WOMEN WITH DISABILITIES AND INFORMAL SETTLEMENT SANITATION: IMPLICATIONS FOR POLICY AND PRACTICE

THE STRUGGLE TO BE ORDINARY
SANITATION FOR WOMEN WITH DISABILITIES IN INFORMAL SETTLEMENTS

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Disability is not simply the result of physical or cognitive impairments. Disability is an evolving concept, which results from the interaction between people with impairments and the attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.¹

In terms of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), ratified in November 2007² and therefore considered by South African courts in understanding government’s constitutional obligations to people with disabilities:³  

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.⁴

People with disabilities living in informal settlements are among the most vulnerable and marginalised in the country. Informal settlements are characterised by severe poverty and unemployment,⁵ and are poorly served with water, sanitation and other essential services.

In 2013 it was estimated that there were approximately 1.25 million households living in informal settlements, and that 68% of these households lacked access to adequate sanitation.

Many of the informal settlements in South Africa were established in the early 1990s as a result of apartheid spatial planning, which reserved housing near to urban economic centres for white people. Drawn to urban areas in search of work but without affordable housing options, many black South Africans rented backyard shacks or lived on unoccupied land near employment opportunities. The Housing Development Agency (HDA) estimates that one in every five households in metropolitan municipalities live in an informal dwelling. Moreover, reports indicate that there has been a steady increase in informal settlement in metropolitan areas over the last ten years.

Primarily because of government’s emphasis on eradicating informal settlements, many municipalities provide water and sanitation services as temporary or emergency measures, even though settlements have existed for many years. For example, sixty percent of the informal settlements in Gauteng and the Western Cape have existed for between 5 and 10 years.

Very few informal settlements have formal electricity, adequate water and sanitation, health or emergency services. Communal taps can be shared by upwards of 50 households per tap, and chemical latrines are often shared by hundreds of households.

It is challenging for any informal settlement resident to access adequate water and sanitation services. For residents with disabilities, water and sanitation facilities are virtually inaccessible as they are located on settlement peripheries and not designed to accommodate people with disabilities.

Women with disabilities face compounded challenges in accessing safe
water and sanitation services, creating an added and avoidable indignity over and above the social stigma that they already face.

This report seeks to raise awareness of the challenges women with disabilities living in informal settlements face in accessing adequate water and sanitation, and to propose actions to ensure safe, dignified services. The report begins with an outline of the legislative and policy framework pertaining to water and sanitation provision to people with disabilities living in informal settlements. It then provides an overview of the state of sanitation in informal settlements, after which its sets out the challenges that women with disabilities living in informal settlements face in terms of accessing adequate sanitation. The report concludes with implications for actions to enable the provision of adequate sanitation for women with disabilities living in informal settlements.
2. LEGISLATIVE AND POLICY FRAMEWORK

INTERNATIONAL INSTRUMENTS

South Africa is party to a number of international instruments which create a legal obligation to ensure that the human rights of women with disabilities are protected within its borders, including with respect to the right to water and sanitation. South Africa has signed and ratified the following international and regional instruments:

- **The International Covenant on Economic, Social and Cultural Rights (ICESCR)**, adopted by the United Nations General Assembly in 1966, governs socio-economic rights. Although ICESCR does not make explicit reference to the right to sanitation, the Committee on Economic, Social and Cultural Rights (the body that interprets and clarifies ICESCR) declared that “since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights...”.

- **The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**, adopted by the United Nations General Assembly in 1979, "provides the basis for realizing equality between women and men through ensuring women’s equal access to, and equal opportunities in, political and public life as well as education, health and employment.”

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14 Ibid.
• In the Istanbul Declaration on Human Settlements\(^{15}\) adopted in 1996, Heads of States reaffirmed their commitment to "ensuring adequate shelter for all and making human settlements safer, healthier and more liveable, equitable, sustainable and productive".\(^{15}\)

• The United Nations’ Convention on the Rights of Persons with Disabilities (UNCRPD),\(^{17}\) adopted in 2006, was developed in order to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".\(^{18}\)

• The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted in 2003,\(^{19}\) promotes the rights of women across the continent including the right to equality with men, health and reproductive rights.\(^{20}\)

• The Southern African Development Community (SADC) Protocol on Gender and Development was adopted in 2008.\(^{21}\) Its purpose is "to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects".\(^{22}\)

• The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities in Africa (Africa Disability Protocol)\(^{23}\) was adopted in 2018. South Africa was the fourth country to sign the Africa Disability Protocol, which it did on the 29\(^{th}\) of April 2019. Its purpose is "to promote, ensure and protect the full and equal enjoyment of all human and peoples’ rights by all persons with disabilities, and to ensure respect for their inherent dignity".\(^{24}\)


\(^{16}\) Ibid. p. 1


\(^{18}\) Ibid. p. 4


\(^{20}\) Ibid.


\(^{22}\) Ibid.


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**SOUTH AFRICAN LEGISLATION AND POLICY**

The Constitution of the Republic of South Africa Act 108 of 1996 (Constitution) is the supreme law of the country and provides a legal framework for the rights of everyone in South Africa. These rights include the right to water in section 27\(^{25}\) and the right to sanitation which, while not explicitly provided for in the Constitution, is fundamentally related to a number of other constitutional rights. These include the right "to an environment that is not harmful to [a person’s] health or well-being", the right to adequate housing, the right to privacy, and the foundational right to human dignity.\(^{26}\) Further, under Section 9 of the Constitution, the equality of all individuals is guaranteed, including the full and equal enjoyment of all rights and freedoms. This provision prohibits direct or indirect discrimination based on a number of grounds, including disability. The Constitution places the duty for providing basic services, including sanitation services, on local government.

The Constitution makes it quite clear that women, people with disabilities and a whole range of other vulnerable people are entitled to equality and equal protection and benefits of the law. Our Constitution and the Convention [UN Convention on the Rights of Persons with Disabilities] both provide for the right to have everyone’s dignity respected and protected. In my view it is the respect and protection of dignity that is at issue when we talk about sanitation.


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\(^{26}\) The right “to an environment that is not harmful to [a person’s] health or well-being” is enshrined in section 24(a) of the Constitution, the right to adequate housing in section 26(1), the right to privacy in section 14, and the right to human dignity in section 10.
The Water Services Act 108 of 1997 (Water Services Act) governs water and sanitation services. Section 2(a) sets out one of the main objectives of the Act, which is to provide for “the right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being.”

The Water Services Act, together with other regulations and policies, create the framework within which water and sanitation services are to be provided. As mentioned above, the Municipal Systems Act 32 of 2000 (Systems Act) states that municipalities should give effect to the provisions of the Constitution and echoes the constitutional duty to “ensure that all members of the local community have access to at least the minimum level of basic municipal services.”

Housing legislation and policies such as the Housing Act 107 of 1997, the National Housing Code (2009) and Part 3 Volume 4 of the National Housing Code which contains the Emergency Housing Programme and the Upgrading of Informal Settlements (UISP) are applicable in terms of the provision of water and sanitation services in informal settlements. The Emergency Housing Programme extends financial assistance to municipalities in emergency situations to enable the provision of shelter and basic services (including sanitation) to households on a temporary basis.

Regarding emergency sanitation, it states that where possible Ventilated Improved Pit Latrines (VIP) must be provided on the basis of one VIP per five families.

The UISP, which will be expanded on in a subsequent section, is particularly relevant since it focuses on the participatory upgrading of informal settlements in situ, including the formalisation of informal settlement residents’ tenure rights and the provision of a basic services infrastructure.


30 Dugard, The right to sanitation in South Africa, p. 7

31 Ibid.

Finally, the Guidelines for Sanitation Facilities for People with Disabilities (2007) sets out minimum requirements for sanitation for people with disabilities, as well as desirable design elements that depend on available funding. Minimum requirements include specifications regarding adequate space for wheelchairs, ramped access, and support structures. The Guidelines highlight community participation as essential and recognise consultation with people with disabilities as vital to ensure that the sanitation needs of people with disabilities are appropriately met. The “key design requirements for toilets for people with disabilities are accessibility, ability to use without additional help, and preservation of human dignity.” This includes “level or ramped access, a wide door and sufficient space inside for a wheelchair user or helper to manoeuvre, and the provision of support structures such as a handrail and a toilet seat.”

The guidelines specify minimum design requirements as follows:

- Unless the interior of the toilet is very spacious, the toilet door should open outwards;
- The door handle should be such that it can be easily grabbed by a person who does not have the full use of their hands. A rope should be attached to the door so that it can be pulled closed from a position inside the cubicle;
- Wheelchair users, the infirm, people on crutches and other people with disabilities find great difficulty using a squat type toilet, and hence all toilets should have a pedestal seat;
- Grab bars should be installed to facilitate getting on and off the seat;
- The toilet should be easily accessible for people with disabilities. This means a smooth, firm path to the toilet and if necessary a guide rope along the path for the blind;
- There should not be any steps;
- The path should be adequately illuminated for use at night.

Additionally, the White Paper on the Integrated National Disability Strategy acknowledges that women with disabilities are often the most vulnerable and marginalised group within society and recognises the inherent difficulties of women with disabilities in a patriarchal society. It proposes a socially-based approach to targeting societal perceptions and behaviours towards people with disabilities.
Informal settlements are characterised by poor access to basic services such as water, sanitation, electricity, health and emergency services. Informal settlements are often constructed on privately-owned land, a reason cited by municipalities for the limitation on their ability to provide permanent water and sanitation infrastructure. According to Statistics South Africa, more than 68% of households living in informal dwellings share toilet facilities; this far surpasses households in formal dwellings which stands at 19%.\(^3\) Approximately 6.8% of households in informal settlements rely on the bucket toilet system compared to 0.1% of residents living in formal housing.\(^4\) Approximately five times the number of residents of informal settlements practice open defecation than those in formal dwellings (2.1%).\(^5\)

There is a paucity of adequate and up-to-date information and disaggregated statistics on the nature and prevalence of disability in South Africa. However, the 2011 Census recorded an estimate of just over 2.8 million (2,870,130) people with disabilities in South Africa.\(^6\) According to the 2017 General Housing Survey, 4.2% of South Africans aged 5 years and older have disabilities; 4.5% of women have disabilities as compared to 3.9% of men.\(^7\) Households headed by people with disabilities are more likely to have no access to piped water (13.4%) and flush toilets (45.2%) than those headed by someone without a disability (8.2% and 37.1% respectively).\(^8\) Moreover, the use of pit latrines is a prominent feature in households headed by people with disabilities at 37.1%.\(^9\)

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3. **SANITATION SERVICES IN INFORMAL SETTLEMENTS**

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3 Pali Lehohla, GHS Series Volume VIII: Water and Sanitation, Statistic South Africa (2016) p 101
4 The bucket system refers to a dry on-site sanitation system consisting of a top-structure with a seat positioned over a bucket or other container located in a small compartment beneath. In some areas, the bucket is collected during the week by municipalities or their service providers and in other areas households are expected to dispose of their buckets themselves; Lehohla, GHS Series Volume VIII: Water and Sanitation, p. 101
5 Pali Lehohla, GHS Series Volume VIII: Water and Sanitation, p. 96
7 Ibid.
8 Ibid.
Municipalities often only provide temporary or emergency services in informal settlements. Municipally provided water and sanitation services predominantly comprise of standpipes and chemical toilets, often placed along road servitudes on the perimeters of the settlements. These shared facilities are placed along settlement peripheries because municipalities claim that they are prohibited from installing services on privately-owned land, and because vacuum trucks, required to empty the chemical toilets, cannot access most areas in informal settlements as the streets or pathways are too narrow. Such temporary or emergency services are not intended for more than six months but in reality they remain for much longer, in part because the upgrading of informal settlements is not being implemented.

CHALLENGES FOR WOMEN WITH DISABILITIES LIVING IN INFORMAL SETTLEMENTS

The location of water and sanitation facilities in informal settlements presents a barrier to people with disabilities, particularly for women who need access to sanitation facilities more often than men in order to manage menstruation and to meet societal expectations placed on women as primary caretakers of children and of the elderly.

That responsibility is usually placed on women so if you’re a woman with a disability and if you’re a woman such as myself, a paraplegic, trying to get a bucket up onto your lap and then wheeling all the way to the river is not very practical. It’s not something that’s very easy, so already I’ll be shunned because I am not able to fulfil my so-called duties as a woman.


In most cases when I want to fetch water I’ll take a small bucket because the big one, I won’t be able to carry it by myself, so I’ll take the small one and [go] to the tap and take 5 litres of water and come back. But if my daughter is around, she’s the one who’s fetching water every day.


Traversing long distances along unpaved roads is extremely difficult for people with physical disabilities, particularly for people using assistive devices such as wheelchairs or crutches. There are accounts of people having to dismount their wheelchairs and drag themselves on the ground to move around the settlement or to access latrines.46 Hand washing with soap before eating food and after defecation is an essential barrier to the transmission of a range of diarrhoeal, urinary tract and respiratory illnesses.47 Clean water is needed, both within households and adjacent to latrines, to enable effective hand washing and its associated health benefits. This is particularly relevant for people with disabilities who may also be immunocompromised and for whom the distances between households and water points and between latrines and water points present significant risks and challenges.

Furthermore the lack of electrification and adequate policing renders people with disabilities, especially women and children, vulnerable to attack, muggings and sexual assault including rape. Local statistics on violence against women and children with disabilities are not available48 but according to UNAIDS49 children and adults with disabilities, particularly mental disabilities, are at a higher risk of violence than non-disabled children and adults. Several risk factors are cited, including exclusion from education and employment; the need for personal assistance with daily living; reduced physical and emotional defences; communication barriers that hamper the reporting of violence; and societal stigma and discrimination.


48 Committee on Rights of Persons with Disabilities (CRPD), “General Comment No. 3” (2016), p. 68.

I feel to go [to the toilet] but sometimes I feel [like] it’s a risk… my son would feel [like] going to the toilet and he would say ‘Mommy wake up, help me. Escort me to the toilet.’ I say ‘no man even me I’m scared to go outside’.

- Constance Borileng, Slovo Park resident raising a son with a disability (2018).

Additionally, people with disabilities living in informal settlements generally do not have access to assistive devices to reduce the impact of their disability. Access to assistive devices such as wheelchairs and walking sticks or frames, set out in Article 20 of the UNCRPD, offer people with disabilities greater mobility and independence.50 In South Africa access to assistive devices is directly correlated to socio-economic grouping and race. According to Statistics South Africa, black Africans represented the most limited usage of assistive devices.51 Access to assistive devices is significantly lower for black people living in poor communities, especially amongst black women.

In general shared facilities are more appropriately characterised as public rather than shared, and are frequently full, unpleasant and unsafe to use.52 These facilities also do not meet the minimum design standards to accommodate people with disabilities. Sanitation facilities often lack space to accommodate a wheelchair, an assistive device or caregiver and also lack the ramped access and support structures such as toilet seats and handrails. The lack of required space and other necessary requirements compromises the rights to dignity and privacy of people with disabilities living in informal settlements. Sanitation facilities commonly found in informal settlements fall short of the minimum design requirements prescribed by the Department of Water Affairs’ “Guidelines for Sanitation Facilities for People with Disabilities” (2007), described in a previous section.

50 Although it is not clear whether South Africa has taken steps to ratify the AU Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa, the regional treaty echoes provisions in the UNCRPD: Article 10 on the right to live in the Community, which states that, “States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of the right to live in the community, on an equal basis with others, including by ensuring that… Persons with disabilities have personal mobility with the greatest possible independence.” See African Union (AU), “Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa” (2018), p. 10-11.


Disabled people that we’ve spoken to have spoken about the difficulties with accessing toilets… the roads between toilets and along servitudes are difficult for wheelchairs to cross and so people report stories of having to crawl across roads to get to latrines which are inaccessible, which are too small to allow for a wheelchair, with a seat that is at the wrong height, without handrails, with no space for a caretaker to help them use the latrine and so they are made exceptionally vulnerable in the use of these latrines. These shared latrines make particularly women and children vulnerable to gender-based violence because they are inaccessible to the home, and they present a security risk because many informal settlements lack electricity and so these shared facilities are not lit.


Someone such as myself, as a paraplegic, cannot access a bathroom of that size or if I even am able to then I cannot close the door so I’ve got absolutely no privacy at all, and I mean privacy is a right that I have.

4. FINDING SOLUTIONS

Our government, I think they must upgrade our settlement. They must upgrade and give us proper services... and those services they must be affordable and they must cater for the people that are disabled.

In order to address the constraints to adequate sanitation for women with disabilities living in informal settlements, this report proposes two key actions:

- Housing and sanitation legislation and policies need to be revised to align with international human rights instruments especially the *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD) and;
- The *Upgrading of Informal Settlements Programme* (UISP) and the *Emergency Housing Programme* must be implemented, and in doing so, women with disabilities must be consulted to ensure that their sanitation needs are appropriately addressed.

Aligning Housing and Sanitation Legislation and Policies with International Human Rights Instruments

National legislation and policies pertaining to services for people with disabilities are simply not implemented in informal settlements. In addition to the challenges posed by shared facilities on the peripheries of informal settlements; inappropriate design standards and the lack of access to assistive devices, the provision of housing and facilities which accommodate people with disabilities living anywhere is facilitated through programmes such as the *National Housing Subsidy Scheme*, which targets specific households through an application and qualification process rather than universally providing suitable facilities.

This ‘provision by application’ approach not only excludes a substantial number of people with disabilities who do not meet the selection criteria or do not have, or cannot afford the documents required to verify their disabilities and to apply for these programmes. It also excludes many people living in informal settlements because special adaptations to sanitation facilities can only be made to top structure housing.53

In order to fulfill its obligations to provide people with disabilities access to water and sanitation and other services, South Africa’s legislation and policies need to be informed by and aligned with the interrelated principles of accessibility and reasonable accommodation set out in the UNCRPD. These distinct principles can be combined through the following principles:

**Accessibility**

The principle of accessibility is widespread in the discourse on disability due to the efforts of organisations advocating for the rights of people with disabilities. Article 9 of the Convention declares that “State Parties shall take appropriate measures to ensure persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and rural areas.”54

The Committee on the Rights of Persons with Disabilities (the Committee) indicates in its interpretation of this right in its General Comment 2, that accessibility is a precondition for people with disabilities to live independently and participate fully and equally in society as provided for in Article 19 of the Convention.55 It further states that without access to “…facilities and services open to or provided to the public, persons with disabilities would not have equal opportunities for participation in their respective societies.”56 Accessibility is a structural means towards achieving the goal of full and effective participation in society on an equal basis for people with disabilities.57

As such the principle of accessibility needs to be viewed in the context of the principle of non-discrimination (provided for in Article 6 in the UNCRPD and Section 9 of the Constitution of South Africa). The denial of access to sanitation facilities for people with disabilities in informal settlements should therefore be considered to constitute discrimination,58 in violation of the most fundamental principles and rights of human rights law, equality and non-discrimination.


54 UN, “Convention on the Rights of Persons with Disabilities” (2006), p. 9. The principle of accessibility is also provided for in the AU Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa, Article 11 on Accessibility, states that “Every person with a disability has the right to barrier free access to the physical environment, transportation, information… and other facilities and services open or provided to the public” and further that “States Parties shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right; and such measures shall, among others, apply to.. buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces”. See AU, “Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa” (2018), p. 11

55 CRPD, “General Comments No. 2” (2014), p. 11

56 Ibid., p. 4


58 Ibid., p. 4
The principle of accessibility encompasses the "universal design" approach. Universal design means:

- the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.60

The Committee states that "the strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities in a way that takes full account of their inherent dignity and diversity".60 This does not exclude assistive devices for particular groups of persons with disabilities where this is needed.60

Applying universal design principles has implications for the provision of sanitation facilities in informal settlements. It means that all new sanitation facilities, household-based or even communal, need to meet the requirements of universal design. The upgrading of informal settlements, discussed in the next section, provides municipalities with the opportunity to apply these principles to the provision of new sanitation facilities.

"Reasonable accommodation" is defined by the Committee as "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms..."61 The Committee elucidates that reasonable accommodation, unlike "accessibility" is individualised and becomes applicable the moment an individual with a disability needs to be accommodated. Accessibility as an ex ante duty, must be built into the systems and processes without regard to the need of a particular person with a disability, for example providing access to people with disabilities to a building on an equal basis with others. However, because the gradual realisation of accessibility in the built environment may take time, reasonable accommodation may be used as a means to provide access to individuals more immediately.63

Both the principles of accessibility and reasonable accommodation are means to achieve equality and freedom from discrimination for people with disabilities. Accessibility is applied structurally, to all aspects of life, while reasonable accommodation is applied on an individual basis.

If a person with a disability can use a sanitation facility that is universally accessible, you are sure that any other person can [use it, too].

- Ngwako Maphoto, Department of Water and Sanitation (2018).

In light of the above principles, the state of water and sanitation facilities in informal settlements is in violation of both the Constitution of South Africa and the country’s commitments to applying the UNCRPD. The right to sanitation for people living in informal settlements and in the case of people with disabilities, the right to equality in terms of access to facilities available to others, continue to be transgressed. Moreover, South Africa’s commitment to take appropriate measures to ensure accessibility

61 CRPD, “General Comments No. 3” (2016), p. 4. The principle of reasonable accommodation is also provided for in the African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa. Defined as, “necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”, the reasonable accommodation principle is applied to achieve several rights enshrined in the Protocol, like the rights to education, work, and to participate in political and public life in Articles 12, 15 and 17 respectively. See AU, “Protocol to the African Charter on Human and People’s Rights on the Rights of Persons with Disabilities in Africa” (2018), pp. 4, 12, 16, 17.
63 CRPD, “General Comments No. 6” (2018), p. 11.
for people with disabilities, on an equal basis to others, to facilities and services open or provided to the public enshrined in Article 9 of the UNCRPD, is not being upheld. The provision of sanitation in informal settlements amounts to discrimination on the basis of disability because it creates a “distinction, exclusion or restriction on the basis of disability” which is defined as including “denial of reasonable accommodation”.\(^64\) The implementation of policies for the provision of basic sanitation in informal settlements may appear neutral but in reality have a disproportionately negative impact on women with disabilities and amounts to indirect discrimination.\(^65\) Simply put, the failure to design and implement adequate policies and plans for the provision of adequate sanitation denies poor, black women with disabilities, in particular, the right to live independently and on equal basis with others and therefore strikes at the core of their right to human dignity.\(^66\)

**IMPLEMENTING THE UPGRADE INFORMAL SETTLEMENTS PROGRAMME (UISP) AND EMERGENCY HOUSING PROGRAMME**

In addition to aligning legislation and policy with international human rights instruments like the UNCRPD, this report proposes the implementation of the Upgrading Informal Settlements Programme (UISP) and the Emergency Housing Programme (both contained in Part 3 of the National Housing Code) to address the constraints to adequate sanitation for women with disabilities living in informal settlements.

The UISP guides the process of *in situ* upgrading of informal settlements by municipalities. The three priority objectives of the UISP are to:

- Enhance secure tenure through recognising and formalising tenure rights of residents;
- Promote and develop healthy and secure living environments through the provision of sustainable basic service infrastructure, and;
- Enable community empowerment through public participation to build on social capital while addressing social needs of communities.\(^67\)

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\(^{64}\) UNCRPD, “General Comments No. 3” (2016), p. 4

\(^{65}\) Ibid.


Upgrading is the most appropriate way of dealing with those specific [informal settlement] spaces occupied by people. Firstly, to make the lives of those people liveable and comfortable, but also to upgrade them incrementally in situ. The UISP should be implemented by both province and the municipality. We observed that the UISP is one of the least implemented programmes.


Upgrading is implemented over four phases, the first three benefitting all residents of an informal settlement and providing them with “access to land, basic municipal engineering services and social amenities.” The fourth phase provides access to permanent housing for those who qualify for benefits under the National Housing Subsidy Scheme (NHSS). Before a municipality applies the UISP to a settlement, the settlement needs to be assessed according to the Housing Development Agency’s (HDA’s) guidelines, to determine whether the site is viable and appropriate for conventional upgrading, whether implementation can commence without delay or in some instances whether relocation is necessary.

Furthermore, the National Upgrading Support Programme (NUSP) provides developmental pathways for settlements and notes that where upgrading is not going to happen in the short term in settlements appropriate for conventional upgrading, communities should be provided with interim or basic services, which can be upgraded over time to reduce the risk of interim service investments being abandoned. In settlements not suitable for upgrading and where relocation is to be expected, the Emergency Housing Programme provides guidelines in terms of the provision of emergency services.

Figure 12: Slovo Park informal settlement, which has been approved for upgrading under the UISP.
This report offers the following implications for sanitation services provided to informal settlements under the UISP and Emergency Housing Programme:

• In settlements eligible for upgrading in terms of the UISP, all permanent engineering services should meet the accessibility and reasonable accommodation standards of the UNCRPD. Everybody, living with or without a disability, needs low maintenance household latrines which can accommodate wheelchairs or caretakers and should be equipped with handrails and running water. All new sanitation facilities, including those in informal settlements, should be constructed according to universal design standards. Roads should also be graded to enable freedom of movement for people with disabilities.

• In settlements where upgrading is not possible in the short term, interim services should be provided to individual households and meet “universal design” standards. The availability of clean water within households and adjacent to latrines is essential to enable hand washing, which, together with the use of a safe water and sanitation, blocks the transmission of a range of illnesses.

• In settlements not appropriate for upgrading (where complete relocation is necessary) latrines should be provided which may be shared between up to 5 households in line with the Emergency Housing Programme.70 This was not intended to persist for more than a few months. Even temporary sanitation facilities should enable accessibility for all and be designed to accommodate wheelchairs, caretakers and or assistive devices, and be equipped with handrails and running water. Where possible, pathways should be graded.

70 Department of Human Settlements (DHS), "Emergency Housing Programme", Part 3, Volume 4 of the National Housing Code (2009), p. 38
5. CONCLUSION

Women with disabilities living in informal settlements stand out as among the most vulnerable and marginalised groups in South Africa. While accessing adequate water and sanitation facilities is challenging for informal settlement residents; for residents with disabilities, these facilities are virtually inaccessible. Facilities are placed on settlement peripheries, which poses a challenge for people with physical disabilities, particularly for people using assistive devices like wheelchairs or crutches, who find it extremely difficult to traverse long distances and unpaved roads. Moreover, facilities also do not meet the minimum design standards to accommodate people with disabilities. Sanitation facilities often lack space to accommodate a wheelchair, an assistive device or caregiver, ramped access and support structures such as toilet seats and handrails, compromising the rights to dignity and privacy of people with disabilities.

Nevertheless, the right to water and sanitation is provided for in the Constitution of South Africa. Additionally, South Africa is party to a number of international instruments which create a legal obligation, to ensure and protect the human rights of women with disabilities within its borders, with respect to the right to water and sanitation. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in particular provides States Parties with the two interrelated principles of accessibility and reasonable accommodation amongst others, which when applied to national legislation and policy, can help to achieve equality and freedom from discrimination for people with disabilities.

In order to address the constraints to adequate sanitation for women with disabilities living in informal settlements, this report proposed two key actions; that housing and sanitation legislation and policies need to be revised to align with international human rights instruments especially the principles of accessibility and reasonable accommodation in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and; that the Upgrading of Informal Settlements Programme (UISP) and the Emergency Housing Programme must be implemented in line with the accessibility and reasonable accommodation standards of the UNCRPD.

The right to water is provided for in section 27 of the Constitution of the Republic of South Africa. The right to sanitation which while not explicitly provided for in the Constitution, is fundamentally related to a number of constitutional rights. These include the right "to an environment that is not harmful to [a person’s] health or well-being" in section 24(a) of the Constitution, the right to adequate housing in section 26(1), the right to privacy in section 14, and the foundational right to human dignity enshrined in section 10.
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