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To cite this article: Serges Djoyou Kamga (2016) Disability rights in South Africa: prospects for their realisation under the White Paper on the Rights of Persons with Disabilities, South African Journal on Human Rights, 32:3, 569-580, DOI: [10.1080/02587203.2016.1264109](https://doi.org/10.1080/02587203.2016.1264109)

To link to this article: <https://doi.org/10.1080/02587203.2016.1264109>



Published online: 11 Jan 2017.



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CURRENT DEVELOPMENT

Disability rights in South Africa: prospects for their realisation under the White Paper on the Rights of Persons with Disabilities

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I. Introduction

Since time immemorial, persons with disabilities have been victims of systemic discrimination and South Africa is no exception. In addressing the problem, the South African government adopted the 1996 Constitution informed by the need to secure the right to equality for all.¹ To ensure that the constitutional commitment is meaningful for persons with disability, a legislative and policy framework was adopted. It includes the South African Schools Act 84 of 1996, Employment Equity Act 55 of 1998, Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, Mental Health Care Act 17 of 2002, Social Assistance Act 13 of 2004 and Children's Act 38 of 2005. In addition, although an Integrated National Disability Strategy and the Education White Paper 6 on Special Needs Education were also adopted in 1997 and 2001, respectively, in general, disability rights protection was infused into generic legislation prohibiting discrimination and this was not conducive to adequate protection of persons with disabilities, who remain invisible. Van Reenen and Combrinck write:²

[T]he existing generic legislation does make provision for certain areas of life such as employment. However, it is clear that in order to fully incorporate the CRPD into domestic law, additional steps, likely in the form of comprehensive disability legislation, should be considered.

In reaction to critics, the Department of Social Development, which is the national focal point on disability, spearheaded the adoption of the White Paper on the Rights of Persons with Disabilities (WPRPD) on 9 December 2015 by the Cabinet.

This article assesses the implications of the WPRPD on disability rights protection in the country. It interrogates whether the adoption of the WPRPD will enhance the prospects for the protection of disability rights. To this end, it considers the legal value of the WPRPD, the implementation and monitoring of the WPRPD through

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¹ Section 9 of the Constitution.

² TP Van Reenen & H Combrinck 'The UN Convention on the Rights of Persons with Disabilities in Africa: Progress After 5 Years' (2011) 14 *Sur Int JHR* 133, 153.

two chapter 9 institutions (the South African Human Rights Commission and the Office of the Public Protector)³ and disabled people organisations (DPOs). Ultimately, the article argues that even though the WPRPD is a positive development, it will not make a difference if chapter 9 institutions and DPOs cannot monitor its implementation.

The article is divided into four parts including this introduction. The second part presents an overview of the WPRPD and its legal value. The third part examines the role of chapter 9 institutions in ensuring that WPRPD foster disability rights and the fourth part concludes the article.

II. The WPRPD: an overview and legal value

(a) The WPRPD: an overview

The WPRPD is the most recent policy through which the government intends to turn its political vision into a programme and action to ensure the right to equality and dignity for persons with disabilities. Updating the 1997 White Paper on an Integrated National Disability Strategy, the WPRPD objective is the establishment 'of free and just society inclusive of all persons with disabilities as equal citizens'.⁴ To this end, the WPRPD relies on nine Strategic Pillars which are the following:

- Removing Barriers to Access and Participation,⁵
- Protecting the Rights of Persons at risk of Compounded Marginalisation,⁶
- Supporting Sustainable Integrated Community Life,⁷
- Promoting and Supporting the Empowerment of Children, Women, Youth and Persons with Disabilities,⁸
- Reducing Economic Vulnerability and Releasing Human Capital⁹
- Strengthening the Representative Voice of Persons with¹⁰
- Disabilities
- Building a Disability Equitable State Machinery¹¹
- Promoting International Co-operation¹²
- Monitoring and Evaluation.¹³

These pillars are instrumental for the implementation of the human rights model of disability echoed by the Convention on the Rights of Persons with

³ Other chapter 9 institutions are the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission.

⁴ H Bogopane-Zulu, MP Deputy Minister of Social Development 'overview' of the White Paper on the Rights of Persons with Disabilities' (2015).

⁵ Strategic Pillar 1.

⁶ Strategic Pillar 2.

⁷ Strategic Pillar 3.

⁸ Strategic Pillar 4.

⁹ Strategic Pillar 5.

¹⁰ Strategic Pillar 6.

¹¹ Strategic Pillar 7.

¹² Strategic Pillar 8.

¹³ Strategic Pillar 9.

Disabilities (CRPD),¹⁴ which South Africa ratified together with its Protocol on 30 November 2007. According to the human rights model of disability, persons with disabilities have the same rights as everyone else in the society and shall not be discriminated against on the ground of disabilities or any other ground. This suggests that persons with disabilities are no longer viewed 'as objects of charity, medical treatment and social protection, [but] as subjects of rights able to claim those rights as active members of society'.¹⁵

To ensure that the human rights model of disability characterized by the full inclusion of persons with disabilities becomes reality, the WPRPD was supplemented by an implementation matrix to monitor compliance from 2015 to 2030. The matrix, divided into sectors, captures the implementation of all the rights in the bill of rights, the need to reduce the vulnerability, strengthening the self-representation and establishing state machinery for the inclusion of persons with disabilities. This arrangement is supplemented by clear outcomes and targets for the years 2015–2019 and 2020–2030 and lead agencies to ensure that the objectives are met.¹⁶ The monitoring and evaluation will be based on statements and outcome indicators related to each of the strategic pillars and their impact published by lead agencies.¹⁷ This will be followed by an annual report on progress made, published by the chosen national disability rights coordinating mechanism.¹⁸

The adoption of the WPRPD is a step in the right direction. The WPRPD ensures the visibility of disability rights, elaborates their content and most importantly provides a code of implementation through a matrix. Nevertheless, the adoption of disability-specific legislation in the form the WPRPD could be counterproductive because having disability inferred in various legislations under the prohibition of discrimination could assist in mainstreaming it and turning it into a cross-cutting issue.

However, so far the protection of disability rights through the hybrid approach, or piecemeal legislation has not worked, hence the necessity to adopt a specific legislation that will ensure the protection of these rights by adequate monitoring bodies or agencies. Dlamini, the Minister of Social Development writes:

We believe that the WPRPD and its Implementation Matrix will offer both the public, private and civil society sectors a tangible platform to do things differently to expedite the process of improving the quality of life of persons with disabilities and their families.¹⁹

(b) The legal value of the WPRPD

The WPRPD attempts to move disability rights from rhetoric to reality in South Africa. With this policy, South Africa endeavours to move from piecemeal regulation

¹⁴ Adopted in 2006 and entered into force in 2008.

¹⁵ R Kayess & P French 'Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 *HRLR* 1, 3. For more details on the models of disability, see A Harris & S Enfield *Disability, Equality, and Human Rights: A Training Manual for Development and Humanitarian Organizations* (2003) 14–18.

¹⁶ White Paper on the Rights of Persons with Disabilities Implementation Matrix 2015–2030 (2015) 1–27.

¹⁷ Bogopane-Zulu (note 4 above).

¹⁸ *Ibid.*

¹⁹ B Dlamini 'Foreword' of White Paper on the Rights of Persons with Disabilities (2015).

on disability to have a disability-specific policy and perhaps legislation. The latter is essential as it will not only provide guidance for the implementation of the policy, but will also enhance its enforceability when policy considerations are enacted and adopted by the legislature. Gumede writes:

Law is about ensuring that policies are implemented by holding government legally accountable. This implies that public policy which sets out the goals and planned activities of a department, as an example, may have to be translated into a law to enable government to put in place the necessary institutional and legal frameworks to achieve its objective.²⁰

Nonetheless, the law-making process is very lengthy. In this regard, a policy discussed in the sphere of the Executive Authority,²¹ or government department is made public for comments and suggestions in the form of a Green Paper. Subsequently, it is disseminated after broad consultations with experts and civil society organisations as a White Paper (that may still be made public for comments), before being tabled in the legislature as a draft Bill prior to its adoption as a Bill. The latter is then sent to the Law Commission and the Cabinet for approval, and then circulated to the State Law Advisers who examine the legal and technical ramifications of the draft law before its adoption as an Act by the Parliament.²²

Notwithstanding the lengthy legislative process, the government should be commended for having started with the adoption of the WRPD which gives a positive signal that disability rights will be given more attention. It is hoped that although 'government enjoys substantial control over the legislative process',²³ serious strides will be made towards the adoption of a fully-fledged Disability Act in South Africa.

Even though a Disability Act is not the panacea to solve all disability rights problems, it is significant in terms of standard setting. It ensures continuity, shields specific groups or beneficiaries of legislation against unnecessary policy reforms that may occur as a result of change of context or political environment or even change of a Minister within the same government.²⁴ Therefore, a Disability Act is a more effective tool for it is not easy to be repealed as this process is rather lengthy as well. It is therefore hoped that at some point the WRPD policy will reach the stage of legislation.

However, the current WRPD is welcome for it will consolidate and create harmony between the various pieces of legislation and policies as well as regional and global undertakings on disability law. It will assist to combine them into a comprehensive and distinct approach to disability, which is likely to lead to better implementation. Nevertheless, for a successful implementation, besides the focal point²⁵ (the Department of Social Development), it is essential to have checks and balances in the

²⁰ V Gumede *Political Economy of Post-Apartheid South Africa* (2016) 27, <<http://www.codesria.org/spip.php?article2625>>.

²¹ See chapter 5 of the Constitution.

²² On law making in South Africa see note 20 above; V Gumede 'Policy Making in South Africa' in C Landsberg & A Venter (eds) *South African Government and Politics* 4 ed (2011) 166.

²³ A Atchison & I Down 'Women Cabinet Ministers and Female Friendly Social Policy' (2009) 1 *Poverty Public Policy* 1, 23.

²⁴ For more details on policy reform, see note 20 above 20.

²⁵ CRPD art 33(1).

forms of national independent institutions²⁶ and civil society organisations, especially DPOs²⁷ that will compel the state to deliver its commitments.

III. Independent institution(s) and disabled people organisations and the monitoring of disability rights

The CRPD provides:

States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more *independent mechanisms*, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.²⁸

Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.²⁹

This provision clearly delineates the role of independent institutions and civil society and especially, DPOs in fostering disability rights.

(a) Independent institutions: The South African Human Rights Commission and the Public Protector and the monitoring of disability rights

Subsection 2 of art 33 of the CRPD compels state parties to provide an enabling environment in which an independent institution(s) may function to promote, protect and foster respect for disability rights. It requires states to designate or set up such institution(s) in line with the Paris Principles.³⁰ In this context, an independent institution is tasked with monitoring how state gives effect to disability rights. It is a check-and-balance measure needed to monitor government's activities. In South Africa, the South African Human Rights Commission (Commission) and the Public Protector, established under chapter 9 of the Constitution, are tasked to protect all human rights including disability rights.

Established under ss 181 and 184 of the Constitution, the Commission is mandated to promote, protect and monitor the implementation of human rights in general. The South African Human Rights Commission Act 40 of 2013 operationalises the SAHRC's constitutional mandate, and determines a variety of functions and powers of the Commission.³¹ To discharge its mandate, the Commission is empowered by the Human Rights Commission Act³² to create a Committee or Committees made of one or more commissioners. The Committee(s) should advise the Commission

²⁶ Ibid art 33(2).

²⁷ Ibid art 33(3).

²⁸ Ibid art 33(2).

²⁹ Ibid art 33(3).

³⁰ The Paris Principles originated from an international workshop of national human rights institutions, held in Paris in 1991, but were adopted by the United Nations General Assembly in 1993. General Assembly resolution 48/134 of 20 December 1993.

³¹ Sections 13(1), 14, 15 and 16.

³² Section 11(1).

in respect of matters for which the committee was set up.³³ In this context, the Commission has defined seven focus areas, including one on Disability and Older Persons.³⁴ The Disability and Older Persons portfolio is mandated to promote, protect and monitor the rights of persons with disabilities and the elderly.

In 2002, prior to the adoption and ratification of the CRPD and its Protocol by South Africa, and then relying on the United Nations Standard Rules on the Equalization of Opportunities for Peoples with Disabilities³⁵ and the need to protect equality and dignity in the Constitution, the Commission received and attended to cases related to disability rights. It is nonetheless important to note that, as correctly observed by Nhlapo et al, notwithstanding the abundance of sociological and anecdotal evidence of violations of disability rights, these encroachments 'do not become operationalised into formal complaints, thus restricting the Commission's potential for development of legislative prescription regarding disability rights'.³⁶ The reliance on sociological and anecdotal evidence of violations disability rights is illustrated through three cases that reached the Commission.³⁷ The first case relates to the right to education. The Commission was approached with a complaint alleging the exclusion of a child from a school on the ground of disability. In this case, the principal of the school simply denied access to a child who was physically impaired and could not access his classroom (which was located upstairs in a school without lifts). After engaging with the Commission, the principal agreed to move the learner's classroom downstairs and the problem was solved.³⁸ As correctly noted by Nhlapo et al, the lesson learnt here is that the principal was able to understand his obligation to ensure access to education for all.³⁹

The second case deals with inaccessible prisons for persons with disabilities. A person with disability was condemned to 15 years of prison and incarcerated in a prison with no access facilities for physically-impaired prisoners. As a result, he was accommodated in the prison sick area and consequently was bedbound for three years at the time of the complaint.⁴⁰ The Commission called on the Department of Correctional Services to take appropriate measures to ensure that prisons are disability-friendly and, more importantly, to ensure that measures taken to remedy the situation are fully implemented.⁴¹ Although the state has yet to fully comply with these instructions of the Commission as reports suggest,⁴² the Commission should be commended for its view and directives on the issue.

³³ Sections 11(4) (a) and (b).

³⁴ The other Committees access to justice and Housing, Environment, Natural Resources and Rural Development, Basic Services and Health Care, Children Rights and Basic Education, Human Rights and Law Enforcement and Prevention of Torture and Migration and Equality. For more, see <<http://www.sahrc.org.za/>>.

³⁵ Adopted by the United Nations General Assembly, 48th session, Resolution 48/96 annex of 20 December 1993.

³⁶ CM Nhlapo et al 'Disability and Human Rights – The South African Human Rights Commission' in Watermeyer et al (eds) *Disability and Social Change* (2006) 102.

³⁷ These are sociological and anecdotal cases. I could not find the primary sources and references for these cases and had to rely on the secondary source (CM Nhlapo et al *ibid*). This chapter was the outcome of an interview between Brian Watermeyer, Marguerite Schneider and Charlotte Vuyiswa McClain Nhlapo who was the Commissioner at the Human Rights Commission at the time.

³⁸ Nhlapo et al (note 36 above) 101.

³⁹ *Ibid* 106.

⁴⁰ *Ibid* 105.

⁴¹ *Ibid*.

⁴² C Raphaely 'Detainees on Remand in South Africa Often Endure Worse Conditions than Convicts. This is One Paraplegic Man's Story' <<http://www.theguardian.com/world/2013/feb/22/paraplegic-remand-south-africa>>; Raphaely 'Denying Paraplegic Bail is torture' *Mail and Guardian* (19 April to 15 May 2013) 9.

The third case deals with a failed medical operation. A young boy was operated upon, but the surgery failed. As a result, the patient's condition worsened and he became severely physically disabled. Instead of finding solutions for his predicament, the boy was simply discharged from the hospital without any further explanation or any attempt made to remedy his condition. Informed of the situation, the Commission approached the Provincial Member of the Executive Council (MEC) for health to request a documented plan for the care to be provided to the patient. Subsequently, reacting to the silence of the MEC, the Commission issued a *subpoena* to the MEC to compel her to take responsibility for the medical malpractice of her personnel. This pressure yielded positive results as the provincial department agreed to design a plan of intervention to be implemented by the local state hospital who committed themselves to administer the necessary care to the patient.⁴³ This case is significant in ensuring that disability rights become a priority on the agenda of the Department of Health at the provincial level.⁴⁴

Even though these three cases are sociological and anecdotal, they show that the Commission is able to deal with disability rights. Besides the sociological cases, the ability of the Commission to address disability rights was further illustrated through the case of *Lettie Hazel Oortman v St Thomas Aquinas Private School & Bernard Langton*⁴⁵ in Mpumalanga's Equality Court. In this case dealing with discrimination against learners with disabilities at school, the Commission was instrumental in showing how the school failed to accommodate Oortman, a child with disability, at a local school.⁴⁶ In doing so, the Commission guided the Court in reaching a decision that compelled the school to remove all obstacles 'for the learner in order to enable her to have access to the classroom, washbasin and toilet allocated to the learner by using her wheelchair'.⁴⁷ It could therefore be argued that the Commission has been instrumental in advancing disability rights in the country as prescribed by the CRPD.

In spite of this encouraging development, the Commission, especially its portfolio on Disability and Older Persons is weak in monitoring disability rights. This weakness of the Commission in dealing with art 33 was acknowledged in the South African Draft First Country Report to United Nations on the Implementation of Convention on the Rights of Persons with Disabilities.⁴⁸ The latter notes that 'the Commission's current capacity does not enable it to meet its obligations as required by the CRPD'.⁴⁹

Moreover, the capacity challenge is aggravated by the fact that the sub-committee (of experts) at the Commission meets only once or twice a year. Given the gravity of systemic discrimination based on disability, meeting intermittently reduces the ability of the Commission to monitor and give effect to the WRPRD. Furthermore, the

⁴³ Ibid 105.

⁴⁴ Ibid.

⁴⁵ Equality Court Case 1/2010 (13 December 2010).

⁴⁶ Ibid; G du Plessis & C Grobler 'South Africa' in *African Disability Rights Yearbook* (2013) 307, 326.

⁴⁷ Ibid.

⁴⁸ Draft First Country Report to United Nations on the Implementation of Convention on the Rights of Persons with Disabilities for public comment, 26 November 2012.

⁴⁹ Ibid para 196.

Commission also faces the lack of financial resources which equally hinders its ability to deliver its mandate effectively.⁵⁰ Therefore, the Commission should address its capacity challenges, ensure regular effective meetings and deal with financial limitation if it is to give effect to the WPRPD and improve the lives of persons with disabilities.

As far as the Office of the Public Protector is concerned, it is established under ss 181 and 182 of the Constitution and is mandated to ensure good governance, promote and protect the rule of law and respect for human rights, including those of persons with disabilities.⁵¹ To discharge these functions, the Public Protector is empowered by s 182 of the constitution to:

- (1) (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice
- (b) to report on that conduct; and (c) to take appropriate remedial action.
- (2) The Public Protector has the additional powers and functions prescribed by national legislation.
- (3) The Public Protector may not investigate court decisions.
- (4) The Public Protector must be accessible to all persons and communities.
- (5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.

This constitutional mandate is given effect through the Public Protector Act 23 of 1994 which enables the Public Protector to take action on his or her own ingenuity or after receipt of a complaint or based on information at his or her disposal and related to government maladministration, misuse or unjustifiable or unfair exercise of power amongst others.⁵² The mandate of the Public Protector is also grounded in various other legislations⁵³ which enable him or her to foster governance and the rule of law in the country.

In addressing disability rights, in November 2010, the Public Protector investigated a case of ill-treatment administered to a person with disability who was deprived of a wheelchair in a healthcare facility.⁵⁴ She found for the applicants and unequivocally called on the Western Cape Department of Health to provide the patient with a 'wheelchair and associated assisting devices' in respect of the right to access to health-care to a person with a disability.⁵⁵ The right to health provided under section 27 of the Constitution applies to all, including persons with disabilities. In this regard, the

⁵⁰ The South African Commission Annual Report (2013) iv and v.

⁵¹ For more on his/her power, see Public Protector Act 23 of 1994 <<http://www.pprotect.org>>.

⁵² Section 6.

⁵³ The Executive Members' Ethics Act 82 of 1998, the Executive Ethics Code; the Prevention & Combating of Corrupt Activities Act 12 of 2004; Promotion of Access to Information Act 2 of 2000; Electoral Commission Act 51 of 1996 41; Protected Disclosures 26 of 2000; National Archives and Record Service Act 43 of 1996; National Energy Act 40 of 2004; Housing Protection Measures Act 95 of 1998; Promotion of Equality & Prevention of Unfair Discrimination 4 of 2000; Public Finance Management Act 1 of 1999; Lotteries 57 of 1997; Special Investigating Units & Special Tribunals Act 74 of 1996; 16. National Environmental Management Act 108 of 1998.

⁵⁴ Public Protector Report on an investigation into alleged failure by the Western Cape Department of Health to Provide Proper Health Care to a disabled person 'State to provide wheelchairs for the indigent' Report No 23 of 2009/10.

⁵⁵ Ibid para iii(b); also Du Plessis & Grobler (note 46 above) 327.

Public Protector also urged the Department of Health to endeavour to acquire more wheelchairs and to secure the necessary budget.⁵⁶

The power of the Public Protector in fostering democracy and the rule of law has been strengthened by the Constitutional court through the case of *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly*⁵⁷ (Nkandla case) in which it was held that the Public Protector's remedial action is binding. Therefore, persons with disabilities should approach the Public Protector for remedial actions whenever their right are violated.

However, similar to the Commission, the Office of the Public Protectors faces numerous challenges including the lack of capacity and insufficient financial resources.⁵⁸ Furthermore, the other constraint facing the two chapter 9 institutions in ensuring the visibility of disability rights in the wider public arena is that these institutions are generally unknown.⁵⁹ In spite of the few successes regarding the realisation of disability rights mentioned earlier, many – especially persons with disabilities – are not aware that these institutions are established to promote and protect their rights. This is because these institutions are generally perceived as holding the government accountable for corruption, and other high-profile issues, and hence do not focus on disability rights which are perceived to be peripheral in policy and practice spheres. In fact, those in need of these rights are often too poor and focus on begging for survival and would not even understand what the Commission and the Public Protector are. Those able to bring cases to these institutions do not do so 'for fear of reprisal or victimisation'.⁶⁰ It is therefore imperative to raise awareness and educate society in general and those with disability in particular, on the role of independent institutions in addressing disability rights.

Generally, although chapter 2 institutions face resources, capacity constraints and lack of awareness on their disability rights mandate, these institutions have now been accorded an enormous amount of respect, especially after the Nkandla decision. Therefore, it is imperative to rely on them to monitor disability rights. This means that an effective Commission and a strong Public Protector who investigates disability rights violations would be significant in ensuring that the WPRPD yield a positive outcome.

(b) Disabled people organisations and the monitoring of disability rights

Under section 33(3) of the CRPD, a state party is obliged to ensure that '[c]ivil society, in particular persons with disabilities and their representative organizations, [are] involved and participate fully in the monitoring process'. This is the application of the disability motto, 'nothing about us without us'. To ensure the

⁵⁶ Ibid para iii(c).

⁵⁷ [2016] ZACC 11.

⁵⁸ SD Kamga & S Heleba 'Can Economic Growth Translate Into access to Rights? Challenges Faced by Institutions in South Africa in Ensuring that Growth Leads to Better Living Standards' (2012) 9 *Sur Int JHR* 83, 97.

⁵⁹ T Madonsela 'Corruption and Governance Challenges: The South African Experience' Address by the Public Protector of the Republic of South Africa at the National Conference on Corruption and Governance Challenges, Nigeria (21 January 2010) <http://www.publicprotector.org/media_gallery/2010/PP%20Speech%20Nigeria%20Corruption%20and%20Governance%20Challenges%20final.pdf>.

⁶⁰ Kamga & Heleba (note 58 above) 82, 97.

involvement of DPOs in the implementation process, the government through the Department of Social Development has provided an enabling environment through which civil society organisations, in general, may play key roles in promoting and protecting the rights of persons with disability. In this respect, the government established the National Disability Machinery, which is a non-statutory consultative medium between government and DPOs, business and institutions of higher learning.⁶¹ In this context, the South African Disability Alliance (SADA) and Disabled People South Africa are involved in processes aimed at ensuring the participation of DPOs in the implementation of the CRPD. Amongst other activities, in 2012, SADA (made up of 13 national DPOs) started a South African chapter of Disability Rights Promotion International (DRPI) in partnership with York University in Canada. This initiative is aimed at capacitating DPOs in monitoring the implementation of the CRPD.⁶²

Furthermore, all government departments, from the national to local municipality levels, are instructed to establish a disability focal point to ensure the mainstreaming of disability rights in their activities. Concretely, this entails the involvement of civil society in general, and DPOs in particular, in the development of policies and strategies to address disability rights.⁶³ If synchronised through the National Disability Machinery, the involvement of various disability units or focal points from different levels of government, as well as DPOs, would be instrumental in taking the discourse of disability rights to grassroots level, and ensuring that the rights of persons with disability are protected by all duty-bearers at all levels.

Moreover, while working in tandem with the government, DPOs should at the same time be the watchdogs that prepare shadow reports on the implementation of the CRPD which should be submitted to various Committees or bodies dealing with the supervision of the implementation of the CRPD at national, regional and global level.

Nevertheless, DPOs have not been consistent in working with partners such as the Commission and the Public Protector.⁶⁴ Furthermore, even though DPOs are subsidised by the state,⁶⁵ they face financial and human capacity constraints. As far as human capacity is concerned, this problem is aggravated by the fact that many DPO members often abandon their organisations to join the government or other organisations (without disability interest).⁶⁶ According to Matsebula et al, the migration of skills from the disability sector limits the ability of this sector to discharge its function of monitoring.⁶⁷

⁶¹ Baseline Country Report to the United Nations on the Implementation of the Convention on the Rights of Persons with Disabilities in South Africa, para 63.

⁶² Ibid para 410.

⁶³ Ibid para 63.

⁶⁴ S Liebenberg 'Making a Difference: Human Rights and Development – Reflecting on the South African Experience' in Andreassen & Marks (eds) *Development as a Human Right: Legal, Political and Economic Dimensions* (2006) 167.

⁶⁵ See, eg Department of Labour 'Policy on Transfer of Subsidies to Organisations administering Programmes for People with Disabilities' <<http://www.labour.gov.za/DOL/downloads/documents/useful-documents/skills-development-act/pesdisabilitypolicy.pdf>>.

⁶⁶ S Matsebula et al *Integrating Disability within Government: The Office of the Disabled Persons in Disability and Social changes* (2006) 87.

⁶⁷ Ibid.

The other challenge is that some DPOs face concerns regarding their legitimacy and ability to coordinate actions of disability focal points at all levels of government, as well as within their own circles.⁶⁸ In addition, procedural backlogs linked to bureaucracy limit their efficiency in delivering their mandate.⁶⁹

Needless to say, DPOs have a significant role in monitoring the implementation of the CRPD. They should work in partnership with other civil society organisations to improve their capacity, address their legitimacy challenges and ensure the retention of their personnel by providing requisite pay and benefits. In this respect, the government should assist DPOs with capacity building, and enhance the coordination of activities between various disability focal points and DPOs to ensure that the National Disability Machinery undertakes a more effective implementation of disability rights. In this manner, DPOs can successfully rely on the WPRPD to increase the chances for the achievement of disability rights.

IV. Conclusions

The aim of this article was to examine the extent to which the WPRPD can enhance the prospects for the realisation of disability rights in South Africa. After a brief examination of the WPRPD and its implementation matrix, it was found that although this is a mere policy which is yet to reach maturity in the form of legislation, its value cannot be discarded for it indicates a positive signal in the development and protection of disability rights in the country.

It was, however, also found that although valuable at first sight, the WPRPD will not make a significant difference if independent monitoring institutions, namely the Commission and the Office of the Public Protector are not able to monitor its implementation. In addition, the failure by DPOs to monitor the implementation of the WPRPD will not enhance the prospects for the achievement of disability rights. This is to say that the WPRPD per se is meaningless if independent institutions and PDOs cannot monitor its implementation.

While a lot need to be done by DPOs to improve their ability to monitor disability rights, the role of independent institutions remains pertinent. In the final analysis, although this article focuses on South Africa, it is hoped that its findings will assist other African countries grappling with the protection and monitoring of disability rights.

Disclosure statement

The author reports no conflicts of interest. The author alone is responsible for the content and writing of this article.

⁶⁸ Ibid.

⁶⁹ AK Dube 'The Role and Effectiveness of Disability Legislation in South Africa' Disability Knowledge & Research (KaR) Programme (2005) edited by E Stanley <http://tugs63.org/documents/additional%20documents/PolicyProject_legislation_sa.pdf>.

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