



**Submission by Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International to the CRPD Committee Working Group for South Africa  
July 31, 2018**

**Submitting Organizations:**

Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International

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Cape Mental Health, Centre for Human Rights at The University of Pretoria, Epilepsy South Africa, Khuluma Family Counselling, Lawyers for Human Rights, Port Elizabeth Mental Health, SA Federation for Mental Health, The Teddy Bear Clinic for Abused Children, and Women Enabled International jointly submit this report for consideration during the Committee on the Convention on the Rights of Persons with Disabilities' (CRPD Committee) state review of South Africa.



**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 award-winning Sexual Abuse Victim Empowerment (SAVE) programme that empowers people with mental disability, who are complainants in sexual abuse cases, to access to justice.

**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.

**Epilepsy South Africa** is the only national non-profit organisation in the country focusing exclusively on specialised and comprehensive services to persons with epilepsy and other disabilities. Our services are based in the United Nations Convention on the Rights of Persons with Disabilities. The organisation provides a range of services including advocacy, education/awareness, economic, social and skills development. We are dedicated to enhancing the quality of life of people with and affected by epilepsy and other disabilities.

**Khuluma Family Counselling (KFC)** is a place to transform your tomorrow today, a beacon of hope and a place to speak out. We believe that emotional and social health is every person's right – even though we cannot always see the physical scars of emotional damage. We offer a broad spectrum of professional psycho-social support services to people from all walks of life and we serve a large area within the greater Tshwane. We champion our clients' emotional well-being and strive toward their optimal social functioning and healing.

**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.

**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.<sup>1</sup>



**Port Elizabeth Mental Health (PEMH)** is a registered non-governmental organization providing community-based mental health services in Port Elizabeth. Our strategic objectives include 1. To enhance mental wellbeing through education and skills development 2. To promote resilient communities through self-sustaining mental health care networks 3. To promote Ubuntu (humanity) and mental health innovation through networking and advocacy.

**SA Federation for Mental Health (SAFMH)** is the largest national mental health organisation in South Africa. The strategic key focus areas of the SAFMH National Office are: the empowerment of mental health care users and mental health organizations nationwide, advocating for the human rights of mental health care users, mental health research and information management and the implementation of national awareness campaigns. The SAFMH Board is constituted by 17 Mental Health Societies from across South Africa and the SA Mental Health Advocacy Movement. The Mental Health Societies are all independent bodies with their own governing structures. These organizations provide community-based mental health services to communities that are often vulnerable and under-resourced.

**The Teddy Bear Clinic for Abused Children (TTBC)** originated in 1986 in South Africa in response to an urgent need for medical examinations for sexually abused children. From there it has grown into a fully-fledged service for abused children which includes: Forensic medical examinations, forensic assessments, counselling, psychological testing and more recently a diversion programme for youth sexual offenders.

**Women Enabled International (WEI)** works at the intersection of women's rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women's rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls.



### **Executive Summary:**

This submission describes human rights violations against women and girls with disabilities in South Africa. These violations include failure to take all appropriate measures to ensure the full development, advancement, and empowerment of women and girls with disabilities or affirmative measures to address discrimination; inaccessible justice systems and procedures; lack of accessible gender-based violence services and other supports and services for women and girls with disabilities and their families and caregivers; institutionalization, violence in institutions, and deficient support and oversight of institutions and other facilities for persons with disabilities; violations of women with disabilities' right to make their own reproductive choices and their right to legal capacity; lack of comprehensive sexuality education and discriminatory attitudes of healthcare providers; and lack of data collection disaggregated by disability and gender.

Through this submission, our organizations make the following key recommendations:

- Take specific measures to address discrimination experienced by women and girls with disabilities and to empower women and girls with disabilities, especially black women with disabilities.
- Improve access to justice for women and girls with disabilities by amending laws and policies and providing training to justice system actors.
- Combat abuse and violence against women and girls with disabilities by ensuring gender-based violence services are accessible and available in disadvantaged areas; by developing inclusive awareness raising programs; by conducting research on the availability of programs and monitoring programs; and by investing in preventative gender-based violence programs.
- Amend laws that compromise South African women with disabilities' right to make their own reproductive choices and their right to legal capacity.
- Ensure that comprehensive sexuality education programs are available and accessible to women and girls with disabilities.
- Collect data on the issues that most impact women and girls with disabilities and ensure that women and girls with disabilities are included in all data collected about women and in all data collected about persons with disabilities.



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## **I. Introduction**

Women and girls with disabilities<sup>2</sup> in South Africa face intersectional discrimination on the basis of both their gender and disability in various aspects of their lives. Similar to women with disabilities around the world, South African women with disabilities are discriminated against and subjected to harmful stereotypes that undermine their dignity and erect barriers to their full inclusion in society. South African women with disabilities, particularly black women, women in rural areas, and women with intellectual or psychosocial disability, are regularly discriminated against and denied access to justice or essential supports, services, and accommodations necessary to uphold their rights and live independent lives free from discrimination and violence.<sup>3</sup>

Gender-based violence constitutes one of the most pernicious manifestations of intersectional discrimination. Although all women in South Africa face a high risk of gender-based violence,<sup>4</sup> women with disabilities are at an even greater risk of such violence, particularly sexual violence.<sup>5</sup> 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 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.<sup>6</sup> 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.<sup>7</sup> This submission focuses on the rights violations that disproportionately or uniquely affect women with disabilities in South Africa as identified by the CRPD Committee's 'List of Issues in Relation to the Initial Report of South Africa.'<sup>8</sup> This submission concludes with recommendations for the CRPD Committee to take into account during its review of and concluding observations to South Africa.





## II. Legal Background

### *i. International and Regional Human Rights Obligations*

South Africa has ratified all of the international human rights treaties, including the optional protocols to CRPD, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC).<sup>9</sup> In its 2011 country review, the Committee on the Elimination of Discrimination against Women recommended that South Africa “expeditiously strengthen its National Gender Machinery, in particular the Ministry for Women, Children and People with Disabilities,”<sup>10</sup> including provision of “adequate human, financial and technical resources.”<sup>11</sup> Similarly in its 2016 country review, the Committee on the Rights of the Child recommended that South Africa address discrimination against children with disabilities;<sup>12</sup> develop, adopt, and implement a national strategy to prevent, protect, and address violence against children with disabilities;<sup>13</sup> strengthen disaggregated data collection on children with disabilities;<sup>14</sup> develop, strengthen, allocate resources, and monitor comprehensive laws and policies relating to children with disabilities;<sup>15</sup> improve intersectoral service provision for children with disabilities and their caregivers;<sup>16</sup> expedite reasonable accommodation strategies;<sup>17</sup> develop, fund, improve, and support inclusive education, including ensuring free primary education to all children with disabilities;<sup>18</sup> and remove barriers to accessing social security benefits for children with disabilities and their caregivers.<sup>19</sup>

In addition to these international human rights obligations, South Africa is a state party to the African Charter on Human and Peoples’ Rights (ACHPR) and its Protocol on the Rights of Women in Africa (Maputo Protocol). The Maputo Protocol recognizes violence against women as a violation of the rights to dignity, life, and integrity and security of the person, requiring States to take specific measures to prevent and prosecute this violence, whether it occurs in public or private.<sup>20</sup> Additionally, the Maputo Protocol requires that States ensure the health and reproductive rights of all women, including; women’s right to control their fertility; freedom to exercise “the right to self-protection” from sexually transmitted infections such as HIV/AIDS; and access to adequate, affordable and accessible health services, particularly in rural areas.<sup>21</sup> Concerning women with disabilities, Article 23 of the Maputo Protocol requires states to take special measures to protect their rights, including by “ensur[ing] the right of women with disabilities to freedom from violence, including sexual abuse, discrimination based on disability and the right to be treated with dignity.”<sup>22</sup> The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities (African Disability Rights Protocol) was adopted by the African Union Heads of States on January 30, 2018, but has not yet come into operation at the time of this submission.

In the concluding observations following South Africa’s second periodic report to the ACHPR, the African Commission expressed concern about South Africa’s lack of adequate data



disaggregated by gender and disability.<sup>23</sup> The Commission recommended that South Africa provide adequate data in its next report and “develop a proactive sensitisation policy aimed at reducing or eliminating stereotypes and other perceptions which undermine the full realisation of the rights of older persons and persons with disabilities.”<sup>24</sup>

## *ii. Domestic Laws and Policies*

### 1. Background

South Africa has a “mixed” (or hybrid) legal system based on an amalgamation of different legal systems. The sources of South African law include legislation (enacted by national and provincial legislatures), judicial precedent, the common law as developed in the judgments of superior courts,<sup>25</sup> custom and customary law. Both international and foreign law are considered as additional sources of law, in that, subsections 39(1)(b) and (c) of the Constitution provide that all courts, when interpreting the Bill of Rights, must consider international law and may consider foreign law.<sup>26</sup> The Constitution of 1996 is the supreme law and any law or conduct that is inconsistent with its provisions is invalid.<sup>27</sup> Constitutional obligations must be fulfilled.<sup>28</sup>

### 2. Constitutional Provisions

Chapter 2 of the Constitution contains the Bill of Rights. Section 9 of the Bill of Rights, which guarantees the right to equality, is specifically relevant for disability. Section 9(1) guarantees the right to equality before the law and equal protection and benefit of the law. The section further prohibits the State<sup>29</sup> and private entities<sup>30</sup> from unfairly discriminating (both directly and indirectly) against anyone based on one or more listed grounds, including race, gender, sex, pregnancy, marital status, and disability.

### 3. Legislation and Policy

South Africa does not have comprehensive disability legislation. Instead, various aspects of disability rights are addressed in general legislation, such as the Criminal Procedure Act of 1977, the Sterilisation Act 44 of 1998, the Employment Equity Act 55 of 1998, the Domestic Violence Act 116 of 1998, the Promotion of Equality and Prevention of Unfair Discrimination Act<sup>31</sup> 4 of 2000 (PEPUDA), the Mental Health Care Act 17 of 2002, the Social Assistance Act 13 of 2004 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.<sup>32</sup>

Disability-related issues are also addressed in government policy documents, primarily the White Paper on the Rights of Persons with Disabilities (White Paper).<sup>33</sup> This document, which updates the 1997 White Paper on an Integrated National Disability Strategy, aims to integrate the CRPD into South Africa’s legislative and policy frameworks.<sup>34</sup> It further guides the review of all



existing policies and programs, budgets and reporting systems and their respective alignment with the Constitution and international treaty obligations and stipulates norms and standards for the removal of discriminatory barriers perpetuating the exclusion of persons with disabilities. Based on nine “Strategic Pillars,” such as “Protecting the Rights of Persons at risk of Compounded Marginalisation,”<sup>35</sup> the White Paper identifies focus areas and specific directives for each pillar. The White Paper notes that its scope of application includes “duty-bearers” such as government institutions, the judiciary, the private sector, the media, disabled people's organizations and non-governmental organizations.<sup>36</sup>

While the adoption of the White Paper was tentatively welcomed, questions remain regarding its legal status and enforceability.<sup>37</sup> The general principle is that policy documents, such as White Papers, do not have legal status and consequently their implementation therefore cannot be enforced by the courts. However, since all policies must also be consistent with the Constitution, a policy document may be challenged based, for example, on the fact that it unfairly discriminates against a particular person or group. Given that the policy was adopted relatively recently (approved by the cabinet on December 9, 2015), no information is yet available on the implementation (or lack thereof) of the White Paper.

#### 4. Protection of Disability Rights

The main bodies responsible for protecting disability rights in South Africa include the courts (with specific reference to the Equality Courts),<sup>38</sup> and the so-called “Chapter 9 institutions,”<sup>39</sup> along which the South African Human Rights Commission and the Public Protector which also play important roles in the context of disability.<sup>40</sup>

In terms of implementation of legislation and policies, disability issues currently fall mainly under the Department of Social Development, following the disbandment in 2014 of the Department of Women, Children and Persons with Disabilities.<sup>41</sup> The Department of Social Development is also the lead department with regards to the White Paper. Other government departments are also responsible for implementation of disability rights in their specific sphere or operation, such as the Department of Justice and Constitutional Development, the Department of Labour and the Department of Basic Education.

### III. Women with Disabilities (art. 6)

South Africa fails to fully recognize and take action to address the multiple forms of discrimination that women with disabilities experience in South Africa, especially black women, women in rural areas, and women with intellectual or psychosocial disability, in violation of its obligations under CRPD Article 6.<sup>42</sup>





*a. Failure to take Measures to Empower Women with Disabilities*

South Africa is obligated to take “all appropriate measures to ensure the full development, advancement, and empowerment” of women with disabilities as rights holders, and to mainstream their rights.<sup>43</sup> In the experience of the South African partners in this report, women with disabilities, especially those with intellectual or psychosocial disabilities, are often unfamiliar with their rights and face barriers to empowerment due to lack of education and poverty. In Cape Mental Health’s (CMH) experience, one aggravating factor is the high unemployment rate in South Africa for people with disabilities. CMH finds that many women with intellectual or psychosocial disability have often not been given opportunities for advancement and empowerment, such as learning how to stand up for their rights. Similarly, in Port Elizabeth Mental Health’s (PEMH) experience, many women with intellectual or psychosocial disability do not seek access to services because they do not feel empowered to make self-protecting choices, such as reporting an abusive caregiver. PEMH finds that many women with disabilities are not even aware of their basic rights, experience low self-esteem, and thus remain in abusive relationships. PEMH also finds that there is a need to establish awareness raising programs for women with disabilities to assist them in knowing their rights relating to abuse and where to seek help if they experience abuse. In PEMH’s experience women with intellectual disability living with foster parents or extended family are even more at risk of such abuse as they fear becoming homeless or injured, or they do not think that anyone will believe them if they come forward about the abuse they experience.

*b. Insufficient Affirmative Action Measures relating to Discrimination*

South Africa is obligated to take measures to address the multiple and intersecting forms of discrimination experienced by women with disabilities, especially black women.<sup>44</sup> In a study published this year on disability stigma, womanhood, and intimate partnerships in South Africa, researchers found that Black culture in particular could negatively affect black women with disabilities’ intimate partner relationships. They found that Black culture has distinct prescribed gendered roles in intimate partner relationships, which according to one study participant means that:

The abuse of a disabled woman in Black culture is different. Because a man is seen as a superior figure and a woman knows she is obligated to care for him. You know Coloured or White people care about their partners, but us black people - if it’s a woman, and a man would care for her, people would look at him like he is a weak man and say, ‘how can you wash for a woman?’ So, the husband would rather neglect the wife or leave her (38-year-old, married, physical and visual impairment).<sup>45</sup>

Similarly, in another 2018 survey of South Africans with intellectual disability, researchers found that the belief that persons with intellectual disability are “inferior” exposes them to



increased abuse and exploitation that they often lack the support to overcome.<sup>46</sup> Researchers also found that black South Africans with intellectual disability and young adults with both intellectual and physical disabilities experienced even greater levels of stigmatization.<sup>47</sup> Similarly, in surveying clients with disabilities, The Teddy Bear Clinic (TTBC) received responses from two clients who reported that they (or their daughter) experienced discrimination as a black woman with a disability and that they felt that the government did not do anything to prevent this discrimination.

Furthermore, South Africa needs to tackle discrimination against women with disabilities related to their economic rights, including related to social security and employment. CMH finds that the current South African Social Security Agency grants provided to women with disabilities are insufficient and often keep women at home in a childcaring role. Instead, South African women with disabilities need opportunities to develop the skills needed to access work opportunities to lift themselves and their families out of poverty. For those women who do seek employment opportunities, in CMH's experience, women with disabilities regularly experience discrimination in employment settings where they are often terminated following a disability disclosure and in medical settings when seeking admission or collecting prescriptions. At CMH's Awareness Raising Sessions, many women share the discrimination they experience from both managers and co-workers and how they are denied reasonable accommodations (despite clear legislative and policy obligations that require employers to provide accommodations<sup>48</sup>).

#### *c. Lack of Accessible Gender-Based Violence Services*

For information about gender-based violence services, please see Section V below.

### **IV. Access to Justice (art. 13)**

South African women with disabilities cannot access justice on an equal basis with others due to a range of barriers, both physical and legislative, in violation of CRPD Article 13.<sup>49</sup> This is particularly harmful for South African women with disabilities who face an exceedingly high risk of gender-based violence<sup>50</sup> and lack effective resources within the justice system.

#### *a. 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 with disabilities in South Africa.<sup>51</sup> Barriers to accessing justice are especially acute for gender-based violence victims/survivors with intellectual disability.<sup>52</sup> A 2005 comprehensive study by the Centre for the Study of Violence and Reconciliation's (CSVR) on access to gender-based violence services in South Africa, found that police officers and court officials did not



perceive women with intellectual or psychosocial disabilities as credible witnesses.<sup>53</sup> Furthermore, academic research published in 2015 and 2017 on access to justice for women with intellectual disabilities in South Africa found that these 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.”<sup>54</sup> A 2017 study also found that family members of women with intellectual disability generally serve as gatekeepers to accessing justice and may perceive that accessing justice for gender-based violence is futile or would lead to loss of essential family income or stigma.<sup>55</sup>

Women with hearing or physical disabilities in South Africa face similar barriers to accessing justice.<sup>56</sup> For example, a 2017 study of access to justice for Deaf South Africans conducted by the Deaf Federation of South Africa<sup>57</sup> and a 2003 study of eight South African legal cases involving Deaf people<sup>58</sup> found that substantial barriers exist to accessing justice for Deaf South Africans. Barriers included 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.<sup>59</sup>

In a small-scale 2005 survey of the physical accessibility of court buildings and police stations, sites were found to be largely inaccessible.<sup>60</sup> Problems that were identified included inadequate accessibility measures (e.g. steep ramps).<sup>61</sup> South Africa’s State party report to the CRPD Committee states that from 2008/09 to 2012/13, a total of 159 police stations have been made accessible.<sup>62</sup> 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.<sup>63</sup>

CMH, PEMH, TTBC, and Mpumalanga Mental Health (MMH) have all observed that the stereotypical belief that people with intellectual disability are not credible is still widely held and impacts the reporting of cases to the South African Police Services (SAPS) and prosecutions of such cases. In PEMH’s experience people with intellectual and/or psychosocial disabilities are viewed as unreliable by the SAPS and provided with poor service as a result, which prevents them from reporting abuse. This occurs in the context of criminal offences, such as rape, that are already generally under-reported. Similarly, if a complainant is able to make a complaint, in CMH’s experience their case is often withdrawn, not because of lack of evidence, but rather because the court officials are unsure about how to proceed with cases when the complainant has a disability. Similarly, PEMH has found that persons with intellectual disability are not viewed as reliable witnesses and persons with psychosocial disability are often stigmatized as being unstable and unreliable.

#### *b. Unequal Procedural Measures for Participation in Legal Proceedings*



South African women with disabilities face unequal recognition under the South African Criminal Procedure Act No. 51, 1977 in multiple ways that substantially impede their ability to access justice. The Criminal Procedure Act 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.”<sup>64</sup> 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.” It therefore does not automatically exclude all persons with disabilities from testifying, but only those found to also be lacking “the proper use of their reason.”<sup>65</sup> However, the effect in practice is that a person's ability to participate as a witness in legal proceedings is dependent on his/her mental capacity.<sup>66</sup> In a study published in 2018, researchers found that “[d]espite the survivor’s ability to give an account, legal determination of capacity to testify against the perpetrator is ultimately out of the survivor’s hands and depends on results of mental health examinations.”<sup>67</sup>

Additionally, the Criminal Procedure Act requires all witnesses to give evidence under oath, except for a person “who is found not to understand the nature and import of the oath or the affirmation,” who can give evidence without taking the oath, provided that the person is instead “admonished” by the presiding officer to speak the truth.<sup>68</sup> However, ultimately these requirements amount to differential treatment of witnesses who are admonished or warned by the court (in practice, usually children or persons with intellectual disability). 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, especially a person with intellectual disability. In CMH’s experience, the use of such abstract concepts is hugely problematic and leads to complainants being found unable to testify.

Lastly, although the Act sets out a number of “protective” measures for witnesses in a criminal trial, these measures are not consistently provided when appropriate to persons with disabilities. These measures include the witness giving evidence through an intermediary, which may be considered where the witness is “under the biological or mental age”<sup>69</sup> of eighteen.<sup>70</sup> This measure can be especially useful to witnesses with disabilities because the intermediary may convey questions in an accessible form (provided that the general purport of the question is maintained).<sup>71</sup> 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.<sup>72</sup> 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 when their disability requires such an accommodation. This indicates a need for the training of court officials (such as





prosecutors and judicial officers) on the use of procedural accommodations to ensure that witnesses with disabilities may effectively participate in the criminal proceedings.

**V. Abuse and Violence against Women with Disabilities (freedom from torture, or cruel, inhuman, or degrading treatment or punishment, art. 15, and freedom from exploitation, violence, and abuse, art. 16)**

Women in South Africa face an exceedingly high risk of gender-based violence.<sup>73</sup> For women with disabilities, the risk of violence is even greater, particularly sexual violence.<sup>74</sup> Despite these risks, South Africa fails to exercise due diligence to prevent, protect against, investigate, prosecute, and punish gender-based violence, while ensuring that women and girls have access to appropriate support services when they experience such violence, in violation of CRPD Articles 15 and 16.<sup>75</sup>

*a. Lack of Accessible Gender-Based Violence Services*

Current measures to prevent and protect South African women with disabilities, especially those with psychosocial and/or intellectual disability, against any form of exploitation, violence, and abuse, including sexual violence, are insufficient. South Africa acknowledges in its country report that there are deficiencies in violence-related service delivery to women with disabilities.<sup>76</sup> Studies in South Africa have shown that gender based violence services are widely unavailable to women with disabilities, especially women with intellectual disability<sup>77</sup> and women with disabilities living in poverty and in rural areas.<sup>78</sup> A recent study of sexual violence against children in South Africa published in 2018 found that children with disabilities were especially vulnerable to sexual violence and that this at-risk group required “specific and targeted preventive interventions” to address their vulnerability.<sup>79</sup>

**1. Barriers to Independent Access to Services**

Barriers to accessing gender-based violence services for women with disabilities are numerous. A 2017 study of access to healthcare services for South African’s living in rural areas found that lack of transportation was one of the primary barriers to accessing services.<sup>80</sup> According to a 2005 study by the Centre for the Study of Violence and Reconciliation (CSVR) in South Africa, women with disabilities are frequently unable to access gender-based violence services by themselves.<sup>81</sup> Similarly, essential gender-based violence services like Khuluma Family Counselling (KFC) report low rates of rape victims/survivors with disabilities engaging their services like their Victim Empowerment Centres. KFC reports that women with disabilities are prevented from accessing their services because informal settlements, where many women with disabilities live, are too far a walk from services along dirt roads and the cost of public transportation is often prohibitive.<sup>82</sup>





In the experience of CMH, PEMH, and MMH, many women with disabilities find it challenging to access services because of patriarchal family dynamics where women are expected to stay at home and rear the children, thereby placing financial power in the hands of the male household members. CMH, PEMH, and MMH find that men often use this as leverage, which leads women to stay in abusive and exploitative relationships because they are financially dependent on their male family members. In general, PEMH has found that communication difficulties are one of the main barriers for women with intellectual or psychosocial disability in reporting abuse due to the lack of accessible complaint procedures in the Eastern Cape.

This situation is especially problematic for women with intellectual disability who are particularly at risk of violence from family members or those close to the family (such as family friends and neighbors).<sup>83</sup> If they also have to rely on abusive family members or those close to abusers to access services, this creates an often insurmountable barrier. For instance, the 2005 CSVSR study cited above found that there was a complete lack of shelters for women with developmental, psychosocial, and intellectual disabilities in South Africa.<sup>84</sup> CMH has similarly found that in some shelters, only a woman is allowed to stay but not her adult child with intellectual disability.

## 2. Barriers to Information about Services

Information about gender-based violence and gender-based violence services are often not accessible to or do not include women with disabilities. A 2015 South African academic study on gender-based violence and women with intellectual disability found that mainstream advocacy and awareness raising campaigns addressing gender-based violence, access to services, and access to justice rarely included women with disabilities.<sup>85</sup>

KFC has found that many people with disabilities are taught from a young age that they are “outcasts” and kept hidden away, which conditions them to believe they cannot access “normal” services. For example, in 2017 a Deaf man sought out KFC’s services and expressed great surprise when the KFC social worker took the time to communicate with him, as he said that usually when people see him coming they turn away or tell him that they do not have the time to assist him. Despite an obvious need, KFC lacks the funding necessary to hire a person who can conduct outreach and mobile services to persons with disabilities to inform them of their rights and the availability of key gender-based violence services.

## 3. Attitudinal Barriers

Many women with disabilities in South Africa also experience attitudinal barriers to accessing gender-based violence services. The 2005 CSVSR 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.<sup>86</sup> The study also found that many providers did not view accessibility as inclusive of the needs of persons with disabilities other than physical disabilities.<sup>87</sup> Similarly, a 2015 study found that service providers regularly expressed the belief that women with intellectual disability were not to be believed and were likely to make up stories and mimic behavior seen on TV.<sup>88</sup>

#### 4. Physical Barriers

Physical inaccessibility of gender-based violence services is still a significant problem in South Africa. The 2005 CSVSR study found that out 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.<sup>89</sup> When informed of the barriers present at their facilities, service providers expressed a willingness to address these barriers but cited that they lacked financial means to implement necessary changes.<sup>90</sup> One respondent to the TTBC's client survey explained that mobile clinics are necessary to make gender-based violence services more accessible and available to persons with disabilities.

Moreover, women and girls with disabilities are impeded from accessing the Thuthuzela Care Centres, which provide essential support services for survivors of sexual offences and domestic violence. CMH has found that accessibility of Thuthuzela Care Centres, especially in rural areas, is a huge problem. According to South Africa's State party report, an accessibility audit of the Centres is pending but no information is provided in the State party report or reply to the List of Issues as to the status of this audit.<sup>91</sup>

#### 5. Funding Barriers for Service Providers serving Women with Disabilities

CMH, PEMH, MMH, and TTBC all play an essential role in providing gender-based violence services to women with disabilities in South Africa. For example, CMH's Sexual Abuse and Victim Empowerment (SAVE) program was established in the early 1990s and is regularly utilized by the South African Police Service and the Department of Justice.<sup>92</sup> The SAVE program offers victims with intellectual disabilities and their families psychological counselling and the same access to justice as the general population.<sup>93</sup> Research on the effectiveness and best practices of the program has been completed and published and is recognized internationally as an innovative practice.<sup>94</sup>

In its State party report, South Africa cites CMH's SAVE program as a successful program for ensuring that women with intellectual disability have access to justice. Even though this program is identified as a best practice intervention and included in the country report, it should be noted



that this is not a government initiative. CMH is a non-profit, non-governmental organization. Although the South African government contributes to CMH and has acknowledged its successful practices, CMH is still dependent on private donors to sustain its services and in particular the SAVE program. In April 2013, the South African cabinet decided that CMH's program should be incorporated in the government response to gender-based violence and expanded across the country; however as of this writing, the South African government has not taken steps (financial or otherwise) to ensure the viability of the program or its future expansion beyond the Western Cape.

The lack of funding for accessible gender-based violence services for women with disabilities is only likely to get worse as established and effective gender-based violence programs 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.<sup>95</sup>

*b. Lack of Other Supports and Services for Women with Disabilities and their Families and Caregivers*

One factor that increases the vulnerability of South African women with disabilities to exploitation, violence, and abuse is the lack of services necessary to support families and/or independent living.<sup>96</sup> 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-related needs and incidents of violence, which can result in further violations of the rights of women with disabilities.<sup>97</sup>

Due to the number of deaths related to HIV/AIDS in South Africa, many families are dependent on older women or minor children for their livelihoods and support.<sup>98</sup> As a result, a family member with a disability is often viewed as a substantial responsibility.<sup>99</sup> This view is exacerbated by the lack of services and supports for family members and persons with disabilities, and in turn, resentment builds up towards the person with a disability.<sup>100</sup> 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 as identified by the CRPD Committee.<sup>101</sup> In other cases, the disability grants that women with disabilities receive can be essential contributions to the livelihood of some families, a situation which can prevent family members from reporting violence against women with disabilities if that violence is perpetrated by a family member.<sup>102</sup>

In PEMH's experience, a woman with intellectual or psychosocial disability's dependence on caregivers reinforces her vulnerability to abuse. PEMH has also found that financial abuse against women with disabilities is pervasive, as women with disabilities are perceived as unable



to manage their own finances and lack the services to enable them to do so. As a result, they are dependent on others, which opens them up to abuse.

*c. Institutionalization, Violence in Institutions, and Deficient Support and Oversight of Institutions and Other Facilities for People with Disabilities*

A 2017 South African academic study showed that, because of the dearth 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.”<sup>103</sup> Forced institutionalization is itself a form of violence, and because institutionalization also leads to isolation and dependence, frequently without adequate oversight, institutionalizing women with disabilities in both State and non-State facilities increases their vulnerability to violence.<sup>104</sup> Because institutionalization also leads to isolation and dependence on third parties, frequently without adequate oversight, institutionalization of women with disabilities in both State and non-State facilities in turn increases their vulnerability to violence.

One notable example of this in South Africa was the rape of a woman with a mental disability in an unlicensed community-based non-governmental residential care facility following her transfer from Life Esidimeni, a government-run institution.<sup>105</sup> Testimony about the sexual assault was proffered as part of the 2017 hearings regarding the deaths of 144 people with mental disability due to negligent transfers from the Life Esidimeni institutional setting to unlicensed non-governmental service providers, highlighting the grave deficiencies in service provision and oversight in South Africa.<sup>106</sup> 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 persons with disabilities.<sup>107</sup>

In CMH and PEMH’s experience, women with intellectual or psychosocial disability who receive long-term care at facilities are particularly vulnerable to abuse by other patients or by staff. These women often do not know that there is recourse for the abuse they experienced. They often do not understand the communication channels and structures that are available to report abuse and, if they do, they often lack an accessible way to communicate their complaint. Moreover, there are no reliable statistics on the number of persons with disabilities deprived of liberty, be it in institutions, residential care facilities, or prisons, which hampers effective oversight.

Similarly, three girls with hearing impairment were killed in a fire at the North West School for the Deaf because the school failed to adhere to basic safety and fire standards.<sup>108</sup> The South African Human Rights Commission investigation into the incident found that the school violated learners at the school’s rights in a multitude of ways, including failing to adhere to legislative and policy requirements for learners with disabilities or “take positive steps to protect the



learners, which was compounded by locking the doors to the residential facilities from the outside.”<sup>109</sup> Although this school may not be an institution in the same way as a long-term residential care facility or psychiatric hospital, the government’s lack of oversight of this facility, similar to its lack of oversight over institutions, likely contributed to the deficiencies that led to these deaths.

## VI. Integrity of the Person (art. 17)

The right of women with disabilities in South Africa to make their own reproductive choices along with their right to legal capacity is at risk due to the current drafting of the South African Sterilisation Act No. 44, 1998, and Choice on Termination of Pregnancy Act No. 92, 1996, which violate CRPD Articles 12, 15, 17 and 23.

The current Sterilisation Act 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.<sup>110</sup> 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.”<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup> However, there are no widely available studies on the rate of or extent to which sterilisations of women with disabilities in South Africa are 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,” without a requirement to even consult with or consider the views of the woman herself, let alone obtain her informed consent.<sup>114</sup>

In CMH’s experience, forced sterilisation and forced abortion of women with disabilities without their consent continues to occur. This is, in part, because both pieces of legislation allow substitute decision-makers to make this decision for some women and girls with disabilities, particularly with intellectual or psychosocial disability, which allows professionals and substitute decision-makers to abuse this gap in legislation. Similarly, in TTBC’s experience, many families and institutional service providers place women and girls with disabilities on contraception, and it is unclear to TTBC whether it is done with informed consent of the woman or girl. TTBC finds that many family members do so as a protective measure because they feel like they do not have control over their children or out of concern for the high risk of sexual abuse their children face. This is





particularly problematic given that contraception does not prevent sexual abuse and may prevent abuse from being detected.

## VII. Respect for Home and the Family (art. 23) and Health (art. 25)

South African women, particularly those living in rural areas and with intellectual disabilities, do not receive sufficient education and information about their sexual and reproductive health and rights nor do they have access to sufficient accessible health facilities. 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. As such, South Africa is failing to meet its obligations under both CRPD Articles 23 and 25.<sup>115</sup>

### a. *Lack of Comprehensive Sexuality Education*

Children with disabilities across South Africa are denied access to education because of a lack of inclusive education and services.<sup>116</sup> As a result, their opportunity to access comprehensive sexuality education (CSE), where available, in school is rare. For women with disabilities who are able to attend school, this lack of CSE is particularly egregious given that female learners with disabilities in South Africa report experiencing school-based sexual violence and threats of violence by male learners for refusing sexual advances.<sup>117</sup> Moreover, lack of CSE only increases the vulnerability of children with disabilities to violence and abuse, as it impedes their ability to recognize abuse. In a South African study published in 2018, 14.61% of girls reported some lifetime sexual victimization.<sup>118</sup> Factors that increased their risk included both school enrollment and having a disability.<sup>119</sup>

In a 2017 study of CSE programs for students with disabilities at South African schools, researchers found both that CSE for young persons with disabilities is essential because of the impact that societal discrimination has on their sexuality and that teachers currently lack a research-based curriculum to provide quality CSE to students with disabilities.<sup>120</sup> A 2016 academic literature review of research on CSE for persons with intellectual disabilities in South Africa found that persons with disabilities were regularly denied access to sexuality education.<sup>121</sup> The researchers highlighted the findings from one 2015 study that found that where educators did provide learners with disabilities with sexuality education, the content primarily focused on hygiene, abstinence, and self-respect rather than comprehensive sexuality education.<sup>122</sup> As UNESCO outlines in its technical guidance on CSE, 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.”<sup>123</sup> 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.<sup>124</sup> Similarly, another study from 2015 found that teachers in special schools in South Africa lacked the confidence needed to deliver sex education to their students with intellectual disabilities despite recognizing its importance.<sup>125</sup> Consequently, the teachers defaulted to only promoting abstinence.<sup>126</sup>

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 relation to persons with disabilities.<sup>127</sup> According to 2015 academic research on gender-based violence, caregivers frequently infantilize women with disabilities, which results in caregivers failing to provide sexuality education and blocking access for women with disabilities to available sexuality education.<sup>128</sup>

PEMH finds that within the communities in the Port Elizabeth region, young girls and women with intellectual disabilities are often infantilized and are not seen as sexual beings, which means they are not provided with needed information to be aware of and identify behaviors that constitute abuse. In particular, PEMH finds that many girls and women with intellectual disability lack awareness of sexual relations and their rights under the law. However, there are very few programs addressing this gap, particularly for those who have a moderate or severe intellectual disability. It is essential that appropriate learning materials on CSE for women and girls with disabilities be developed to fill this gap.

#### *b. Attitudes of Healthcare Providers*

Women with disabilities worldwide face a wide range of unique human rights abuses in healthcare settings, including sexual and reproductive healthcare settings, due to both their gender and disability. As the CEDAW Committee noted in its General Recommendation No. 24 on the right to health, “women with disabilities, of all ages, often have difficulty with physical access to health services.”<sup>129</sup> As the CRPD Committee has noted in its General Comment No. 3, stereotypes about women with disabilities—including that they cannot make decisions for themselves, are asexual, or cannot become pregnant—may lead healthcare workers to discount their needs or subject them to abuse, violating their rights to health and to found a family.<sup>130</sup>

There is insufficient research in South Africa documenting the discrimination that women with disabilities face by healthcare providers while trying to access services.<sup>131</sup> 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.<sup>132</sup> 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.<sup>133</sup> These findings are in line with information provided in South Africa’s State report;<sup>134</sup> however, the State report does not propose concrete measures to address these shortcomings.

### **c. Statistics and Data Collection (art. 31)**

The current South African data on persons with disabilities is not accurately disaggregated or reflective of women with disabilities in South Africa and their needs, in violation of South Africa’s obligations under CRPD Article 31.<sup>135</sup> Both the Committee on the Rights of the Child and the African Commission on Human and Peoples’ Rights have expressed concern about this lack of data and both recommended in 2016 that South Africa rectify the lack of accurate and comprehensive data on persons with disabilities.<sup>136</sup> However, as of this writing, no updated data was available. In the experience of the partners to this report, South African women with disabilities are rarely engaged in the process of designing data collection systems.

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.<sup>137</sup> 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,<sup>138</sup> 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,<sup>139</sup> 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.<sup>140</sup> Furthermore, the South African census findings only relate to persons aged 5 years and older.<sup>141</sup>

There is a particular dearth of data on people with intellectual disabilities in South Africa. Indeed, a 2018 academic report surveying the available research on intellectual disabilities in South Africa found that the last reliable data on the prevalence of intellectual disabilities was collected in the 1990s.<sup>142</sup> Intellectual disability was not expressly measured in the 2011 Census.<sup>143</sup>

South Africa acknowledges the importance of appropriate disaggregated information in its State party report and concedes that disaggregation of disability-related statistics across all government departments “remains problematic.”<sup>144</sup> The South African government’s White Paper on the Rights of Persons with Disabilities does set out a policy to disaggregate all disability-related data and statistics according to gender, but it 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.<sup>145</sup>

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 offences statistics, which capture some forms of gender-based violence against women, do not include data about the victim/survivor's disability.<sup>146</sup> Furthermore, the annual SAPS crime statistics does not report on domestic violence at all.<sup>147</sup> 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."<sup>148</sup> There is also a lack of data on the provision of healthcare services to persons with disabilities.<sup>149</sup>

## Conclusions and Recommendations

Despite recent efforts to align South African policy with some aspects of the CRPD, including through the White Paper on the Rights of Persons with Disabilities, the rights of South African women and girls with disabilities remain in serious jeopardy. Based on the information provided above, our organizations would like to make the following recommendations to the CRPD Committee for its review of South Africa.

### *Questions to Pose During the Review:*

1. *Women with Disabilities (art. 6)*
  - What measures is South Africa taking to specifically empower women with disabilities and educate them about their rights in an accessible manner?
  - How does South Africa plan to address the discrimination experienced by women with disabilities in South Africa, especially in the service delivery, healthcare, employment, and education contexts?
2. *Access to Justice (art. 13)*
  - 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?
- 3. *Abuse and Violence against Women with Disabilities (freedom from torture, or cruel, inhuman or degrading treatment or punishment, art. 15, and freedom from exploitation, violence and abuse, art. 16)*
  - 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) and to deinstitutionalize while providing services and supports for independent living in the community?
- 4. *Integrity of the Person (art. 17)*
  - 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?
- 5. *Respect for Home and Family, and the Right to Health (arts. 23 and 25)*
  - 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 with disabilities?
  - What is the status of the accessibility measures referred to in South Africa's country report (i.e. National Health Facility Baseline Audit,<sup>150</sup> Office of Standards Compliance)?<sup>151</sup>
- 6. *Statistics and Data Collection (art. 31)*
  - 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 the 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?

### *Recommendations for Concluding Observations:*

#### *1. Women with Disabilities (art. 6)*

- Develop “Know Your Rights” materials targeted at women with intellectual or psychosocial disability, to help them feel empowered to claim their rights.
- Ensure that laws, policies, and programs reflect the lived experiences of women with disabilities in all of their diversity, including for black women with disabilities.
- Create support and empowerment programs for women with disabilities.
- Fund research into the specific needs of women and children with disabilities.
- Take specific measures to address the multiple and intersecting forms of discrimination experienced by black women with disabilities.

#### *2. Access to Justice (art. 13)*

- Amend laws and policies to ensure that women with disabilities are not prevented from testifying in court. Ensure that current provisions allocating support for individuals when needed to testify in court are provided to persons with disabilities so that they are not excluded from testifying.
- Provide training to justice system actors on the rights of women with disabilities and the specific support services and accommodations they may need to report crimes, give statements, and testify in court, among other activities.

#### *3. Abuse and Violence against Women with Disabilities (freedom from torture, or cruel, inhuman or degrading treatment or punishment, art. 15, and freedom from exploitation, violence and abuse, art. 16)*

- Take immediate steps to ensure that gender-based violence services are accessible to persons with disabilities. Ensure support for the expansion of existing programs that are accessible to and aimed at women with disabilities.
- Develop awareness raising programs tailored for women with disabilities to inform them about their rights, particularly pertaining to abuse and violence.
- Establish and support more service programs in disadvantaged areas, including rural areas and disadvantaged urban areas.
- Conduct research into current service programs and program implementation to improve service delivery to women with disabilities.
- Research and improve monitoring of programs and facilities for people with disabilities across South Africa, while also deinstitutionalizing persons with disabilities and ensuring adequate services and supports for independent living in the community.
- Invest in the development of preventative gender-based violence services for women with disabilities.



4. *Integrity of the Person (art. 17)*

- Amend the Sterilisation Act and the Termination of Pregnancy Act to note that third-party consent for sterilisation and abortion is not valid and that the only valid consent for sterilisation and abortion comes from the woman herself.
- Amend criminal laws to ban forced sterilisation, contraception, and abortion and provide punishments for perpetrators. Ensure adequate redress measures for victims/survivors of forced sterilisation, contraception, and abortion, including compensation and rehabilitation.

5. *Respect for Home and Family, and the Right to Health (arts. 23 and 25)*

- Ensure that CSE programs are provided to all girls and young women with disabilities, both inside and outside of school, in formats that are accessible to them.
- Remove attitudinal barriers faced by women with disabilities to accessing sexual and reproductive health information and services by training healthcare providers on the rights and lived experiences of women with disabilities as well as how to provide them with quality, gender- and disability-sensitive care.

6. *Statistics and Data Collection (art. 31)*

- Collect data on the issues that most impact women with disabilities—including on gender-based violence, sexual and reproductive health, education, and employment, among others—and ensure that women with disabilities are included in all data collected about women and in all data collected about persons with disabilities, including by disaggregating by gender, age, race, and disability, among other factors.

Thank you for your consideration of this shadow report. Our main point of contact is Anastasia Holoboff at [A.Holoboff@WomenEnabled.org](mailto:A.Holoboff@WomenEnabled.org)

<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> See Charlotte Capri, Lameze Abrahams, Judith McKenzie, et al., *Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?*, AFRICAN J. OF DISABILITY, 2018, at 1, 5, available at, <https://doi.org/10.4102/ajod.v7i0.396>; 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?*]; 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*]; 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), available at [http://www.iiav.nl/epublications/2005/On\\_the\\_Margins.Pdf](http://www.iiav.nl/epublications/2005/On_the_Margins.Pdf). [hereinafter CSVR, *On the Margins*].



<sup>4</sup> See, e.g. 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](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*].

<sup>5</sup> 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 4, para. 30; *Invisible Intersections*, *supra* note 2, at paras. 14-23. 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*].

<sup>6</sup> CRPD Committee, *General Comment No. 3*, *supra* note 5, at paras. 7, 24.

<sup>7</sup> CRPD Committee, *General Comment No. 3*, *supra* note 5, at para. 26.

<sup>8</sup> United Nations Digital Library, *List of Issues in Relation to the Initial Report of South Africa: Committee on the Rights of Persons with Disabilities*, available at <https://digitallibrary.un.org/record/1484963>.

<sup>9</sup> Office of the High Commission for Human Rights, *Status of Ratifications: South Africa*, <http://indicators.ohchr.org/>.

<sup>10</sup> Disability issues currently fall mainly under the Department of Social Development following the disbandment in 2014 of the Department of Women, Children and Persons with Disabilities.

<sup>11</sup> CEDAW Committee, *Concluding observations: South Africa*, ¶19, U.N. Doc. CEDAW/C/ZAF/CO/4 (2011).

<sup>12</sup> CRC Committee, *Concluding observations: South Africa*, ¶24(a), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>13</sup> CRC Committee, *Concluding observations: South Africa*, ¶34(a)-(b), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>14</sup> CRC Committee, *Concluding observations: South Africa*, ¶44(a), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>15</sup> CRC Committee, *Concluding observations: South Africa*, ¶44(b), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>16</sup> CRC Committee, *Concluding observations: South Africa*, ¶44(d)-(e), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>17</sup> CRC Committee, *Concluding observations: South Africa*, ¶44(f), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>18</sup> CRC Committee, *Concluding observations: South Africa*, ¶46, U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>19</sup> CRC Committee, *Concluding observations: South Africa*, ¶56(a), U.N. Doc. CRC/C/ZAF/CO/2\* (2016).

<sup>20</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, adopted July 11, 2003, arts. 3, 4 & 11, CAB/LEG/66.6 (entered into force Nov. 25, 2005).

<sup>21</sup> *Id.*, art. 14.

<sup>22</sup> *Id.*, art. 23.

<sup>23</sup> 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. 55 (2016).

<sup>24</sup> *Id.*

<sup>25</sup> In certain instances, courts may also have to consult the "old Roman-Dutch authorities" to determine the content of common law principles. This is however becoming increasingly rare as the common law is being amended or replaced by legislation.

<sup>26</sup> This presents a clear opportunity for the CRPD to influence domestic law, as demonstrated in the case of *De Vos NO v Minister of Justice and Constitutional Development* 2015 (2) SACR 217 (CC).

<sup>27</sup> Constitution of the Republic of South Africa, Act 108 of 1996, section 2.



<sup>28</sup> See, e.g., section 7(2), which enjoins the State to “respect, protect, promote and fulfil” the rights in the Bill of Rights.

<sup>29</sup> Section 9(3) of the Constitution.

<sup>30</sup> Section 9(4) of the Constitution.

<sup>31</sup> Section 9(4) of the Constitution requires the enactment of national legislation to prohibit or prevent unfair discrimination.

<sup>32</sup> Also referred to as “the Sexual Offences Act”.

<sup>33</sup> Adopted by Cabinet in 2015.

<sup>34</sup> Deputy Minister H Bogopane-Zulu, *White Paper on the Rights of Persons with Disabilities* (2015).

<sup>35</sup> *Id.*, at 5.

<sup>36</sup> *Id.*, at 38.

<sup>37</sup> See, e.g., SD Kamga, *Disability rights in South Africa: Prospects for their realisation under the White Paper on the Rights of Persons with Disabilities*, SOUTH AFRICAN J. ON HUMAN RIGHTS (2016) at 572.

<sup>38</sup> The Equality Courts are dedicated tribunals for adjudicating complaints of inter alia unfair discrimination under PEPUDA.

<sup>39</sup> Chapter 9 of the Constitution makes provision for “state institutions supporting constitutional democracy”.

<sup>40</sup> For examples of disability-related complaints before the SAHRC and the Public Protector, see Kamga (above) at 574-577.

<sup>41</sup> Although this Department had been criticized for a lack of clarity on its role in respect of the three focus areas, the decision to disband the Department and move disability matters to the Department of Social Development elicited dismay from the disability sector, which viewed the inevitable association between disability and “welfare matters” as a retrogressive step which could potentially undermine the recognition of disability as a human rights issue.

<sup>42</sup> Convention on the Rights of Persons with Disabilities (CRPD), adopted Dec. 13, 2006, art. 6, G.A. Res. A/RES/61/106, U.N. Doc. A/61/611, (entered into force May 3, 2008) [hereinafter CRPD].

<sup>43</sup> *Id.*, art. 6(2).

<sup>44</sup> CRPD, *supra* note 42, arts. 4,5,6. See Ingrid Van der Heijden, Jane Harries & Naeemah Abrahams, *In pursuit of intimacy: disability stigma, womanhood and intimate partnerships in South Africa*, CULTURE, HEALTH & SEXUALITY (2018).

<sup>45</sup> Ingrid Van der Heijden, Jane Harries & Naeemah Abrahams, *In pursuit of intimacy: disability stigma, womanhood and intimate partnerships in South Africa*, CULTURE, HEALTH & SEXUALITY 8 (2018).

<sup>46</sup> Charlotte Capri, Lameze Abrahams, Judith McKenzie, et al., *Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?*, AFRICAN J. OF DISABILITY, 2018, at 1, 5, available at, <https://doi.org/10.4102/ajod.v7i0.396>.

<sup>47</sup> *Id.*

<sup>48</sup> See Department of Labour, *Code of Good Practice on the Employment of People with Disabilities* (2002) at 6, 7; Department of Labour, *Technical Assistance Guide on the Employment of People with Disabilities* (undated) at 15-26.

<sup>49</sup> CRPD, *supra* note 42, art. 13.

<sup>50</sup> See, eg., *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa 2016*, *supra* note 4.

<sup>51</sup> See 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*, paras. 132, 134, 371(2), U.N. Doc. CRPD/C/ZAF/1 (Nov. 24, 2015) [hereinafter CRPD Committee, *Initial Report: South Africa*]; *Help, harm or hinder?*, *supra* note 2, at paras. 37-55, 49; *Invisible Intersections*, *supra* note 2, at 14-23.





- <sup>52</sup> See *Help, harm or hinder?*, *supra* note 2, at 37-55, 49; *Invisible Intersections*, *supra* note 2, at 14-23; Beverley Dickman, Amanda Roux, Susan Manson, Gillian Douglas & Nokuthula 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.
- <sup>53</sup> *Invisible Intersections*, *supra* note 2, at 14.
- <sup>54</sup> CSVR, *On the Margins*, *supra* note 2, at 35.
- <sup>55</sup> *Invisible Intersections*, *supra* note 2, at 14.
- <sup>56</sup> *Help, harm or hinder?*, *supra* note 2, at 49-51.
- <sup>57</sup> See CSVR, *On the Margins*, *supra* note 2, at 28-30.
- <sup>58</sup> Odette Swift, *Unequal Access to Justice – Access to Courts for Deaf persons*, *Deaf Federation of South Africa* (2017) (on file with author).
- <sup>59</sup> 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 J. ON HUMAN RIGHTS* 1, 27-56, 30-36 (2003).
- <sup>60</sup> *Id.*; Odette Swift, *Unequal Access to Justice – Access to Courts for Deaf persons*, *Deaf Federation of South Africa* (2017) (on file with author).
- <sup>61</sup> CSVR, *On the Margins*, *supra* note 2, at 28-30, 32.
- <sup>62</sup> CSVR, *On the Margins*, *supra* note 2, at 28-30, 32.
- <sup>63</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, at para. 79.
- <sup>64</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, at para. 79. See also *WH Bosch v Minister of Safety and Security* (EqC) unreported case number 25/2005, para. 2.3, Port Elizabeth (Challenge to the lack of access by persons with disabilities to the first floor of the Park police station. Litigation has been ongoing, but the practice is unchanged).
- <sup>65</sup> Criminal Procedure Act, 51 of 1977, § 194 (S. Afr.).
- <sup>66</sup> Criminal Procedure Act, 51 of 1977, § 194 (S. Afr.).
- <sup>67</sup> 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 *INT’L J. OF L. AND PSYCHIATRY* 59-68, 64-65 (2017).
- <sup>68</sup> Charlotte Capri, Lameze Abrahams, Judith McKenzie, et al., *Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?*, *AFRICAN J. OF DISABILITY*, 2018, at 1, 9, available at, <https://doi.org/10.4102/ajod.v7i0.396>.
- <sup>69</sup> Criminal Procedure Act, 51 of 1977, §§ 162, 164 (S. Afr.).
- <sup>70</sup> We acknowledge the problematic nature of the notion of “mental age”; however, a discussion is beyond the scope of this submission. See CRPD Committee, *General Comment No. 1 (2014) Article 12: Equality Recognition Before the Law*, ¶ 13, U.N. Doc. CRPD/C/GC/1 (May 19, 2014).
- <sup>71</sup> 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 *INT’L J. OF L. AND PSYCHIATRY* 59-68, 64 (2017).
- <sup>72</sup> Criminal Procedure Act, 51 of 1977, § 170A(2)(a) (S. Afr.).
- <sup>73</sup> 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).
- <sup>74</sup> See, eg., *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences on her Mission to South Africa 2016*, *supra* note 4.
- <sup>75</sup> 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 4, para. 30; *Invisible Intersections*, supra note 2. See also CRPD Committee, *General Comment No. 3*, supra note 4.

<sup>75</sup> CRPD, supra note 42, arts. 15 & 16.

<sup>76</sup> CRPD Committee, *Initial Report: South Africa*, supra note 51, para. 371(2).

<sup>77</sup> *Help, harm or hinder?*, supra note 2.

<sup>78</sup> *Help, harm or hinder?*, supra note 2, at 49; R. Vergunst, L. Swartz, K.-G. Hem, et. al., *Access to health care for persons with disabilities in rural South Africa*, BMC HEALTH SERVICES RESEARCH, 1, 6 (2017).

<sup>79</sup> Catherine Ward, Lillian Artz, Lezanne Leoschut, et. al., *Sexual violence against children in South Africa: a nationally representative cross-sectional study of prevalence and correlates*, 6 THE LANCET GLOBAL HEALTH 4, e460-e468, e467 (2018).

<sup>80</sup> R. Vergunst, L. Swartz, K.-G. Hem, et. al., *Access to health care for persons with disabilities in rural South Africa*, BMC HEALTH SERVICES RESEARCH, 1, 6 (2017).

<sup>81</sup> CSVR, *On the Margins*, supra note 2.

<sup>82</sup> See e.g. Thembela Ntongana, *Public Transport is a Nightmare for the Disabled*, GROUND UP (Oct. 14, 2016), <https://www.groundup.org.za/article/public-transport-nightmare-disabled/>

<sup>83</sup> See *Help, harm or hinder?*, supra note 2, 37-55 at 39.

<sup>84</sup> CSVR, *On the Margins*, supra note 2, at 35.

<sup>85</sup> *Invisible Intersections*, supra note 2, at 20.

<sup>86</sup> CSVR, *On the Margins*, supra note 2, at 34.

<sup>87</sup> CSVR, *On the Margins*, supra note 2, at 31, 37.

<sup>88</sup> *Invisible Intersections*, supra note 2, at 19.

<sup>89</sup> CSVR, *On the Margins*, supra note 2, at 30.

<sup>90</sup> CSVR, *On the Margins*, supra note 2, at 30.

<sup>91</sup> See CRPD Committee, *Initial Report: South Africa*, supra note 51, at para. 161; CRPD Committee, *Replies of South Africa to the List of Issues*, U.N. Doc. CRPD/C/ZAF/Q/1/Add.1 (2018).

<sup>92</sup> Beverley Dickman, Amanda Roux, Susan Manson, Gillian Douglas & Nokuthula 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.

<sup>93</sup> See CAPE MENTAL HEALTH, SEXUAL ABUSE VICTIM EMPOWERMENT [SAVE], available at <http://www.capementalhealth.co.za/save.html>.

<sup>94</sup> See Beverley Dickman, Amanda Roux, Susan Manson, Gillian Douglas & Nokuthula 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, available at <https://zeroproject.org/practice/cape-mental-health-south-africa/>

<sup>95</sup> See Kathleen Dey, *Rape Victims’ Care Centres Face Funding Drying Up*, IOL (Nov. 3, 2017), <https://www.iol.co.za/capeargus/opinion/rape-victims-care-centres-face-funding-drying-up-11845771>.

<sup>96</sup> *Help, harm or hinder?*, supra note 2, at 41, 45.

<sup>97</sup> *Help, harm or hinder?*, supra note 2, at 38.

<sup>98</sup> *Help, harm or hinder?*, supra note 2, at 41, 45.

<sup>99</sup> *Help, harm or hinder?*, supra note 2, at 41.

<sup>100</sup> *Help, harm or hinder?*, supra note 2, at 41.

<sup>101</sup> CRPD Committee, *General Comment No. 3*, supra note 4, para. 31.

<sup>102</sup> *Help, harm or hinder?*, supra note 2, at 41, 48.

<sup>103</sup> *Help, harm or hinder?*, supra note 2, at 46.



<sup>104</sup> See *Help, harm or hinder?*, *supra* note 2, at 46; CRPD Committee, *Gen. Comment No. 3*, *supra* note 4, para. 53; 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). 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>.

<sup>105</sup> 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>.

<sup>106</sup> *Id.*; 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>.

<sup>107</sup> 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>.

<sup>108</sup> *Media Statement: SAHRC releases its Final Investigative Report into a fire that claimed the lives of three learners at North West School for the Deaf, North West Province*, SOUTH AFRICAN HUMAN RIGHTS COMMISSION (Feb. 7, 2018), available at <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/1146-media-statement-sahrc-releases-its-final-investigative-report-into-a-fire-that-claimed-the-lives-of-three-learners-at-north-west-school-for-the-deaf-north-west-province>.

<sup>109</sup> *Id.*

<sup>110</sup> Sterilisation Act, 44 of 1998, § 2 (2) (S. Afr.)

<sup>111</sup> Sterilisation Act, 44 of 1998, § 2 (2) (S. Afr.)

<sup>112</sup> 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).

<sup>113</sup> 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); Paul Chappell, *(Re)thinking Sexual Access for Adolescents with Disabilities in South Africa: Balancing Rights and Protection*, 4 AFRICAN DISABILITY RIGHTS YEARBOOK 124 (2016), <http://www.adry.up.ac.za/index.php/section-a-articles-4-2016/paul-chappell>

<sup>114</sup> Choice on Termination of Pregnancy Act, 92 of 1996, §5(5) (S. Afr.); 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).

<sup>115</sup> CRPD, *supra* note 42, arts. 23 & 25.

<sup>116</sup> HUMAN RIGHTS WATCH, *COMPLICIT IN EXCLUSION: SOUTH AFRICA'S FAILURE TO GUARANTEE AN INCLUSIVE EDUCATION FOR CHILDREN WITH DISABILITIES* (2015), available at <https://www.hrw.org/report/2015/08/18/complicit-exclusion/south-africas-failure-guarantee-inclusive-education-children>.

<sup>117</sup> Charlotte Capri, Lameze Abrahams, Judith McKenzie, et al., *Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?*, AFRICAN J. OF DISABILITY, 2018, at 1, 9, available at <https://doi.org/10.4102/ajod.v7i0.396>.

<sup>118</sup> Catherine Ward, Lillian Artz, Lezanne Leoschut, et. at., *Sexual violence against children in South Africa: a nationally representative cross-sectional study of prevalence and correlates*, 6 THE LANCET GLOBAL HEALTH 4, e460-e468, e467 (2018).

<sup>119</sup> *Id.*

<sup>120</sup> Julia S. Louw, *A Qualitative Exploration of Teacher and School Staff Experiences when Teaching Sexuality Education Programmes at Special Needs Schools in South Africa*, 14 SEX RES SOC. POLICY 425, 432 (2017).



<sup>121</sup> 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).

<sup>122</sup> *Id.* at 117 (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)).

<sup>123</sup> 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](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.

<sup>124</sup> 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).

<sup>125</sup> Paul Chappell, Rebecca Johns, Siphumelele Nene & Jill Hanass-Hancock, *Educators' perceptions of learners with intellectual disabilities' sexual knowledge and behaviour in KwaZulu-Natal, South Africa*, 18 SEX EDUCATION 2, 125-139, 127 (2018), available at <https://doi.org/10.1080/14681811.2017.1405801>.

<sup>126</sup> *Id.*

<sup>127</sup> 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).

<sup>128</sup> *Invisible Intersections*, *supra* note 2, at 14-23, 19.

<sup>129</sup> CEDAW Committee, *General Recommendation No. 24, Article 12 of the Convention (women and health)*, (20th Sess., 1999), in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, para. 25, U.N. Doc. HRI/GEN/1/Rev. 9 (Vol. II) (2008).

<sup>130</sup> CRPD Committee, *General Comment No. 3*, *supra* note 4, para. 38.

<sup>131</sup> 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).

<sup>132</sup> 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).

<sup>133</sup> *Id.*, at 271.

<sup>134</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, para. 269.

<sup>135</sup> CRPD, *supra* note 42, art. 31.

<sup>136</sup> See CRC Committee, *Concluding observations: South Africa*, paras. 43-44, U.N. Doc. CRC/C/ZAF/CO/2\* (2016); African Commission on Human and Peoples' Rights, *Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter in 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)*, paras. 39, 55 (2016).

<sup>137</sup> WORLD HEALTH ORGANIZATION AND WORLD BANK, WORLD REPORT ON DISABILITY 28 (2011).

<sup>138</sup> 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>

<sup>139</sup> 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>

<sup>140</sup> See Deputy Minister H Bogopane-Zulu, *White Paper on the Rights of Persons with Disabilities* (approved by Cabinet on Dec. 9. 2015), para. 1.3.2.

<sup>141</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, at para.12.

<sup>142</sup> Charlotte Capri, Lameze Abrahams, Judith McKenzie, et al., *Intellectual disability rights and inclusive citizenship in South Africa: What can a scoping review tell us?*, AFRICAN J. OF DISABILITY, 2018, at 3, available at <https://doi.org/10.4102/ajod.v7i0.396>.

<sup>143</sup> *Id.*

<sup>144</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, 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).

<sup>145</sup> Deputy Minister H Bogopane-Zulu, *White Paper on the Rights of Persons with Disabilities* (approved by Cabinet on Dec. 9. 2015), para. 6.7.1.2.

<sup>146</sup> See *Addendum to the SAPS Annual Report: Annual Crime Report 2016/2017*, SOUTH AFRICAN POLICE SERVICE 46-52 (Aug. 31, 2017), [https://www.saps.gov.za/about/stratframework/annual\\_report/2016\\_2017/gpw\\_crime\\_stats\\_2017.pdf](https://www.saps.gov.za/about/stratframework/annual_report/2016_2017/gpw_crime_stats_2017.pdf)

<sup>147</sup> 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.

<sup>148</sup> 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/>

<sup>149</sup> 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).

<sup>150</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, at para. 271.

<sup>151</sup> CRPD Committee, *Initial Report: South Africa*, *supra* note 51, at para. 272.