislation.

As currently drafted, the language of the Sterilisation Act is excessively broad and, despite making provision for administrative review, allows for potential abuse by substitute decision-makers.⁶² Although there has not been an in-depth study of this issue, academic research has indicated that parents of girls with disabilities in South Africa have consented to sterilisation based on discriminatory notions of disability and sexuality.⁶³ However, there are no widely available studies on the rate of or extent to which sterilisations of women with disabilities is currently taking place under abusive and coercive circumstances and further research is required to identify the scope of the problem. Similarly, the Choice on Termination of Pregnancy Act allows for substitute decision makers to consent to the termination of a woman’s pregnancy if she has been classified as “severely mentally disabled” and does not require a procedure by which the woman’s views must be considered.⁶⁴ Furthermore, the Act does not clearly define a “severe mental disability.”⁶⁵



Freedom to Express Sexuality

One other notable consequence of restrictions on the legal capacity of women with disabilities in South Africa is the potential unintended consequences of the Criminal Law (Sexual Offences) Amendment Act, 2007.⁶⁶ The Act defines “rape” as an unlawful, intentional act of sexual penetration with another person without his or her consent.⁶⁷ It provides examples of circumstances where consent would be regarded as absent; these include instances where the victim is incapable in law of appreciating the nature of the sexual act because, for example, s/he is a person who is mentally disabled.⁶⁸ The latter concept is defined as a person affected by mental disability to such an extent that s/he at the time of the offence was “(a) unable to appreciate the nature and reasonably foreseeable consequences of a sexual act; (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation; (c) unable to resist the commission of any such an act; or (d) unable to communicate his or her unwillingness to participate in any such act.”⁶⁹ This provision must be read with section 57(2), which reaffirms that a person with a mental disability is unable to consent to a sexual act.⁷⁰

Although a clear reading of the Act shows that the latter provision does not apply to persons with mental disabilities generally (but rather, only those who are affected by such disability *to the extent outlined in the statutory definition above*), this wording has led to an incorrect perception that *all* persons with mental disabilities (specifically, women with intellectual disabilities) are unable to consent to sexual activities.⁷¹ In CMH’s experience, this incorrect interpretation of the Act is still widely believed and applied to persons with disabilities. There is accordingly a need to clarify the language in the Act to ensure that it is not interpreted as prohibiting consenting adults with disabilities from engaging in sexual acts.⁷²

Suggested Questions to South Africa for List of Issues

- What is the status of the South African Law Reform Commission investigation into assisted decision-making report?
- What steps is South Africa taking to review legislation - such as the Sterilisation Act, 1998 and the Choice on Termination of Pregnancy Act, 1996 - which contain provisions for substituted decision-making mechanisms, to ensure alignment with Article 12 of the CRPD?
- What steps is South Africa taking to review provisions of the Criminal Law (Sexual Offences) Amendment Act, 2007 that may have the effect of limiting the sexual autonomy of persons with disabilities?

III. Access to Justice for Women with Disabilities in South Africa (CRPD, arts 6, 13, & 16)

Women with disabilities worldwide face a range of barriers to effective access to justice, including lack of reasonable accommodations, negative attitudes, and hostile reporting procedures.⁷³ The CRPD Committee has explained that States parties must exercise due diligence to ensure that women with disabilities are free from exploitation, violence, and abuse.⁷⁴ On multiple occasions, the CRPD Committee has found that States parties must investigate,⁷⁵



prosecute,⁷⁶ and punish⁷⁷ perpetrators of gender-based violence and ensure effective remedies, including compensation and reparations, for victims.⁷⁸

South Africa notes in its State party report that there are deficiencies in realizing the right of women and children with disabilities to access justice.⁷⁹ However, despite the existence of effective established models for increasing access to justice, South Africa has done little to realize the rights of women with disabilities in this respect. As such, South Africa is failing to ensure effective access to justice for women with disabilities who have experienced or are experiencing gender-based violence and other serious human rights violations.

Inaccessible Justice Systems

The widespread lack of knowledge, training and protocols regarding accommodating and working with victims/survivors or witnesses with disabilities creates barriers to accessing justice for women and girls with disabilities in South Africa.⁸⁰ In CMH's experience, many disabilities are not catered for in the justice system and cases are withdrawn, not because of lack of evidence, but rather because the court officials are unsure on how to proceed with cases when the complainant has a disability.

Barriers to accessing justice are especially acute for gender-based victims/survivors with intellectual disabilities.⁸¹ Academic research published in 2015 and 2017 on access to justice for women with intellectual disabilities in South Africa found that women faced attitudinal barriers to justice due to perceptions that "people with disabilities are less valuable, cultural myths and superstitions about disability, fear and shame associated with 'disabled' sexuality, beliefs about the lack of credibility of persons with intellectual disabilities, and the tendency of persons with disabilities to internalise negative views about themselves."⁸² As well as the perception of family members, who generally serve as gatekeepers to accessing justice, that accessing justice for gender-based violence is futile, or would lead to loss of essential family income or stigma.⁸³ Additionally, the 2005 CSVr study on access to gender-based violence services highlighted that police officers and court officials perceive that women with intellectual or psychosocial disabilities are not credible as witnesses.⁸⁴

Similar barriers to accessing justice have been identified through studies of women with physical and hearing disabilities in South Africa.⁸⁵ For example, a 2017 study of access to justice for Deaf South Africans conducted by the Deaf Federation of South Africa⁸⁶ and a 2003 study of eight legal cases involving Deaf people⁸⁷ found that substantial barriers exist to accessing justice for Deaf South Africans including attitudinal barriers of court staff, poor quality interpreters, lack of proficient interpreters, and lack of knowledge about rights and the court system among Deaf people.⁸⁸

Similarly, in a small-scale 2005 survey of the physical accessibility of court buildings and police stations, sites were found to be largely inaccessible.⁸⁹ Problems that were identified included inadequate accessibility measures (e.g. steep ramps).⁹⁰ South Africa's State party report states



that from 2008/09 to 2012/2013, a total of 159 police stations have been made accessible.⁹¹ However, there are currently a total of 1,144 police stations in the country, and thus updated information on the accessibility of police stations is needed.⁹²

Support for Access to Justice Programmes

In its State party report, South Africa cites Cape Mental Health's "SAVE" programme as a successful programme for ensuring women with disabilities access to justice. The inclusion of this programme in the report is misplaced, given that this is not a government initiative.

Cape Mental Health (CMH) is a non-profit non-governmental organisation. The SAVE programme was established in the early 1990s and is regularly utilized by the South African Police Service and the Department of Justice.⁹³ Research on the effectiveness and best practices of the programme has already been completed and published and it has been recognized internationally as an innovative practice.⁹⁴ Despite the repeated recognition of the effectiveness of the programme by government officials, including police officers and prosecutors, and a cabinet decision during April 2013 that the programme should be incorporated in the government response to gender-based violence and expanded across the country, the South African government has to date not taken steps (financial or otherwise) to ensure the viability of the programme or its future expansion beyond the Western Cape. The SAVE programme is primarily reliant on private funding and currently lacks the funding and infrastructure required for such an expansion.⁹⁵

Unequal Recognition Before the Law

The South African Criminal Procedure Act, 1977 states that "No person appearing or proved to be afflicted with mental illness or to be labouring under any imbecility of mind due to intoxication or drugs or the like, and who is thereby deprived of the proper use of his reason, shall be competent to give evidence while so afflicted or disabled."⁹⁶ This prohibition has two components: being "afflicted with mental illness" (or laboring under any imbecility of mind due to intoxication) and being "deprived of the proper use of his [or her] reason."⁹⁷ It therefore does not automatically exclude all persons with mental illness from testifying, but only those found to also be lacking "the proper use of their reason."⁹⁸ The effect is that the person's ability to participate as a witness in legal proceedings is dependent on his/her *mental* capacity. The CRPD Committee has advised against the confusion of legal capacity with mental capacity and reiterated that Article 12 requires support to be provided in the exercise of legal capacity, rather than denying legal capacity based on perceived or actual deficits in mental capacity.⁹⁹

Furthermore, in terms of the Criminal Procedure Act, 1977, all witnesses are required to give evidence under oath.¹⁰⁰ Section 164 of the Act allows a person "who is found not to understand the nature and import of the oath or the affirmation" to give evidence without taking the oath, provided that such a person must instead be "admonished" by the presiding officer to speak the truth.¹⁰¹



In order for this to happen, the court (magistrate/ judge) must first establish whether the witness understands the nature and import of the oath. If the finding is that the witness does not understand the oath, the court must find out whether the witness can distinguish between truth and lies. If this is the case, the witness may be admonished to speak the truth and the testimony can proceed.

These requirements amount to differential treatment of witnesses who are admonished or warned by the court (in practice, usually children or persons with intellectual disabilities).¹⁰² Witnesses who take the oath are not required to demonstrate that they understand the meaning of the oath, whereas those testifying under admonition have to show that they understand the difference between truth and falsehood, which are abstract concepts and can be difficult both to understand and to articulate for anyone, including persons with a disability. In CMH's experience, the use of such abstract concepts is hugely problematic and leads to complainants being unable able to testify. This may therefore indirectly constitute a disproportionate barrier to the introduction of evidence of witnesses with intellectual disabilities.

Procedural Measures for Participation in Legal Proceedings

The South African Criminal Procedure Act, 1977, sets out a number of "protective" measures for witnesses in a criminal trial. These measures include the witness giving evidence through an intermediary, which may be considered where the witness is "under the biological or mental age"¹⁰³ of eighteen.¹⁰⁴ This measure may be to the advantage of witnesses, amongst other reasons because the intermediary may convey questions in accessible language (provided that the general purport of the question is maintained).¹⁰⁵ However, published anecdotal evidence suggests that this measure is seldom used where the witness is biologically older than eighteen, but is found to have a "mental age" below eighteen.¹⁰⁶ In CMH's experience, some magistrates will not allow complainants to have access to the service of an intermediary if they are older than eighteen years, even if because of their disability they require such support. This indicates a need for training of court officials (such as prosecutors and judicial officers) on the use of procedural measures to ensure that witnesses with disabilities may effectively participate in the criminal proceedings as required under Article 13(1) of the CRPD.

Suggested Questions to South Africa for List of Issues

- How does South Africa plan to support and expand the SAVE programme initiated by CMH?
- What steps is South Africa taking to improve access to justice for women with communication disabilities who have experienced gender-based violence (e.g. making available trained South African Sign Language interpreters)?
- What progress has been made since 2013 to improve the physical accessibility of police stations and courts in South Africa (e.g. study of courthouse accessibility)?
- What steps is South Africa taking to review criminal procedure legislation which may have the effect of disproportionately excluding women with disabilities from testifying as witnesses?



- What steps is South Africa taking to provide appropriate training relating to gender-based violence and sexual and reproductive health violations against women with disabilities to officials working in the administration of justice?

IV. Statistics and Data Collection on Women with Disabilities in South Africa (CRPD, arts. 6 & 31)

According to the World Health Organization and the World Bank, approximately 15% of people worldwide are persons with disabilities, and women with disabilities account for 19.2% of the total population of women.¹⁰⁷ The findings of the South African 2011 Census, the General Household Survey 2016 and the Community Survey 2016, however, indicate a much smaller percentage of women with disabilities in South Africa,¹⁰⁸ despite utilizing questions on difficulties in functioning developed by the Washington Group on Disability Statistics. Questions have been raised about the accuracy of the South African Census,¹⁰⁹ relating both to this discrepancy between the South African disability prevalence among women and the worldwide rate and the fact that the Washington Group Model has the effect of excluding persons with psychosocial, intellectual and neurological disabilities.¹¹⁰ Furthermore, the South African census findings only relate to persons aged 5 years and older.¹¹¹

South Africa acknowledges the importance of appropriate disaggregated information in its report and concedes that disaggregation of disability-related statistics across all government departments “remains problematic.”¹¹² The South African government’s White Paper on the Rights of Persons with Disabilities (WPRPD) does undertake the disaggregation of all disability-related data and statistics according to gender, but stops short of indicating how it will overcome the current difficulties in obtaining such information across all government institutions referred to in the State party report.¹¹³

The picture becomes even less clear when attempting to obtain information about specific issues affecting women with disabilities. For example, the South African Police Services (SAPS) sexual offenses statistics, which capture some forms of gender-based violence against women, do not include data about the victim/survivor’s disability. Furthermore, the annual SAPS crime statistics release does not report on domestic violence at all.¹¹⁴ The lack of data on gender-based violence against women with disabilities means that all policy design and implementation is currently happening in an “information vacuum.”¹¹⁵ Similar observations have been made in respect of the provision of healthcare services to persons with disabilities.¹¹⁶

Suggested Questions to South Africa for List of Issues

- What steps is South Africa taking to ensure the collection of accurate data on *all* women with disabilities (including those with psychosocial, intellectual and neurological disabilities)?
- What steps is South Africa taking to ensure the meaningful disaggregation of official information, such as SAPS crime statistics, to reflect women with disabilities?
- How will South Africa address the difficulties experienced in collecting disaggregated disability-related information across all government institutions?



Conclusions

As described in this submission, women with disabilities in South Africa face a range of intersectional forms of discrimination and violence based on both their gender and disability. The South African government has made some progress in addressing these areas; the adoption of the WPRPD, while it is a non-binding policy document only, is also a step in the right direction. However, we are concerned about fundamental shortcomings, as outlined above. We are also concerned about indications of retrogression in terms of compliance with the CRPD, as suggested by, amongst others, impending cuts in funding for the Thuthuzela Care Centres and delay in the South African Law Reform Commission's investigation into supported decision-making measures. Furthermore, investment in revising and improving legislation, policies, and programming to realize the rights of women with disabilities in South Africa is minimal. As detailed above, research, financial support, and legislative amendments are essential first steps to ensuring that women with disabilities can realize their full range of human rights.

Thank you for your consideration of this shadow letter. Our main point of contact is Anastasia Holoboff at A.Holoboff@WomenEnabled.org.



¹ Helene Combrinck's contributions to this submission are made in her personal capacity (and as such do not represent the views of the Faculty of Law or the North-West University).

² This submission will address the situation of women with disabilities throughout the life cycle. Any reference to "women with disabilities" should be interpreted to include girls with disabilities unless otherwise indicated.

³ See eg. Dubravka Šimonović (Special Rapporteur on Violence against Women, its Causes and Consequences), *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa*, paras. 9-10, UN Doc. A/HRC/32/42/Add.2 (June 14, 2016), http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session32/Documents/A_HRC_32_42_Add.2_en.docx [hereinafter *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa 2016*].

⁴ Reasons proposed for this heightened risk for women with disabilities include: their social isolation and dependence on others, a lack of knowledge about their rights and the obstacles faced in accessing social support services and justice mechanisms. See *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa 2016*, *supra* note 3, para. 30; Talia Meer & Helene Combrinck, *Invisible Intersections: Understanding the Complex Stigmatisation of Women with Intellectual Disabilities in their Vulnerability to Gender-Based Violence*, 29 AGENDA 14, 14-23 (2015) [hereinafter *Invisible Intersections*]. See also Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 3 (2016) Article 6: Women and Girls with Disabilities*, para. 33, U.N. Doc. CRPD/C/GC/3 (Nov. 25, 2016) [hereinafter CRPD Committee, *General Comment No. 3*].

⁵ CRPD Committee, *General Comment No. 3*, *supra* note 4, at paras. 7, 24.

⁶ CRPD Committee, *General Comment No. 3*, *supra* note 4, at para. 26.

⁷ Office of the High Commission for Human Rights, *Status of Ratifications: South Africa*, <http://indicators.ohchr.org/>.

⁸ CRPD Committee, *General Comment No. 5 (2017) on Living Independently and being included in the Community*, para. 72, U.N. Doc. CRPD/C/GC/G (Oct. 27, 2017).

⁹ CRPD Committee, *Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of State Parties due in 2009 South Africa*, para. 371(2), U.N. Doc. CRPD/C/ZAF/1 (Nov. 24, 2015) [hereinafter CRPD Committee, *Initial Report: South Africa*].

¹⁰ Talia Meer & Helene Combrinck, *Help, Harm or Hinder? Nongovernmental Service Providers' Perspectives on Families and Gender-Based Violence against Women with Intellectual Disabilities in South Africa*, 32 DISABILITY & SOCIETY 1, 37-55, 49 (2017) [hereinafter *Help, harm or hinder?*].

¹¹ *Help, harm or hinder?*, *supra* note 10, at 49.

¹² Naidu, Ereshnee, Sadiyya Haffeejee, Lisa Vetten, & Samantha Hargreaves, *On the Margins: Violence against Women with Disabilities*, CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION 35 (2005), http://www.iivn.nl/epublications/2005/On_the_Margins.Pdf. [hereinafter CSV, *On the Margins*].

¹³ See *Help, harm or hinder?*, *supra* note 10, 37-55 at 39.

¹⁴ CSV, *On the Margins*, *supra* note 12, at 35.

¹⁵ *Invisible Intersections*, *supra* note 4, at 20.

¹⁶ CSV, *On the Margins*, *supra* note 12, at 34.

¹⁷ *Invisible Intersections*, *supra* note 4, at 19.

¹⁸ CSV, *On the Margins*, *supra* note 12, at 31, 37.

¹⁹ CSV, *On the Margins*, *supra* note 12, at 30.

²⁰ CSV, *On the Margins*, *supra* note 12, at 30.

²¹ See Kathleen Dey, *Rape Victims' Care Centres Face Funding Drying Up* IOL (Nov. 3, 2017), available at <https://www.iol.co.za/capeargus/opinion/rape-victims-care-centres-face-funding-drying-up-11845771>

²² See CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 161.

²³ *Help, harm or hinder?*, *supra* note 10, at 41, 45.

²⁴ *Help, harm or hinder?*, *supra* note 10, at 41, 45.

²⁵ *Help, harm or hinder?*, *supra* note 10, at 41.

²⁶ *Help, harm or hinder?*, *supra* note 10, at 41.

²⁷ CRPD Committee, *Gen. Comment No. 3*, *supra* note 4, para. 31.



²⁸ *Help, harm or hinder?*, *supra* note 10, at 38.

²⁹ *Help, harm or hinder?*, *supra* note 10, at 41, 48.

³⁰ *Help, harm or hinder?*, *supra* note 10, at 46.

³¹ See *Help, harm or hinder?*, *supra* note 10, at 46; CRPD Committee, *Gen. Comment No. 3*, *supra* note 4, para. 53.

³² CRPD Committee, *General Comment No. 5 (2017) on Living Independently and being included in the Community*, para. 72, U.N. Doc. CRPD/C/GC/G (Oct. 27, 2017); CRPD Committee, *General Comment No. 3*, *supra* note 4, at para. 53. See also Nation Nyoka, *Life Esidimeni Hearings Told of Rape at the Facility*, NEWS 24 (Nov. 22, 2017), available at <https://www.news24.com/SouthAfrica/News/life-esidimeni-hearings-told-of-rape-at-facility-20171122>.

³³ Nation Nyoka, *Life Esidimeni Hearings Told of Rape at the Facility*, NEWS 24 (Nov. 22, 2017), available at <https://www.news24.com/SouthAfrica/News/life-esidimeni-hearings-told-of-rape-at-facility-20171122>.

³⁴ Nation Nyoka, *Life Esidimeni Hearings Told of Rape at the Facility*, NEWS 24 (Nov. 22, 2017), available at <https://www.news24.com/SouthAfrica/News/life-esidimeni-hearings-told-of-rape-at-facility-20171122>; Lindi Masinga, *Life Esidimeni Transfers Caused at 'least 118 deaths'*, IOL (Oct. 9, 2017), available at <https://www.iol.co.za/news/south-africa/gauteng/life-esidimeni-transfers-caused-at-least-118-deaths-11528935>

³⁵ Nation Nyoka, *Life Esidimeni Hearings Told of Rape at the Facility*, NEWS 24 (Nov. 22, 2017), available at <https://www.news24.com/SouthAfrica/News/life-esidimeni-hearings-told-of-rape-at-facility-20171122>.

³⁶ Convention on the Rights of Persons with Disabilities, arts. 23, 25., G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Dec. 13, 2006) [hereinafter CRPD].

³⁷ CRPD Committee, *Gen. Comment No. 3*, *supra* note 4, paras. 38-54.

³⁸ See Committee on the Rights of Persons with Disabilities (CRPD Committee), *General Comment No. 4 (2016) on the right to inclusive education*, para. 54, U.N. Doc. CRPD/C/GC/4 (Nov. 25, 2016) [hereinafter CRPD Committee, *General Comment No. 4*].

³⁹ Committee on the Economic, Social, and Cultural Rights (ESCR Committee), *General Comment No. 14: The Right to the Highest Attainable Standards of Health* (Art. 12), para. 29, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); ESCR Committee, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on the Economic, Social and Cultural Rights)*, paras. 12-21, U.N. Doc. E/C.12/GC/22 (May 2016). See also Programme of Action of the International Conference on Population and Development, paras. 8.3, U.N. Doc. A/ CONF.171/13/Rev.1 (Sept. 5-13, 1994).

⁴⁰ CRPD Committee, *Concluding Observations: Italy*, para. 62, U.N. Doc. CRPD/C/ITA/CO/1 (2016); *Colombia*, para. 57, U.N. Doc. CRPD/C/COL/CO/1 (2016); *Uganda*, para. 51, U.N. Doc. CRPD/C/UGA/CO/1 (2016); *Slovakia*, para. 70, U.N. Doc. CRPD/C/SVK/CO/1 (2016); *Chile*, para. 52, U.N. Doc. CRPD/C/CHL/CO/1 (2016); *El Salvador*, para. 52, U.N. Doc. CRPD/C/SLV/CO/1 (2013).

⁴¹ CRPD Committee, *Concluding Observations: Kenya*, para. 46, U.N. Doc. CRPD/C/KEN/CO/1 (2015); *Costa Rica*, para. 50, U.N. Doc. CRPD/C/CRI/CO/1 (2014); *Paraguay*, para. 60, U.N. Doc. CRPD/C/PRY/CO/1 (2013).

⁴² CRPD Committee, *Concluding Observations: Italy*, para. 62, U.N. Doc. CRPD/C/ITA/CO/1 (2016).

⁴³ CRPD Committee, *Concluding Observations: El Salvador*, para. 51, U.N. Doc. CRPD/C/SLV/CO/1 (2013).

⁴⁴ Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 100-123 (2016).

⁴⁵ Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 100-123, 117 (2016) (citing L de Reus et al, *Challenges in providing HIV education to learners with disabilities in South Africa: The voice of educators' in Sex education: Sexuality, Society and Learning* (2015)).

⁴⁶ UNESCO, UNAIDS SECRETARIAT, UNFPA, UNICEF, UNWOMEN, WHO, REV. ED. INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE INFORMED APPROACH (2018), http://www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf. Many women with disabilities may have missed out on the CSE they required and were entitled to as a child or young adult, thus it is important that adult CSE programmes are developed that meet the same standards as women were entitled to receive as children and young adults as enumerated in the foregoing guidelines.



- ⁴⁷ Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 100-123, 118 (2016).
- ⁴⁸ Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 100-123, 116-118 (2016).
- ⁴⁹ *Invisible Intersections*, *supra* note 4, at 14-23, 19.
- ⁵⁰ Kate Sherry, *Disability and Rehabilitation: Essential Considerations for Equitable, Accessible and Poverty-Reducing Health Care in South Africa*, 2014/15 SOUTH AFRICAN HEALTH REVIEW 89- 92 (2015).
- ⁵¹ Victoria Nokwanele Mgwili & Brian Watermeyer, *Physically Disabled Women and Discrimination in Reproductive Health Care: Psychoanalytic Reflections*, DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA 262-266 (Brian Watermeyer et. al. eds., 2006).
- ⁵² Victoria Nokwanele Mgwili & Brian Watermeyer, *Physically Disabled Women and Discrimination in Reproductive Health Care: Psychoanalytic Reflections*, DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA 271 (Brian Watermeyer et. al. eds., 2006).
- ⁵³ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 269.
- ⁵⁴ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 271.
- ⁵⁵ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 272.
- ⁵⁶ CRPD Committee, *General Comment No. 1: Article 12: Equal recognition before the law*, para. 8, U.N. Doc. CRPD/C/GC/1 (2014).
- ⁵⁷ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 125. *See also* CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 166.
- ⁵⁸ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 124.
- ⁵⁹ Republic of South Africa. 1998. Sterilisation Act. (Act 44 of 1998), § 2 (2).
- ⁶⁰ Republic of South Africa. 1998. Sterilisation Act. (Act 44 of 1998), § 2 (3).
- ⁶¹ Republic of South Africa. 1996. Choice on Termination of Pregnancy Act. (Act 92 of 1996), § 5(4).
- ⁶² We concur with the analysis presented by Holness, who measures the Sterilisation Act in its present form against both the Constitution and the CRPD, and concludes that it falls short on both counts. Willene Holness, *Informed Consent for Sterilisation of Women and Girls with Disabilities in the Light of the Convention on the Rights of Persons with Disabilities*, 27 AGENDA 4, 35-54 42-43 (2013).
- ⁶³ *See* Willene Holness, *Informed Consent for Sterilisation of Women and Girls with Disabilities in the Light of the Convention on the Rights of Persons with Disabilities*, 27 AGENDA 4, 35-54 36 (2013).
- ⁶⁴ Republic of South Africa. 1996. Choice on Termination of Pregnancy Act. (Act 92 of 1996), §5(5); Ashwanee Budoo, Rajendra P. Gunuth, *Termination of Pregnancy of Persons with Mental Disabilities on Medical Advice: A Case Study of South Africa*, 2 AFRICAN DISABILITY RIGHTS YEARBOOK 101, 103-104 (2014).
- ⁶⁵ Republic of South Africa. 1996. Choice on Termination of Pregnancy Act. (Act 92 of 1996), §5(4)(a) (§5(4)(a) does qualify this concept: it requires that the woman should be “severely mentally disabled” to such an extent that she is “completely incapable of understanding and appreciating the nature or consequences of a termination of her pregnancy”). *See also* Ashwanee Budoo, Rajendra P. Gunuth, *Termination of Pregnancy of Persons with Mental Disabilities on Medical Advice: A Case Study of South Africa*, 2 AFRICAN DISABILITY RIGHTS YEARBOOK 101, 119 (2014).
- ⁶⁶ Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007).
- ⁶⁷ Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007), § 3.
- ⁶⁸ Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007) §1(3)(d)(v) (Read with Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007) § 1(2)).
- ⁶⁹ Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007) §1(1).
- ⁷⁰ Republic of South Africa. 2007. The Sexual Offences Act (Act 32 of 2007) §57(2).
- ⁷¹ Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 100-123, 123 (2016).
- ⁷² *See* Rebecca Johns & Colleen Adnams, *My Right to Know: Developing Sexuality Education Resources for Learners with Intellectual Disabilities in the Western Cape, South Africa*, 4 AFRICAN DISABILITY RIGHTS



YEARBOOK 100-123, 123 (2016).); Paul Chappell, (*Re*)Thinking Sexual Access for Adolescents with Disabilities in South Africa: *Balancing Rights and Protection*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 124- 140, 133-134 (2016).

⁷³ CRPD Committee, *General Comment No. 3*, *supra* note 4, at para. 52.

⁷⁴ CRPD Committee, *General Comment No. 3*, *supra* note 4, at para. 29.

⁷⁵ CRPD Committee, *Concluding Observations: Argentina*, para. 30, U.N. Doc. CRPD/C/ARG/CO/1 (2012); *China (Hong Kong)*, paras. 58, 66, U.N. Doc. CRPD/C/CHN/CO/1 (2012); *Gabon*, para. 39, U.N. Doc. CRPD/C/GAB/CO/1 (2015); *Turkmenistan*, para. 30, U.N. Doc. CRPD/C/TKM/CO/1 (2015); *Ukraine*, para. 12, U.N. Doc. CRPD/C/UKR/CO/1 (2015).

⁷⁶ CRPD Committee, *Concluding Observations: Argentina*, para. 30, U.N. Doc. CRPD/C/ARG/CO/1 (2012); *China (Hong Kong)*, paras. 58, 66, U.N. Doc. CRPD/C/CHN/CO/1 (2012); *Gabon*, para. 39, U.N. Doc. CRPD/C/GAB/CO/1 (2015); *Hungary*, para. 32, U.N. Doc. CRPD/C/HUN/CO/1 (2012); *Turkmenistan*, para. 30, U.N. Doc. CRPD/C/TKM/CO/1 (2015); *Ukraine*, para. 12, U.N. Doc. CRPD/C/UKR/CO/1 (2015).

⁷⁷ CRPD Committee, *Concluding Observations: China (Hong Kong)*, paras. 58, 66, U.N. Doc. CRPD/C/CHN/CO/1 (2012); *Ecuador*, para. 31, U.N. Doc. CRPD/C/ECU/CO/1 (2014); *Gabon*, para. 39, U.N. Doc. CRPD/C/GAB/CO/1 (2015); *Mauritius*, para. 11, U.N. Doc. CRPD/C/MUS/CO/1 (2015); *Ukraine*, para. 12, U.N. Doc. CRPD/C/UKR/CO/1 (2015).

⁷⁸ CRPD Committee, *Concluding Observations: Kenya*, para. 32, U.N. Doc. CRPD/C/KEN/CO/1 (2015); *Mauritius*, paras. 11, 28, U.N. Doc. CRPD/C/MUS/CO/1 (2015); *Mexico*, para. 34, U.N. Doc. CRPD/C/MEX/CO/1 (2014); *Mongolia*, para. 26, U.N. Doc. CRPD/C/MGN/CO/1 (2015); *Peru*, para. 15, U.N. Do. CRPD/C/PER/CO/1 (2012); *Ukraine*, para. 12, U.N. Doc. CRPD/C/UKR/CO/1 (2015).

⁷⁹ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at paras. 127, 134, 371(2).

⁸⁰ See CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at paras. 132, 134, 371(2); *Help, harm or hinder?*, *supra* note 10, at 37-55, 49; *Invisible Intersections*, *supra* note 4, at 14-23.

⁸¹ See *Help, harm or hinder?*, *supra* note 9, at 37-55, 49; *Invisible Intersections*, *supra* note 4, at 14-23; B. Dickman, A. Roux, S. Manson, G. Douglas & N. Shabalala, 'How Could She Possibly Manage in Court?' *An Intervention Programme Assisting Complainants with Intellectual Disability in Sexual Assault cases in the Western Cape*, DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA, 116-133.

⁸² *Invisible Intersections*, *supra* note 4, at 14.

⁸³ *Help, harm or hinder?*, *supra* note 10, at 49-51.

⁸⁴ CSVR, *On the Margins*, *supra* note 12.

⁸⁵ See CSVR, *On the Margins*, *supra* note 12, at 28-30.

⁸⁶ Odette Swift, *Unequal Access to Justice – Access to Courts for Deaf persons*, *Deaf Federation of South Africa* (2017) (on file with author).

⁸⁷ Helen Dagut & Ruth Morgan, *Barriers to Justice: Violations of the Rights of Deaf and Hard-of-Hearing People in the South African Justice System*, 19 SOUTH AFRICAN JOURNAL ON HUMAN RIGHTS 1, 27-56, 30-36 (2003).

⁸⁸ Helen Dagut & Ruth Morgan, *Barriers to Justice: Violations of the Rights of Deaf and Hard-of-Hearing People in the South African Justice System*, 19 SOUTH AFRICAN JOURNAL ON HUMAN RIGHTS 1, 27-56, 30-36 (2003); Odette Swift, *Unequal Access to Justice – Access to Courts for Deaf persons*, *Deaf Federation of South Africa* (2017) (on file with author).

⁸⁹ CSVR, *On the Margins*, *supra* note 12, at 28-30, 32.

⁹⁰ CSVR, *On the Margins*, *supra* note 12, at 28-30, 32.

⁹¹ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 79.

⁹² CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 79.

⁹³ B. Dickman, A. Roux, S. Manson, G. Douglas & N. Shabalala, 'How could she possibly manage in court?' *An intervention programme assisting complainants with intellectual disability in sexual assault cases in the Western Cape*, DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA, 116-133.

⁹⁴ See B. Dickman, A. Roux, S. Manson, G. Douglas & N. Shabalala, 'How could she possibly manage in court?' *An intervention programme assisting complainants with intellectual disability in sexual assault cases in the Western Cape*, DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA, 116-133; ZERO PROJECT INNOVATIVE PRACTICES 2015 ON INDEPENDENT LIVING AND POLITICAL PARTICIPATION, <https://zeroproject.org/practice/cape-mental-health-south-africa/>



⁹⁵ B. Dickman, A. Roux, S. Manson, G. Douglas & N. Shabalala, ‘How could she possibly manage in court?’ *An intervention programme assisting complainants with intellectual disability in sexual assault cases in the Western Cape*, *DISABILITY AND SOCIAL CHANGE: A SOUTH AFRICAN AGENDA*, 116-133.

⁹⁶ Republic of South Africa. 1997. Criminal Procedure Act. (Act 51 of 1977), § 194 (Apart from the substance of this provision, the terminology used here is problematic).

⁹⁷ Republic of South Africa. 1997. Criminal Procedure Act. (Act 51 of 1977), § 194.

⁹⁸ See Helene Combrinck, *Promises of protection: Article 16 of the Convention on the Rights of Persons with Disabilities and gender-based violence in South Africa*, 53 *INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY* 59-68, 64 (2017).

⁹⁹ CRPD Committee, *General Comment No. 1 (2014) Article 12: Equality Recognition Before the Law*, para. 13, U.N. Doc. CRPD/C/GC/1 (May 19, 2014) [hereinafter CRPD Committee, *General Comment No. 1*].

¹⁰⁰ Republic of South Africa. 1997. Criminal Procedure Act. (Act 51 of 1977), § 162.

¹⁰¹ Republic of South Africa. 1997. Criminal Procedure Act. (Act 51 of 1977), § 164.

¹⁰² Dianah Msipa, *How assessments of testimonial competence perpetuate inequality and discrimination for persons with intellectual disabilities: An analysis of the approach taken in South Africa and Zimbabwe*, 3 *AFRICAN DISABILITY RIGHTS YEARBOOK* 63-90, 68 (2015).

¹⁰³ We acknowledge the problematic nature of the notion of “mental age”; however, a discussion is beyond the scope of this preliminary submission. See CRPD Committee, *General Comment No. 1*, *supra* note 99, at para. 13.

¹⁰⁴ In terms of sec 170A of the Criminal Procedure Act, 1977. For a general discussion, see Helene Combrinck, *Promises of protection: Article 16 of the Convention on the Rights of Persons with Disabilities and gender-based violence in South Africa*, 53 *INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY* 59-68, 64. (2017).

¹⁰⁵ Criminal Procedure Act, 1977 (Act 51 of 1977), § 170A(2)(a).

¹⁰⁶ Carol Bosch, *The Implementation of Sexual Offences Legislation from the Perspective of People with Intellectual Disabilities*, *IF YOU DON'T STAND UP AND DEMAND, THEN THEY WILL NOT LISTEN: SEXUAL OFFENCES LAW AND COMMUNITY JUSTICE* 53 (H. Galgut, & L. Artz eds., 2016).

¹⁰⁷ WORLD HEALTH ORGANIZATION AND WORLD BANK, *WORLD REPORT ON DISABILITY* 28 (2011).

¹⁰⁸ There are minor differences between the findings of the three sets of data collection in respect of disability prevalence and sex. The 2011 Census found a disability prevalence of 8,5% for women and 6,5% for men – Statistics South Africa 2011 Census: South African Profile of Persons with Disabilities (2014) vi. The 2016 Community Survey reported a prevalence of 8,9% (women) and 6,5% (men) – Statistics South Africa Community Survey 2016: Statistical Release (2016) at 34. The findings of the 2016 Household Survey show 5,2% (women) and 4,1% (men). STATISTICS SOUTH AFRICA GENERAL HOUSEHOLD SURVEY, 2016 MEDIA RELEASE (May 31, 2017). <http://www.statssa.gov.za/?p=9922>

¹⁰⁹ See Paul Berkowitz, *Census 2011: The (Incomplete) (Probably Inaccurate) Sum of Us*, *DAILY MAVERICK* (Oct. 31, 2012), <https://www.dailymaverick.co.za/article/2012-10-31-census-2011-the-incomplete-probably-inaccurate-sum-of-us/#.WnAJpM-cmK>; Phillip De Wet, *Is Census 2011 Accurate? Still Depends on Who you Ask*, *MAIL & GUARDIAN* (Nov. 01, 2012), <https://mg.co.za/article/2012-11-01-is-census-2011-accurate-still-depends-who-you-ask>

¹¹⁰ See Republic of South Africa. 2015. White Paper on the Rights of Persons with Disabilities, para. 1.3.2.

¹¹¹ CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para.12.

¹¹² CRPD Committee, *Initial Report: South Africa*, *supra* note 9, at para. 394. Similarly in South Africa’s second periodic review by the African Commission on Human and Peoples’ Rights (ACPHR) which took place in 2016, the Commission expressed concern about lack of adequate disaggregated data on gender, age, and form of disability. African Commission on Human and Peoples’ Rights, *Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples’ Rights and the Initial Report under the Protocol to the African Charter on the Rights of Women in Africa of the Republic of South Africa (1996-1998, 1999-2001)*, para. 39 (2016).

¹¹³ Republic of South Africa. 2015. White Paper on the Rights of Persons with Disabilities, para. 6.7.1.2.

¹¹⁴ See *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa 2016*, *supra* note 3, at para 15.

¹¹⁵ See *Crime Statistics 2016/2017*, SOUTH AFRICAN POLICE DEPARTMENT, <https://www.saps.gov.za/services/crimestats.php>; Kate Wilkinson, *Guide: Rape Statistics in South Africa*, *AFRICA CHECK* (June 22, 2016), <https://africacheck.org/factsheets/guide-rape-statistics-in-south-africa/>



¹¹⁶ See Kate Sherry, *Disability and Rehabilitation: Essential Considerations for Equitable, Accessible and Poverty-Reducing Healthcare in South Africa* 2014/15 SOUTH AFRICAN HEALTH REVIEW 89-99, 96-97 (2015).