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30 March 1992

The Secretariate
CODESA

BY FAX: 011-3972211

Dear Sirs

Please find enclosed a Recommendation from Disabled People South Africa to be considered for inclusion in the future constitution of a democratic South Africa.

Please would you sign and fax the enclosed confirmation of receipt back to us at 0431-29470.

Yours sincerely .

~G_. Hew
FPMIKE DO TOLT
SECRETARY GENERAL

Report prepared for the Congress for a Democratic South Africa

March 1992

L. INTRODUCTION

There are few people, participating in the move towards the development of a new constitution for South Africa, who do not acknowledge the devastating effects which Apartheid has had on the lives of the majority of people in South Africa. In focusing on this devastation however, little attention is paid to those people who have been most severely undermined by the social and economic policies of Apartheid. These people are the disabled people of South Africa, including the blind, deaf and mentally disabled, who as a result of their disabilities have suffered special penalties in relation to educational services, inadequate medical services, discrimination within the workplace and a host of other measures designed to exclude disabled people from society rather than to promote their integration. In stressing the effects of Apartheid on the lives of Disabled people, Dr William Rowland, co-chairperson of Disabled People South Africa (DPSA) has argued that in essence Apartheid causes disability and imposes special penalties on disabled people.²

"The conditions of poverty and unequal opportunity of black urban and rural disabled people arises from the disadvantages which are economic, social and political.

We believe that this situation has been created by the policy of Apartheid which includes unequal pension, unequal education and unequal hospital facilities. Until this changes our people will remain doubly handicapped. (Rowland, 1990:2342)

As a result of the iniquities which Apartheid has imposed on the people of South Africa there is massive economic deprivation and social disorganisation. These two conditions have real effects on generating a range of disabilities among the population and intensifying the hardships faced by disabled people in their everyday lives. The two most stark conditions prevalent in our society which are central in contributing to disability are the intense level of violence, which continues to escalate and deprived living conditions which allow for the spread of diseases and the development of conditions leading to physical and mental impairments.

Looking specifically at the violence in our society, it remains a key contributing factor in causing disability. The high level of violence in our society largely results from political violence, which involves state repression,

¹ Address by Dr Rowland, Welfare Protest meeting, July 1990

² Disabled People South Africa (DPSA). Bloemfontein, 1986.

retaliatory violence and community conflict and increasing criminal violence which has escalated considerably in the last ten years. Many disabilities result from shootings, stabbings, people being thrown from moving trains and a range of other violent acts perpetrated against people. The considerable impact of violence on causing disability is evidenced from two studies undertaken into spinal injury in Soweto. A study completed in 1982 revealed that up to 70% of the disabilities prevalent within spinal injured residents of Soweto were caused by violence (Du Toit, 1987). A more recent study undertaken in 1988 by Jackie Cock into spinal injury among a group of 88 wheelchair users in Soweto, showed that 77% of the sample had been disabled through violence. In the first study 22% of the people had been shot by the police. In the second study a similar percentage of respondents had been disabled through police shootings. In Cock's study, 42% of the sample had been stabbed and 13% had been disabled through other shooting incidents. The first study also showed a high percentage of injuries caused by reactive criminal violence (Cock, 1988;3)5

Another important cause of disability in South Africa, especially among the white population, is injuries sustained in vehicle accidents. According to informed estimates 70% of white people with spinal injuries have become disabled through vehicle accidents. In Cock's study of Soweto residents, 18% of the sample had sustained injuries in vehicle accidents. The National Road Safety Council estimates that in 1991 432 569 people were involved in accidents on South Africa's roads. Of this number 34 621 people were seriously injured and 11 022 were killed. It is estimated that of the people who are seriously injured in vehicle accidents, most will suffer some form of disablement for the rest of their lives.

It is also important to recognise the role that inadequate health care facilities and poverty play in contributing to disability. In poor communities diseases such as poliomyelitis and measles which often lead to disability tend to reach epidemic proportions. Children and pregnant mothers are particularly susceptible to these illnesses. Similarly, in communities where there are inadequate health care facilities, post-natal complications may arise which can not be dealt with speedily and appropriately. These situations often result in permanent impairments in the child's physical and mental functioning.

The effects which economic deprivation and social upheaval have had on the lives of disabled people will not necessarily be eradicated in a new South Africa, unless fundamental changes are made in the laws and statutory provisions which are designed to promote people's effective functioning within society and effective steps are taken to eradicate the

\$3 Life "inside the shell": a needs survey of spinal cord injured wheelchair users in Soweto.
Jacklyn Cock, University of the Witwatersrand, April 1988

inequalities which continue to deprive the majority of the population. ,

With regard to laws and social practice South Africa has a long way to go until it reaches similar standards of integration and promotion of disabled people which is evident in other countries throughout the world. It is generally agreed by disabled people in South Africa that the present government has done little to promote the principles mentioned above and to abolish discrimination.

Already, disabled people in South Africa have developed a strong movement which is aimed at ensuring the enforcement of equality legislation and the equalisation of opportunities which form the key areas around which the International disability rights movement organises and lobbies. Already, the international disability rights movement has made significant progress in promoting equal opportunities and non-discrimination through effective programmes of action which have helped to inform steps taken by various governments to address discrimination in their countries,

The progress of the Disability Rights movement in the world is evidenced in three important actions taken by disabled people internationally, two of which have involved steps taken by the United Nations and thus has included the co-operation and support of its member nations.

On 9 December 1975 the General Assembly of the United Nations passed the "Declaration on the Rights of Disabled Persons". The declaration, designed by this body, enshrines all those rights which disabled people, by virtue of their existence as human beings and their particular needs as disabled people should be entitled to in relation to their participation within society. Essentially, the declaration aimed at confirming disabled people's right to the enjoyment without prejudice or discrimination of those rights contained in the Universal Declaration of Human Rights.

The international disability rights movement however has not remained enclosed within the chambers of the General Assembly, in fact its driving force has been Disabled People's

International which was formed in Winnipeg, Canada in June 1980. DPI was founded by over 250 delegates representing disabled people from 40 different countries who attended the World Congress of Rehabilitation International in Winnipeg at this time. ,

The first congress of PPI was held in Singapore in December 1981. It was attended by 400 delegates who represented

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disabled people from 51 different countries throughout the world. At this Congress a constitution was adopted, a manifesto issued, a charter endorsed and a world council elected. The philosophy of DPI was explained by Bengt Tindöw from Sweden in the following way:

The case is very simple. Disabled people, of course, have the same needs as other human beings - the same needs for food, for warmth, for sleep, for sex, for security, for friendship, for love. We have the same need to share all the pleasures but not only pleasures but all the duties and the experiences, the different situations of life, we want to accept the responsibilities which are normal to the citizens in our respective countries.

We want to contribute to our societies, to our Families and to our own self-support. In other words, quite

Simply, we want to be full human beings enjoying the same values and rights. We all know that this isn't so today

ALI laws and provisions which prevent disabled people from realising their full potential inhibit their ability to meet these needs. It was stressed at the congress that as a result of poor socio-economic conditions, the position of disabled people was particularly unequal in developing countries, and thus attention should be paid particularly to promoting organisations of disabled people in these countries and to influencing and promoting programmes for equal opportunities.

Probably the most significant step taken in the Disability Rights Movement was the formulation of the World Programme of Action Concerning disabled people. The programme was adopted by the General Assembly of the United Nations on 3 December 1982. It represented the first real attempt to integrate effectively and practically the principles enshrined in the philosophy of the disability rights movement into the constitutions and policies of different countries. The objective of the programme of action were summarised as follows;

The purpose of the World Programme of Action concerning Disabled Persons is to promote effective measures for prevention of disability, rehabilitation and the realization of the goals of "Full participation" of disabled persons in social life and development, and of

equality

equality.

Since its adoption, DPI has been involved in tirelessly striving to integrate the world programme of action into the policies and practices of countries throughout the world. As was mentioned earlier, DPI has attempted to pay particular attention to developing countries and has encouraged the development of organisations of disabled people in these

regions. Disabled People South Africa, which is affiliated to DPI is also a member of SAFOD, the Southern African Federation of the Disabled, which is particularly concerned with the development of equality legislation in Southern Africa.

Disabled People South Africa's involvement with DPI and SAFOD has allowed it to integrate the struggles of disabled people in South Africa with those of disabled people in other countries. At the same time however Disabled People South Africa has been intent on meeting the particular needs of disabled people in South Africa. For many disabled people the conditions which have prevented them from achieving their full potential are similar to those conditions which have controlled and undermined the lives of most people in South Africa.

Thousands of disabled people, especially those living in the rural areas of South Africa and the Bantustan regions, have had to try and survive under conditions of extreme poverty, where services are negligible and a punitive welfare system acts to retard any form of state assistance. The struggle of disabled people in South Africa is therefore primarily a struggle for basic human rights, particularly socio-economic rights which have been denied them for so long. Similarly the rights of disabled people can not be achieved in a climate of extreme violence and strife, which serves to increase levels of disability and increases the extreme vulnerability which disabled people are subject to in every day life.

DPSA, together with Lawyers for Human Rights, has already taken up the challenge of fighting discrimination against disabled people in all sectors of society. The Discrimination Watch Project is an initiative co-ordinated by the Disability Rights Unit of Lawyers for Human Rights, which was set up by through co-operation between these two organisations. This project aims through legal intervention and public education

to challenge practices which discriminate against disabled people and thus to facilitate change towards equal opportunities in all spheres of social functioning.

Any attempt therefore to set in motion a process of consultation leading to the adoption of a new constitution must involve the participation of disabled people themselves in drawing up new guidelines for their full and equal integration in society. If this process does not take place and the rights of disabled people are not incorporated into a new constitution and more specifically a future Bill of Rights, a new South Africa can never hope to achieve true democracy and equality in the future.

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2. CONSTITUTIONAL PRINCIPLES CONCERNING DISABLED PEOPLE IN A NEW AND DEMOCRATIC SOUTH AFRICA.

Disabled people in our country and indeed throughout the world are confronted with a major challenge every day of their lives. To survive in an environment designed to exclude them, to identify themselves, associate and interact with a society that is committed to rejecting, isolating, discriminating against and abusing them. They hope that one day change will come, when there is a society which will come to understand and respect the dignity of all people. They believe that through enlightened laws which recognize, respect and protect the fundamental rights of people, the first step on the long road towards equality shall have been reached.

The disabled people of South Africa therefore, at this stage of political development in our country, call upon the Convention for the Establishment of a Democratic South Africa to give formal recognition to and entrench the constitutional principles put forward hereunder, to ensure the permanent protection of fundamental rights to disabled people in a new and democratic South Africa.

2.1 The Right to Speak for Ourselves and Represent Ourselves at all Levels of Decision Making.

Throughout the history of South Africa the active role of so-called able-bodied people, the so-called experts on disability, professionals in the medical, social sciences and other fields who have reserved for themselves the right to make decisions on matters affecting the lives of disabled people, without even consulting them in most cases. Because of the level of respect which most of these professions command in society, governments have tended to make laws and policies based solely on the advice they receive from these experts and professionals, without first obtaining the opinion of disabled people themselves. This undemocratic process has contributed to the prevailing situation in which major hardships and frustrations faced by disabled people are not being addressed.

An attempt to address this issue was made by the South African Government in 1986 by declaring that year the Year of the Disabled and establishing an Inter-departmental Committee for the Care of the Disabled. Disabled people were invited to represent themselves in that structure, but because they could not exercise a controlling influence over the affairs of the structure, very little was achieved during the six years of its existence despite the high costs involved.

A new forum has been established in the place of the above structure called the Field of Service Forum on the Care of the

Disabled. This body is made up of government representatives, representatives from welfare organisations and representatives from organisations of disabled people. We hope that this structure will have the capacity to address the issues on disability and recommend to CODESA that it be preserved and supported in the new political dispensation.

Article 12 of the United Nations Declaration on the Rights of Disabled persons, recognises the usefulness of consulting with organisations of disabled people in all matters regarding their rights. In paragraph 28 of the World Programme of Action Concerning Disabled Persons recognition is given to the emergence of the disabled people's movement which unites disabled people throughout the world as advocates for their own rights to influence decision making in governments and in all sectors of society. Finally, paragraph 278 of the report prepared in 1991 by the United Nations Commission on Human Rights' sub-commission on Discrimination and Protection of Minorities, states that;

The establishment of non-governmental organisations formed by disabled persons or defending their interests should be encouraged and their activities facilitated. This recommendation is crucial, since as has been mentioned earlier, the leading role played by this organisation in decision-making, policy selection and defence of their own human rights is one of the most outstanding features of the decade. The recognition of disabled persons as experts in their own affairs is relatively recent and coincides, not by accident, with the growing attention being paid to the topic by the international community. E/CN. 4/Sub. 2/1991/31

Guidelines as to how this can be achieved can be extracted from the Harare Declaration on Legislation for Equalization of Opportunities for Disabled People. This document was drafted by over 100 delegates and participants at a symposium on Equal Opportunities Legislation for Disabled People in Harare, Zimbabwe in March 1991. Delegates of disabled people from nine countries in the Southern African region, South African liberation movements, United Nations officials and international aid bodies participated. Paragraph 4 of this document summarizes the role of organisations of disabled people as follows;

* Proposed equality legislation should be the result of extensive consultation with the organisations of disabled People. Such legislation will therefore reflect the needs and concerns of disabled people.

* There must be an ongoing process of consultation with organisations of disabled people in reviewing the impact of legislation enacted.

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* Adequate reanurnan should he provided te organigaticns of disabled people go as to enable them to discharge their task in this regard.

* Any advisory bodies eatablished concerned with disability issues should have majority representation by organisationg of digabled people.

A consultation process with disabled people throughout the country to develop a Charter of Demands of Disabled People of South Africa, jointly supported and facilitated by Disabled People South Africa and Lawyers for Human Rights will be completed during the middle of this year. Since early last year a series of workshops have taken place in various parts of the country at which disabled people have been afforded an opportunity to discuse their rights and put forward demands to be included in the charter referred to above. This document, after it has been drafted and adopted at a national congress of disabled people in September cf this year, will be used by disabled people to inform decision-makers of their needs and concerns.

2. The Right to Equality of Treatment and Equal Opportunities

As already indicated above, the ultimate objective of the movement of disabled people is a safe and barrier free society in which there shall be equal treatment and consideration for all who Live in it.

Paragraph 1 of the World Programme of Action Concerning Disabled Persons states;

This means opportunities equal te those of the whole Population and an equal share in the improvement in living conditiona resulting from social and economic development. These concepts should apply with the same scope and with the game urgency to all countries, regardless of their level of development.â\200\234

Article 3(a) of the Bill of Rights proposed by the South African Law Commission sanctions equality before the law for everyone, including the disabled. Article 3(b) empowers the highest legislative body to introduce through legislation, programmes of affirmative action and to vote for funding to ansure that through education and training, financing programmes and employment, people develop and realise their natural talents and potential to the full. Article 27 of the game bill is entitled "social security" and paragraph (f) ehovecd gvaunes everyzne the viaht te sladm he avatlsbbls otats assistance to provide for his or her own necessary subsistence

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and medical needs where he or she is unable to provide for such needs for reasons such as disability.

On the other hand, Article 8 of the African National Congress's 2002 proposed Bill of Rights contains significantly different provisions to those already referred to above. Sub-article 1 thereof simply prohibits discrimination against disabled people. Sub-article 2 provides for the progressive opening up of employment opportunities for disabled men and women. It further provides for the removal of obstacles to the enjoyment by them of public amenities and for their integration into all areas of life.

The Law Commission's 2003 equality before the law clause (Article 3), clearly prohibits discriminatory legislation. Much of the legislation allowing for the unequal treatment of people in South Africa has been abolished. However, there is still legislation that discriminates against disabled people currently in effect. Mere prohibition of discriminatory laws cannot free society from discrimination. Discrimination in its totality must be outlawed, whether it is sanctioned by law or perpetuated through social practice.

We therefore recommend that in addition to providing for the abolition of all forms of discrimination, no organisation or programme should receive state funding unless it clearly abstains from practising discrimination against disabled people.

Article 3(b) of the Law Commission's proposed bill provides for all citizens to have equal opportunities for developing and realising their natural talents and potential to the full. Government may provide funds and introduce affirmative action programmes in support of education and training, financing programmes and employment. Article 8.2 of the ANC's 2002 proposed Bill of Rights goes further to provide for the removal of obstacles to the enjoyment by disabled people of public amenities. This is particularly significant for disabled people because it entrenches the fundamental right to access. We have indicated earlier that the physical environment in this country is almost completely inaccessible and hazardous for disabled people. The majority of people in this country and the majority of disabled people in this country cannot afford to have their own private means of transport. They thus have to rely on public transport which is completely inaccessible.

Further it is clear that the level of effectiveness of communication and information system is very poor and far from satisfactory and deserves especial attention.

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The article further sanctions the integration of disabled people into all areas of life. This is particularly important for disabled people. Many disabled people are kept in isolation from the rest of society in so-called special institutions. This often results in them finding it difficult to keep abreast with developments in the broader society and become socially disorientated. Institutionalisation of this nature does not always contribute to effective rehabilitation, in fact, permanent psychological and physical impairment sometimes results. This practice also has the effect of aggravating existing prejudices against disabled people in our society.

In Article 27 of the Law Commission's bill, which deals with social security, it is only in paragraph (f) that this second generation right is dealt with in relation to the responsibility of the state. Paragraph (f) limits itself however to only two forms of state assistance, namely, assistance for subsistence and for medical needs. It is our contention that the mentioning of these two specific categories implies the exclusion of all other forms of state assistance which may not fall into the two categories mentioned. For example, assistance for assistive devices and personal assistants for severely physically disabled people, sign language interpreters for deaf and hard of hearing people and mentors for people with mental disabilities. Subsidies for braille provision and wage augmentation are existing benefits to blind people which should not be lost.

The above paragraph contains certain qualifications which further limit the right to social security. Firstly, by making

use of the words "available state assistance" without at the same time imposing a duty on the state to make social

assistance available, the clause further weakens people's right to social security. Secondly, another condition imposed is that the person seeking assistance must have no one else from whom support could be obtained. It follows therefore that if such a person does exist, the applicant for state assistance will not qualify. The cost of living for a disabled person is extremely high and therefore the right to

annual assistance is vital to the majority of disabled people in this country.

2.3 The Right to Survival, the Protection from Harm and Exploitation and the Development of every Disabled Child to his/her Full Potential

The role of education in the development of the disabled child cannot be underestimated. Former Director General of UNESCO, Rene Maheu, declared in 1970:

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â\200\234The absence of intellectual stimulation arising from 4
Lack or insufficiency of education. ..inevitable
results...in a slowing down of the mental process. We
know, furthermore, that forms of mental retardation can
no longer be overcome if certain learning
processes...have not been mastered at an appropriate
age..."

The right to education or the call to education for all cannot
be reached if the educational needs of the disabled children
are not met. The environment should be conducive to the
child's development and ensure integration.

3. CONCLUSION

The ANC's proposed Bill of Rights gives special attention to
the three main sectors of society that have in the past
suffered most as a result of discriminatory practices and
continue to do so at present, namely women, children and
disabled people. The draft this by including special articles
which deal specifically with these three categories of people.
The Law Commission's proposed Bill of Rights however, only
contains a special article dealing with Children.

We submit that special emphasis is necessary, if these three
categories are to receive the attention they deserve.
Moreover, the Law Commission's clause dealing with national
security provided by the state for children, only mentions in
paragraph (cc) the indigent child's right to free state-aided
medical care. Although the paragraph immediately preceding it,

does allow for state aid to be provided for children who have
no other source of care, unless the nature and content of this
state aid is clarified, fundamental needs of disabled
children, apart from general subsistence and medical care, may
be overlooked. Disabled women and children in this country
suffer the most extreme forms of discrimination and therefore
their particular needs deserve special attention.

A special article dealing with disability must also contain
provisions which address the issue of prevention of
disability. As was mentioned earlier in the report violence
and deprived socio-economic conditions are the main causes of
disability in our country. Programmes and laws designed to
combat poverty and deprivation must be instituted with
immediate effect. We also stand firmly for peace and insist
that the right to peace, which belongs to the society as a
whole, is a fundamental principle which should receive special
attention in a new constitution.

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