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Towards inclusion: a critical appraisal of legislation and the South African Standard, Part S

Peer reviewed

Abstract

Since the demise of apartheid in 1994 South Africa has undergone tremendous transformation, both political and societal. Evidence of this is the constitution, which was adopted in 1996 and is considered to be one of the most progressive in the world. Its essence is rooted in the qualities of equality and diversity. Yet, despite the inclusive nature of changes made to the constitution and related legislation, the *South African Standard* (SABS 0400), in particular Part S 'Facilities for disabled persons', remains a discouragingly exclusive document. This article documents the inclusive nature of South Africa's new constitution and related legislation against which context Part S of SABS 0400 is critically appraised. Research is conducted by means of a literature review, an interview with the South African National Standard (SANS) technical advisor and questionnaires; thereafter, the pertinent documentation is critically analysed. Finally, recommendations are made in an endeavour to achieve a built environment that is rightly inclusive.

Keywords: South Africa, constitution, legislation, building standards, inclusive environments

Abstrak

Sedert die opheffing van apartheid in 1994 het Suid-Afrika geweldige transformasie ondergaan. Die grondwet, wat in 1996 aangeneem is en wat as een van die mees progressiewe grondwette in die wêreld beskou word, is 'n bewys van hierdie transformasie. Die grondwet se essensie is gewortel in gelykheid en diversiteit. Ten spyte van die inklusiewe karakter van die veranderinge wat aan die grondwet en verwante wetgewing aangebring is, bly die *Suid-Afrikaanse Standaard* (SABS 0400), veral Deel S 'Fasiliteite vir gestremde persone', nietemin 'n ontmoedigend eksklusiewe dokument. Hierdie artikel dokumenteer die inklusiewe aard van Suid-Afrika se nuwe grondwet, asook verwante wetgewing. Deel S van die SABS 0400 word binne hierdie konteks krities beoordeel. Navorsing is gedoen deur middel van 'n literatuurstudie, vraelyste, en 'n onderhoud met die tegniese raadgewer van die Suid-Afrikaanse Nasionale Standaard (SANS); hierna is die pertinente dokumentasie geanaliseer. Laastens word aanbevelings gemaak in 'n poging om 'n bou-omgewing wat waarlik inklusief is, daar te stel.

Sleutelwoorde: Suid-Afrika, grondwet, wetgewing, boustandaarde, inklusiewe omgewings

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1. Introduction

South Africa's buildings, neighbourhoods and cities are cultural artefacts shaped by human intention and intervention, symbolically indicating to society the place held by each of its members. According to Weisman (1994: 1-2) access to space is fundamentally related to social status and power, and changing the allocation of space is inherently related to changing society. Space is, thus, a social construct; the spatial arrangements of our buildings and communities reflect and reinforce the nature of relations in society. This is particularly evident in South Africa which since the democratic elections in 1994 has undergone a number of political and social changes. Architecture is a means to express this change, from an exclusive society to an inclusive one. Deplorably, only a handful of the buildings designed and constructed since 1994 have truly embraced and reflect the inclusive nature of the constitution. This can be attributed to a number of factors, the most glaring being that the National Building Regulations (NBR) and Part S of the South African Standard (SABS 0400)¹ has taken this length of time to be revised. The result is a disjuncture between the new constitution (1996) and its associated Acts and the NBR and SABS 0400.

The notion of inclusive environments and a definition of disability are discussed in an effort to articulate their relevance to the built environment. The inclusive nature of South Africa's new constitution and related legislation is then briefly documented. Against this context, Part S of SABS 0400, both as it currently stands and the proposed revision is critically appraised. Finally, recommendations are made in an endeavour to achieve a built environment that is truly inclusive.

2. Research

Background for research was established by means of a literature review. A semi-structured interview with the SABS 0400 technical advisor, Ms D Geszler was conducted early in 2008. Questions posed to Geszler and subsequent discussion was concerned with:

- The current state of the SABS 0400 Part S.
- What does the process for the revision of any part of the building regulations entail?

1 While the title of the South African Standard (SABS 0400) has been changed to the South African National Standard (SANS 10400) the document has not yet been published. Currently the South African Bureau of Standards (SABS) is still issuing the SABS 0400 document.

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- Whether any of the various disability groups are involved in the process?
- Which other professionals are consulted?
- What are the stumbling blocks that have delayed the process?
- Whether international precedents, such as the United Kingdom and Australian standards, are considered as part of the revision process?

2.1 Questionnaire

A short questionnaire was compiled and distributed among permanent and part-time lecturing staff at the Department of Architecture, University of Pretoria, as well as a small sample of practitioners. Both lecturers (who are also practitioners) and practitioners are representative of the three disciplines of architecture, namely: architecture, landscape architecture and interior architecture. A total of twenty-nine questionnaires were distributed, of which nineteen were completed and returned.

The questionnaire posed the following questions:

- Whether the practitioner applies the recommended dimensions for facilities for people with disabilities as given in SABS 0400 Part S as maximum or minimum dimensions?
- Whether the practitioner is aware of the existence of the SABS 0246 and, if so, what do they understand by the reason for its existence?
- Whether the practitioner is aware of the *Promotion of Equality and Prevention of Unfair Discrimination Act* and, if so, what do they understand were its legal implications for him/her as designer?

The following findings were made from the completed questionnaire:

- 33% of the respondents apply the recommended dimensions for facilities for people with disabilities as minimums.
- 57% of the respondents apply the recommended dimensions for facilities for people with disabilities as maximums.
- 38% of the respondents are not aware of the existence of the SABS 0246.

- 52% of the respondents are aware of the existence of the SABS 0246.
- 73% of the respondents who are aware of the existence of the SABS 0246 actually use it in practice. One respondent pointed out that it is confusing to have more than one document dealing with the same issue, which is further compounded by the fact that the two do not correspond.
- 33% of the respondents are unaware of the *Promotion of Equality and Prevention of Unfair Discrimination Act*.
- 57% of the respondents are aware of the *Promotion of Equality and Prevention of Unfair Discrimination Act*.
- 83% of the respondents who are aware of the Act's existence admitted to not being familiar with the content of the Act and therefore are unaware of its legal implications for them as designers.

3. Inclusive environments and disability

An inclusive environment refers to a built environment that takes into consideration the potential ability and needs of *all* users. An inclusive environment includes:

... people who are physically disabled, people with sensory disabilities: both hearing and sight, people with learning disabilities, people with mental illnesses, elderly people, young children, people with heavy luggage, people with dexterity problems, people with neurological problems, women who are very pregnant, people who are in a hurry and not looking where they are going, people who have had an accident and are temporarily disabled, people who are not wearing their glasses that day, people who are distracted or concentrating on something else (Osman & Gibberd, 2000: 25).

It is evident that all South Africans need an inclusive environment. However, certain groups of people can be identified as experiencing the greatest difficulties with the built environment, including people with disabilities, people with Acquired Immune Deficiency Syndrome (AIDS), children and elderly people. According to Osman & Gibberd (2000: 25), among these groups, people with disabilities have been singled out as having been significantly disadvantaged from using the built environment.

Disability is an evolving concept and contemporary approaches to disability adopt a more critical interpretation of disability. Disabled Peoples International (Priestley, 2006: 21) define disability as:

... the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others due to physical and social barriers.

The United Nations (UN) Convention on the Rights of Persons with Disabilities (United Nations, 2006: online) defines disability as a result of:

... the interaction between persons with impairments and attitudinal and environmental barriers that hinders full and effective participation in society on an equal basis with others. Furthermore, it states that people 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.

It is evident, from these definitions, that impairment is clearly set apart from disability and that disability has social and environmental causes rather than biological ones. Priestley (2006: 23) states that social relations and barriers prevent the full participation of people with disabilities, ie quality and citizenship. Thus, if the built environment is a cultural artefact, then it too plays a role in disability: it may either increase disability, through negligent or exclusive design, or decrease disability through considered and good design, allowing all people to move around and experience the environment as independently and freely as they would like.

4. Legislative provisions in acts other than the National Building Regulations and Building Standards Act

South Africa's constitution, 'one law for one nation' (South Africa, 1996), is considered to be one of the most progressive in the world. In essence it is rooted in the qualities of equality and diversity. People with disabilities are referred to specifically.

4.1 Constitution of South Africa, 1996

The *Constitution* was first adopted on 8 May 1996 and amended on 11 October of the same year by the Constitutional Assembly. It was signed into law on 10 December 1996. The process of drafting the *Constitution* involved as many South Africans as possible and took two years. The *Constitution* is, thus, an integration of ideas from ordinary citizens, civil society and political parties represented in and outside of the Constitutional Assembly (South Africa, 1996).

4.2 Bill of Rights and Legislative Acts

Chapter two of *the Constitution* contains the *Bill of Rights*. The sections of the *Bill of Rights* (South Africa, 1996), as well as legislative acts other than the NBR and *National Building Standards Act*, which pertain to the built environment, are listed in Table 1.

Table 1: Bill of Rights and Legislative Acts pertaining to the built environment

Legislation	Premise
Bill of Rights: Section 7 Rights (South Africa 1996)	<ul style="list-style-type: none"> enshrines the rights of 'all' South Africans affirming the values of human dignity equality and freedom.
Bill of Rights: Section 9 Equality (South Africa 1996)	<ul style="list-style-type: none"> everyone is equal before the law. the state may not unfairly discriminate on one or more grounds including disability.
Bill of Rights: Section 10 Human Dignity (South Africa 1996)	<ul style="list-style-type: none"> everyone has inherent dignity and the right to have their dignity respected and protected.
Bill of Rights: Section 24 Environment (South Africa 1996)	<ul style="list-style-type: none"> everyone has the right to an environment that is not harmful to their health or well-being.
Occupational Health and Safety Act (Act No 85 of 1993) (South Africa 1993)	<ul style="list-style-type: none"> affects all employers people in employment and people not in employment but who are affected by the employer's undertakings which includes people with disabilities. thus an employer's responsibilities are to provide and maintain a working environment that is safe and without risk to the health of his/her employees.
Employment Equity Act (Act No 55 of 1998) (South Africa 1998: 2 12 14)	<ul style="list-style-type: none"> To achieve equity in the work place by: promoting equal opportunity and fair treatment in employment and implementing affirmative action to redress the disadvantages in employment experienced by designated groups including people with disabilities.
Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000) (South Africa 2000: 1 7)	<ul style="list-style-type: none"> addresses the issue within which sites complexes and buildings should be made usable by people with disabilities. No person may unfairly discriminate against any person on the ground of disability including: denying or removing any supporting or enabling facility necessary for their functioning in society contravening the code of practice or regulations of the SANS that govern environmental accessibility failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons.

<p>White Paper on Integrated National Disability Strategy (South Africa 1997: 23) commonly known as the INDS</p>	<ul style="list-style-type: none"> • The White Paper is government's normative stance in terms of the development of people with disabilities and the promotion and protection of their rights: • Government's vision is "a society for all" in which people with disabilities form a natural and integral part which is in line with the human rights vision of the UN. • Legislation is regarded as a crucial mechanism for action. • Government recognises the need for revision and amendment of existing legislation so that it should comply with and give substance to constitutional requirements.
<p>United Nations Convention on the Rights of People with Disabilities (United Nations 2006: online)</p>	<ul style="list-style-type: none"> • South Africa ratified the convention in 2007: • to promote protect and ensure full and equal enjoyment of human rights and fundamental freedoms by all persons with disability • to promote respect for their inherent dignity • the convention is unique in that it is legally binding

5. National Building Regulations and Part S

The purpose of Part S 'Facilities for disabled' of the NBR and its associated SABS 0400 deemed-to-satisfy rules is to serve as a document to be used by local, state or national government to control building practice, by way of a set of statements of acceptable minimum requirements of building performance (SABS stakeholders workshop 2007). The document is structured into Parts dealing with various aspects of a building. Each Part contains a section with the relevant regulations (stated in legal language), followed by deemed-to-satisfy rules.

The *White Paper on Integrated National Disability Strategy (INDS)*, compiled in 1997, already recognised then that the standards prescribed by the NBR require review. Yet, change has been slow to be realised due to a number of factors. In order to revise any Part of the NBR and SABS 0400 the following steps must be taken: stakeholders are consulted; feasibility and impact studies are conducted; the proposed amendments are published in the *Government Gazette*, and finally the amendment is legislated. Geszler (2008), technical advisor on building regulations at the SABS, commented that this process is cumbersome and hampers uniform implementation.

This is one of the reasons why the revision of Part S, which was initiated in 2000, is yet to be completed: it is a logistical one and has nothing to do with the changes in legislation. The building regulations were originally published as a total document; this entire document had

to be revised and changed in order to update a single part. It has taken this length of time within the SABS to agree to publish the different Parts separately so that they can be updated separately.

According to Geszler (2008), changes to NBR are also assessed in terms of financial implications to building costs with the stipulation that they should not increase building costs. Stated in the Preface of the SABS 0400 (1990: 3):

... [as] these regulations were originally introduced as a long-term anti-inflationary measure it is obvious that they should not increase the overall cost of building.

In this regard, it was inferred from comments by Geszler (2008) that a revised and more rigorous Part S would result in increased building costs. This misconception would certainly impede the drive for revision and change. Moreover, this is unfounded since the contrary is clearly stated in the *INDS* (South Africa, 1997: 30), namely that purposefully designing in an inclusive manner only increases overall building costs by 0.2%, which is regained in the long term.

The NBR, which has been amended within its current state but not revised, was approved by the Department of Trade and Industry (DTI) in May 2008 (South Africa, 2008: 45). Although the NBR itself is not being revised, the wording has been re-interpreted in the light of the new constitution. While this has enabled some change to the regulation, other suggested changes have been rejected, as they require a revision of the regulation, which did not form part of the scope of the changes. As a result a new version of the deemed-to-satisfy rules of Part S has been drafted (SANS 10400-S, 2008). This was due to be published in March 2009; however, this has been delayed because parts of SANS 10400 which refer to other standards need to be revised. This revised Part S will cancel and replace the corresponding parts of the first revision, SABS 0400 Part S, and absorb the SABS 0246. Even though the new Part S is yet to be published it is evaluated, in this article, by comparison to the old Part S in the critical appraisal that follows.

5.1 Part S

Part S of the SABS 0400 and SANS 10400-S includes the regulations and deemed-to-satisfy rules, which are standards setting out national requirements for an accessible built environment. Part S is the construction industry's reference point on access for people with disabilities, whether adults or children.

5.2 0246

The SABS 0246 'Accessibility of buildings to disabled persons' was compiled in 1993 as voluntary guidelines/standards to be consulted as a supplement to the SABS 0400 Part S. The SABS 0246 establishes the minimum design requirements for access to and circulation in buildings and related facilities.

6. Critical appraisal of SABS 0400 Part S and SANS 10400-S

This section examines the SABS 0400 Part S² and SANS 10400-S in the light of the preceding discussion (c.f. 4 & 5), as they apply to people with disabilities, and explains legal anomalies.

6.1 Defining the population (S1)

A common misconception is that Part S of the Building Regulations is the only part that affects people with disabilities. However, other parts also relate to environmental access for people with disabilities: Parts D (Public safety), Part J (Floors), Part K (Walls), Part M (Stairways), Part N (Glazing), Part O (Lighting and Ventilation), Part P (Drainage), and Part T (Fire Protection). Part T of the new SANS 10400, as approved by the DTI (cf. 5) addresses this issue. This part has been amended to include people with disabilities in regulation T(1)(a), the protection and safe evacuation of users/occupants (South Africa, 2008: 67).

The old Part S gives no direct definition of disability. It does not distinguish between adults and children. It is, thus, inferred that a disabled person is a person who falls into one of the following categories of people: people in wheelchairs, people who are able to walk but unable to use stairs, and people with impaired vision. South African statistics, from 1996 and 2001, demonstrate that while many people relate disability to wheelchair use, and commonly only to people with paraplegia who are only a fraction of the wheelchair-using population, this is inaccurate. The new Part S (SANS 10400-S 2008: 7), however, highlights the fact that other groups of people with disabilities have problems with the built environment, and includes a comprehensive and up-to-date definition of disability, making it clear that other groups of people with disability have just

2 The old Part S (SABS 0400) and new Part S (SANS 10400-S) will be distinguished from one another on points difference however where Part S remains unchanged it is simply referred to as Part S. This is done purposefully to highlight the improvements in the new Part S while simultaneously drawing attention to failings that remain unaddressed.

as much right to experience non-discrimination, according to the *Constitution*, as people with paraplegia.

6.2 The application of Part S (S1)

Part S applies to 79% of building occupancy categories. Changes to most building occupancy categories require a revision of the regulation. The following exceptions were allowed in the recent amendment:

A hotel with less than 25 beds (category H1) is not required, by the old Part S (SABS 0400 1990: 151), to make provision for wheelchair access. This exception has been amended in the new Part S. A hotel with less than 25 beds is exempt only if it can reasonably prove that it is not possible to include wheelchair access in certain aspects of the design (SANS 10400-S, 2008: 27).

The S1(d)(i and ii) (SABS 0400 1990: 151) is written in such a way that it is extremely nebulous:

Any building where

... there is a difference between the level of the ground storey and the finished ground immediately outside any door giving access to such ground storey and such difference in levels or, where there is more than one such door, the smallest of such differences, expressed in millimetres, is more than the overall floor area of such a building expressed in square metres: provided that such overall floor area shall, in any building equipped with a lift, be deemed to be the total floor area of all storeys served by such a lift.

This infers that if any type of building is designed to be high enough off the ground, and the relationship of its height from the ground with its surface area is calculated and found to be more than the total surface area, no facilities for people with disabilities need be included. This loophole contravenes section (c) of the *Promotion of Equality and Prevention of Unfair Discrimination Act* (Table 1). This ambiguity has been removed from the new Part S (SANS 10400-S, 2008: 27).

6.3 Facilities to be provided under Part S (S2)

Part S requires that certain facilities be provided to make a building accessible. Some of the significant gaps found in the old Part S are addressed by the new Part S.

6.3.1 Access, egress and lifts

The old Part S (SABS 0400 1990: 151) provides scope to create access through any door, not necessarily the main entrance, thereby sanctioning segregated entrances to buildings. The new Part S (SANS 10400-S, 2008: 27) closes this gap by stipulating that people with disabilities are able to enter the building safely, by suitable means, from the main and ancillary approaches of the building to the ground storey; via the main entrance and any secondary entrance. It includes a provision for egress, that was previously absent. There must be a suitable means of egress for people with disabilities from any point in a building to a place of safety in the event of an emergency.

The old Part S is vague as far as the issue of lifts is concerned. It merely states that a lift must be provided (SABS 0400, 1990: 151). The new Part S (SANS 10400-S, 2008: 27) provides clear requirements: that any lift installed must serve the needs of people with disabilities, which is extended from people with paraplegia and mobility impairments to include a more comprehensive definition of disability (c.f 6.1).

6.3.2 Parking

Parking facilities to be provided, as stated in Part S (SABS 0400, 1990: 151, SANS 10400-S, 2008: 27) is unclear and inadequate. It only makes provision for parking for people with disabilities if there are more than 50 parking spaces and if access is provided from the parking area to the ground storey. A more comprehensive requirement would be that in any parking lot an adequate number of the parking spaces be provided for people with disabilities and that the parking spaces be located within 50 metres of the accessible entrance.

6.3.3 Auditoria

With regards to auditoria the old Part S (SABS 0400 1990: 151) indicates that space for access and space for seating must be provided for people in wheelchairs in an auditorium. The new Part S (SANS 10400-S 2008: 27) specifies that access and space for seating must accommodate both people in wheelchairs and other assistive devices. Both, however, fail to require that the person seated in the aforementioned space be able to see and hear what is taking place.

6.3.4 Water closets

With regard to the provision of water closet (WC) facilities, Part S2 (SABS 0400, 1990: 151, SANS 10400-S, 2008: 28) exempts H3 (domestic residence) classification of building from providing a wheelchair accessible WC. However, the inclusion of wheelchair accessible facilities is relevant to this class of building, as it would allow a resident to remain in his/her home as s/he grows older or becomes disabled.

6.3.5 Commonly used routes

The new Part S (SANS 10400-S, 2008: 27) extends the definition of obstacles in the path of travel. It states that commonly used paths of travel must be clear of obstacles which limit, restrict or endanger the movement of people with disabilities. It also includes obstacles which may prevent people with disabilities from accessing facilities provided in the building.

6.4 Deemed-to-satisfy rules

The new Part S successfully omits a glaring loophole found in commentary provided at the beginning of the deemed-to-satisfy rules in the old Part S. The commentary states that even though people with disabilities should be able to play a full role in society, "... economic considerations may make it difficult to provide the facilities in all buildings. This fact has been acknowledged in the regulations in the form of an exemption from the requirements in the case of certain buildings ..." (SABS 0400, 1990: 152). This commentary provides designers with all the motivation they require to disregard environmental access whenever they choose to do so. This is also seen to validate the misconception that including access features into the design of a building increases the building costs (cf. 4).

The SABS 0246 provides practitioners with requirements or design principles on access for people with disabilities, which when applied are advantageous not only to the disabled user but also to the entire population of South Africa. However, the document is not widely used among practitioners. In addition, many of the requirements given do not correspond with the old Part S, which is confusing (cf. 2.1). The SABS 0246 provides a more comprehensive, detailed and illustrated document than the old Part S. A number of areas not covered by the old Part S are included: lighting; signage; controls for use by people with disabilities; signals and warnings for people with impaired sight or hearing, as well as additional notes and diagrams on the design and layout of a wheelchair-accessible water closet. In

the new Part S the old deemed-to-satisfy rules have been replaced with the more comprehensive and accessible SABS 0246, which will allow for both better practice and a better understanding of the needs of people with disabilities. However, it should be noted that even the SABS 0246 needs to be updated and brought in line with international standards of universal access.

6.5. Legal clarification and status of Human Rights legislation

Prior to May 2008 (cf. 5) the State was exempted from the provisions of SABS 0400 if the Minister of Trade and Industry, in concurrence with the Ministers' of Defence, Law and Order, and Justice, were of the opinion that the erection of any building or class of building by or on behalf of the State is in the interest of the country's security (in accordance with the NBR and *Building Standards Act 103 of 1977*). The State was also exempted by virtue of economic considerations, necessity or expediency, either generally or in any specific case. However, because South Africa has since ratified the UN Convention (Table 1) and because of the *Promotion of Equality and Prevention of Unfair Discrimination Act*, the aforementioned exemption is no longer valid.

As the findings from the questionnaire indicated (cf. 2.1), while 57% of the respondents are aware of the *Promotion of Equality and Prevention of Unfair Discrimination Act*, the majority of practitioners are not familiar with its content and are, therefore, not aware of their legal obligations in ensuring an accessible built environment (Table 1). Although the legal status of this Act is still being tested, recent court cases, for example the case of the Kabega Park police station (Steyn, 2008) and the case of Meyerton Court buildings (De Bruin, 2003), heard in equity courts, have resulted in people with disabilities being awarded compensation for inaccessible buildings, and apologies being proffered by the offending party.

6.6 Enforcement

Enforcement of the NBR is controlled at microlevel by the local building council and their inspectors. Geszler (2008), however, stated that these inspectors often lack the skills to make sound judgements. The *INDS* (South Africa, 1997: 30) concurs: "... unfortunately these regulations have been badly administered and monitored". In this regard the *INDS* (South Africa, 1997: 30) lists a number of specific problem areas that need to be addressed, including planning professionals who fail to understand and implement the specific

details required in providing an inclusive environment and developers who do not have clear policies on environmental access.

6.7 Standards: minimums or maximums

The standards given in Part S and the SABS 0246 are minimums. However, practitioners typically apply them as maximums (optimum dimensions) (cf. 2.1). This is problematic in that the standards are grossly outdated and have seemingly been compiled with a lack of understanding of the problems encountered by people with disabilities in the built environment.

6.8 The new Part S

While preceding sections discussed the new Part S compared to the old Part S, this section summarises the achievements and failures of the new Part S. First, it combines both the technical standards, the SABS 0400 and the SABS 0246, eliminating previous confusion. Secondly, the meaning of the standard is brought in line with the constitution and the *Promotion of Equality and the Prevention of Unfair Discrimination Act*. New standards, such as those pertaining to parking spaces have been added. Finally, it features clear explanatory notes, a comprehensive list of definitions, and includes all the legislative Acts and sections of the *Bill of Rights* related to disability.

However, it fails to achieve the following: requirements are not based on the latest ergonomic research and international standards, for example the required gradients for ramps are still out of date and dangerous. The requirements also do not provide for different environments, such as transport infrastructure or shopping malls, as opposed to office environments.

7. Recommendations

It is evident from this study, and as stated in the *INDS* (South Africa, 1997: 30), that the old Part S (SABS 0400 Part S) is outdated, seemingly compiled with a lack of understanding of the real needs of people with disabilities and not in line with the inclusive nature of the constitution. Therefore, the new Part S (SANS 10400-S) urgently needs to be published and implemented. However, it should be borne in mind that it is in itself imperfect.

The following recommendations are made:

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- the regulations should be revised in terms of remaining ambiguities, thereby bringing them in line with the constitution and associated legislation;
- the regulation should be reviewed. A move towards a universal access regulation, including both people with disabilities and those without should be debated and considered;
- the new Part S (SANS 10400-S) should be updated in terms of the latest research in ergonomics, and other areas of universal design;
- the new Part S (SANS 10400-S) requirements should be extended to include a variety of built environments, such as city planning, transport infrastructure and different building types;
- the new Part S (SANS 10400-S) should be updated, by means of a comparative study, in terms of progressive international standards, such as those of the United Kingdom and Australia;
- any procedures of revision should include an intensive and thorough process of consultation with all the relevant organisations of and for people with disabilities;
- any process of revision should include the study of international precedents in terms of their processes and resultant standards;
- the public, local building council and their inspectors, professional practitioners, construction industry and developers should be made aware of the revised standards, the legal implications in terms of the constitution and be given an understanding of the real needs of people with disabilities;
- education and training is a means to achieve the aforementioned recommendation. Training in this regard needs to be formally implemented in tertiary diplomas and degrees relating to the built environment. Furthermore, training should be provided by the various professional bodies to practitioners.

8. Conclusion

It is clear that all people need an inclusive built environment so that they can live and work comfortably. Moreover, certain groups in society, in particular people with disabilities, experience the greatest difficulties with the built environment. Thus, it is imperative that the new Part S (SANS 10400-S) be published and implemented if our built environment is to begin to reflect the political and social change it

is currently experiencing, and that these standards themselves be further updated.

In addition, the needs of people with disabilities ought to be understood and appreciated. Therefore, the standards should be aligned with the inclusive nature of our constitution, in particular the Bill of Rights. In this way our buildings, landscapes, neighbourhoods and cities might both physically and symbolically indicate that people with disabilities are an integral part of our society.

References

De Bruin, P. 2003. Courts taken to court. [online]. Available from: <http://www.news24.com/News24/South_Africa/0,,2-7_1428134,00.html> [Accessed 23 February 2009].

Gezler, D. 2008. Personal interview at the South African Bureau of Standards, Pretoria on 11 February 2008.

Osman, A. & Gibberd, A. 2000. Housing for special needs: Physical interior design to accommodate special needs. Social Housing Foundation Conference. Johannesburg.

Priestley, M. 2006. Developing disability studies programmes: The international context. In: Watermeyer, B., Swartz, L., Lorenzo, T., Schneider, M. & Priestley, M. (Eds.). *Disability and social change: A South African agenda*. Cape Town: HSRC Press, pp.19-30.

SABS 0400. 1990. *South African Standard: Code of practice for the application of the National Building Regulations*. Pretoria: The Council of the South African Bureau of Standards.

SANS 10400-S. 2008. South African National Standard: The application of the National Building Regulations. Part S: Facilities for disabled persons. 3rd Edition. Unpublished draft.

SABS 0246. 1993. *South African standard, code of practice: Accessibility of buildings to disabled persons*. Pretoria: The Council of the South African Bureau of Standards.

SABS stakeholder's workshop. 2007. Unpublished agenda.

South Africa. 1993. *Occupational Health and Safety Act, Act 85 of 1993*. Pretoria: Government Printers.

South Africa. 1996. *Constitution of the Republic of South Africa, Act 108 of 1996*. Pretoria: Government Printers.

South Africa. 1997. *White Paper on Integrated National Disability Strategy*. Pretoria: Government Printers.

South Africa. 1998. *Employment Equity Act, Act 55 of 1996*. Pretoria: Government Printers.

South Africa. 2000. *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*. Pretoria: Government Printers.

South Africa. 2008. National Building Regulations and Building Standards Act, Act 103 of 1977. *Government Gazette*, No 31084, pp. 45-68.

Steyn, A. 2008. The judgement of the equality report. Annual report from the portfolio holder for advocacy. [online]. Available from: <http://www.givengain.com/cgi-bin/giga.cgi?cmd=cause_dir_news_item&news_id=53367&search=&cause_id=1137> [Accessed: 23 February 2009].

United Nations. 2006. Convention on the Rights of Persons with Disabilities. [online]. Available from: <<http://www.un.org/disabilities/>> [Accessed: 02 December 2008].

Weisman, L.K. 1994. *Discrimination by design: a feminist critique of the man-made environment*. Urbana: University of Illinois Press.