

SHINE FACT SHEET: EVERYONE IS POTENTIALLY DISABLED OR OLD. BEING INCLUSIVE AND CONSIDERATE OF THESE GROUPS IS HELPING MYSELF.

 Social Harmony National Effort  @SAHRCommission



INTRODUCTION

This issue highlights facts focused on providing more information on the rights of older persons and persons living with disabilities. It is developed in support of the SHINE theme for the month of October that reads: *“Everyone is potentially disabled or old. Being inclusive and considerate of these groups is helping myself”.*

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PEOPLE LIVING WITH DISABILITIES

1. The Republic of South Africa is founded on inter alia the values of Human Dignity and the achievement of equality and the advancement of human rights and freedoms.
2. According to some research data, South Africa has about 3 million people living with disabilities, equating to about 7.5% of the country's population.¹
3. It is argued that: *“Historically, people with disabilities have been excluded from the majority of meaningful activities in society, including access to education, health and economic opportunities (Albert & Hurst, 2004).”*²
4. Some of the most prevalent forms of disabilities in South Africa include the following: visual impairment - 32,1%; Hearing impairment - 20,1%; Communication impairment - 6,5%; Physical impairment -29,6%; Intellectual impairment - 12,4%; and Emotional impairment - 15,7%.³
5. According to statistics South Africa, disability is positively correlated with age. That is, the proportion of persons with disabilities increases with age. More than half (53,2%) of persons aged 85+ reported having a disability.⁴
6. People living with disabilities and older persons are human, and therefore, deserve the full protection of the law from all discrimination. Their rights must be respected, protected, promoted and fulfilled.
7. As a society it is our collective duty to ensure that people living with disabilities and older persons live lives that are consonant with our collective sense of humanity, dignity and ubuntu.
8. According to article 1 of the Convention on the Rights of Persons with Disabilities: *“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.*⁵

¹ <https://www.iol.co.za/capetimes/opinion/little-done-to-aid-3-million-disabled-south-africans-18451347>

² <https://www.iol.co.za/capetimes/opinion/little-done-to-aid-3-million-disabled-south-africans-18451347>

³ <http://www.rodra.co.za/index.php/south-africa>

⁴ Profile of persons with disabilities in South Africa <https://www.statssa.gov.za/publications/Report-03-01-59/Report-03-01-592011.pdf> on page 9

⁵ Convention on the Rights of Persons with Disabilities, Article 1:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities#:~:text=Persons%20with%20disabilities%20include%20those,an%20equal%20basis%20with%20others>





PEOPLE LIVING WITH DISABILITIES

- Moreover, section 9 of the South African Constitution also prohibits discrimination “9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms.” The Promotion of Equality and Prevention of Unfair Discrimination Act No 2000 is the legislation that gives meaning to section 9 of the Constitution. In terms of section 9 of the Act “no person may unfairly discriminate against any person on the ground of disability, including - denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society;”
- In respect of discrimination, this Convention states: “Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.”
- In respect of children with disabilities, article 7 states that: “States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”⁶
- The Convention further places an obligation on all governments to do the following: “To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”⁷



OLDER PERSONS

- On 7 October 2021, the Human Rights Council (HRC) of the United Nations adopted its first-ever substantive resolution⁸ in advancing older people’s rights and the fight against ageism and age-based discrimination worldwide. The resolutions in relevant parts:
“Calls upon all States to prohibit all forms of discrimination against older persons and to adopt and implement non-discriminatory policies, national strategies, action plans, legislation and regulations, and to promote and ensure the full realisation of all human rights and fundamental freedoms for older persons in, inter alia, employment, social protection, housing, education and training, access to technologies and the provision of financial, social, health-care, long-term support and palliative care services, while systematically providing for consultation with and the participation of older persons themselves.”
“Encourages all States to take measures to combat ageism and eliminate age discrimination, and to protect the human rights of older persons in, inter alia, employment, social protection, housing, education and training, access to new technologies and the provision of financial, social, health-care, long-term support and palliative care services, and to promote the development of comprehensive care systems.”
- It is important to note that even the South African Constitution also protects people living with disabilities and older persons. Various provisions of the Constitution have sections that protect people living with disabilities and older persons: “Everyone is equal before the law and has the right to equal protection and benefit of the law. Equality includes the full and equal enjoyment of all rights and freedoms.”⁹ “Everyone has inherent dignity and the right to have their dignity respected and protected”¹⁰, life¹¹, freedom and security of the person¹², freedom of trade¹³, health care, food, water¹⁴, education¹⁵, housing¹⁶ and so forth.
- In addition to these protections that are guaranteed by the Constitution, the Constitutional Court has also recognised the existence in our law and society of the value of Ubuntu. In *S v Makwanyane and Another*¹⁷ the Court said: “ubuntu”... is a concept that permeates the Constitution generally and more particularly Chapter [two] which embodies the entrenched fundamental human rights. The concept carries in it the ideas of humaneness, social justice and fairness.”¹⁸
- “Ubuntu translates as humaneness... it expresses itself in umuntu ngumuntu ngabantu, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denotes humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.”¹⁹
- “An outstanding feature of ubuntu in a community sense is the value it puts on life and human dignity. The dominant theme of the culture is that the life of another person is at least as valuable as one’s own. Respect for the dignity of every person is integral to this concept”²⁰

⁶ Convention on the Rights of Persons with Disabilities, Article 7

⁷ Convention on the Rights of Persons with Disabilities, Article 9

⁸ Resolution adopted by the Human Rights Council on 7 October 2021, 48/3. Human rights of older persons: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/287/79/PDF/G2128779.pdf?OpenElement>

⁹ Constitution of the Republic of South Africa, section 9

¹⁰ Constitution of the Republic of South Africa, section 10

¹¹ Constitution of the Republic of South Africa, section 11

¹² Constitution of the Republic of South Africa, section 12

¹³ Constitution of the Republic of South Africa, section 22

¹⁴ Constitution of the Republic of South Africa, section 27

¹⁵ Constitution of the Republic of South Africa, section 29

¹⁶ Constitution of the Republic of South Africa, section 26

¹⁷ *S v Makwanyane and Another* [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (Makwanyane)

¹⁸ *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 Para 237

¹⁹ *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 Para 308

²⁰ *S v Makwanyane and Another* (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 Para 225

