

SADA

SOUTH AFRICAN DISABILITY ALLIANCE

Submission in terms of the replies of the South African Government to the List of Issues

Committee on the Rights of Persons with Disabilities

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South African Disability Alliance (SADA)**

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1. SELF-INTRODUCTION

The South African Disability Alliance (SADA) is a national “consultative forum of member organisations on issues of mutual concern and interest”¹.

The objectives² of SADA are to:

- a) Provide a platform for seeking consensus and reaching common positions on disability issues; and
- b) Promote collaboration in terms of joint initiatives, campaigns, programmes and projects between role-players in the disability sector and the disability sector and other societal and governmental role-players.

SADA recognises two membership categories:³ Full members are registered organisations operational in at least 50% of South African provinces with a core focus in the field of disability while associate members are registered organisations (not individuals) with a direct interest in the field of disability beyond a commercial interest.

SADA supports the right of persons with disabilities to represent ourselves in all matters affecting us, as well as the promotion of equal opportunities and inclusion of persons with disabilities in all aspects of society and particularly activities and initiatives of SADA⁴. As such, our Terms of Reference requires consideration of the principles of self-representation, transformation and equality in all SADA representation and decision-making.

This submission represents input provided by our member organisations (see Annexure A for a list of current SADA members).

The South African Disability Alliance (SADA) submitted input to the List of Issues on 30 January 2018 and participated in a series of meetings at the United Nations in March 2018, including a closed meeting with representatives of the CRPD Committee. We express our appreciation to the International Disability Alliance and UN structures, particularly the CRPD Committee for the opportunity to represent the voice of South Africans with disabilities.

We now make this submission in response to the replies submitted by the Government of South Africa (GOSA) which we received on 20 June 2018.

2. EXECUTIVE SUMMARY

In most of its responses the GOSA refers to policies and national frameworks. SADA recognises the exceptional ability of the GOSA to draft policies, but must point out the dismal failure in terms of implementation. We believe that the GOSA cannot substantiate its arguments through evidence-based data or explain how to ensure accountability in terms of transgression of the rights of persons with disabilities. South Africa has seen a rise in service delivery protests across all sectors and the inability of the GOSA to address these issues will effectively leave us all in dire crisis. It would seem that all these wonderful policies and national frameworks will leave the most vulnerable sectors of our population excluded.

The GOSA submitted that the establishment of legislative and policy frameworks is a vital and integral component of securing the rights of persons with disabilities. While SADA agrees with this principle, it is of little value when such instruments are neither rolled out nor implemented properly.

¹ Terms of Reference of the South African Disability Alliance, April 2016. Clause 2(a).

² Ibid. Clause 2(b).

³ Ibid. Clause 3.

⁴ Ibid. Clause 6(b)(vii).

Despite the SADA membership operating at the apex of the disability field, at national/international level and in collaboration with government we were unaware of certain instruments. The most poignant of these is the Rehabilitation Policy and the Framework on Self-Representation. If national disability organisations are unaware of such policies, how could persons with disabilities, their families, peers and employers possibly be aware of these rights and duties?

It is against this background that SADA recognises the importance of international instruments, most notably the CRPD, UN reporting processes and the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa (the African Disability Protocol). SADA questions the current status of the African Disability Protocol in South Africa. Many of our member organisations are working with continental structures in ensuring the ratification and domestication of this Protocol. Examples include the Africa Down Syndrome Network and its work in developing model disability legislation and the African Region of the International Bureau for Epilepsy.

It is thus critical that the measures of implementation articulated by the GOSA are accurate and true in terms of the lived experiences of persons with disabilities. Unfortunately, there are many convenient omissions in the GOSA responses which render many of its answers somewhat moot.

In the sections regarding the right to equality, the right to life, the right to be free from torture or cruel, inhuman or degrading treatment the GOSA does not adequately refer to the Life Esidimeni Tragedy where 144 mental health care users lost their lives. In reality, if the existing legal and policy framework (including the CRPD, the South Africa Constitution, the WRPDP and the Mental Health Policy Framework and Strategic Action Plan) was properly implemented the tragedy would never have occurred. SADA thus submits that the GOSA should be questioned about this on the basis of the contents of a spectrum of CRPD Articles – more so than it has been. To date, reasons for the crisis have still not adequately been brought to light and the GOSA must be held accountable. While the GOSA response discusses its efforts to implement the recommendations of the Health Ombudsman, these efforts have been somewhat cosmetic in nature without addressing the core of the report. For example, to date no duty bearers have been held accountable.

SADA will illustrate in this submission how certain of the questions posed by the CRPD Committee have not been adequately answered and set forth further questions that ought to be posed to the GOSA to ensure a full and accurate picture of the status quo in South Africa.

3. SPECIFIC ARTICLES OF THE CONVENTION

PURPOSE AND GENERAL OBLIGATIONS (ARTICLES 1 - 4)

Paragraph 1⁵

SADA recognises with appreciation the approval of the White Paper on the Rights of Persons with Disabilities (WRPDP) by the South African Cabinet on 9 December 2015. However, the required review of legislation to ensure alignment with the CRPD has not yet materialised. In addition, the WRPDP is not legislation and it would seem that it is unlikely to achieve this status. This seems similar to the Integrated National Disability Strategy (INDS) which remained a policy document (as opposed to legislation) throughout its existence.

We also recognise the efforts of the Government to align the concept of disability with the human rights model of disability as per the CRPD in South African legislation, most notably the Employment Equity Act (1998). However, experience has shown that implementation tends to focus on the issues of race and gender (also included in this legislation) to the detriment of disability rights.

⁵ Paragraph numbers quoted in this document refers to the replies of the GOSA to the List of Issues dated 20 June 2018.

Recent challenges with regard to the right to social security led to litigation, Parliamentary review and extensive problems faced by beneficiaries. This can largely be ascribed to poor implementation by the South African Social Security Agency (SASSA) and the National Department of Social Development in terms of required changes to the delivery model and role-players, especially Cash Paymaster Services (CPS) as the service provider. The immediate crises faced by persons with disabilities in terms of delayed payments and ongoing confusion regarding the process seems indicative of an uncaring government. The recent strike by SASSA employees worsened a crisis situation with beneficiaries not receiving social security payments timeously, resulting in severe hardships.

During his macro-organisation of the State (2014) former President Zuma located the disability matters in the Department of Social Development. While this decision was widely and intensely opposed by the disability sector, the matter remains unresolved.

While the GOSA response cites relevant policy directives highlighting the relevant CRPD obligations, practical implementation is still not operationalised in strategic documents, e.g. the strategic and performance plans of national/provincial government departments, the existence of intra-institutional disability rights coordinating mechanism at national/provincial levels and the existence of an overarching national monitoring and evaluation framework that methodically tracks progress in the fulfilment of the rights of persons with disabilities and feeding information to policy makers.

The GOSA has a history of citing policies without supporting evidence as is the case with paragraph 2(a). SADA wishes to see evidence of the number of learners supported using the SIAS since 2014 as the roll out of the SIAS process failed to inform parents, thereby excluding parents and learners in determining the level of support required.

Reference to the Framework and Strategy for Disability and Rehabilitation Services in paragraph 2(b) again fails to mention the number of violations against persons with disabilities. The current situation in the North West province (particularly in terms of health services) and the alleged abuse of learners at Vukuhambe Special School in the Eastern Cape questions the protection of the rights of persons with disabilities.

Examples cited in the GOSA response are important. However, this is not the case with all legislation, e.g. the Mental Health Care Act. While a section of the Act provides for an approach promoting the dignity of mental health care users, this does not reverberate through the entire document. For example, in instances where the South African Police Services (SAPS) is involved in involuntary admission of mental health care users into psychiatric hospitals words such as “apprehend” and “held” appear in the legislation suggesting that the mental health care user has committed an offence as opposed to being someone in need of assistance and care.

It is for this and other reasons that legislation must be reviewed. Another example of the lack of a human rights approach can be found in the Guidelines on the Licensing of Residential and/or Daycare Facilities for Persons with Mental Illness and/or Severe and Profound Intellectual Disabilities. In the discussion of community-based care constructs such as “admission” and “discharge” are used, evidencing the medical model as such mental health care users are not patients but attending these services voluntarily.

While most South African legislation and policies are fairly progressive, some instances continue to exclude persons with disabilities, e.g. the pending Draft Policy on Rural Education. This Policy sets out a plan to make schools in rural areas more functional (e.g. infrastructure and curriculum), but never mentions learners with disabilities. This represents a very serious and dangerous oversight and it is extremely disappointing that the Department of Basic Education would release a document with such a woeful deficit (despite the opportunity for comment on the draft) which illustrates a lack of insight into the needs of persons with disabilities.

Paragraphs 3 - 5

In our experience the only response from the GOSA enabling persons with disabilities to use the CRPD in court proceedings is through tribunal hearings without any successful political will to hold those accountable of violations through criminal proceedings. This is particularly true in terms of the Esidimeni Tragedy. While hearings (including an arbitration hearing) have been held, no criminal charges have been preferred against those responsible for the deaths of 144 people with disabilities.

Paragraphs 6 -8

These paragraphs highlight measures to consult with persons with disabilities (particularly the most vulnerable groups) through representative organisations to facilitate decision-making. However, the Supported Decision-Making Act has never been prioritised. SADA thus questions the timeframes.

Each sphere of government is also meant to contribute to processes. Yet, many departments fail to attend meetings (e.g. the National Disability Rights Machinery). As a result, the voices of persons with disabilities remain silent.

The National Disability Rights Machinery (NDRM) was established as a consultative platform between government (national and provincial), structures established in terms of Chapter 9 of the South African Constitution (e.g. the South African Human Rights Commission) and civil society. While SADA agrees with the intention and aim of the NDRM, we are disappointed by the lackadaisical attitude of many government departments to this structure. Non-attendance by key departments (often without apology) is indicative of the importance placed on disability rights by government. In addition, the lack of understanding of and knowledge about disability is evident in the representation by some departments. There is little doubt that the NDRM has failed to achieve its objectives. As such, the composition, aims and objectives and functioning of the NDRM requires revision to ensure effective consultation with and self-representation by persons with disabilities.

Paragraph 7

SADA questions the requirement for quarterly reports regarding partnerships on the SIAS as our member organisations (e.g. Down Syndrome South Africa) have not received any such reports.

Paragraphs 8 and 10

The GOSA tends to support statements by referring to consultation with representative organisations (e.g. consultations regarding the draft National Framework for Self-Representation for Persons with Disabilities or the National Disability Rights Machinery). However, the disability sector is seldom aware of the criteria applying to “representative” organisations and is generally not aware of the organisations involved in these consultations. For example, organisations such as Epilepsy South Africa and Down Syndrome South Africa were not involved in the consultations regarding the National Framework.

Paragraph 11

While service-level agreements are concluded with organisations and the GOSA pays subsidies, these are chronically late with severe impact on the operations of beneficiary organisations. In addition, there are often extended and difficult negotiation processes regarding these agreements leading to organisations not being able to function properly in the interim. SADA thus questions how these processes could be streamlined to provide organisations with the support they require.

SADA respects the processes established by the National Department of Social Development in terms of funding applications we are also concerned about the requirement to attend a briefing meeting. For organisations located outside the Gauteng Province (where these meetings are held annually) this implies additional costs which we cannot afford. Surely, these are historic relationships with parties familiar with each other?

While we understand the need to balance the funding of disability organisations against available funds, SADA members question the implementation of funding decisions. For example, Epilepsy South Africa traditionally received financial support from the GOSA. However, this funding was withdrawn without notice placing the organisation at serious financial risk which led to the curtailing of services and the potential closure of offices and the reduction of the reach of the only national organisation serving persons with epilepsy in South Africa. In addition, there was no consultation or even notification of this decision over a two-year period.

ARTICLE 5 (EQUALITY AND NON-DISCRIMINATION)

It is important to note that despite efforts to change and transform society, the South African environment remains discriminatory towards persons with severe disabilities and particularly “invisible” and psychosocial disabilities, most notably epilepsy, autism and intellectual impairment. For example, employers generally prefer to employ persons with “lesser” disabilities (e.g. partially sighted persons or persons with hearing loss). It is even more shocking that many employers and skills development service providers do not view such “selection” as discriminatory – clearly an indication of the lack of knowledge, understanding and inclusion. As such, this remains a major area of concern.

Paragraphs 13 – 19

These paragraphs respond to a question regarding the protection of people with disabilities in different settings, including those living in “native” communities. The GOSA reply is especially problematic as it fails to address the extant harmful traditional and cultural practices in these communities which can be damaging and even fatal to those at risk.

Persons with psychosocial and neurological disabilities (similar to persons with albinism) are often perceived to be “bewitched” or cursed and are treated in ways that often exacerbates their condition. Such behaviour results from communities (particularly rural communities) not being aware of medical and other interventions that could save the lives of those affected. Rather than addressing this concern, the GOSA provides examples of general legislation that ought to protect everyone. This does not penetrate into the rural areas.

While these paragraphs intend addressing discrimination against persons with psychosocial disabilities specifically, this group is not mentioned here. One of the most pervasive forms of discrimination against this group emanates from social stigma (persistent attitudes resulting in behaviour). There is a perception that persons with psychosocial disabilities are dangerous, capricious and unable to sustain stable relationship and be gainfully employed. As with the issues surrounding “native” communities this can be remedied through education and awareness. Knowledge and understanding of mental health issues is severely lacking with the effect that stigma is rife. The GOSA does not take this into account in its analysis.

SADA recognises the intention behind legislation in South Africa to ensure the rights of persons with disabilities and the establishment of recourse mechanisms. However, many persons with disabilities are not even aware of their rights and would thus not consider taking action against discrimination. The single biggest challenge faced by the disability sector in South Africa is the lack of awareness not only in general society, but amongst persons with disabilities. As a result, most of the SADA member organisations are involved in awareness and advocacy initiatives, despite a lack of funding from the GOSA for such activities.

Paragraph 21

Parents of children with disabilities are not informed and thus do not understand reasonable accommodation. As such, they do not request such support systems for their children. For example, reasonable accommodation for children with Down syndrome could be a class assistant. However, most public schools insist that parents pay for these services.

The GOSA response cites the Policy on Reasonable Accommodation and Assistive Devices for Employees with Disabilities in the Public Sector (2014) as a key legislative development in terms of non-discrimination. However, SADA notes with concern the lack of a national assistive devices policy addressing the specific responsibility of the Departments of Health, Basic Education and Social Development in the provision of assistive devices for learners with disabilities and older persons living in residential/care facilities requiring assistive devices beyond mobility devices and that includes personal aids for independent living.

The Strategic Policy Framework on Disability in Post-School Education and Training includes intellectual disability in its definition of disability but fails to give clear guidelines on how to include persons with intellectual disabilities in Community Education Training (CET) and Technical and Vocational Education Training (TVET).

Paragraph 23

This paragraph lists an impressive array of institutions “tasked with receiving and investigating complaints on the basis of different forms of discrimination”, but fails to include evidence of cases reported or the outcomes of such cases.

In addition, experience has shown that the lack of awareness about rights prevents many persons with disabilities to access such recourse mechanisms. Information is not adequately distributed by the GOSA regarding these institutions, their functions and especially about access for persons with disabilities. It is also a matter of concern that some of these institutions (particularly the South African Human Rights Commission is under-resourced.

The reported lack of an “integrated system which keeps record of the number of investigations, sanctions imposed and/or remedies provided to victims” is unacceptable.

Paragraph 25

The GOSA reply indicates a process of consultation “with all relevant stakeholders, inclusive of disability organisations”. However, organisations working with persons with an intellectual disability were not consulted. Most persons with Down syndrome are not able to access courts on an equal basis with other people.

Paragraph 26

SADA finds it unacceptable that questions about the South African Human Rights Commission are not answered, but rather referred to this institution. We have not received any responses from the Commission in this regard which creates the impression that these matters are not of sufficient importance to the GOSA or the Commission.

ARTICLE 6 (WOMEN WITH DISABILITIES)

Paragraphs 28 - 30

These paragraphs refer to the WPRPD, but neglects to consider the fact that the status of thereof is not legislative, but advisory (policy level). As such, the White Paper provides very little protection to women and girls with disabilities given the legislative status of the WPRPD.

ARTICLE 7 (CHILDREN WITH DISABILITIES)

Paragraph 38 (2)

The GOSA reports on consultation with learners, but this is certainly not the case with children with intellectual disabilities. If the GOSA can state that there are 151 intermediaries to support people in court, SADA questions why statistics cannot be provided on how many children with disabilities received adequate support in achieving their learning outcomes through the SIAS policy.

Paragraph 40

The issue of children with disabilities accessing Early Childhood Development (ECD) remains a matter of concern. For example, children with Down syndrome are not accessing Early Childhood Centres and are turned away as teachers claim they do not have training to deal with such children. To date, SADA has been unable to source a list of ECD centres in Gauteng supported by the Department of Social Development catering for children with Down syndrome and other intellectual disabilities.

We note that plans are in development to expand access to education for children with disabilities. However, we must understand that delays in implementation affect the opportunities and thus lifelong experience of a generation of children.

Paragraph 42

The alleged abuse of children with disabilities at Vukuhambe Special School in Mdantsane, Eastern Cape seems in direct contrast to the GOSA reply that “the National School Safety Framework has been implemented at all special schools in the country”. Reports indicate that learners with severe disabilities have been left without supervision over weekends given the non-payment of overtime claims by caregivers and support staff at the School. SADA has been engaging with the School management, provincial government and the National Department of Basic Education to resolve this crisis. However, we are disappointed by our inability to secure an urgent meeting with the Minister of Basic Education. In response to our request the Office of the Minister referred the matter to officials in the Department.

ARTICLE 8 (AWARENESS RAISING)

The GOSA addressed questions about the need to educate the public and measures taken to dispel discrimination and misconceptions through reference to occasions such as Human Rights Awareness Month or National Disability Rights Awareness Month. These events thus become an “escape” for the lack of ongoing education programmes and human rights advocacy. SADA submits that the GOSA errs here because most societal views about disability are so enigmatic and impenetrable that these often result in unfair discrimination against persons with disabilities – simply because people “don’t know any better” and the lack of enforceable legislation to protect the rights of persons with disabilities. This again raises questions regarding the current legislative status of the WPRPD.

SADA also notes with concern the emergence of a selective approach by the GOSA in terms of specific impairments to the detriment of others. An example is the seeming unwillingness of the GOSA to address awareness about epilepsy as shown by the inability to make progress in terms of epilepsy and driving with the Department of Transport and the complete lack of implementation of the epilepsy resolution of the World Health Assembly by the Department of Health.

While we understand the limited resources available for disability education and awareness about disability, we believe that consultation with the disability sector will ensure an equitable distribution of these resources.

Paragraphs 46 and 52

The lack of a “coherent sustained national targeted awareness-raising strategy that measures impact of awareness-raising campaigns” is another example of intention rather than implementation by the GOSA. The replies refer to “work-in-progress”, plans and intentions rather than reporting about specific achievements in unambiguous terms supported by evidence. This is also reflected in paragraph 52: “The country is currently developing inclusive education and disability mainstreaming modules in partnership with the British Council for teacher training courses offered at universities around the country”. When dealing with the education of children with disabilities it seems impossible that this work is only now receiving attention given that South Africa was one of the first countries to ratify the CRPD.

Paragraphs 54 and 55

SADA actively participates in initiatives of the Disability 360 programme of the South African Broadcasting Corporation (SABC). However, these initiatives must be seen against a recent decision by SAFM to cancel a disability-specific programme. SADA raised concerns about this decision, but was informed that the audience was too small to be commercially viable. This does not seem to support the responsibilities of the national broadcaster.

ARTICLE 9 (ACCESSIBILITY)

Paragraphs 58 and 59

SADA notes with grave concern the lack of progress in providing accessible public transport for persons with disabilities as this is crucial in enabling access to health, education and employment for persons with disabilities.

Although some disability inclusive transport systems exist (e.g. Dial-A-Ride and MyCiti in selected areas of Cape Town), these are limited in terms of capacity and not universally available. Furthermore, the disparity in transport available in urban and rural areas remains problematic as accessible transport is general not available in rural areas where the need is arguably greater due to longer distances between facilities and poor road/transport infrastructure.

SADA is also concerned about the focus on accessibility in terms of mobility impairments to the exclusion of other impairments. Physical access features relating to persons with visual disabilities are not prioritised. For example, there is no standardised street and walkway (pavement) differences in terms of surface design. Persons with epilepsy continue to be at risk when using public transport with cases of theft, assault and even rape reported during seizures on public transport.

Paragraph 64

While SADA recognises progress made in terms of accessible ICT, the rights of persons with epilepsy (particularly photosensitive epilepsy) are largely ignored. For example, the inclusion of a warning about flickering lights in television programmes would be very easy to implement with little financial implications. This is a matter of political will and concern about all disability rights.

Paragraph 65

The recent judgement in the Bisho High Court in East London brought by Equal Education has reference. The Court found the legislated Norms and Standards on Infrastructure flawed with loopholes allowing the Department of Basic Education to avoid renovating and repairing dilapidated schools. Some of the regulations were found to be unconstitutional and invalid.

It is also important that we mention the tragic deaths recently of learners at schools with “pit toilets” and request feedback from the GOSA regarding the measures to avoid recurrence of such tragedies.

ARTICLE 10 (RIGHT TO LIFE)

The GOSA replies regarding the protection of persons with albinism lacks substantiating evidence. SADA thus questions the measures taken to ensure the safety of persons with albinism and the number of perpetrators successfully prosecuted.

ARTICLE 11 (SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES)

Paragraphs 72 and 73

The reply by the GOSA focuses exclusively on Deaf persons while the question posed requests information about “persons with disabilities, especially persons with psychosocial and/or intellectual disabilities and persons with disabilities living in rural areas”. SADA thus believes that the GOSA failed to adequately address this issue.

Paragraph 74

The GOSA confirms its intention to include persons with disabilities, but provides no indication on how these persons will be selected and the mechanisms to ensure adequate representation and feedback. Experience has shown that persons with disabilities selected for inclusion in such initiatives seldom consult with the disability sector or provide feedback on progress.

ARTICLE 14 (LIBERTY AND SECURITY OF THE PERSON)

Paragraphs 90 and 92

The GOSA reports an intention to revise the Older Persons Act (2006) following the amendment of the Mental Health Care Act (2002). However, there is no indication regarding timeframes for these amendments. Once again, intention differs substantially from implementation.

Paragraph 91

The GOSA reply regarding disaggregated data regarding involuntary hospital admissions of persons with disabilities in terms of the Mental Health Care Act shows an alarming increase of 15,178 between 2015 and 2017 (almost doubling the number of admissions). This is of particular concern given that the GOSA reduced the number of beds in state psychiatric hospitals. SADA thus questions where these patients are admitted (see proposed recommendations), especially given experiences highlighted by the Esidimeni Tragedy.

ARTICLE 15 (FREEDOM FROM TORTURE OR CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT)

Paragraph 98

While SADA recognises the GOSA reply, this fails to answer questions regarding prosecution (criminal charges) brought against the perpetrators. To date not a single person has been official charged.

This paragraph also makes reference to the gazetting of the Policy Guidelines for the Licensing of Residential and/or Daycare Facilities for Persons with Mental Illness and/or Severe or Profound Intellectual Disabilities. These Guidelines represent something of a “knee-jerk” response to the Esidimeni Tragedy.

While the sentiment is admirable, the resultant criteria are so stringent in nature that most hospitals cannot comply and community-based care organisations even less so. Failure to obtain a license means that an organisation cannot obtain financial support (subsidies) from the GOSA. Many organisations that are operated effectively cannot comply and thus face the risk of closure, which could result in people being forced to place their loved ones in unlicensed facilities given the need for these organisations already far outweighing availability.

Paragraph 99

The GOSA reply lists options for persons with disabilities to lodge complaints, but fails to substantiate the efficacy thereof. SADA would wish to obtain information on the number of complaints and the status of such complaints (i.e. the number of cases still pending and the number of cases successfully resolved).

The SAPS is not equipped to deal with complaints and most victims leave with secondary trauma as a result of the way they were treated. This was evident at the SAPS Indaba held in 2017.

SADA is disappointed that representative organisations working with persons with intellectual disabilities were not consulted to make recommendations regarding the SAPS Disability Learning Programme. However, some SADA member organisations reported interaction with the SAPS in this regard.

ARTICLE 16 (FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE)

Paragraph 102

The lack of progress since the official hand-over of the report investigating the viability of re-establishing the Sexual Offences Courts in August 2013 is a matter of serious concern and requires clarification. The GOSA reply creates the impression that the Minister of Justice and Correctional Services failed to implement the recommendations contained in the report which makes a mockery of the GOSA's stated approach to Gender-Based Violence.

ARTICLE 19 (LIVING INDEPENDENTLY AND BEING INCLUDED IN THE COMMUNITY)

Paragraph 112

SADA supports the GOSA's acknowledgement of the need for a well-defined national strategic and legislative framework on independent living support services for persons with disabilities. We note that these policies must include persons with mental health concerns and the unique requirements of this vulnerable group in terms of access to specific psychosocial and re-enablement interventions that enables and supports full community participation.

Paragraph 120

SADA is disappointed by the GOSA's reply to the Esidimeni Tragedy which focuses exclusively on the binding reward made by Justice Moseneke rather than the implementation thereof by the government. Some of the deadlines quoted in this paragraph have already passed and thus requires reporting.

ARTICLE 20 (PERSONAL MOBILITY)

SADA recognises the efforts of the Department of Health to include indicators for the distribution of wheelchairs and hearing aids in the District Health Information System (DHIS). We also include specific recommendations in terms of this Article (see below).

ARTICLE 21 (FREEDOM OF EXPRESSION AND OPINION AND ACCESS TO INFORMATION)

Paragraphs 136 - 138

These paragraphs deal with how information has been made available to persons with disabilities. However, in SADA's view there is an incredible dearth of such information available and that very few persons with disabilities are actually aware of their rights. We assert that the measures required by the GOSA must ensure that all human rights instruments are available in accessible formats and that these be publicised widely.

ARTICLE 24 (EDUCATION)

Paragraph 147

The SIAS, Draft Curriculum for SID policies and Norms and Standards on Infrastructure address the needs of children within the education system, but ignores the thousands of children with disabilities currently out of school. What concrete measures have the GOSA taken to place these children into schools by 2021. Merely stating that this is work in progress is not acceptable.

In addition, the quality of education available to children with disabilities is weakened by educators who are not skilled in Braille and the teaching blind learners, as well as the lack of learner and teacher support material.

In the opinion of SADA the implementation of inclusive education remains an unrealised dream in South Africa. There is extensive confusion about the GOSA's intentions regarding inclusive education and the continuation of special schools.

ARTICLE 25 (HEALTH)

Paragraphs 154 - 156

These paragraphs provide answers regarding physical accessibility to health facilities as well as provision of information in this regard. While there may be policies and procedures facilitating such, these are not widely known by persons with disabilities and the system is virtually unnavigable to many people.

In addition, vulnerable persons with disabilities have to wait in long queues to access public health care services which is particularly difficult for some people with psychosocial disabilities as it causes stress and angst. What is the GOSA doing to streamline these processes to make the system more accessible? This is particularly challenging in rural areas where clinics and hospitals are often some distance from where people live.

Paragraph 158

According to the Public Health Report tabled in Parliament recently most clinics and hospitals in South Africa are operating below standard following an inspection of the OHS in June 2018.

ARTICLE 26 (HABILITATION AND REHABILITATION)

SADA is concerned by the lack of recognition for orientation and mobility practice in South Africa resulting in a lack of State funding.

ARTICLE 27 (WORK AND EMPLOYMENT)

Paragraphs 162 - 165

These paragraphs set forth answers to a question regarding measures taken to create employment for persons with disabilities.

According to the 16th Commission for Employment Equity Annual Report only 1.2% of the workforce in South Africa is persons with disabilities. This must be seen against an estimate 7.5% of the population having some form of disability⁶ and the policies reported by the GOSA. SADA thus requests an explanation by the GOSA who should be held to account in this regard.

Paragraph 163

The Supported Employment Programme highlights that supported employment costs are far higher for persons with intellectual disabilities. Therefore, access to the open labour market remains inaccessible for most people. The only option available is protective workshops as learnership programmes are also not accessible given the minimum entry requirement of a Grade 12 pass.

ARTICLE 28 (ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTIONS)

Paragraphs 166 - 170

Despite the information provided by the GOSA, the reality of the efficacy of the social grant system must be viewed against the current crisis with SASSA caused by the change in service providers as well as strike action by SASSA employees. This resulted in grant payments not reaching beneficiaries timeously. In addition, there seems to be little evidence of holding those responsible for this crisis accountable.

ARTICLE 32 (PARTICIPATION IN CULTURAL LIFE, RECREATION, LEISURE AND SPORT)

Paragraphs 181 - 182

The GOSA reply is silent on the extensive delays in the revision of the Copyright Act (1978) and the incorporation of the Marrakesh Treaty.

4. PROPOSED RECOMMENDATIONS

SADA recommends that the GOSA:

- a) Explains the measures taken in terms of the implementation of legislative and policy frameworks, particularly in ensuring access to information by persons with disabilities. Such explanation must be supported by evidence.
- b) Reviews the composition, aims and objectives and functioning of the NDRM to ensure effective consultation with and self-representation by persons with disabilities. Specific attention must be given to representation of government departments and structures.
- c) Ring-fences funding for national awareness and advocacy initiatives led by persons with disabilities and their representative organisations.
- d) Provides clarity regarding the level of knowledge and understanding of education law and policy makers into the construct of disability and how the GOSA intends improving this.
- e) Provides information on the exclusion of the recovery model in the GOSA response. This is an internationally accepted approach aimed at allowing persons with disabilities to get well and remain so. It involves such individuals becoming productive and resilient members of society and goes hand in hand with the human rights approach as it involves more than simply allowing a service user to drift from one area of the system to another, but rather the provision of a continuum of care.

⁶ 2011 Census report: 'Profile of persons with disabilities in South Africa'.

This is largely absent from the South African system and persons with disabilities relapse or experience the worsening of their condition as a result. A comprehensive basket of services ought to follow the person from one area/system to another (e.g. from hospital into the community). Persons with disabilities should be provided with adequate information on how to access services. The woeful absence of this in South Africa precludes recovery. As such, questions should be asked about the steps the GOSA is taking to ensure that the system is fluid and that persons with disabilities can move smoothly between one area and another.

- f) Explains paragraph 8 stating that persons with psychosocial disabilities are directly represented through NGOs in the National Disability Rights Machinery as SADA questions whether this is truly adequate. A service user with a psychosocial disability serves on the Ministerial Advisory Committee and we thus question whether persons with psychosocial disabilities could not represent themselves in Machinery meetings. Representation differs significantly from self-representation and we therefore submit that questions should be posed as to how self-representation is actually provided for (if at all).
- g) Takes swift action to ensure consistent implementation of the SIAS policy (despite progressive implementation with a view to full implementation by 2019), particularly in rural areas and under-resourced townships.
- h) Respond to SADA's concerns about the deep sense of shame often experienced by families of persons with disabilities. This can have serious impact such as a child not attending school, abuse and even death. Clearly, disability education and awareness in these communities is a key transformation strategy which requires the roll-out of programmes to remedy this lack of knowledge. As such, SADA would welcome a response from the GOSA regarding steps taken in this regard.
- i) Makes resources available to fund education and awareness programmes throughout the year to enable the public to learn, understand and appreciate disability and its implications. Such programmes should focus on a wide variety of impairments rather than a selective approach favouring certain impairments.
- j) Provides clarity regarding the increasing admission of persons with disabilities seen against the reduction of available beds in psychiatric hospitals (paragraph 91 of the GOSA replies).
- k) Responds to the need for the inclusion of a capacitation plan in the Policy Guidelines for the Licensing of Residential and/or Daycare Facilities for Persons with Mental Illness and/or Severe or Profound Intellectual Disabilities. In addition, we request clarity on the implementation of these Guidelines given the concern expressed in this document (Article 15).
- l) Consults with key experts in the disability sector to include more comprehensive indicators for assistive technology as opposed to the exclusive focus on mobility and hearing aids. We also recommend the inclusion of evidence (indicators) that assistive technology was appropriately provided and enabled participation in key areas of functioning, including school participation, work access and community living.
- m) Includes persons with intellectual disabilities in the Sexual and Reproductive Health Policy (Article 25).
- n) Provides a detailed report on the implementation of the order of Justice Moseneke regarding the Esidimeni Tragedy (paragraph 120).
- o) Provides clarity regarding the current SASSA crisis with particular reference to holding those responsible accountable.

5. CONCLUSION

While the GOSA answered some of the questions posed by the CRPD Committee in full, SADA submits that there are considerable additional questions to be posed. We hope that these suggested additional will be of assistance to the Committee and the GOSA in realising the rights of persons with disabilities in South Africa.

SADA thanks the CRPD Committee for the opportunity to participate in this process.